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**THE 19<sup>TH</sup> ANNUAL  
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**Police Reference Checks and Other Practical Issues  
Regarding Child Protection**

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2

**A. INTRODUCTION**

- The objective of this presentation is to provide general information regarding Police Reference Checks and other practical issues in child protection
- There are different categories of vulnerable persons, including children, the elderly, physically or mentally challenged persons and others
- The focus of this presentation is on child protection, although comments on the Police Checks for the vulnerable sector may also apply to other groups of vulnerable persons

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- The comments provided throughout this presentation are not intended to serve as legal advice and specific questions that arise should be addressed with the assistance of legal counsel
- Throughout this presentation the generic term Police Check will be used for all types of Police Reference Checks (as defined later in the presentation)

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4

- Every organization hopes that it will never have to encounter any incidents of child abuse that occurred through one of its programs
- However, due to a number of tragic, high-profile incidents of child abuse that were committed at various charitable and non-profit organizations, as well as developing case law, child protection issues are now a primary concern
- As such, all organizations that carry out programs involving children should implement a child protection policy which should include a requirement for Police Checks

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- At an initial level, Police Checks can help to screen those individuals who may not be well suited to work with children
  - e.g. by helping to identify individuals with criminal records involving past abuses or violent crimes
- Police Checks alone however are insufficient for screening potential volunteers and/or employees as:
  - Any information obtained through a Police Check, may not necessarily reflect the most current information

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- Police Checks are not always 100% accurate and it is not uncommon for such records to contain clerical errors and/or omissions
- Not all perpetrators of child abuse have a past criminal record and a number of incidents surrounding child abuse have involved first-time abusers
- A Police Check is one important step as part of a more comprehensive screening procedure for volunteers and employees who wish to work with children

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- Further information on child protection matters are available on our website at [www.charitylaw.ca](http://www.charitylaw.ca):
  - PowerPoint Presentation, entitled "Thoughts on Child Protection Policies: How to Make Them Work for Your Not-for-Profit or Charity", dated June 7, 2010 - <http://www.carters.ca/pub/seminar/charity/2010/eso0607.pdf>
  - Church Law Bulletin No. 23, entitled "Thoughts on Child Protection Policies: How to Make Them Work for Your Church or Charity", dated November 27, 2008 - <http://www.carters.ca/pub/bulletin/church/2008/chchlb23.pdf>

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8

- Helpful resource materials regarding child protection and abuse prevention are also available on the Robertson Hall Insurance website in the Resources section of their *Church Protection Plus* Church & Charity home page: [www.robertsonhall.com](http://www.robertsonhall.com) and [http://robertsonhall.com/pdf/RH\\_Abuse%20Prevention\\_Newsletter.pdf](http://robertsonhall.com/pdf/RH_Abuse%20Prevention_Newsletter.pdf)



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9

## B. POLICE RECORD CHECKS

- There is no statutory legal requirement to carry out Police Checks on employees and volunteers working with vulnerable persons in Ontario, however, the checks:
  - Are becoming industry standard among organizations that work with children
  - Are required by insurance companies to qualify for abuse coverage
  - Are important due diligence steps to screen out applicants with criminal convictions involving violence or abuse and help to protect the organization from liability



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10

- There are generally two main options on Police Checks that may be completed by charities and non-profits: "Police Information Checks" and "Police Vulnerable Sector Checks"
- The process that applies to obtaining the Police Checks differs with each municipal police service
- The LEARN Guideline for Police Record Checks is underway to standardize the procedure to obtaining Police Checks across Ontario

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- Organizations that work with vulnerable persons are eligible to obtain more detailed Police Checks, subject to the requirements in the organization's particular jurisdiction
- Police Checks should be updated regularly in accordance with the provisions of the organization's Child Protection Policy
  - Many insurers recommend every 3-5 years
  - A practical guideline would be every 2-3 years
  - RCMP recommends they be updated yearly

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- There is no simplified process to "update" a Police Check and new checks are required
- Important to remember that criminal records should be handled sensitively and proper privacy protocols should be in place
- Original copies of criminal record clearance forms should be kept on file in perpetuity as there is no statute of limitations on legal actions launched by childhood victims of abuse

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## 1. Police Information Check

- Available for employees or volunteers of not-for-profit organizations who are **not** working with children or other vulnerable persons
- Police Information Checks are used to determine the possible existence of a criminal record
- Searches the RCMP National Repository of Criminal Records and the local police service's records for indictable or hybrid offences, by an individual's name and date-of-birth



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14

- Summary conviction offences are only reported if they have occurred along with an indictable or hybrid offence
- No search is completed of pardoned sex offenders or mental health apprehensions
- If the police service is unable to verify an individual's criminal record information based on name and date of birth, then fingerprints will also be required
- Certified Criminal Record Product is issued which includes a summary of an individual's offence convictions and non-convictions that are releasable in accordance with federal laws

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15

## 2. Police Vulnerable Sector Check (PVSC)

- Consists of the more detailed Police Check available for individuals that intend to work and/or volunteer with vulnerable person(s) (pursuant to the *Criminal Records Act*)
  - Teachers, social workers, coaches, day-care workers, paid employees or volunteers of not-for-profit organizations working with children or other vulnerable persons
- PVSC searches several databanks based on an individual's name and date of birth:



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16

- RCMP National Repository of Criminal Records
- Canadian Police Information Centre (CPIC) Investigative Data Bank, whose records include:
  - Law enforcement investigation records
  - Accused, court action, missing, parolee and wanted persons reports
  - Information on stolen or lost property
- CPIC Intelligence Data Bank
  - Includes records entered by agencies who gather criminal intelligence
- Local police records of where applicant resides

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17

- If an individual's gender and date of birth match that of a pardoned sex offender, a fingerprint based search will also be needed and a Certified Vulnerable Sector Product issued
  - The report is a summary of an individual's offense convictions, non-convictions and pardoned sexual offense convictions that are releasable in accordance with federal laws
  - The report also includes information relating to *Mental Health Act* incidents the individual has been involved in

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18

### 3. Other Police Record Checks

- Police Criminal Record Check (PCRC)
  - Only searches for criminal convictions
  - More basic and general search
  - **Not** ideal for not-for-profit organizations
- Firearms Interest Police (FIP)
  - Not generally completed through police services
  - Does not include a search of pardoned sexual offences

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19

#### 4. Possible Results of Police Checks

- Negative
  - RCMP did not identify any possible criminal records
- Records Match
  - RCMP identified a possible match to a registered RCMP criminal record
- Incomplete
  - Results are inconclusive and individuals must submit fingerprints
  - Certified Records are then issued



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#### C. POLICE VULNERABLE SECTOR CHECK PROGRAMS IN GREATER TORONTO AREA

##### 1. Toronto Police Service (TPS)

- All local community organizations must be registered with TPS before any Police Checks will be performed
- A Memorandum of Understanding between the organization and TPS must be entered into
- At least one representative of the organization having responsibility for hiring volunteers and employees must have training on the Ontario *Human Rights Code*

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- The organization's management and human resources personnel must have an understanding of what constitutes a *bona fide* occupational or volunteer requirement to seek and receive information relating to *Mental Health Act* apprehensions
- Individuals may submit a request to the TPS to have any *Mental Health Act* information relating to prior contact with the police suppressed
- TPS Records Management Services performs all Police Checks and charges the organization for performing checks on employees and volunteers

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- Organizations will submit to TPS the request for a Police Check after applicants sign a consent to disclose form
  - If fingerprints are required, the application will be returned to the applicant, who then must attend in person at an RCMP accredited fingerprint agency to have their identity confirmed
  - Once their identity is confirmed the applicant must mail the confirmation and the application back to TPS
  - The results of the Police Check will be mailed directly back to the applicant

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23

## 2. York Regional Police

- A Vulnerable Sector Screening (VSS) is available for individuals working or volunteering with the vulnerable sector
- In order for an individual to receive a VSS, the charitable or non-profit organization must certify by letter that:
  - The VSS is being used to determine the suitability of the applicant to work and/or volunteer in the vulnerable sector
  - The VSS is the last step in the hiring process; and
  - The organization understands its obligations under the *Human Rights Code*

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24

- Applicants can apply at Aurora or Richmond Hill Police Stations
  - Must appear in person and provide two pieces of Government Issued Identification (one must be photo I.D.)
  - Fees apply to both volunteers and employees
  - Volunteers must bring a letter from the organization they are applying to work with
  - Four to six week processing time and results are mailed back to the applicant
- If fingerprints are needed, they can be taken at the Aurora location (at an extra cost)

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25

### 3. Peel Regional Police (PRP)

- Charities and Not-for-profits must be added to the PRP Volunteer Agency List before any form of Police Check will be performed
- Organizations must send a letter to PRP:
  - Describing the type of services the organization provides; and
  - Listing the various responsibilities of the volunteers
- Organizations must also attend an information session

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26

- Applicants can apply in person in Brampton (unless from Caledon, then must go to Caledon OPP)
  - Must provide two pieces of Government Issued Identification (one must be photo I.D.)
  - Free for volunteers
  - Volunteers must bring form and letter from the organization with them
  - Four to six week processing time and results are mailed back to the applicant
- Further information is available on each regional police service website

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27

### D. MENTAL HEALTH POLICE RECORDS CHECK COALITION

- Coalition led by the Canadian Mental Health Association (Ontario), the Psychiatric Advocate Office and the Ontario Association of Patient Councils to help develop consistent policies across the province for Police Record Checks
- The Coalition is concerned that information about non-criminal (mental health related) contact with the police is included in an individual's police file
  - Improper listing of police contact has led to criminalization of individuals and has affected their employment and volunteer opportunities

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28

- Pursuant to the *Mental Health Act*, the Coalition believes that this unnecessary disclosure:
  - Is discriminatory to individuals who have had contact with police; and
  - Violates the Ontario *Human Rights Code* on the grounds of disability or perceived disability
- These “disclosures” suggest to potential employers that an individual did something wrong or committed a crime, as many police forces report on their databases that the individual was “arrested” under the *Mental Health Act*

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29

- The Coalition's concerns, along with those of other provincial organizations, have led to the creation of the LEARN Guideline for Police Record Checks by the Ontario Association of Chiefs of Police
- The Guideline assists provincial police services in applying relevant legislation, policies, directives and procedures when processing Police Checks
- The Guideline also promotes consistency in the processing of Police Checks throughout Ontario (e.g. in the terminology and methodology used)

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**E. THE SCREENING HANDBOOK (2012 EDITION)**

- Prepared by Volunteer Canada for Public Safety Canada
  - Last updated in 1996
- The objective of the Handbook is to assist volunteer organizations develop and revise screening policies and practices
- The Handbook provides practical information and resources for volunteer organizations
  - It is important to note that it is not a legal document

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31

## F. OTHER PRACTICAL ISSUES IN CHILD PROTECTION

### 1. Importance of Abiding by the Policy

- Charities and non-profits must ensure that adequate screening and abuse prevention policies are not only adopted but are being followed in their operations
  - Example involving a church that had a child protection plan in place (which included a requirement for Police Checks), but the individual in charge of doing the Police Checks did not get them completed



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- The church advised the insurer that it had an abuse prevention plan and obtained insurance coverage for abuse claims
- Three years later a youth leader was charged and later pleaded no contest to sexually molesting three teenagers in the youth group
- Youth leader had a previous sexual offence conviction that would have been disclosed if a Police Check had been done
- Insurance coverage was denied on the basis of a material misrepresentation

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### 2. Insurance Considerations

- Most liability insurance policies exclude abuse related claims. As such, organizations should not assume they are covered for abuse claims
- In order to qualify for coverage with the few insurers willing to cover abuse-related claims for a church or charity, a signed declaration in the insurance application is required confirming the organization has a Child Protection Policy, including screening procedures
- If unsure, organizations should contact their insurance broker or insurer


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### 3. Programs Carried Out in Members' Homes

- It is important that an organization's child protection policy must be followed in all aspects of the operations, wherever they may be carried out
- Many churches and religious organizations carry out meetings at a member's home on a weekly or bi-weekly basis
  - e.g. referred to as cell groups, house churches, and other meetings



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35

- Cases involving sexual abuse committed by a teenaged babysitter for younger children at a meeting held at someone's home, underscore the importance of appropriate supervision in accordance with a child protection policy at all times

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36

### G. BRIEF COMMENTS ON SOCIAL MEDIA AND CYBERBULLYING

- Child protection is a rapidly evolving area of law and there are a number of areas of risk that organizations need to address
- In order to protect themselves, organizations should be proactive in the development of policies and procedures in regard to the Internet and social media



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37



- What internet sites can volunteers use/have access to?
- Can volunteers set up Facebook sites for their programs?
- How much interaction should be allowed between volunteers and participants via text messaging, Twitter, email, Skype, MSN, chat rooms and other telecommunication methods?
- Nancy Claridge will be reviewing issues relating to social media during her presentation entitled "Avoiding the Pitfalls of an Online Presence for Churches and Charities"

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38

- Charities and non-profits must also address bullying and cyberbullying by developing policies and procedures to determine how situations of bullying will be dealt with, between:
  - Volunteers and participants; and
  - Participants and participants
- Organizations must remember that cyberbullying is especially difficult for children as they no longer have "safe zones" – social media follows them everywhere

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- The Supreme Court of Canada (SCC) recently released *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, an important decision on cyberbullying, the vulnerability of children and the freedom of the press
  - An unknown individual posted a fake Facebook profile with a picture of A.B., a fifteen year old girl, and a slightly modified version of her name
  - The Facebook profile contained sexually explicit references and unflattering comments about A.B.'s appearance

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- A.B. through her father as guardian, applied for a court order to force the provider of the IP address to disclose details about the imposter so legal action could be commenced against the imposter
- A.B. requested anonymity during the proceedings and a publication ban on the content of the profile, but the Nova Scotia Supreme Court and Nova Scotia Court of Appeal did not grant the requests

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- The SCC partially overruled the lower courts and held that A.B. could remain anonymous, although non-identifying information from the Facebook profile (that could not be connected to A.B.) could be published
  - The SCC noted that freedom of the press can be restricted when children need to be protected from cyberbullying and have their privacy protected
  - If children are not allowed anonymity in court applications, they are at risk of further harm from cyberbullying due to the public disclosure

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- Children's vulnerability is inherent and therefore does not need to be demonstrated in a court application involving cyberbullying
- To read *A.B. v. Bragg Communications Inc.* in full: <http://canlii.ca/t/fstvg>

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