

Weekly legal advice for CPCO Practising Associates

By Joe Geiser

Each week, our Protective Services Coordinator, Joe Geiser, shares a timely legal tip on CPCO's website. These tips *can be found* under the **Protective Services** dropdown on the **Associates** tab of the website. We encourage all Practising Associates to log on each week to view these, as they are a valuable resource.

For a preview of our **Tip of the week** series, Joe shares a snapshot of his most recent one below.

Police Record Checks Reform Act, 2015

In December 2015, *Bill 113 – Police Record Checks Reform Act* passed at third reading in the provincial legislature. While the legislation is yet to be proclaimed into law, it will address the following two concerns:

- No **comprehensive legislative framework currently exists in Ontario**, to govern police record checks.
- There is a **lack of consistency across providers** with respect to how police record checks are conducted.

The new legislation was developed with a view to finding the right balance between public safety and privacy.

Current Police Record Checks Requirements

Since 2001, *Ontario Regulation 521/01* requires school boards to collect a **criminal background check** for every employee and service provider prior to commencing work at a school site.

The regulation also requires school boards to obtain an **annual offence declaration** by Sept. 1 of every year that they remain employed, or continue to provide service to the board.

In August 2015, the *Child Care and Early Years Act, 2014* (CCEYA) and its regulations came into effect, which included new requirements for police record checks for child care programs. Section 60 of *Ontario Regulation 137/15* requires child care licensees to obtain a **vulnerable sector check** from every employee, volunteer and student who interacts with children receiving care at the centre. Additionally, this regulation requires a re-check to be conducted every five years.

School boards, for the most part, require **vulnerable sector checks** from their employees and volunteers as their work involves direct and regular contact with children. As a result, most “non-conviction information” (e.g. discharges, outstanding charges, court orders and not criminally responsible findings) would be disclosed. However, this would not be the case for a standard criminal record check.

The new legislation, once proclaimed, significantly limits disclosure in the areas of mental health and non-conviction

information (such as complaints where no charges were laid, acquittals, etc.). The latter can only be disclosed in a vulnerable sector check and only if it meets the test for exceptional disclosure. This requires police to consider factors such as how long ago an incident took place, if the record relates to predatory behaviour around a vulnerable person, and whether the records show a pattern of such behaviour before deciding whether to release those records.

Criminal offences for which the individual has been found not criminally responsible on account of mental disorder, may only be disclosed under a vulnerable sector check that is made within five years of the finding. Restraining orders made under the Family Law Act, Children's Law Reform Act, or Child and Family Services Act, and court orders relating to charges that have been withdrawn, may not be disclosed under any type of check.

While the Act has not yet been proclaimed subject to changes in the Regulation, school boards will need to be prepared for the new logistical and organizational expectations and steps that will need to be altered.

The following chart provides a summary of the types of information that may be disclosed and the period of time during which such information is to be relied on. It is worth noting that the vulnerable sector check continues to require the highest standards of diligence, and is the most comprehensive record check currently available.



The Borden Ladner Gervais (BLG) Education Law Newsletter – Winter 2016 provides further information on this topic. It also contains several articles of interest for school administrators. The entire newsletter is available in the [CPCO Law Library](#).