



Background screening is rather commonplace throughout many provinces in Canada. However, there are diverse legal and cultural considerations that companies should be aware of before implementing a background screening program in this particular country. This whitepaper will highlight the legal landscape and outline checks available.

Legal Landscape

Employers need to understand the different laws that may impact background screening. In particular, data privacy laws and human rights legislation on both the federal and provincial level serve as a great starting place.

Canada is comprised of several provinces and territories: Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon.

Quebec in particular raises more challenges for employers than perhaps the other provinces and territories due to its language requirements. Under the “Charter of the French Language”, French is the official language of Quebec. As a predominantly French-speaking province, Quebec passed and actively enforces the Charter in order to preserve and ensure the long-term viability of the French language, especially given the rising influence of English dominated transactions.

Employers are prohibited from terminating, refusing to hire or failing to promote an individual based solely on the fact that he or she is French speaking. Additionally, employers cannot make any position dependent on another language unless the duties require such knowledge. Employment applications and other related materials must be provided in French. Businesses that employ more than 50 people have additional obligations such as the requirement to register with the Office québécois de la langue française to receive a specific certificate outlining their accommodation and use of the French language in the workplace. Businesses with more than 100 employees must form a francization committee composed of six or more individuals.

Capital	Ottawa
Currency	Canadian Dollar
Population	36,286,378
Area	9,984,670 km ²
Language	English; French
Time Zone	UTC -3.5 to -8
Calling Code	+1

Data Privacy

On the federal level, the Personal Information Protection and Electronic Documents Act (PIPEDA) governs organizations involved in commercial activities and applies when personal data is transferred across provincial borders or internationally. Under PIPEDA, “personal data” is defined broadly to include “information about an identifiable individual” excluding certain information such as the name or title of an employee of an organization.



There are ten principles under PIPEDA organizations should be aware of: Accountability, Identifying Purposes, Consent, Limiting Collection, Limiting Use, Disclosure and Retention, Accuracy, Safeguards, Openness, Individual Access and Challenging Compliance. Among other obligations, these principles require organizations to limit collection of personal information to only that which is necessary, to ensure data is accurate, complete and up-to-date and to protect personal data with appropriate security safeguards.

Notably, employers should collect appropriate consent from individuals before proceeding with the background check process. The Office of the Privacy Commissioner has published a fact sheet¹ on what constitutes appropriate consent which states that express or opt-in consent may be required if the information collected and processed is considered “sensitive”.

On the provincial level, provinces may adopt privacy laws provided they are deemed “substantially similar” to PIPEDA. Currently, only Quebec, Alberta and British Columbia have separate privacy legislation that impacts the private sector. In 2013, Manitoba passed its data privacy legislation, but the law has not been proclaimed which means it is not currently in effect.

PIPEDA is the controlling data privacy law as it pertains to international and interprovincial transfers. When data is being transferred within the particular province itself, the provincial privacy law (if one exists) will control instead of PIPEDA.

Human Rights Legislation

In addition to data privacy laws, employers should be aware of human rights legislation, particularly as it pertains to the consideration of criminal history information in employment decisions. On the federal level, the Canadian Human Rights Act prohibits discrimination based on the following: race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability or a conviction for which a pardon has been granted. The Federal Canadian Human Rights Act applies to federally regulated industries, otherwise the human rights law in the particular province or territory applies.

Although provincial human rights laws protect largely the same groups, a criminal conviction for which a pardon has been granted is not always included as a protected class. Alberta and New Brunswick for example do not make any mention of criminal history or convictions. On the other hand, several provinces, such as British Columbia, Newfoundland and Labrador, Quebec and the Northwest Territories do prohibit discrimination based on the fact that an individual has been convicted of an offense that is unrelated to the position being filled. In these provinces it is especially critical for employers to avoid blanket disqualification policies by ensuring that criminal

¹ Office of the Privacy Commissioner of Canada, “Determining the appropriate form of consent under the *Personal Information Protection and Electronic Documents Act*”. Available at, https://www.priv.gc.ca/resource/fs-fi/02_05_d_24_e.asp. Last accessed Feb. 5, 2015.



history is considered with a direct relationship to the position requirements and the particular job applicant.

Background Screening – Available Checks

Bankruptcy Records

Civil Records

Credit Check

Criminal (CPIC)

Criminal (Provincial)

Education

Employment

Motor Vehicle Records

Passport Check

Professional License Verification

References

In general, the most commonly conducted checks in Canada include reviewing an individual's past education and employment history, checking professional references and conducting a criminal records check. Other checks, such as reviewing an individual's credit history and motor vehicle records, are available; however, they tend to be used only when directly relevant to the position being filled and may not be suitable for every position in every industry.

Employers should take note that the Social Insurance Number (SIN) is not required and should not be collected for background screening. The SIN is a nine-digit number that is restricted to income reporting purposes. As advised by the Office of the Privacy Commissioner of Canada, unless there is a legislated purpose, private sector organizations should restrict the collection and use of SINs.²

Education

In Canada it is common to verify only the highest degree obtained by a candidate. Educational institutions will be contacted to verify dates of attendance, graduation date and degree information.

Employment

It is common to verify the last seven years of employment for candidates in Canada. Employers will be contacted to verify the individual's title, dates of employment and if the candidate is eligible for rehire.

² Office of the Privacy Commissioner of Canada, "Best Practices for the use of Social Insurance Numbers in the private sector." Available at, https://www.priv.gc.ca/resource/fs-fi/02_05_d_21_e.asp. Last accessed Feb. 6, 2015.



Criminal

Employers generally have two options for conducting criminal checks: CPIC and Provincial. A third, the Vulnerable Sector search, is typically used for employment or volunteer work involving children, seniors and other vulnerable persons.

CPIC (Canadian Police Information Centre)

The CPIC is a national database managed by the Royal Canadian Mounted Police (RCMP). The CPIC system contains fingerprint-based records which includes indictable and hybrid offenses. An indictable offense is considered a more serious charge such as assault, manslaughter, kidnapping and theft over \$5,000. Hybrid offenses (sometimes called a “Crown option” or “dual procedure”) are offenses tried either summarily or by an indictment. Summary offenses are not included in the CPIC system and are typically considered minor crimes such as disturbing the peace. Conducting a check in the CPIC system will return a clear/not-clear based on a name-match only. In order to obtain a certified criminal record, fingerprints must be taken and submitted to ensure if there is a criminal records match for the individual being screened. While the initial results are rather instantaneous, the fingerprinting process can cause significant delays. According to the RCMP, when electronic fingerprints are submitted and there is no match in the system, the process can take 3 business days or less. However, if there is a match it could take 120 days or more. If paper fingerprints are submitted, it could take 22 weeks if there is no match and 120 days or more if there is a match.

Provincial

A provincial search is a local court search that is based on the applicant’s residence history. This search will return any summary and indictable offenses found in the particular province being searched and will include more details than the CPIC search such as date of offense, charge type, disposition and sentencing information. In most cases these searches can be completed in 3-5 business days.

There are pros and cons to each criminal search method, and consultation with legal counsel is recommended before choosing which option to proceed with.

Motor Vehicle Records

Motor vehicle records will provide you with details regarding the driver’s identifiers such as full name, date of birth and driver's license number. The report will also indicate if the license is currently active, suspended or expired. Any traffic violation convictions made by the driver may also be included on the report. Reporting time frames and turnaround times vary depending on the Province. Currently, the MVR search is not available through Info Cubic in Alberta due to third party restrictions.



Miscellaneous

Other searches in Canada include: Civil Records, Bankruptcy Records, Credit Check, Professional License Verification and Professional References.

Drug Testing

Employers are strongly encouraged to engage with qualified local legal counsel before implementing a drug testing policy. The Canadian Human Rights Commission has published a policy document on the issue noting that if there is “no demonstrable relationship to job safety and performance”, drug testing may violate an employee’s human rights. In particular, “[g]iven that a drug test cannot measure impairment at the time of the test, requiring an employee or applicant for employment to undergo a drug test as a condition of employment may be considered a discriminatory practice on the ground of disability or perceived disability.”³

It is important to note that the preceding is offered as general educational information and is not intended to constitute legal advice. Given the intricacies of the pertinent laws and regulations, consultation with qualified legal counsel is recommended.

³ Canadian Human Rights Commission, “Policy on Alcohol and Drug Testing”. Available at, <http://www.chrc-ccdp.gc.ca/eng/content/policy-alcohol-and-drug-testing>. Last accessed Feb. 6, 2015.