

New law on record-check information a good first step



By [Jacob Stilman](#)

When a new client comes to see me, despondent and dismayed to be facing the prospect of a criminal conviction, and seeking guidance as to how to navigate the rocky shoals of our criminal justice system, I often describe the process in these terms:

“Imagine that someone has grabbed you by the back of the neck, and is now repeatedly slamming your head into a concrete wall. That is the criminal justice process, with all its delays, attendant uncertainties, and unfair or imbalanced accusations. But, if we are successful in defending your case, you get a reward: they stop slamming your head into the wall.”

OK, it’s a bit grim. But for many accused persons who have to endure a process fraught with uncertainty and anxiety, and who in some cases, are indeed wrongly accused to begin with, it’s fairly accurate. Although the person may ultimately be acquitted, there is seldom any redemption at the end of the process — there’s merely an end to the torment.

However, even this sunny bit of advice that I frequently pass on to my clients glosses over another harsh reality: any person who faces a criminal charge, even if acquitted, leaves a deep and indelible footprint in the quagmire of police records. The mere record of a charge, be it a minor theft, drug possession matter, assault, or sexual offence, never fully vanishes. And in this age of information, increased employer intrusion into workers’ private lives and heightened security awareness, these records can come back to haunt an individual long after the system has presumably cleared them.

Every criminal lawyer has received a call from a former client asking how it is that a charge, long ago dismissed, is now disqualifying them from getting a new job, preventing them entry into the United States, or causing a local kids’ sports league to reject their offer as a volunteer coach. It is as though their head is being slammed into the wall all over again, only this time with no finish line in sight.

Fortunately, the Ontario government is finally acknowledging the injustice that is being visited upon such individuals. New legislation has been introduced which will standardize the procedures that govern how police forces are to respond to record-check inquiries by third parties. Until now, police forces, which control access to such information, have been able to set their own policies with respect to such disclosures. The Police Records Check Reform Act sets criteria for how various types of records are to be categorized, and what can be disclosed in response to a request. It also requires the record holder to notify the subject that a request for release of information has been made, and to provide an opportunity to the person to request that certain entries not be released.

This legislation is an important and positive step in addressing what has, since the proliferation of record checks in all venues, become a serious concern.

Nevertheless, there is still more that can, and should be, done. The legislation does not deal with the basic issue of what types of information should not have been retained in the first place. For instance, police forces can still determine whether or not to delete the charge history of individuals who have been acquitted, no matter how frivolous the charge. Similarly, if police have been involved in a Mental Health Act apprehension, this too may have generated a record, which in some cases has resulted in detrimental consequences for persons years later (in one notorious case a woman was denied entry into the U.S. on account of a mental health event that showed up on a U.S. border agency database.) While the new legislation specifically addresses the problem of access to such record entries, one has to wonder why such sensitive information is even permitted to be retained by law-enforcement agencies in the first place.

Hopefully, this new awareness of the perils of “too much information” will result in a revisiting not just of disclosure and access policies, but of the entire issue of how such information is generated in the first place.