



Canadian Mental
Health Association
Ontario
Mental health for all

Association canadienne
pour la santé mentale
Ontario
La santé mentale pour tous

Shafiq Qaadri, MPP (Etobicoke North)
Chair, Standing Committee on Justice Policy
Premier's Office, Room 6522, Whitney Block
99 Wellesley Street West
Toronto, Ontario M7A 1A1

November 5, 2015

Dear Mr. Qaadri:

Re: Bill 113 – Police Record Checks Reform Act

Canadian Mental Health Association (CMHA) Ontario would like to thank the Legislative Assembly of Ontario's Standing Committee on Justice Policy for this opportunity to provide our perspective on *Bill 113 – Police Record Checks Reform Act (PRCRA)*.

We commend the Honourable Minister Yasir Naqvi and the Ministry of Community Safety and Correctional Services for proposing this legislation to suppress the disclosure of mental health police records and other non-conviction records. We understand that the intent of this legislation is to decree that police services in Ontario are prohibited from disclosing police records, including mental health related information, to third parties with the exception of a few narrow circumstances as specified in the Authorized Disclosure Table section of the legislation.

We are pleased that this proposed legislation is modeled after the Ontario Association of Chiefs of Police (OACP) Law Enforcement and Records (Managers) Network (LEARN) Guideline for Police Record Checks. CMHA Ontario supported the development of the LEARN Guideline in 2011, and we provided further input during the review of the guideline in 2014. Earlier this year, we also participated in several consultations with the Ministry of Community Safety and Correctional Services during the initial development of Bill 113.

CMHA Ontario believes that mental health police records are often created as a result of medical intervention, not criminal contact. Mental health police records are not criminal records and therefore should not be treated as such. We recognize that police services need to collect and compile mental health information and we believe that mental health police records are helpful when the information is used internally by police to assist a person experiencing a mental health crisis. This information can help facilitate a coordinated effort to provide mental health services and supports to the individual. However, we believe that the disclosure of this information for other purposes, and to other entities, is discriminatory and increases the stigma and discrimination associated with mental health issues, especially when the information is shared in a manner that does not directly benefit the individual in crisis and instead creates barriers for that person.

We held an internal consultation with a group of our stakeholders to discuss the content of Bill 113 and we are providing for you a summary of our discussion (please see attachment).

There was an overwhelming consensus within our group that the legislation should explicitly state that any references to interactions under the *Mental Health Act*, any references to incidents involving mental health contact, and any references to mental health related information are prohibited from disclosure under the PRCRA. The current Schedule refers only to court orders made

under the *Mental Health Act*, which is too narrow and does not adequately reflect the myriad of circumstances that mental health contact might encompass. As language plays a key role in the formulation of legislation, it also 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 by the PRCRA.

Thank you for the opportunity to provide our feedback on the proposed PRCRA. CMHA Ontario would be pleased to provide further support to the government and the Standing Committee on Justice Policy on further development of this legislation and its regulations.

If you have any further questions, please feel free to contact me directly at cquennewille@ontario.cmha.ca or by phone at 416-977-5580 x 4126.

Sincerely,



Camille Quenneville
CEO
Canadian Mental Health Association, Ontario

cc Honourable Minister Yasir Naqvi
Rick Nicholls, MPP (Chatham-Kent), Opposition Critic
Jennifer French, MPP (Oshawa), NDP Critic
Melissa Banfield, Minister's Office, MCSCS
Adriana Ibarguchi, MCSCS
Robert Bonofiglio, MCSCS
Sergio Guillermo, MCSCS
Mavis Fung, MCSCS
Afra Khan, MCSCS
Uppala Chandrasekera, CMHA Ontario
Seble Makonnen, CMHA Ontario

About the Canadian Mental Health Association

The Canadian Mental Health Association (CMHA), which operates at the local, provincial and national levels across Canada, works towards a single mission: to make mental health possible for all. The vision of CMHA Ontario is a society that believes mental health is the key to well-being. We are a not-for-profit, charitable organization which is funded by the Ontario Ministry of Health and Long-Term Care. Through policy analysis and implementation, agenda setting, research, evaluation and knowledge exchange, we work to improve the lives of people with mental health and addictions conditions and their families. As a leader in community mental health and a trusted advisor to Government, we actively contribute to health systems development through policy formulation and by recommending policy options that promote mental health for all Ontarians. We also provide support to the 32 local Branches of CMHA across the province that provide comprehensive mental health and addictions services to approximately 60,000 individuals in diverse communities across Ontario.

CMHA Ontario has been working to increase awareness about and address issues relating to mental health police records for nearly a decade. CMHA Ontario is a Co-Chair of the Police Records Check Coalition (PRCC), a group of more than 30 people comprising health law and human rights legal experts, the mental health and addictions sector, and representatives from the Ontario Association of Patient Councils, the Schizophrenia Society of Ontario, the John Howard Society of Ontario and the Canadian Civil Liberties Association. For more information, please visit: www.PRCCOntario.ca

CMHA Ontario also works in partnership with the Provincial Human Services and Justice Coordinating Committee (HSJCC), who has also written about the issues arising from mental health police record information. For more information, please visit: www.hsjcc.on.ca

Mental Health Police Records

CMHA Ontario believes that mental health police records are created as a result of medical intervention, not criminal contact. In other words, mental health police records are not criminal records and should not be treated as such.

CMHA Ontario recognizes police services need to collect and compile mental health information and we believe that mental health police records are helpful when the information is used *internally* by police to assist a person experiencing a mental health crisis. This information can help facilitate a coordinated effort to provide mental health services and supports to the individual. However, we believe that the *disclosure* of this information for other purposes, and to other entities, is discriminatory and increases the stigma and discrimination associated with mental health issues, especially when the information is shared in a manner that does not directly benefit the individual in crisis and instead creates barriers for that person.

Given our position, we have listed below a few concerns and questions that we would like to raise regarding *Bill 113 – Police Record Checks Reform Act*.

PRCRA Section 1:

Definition of “non-conviction information”

- This definition focuses on the individual’s charge; however, there are many situations where police contacts do not result in a charge (e.g. an individual that is apprehended under the *Mental Health Act* and accompanied to the hospital emergency department by police). Therefore, what is the implication for non-charge, non-conviction police contact? CMHA Ontario recommends expanding this definition of “non-conviction information” to include police contacts that do not result in a charge. Our clients have faced situations where a police record is generated as a result of being present with someone who has been charged, so any incidental police contact should also be addressed in this regard. This section should also reflect contact made by family members, caregivers or any other concerned person, as they may have their information stored as a result of helping a person in crisis.

Definition of “vulnerable person”

- We feel that the current definition is too broad and could be amended to specify a person “in a position of dependency that is otherwise unsupervised” or “providing direct services under the *Education Act, Long-Term Care Homes Act, Retirement Homes Act, Social Work Act*” and any other pertinent pieces of legislation that refers to caregivers.
- It is also unclear if this definition in any way relates to the “vulnerable sector check” as the three levels of checks are not defined.

Subsection 1(4)

Exception, non-conviction information

- With respect to the reference to the *Criminal Code of Canada*, Section 717.2 or 717.3, further clarity is needed on these provisions. Does this mean that alternative measures will not be considered non-conviction information and ultimately be disclosed on a record check?

PRCRA Section 2:

- CMHA Ontario is pleased with this section as it covers most situations in which an individual would need a police record check, and we understand the need for exceptions as outlined in Section 2(2).
- We would like to clarify that “goods or services” also includes housing, and if not, housing should be explicitly stated in Section 2.1(a).

PRCRA Section 4:

Disclosure under other Acts

- As noted previously, we recommend that Section 4 explicitly state that any references to interactions under the *Mental Health Act*, any references to incidents involving mental health contact, and any references to mental health related information are prohibited from disclosure under the PRCRA.
- We are concerned about the inclusion of Section 4(c) and the considerations under the *Police Services Act*. We understand that the *Police Services Act* authorizes the disclosure of information at the discretion of the Chief of Police [see specifically Sections: 31(1)(f); 41(1.1); 135(20.1); and O. Reg 265/98]. We recommend that this discrepancy be clarified in the Complementary Amendments section of the PRCRA.

PRCRA Section 7:

Subsection 7(1) Request for police record check

- We recommend that this section be clarified so that anyone is permitted make a request for any level of check prospectively, without needing a letter from an employer or volunteer organization. This would be extremely helpful for our clients, some of whom are concerned about the possibility that they may have a police record.

Subsection 7(5) Fee

- We recommend that the PRCRA state a standard fee for obtaining police record checks. Furthermore, we recommend that the fee be set at \$10 and a provision around fee waivers be established for low-income individuals, students, seniors and volunteers so that Ontarians have equitable access to their police records.

PRCRA Section 8

Subsection 8(1) Conducting police record check

- CMHA Ontario strongly recommends that the PRCRA provide clear definitions for each of the three levels of police checks, with references made to the Ontario Association of Chiefs of Police Law Enforcement and Records (Managers) Network (LEARN) Guideline for Police Record Checks. The LEARN Guideline provides clear definitions of each level of police checks and provides recommendations around what level of check is appropriate for what purpose. Providing clear definitions on the three levels of checks will ensure that police services, employers and other service providers, and the individuals who are seeking police records checks are educated on the utility and purpose of each level of checks.
- We recommend that timelines for the administrative processing of the police records be specified in the legislation.
- We recommend that the purview of the police record also be specified in the legislation. For example, how far back in an individual's history does the police record show? When determining purview, we strongly encourage that the circumstances of individuals with mental health and addictions issues be taken into consideration; mental health and addictions issues are episodic in nature and an individual may experience periods of illness surrounded by periods of recovery or wellness. Through our local CMHA Branches, we understand that some local police services provide police record checks that span many years of a person's life and disclose mental health related information that occurred 15 or 20 years ago. Therefore, we recommend that the purview of the police record be specified in the legislation.
- We recommend that each police record check be valid for a full calendar year from the date it is issued, as this practice would result in time and cost savings for Ontarians, as well as police services and third-party providers.

Subsection 8(3) Consent of individual

- CMHA Ontario is delighted to see that written consent from the individual is required before conducting a police record check.

PRCRA Section 9:

- CMHA Ontario is extremely pleased with Section 9 and we are encouraged that the PRCRA requires that information disclosure be specifically authorized as stated in the Authorized Disclosure Table.

PRCRA Section 10:

Subsection 10(2) Criteria for exceptional disclosure

- We understand the need for exceptional disclosures of non-conviction information outlined in Section 10(2).
- We recommend that this section make reference to and follow the exceptional disclosure provisions of the LEARN Guideline, particularly on two points:
 - 1) That the focus on a pattern of predation relates specifically to fraud and sexual offences: The concern here is that non-conviction information must, in the wording of the LEARN Guideline, "show a clear, evidenced pattern of alleged predation of vulnerable persons, sexually or financially, may meet the threshold for disclosure. The focus of this assessment should not be based on general behavior prediction, but rather identifying those who knowingly target vulnerable persons to facilitate the commission of these types of criminal acts," and it must be recent.

2) How this decision is made:

As per the LEARN guideline, “The decision to release non-conviction information pursuant to the *Police Service Act* should not be made by the member processing the record check. When applicable, the member will forward the information to a decision maker who is another member in a supervisory or managerial position, in order to determine if the Exceptional Disclosure Assessment has been met.”

- We recommend that the purview of the exceptional disclosure police records check be specified in this section. For example, how far back in an individual’s history does the exceptional disclosure police record show? When determining purview, we strongly encourage that the circumstances of individuals with mental health and addictions issues be taken into consideration, as mental health and addictions issues are episodic in nature and an individual may experience periods of illness surrounded by periods of recovery or wellness.

Subsection 10(4) Reconsideration

- We are pleased that there are reconsideration provisions in Section 10(4). We are also pleased that there is a specified 30-day timeline for the reconsideration determination. We look forward to seeing the associated regulations for this section that we hope specifies the process and person(s) responsible for conducting the reconsideration review.

PRCRA Section 12:

- CMHA Ontario is delighted to see that the results of the police records check are released directly to the individual and that written consent from the individual is required before the police record can be disclosed to a third party.

PRCRA Section 15:

Corrections

- We are pleased that there is a correction provision incorporated in the PRCRA and look forward to seeing the associated regulations for this section that we hope outline timelines for the information correction process and specifies the person(s) responsible for correcting the information.

PRCRA Sections 17 and 18:

- CMHA Ontario is very pleased that any police records sharing agreement that police services in Ontario enter into with a third party are subject to the parameters of the PRCRA. It is our hope that the PRCRA in Ontario will build the foundation for a larger nation-wide conversation around cross-border disclosure of police record information.
- We recommend that this section specify that all police services in Ontario ensure that any existing police records sharing policies are in compliance with the PRCRA and that the deadline for compliance be established.

Complementary Amendments

- **We recommend a Complementary Amendment to the *Mental Health Act* that states that all actions taken under the *Mental Health Act* are restricted from being disclosed under PRCRA as any references to interactions under the *Mental Health Act*, any references to incidents involving mental health contact, and any references to mental health related information are prohibited from disclosure under the PRCRA.**
- As we stated previously in Section 5.3(c), we understand that the *Police Services Act* authorizes the disclosure of information at the discretion of the Chief of Police [see specifically Sections: 31(1)(f); 41(1.1); 135(20.1); and O. Reg 265/98]; therefore, we recommend that the discrepancy between the PRCRA and the *Police Services Act* be remedied in the Complementary Amendments section.

- CMHA Ontario believes that the PRCRA would make a stronger statement if it made reference to the *Ontario Human Rights Code*, which currently protects Ontarians from being discriminated against as a result of a “record of offences.” CMHA Ontario would support a Complementary Amendment that expands the record of offences provision so that the *Ontario Human Rights Code* can protect all disclosure of information under the PRCRA.

Authorized Disclosure Table

- **CMHA Ontario recommends that the disclosure parameters set forth in this table explicitly state that all actions taken under the *Mental Health Act* are restricted from being disclosed under PRCRA as any references to interactions under the *Mental Health Act*, any references to incidents involving mental health contact, and any references to mental health related information are prohibited from disclosure under the PRCRA.**

We recommend creating a new Item on the Schedule, specifically for the *Mental Health Act*, and show “do not disclose” under each column, since it is a visual reference tool and meant to make the task of record checks uncomplicated and reduce errors. The Schedule should also specify the interactions described above, in addition to court orders made under the *Mental Health Act*. This would make very clear the intent of this legislation to prohibit the disclosure of all mental health related information.

Item 7 - NCR

- Regarding findings of Not Criminally Responsible (NCR), in Item 7 under Column 4, CMHA Ontario recommends that the timelines for the disclosure of police records relating to NCR dispositions should be the same as those prescribed in the *Criminal Code of Canada* and the *Criminal Records Act*. When an individual is found NCR, they are given a disposition and not a conviction. There are three types of dispositions: absolute discharge, conditional discharge or detention in a designated forensic hospital for a period of time. The Ontario Review Board (ORB) makes the disposition based on the need to protect public safety, with a view to rehabilitating the individual and successful reintegration into society. Once a person receives an absolute discharge or a conditional discharge, it is not equitable or just that a police record check should continue to disclose an NCR finding.
- Therefore, the timelines for the disclosure of police records relating to dispositions should be the same as those prescribed in the *Criminal Code of Canada* and the *Criminal Records Act*, one year for an absolute discharge and three years for a conditional discharge (see *Criminal Records Act*, Section 6.1, and *Criminal Code of Canada*, Section 730), also as reflected in Items 3 and 4 of the Schedule, respectively.
- A person may also remain under the authority of the ORB well beyond a 5-year period. If a person who is declared NCR continues to appear before the ORB beyond the 5-year threshold, it would seem proper and necessary to continue to disclose the NCR finding on a Vulnerable Sector Check. These distinctions are therefore crucial to making fair and proper disclosure of NCR information rather than having a blanket 5-year allowance period that does not appropriately reflect the circumstances of each case.