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Jeudi 5 novembre 2015

**Standing Committee on
Justice Policy**

Police Record Checks
Reform Act, 2015

**Comité permanent
de la justice**

Loi de 2015 sur la réforme
des vérifications
de dossiers de police

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 5 November 2015

Jeudi 5 novembre 2015

The committee met at 1400 in committee room 1.

**POLICE RECORD CHECKS
REFORM ACT, 2015
LOI DE 2015 SUR LA RÉFORME
DES VÉRIFICATIONS
DE DOSSIERS DE POLICE**

Consideration of the following bill:

Bill 113, An Act respecting police record checks /
Projet de loi 113, Loi concernant les vérifications de
dossiers de police.

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Comme vous savez, nous sommes ici pour considérer le projet de loi 113, Loi concernant les vérifications de dossiers de police.

Welcome, colleagues. As you know, we're here to consider, through the justice policy committee of Ontario, Bill 113, An Act respecting police record checks. Welcome to all committee members. Welcome to all witnesses and participants.

Just to review the protocol: We have 15 minutes per presenter, five minutes for an opening address and then five minutes, in rotation, for questions by each party. As you know—

Interjection.

The Chair (Mr. Shafiq Qadri): Three minutes, yes—and as you know, the timing will be enforced with military precision.

**CHRISTIAN LABOUR ASSOCIATION OF
CANADA**

The Chair (Mr. Shafiq Qadri): I would now invite our first presenter to please come forward: Trish Douma, regional director of the Christian Labour Association of Canada. Welcome, Ms. Douma. Please be seated. Your five-minute opening address begins now.

Ms. Trish Douma: Thank you, Mr. Chair and members of the committee, for the opportunity to address you today and to provide CLAC's perspective on Bill 113, the Police Record Checks Reform Act. My name is Trish Douma and I'm a regional director for CLAC.

For context, CLAC is the largest national independent multi-sector labour union in Canada, and one of the fastest-growing unions in the country. Founded in 1952,

CLAC represents over 60,000 members nationwide, of which over 15,000 reside in Ontario. Of our Ontario workforce, approximately 8,000 work in the health care sector, where record checks are mandatory for most of our front-line workers. It is for these 8,000 health care workers that we are so pleased to be here in support of this important legislation.

To provide a bit of context, the concerns around the inconsistent processes for police record checks came to the forefront when the screening became mandatory for long-term-care workers in 2011. Increasingly since then, CLAC members have come to us with challenges regarding the disclosure of non-conviction information during police checks. These members brought to us true stories of being unfairly penalized in their professional or their personal pursuits as a result of irrelevant or non-conviction information being disclosed. In some cases, it prevented members from gaining other employment, and for others it restricted their participation in volunteer activities.

After researching the issue, we came to understand that there was no mandatory standard in place and, because of that, there was significant variation across the province on what information would be released for different police checks.

We firmly believe that police record checks serve an important role, especially when workers are interacting with potentially vulnerable populations. However, we have been advocating for a standard practice and clear guidelines on what information can be released. Our members and all individuals who require a police check deserve the certainty and peace of mind that comes with knowing what information is going to be included in their check. They also should not face the risk of having irrelevant non-conviction information released that could harm them either personally or professionally.

CLAC would like to thank Minister Naqvi, his staff and the staff at the ministry for engaging actively with us and other organizations to ensure that the standard process put in place throughout the province struck the right balance. We would also like to thank the Ontario Association of Chiefs of Police for developing the LEARN guideline that this legislation is based upon.

The concerns voiced by CLAC during the consultation process, about who to release police checks to, allowing additional criteria to be added via regulation to determine when non-conviction information can be released, and on

who should offer which levels of check throughout the province have all been addressed in the current bill.

Going forward, our primary concern will be around proper implementation. We want the new processes for record checks to take effect immediately but also recognize that certain police forces may need time to be able to prepare. Proper implementation timelines to avoid delays and backlogs are critical for our members who require police checks as a pre-condition of employment.

The second concern for us going forward will be on cost. We want to make sure that the new processes do not drive up the cost of obtaining a police record check. We have no indication that this will be the case but will be monitoring the costs on behalf of our members.

Once again, on behalf of CLAC, I would like to state our support for Bill 113, Police Record Checks Reform Act. Information is a powerful thing and must be released with parameters, especially when it has the power to do such harm.

Thank you for your time this afternoon and your attention to such an important matter.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Douma. We'll begin with questions, three minutes a side. Mr. Hillier?

Mr. Randy Hillier: Thank you for being here today. I know that you're very supportive of the legislation. I want to ask you specifically—you spoke about proper implementation—if you've looked at sections 16 and 21 and if you've made any commentary during the consultation process.

First off, section 16 doesn't identify what statistics are going to be kept by the police record check provider. Section 21 requires the minister to conduct a review of this act within five years, but there is no obligation to make that review public or to table it with the House. Does the CLAC have any concerns that those two items, 16 and 21, will not help your request for proper implementation?

Ms. Trish Douma: No, we don't have any concerns in regard to that.

Mr. Randy Hillier: So a review, as long as a review is done, and it doesn't need to be made public—you're fine with that?

Ms. Trish Douma: Yes.

Mr. Randy Hillier: All right. And you don't care about what statistics are kept. So I'm wondering: How would you define "proper implementation" if statistics and records are unknown—what is going to be kept? How are you going to be able to measure or judge if there is proper implementation?

Ms. Trish Douma: Because we will hear it directly from our members, who will be facing this every day.

Mr. Randy Hillier: So anecdotal evidence is fine for you?

Ms. Trish Douma: Correct, yes—for us and for our purposes.

Mr. Randy Hillier: Yes. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just before I pass the floor to Ms. French of the

NDP, I'd just like to introduce the committee and welcome the next generation of parliamentarians from the Qaadri household, Shafiq Qaadri Jr., who will now retire to do homework.

Ms. French, three minutes.

Ms. Jennifer K. French: Thank you very much. Thank you for joining us today at Queen's Park. In your submission, as we've already heard, you have concerns around proper implementation, specifically timelines. What would you expect those timelines to look like?

Ms. Trish Douma: Currently timelines vary dramatically between police departments. We hear anecdotally that sometimes it's three or four days, and there are cases where we have heard that it's up to six weeks.

We understand the need for this to be done correctly, but six weeks certainly places people in a difficult position. It also places the employer in a difficult position, as they are trying to fill a need in either a hospital or in a long-term-care home. In some cases, that might have direct patient or resident impact if they can't actually get a staff person into the workplace.

Ms. Jennifer K. French: Okay; thank you. As you had mentioned earlier, you hear directly from your members on a regular basis. Can you tell us about some of the ways that your members have been disadvantaged by the disclosure of non-conviction records?

Ms. Trish Douma: Yes. Actually, unfortunately, as an advocate for justice, we hear about these things quite frequently. I think we all know that the desire to be seen as innocent until proven guilty is extremely important to people. When non-conviction and non-related information is presented at this time, during a police vulnerable sector check, it prevents people from being able to volunteer—either it's in their child's school or just elsewhere within their community—and sometimes prevents them from getting a job as well.

Ms. Jennifer K. French: Okay. Is there anything that you feel should have been included in this piece of legislation that hasn't and that you've heard from your members and would connect to this?

Ms. Trish Douma: No. Our concerns are primarily around the implementation and the timing.

Ms. Jennifer K. French: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. The floor now passes to the government side: Mr. Balkissoon, three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Thank you very much for being here and making your deputation to the committee. Let me say thank you for the compliments you paid to the ministry and the staff that you were involved with during the consultation process.

As you know, the legislation is based on the LEARN guidelines that were developed by the chiefs of police, which you're familiar with. You also know that more than 60%, I believe it is, of the police forces around Ontario are already following those guidelines, except for some minor changes in the legislation.

I hear your concern about the implementation date, but you also expressed concern that maybe some of them will do it on time or not. If I can reassure you, once the minister gets this passed and he sets the deadline in the legislation, that it has to be implemented as of this date, would you be comfortable that all forces will have to comply by that date?

1410

Ms. Trish Douma: I would be comfortable with that. I would just hope that they would have the resources to be able to proceed.

Mr. Bas Balkissoon: Okay. In terms of the people you represent, are they very comfortable with what the government has done with the three-process stage and that we now define what type of record you can get? I know you mentioned workers and volunteers, who are, probably, the majority who have had problems with it before. Generally, is your membership very supportive of this?

Ms. Trish Douma: Yes, they are. They feel very comfortable with the guidelines and the checks that are put in place.

Mr. Bas Balkissoon: Okay. Do you think the government should be doing anything after the legislation is implemented?

Ms. Trish Douma: In terms of what?

Mr. Bas Balkissoon: Letting your members know. How should we pass this on to the public?

Ms. Trish Douma: I think you'll have to do some public relations work to ensure that everybody is satisfied that the right balance has been struck.

Mr. Bas Balkissoon: Okay. So, generally, you're happy with what we're doing here.

Ms. Trish Douma: Yes, we are.

Mr. Bas Balkissoon: Thank you very much for taking the time to come here.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Balkissoon. Thanks to you, Ms. Douma, for your deputation on behalf of the Christian Labour Association of Canada.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair (Mr. Shafiq Qadri): Our next presenter, please come forward: Ms. Mary Ballantyne, CEO of the Ontario Association of Children's Aid Societies, and your colleague. I'd invite you to (a) be seated, (b) please introduce yourself, and I'll let you know when your time officially begins. Please begin.

Ms. Mary Ballantyne: Thank you very much for having us here. My name is Mary Ballantyne. I am the chief executive officer of the Ontario Association of Children's Aid Societies. It's the membership organization of 44 of the 47 children's aid societies in Ontario. With me today I have Wendy Miller, who also works at the Ontario association.

Today I'd like to speak to you about the work of children's aid societies to protect children, as mandated

by the Child and Family Services Act. In relation to Bill 113, some of the key functions of a children's aid society are to investigate allegations of abuse and neglect and also to place children with alternate caregivers such as foster parents, kinship parents or adoptive parents.

I want to start by saying that the OACAS and our members understand and respect that Bill 113 aims to protect civil liberties and to make sure people's private information is not used to discriminate against them. We also support the balance that this bill strikes between privacy and the protection of vulnerable people, such as children and seniors.

However, we do believe that it doesn't go far enough to protect children because, as it is written, it restricts the kind of information that children's aid societies use on a daily basis to make critical decisions related to child safety. We acknowledge and support that the Office of the Children's Lawyer is exempted from Bill 113; however, children's aid societies require the same or more information as the Office of the Children's Lawyer, and we don't have that same exemption.

Let me give you a couple of examples of where this is critical information and when it is needed. When a children's aid society is working with a family and it becomes apparent that the child cannot stay in their own home, they have to find an alternative caregiver for that child. Those alternative caregivers can be a relative of the child, can be a foster family or, eventually, could become an adoptive family. Right now, we do access information through a criminal reference check and a vulnerable persons check but we also are able to access other information that is very helpful in determining the safety and well-being of children.

I'd like to emphasize that coroner's inquest juries have repeatedly called for children's aid societies to have as much information, in a timely way, as possible to make the right decisions to keep children safe. For example, most recently the recommendation was made by a jury at the inquest into the death of Jeffrey Baldwin. People may remember that Jeffrey died while in the care of his grandparents. The inquest jury observed that, had the information that's currently available to CASs been available at the time that Jeffrey was placed with his grandparents, children's aid societies probably would have made a different decision.

The kind of information that we're talking about that children's aid societies would no longer have access to if Bill 113 were passed as currently drafted is information that relates to mental health and domestic violence, to the presence of restraining orders, and to youth records, particularly pertaining to young parents. OACAS is asking that you change that so that we would be able to see an amendment to Bill 113 that would permit children's aid societies to continue to receive this police record information, allowing them to make critical children's safety decisions.

This is also critical because this is a time when we're trying to find more foster and kin caregivers for children so that they can stay within families. If we are not able to

access this information, it does prevent us from finding as many potential opportunities for children.

In the spirit of the bill, we would also like you to know that children's aid societies are obligated under the Child and Family Services Act to maintain strict confidentiality of all personal information in their possession. There are explicit rules that each agency follows to make sure that the information is only used for the purpose of keeping children safe.

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Ms. Mary Ballantyne: I would also ask you to consider what would happen if CASs are not able to continue to access that non-conviction information. Judges will be making decisions that may not be in the children's best interest, children under the Children's Law Reform Act will have more safety than those in the care of children's aid societies, and as a result, a child could suffer. We have seen enough evidence of that and we would ask that you consider amending the bill accordingly. Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Ballantyne. To the NDP: Ms. French, three minutes.

Ms. Jennifer K. French: Thank you very much for joining us today. As you have put forward, you're requesting an exemption. I know that you spoke about it a little bit, but can you explain more in depth what that exemption would look like?

Ms. Mary Ballantyne: Similar to the Office of the Children's Lawyer, it would exempt children's aid societies from being restricted in the information that they're currently getting, which this bill would restrict them from being able to access.

Ms. Jennifer K. French: Okay. Just so that we're clear, what would that look like in practice? That's currently what's happening—

Ms. Mary Ballantyne: Do you want to speak to that, Wendy?

Ms. Wendy Miller: In practice, in terms of what the exemptions would look like, or in practice in terms of restricting that information to the CASs?

The Chair (Mr. Shafiq Qadri): Sorry, could you just introduce yourself for Hansard?

Ms. Wendy Miller: Forgive me. Wendy Miller, senior program analyst, OACAS.

Ms. Jennifer K. French: Sorry, just so that I'm clear, the exemption would essentially allow you to continue doing what it is that you're currently doing. If you could better help us explain what that is currently.

Ms. Mary Ballantyne: What we're currently doing?

Ms. Wendy Miller: Yes.

Ms. Mary Ballantyne: When a children's aid society is assessing a foster parent or perhaps when a grandparent comes forward and says, "I would like to take care of my grandchild," the children's aid society would access, through the police, the information around criminal conviction, but also would have access to this other information—whether there have been police calls to the home, whether there are restraining orders, those kinds of

things. That does help with determining the stability of the parent.

Ms. Jennifer K. French: Thank you.

Also, in your submission here, you suggested that it's an oversight in the drafting of the bill. Were you involved in a consultation process? Is this something that had already come up?

Ms. Mary Ballantyne: No. We were missed in the consultation process.

Ms. Jennifer K. French: So your hope, then, in going forward is that you can be involved in that process?

Ms. Mary Ballantyne: Yes. Yes, please. We do see that these children and the decisions that children's aid societies are making are similar to what the Office of the Children's Lawyer would be needing to make, but unfortunately, we weren't consulted when the bill was drafted.

Ms. Jennifer K. French: Do you imagine that there would be anyone else who would be seeking a similar exemption for a similar reason?

Ms. Mary Ballantyne: In addition to the children's aid societies?

Ms. Jennifer K. French: That might also have been missed in consultations.

Ms. Mary Ballantyne: I don't think so—not on such a grand scheme, anyway.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. French. To the governing side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you for being here. I just want to clarify that too. You're actually saying to us that if you want to check next of kin, grandparents or a foster family, the vulnerable record check that is in this legislation is inadequate for you?

Ms. Mary Ballantyne: Yes.

Mr. Bas Balkissoon: Can you tell me where the shortfall is, so that I can make sure that I understand?

1420

Ms. Wendy Miller: I can speak to that. I think it's in the schedule to the act itself, to the statute. It describes the kinds of information that are currently available through various checks: the criminal, non-criminal and vulnerable sector—

Mr. Bas Balkissoon: No, but if you apply for a vulnerable check for a foster family or a next of kin, what information will be missing that you absolutely need?

Ms. Wendy Miller: Information related to police contacts related to domestic violence, restraining orders, non-conviction information that gives important, critical information that is used by the clinicians at a CAS who are making decisions about children's safety. They take that information, such as information related to domestic violence calls—maybe there was never a conviction, but it suggests potential information that impacts whether that child would be safe going to live with that individual.

Mr. Bas Balkissoon: My understanding is you had a meeting with the staff at the ministry just recently.

Ms. Wendy Miller: Yes, we did.

Mr. Bas Balkissoon: You've raised this issue with them?

Ms. Wendy Miller: We have, and with our own ministry as well.

Mr. Bas Balkissoon: Can you share with the committee what they relayed to you in regard to exactly what's missing?

Ms. Wendy Miller: I can say that the legislation that we are operating under, the Child and Family Services Act, and its regulations reference criminal records checks. All the individual information that CASs are currently able to access that would be curtailed by this bill, they are accessing as a result of individual protocols with police detachments across the province. So the very attempt to create the legislative framework and consistency that this bill aims for is also tied up in how CASs currently receive this information. What's clear is that CASs depend on the information they are getting in order to fulfill their statutory obligation. We've made that very clear.

We understand that an amendment to Bill 113 may also need to be accompanied by complementary changes to regulations, and those are important discussions we hope to have going towards the clause-by-clause discussions.

Mr. Bas Balkissoon: Okay. Thank you very much.

The Chair (Mr. Shafiq Qadri): To the PC side: Mr. Hillier?

Mr. Randy Hillier: Thank you very much for being here. It is indeed unfortunate that you weren't part of the consultation process in the development of the legislation, unlike the previous presenter.

It is also unfortunate that we only have three minutes to speak to a very important bill that could have significant ramifications, which you've just raised, of compromising—or maybe even being in a prejudicial manner—your ability to scrutinize who will take care of vulnerable children.

You did mention that you had consultations with the ministry subsequent to the creation of the legislation. Have you proposed specific amendments to the ministry, and have you shared those with the committee, the specific wording of those proposed amendments?

Ms. Wendy Miller: We have. We've been in touch with the staff of the caucuses. We've been in touch with our ministry closely. As you've mentioned, we have spoken to the drafting ministry. What we have understood is that we've proposed language but the language may also require some further finessing in terms of the regulations.

We also understand that our ministry, the Ministry of Children and Youth Services, was invited to provide input to a regulatory exemption, but our members in the OACAS feel strongly that the exemption that we have for our sector should be in statute—

Mr. Randy Hillier: Yes.

Ms. Wendy Miller: —not only in regulation.

Mr. Randy Hillier: We know that with the regulations we give broad powers to the Lieutenant

Governor in Council, the cabinet, and also to the minister, to do as they may at any time in the future on a number of key things.

Number one is exempting any person or class of persons from any provision of this act and attaching conditions to that exemption. So there is the authority granted to cabinet; however, that authority, if it was to be exercised, would never be done in a public fashion. It's not done with open debate and being able to scrutinize it.

I think it is important, with the matters that you've raised, for the assembly to consider those and see how this may be a negative impact and work at cross purposes to what we're actually trying to do here.

Are you also concerned at all about just the increasing use of background checks in your interactions with foster parents, with the people that you deal with; if this legislation is going to exacerbate that and make it even more cumbersome or more widespread, and how that might affect the operations of the CAS?

The Chair (Mr. Shafiq Qadri): Sorry, Mr. Hillier. The question will have to remain rhetorical. Time has now expired.

I'd like to thank you, Ms. Ballantyne, and your colleague on behalf of the Ontario Association of Children's Aid Societies.

JOHN HOWARD SOCIETY OF ONTARIO

The Chair (Mr. Shafiq Qadri): I'd now invite our next presenter to please come forward: Ms. Jacqueline Tasca of the John Howard Society. Welcome, Ms. Tasca. Your time begins now.

Ms. Jacqueline Tasca: Thank you, and thank you for the opportunity to speak today.

For years in Ontario, people have been punished for crimes they have not committed. Routinely through police record checks, police have disclosed information about non-criminal and non-conviction interactions with Ontarians.

This is not a harmless practice. It strikes at the heart of our cherished legal presumption of innocence. It has also destroyed the hopes of countless people for jobs, housing, volunteering and education.

The scope and impact of this issue is tremendous. Thousands of Ontarians have records of non-conviction and many don't even know it. In recent years, the demand for record checks during hiring or screening has risen dramatically across sectors. People with non-conviction police records currently have no human rights protections in the hiring or employment context in Ontario.

The John Howard Society of Ontario has researched and documented the harm this practice has inflicted on so many vulnerable and often voiceless individuals. Most recently, we highlighted some of these findings in our report entitled Help Wanted. Non-conviction records can impact anyone. However, our research shows that certain populations are disproportionately impacted by both policing and therefore police records. These populations

overlap significantly with communities that already experience tremendous discrimination and marginalization. This includes racialized populations and populations with mental health and addiction issues.

We've also searched the academic literature on record checks to identify if there is any compelling evidence to support the use of non-conviction records to screen prospective employees or volunteers. We found no evidence to suggest a link between past non-conviction records and future criminal behaviour, particularly in the workplace.

In light of the tremendous societal harm associated with the continued disclosure of non-conviction records and the absence of compelling evidence for their use as a screening tool at the employment stage, we called for legislation. I am here today to express the John Howard Society of Ontario's support for this bill.

To be clear, Bill 113 regulates what is disclosed on police record checks. There are, in our view, some outstanding issues related to record checks, such as the lack of human rights protections in Ontario for people with police records, as well as the employer demand side of the issue. But Bill 113 addresses a critical piece of this issue and, if implemented, will have significant and positive impacts.

I want to draw your attention to what we view as four key aspects of police record checks that would be regulated and standardized under Bill 113.

The first is that Bill 113 brings much-needed clarity and consistency around the language used to describe police record checks, in establishing three key levels of record check. Presently, police services have significant discretion around what types of record check products they offer, what they call these record check products and what is disclosed at these different levels. This is confusing for both those being subject to record checks as well as those requesting and interpreting the results of these record checks.

The second thing this bill does is it standardizes the type of information that can be disclosed at the different levels of check. The need for transparency, consistency and fairness around disclosure is really critical. Crucially, Bill 113 will completely eliminate the disclosure of non-criminal police contacts. These are instances when people were never even charged or alleged to have committed anything criminal at all.

In addition, Bill 113 will greatly restrict the disclosure of non-conviction dispositions. These are the instances where individuals were charged with a criminal offence but ultimately not found guilty. Non-conviction dispositions under Bill 113 will only be disclosed in rare and exceptional circumstances—only at the vulnerable sector check level and only if they meet strict criteria.

We support this disclosure framework and the details of the assessment process are partially outlined in Bill 113, but we understand—

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Ms. Jacqueline Tasca: Sorry?

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Ms. Jacqueline Tasca: Thank you—we understand that they will be further refined in regulation. I should just say that we strongly endorse the 2014 LEARN guideline assessment tool and hope to see some of that replicated in the regulation.

1430

The third thing that Bill 113 does is it places consent back into the hands of the individual who is subject to the record check.

Fourth, it establishes a reconsideration process that must be mandatory to police services.

I'll stop there. Thank you for your time. I welcome any questions.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Tasca. To the governing side: Mr. Balkissoon.

Mr. Bas Balkissoon: Let me say thank you for being here and presenting to us.

You've made it very clear that you're supportive of the legislation. I understand that your group was one of the major players in the consultation with the chiefs of police in developing the LEARN guideline, so I'm assuming your organization is quite happy with the LEARN guideline. Does the bill completely reflect what's in that guideline to your satisfaction?

Ms. Jacqueline Tasca: Yes. Overall, I would say the bill does a very good job of capturing what was in the guideline and what we really liked about the guideline. There are a couple of areas, like I mentioned—the exceptional disclosure assessment, where part of it still has to be defined in regulation; namely, perhaps, a specific list of offences that can focus the exceptional disclosure assessment process. But outside of that, we're quite happy with it.

Mr. Bas Balkissoon: You made a comment and I slightly missed the beginning part. You made a comment something to the effect of “employer demand side”?

Ms. Jacqueline Tasca: Yes.

Mr. Bas Balkissoon: Can you explain that or expand on it so I understand?

Ms. Jacqueline Tasca: Sure. This bill deals with what is being printed, basically, on police record checks: What is the type of information that's being sent? It does not at all deal with the fact that with employers and all sorts of industries, the demand for record checks has been going through the roof. It will not curtail at all, necessarily, the level of demand for record check products. That's what I mean. We have a number of recommendations around that.

Mr. Bas Balkissoon: I guess you don't feel comfortable that once employers know there are three levels of checks and what they're looking for they will not get—which is the vulnerable record check, unless they're being employed in that sector of society. You don't think that would lower the number of requests?

Ms. Jacqueline Tasca: No, I don't think so.

Mr. Bas Balkissoon: A bank employee having to get a records check, and they only get a criminal record check, and they know that's all they'll get—I don't see that it'll drive up the volume—

Ms. Jacqueline Tasca: I don't think it will have an impact on the volume.

Mr. Bas Balkissoon: I would have thought it would.

Ms. Jacqueline Tasca: Well, I'd like to be wrong.

Mr. Bas Balkissoon: Your organization is 100% supportive of this because you participated in the process all the way through, and we thank you for that support.

The Chair (Mr. Shafiq Qadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: I want to just get into this expanding role of background checks, and if there was any discussion by your organization with the government in development of this. We have seen exponential growth in the demand for record checks over the years. Nobody will deny that the growth element is significant, and I don't see anything on the horizon that is going to abate that exponential growth. Were there any discussions in the development of this bill, from the John Howard Society, about ways and means that the government may incorporate elements into this legislation that would abate that growth? As you said earlier, there is an absence of evidence on the release of non-conviction records for employment and for many other activities.

Ms. Jacqueline Tasca: Certainly, we raised some of these concerns to the government when meeting with them initially about this issue.

One of the things we recommended and that we think would really serve to curb demand, or at least make demand a little bit more thoughtful around record checks on the employer side, is looking at a change to the Human Rights Code and offering more protections for people with police records in Ontario, because that will force employers to have to think a little bit more critically about matching the request for a criminal record check to a bona fide occupational job requirement. That was one of the suggestions we put forward.

The other thing is public education. There needs to be a little bit more public education around when it's appropriate to ask for what level of check. That's something my organization has been doing, along with the Canadian Civil Liberties Association.

Mr. Randy Hillier: What was the response to that first element from the John Howard Society, to abate this growth—your recommendation to the government?

Ms. Jacqueline Tasca: So far, we haven't had a response directly, but that's because we haven't approached the Ministry of the Attorney General. We made the recommendation broadly and we've approached the Ontario Human Rights Commission on that. It's an ongoing piece, but we saw it as falling a little bit outside of the scope of this bill. We continue to pursue it.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: Thank you very much for joining us today. I appreciated your submission.

As you had said, this is not a harmless practice and, of course, you would hear from many and varied people across the society.

One of the pieces that I don't think you had a chance to talk about was youth records. Is that something you wanted to take the opportunity to share?

Ms. Jacqueline Tasca: Sure. Our organization has had some concerns about the disclosure of youth records, as it stands on record checks in Ontario. The 2014 LEARN guidelines still allow for the disclosure of some youth findings of guilt. The legislation, Bill 113, emulates that in the schedule. We have some concerns around the disclosure of youth records generally, in terms of how consistent that is with the spirit of the Youth Criminal Justice Act, which offers some pretty strong safeguards around the disclosure of youth records.

From what we understand, in Bill 113, it seems to us that the government has done a good job at coming up with the solution to that issue, in that, if we understand the legislation correctly, when a young person—they may or may not be an adult at the time of the record check—goes for a record check, there will be two sheets. There will be a detachable sheet where the first sheet gives you the outcome of the record check except for the youth records and the second sheet will contain the youth records that are only accessible, perhaps, to the youth. The youth will be able to detach that and only hand over the results of the front part of the record check to their employers, who might not be able legally to access the youth part, which is something that's been going on frequently.

Ms. Jennifer K. French: Thank you. Just in the interest of time—you had also mentioned that a positive about this is consent back in the hands of the individual. Actually, no, I'm not going to give you a chance to talk about that; I had another question.

As you said, in rare and exceptional circumstances, you support the disclosure framework and that you're watching to see that it will be further refined in regulation. Do you have any suggestions or thoughts on the discretion to disclose, on what that should look like and who should have that power?

Ms. Jacqueline Tasca: In the LEARN guidelines, they specify existing lists of offences that are to be contemplated for disclosure—

Ms. Jennifer K. French: Who should—

Ms. Jacqueline Tasca: But who should be making that? In the guidelines, they also recommend escalating it to beyond the records staff, escalating it to either a manager or some more senior staff in order to make that decision. I think that sort of process is something that we would like to see emulated in regulation.

Ms. Jennifer K. French: Okay. Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. French, and thanks to you, Ms. Tasca, for your deputation on behalf of the John Howard Society of Ontario.

ONTARIO PEER DEVELOPMENT
INITIATIVE

The Chair (Mr. Shafiq Qaadri): Our next presenters, please come forward: Ms. Sherman and Mr. Cheng of the Ontario Peer Development Initiative. Welcome. Please be seated, and your time officially begins now.

Ms. Deborrah Sherman: Good afternoon. I want to thank you for this opportunity to present to the standing justice committee, Mr. Chairman.

My name is Deborrah Sherman, and I am the executive director of the Ontario Peer Development Initiative. With me today is our policy analyst, Raymond Cheng.

OPDI is the provincial umbrella of some 52 consumer-survivor initiatives and peer support organizations in Ontario. We are funded by the Ministry of Health to bring the voice of these groups, which are run by and for people with lived experience of mental health conditions and addictions, to provincial planning and policy processes. In addition, we created and provide a basic training program for peer supporters. We are pleased to share with you the perspective of people with lived experience of mental health and addictions at today's hearing.

To give some anecdotal background: In the spring of 2000, shortly after becoming the executive director of one of OPDI's member organizations, I attended a workshop on public sector screening that was provided to non-profits by my city's police service. We were taught that the basic cost of a volunteer screening was \$40, that a quicker turnaround for paid staff could be had for more money and we were told how to interpret the information we would be seeing on returned records.

The facilitator that day also took the opportunity to point out to the roomful of volunteer and human resources directors that, should we ever see the phrase "taken to hospital" on these reports, we could take that as a sort of code that the person has a mental illness, and we might want to think twice about them.

1440

I very quickly learned that very few of the marginalized people who made up our membership could afford the fee, and that every dollar spent by the program on screening board members and staff was a dollar taken out of our programming. I quickly saw that I was receiving reports back that not only listed every time someone was taken to hospital or in some cases charged with some misdemeanour or crime, but I was even seeing lists of how many times they had called police to report something. Every single contact with police was showing up on these reports.

I quickly learned from the members and the staff that the cost and the indiscriminate information-sharing was standing in the way of their efforts to get jobs, to get vocational training, to get volunteer positions and sometimes even to get social housing. Rather than use these reports to identify how to include people, as my program did, many local organizations were using them

as reasons not to include some people at all. Then over time, I became quite appalled to learn that somehow, some people's information was finding its way to the US border, and people had family vacations or business trips ruined when they were turned back from the border because of past suicide attempts.

After 15 years and a whole lot of advocacy by the Police Records Check Coalition and a number of other groups that we are in touch with, we're pleased to finally have this legislation. We're impressed with the breadth and the grounded understanding of the impact that each of the three political parties showed in the second reading of Bill 113. That being said, though, we would like to offer these four observations on improving the Police Record Checks Reform Act of 2015.

First of all, the bill spells out that there are three kinds of police records checks. It is possible that an individual might be asked for different reports as a condition of employment, or for volunteering or for vocational placement. The costs of such checks can represent a financial burden on those with limited incomes. It's not clear, but quite possible, that repeat annual screenings may be required by some organizations. Such fees represent a significant economic barrier to full participation in society. At present, the bill is silent on this point.

Secondly, consumer-survivor initiatives may have to adopt police records checks for all staff and volunteers if this broad standard is adopted provincially and becomes required by insurers. If individuals cannot afford these costs, the organizations themselves may have to absorb them as part of their staffing expenses. Non-profits, and especially peer support organizations, have very limited staffing budgets, and they'll find themselves forced to choose between doing due diligence and doing programming for their members and clientele.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Deborrah Sherman: The act gives broad definition to police forces on how to word the results of their checks. The legislation allows the applicant to review unjust non-conviction information. We believe the bill should lay out a provincial standard for police forces by spelling out a common set of working forms using plain language so that the results of police record checks can be applied consistently and unambiguously in Ontario. This would minimize discrepancies in reporting and resultant appeals of inappropriate disclosures.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sherman. To Mr. Hillier of the PC side.

Mr. Randy Hillier: Thank you very much for being here. Again, it's unfortunate that the government has only allocated three minutes for discussion on this important bill, which I support as well. However, I do think there are some elements, such as ones you've pointed out.

I'm wondering, during your discussions with government, if you were part of that consultation process, if you brought up these points, number one and two; we didn't get to number three within your three-minute time

frame. These can be significant barriers. We have seen a continued growth in reliance on the use of background checks.

Have you put forward any suggestions that would have mitigated those concerns that you've identified?

Ms. Deborrah Sherman: We've not been consulted by the government directly on this. We have been a corresponding member of the Police Records Check Coalition. I believe Raymond attended a couple of their meetings.

I think what is going to ultimately happen and what would be a good idea to put in place in the first place is—perhaps a centralized repository or a centralized process for getting at this information would make a lot of sense. I predict that like every other piece of statistical gathering we have to do as programs of the mental health ministry, it will probably end up becoming quite evident that this needs to happen in order to get consistent information and to have things applied consistently and priced consistently, and remove that burden from the police services.

Mr. Randy Hillier: But you do have a concern that this increasing reliance on it will have a detrimental impact on your operations.

Ms. Deborrah Sherman: Yes.

Mr. Randy Hillier: And that there aren't any safeguards or mitigating clauses in the legislation to help deal with that challenge.

Ms. Deborrah Sherman: Correct.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: Thank you for joining us today. Unfortunately, as we saw, you ran out of time midway through your third point about a common set of working forms using plain language, so that, as you have said here, the results of police record checks can be applied consistently and unambiguously in Ontario. If you want to take a moment and further expand on that, and then I want to ask you about your fourth point we haven't heard about.

Ms. Deborrah Sherman: Okay. Certainly people are very mobile. What happens in one city with one police force could be very different from what gets reported by a police force from another city. For our way of thinking, it makes a whole lot of sense to provide them with a standard set of forms that they're asked to use so that there's much more consistency, so that everybody knows what to expect and so that the kind of language that's used in the reporting is also consistent and far less discriminatory than it is today, or has been to now.

Ms. Jennifer K. French: Thank you. One of the points that you had the chance to make is that people, as they're trying to go on vacation or take business trips, have run into surprises at the border, with some of their mental health history becoming, essentially, public and affecting their plans. So your fourth point here, about non-criminal mental health information remaining in the

hands of the FBI and US border patrols: What would you like to say on that?

Ms. Deborrah Sherman: I know several people that this has happened to, and the effects are really quite devastating. You're all packed up, you're with your family, you're heading for Florida, and suddenly there's a decision that has been made: Are we going to leave our family member home and go without them, or are we all going to turn back?

It has a huge impact on people. It definitely affects their self-esteem, how they view themselves. I've known people that it has happened to, and it has put them back into a bad state of mind, to be put down in that manner. Certainly, it's an unexpected thing. You never know when it's going to happen, and it's because there is something in that record that says they, once upon a time, made a suicide attempt. That's personal health information; it has no place at the US border.

Ms. Jennifer K. French: Would you say anything to the government on that subject—a recommendation, perhaps?

Ms. Deborrah Sherman: We certainly hope that this legislation will put a stop to it. Retroactively, though, what happens? We know that you can't go and say, "Give us back all the information." But it's good in the sense that hopefully this will be stopped.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. French. To the governing side, to Mr. Potts.

Mr. Arthur Potts: Yes. Ms. Sherman, and thank you very much for being here. Very interesting. I think you have laid out very clearly one of the reasons why this bill was necessary, particularly in what you were seeing with records and how that impacts people's capacity not just to volunteer but for people to work.

Are you satisfied that we are getting to that piece of the puzzle, in that all those background non-conviction issues, all those issues of police stops, aren't going to be divulged in a simple employment application when they want a criminal background check?

Ms. Deborrah Sherman: I do feel that you are getting towards resolving a lot of the issues that happen. I would point out, however, a little bit of concern about the fact that in our field every screening would almost be a vulnerable sector screening, as opposed to the other two types, and so the more stringent pieces may apply. To apply those pieces to people with mental health issues who are not looking to adopt children, necessarily, or become foster parents—I certainly see the need for extra screening in those types of settings, but most of the people who would be wanting to volunteer or get jobs with our organizations would be interested in doing peer support, because that's what we do.

1450

Mr. Arthur Potts: So you would describe the people you're servicing through your organization as vulnerable people—

Ms. Deborrah Sherman: Yes, quite a few of them.

Mr. Arthur Potts: —in the sense that children would be vulnerable or seniors would be vulnerable.

Ms. Deborah Sherman: Yes, similarly.

Mr. Arthur Potts: And I'm not sure; I guess that has to be spelled out in the regulations. I know that staff is here taking note about how that would apply in the circumstance.

You talk about the three levels of checks. You give the impression that that's three different applications, when in fact it's just different levels, so some are available in some and not in others. I just want to clarify that you know that's not going to be three separate applications.

Ms. Deborah Sherman: Yes. It's different levels of scrutiny, correct?

Mr. Arthur Potts: Yes.

Ms. Deborah Sherman: But in our sector, a lot of people don't get full-time work, they get part-time work, so every employer you go to wants a screening. Hopefully, you're able to provide one screening. Some of them demand their own. It's a question of what is being asked for and being careful around what is being asked for, and not applying the same levels of scrutiny to a person several times.

Mr. Arthur Potts: I'm going to let the PA have a little shot at it.

The Chair (Mr. Shafiq Qadri): Mr. Balkissoon, 20 seconds.

Mr. Bas Balkissoon: I'm trying to clarify, because I know who your clients are. They're clients with mental health issues—but that's your client. If they are looking for a job, unless that employer is involved with vulnerable people, the employer cannot request a vulnerable check. Are you aware of that?

Ms. Deborah Sherman: Correct.

Mr. Bas Balkissoon: So that will help your client.

Ms. Deborah Sherman: Yes.

Mr. Bas Balkissoon: Okay. Are you aware that the issue you mentioned about crossing—

The Chair (Mr. Shafiq Qadri): Thanks to you, Ms. Sherman and Mr. Cheng, for your deputation on behalf of the Ontario Peer Development Initiative.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mr. Shafiq Qadri): I invite our next presenter to please come forward: from the Canadian Civil Liberties Association, Laura Berger. Welcome. You've seen the drill: five minutes and then questions by rotation. Is it pronounced "Burger" or "Berger"?

Ms. Laura Berger: I'm from Quebec, so I answer to both.

Le Président (M. Shafiq Qadri): Voilà. Vos cinq minutes commencent maintenant.

Ms. Laura Berger: Merci and thank you. I would like to thank the committee for giving the Canadian Civil Liberties Association the opportunity to speak to this important bill.

As you may know, the CCLA is an independent, non-profit, non-governmental organization. For over 50 years, our work has brought us before legislative bodies, but

also before courtrooms and in classrooms all across Canada. We work to promote and protect the fundamental rights and freedoms of all Canadians.

Over the past 10 years, we have worked extensively on the issue of police record checks. We have intervened in court cases, published two major reports, and delivered dozens of public education workshops.

We have also provided legal information, and occasionally advocacy support, to over 100 Canadians who have contacted our offices with concerns about police record checks. I personally receive calls and emails every month from Canadians who are worried about the impact that a youth finding of guilt, or old criminal charges, or even a past suicide attempt could have on their lives and their livelihoods.

Based on all this experience and expertise, we welcome the introduction of the Police Record Checks Reform Act. In my time before the committee, I wish to speak about Bill 113 through the lens of individual rights.

We believe this legislation is a necessary first step in combatting unnecessary and overly invasive police record checks. It is necessary if we want to be a society where the presumption of innocence truly means something. Indeed, the bill responds to the very first recommendation in our most recent report on this topic, which urged government to legislatively prohibit the disclosure of non-conviction records on criminal record and police information checks.

I would like to highlight a few features of the bill.

First, as we know, the bill will end the disclosure of information about police contact that never resulted in criminal charges. It also strictly limits the disclosure of information about charges that never led to convictions: charges that were withdrawn, that were stayed, or that resulted in an acquittal.

The CCLA supports a strong presumption against disclosing any non-conviction information on police record checks. In our view, individuals who have never been found guilty of an offence are entitled to benefit from the presumption of innocence that underpins our justice system.

As you heard from my colleague from the John Howard Society, our review of the social science evidence shows that there is no evidence suggesting that non-conviction information is helpful in predicting the risk that a person may offend in the future, particularly not in the workplace.

Now, of course, under Bill 113, some non-conviction information may be disclosed in a narrow range of cases. As you know, there is an exceptional disclosure test in the 2014 LEARN guideline. The intent behind this exception was very specific. Despite the lack of social science evidence demonstrating the utility of non-conviction records as screening tools, there do remain strong fears in the community about child sexual predation and fraud schemes targeting the elderly. The exceptional disclosure assessment in the LEARN guideline was intended to limit the scope of discretion that police forces have in disclosing non-conviction

information, but to allow a narrow and limited valve for some of that information to be disclosed in appropriate cases where there is a pattern of sexual or financial predation.

There are two features in the LEARN guideline that we hope will be reflected in the regulations envisioned in Bill 113. Again, my colleague from the John Howard Society mentioned these. The first is separating the exceptional disclosure assessment from the routine processing of record checks. The decision to release non-conviction information should not be made by the member or the clerk processing the record check. It should be elevated to a supervisor who has training in assessing exceptional disclosure cases.

Second, we support confining the scope of disclosure to specific offences. In the LEARN guideline, we have several schedules—

Le Président (M. Shafiq Qadri): Trente secondes.

Ms. Laura Berger: Thank you. I do want to mention one final outstanding issue because I think this has been very common in debate before the House. There is an outstanding issue around travel to the US and elsewhere. It is our understanding that Bill 113 does not resolve the issue that Ontarians with police records, including records that reveal a person's mental health history, may face barriers in travelling to the United States. This is because the bill does not currently address—

Le Président (M. Shafiq Qadri): Merci, madame Berger, pour vos remarques introductoires. Maintenant, je passe la parole à M^{me} French du NPD.

Ms. Jennifer K. French: Merci. If you would like to continue with that thought, please take the opportunity.

Ms. Laura Berger: I would just like to say that the bill doesn't address information-sharing between law enforcement agencies. It's our understanding that US border authorities are able to query the Canadian Police Information Centre, CPIC, and they have access to some records in the SIP—special interest police—repository or section at CPIC. It's my understanding that that access is not affected by this bill, so even after the passage of Bill 113, there will be a need to work with policing partners and in particular privacy advocates, like the Information and Privacy Commissioner, to find rights-respecting solutions.

Ms. Jennifer K. French: Thank you very much. One of the pieces that you had mentioned, the scope of discretion—you and your colleague before had referred to management or the clerk or member responsible for keeping the records being able to choose to disclose. Can you talk a little bit more about that piece of it? When you say “manager,” is that from within that community or outside?

Ms. Laura Berger: Currently, under the LEARN guideline, the idea is that a supervisor within the police service is making that exceptional disclosure assessment, as opposed to the member who is routinely processing the checks. I think this was a solution aimed at trying to ensure thoughtful decision-making and thoughtful

exercises of discretion within the current format, which is that police services are processing record checks.

As you are perhaps aware, the CCLA, along with other organizations, has recommended exploring a model similar to BC's for vulnerable sector checks, where disclosure decisions would be made by a centralized screening body that has expertise in risk assessment and would essentially give a red light/green light when someone has made an application for a vulnerable sector check. The idea behind that is that it puts decision-making in the hands of a specialized body that has expertise in risk assessment, as opposed to having that level of discretion in the hands of police services.

But we are satisfied that the LEARN guideline and consequently the bill does as much as possible within the current framework to try to rein in the discretion wielded by police services, which has, up to now, resulted in inconsistent decision-making and inconsistent results across the province.

1500

Ms. Jennifer K. French: Okay.

The Chair (Mr. Shafiq Qadri): Eight seconds.

Ms. Jennifer K. French: Thank you very much.

Ms. Laura Berger: Thank you.

The Chair (Mr. Shafiq Qadri): Well-used, Ms. French.

To the government side: Ms. Naidoo-Harris.

Ms. Indira Naidoo-Harris: Ms. Berger, thank you so much for coming in today and sharing your thoughts about this very important bill with us.

Your organization is well-known for its monitoring of the legal and policy frameworks that govern policing, and the administration of justice in Canada. What you really try to do is ensure that we are being respectful of civil liberties and the Charter of Rights. I'm really interested in finding out: How do you feel this legislation, if passed, will respect civil liberties and the Charter of Rights?

Ms. Laura Berger: There are some very fundamental values in our charter. One of them is the right to privacy and another one is the presumption of innocence. These are fundamental ideas in our justice system. We do have a system where people who have not been convicted or found guilty of an offence in a court of law can nevertheless suffer the consequences.

Another important charter value is the value of equality. As you've heard from people giving deputations before me, in the past we've seen people with mental health issues and members of marginalized communities facing incredible stigma and barriers because of the current system and the lack of legislation in this area.

We are very excited to see this move forward. There are outstanding issues around privacy protection, human rights protection and so on that we hope Ontario will continue to tackle.

Ms. Indira Naidoo-Harris: You touched earlier on the idea that the collection of this data doesn't really assist in terms of predicting behaviour. Can you tell me a little bit more about that?

Ms. Laura Berger: Sure. When we looked at a review of the literature, we found that if you look at actual criminal convictions, the evidence suggests that there is not a strong correlation between record of conviction and future workplace offences. There is absolutely no evidence that a non-conviction record—which could be anything from a spurious charge that was quickly dropped, or allegations and investigations that never led to charges. There is absolutely no evidence that people with those sorts of records are at a greater risk of offending in the future than the general population.

When we do public education campaigns for employers or non-profits, we try to emphasize this: It's a stereotype and it's a faulty assumption to believe that someone with a police record is going to be a worse volunteer or is going to pose a risk to clients or organizational assets. That's why we're very—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Naidoo-Harris. To the PC side: Mr. Hillier.

Mr. Randy Hillier: I guess we'll have to temper my desire for wide-ranging discussion on this piece of legislation to meet the three-minute time allocation the government has permitted.

I would like to ask you, specifically under section 19 of the bill, if it gives the Canadian Civil Liberties any—if you're aware of this and what you might have to say: “A prosecution shall not be commenced under this section without the minister's consent.”

Of course, this bill provides a \$5,000 offence for contravention of the release of information. Have you ever seen a bill or a law where prosecution requires the consent of the minister to go ahead?

Ms. Laura Berger: It's my understanding that other privacy statutes in Ontario, including MFIPPA, FIPPA and PHIPA, also require ministerial consent for certain prosecutions.

Mr. Randy Hillier: FIPPA requires ministerial consent?

Ms. Laura Berger: For certain offences under those privacy statutes.

Mr. Randy Hillier: So under this statute, all offences require ministerial permission. Do you have any concerns about that, or any comment that you would like to share with the committee?

Ms. Laura Berger: I think that the enforcement of privacy statutes is a large issue and sort of a big can of worms, so to speak. I'm not best-placed to assess, for instance, under MFIPPA, FIPPA and PHIPA, what the enforcement challenges have been. That might be worth speaking with the Information and Privacy Commissioner—

Mr. Randy Hillier: The context of this bill is—we know that generally it's police services that are providing the information.

Ms. Laura Berger: Right.

Mr. Randy Hillier: If it's not done in the correct manner or whatever, the complainant would have to seek the minister's consent and approval—written approval—before any charges would be brought forward.

Ms. Laura Berger: Right. My sense is that an individual would also be able to bring a civil action for invasion of that person's privacy as well.

Mr. Randy Hillier: Okay. I didn't see that—

Ms. Laura Berger: It's not in the bill, but I don't see anything that precludes the normal causes of action.

Mr. Randy Hillier: What about the review? Does this cause you any concern that the review of the legislation and how it has been implemented will not be made public or that there's no requirement for it to be made public and it's strictly the minister's prerogative?

Ms. Laura Berger: Right. I think we would hope that when it comes time for the review, it is a broad-based review, that consultation with—

Mr. Randy Hillier: Would you like it to be public?

Ms. Laura Berger: I think it would be helpful if at least some of the conclusions were public and that there was some public discussion.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hillier. Merci, madame Berger, pour votre députation présentée pour l'Association canadienne des libertés civiles.

M^{me} Laura Berger: Merci à vous.

ONTARIO NONPROFIT NETWORK

Le Président (M. Shafiq Qadri): Maintenant, je voudrais inviter notre prochain présentateur, M^{me} Liz Sutherland, policy adviser of the Ontario Nonprofit Network. Welcome, Ms. Sutherland.

Just to be clear, the submission on behalf of the Canadian Civil Liberties Association quite strategically also contains the submission by—

The Clerk of the Committee (Ms. Tonia Grannum): No, no, it's separate. It's just that they were handed out ahead of time.

The Chair (Mr. Shafiq Qadri): They were handed out ahead of time.

The Clerk of the Committee (Ms. Tonia Grannum): And for the Ontario Nonprofit Network.

The Chair (Mr. Shafiq Qadri): And for the Ontario Nonprofit Network. Thank you.

Ms. Sutherland, your time begins now—five minutes, as you've seen. Please begin.

Ms. Liz Sutherland: Thank you, Mr. Chair. I'm Liz Sutherland. I'm pleased to be here on behalf of the Ontario Nonprofit Network. We're the network for the 55,000 non-profit organizations that make Ontario communities more vibrant, inclusive and innovative places to live, work and play.

The issue of police record checks is incredibly important to our network. About half of our network has paid staff and the other half doesn't, which, you can imagine, is an issue when it comes to reviewing police record checks in volunteer-led organizations.

Our sector provides volunteer opportunities for five million Ontarians, and our interest in Bill 113 is ensuring that these checks are used appropriately as one tool in a

comprehensive approach to volunteer and employee screening.

I've got five main points I'll touch on quickly. First of all, I would like to say that ONN is pleased with Bill 113. We were pleased to see it tabled. It's an important piece of framework legislation, and the legislation reflects a lot of the discussions that we had with the ministry in advance of its tabling.

We have been working for some time with the John Howard Society, the Canadian Civil Liberties Association and the Ontario Association of Chiefs of Police to press for changes to the police record checks system. We're pleased to see that this bill builds on the good work done by the LEARN network and others in our sector.

We're pleased with the consistent terminology it establishes and we agree with the provisions for the vulnerable sector checks and the requirement that an individual give consent before the information in his or her check is released to a third party. We appreciate the increased consistency around police record checks across a number of existing acts, such as those that govern child care and long-term care for the elderly.

Our second point is that unless Bill 113 is amended to address processing timelines and the cost to volunteers of police record checks, we will seek clarity in the forthcoming regulations under the act to provide consistency on these issues.

We've heard from non-profits that some police services can process checks in days while others take 10 weeks or more. There's also significant variability in terms of the cost. About half the police services in Ontario charge for police record checks and the other half don't, and we'd like to see consistency on that practice.

Aside from regulating the fees and timelines, we'd like to see the regulations provide some clarity on the circumstances in which different levels of checks are used. We'd like clarity on record check providers offering electronic applications and processing. We'd like to require that police record checks state in their public materials that they offer all three levels of police record checks, to reduce the overreliance on vulnerable sector checks. Finally, we would like to see a robust framework for statistics to be collected and released as data sets in accordance with the Ontario government's draft Open Data Directive.

These are things that we would like to see in the regulations if we don't see them amended in the bill itself. I know there has been discussion at second reading about these things.

1510

Our third point is that ONN is concerned that the interpretation of sensitive information released as part of vulnerable sector checks remains in the hands of employers and stewards of volunteers, particularly in the case where non-profits have no staff. Ultimately we would like to see this legislation complemented by two systems that would further reduce the administrative burden on non-profits: first will be a central screening

service that provides clear results—pass, fail, adjudicate or appeal—for vulnerable sector checks, as is in place in British Columbia, instead of police record checks information that non-profits have to interpret themselves. We'd also like to see a program that covers the cost of volunteer checks if it is determined that fees are continuing to be charged for volunteer checks across the province. So that's the system that we would like to see in place: this framework, a central screening service, and a program for volunteer police record checks costs.

Our fourth point is that we support, in principle, the idea that private member's Bill 79, the Helping Volunteers Give Back Act, be incorporated into this bill. It would allow the volunteers to use the results of a police record check across multiple organizations, within a given time frame, without paying additional fees. We realize that this may not be possible for vulnerable sector checks because different information may be released to different organizations depending on the nature of the position.

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Ms. Liz Sutherland: Thank you. But for other checks we think that this would be a good idea, if these continue to be charged.

Our last point is that we are looking forward to working with the Ontario government and our other partners on public education. We know that police record checks are overused in this province and we would like to encourage more organizations to use the Screening Handbook and the 10 steps of screening, of which police record checks is only one. We've heard reference to education in this bill. If there may be an amendment, that's great. If not, we would like to—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Sutherland. To the government side, to Mr. Balkissoon. Three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Thank you very much for being here and making your presentation. I just wanted to ask a couple of questions. You made it very clear that you participated with the John Howard Society and the chiefs of police and everything, so you're quite pleased that this bill is incorporating everything that is in the LEARN guideline?

Ms. Liz Sutherland: We can't speak to the technical specifics of that, but our understanding from our partners is that the LEARN guideline has been well reflected in this bill. Our interest, though, is in how this will affect employers and stewards of volunteers, so we shouldn't comment on the actual technical aspects of the police records themselves.

Mr. Bas Balkissoon: So you see the three different checks actually helping in your checks that you receive for volunteers today—that they would provide more opportunities for more volunteers in the long run?

Ms. Liz Sutherland: It certainly provides clarity. Now that we know which levels are available across the province, we can do better education on that and where the different levels are appropriately used. So certainly that's a useful framework for our sector.

Mr. Bas Balkissoon: You mentioned the multiple use of a record check and you did say you realized that there should be some timeline. Do you have any idea, if I was to get a record check today, how long it should be valid for? The people issuing the check have a concern that it's a snapshot as of that day. If something happens in the near future, it would not be captured, so have you given much thought about what you see as a reasonable time frame?

Ms. Liz Sutherland: The private member's bill refers to a year as being a reasonable time frame. I would say that would be a minimum. Some organizations say every three years; I think that seems reasonable. Frankly, the number of people who are going to offend over the course of a period of a year or two who don't have a record already—I don't think this is a major issue in terms of risk management for non-profit organizations.

Mr. Bas Balkissoon: My colleague here has a question.

The Chair (Mr. Shafiq Qaadri): Ms. Martins.

Mrs. Cristina Martins: Thank you so much, PA Balkissoon. I just wanted to say welcome to Liz and thank you so much for all the work that you do. Liz is one of my constituents so I just want to say thank you for all the volunteering that you do and everything that you contribute to our community.

Ms. Liz Sutherland: Thank you, Ms. Martins.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. Attending to constituents' needs is always welcome.

To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much. Points 2, 4 and 5, I think, are important ones to emphasize to the committee because all members here will have experiences, wide-ranging and a wide spectrum, of how fast police checks are done, as well as the time that comes with it. There is nothing in this bill that drives or motivates or incents consistency on either of those two elements: cost or timeliness. I think it would be well-received by everybody if we could drive and have more consistency on that.

Also, number 4: We've seen this often, needing to go back to the well time and time again to get the same background check but for a different application or a different employer. It could be a host of different things: a different minor hockey league, a different bus company, I don't know.

So you don't see any inherent faults with that? Was there any response from the government in your consultations about incorporating those aspects of Bill 79 in this legislation?

Ms. Liz Sutherland: Thank you. We didn't speak to Bill 79 in particular, but we did talk about timelines and costs in general. We were told that those types of things might not be appropriate for the legislative stage, but that they could certainly be addressed in regulations. So we do look forward—if there isn't an amendment on that—to working with the government at the regulations stage

to see that those issues are addressed. They are very important for our constituents.

Mr. Randy Hillier: Are you confident that you'll be included in that development of the regulations?

Ms. Liz Sutherland: Yes.

Mr. Randy Hillier: Because as members, we're not.

Ms. Liz Sutherland: Right. Our understanding is that we will be consulted at the regulation stage.

Mr. Randy Hillier: Okay. Finally, on the education—I think that's a very substantial and not-spoken-of element: the need to create more public awareness to begin to lessen the overuse of background checks. As we've heard from many deputants today, there's no evidence whatsoever that—they're more of a—in the trade, we used to say a CYA purpose, more than an actual due diligence or to provide any tangible benefits. Any response from the government in those consultations of an interest in doing a public awareness campaign with this bill?

Ms. Liz Sutherland: Yes. It is our understanding that we would be welcomed to work in partnership with the government and other non-profits—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The interruptions are not preplanned, I do assure you.

Ms. French.

Ms. Jennifer K. French: Okay, my turn. Hi. Thank you very much for coming. We appreciate your submission here.

I will be happy to further the point of my colleague from the Progressive Conservatives. My question is also about education. As you had mentioned, it's important to educate your sector so that they would know when to use the three different checks. What would that education plan look like for the broader public in terms of overuse or specifics there, but also in terms of your own sector and the importance of understanding when to use which check?

Ms. Liz Sutherland: Yes. I do believe that a public education campaign can actually address some of the issues that we have with costs and timelines because the overuse of police record checks contributes to those issues. I can't sketch out a plan for you, but I certainly can say that there is a network of volunteer centres across Ontario. We have strong connections with them and with Volunteer Canada on appropriate use of police record checks in an overall holistic screening approach.

You could use any kinds of mechanisms, whether it be webinars or workshops—I know that some of my colleagues have already conducted some of these—but certainly an outreach effort in lots of different parts of the province to get the word out to non-profits through their own networks I think would help.

Ms. Jennifer K. French: Okay. Another thing that you had mentioned was that you would be advocating for the development of regulations, especially to ensure that fees, timelines and other processing barriers are addressed. We've heard now about fees, costs and

timelines, but other processing barriers—if you'd like to elaborate.

Ms. Liz Sutherland: Thank you, yes. We've heard that some police services require money orders. In this day and age, that seems archaic and it can also be an added cost to purchase a money order. We think that it would be appropriate to move to electronic applications and processing of these checks and that would eliminate some of the barriers in terms of paper-based applications.

Ms. Jennifer K. French: Okay, that's interesting. More than eight seconds?

The Chair (Mr. Shafiq Qadri): A minute.

Ms. Jennifer K. French: Oh, sweet. Okay. Shoot, I lost my spot.

Also, back to the cost, then: As you had said, a program that covers the cost of volunteer police record checks for eligible non-profit organizations is something that you would advocate for. Do you have opinions on what that could look like?

1520

Ms. Liz Sutherland: There is a model in Alberta. There's an organization in Alberta, Volunteer Alberta, that actually runs a program for the government whereby they essentially legitimate non-profits that should have access to that program and ensure that they have the right tax status and so on so that they can take away the cost. There's a cap on the program, but it's used by a lot of non-profits in Alberta. With some tweaks, it seems to be working fairly well, so we would examine that model for here.

Ms. Jennifer K. French: We would hope, then, that the government would also examine that model.

Ms. Liz Sutherland: We would hope so.

The Chair (Mr. Shafiq Qadri): Thanks to you, Ms. Sutherland, for your deputation on behalf of the Ontario Nonprofit Network.

JUSTICE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qadri): Is Ms. Birdsell from Justice for Children and Youth here? You're right on time. You have five minutes for an opening address, and three minutes by rotation for questions.

Ms. Mary Birdsell: Thank you. I will just pass to you our written submissions.

The Chair (Mr. Shafiq Qadri): Please be seated. Your deputation officially begins now. Your colleagues are welcome to join you. If you speak, please introduce yourselves. Go ahead.

Ms. Mary Birdsell: Thank you. I am Mary Birdsell. I am a lawyer and the executive director of the legal clinic Justice for Children and Youth. I'm here with my colleague Emily McKernan, who is a lawyer in our office as well.

What we would like to do today is just speak to you briefly about the impact of the Police Record Checks Reform Act on Youth Criminal Justice Act matters. We're going to restrict our comments to that.

What you'll see in our submission is that we've raised essentially two levels of concern; but really one amendment to the bill, in our view, would resolve the totality of the problem in some respects.

We're very pleased to see this bill. Over the last 15 years, we have been advocating and working on the issue of the disclosure or non-disclosure of police records, especially in the context of records checks for volunteer opportunities and employment opportunities. Young people are making these kinds of requests.

What we're seeing routinely with clients in our office is that their records are being disclosed—not just records during what you may be familiar with as the access period provided for in the Youth Criminal Justice Act, but beyond that period of time as well.

If I can back up for a moment, the difficulty is that the Youth Criminal Justice Act, having authority over all records, including police records, prohibits the disclosure of information except to a specific list of people who are enumerated in the Youth Criminal Justice Act. The reason that police records get disclosed is that the young person is the one making the claim, and of course they are entitled to access to their records, but really, the purpose of that access is to use it to give to a third party. The Youth Criminal Justice Act would actually make it illegal for that young person to then go and disclose to the employer.

But of course, the circumstance—you can imagine a young person is applying for a job or a school placement opportunity or a volunteer position. They are asked to do a police records check. It comes back with information on it about their involvement with the criminal justice system, and they feel obligated to pass it on to the employer, even though doing so is actually a violation of the law. So we're thrilled to see this piece of legislation come into place because it creates a standard that police forces across the province could adhere to. What we particularly appreciate is that at section 4(a), the bill prohibits the disclosure of Youth Criminal Justice Act records, in accordance with the Youth Criminal Justice Act.

Our concern is that there are other places, then, that make reference to Youth Criminal Justice Act records, and it becomes unclear. Our worry is that with that lack of clarity, with that potential confusion, even if that's not the intention of the bill, that potential confusion will result in erroneous and actually illegal disclosure of information.

You'll see in our submissions that we've made a number of suggestions.

Our primary suggestion is that after section 4(a), you include a section 4(a.1) that would say nothing abrogates or derogates from the ability of a young person himself or herself to access records. In our submission, that would cure the things that I think section 11 and schedule 1 are trying to resolve, because after that initial statement in section 4(a) where it says that no Youth Criminal Justice Act record shall be disclosed, then section 11

makes reference to Youth Criminal Justice Act records and so does the schedule.

The only thing I can imagine or understand about why section 11 and schedule 1, item 2 mention Youth Criminal Justice Act records is because they're trying to address this problem about what if the young person just wants the record themselves, which of course they are entitled to? That's why we've suggested that there is a simple response, which is simply to say that young people are allowed.

The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Ms. Mary Birdsell: Okay. We've made a couple of other suggestions which would be alternatives to that primary suggestion and also cure the possible confusion about where there is reference to Youth Criminal Justice Act matters and where there is not.

I invite you to look at our submissions that are on paper.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Birdsell. To Mr. Hillier of the PCs.

Mr. Randy Hillier: Thank you very much. It's interesting and it's the first time that it's been raised in today's hearing, so thank you very much.

This is going to, I think, take some time. Unfortunately we are only permitted three minutes as part of the government efficiency program on time, I guess—three minutes to review this bill.

That is interesting that you're saying at the present time, there would be a contradiction between both the Youth Criminal Justice Act and this bill before the House; that one prevents disclosure of that information, but then also permits it without having amendment 4(a.1) included.

Ms. Mary Birdsell: We had the privilege of being consulted by the minister's office in terms of preparation for initiating this bill, and it's my understanding from them that they did intend to prohibit the disclosure of youth criminal justice records in accordance with the Youth Criminal Justice Act.

My understanding from our meetings with them—but I'm left with the bill at this point—was that they did agree with our assessment of what the Youth Criminal Justice Act requires and meant for this bill to be in harmony with the Youth Criminal Justice Act. Our concern is that the way it's drafted may lead to some confusion and a lack of clarity, which is exactly the purpose of the bill: to create clarity.

Mr. Randy Hillier: Okay. Well, maybe I'll just leave that for the parliamentary assistant to comment on when it comes around to the Liberal side. I would like to hear what the government's view is on that amendment. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Ms. French of the NDP.

Ms. Jennifer K. French: We appreciate your coming in and bringing this up. We had heard earlier from the John Howard Society briefly on the issues around youth and disclosure.

I appreciate having your submission. There is obviously a lot in here. Is there anything more that you didn't have the chance to say that might bring a bit more clarity, because as I'm trying to rapidly make sense of this in the limited time allotted, I would appreciate, obviously, your expertise to help clarify.

Ms. Mary Birdsell: Okay. Well, what I would say is that our first suggestion, where we propose language to be included as section 4(a.1)—I just did that numbering because it fits in the existing bill—

Ms. Jennifer K. French: That nothing abrogates the youth from accessing their own records.

Ms. Mary Birdsell: Yes. I guess I've already said this, but that would cure the problem or the potential confusion. If you were to do that, then that would be done consistent with removing item 2 of the schedule altogether and removing section 11 altogether.

The schedule would then not make reference to the Youth Criminal Justice Act because it just wouldn't apply. The Youth Criminal Justice Act records would never be disclosed, except to the individual young person.

Ms. Jennifer K. French: You had said earlier that you were trying to understand why the government would have put that piece in. As you've consulted with them, has it been explained why that decision was made?

Ms. Mary Birdsell: I would hate to speak for them, obviously—I'm not in a position to do so—but my understanding was that it was to address this problem of the young person themselves trying to access the record.

1530

Ms. Jennifer K. French: Okay. Well, while you're here and we've got you, this would be an opportunity to share some of the struggles that—well, you're speaking on behalf of youth as they have been trying to navigate their journeys, what this means to have this bill work for them. How is this—

Ms. Mary Birdsell: Absolutely. In our written submissions we included three very short anecdotes of young people whom we've helped in this regard. But it actually really does have a very serious impact. The Youth Criminal Justice Act seeks to protect the privacy of young people and to assist in non-stigmatization and rehabilitation. The point is, really, to allow young people the sort of latitude, if you will, to have had a mistake, to have faced the consequences, and then to be able to move on without the negative impact that criminal justice system involvement can often have.

A couple of the examples that we used were young people who were in school a number of years later and do a record check for—one of the examples is a student in a nursing program. She got in a fight in school and had an assault charge. She resolved that and was now in a nursing program. She lost her opportunity to participate in that program—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for explaining your position for being here. We appreciate it.

I'm trying to follow what you're saying, but I want clarification because section 11, which you made reference to, clarifies that the individual, if a record check is processed, will receive a two-page form. The first page will be just a criminal records check, and the second one would be everything under the Youth Criminal Justice Act. It will be separate. Since the record is now being given to the individual, which is different from what was being done in the past, then it's up to the individual to know that they only have to provide, to whomever is requesting it for employment or nursing school, as you defined, just the first page and not the criminal justice act page.

I think that's what the ministry is trying to do here. The record is there. We have to provide it because the person is requesting it, but we provide it separately so that one can proceed without the other to the employer or the organization for registration. Is that not clear enough? Do you still think that would be a problem?

Ms. Mary Birdsell: I appreciate you pointing out the details of section 11. One of the suggestions that we make in our written submissions is that, if you're going to keep section 11 and it's going to read in that form—we've given some alternative wording that we think would help to clarify the problem—you might also add a requirement that there be some kind of a cover letter.

Our concern is that the young person who gets those two separate pieces of paper is still going to be in a position where they're unclear about what they're supposed to do with these two pieces of paper. Our experience is that young people receive letters from people in positions of authority or organizations of authority and in many, many circumstances they really don't question what the next step is.

For instance, all of these young people who pass on the police record checks that they've been getting in the past could have come to us first to say, "What should I do with this?"

Mr. Bas Balkissoon: Okay. I understand what you're saying. You've consulted with the ministry—

Ms. Mary Birdsell: We have.

Mr. Bas Balkissoon: —and you've explained this cover letter, or whatever it is that you're looking for with the two pieces of records. What was their response?

Ms. Mary Birdsell: They were receptive to that and perhaps they were thinking of including it in a regulation or some other avenue.

Mr. Bas Balkissoon: So if it's done in regulation, that would satisfy your concern?

Ms. Mary Birdsell: Well, I would still prefer the suggestions we're making here today because I think as far up front as you can put it is how you're really going to solve the problem. I'm concerned that things that are left to a regulation will be less accessible to young people, in terms of their knowing the law themselves, and less accessible to police forces—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon, and thanks to you, Ms. Birdsell, for your deputation on behalf of Justice for Children and Youth.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

The Chair (Mr. Shafiq Qaadri): I invite our next presenters to please come forward: Ms. Chandrasekera and Ms. Quenneville from Canadian Mental Health Association, Ontario division. Welcome. Please be seated. Your five-minute opening address begins now.

Ms. Camille Quenneville: Thank you, Mr. Chair. Good afternoon, everyone. My name is Camille Quenneville. I'm the CEO of Canadian Mental Health Association, Ontario division. With me is my colleague Uppala Chandrasekera. She is our director of public policy. In the interest of time, I'm going to stick to my script.

CMHA is the largest community-based mental health and addictions service provider in the country. We support 120 communities across Canada. In Ontario, we have 32 local branches and we provide services to individuals across the province from all walks of life and from all age categories.

We would like to thank and commend Minister Naqvi. I think he has been exceptionally accessible and consultative as he developed this legislation, which is designed to suppress the disclosure of mental health police records and other non-conviction records.

While commending the government, we also want to recognize both opposition parties and express our gratitude to you, as well, for your unanimous support thus far in Bill 113.

CMHA Ontario is pleased to have been consulted during the drafting of the bill, and applauds this proposed legislation as a positive step towards reducing the harmful effects of mental health police checks on a vulnerable population.

Our organization has been working to address issues relating to mental health police records for nearly a decade. This is a long time in the making. We've done so on our own and in conjunction with several other important stakeholders who have all been committed to this cause.

For example, Ontario division is currently the co-chair of the Police Records Check Coalition. As you might be aware, this group was created in 2009 to specifically address the issue of the improper release of non-conviction information.

CMHA Ontario has also continuously worked in partnership with the provincial Human Services and Justice Coordinating Committee, which, I should tell you, is now housed in our office and which has also written about the negative issues arising from police record information.

With respect to Bill 113, we're particularly pleased that this proposed legislation is modeled after the guideline developed by the Ontario Association of Chiefs of Police. CMHA Ontario supported the development of the Law Enforcement and Records Network guideline, also known as the LEARN guideline, in 2011. We

provided further input to the police chiefs during the review of the guideline just last year.

This legislation is quite simply the right thing to do. I think that's obvious by the support it has had from all three parties to date.

It's important to note that the vast majority of people with mental health and addictions issues never come into contact with police—I don't think we can emphasize that enough—but we do know it happens.

Police are the first responders in mental health crisis situations most often, and they often accompany those individuals in crisis to the emergency department or to other places for treatment and medical assessment. It's at that point that a mental health police record is created. The mental health police records are helpful when the information is used internally by police to assist a person experiencing a mental health crisis, but the disclosure of this for other purposes can create barriers for people who are already vulnerable and can increase mental health stigma.

In fact, mental health police records can prevent people with mental health conditions from securing professional employment, as well as accessing services, facilities and travel.

This legislation will ensure that mental health police record information will not appear on any level of police check.

We held an internal consultation with a group of our stakeholders to discuss the contents of Bill 113, and we're providing you with a written summary of our discussion for your information. Above all, there was overwhelming consensus from our group that the legislation should specifically state that the following are prohibited:

- any reference to interactions under the Mental Health Act;
- any references to incidents involving mental health contact; and
- any references to mental health-related information.

Language plays a key role in any legislation, and this is no different. It impacts on the way that society frames the conversation around mental health. Explicitly stating that mental health police record information and interactions under the Mental Health Act are prohibited from disclosure would ensure that the privacy and the rights of people with mental health and addictions issues are protected.

CMHA Ontario strongly recommends that this legislation provide clear definitions for each of the three levels of police checks, with references made to the LEARN guideline. The LEARN guideline itself provides clear definitions of each level of police record check and provides recommendations around what level of check is appropriate and for what purpose.

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Ms. Camille Quenneville: Thank you. Providing these clear definitions will ensure that police services, employers, other service providers and the individuals seeking that information about their own police record

checks are educated on the utility and purpose of each check.

We're delighted to see this legislation as it currently exists. We believe it will be extremely helpful to our clients, some of whom are concerned about the possibility they could have a police check. We also think that this will mean less duplication and more time and money saved for Ontarians as well as police services—

The Chair (Mr. Shafiq Qadri): Thank you. I offer the floor now to Ms. French of the NDP.

Ms. Jennifer K. French: If you'd like to finish that thought—

Ms. Camille Quenneville: Thank you. I'm grateful for that.

The point is that this works for all parties. I think when you're talking about people who struggle with their mental health or an addiction or have had a diagnosable mental illness, they are by their very nature vulnerable. The likelihood that they could end up with an unwanted police record—not by their own making but rather because they sought assistance, help or were in a crisis situation—really has a long-term implication for them potentially down the road in terms of employment and carrying on with life the way that you and I enjoy it.

1540

Ms. Jennifer K. French: One would also imagine that it might give them pause to think about whether they would interact with police again, should they ever be in need.

Ms. Camille Quenneville: Well, that's certainly a concern. It's a fine balance. I will tell you that we believe that if there has been an attempt of suicide, that information should be made available internally so that if the police are again called to that residence or location, they are aware of those past incidents. That said, we don't believe that should be tagged to that individual for the duration of their life, and potentially have the stigma that I've outlined.

Ms. Jennifer K. French: One of the things that I have learned along the way or think I understand about this as well is that if family, or someone in the circle of an individual who may be challenged with a mental illness, were to reach out and call the police or authorities on their behalf, that then can be held against the individual. Does this bill address those concerns as well?

Ms. Camille Quenneville: I'm going to ask my colleague Uppala to jump in, but the short answer is yes.

Do you want to get into the specifics of that?

Ms. Uppala Chandrasekera: Yes. I think for us, the issue really is for this bill to explicitly state that any contact under the Mental Health Act would not be disclosed. A friendly amendment to the schedule, for example, would be to add another row to say, "Mental Health Act" and "Do not disclose. Do not disclose. Do not disclose," across the board. It would make it very clear and simple for people to understand when they are interpreting this bill.

Ms. Jennifer K. French: Okay, thank you.

You had brought up costs, as we have heard from other deputants. Is there anything further that you would like to add about your recommendations regarding costs?

Ms. Uppala Chandrasekera: We believe that the specific cost to do the record check should be stated in the act, and we suggest \$10; that provisions for providing support to people who are low-income or students or volunteers should be actually built into the act itself; and that the record only last the purview of a whole year, so that someone is not paying—let's say they needed a check for an employment for one month, and two months later they are volunteering somewhere else and they don't have the—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. French. To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Let me say thank you very much for being here and making your presentation. You were very extensive, and I know you participated in all the processes up to this point. We appreciate that support.

The minister, I believe, has committed publicly to doing some kind of public education campaign, because it has been widely heard, and I think heard very clearly, that public education on what this bill is actually doing will be helpful to a lot of people who are unaware of their rights under these types of checks.

Has your organization given it any thought, or do you have any ideas on what that public education would look like and what means the government can use to disseminate that information?

Ms. Camille Quenneville: We have found with respect to this legislation that the minister has been, as I said at the outset, very accessible and wanting opinions, which we've been happy to provide. I think that would certainly continue.

I would highly encourage him to have public education around this issue. We find that the best way to reduce stigma is for people to be better educated about the challenges faced by people who struggle with their mental health or have a diagnosed mental illness or an addiction. We have a network across the province with 32 branches where we have easy access to the public, who we are in touch with regularly, and we have our own anti-stigma activities that we run, public awareness activities that we run, and public education activities that we run. So I think we could be extremely helpful if the minister chose to go that route, and, as I said, we would encourage him to do so.

Mr. Bas Balkissoon: At the very end, as you concluded, you just mentioned three points in your presentation, and I heard them and made notes. Is there anything else that you want to share with us?

Ms. Camille Quenneville: I think that right now there is a unique point in time where there is a whole lot more attention being paid to people who have a mental health issue or to the mental health of Canadians generally speaking, and of Ontarians.

This kind of legislation goes a long way to reducing the stigma and beginning that public conversation. I think that, simply put, as I've said to the minister, it's just the

right thing to do. We are delighted to offer our support to it, and with very few caveats. We're very pleased to be part of this process thus far.

Mr. Bas Balkissoon: Thank you very much, and thank you for taking the time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much. We have heard a number of these recommendations from others. They are all thoughtful and reasonable. Hopefully we can encourage everybody on the committee to adopt and accept some of these amendments, and get a good bill that much better. Thank you very much.

Ms. Camille Quenneville: Thank you. I wasn't under the impression that we were offering up anything new today.

Mr. Randy Hillier: You know, fees and also the use of the background record checks as well.

Ms. Camille Quenneville: Yes. I'm actually very grateful that you raised that. I think that it just really does speak to, again, our point, which is clearly there is unanimous agreement that this is the way we should all proceed. I'm delighted that you raised it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Ms. Chandrasekera and to your colleague on behalf of the Canadian Mental Health Association.

NATIONAL ASSOCIATION OF PROFESSIONAL BACKGROUND SCREENERS

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: deputants Fairweather, Anstey, Leblond and Piukkala on behalf of the National Association of Professional Background Screeners. Welcome and please begin now. Please do introduce yourselves in turn.

Ms. Rhonda Fairweather: I'm Rhonda Fairweather, chair of the National Association of Professional Background Screeners.

Mr. Rod Piukkala: Rod Piukkala.

Ms. Michelle Leblond: Michelle Leblond, past chair.

Mr. Todd Anstey: Todd Anstey, chair-elect.

Ms. Michelle Leblond: Thank you to the Standing Committee on Justice Policy for allowing us to speak. We applaud the intent of the legislation and the standardization that's meant to be brought to the process. Although we had not been involved in the initial consultations, which we did find a little interesting, we're pleased to be here now and I think what you'll see is that we represent a bit of a different perspective on the matter.

NAPBS is a national association representing the third-party background screening industry in Canada. Our members probably cover about 90% of the third-party background checks that are done in Canada. While there is a whole range of services that are being done, primarily criminal record checks is our forte.

One of the challenges for our clients at this point is to understand how this legislation is going to impact them, so we're here today to speak on behalf of our members, which are the third-party screeners, our clients, the millions of Canadians and Ontarians who are going to go through the process, as well as the police services we work with, because this bill has caused quite a bit of confusion and skepticism about how the actual workability of the act will be. Our focus is on ensuring an accurate, secure, efficient and timely process for criminal record checks and really, as I said, what we're focused on is how to operationalize the bill.

Our clients span industries. We deal with both for- and non-profit entities right across Canada. Some of them may screen one or two individuals, some will screen thousands in a given day or week. The challenge is that, for non-criminal justice purposes, there are probably about eight million checks that are done a year. Three million of those are vulnerable sector, which our industry does not do, and of the remaining five million, a substantial majority is done by our industry. The way we do those is through proprietary relationships with police services, and we're governed by an MOU—memorandum of understanding—with the RCMP.

As part of that standard process, we do not receive the details of criminal record checks. We only receive one of three responses. So when we view the bill, even though it does indicate applicability to a third-party industry, we are still a little confused about how that's actually going to operationalize.

Mr. Rod Piukkala: I've been a police chief in this province. I've been a police officer for 34 years. I understand both sides of this argument. I have been in the screening industry for six and a half years. Criminal record checks has been my business for the last six and a half years.

We have been way ahead of the curve on most of this legislation. I've heard youth criminal justice matters—we do not release that type of information, as private sector people. We do not release MHA—Mental Health Act—information. We do not release local police information where there have been no charges laid.

We're looking at convictions and where there's a charge laid by the police. That is the type of information that we would release. Ninety-two per cent of the people are clear—92% of the applicants that we see, and we do millions of these a year. So when we looked at this legislation, everything fits with the way we are doing business, except there are a couple of things. As Michelle has said, there are a couple of operational things that you should be aware of.

The integrity of the data: As soon as you put the data in the hands of the individual, there's a gap there. That is a major gap. There's not only the integrity gap; there are delays in getting it to the actual client who needs it. People do not just go get a criminal record check, right? They need it for employment or they need it to volunteer. They need to present that to somebody; it has to be presented to somebody. We just want that to be presented

to the client and the applicant at the same time. It can be done very easily through dual consent. The RCMP has got that in their forms.

1550

In fact, this legislation is a disconnect in many respects with federal legislation that deals with the disclosure of information—the Criminal Records Act—where it goes to the client and it goes to the applicant at the same time in a vulnerable sector check. There's a bit of a disconnect there.

One, we see a problem with consent. It could be resolved by dual consent, the same as the RCMP have on all their forms. You sign an informed consent for the check and an informed consent that you want it shared. That was the whole purpose that you wanted the check in the first place, if you will.

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Mr. Rod Piukkala: Okay. The second issue, another solution, is that we do not see ourselves being impacted by this. We don't release details. The third-party industry, if you will—our industry—does not release details. We see that the information that gets to the individuals quickly is the “clear” information. We're an inclusive versus an exclusive—we've got that sort of an objective. We want these people who are clear to move on, get a job quickly and timely, and do the job that the employer wants.

The Chair (Mr. Shafiq Qadri): Thank you. We'll now pass to the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: I just want to quickly say to you that we've had many public meetings on this issue and we've heard loudly from the public, especially people who have been affected by the system, that they would like to see the record in their hands first before it goes anywhere. If you read the legislation properly, also, it allows that individual to request a review. So if I agreed to your consent part, it breaks that commitment we made to the public. I would like you to explain: How do you see that working? Then maybe I can take it back.

Mr. Rod Piukkala: Very easily, sir. As I said, 92% of people are clear; that's no results. Why disadvantage those people in the process? If they have no results, let them share it. If there are any results, it goes to the applicant and they discuss it. They discuss it in a reasonable way with the client or the applicant, or they decide to share it or not share it. But 92% of the people, of these millions of people who are getting criminal record checks a year, are now going to be disadvantaged. Not only that, there's an opportunity for fraud, and that happens. That happens across the country, where the results are changed; paper results can be changed.

There's also a delay. People are going to forget it, and they're going to give it to the wrong person in the client base when they do have it. Human rights considerations may not be fairly applied to that record.

You're putting a lot of onus on the individuals in all these organizations, not-for-profits and for-profits, to look at these checks and realize that this has got integrity in it.

Mr. Bas Balkissoon: Unfortunately, most of the organizations that presented, they've also been at the public meetings and they've demanded that.

You're saying to me: If the person you're doing a check on gives you a consent request, then you want the system to respond to that consent request and the record be given to you plus the person.

Mr. Rod Piukkala: Not so much us. We're not here as an industry that we want the record—

Mr. Bas Balkissoon: No, but you get a good, bad, indifferent or clear record, or whatever. Whatever you're getting, you want to get it at the same time the person gets theirs. Is that what you're saying?

Mr. Rod Piukkala: That's correct.

Mr. Bas Balkissoon: Therefore, in the review process for that individual, are they giving up their rights to a review? Because once you get it, they cannot request a review.

Ms. Michelle Leblond: No, they're not. What we're really trying to understand first is the definition of "results." Does a result include both a positive and a negative result?

The second piece, which was actually the first recommendation, is a consideration for an exemption for our process because giving an individual a yes-no-maybe answer doesn't allow them sufficient detail to know what they're releasing. The two solutions are actually mutually exclusive solutions.

Mr. Bas Balkissoon: I have difficulty understanding it, but I'll let the others go.

The Chair (Mr. Shafiq Qadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. It's a pleasure to see somebody from a little bit of a different side of the fence as well making a presentation today. I think both my colleague and myself will probably want to speak with you in more detail afterwards, because we're strictly limited to three minutes.

This dual consent: We've seen a lot of problems with background checks and the length of time to get them, and the ever-growing desire and need by different companies etc., for relying on background checks. That's one of the things that I would like to see: a more expedited system where people are not losing job opportunities because of the time it takes to get a background check. Being able to get a background check, preferably being able to use it for a period of time, and it being accepted by multiple employers—when people are out seeking work, they're not necessarily just seeking employment from one employer. They're in the marketplace. Maybe if you could just make a few comments about how what you guys do could improve the system, or within that context.

Mr. Rod Piukkala: Absolutely. First off, our industry turns around results within the day or hours in almost all cases. By and large, though, we're competitors at this table. We're pretty consistent on pricing as well, in many respects. It's a market-driven process. But our turnaround time is very consistent. That's one of the things that we

saw that would be caused by putting the results in the hands of the applicant: that they'll forget to turn them in. They'll take their time. It will go to the wrong person at the organization. All that will increase the delays and increase the delays in being—

Mr. Randy Hillier: But you're not getting the information back from the actual provider within a day?

Mr. Rod Piukkala: Oh, absolutely, sir.

Mr. Randy Hillier: Oh, is that right?

Ms. Michelle Leblond: Yes. We're not getting a detailed response but we are getting, "There appears to be a record," or, "There does not appear to be a record," or we also have a disclosure process whereby the individual can disclose their record up front and it can be confirmed or denied. That record is coming back to us within a business day. It's literally within hours. That's one of the challenges that I think is out there. The experience at a front counter of a police station is very different than the experience dealing with our industry, and in many cases our industry is now supporting some of the police front counters because they have got into a business that they have no interest in being in and it's not a core policing function.

Mr. Randy Hillier: And oftentimes it's not the competency—

Ms. Michelle Leblond: It's just paperwork, and unfortunately it's being done by lower-level admin staff versus people expert in the ability to review criminal record checks.

Mr. Rod Piukkala: Here's what's happening in police departments: As more requests come in, more people are put on the job to put it around in some sort of expeditious time—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hillier. The floor now passes to Ms. French of the NDP.

Ms. Jennifer K. French: Thank you. We appreciate your coming to Queen's Park today and weighing in on this.

Just so that I'm clear: As you have said, your industry doesn't work with vulnerable sector checks. In this piece of legislation, as it lays out the three different types of checks, perhaps you have thoughts on the breakdown there and how you connect to that.

Mr. Rod Piukkala: The breakdown is exactly what we do. We do both those types of checks. In our industry, we do what you might call a CPIC check only—convictions only—and in the second piece it has some local police information to it or outstanding charges; we do that. We do not do the vulnerable sector check, which is essentially one other piece of information, which is a review of the Pardoned Sex Offender Database of 13,000 names to see if that person is in there. That's the integral difference from the first two. We do not do the third piece.

Ms. Jennifer K. French: Okay. Some of the conversations that we've had before now have revolved around an education piece. Would you have thoughts on that part of it, greater public education, but also to whom you represent?

Mr. Rod Piukkala: Absolutely. This is exactly what we do with our client base. We have blue-chip clients—all the banks. Every sector is doing this. Part of our job as third-party providers is that we provide thought leadership, webinars, we provide information and we provide interpretation. Our job is to remain compliant and to keep our clients compliant as well, and to operate within best practices in human rights legislation and human resources. That's where our specialties are.

Ms. Michelle Leblond: I think one of the advantages we have through our association and just as a business is, we see some of the models that come out internationally. In the US there are requirements to provide a summary of rights or a notice to users when certain records are being

released. It's certainly within the realm of that being done here in Canada as well.

Ms. Jennifer K. French: Okay. I don't have anything further.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. French, and thank you, colleagues from the National Association of Professional Background Screeners, for your deputation and presence.

Just to alert the committee, our next meeting is on Thursday, November 19, you'll be pleased to know, for clause-by-clause from 2 p.m. to 9 p.m. I repeat: 2 p.m. to 9 p.m. Deadline for amendments is 10 a.m. Tuesday, November 17. The committee is adjourned.

The committee adjourned at 1600.

Mrs. Marie-France Lalonde (Ottawa–Orléans L)
Mr. Rick Nicholls (Chatham–Kent–Essex PC)

Clerk / Greffière
Ms. Tonia Grannum

Staff / Personnel
Mr. Andrew McNaught, research officer,
Research Services

CONTENTS

Thursday 5 November 2015

Police Record Checks Reform Act, 2015, Bill 113, Mr. Naqvi / Loi de 2015 sur la réforme des vérifications de dossiers de police, projet de loi 113, M. Naqvi	JP-145
Christian Labour Association of Canada	JP-145
Ms. Trish Douma	
Ontario Association of Children's Aid Societies	JP-147
Ms. Mary Ballantyne	
Ms. Wendy Miller	
John Howard Society of Ontario	JP-149
Ms. Jacqueline Tasca	
Ontario Peer Development Initiative.....	JP-152
Ms. Deborrah Sherman	
Canadian Civil Liberties Association.....	JP-154
Ms. Laura Berger	
Ontario Nonprofit Network.....	JP-156
Ms. Liz Sutherland	
Justice for Children and Youth.....	JP-159
Ms. Mary Birdsell	
Canadian Mental Health Association, Ontario division	JP-161
Ms. Camille Quenneville	
Ms. Uppala Chandrasekera	
National Association of Professional Background Screeners	JP-163
Ms. Rhonda Fairweather	
Mr. Rod Piukkala	
Ms. Michelle Leblond	
Mr. Todd Anstey	

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