

# THE INVISIBLE BURDEN

POLICE RECORDS AND THE BARRIERS TO EMPLOYMENT IN TORONTO



JohnHoward  
SOCIETY OF ONTARIO

# ABOUT THE JOHN HOWARD SOCIETY OF ONTARIO

The John Howard Society of Ontario (JHSO) is a leading criminal justice organization advancing the mandate, “effective, just and humane responses to crime and its causes.” We work towards our mission through the delivery of services to those in conflict with the law and at-risk, both adult and youth, provided by our 19 local offices who are active in communities across the province. In 2003, JHSO’s provincial office established its Centre of Research, Policy & Program Development (the Centre) to contribute to the evidence-based literature and policy discourse in order to further advance our mandate.

Local John Howard Society (JHS) offices provide services in a broad continuum of care from prevention through aftercare. Programming is sensitive to and reflective of the unique needs of the community it serves.

JHS is often the first point of contact for programs and services for people who have mental health issues and who are justice-involved. JHS has a reputation for providing services that are accessible, welcoming, and safe for those who have experienced the criminal justice system.

JHS staff conduct assessments to identify individual strengths, needs and risk factors. Evidence-based services target the criminogenic risks and needs and the social determinants of health to ensure that the services are responsive to the specific client and their circumstances. When a person has mental health issues, staff adjust their case management approach in order to ensure that service delivery targeting identified criminogenic factors is responsive to and addresses a person’s mental health needs. JHS services aim to reduce the risk of criminal behaviour while building on an individual’s strengths. Our offices maintain an open-door policy offering long-term follow-up to clients who have accessed services.

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# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	5
<b>INTRODUCTION</b> .....	7
<b>ASSERTION 1: A SUBSTANTIAL NUMBER OF PEOPLE IN CANADA, AND PARTICULARLY TORONTO, HAVE SOME FORM OF A POLICE RECORD.</b> .....	9
Non-conviction records are very prevalent in Ontario, and can create unique barriers to employment .....	9
<b>ASSERTION 2: CRIMINAL RECORD CHECKS ARE REQUESTED FREQUENTLY BY EMPLOYERS AND HAVE A POWERFUL EFFECT ON HIRING PRACTICES AND EMPLOYMENT OUTCOMES. LACK OF HUMAN RIGHTS PROTECTIONS ENABLES DISCRIMINATION.</b> .....	12
High use amongst employers .....	12
The effects on the hiring process.....	12
Effects are more pronounced for racialized populations .....	14
Effects on employment levels and economy .....	14
Lack of standardized practices and minimal human rights protections create uncertainty .....	15
<b>ASSERTION 3: POLICE RECORDS DISPROPORTIONATELY AFFECT MARGINALIZED, RACIALIZED AND VULNERABLE POPULATIONS.</b> .....	16
Social determinants of criminal justice contact .....	16
Police records and disproportionate impacts on racialized populations.....	17
Police records and disproportionate impacts on Indigenous Peoples.....	18
Police records and disproportionate impacts on Women.....	19
<b>ASSERTION 4: THERE IS A STRONG RELATIONSHIP BETWEEN UNEMPLOYMENT AND CRIME, AND A VICIOUS CYCLE BEGINS WHEN PEOPLE WITH CRIMINAL JUSTICE INVOLVEMENT ARE DENIED WORK OPPORTUNITIES.</b> .....	20
Strong Relationship between Unemployment and Crime .....	20
Homelessness, Unemployment, and Crime .....	20
The Vicious Cycle.....	21
The impacts of incarceration on employability – Educational and Vocational Opportunities in Prison .....	22
<b>RESEARCH SUMMARY</b> .....	23
<b>NEXT STEPS</b> .....	29
<b>RECOMMENDATION 1: STRENGTHENING HUMAN RIGHTS PROTECTION</b> .....	29
<b>RECOMMENDATION 2: EMPLOYING PEOPLE WITH RECORDS AS A PUBLIC POLICY GOAL</b> .....	30
<b>RECOMMENDATION 3: EXPLORING EMPLOYER INCENTIVES</b> .....	31
<b>RECOMMENDATION 4: RECORD SUSPENSION REFORM</b> .....	32
<b>RECOMMENDATION 5: EDUCATION AND TRAINING:</b> .....	33
<b>RECOMMENDATION 6: RESEARCH</b> .....	34
<b>LAW IN LIMBO &amp; LOOKING UPSTREAM</b> .....	36
Bring the PRCRA and regulations into force .....	36
Looking upstream: Justice systems and other systems .....	36
<b>PROMISING PRACTICES IN TORONTO</b> .....	38
<b>CONCLUSION</b> .....	39
<b>REFERENCES</b> .....	41

## EXECUTIVE SUMMARY

While the Canadian public assumes that a sentence for a crime is finite in length, the existence of police records can have serious negative effects on people's lives long after their formal sentences are over. Having a police record can make it difficult or impossible to get a job, or to enter an education or training program, even when the record is irrelevant to the job or education being pursued. The negative effects are not only limited to records of conviction (i.e., when an individual is found guilty or pleads guilty and is sentenced). Non-conviction records – such as withdrawn charges, stayed charges, or acquittals – can have long-lasting, negative effects on employment opportunities.

Recent changes made to the record suspension system (formerly called “pardons”) mean that individuals have to wait much longer before they can apply (either 5 or 10 years), and the high cost makes the process unaffordable for many people. There is no equivalent record suspension process for most non-conviction records, meaning that these types of barrier-creating records, which affect tens of thousands of Canadians per year, can show up on an individual's record check (when they apply for a job or for education) for a very long time.

To empirically capture the negative effects of police records on the employment potential of Torontonians, the Centre of Research, Policy & Program Development (the Centre) at the John Howard Society of Ontario (JHSO) conducted an in-depth survey and interviews with Toronto employers and a focus group with people with police records. The research, supported through funding from the Metcalf Foundation, builds on previous findings from the Centre's and other community agencies' work on the deleterious effects of police records on employment. Key findings from the current research include:

- ❖ Over **60%** of employers indicated that they **require** police record checks for all employees.
- ❖ **Large organizations** are more likely to require police record checks, particularly employers from some of **Toronto's largest industries**.
- ❖ The most commonly reported purpose for police record checks was due to **company policy**, followed closely by **liability/risk management** and **Bill 168** (Ontario's Occupational Health and Safety Act).

- ❖ When asked about the employability of people with police records, **some** employers held **negative character assessments** of individuals with police records.
- ❖ **56%** of the employers indicated that despite a positive police record, they would still **'Hire'** an individual depending on the type of offence.
- ❖ However, **15%** indicated that they **DO NOT** hire, regardless of the type and age of the offence and the type of position.
- ❖ Additionally, more than half of those surveyed (**57%**) indicated that they have not knowingly hired a person with a police record.
- ❖ Focus groups, conducted with people who have records, confirmed that police records act as an **invisible burden** that create **multiple barriers** to **employment** as well as **housing** and **education**. Participants called for greater **standardization** of record check processes.

Findings from the research in Toronto are consistent with the Centre's previous research, and in many cases, results indicated that the practice of police record checks and, by extension, the consequences, are more problematic in Toronto than the rest of Ontario. The Report proposes several policy recommendations to minimize the negative consequences of police records and help a very stigmatized and marginalized population to participate in the labour market. The recommendations put forth in this Report include:

1. **Human Rights Reform.** Strengthening Human Rights protection for people with conviction and non-conviction records in Ontario by amending the *Ontario Human Rights Code*.
2. **Public Policy Goals.** Government-led initiatives to educate employers and prioritize hiring people with records as a policy goal.
3. **Employer Incentives.** Exploring and piloting employer incentives to hire people with police records.
4. **Records Law Reform.** Creating a new record suspension regime for people with police records.
5. **Education for service providers, people with records, and the legal community -** Education and toolkits for judges, Justices of the Peace, lawyers and police on the collateral consequences of police records and governing laws/case law. Education, toolkits and initiatives to help individuals with records and service providers build relationships with potential employers.
6. **Research Agenda.** A Research Agenda to better understand: employer trends and practices with respect to hiring people with records in Ontario/Canada; the intersection of race, gender, police records, and employment.

These recommendations are immediately followed by several **critical** actions that, if realized, would help ease and even prevent the burden of a police record. Last, promising practices taking shape in the City of Toronto are briefly explored.

# INTRODUCTION

In 2014, the John Howard Society of Ontario (JHSO) released a report identifying the labour market barriers created by police records in Ontario. This report, titled *Help Wanted\*: Reducing Barriers for Ontario's Youth with Police Records*, examined the literature on barriers to labour market inclusion for marginalized youth. Findings from JHSO's study indicated that the majority of the employers surveyed require police background checks of prospective employees. These findings were used to explore the devastating impacts on employment opportunities, and helped generate recommendations for reform.

The 2014 survey was replicated in a more recent study of HR practitioners in the London and Middlesex County, which also found a high use of police record checks during the hiring process (see Asif, 2015). What became apparent in both studies is that police records continue to be used as a screening tool and act as a barrier to employment regardless of region. These findings are generally similar to other research that has been conducted in other countries.

JHSO received funding from the Metcalf foundation to replicate the 2014 study in Ontario's largest city and financial capital, Toronto. The aim of the study was to examine whether the findings from Toronto were similar to the previous studies, and if so, how those findings should inform initiatives to mitigate the collateral consequences of having a police record.

In the first section of the Report, we present an overview of police records. We establish and document four key assertions, based on existing research and statistics, relating to record check processes in Canada.

- 1. A substantial number of Canadians, particularly Torontonians, have some form of a police record.**
- 2. Police record checks are requested frequently by employers and have a powerful effect on hiring, with the result that people with records have a difficult time finding employment.**
- 3. Police records tend to disproportionately affect racialized, marginalized, and other vulnerable populations.**
- 4. There is a strong correlation between unemployment and crime. There is a cyclical nature to crime and unemployment.**

The second section of the Report provides a brief snapshot of our research findings. The study included administering an in-depth survey of employers' policies and practices, which was the same survey used in JHSO's previous studies. In addition, four one-on-one interviews were conducted with select employers, to supplement the findings from the survey. The study also included a focus group with individuals with police records, in order to elicit the opinions of individuals who are most impacted by police record check policies. A complete breakdown of survey, interview, and focus group findings are available at [PoliceRecordHub.ca](https://www.police-record-hub.ca).

Last, based on the assertions and the research findings of this study, we have crafted "Next Steps" – a series of recommendations aimed at enhancing employment opportunities for people impacted by police record checks and reducing the deleterious impacts of police records. These ideas are meant to create the right mix of reforms that can lead to rights-respecting and inclusive hiring practices, which also balance employers' legitimate interests in staffing.

This study, in addition to our previous studies, confirms that there is a wide spectrum of people who suffer the collateral consequences of police records. The stigma associated with a record – and the labelling of someone as an "ex-offender" or "ex-con" – can follow an individual around long after any formal sentence has ended. This stigma also impacts people who have been convicted of nothing – legally innocent people. Certainly, there are some populations that face compounded stigmatization – race, criminal justice involvement, and employment intersect to create unique and systemic barriers for many Ontarians.

One goal of our study is to help identify and address a significant catch 22 in our society: the expectation that people move past their criminal justice histories while simultaneously putting up barriers that keep them from doing so. We believe that by listening to employers, by looking at evidence and best practices, and by listening to people whose voices have historically been marginalized, there is opportunity for change that will benefit all of society.

## ASSERTION 1:

### **A SUBSTANTIAL NUMBER OF PEOPLE IN CANADA, AND PARTICULARLY TORONTO, HAVE SOME FORM OF A POLICE RECORD.**

When we consider both conviction and non-conviction records, the scope of Canadians with some form of record is quite large. As a result, a significant number of Canadians face barriers when applying for work.

Estimates are that about 1 in 9 Canadians – about 13% of the population – have a criminal record (CCLA 2014a, footnote 194). If we also include other kinds of contacts with the justice system, such as people who have had charges withdrawn or stayed, or people who have been acquitted, there are likely many times more people who have some form of police record (JHSO, 2014; CCLA, 2014a). Even when considering that the records database may contain records of deceased persons that have yet to be updated and tourists that are from outside of Canada, these numbers suggest that a significant number of Canadians have some type of record that exists in local or national police databases. Unsurprisingly, the proportion of individuals with police records is greater in Toronto.

### **Non-conviction records are very prevalent in Ontario, and can create unique barriers to employment**

The number of people who receive some form of record in Ontario, specifically Toronto, is high. Many of those records are non-conviction records.

Table 1 shows the number of total decisions rendered in Ontario and Canadian courts over a five-year period (StatCan 2017). On average, there are over 100,000 criminal cases processed per year in Ontario courts. Ontario accounts for a high proportion of the total number of all Canadian cases. Ontario also accounts for a high proportion of all withdrawn or stayed cases in Canada every year. Last year in Ontario, approximately 64,000 cases resulted in a finding of guilt, and about 51,000 cases were stayed or withdrawn. While it is difficult to determine the number of unique individuals who receive a record every year (because the same individual might have multiple cases in one year), the statistics suggest many tens of thousands of both conviction and non-conviction records are generated every year in Ontario.

**Table 1: Adult criminal courts, number of cases and charges by type of decision, Canada and Ontario**

	Canada				Ontario			
	2012-2013	2013-2014	2014-2015	2015-2016	2012-2013	2013-2014	2014-2015	2015-2016
<b>Total Decisions</b>	387,614	379,058	352,021	342,274	144,399	135,324	124,364	117,815
<b>Guilty</b>	249,152	244,742	227,033	220,233	79,949	73,586	66,805	64,611
<b>Stayed or Withdrawn</b>	120,964	116,300	108,143	105,832	61,937	59,485	55,418	51,155
<b>Acquitted</b>	13,476	14,093	13,369	12,434	1,238	1,186	1,089	992

Source: Stats Canada Table 252-0053

Table 2 shows the total number of youth and adult charges for Ontario and Toronto over the past four years, and is more reflective of police practice than it is of court processes. While an individual might be charged more than once in a statistical year, the raw numbers demonstrate that thousands of people in Toronto are charged by police every year. There is relative stability in the total number of youth and adults charged every year. While not shown here, the Cansim Table shows small declines in the rates of total persons charged, for both youth and adults, over the four-year period, though in Toronto the rate of youth charged increased last year.

**Table 2: Youth and Adult Police Charges, Year, Ontario and Toronto**

	Ontario				Toronto			
	2013	2014	2015	2016	2013	2014	2015	2016
<b>Total Youth Charged</b>	18,263	16,227	15,467	14,803	3,001	2,685	2,547	2,649
<b>Total Adult Charged</b>	174,943	169,045	169,953	171,999	32,825	30,836	30,339	30,688
<b>Total Persons Charged</b>	193,206	185,272	185,420	186,802	35,826	33,521	32,886	33,337

Source: Stats Canada Table 252-0077

The statistics demonstrate the high number of non-conviction records that are generated every year. Ontario has the highest percentage of withdrawn cases in the country at 43 percent (StatCan, 2016). This can be compared to Quebec where only 9 percent of charges are withdrawn. 'Withdrawn' refers to when a prosecution is discontinued: charges may be withdrawn once an accused has completed some form of diversion programming; charges may also be dropped because the Crown determines there is no reasonable likelihood of prosecution, or it is not in the public interest to prosecute. Page 37 of this Report touches on the issue of pre-charge screening in Ontario.

As the following sections explore, the nature of non-conviction records create unique challenges for people applying for jobs: these records can remain in police databases for years and be revealed on detailed record checks; there is little in the way of human rights protection for these types of records; and employers may not appreciate the differences between conviction and non-conviction records or how to assess the relevance of a non-conviction record to a specific position.

# WHAT ARE POLICE RECORDS?

Police records may be created from a variety of interactions with a local police service related to non-criminal and criminal matters, and can include instances where someone:

- ❖ Had informal contact with a police officer and provided their name;
- ❖ Called 9-1-1, or was present when officers responded to a call;
- ❖ Called 9-1-1 for themselves or someone they know was experiencing a mental health crisis;
- ❖ Was involved in a police investigation as a witness, victim or suspect;
- ❖ Was arrested;
- ❖ Was charged with a criminal offence (but not convicted);
- ❖ Was found guilty of a criminal offence; or
- ❖ Was convicted of a criminal offence.

## CATEGORIES OF RECORDS

Generally, police records can be divided into four categories: criminal convictions, non-conviction findings of guilt, non-conviction dispositions with no finding of guilt, and police contacts. These categories of police records are detailed below.

### 1. CRIMINAL CONVICTIONS

Sentences that result in criminal convictions:

- Imprisonment Sentence
- Intermittent Sentence
- Suspended Sentence
- Conditional Sentence
- Fine or forfeiture



### 2. NON-CONVICTION DISPOSITIONS: FINDINGS OF GUILT

- Absolute Discharge
- Conditional Discharge



### 3. NON-CONVICTION DISPOSITIONS: NO FINDINGS OF GUILT

- Charges withdrawn
- Acquittal at trial
- Stay of proceedings



### 4. POLICE CONTACTS

- Police contact and surveillance
- Mental health apprehensions
- Arrests (but no charge)
- Victimization
- Witness



*\*Please note: this information is specific to adult police records only. Youth records are governed by a separate legislative framework.*

*\*\* Provincial Offenses such as parking tickets or speeding tickets do not show up on any level of criminal record check.*

#### POLICE CRIMINAL RECORD CHECK

- The Police Criminal Record Check is typically used for employment opportunities where a basic criminal background check is requested. It is generally the least intrusive level of check.

#### POLICE INFORMATION CHECK

- The Police Information Check will generally reveal the same information as a Police Criminal Record Check, as well as absolute and conditional discharges, court orders, charges and warrants.

#### POLICE VULNERABLE SECTOR CHECK

- The Police Vulnerable Sector Check is the most in-depth check. It is used when applicants are seeking employment and/or volunteering directly with vulnerable populations, and will reveal convictions and all non-conviction records.

A complete breakdown of the definitions of the various types of police records and other terms can be found at JHSO's **On the Record** publications available at:

[WWW.POLICERECORDHUB.CA/ONTHERECORD/](http://WWW.POLICERECORDHUB.CA/ONTHERECORD/)

## ASSERTION 2:

**CRIMINAL RECORD CHECKS ARE REQUESTED FREQUENTLY BY EMPLOYERS AND HAVE A POWERFUL EFFECT ON HIRING PRACTICES AND EMPLOYMENT OUTCOMES. LACK OF HUMAN RIGHTS PROTECTIONS ENABLES DISCRIMINATION.**

### **High use amongst employers**

Police record checks are widely used by employers in the hiring process, and the practice appears to be increasing (Kilgour, 2013; CCLA, 2014a; Holzer et al., 2004). Toronto police have reported the highest number of police record checks processed compared to all police service across Canada. The number of checks conducted by Toronto Police Services increased by roughly 7% from 2010 to 2012, with approximately 117,387 record checks conducted in 2012 and less than 110,000 records checks conducted in 2010 (CCLA, 2014a). These record checks may not have been exclusively for employment opportunities, as the use of records checks as a screening tool has extended to the areas of housing and volunteering. Whether more employers are requesting record checks or there has been an increase in the number of individuals entering the labour market and therefore applying and obtaining record checks, is unclear. What is clear is that the sheer number of record checks conducted in Toronto suggests they are common, and most likely for employment purposes.

Findings from JHSO's survey of employers in Ontario indicated that 51% of the organizations required police record checks of prospective employees during the hiring process (JHSO, 2014). A recent study of Human Resource (HR) practitioners in London and Middlesex County also found high use of police record checks during the hiring process (Asif, 2015). US research shows much higher rates, for instance, a 2012 survey conducted by the Society for Human Resource Management (SHRM) in the US found 87% percent of organizations surveyed indicated that they conduct criminal background checks of all or selected employees (SHRM, 2012). Based on existing research, the most frequently cited reasons that employers conduct criminal record checks are fears of liability, risk management, and legal requirements to perform checks (JHSO, 2014; Asif, 2015; SHRM, 2012;). Our study largely confirms these findings.

### **The effects on the hiring process**

The results of records checks can have a powerful effect on hiring practices and outcomes, even when the criminal record is unrelated to the job being sought.

Some organizations have a blanket denial of employment due to the presence of a criminal record, or otherwise signal discrimination against people with records. A recent review of literature in the US discovered that 9 out of 10 employers conduct criminal background checks for employment and the likelihood of callback for an interview drops by 50% for applicants with criminal records (Emsellem et al., 2015). In one study of youth, most employers stated they had never knowingly hired an individual with a police record (JHSO, 2014). In another Ontario study, both youth and employment agency workers reported that individuals with police records were consistently denied work regardless of seriousness or type of offence (St. Stephen's Community House & Access Alliance, 2016). Research in the US, the UK and Australia has found that employers, particularly in industries sought out by those leaving prison, expressed a clear avoidance of even interviewing individuals with history of incarceration (Decker et al., 2014). Even when applicants manage to speak with employers about their records, the barriers to employment may not be fully neutralized. Individuals with records may have limited success when trying to persuade employers to look past their criminal record, for example by highlighting organizationally-desired characteristics, which suggests the power of the stigma of a record (Isipa-Landa & Loeffler, 2016).

Discrimination may depend on the seriousness of the crime. For more serious crimes, employers tend to discriminate more, especially against racialized (i.e. Black) populations (Wheelock et al., 2011). There is also a demonstrated link between non-conviction records and reduced employment opportunity (*Ibid*).

The reasons why there may be a denial or hesitancy to hire people with records are twofold. First, there is a negative perception of the characteristics of people with criminal records. Second, people with records are seen to be more risky (to safety, to assets) in the workplace. In JHSO's *Help Wanted* study, a significant proportion of employers reported strong negative character assessments and stereotypes of people with police records of any kind (JHSO, 2014). The research suggests that people with records, even non-conviction records (charges, withdrawn charges, acquittals), may be perceived as less reliable, less honest, and a greater risk (employers highlight risk to liability as the number one reason for conducting checks). This may account for why even amongst organizations who say they are willing to hire people with police records, their actual hiring patterns do not reflect their statements (Asif, 2015). Employers often cite potential attendance problems, drug/alcohol issues, and relationship with other employers as main reasons for avoiding justice involved individuals during the hiring process (Decker et al., 2014). Research has only recently started to assess the job performance of people with criminal records. One study found that for some jobs, people with a record are likely to have longer tenure and are less likely to be fired for misconduct, while for other jobs, they are more likely to leave for reasons of misconduct (See Minor et al., 2016). These results suggest that few generalizable conclusions can be drawn, and at the very least it would be troubling, and perhaps even counterproductive, for employers to assume that all applicants with records will perform poorly if hired.

### **Effects are more pronounced for racialized populations**

The negative effects of a criminal record on employment prospects appear to be stronger for racialized individuals than individuals who identify as White. Since racialized populations are overrepresented in the criminal justice system (Owusu-Bimpah & Wortley, 2013), they are also disproportionately impacted by criminal records. It has been suggested that employers' refusals to hire people with criminal records has a disproportionate impact on individuals with other rights-protected characteristics, such as race (Hall et al., 2017). The stigma of a record may increase when the applicant is a minority, the crime was a "blue collar" crime, and the organization does not embrace diversity (Young & Powell, 2014). Studies investigating job applicants found differences in employment prospects for the criminal justice-involved along race/ethnicity lines, with Blacks and Hispanics generally faring more poorly than Whites (Decker et al., 2014; Pager et al., 2009; Vishser et al 2012). One study followed young males (with and without minor records) who applied to 150 to 300 workplaces. The researchers discovered that the negative effects of criminal records on call-backs were significant, particularly for Black participants (Uggen et al., 2014). Other research suggests that there may be ways to mitigate these effects. Pager et al.'s (2009) research suggests that employment prospects for racialized individuals with records improves "significantly for applicants who have a chance to interact with the hiring manager" (209). This point has policy implications, which are captured in the recommendations section of this Report.

### **Effects on employment levels and economy**

A higher unemployment rate for those with a criminal justice history is not an unreasonable assumption. A 2008 longitudinal study of 740 former prisoners across three US States found that, two months after release, only 30% had secured legal employment; after eight months, that rose to only 40%, with the majority of those who found work relying on family and friends, government support, "under-the table" work, and illegal activities (Visher, Debus-Sherrill, & Yahner, 2010). Over 70% of participants in this study felt that their criminal record was preventing them from finding legitimate work.

A review of the literature suggests that incarceration and police records have moderate to large effects on subsequent employment levels (Warner et al., 2010). Researchers estimate that police records lower overall employment rates as much as 0.9%, lower male employment rates as much as 1.7%, and lower employment rates for less-educated men as much as 6.9% (Warner et al., 2010). In more recent analysis, US researchers have suggested that depressed labour force participation rates can be partially attributed to the large number of individuals with criminal records (Kelly, 2014). Criminal justice involvement not only carries significant and deleterious repercussions for the remainder of an individual's working years: it can also affect earnings. A study of the effects of incarceration on employment in the US found that serving time reduced hourly wages by 11% and annual earnings by 40% (PEW, 2010).

In GDP terms, barriers to employment caused by criminal records can translate into billions of dollars of lost output (Schmitt & Warner, 2010), though this study was

conducted in the US, which has many local and state-level disenfranchisement laws. Conversely, there may be multiple economic *benefits* to removing job barriers for people with records: increased lifetime earnings, increased tax contributions, and decreased justice system costs (Economic League of Philadelphia 2011); and increased returns to tax payers (Drake, Aos & Miller, 2009). No similar analyses have been conducted in Canada.

**Lack of standardized practices and minimal human rights protections create uncertainty**

In Ontario, police forces have different policies on the disclosure of police records during a record check process. This lack of provincial standardization means that the information disclosed on a record check can vary widely, creating uncertainty for an applicant. In some areas of Ontario, non-conviction records (unproven allegations that never resulted in criminal charges, or charges that have been withdrawn, dismissed, or stayed) are regularly released on record checks. Employers and Human Resources (HR) staff may not know how to differentiate or interpret this information, creating unforeseen and unactionable barriers for applicants. Once in force, the new legislation in Ontario – the *Police Records Check Reform Act* – will standardize disclosure practices across the province, though police will still have discretion as to when to release non-conviction information. The importance of this legislation coming into force is explored on page 38.

There is minimal human rights protection against labour discrimination in Ontario for individuals who have police records. While there is some human rights protection for people with a “record of offences,” a term which appears in the Ontario Human Rights Code, the term has been interpreted very narrowly by tribunals. In short, the term “record of offences,” and thus rights protection under the Code in the employment context, only applies to: (1) those who have been convicted of a federal offence, have received a pardon, and have not had that pardon revoked (*Marsh v Sprint LP*, 2010); and (2) convictions for provincial offences. In Ontario, a record of offences excludes non-conviction records such as charges, acquittals, stays, and pending charges, (See *Hulbert v Cott Beverages*, 2014; *Jamal v First Student Canada*, 2009). Even meeting the definition does not guarantee that an individual with a record of offences will be protected from discrimination. An employer can still take that individual’s record of offences into account during the hiring process if the record is a “reasonable and bona fide qualification of the nature of employment,” meaning it is rationally connected to and necessary for job performance (See Ontario Human Rights Commission, 2014). Other provinces and territories (B.C., Yukon) provide protection against discrimination for non-conviction records. There is a need in Ontario for tools to assist employers factoring a police record into the hiring process. Our recommendations section towards the end of the Report provides examples of human rights protections and tools to assist in decision-making.

## ASSERTION 3:

### **POLICE RECORDS DISPROPORTIONATELY AFFECT MARGINALIZED, RACIALIZED AND VULNERABLE POPULATIONS.**

#### **Social determinants of criminal justice contact**

Criminal justice involvement is a complex phenomenon – proving causation in crime is difficult, and researchers generally speak of “correlates” of crime, rather than “causes.” Criminal justice contact has social determinants or correlates – unemployment, lower levels of education, unstable housing, and health (especially mental health) issues are *correlated* with criminal justice contact. These factors are influenced by and interact with broader societal and historical factors, such as the economy, politics, and histories of residential schools and colonialism.

The relationship between crime and poverty is complex. Researchers have concluded that there is an association between crime and poverty, but that “there are multiple interpretations of this association” and it would be important to look at both the individual as well as the community characteristics in determining an association (Sharkey, Besbris, & Friedson, 2016). Sharkey, Besbris, and Friedson (2016) suggested that “most theoretical and empirical evidence suggest that poverty is linked with criminal behavior through individual characteristics and conditions associated with poverty, such as joblessness, family structure, peer networks, psychological strain, or exposure to intensely violent environments” (631-632).

There is evidence that income inequality has significantly increased throughout Canada. A report of the Canadian Index of Wellbeing found that since 1980, wealth distribution has become more unequal, the unemployment rate has increased, and the proportion of low paid labour has increased significantly (Sharpe, 2013). Several recent reports also document the rise of economic inequality in Toronto (Toronto Region Board of Trade (TRBT) 2014; Poverty and Employment Precarity in Southern Ontario (PEPSO), 2013; Stapleton & Kay, 2015).

More recent studies by Stapleton and Kay found that despite Toronto being the nation’s richest city, it houses Canada’s highest concentration of working poverty and the fastest growing percentage of working poor (2015). Moreover, Toronto region’s employment rates fell from 63.8% in 2006 to 61.1% in 2012 (Stapleton & Kay, 2015). Predictably, Toronto’s most disenfranchised and marginalized have a significantly higher percentage of working poor. The effects of economic disenfranchisement in

Toronto are summarized by the Toronto Region Board of Trade, who state that “...these challenges lead to a rising sense of marginalization in these low-income neighbourhoods – a feeling of being left out of the region’s economy and society” (2014). While the relationship between poverty and crime is complex, this kind of social dislocation related to low income and poverty can have effects on levels of crime (Sharkey, Besbris, & Friedson 2016). Canada, Ontario, and Toronto have recently initiated multi-year Poverty Reduction strategies, which could lead to opportunities for bringing socially excluded populations into labour markets and housing.

### **Police records and disproportionate impacts on racialized populations**

Several decades of mass influx of immigrants to Toronto has transformed the city into one of the most cosmopolitan and multicultural places in the world. The recently released Canadian Census shows that a majority of Torontonians – 51.5% – now identify as belonging to a visible minority community – a proportion that has been steadily increasing since at least 1996 (StatCan Census Profile, 2016). Nationally, both Black and Aboriginal<sup>1</sup> populations make up a very small percentage of Canada’s overall population, at approximately 3% and 4% respectively. According to the recent census, there are 518,300 individuals of Aboriginal ethnic origin living in Ontario (the highest number in Canada), about 4% of the total population of Ontario. Toronto is home to just over 23,000 individuals of Aboriginal ancestry, about 0.9% of Toronto’s total population. Additionally, people who identify as Black make up approximately 9% of Toronto’s population (StatCan Census Profile, 2016).

While Black and Indigenous Peoples comprise a small percentage of Canada and Toronto’s overall population, data demonstrates that they are disproportionately impacted at nearly every stage of the criminal justice system – from police contact through sentencing and release from prison (Owusu-Bempah, 2013; Wortley & Kellough, 2004). For example, despite comprising less than 5% of Canada’s total population, Aboriginal Peoples make up more than 26% of the incarcerated population (OCI, 2017). The especially high numbers are rising for women, who make up about 37% of federally incarcerated individuals (Ibid). Aboriginal youth are also overrepresented: while only 7% of the Canadian population, they comprise over 40% of the federally incarcerated population (Kirkup, 2017). The number of Black people in Canadian correctional institutions has increased by 50% in the last three decades and their overrepresentation in custodial sentences is among the highest: while Black men comprise only 1.25% of Canadian population, they account for approximately 20% of individuals in federal institutions (Warde, 2012). It is logical to conclude that a disproportionate number of racialized populations have some form of police record, and thus face greater challenges in finding employment.

Literature also provides evidence of racial bias and discrimination against members of visible minorities at other stages of the Canadian criminal justice system (Roberts & Doob, 1997; Owusu-Bempah, & Wortley, 2013). A comparative study of Black males in

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<sup>1</sup> This Report uses the term “Aboriginal” in relation to census data or other data sources that also rely on that definition. It is recognized that “Indigenous Peoples” is in some instances the more appropriate term.

the US, Canada and England found that the three countries are remarkably similar in the disproportionate representation of Black men in the criminal justice system (Warde, 2012). The Report concludes that there is little evidence to suggest that the relationship between law enforcement and the Black community is improving. Self-report studies have concluded that Whites and Blacks commit lower level offences like marijuana or drug possession at similar rates but are policed differently (Kellough & Wortley, 2004). This study suggests that overrepresentation of racialized persons at the stage of police contact (where arrest records are generated) can depend on policing practices (e.g. decisions to arrest and charge).

Because racialized populations are overrepresented in the criminal justice system, they are also disproportionately impacted by criminal records. Employers' refusals to hire people with criminal records can have a disproportionate impact on individuals with other protected characteristics, such as race (Hall et al., 2017).

### **Police records and disproportionate impacts on Indigenous Peoples**

When Canadian courts sentence Aboriginal Peoples, they are required to consider "the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts" (*R v Ipeelee*, 2012). Recognizing the gross overrepresentation of Aboriginal Peoples in Canadian correctional institutions, courts must take notice of factors such as: "history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal Peoples" (*R v Ipeelee*, 2012). Statistics from Canada suggest that while a younger Aboriginal population partially explains overrepresentation of Aboriginal adults in custody, education and employment characteristics can also play a significant role, as "young adults without a high school diploma or employment are more at risk of committing crimes that lead to being incarcerated" (Perrault, 2009). In *R v Gladue*, the Supreme Court of Canada has noted (*R v Gladue*) the prevalence of racism against Aboriginal Peoples in Canada and evidence that "widespread racism has translated into systemic discrimination in the criminal justice system" (para 61). Behind criminal justice involvement are a host of systemic issues grounded in Canada's poor treatment of Indigenous persons. Some leading academics have recognized the issues relating to criminal record data.

Rudin (2006) described how CPIC data, which is criminal record data maintained by the RCMP and is shared with employers when they request a record check, "hint[s] at some systemic problems within the criminal justice system as it relates to Aboriginal offenders" (55). While employers may see criminal record data as neutral and objective representations of someone's criminality, Rudin suggests why this may not be the case. In addition to differences in police practices, there are court processes and cultural factors that may result in differential records for Aboriginal Peoples. Rudin states that "when Aboriginal people are required to fit into a system that does not recognize their values, overrepresentation occurs" (22). This cultural difference is manifested in crucial stages of the criminal justice system. Rudin states that the

cultural differences (taking responsibility for one's actions) help explain why Aboriginal Peoples are more likely to plead guilty. Individuals held in remand (in custody awaiting a bail decision or trial) are also more likely to plead guilty. Rudin adds that it is harder for Aboriginal Peoples to obtain bail. Many of those arrested have little income, lack jobs, and may be homeless. These factors "combine to make the accused person seem less likely to appear for court" and may be a reason why Aboriginal Peoples are less likely to receive bail, and thus pressured to plead guilty (52-53).

In sum, the result of systemic factors is that "Aboriginal offenders have a worse CPIC record than a non-Aboriginal offender who may have the same history of involvement with the police" (55). CPIC records capture systemic problems in our criminal justice system. Employers should know this type of information when interpreting police records. This should also inform human rights reform in the province.

### **Police records and disproportionate impacts on Women**

The negative employment consequences of criminal justice involvement do not just affect men. A recent study of female parolees in the US indicated that a majority (71%) reported criminal background checks as a major barrier to finding and keeping a job (Johnson, 2014). Of the women who were able to find a job, a majority (68%) indicated annual incomes of \$10,000 USD or less (Johnson, 2014), indicating that the jobs women with records do find are menial and economically unsustainable. The authors conclude that criminal background checks affected not only whether the women were hired but also the type of work and the wages they received (Johnson 2014). Ontario research is non-existent in this regard. In fact, there is very little available research exploring the intersection of race, gender, police records, and employment.



## ASSERTION 4:

**THERE IS A STRONG RELATIONSHIP BETWEEN UNEMPLOYMENT AND CRIME, AND A VICIOUS CYCLE BEGINS WHEN PEOPLE WITH CRIMINAL JUSTICE INVOLVEMENT ARE DENIED WORK OPPORTUNITIES.**

### **Strong Relationship between Unemployment and Crime**

Academics and researchers have centred on one empirically verifiable assertion: that stable employment and all the benefits that stem from employment are protective factors against future reoffending. Employment is one of the most effective supports for reintegrating individuals into society and reducing recidivism (meaning “subsequent criminal involvement”) (Visher, Winterfield, & Coggeshall, 2005). Lack of employment has been noted as a factor highly correlated to recidivism (Emsellem et al., 2015). In one study, individuals with employment post incarceration were twice as likely to avoid involvement with the criminal justice system than those that were unemployed (Berg & Huebner, 2010). Findings from a 5-year study in the US concluded that employment was a major predictor of lower recidivism regardless of an individual’s type of offence, such as violent, non-violent, drug or sex offences (Nelly et al., 2014). Even marginal employment opportunities for individuals in conflict with the law were found to be effective in reducing illegal activity (Lageson & Uggen, 2014; Uggen, 2010). However, meaningful and secure employment is still elusive for many.

In addition to a steady income and the ability to support oneself, which remove incentives for criminal behaviour and provide a safe environment, employment can produce additional benefits that also reduce recidivism. Researchers argue that having a job enables individuals to generate more personal support, stronger positive relationships, enhanced self-esteem, and improved mental health (Duran et al., 2013). All of these “social bonds” reduce the likelihood that the individual participates in and/or associates with individuals who engage in criminal behaviour. Studies have found similar results with respect to youth (Verbruggen et al., 2015). In sum, barriers to employment for individuals with police records have negative consequences not only for the individuals, but also for the communities to which these individuals belong.

### **Homelessness, Unemployment, and Crime**

There is a circular relationship between homelessness and incarceration that academics refer to as the “bi-directional relationship” between homelessness and crime (JHSO 2016; Gaetz & O’Grady, 2006). In other words, being homeless increases the likelihood of ending up in jail, while imprisonment increases the risk of

homelessness (John Howard Society of Toronto, 2010, [iii]). Approximately 15% of the Canadian prison population were homeless in the year prior to their incarceration (Trypuc, 2009), and a nearly identical percentage in a homeless sample in Toronto reported having been in a correctional facility in the previous six months (City of Toronto, 2013a). Through interviews with over 350 men serving sentences in local jails, the John Howard Society of Toronto (2010) found that over 30% were planning, upon release, to go to a shelter, live on the street, or couch-surf with friends, and 12% had no housing plans at all. Among those who had been homeless prior to incarceration, over 85% anticipated being homeless again when discharged.

When individuals are released from correctional institutions, they enter a housing market which is already unaffordable. City or province-supported affordable housing has become increasingly difficult to obtain. In 2015, there were over 171,000 names on the waiting list for subsidized housing in Ontario, nearly half of those from Toronto. The average wait time for a household on this list is about five years, but can be as high as fourteen years for urban, high demand areas (Ontario Non-Profit Housing Association, 2016). As a result, released individuals generally have to rely on the private sector for housing, which can be difficult in Toronto given the cost (CMHC, 2009). In 2015, the average cost of a one-bedroom apartment in the city was \$937, while the maximum income assistance for shelter from Ontario Works was \$376 (City of Toronto, 2016).

Even if one can afford housing in Toronto, there are additional barriers to obtaining it. Ontario landlords may ask for a criminal record check as part of the rental application process. While it cannot be legally required, a prospective tenant who refuses to provide a record check or who has anything other than a spotless record may go to the bottom of a landlord's list (Ontario Human Rights Commission, 2009). Credit checks, which are usually required in Toronto's rental market, can also be an obstacle, especially to those who have not been building credit for some time due to having been in prison, in poverty, or in and out of shelters.

### The Vicious Cycle

When examining all the available literature and data on police records and rehabilitation, a significant Catch-22, or "the jobless trap" (Ghayad, 2013), becomes apparent. On the one hand, individuals with police records are barred from and stigmatized in the labour market; on the other, stable employment and jobs are fundamental in preventing individuals from criminal involvement. This trap is created by the gradual erosion of skills, loss of professional networks, and the increasing sense of under-appreciation and alienation from the labour force. A job provides stability, an income, new networks for social contact, and, crucially, the ability to afford accommodation – all factors linked to the prevention of recidivism.

*With no job, one's likelihood of subsequent criminal contact (and thus a new police record) increases, and the cycle between poverty, incarceration, and homelessness begins or is reinforced. Reducing barriers to employment can help break this vicious cycle.*

## The impacts of incarceration on employability – Educational and Vocational Opportunities in Prison

Individuals who become involved with the criminal justice system tend to have lower educational attainment and work experience. Opportunities for training during incarceration may be limited, and released individuals may have limited employment opportunities because of low skills, low education, and diminished social networks.

Formerly incarcerated individuals returning to the Toronto job market upon release are at a distinct disadvantage due to low educational attainment. Approximately 75% of prisoners entering federal correctional facilities between 2008 and 2013 had not completed high school or an equivalent, compared to 20% in the Canadian population overall (Richer et al., 2015). An educational assessment is required for all prisoners during intake (*ibid*), and those who test below a grade 12 level are recommended for participation in the Adult Basic Education (ABE) program, which covers grades 1 through 12. Historical data indicates that about 35% of prisoners participate in ABE programs and 25% of participants complete them (*ibid*). This may mean a majority of all incarcerated individuals also leave a federal correctional facility without a high school-level education. In a market where the minimum requirement for many jobs is a university degree or college diploma, this is a significant gap in competency. Prisoner work programs designed to help prisoners develop skills and find employment on release are also falling short. CORCAN, the main federal work program, was found to only marginally increase the likelihood of finding employment post-release and to have little impact on recidivism rates (Nolan et al., 2014). In a 2012 evaluation of the program by the Department of Public Safety, it was described as “a system that is too small for many inmates to access and offers few opportunities to develop skills that can be applied outside of prison” (Mackrael, 2013).

Provincial facilities have very different populations, which leads to challenges in providing consistent work and education opportunities. As previously mentioned, the majority of people in Ontario’s correctional institutions are on remand. Those who are sentenced stay for very short amounts of time – the majority of sentences are 6 months or less. Ontario’s Ministry of Community Safety & Correctional Services offers some categories of programs, including life skills, education programs, and work programs, which may have benefits for keeping individuals occupied during incarceration. However, in 2017, the Independent Review of Corrections in Ontario released its final report, highlighting some of the shortcomings of education and programming opportunities in Ontario’s provincial institutions, including inconsistent program availability and delivery, little dedicated funding, and barriers to accessing certain programs based on custody status (sentenced versus a remand population, in which the latter is presumptively inadmissible for work programs) (IROC, 2017). While not the focus of the Invisible Burden Report, it is clear that opportunities to improve skills and make connections with employers prior to release are issues related to finding employment in the community.

# RESEARCH SUMMARY

John Howard Society of Ontario (JHSO), in partnership with several community organizations, has previously conducted a series of surveys to investigate the employment barriers created by police record checks in Ontario. Two previous of employers were conducted in Hastings and Prince Edward Counties in 2014 (see *Help Wanted*) and in London and Middlesex County in 2015 (see Asif, 2015). For the current Metcalf Foundation-funded project, a similar survey was administered to employers in Toronto and focused on hiring policies and practices as they relate to police records. The survey was followed up with in-depth interviews with four large employers and a focus group with individuals who have police records. The following section of the Report presents a brief overview of the research findings for the current project. For a complete analysis of survey, focus group and interview findings please visit [POLICERECORDHUB.CA](http://POLICERECORDHUB.CA).

## Participant Profile: Employer Survey



Top Industries represented in the Survey:



Health Care & Social Assistance



Retail Trade

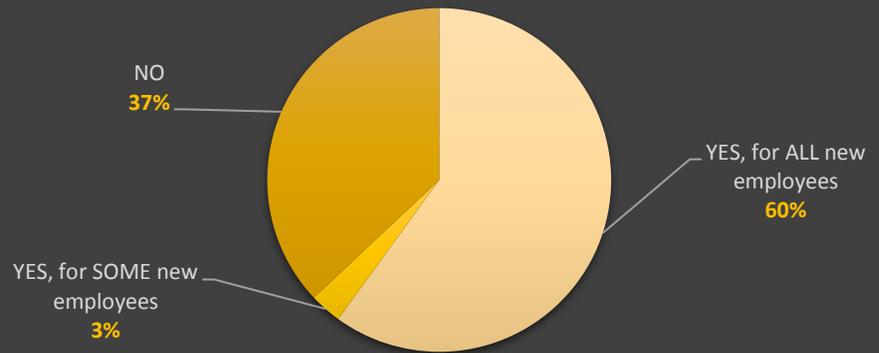


Accommodation and Food Services

## Employer Survey: A Snapshot of Employer Practices in Toronto

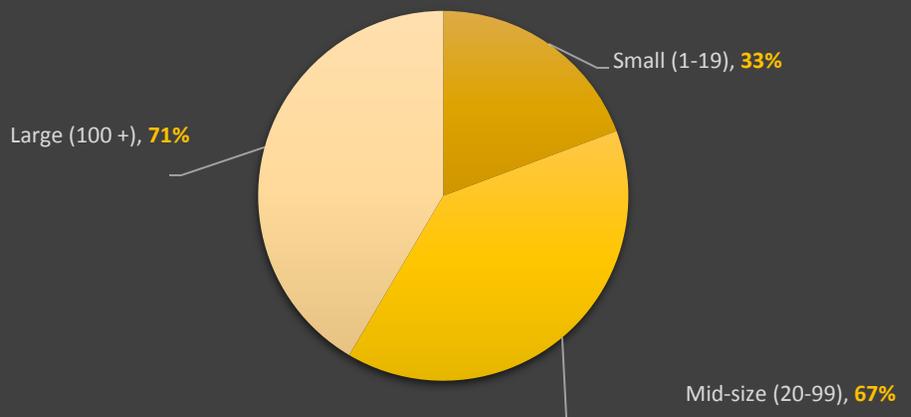
# 60%

of employers indicated that they required police background checks for **ALL NEW** employees.



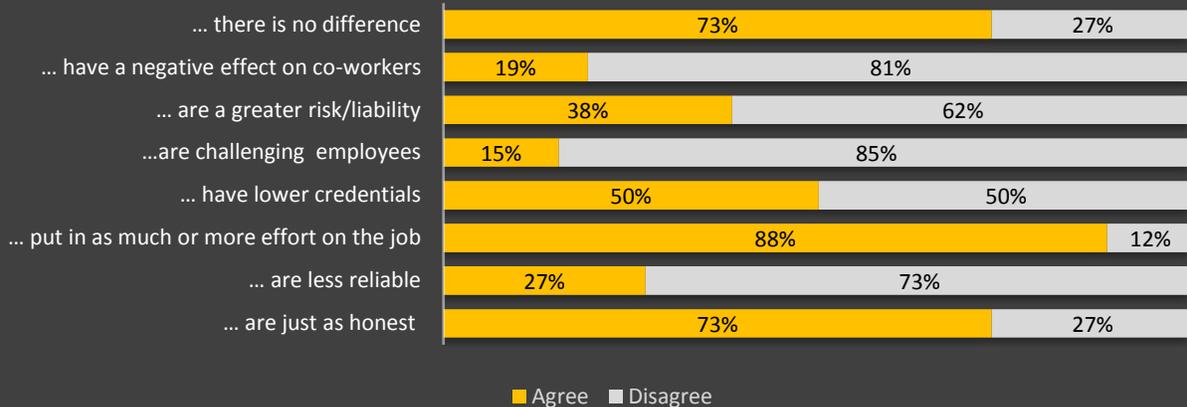
# 71%

of the employers who require police background checks represent **LARGE** industries.



All of the respondents in the 'public administration', 'administration and support, waste management and remediation services', 'manufacturing', and 'professional, scientific and technical services' and a vast majority of 'health care and social assistance' require police record checks for **ALL NEW** employees.

When asked about the employability of people with police records, some employers held **negative character assessments** of individuals with police records. Participants were asked to indicate to what extent they agreed with the following statements: “**People with police records...**”



**56%**

of the employers indicated that despite a police record, they would still **Hire** the individual depending on type of offence.

However,

**15%**

indicated that they **DO NOT hire** regardless of the type and age of the offence and the type of position.

Participants were asked for what **PURPOSE** a police record check is required. The responses were as follows:



Employers indicated that **funding incentives**, increased support through **toolkits/training/best-practices**, and improved individual **technical skills prior to hiring** might encourage organizations to employ individuals with police records. Some respondents also indicated that **changes in legislation** regarding employing people with police records and organizational police change might be helpful.

## Interviews: Key Highlights from Employers

As part of the study, four one-on-one and in-depth interviews with employers were conducted to supplement the employer survey findings. Interview participants were selected from different industries that worked either in HR or were otherwise involved with the hiring process. Overall, interview respondents held similar views to the survey respondents regarding candidates with criminal records. As such, there were common themes within these interviews: dependence on offense, overall background checks, and disclosure timing.

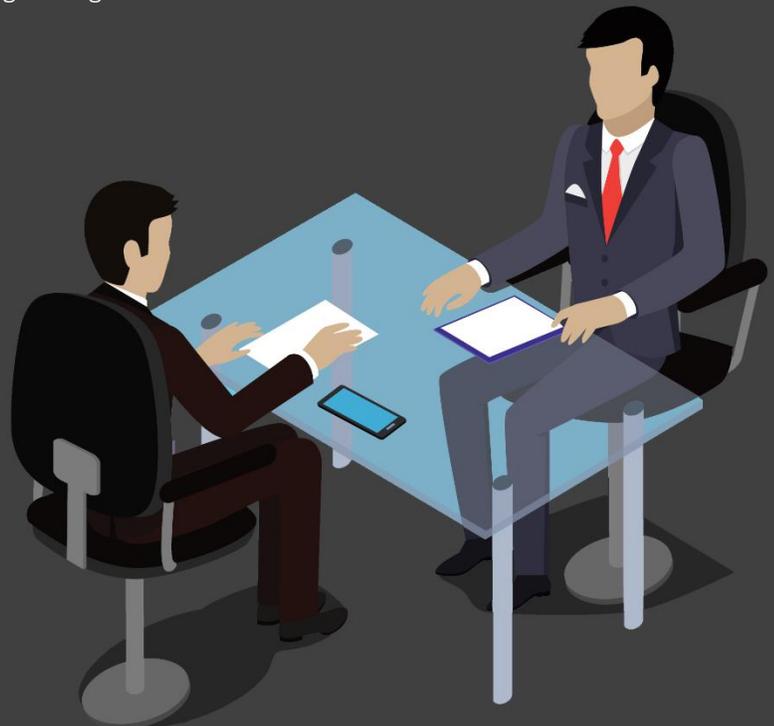
Several of the respondents indicated that certain sectors/levels of management would have record checks in place due to the nature of the **industry**, and the most common sector was **finance**. Although not explicitly stated in the interviews, **liability** was hinted as the reason as to why certain industries were prone to having record checks done. One candidate explained that, "Finance departments do criminal background checks due to handling a large amount of money... there is elevated chance for **fraud** in that department".

The respondents explained that they do consider the type of offense, as well as the timing of the conviction, but only one respondent discussed how the candidate's application was related to the record check.

Lastly, employers mentioned that candidates **should not disclose** their record immediately at the start of the interview. Employers felt that this would skew the interview **against** the candidate. One employer advised that if the candidate felt that the interview went well, notify the hiring manager about the record and whether that would affect the hiring process.

*We moved from requiring the checks only from IT, HR and Finance roles to all roles...added a requirement to all offer letters to maintain a clear record and notify the organization of any convictions.*

- EMPLOYER



## Focus Group: Key Highlights from Individuals with Police Records

**Stigma:** To most of the participants, a police record acted as a barrier to not only employment, but also toward housing and travel.

Respondents noted that they were more likely to be taken advantage of during the employment process if employers knew of their record. Some respondents said that employers were willing to provide them with employment for a reduced wage/salary, or even asked them to carry out illegal activities in the work place.

**Sustained Punishment:** According to focus group participants record checks prevented individuals from obtaining qualifications that are necessary in some industries, significantly lowering individuals' employability in these fields that require certain licenses/qualifications. As a result, record checks become a "sustained punishment" for individuals for many years to come, even after they have served their sentence.

**Need for Standardization:** Focus group participants uniformly agreed that the process of requesting record checks from potential or existing employers should be transparent and standardized. The process of requesting a record check during the hiring process should not be left to the discretion of each employer but rather should be regulated.

*Affects you in every way, discourages you to reach your goals and dreams. There is no comfort in having that record...*

- FOCUS GROUP CLIENT

*Criminal records affect the wrong people... people who are trying to recover.*

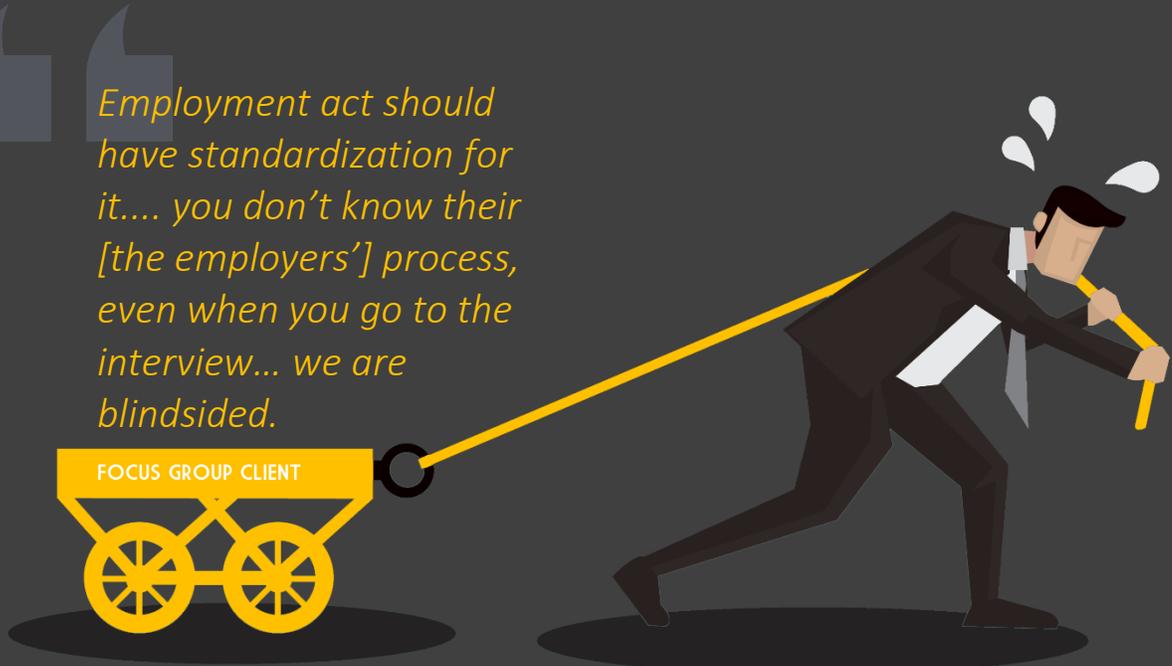
- FOCUS GROUP CLIENT

*My police record has turned me into a bum.*

- FOCUS GROUP CLIENT

*Employment act should have standardization for it.... you don't know their [the employers'] process, even when you go to the interview... we are blindsided.*

FOCUS GROUP CLIENT



## Discussion

More than half of the employers surveyed indicated that they require some form of police record check for new and/or existing employees. These employers came from a cross-section of industry types and sizes. A significant majority (**63%**) of the largest employers in Toronto claim to require a record check for **all** or **some** of their new hires – unsurprisingly, many of these organizations also employ a large proportion of individuals.

The majority of the organizations who require police record checks did indeed indicate that they would still hypothetically consider hiring an individual – based on specific circumstances – regardless of a positive police record check. However, when asked about their general perceptions regarding individuals with criminal records, some of those surveyed continued to hold negative opinions. Some respondents reported stigmatizing characterizations of people with criminal records, such as not being ‘...just as honest’, being ‘...less reliable’ and ‘challenging employees’, and being a ‘...greater risk/liability’ compared to other workers. Despite many participants indicating that their organization would still hire individuals with criminal records under certain circumstances, a majority (**57%**) stated that they had never knowingly hired an individual with a police record.

On the other hand, all of those that claimed to have knowingly hired a person with a criminal record also indicated their general experience with the individual was the same as with other employees. Most respondents called for increased funding and support to employers and also training for individuals with police records to increase their job potential.

The results obtained from the current study are comparable to the findings of previous studies conducted in other areas of Ontario. There appears to be a slight increase in the proportion of employers conducting police record checks (**60%**) compared to previous surveys. The survey conducted in London and Middlesex County area in 2015 reported slightly lower proportion **54%** of employers conduct police background checks with all new. The 2014 survey in Hastings and Prince Edward Counties reported slightly lower figures, where **51%** of employers conduct police record checks with all new employees. Toronto survey also found an increase in police record checks for certain industries such as construction, accommodation/food services and manufacturing as compared to previous surveys. In previous survey these industries ranked amongst the lowest in police record check practices; however, in the current study, these industries conducted checks just as frequently as other organizations.

In regard to employer size: the purpose of record checks, views on individuals with records, and changes that would encourage them to hire more individuals responses from all three surveys remained identical. What has become evident from the current study is that police records continue to pose a significant employment barrier to individuals three years after our original study. These impacts seem to be even more pronounced in larger and more urban areas.

## NEXT STEPS

### RECOMMENDATION 1:

## STRENGTHENING HUMAN RIGHTS PROTECTION

There is little in the way of human rights protection for individuals with police records in Ontario. Only those who have received a pardon, now called a record suspension, or those with provincial offences are offered specific protection against discrimination through the *Ontario Human Rights Code* provision on “record of offences.” Individuals with unsealed records (convictions for which there is no pardon or record suspension), and non-conviction information (like arrests, withdrawn charges, acquittals, stays) can be discriminated against.

Where tribunals have had the opportunity to interpret the *Code* as applying to individuals with non-conviction records, the tribunal has determined that the *Code* does not apply to these types of records. This absurdity – that people who are convicted have legal protection, while those who are legally innocent have little to no protection – must be corrected by legislative change.

**Our recommendation is that the provincial government should amend the *Ontario Human Rights Code’s* “record of offences” provision to broaden the definition to explicitly protect Ontarians against discrimination on the basis of any record of offences. An expanded “record of offences” definition should include all non-conviction police records, mental health police contacts, criminal convictions and records that have been sealed subsequent to a pardon or record suspension.**

### ROBUST HUMAN RIGHTS PROTECTION EXAMPLES

Other provinces in Canada have more robust human rights protections built into their provincial rights legislation. For example, British Columbia’s Human Rights Code protects against discrimination based on the fact “that a person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.” Tribunals have interpreted the provision broadly, creating more “cautions” for employers when asking about and interpreting police records. Newfoundland’s Human Rights Code similarly amended language in 2010 to provide protection against employment discrimination for people with any “conviction for an offence that is unrelated to the employment of the person.” Both examples offer more protection than the Ontario Code by stating that the conviction and employment must be related.

One of the most robust human rights protection for people with police records can be found in the Yukon Human Rights Act. The Yukon Act bars discrimination on the basis of “a criminal record or criminal charges” unless the history is relevant to the employment. The use of “criminal charges” in addition to a record expands the scope of those who would be protected to individuals who have been charged but not convicted. The Manitoba Human Rights Commission has also found that, given their Code language, “discrimination in employment on the basis of a criminal charge or conviction may constitute the basis of a complaint.” BC tribunals have also interpreted their Code provision to address discrimination based on non-conviction records.

## RECOMMENDATION 2: EMPLOYING PEOPLE WITH RECORDS AS A PUBLIC POLICY GOAL

Our surveys revealed that employers want and would benefit from toolkits and education, especially government-led initiatives, to help craft rights-respecting, best-practice hiring policies. Our sense from this research and other studies is that employers are attempting to reform hiring policies in the absence of clear direction and knowledge. Survey results revealed that “company policy” is the number one reason for conducting a record check on applicants. A significant number of employers also revealed that they feel obligated to perform record checks because of workplace health and safety legislation, specifically Bill 168, even though the Bill does not require employers to do police records checks.

The government of Ontario, such as the Ministry of Labour, or the Anti-Racism Directorate (who have a clear mandate for improving inclusiveness in Ontario), could lead an initiative to educate employers on: the impact of police records on employment (in particular, disproportionate impacts on racialized and other populations); best practices in hiring; and the laws which must be complied with. This effort could include a comprehensive "Guidance Document" similar to the example noted below.

The benefits of a government-led initiative would include:

- ❖ Providing a source of government-endorsed guidance and justification for employment practice and law regarding individuals with police records;
- ❖ Signaling the government’s commitment to helping an expanded category of vulnerable persons – persons with records – obtain employment;
- ❖ Helping standardize practices across the province. This will help give both employers and applicants a greater degree of certainty and expectation;
- ❖ Providing employers with access to crucial information about the disproportionate impacts of records on Ontario’s racialized and indigenous populations.

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### “Consideration of Arrest and Conviction Records in Employment Decisions”

The United States Equal Employment Opportunity Commission (EEOC) is a federal government body in the US responsible for investigating charges of employment discrimination by employers.

In 2012, the EEOC produced a document titled “Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.” The document outlines key legal obligations and information for employers when dealing with applicant’s or employees’ criminal records. It fulfills a key goal: ensuring that criminal record information is not used in a discriminatory way. The document provides guidance on:

- ❖ The difference between conviction records and non-conviction records;
- ❖ The disproportionate impact of records on racialized populations;
- ❖ How to determine whether a criminal record is relevant to a particular position;
- ❖ How applicants can challenge the relevancy or utility of the prior record;
- ❖ That reliance on criminal records can seriously prejudice individuals which outweighs the record’s utility as a predictor of future risk.

## RECOMMENDATION 3: EXPLORING EMPLOYER INCENTIVES

Incentives are designed to motivate individuals to perform an action. In the employment context, examples from other jurisdictions, like the United States, include wage subsidies, tax incentives, bonds, and bid incentives, which are *specific* to people with records. A goal of these incentives is to counteract the risk and liability concerns that employers have with regards to people with police records and provide a financial benefit to employers. The logic is that with these incentives, there will be more employment opportunities for people with police records.

Our survey results showed that the number one suggestion from Toronto employers to encourage the employment of people with police records is a funding incentive. The survey also confirms the risk and liability concerns that Toronto employers have with respect to applicants with police records.

An analysis of the full menu of wage subsidy programs in Ontario was beyond the scope of this research project. There are existing wage subsidies that apply to youth or focus on vulnerable populations. However, these existing wage subsidies do not explicitly mention people with police records.

**We recommend examining existing practices and legacy programs, such as Ontario Works, to determine how or if they are meant to be working for people with records. This could lead to several important outcomes. First, employers would have a clear sense of which programs are applicable to people with records, and governments (local, provincial) could seek to promote these programs. Second, those programs that do cover people with records could be examined and augmented to improve effectiveness, scope, or inclusiveness. Third, those programs whose scope does not cover people with records could be re-examined to determine if/how the scope should be broadened.**

In addition to a purposeful review of existing subsidies and programs that provide subsidies, Ontario could consider piloting new tax and bid incentives for employers. Examples from the US are explored in the insert to the right.

### BID & TAX INCENTIVE: CHICAGO & IOWA

The City of Chicago has prioritized advertising work programs and incentives aimed at people with criminal records. A recent bid incentive initiative incentivizes construction contractors to win contracts by hiring “ex-offenders.” Based on the number of hours worked by an individual with a record, the construction company would receive a bid incentive on future bids. The city is tracking the number of individuals with criminal records who have been provided employment opportunities, and cites several hundred individuals who have benefited from the program.

Some tax credit schemes in the United States are specifically designed and worded to incentivize employers to hire people with criminal records. The Federal Work Opportunity Tax Credit (WOTC) is one example. The language used in some State WOTC schemes, including Iowa’s, is aimed at targeting groups “with significant barriers to employment” and lists those target groups, which includes “ex-felons.” Iowa credits employers for 65% of an employee’s wages paid in the first year of employment, to a maximum of \$20,000. The application of the schemes to people with at least some form of criminal record, is clear and communicated to employers.

## RECOMMENDATION 4: RECORD SUSPENSION REFORM

Record suspensions in Canada are costly, the wait times are long, and the criteria for eligibility (for example, “good moral conduct”) create significant barriers for people trying to move beyond their criminal record. For example, unpaid traffic or parking tickets may deem someone ineligible for a record suspension. Also, due to constitutional challenges, Canada’s record suspension system (at the time of writing) has [different](#) criteria for residents in British Columbia and Ontario versus the rest of Canada. This inequality, and results from a recent survey, suggest the need for legislative change to Canada’s record suspension regime.

In a recent Public Safety Canada [survey](#), many Canadians supported reforming the record suspension regime, including reduced wait times and reduced fees. 83% of respondents also felt that for some crimes, record suspensions should be automatic – no application required. This can be referred to as a “spent record regime.” A spent regime creates an automatic process for closing (sealing) a criminal record of conviction by law. The principles underlying a spent regime include rehabilitation and recognition of the stigma attached to a criminal record.

Canada should amend the *Criminal Records Act* to create a “spent model” for adults, in effect creating a spent regime like that found in the YCJA. Both conviction and non-conviction records should be covered by a new regime. The regime should be available for summary and indictable offences. For some categories of offences, there could be exceptions to the automatic process (e.g. judicial discretion to require an application for some offences). See this [link](#) for more detail on how spent regime works.

### MODELS OF SPENT REGIMES

#### CANADA: PARTIAL SPENT REGIME

For adults, Canada has a limited spent regime, which covers only Absolute and Conditional Discharges, automatically sealed after 1 and 3 years respectively. For youth, Canada has a more robust automatic record closure system under the Youth Criminal Justice Act (YCJA). The wait times are shorter than record suspension wait times, and are based on the offence committed and the disposition. The youth regime under the YCJA covers [both](#) conviction and non-conviction records (stays, withdrawn charges, acquittals).

#### UK

The UK model of spent convictions provides waiting periods (rehabilitation periods) based on the offence, sentence length, and/or disposition, rather than whether the conviction was summary or indictable as in Canada’s record suspension regime. The UK model is not without its shortcomings. The “rehabilitative periods” have been the subject to a number of court challenges. Courts have found the scheme to be arbitrary and disproportionate because it creates many exceptions to the general rules.

#### WESTERN AUSTRALIA

WA’s model ensures that all convictions can eventually become spent, even if the process is not automatic. For some offences (those which have life sentences, “serious convictions”) the record cannot become spent automatically. The individual would have to apply to a judge, and legislation enumerates the criteria the judge must consider in granting the application to “spend” the record. The definition of “serious offence” is severely limited: it is defined as an offence with a sentence of (1) imprisonment for more than 1 year; or (2) a fine of more than \$15,000.

## RECOMMENDATION 5:

# EDUCATION AND TRAINING:

## THE LEGAL COMMUNITY, SERVICE PROVIDERS, AND INDIVIDUALS WITH RECORDS

The collateral consequences of police records, record suspension law, and the human rights/privacy laws related to police records is important information for service providers, people with records, and legal actors.

### Legal Actors

Recent case law from Canada suggests that courts are also starting to interpret police records when considering sentencing and constitutional questions. A 2017 case from British Columbia concluded that a criminal record is part of a person's punishment, as the term is used in sections 11(h) and 11(i) of the *Charter of Rights and Freedoms*. Like other provincial courts, the BC court also accepted that judges can consider the significant impacts of a criminal record when they are considering sentencing goals, such as deterrence.

We recommend that legal actors (i.e. Judges, Justices of the Peace, Police, Crown, Defence Lawyers, Legal Aid) be provided training/education sessions on: the law of police records and record suspensions; the impacts of police records; case law and police records; types of records; and the pervasiveness of criminal record checks. Lawyers could receive this education as part of Law Society requirements for Continuing Professional Development. A set of tools (i.e. Guidebooks, interactive websites), which could be developed by experts in police records, should also be made available to the legal community.

### Service Providers and People with Records

Individuals who have records should be knowledgeable about their rights and protections, and tips for interviewing (i.e. – how to talk about records, when/if/why one should disclose criminal justice involvement). Service providers in Ontario – organizations which attempt to connect individuals to jobs – are well positioned to deliver this type of guidance, if they have the appropriate toolkits and knowledge. The education piece detailed in Recommendation #3 would be an important tool for service providers to have, alongside other resources which can be used to facilitate meaningful and informed dialogue with employers.

### AMERICAN BAR ASSOCIATION

The American Bar Association produced a detailed research document that “collects and describes the collateral consequences of a criminal conviction that arise under federal statutes and regulations” (ABA 2009). While the US has a much wider array of federal and state laws which impact people with records, a similar document, including case law, relevant federal/provincial/municipal law, and expert evidence, should be replicated for Ontario/Canada. The ABA document was conceived as “a useful tool for criminal justice practitioners (including defenders, judges, and prosecutors),” and for “persons seeking information about the legal rights and responsibilities of people who have a conviction record.”

### COUNCIL OF STATE GOVERNMENTS INVENTORY

In 2012, the American Bar Association started to compile an inventory of all collateral consequences of a criminal record, and post it to a publicly searchable database. In 2017, the Council of State Governments took over the website, and continuously updates the website with new statutory and regulatory changes. The interactive website is highly innovative, allowing legal professionals to search each state for various types of consequences (employment, housing, many more), by offence type, and even the duration of the consequence (Garretson, 2016).

The combination of employer, service provider, and applicant knowledge seems crucial, given the results of this survey and existing research which says that employment prospects can improve significantly where applicants have the chance to interact with hiring managers. Getting individuals to interviews should be a strategic outcome of these education efforts (the toolkits, resources, and government led-initiatives in Recommendation #3).

## RECOMMENDATION 6: RESEARCH

There is little empirical research on the impact of police records and employment in Ontario and Canada. There is also no Canadian research that has conducted an inventory of employers who ask about police records on applications, and those who delay record check questions until later in the application process. Little is known about the intersection of records, race, and employment.

The overrepresentation of mental health, Aboriginal Persons, and racialized populations in the criminal justice system, the lack of country-wide standards in human rights and privacy law, and the large demand for record checks in employment suggests the need for a research agenda.

Canadian research should be undertaken to study the following, which will further inform necessary changes in hiring policies and practices:

1. Identifying trends in practices and sectors/industries where more awareness of the issues is required;
2. Understanding the intersection of race, gender, mental health, police records, and hiring;
3. Understanding how current policy and legislation (i.e. provincial and federal human rights codes, privacy laws, and the Police Records Check Reform Act, once in force) mitigate or aggravate employment opportunities for people with police records.

### BAN THE BOX

Ban the box laws or policies are aimed at removing criminal history checkboxes from applications and delaying criminal background checks until later in the hiring process. There is no formal Ban the Box campaign or laws in Canada as of 2017.

U.S. research on Ban the Box initiatives suggest some unintended negative consequences of the laws and policies. On the one hand, Ban the Box initiatives have increased call-back rates and hiring rates of some groups of people (Agan & Starr, 2016; Berracasa et al., 2016). However, in the absence of information about an individual's criminal background – when there is no “check box” for criminal record history – research has suggested that employers may make hiring decisions on the perception that an individual has a record, resulting in racial discrimination (Agan & Starr, 2016; Doleac & Hansen, 2016; Vuolo, Lageson, & Uggen, 2017).

Researchers have noted there is room and need for further analysis of Ban the Box type policies (Vuolo, Lageson, & Uggen, 2016; Sugie, 2017), and the intersection of these policies with human rights laws. Some analysts suggest that additional regulations, training, and alterations to Ban the Box models may be able to balance discriminatory effects in hiring and fair hiring practices for people with police records (Stacy & Cohen, 2017). As more evaluation research comes out, the benefits, any unintended consequences, and policy implications will become clearer.

The literature review conducted through the current study suggests that the following research projects would be particularly informative in the Canadian context:

1. How employers and staffing agencies in Ontario and across Canada ask about police records at the initial application stage;
2. Including “police records” as an added element of discrimination in research, for example looking at call-back rates/job offers between white and racialized or Indigenous applicants, including those with and those without police records;
3. Employment outcomes for racialized applicants in companies that have and do not have a record check policy (including those policies that we might consider inspired by Ban the Box).



## LAW IN LIMBO & LOOKING UPSTREAM

The recommendations above are actionable and share a common theme: they generally address the issue of people who already have records, and what can be done to minimize the deleterious consequences of those records. There are several additional actions related to the issue of police records that merit mention. One is concrete, can be achieved very quickly, and will have immediate and important impacts on the record check process. The others shift the lens away from the back end of reform ideas towards other crucial points of intervention, further upstream.

### BRING THE *PRCRA* AND REGULATIONS INTO FORCE

**The Police Records Check Reform Act (*PRCRA*)** – law to standardize and limit disclosure of records across Ontario – received Royal Assent in 2015. This important law will result in significant improvements to current record check processes across Ontario, creating greater levels of fairness and respect for privacy for individuals when they request any level of police record check for employment purposes.

At the time of writing this Report, this important law is **not yet in force**. While it remains not in force, people with records will continue to fall through the gaps. The **focus group** participants clearly recommended greater standardization of police records check processes. This is exactly one of the purposes behind the creation of the *PRCRA*. **This legislation and its accompanying regulations must be brought into force as soon as possible.**

### LOOKING UPSTREAM: JUSTICE SYSTEMS AND OTHER SYSTEMS

Other stages of the criminal justice system should be explored as opportunities to alleviate or prevent the impacts of criminal records early on. Examples alluded to in this Report include:

1. **Corrections:** Examining how to enhance the opportunities for meaningful education and work programs for Ontario's incarcerated population, and examining how discharge planning can better connect released individuals (including remanded) with their former or new employers.
2. **Courts and Sentencing:** Systematically examining how and when sentencing principles should be informed by the collateral consequences of police records.
3. **Police and Charges:** Examining opportunities for pre-charge screening and pre-charge diversion. Some provinces have standardized pre-charge screening, where Crown help to determine whether charges should be laid. In these provinces, the

percentage of withdrawn charges are generally much lower than provinces that do not have such screening, such as Ontario (Williams 2017). While there are some pre-charge diversion programs for youth in Toronto, as well as bail pilot programs where Crown attorneys are involved in helping police find alternatives to criminal charges (for low risk individuals), there is no standard pre-charge screening process across Ontario.

This latter point recognizes a crucial prevention lens to police records reform. However, by the time someone has an encounter with police, prevention opportunities have already been missed. The criminal justice system continues to catch those who fall through the gaps in Canada's social safety net. Prevention necessitates looking upstream at other systems, such as health (mental health and addictions), housing, education, and child welfare. Prevention means reducing the inequities across socioeconomic groups and communities that give rise to both justice involvement and mental health issues.

## PROMISING PRACTICES IN TORONTO

City of Toronto divisions have begun to prioritize the issue of barriers to employment for people with records. While the planning and initiatives are relatively new, there is important leadership in finding evidence-based solutions and best practices to an identified problem. This leadership has spurred new connections between service providers and employers, new initiatives that are being evaluated and reviewed, and strategies to find creative solutions.

In 2016, Toronto City Council approved new resources to support a number of innovative Intensive Case Management (ICM) pilots. Two of these pilots focus on black youth, aged 18-29, with self-disclosed criminal justice involvement. The **Trades Connex** initiative connects youth, some of whom have experience in the justice system, with construction skills training and culturally sensitive intensive case management. The **Consumers to Creators** initiative connects youth with training in the Digital Technology sector and culturally sensitive intensive case management. These pilots have very high graduation rates and have resulted in a significant number of youth attaining employment and internship opportunities.

**Employment Connections** (EC) is an innovative partnership between the City of Toronto's Social Development, Finance and Administration Division, the Ministry of Community Safety and Correctional Services (MCSCS) and multiple non-profit agencies. EC was designed specifically to connect youth (16-29) on probation or parole to pre-employment training, ongoing employment supports, and access to employment opportunities. A Central Intake Process identifies the types of supports needed for each youth. Case workers, career counselors, and job developers provide support that continues after a youth is hired, which is a key factor in retention. Crucially, the program focuses on attracting and educating employers: an annual job fair includes over 25 employer partners. In its short lifespan, the EC program has secured meaningful employment opportunities, education and training for hundreds of youth. Based on evaluation, the program seeks to expand the framework of program partners (to include residents, select employers, educational institutions), to inform development of a coordinated city approach to help address the barriers and needs of people with criminal records.

## CONCLUSION

In Ontario, having a police record can make it difficult or impossible to get a job, even when the crime is irrelevant to the position being pursued. The negative effects are not only limited to records of conviction (i.e., when an individual is found guilty or pleads guilty and is sentenced). Non-conviction records – such as withdrawn charges, stayed charges, or acquittals – can have long-lasting, negative effects on employment opportunities.

Our survey revealed that requiring a record check is often part of an organization's official/formal policy. Employers, and specifically those in charge of hiring practices and decision such as HR professionals, may hold negative stereotypes of people with records, and identify "risk" and "requirements under law" as some of the primary reasons to conduct a record check. One concern is that decision-makers do not have the tools on how to interpret the relevance of a particular record in relation to a particular position, or whether positions really necessitate a check at all. Employers also suggested they lack incentives, such as subsidies, to hire individuals with records. Individuals with records need the tools and education to help them in an interview process.

Education on the laws, negative consequences, and best practices in decision-making – especially for human resource staff – is a crucial piece to removing some of the barriers to employment for people with police records. But there are other crucial reforms: reforming Canada's pardon or "record suspension system" to create an automatic process, which is based on evidence and best practices; amending the *Ontario Human Rights Code* to provide more rights protections for people with all types of records (convictions and non-convictions); government-led initiatives that see de-stigmatization and employer support as public policy goals, such as the creation of employer incentives. Lastly, the intersection of race, records, and employment is not well known in Ontario and Canada, and must be a research focus moving forward.

This Report and its recommendations do not suggest that records are always irrelevant in hiring, or that employers' concerns over risk in the workplace should be disregarded. But the high use of record checks and the reasons revealed in the surveys and interviews are concerning. The Report stresses the importance of looking at the evidence, best practices, the needs of applicants, service providers, and employers, and critically thinking about a multi-pronged approach - one that balances employer interests with the need for a rights-respecting and inclusive approach for people who need to work.

The window to have important discussions and implement key reforms in Ontario is open. In addition to the waiting *PRCRA*, public support for record suspension reform, and momentum for amending the *Ontario Human Rights Code*, inclusive hiring strategies for marginalized populations, including people with police records, can be anchored within existing government strategies such as Poverty Reduction [strategies](#) at the provincial and city levels. This Report ultimately suggests that with the right mix of law, education, leadership, and tools, designed for a broad spectrum of society, it is possible to provide an evidence-based foundation for reform in Ontario.



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