

## LEARN Record Checks Guideline - Background

There is an increasing demand for police records checks, both in the private and voluntary sectors. Canadian academics researching the impacts of releasing police contact and non-conviction records have found that the disclosure of these records is serving as a barrier in areas as diverse as employment, volunteer and educational opportunities, housing, public assistance, insurance, and immigration. This occurs because employers, volunteer co-ordinators, educators, and others, who are receiving and making decisions based on non-conviction entries, frequently do not understand what a police contact or non-conviction record is, and have little or no guidance as to how this information should factor into their decision-making process. The result is that many organizations adopt the most risk-averse position, automatically disqualifying a wide range of individuals solely on the basis of these records.

Our objective has been to find the right balance between providing information for the safety of our communities and protecting the privacy, human rights, and presumption of innocence of individuals.

Public sector and civil society organizations have devoted increasing attention to this issue. The Canadian Human Rights Commission has identified the release of non-conviction records as *prima facie* discriminatory, and the Information and Privacy Commissioner of Ontario has recommended for several years that there be a presumption against the release of such records. In 2012, the Canadian Civil Liberties Association (CCLA) released a report, *Presumption of Guilt: The Disclosure of Non-Conviction Records in Police Background Checks*, recommending policy changes to presumptively prevent the release of these records.

In 2012, the Minister of Community Safety and Correctional Services requested that the OACP revisit the way in which the LEARN Guidelines dealt with non-conviction records.

From a policing perspective, there is an understanding that a “clean” police record is not a guarantee of safety; database information may be incomplete or out of date, many individuals who commit crimes will have no police record, and not all police information will be released on a record check (e.g., if release will compromise surveillance or an ongoing police investigation). Organizations, however, tend to over-rely on police check results, viewing individuals who have no record as “safe” and trust-worthy, creating a false sense of security that may increase public safety threats. Police representatives also report that administering the records check system is taking up a significant amount of policing resources, and there is an increasing risk and liability associated with the release of non-conviction information in particular.

The OACP has worked to make Ontario police services leaders in terms of respecting the rights of individuals, while ensuring public safety. In March 2011, the *LEARN Guideline for Police Record Checks* was released, attempting to systemize the record check processes across the province and, in particular, address significant concerns about the impact of releasing mental health-related police records. The guideline was welcomed and applauded as a strong first step in the right direction. In September 2013, the guideline was updated to rectify some oversights regarding the treatment of diverted charges, and absolute and conditional discharges, news that was welcomed by community partners.

In November 2013, extensive consultation took place with the following community and government partners as police leaders sought to find the right balance between public safety and privacy:

- Canadian Civil Liberties Association
- Canadian Mental Health Association Ontario
- John Howard Society Ontario
- Justice for Children and Youth

- Legal Aid Ontario
- Mental Health Lawyers' Committee
- Ontario Association of Patient Councils
- Ontario Human Rights Commission
- Police Record Check Coalition
- Psychiatric Patient Advocate Office
- Schizophrenia Society of Ontario
- University of Toronto
- Volunteer Toronto

Our research and consultations with the community and Ontario police services have formed the basis of the recommendations made to the OACP Executive and Board of Directors. On February 26, 2014, the OACP Board of Directors passed two motions regarding record checks in the Province of Ontario.

### **Motion #1 - Short Term Recommendations**

1. Public education about the benefits and limitations of Criminal Record Checks
2. Presumption against disclosure of non-conviction records
3. Crafting a narrow public safety exception to protect the most vulnerable people in our communities.

### **Motion #2 - Long Term Recommendations**

1. Work for provincial change to:
  - a. Lobby for legislation
  - b. Implement an evidence-based procedure for determining when non-conviction information can be disclosed.

The LEARN Record Check Guideline is now updated. The most notable changes are listed on the 2<sup>nd</sup> page. The changes made since the last version are highlighted in green throughout the document. There will be two sessions about the guideline at the upcoming LEARN conference on October 1 and 2. The first session will outline how we got to this point through extensive stakeholder engagement while the second session will provide training on the Exceptional Disclosure Assessment.

While a guideline does not mandate direction for your police service, the OACP encourages all police services in the province to implement this guideline. In the absence of legislation this is the next best thing a police service can do to show there has not been arbitrary decisions made in developing a separate record check process. The guideline resolves many of the objections raised by the Human Rights Commission and the Information and Privacy Commissioner of Ontario. In addition, there is extensive community support.