

Police Record Checks in Alberta

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Paper Commented On: Alberta Law Reform Institute, [Police Record Checks: Preliminary Research](#) (March 2020)

The Alberta Law Reform Institute (ALRI) recently published a paper on police record checks. The paper:

- examines the provincial and federal statutes that partially regulate the disclosure of information in police record check results;
- reviews the provincial and national calls that have been made for specific legislation to regulate police record checks;
- evaluates Ontario's *Police Record Checks Reform Act, 2015*, [SO 2015, c 30](#) (Ontario Act); and
- compares the Ontario Act with the [Alberta Police Information Check Disclosure Procedures](#) (Alberta Procedures) endorsed by the Alberta Association of Chiefs of Police (AACP).

Statutes Limiting the Disclosure of Police Information

Privacy and criminal law statutes place some limits on the disclosure of police information and, therefore, partially regulate the disclosure of information in police record check results. Privacy statutes – like Alberta's *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#), ss 39(1)(b) and 40(1)(d) and the federal *Privacy Act*, [RSC 1985, c P-21](#), ss 7-8 – require police services to obtain an applicant's consent before they conduct, and disclose the results of, a police record check. And, criminal law statutes limit the disclosure of certain police information.

The *Criminal Records Act*, [RSC 1985, c C-47](#), ss 6(2) and 6.1(1) limits the disclosure of information regarding absolute and conditional discharges, and criminal convictions for which a record suspension (pardon) has been granted. The *Youth Criminal Justice Act*, [SC 2002, c 1](#), s 118(1) limits the disclosure of youth record information. And, the *Criminal Code*, [RSC 1985, c C-46](#), ss 717.1-717.4 limits the disclosure of information regarding alleged offences dealt with by alternative measures (such as community service, an apology or counselling).

Calls for Legislation to Regulate Police Record Checks

Because privacy and criminal law statutes only partially regulate the disclosure of information in police record checks results, there can be significant variation in the information disclosed by different police forces. Different police forces offer different types of police record checks that disclose different types of police information.

Some police record checks have the potential to disclose “non-conviction information.” That is, they have the potential to disclose information regarding:

- criminal charges that did not result in a conviction or finding of guilt (like withdrawn, dismissed or stayed charges); and, perhaps,
- police interactions that did not result in any criminal charges (like criminal offence allegations and mental health apprehensions).

Police services determine whether non-conviction information should be disclosed by balancing public safety issues with an applicant’s privacy and human rights. But, not all police services do this balancing the same way. Like conviction information, when non-conviction information is disclosed in police record check results, it can prevent an applicant from obtaining work, volunteer and other important opportunities.

As a result of inconsistencies in the police record check practices of different police forces, and the controversial disclosure of non-conviction information in some police record check results, many have called for specific legislation to regulate police record checks. Advocates for such legislation include civil liberties organizations, privacy commissioners, the Uniform Law Conference of Canada, the Canadian Bar Association and judges dealing with issues arising from police record check results. (See section E of ALRI’s paper.)

Ontario’s Police Record Checks Reform Act, 2015

The Ontario Act came into force in November 2018. It seeks to standardize police record check practices, and limit the disclosure of non-conviction information, in Ontario.

The Ontario Act fills the gaps left by privacy and criminal law statutes by, among other things:

- specifying the three types of police record checks that can be conducted in Ontario (criminal record, criminal record and judicial matters, and vulnerable sector checks);
- listing the types of information that will be disclosed in the results of each type of check;
- defining “non-conviction information” for police record check purposes;
- restricting the disclosure of non-conviction information to the results of vulnerable sector checks;
- providing a test for the exceptional disclosure of non-conviction information; and
- establishing processes for correcting or challenging information disclosed in police record check results. (See section F of ALRI’s paper for further details.)

The Ontario Act is the first legislation of its kind in Canada. Many of the organizations mentioned above have recommended that other Canadian governments should adopt it or a similar statute.

Alberta Police Information Check Disclosure Procedures

Alberta lacks legislation like the Ontario Act. However, Alberta police services are expected to follow the Alberta Procedures, endorsed by the AACCP in May 2018; and, the contents of those procedures are similar to the contents of the Ontario Act.

The Alberta Procedures:

- state that Alberta police services only offer two types of police record checks (police information and vulnerable sector police information checks);
- explain that criminal record checks (a third type of police record check) can be obtained through private companies accredited by the Royal Canadian Mounted Police;
- list the types of information that will be disclosed in police information check (PIC) and vulnerable sector police information check (VSPIC) results;
- define “non-conviction information”;
- provide a test for the exceptional disclosure of non-conviction information; and
- establish an appeal process for challenging information disclosed in PIC and VSPIC results.

Although the contents of the Alberta Procedures are similar to the contents of the Ontario Act, there are significant differences between them. Unlike the three types of police record checks available under the Ontario Act, the two types of police record checks available under the Alberta Procedures do not really disclose different levels, or amounts, of information. Both PICs and VSPICs routinely disclose:

- criminal convictions for which no record suspension (pardon) has been granted;
- findings of guilt under the *Youth Criminal Justice Act*, during the applicable access period(s) under that Act;
- absolute and conditional discharges for one and three years, respectively;
- outstanding criminal charges and arrest warrants;
- certain court orders (like firearm prohibition orders, probation orders and peace bonds);
- findings of not criminally responsible on account of mental disorder;
- alternative measures;
- youth extrajudicial sanctions; and
- stays of proceedings.

It should be noted that alternative measures, youth extrajudicial sanctions and stays of proceedings should be categorized as “non-conviction information”. Moreover, alternative measures should not be disclosed because of the disclosure restrictions in the *Criminal Code*.

Additionally, both PICs and VSPICs have the potential to disclose “non-conviction information” (as that term is defined in the Alberta Procedures), whereas, under the Ontario Act, only vulnerable sector checks have that potential. The only difference between the information disclosed in PIC and VSPIC results under the Alberta Procedures is that VSPIC results disclose sexual offence

convictions for which a record suspension (pardon) has been granted, if disclosure is authorized by the *Criminal Records Act*.

Another significant difference between the Alberta Procedures and the Ontario Act is that the Ontario Act contains a much narrower definition of “non-conviction information” than the Alberta Procedures. The Alberta Procedures say “non-conviction information” is:

[i]nformation in a police record that did not result in a conviction and may include information about dismissed or withdrawn charges, police interactions that did not result in charges, mental health related occurrences or any other interactions of any type involving the police. (Appendix 2 - Glossary)

In contrast, the Ontario Act defines “non-conviction information” as “information concerning the fact that an individual was charged with a criminal offence if the charge, (a) was dismissed, withdrawn or stayed, or (b) resulted in a stay of proceedings or an acquittal;” and states that “non-conviction information” does not include information regarding alleged offences dealt with by alternative measures under the *Criminal Code* (ss 1(1) and 1(4)). Consequently, Alberta PIC and VSPIC results have the potential to disclose some information that will never be disclosed in any police record check results under the Ontario Act; that is, information regarding:

- alternative measures, and
- police interactions that did not result in any criminal charges (like criminal offence allegations, suspect information, mental health apprehensions, informal police contact and 911 calls).

The Alberta Procedures also contain a less stringent test for the exceptional disclosure of non-conviction information than the Ontario Act. Nevertheless, it appears that non-conviction information is rarely disclosed in PIC or VSPIC results under the Alberta Procedures. Statistics ALRI obtained from the AACP indicate that, of the 225,445 PICs and VSPICs nine Alberta police services conducted between January and November 2019, only 99 (or 0.04%) disclosed any non-conviction information.

Other differences between the Alberta Procedures and the Ontario Act are discussed in section G of ALRI’s paper.

Conclusion

Like the Ontario Act, the Alberta Procedures seek to standardize provincial police record check practices, and limit the disclosure of non-conviction information. However, the procedures lack the force of provincial legislation and there is still room for their improvement. As the procedures were only recently adopted by all Alberta police services and published, and because the AACP is open to revising them, time may tell whether Alberta needs specific legislation to regulate police record checks. Accordingly, ALRI has decided not to proceed with a police record check law reform project at this time.

ALRI’s paper contains its preliminary research findings. Its publication is intended to promote discussion about police record check practices in Alberta.

This post may be cited as: Jennifer Taylor, “Police Record Checks in Alberta” (July 3, 2018April 17, 2020), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/07/Blog_JT_ALRI.pdf

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