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CLEAR CONFERENCE

Conducting Criminal Background Checks as a Condition of Licensure:

The Canadian Perspective

- Canadian criminal record information is recorded through the Canadian Police Information Centre ("CPIC"), a computerized information system for Canadian law enforcement agencies.
- CPIC is operated by the RCMP. Provincial police forces and certain other approved agencies have access to CPIC. Broadly speaking, only police and other similar law enforcement agencies may have direct access to CPIC for purposes of searching criminal records.
- Professional regulatory bodies (such as, for example, health profession regulatory bodies) are not approved CPIC agencies and cannot, themselves, have direct access to CPIC.
- Some regulatory bodies (e.g. certain provincial regulators of casinos and gaming and some health profession regulatory bodies, among other agencies) enter into a memorandum of understanding with the relevant provincial police force, providing for the police to conduct CPIC searches on behalf of the regulator.
- Where the regulatory body (through the police) obtains the criminal record check, the application form for licensure/registration generally requires the applicant to supply name(s), d.o.b., social insurance number. In some cases, the application may also require the applicant to provide fingerprints (done by a police service or an accredited agency approved by the regulator). In either case, the applicant will be asked to consent to the CPIC criminal record search and to the release of the results to the regulator.
- An alternate approach (adopted by many health profession regulatory bodies) is to require applicants for registration/licensure to themselves obtain and submit a CRS (Criminal Record Synopsis) from CPIC as part of their application.
- A third approach (also adopted by certain health regulatory bodies and other licensing bodies) is to require, as a condition of registration/licensure, that an applicant provide the regulatory body with information concerning any previous criminal convictions, without any confirming criminal record check.

- Several levels of criminal record information are available through CPIC, including the following:
 - (a) **Full Criminal Record:** includes not only conviction history but also stayed proceedings, withdrawn charges, acquittals and absolute and conditional discharges;
 - (b) **Criminal Record Synopsis:** includes only personal information [such as name, date of birth and personal characteristics] and conviction history; and
 - (c) **Criminal Name Index:** indicates only that a record may exist, but includes no information about conviction history, etc
- Withdrawn charges and stays may be removed from CPIC at the request of the individual to whom they relate. Conditional discharges are purged from CPIC after 3 years and absolute discharges after 1 year.
- Records with respect to which an individual has obtained a pardon are removed from the "main" CPIC system into another database for which access is restricted. Generally speaking, information about pardoned records is no longer available to most regulatory bodies through a CPIC criminal record search and there will be no indication that the person received a pardon.
- The content of the CPIC database (and therefore the information available through a CPIC search) is affected by the provisions of the *Criminal Records Act* and various Ministerial Directives which specify what is to be recorded on CPIC, how long information is to be maintained on CPIC and what types of information must be purged from CPIC at certain intervals.
- The content of CPIC is also affected by the extent to which local police services enter information relating to criminal convictions into the CPIC system. There is no statutory obligation on local police to submit information to CPIC.
- Aside from the limitations on the content of CPIC, the scope of a criminal record check performed as a condition of licensure will depend upon the extent of the information requested by the regulatory body from the applicant and on the type of information that the applicant consents to being released. Criminal record information relating to an applicant will only be released to a professional regulatory body where the individual consents in writing to the release of the particular information in question.
- To get the full range of information available to a professional regulatory body through a CPIC search, some regulators:
 - seek applicant's consent not only for the search of information concerning criminal convictions, but also concerning all discharges not purged from CPIC and all outstanding criminal charges of which the police are aware;

- provide for initial submission of fingerprints, or for fingerprint verification in the event that a search by name and d.o.b. turns up convictions, etc, that may relate to the individual;
 - require the individual to consent to the direct release of the information to the regulatory body
- Many regulatory bodies seek additional information regarding an applicant's criminal history on the application for registration/licensure, asking questions about previous charges, arrests, participation in a diversion program or other resolution process, or pardons. In addition, applicants are sometimes asked about convictions under federal statutes, such as the *Food and Drugs Act* or the *Controlled Drugs and Substance Act*.
 - Practice varies among professional regulatory bodies regarding the point at which a criminal record check is required. Some require it only as a condition of initial registration/licensure and upon reinstatement. Other regulators require criminal record checks for existing registrants who have not previously provided a criminal record check.
 - In addition, many professional regulatory bodies have an ongoing self-reporting requirement which requires registrants/licensees to report any criminal conviction subsequent to registration. Some also require the reporting of such information as a condition of annual renewal.