

 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p>Carters Annual <i>Charity &amp; Not-for-Profit Law</i> Webinar November 9, 2023</p>
<p><b>Vulnerable Sector Checks: What Charities and NFPs Need to Know - Brief Comments from a Practitioner's Perspective</b></p> <p>By <b>Esther S.J. Oh, B.A. LL.B.</b> estheroh@carters.ca 1-877-942-0001</p> <p>© 2023 Carters Professional Corporation</p>	
<p>CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</p>	<p>Toronto Ottawa Orangeville www.carters.ca www.charitylaw.ca www.churchlaw.ca</p>

2

**A. INTRODUCTION**

- There is no statutory legal requirement to carry out vulnerable sector checks (VSCs) on employees and volunteers working with vulnerable persons in Ontario
- However, vulnerable sector checks are an essential due diligence step to help screen individuals who may not be well suited to work with vulnerable persons
  - VSCs help to screen applicants with criminal convictions involving violence or abuse in order to protect vulnerable persons from potential abuse
  - By protecting vulnerable persons from harm, this in turn, can help protect the organization from potential liability

www.carters.ca www.charitylaw.ca

- VSCs are normally required by insurance companies as a condition of abuse coverage (although VSCs should be restricted to individuals with duties that involve providing services to vulnerable persons)
- VSCs are a snapshot of the records of the police concerning an individual **at a given moment in time**
  - Not all perpetrators of abuse have a criminal record
  - Incidents involving abuse can be perpetrated by individuals who are first-time abusers (some perpetrators have not been caught yet)
  - VSC findings can change at any time and therefore new VSCs should be obtained periodically
- A VSC should **not** be relied on **by itself** to screen individuals who will work with vulnerable persons

## B. IMPORTANCE OF DETAILED SCREENING PROCEDURES WITHIN POLICY TO PROTECT VULNERABLE PERSONS

- VSCs should be **one step** in a **comprehensive screening** procedure for volunteers and employees who wish to work with vulnerable persons, including but not limited to:
  - Detailed written application form,
  - Verification of multiple references,
  - Interview(s) with the applicant, and
  - Other screening measures
- Comprehensive screening requirements should be set out in a child protection policy and/or a vulnerable persons policy which also outlines procedures to be followed to protect children and other vulnerable persons from potential harm

## C. POLICE RECORDS CHECK REFORM ACT (ONTARIO)

- In Ontario, the *Police Records Check Reform Act* came into force on November 1, 2018
  - All adults (18 years of age and over) who wish to become employed or volunteer in positions involving duties to assist vulnerable persons should be required to obtain a VSC
  - Minors (under the age of 18) who reside within Ontario cannot legally obtain a VSC or other police record check
    - The only exception is where the minor is applying to work or volunteer with the vulnerable sector with a federal, provincial or municipal government agency of Canada
    - Where this applies, an application for a criminal record and judicial matters check may be submitted (not a VSC)
- However, upon becoming eighteen (18) years of age an individual can apply to obtain a vulnerable sector check

## D. APPLYING FOR VSC IN ONTARIO

- Police services throughout Ontario have different procedures and requirements for VSC applications
 

- Applications may be submitted in person, online or by mail, subject to requirements at police service
  - Fees and acceptable methods of payment will vary
  - Some police services will provide a lower fee for applicants for volunteer positions (as opposed to applicants for employment positions)
- Applicants normally need to provide information confirming the person is applying to work or volunteer with vulnerable persons as part of their duties at the charity or NFP
- Generally speaking individuals will be required to provide valid government issued I.D. and other information
- Police services have different processing times
- Results will normally be provided to each individual (not the charity or NFP) by email, by mail, or in person

- In order to obtain a VSC, individuals must apply at the police service where the individual resides
- Each individual must apply for their own Police Record Check
- Where fingerprints are required to verify the identity or information concerning an individual or where an individual has a criminal record, further instructions will be provided by the police on steps to be taken

## E. PRIVACY CONSIDERATIONS

- Given the sensitive nature of the information contained in VSCs, NFPs should use appropriate administrative, technical and physical safeguards to protect VSCs:
  - Technical safeguards include using strong passwords, firewalls and anti-malware scanners
  - Physical safeguards include restricting office access, locking rooms and locking drawers or cabinets where the VSCs are kept
  - Administrative safeguards include restricting access to the VSCs on a “need-to-know” basis
- Other privacy considerations also apply to the obtaining of consents from employees and volunteers to acquire and store the VSCs, which are beyond the scope of this presentation
  - Legal advice is recommended

## F. OPERATING IN OTHER PROVINCES

- Where a charity or NFP operates in different provinces across Canada, the charity or NFP should be aware that:

- Each regional police service within each of the provinces may have different requirements that apply to applications for VSCs

- Each province also has separate provincial legislation outlining requirements that apply to the reporting of abuse of children

## Disclaimer

This handout is provided as an information service by Carters Professional Corporation. It is current only as of the date of the handout and does not reflect subsequent changes in the law. This handout is distributed with the understanding that it does not constitute legal advice or establish a solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

© 2023 Carters Professional Corporation