

EXECUTIVE SUMMARY

An increasing number of Canadian organizations – employers, volunteer managers, educational institutions, licensing bodies and governments – are incorporating police record checks into their hiring and management practices. This report examines the Canadian legal regulation of these practices and the available social science evidence regarding the utility and impact of conducting police record checks. In the course of our research we conducted interviews with individuals from a wide range of organizations that request record checks. Our research was also informed by contact with over one hundred Canadians regarding the impact that record checks have had on their lives.

There is no clear or consistent definition of a “criminal record” in Canadian law, and existing legislation establishes only a patchwork of partial regulation. There are statutes that set clear limits on the disclosure of certain records, including less serious findings of guilt, youth records and, upon application, some convictions. Local and federal police databases, however, store not only a history of criminal convictions but also details about mental health apprehensions, 911 calls, casual police contact, unproven allegations, withdrawn charges and acquittals (“non-conviction records”). In many jurisdictions, these non-conviction records are frequently disclosed on police record checks. Most employees are not covered by existing privacy legislation. Human rights statutes provide varied levels of protection, at times prohibiting discrimination against pardoned convictions, while leaving those with non-conviction records open to unfair treatment. Because of these and other gaps in Canadian law, depending on where a person lives, receiving an acquittal or having a withdrawn charge can be more personally and professionally damaging than a formal finding of guilt.

Our research suggests that Canadian employers and volunteer managers regularly require applicants to provide record checks during the application process. Organizations appear generally risk averse. Some simply have zero-tolerance policies, requiring applicants to provide an absolutely clean record check. Others will say they exercise some discretion but will nonetheless err on the side of requesting more information and turning away individuals where there is any perceived

link between the entry on the police record and the position. Awareness of the legal restrictions on requesting and using police record checks is limited; based on our interviews, even the clear legal provisions that are in place to limit the use of vulnerable sector checks – the most invasive form of police record check – are being contravened.

Our interviews also revealed a general perception that a police record check is a useful risk-mitigation tool – that it will help screen out “bad” people and keep organizational assets and vulnerable clients safe. The available social science evidence, however, does not support this assumption. The academic research that has been done to date has found that past criminal convictions are not correlated with a likelihood to commit a work-related offence in the future. Moreover, these studies focus only on the predictive value of convictions; an enormous range of circumstances may give rise to a non-conviction record, making their utility in employee screening even more questionable.

This growing reliance on police record checks has significant collateral consequences that are damaging on multiple fronts. On a personal level, individuals who have paid their debt to society find that they are facing years of social and economic exclusion. Those who called 911 for medical assistance or faced baseless allegations are being excluded from school, denied employment and isolated from their communities on the basis of old non-conviction records and police contact. On a societal level, placing increased and unnecessary barriers in front of individuals who are seeking employment, education or volunteer experience is counterproductive. For those who have committed a crime, employment – along with the social networks and economic stability that work provides – increases the likelihood of successful rehabilitation and reintegration.

The current legal lacunae largely leave it to requesting organizations and local police services to decide what should be disclosed, to whom, and under what circumstances. Organizations are generally risk averse. Numerous police services across the country, concerned about protecting vulnerable individuals and about potential liability for not sharing seemingly relevant information, have moved towards greater disclosure. Employers and volunteer managers are similarly concerned about protecting vulnerable individuals and organizational assets and are also worried about potential liability for not requesting all available information – and not acting upon information if something is disclosed. Ultimately, it is left up to the individual with some type of notation on their record to find a job, to explain why the police were called to the house four years ago, or to try to navigate complex bureaucratic systems to suppress or expunge their non-conviction record.

The time has come for our provincial, territorial and federal governments to address this issue. There is no evidence that broad use of criminal records materially reduces the risk of crime or violent offences in the workplace. To the contrary, systemic barriers to employment undermine the significant efforts and resources put into reintegration and ultimately prejudices community safety. The widespread release of non-conviction records runs counter to the presumption of innocence; violates individuals' privacy; and leads to discriminatory, stigmatizing exclusion from employment, education and community opportunities. The bottom line is that widespread, unnecessary police record checks do not contribute to public safety; they undermine it. The following recommendations – both short- and long-term – are aimed at reintroducing perspective and balance to the societal use of police record checks.

Recommendations

1. To provincial, territorial and federal governments

- 1.1 Governments should legislatively prohibit the disclosure of non-conviction records for criminal record and police information checks.
- 1.2 Governments should introduce legislation based on British Columbia's *Criminal Records Review Act*, establishing centralized bodies to conduct vulnerable sector screening and evidence-based risk assessments. These bodies should provide screening services for all positions that would qualify for a vulnerable sector check.
- 1.3 Human rights statutes across the country should be amended to clearly prohibit discrimination on the basis of police contact, non-conviction records and criminal records of conviction.
- 1.4 Provincial and territorial privacy statutes across the country should be amended to provide privacy protection for applicants, employees and volunteers not already covered by existing provincial or federal privacy statutes.
- 1.5 It is in the public interest for individuals with a criminal record to have the fullest opportunity for employment. Governments should critically review legislative provisions that permit or require police record checks, as well as government grants and contracts that require the recipient organization to conduct police record checks. Recent federal amendments that further restricted Canadians' access to record suspensions should be repealed.

2. To police services and police service boards

- 2.1 Police services should not disclose non-conviction information on criminal record and police information checks.
- 2.2 Until recommendation 1.2 is adopted, there should be a strong presumption against the disclosure of any non-conviction information on vulnerable sector checks. Non-conviction information should be disclosed only in exceptional circumstances where there are reasonable grounds to believe that disclosure of this information will mitigate an identifiable risk to public safety.
- 2.3 Police services should bring existing policies into compliance with the intent of federal legislation governing police records, including the *Youth Criminal Justice Act*, the *Criminal Records Act* and the *Criminal Code*.

3. To businesses and not-for-profit organizations

- 3.1 Organizations should critically assess whether current record check practices are necessary. The majority of positions should not require any form of record check, and in general only individuals who are in ongoing, unsupervised positions of trust with or power over the vulnerable sector should be subject to a vulnerable sector search.
- 3.2 Checks that may disclose applicants' mental health information and history of police contact are highly privacy invasive and likely contravene Canadian privacy law, where applicable. They should not be utilized.
- 3.3 Organizations offering positions that do warrant a criminal record or vulnerable sector check should develop detailed, clear, written guidelines. The full policy should be public and available to all applicants, and criminal record checks should be requested only once a conditional offer of employment has been extended.

4. To third-party record check companies

- 4.1 Third-party record check companies should enhance transparency and clarity; fully comply with the *Personal Information Protection and Electronic Documents Act* and provincial privacy statutes; and end services that provide or facilitate access to non-conviction records.

5. To privacy commissioners and human rights commissions and tribunals

- 5.1 The development, interpretation and application of privacy and human rights law should take into consideration the most recent social science evidence regarding the dubious value of police record checks as a workplace screening tool.
- 5.2 Where a privacy commissioner has the authority to initiate its own investigations, it should consider investigating the collection, use and disclosure of both conviction and non-conviction information for employment purposes by organizations within its jurisdiction.