


HELP WANTED*

Reducing Barriers for Ontario's
Youth with Police Records

 *Youth with police records
need not apply*

JohnHoward
SOCIETY OF ONTARIO

About Us

Centre of Research, Policy & Program Development at the John Howard Society of Ontario

The Centre of Research, Policy & Program Development was established in June of 2003 with the aim of providing direction and support services to our 19 local offices across Ontario. To accomplish this goal, the Centre engages in research and policy initiatives across the criminal and social justice and corrections fields. Staff at the Centre are also responsible for program evaluation and assessment, the development and implementation of evidence-based pilot programs and providing local JHS offices with thorough, accurate and reliable information on an as-needed basis.

As the John Howard Society of Ontario also actively participates in broader public discussions and discourse surrounding criminal and social justice issues, the Centre is also responsible for developing policy positions, liaising with government and community stakeholders, disseminating educational materials and public education and analyzing information on past, present and future legislative/policy issues related to criminal and social justice.

Centre of Research, Policy & Program Development

John Howard Society of Ontario

603 - 111 Peter Street

Toronto, ON

M5V 2H1

416.408.4282

www.johnhoward.on.ca

[@ReducingCrime](https://twitter.com/ReducingCrime)

JohnHoward
SOCIETY OF ONTARIO

© May 2014 John Howard Society of Ontario

This document may be freely copied in whole and distributed, and sections may be copied or quoted provided appropriate credit is given to the John Howard Society of Ontario.

This research was supported by the Government of Ontario through the Ontario Human Capital Research and Innovation Fund. The opinions, and any errors and omissions contained within this report, are solely those of the authors.

Table of Contents

Executive Summary	4
Summary of Recommendations	7
Introduction	10
Youth and Unemployment in Ontario: The Synopsis	12
Youth and Crime	13
Scarlet Letter: Seeking Employment with a Police Record	15
The Vicious Circle	16
False Security?: Are Police Record Checks Useful Predictors of Risk	16
Survey Findings	19
Ending Legitimized Discrimination in Ontario	24
1. Increasing Youth Labour Supply and Demand	25
Investing in Youth: Client-Centered Programming for Employment Readiness and Mentorship	25
Money Talks – Bid Incentive and Tax Incentive Programs	27
2. Regulating the Demand for Police Record Checks	29
End the Use of Stigmatizing Language by Government	30
The Ontario <i>Occupational Health and Safety Act</i> – Not a License to Discriminate	31
The Employer’s Onus: Rights-Respecting, Evidence-Led Hiring Practices	32
Pre-employment Privacy Legislation	33
Implementing a Centralized Program for Vulnerable Sector Searches/Checks	34
3. Regulating the Disclosure of Police Records	36
End the Disclosure of Non-Conviction Police Records in Ontario	36
OACP LEARN Guideline and Need for Legislative Change	37
Amend the <i>Criminal Records Act</i>	38
4. Regulating the Use of Police Records	41
Human Rights for <u>All</u> Ontarians	41
5. Future Research Recommendations	43
Conclusion	45
References	46

Executive Summary

Youth unemployment has become a pressing social issue in recent years, both in Canada and internationally. The current economic climate only serves to exacerbate pre-existing disadvantages faced by youth from marginalized groups (Aboriginal, racialized/immigrant communities, individuals with mental illness/addiction or developmental disabilities, etc.). Incidentally, young Ontarians from these same marginalized populations are more likely to come into contact with the police and justice system, and thus, have a police record, which in turn is one of the most significant barriers to employment and employability.

Over 4.1 million Canadians (roughly 20% of the adult male population) have a record of criminal conviction. In addition, in Ontario our criminal court system processes more than half a million charges annually, and about 43% of criminal court cases resulted in stayed or withdrawn charges. All of these individuals whose charges were withdrawn, none of whom were convicted, now have police records. Even individuals who have never been charged with a criminal offence, but were questioned by the police or called for police assistance during a mental health crisis, may have a police record stored in local police electronic databases. Non-conviction records can be and often are disclosed on police record checks. These types of records can have as devastating an impact on young people's employment, volunteering and academic prospects as records of convictions.

This report aims to examine the barriers facing youth with police records (YPRs) in Ontario, with a particular emphasis on their exclusion from the labour market¹. In addition to a detailed review of the literature, this report draws on the results of a targeted research survey of employers in one region of Ontario, undertaken by the Centre of Research, Policy & Program Development (the 'Centre') at the John Howard Society of Ontario (JHSO).

The escalating demand for police record checks as a requisite component of employer hiring processes is exacerbating the stigma and exclusion of YPRs from Ontario's labour

¹ For the purposes of this report a YPR connotes a youth ages 15-29 with a police record that can be disclosed on a police record check in Ontario. This can include both records of conviction and non-conviction information.

market. Ironically, employment and a stable job market are paramount factors in reducing crime and recidivism. On an individual level, studies have consistently found a close relationship between employment and a reduction in criminality, especially amongst youth. In fact, unemployment is one of the top three predictors of criminal recidivism (Motiuk and Vuong 2005). Therefore on the one hand, being jobless increases the chances that a person will offend, while on the other hand, having a police record closes doors to employment.

The research literature is clear: persons with past criminal justice involvement are perhaps the single most excluded identifiable population from the labour market. When a person from a marginalized or racialized population has a police record, the effect on employment prospects is even more deleterious (Pager 2004; Pager et al 2009). Individuals are frequently barred from pro-social engagement due to their past criminal justice involvement, and yet face societal (if not legal) condemnation when they do not appear to be making every effort at rehabilitation. This catch-22 – expecting reintegrating individuals to fully re-engage with society when it simultaneously bars them from doing so – sets people up for failure.

In order to gain a window into the hiring practices of employers in Ontario, the Centre developed a survey that was administered to employers/local businesses in Hastings and Prince Edward Counties. This area was selected because its employers appeared to be broadly representative of the spectrum of industry types found across Ontario. Most of the survey findings can be considered unique since such data have not previously been available in a Canadian context. Several key findings include:

- 51% of the organizations surveyed require police background checks of prospective employees during the hiring process.
- Certain sectors, such as Construction and Accommodation/Food & Services sectors are much less likely to require background checks.
- There is a clear relationship between the size of the company² and the requirement for a police background check. Large enterprises were 3 times as likely to require a police background check, while medium sized companies were twice as likely to require one.
- The most frequently cited reasons for requiring background checks of prospective employees were: Liability/risk management; Company Policy; Legal Requirement for Vulnerable Sector Checks; and the *Occupational Health and Safety Act* (Bill 168).
- 15% of respondents reported that they will not hire anyone with a criminal record, regardless of the nature of record, how much time is passed since it was acquired, or its relevance to the job position.
- 50% of employers reported having had a police record check come back positive in the last 12 months.

2 A small company was defined as 1 – 19 employees; Medium size was 20 – 99; Large was 100 or more.

- Of employers who reported having hired people with a record, 73% stated that their experience with them was about the same as with other employees.

The survey's findings are generally consistent with those from other jurisdictions, especially around the effect that having a police record has on a person's prospects for employment. The majority of the companies who require police record checks did indeed indicate that hypothetically they would still 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 police records, a significant proportion of those surveyed reported strong negative character assessments and stereotypes. Close to half of the respondents reported negative and stigmatizing characterizations of people with criminal records, such as not being '...just as honest', being '...less reliable' and being a '...greater risk/liability' compared to other workers. Despite many survey participants' indication that their organization would still hire individuals with police records under certain circumstances, the majority (61%) stated that they had never knowingly hired an individual with a police record.

The survey and research findings point to opportunities to effect change in the present situation; changes that will benefit both employers and YPRs, and the labour market in general. The report suggests that in order to successfully address the exclusion of YPRs from employment and economic engagement in Ontario, a two-pronged strategy must be developed and implemented. The first focus needs to be on supporting youth and connecting them to the training, skills development and mentorship that they need to improve their individual employability and capacities to fill existing skills gaps in Ontario; the second focus, equally if not more important than the first, is to change the present landscape in Ontario to make it a province that supports reintegration, de-stigmatizes and de-emphasizes police records, and that is respectful and protective of equality and human rights for all its citizens. It is time for Ontario to meaningfully support YPRs' efforts to remain crime-free and engage in pro-social activity. This report proposes a number of recommendations to improve YPRs' social and labour market inclusion and engagement, which is to the benefit of our entire province.

Summary of Recommendations

Increasing Youth Labour Supply and Demand

1.1 Invest both provincially and locally in programs aimed at enhancing YPRs' employability and that are flexible, client-centered, and address any co-existing challenges faced by youth. Program models should reflect evidence-based best practices, which include long-duration programs, with emphasis on apprenticeships or placements, ongoing mentorship and access to services. Local agencies running the programs should have strong relationships with and ties to the local business community and social services.

1.2 Wherever possible provide YPRs, both within correctional institutions and in the community, with training in areas that match labour market skills gaps/needs.

1.3 Both the province of Ontario and municipal governments should consider implementing bid incentive and tax incentive models utilized in other jurisdictions to incentivize the hiring of persons with police records.

1.4 The provincial government and local government should commit to critically reviewing their departmental funding requirements which may serve to exacerbate barriers to employing YPRs and make the requirements consistent with evidence-based and rights-respecting practice to lead by example.

Regulating the Demand for Police Record Checks

2.1 The provincial government should commit to making Ontario a province that fosters barrier-free reintegration and inclusivity. It should model the efforts underway in other jurisdictions around eliminating the government's use of stigmatizing and labeling language, and enacting policies akin to the "Ban the Box" reforms in the U.S.

2.2 The provincial government should engage in a widespread public information campaign educating Ontario employers on their obligations under the *Occupational Health and Safety Act*, which do not include mandating police record checks of employees.

2.3 The provincial government, in partnership with community organizations, should lead an education campaign for employers and human resources professionals around barrier-free and rights-respecting hiring practices.

2.4 Employers in the private sector, public sector and non-profit sector alike should critically review their existing hiring practices and any use of police record checks with a view to the evidence around the utility of record checks and with a goal of minimizing the invasion of privacy and discrimination that flows from police record checks. Organizations that determine that police record checks are necessary for some positions should put in place clear policies and protocols that define in what narrow instances a criminal record would preclude a candidate from a specific employment opportunity. These policies and protocols should be consistent with rights-respecting and evidence-led best practice.

2.5 The provincial government of Ontario should introduce privacy legislation to protect Ontarians from undue invasion of privacy in the hiring and pre-employment contexts.

2.6 The province of Ontario should develop and implement an analogous legislative model and program to that of B.C.'s *Criminal Records Review Act* and Criminal Records Review Program, to centralize, regulate and standardize the demand for and

review of Vulnerable Sector Search checks in our province, through objective and evidence-based processes that offer more robust privacy and human rights protections.

Regulating the Disclosure of Police Records

3.1 All police services in Ontario should endorse and adopt the forthcoming Ontario Association of Chiefs of Police's LEARN Guideline and commit to presumptively not disclosing non-conviction information on all levels of police record check.

3.2 The provincial government of Ontario, in partnership with policing and community-based stakeholders, should develop legislation protecting Ontarians from the disclosure of their non-conviction police records.

3.3 The federal government should repeal the recent legislative changes to the *Criminal Records Act* contained in Bill C-23A and Bill C-10 which greatly restricted Canadians' access to record suspensions (pardons).

3.4 The federal government should amend the *Criminal Records Act* to expand and build upon the foundations of the existing "spent model" to ensure that non-conviction records are

never disclosed. In addition, it is recommended that Canada model other countries' approaches to supporting reintegration by automatically sealing (again, through a "spent model") certain records of conviction that meet a specified set of criteria; generally that an individual only had a record of summary convictions, has remained crime-free for a specified period of time, and has completed his/her sentence.

Regulating the Use of Police Records

4.1 The provincial government should amend the *Ontario Human Rights Code's* "record of offences" provision to broaden its definition to explicitly protect Ontarians against discrimination on the basis of *any* record of offences – which should include all non-conviction police records, mental health police contacts, criminal convictions and records that have been sealed subsequent to a record suspension – with a narrow exception allowed for employers who can demonstrate that a particular criminal record is reasonably and objectively connected to a *bona fide* requirement of the specific employment or volunteer position being sought.

4.2 The provincial government should also explore adding the above amended "record of offences" grounds beyond the Employment context in the *Ontario Human Rights Code* so that it also applies to Vocational Associations, since accessing employment in many fields of work first requires memberships in professional associations and trade unions.

Future research

5.1 That the province of Ontario, in collaboration with municipalities, police services, and employers, should begin to systematically collect, analyze and publicly report on data pertaining to the demand for and disclosure of police records in Ontario.

Introduction

Youth today.

The reality of an aging population, looming mass retirement and evolving labour markets has pushed youth unemployment to the forefront of the public consciousness. Numerous news articles, studies and policy reports have waded into the debate around this burgeoning and yet not fully understood issue. In Ontario, young people (ages 15-29)¹ have yet to recover from the effects of the 2008 recession. Unemployment rates among youth remain stubbornly high, and the employment rate – the percentage of youth in an age group who are employed – is at an all-time low (Foster 2012). As a recent report observes, “five years after the Great Recession, youth remain largely shut out of Ontario’s slow economic recovery” (Geobey 2013).

As bad as the situation is for youth in general, there are disadvantaged youth sub-groups that are in substantially worse circumstances. One such sub-group is young people who have police records (‘YPRs’ henceforth). In years past, having contact with the police or even having a criminal record did not result in an indelible mark that was frequently (or easily) disclosed on background checks. In today’s digitized and risk-averse world, the situation is starkly different. A police record is created any time an individual is actively involved with the police; for example, after calling 9-1-1 or reporting a crime. Even individuals who have never been charged or convicted of a criminal offence, but were questioned by the police, may have a police record stored in local police electronic databases.²

1 The age category is as defined by the funder of this research. However, it will be observed that many studies and agencies (e.g. Statistics Canada) define the “youth” category as age 15 – 24. Where we report data, therefore, we indicate the ages applicable.

2 For the purposes of this report, a YPR connotes a youth with a police record that can be disclosed on a police record check in Ontario. This can include both records of conviction and non-conviction information, as depicted in the diagram on this page.

Police Records

- Calls to 9-1-1 for Assistance
- Victimization
- Mental Health Crises involving police
- Being questioned by police
- Arrests
- Charges that did not result in convictions

Non-conviction records can have devastating impacts on young people's employment, volunteering and academic prospects.³ Of course, when a YPR is also from a marginalized population such as Aboriginal youth, or has a developmental disability or mental health problem, the disadvantage is further compounded. The escalating demand for police record checks as a requisite component of employer hiring processes is exacerbating the stigma and exclusion of YPRs from Ontario's labour market.

This report seeks to explore the barriers facing YPRs in Ontario, with a particular emphasis on their exclusion from the labour market. In addition to a detailed review of the academic and policy literature, this report draws on the results of a targeted research survey of employers in one region of Ontario, undertaken by the Centre of Research, Policy & Program Development (the 'Centre') at the John Howard Society of Ontario (JHSO). This report proposes a number of recommendations to improve YPRs' social and labour market inclusion and engagement, which is to the benefit of our entire province. Having a police record is perhaps the most significant barrier to accessing employment, and yet having a police record that can be disclosed on record checks is all too common. This is especially problematic in the context of spiraling efforts to manage risk and liability in workplaces, academic institutions, voluntary organizations, vocational associations, housing providers and so on. Ironically, employment is a significant stabilizing factor that has been shown to prevent criminal behaviour (or reduce it among populations who have previously engaged in criminal activity). It is fair to state that hiring more YPRs will not only contribute to a more robust Ontario economy by widening the tax base and reducing the costs associated with unemployment, but also enhance community safety. These are social and economic gains that we cannot afford to deny any longer.

3 Perhaps more so, since many individuals have no idea that they have a police record that can be disclosed.

Youth and Unemployment in Ontario: The Synopsis

A review of employment trends and current market demands in Ontario and Canada helps shed light on why young people in general, and those from marginalized groups in particular (Aboriginal, racialized/immigrant communities, individuals with mental illness/addiction or developmental disabilities), are finding it so challenging to enter the labour market. The reasons are rooted in economic changes that pre-date the 2008 recession. Ontario is changing in respect to demographic trends, the economic climate and the labour market. Some trends of note include the following:

- Falling fertility rates and an expanding 65+ population are shrinking the size of the available work-force;⁴
- Low-to-medium skill level jobs in the manufacturing sector that were once accessible to many of the more vulnerable workers are disappearing (Drummond Report 2012);
- The increasing incidence of temporary employment: "Temporary jobs tend to pay lower wages, offer fewer benefits (medical and pension), are less likely to offer on-the-job training, and are more precarious in nature" (Burleton 2013). Not only are temporary jobs becoming more common, the average duration of being a temporary worker has also been increasing;
- The new economy is moving to what is termed a "knowledge economy", with positions requiring higher skill levels (Burleton 2013; Miner 2013).

These trends are leading to a situation in which employers can expect to encounter difficulties in filling positions at the same time as large numbers of Ontarians are unemployed (Miner 2010). The Conference Board of Canada estimates that the cost to the Ontario economy of mismatches in the labour market – the "skills gap" – is up to \$24.3 billion in foregone GDP, as well as \$4.4 billion in federal tax revenues and \$3.7 billion in provincial tax revenues, annually (Stuckey and Munro 2013).

On the basis of Statistics Canada data, Burleton (2013) has identified areas in which labour shortages exist currently, and where they are expected to emerge in the next few years. Specifically, shortages are in the following sectors: Science, Engineering and IT; Trades; Health; and Other. On the other hand, surpluses exist in: Manufacturing-related jobs and Labourers; Teachers; Clerical; and Sales and Service.

The changes are having a particularly serious impact on the youth population, aged 15 – 24. Their unemployment rate is not declining, and their level of participation in the la-

4 For an accessible discussion, see Statistics Canada, Canadian Demographics at a Glance: Population growth in Canada. [91-003-XWE](#). 2008

bour force is at an all-time low.⁵ Youth are clearly among the disadvantaged in the present economy. When youth is combined with other factors, including “aboriginal people, people with disabilities, low-income and at-risk youth,” it forms what Ontario’s Ministry of Training, Colleges and Universities has termed an “untapped pool of human resource potential” and is identified as a key issue to be addressed (MTCU 2014).

Measures announced or implemented by government thus far do not appear to have made a significant impact on the problems being faced by youth, and particularly by those who are at-risk. The relatively limited amounts of funding may be part of the reason. As a recent report clearly states, “Greater concerted efforts put forth by all labour market participants are required to boost labour force participation rates of typically under-represented workers, (e.g. women, Aboriginal peoples, persons with disabilities)” (Burlington 2013). Another reason for the apparently limited impact of efforts to date may be certain systemic barriers that are more difficult to contend with. These would include employer biases and recruiting practices, both of which can serve to narrow the pool of applicants under consideration and “weed out” applicants from vulnerable groups. This topic is addressed in depth later in the report.

Youth and Crime

Young adults are over-represented in the justice system generally. Youth between the ages of 12–29 represent 23% of Ontario’s population, yet they account for 56% of all individuals charged with a crime (McMurtry and Curling 2008). Numerous studies confirm that rates of offending are the highest among 15-19 year olds, followed closely by the 20-24 age group (Wortley 2008).

In Canada, young people who are between the ages of 12-17 and who are involved in the criminal justice system, are governed by the *Youth Criminal Justice Act (YCJA)*. The *YCJA* prescribes the differential retention and disclosure of youth police records, as compared to adult police records (i.e. those police records acquired at age 18 and upward). Specifically, requests for and disclosure of youth records under the *YCJA* are tightly restricted, and only permissible in explicitly defined scenarios.⁶ Despite this, employers are increasingly requiring police record checks of persons under age 18.

As noted earlier, a police record can be acquired even if no conviction was ever registered. In Ontario our criminal court system processes more than half a million charges annually.⁷ In addition to court cases that result in convictions, in Ontario about 43% of annual adult criminal court cases resulted in stayed or withdrawn charges (i.e. there is

5 For a discussion of youth unemployment see Foster, Karen, Youth Employment and Un(der) Employment in Canada. 2012. Canadian Centre for Policy Alternatives. Data are in Statistics Canada, CANSIM, table 282-0087 and Catalogue no. 71-001-XIE

6 See Canadian Civil Liberties Association’s 2014 Report, “False Promises, Hidden Costs”, at page 22 for specific information on what the YCJA dictates with respect to requesting and disclosing youth records: www.ccla.org

7 See Megan O’Toole’s “Courting Disaster? The Long, Long Wait for Justice in Ontario.” <http://news.nationalpost.com/2012/06/09/courting-disaster-the-long-long-wait-for-justice-in-ontario/>

no finding of guilt).⁸ All of these non-convicted individuals now have police records.⁹ Furthermore, if an individual has ever called the police for assistance during a mental health crisis, has ever called to report being victimized, or has ever been questioned as a suspect and/or arrested but never charged, he/she has a police record.¹⁰ These incidents can be disclosed on police background checks for the purposes of employment, volunteering, and academic placements.

Once created, both non-conviction and conviction police records are not purged automatically.¹¹ Over 4.1 million Canadians (roughly 20% of the adult male population) have a record of criminal conviction. Moreover, recent amendments to federal legislation have exacerbated the impact of having a record of conviction. For example, Bill C-23A, which came into effect in June 2010, placed restrictions on eligibility for record suspensions (formerly called pardons) in Canada, resulting in a marked decrease in the number of applications, submitted and/or processed, from 12,379 in 2010-11 to 3,546 in 2011-12 (PSC 2012).¹² Having acquired a record at an early age, young people will find themselves stuck with it for an increasingly long period of time.

In the case of Aboriginal youth, they are not only over-represented in the justice system by virtue of being youth, but also are further over-represented owing to their Aboriginal status. Even though Aboriginal persons constitute only 4% of the Canadian adult population, they comprise 24% of adult admissions to provincial/territorial prisons and 18% of admissions to federal custody (Yessine and Bonta 2009). The proportion has not fallen, despite attempts to reduce it. It means that compared to youth in general, Aboriginal youth are at an even higher risk of having a police record.

8 Statistics Canada, 2010-2011. <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11646-eng.htm#a4>

9 It is impossible to know precisely how many Ontarians and YPRs in particular have police records based on publicly available data. News stories occasionally provide insights into local police practices; but since each police service establishes their own police record disclosure policies, it is hard to know how many citizens have records that can/will be disclosed on record checks. A recent analysis of police statistics by the Toronto Star indicates that in some neighbourhoods in Toronto, based on the number of citizen stops compared with demographic data, it is conceivable that police have questioned and documented every young man of colour. Police contacts such as these are stored in police databases. According to the Star report, Toronto police document individuals using Field Information Reports; between 2008 and mid 2011 approximately 1.25 million were filled. Unsurprisingly the data also revealed significant discrepancies in contact between police and individuals from different ethnic backgrounds. For example blacks account for 8.3% of Toronto's population yet they accounted for 25% of the Field Information Reports. For more information, see Toronto Star investigative series "Known to Police" at http://www.thestar.com/news/gta/known_topolice.html

10 Please refer to the Ontario Association of Chiefs of Police's [Guideline For Police Record Checks](#) for information on the specific types of police records that are disclosed at various levels of check. Note, however, that each local service has the autonomy to create its own non-conviction disclosure policies and practices. See also Canadian Civil Liberties Association's recent report, *Presumption of Guilt?* (2012): <http://ccla.org/wordpress/wp-content/uploads/2012/09/CCLA-NCD-Report.pdf>

11 One exception to this is federal legislation around absolute and conditional discharges, which are supposed to be purged automatically after one and three years respectively.

12 Note: the pardon regime was again amended in 2012 to even further restrict Canadians' access to a record suspension (pardon).

Scarlet Letter: Seeking Employment with a Police Record

While Canadian-based literature studying the effects of a police record on the employment prospects of youth is limited, there is a wealth of research from other jurisdictions.¹³ This literature shows that employers generally prefer to hire other job candidates than persons with criminal records.¹⁴ A criminal record is often perceived by the employer as a reflection of a person's character – an inference that weighs heavily in making hiring decisions (Holzer et al., 2003; Working Links, 2010). These character assessments take place regardless of the age or type of offence (O'Brien and Darrow 2007). In a large-scale U.S. study, Holzer et al. (2001) found that the willingness of employers to hire people with a criminal record is even more limited than that of other disadvantaged groups (e.g. those on welfare and those without a high school diploma, etc.). This study also identified a significant increase in the number of record checks conducted by employers from 32% in 1992 to 44% in 2001 (Holzer et al. 2004). **Employer willingness to hire people with criminal**

¹³ Note, most literature has focused exclusively on examining the impacts of a criminal record (that is, a record of criminal conviction). Accordingly, when describing studies, this report will use the terminology employed by the studies' authors.

¹⁴ See for example Holzer et al. et al. 2003. Employment Barriers Facing Ex-Offenders. Employment Dimensions of Prisoner Reentry and Work: Understanding the Nexus between Prisoner Reentry and Work. New York: Urban Institute Roundtable and Pager, Devah. (2003). "The Mark of a Criminal Record". American Journal of Sociology, 108(5), 937-75.

Case Examples:

How Non-Conviction Police Records Impact Ontarions

These are two scenarios that are reflective of the many that come to JHSO's attention*.

1) Jim had been employed for over eight years with the same company. During a verbal dispute between Jim and a neighbour the police were called by onlookers and Jim was charged with mischief. Jim contested the allegations against him. He had never been in conflict with the law before and had no previous criminal record. He was ultimately not convicted of the charge. Several years later, when Jim is required by his employer to undergo a renewal of his criminal background check, his non-conviction charge is disclosed to his employer (much to his surprise). He was subsequently terminated from his position and became unemployed during the height of the recession.

* * *

2) Janet was traveling to the U.S. with her husband and children for a family vacation. When they reached the border, the border officials ran a random background check on Janet, revealing information about an incident that took place five years earlier when Janet's husband called the police for emergency service because she was having a mental health crisis. The police had responded to the emergency call and had transferred her to the hospital. She was denied entry into the U.S. due to this mental health police record and the family was forced to cancel their planned trip.

*Note: these scenarios are composite case examples of a number of stories we have heard from clients and/or members of the public.

records is also correlated with organizational and/or job position characteristics. In particular, jobs in the financial and service sector as well as jobs requiring direct customer contact tend to pose greater barriers for people with criminal records. Having a criminal record can reduce the chances of employment by 50%; the effect is even more pronounced for racialized populations (Rodriguez and Emsellem 2011). This translates into relatively low employment rates for people with criminal records, and significantly less earnings than other workers with comparable characteristics.

The Vicious Circle

Employment and a stable job market are paramount factors in reducing crime and recidivism.¹⁵ Freeman and Rogers identified the relationship between the job market and crime: "...our results demonstrate that crime and labor market conditions and outcomes are closely linked, crime rates have fallen most rapidly in states where unemployment has fallen most" (Freeman and Rogers 1999). On an individual level, studies have consistently found a close relationship between employment and a reduction in criminality, especially amongst youth. In fact, unemployment is one of the top three predictors for criminal recidivism (Motiuk and Vuong 2005). Therefore on the one hand, being jobless increases the chances that a person will offend, while on the other hand, having a police record closes the door to employment.

False Security?: Are Police Record Checks Useful Predictors of Risk

The heightening demand for police record checks in recent years has been fueled in large part by a desire to minimize organizational risk and exposure to liability and to protect vulnerable populations from harm. It is often taken for granted that police record checks are reliable and useful screening tools. It is worthwhile to consider to what extent police record checks actually predict risk.

In fact, there is no research demonstrating that police record checks are effective as risk management tools. This is an especially important point to emphasize given that the type of information that can be disclosed on police record checks is highly sensitive and personal, often resulting in the prejudicial and stigmatizing treatment of those with police records¹⁶. Some key findings from the literature include:

¹⁵ See also, JHSO's FactSheet "[Crime and Unemployment: What's the Link?](#)" for a succinct overview of the literature around employment as a criminogenic factor.

¹⁶ See the sidebar on "Types of Police Record Checks in Ontario" contained on the next page for general definitions of the types of police record checks available in Ontario and what information is generally disclosed at the various levels of check. Note, not all police services offer these exact types of checks, and disclosure practices vary across Ontario: this is for general information purposes.

Types of Police Record Checks in Ontario

Criminal Record Check

This is generally the least intrusive type of record check. A criminal record check, sometimes called a “CPIC” check, typically reveals criminal convictions (that have not been record suspended/pardoned), pending charges and, at times, some non-conviction dispositions. Criminal record checks should generally only disclose records related to criminal activity under the Criminal Code.

Police Information Check/Police Background Check

This check may include a criminal record check along with a check of local police involvement, which include non-criminal contacts with police, such as calls to 9-1-1, or being questioned by police (though not formally charged).

Vulnerable Sector Search/Check (VSS)

This check is restricted to applicants seeking employment and/or volunteering with vulnerable populations (e.g. children, elderly, or developmentally disabled persons). A VSS generally includes all of the information from the first two levels of checks, plus more in-depth and sensitive information. Records revealed through a VSS can include records of voluntary and involuntary apprehensions under the *Mental Health Act* and transfers to mental health facilities, incident reports, and even contact information such as having been a victim, suspect or witness. Pardoned sexual offences are flagged in the national criminal record repository (CPIC) system and as a result will also appear in a VSS.

- Risk factors as interpreted by employers or other agencies requesting background checks, namely, the existence or nature of convictions or arrests, “depart markedly from criteria included in commonly accepted and validated assessments of offender risk”. That is, making judgments about a person’s “risk” based on a single static factor like a police record is not consistent with evidence-based practice (Harris and Keller 2005).
- There is also no compelling evidence to suggest that workplace violence is perpetrated more by persons with criminal records than those without one; indeed, “Considering the problem of workplace crime in the aggregate, an assumption that much employee-perpetrated illegal activity may be due to employees with no prior criminal justice involvement is probably not unreasonable” (Ibid).
- Research suggests that after certain time frames, there are no differences in the risk of offending between those with a prior conviction and those without. There is a period of time for which the risk of offending is the same for those with a prior conviction and those who have never been convicted (Kurlychek et al 2007).
- Since there is no compelling evidence suggesting that past police records of conviction are useful predictors of risk, it would be reasonable to suggest that *non-conviction* police records are even less useful in predicting future behaviour.

Certainly, the goals of managing risk, screening for capable employees and protecting vulnerable persons are laudable. In some circumstances, it is indeed reasonable and legally required to request police record checks (i.e. for employees who will be working directly with vulnerable populations). It is important, however, to use police record checks with the knowledge that they are by no means reliably predictive of risk or competency at performing a specific job position. Conversely, simply because an individual has a “clear” police record check does not guarantee that he/she has not committed offences in the past (without detection), will not commit future criminal offences or be a competent model employee. The bottom line: caution should be exercised when drawing conclusions about future performance based on police record checks, especially when these checks are used in lieu of other effective screening and workplace supervision policies and practices.

Survey Findings:

A Snapshot of Employer Practices in Ontario

The Centre developed a survey to examine barriers facing YPRs in Ontario as identified by employers/businesses. The survey was administered to Ontario employers/local businesses in Hastings and Prince Edward Counties. This area was selected because its employers appeared to be broadly representative of the spectrum of industry types found across Ontario. A voluntary and confidential survey of approximately 25 questions was developed for online use. The survey with an invitation to participate was emailed directly to approximately 500 prospective participants.

The result was a sample of employers roughly representative of the local enterprise types. Industry types were classified according to the North American Industry Classification System (NAICS).¹ The largest survey representation was from five NAICS categories: Manufacturing, Other Services, Construction, Healthcare and social assistance, and Retail trade.² Two sectors were under-represented vis-à-vis their representation in the area: Educational Services and Public Administration. The 43 survey respondents employ just over 10% of those who are employed in Hastings and Prince Edward Counties.

Most of the survey findings can be considered unique since such data have not previously been available in a Canadian context. In addition, our findings, highlighted below, are compared with studies in other jurisdictions.

¹ This system is used throughout North America. Specifically in Canada, it is used by Statistics Canada in its reporting on the economy and in Ontario by MTCU in its reporting on the labour market. It is available online at <http://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVDP&Page1&TVD=118464> (accessed March 21, 2014).

² Note, the "Other Services" category includes non-profit organizations.

- **51% of the organizations surveyed require police background checks of prospective employees during the hiring process.** In the U.S., there are varying estimates on the extent to which employers require checks. However, Holzer et al. (2004) report some 44% of employers require police background checks³, a percentage that had risen from 1992 to 2001. One study found that over 90% of employers used police background checks for all or some of their job candidates.⁴
- **None of the survey respondents from the Construction and Accommodation/Food & Services sectors require police background checks, while 63% of Manufacturing sector respondents likewise reported that they do not require them.** This is similar to the findings of Holzer et al. (2003) from the U.S.
- **There is a clear relationship between the size of the company⁵ and the requirement for a police background check.** Large enterprises were 3 times as likely to require a police background check, while medium sized companies were twice as likely to require one. Only 28% of small enterprises reported requiring police background checks. This finding does not necessarily suggest that these companies are less likely to actually hire a person with a record, just that it is a factor, to some extent. What it may indicate, however, is that surveys asking employers if they require record checks without considering the number of individuals these organizations employ may underestimate the extent to which Ontarians may be subject to record checking.
- **More than half (55%) of those participants who request police record checks indicated that their organizations use third party providers to run the police record checks.** Some of the third party providers used by the employers include 'Hire Performance', 'CKR', 'BPS' and 'CK Global.' 75% of employers also indicated that their organization reimburses the employee for the cost of the police background check.
- **71% of those requiring police background checks indicated that they do not require them for existing employees.** This finding suggests the policies are likely to have particular impact on those seeking to enter the job market.
- **The most frequently cited reasons for requiring background checks were Liability/risk management, Company Policy, and Legal Requirement for Vulnerable Sector checks.** A number of employers who require record checks (30%) also cited the *Occupational Health and Safety Act* (Bill 168). The importance of the general concern regarding liability was also raised in Holzer et al. (2003) in the U.S. See Figure 1.
- **15% of respondents indicated they do not hire anyone with a positive police background check.** All the other respondents from the present survey indicated that they would still be prepared to hire people with police records under certain circumstances (e.g. the record was old, it involved a minor/unrelated offence, or the hiring was based on the knowledge of the person or the referral source).

³ For the purposes of the survey, the term 'police background check' was used and includes all checks or queries of local police and/or RCMP databases for criminal records and police contact information, including basic criminal record checks (CPICs), and Vulnerable Sector Checks.

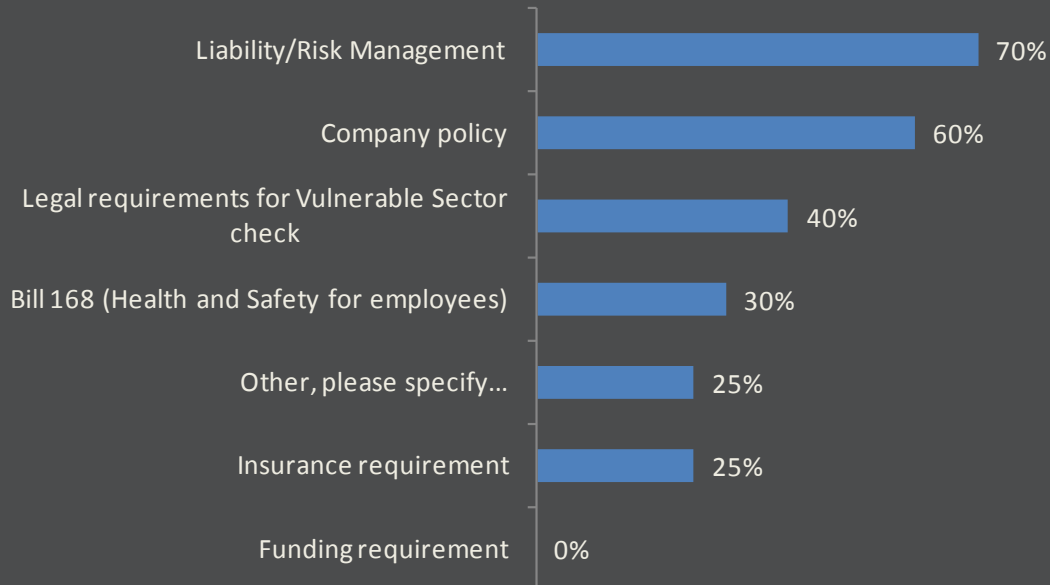
⁴ Survey by the Society of Human Resources Management published in 2010, cited in Rodriguez and Emsellem (2011), p. 1

⁵ A small company was defined as 1 – 19 employees; Medium size was 20 – 99; Large was 100 or more. The sizes align with those used by NAICS.

The 15% figure is lower than reported by some other jurisdictions. For example, Holzer et al. (2001) reports on survey results that found 19.5% would "Absolutely" not be willing to hire an applicant with a criminal history. A U.K. survey⁶ found 36.6% would exclude all

⁶ Survey conducted by the Chartered Institute of Personnel and Development, quoted in NACRO (2006).

Figure 1: What is the current purpose of asking for a police background check?



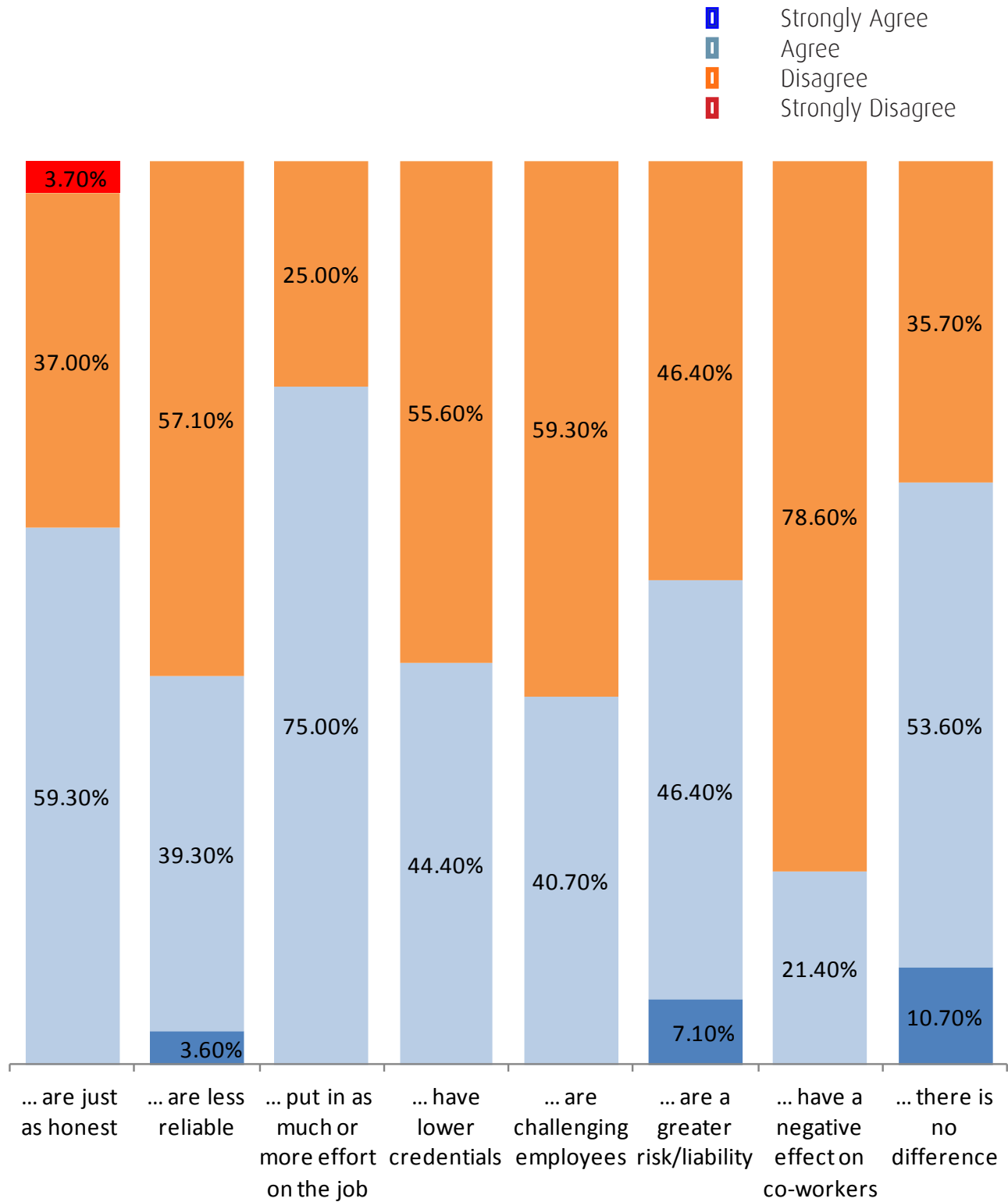
people with criminal records from their recruitment process; another U.K. study reported a more moderate 16% (Working Links 2010).

- **50% of employers reported having had a police record check come back positive in the last 12 months**, showing both the prevalence of record checking and the prevalence of individuals with police records in the workforce (or attempting to enter the workforce).
- **Of employers who reported having hired people with a record, 73% stated that their experience with them was about the same as other employees.** Only 7% indicated that the experience was “Much worse” than their experience with other employees. This finding was consistent with a study from the U.K. which reported that about 65% of employers surveyed indicated that their experience with employees with records was “As expected”, while only 7% found it “Worse than expected” (Working Links, 2010).

In a similar vein, 59% agreed with the statement that persons with criminal records are just as honest as other employees, and 57% disagreed with the statement that they are less reliable (Figure 2).

- On the other hand, when asked whether they agreed with the statement that **people with records are a greater risk/liability compared to other workers, 54% of employers agreed.** This echoes the earlier response that showed potential risk/liability as the most common reason for requiring police background checks. Taken together, they are suggestive of a free-floating anxiety over potential liability, even though few (25%) cited insurance requirements as a purpose for asking for a police background check.

Figure 2 : The Extent to which organizations agree with the following statements:
"People with Criminal Records are..."



While acknowledging that a larger survey sample size would have been desirable, the survey's findings are generally consistent with those from other jurisdictions, especially around the effect that having a police record has on a person's prospects for employment. A high percentage of the employers surveyed – over half – routinely use police record checks in their hiring process, most often out of general concern about possible liability. The practice is more widespread among larger employers, and is particularly prevalent in some types of enterprises.

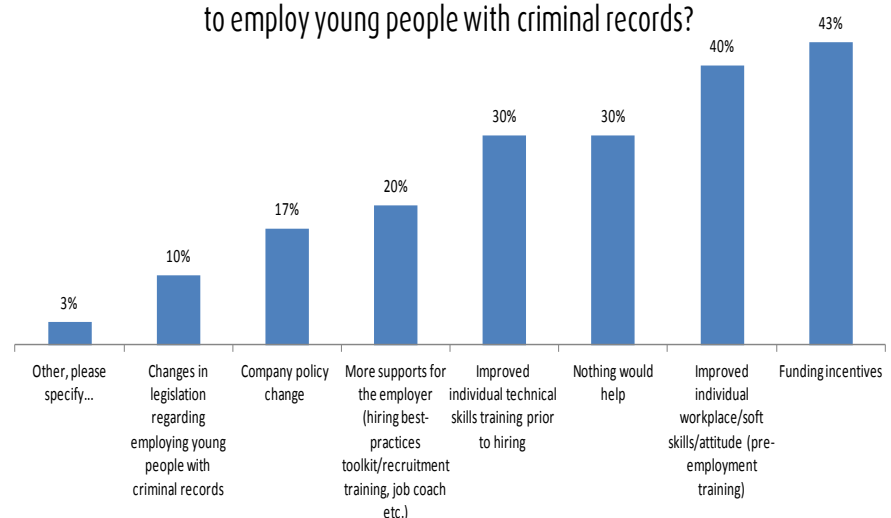
The majority of the companies that require police record checks indicated that hypothetically they would still consider hiring an individual – based on specific circumstances – regardless of a positive police record check. However, when asked about their general perceptions regarding individuals with criminal records, a significant proportion of those surveyed reported strong negative character assessments. Close to half of the respondents reported negative and stigmatizing characterizations of people with criminal records, such as not being '...just as honest', being '...less reliable' and being a '...greater risk/liability' compared to other workers. Despite many survey participants' indication that their organization would still hire individuals with criminal records under certain circumstances, the majority (61%) stated that they had never knowingly hired an individual with a criminal record.

The findings point to opportunities to effect change in the present situation, changes that will benefit both employers and YPRs, and the labour market in general. While a small minority of employers would categorically exclude anyone with a police record, the large majority of employers are open to hiring them under some circumstances. A high percentage (73%) of those who had hired persons with police records found the experience no different from that with their other employees.

Those participating in the survey also shared their thoughts on what would encourage them to employ YPRs (See Figure 3). While Funding Incentives was the leading response (43%), Improved Skills (technical and "soft") and Supports for the Employer were also significant. A strong minority (30%) said nothing would encourage them.

Based on our survey research findings, and the extensive review of the literature, we propose a number of policy and future research recommendations to both reduce employment barriers for YPRs and to make Ontario a province which supports the full social and economic engagement of YPRs. These recommendations are outlined in the remainder of this report.

Figure 3: Is there anything that might encourage your organization to employ young people with criminal records?



Ending Legitimized Discrimination in Ontario

From a policy perspective, barriers to employment are the last thing we should seek for youth from marginalized communities. The research is clear that stable and meaningful employment, as well as the income, stable housing and social networks that employment can foster, are significant protective factors against criminal behaviour. Unfortunately police background checks are often mandatory components of employment recruitment processes in Ontario (and Canada) today, and a police record carries with it tremendous stigma, perhaps more so now than ever before.

Ontario is certainly not the only jurisdiction with significant employment barriers for YPRs; many comparable jurisdictions show strikingly similar patterns to Canada in the number of individuals with police records and the practice of police record checking by employers in general. What distinguishes many international jurisdictions – the U.S. and the U.K. in particular – from Ontario is the growing awareness of and attention to the issue by their law/policy makers, academia, non-profit organizations and the general public. While this level of awareness and concern is largely missing in Ontario (and Canada more generally), other jurisdictions have clearly identified the importance of removing the barriers to employment for people with police records as an important step in improving economic and social engagement, reducing recidivism, supporting reintegration and rehabilitation, and in respecting individual human and privacy rights. Their governments have begun to enact policies and practices to address these issues.

In order to successfully address the exclusion of YPRs from employment and economic engagement in Ontario, a two-pronged strategy must be developed and implemented.

The first focus needs to be on supporting youth and connecting them to the training, skills development and mentorship that they need to improve their individual employability and capacities to fill existing skills gaps in Ontario. The second focus, equally if not more important than the first, is to change the present landscape in Ontario to make it a province that is conducive to reintegration, and one that is respectful and protective of equality and human rights for *all* its citizens.

The complex and intersecting challenges facing YPRs must be addressed to ensure their employment readiness. To this end, evidence-based programs designed to address these intersecting issues and skills gaps must be invested in or expanded. However, systemic barriers to employment also exist and must be similarly redressed. The use of police record/background checks is ubiquitous in Ontario and the demand is growing – indeed, third party background checking companies are proliferating. Employers, volunteer organizations and academic programs readily and frequently discriminate (indiscriminately) against persons with police records, regardless of the record’s relevance to the position that they are applying for. Therefore, we advance recommendations to ensure that YPRs do not face barriers on the employer side once they have received appropriate training and services and are applying for work. It must be emphasized again that in order to successfully engage YPRs in Ontario’s labour market and allow them to be fully engaged citizens, these broader systemic and legislative changes must come to pass; it is misguided, if not unethical, to engage YPRs in programming, to build their resumes and skills, only to place the onus of accessing employment on them, if employers are unwilling to look past their pasts.

1 Increasing Youth Labour Supply and Demand

Investing in Youth: Client-Centered Programming for Employment Readiness and Mentorship

YPRs are not a homogenous group of individuals. Indeed, many individuals with police records are highly skilled and have ample job experience, while others may struggle with literacy, life skills, and mental health or addiction issues. YPRs who have complex

and layered needs, and/or individuals recently released from correctional institutions, will likely need programming and support that is tailored to their individual circumstances. Programs aimed at enhancing YPRs' employability must necessarily be flexible, client-centered and strengths-based, and also address any co-existing challenges faced by youth, such as homelessness. Recent research by JHSO (2012) indicates that client-centered and strengths-based approaches to client engagement are key to successful program outcomes. Each youth should be assessed individually and actively engaged in identifying his/her strengths, resiliency, and needs, in order to develop a unique plan.

In terms of specific training program models or best practices, most evaluative research indicates the importance of long-duration programs, which include hands-on apprenticeships or placements, ongoing mentorship and access to services. The demonstrated best practices from other jurisdictions should inform program models that are funded here. Programs in a number of jurisdictions provide special supports for individuals returning to the community after a period of custody. For example, in the U.K., a government-level response was to shift responsibility for reintegrating individuals' skills and training to the Department for Education and Skills, creating the "Offenders Learning and Skills Unit" (OLSU). It in turn worked with the Learning and Skills Council to set up the "Offenders' Learning and Skills Service (OLASS), whose goal is to help people" with a criminal record "gain the skills and qualifications they need to hold down a job and have a positive role in society" (Department of Innovation, University and Skills 2007). Their mandate

is to work with employers to design and deliver programs to upgrade participants' skills such as literacy, language numeracy and IT, but also to help them acquire and maintain employment.

Project RIO in Texas is like a number of direct service programs that assist individuals with records to find employment. It helps prisoners develop skills prior to release, matches them with a placement worker upon release, helps organize documentation (i.e. transcripts, birth certificate), and cultivates life skills (i.e. how to pay taxes) (U.S. Department of Justice, 1998). Project staff workers can call employers on behalf of program participants and use databases of jobs to place clients. Employment specialists can also help secure housing, medical care, clothing, among other key services, and effectively address other barriers that would otherwise prevent people from finding and retaining work.

In Ontario, there are certain industry areas that are witnessing increasing demand and attrition; some of these shortages identified earlier include industries such as the sciences, engineering, IT, trades and health. It makes strategic sense to increase YPRs' access to training and skills development in the sectors that are growing and/or facing significant attrition.

RECOMMENDATIONS

- 1.1 Invest both provincially and locally in programs aimed at enhancing YPRs' employability and that are flexible, client-centered, and address any co-existing challenges faced by youth. Program models should reflect evidence-based best practices, which include long-duration programs, with emphasis on apprentice-

ships or placements, ongoing mentorship and access to services. Local agencies running the programs should have strong relationships with and ties to the local business community and social services.

1.2 Wherever possible provide YPRs, both within correctional institutions and in the community, training in areas that match labour market skills gaps/needs.

Money Talks – Bid Incentive and Tax Incentive Programs

In order to encourage employers to hire persons with police records, some jurisdictions are offering tax credits¹ to employers who hire people from disadvantaged groups, including YPRs. Among the American cities that have tried this approach are San Francisco and Philadelphia. The Philadelphia Re-entry Program (PREP) gives \$10,000 per year to an employer who hires a person with a criminal record. Similarly, the city of Indianapolis has established a “bid incentive” program, under which preferential treatment in their contractor selection process is given to companies that employ YPRs (National League of Cities Institute for Youth, Education and Families 2010).

Using bid incentive and tax incentive models to incentivize the hiring of persons with police records makes sense,

¹ See Economy League Greater Philadelphia. (2011). Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia. Office of the Deputy Mayor for Public Safety. Retrieved from: http://economyleague.org/files/ExOffenders_-_Full_Report_FINAL_revised.pdf

Spotlight on Promising Programming Practices

One of the most successful models of vocational training focused on youth in contact with the criminal justice system is the Community Restitution and Apprenticeship Focused Training program, or Project CRAFT in the U.S. Sponsored by the Home Builders Institute (HBI), the program provided “youth with social, personal and vocational skills and employment opportunities.” The program attempts to utilize a holistic approach combining career training, support services (i.e. employment training, social skills training etc.) and community service activities sponsored by local industries. According to a report by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) the program provides students with (OJJDP, 1999):

“...pre apprenticeship certificate training, an industry-validated curriculum, which includes 840 hours of hands-on training and classroom instruction in the use of tools, safety, work habits, and trades-related mathematics...After graduating from the program, participants are placed in industry-related jobs and receive long-term follow-up services.” (p.1)

The project is also a multi-sectoral collaboration between the public sector (i.e. correction facilities, justice system personal, judges), education agencies, and community-based organizations as well as other human service agencies. Since the inception of the program in 1994 in three sites across the U.S., the program has (Cont...)

(cont...) replicated in five additional sites. Furthermore, a comprehensive four year evaluation of the program concluded that Project CRAFT has a high rate of job placement (94 of 140 graduates in three sites evaluated) and the recidivism rate of the participants was 26% - significantly lower than the 70% national rate.

In 2006, the U.K. government introduced the Offender Learning and Skills Services (OLASS), which is currently in its fourth phase (OLASS 4).² The service attempts to bring together several stakeholders from different departments including Department of Innovation, Universities and Skills (DIUS), Ministry of Justice, Department of Works and Pensions (DWP) amongst others as well as several job and employment agencies such as Jobcentre Plus. The aim of OLASS is to bring together existing delivery services to focus on the needs of a specific group. According to an OLASS guide (OLASS 2007) the main goal of the service is:

"...ensuring offenders have the underpinning skills for life (literacy, language, numeracy and basic IT skills), and have developed work skills, will enable them to meet the real needs of employers in the area where they live or will settle after their sentence is complete."

Furthermore the service aims to act upon other needs of individuals in conflict with the law by focusing efforts on providing assistance in housing, drugs and alcohol, health, finance amongst other things. What distinguished OLASS from other services is the commitment to a continued learning process and a focus on providing personalized programs depending on the individual's needs, and a commitment to providing skills that align with employer needs.

especially in light of the still-recovering economy and organizational reluctance to assume any perceived risks. While many of these initiatives in other jurisdictions are in their early stages and have not yet been subject to rigorous evaluation, we recommend that the government of Ontario, as well as local municipal governments, strongly consider piloting the use of this promising practice. In Ontario, general concerns around liability and risk management were cited as a key reason for requiring police record checks by 70% of the respondents in our survey. Furthermore, lack of financial ability to hire and train unskilled YPRs was also commonly identified as a barrier to hiring YPRs. It appears that financial incentive programs could alleviate both of these employer concerns in different ways.

First, if the provincial government is seen to be supporting the hiring of YPRs by building in financial incentives for employing them, employer concerns around liability may be mitigated. Indeed, non-profit or transfer-payment agencies that receive government funding for programs indicate that they are at times contractually bound by certain Ministries to screen all candidates and not hire anyone with a criminal record. The provincial government should commit to critically reviewing its own funding requirements that increase the barriers to employing YPRs and make the requirements consistent with evidence-based and rights-respecting practice.

Second, if there were financial incentives for hiring YPRs, and this was also tied to a training and/or employment program that offered ongoing mentorship and support for the youth, it follows that more employers would be willing to hire YPRs. The data from our survey reinforce-

es this proposal strongly; of the employers asked what factors would increase their likelihood of hiring YPRs, 43% selected financial incentives. It would seem in the short-term, in order to encourage more employers in Ontario to hire YPRs, money does speak volumes.

RECOMMENDATIONS

1.3 Both the province of Ontario and municipal governments should consider implementing bid incentive and tax incentive models utilized in other jurisdictions to incentivize the hiring of persons with police records.

1.4 The provincial government and local government should commit to critically reviewing their departmental funding requirements which may serve to exacerbate the barriers to employing YPRs and make the requirements consistent with evidence-based and rights-respecting practice to lead by example.

2 Regulating the Demand for Police Record Checks

Leading by Example: Provincial Government Championship and Public Education Campaign

End the Use of Stigmatizing Language by Government

Freedom. Now the punishment starts. – JHSO public education campaign, 1970s

The legitimized discrimination against and labeling of individuals who have had past contact with the criminal justice system is fundamentally unjust and is also counterproductive to community safety. It is a sad reality in Ontario that people who once contravened the law but who have repaid their debt to society and wish to attain meaningful employment remain stigmatized indefinitely and are intractably labeled “ex-offender”. The stigma that individuals face when attempting to reintegrate is a real and significant barrier to their successful re-entry into the community. Individuals are frequently barred from pro-social engagement due to their criminal record, and yet face societal (if not legal) condemnation when they do not appear to be making every effort at rehabilitation. This catch-22 – expecting reintegrating individuals to fully re-engage with society when it simultaneously bars them from doing so – sets people up for failure and disillusionment. It is time for Ontario to meaningfully support reintegrating persons’ efforts to remain crime-free and engage in pro-social activity.

In the U.S., the “Ban the Box” campaign is aimed at barring employers from asking applicants about criminal histories during the hiring process. Led by numerous organizations the campaign aims to reform practices across the U.S.

by encouraging the removal of questions about conviction history from the job application. According to recent reports, various iterations of the “Ban the Box” reforms have been adopted by 56 Jurisdictions across the U.S. over the last nine years (NELP 2014). The City of Philadelphia, along with many other states in the U.S., provide excellent examples of how governments can effect both policy *and* attitudinal change to improve its citizens’ reintegration outcomes.

Philadelphia has also enacted “Ban the Box” legislation, and as mentioned earlier, offers incentives for employers who hire persons with criminal records. Ontario would benefit from looking at Philadelphia and other U.S. states for promising initiatives to model and adopt in our province. These initiatives require government buy-in, and in order to improve the employment outcomes for YPRs in Ontario, the issue must be a priority for the provincial government. The barriers and stigma for those with past police/justice contact is a topic that is largely absent from the public discourse. Public education about the utility and predictive value of police records as screening tools, along with a campaign to combat stigma, labeling and discrimination, is sorely needed. This issue needs a provincial strategy and also necessitates an inter-ministerial response. The barriers facing YPRs, and the causes of these barriers, are not limited to employment. Issues surrounding the retention and disclosure of police records, and the barriers to successful reintegration, cut across numerous sectors and levels of government, and the provincial response should be similarly cross-sectoral in nature.

RECOMMENDATION

2.1 The provincial government should commit to making Ontario a province that fosters barrier-free reintegration and inclusivity. It should model the efforts of other jurisdictions aimed at eliminating the government's use of stigmatizing and labeling language, and enacting policies akin to the "Ban the Box" reforms in the U.S.

The Ontario *Occupational Health and Safety Act* – Not a License to Discriminate

Recently in Ontario, amendments to the *Occupational Health and Safety Act (OHS)* contained in "Bill 168" that regulate workplace violence and harassment have come into force. Bill 168 mandates that employers must, among other things, assess workplaces for the risk of violence, develop policies for workplace violence and harassment, and provide information to employees about the risk of workplace violence. Many employers have responded to their new obligations under the *OHS* by going beyond what the legislation mandates, however, and have expanded the use of police record checks to screen out what are perceived as "risky" persons. The legislation *does not* require that employers screen both prospective and existing employees for their individual propensity for violence or "risk". In fact, the government recogniz-

Combating Stigma and Labelling:

The Philadelphia Case Example

The Mayor of Philadelphia recently asked a member of the city's Council to introduce an ordinance amending **The Philadelphia Code** by replacing the term "ex-offender" with the term "returning citizen". In addition, the Mayor of Philadelphia also signed an Executive Order re-naming the city's Office of Re-integration Services for Ex-Offenders (R.I.S.E.) to the Office of Re-integration Services (R.I.S.E.) in order to comply with the ordinance.

The Executive Order defines a "returning citizen" as: "an individual who has recently been released from a federal, state or local correctional facility, or a person who, while not recently incarcerated, has a criminal record or history." According to the Executive Order, the policy of the City of Philadelphia is to cease using the term "ex-offender" and to instead use the term "returning citizen" on any official and unofficial communication, document, or other written material.*

Read more about how this initiative is unfolding here: <http://philadelphia.cbslocal.com/2013/11/13/once-called-ex-cons-philadelphia-returning-citizens-begin-six-weeks-of-reintegration/#.UyMTV6StPJU.twitter>

*To learn more about the ordinance, see: <http://cityofphiladelphia.wordpress.com/2013/10/24/mayor-nutter-signs-executive-order-legislation-introduced-to-help-returning-citizens/>

es this to be an untenable expectation. Actual validated risk assessments utilized by criminal justice professionals are complex tools that take into account a variety of static and dynamic risk factors – and even then, risk prediction is not precise. A Ministry of Labour guideline on the *OHSA* states quite explicitly that:

“the Occupational Health and Safety Act does not require employers or supervisors to do criminal background checks or to otherwise seek out information on workers or other people who are likely to be in the workplace.” (Ministry of Labour 2010, 17)

In spite of this clear language, many employers are screening for or excluding job candidates with police records using Bill 168 as justification; our survey found that “Bill 168” was cited by 30% of participants as a justification for requiring police record checks. Moreover, some social service agencies refuse to serve or assist clients who have a police record or are perceived as “risky” citing Bill 168. The provincial government needs to address and respond to widespread misunderstandings or misuse of the *OHSA*, through the development and comprehensive dissemination of clear guidelines and backgrounders on this subject. Similarly, the provincial government, in partnership with community organizations, needs to actively educate employers and human resources professionals around rights-respecting hiring practices.

RECOMMENDATIONS

2.2 The provincial government should engage in a widespread public information campaign educating Ontario employers on their obligations under the *Occupational Health and Safety Act*, which do not include mandating police record checks of employees.

2.3 The provincial government, in partnership with community organizations, should lead an education campaign for employers and human resources professionals around barrier-free and rights-respecting hiring practices.

The Employer's Onus: Rights-Respecting, Evidence-Led Hiring Practices

There are some instances where requiring a police record check, in particular, the Vulnerable Sector Search (VSS) is supported by law. There are circumstances when an employee or volunteer is in a position of trust and authority over vulnerable populations, and has direct, ongoing and unsupervised access to this population, where a VSS is both justified and sensible. The majority of employment positions in Ontario do not meet this threshold, however.

In fact, we would submit that even basic criminal record checks should not be required for most positions, and especially not entry level positions that do not work directly with vulnerable populations and/or positions that are not senior and responsible for managing assets, financials or highly sensitive information where no lateral safeguards are in place.² All organizations that require record checks should develop a compa-

² For a helpful review of the legislative restrictions around requesting VSS checks, please see Canadian Civil Liberties Association's (2014) Report, “False Promises, Hidden Costs”. www.ccla.org

ny policy around police record checking, and assess *each position* individually to determine whether or not a criminal record check is required and justified. To be clear: blanket policies mandating across-the-board record checks of all employees, regardless of the position, are not consistent with best practice and should be avoided. Protocol should also be developed on how to assess a criminal record's relevance to each specific job position, should a criminal record reveal a record of *convictions*. These position-by-position assessments should be based on objective, transparent and narrow criteria of criminal offences that resulted in convictions that are both relevant and clearly connected to the position being sought, and thereby prevent a candidate from meeting their job duties/requirements. The idea here is to again minimize the blanket exclusion of persons on the basis of police records that are irrelevant to the position being sought, by establishing a clear, sound and neutral criteria and processes *before* commencing the hiring process. Finally, if a criminal record check or VSS is a required step in the hiring process for a specific position, this should only be requested after a conditional offer of employment has been made.

RECOMMENDATION

2.4 Employers in the private sector, public sector and non-profit sector alike should critically review their existing hiring practices and any use of police record checks with a view to the evidence around the utility of record checks and the goal of minimizing the invasion of privacy and discrimination that flows from police record checks. Organizations that determine that police record checks are necessary for some positions should

put in place clear policy and protocol that define in what narrow instances a criminal record would preclude a candidate from a specific employment opportunity. These policies and protocols should be consistent with rights-respecting and evidence-led best practice.

Pre-employment Privacy Legislation

Several provinces in Canada have provincial privacy legislation in place that governs the private sector's collection of and requests for personal information (e.g. police record information) in the pre-employment and employment context. These statutes provide instruction on circumstances or conditions where criminal record checks may be appropriate, and place strong emphasis on the informed and voluntary consent of individuals subject to a record check. As noted by Canadian Civil Liberties Association (CCLA) (2014) in its analysis of provincial privacy legislation, the British Columbia Information and Privacy Commissioner concluded that under its privacy laws, "a public body can only collect personal information if 'the information relates directly to and is necessary for a program or activity of the public body.' Given the lack of evidence linking a criminal history to employment suitability, the BC IPC concluded that criminal record checks must be requested with significant restraint." (p. 24). We strongly recommend that Ontario introduce privacy legislation to protect Ontarians from undue invasion of privacy in the hiring and pre-employment contexts, as is the case in other provinces.

RECOMMENDATION

2.5 The provincial government of Ontario should introduce privacy legislation to protect Ontarians from undue invasion of privacy in the hiring and pre-employment contexts.

Implementing a Centralized Program for Vulnerable Sector Searches/ Checks

Presently in Ontario there is a patchwork of legal regulation governing requests for VSS checks. While there is some limited provincial statute and the *Criminal Records Act's* definition of "vulnerable populations"³ setting out criteria for when an organization is justified in requesting a VSS of individuals filling specific positions, there is no comprehensive legal framework in Ontario. Furthermore, while police services often vet organizations who request VSS checks to ensure that they meet the appropriate criteria, this vetting often occurs at an organizational level, and not necessarily on a position-to-position basis, which is prob-

³ As defined by the *Criminal Records Act* "vulnerable person" means a person who, because of his or her age, a disability or other circumstances, whether temporary or permanent, (a) is in a position of dependency on others; or (b) is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

lematic.⁴

Employer and volunteer organization access to VSS checks should be scrutinized and regulated. In the next section of this report, JHSO calls for provincial legislation to bar the disclosure of non-conviction police records on police record checks. This legislation could be introduced as part of wider legislative change to the province's police record check framework and regulation, especially around employer access to VSS checks.

A promising model currently being utilized in B.C. provides the groundwork for a legislative framework regulating VSS checks that could be developed and implemented in Ontario. B.C. already has more robust and inclusive human rights protections for individuals with criminal records; employers cannot discriminate against an individual due to a criminal record unless that record expressly relates to the job position in question.

The human rights approach in B.C. informs its provincial legislation governing the eligibility for and use of VSS checks in that province, and how safety concerns for vulnerable populations are balanced against an individual's privacy rights. B.C.'s *Criminal Record Review Act (CRRRA)* provides clear direction on what specific job positions must undergo VSS checks. The *CRRRA* enumerates a list of job positions that meet its criteria of "individuals working with children or vulnerable adults directly or potentially

⁴ For example, while it may be necessary and appropriate for camp counselors to undergo a VSS since they meet the criteria laid out in *Criminal Records Act*, it may not mean that an administrative assistant at a registration desk working for the same company does. Each position must be assessed individually, which does not always happen. For example, certain agencies will have blanket practices to VSS all employees regardless of their exposure to and authority over vulnerable populations.

have unsupervised access to children or vulnerable adults.” If job positions fall under the list outlined in the *CRRRA*, a prospective employee or volunteer must authorize the Criminal Records Review Program (CRRP) to conduct a VSS. The CRRP is a centralized and standardized government-run program that oversees the VSS checks for employers (and voluntary organizations serving vulnerable populations) for the entire province. The criteria that are applied during VSS checks are consistent and transparent. For each authorized check, the CRRP reviews the relevant criminal history of the applicant; if applicable, the CRRP will investigate the circumstances of relevant offences, and make a determination on whether the individual is a risk to work with children and/or vulnerable adults. The CRRP relies on a clearly defined list of offences (convictions or pending charges only) that are considered “related” to working with children or adults (the lists differ, depending on the population). Individuals who are determined to be a “risk” are not cleared to work with children and/or vulnerable adults. Individuals are afforded an opportunity to appeal for reconsideration if they feel the determination is inaccurate. If no records meeting the test of “relatedness” are found, the individual is in essence given clearance to work in that role. The employer never knows the contents of the individual’s record, regardless of whether the individual was cleared or determined to be a risk/not cleared.

If Ontario developed and implemented an analogous legislative model and program to that of B.C.’s, it is our submission that it would not only regulate the demand for VSS checks and save police services a tremendous amount of time and resources, but it would

ensure standardized, evidence-based risk assessments by a centralized body, conducted in an objective manner that is consistent with protecting the privacy and human rights of all individuals. VSS checks provide a prospective employer with a tremendous amount of personal and sensitive information outside of criminal convictions; this information is often used inappropriately or is not well understood by those requesting it. A centralized model and Ontario-specific legislation would prevent a significant amount of the discrimination against YPRs that presently takes place when any police record, regardless of its relevancy, gravity or non-conviction status, is both requested and disclosed. Further protections against the disclosure of certain types of police records are discussed next.

RECOMMENDATION

2.6 The province of Ontario should develop and implement an analogous legislative model and program to that of B.C.’s *Criminal Records Review Act* and Criminal Records Review Program, to centralize, regulate and standardize the demand for and review of Vulnerable Sector Search checks in our province, through objective and evidence-based processes that offer more robust privacy and human rights protections.

3 Regulating the Disclosure of Police Records

Police maintain broad powers under the *Police Services Act* and *Municipal Freedom of Information and Protection of Privacy Act* to retain and disclose police record information at each local police service's discretion, but little exists in statute to structure or inform what type of information *should* be disclosed at varying levels of check. The Ontario Association of Chiefs of Police (OACP) LEARN Guideline which will be discussed in more depth below, though voluntary, attempts to fill this legislative gap and offers best practice police record disclosure guidelines; but the decision to adopt these practices is left to each autonomous police agency. For the sake of Ontarians' privacy and human rights, these retention and disclosure policies and practices should be standardized, clear and objective.

End the Disclosure of Non-Conviction Police Records in Ontario

The retention and disclosure of non-conviction information is an issue that affects the equality, opportunities, human rights and civil liberties of *all* Ontarians. JHSO frequently hears from Ontarians who face ongoing discrimination and stigmatization as a result of non-conviction information that is revealed on police record checks. There are currently no human rights protections for people in this situation.

As noted earlier, the literature indicates that employers often use the presence of police records to make judgments about a person's "risk" or likelihood to cause workplace disruption without any basis in evidence-based factors. The presence of a police record, and in particular a record of non-conviction, is not in itself a useful predictor of future behaviour, and certainly not a predictor of workplace-specific performance or challenges. The disclosure of non-conviction information is highly prejudicial, and not a sound approach to ensuring community safety. There is a pressing need for mechanisms, legislation and policies to protect Ontarians from the disclosure of non-conviction information

on police records checks (and the impacts flowing from the disclosure).

To prevent against the discrimination, stigmatization and prejudicial impacts that are associated with having a police record, JHSO calls for the systematic restriction of the type of information disclosed on all levels of police record checks to only criminal charges that resulted in criminal convictions. That is, the policy default should prescribe that non-conviction dispositions and information not be disclosed on any level of police record check. There are both short- and long-term recommendations that flow from this position.

OACP LEARN Guideline and Need for Legislative Change

The Ontario Association of Chiefs of Police (OACP) Guideline for Police Record Checks (often referred to in short as the “LEARN Guideline”) is a provincially issued guideline which outlines what type of information should be disclosed at the various levels of police record check in Ontario. It also defines the levels of police check. It is a voluntary guideline that local police services in Ontario choose to adopt/endorse. In 2013, following sustained discussions on the disclosure of non-conviction information in Ontario, the OACP revisited the way in which the LEARN Guideline dealt with non-conviction records. In February 2014 the Board of the OACP passed two motions in response to the recommendations submitted jointly by the LEARN Subcommittee

and Canadian Civil Liberties Association. The following is quoted directly from the OACP’s March 7, 2014 statement:

MOTION # 1

1. The OACP will engage in public education about the benefits and limitations of Criminal Record Checks;
2. The OACP accepts the presumption against disclosure of non-conviction records; and,
3. The OACP will craft a narrow public safety exception to protect the most vulnerable people in our communities.

MOTION # 2

- Advocate for changes to Provincial legislation regarding police record checks; and,
- Implement an evidence-based, centralized procedure for determining when non-conviction information can be disclosed. The OACP Law Enforcement and Records (Managers) Network (LEARN) will update the OACP LEARN Guideline for Police Record Checks by June 2014, and work with community stakeholders on public education after June.

JHSO strongly endorsed the recommendations presented to the OACP Board, in particular the recommendation that non-conviction information presumptively not be disclosed at any level of check, and support the amendment of the provincial OACP LEARN Guideline. The Guideline, however, is voluntary and some large police services have not adopted it in its past iterations. Our immediate recommendation is for *all* police services

across Ontario to endorse the forthcoming LEARN Guideline in its entirety, and to commit to presumptively excluding non-conviction information from disclosure at all levels of police records check. This would result in considerable interim improvements for all YPRs who have records of non-conviction that are precluding them from meaningful engagement in the labour market or post-secondary programs.

We laud the OACP for amending its Guideline and support its efforts to advocate for legislative change, and thusly recommend that the provincial government work with the community and policing stakeholders to develop legislation that protects Ontarians, in statute, from the disclosure of their non-conviction police records. As demand for police record checks escalates, a growing number of Ontarians with non-conviction police records face exclusion and discrimination; a situation that calls for attention and redress now.

RECOMMENDATIONS

3.1 All police services in Ontario should endorse and adopt the forthcoming Ontario Association of Chiefs of Police's LEARN Guideline and commit to presumptively not disclosing non-conviction information on all levels of police record check.

3.2 The provincial government of Ontario, in partnership with policing and community-based stakeholders, should develop legislation protecting Ontarians from the disclosure of their non-conviction police records.

Amend the *Criminal Records Act*

Presently the *Criminal Records Act*, federal legislation governing the disclosure of specific types of criminal records,⁵ is silent on and does not offer any privacy protection for individuals who have records of non-conviction, except for absolute and conditional discharges. We recommend that the federal government consider reviewing the *Criminal Records Act* with a view to adding statutory protections for individuals with any non-conviction police records, not only absolute and conditional discharges (which are not considered convictions), and to scale the "spent" timeframe for disclosure of non-conviction records to zero.

In addition, many other jurisdictions employ a "spent" model or have "stale laws" which automatically seal certain records of conviction after specific criteria are met. These criteria typically relate to the nature of the offence, and require individuals be crime-free for a set timeframe, after which their records are automatically sealed or expunged. For example, one of the ways New Zealand has attempted to reduce the barriers to employment that individuals with criminal records face is to introduce the *Criminal Record (Clean Slate) Act*. The *Act* is a scheme whereby individuals automatically qualify to have their records sealed from disclosure if they meet a specific set of criteria. This removes many of the barriers created by pardon systems, including processing time and cost as well

⁵ Of note, it outlines the retention/disclosure periods for absolute and conditional discharges, and enumerates the record suspension (pardon) regime.

as the onus to apply, such as the one that exists in Canada (NZMJ 2004).

In Canada, we have had the foundation of a spent model since 1992, with the introduction of the discharge disposition “spent” regime. Discharges are sentencing options outlined in Section 730 of the *Criminal Code* which are not considered to be convictions but rather registrations of guilt. These dispositions are reserved for criminal cases that do not involve mandatory minimum sentences and where the accused generally is considered low-risk or a first-time accused and where the judge deems that the individual does not merit the condemnation that comes with a conviction. The *Criminal Records Act* prescribes that, except in exceptional circumstances that:

- No record of an absolute discharge may be disclosed after one year from the discharge date;
- If the discharge is conditional, no record may be disclosed after three years.⁶

After these timeframes have elapsed, the record of the discharge is supposed to be automatically sealed and the individual’s fingerprints destroyed⁷. While the spent system for discharges is a good system, we recommend building on and expanding the spent system presently outlined in the *Criminal Records Act* to include automatic repeals of some convictions as well, as is the case in other jurisdictions. Since the record suspension application fee has been raised to a prohibitive \$631, and recent

⁶ *Criminal Records Act* RSC 1985, c C-47, s 6.1.

⁷ In practice, not all police services comply with this legislation and will release discharged records beyond the legislated timeframes, which is an issue that also needs to be redressed.

amendments to the *Criminal Records Act* changed the record suspension regime to greatly restrict eligibility, citizens’ ability to move past their criminal history has been seriously compromised, to the detriment of society. We therefore propose several key changes.

First, we call for the repeal of the recent amendments to the *Criminal Records Act* around the Canadian record suspension (pardon) regime in 2010, and again subsequently in 2012.⁸ These changes to the *Criminal Records Act*, especially to the record suspension eligibility criteria, were widely challenged by academics, legal professionals and non-profit organizations, and ran contrary to the evidence that indicated that the old system was working quite successfully. Record suspensions serve a very important function: they enable people who have made positive life changes and who have abstained from criminal behaviour to be freed from many of the negative impacts and long term consequences of having a criminal record, such as securing employment and housing. From a public safety perspective, this type of incentive offered to individuals trying to reintegrate successfully back into the community is demonstrably sound.

Second, we recommend that the federal government expand the *Criminal Records Act* spent regime to include the automatic repeal of summary convictions once specific criteria have been met. This would result in significant cost-savings for the government and reduce the hardships associated with the record suspension application process – a process that is expensive, that takes months or years

⁸ These successive changes to the Canadian pardon regime were contained in Bill C-23A and Bill C-10, respectively.

to complete and can be extremely onerous, especially for those from marginalized communities. The criteria below mirror the old criteria for eligibility for pardons for persons with summary convictions, and we advance these criteria as those that should result in automatic repeal, in an expanded spent system, provided individuals meet them:

1. The individual has completed his/her sentence, (i.e. s/he has completely paid any fines, costs, restitution or compensation orders, completed any probation order or conditional sentence, and served all of the sentence including parole or statutory release); and,
2. It has been at least three years since a summary conviction sentence was completed; and,
3. The individual has been of 'good conduct' and has not been convicted of any new offences, and has no new charges or outstanding fees.

We further call on the provincial government of Ontario to support these evidence-based recommendations and similarly request these amendments from its federal counterpart.

RECOMMENDATIONS

3.3 The federal government should repeal the recent legislative changes to the *Criminal Records Act* contained in Bill C-23A and Bill C-10 that greatly restricted Canadians' access to record suspensions (pardons).

3.4 The federal government should amend the *Criminal Records Act* to expand and build upon the foundations of the existing "spent model" to ensure that non-conviction records are never disclosed. In addition, it is recommended that Canada model other countries' approaches to supporting reintegration by automatically sealing (again, through a "spent model") certain records of conviction that meet a specified set of criteria; generally that an individual only had a record of summary convictions, has remained crime-free for a specified period of time, and has completed his/her sentence.

4 Regulating the Use of Police Records

Human Rights for All Ontarians

The only explicit human rights protection afforded to individuals in Ontario with police records in the employment context is for those who have a criminal record for which a record suspension (pardon) has been granted⁹. For all other intents and purposes, individuals with unsealed police records (i.e. those with non-conviction or local police records or those with convictions who have not received a record suspension) can be discriminated against, regardless of the police record's nature or relevance to the position being sought. The research literature is clear: persons with criminal records are perhaps the most singularly excluded identifiable population from the labour market. When a person from a marginalized or racialized population

⁹ "Record of offences" is defined under the *Ontario Human Rights Code* as: a conviction for (a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or (b) an offence in respect of any provincial enactment.

has a criminal record, the effect on one's employment prospects is even more deleterious (Pager 2004; Pager et al 2009). Human rights, through protected grounds under human rights legislation, afford individuals protection against differential and negative treatment on the basis of identifiable characteristics. Persons with police records – a significant proportion of Ontario's population – are frequently stigmatized and excluded on the basis of this identifiable and specific characteristic. Irrespective of a person's qualifications and capacity to undertake a specific role, the mere presence of a police record is often *the* defining factor in rejecting an otherwise ideal candidate, regardless of the nature of the record and its relevance to the position. This blatant and blanket discrimination should not be legitimized. Indeed, many other Canadian provinces, having already recognized this, have taken measures to protect its citizens from undue exclusion and indignity.

A number of other provinces in Canada provide more robust human rights protections to persons who have criminal records (broadly speaking). For example,

The B.C. *Human Rights Code* provides the following protection for people with criminal records:

Section 13 (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or *because that 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*.¹⁰ [emphasis added]

This protection has been interpreted and applied to non-conviction police records as well as records of conviction. B.C. courts have established helpful adjudication criteria on how to determine when a criminal conviction is related and relevant to a specific position, thereby justifying discrimination. In *Woodward Stores (British Columbia) Ltd. v. McCartney*, [(1983), 43 B.C.L.R. 314], Justice MacDonald developed a “Test of Relatedness” based upon the following criteria which employers in B.C. must take into consideration:

An employer must consider the circumstances of the conviction before concluding that the charge relates to the

employment. Such factors as the details of the offence, the length of time intervening between the conviction and the employment decision, the employment history of the individual concerned, his age at the time of the offence and his efforts at rehabilitation, must be considered.¹¹

Similarly, the government of Newfoundland recently amended its *Human Rights Act* (2010) to provide stronger protection for persons with criminal records (i.e. including unsealed convictions) in the employment context¹². One of the most protective frameworks in Canada can be found in the Yukon’s *Human Rights Act*; it bars discrimination on the basis of “a criminal record or criminal charges” unless the history is relevant to the employment.¹³

We recommend that the provincial government of Ontario commit to amending the *Ontario Human Rights Code* “record of offences” provision to make its language and definition explicitly protect against discrimination on the basis of *any* record of offences – including all non-conviction police records, mental health police contacts, criminal convictions and records that have been sealed subsequent to a record suspension – with an exception allowed for employers who can demonstrate that a specific record is reasonably connected to the position being sought. That is, the employer must be able to objectively demonstrate that

¹¹ Paragraph 318-319.

¹² Newfoundland and Labrador’s Human Rights Commission’s Guidelines Regarding Employment of Persons with Criminal Convictions http://www.justice.gov.nl.ca/hrc/publications/criminal_conviction_and_employment.pdf

¹³ *Human Rights Act*, R.S.Y. 2002, c. 116, ss. 7(i), 10(b).

¹⁰ *British Columbia Human Rights Code*, RSBC 1996

a specific type of police record would preclude a candidate from meeting a *bona fide* job requirement of the specific job position that s/he applied for.

RECOMMENDATIONS

4.1 The provincial government should amend the *Ontario Human Rights Code's* "record of offences" provision to broaden its definition to explicitly protect Ontarians against discrimination on the basis of any record of offences – which should include all non-conviction police records, mental health police contacts, criminal convictions and records that have been sealed subsequent to a record suspen-

sion – with a narrow exception allowed for employers who can demonstrate that a particular criminal record is reasonably and objectively connected to a *bona fide* requirement of the specific employment or volunteer position being sought.

4.2 The provincial government should also explore adding the above amended "record of offences" grounds beyond the Employment context in the *Ontario Human Rights Code* so that it also applies to Vocational Associations, since accessing employment in many fields of work first requires memberships in professional associations and trade unions.

5 Future Research Recommendations

In Ontario, and Canada more generally, there is a pressing need for better information on and documentation of the barriers for YPRs in the employment context. Ontarians are presently without an accurate picture of how many people in Ontario there are with police records (not just criminal convictions in CPIC); statistics on the demand for and processing of police record checks across Ontario; studies on the prevalence of the demand on the employer side for police records as condition of employment; and, an overall understanding of the manifold barriers YPRs face in Ontario. Developing Ontario-specific solutions requires better information and understanding of the magnitude of these challenges. Our research provides some insight into the picture in Ontario, and piecemeal information from local police services on the supply and demand side is at times made

available,¹⁴ but the province needs to systematically collect and publicly release standardized data on police record checks and their growing demand in Ontario, and build evidence-based strategies based on these findings.

RECOMMENDATION

5.1 The province of Ontario, in collaboration with municipalities, police services, and employers, should begin to systematically collect, analyze and publicly report on data pertaining to the demand for and disclosure of police records in Ontario.

Further to this recommendation, the following is a list of recommended areas where future resources and academic research could serve to increase our understanding of the issues:

- Broader surveys of employer policies and practices across Ontario with regard to police record checking policies. Through a collaborative approach between government, major employers and non-governmental institutions, a more comprehensive study of employers could help identify particular trends in practices, and identify sectors and industries where more awareness of the issue/s is required.
- More studies seeking to examine the social and psychological consequences of having a police record and its effects on employment within a Canadian context. There is a significant body of literature in other jurisdictions on issues such as stigma and race as compounding the barriers to employment for those with police records. More research is required on the social and collateral consequences flowing from having a police record in Canada and the impact of police records on specific sub-populations, such as Aboriginal populations or those with mental health issues.
- Although there is some literature on youth employment generally, more research is required on increasing employment prospects for youth that come from specific disadvantaged, marginalized and racialized communities. These individuals require policies and programs uniquely designed to accommodate their particular needs and circumstances.

¹⁴ For example, a recent Toronto Star news article featuring the Toronto Police Service indicates that the Toronto Police's Record Management Department receives 200 new requests for police record checks daily. http://www.thestar.com/news/crime/2014/03/19/toronto_police_criminalbackground_check_backlog_puts_thousands_of_jobs_and_studies_in_limbo.html#

Conclusion

Ontario is about to bear witness to a significant shift in its labour market with the upcoming retirement of the “baby boomer” generation; at the same time, our youth, especially YPRs, are facing increasing barriers to meaningful and stable employment. Indeed, the current economic climate in Ontario has had the effect of exacerbating pre-existing disadvantages faced by youth from marginalized groups (Aboriginal, racialized and immigrant communities, individuals with mental illness/addiction or developmental disabilities, etc.). Incidentally, young Ontarians from these same marginalized populations are more likely to come into contact with the police and justice system, and thus, have a police record, which in turn is one of the most significant barriers to employment and employability. This report has identified both barriers – individual and systemic – to YPRs’ successful engagement in the labour market. It has also outlined recommendations for improving Ontario’s support for YPRs. In order to effectively break down the barriers that YPRs face, the province, in partnership with its community-based stakeholders and other levels of government, must commit to substantive policy and legislative change, public education, innovative funding incentives and supporting evidence-based programs. The growing demand for police record checks, and the resultant exclusion of YPRs from both the labour market and meaningful pro-social engagement, is a pressing issue that necessitates a response today.

References

British Columbia Criminal Records Review Act, [RSBC 1996] Chapter 86

British Columbia Human Rights Code, RSBC 1996

Burleton, Derek, Gulati, Sonya, McDonald, Connor, and Scarfone, Sonny (2013). "Jobs in Canada: Where, What and For Whom? TD Economics. Retrieved from: <http://www.td.com/document/PDF/economics/special/JobInCanada.pdf>

Canadian Civil Liberties Association. (2012). "Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks". Retrieved from: <http://ccla.org/wordpress/wp-content/uploads/2012/09/CCLA-NCD-Report.pdf>

Commission on the Reform of Ontario's Public Services (2012). Public Services for Ontarians: a path to sustainability and excellence ("Drummond Report"). Retrieved from: <http://www.fin.gov.on.ca/en/reformcommission/>

Criminal Records Act RSC 1985, c C-47

Department for Innovation, Universities and Skills. (2007). The Offenders' Learning and Skills Service (OLASS) in England: A Brief Guide. Retrieved from the UK Government website at: <http://readingroom.lsc.gov.uk/lsc/national/olass-booklet.pdf>

Department of Public Safety Canada (PSC). (2012). 2012 Annual Report: Corrections and Conditional Release Statistical Overview. [Ottawa].

Economy League Greater Philadelphia. (2011). Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia. Office of the Deputy Mayor for Public Safety. Retrieved from: http://economyleague.org/files/ExOffenders_-_Full_Report_FINAL_revised.pdf

Fahey, Jennifer, Roberts, Cheryl & Engel, Len. (2006). Employment of Ex-offenders: Employer Perspectives. Crime and Justice Institute. Retrieved from CJI website at: http://208.109.185.81/files/ex_offenders_employers_12-15-06.pdf

Foster, Karen, Youth Employment and Un(der) Employment in Canada. 2012. Canadian Centre for Policy Alternatives. Data are in Statistics Canada, CANSIM, table 282-0087 and Catalogue no. 71-001-XIE

Freeman, Richard and Rodgers, William. (1999). Area Economic Conditions and the Labor Market Outcomes of Young Men in the 1990s Expansion. Massachusetts: National Bureau of Economic Research

Geobey, Sean, The Young and the Jobless: Youth Unemployment in Ontario. September 2013. Canadian Centre for Policy Alternatives.

Government of Ontario, Ministry Of Training, Colleges and Universities (MTCU), Results-Based Plan Briefing Book 2013-14, Accessed 27 January 2014 at www.tcu.gov.on.ca/eng/about/annualreport/2014RbP_En.pdf

- Hamilton, Robin and McKinney, Kay. (1999). OJJDP Fact Sheet. Office of Juvenile Justice and Delinquency Prevention (OJJDP). 116. Retrieved from NCJRS website at <https://www.ncjrs.gov/pdffiles1/ojjdp/fs99116.pdf>.
- Harris, Patricia and Kimberly Keller. (2005). "Ex-Offenders Need Not Apply: The Criminal Background Check in Hiring Decisions." *Journal of Contemporary Criminal Justice* 21(1): 6-30.
- Holzer, Harry J., Raphael, Steven and Stroll, Michael A. (2001) "Will Employers Hire Ex-Offenders? Employer Checks, Background Checks, and Their Determinants." UC Berkeley: Working Papers, Berkeley Program on Housing and Urban Policy. Retrieved from <http://escholarship.org/uc/item/3c6468h2>
- Holzer et al. (2003). "Employment Barriers Facing Ex-Offenders". *Employment Dimensions of Prisoner Reentry and Work: Understanding the Nexus between Prisoner Reentry and Work*. New York: Urban Institute Roundtable
- Holzer, Harry J., Raphael, Steven and Stroll, Michael A. (2004). "How willing are employers to hire ex-offenders?" *Focus*. 23(2). 40-43.
- John Howard Society of British Columbia. Information for Employers – Criminal Record Tool Kit. Retrieved from: <http://www.njhs.ca/employerstoolkit/html/index.html>
- John Howard Society of Ontario. (2012). Effective, Just and Humane: A Case for Client-Centered Collaboration. Retrieved from: <http://johnhoward.on.ca/pdfs/FINAL%20Community%20Report%20May%202012.pdf>
- Kurlychek, Megan, Robert Brame and Shawn Bushway. 2007. "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement." *Crime & Delinquency* 53(1): 64-83.
- Legal Action Center. (2002). "Individuals with Criminal Histories: A Potential Untapped Resource". *Smart Solutions*. 11. Retrieved from: http://lac.org/doc_library/lac/publications/smart_solutions.pdf
- Motiuk, Larry and Vuong, Ben. (2005) "Offender Employment: What the Research Tells Us". *Forum of Corrections Research*, 17(1).
- McMurtry, Roy and Alvin, Curling. (2008). *The Review of Roots of Youth Violence*. Volume 1
- Miner, Rick, *People without Jobs, Jobs without People: Ontario's Labour Market Future*. February 2010. Miner Management Consultants.
- Ministry of Labour. (2010). *Workplace Violence and Harassment: Understanding the Law*. Accessed at: http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf
- National League of Cities Institute for Youth, Education, and Families. (2010). *Cities Pave the Way: Promising Reentry Policies that Promote Local Hiring of People with Criminal Records*. Retrieved from NELP Website at: <http://www.nelp.org/page/-/SCLP/2010/CitiesPaveTheWay.pdf?nocdn=1>
- NACRO (2006). *Ex-offenders and employment – the way forward: A Nacro briefing*. Retrieved from NACRO website at: <https://www.nacro.org.uk/data/files/ex-offendersemployment-930.pdf>

National Employment Law Project. (2014a). Ban the Box: Major U.S. Cities and Counties Adopt Fair Hiring Policies to Remove Unfair Barriers to Employment of People with Criminal Records. Resource Guide January 2014. Retrieved from NELP Website at: http://nelp.3cdn.net/ceb-c75246d6b12f887_skm6bsijp.pdf

Newfoundland and Labrador's Human Rights Commission. (2011). Guidelines Regarding Employment of Persons with Criminal Convictions. Retrieved from: http://www.justice.gov.nl.ca/hrc/publications/criminal_conviction_and_employment.pdf

Ontario Association of Chiefs of Police's. (2013) Guideline For Police Record Checks. Accessible at: http://www.oacp.on.ca/Userfiles/Committees/CPEGLawEnforcementAndRecordsManagersNetwork_LEARN_/ResourceDocs/2013%20Police%20Record%20Checks.pdf

O'Brien, Christine Neylon and Darrow, Jonathan J. (2007). "Adverse Employment Consequences Triggered by Criminal Convictions: Recent Cases Interpret State Statutes Prohibiting Discrimination". 42 Wake Forest Law Review, 991, p 4-7.

Ontario Human Rights Code, R.S.O. 1990

Pager, Devah. (2004). "The Mark of a Criminal Record". Focus 23(2). 44-49.

Rodriguez, Michelle N. and Emsellem, Maurice. (2011). 65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks. New York: The National Employment Law Project

Briefing Book 2013-14. Accessed 27 January 2013 at www.tcu.gov.on.ca/eng/about/annualreport/2014RbP_En.pdf

Statistics Canada. (2012). Adult criminal court statistics in Canada, 2010/2011. Retrieved from: <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11646-eng.htm#a4>

Stuckey, James and Munro, Daniel (2013). The Need to Make Skills Work: The Cost of Ontario's Skills Gap. Conference Board of Canada.

U.S. Department of Justice. (1998). Program Focus: Texas' Project RIO (Re-Integration of Offenders). Office of Justice Programs. Retrieved from NCJRS website at: <https://www.ncjrs.gov/pdffiles/168637.pdf>

Working Links (2010). Prejudged: Tagged for Life: A Research Report into Employer Attitudes Towards Ex-offenders. Retrieved from Working Links website at: <http://workinglinks.co.uk/pdf/Prejudged%20Tagged%20for%20life.pdf>

Wortley, Scot. (2008). "A Province at the Crossroads: Statistics on Youth Violence in Ontario". The Review of Roots of Youth Violence. Volume 4. Retrieved from Ontario Ministry of Children and Youth Services Website: <http://www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/roots/index.aspx>

Yessine, A. and J. Bonta. (2009). "The Offending Trajectories of Youthful Aboriginal Offenders". Canadian Journal of Criminology and Criminal Justice, 51(4), 435-472

Yukon Human Rights Act, R.S.Y. 2002, c. 116

JohnHoward

SOCIETY OF ONTARIO

Centre of Research, Policy & Program Development

John Howard Society of Ontario

603 - 111 Peter Street

Toronto, ON

M5V 2H1

416.408.4282

www.johnhoward.on.ca

@ReducingCrime

© May 2014 John Howard Society of Ontario

This document may be freely copied in whole and distributed, and sections may be copied or quoted provided appropriate credit is given to the John Howard Society of Ontario.

This research was supported by the Government of Ontario through the Ontario Human Capital Research and Innovation Fund. The opinions, and any errors and omissions contained within this report, are solely those of the authors.

