

UNIFORM LAW CONFERENCE OF CANADA
CONFÉRENCE POUR L'HARMONISATION DES LOIS AU CANADA

INFORMATION NOTE: *Uniform Police Record Checks Act (Aug 2021)*

KEY POINTS:

- There is no standard across the country for what is included in a police record check and in some jurisdictions, it may include “non-conviction” information the disclosure of which can be harmful to an individual and would not benefit public safety.
- In 2016 the ULCC populated a working group to investigate police record check policies and practices across Canada, and to prepare a uniform Act. The joint project of the Civil and Criminal Law Sections was initiated in response to a resolution of the Canadian Bar Association that Canadian jurisdictions enact uniform legislation.
- The *Uniform Police Record Checks Act* was adopted and recommended to Canadian jurisdictions for enactment at the annual meeting of the ULCC in 2018. The Uniform Act:
 - Sets out the scope of the Act, which is focused on record checks for purposes such as background checks for volunteer positions or membership in an organization, and employment or education applications. It does not impact the ability of law enforcement to conduct background checks for police investigations;
 - Sets out the requirements for requesting a record check, the types of record checks permitted, the duties of police in carrying out record checks, and the type of information that may be disclosed;
 - Provides that “non-conviction” information may only be disclosed in response to a “vulnerable sector check” and lists criteria that must be met to fall into this category including risk of harm to a child or vulnerable person.

BACKGROUND:

Why Are Police Record Checks Required?

- Police record checks are extensively used to assess prospective employees and volunteers. They can also be required for other purposes including: adoption, international travel, changes of name, and student enrollment and placement.

What Information is included in a Police Record Check?

- Traditionally a police record check includes a person’s record of criminal conviction(s). However, checks can also disclose other information that may be inaccurate, irrelevant or prejudicial.

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- The most significant problem concerns the disclosure of information that goes beyond a person’s record of a criminal conviction to include “non-conviction information” such as mental health apprehensions, suicide attempts, and drug overdoses.
- Police record checks may also include what are referred to as “adverse” or “negative” contacts with police such as information respecting:
 - charges that were dropped or stayed, or which resulted in an acquittal;
 - a police file in which the individual who is the subject of the police record check was a “suspect”, “witness” or “person of interest” in a matter that did not result in charges being brought against the person.

Why is the Act needed?

- There is no standard across the country for what is included in a police record check. There are therefore inconsistencies across Canada respecting:
 - the kinds of checks that may be conducted;
 - what information may be released; and
 - what procedural protections are extended to applicants to challenge the accuracy or relevance of information disclosed.
- Uniform standards would be beneficial in relation to release of non-conviction information, which can result in unnecessary consequences and serious prejudice to the person who is the subject of the police record, such as to the person’s employment prospects or other opportunities;
 - Non conviction information can lead to a loss of community respect and personal standing. As the Canadian Civil Liberties Association has said, such records “place a cloud over the character of people who may never have been convicted or even arrested for a crime”. They also act as an “invisible punishment” for having come into contact with the criminal justice system. Non conviction records may harm the reputation and standing of individuals as it is often assumed that they are guilty and were not convicted only because the high standard of proof required in criminal cases or because of a “technicality”.

Implications of Police Record Checks on Youth and Minorities

- The harmful consequences of disclosing non-conviction information disproportionately affects youth and minorities.
- Racialized populations are overrepresented in the criminal justice system at every stage, including police contact, and are disproportionately impacted by criminal records and non-conviction records.
- Studies by the John Howard Society of Ontario found that:

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- “employers’ refusals to hire people with criminal records can have a disproportionate impact on individuals with other protected characteristics such as race.”
- non-conviction records of young persons, between the ages of 15 and 29, can have “as devastating an impact on young people’s employment, volunteering and academic prospects as records of convictions” and that “the retention and disclosure of non-conviction information is an issue that affects the equality, opportunities, human rights and civil liberties” of all Canadians.

Responses to Calls for Reform

- Organizations such as the Canadian Civil Liberties Association and the Information and Privacy Commissioners of Ontario and British Columbia have called for greater fairness and clarity in the police background check process.
- Ontario enacted the *Police Record Checks Reform Act, 2015*, which constitutes a major advance in this area and upon which this uniform act is modeled. The Act regulates police record checks province-wide. It standardizes and significantly limits the amount of non-conviction information that may be provided in response to a police record check, codifies a process to correct inaccurate information that may be contained in a record, and provides a means of appeal to allow applicants to challenge the release of irrelevant non-conviction information.
- In British Columbia, comprehensive (but non-legislative) guidelines have been issued in consultation with chiefs of police. In some other provinces and territories, similar guidelines have been adopted or are being developed, while in others, individual police forces develop their own policies. The RCMP also has its own policies.

For more information on the Uniform Act contact? info@ulcc-chlc.ca