

Legislative update

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

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By E-mail: 6 Pages plus attachment

Criminal Records Review Act

The *Criminal Records Review Act* (the Act) was passed in June 1995 and came into force on January 1, 1996.

The Act was designed to help protect children from physical and sexual abuse by making criminal record checks mandatory for all individuals who work with children. Section 1 of the Act defines "work with children" as:

- working with children directly or having or potentially having unsupervised access to children
 - (a) in the ordinary course of employment,
 - (b) in the practice of an occupation, or
 - (c) during the course of an education program.

The Act applies to:

- employees in organizations that are licensed by, operated by, or receiving operating funds from, the provincial government (e.g., boards of education)
- members of professional bodies (e.g., the BC College of Teachers)
- post-secondary students doing a practicum with children as a requirement for registration as a member of a governing body (e.g., student teachers).

Criminal Records Review Program

The Criminal Records Review Program within the Ministry of Public Safety and Solicitor General is responsible for processing criminal record checks under the Act in order to determine whether or not an individual poses a risk to children.

1. 2008 Amendments to the Act

Changes to the Act were passed into law with Bill 16, the *Public Safety Statutes Amendment Act, 2007*. The changes came into force by Regulation on January 1, 2008. A current version of the Act is attached to this bulletin.

The following is a brief summary of the changes:

- Expanded definitions for conviction include pardons, conditional discharges and charges diverted to alternative measures
- Relevant offences outside of Canada are now relevant
- Six new offences were added; a total of 62 relevant offences are now reviewed

- Criminal record checks are now required for students registered with a post-secondary institution in an education program that:
 - includes a practicum component involving work with children,
 - and the successful completion of which is a requirement for registration as a member of a governing body designated by regulation or authorization under the *Independent School Act* to provide the services of a teacher
- Independent school teachers must undergo a criminal record check prior to certification by the inspector of independent schools
- Individuals required to do criminal record checks under the Act will now be checked every five years
- There are new powers for the Registrar to request documents for compliance.

2. Offences Reviewed Under the Act

Criminal record checks are conducted for many purposes and can also be conducted by municipal police or the RCMP. The difference is that criminal record checks done through the provincial government's Criminal Records Review Program are **only** done for individuals who fall under the Act, cover only a limited number of offences deemed to relate to a risk to children, and include information (e.g., pardoned offences) that would not be available under a regular police criminal record check.¹

- **Criminal Records Review Program:** A criminal record check under the Act is a review of any outstanding charges, stays of proceedings, recognizances under certain sections of the *Criminal Code of Canada*, conditional discharges, pardons, charges diverted to alternative measures, or convictions of the 62 relevant offences as identified in the Act. The 62 specific offences are deemed relevant to determining the risk that individual may pose in a position where they have unsupervised access to children. The program does not review the individual's complete record of criminal convictions. However, other records that are not usually part of a police criminal record check are checked; e.g., provincial and young offender's records, pardons, charges diverted to alternative measures. A complete list of the 62 offences is attached as Schedule 1 to the Act.
- **Police criminal records checks:** These are conducted for organizations subject to the Act, but that have employees or volunteers who are not covered by the Act. Also, organizations not subject to the Act may make their own arrangements with a local police agency for a criminal records check of an individual. Such checks are not limited to the 62 offences deemed relevant under the Act. However, these checks do not include all of the records that are checked by the Criminal Records Review Program.

¹ This information is based on the information found on the Criminal Records Review Program website: <http://www.pssg.gov.bc.ca/criminal-records-review/>.

3. What do the 2008 Amendments Mean for Districts?

- **Five year re-check**

All individuals subject to the Act will be required to undergo a criminal records re-check every five years.

If an employee who is subject to the Act is charged with or convicted of a relevant offence subsequent to a criminal records check, the employee must promptly report the charge or conviction to his/her employer and provide to the employer a criminal records check authorization for a further criminal records check.

When an employer becomes aware that an employee who is subject to the Act has an outstanding charge for, or has been convicted of, a relevant offence, the employer must require the employee to provide a criminal records check authorization for a further criminal records check.

- **Members of the BC College of Teachers (the “College”)**

Registered members of the College will have to provide a criminal records check authorization to the College at least once every five years.

Currently, the practice at the College is to have applicants pay the fee for the criminal records check. The College is considering other options regarding payment in light of the new requirement to repeat the checks every five years.

- **Other Employees**

Districts will have to ensure that employees who work with children or who have (or potentially have) unsupervised access to children in the ordinary course of their employment and who are not registered members of a governing body (e.g., the College) have criminal records checks completed at least once every five years.

Employers must ensure that every individual who is hired for employment involving work with children and every employee who works with children undergoes a criminal records check as required by the Act. If an individual does not provide a criminal records check authorization as required by the Act, the individual must not work with children until he/she has provided the criminal records check authorization.

- **Volunteers**

The only volunteers that are covered by the Act are those individuals at child care facilities licensed by a [local health authority](#), or license-not-required child care facilities registered with the [Child Care Resource and Referral Program](#).

Although criminal records checks are not currently covered by the Act for other volunteers, many employers conduct their own criminal records checks on their volunteers with the assistance of their local police agency. For student safety reasons, it is prudent for districts to consider which volunteers should have criminal records checks; e.g., those volunteers who have unsupervised access to children, even though it is not mandated by the Act.

- **Post-Secondary Student Practicums**

Beginning January 1, 2008, education institutions will be required to ensure every registered student who will work with children undergoes a criminal records check.

The new requirement for criminal records checks for student teachers and others doing a practicum with children applies when the practicum is a requirement for registration as a member of the College or another governing body (as set out in Schedule 2 of the Act).

Education institution is defined in the Act as:

A post secondary institution, within the meaning of section 7 [a university under the University Act, the University of Northern BC, Royal Roads University, Thompson Rivers University, and an institution as defined in the College and Institute Act], that offers an education program.

Education program is defined as:

an education program, offered by an education institution,

- (a) that includes a practicum component involving work with children, and
- (b) the successful completion of which is a requirement for
 - (i) registration as a member of a governing body designated by regulation, or
 - (ii) authorizations under the Independent School Act to provide the services of a teacher.

For student safety reasons, it is prudent for districts to consider whether criminal records checks should be completed for other practicum students (i.e., those not enrolled in an education program as defined by the Act, such as student special education assistants); e.g., for those students who have unsupervised access to children, even though it is not mandated by the Act.

- **Third Party Contractors Who Work with Children**

The Act defines "employee" as:

an individual who is employed by an employer and includes an independent contractor who has entered into an agreement with an employer.

Therefore, independent contractors who work with children are also required to provide criminal records check authorizations to employers under the Act and undergo criminal records re-checks every five years.

4. Phase-in Period

The new Criminal Records Check Authorizations Regulation also came into effect on January 1, 2008

To reduce the administrative burden, the Regulation establishes a phase-in period for employers and governing bodies.

Districts with fewer than six “employees” (i.e., employees who are not members of the BC College of Teachers or another governing body) will have until **December 31, 2008** to bring checks of those employees up to date.

Districts with more than five but fewer than 100 “employees” (i.e., employees who are not members of the BC College of Teachers or another governing body) will have until **December 31, 2009** to bring checks of those employees up to date.

Districts with more than 100 “employees” (i.e., employees who are not members of the BC College of Teachers or another governing body) will have three years until **December 31, 2010** to bring checks of those employees up to date.

We have been advised by the Ministry of Public Safety and Solicitor General that the intent of the legislation is to ensure that everyone is checked at least every five years and the Deputy Registrar of the Criminal Records Review Program has advised stakeholders that the intent is every five years. Therefore, those employees whose criminal records checks will still be current as of the applicable implementation date set out in the Regulation (i.e., December 31, 2008, 2009 or 2010), that is within the five years before the implementation date, are not required to undergo a re-check at that time. Those employees must provide a criminal records check authorization five years from the date of their previous criminal records check. For example, an individual who was hired by a district on July 1, 2007 and had a criminal records check done at that time would not have to undergo a re-check until July 2012.

All new criminal records checks and all five year re-checks will be checked on the six new relevant offences added to Schedule 1 of the Act on January 1, 2008. Individuals checked previously and issued a clearance under the original 56 relevant offences may not result in a clearance during their re-check because of the six additional new offences.

Teachers and other registered professionals will have re-checks done through their governing bodies (e.g., the College) over the next five years, to be completed by December 31, 2012, based on the first letter of their last name.

5. Are Districts Required to Pay for the Criminal Records Checks?

The Act does not explicitly state who is to pay for the criminal records checks. However, section 10 of the Act places the obligation on existing employees to provide a criminal records check authorization to their employers. The wording of section 10 is similar to that contained in section 9, which provides that applicants who have been offered employment must provide a criminal records check authorization to the employer.

The criminal records check consent form on the Criminal Records Review Program website clearly states that payment must be included with the form and the form is to be completed by the individual applicant.

Further, the Ministry of Education policy document on criminal records checks states:

Unless the employer or governing body has made other arrangements to pay the fee, the payment is to be supplied by the individual consenting to the criminal records check.

Please note that, to date, the Ministry of Education policy has not been updated to reflect the current amendments to the Act. However, the wording of sections 9 and 10 which place the obligation on applicants and existing employees to provide criminal records check authorizations to an employer were not amended by Bill 16.

These facts suggest that the applicant, or existing employee, who is providing the criminal records check authorization has the primary obligation to pay for the criminal records check. However, districts have different policies and practices regarding the issue of payment for criminal records checks under the Act. Districts may also have collective agreement language regarding payment.

Districts should follow their collective agreement, policy or continue their current practice regarding payment for criminal records checks under the Act. If you are considering amending your policy or changing your current practice, please contact your BCPSEA district liaison for advice.

Attachment