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## **POLICE CHECKS AND CHILD PROTECTION**

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*By Esther S.J. Oh\**

### **A. INTRODUCTION**

While every organization hopes it will never have to encounter any incidents of child abuse occurring through one of its programs, a number of tragic, high-profile incidents of child abuse that were committed at various charitable and not-for-profit organizations, as well as developing case law, have made child protection issues now a primary concern. As a result, all organizations that carry out programs involving children should implement a child protection policy which includes a requirement for police checks.

This *Charity Law Bulletin* will provide a general discussion on the issue of police checks, with a focus on the programs in place in the Greater Toronto Area.

### **B. SCREENING VOLUNTEERS**

At an initial level, police checks can help to screen those individuals who may not be well suited to work with children by identifying individuals with criminal records involving past abuses or violent crimes. However, police checks alone are insufficient for screening potential volunteers and/or employees for a number of reasons. Firstly, information obtained through a police check may not necessarily reflect the most current information or may include clerical errors and omissions. In addition, not all perpetrators of child abuse have a past criminal record, as a number of incidents of child abuse have involved first-time abusers. Nevertheless, police checks are 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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While there is no statutory legal requirement to carry out police checks on employees and volunteers working with vulnerable persons in Ontario, police checks are becoming the industry standard among organizations that work with children, as they are often required by insurance companies before an organization can qualify for abuse coverage. Police checks are viewed as an important due diligence step in screening out applicants with criminal convictions involving violence or abuse to protect children from harm and the organization from liability.

There are generally two main types of police checks that may be obtained for charities and not-for-profits: “Police Information Checks” and “Police Vulnerable Sector Checks”. Organizations that work with vulnerable persons (e.g. children) may be eligible to obtain more detailed Police Vulnerable Checks, subject to the requirements in the organization’s particular jurisdiction, as described later in this Bulletin. Although the terminology used to describe the police checks and the procedures to be followed to obtain the checks can be different between municipal police services, the LEARN Guideline for Police Record Checks,<sup>1</sup> created by the Ontario Association of Chiefs of Police, was developed in order to standardize the procedure in obtaining police checks across Ontario. The Guideline assists provincial and municipal police services in applying relevant legislation, policies, directives and procedures when processing police checks, and also promotes consistency in the processing of police checks throughout the province (i.e. in the terminology and methodology used). While the Guideline was released in 2011, it has yet to be fully implemented by the various municipal police services.

Once obtained, police checks should be updated regularly in accordance with the provisions of the organization’s Vulnerable Persons or Child Protection Policy. While the RCMP recommends that police checks be updated yearly, this may not be practical for charities and not-for-profits that have numerous volunteers and employees that work with children. While many insurance companies recommend that police checks be updated every 3-5 years, this may not be frequent enough to catch any new convictions of abuse that occur while a person is volunteering or working with an organization. As such, a practical guideline would be to update the police checks every 2-3 years. Charities and not-for-profits should remember that criminal records involve a highly sensitive and personal issue and therefore appropriate procedures should be established to protect the privacy and dignity of each employee and volunteer. Unfortunately there is no option to order a cheaper or faster “update” of an earlier police check, as each police check involves

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<sup>1</sup> Available at [http://www.oacp.ca/upload5/news/GUIDELINES\\_FOR\\_RECORD\\_CHECKS\\_FINAL.pdf](http://www.oacp.ca/upload5/news/GUIDELINES_FOR_RECORD_CHECKS_FINAL.pdf) (the “Guideline”).

reviewing and verifying all of the relevant databases to confirm there are no criminal records for a given applicant. As such, the process for updating a police check simply involves ordering a new one current as of the date it is issued.

## C. POLICE CHECKS COMMONLY OBTAINED BY CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS

The more generic police check referred to as the **Police Information Check (PIC)** is available for employees or volunteers of charities and not-for-profits who are **not** working with children or other vulnerable persons. PICs are used to determine the possible existence of a criminal record and involve a search of 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. Under a PIC, no search is completed of pardoned sex offenders or mental health apprehensions. Where a police service is unable to verify an individual's criminal record information based on name and date-of-birth, fingerprints will then also be required. In such a case, a **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.

The more detailed police check is often referred to as the **Police Vulnerable Sector Check (PVSC)**, although the terminology may differ with each municipal police service. The PVSC consists of the more detailed police search available for individuals who intend to work and/or volunteer with vulnerable person(s), including teachers, social workers, coaches, day-care workers, as well as paid employees or volunteers of not-for-profit organizations working with children or other vulnerable persons.

The PVSC involves a search of several databanks based on an individual's name and date-of-birth, including:

- The RCMP National Repository of Criminal Records;
- The 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;

- The CPIC Intelligence Data Bank, which includes records entered by agencies who gather criminal intelligence; and
- The local police records of where applicant resides.

If an individual's name, 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 thereafter. The PVSC report provides 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 in which the individual has been involved.

While there are other types of police checks available through the municipal police services, they are generally not suitable for charities and not-for-profits that wish to screen potential volunteers and employees who will work with children and other Vulnerable Persons.

#### D. POLICE VULNERABLE SECTOR CHECK PROGRAMS IN THE GREATER TORONTO AREA

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

In Toronto, all local community organizations must be registered with the TPS before police checks will be carried out, and a Memorandum of Understanding (MOU) must have been entered into between the organization and TPS. At least one representative of the organization having responsibility for hiring volunteers and employees must have training on the Ontario *Human Rights Code*. In this regard, the applicant 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. In order to obtain a police check on a given employee or volunteer candidate, an organization must submit the request for a police check after the employee or volunteer candidate has signed a consent to disclose. 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 who will then decide whether or not to disclose the information to the organization.

## 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 not-for-profit 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 not-for-profit understands its obligations under the *Human Rights Code*.

Applicants can apply at either the Aurora or Richmond Hill Police Stations. They must appear in person and provide two pieces of Government Issued Identification (one must be a photo ID). Fees apply to both volunteers and employees, and volunteers must bring a letter from the organization with which they are applying to work. If fingerprints are needed, they can be taken at the Aurora Police Station (for an extra cost). There is a four to six week processing time and results are mailed back to the applicant.

## 3. Peel Regional Police (PRP)

The Region of Peel is currently undergoing changes to its vulnerable sector check process. In the past, before volunteer applicants could receive a vulnerable sector check, an organization was required to send the PRP a letter requesting that it be added to the volunteer agency list (i.e. the list of organizations that work with Vulnerable Persons). The PRP would then respond with a letter confirming that the organization had been added to the list and every volunteer applicant would bring a copy of this letter to the police station when requesting a vulnerable sector check. The PRP, however, is now in the process of auditing this system. As a result, at this time any volunteer wishing to receive a vulnerable sector check must pay a \$45 fee (or \$25 senior fee) in order to have the check conducted. However, those volunteer agencies previously registered with PRP will continue to have their volunteer applications processed as before. In order to request a vulnerable sector search, volunteer and employee applicants must attend in person at PRP Headquarters in Brampton with two pieces of valid government ID. There is a two to four week processing time and results are mailed back to the applicant.

## E. BRIEF COMMENTS ON OTHER PRACTICAL ISSUES RELATING TO CHILD PROTECTION

As mentioned earlier in this Bulletin, police checks are an important step in screening employees and volunteers. However, organizations working with children and other vulnerable persons are strongly recommended to adopt a comprehensive child protection policy that outlines screening procedures, reporting guidelines and other measures to help protect children from harm. Once a child protection policy is adopted, it is imperative that the organization designate a responsible person to ensure that the screening and abuse prevention policies are actually followed.

The importance of this principle is underscored in a case involving a church that was denied insurance coverage on the basis of a material representation when incidents of abuse arose. The church in this case had obtained insurance coverage for abuse claims after it had advised its insurer that it had a child protection plan in place, which included a requirement for police checks. Unfortunately, the individual in charge of doing the police checks did not follow through in having the police checks completed. A few months later a new youth leader was charged, and later pleaded no contest, to sexually molesting three teenagers at the church's youth group. If the church had conducted the police checks on the youth leader in accordance with the screening procedures outlined in its child protection policy, the church would have discovered that the youth leader had a pre-existing sexual offence conviction.

It is important to note that most liability insurance policies exclude abuse related claims and therefore charities and not-for-profits should not assume they are covered for abuse claims. If they are unsure, organizations should contact their insurance broker or insurer to obtain written confirmation of coverage.

Organizations should ensure they comply with their child protection policy, and that the policy is 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 (i.e. cell groups, house churches), but do not adhere to the child protection policies at programs held outside of the church facility. However, the increased potential for incidents to occur at such meetings underscores the importance of organizations complying with their child protection policy and providing appropriate supervision at **all** activities.

Further information on child protection matters is 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>

Helpful resource materials regarding child protection are also available on the Robertson Hall Insurance website: [http://robertsonhall.com/church-insurance/resources/abuse\\_prevention.html](http://robertsonhall.com/church-insurance/resources/abuse_prevention.html)