

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

YAZDAN KHORSAND

Applicant

and

TORONTO POLICE SERVICES BOARD and
TORONTO POLICE CHIEF JAMES RAMER

Respondents

and

CANADIAN CIVIL LIBERTIES ASSOCIATION

Intervener

APPLICATION UNDER Rule 14.05 and 68.01 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194

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TABLE OF CONTENTS

	Page No.
PART I - OVERVIEW	1
PART II - POSITION ON THE ISSUES	2
PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES	2
A. THE REALITY OF POLICE RECORDS	2
(i) Police records are not limited to criminal activity	2
(ii) Overview of local and national Police Record databases	4
(iii) Types of Police Record Checks	5
B. REGULATION OF POLICE RECORDS CHECKS	8
(i) National Legislation	8
(ii) Ontario Legislation	9
C. POLICE RECORDS CHECKS ARE OF LIMITED USE AND BENEFIT	12
(i) Individuals from marginalized communities are disproportionately represented in police databases	14
(ii) The Toronto Police Service's detailed report on systemic racism.....	15
D. THE DISCRIMINATORY APPLICATION OF BACKGROUND CHECKS IS A BROADER PUBLIC ISSUE REQUIRING PROCEDURAL FAIRNESS AND CHARTER PROTECTION.....	16
(i) The Court should ensure procedural fairness for all individuals undergoing Police Background Checks.....	16
PART IV - CONCLUSION.....	20

PART I - OVERVIEW

1. In the course of their duties, police produce records of their interactions with the public. These records can include extensive personal information about individuals both directly and indirectly involved in a particular police interaction and are subsequently used for a variety of reasons, including employment screening and other applications.

2. Unfortunately, it is well-established that policing institutions in Canada are prone to institutionalized bias and racism. Certain communities are more heavily policed than others. Greater police presence results in more police interactions, which is one of the drivers of more extensive police records. Because of this, over-reliance on Police Records Checks, as defined below, produces disproportionate harm in over-policed communities: people living in these heavily policed neighbourhoods will have more interactions with police, and consequently, more police records. Reliance on police records, therefore, disproportionately affects a range of marginalized groups.

3. The creation, maintenance and dissemination of most police records is subject to legislative oversight to protect, amongst other things, the privacy interests at stake, and to mitigate the prejudicial effects of these checks. It is critically important that access to and reliance on police records, including for police “background checks”, be as transparent as possible and subject to legislative and judicial oversight. While the *Police Records Check Reform Act* provides some legislative constraints for police records checks, its accompanying regulations allow for exemptions that permit police agencies to conduct unregulated and overbroad background checks.

4. This Application deals with such a background check and exemplifies the tangible and significant consequences of these unregulated checks. Particularly when an individual “fails” a

background check without having been convicted of – or even charged with – a criminal offence, it raises serious questions about what, if any, criteria are being used. Further, it raises concerns about how the systemic issues of bias within policing may inform and affect this decision-making.

5. The hiring process for police and special constables in Ontario is a public process and is therefore subject to judicial review. To find otherwise would be to ignore both the extensive legislative framework that affords police the authority to appoint their members and carry out their duties as well as the significant public interest in this process. The Canadian Civil Liberties Association therefore submits that, in addition to being subject to judicial review, individuals that are subject to the police background check process are entitled to the guarantees of procedural fairness. This includes the right to know the process and criteria of such background checks, disclosure of information that was before the decision-maker, and substantive reasons if a negative decision is made. This will help ensure that the decision-making around hiring police and special constables is not impacted by unconscious or overt bias and discrimination.

PART II - POSITION ON THE ISSUES

6. The CCLA takes no position on the facts or the outcome of this application.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. THE REALITY OF POLICE RECORDS

(i) Police records are not limited to criminal activity

7. A police records check is the process of retrieving, assessing, and/or disclosing police records from databases, that relate to an individual (“**Police Records Check**”). A person’s police record (“**Police Record**”) encompasses a variety of private information; for many individuals

much of their Police Record, if not all, will be unrelated to criminal activity.¹ A Police Record documents any interaction with law enforcement including conviction, non-conviction, and non-criminal interactions with police. It can also document information provided to the police by a third party. Therefore, even if a person has no history of alleged or proven criminal activity, they may still have a Police Record that is accessible to law enforcement agencies.

8. Criminal records are captured within the broad category of Police Records. While jurisdictions differ in how they categorize and define the different types of criminal records, they can be summarized as follows: criminal convictions, non-conviction findings of guilt, and non-conviction records with no finding of guilt.² Criminal convictions are generated when a person has been found guilty of a criminal offence.³ Non-conviction findings of guilt are documented when a person receives an absolute or conditional discharge. Finally, non-conviction records with no finding of guilt capture a range of police contact including witness and complainant interviews, 911 calls, mental health-related contacts and apprehensions, police surveillance, allegations, complaints, withdrawn charges, and acquittals. Much of the non-conviction information police have about an individual will not relate to allegations of wrongdoing. Further, these records may also be related to job duties that require an individual to contact police, including security guards, paramedics, special constables, victim advocates, social workers, and child protection agents. Depending on circumstance or choice of employment, some individuals may have an extensive Police Record attached to their name.

¹ Canadian Civil Liberties Association, "Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks" (May 2012) at 2, Online: <<https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plng/cn33447-eng.pdf>> [CCLA, "Presumption of Guilt"], **Book of Authorities of the Intervener [BOAI], Tab 20.**

² Canadian Civil Liberties Association, "What is A Criminal Record?" (May 2014) at 1, online: <[What is a Criminal Record.pdf \(ccla.org\)](https://www.ccla.org/what-is-a-criminal-record.pdf)> [CCLA, "What is A Criminal Record"], **BOAI, Tab 22.**

³ *Ibid.*

9. Where non-conviction records relate to suspected criminal activity, these alleged incidents have not been proven in court. Individuals may not be aware these records exist.⁴ Prior to the passage of the PRCRA, police services disclosed many types of non-conviction records on Police Records Checks.⁵ While there can be legitimate reasons for law enforcement to collect and store non-conviction or non-criminal records, in the context of employment, utilizing or disclosing these records on a Police Records Check is largely unjustified and an invasion of privacy.⁶

(ii) Overview of local and national Police Record databases

10. After a Police Record is generated, the information is stored in a police database, which can be done easily and with little expense since the introduction of the internet.⁷ In general, there are two types of databases where Ontario law enforcement can access Police Records: the national Canadian Police Information Centre (CPIC), and local police databases. For the purposes of Police Records Checks, law enforcement will retrieve, disclose or analyze records from both databases.

11. CPIC is operated by the RCMP's National Police Services program and is the only database maintaining Police Records across Canada.⁸ According to recent data, CPIC contains approximately 38 million records, including conviction and non-conviction records,⁹ and is available to over 100,000 law enforcement agents in Canada and abroad.¹⁰ Local law enforcement

⁴ CCLA, "Presumption of Guilt", *supra* note 1 at 10-11, **BOAI, Tab 20**.

⁵ Canadian Civil Liberties Association, "False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada" (May 2014) at 14, online: <[Records-check-final-20140516.pdf](https://www.ccla.org/records-check-final-20140516.pdf) (ccla.org)> [CCLA, "False Promises"], **BOAI, Tab 19**.

⁶ "Police Record Checks Reform Act", 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess, No 101 (29 September 2015) at 4897 (Hon. Yasir Naqvi), at 5412-5413 [Hansard Sept 29], **BOAI, Tab 27**.

⁷ CCLA, "Presumption of Guilt", *supra* note 1 at 4, **BOAI, Tab 20**.

⁸ Government of Canada, "CPIC's 50th Anniversary" (Article, March 2022) at 1-2, Online: *Canadian Police Information Centre* <<https://www.cpic-cipc.ca/anniversary-anniversaire-eng.htm>> **BOAI, Tab 23**.

⁹ *Ibid* at 4, **BOAI, Tab 23**.

¹⁰ *Ibid* at 3, **BOAI, Tab 23**.

can easily access CPIC from any police computer, including remote access from vehicles.¹¹ Records may include details of investigations, warrants, or surveillance.¹² CPIC is also linked to the RCMP's Criminal Records Information Management Services database (CRIMS), which houses the details and dispositions of an individual's past or current criminal charges and convictions.¹³

12. Local police databases are maintained by regional law enforcement. Like CPIC, local police databases hold a range of information, but unlike CPIC, these records are not readily accessible across local or provincial jurisdictions. Depending on the individual agency's data retention policies, local databases may include records that are absent or purged from CPIC.¹⁴ Subject to a small number of applicable statutes, local data collection and retention is largely unregulated.¹⁵

(iii) Types of Police Record Checks

13. Individuals normally request that a police service provide a Police Record Check during a job or volunteer application. The records disclosed will depend on the level of check requested, as well as any internal police policies or legislative oversight.¹⁶ Although the titles vary between jurisdictions, there are generally three categories of Police Records Checks an employer can request: criminal records checks, police information checks, and vulnerable sector checks. In addition to the publicly available checks, police services regularly perform more extensive Police

¹¹ *Ibid* at 5, **BOAI, Tab 23**.

¹² Affidavit of David Ouellette at para 10 [Ouellette Affidavit], **Responding Application Record of the Respondents [RARR], Tab 1**; CCLA, "Presumption of Guilt", *supra* note 1 at 6-7, **BOAI, Tab 20**.

¹³ CCLA, "Presumption of Guilt", *supra* note 1 at 6-7, **BOAI, Tab 20**.

¹⁴ *Ibid* at 7, **BOAI, Tab 20**.

¹⁵ *Ibid* at 7, **BOAI, Tab 20**.

¹⁶ In Ontario, publicly available Police Records Checks are governed by the *Police Records Checks Reform Act*. As further expanded upon in part B, this Act significantly limits the disclosure of non-conviction Police Records on Police Records Checks,

Records Checks for internal employment opportunities and law-adjacent positions.¹⁷

14. According to the RCMP, a Criminal Records Check (“**CRC**”) “will determine if a person has been charged or convicted of a crime.”¹⁸ At the request of an individual or their employer, police services commonly process this kind of check through CPIC and other local databases. Depending on the applicable rules in the jurisdiction, police services will then disclose the contents of the record to either the employer or the applicant.¹⁹

15. Alternatively, an employer may require an individual to submit a Police Records Check that includes both conviction and non-conviction records. In Ontario, this is called a Criminal Record and Judicial Matters check (“**CRJM**”).²⁰ A CRJM will include criminal convictions, findings of guilt under the *Youth Criminal Justice Act*, non-conviction criminal records, outstanding criminal charges and all court orders made against an individual.

16. Vulnerable Sector Checks (“**VSC**”) are governed by s. 6.3(3) of the *Criminal Records Act* and s. 9 of the *PRCRA*.²¹ A VSC includes the same information as a CRJM check, but with an additional search for any non-conviction information authorized for “exceptional disclosure.”²² The exceptional disclosure criteria includes police records that include alleged victims that are children or vulnerable persons, or for which there is record of any risk of harm to a child or vulnerable person. Because VSCs include highly prejudicial information and may be interpreted

¹⁷ Ouellette Affidavit, *supra* note 12 at para 7, **RARR, Tab 1**.

¹⁸ Royal Canadian Mounted Police, "Types of Criminal Background Checks" (March 2018) at para 1, online: *Royal Canadian Mounted Police* <[Types of criminal background checks | Royal Canadian Mounted Police \(rcmp-grc.gc.ca\)](https://www.rcmp-grc.gc.ca)> [RCMP] **BOAI, Tab 29**; Schedule to Section 9 of the *PRCRA* defines a CRC within Ontario as including “[e]very criminal offence of which the individual has been convicted for which a pardon has not been issued or granted” and “every finding of guilt under the *Youth Criminal Justice Act* (Canada) in respect of the individual during the applicable period of access under that Act.

¹⁹ This process exists in Ontario and is dictated by the *PRCRA*.

²⁰ *Police Record Checks Reform Act, 2015*, SO 2015, c 30, s 8(1) and associated Schedule [*PRCRA*].

²¹ *Criminal Records Act*, RSC 1985, c C-47, s 6.3(3) and s 9 [*CRA*]; See also the associated Schedule of the *PRCRA*.

²² RCMP, *supra* note 18 at para 3, **BOAI, Tab 29**.

broadly, the *Criminal Records Act* strictly limits who can request these checks, how such checks are processed, and what the results can be used for.²³

17. In addition to the standardized and regulated Police Records Checks, there is also a process of Police Background Investigations.²⁴ A Police Background Investigation (“**PBI**”) is a “pre-employment screening process”²⁵ that is exclusively available to law enforcement and their community partners.²⁶ Although the processes and procedures may vary between police forces, within Toronto Police Services (“**TPS**”), PBIs are led by the Talent Acquisition Unit (the “**TAU**”); a team of current and retired police officers.²⁷ According to the TAU’s Acting Inspector, PBIs are “distinct... and more extensive” than the record checks available to the public.²⁸

18. When conducting a PBI, the police services simultaneously act as custodians of Police Records, the entity drawing conclusions from police records, a gatekeeper to potential employment, and as a potential employer. As stated by the TAU’s Acting Inspector, a PBI ensures that applicants meet the requisite “level of professionalism, trustworthiness, and integrity.”²⁹ In this way, a “pass” or “fail” indicates if a candidate is suitable for law enforcement, which will have a determinative effect on their application.

19. PBI’s are also distinct because police services are a public entity with the statutory power to hire or appoint certain positions, such as police or special constables.³⁰ When members of police

²³ CCLA, “False Promises”, *supra* note 5 at 23, **BOAI, Tab 19**.

²⁴ In Ontario, PBIs are not regulated under the *Police Records Checks Reform Act*.

²⁵ Ouellette Affidavit, *supra* note 12 at para 5, **RARR, Tab 1**.

²⁶ *Ibid* at paras 3-4, **RARR, Tab 1**.

²⁷ *Ibid* at para 2, **RARR, Tab 1**.

²⁸ *Ibid* at para 6, **RARR, Tab 1**.

²⁹ *Ibid* at para 5, **RARR, Tab 1**.

³⁰ *Police Services Act, RSO 1990, c P15, s 53(1) [PSA]; Comprehensive Ontario Police Services Act, 2019, S.O. 2019, c. 1 - Bill 68 s. 92(1) [COPSA]*.

services conduct a PBI for a position over which they have statutory authority, the determinative effect of a PBI cannot be separated from the power to hire or appoint. This remains true even when working with community partners.

20. In contemplating whether an applicant “passes” or “fails,” talent acquisition officers may rely on a vast number of Police Records. These records can include criminal charges, convictions, national intelligence information, domestic and international security checks, financial reports, and an applicant’s driving record.³¹ Police also have access to other categories of information, such as victim statements, witness accounts and mental health-related records. It is not clear what information talent acquisition officers tangibly retrieve or use. At the close of the process, community partners and applicants are only informed if they have “passed” or “failed” the investigation.³² As in this case, people with no history of criminal activity can “fail” without reason.³³

B. REGULATION OF POLICE RECORDS CHECKS

(i) National Legislation

21. Nationally, the courts and legislature understand that the stigma associated with Police Records can lead to significant barriers. As quoted by the Supreme Court of Canada, the purpose of a record suspension “is the removal, as completely as possible, of the negative consequences of conviction once the offender has fulfilled the sentence and enough time has elapsed to establish, with some degree of certainty, law-abiding behaviour.”³⁴ Per s. 2.3 of the federal *Criminal Records*

³¹ Ouellette Affidavit, *supra* note 12 at para 11, **RARR, Tab 1.**

³² *Ibid* at para 13, **RARR, Tab 1.**

³³ *Mounsey v. Metrolinx*, [2021 HRTO 189](#) at para 7, **Book of Authorities of the Intervener [BOAI], Tab 8.**

³⁴ *Montréal (City) v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, [2008 SCC 48](#), [2008] 2 S.C.R. 698 at para 15, **BOAI, Tab 7.**

Act (“**CRA**”), after receiving a record suspension, all records related to the individual’s criminal conviction are removed from a general search of CPIC.³⁵ Provisions in the CRA also limit the disclosure of non-conviction findings of guilt for absolute and conditional discharges.³⁶

22. Unfortunately, these provisions are not sufficient to achieve the purpose of removing the stigma because the CRA only applies to records housed in CPIC.³⁷ Depending on the municipal or provincial policy, records expunged from CPIC may still exist on local police databases and therefore remain accessible.³⁸

23. Further, national legislation provides no means to remove non-criminal and non-conviction records without a finding of guilt; therefore, many such records can remain on CPIC and in local police databases indefinitely.³⁹ Although Ontario’s Human Rights legislation prevents discrimination based on a conviction that is subject to a record suspension, there is no equivalent protection against discrimination on the basis of a non-conviction or non-criminal police record.⁴⁰

(ii) **Ontario Legislation**

a. **Police services authority to hire and appoint**

24. The *Police Services Act* governs the powers, appointments and governance of police officers and special constables in Ontario.⁴¹ The Toronto Police Services Board recruits, appoints, and promotes members to the Toronto Police Service pursuant to s. 41-53 of the *Police Services*

³⁵ CRA, *supra* note 21, s 2.3.

³⁶ *Ibid*, s 6.1(1)(a)-(b).

³⁷ Government of Canada, "What is A Record Suspension?" (2018 Oct) at para 3, online: *Canada.ca* <[What is a record suspension? - Canada.ca](#)>, **BOAI, Tab 24**.

³⁸ *Ibid*, **BOAI, Tab 24**.

³⁹ CCLA, “Presumption of Guilt”, *supra* note 1 at 12, **BOAI, Tab 20**.

⁴⁰ CCLA, “False Promises”, *supra* note 5 at 10, **BOAI, Tab 19**.

⁴¹ PSA, *supra* note 30, s 42 (Police Officers), s 53 (Special Constables).

Act (“*PSA*”) and s. 79-96 of the *Comprehensive Ontario Police Services Act* (“*COPSA*”).⁴² While the *COPSA* is not yet in force, the bill has received royal assent. Both the *PSA* and the *COPSA* will be combined the forthcoming *Community Safety and Policing Act*.⁴³ Although Special Constables work for community partners, they are appointed by police services and their authority is derived by the *PSA* and reflected in the *COPSA*.⁴⁴ Further, the relationship between the employers of special constables and police services is set out in s. 97 of the *COPSA*.

b. *Police Records Check Reform Act*

25. The 2015 *Police Records Check Reform Act*⁴⁵ (“*PRCRA*”) was the first piece of legislation in Ontario to create a province-wide standard for Police Records Checks.⁴⁶ The legislature rightly limited the disclosure of non-criminal and non-conviction records. As supported by numerous reports, releasing non-conviction and non-criminal records does not increase safety.⁴⁷ Instead, releasing these records has prevented individuals from accessing employment, housing, and education, and thus “undermining stabilizing elements in individuals’ lives.”⁴⁸ Especially in the context of racialized and other overpoliced populations, releasing non-conviction and non-criminal records has “entrench[ed] patterns of systemic discrimination.”⁴⁹

26. Police Records Checks conducted for the purpose of hiring within police services are excluded from *PRCRA* compliance.⁵⁰ Therefore, PBIs may rely on the kinds of non-conviction

⁴² *COPSA*, *supra* note 30.

⁴³ *Community Safety and Policing Act*, 2019, SO 2019, c 1, Sched 1.

⁴⁴ *PSA*, *supra* note 30, s 53.

⁴⁵ *PRCRA*, *supra* note 20.

⁴⁶ Hansard Sept 29, *supra* note 6 at 5413-5414, **BOAI, Tab 27**.

⁴⁷ Canadian Civil Liberties Association, *Submissions Regarding the Regulatory Exemptions Proposal Under the Police Record Check Reform Act, 2015*, by Abby Deshman, (March 2020) at 5, online: [CCLA <2021-03-12-CCLA-Submissions-re-PRCRA-regulatory-proposals-1-1.pdf>](#) [CCLA *PRCRA* Exemption Submissions], **BOAI, Tab 21**.

⁴⁸ *Ibid*, **BOAI, Tab 21**.

⁴⁹ *Ibid*, **BOAI, Tab 21**.

⁵⁰ O Reg. 347/18, s 5.

records feared prejudicial by the Ontario legislature. The CCLA submits that a PBI performed by police services in its statutory capacity to hire or appoint, is subject to judicial review. In that situation, the police service is exercising a statutory power (its power to hire, appoint, and to access Police Records in databases⁵¹) and the subject of a PBI is entitled to procedural fairness.

c. Adoption of the LEARN guidelines

27. Law enforcement recognized the unnecessary barriers and human rights issues created when releasing non-conviction information on Police Records Checks. In 2011, members of the Ontario Association of Chiefs of Police (OACP) released the *LEARN* guidelines “to assist police services understand and apply relevant legislation, policies, procedures and directives”⁵² when conducting Police Records Checks.

28. Significantly, OACP was concerned that organizations over-relied on police checks and were unnecessarily excluding individuals from jobs, volunteer positions, and other important activities. From the perspective of law enforcement, a “clean” record is not synonymous with safety; likewise, the presence of a Police Record is not necessarily an indication of risk.⁵³ The *LEARN* guidelines were made in consultation with a range of stakeholders, including the RCMP, the Ontario Human Rights Commission and the Canadian Mental Health Association Ontario. Notably, the Toronto Police did not participate in the creation of the *LEARN* guidelines, which were non-binding best practice recommendations.⁵⁴ These guidelines later formed the framework

⁵¹ *PSA*, *supra* note 30, s 33(3).

⁵² Law Enforcement and Records (Managers) Network [“*LEARN*”], “Guideline of Police Record Checks” (March 2011, last updated Sept 2013) at 6, online: *Police Solutions* <https://www.policolutions.ca/checks/services/LEARN_Guideline_For_Police_Record_Checks_201406_final.pdf>, **BOAI, Tab 25**.

⁵³ *Ibid* at 7, **BOAI, Tab 25**.

⁵⁴ *Ibid* at 1, **BOAI, Tab 25**.

for the *PRCRA*.⁵⁵

C. POLICE RECORDS CHECKS ARE OF LIMITED USE AND BENEFIT

29. Police Records Checks are often used as a risk mitigation tool.⁵⁶ Employers seek a “clean” check in hopes of reducing potential risks such as child abuse, financial crimes, unauthorized disclosure of private information, or workplace violence.⁵⁷ In the law enforcement context, protecting the privacy of community members is a significant priority. Police officers and their community partners have access to sensitive private information, and police state that PBIs are used to limit the risks of unauthorized access and disclosure.⁵⁸ In addition, PBIs are also intended to be used to reduce the risk of organized crime infiltrating law enforcement.⁵⁹ Despite these valid concerns, there is a lack of evidence to establish that Police Records Checks prevent these risks from occurring.⁶⁰

30. Using Police Records checks as a risk mitigation tool assumes that past criminal convictions are a reliable predictor of future behaviour.⁶¹ Despite this tempting connection, studies have shown that after a few years, those with prior convictions have no higher risk of offending than the general population.⁶² Past convictions are only helpful in a limited set of circumstances.⁶³

⁵⁵ Hansard Sept 29, *supra* note 6 at 5413, **BOAI, Tab 27**.

⁵⁶ CCLA, “False Promises”, *supra* note 5 at 38, **BOAI, Tab 19**.

⁵⁷ *Ibid*, **BOAI, Tab 19**.

⁵⁸ Ouellette Affidavit, *supra* note 12 at para 8, **RARR, Tab 1**; Ontario, Ministry of the Solicitor General, *Police Record Check Reform Act, Exemption Proposal* (Consultation Document), Proposal No 21-SOLGEN001 (Ontario: Ministry of the Solicitor General, 2021) at 16, online: *Ontario's Regulatory Registry* <<https://www.ontariocanada.com/registry/view.do?postingId=36228>> [PRCRA Exemption Proposal Document] **BOAI, Tab 26**.

⁵⁹ PRCRA Exemptions Proposal Document, *supra* note 58 at 16, **BOAI, Tab 26**.

⁶⁰ Canadian Civil Liberties Association, “Are Police Record Checks Useful in Employment Screening?” (May 2014) at 1, online: <<https://ccla.org/recordchecks/doc/Are%20Police%20Record%20Checks%20Useful%20in%20Employment%20Screenings.pdf>> [CCLA, “Employment Screenings”], **BOAI, Tab 18**.

⁶¹ CCLA, “False Promises” *supra* note 5 at 58, **BOAI, Tab 19**.

⁶² CCLA, “Employment Screenings”, *supra* note 60 at 1, **BOAI, Tab 18**.

⁶³ CCLA, “False Promises” *supra* note 5 at 58, **BOAI, Tab 19**.

For example, a record may be predictive if behaviour is frequently repeated, if little time has passed, if the behaviour has not been met with negative feedback, or if a behaviour can be linked to situational triggers.⁶⁴ Otherwise, a single conviction, or even a handful of previous convictions, is unlikely to indicate future behaviour.⁶⁵

31. The value of non-conviction records is even less apparent. Non-conviction records such as charges, complaints, and investigations, are simply a set of unproven allegations. When employers base hiring decisions on this data, applicants frequently face unjust discrimination,⁶⁶ as there is often an assumption that individuals with non-conviction entries are guilty of those offences but “got off on a technicality.”⁶⁷ Further, non-conviction records that refer to various instances of police contact including witness interactions, mental health crisis calls, and victim information disclose very private information, that may be prejudicial and stigmatizing.⁶⁸

32. In other words, reliance on criminal record checks, and non-criminal police records in particular, will often create unjust barriers to employment. Courts should ensure that these barriers are mitigated by robust protections for individuals subject to these background checks. The role of the courts is particularly important in circumstances where there is no legislation governing the disclosure or reliance on non-criminal Police Records.

33. Further, individuals who identify as a member of one or more over-policed groups, or who live in over-policed neighbourhoods, may have a higher number of non-conviction or non-criminal

⁶⁴ *Ibid*, **BOAI, Tab 19**.

⁶⁵ *Ibid*, **BOAI, Tab 19**.

⁶⁶ CCLA, “False Promises” *supra* note 5 at 60, **BOAI, Tab 19**; “Police Record Checks Reform Act”, 2nd reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess, No 103 (1 October 2015) at 5483 (Jagmeet Singh) at 5483-5484, **BOAI, Tab 28**.

⁶⁷ CCLA “Presumption of Guilt” *supra* note 1 at 10, **BOAI, Tab 20**.

⁶⁸ CCLA, “Employment Screenings”, *supra* note 60 at 1, **BOAI, Tab 18**.

records under their name.⁶⁹ This is explored in greater detail below. In certain instances, it may be justified to release some non-conviction records. But employment decisions based on this information should be closely scrutinized to protect the principles of fundamental justice and guard against systemic and direct discrimination.

(i) ***Individuals from marginalized communities are disproportionately represented in police databases***

34. The Supreme Court has recently stated, “we do not hesitate to find that...the research now shows disproportionate policing of racialized and low-income communities.”⁷⁰ As such, these individuals necessarily have more contact with the police and subsequently are at greater risk of having disproportionately higher levels of information about them entered into police databases in comparison to the rest of the population.

35. Courts have repeatedly commented on the importance of recognizing the existence and impact of systemic discrimination in such situations. For example, in *C.M. v York Regional Police*, a case about an individual suffering from a diagnosed mental illness, Justice Myers stated, “disadvantaged groups face a double whammy as one potentially prejudicial outcome is layered upon another to further increase existing discriminatory barriers.”⁷¹

36. Recently, *R v Smith* also recognized significant discrimination against marginalized communities.⁷² Although this was a murder case centred on jury selection, the court recognized the over-representation of specific marginalized communities as victims of crime and accused

⁶⁹ CCLA PRCRA Exemption Submissions, *supra* note 47 at 3-4, **BOAI, Tab 21**.

⁷⁰ *R. v. Le*, [2019 SCC 34](#), [2019] 2 S.C.R. 692 at paras 90, 97, **BOAI, Tab 12**; *R. v. Morris*, [2021 ONCA 680](#) at paras 90-92, **BOAI, Tab 13**; also see *R. v. Grant*, [2009 SCC 32](#), [2009] 2 S.C.R. 353 at para 154, **BOAI, Tab 9**; and *R. v. Ipeelee*, [2012 SCC 13](#), [2012] 1 S.C.R. 433 at paras 62-63, **BOAI, Tab 10**.

⁷¹ *C.M. v York Regional Police*, [2019 ONSC 7220](#) at para 55, **BOAI, Tab 2**.

⁷² *R. v. Smith*, [2021 ONSC 8405](#), **BOAI, Tab 14**.

persons in the criminal justice system.⁷³ As the accused in this case was Black, the court discussed how aggressive policing of Black communities, including racial profiling, directly contribute to the disproportionate representation of Black persons in the criminal justice system.⁷⁴ After reviewing the literature establishing these facts, Justice Petersen solemnly stated, “[t]hese facts are so notorious and irrefutable that trial judges can properly take judicial notice of them.”⁷⁵

37. Courts must therefore recognize these accepted conclusions and ensure that this context is considered when deliberating on such cases. Individuals from racialized or marginalized communities will necessarily have more police contact and, therefore, are disproportionately disadvantaged when such information is reviewed in any setting.

(ii) *The Toronto Police Service’s detailed report on systemic racism*

38. There is established literature that over-policing leads to discriminatory effects. The Toronto Police Service’s recent detailed report titled “Race & Identity Based Data Collection Strategy” confirms the role that race and identity play in the collection of information by police.⁷⁶ The report recognizes that systemic racism and discrimination exist across law enforcement institutions and that race-based data has indeed been misused by the Toronto Police Service, permeating through everyday police action.⁷⁷

39. The statistics provided in the TPS Report are alarming and aligned with many previous studies. The data collected by the TPS confirms that racialized people in Toronto are highly over-represented in police contacts. Individuals the TPS identified as Black were over-represented by

⁷³ *Ibid* at para 102, **BOAI, Tab 14**.

⁷⁴ *Ibid* at para 103, **BOAI, Tab 14**.

⁷⁵ *Ibid*, **BOAI, Tab 14**.

⁷⁶ Toronto Police Service, "Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020" (Report, June 2022) [TPS Report], **BOAI, Tab 30**.

⁷⁷ *Ibid* at 4, **BOAI, Tab 30**.

120% in enforcement actions by the Toronto Police Services compared to their actual population. Individuals identified as Indigenous were over-represented by 60%, while individuals identified as Middle Eastern were over-represented by 30% compared to their presence in the actual population.⁷⁸ The same patterns were present in the use of force incidents, with individuals identified as Black being over-represented by 60%, while individuals identified as Middle Eastern were over-represented by 20%.⁷⁹ Importantly, these differences were not explained by the demographic make-up of the local resident population, leading the TPS Chief of Police, James Ramer, to state that “[a]s an organization, [the TPS] have not done enough to ensure that every person in [the] city receives fair and unbiased policing.”⁸⁰

D. THE DISCRIMINATORY APPLICATION OF BACKGROUND CHECKS IS A BROADER PUBLIC ISSUE REQUIRING PROCEDURAL FAIRNESS AND CHARTER PROTECTION

40. As demonstrated by the established fact that marginalized communities are subject to a higher frequency and degree of police interactions, the issue at the center of these proceedings is a broader public issue that requires procedural fairness. In the present case, the Applicant’s background and, in particular, his racialized identity have appeared in multiple Police Records that are directly relevant to passing a PBI. Individuals who are subject to the discretionary powers of state actors must be afforded the basic guarantees of natural justice and procedural fairness.

(i) *The Court should ensure procedural fairness for all individuals undergoing Police Background Checks*

41. Administrative law principles require that a person must know the case being made against

⁷⁸ *Ibid* at 45, **BOAI, Tab 30**.

⁷⁹ *Ibid* at 49, **BOAI, Tab 30**.

⁸⁰ *Ibid* at p 62, **BOAI, Tab 30**; Toronto Police Services, “TPS Race & Identity Based Data Collection Strategy News Conference” (15 June 2022) at 00h:1m:35s, online (video): *YouTube* <<https://www.youtube.com/watch?v=w80pKL3RdMY&t=93s>>, **BOAI, Tab 31**.

them and be given an opportunity to answer it before the delegate will make the decision.⁸¹ This extends to requiring that a complainant know the response and be provided with an opportunity to respond to it.⁸² The question to be posed in every case is whether the procedure in the specific case was fair, impartial, and open in all circumstances. Thus, the actual content of procedural fairness depends on the nature of the decision and the context in which it is made – i.e., "the duty of fairness recognizes that meaningful participation can occur in different ways in different situations."⁸³ Fairness also generally requires that all information relied upon by the delegate when making its decision be disclosed. Failure to do so deprives the delegate of jurisdiction and renders the decision void.⁸⁴ The process of determining whether the proper disclosure has been made is fact-specific and not capable of a rigid, mechanical application.⁸⁵

42. In the case before the Court, that fact-specific context entails the Applicant's failure to receive any meaningful information about why he – a racialized individual – failed a police background check despite having no criminal record and no previous criminal charge, while simply seeking employment in his area of expertise and accredited training.

43. This situation is not unique to the Applicant. Marginalized individuals, including Black people and members of other racialized communities, Indigenous persons, individuals who identify as LGBTQI, those experiencing homelessness, mental health challenges, and addiction, or persons with any intersection thereof, will, as established above, experience increased police

⁸¹ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para 22 [*Baker*], **BOAI, Tab 1**.

⁸² See *Mitten v. College of Alberta Psychologists*, 2010 ABCA 159 at para 17, **BOAI, Tab 6**; *Tran v College of Physicians and Surgeons of Alberta*, 2017 ABQB 337, **BOAI, Tab 16**, aff'd *Tran v College of Physicians and Surgeons of Alberta*, 2018 ABCA 95, **BOAI, Tab 17**.

⁸³ *Baker*, supra note 81 at para 33, **BOAI, Tab 1**.

⁸⁴ *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809 at para 92, **BOAI, Tab 5**.

⁸⁵ *R. v. Koopmans*, 2015 BCSC 2514 at para 12, **BOAI, Tab 11**.

interactions. These interactions result in police services collecting and retaining more information about them, as compared to others who are not policed in the same ways and to the same extent. For this reason, although the guarantees of fairness should apply to all, the need for robust procedural fairness is heightened in circumstances such as these, where there is significant potential to further systemic discrimination.

44. Since the police background checks at issue derive their authority from statute and are subject to judicial review, the Court ought to apply the established principles that safeguard natural justice and procedural fairness when deliberating on such cases. The Supreme Court decision in *Baker v Canada (Minister of Citizenship and Immigration)* provides guidance on the governing principles for the duty of procedural fairness.⁸⁶ It emphasized that the duty of fairness is flexible and variable and will depend on several factors, including the following: (1) the nature of the decision being made and the process following in making it; (2) the nature of the statutory scheme and the terms of the statute under which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency itself.⁸⁷ This list is not exhaustive as “[o]ther factors may also be important, particularly when considering aspects of the duty of fairness unrelated to participatory rights.”⁸⁸

45. Turning first to the nature of the decision being made, although it can be accepted that procedural fairness accompanying police background checks will require some processes to protect the integrity of sensitive law enforcement information such as the identity of confidential

⁸⁶ *Baker*, *supra* note 81, **BOAI, Tab 1**.

⁸⁷ *Smith v. Canada (Attorney General)*, [2020 F.C. 629](#) at para 164, **BOAI, Tab 15**.

⁸⁸ *Baker*, *supra* note 81 at para 28, **BOAI, Tab 1**.

informants or information that would prejudice ongoing investigations, the current practice of failing to disclose any relevant information cannot be justified. The current process when a police background check is required for a job application to a police force does not give the applicant any information at all as to whether the background check was even conducted. The process is highly secretive, with no meaningful mechanism for the applicant to be informed of why or how a particular decision was made.

46. Further, the decision on a background check for an application to the police force is not only crucial to the individuals applying for the position but to the community at large. At the individual level, a decision affecting employment requires a high degree of transparency.⁸⁹ At the community level, the decision not to hire an individual because they had incidental interactions with the police shakes confidence in our policing system. It prevents an authentic representation of the local population within the ranks of police services. A fairer process will ensure transparency and enhance public confidence in the hiring of police officers. Police services have extraordinary powers to interfere in the lives of community members. The public has an interest in ensuring that those powers are exercised in accordance with the law and with a cultural sensitivity that reflects the demographic composition of the communities they serve. It is an interest that extends beyond a personal "sense of grievance."⁹⁰ Public confidence in those responsible for the administration of justice and policing our communities is essential to the health of a free and democratic society.⁹¹

47. The only remedy to these breaches of procedural fairness embedded within the current process is to provide individuals with sufficient procedural fairness guarantees, including a

⁸⁹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), [2019] 4 S.C.R. 653 at para 133, **BOAI, Tab 3**.

⁹⁰ *Figueiras v. (York) Police Services Board*, [2013 ONSC 7419](#) at para 45, **BOAI, Tab 4**.

⁹¹ *Ibid*, **BOAI, Tab 4**.

detailed account of the process and criteria that will be followed, a full disclosure of all information before the decision-maker (subject to any valid and specific law enforcement concerns such as protection of confidential sources or prejudice to ongoing investigations), and substantive reasons as to why they have failed a PBI. This is especially the case when an individual fails the PBI, despite having no criminal conviction or criminal charge. Individuals in these circumstances have a legitimate expectation to understand the applicable PBI policies and guidelines and why it is that they are not qualified for a position as a police officer or special constable.

PART IV - CONCLUSION

48. The use of Police Records Checks can have far-reaching prejudicial effects and often disproportionately impacts marginalized individuals. While the appointment of police and special constables is appropriately rooted in statutory authority, the legislative scheme relating to Police Records Checks has maintained the pre-existing legislative gap in the regulation of PBI done for local policing authorities and agencies. The associated lack of transparency and accountability generates opportunities for institutionalized racism and bias to influence these background checks and therefore inform hiring processes. Respectfully, this court should recognize the significant potential for discriminatory effects of PBI and ensure that the process followed by police services actively works to correct such outcomes. These Police Records Checks ought to be subject to judicial review and individuals who “fail” these checks should be entitled to know the process and criteria, receive full disclosure and be provided with substantive reasons to ensure that the decision-making process is conducted in a way that is not grounded in bias or discrimination.

PART V – SUBMISSIONS ON COSTS

49. The CCLA seeks no costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of July, 2022.


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Lawyers for the Intervener,
Canadian Civil Liberties Association

SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Title
1	<u><i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 S.C.R. 817</u>
2	<u><i>C.M. v York Regional Police</i>, 2019 ONSC 7220</u>
3	<u><i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i>, 2019 SCC 65, [2019] 4 S.C.R. 653</u>
4	<u><i>Figueiras v. (York) Police Services Board</i>, 2013 ONSC 7419</u>
5	<u><i>May v. Ferndale Institution</i>, 2005 SCC 82, [2005] 3 S.C.R. 809</u>
6	<u><i>Mitten v. College of Alberta Psychologists</i>, 2010 ABCA 159</u>
7	<u><i>Montréal (City) v. Quebec (Commission des droits de la personne et des droits de la jeunesse)</i>, 2008 SCC 48, [2008] 2 S.C.R. 698</u>
8	<u><i>Mounsey v. Metrolinx</i>, 2021 HRTO 189</u>
9	<u><i>R. v. Grant</i>, 2009 SCC 32, [2009] 2 S.C.R. 353</u>
10	<u><i>R. v. Ipeelee</i>, 2012 SCC 13, [2012] 1 S.C.R. 433</u>
11	<u><i>R. v. Koopmans</i>, 2015 BCSC 2514</u>
12	<u><i>R. v. Le</i>, 2019 SCC 34, [2019] 2 S.C.R. 692</u>
13	<u><i>R. v. Morris</i>, 2021 ONCA 680</u>
14	<u><i>R. v. Smith</i>, 2021 ONSC 8405</u>
15	<u><i>Smith v. Canada (Attorney General)</i>, 2020 F.C. 629</u>
16	<u><i>Tran v College of Physicians and Surgeons of Alberta</i>, 2017 ABQB 337</u>
17	<u><i>Tran v College of Physicians and Surgeons of Alberta</i>, 2018 ABCA 95</u>

Secondary Sources

Tab	Title
18	Canadian Civil Liberties Association, "Are Police Record Checks Useful in Employment Screening?" (May 2014)
19	Canadian Civil Liberties Association, "False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada" (May 2014)
20	Canadian Civil Liberties Association, "Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks" (May 2012)
21	Canadian Civil Liberties Association, "Submissions Regarding the Regulatory Exemptions Proposal Under the Police Record Check Reform Act, 2015", by Abby Dushman, (March 2020)
22	Canadian Civil Liberties Association, "What is A Criminal Record?" (May 2014)
23	Government of Canada, "CPIC's 50th Anniversary" (Article, March 2022)

Tab	Title
24	Government of Canada, "What is A Record Suspension?" (2018 Oct)
25	Law Enforcement and Records (Managers) Network, "Guideline of Police Record Checks" (March 2011, last updated Sept 2013)
26	Ontario, Ministry of the Solicitor General, <i>Police Record Check Reform Act, Exemption Proposal</i> (Consultation Document), Proposal No 21-SOLGEN001 (Ontario: Ministry of the Solicitor General, 2021)
27	"Police Record Checks Reform Act", 2nd reading, Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl, 1st Sess, No 101 (29 September 2015) at 4897 (Hon. Yasir Naqvi)
28	"Police Record Checks Reform Act", 2nd reading, Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl, 1st Sess, No 103 (1 October 2015) at 5483 (Jagmeet Singh)
29	Royal Canadian Mounted Police, "Types of Criminal Background Checks" (March 2018)
30	Toronto, Police Service, "Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020" (Report, June 2022)
31	Toronto Police Services, "TPS Race & Identity Based Data Collection Strategy News Conference" (15 June 2022) at 00h:1m:35s, online (video): YouTube < https://youtu.be/w80pKL3RdMY?t=93 >

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Rules of Civil Procedure, R.R.O. 1990, Reg. 194*

RULE 14.05 APPLICATIONS — BY NOTICE OF APPLICATION OR APPLICATION

14.05 (1) The originating process for the commencement of an application is, as applicable,

- (a) a notice of application (Form 14E, 14E.1, 68A or 73A); or
- (b) an application for a certificate of appointment of estate trustee (Form 74A or 74J), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O. Reg. 383/21, s. 3; O. Reg. 709/21, s. 2.

RULE 68 PROCEEDINGS FOR JUDICIAL REVIEW

How Commenced

68.01 (1) An application to the Divisional Court or to the Superior Court of Justice for judicial review under the *Judicial Review Procedure Act* shall be commenced by notice of application, and where the application is to the Divisional Court the notice of application shall be in Form 68A. R.R.O. 1990, Reg. 194, r. 68.01 (1); O. Reg. 292/99, s. 1 (2).

(2) If the application is made to the Divisional Court and is not commenced at a regional centre, the local registrar in the place where it is commenced shall forthwith transfer a copy of the notice of application and of any material filed in support of the application to the court office in the regional centre of the region where the application is to be heard, and all further documents in the application shall be filed there. R.R.O. 1990, Reg. 194, r. 68.01 (2).

Applicable Procedure

Divisional Court

68.02 (1) Rule 38, except as provided in subrule 38.01 (2), and rules 68.03 to 68.07 apply to applications to the Divisional Court for judicial review. R.R.O. 1990, Reg. 194, r. 68.02 (1); O. Reg. 536/18, s. 5.

2. *Police Record Checks Reform Act, 2015, S.O. 2015, c. 30*

Conducting police record check

Police service

8 (1) A chief of police or a member of a police service designated by a chief of police for the purposes of this Act shall conduct the following types of police record checks:

1. Criminal record check.
2. Criminal record and judicial matters check.
3. Vulnerable sector check. 2015, c. 30, s. 8 (1); 2019, c. 1, Sched. 4, s. 46 (7).

Others

(2) An authorized body, a third party entity or an entity permitted by the Royal Canadian Mounted Police to access the Canadian Police Information Centre databases may conduct any of the types of police record checks mentioned in subsection (1) if, under an agreement with a police service or under the laws of Canada, the body or entity is permitted to conduct the particular type of check. 2015, c. 30, s. 8 (2); 2019, c. 1, Sched. 4, s. 46 (7).

Consent of individual

(3) A police record check provider shall not conduct a police record check in respect of an individual unless the request contains the individual's written consent to the particular type of check. 2015, c. 30, s. 8 (3).

Prescribed requirements

(4) A type of police record check mentioned in subsection (1) that is in respect of an individual becoming a volunteer or continuing as a volunteer shall be conducted in accordance with any prescribed requirements if the check is conducted by a person mentioned in that subsection. 2021, c. 34, Sched. 20, s. 3.

Section Amendments with date in force (d/m/y)

Disclosure in accordance with Schedule

9 A police record check provider shall not disclose information in response to a request for a police record check unless the information is authorized to be disclosed in connection with the particular type of police record check in accordance with the Schedule.

SCHEDULE

Authorized disclosure under s. 9 of the Act

1 (1) For the purposes of section 9 of the Act, a police record check provider shall not disclose information of a type set out in Column 1 of the Table to this section as part of a police record check set out in Column 2, 3 or 4 in respect of an individual unless the information is authorized to be disclosed in accordance with the Table to this section.

Interpretation, "pardon"

(2) In the Table,

“pardon” includes a record suspension within the meaning of the *Criminal Records Act* (Canada).

TABLE
AUTHORIZED DISCLOSURE

Item	Column 1 Type of Information	Column 2 Criminal record check	Column 3 Criminal record and judicial matters check	Column 4 Vulnerable sector check
1.	Every criminal offence of which the individual has been convicted for which a pardon has not been issued or granted.	Disclose. However, do not disclose summary convictions if the request is made more than five years after the date of the summary conviction.	Disclose. However, do not disclose summary convictions if the request is made more than five years after the date of the summary conviction.	Disclose. However, do not disclose summary convictions if the request is made more than five years after the date of the summary conviction.
2.	Every finding of guilt under the <i>Youth Criminal Justice Act</i> (Canada) in respect of the individual during the applicable period of access under that Act.	Disclose.	Disclose.	Disclose.
3.	Every criminal offence of which the individual has been found guilty and received an absolute discharge.	Do not disclose.	Disclose. However, do not disclose if the request is made more than one year after the date of the absolute discharge.	Disclose. However, do not disclose if the request is made more than one year after the date of the absolute discharge.
4.	Every criminal offence of which the individual has been found guilty and received a conditional discharge on conditions set out in a probation order.	Do not disclose.	Disclose. However, do not disclose if the request is made more than three years after the date of the conditional discharge.	Disclose. However, do not disclose if the request is made more than three years after the date of the conditional discharge.
5.	Every criminal offence for which there is an outstanding charge or warrant to arrest in respect of the individual.	Do not disclose.	Disclose.	Disclose.
6.	Every court order made against the individual.	Do not disclose.	Disclose. However, do not disclose court orders made under the <i>Mental Health Act</i> or under Part XX.1 of the <i>Criminal Code</i> (Canada). Do not disclose court orders made in relation to a	Disclose. However, do not disclose court orders made under the <i>Mental Health Act</i> or under Part XX.1 of the <i>Criminal Code</i> (Canada). Do not disclose court orders made in relation to a

			charge that has been withdrawn. Do not disclose restraining orders made against the individual under the <i>Family Law Act</i> , the <i>Children's Law Reform Act</i> or the <i>Child, Youth and Family Services Act, 2017</i> .	charge that has been withdrawn. Do not disclose restraining orders made against the individual under the <i>Family Law Act</i> , the <i>Children's Law Reform Act</i> or the <i>Child, Youth and Family Services Act, 2017</i> .
7.	Every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder.	Do not disclose.	Do not disclose.	Disclose. However, do not disclose if the request is made more than five years after the date of the finding or if the individual received an absolute discharge.
8.	Any conviction for which a pardon has been granted.	Do not disclose unless disclosure is authorized under the <i>Criminal Records Act</i> (Canada).	Do not disclose unless disclosure is authorized under the <i>Criminal Records Act</i> (Canada).	Do not disclose unless disclosure is authorized under the <i>Criminal Records Act</i> (Canada).
9.	Any non-conviction information authorized for exceptional disclosure in accordance with section 10.	Do not disclose.	Do not disclose.	Disclose. Set out the information in the prescribed form (if applicable).

3. *Criminal Records Act* (R.S.C., 1985, c. C-47)

2.3 A record suspension

- (a) is evidence of the fact that
 - (i) the Board, after making the inquiries referred to in paragraph 4.2(1)(b), was satisfied that the applicant was of good conduct, and
 - (ii) the conviction in respect of which the record suspension is ordered should no longer reflect adversely on the applicant's character; and
- (b) unless the record suspension is subsequently revoked or ceases to have effect, requires that the judicial record of the conviction be kept separate and apart from other criminal records and removes any disqualification or obligation to which the applicant is, by reason of the conviction, subject under any Act of Parliament other than
 - (i) section 109, 110, 161, 320.24, 490.012, 490.019 or 490.02901 of the *Criminal Code*,

- **(ii)** section 259 of the *Criminal Code*, as it read immediately before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force,
- **(iii)** subsection 147.1(1) or section 227.01 or 227.06 of the *National Defence Act*,
- **(iv)** section 734.5 or 734.6 of the *Criminal Code* or section 145.1 of the *National Defence Act*, in respect of any fine or victim surcharge imposed for any offence referred to in Schedule 3, or
- **(v)** section 36.1 of the *International Transfer of Offenders Act*.

6.1 (1) No record of a discharge under section 730 of the *Criminal Code* that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be disclosed to any person, nor shall the existence of the record or the fact of the discharge be disclosed to any person, without the prior approval of the Minister, if

- **(a)** more than one year has elapsed since the offender was discharged absolutely; or
- **(b)** more than three years have elapsed since the day on which the offender was ordered discharged on the conditions prescribed in a probation order.

6.3(3) At the request of any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, a member of a police force or other authorized body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if

- (a) the position is one of trust or authority towards that child or vulnerable person; and
- (b) the applicant has consented in writing to the verification.

4. *Police Services Act R.S.O. 1990, c. P.15*

Responsibilities of boards

31 (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

- (a) appoint the members of the municipal police force;
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
- (c) establish policies for the effective management of the police force;

- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;
- (f) establish policies respecting the disclosure by chiefs of police of personal information about individuals;
- (g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);
- (h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;
- (i) establish guidelines for dealing with complaints under Part V, subject to subsection (1.1);
- (j) review the chief of police's administration of the complaints system under Part V and receive regular reports from the chief of police on his or her administration of the complaints system. R.S.O. 1990, c. P.15, s. 31 (1); 1995, c. 4, s. 4 (7); 1997, c. 8, s. 21 (1-3); 1997, c. 17, s. 8; 2007, c. 5, s. 9 (1).

Appointment of special constables by board

53 (1) With the Solicitor General's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient.

YAZDAN KHORSAND

Applicant

-and- TORONTO POLICE SERVICES BOARD and
TORONTO POLICE CHIEF JAMES RAMER
Respondents

Court File No. 651/21

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE INTERVENER,
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