Police Record Checks Legislation Comes Into Force November 1, 2018

September 20, 2018

On December 1, 2015, the Ontario government unanimously enacted the *Police Record Checks Reform Act, 2015* (the Act). Since being passed in 2015, the Act was pending proclamation into law. On April 25, 2018, the Lieutenant Governor issued an Order in Council proclaiming that the Act will come into force on November 1, 2018 — almost three years after being passed.

The Act limits the types of information that police may release in each of three different types of police record checks: (1) criminal record checks, (2) criminal record and judicial matters checks, and (3) vulnerable sector checks (performed when an individual is in a position of trust or authority over vulnerable persons like children or the elderly).

The Act sets out a schedule outlining what type of disclosure is permitted for each type of check. Generally, the most disclosure is permitted for vulnerable sector checks, most commonly used by schools and school boards, while the least disclosure is permitted for standard criminal record checks. Subject to certain temporal and other limits, most "non-conviction information" — meaning discharges, outstanding charges, court orders, and not criminally responsible findings — would be disclosed in a vulnerable sector check, but not for a standard criminal record check. Other non-conviction information may also be disclosed in a vulnerable sector check if it meets the test for "exceptional disclosure", which requires police to consider a number of different factors.

The Act also standardizes the disclosure procedure for each type of check. One significant implication of the Act's disclosure process is that the subject of the check has an opportunity to review the results of a check before it may be disclosed to another person or organization. The results of a check may not be provided to the employer who requested the check unless the individual subject of the check provides his or her written consent after receiving the results.

Along with bringing the Act into force, the government also recently issued four regulations under the Act in order to:

- list the offences to which non-conviction information must relate in order to justify "exceptional disclosure";
- set out provisions for disclosing records under the *Youth Criminal Justice Act*;

- outline the process for requesting reconsideration of disclosure of non-conviction information; and
- provide exemptions for certain types of searches. The exemptions generally relate to licensing applications in sectors such as child and youth care, securities and finance licensing, correctional institutions, police services, and certain public servant roles.

By

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