

HUMAN RIGHTS & POLICE RECORDS:

A CASE FOR BROADER PROTECTIONS

Tens of thousands of people are charged by police and processed through Ontario's courts every year. Statistically, these individuals tend to be some of the most marginalized and vulnerable citizens. In the absence of strong human rights protections, these people, including legally innocent people, face barriers to employment, housing, travel, and volunteer opportunities because of the stigma of a police record. A proposed amendment to Ontario's *Human Rights Code* would provide new rights protections, which could help people find work and lead to social and economic benefits.

Only those who have received a pardon, now called a record suspension, or those with provincial convictions, are offered specific protection against discrimination under the current *Ontario Human Rights Code*. Individuals with unsealed criminal records (convictions for which there is no pardon or record suspension), and non-conviction information (like arrests, withdrawn charges, acquittals, stays) are not explicitly protected in Ontario. From our experience, these types of records can show up on people's record checks for many years, and create significant barriers for employment, housing, education, and travel. In other words, individuals who are legally innocent, yet have some form of police or court record, have little rights protection against discrimination in Ontario. This must be corrected by legislative change.

In 2014, the John Howard Society of Ontario recommended that the provincial government broaden the *Ontario Human Rights Code's* "record of offences" definition and protect Ontarians against discrimination on the basis of not only conviction records, but also non-conviction police records and records that have been sealed subsequent to a record suspension. Bill 164 – a private member's Bill in Ontario – has proposed a broad definition of "police records" which would cover these types of records.

An amended definition of "police records" as proposed in the Bill would bring Ontario in line with other provinces and territories in Canada which have more robust protections. Yukon, Manitoba, PEI, and British Columbia Code's all provide for protection against discrimination on the basis of conviction and non-conviction records.

The proposed change does not mean that employers are prohibited from taking records into account when hiring, however it would mean that employers have to consider the nature of any record in relation to the position being applied for. The change would mean that decision-makers covered by the *Code* would be prohibited from discriminating on the basis of any police record, unless the decision-maker can show that the decision is based on a bona fide occupational requirement.

The presence of a police record, and in particular a record of non-conviction, is not in itself a useful predictor of future behaviour, and not a predictor of workplace-specific performance or challenges. There is however clear evidence that shows employment and a stable job market are paramount factors in reducing crime and recidivism. Currently, people with many types of records can be discriminated against, regardless of the record's nature or relevance to the position being sought. In addition to this important proposed amendment in Bill 164, employers and HR decision-makers should have tools to develop rights-respecting and inclusive hiring practices.

