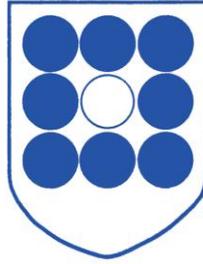


CANADIAN
CIVIL LIBERTIES
ASSOCIATION

90 Eglinton Ave. E., Suite 900
Toronto, ON M4P 2Y3
Telephone (416) 363-0321
FAX (416) 861-1291
E-mail: mail@ccla.org



ASSOCIATION
CANADIENNE DES
LIBERTÉS CIVILES

90 ave Eglinton, Bureau 900
Toronto, ON M4P 2Y3
Téléphone (416) 363-0321
Télécopieur (416) 861-1291
Courriel : mail@ccla.org

December 14, 2018

By Email

Dear Mayor Clark and Members of City Council,

I am writing on behalf of the Canadian Civil Liberties Association (CCLA) with regard to the City of Saskatoon's *Taxi Bylaw* and the proposed *Transportation Network Company Bylaw*. CCLA is a national, non-profit, non-partisan, non-governmental organization dedicated to protecting and promoting the fundamental human rights and civil liberties of all persons in Canada. Since 1964, the CCLA has been at the forefront of protecting fundamental freedoms and democratic life in Canada. Throughout its history, the CCLA has advocated for evidence-based, rights-respecting policies and practices in the criminal justice sphere. In the past few years our work has included a substantial focus on the legal and policy framework around criminal record checks.

The CCLA is concerned that the City's broad requirements for a vulnerable sector check will require checks to be run that contravene the federal *Criminal Records Act*. We are also concerned that the absolute prohibition on people with certain criminal convictions from obtaining a licence creates unnecessary and counter-productive barriers to the rehabilitation and reintegration of individuals with criminal records. We urge you to reconsider both aspects of the existing and proposed bylaws.

Legal limits on vulnerable sector checks

Access to vulnerable sector checks is tightly restricted by the *Criminal Records Act*, federal legislation. The primary limit on such searches is that they must be requested by a "person or organization responsible for the well-being of a child or vulnerable person" in respect to an individual who will occupy a position of "trust or authority towards that child or vulnerable person."¹

In our view, standard taxi licencees and other non-specialized transportation drivers for hire do not meet this legislative threshold.

A variety of legislative, judicial and governmental sources have confirmed that vulnerable sector searches are only to be made available on a restrictive basis. In *Rouge Valley Health System and ONA (13-40), Re 2015* the arbitrator summarized the legislative history of the vulnerable sector searches, which confirms that the check was meant to be used in narrow, limited circumstances.² Members of parliament speaking about the amendments similarly referred to the vulnerable sector search targeting

¹ *Criminal Records Act*, RSC 1985, c C-47, s. 6.3(3).

² *Rouge Valley Health System and ONA (13-40), Re (2015)*, 125 CLAS 45 at para 189 (Arbitrator: John Stout Member).

“organizations responsible for taking care of children”, “those who are hiring people, or bringing on volunteers or putting people in place to care for children”, and individuals who apply to “an organization or person responsible for the well-being of children or other vulnerable persons”.³

Similarly, in 2014 the Privacy Commissioner of British Columbia released a report examining the use of police information checks in British Columbia. Commissioner Denham commented that vulnerable sector searches would be justified for positions such as nannies, babysitters and some summer camp leaders.⁴ There is a clear and important distinction between individuals whose primary duties include the care of vulnerable individuals, and individuals who only come into contact with vulnerable persons occasionally or incidentally in the course of their employment.

While vulnerable sector checks may be justifiable for extremely high-risk positions entailing particular trust with or power over a vulnerable individual, they should not be standard screening tools for general public service positions. In our view, unless a taxi or transportation network driver was specifically dedicated to regularly driving unaccompanied children, disabled individuals, the elderly, or other particularly vulnerable groups, he or she would not meet the threshold set out in the *Criminal Records Act*. The federal legislative regime would be wholly undermined if these requirements were interpreted to include general service providers that might, in the course of their jobs, come into contact with vulnerable individuals.

Requiring all taxi and transportation network drivers to submit to a vulnerable sector search will, in the vast majority of instances, require companies to request checks that contravene the *Criminal Records Act*.

Employing individuals with criminal records

The proposed *Transportation Network Company Bylaw* would also prohibit individuals from holding a licence based only on the existence of a conviction for a prescribed criminal offence. The exact criminal offences this would apply to are not specified in the draft bylaw.

Presumably this proposal stems from a desire to keep transportation customers safe. Blanket policies excluding individuals with criminal records from employment, however, are more likely to undermine community safety than enhance it.

Research has shown that performing criminal records checks is not a reliable way to identify individuals that are at higher risk to commit workplace crimes.⁵ There is no way to predict, based on an individual’s criminal record, whether a person is more likely to commit a future crime in a workplace context. Outside of the workplace, studies do suggest that, for a few years after a person has been found guilty of a crime, there is an elevated likelihood that he or she will have further contact with the criminal justice system. But there is no link between the type of offence committed in the past and the nature of

³ *Ibid* quote by Honourable Don Boudria, Honourable Eric Lowther, and Honourable Pierrette Venne.

⁴ Elizabeth Denham, Information and Privacy Commissioner for British Columbia, “Use of Employment-Related Criminal Record Checks: Government of British Columbia”, Investigation Report F12-03, July 25 2013.

⁵ For a fuller summary of the social science evidence regarding using criminal record checks in employment or volunteer screening see Canadian Civil Liberties Association, *False Promises, Hidden Costs: The case for reframing employment and volunteer police record check practices in Canada* (2014), available online: www.ccla.org/recordchecks/falsepromises.

the possible future contact; a history of criminal convictions for particular offences – assault or sexual offences for example – does not make it more likely a person will commit the same acts in the future.

The consequences of excluding individuals exiting the criminal justice system from stable employment, on the other hand, is clear. Stable employment, as well as the income, stable housing and social networks that employment can foster, are significant protective factors against future reoffending.⁶ Systematically excluding individuals with criminal records from employment decreases community safety by creating barriers to rehabilitation and reintegration. Governments should be promoting policies that encourage businesses to hire individuals that might otherwise be marginalized from stable employment, not passing bylaws that entrench stigma and legally mandate unjustifiable discrimination.

The CCLA urges the City of Saskatoon to address the above concerns by removing the requirement for a mandatory Vulnerable Sector Check from both its proposed new bylaw as well as the existing Taxi Bylaw. We also strongly urge you to eliminate all legal prohibitions on individuals with criminal records becoming licencees.

Please do not hesitate to reach me by email or phone if you would like to discuss these issues further.

Sincerely,



Abby Deshman
Director, Criminal Justice Program
Tel: 416 363-0321 ex 254
Email: adeshman@ccla.org

⁶ Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, *The Social Reintegration of Offenders and Crime Prevention* (Ottawa: National Crime Prevention Centre, 2007); Dominique Fleury and Myriam Fortin, "When working is not enough to escape poverty: An analysis of Canada's working poor," *Human Resources and Social Development Canada* (working paper, 2006); Christopher Uggen, "Work as a turning point in the life course of criminals: A duration model of age, employment and recidivism," *American Sociological Review* 65, no. 4 (2000): 529.