



**Excessive Background Checks  
Conducted on Prospective Jurors:  
A Special Investigation Report**

**Order PO-2826**

**October 5, 2009**



**Information and Privacy Commissioner,  
Ontario, Canada**

**Ann Cavoukian, Ph.D.  
Commissioner**

I would like to express my sincere appreciation to all of those who assisted my office in conducting this investigation. I would like to especially thank the Attorney General, the Honourable Chris Bentley, for his full support. I would also like to recognize Assistant Deputy Attorney General, John Ayre, who diligently and respectfully assisted in this investigation. I must also express my heartfelt thanks to Auditor General Jim McCarter and his staff for their invaluable assistance in the document capture review.

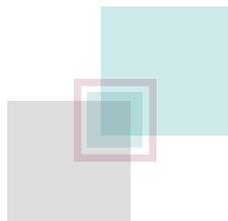
Finally, I would like to give my sincere thanks to my staff for their dedication and hard work. Particular thanks must be given to my investigation team led by Assistant Commissioner Brian Beamish together with Mona Wong, David Goodis, Allison Knight and Debra Grant, and assisted by Assistant Commissioner Ken Anderson. This Special Investigation Report would not have been possible without their tireless efforts.



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# Commissioner's Message

## COMMISSIONER'S MESSAGE

Trial by jury is not only a fundamental part of our criminal justice system — it is an integral element of the essential freedoms that form the foundation of democracy. Jury duty is one of the core legal and moral obligations that we assume as citizens. It follows that any practice that taints, or is perceived to taint, the jury process, strikes at the very heart of the values we share as citizens of a free and democratic society.

The issue of background checks being conducted on prospective jurors first arose in Barrie, as reported in the media on May 25, 2009. At that time, while concerned that such a practice could represent an unwarranted intrusion into the privacy of these individuals, there was no reason to believe that this was anything but an isolated case. However, once the possibility arose that the practice may be more widespread, I felt compelled to launch the investigation that has led to this Order, not only because juror privacy was at stake, but also because an impartial jury is one of the basic underpinnings of our justice system. In coming forward to perform one's civic duty, citizens should be thanked, not burdened. They should not be concerned about the prospect of any excessive background checks being conducted or that such checks will unearth personal details of their lives. In the words of one juror, who described himself as 'angry and in disbelief' — "You kind of lose your faith in the justice system."

Let me be clear — I have the greatest sympathy for the Crown attorneys who are prosecuting cases across the province. They have an important and difficult job to perform. I am convinced that, had clear direction been provided from the outset on what background checks were permissible and what were not, the vast majority of Crown attorneys would have gladly complied. In interviews we conducted with Crown attorneys, it became clear that they simply wanted to know what the ground rules were. However, on this issue, the ground rules have been anything but clear.

As I note in my Order, the issue of jury background checks was first formally flagged within the Ministry of the Attorney General in 1993 — over 16 years ago. Since then, a series of opportunities to provide guidance to Crown attorneys was missed. While policy direction is understandably not developed overnight, there is no reasonable explanation as to why a Practice Memorandum on this topic did not come into effect until March 31, 2006. "Institutional inertia" is simply not an acceptable explanation.

In the absence of clear direction, a patchwork of practices developed across the province. These practices spanned the spectrum from the majority of offices that conducted no background checks, to offices that, in conducting background checks, solicited anecdotal information from Crown office staff and the police on an occasional basis, to those that routinely had the police run names through their records management systems and received detailed, non-criminal information on prospective jurors. A graphic representation of the range of five types of background checks that may be conducted, only one of which is permissible, follows. While these practices varied in terms of their invasiveness, the fact remains that 18 out of 55 Crown attorney offices across the province — one-third — gathered personal information about prospective jurors that exceeded the criminal conviction eligibility criteria set out in the *Juries Act* and the *Criminal Code*.

As was noted on several occasions during this investigation, it is critical that prospective jurors have confidence in the jury selection process and that this process not be perceived as being unduly intrusive or abusive of their privacy. As a result, I have ordered Crown attorneys to cease the collection of personal information about prospective jurors that does not directly relate to the *Juries Act* or *Criminal Code* eligibility criteria.

I have also made 22 Recommendations that will serve to streamline the process and lead to the creation of a single juror screening system. Based on the existing centralized function performed by the Provincial Jury Centre in London, it and it alone should be responsible for ensuring that the names of jurors who have been convicted of indictable offences do not appear on jury panel lists. This will largely eliminate the need for Crown attorneys to separately approach the police or anyone else for such information, thereby creating a more streamlined, efficient system, and greatly enhancing fairness and clarity in the information gathered about prospective jurors. This will also have the additional benefit of introducing administrative efficiencies, by no longer requiring police resources to be encumbered by their involvement in the routine process of seeking juror background checks. And the information regarding the criminal conviction status of prospective jurors will be reflected in the jury panel lists, which will flow equally to both Crown and defence counsel.

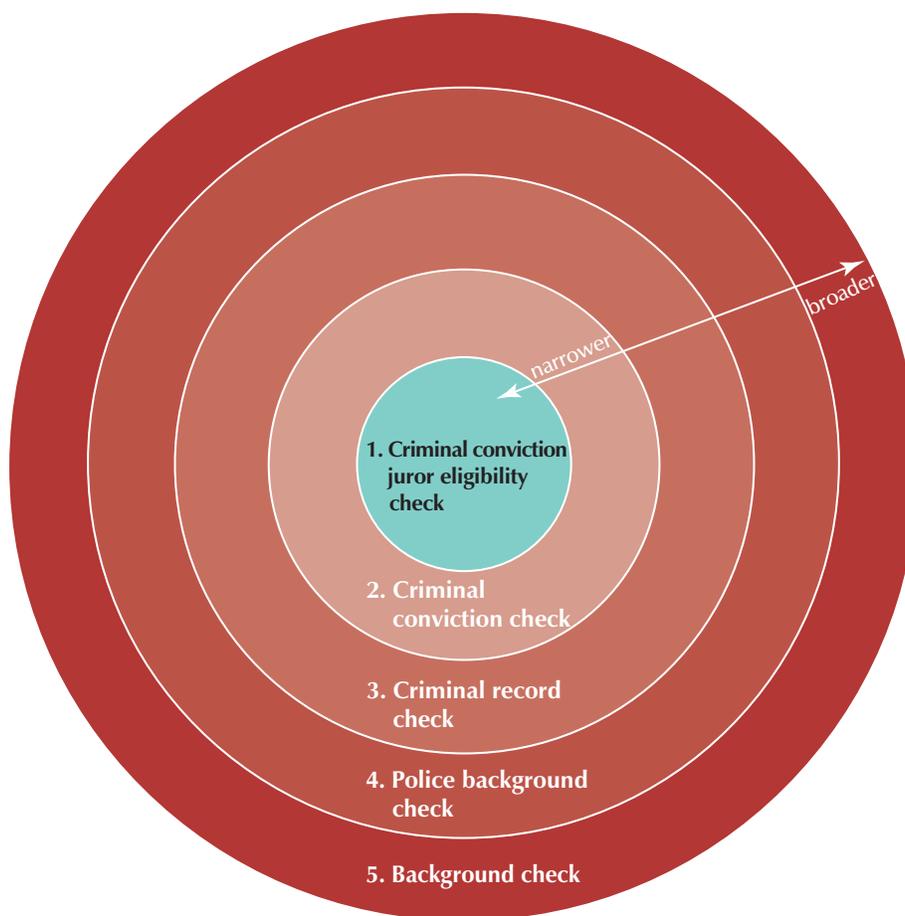
My Order and Recommendations should ensure that a number of important goals are met. Juror privacy will be enhanced — prospective jurors will not be subjected to overly intrusive background checks, and Crown attorneys will not receive information that is irrelevant to an individual's ability to sit as a juror. These measures will also provide all of the parties to a criminal proceeding with equal access to information during the jury selection process, thereby engendering greater confidence that the panel list has been appropriately vetted. Further, I believe this will also create the appropriate level of accountability required by this process, that sits at the very heart of our judicial system.



Ann Cavoukian, Ph.D.  
Information and Privacy Commissioner,  
Ontario, Canada

# GRAPHIC RANGE OF BACKGROUND CHECKS

During the course of my investigation, I found that different parties used a variety of terms to describe the gathering of information about prospective jurors. To assist the reader, I will use the terms set out in the table and diagram below to describe the various types of information-gathering activities, based on the specific source and type of information in question.



Scope	Type of check	Source	Type of information
1. Narrowest Permissible check - in compliance with applicable laws such as FIPPA and MFIPPA	<b>Criminal conviction juror eligibility check</b>	Police databases, including CPIC, RMS (e.g. Niche, Versadex, Manix)	Information relevant to juror eligibility criteria: <ul style="list-style-type: none"> <li>unpardoned indictable criminal convictions (<i>Juries Act</i>)</li> <li>over 12 months' imprisonment (<i>Criminal Code</i>)</li> </ul>
2. Narrow	<b>Criminal conviction check</b>	Police databases, including CPIC and RMS	Convictions for <i>any</i> criminal offences
3. Broad	<b>Criminal record check</b>	Police databases, including CPIC and RMS	Outstanding criminal charges (non-disposed of) and criminal convictions
4. Broader	<b>Police Background Check</b>	Police databases, including CPIC and RMS	Any information about contacts with the police, such as whether the individual has been charged with an offence, convicted of an offence, or been a suspect, witness, victim or complainant
5. Broadest	<b>Background Check</b>	Any source other than the individual	Any type of information

# Executive Summary

## EXECUTIVE SUMMARY

On May 25, 2009, the *National Post* reported that, in Barrie, Ontario, police services had been conducting background checks on prospective jurors, at the request of Crown attorneys. Later media reports contained disturbing details regarding the nature of the background information, which included such comments as, “calls a lot for minor complaints,” “neighbour shot his cat,” and “dad is a drinker.”

Upon learning that the practice extended beyond Barrie to include other locations in the province, my office, the Information and Privacy Commissioner of Ontario, launched an investigation under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. We analyzed the practices of conducting background checks on prospective jurors, and whether these practices were permitted or violated the privacy provisions of these laws.

### The Investigation

To ensure a comprehensive investigation, my office pursued multiple channels of inquiry:

1. We conducted in-person interviews at four different geographical locations with various parties: court staff, Crown attorneys, police officials and defence counsel;
2. We undertook an intensive province-wide empirical survey of all 55 Crown attorney offices;
3. We received sworn affidavits from senior Crown attorneys;
4. We retained the services of the Auditor General’s office to verify the document capture process involving jury panel lists; and
5. We also received four legal submissions from the Ministry of the Attorney General, the Ministry of Community Safety and Correctional Services, the Criminal Lawyers’ Association, the University of Toronto’s Asper Centre for Constitutional Rights, and the Canadian Civil Liberties Association.

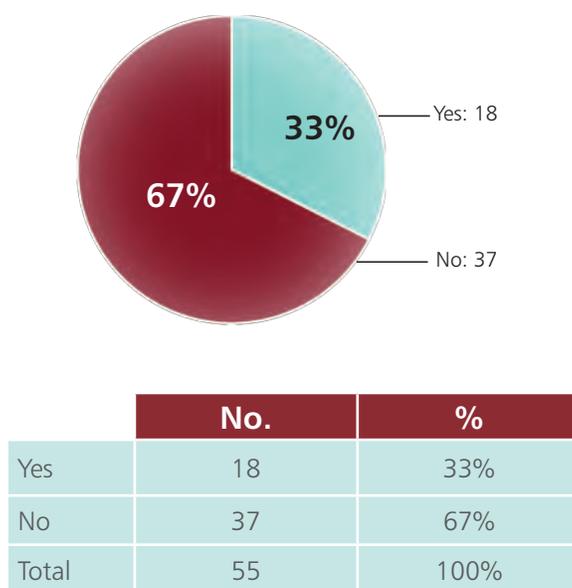
### Our Findings

We discovered that this issue was first addressed in a court case in 1993, after Ontario Superior Court Justice David Humphrey questioned the appropriateness of jury background checks. Within weeks of Justice Humphrey’s decision, in March, 1993, a senior Crown attorney recommended to the Ministry of the Attorney General’s Management Committee that the practice of conducting background checks on prospective jurors should cease. All of this could have been put to a stop 16 years ago if that memorandum had been put into effect. What happened to it? Clearly, it was not acted upon. Why not? What caused the demise of this memorandum? These were some of the questions that my investigative team sought answers to.

On numerous occasions since March of 1993, the Ministry of the Attorney General engaged in internal discussions on the issue of background checks. However, it was not until *March of 2006* that the Ministry of the Attorney General actually issued its formal instruction to Crown attorneys, in what is known as a “Practice Memorandum.” Unfortunately, the Practice Memorandum fell short of what was required. It proved not to be sufficiently clear as to what practices were acceptable. As a result, we discovered that a wide range of opinions were held by the province’s Crown attorneys as to what background check practices were permitted and appropriate.

As a result of our investigation we learned that, since March 31, 2006, the date that the Practice Memorandum came into effect, one third of Crown attorney offices (18 out of 55) had received personal information about prospective jurors from the police that went beyond what was necessary to determine whether individuals were eligible for jury duty (see Figure 1.0). None of the 37 remaining Crown attorney offices had performed any background checks whatsoever during this time period.

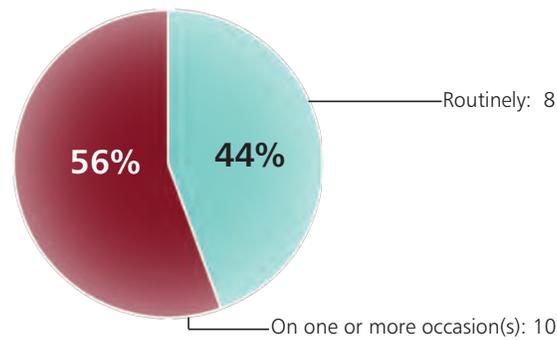
**Figure 1.0 Did the Crown attorney office receive background information about prospective jurors from external sources?<sup>1</sup>**



Our empirical survey of Crown attorney offices also established that eight of the 18 Crown attorney offices that had received personal information about prospective jurors requested this information on a routine basis, while 10 Crown attorney offices requested personal information about prospective jurors on an occasional, or non-routine basis (see Figure 3.0). Further, in cases where personal information about prospective jurors had been received, we discovered there were varying practices as to how often Crown attorney offices had disclosed this information to defence counsel (see Figure 5.0). These results highlight the patchwork of practices that had developed across the province due to a lack of clear direction (for full survey results, see Chapter 6.0).

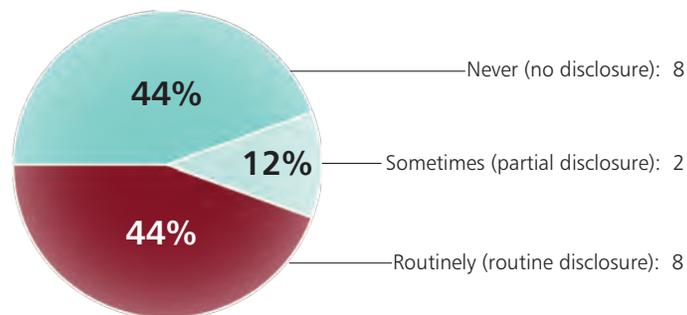
<sup>1</sup> While diagrams summarizing statistical information would normally be referred to as Figures, and charts summarizing statistical information would be referred to as Tables, for the purposes of this Order, figures and their corresponding tables will be collectively referred to as Figures.

**Figure 3.0 How often did the Crown attorney office receive background information on prospective jurors?**



	No.	%
Routinely	8	44%
On one or more occasion(s)	10	56%
Total	18	100%

**Figure 5.0 How often did the Crown attorney office share background information on prospective jurors with defence counsel?**



	No.	%
Never (no disclosure)	8	44%
Sometimes (partial disclosure)	2	12%
Routinely (routine disclosure)	8	44%
Total	18	100%

We concluded that, in conducting background checks on prospective jurors that exceeded determining whether these individuals had criminal convictions that may render them ineligible for jury duty under the *Juries Act* and the *Criminal Code*, both Crown attorneys and the police did not comply with the applicable privacy legislation. Our finding that the broader background checks were not appropriate is supported by a number of court decisions, dating as far back as 1993.

## My Order and Recommendations

Based on these conclusions, I have ordered Crown attorneys to cease collecting any personal information of prospective jurors, beyond that which is necessary to determine criminal conviction information relevant to juror eligibility under the *Juries Act* and the *Criminal Code*. This Order will provide clear direction to Crown attorneys throughout the province as to what personal information may or may not be collected in the jury selection process.

Further, I am recommending a fundamental shift in the way that prospective jurors are screened in Ontario, in an effort to replace the existing varying practices of Crown attorneys across the province, as noted above. I am proposing a complete overhaul of the existing system in order to centralize the process of screening prospective jurors — namely that the Ministry of the Attorney General, through its Provincial Jury Centre (PJC), be the only central body to screen out jurors who are ineligible for jury duty, based on criminal conviction. As the single entity that is already in receipt of the names and personal information of all prospective jurors, the PJC is the obvious candidate to perform this role. Operating from a single location, the PJC is also in an ideal position to implement strict privacy and security measures that can be strongly enforced, thereby providing a consistently high degree of protection for personal information.

Most important, this centralized function would eliminate any need for localized screening of jurors to take place at any of the 55 Crown attorney offices across the province, engaging in disparate practices. Not only would no additional resources be required on the part of local Crown attorneys and police services, but a single, consistent practice, accurately reflecting “the rules” as set out below, would replace the variable practices, presently lacking in consistency.

In total, I made 22 Recommendations directed mainly to the Ministry of the Attorney General (MAG), some of which are presented below:

- Crown attorneys should cease the practice of requesting the police to provide criminal conviction information relating to prospective jurors, barring exceptional and compelling circumstances;
- Where Crown attorneys do obtain criminal conviction information relating to prospective jurors, they should share this information with defence counsel, in accordance with MAG policy;
- MAG should rewrite and redesign the existing jury service qualification questionnaire in order to make it more clear, transparent, and user-friendly for all prospective jurors;

- MAG should issue a new Practice Memorandum to all Crown attorneys that provides clear instructions on the appropriate manner in which to employ juror background checks;
- MAG should continue with its ongoing review of the *Juries Act* and regulation, and consult with the Office of the Information and Privacy Commissioner of Ontario as necessary;
- MAG should amend its jury manual and provide ongoing training to its staff; and
- MAG should develop and implement a policy for Crown attorneys on the appropriate retention and disposal of jury panel lists.

My Order and Recommendations will hopefully ensure that a number of important goals are met: juror privacy will be enhanced; all parties to a criminal proceeding will have equal access to relevant information on prospective jurors; and we will have far greater accountability surrounding the entire jury selection process.

# 1.0

## Background

## 1.0 BACKGROUND

### 1.1 Nature of the Incident

On Monday, May 25, 2009, an article appeared in Canada's *National Post* entitled, "Police Vetting Jury Pools." The article outlined how police services in Barrie, Ontario and the surrounding region had been conducting background checks on prospective jurors, without their knowledge, at the request of the Crown attorney's office in Barrie. In the following days, a series of articles appeared in the media regarding the issue of background checks in Barrie.

Then, on Saturday, June 6, 2009, the *National Post* carried an article entitled, "Secret Jury Lists Note Drinkers, Whiners," which contained disturbing details regarding the nature of the background information provided by the police to the Crown attorney's office in Barrie. The article noted that three cases had come to light in Barrie where background checks had been performed and where personal details had been disclosed to the Crown attorney's office. Examples of these details quoted in the article included, "calls a lot for minor complaints," "neighbour shot his cat," and "dad is a drinker." The article then went on to question whether the background checks may have breached the provincial *Juries Act* and the code of ethics for the use of police computer databases. Similar articles appeared the same day in the *Toronto Sun* and *The Toronto Star*.

In one of the Barrie cases, the presiding judge ordered the dismissal of two jury panels which had been summoned to the courthouse for jury selection, as a result of the Crown attorney obtaining background information about the prospective jurors.

I received several calls from the media and members of the privacy community asking whether I would be investigating the matter. At that time, I decided not to initiate an investigation because the practice of conducting background checks on prospective jurors appeared to be isolated to Barrie. In addition, I was satisfied with the response of the Ministry of the Attorney General (MAG) at that time. MAG had advised my office that it was looking into the matter and would keep me informed of developments in its investigation. However, subsequently, on Tuesday, June 9, 2009, an article appeared in the *Windsor Star* about another similar case, this time in Windsor, Ontario.

In this case, after two months of hearing evidence in a first-degree murder trial, Ontario Superior Court Justice Bruce Thomas dismissed the jurors because jury selection had been "tainted." As in the Barrie cases, the types of information provided by the police to the Windsor Crown attorney's office went well beyond convictions for criminal offences and included comments such as, "dislikes police." Justice Thomas said that he found the gathering and use of personal information on prospective jurors that occurred in this case to be "offensive." The judge noted that citizens who had dealings with the Windsor Police would not have contemplated that the Crown would be using their information in this manner when they were called up for jury duty. The disclosure of the background checks also angered some of the jurors sitting in this trial, as will be outlined in Section 8.2.

Once I became aware of the fact that the practice of jury vetting extended beyond Barrie, I felt compelled to immediately conduct an independent investigation. Accordingly, on Wednesday, June 10, 2009, I launched a Commissioner-initiated investigation, under the *Freedom*

of *Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, into the practices relating to selectively probing the backgrounds of prospective jurors and whether their privacy had been breached when police accessed databases to gather such information, at the request of Crown attorneys.

I assigned three of my most senior staff as the investigative team from my office — the Office of the Information and Privacy Commissioner (IPC) — to assist me in conducting this investigation. Our investigation not only included MAG, but also extended to the Ministry of Community Safety and Correctional Services (MCSCS) — which is responsible for the Ontario Provincial Police (the OPP) — and various municipal police services. Subsequently, as described later in this Order, I enlisted the services of the Auditor General of Ontario to assist with a specific aspect of this investigation relating to the document capture process. I am very grateful to the Auditor General of Ontario, Jim McCarter, for his generous assistance in providing the expertise of his office to our investigation.<sup>2</sup>

I was gratified to learn that my office’s investigation had the full support of the Ontario government. When asked about this matter during a news conference, the Premier, the Honourable Dalton McGuinty, expressed the following view:

The Attorney General has made it perfectly clear this is unacceptable, it’s not in keeping with practice and in fact, it’s against the law .... The Information & Privacy Commissioner has, and I think this is good news, taken a real interest in this. We will offer whatever co-operation is required in order to ensure that she can conduct whatever full review that she might and we look forward to receiving any recommendations that she might come up with, but in the meantime, I think we’ve done all that we can; we’ve told the police and the Crown, you can’t do this — you’ve got to stop doing it.

In addition, the Attorney General, the Honourable Chris Bentley, was quoted in the media as saying that he “welcomes the Privacy Commissioner’s involvement and will co-operate fully with her investigation.” I am grateful to the Attorney General for his assistance and complete co-operation. I would also like to thank John Ayre, Assistant Deputy Attorney General, who diligently assisted this investigation.

After my investigation began, there were reports in the media that suggested that due to the absence of subpoena-making powers, my investigation would not be sufficiently effective. Despite this statutory limitation, I took several steps to ensure that my investigation would be thorough and comprehensive in determining the true nature and extent of jury vetting practices in the province. These steps, described in detail below, included the following: extensive in-person interviews with Crown attorneys, court staff, police officials and defence counsel; site visits to seven different locales; a province-wide empirical survey of all 55 Crown attorney offices (see Appendix 1); sworn affidavits from Regional Directors of Crown Operations (see sample affidavit at Appendix 2); and an independent review, conducted with the assistance of the Auditor General’s staff, to verify the document capture process. I also requested MAG to direct all Crown attorney and Court Services Division staff to ensure that all relevant documents were preserved, which they did.

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<sup>2</sup> I am also very grateful to a member of the legal community, Richard Owens of Stikeman Elliott LLP, for his insightful comments that led me to approach the Auditor General regarding this matter.

## 1.2 Initial Steps Taken by the Information and Privacy Commissioner of Ontario

On Thursday, June 11, 2009, we met with representatives from MAG to determine the nature and extent of the background checks, to determine what, if any, policies dealt with the practice of conducting background checks, and to find out what initial steps may have been taken by MAG in response to the concerns raised by the media. Coincidentally, on the same date, the *Globe and Mail* ran an article reporting that the practice of conducting background checks on prospective jurors also extended to the Thunder Bay Crown attorney's office. Needless to say, this came as a complete surprise.

At the June 11, 2009 meeting, MAG staff provided my investigative team with a key document from the Crown Policy Manual. This document, called a "Practice Memorandum" on juror background checks, dated March 31, 2006, was directed to counsel of MAG's Criminal Law Division. The synopsis of the Practice Memorandum states:

*. . . Other than criminal record checks, Crown counsel should not request the police to undertake an investigation into the list of jurors. Furthermore, criminal record checks, if done, and any concrete information provided by police to the Crown suggesting that an individual may not be impartial, should be disclosed to the defence. Reference should also be made to the Policy and the Practice Memorandum on Disclosure. [emphasis added]*

Following that, on Monday, June 15, 2009, my investigative team met with representatives from MCSCS, including staff of the OPP. At that time, we received a copy of the memorandum issued by the Commissioner of the OPP, Julian Fantino, in which Commissioner Fantino put an immediate halt to any background checks being conducted by OPP officers on prospective jurors, for which I am grateful. Greater detail on this memorandum is provided below.

Following these meetings, my investigative team conducted three site visits, travelling to Windsor, Thunder Bay and Barrie, the locations where the media had reported that background checks on prospective jurors had taken place. Subsequently, articles in the Tuesday, June 30, 2009 edition of the *National Post* and the Wednesday, July 1, 2009 edition of the *Toronto Star* reported that there was also a case in Toronto where jury background checks may have occurred. As a result, Toronto was added to the list for additional site visits.

The purpose of the site visits was to meet with the offices that would have had some involvement in the flow of jury panel lists, prior to and during criminal trials. As a result, each site visit included interviews with four groups: the Crown attorney, the Regional Director of Crown Operations, Court Services staff, the local police service, and criminal defence counsel in certain relevant cases. The team's site visits also included interviews in Orillia with staff from the six OPP detachments which were involved in the Barrie cases.

## 1.3 Initial Steps Taken by MAG and the OPP

### Ministry of the Attorney General

On Tuesday, May 26, 2009, the Assistant Deputy Attorney General for MAG's Criminal Law Division sent out a "Direction and Reminder" on juror background checks to all Directors of Crown Operations, Crown attorneys and Assistant Crown attorneys, reminding them of the March 31, 2006 Practice Memorandum (see Appendix 3). This document stated (in part):

If a Criminal Record check is requested, it should only be for Indictable matters, and should be disclosed to the defence. *In no case, should any other information be requested.* [emphasis added]<sup>3</sup>

In addition, in order to ensure the integrity of our investigation, on Monday, July 6, 2009, I asked that a written directive, comparable to a Document Retention Order, be sent out to all Crown attorneys and Court Services staff to make certain that whatever steps were necessary be undertaken to preserve all electronic and paper documents relating to this matter, and to ensure that no data or documents were destroyed while our investigation was ongoing.

In response, on Friday, July 10, 2009, the Assistant Deputy Attorney General for the Criminal Law Division sent out the requested directive to all Crown attorneys and Court Services staff, with a copy of my letter to the Attorney General attached.

### Ontario Provincial Police

On the day we launched our investigation, the OPP issued a press release, dated June 10, 2009, entitled, "OPP welcomes investigation by Ontario's Information and Privacy Commissioner," in which Commissioner Julian Fantino stated:

The OPP takes the privacy of information in our possession very seriously. We will work cooperatively with the Information and Privacy Commissioner towards developing sound policies and practices to protect the confidentiality of personal information. In May of 2009, I put an immediate stop to providing personal information on prospective jurors to requesting Crown attorneys and initiated a comprehensive review of our internal information release policies.<sup>4</sup>

On the same date, Commissioner Fantino also sent out a reminder memorandum to all staff regarding background checks on prospective jurors in which he referenced his May 2009 memorandum that called for an immediate stop to the practice. The reminder confirmed that the direction given in May 2009 remained in effect until the OPP had completed its policy review. Commissioner Fantino stated:

Until the OPP completes its policy review, OPP personnel shall not conduct any type of background check on potential jurors, including accessing records via the Canadian Police Information Centre (CPIC), Niche RMS or any other police database.<sup>5</sup>

<sup>3</sup> See Appendix 4.

<sup>4</sup> See Appendix 5.

<sup>5</sup> See Appendix 5.

## 1.4 Scope of the Investigation

### Introduction

The purpose of my investigation was to examine how Court Services, Crown attorneys and the police handle personal information relating to prospective jurors, and to determine whether these practices complied with the rules regarding the collection, use and disclosure of personal information set out in *FIPPA* and *MFIPPA*.

### Powers under *FIPPA* and *MFIPPA*

As described elsewhere in this Order, I have made every effort to conduct a thorough and comprehensive investigation to gather the facts surrounding the issue of background checks on prospective jurors. I am confident that as a result of this Order, there will be greater transparency, and the public will have a clearer picture of the nature and extent of these practices in Ontario.

I am required to restrict my analysis and recommendations to the powers granted to me under *FIPPA* and *MFIPPA*. Based on my statutory authority, I am able to do the following:

- gather the facts surrounding the issue of background checks on prospective jurors;
- provide my views on whether the collection, use and disclosure of personal information is in compliance with the provisions of *FIPPA* and *MFIPPA*;
- make recommendations on how to minimize the risk of any future breaches of the privacy provisions of *FIPPA* and *MFIPPA*; and
- order an institution (including MAG) to cease a collection practice and/or destroy collections of personal information that contravene *FIPPA* and *MFIPPA*.

I am not permitted to make rulings on the extent to which Crown attorneys may be required to share information with defence counsel.<sup>6</sup> In addition, I am not in a position to make findings regarding potential individual wrongdoing, for example, whether a person has committed an offence under the *Juries Act* or engaged in professional misconduct.

### Ancillary Issue — Personal Health Information

At the beginning of my investigation, an important issue was brought to my attention that was raised by the practices reported in the media. I received a copy of a letter sent by the Chief Commissioner of the Ontario Human Rights Commission, Barbara Hall, to the Attorney General. In this letter, the Chief Commissioner noted that conducting police record checks on prospective jurors potentially raised human rights implications for individuals with mental health disabilities. The letter noted that police record checks are often broader than a search for convictions and may reveal, “personal information about an individual’s mental health and non-criminal contact with police that might have involved, for example, transfers to a medical facility, or being a victim or witness.”

<sup>6</sup> This is an issue that is within the purview of the courts. Similarly, nothing in this Order should be construed as limiting the jurisdiction of the Superior Court of Justice to control its criminal trial process and jury selection. Further, *FIPPA* and *MFIPPA* explicitly state that they are not to be interpreted in a way that limits the information available by law to parties to litigation.

Similarly, I received a letter directly from a member of the public who raised a similar concern. This individual indicated that he was “horrified” to learn that police responses to the requests of Crown attorneys for information on prospective jurors included notations with regard to past mental health interactions. He requested that I pay particular attention to the issues of the treatment of those with past mental health interactions, during the course of my investigation.

Based on these concerns about health-related information, I needed to determine whether the *Personal Health Information Protection Act (PHIPA)* may apply to the activities noted in this investigation. I have found *PHIPA* has no application in the context of this investigation because *PHIPA* generally applies to “personal health information”<sup>7</sup> held by “health information custodians.”<sup>8</sup> None of the organizations involved in this investigation qualified as a health information custodian.

Except where prohibited or required by law, section 49(1) of *PHIPA* prohibits a person, other than a health information custodian, who receives personal health information from a health information custodian from using or disclosing that information for any purpose other than (a) the purpose for which the custodian was authorized to disclose the information; or (b) the purpose of carrying out a statutory or legal duty. These restrictions on the use and disclosure of personal health information are often referred to as the ‘recipient rule.’ Section 49(5) excludes institutions within the meaning of *FIPPA* or *MFIPPA* from the application of the recipient rule. Thus, the recipient rule does not apply in the present case since the police and MAG did not receive any personal health information directly from health information custodians, and, even if they had, both would qualify as institutions within the meaning of *FIPPA* or *MFIPPA*.

I recognize that, in some cases, background checks may reveal sensitive, health-related personal information of prospective jurors, which causes me great concern. Rest assured that, these concerns will be addressed by the application of the privacy provisions of *FIPPA* and/or *MFIPPA* to any health-related personal information in this context. The absence of the application of *PHIPA* does not mean that the unauthorized use of health information will not be addressed.

## Conclusion

In summation, it is my hope that the public will be confident that a comprehensive assessment of juror background checks has been conducted as a result of my investigation. These facts will provide the tools for the government and other organizations to address the broader systemic issues raised by this matter. Finally, my Order and Recommendations will provide the necessary guidance for future action to best protect juror privacy.

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7 *PHIPA*, s. 4.

8 *PHIPA*, s. 3.

# 2.0

## Methodology

## 2.0 METHODOLOGY

### 2.1 Introduction

In recognition of the significance of this issue and the potential severity of improper practices relating to the privacy of prospective jurors, my office conducted a thorough and comprehensive investigation. We pursued the following methods of inquiry:

### 2.2 Site Visits

- site visits to each of the four locales (Windsor, Thunder Bay, Barrie and Toronto) where it had already been confirmed that the police had probed the background of prospective jurors (in two cases, by judges declaring mistrials) — including personal interviews with the local Crown attorney, the Regional Director of Crown Operations, Court Services staff, the local police service and criminal defence counsel in specified relevant cases;
- a site visit to the Provincial Jury Centre in London, Ontario to interview staff about the jury selection process; and
- interviews with the Auditor/Analyst of the CPIC database at both the OPP and the Royal Canadian Mounted Police (RCMP), including a demonstration of the CPIC database by the RCMP.

### 2.3 Formal Empirical Survey

- a formal 20-page empirical survey, divided into four sections, with a total of 78 questions, sent to all 55 Crown attorney offices by my office, along with a covering letter, co-signed by Attorney General Chris Bentley, to determine the nature and extent of any background checks that may have been performed (see Appendix 1).

### 2.4 Meetings and Interviews

- interviews with the commanders of six OPP detachments in the Barrie area;
- a meeting held by my team and myself with a Toronto Crown attorney and his co-counsel, to expand upon their responses to the survey; and
- follow-up telephone interviews with the Crown attorneys at seven additional locales (Brockville/Leeds and Grenville Counties, London/Middlesex County, Owen Sound/Grey County, Sarnia/Lambton County, St. Thomas/Elgin County, Sudbury/District of Sudbury and Woodstock/Oxford County) to further explore their survey responses.

## 2.5 Sworn Affidavits

- sworn affidavits from the seven Regional Directors of Crown Operations, and the Assistant Deputy Attorney General, in support of the self-reported information provided via the Crown attorney surveys (see Appendix 2).

## 2.6 Auditor General: Document Capture Review

- an independent review undertaken at 10 selected Crown attorney offices (Barrie, Milton, North York, Guelph, Orangeville, Whitby, Lindsay, Cayuga, Cobourg, and Owen Sound), by staff from the Auditor General's office, to attest to the veracity of the survey responses.

## 2.7 Legal Submissions

Given the wide-ranging aspects of this matter, we extended our request for legal submissions beyond the two ministries involved, to other prominent organizations. These organizations represent important participants in the criminal justice system, such as defence lawyers and the police, who may play a direct role in the jury selection process and the gathering of background information on prospective jurors. We provided organizations, some of which we selected and others which approached our office, with the opportunity to provide submissions on the issues identified as arising from our investigation.

In addition to MAG and MCSCS (which provided a single joint submission), the following organizations were selected by our office:

- Criminal Lawyers' Association (CLA);
- Ontario Bar Association (OBA);
- Law Society of Upper Canada (LSUC); and
- Ontario Association of Chiefs of Police (OACP).

In addition to these, we were pleased to receive requests from the following organizations to provide submissions:

- University of Toronto Faculty of Law, David Asper Centre for Constitutional Rights (U of T Asper Centre); and
- Canadian Civil Liberties Association (CCLA).

Of the six organizations (in addition to MAG and MCSCS) that were extended the opportunity to provide legal submissions, three organizations declined. In a letter dated July 17, 2009, the Chief Executive Officer of the LSUC took the following position:

As regulator of Ontario's legal profession, the Law Society of Upper Canada has a mandate to investigate and adjudicate some of the issues raised in your consultation paper. Where such matters come to our attention, it is our practice to consider whether an investigation should be commenced, and to proceed where appropriate. It is therefore not appropriate for the Law Society to participate in the consultation.

The OACP, in a letter signed by their Executive Director dated July 17, 2009, stated:

In our view, our police services are providing your office with information which will help you in the writing of your report. We feel that we can best assist in moving this issue forward by working with the Ministry of the Attorney General to ensure future consistency in this matter.

Finally, the OBA declined to provide submissions.

I will discuss the four submissions I received (MAG/MCSCS, CLA, U of T Asper Centre, CCLA) in more detail in Chapter 8.0 of this Order.

3.0

Criminal Jury System  
in Canada

## 3.0 CRIMINAL JURY SYSTEM IN CANADA

### 3.1 Importance of the Jury in the Criminal Justice System

Trial by jury is not only a fundamental institution in Canada's system of criminal justice, it is an integral part of the fabric of democracy.<sup>9</sup> The jury system serves a number of important purposes. First, the jury serves as an excellent fact finder because of its diversity of experiences and because it operates collectively. Second, the jury acts as the "conscience of the community," due to its representative character, bringing to bear the broader community's sense of fairness and justice. Third, the jury acts as the citizen's ultimate protection against government's potentially oppressive laws and potentially oppressive enforcement of the law. Finally, the jury serves an important educational purpose. By requiring individuals to participate in this important process, the public's understanding of the workings and goals of the justice system is increased, thereby enhancing societal trust in the administration of justice.<sup>10</sup>

### 3.2 Constitutional Right to a Trial by Jury

The right to a trial by jury for serious offences is constitutionally entrenched in section 11(f) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) which states:

Any person charged with an offence has the right

except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

The majority of criminal cases are not tried by jury. In fact, most criminal matters are tried by judge alone.<sup>11</sup>

I note that, similar to Canada, citizens in the United States have a constitutionally guaranteed right to a trial by jury. The jury selection system in the U.S. will be discussed in greater detail below, in Section 5.3.

### 3.3 Civic Duty to Serve as a Juror

Jury duty is one of the core legal and moral obligations imposed by the state on its citizenry.<sup>12</sup> While jury service can be onerous to an individual, the law has always recognized that the citizenry may be called upon to participate in the operation of the criminal justice system and to endure the personal inconveniences that flow from that obligation.<sup>13</sup> As the English Judge and professor, Sir

<sup>9</sup> Tanovich, David M., *et al.*, *Jury Selection in Criminal Trials: Skills, Science and the Law* (Irwin Law, Toronto: 1997), p. xx; Law Reform Commission of Canada, *The Jury in Criminal Trials, Working Paper 27, 1980* (Department of Justice Canada, Ottawa: 1980), p. xi.

<sup>10</sup> *R. v. Sherratt*, [1991] S.C.J. No. 21 at para. 30; *Jury Selection in Criminal Trials*, p. 2; *The Jury in Criminal Trials*, pp. 5-15.

<sup>11</sup> *Jury Selection in Criminal Trials*, p. 28; see also *Criminal Code*, s. 471.

<sup>12</sup> *Tele-Mobile Co. v. Ontario*, [2006] O.J. No. 2589 (C.A.) at para. 66, affirmed [2008] S.C.J. No. 12.

<sup>13</sup> *Lavoie v. Canada*, [2002] S.C.J. No. 24 at paras. 52, 114; *Tele-Mobile Co. v. Ontario* at para. 67.

William Blackstone, said of the jury system, “delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters.”<sup>14</sup>

### 3.4 Essential Characteristics of the Jury

In order for a jury to accomplish its goals, it must have each of these three characteristics:

- impartiality;
- competence; and
- representativeness.<sup>15</sup>

The selection of an impartial jury “is a crucial first step in the conduct of a fair trial,”<sup>16</sup> and is mandated by section 11(d) of the *Charter*. Impartiality is fundamental to both individual and public confidence in the administration of justice.<sup>17</sup>

The jury must also be competent to fulfill its task. Jurors must be able to understand the trial, their role in the trial, the evidence that is presented, and the principles they must apply, among other things.<sup>18</sup>

Finally, the jury must be reasonably representative of the larger community. This goal is generally achieved through the random selection of jurors from the general population.<sup>19</sup>

### 3.5 Jurisdiction over Jury Selection

Both the federal and provincial governments have jurisdiction over the selection of jurors.<sup>20</sup>

Provincial and territorial legislatures have jurisdiction over the “out of court” jury selection process. Each province and territory has legislation that explains how a group of individuals is assembled into a “jury panel,” a large list of individuals from which the actual jury will be chosen to hear a particular case. In particular, the provincial and territorial statutes describe:

- the eligibility requirements for people to serve on a jury; and
- the process for bringing those people forward as the jury panel.<sup>21</sup>

By contrast, only the federal government can make the rules for “in court” jury selection, meaning how individual jurors who will try a particular case are actually selected from the jury panel.<sup>22</sup>

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14 *Blackstone’s Commentaries on the Laws of England* (1902), Book 4, W.D. Lewis ed., p. 1735; *Tele-Mobile Co. v. Ontario* at para. 67; *R. v. Bryant*, [1984] O.J. No. 3404 (C.A.) at para. 31.

15 *R. v. Sherratt* at para. 35; *R. v. Bain*, [1992] S.C.J. No. 3 at para. 28; *Jury Selection in Criminal Trials*, p. 13.

16 *R. v. Parks* (1993), 15 O.R. (3d) 324 at 334 (C.A.), leave to appeal refused [1993] S.C.C.A. No. 481.

17 *R. v. Valente*, [1985] S.C.J. No. 77 at para. 22.

18 *R. v. Bain* at para. 28.

19 *Jury Selection in Criminal Trials*, pp. 17-18.

20 *R. v. Sherratt* at para. 18; *R. v. Barrow*, [1987] S.C.J. No. 84 at para. 30.

21 *R. v. Barrow* at para. 66.

22 *Constitution Act, 1867*, ss. 91(27) and 92(14); see also *Criminal Code*, s. 626(1).

4.0

Criminal Jury System  
in Ontario

## 4.0 CRIMINAL JURY SYSTEM IN ONTARIO

### 4.1 Eligibility Requirements

Both the federal *Criminal Code*<sup>23</sup> and the Ontario *Juries Act*<sup>24</sup> set out eligibility requirements that are designed to ensure that the purposes of the jury are fulfilled.

For example, to ensure that jurors are competent and capable, they must be:

- over the age of 18;<sup>25</sup> and
- able to speak either English or French, or both.<sup>26</sup>

In addition, to ensure competence and capability, jurors are not eligible if they have a physical or mental disability that would seriously impair their ability to discharge the duties of a juror.<sup>27</sup>

To be sure that the jury is representative of its community, jurors must be both:

- a resident of Ontario;<sup>28</sup> and
- a Canadian citizen.<sup>29</sup>

Once jury duty is fulfilled, to prevent undue hardship, a person is ineligible to serve again for a period of three years.<sup>30</sup>

Finally, to ensure juror impartiality, a person may be ineligible because of his or her occupation<sup>31</sup> or connection with the court proceeding.<sup>32</sup>

In addition, and of greatest importance here, an individual is ineligible if he or she has been convicted of an “indictable offence,” unless the person has subsequently been granted a pardon.<sup>33</sup> It has been stated that such convicted (but not pardoned) individuals are “most likely to be biased against the police” and “would be most likely to cause the public to lose confidence in the verdict of the jury.”<sup>34</sup>

I note that while summary offences are punishable by a fine of up to \$5,000 or six months in jail or both (unless otherwise specified in the *Criminal Code*), indictable offences encompass more

23 See Appendix 6 for relevant excerpts from this statute.

24 See Appendix 7 for relevant excerpts from this statute.

25 *Juries Act*, s. 2(c), which states that the person must have attained the age of eighteen years or more in the year preceding the year for which the jury is selected.

26 *Criminal Code*, ss. 530, 638(1)(f).

27 *Juries Act*, s. 4(a).

28 *Juries Act*, s. 2(a).

29 *Juries Act*, s. 2(b).

30 *Juries Act*, s. 3(4).

31 *Juries Act*, s. 3(1), which includes such occupations as judge, lawyer, medical practitioner, correctional official, police officer, firefighter and court official.

32 *Juries Act*, s. 3(3).

33 *Juries Act*, s. 4(b).

34 *The Jury in Criminal Trials*, p. 42.

serious offences and carry greater penalties. In addition, many offences may be prosecuted either by summary conviction or indictment, known as a “hybrid offence,” as elected by the Crown. In the case of a hybrid offence, where the Crown proceeds summarily, any conviction is considered a summary conviction. Where the Crown proceeds by indictment, any conviction is considered an indictable offence conviction.<sup>35</sup>

## 4.2 Jury Selection Process — Out of Court (the *Juries Act*)

### Role of the Central Provincial Jury Centre

The *Juries Act* states that many functions in the jury selection process are to be carried out by the “sheriff.” These functions are described in detail below. Historically, these functions were in fact carried out by sheriffs’ offices in jurisdictions throughout Ontario. However, in 1993, MAG created a single entity under its Court Services Division known as the Provincial Jury Centre (the PJC), based in London, Ontario. The central PJC now carries out the functions assigned to the sheriff under the *Juries Act*.

In order to assist the PJC in carrying out some of its functions, MAG retains two “agents” to act on behalf of the PJC:

- a private third party vendor, DST Output Canada Inc., which provides mailing and printing services; and
- the Revenue Operations and Client Services Branch of the Ministry of Finance, which provides data processing services.

### Collecting Names from Assessment Rolls

The jury roll consists of a list of names of randomly selected individuals, compiled by geographic location.

The process for assembling a jury roll begins with Court Services staff at each Superior Court of Justice location. In the spring of each year, Court Services staff consult with local judges and provide the PJC with an estimate of the number of jurors they will require and the number of jury trials anticipated for the following year.<sup>36</sup>

Once all of the information from each court is received by the PJC, it will determine the jury requirements for the entire province.

The PJC then advises the Municipal Property Assessment Corporation (MPAC) of the number of required jurors for the upcoming year.<sup>37</sup> MPAC selects names at random from the most recent municipal enumeration of residents of each municipality within each county/district, and provides lists of names

35 See the federal *Interpretation Act*, s. 34(1)(c); see also *R. v. Dudley*, [2008] A.J. No. 209 (C.A.) at para. 28, *Re Tohme*, [1995] F.C.J. No. 1606 (T.D.) at paras. 4-5, and *R. v. Stanton*, [1986] O.J. No. 2938 (Prov. Ct.) at para. 12.

36 *Juries Act*, s. 5.

37 Since the names of First Nations persons living on reserves are not reflected on municipal assessment lists, the *Juries Act* sets out additional specific provisions related to First Nations persons living on reserves; see s. 6(8).

to the PJC’s agents.<sup>38</sup> MPAC sends these names to the two agents noted above, in a protected electronic data file stored on physical media,<sup>39</sup> which is securely transported to its destination.

## Juror Qualification Questionnaires

Next, on behalf of the PJC, the third party vendor prints and mails out the juror qualification questionnaires for jury service<sup>40</sup> in September of each year to each of the listed persons, together with a prepaid return envelope.<sup>41</sup> The questionnaires contain questions relating to the eligibility requirements set out in the *Juries Act*.<sup>42</sup> Individuals are required to accurately and truthfully complete the questionnaire and return it, within five days of receipt, to the “Sheriff’s Office.”<sup>43</sup>

Coincidentally, during the course of my investigation, I personally received a juror questionnaire at my home address (see Appendix 8). I carefully reviewed it as a member of the public receiving such a questionnaire, and found it to be deficient in a number of ways. I will elaborate on these deficiencies below.

## Assembling and Certifying the Jury Rolls

Based on each individual’s answers to the questions, the Ministry of Finance, acting as an agent of the PJC, sorts the returned questionnaires into two groups, depending on their eligibility. Individuals who provide answers that indicate they are not eligible, are excluded. The Ministry of Finance compiles the names and addresses of eligible prospective jurors and sends this information to the PJC (by way of a secure electronic data file that is stored on a CD<sup>44</sup>). The Ministry of Finance then packages all original questionnaires sorted by eligibility into sealed boxes, to be delivered to the PJC — they do not keep any hard copies of the questionnaires. The PJC’s transport service picks up the sealed boxes from the Ministry of Finance and delivers them directly to the PJC’s office in London.

Based on the electronic data file, the PJC assembles the eligible prospective jurors into a jury roll for each Superior Court of Justice location.<sup>45</sup> The PJC uses an electronic system known as the “Jury Selection System” to maintain these rolls.

Once the jury roll is completed, it must be certified by the PJC as being “the proper roll prepared as the law directs.” The PJC then notifies a judge of the Superior Court of Justice of the certification.<sup>46</sup>

## Preparation of Jury Panel Lists

A jury panel is a group of persons who have been selected to attend for jury service. They are randomly selected from the jury roll to be considered to serve on a jury in their respective court

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38 *Juries Act*, s. 6(2).

39 MPAC uses password-protected archive files stored on CD.

40 Ontario Regulation 680, s. 1, Form 1.

41 *Juries Act*, s. 6(1); Ontario Regulation 680, s. 1, Form1.

42 *Juries Act*, ss. 2-4.

43 *Juries Act*, s. 6(5); in fact, the questionnaires are sent to the Ministry of Finance as the PJC’s agent, as discussed above.

44 The Ministry of Finance uses encryption to encrypt or code the names and addresses of prospective jurors, providing additional security.

45 *Juries Act*, ss. 7, 8(1).

46 *Juries Act*, s. 9.

location. The size of jury panels is determined by instructions given by a Superior Court judge.<sup>47</sup> Based on the instructions they receive, PJC staff then create appropriate jury panel lists (see Appendix 9 for a mock vetted jury panel list).<sup>48</sup>

## Summons to Prospective Jurors

The PJC sends the jury panel list information electronically, through a secure Internet connection,<sup>49</sup> to its third party vendor, which then prepares and sends out a summons to each member of the jury panel, by regular mail, at least 21 days in advance of the date that the person is required to attend court.<sup>50</sup> The summons indicates the date and court location to attend for jury service.

At the same time, the PJC finalizes the jury panel lists and sends them to the Court Services staff at the relevant court location. The PJC provides the local Court Services staff with two different sets of jury panel lists: the administrative list and the jury panel list. The one key difference between the two lists is that the administrative list contains the telephone numbers for each prospective juror, to enable Court Services staff to contact them, if needed — for example, if they do not appear for jury selection.

I note that, overall, the methods used to transfer personal information between and among the PJC and its agents satisfy current industry standards for ensuring privacy and security, taking into account the specific context involved. These methods are critical to establishing a secure chain of custody for the collection and use of personal information.

## Deferral or Excusal Prior to Attendance

Prospective jurors who receive a summons may request a deferral or excusal. The reasons for deferral may be presented to Court Services staff in writing in advance of the sitting, or in person on the day of attendance. Court services may defer a panel member's jury service to a panel later in the year.<sup>51</sup> Only a judge can excuse a juror from service. A juror may be excused from jury duty for religious reasons, illness or hardship.<sup>52</sup>

## Attendance at Court

Jury panel members attend at the court location specified on the summons and may be called into court for a specific trial. On the day that prospective jurors attend court, at the start of the sitting, Court Services staff take the attendance of the jurors and check it against the panel list. Jurors are segregated in a separate area of the courthouse and monitored to ensure that there is minimal contact between jurors and other courtroom participants.

When the judge calls a panel, Court Services staff escort prospective jurors into the courtroom. At that point, the judge addresses the panel and jury selection then takes place. Only a limited number of panel members are eventually selected to serve on a jury.

<sup>47</sup> *Juries Act*, s. 12.

<sup>48</sup> *Juries Act*, s. 15.

<sup>49</sup> The PJC uses secure File Transfer Protocol (SFTP).

<sup>50</sup> *Juries Act*, s. 19(1); Ontario Regulation 680, s. 4, Form 4.

<sup>51</sup> *Juries Act*, s. 19(2).

<sup>52</sup> *Juries Act*, s. 23.

## Handling of Jury Lists

The *Juries Act* states that jury lists “shall be kept under lock and key” and shall not be disclosed except as necessary to prepare the panel lists and serve the summons.<sup>53</sup> However, during the period of 10 days before the sittings of the court for which a jury panel has been drafted, court services must grant access to the panel list to the accused (or defence counsel) and the Crown attorney, on payment of a fee.<sup>54</sup>

## 4.3 Jury Selection Process — In Court (*Criminal Code*)

### Pre-Screening the Jury Panel

Once jury panel members are brought into court, the judge may, at any time before the trial starts, excuse a juror from service for one of the following four reasons:

- personal interest;
- relationship to the judge;
- personal hardship; or
- any other reasonable cause that, in the judge’s opinion, warrants excusal.<sup>55</sup>

The judge’s power to pre-screen prospective jurors on the basis of partiality (for example, personal interest) is limited to obvious cases.<sup>56</sup>

### Juror Challenges

When a jury panel member is randomly selected to be included in a jury for a particular case, either the accused or the Crown attorney may seek to have that prospective juror disqualified based on one of the grounds listed in the *Criminal Code*.<sup>57</sup> The grounds for a challenge for cause are:

- the person’s name does not appear on the jury panel list;
- the person is not impartial;
- the person has been convicted of an offence for which he was sentenced to death or to a term of imprisonment exceeding 12 months;
- the person is not a Canadian citizen;
- the person is physically unable to perform properly the duties of a juror;<sup>58</sup> and

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53 *Juries Act*, s. 20.

54 *Juries Act*, s. 20.

55 *Criminal Code*, s. 632.

56 *R. v. Sherratt* at para. 53.

57 *Criminal Code*, s. 638(1).

58 *Criminal Code*, s. 638(1)(e), which adds the qualifying words “even with the aid of technical, personal, interpretative or other support services provided to the juror under section 627 of the *Criminal Code*.”

- the person does not speak the relevant official language.

No challenge for cause may be brought on any ground not listed in the *Criminal Code*.<sup>59</sup>

The challenge for cause process provides an additional safeguard for ensuring that the jury is competent, capable and impartial. The purpose of the challenge for cause is to eliminate persons who come within the categories listed above. Any questioning of a prospective juror must be relevant to the challenge, succinct and fair.<sup>60</sup> The challenge for cause “is not for the purpose of finding out what kind of juror the person called is likely to be — his personality, beliefs, prejudices, likes or dislikes.”<sup>61</sup> It is not “a licence for counsel to examine and cross-examine prospective jurors as to what they believe or do not believe.”<sup>62</sup>

In addition to any challenge for cause, an accused or a Crown attorney may challenge a juror without needing to state a reason. This is referred to as a peremptory challenge.<sup>63</sup> The number of challenges available to each party depends on the specific offence in question.<sup>64</sup>

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59 *Criminal Code*, s. 638(2).

60 *R. v. Hubbert*, [1975] O.J. No. 2595 at para. 41 (C.A.), affirmed [1977] S.C.J. No. 4.

61 *R. v. Hubbert* at para. 21.

62 *R. v. Kray* (1969), 53 Cr. App. R. 412 at 416.

63 *Criminal Code*, s. 634.

64 *Criminal Code*, s. 634(2); the number of peremptory challenges available to each party is 20 where the accused is charged with first degree murder or high treason, 12 where the accused is charged with an offence, other than first degree murder or high treason, for which the accused may be sentenced to imprisonment for a term exceeding five years, and four for all other offences; see s. 634 for further provisions on this point.

# 5.0

Background Checks on  
Prospective Jurors:  
Law And Practice

## 5.0 BACKGROUND CHECKS ON PROSPECTIVE JURORS: LAW AND PRACTICE

### 5.1 Ontario

#### Statute

There are no provisions in the *Juries Act* or its regulation,<sup>65</sup> the *Criminal Code*, or any other statute that explicitly address whether or not background checks may be performed on prospective jurors.

#### Law Society of Upper Canada Rules

The Law Society of Upper Canada regulates lawyers, in the public interest, according to Ontario law and its rules, regulations and guidelines. The LSUC's *Rules of Professional Conduct* state the following with respect to lawyers' relations with jurors:

A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the juror or with any member of the juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.<sup>66</sup>

I note that the LSUC's *Rules of Professional Conduct* also state the following:

When engaged as a prosecutor, the lawyer's prime duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately.<sup>67</sup>

#### Case Law

The issue of background checks on prospective jurors has received relatively little judicial attention in Ontario.<sup>68</sup> The first case to address the issue was a 1993 decision in *R. v. Fagan*.<sup>69</sup> Based on the decision of Justice Humphrey, at that point in time, it appears that he was unaware that "in a routine way, the Crown attorney is supplied with a list of the jurors on the panel, which includes background information about people who have been convicted of criminal offences."<sup>70</sup> Further, Justice David Humphrey, at that point in time, expressed concern that "potential jurors who come and volunteer to serve" could be "stigmatized by the fact that they have, perhaps 15 or 20 years ago, been convicted of some offence which would not disqualify them for jury duty."<sup>71</sup> Because of this concern, as well

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65 Ontario Regulation 680.

66 Law Society of Upper Canada, *Rules of Professional Conduct*, Commentary under rule 4.05(1).

67 Law Society of Upper Canada, *Rules of Professional Conduct*, Commentary under rule 4.01(3).

68 It does not appear that there is case law from other Canadian jurisdictions outside Ontario that explicitly deals with the issue of background checks on prospective jurors.

69 [1993] O.J. No. 4679 (Gen. Div.).

70 *R. v. Fagan* at para. 1; in this case, the Crown attorney received only criminal record information, from the Toronto police database known as "Manix."

71 *R. v. Fagan* at para. 2.

as concerns about the unfairness resulting from the Crown not sharing the background information with the accused, Justice Humphrey ordered the Crown attorney and defence counsel to work from a “clean” (i.e., unmarked and unvetted) list for the purpose of jury selection.<sup>72</sup>

In 1997, the Supreme Court of Canada in *R. v. Latimer*<sup>73</sup> described as “a flagrant abuse of process” certain actions taken by the Crown attorney and the police regarding prospective jurors.<sup>74</sup> In this case, the Crown attorney and the police had jointly prepared a questionnaire asking prospective jurors for their views on a number of religious and moral issues that may have been pertinent to the case. The police contacted several of the prospective jurors directly by telephone or in person and asked them the prepared questions. In some cases, the questions led to additional discussions between the police and prospective jurors that went “beyond the exact questions posed in the questionnaire.”<sup>75</sup> Ultimately, five of “about a dozen”<sup>76</sup> questioned individuals actually served on the jury.

I note also that *R. v. Latimer* served as an important catalyst for policy discussions within MAG about background checks, as discussed in detail below.

In a 1998 Ontario case known as *R. v. Perlett*,<sup>77</sup> the Crown attorney took actions that the court described as “not dissimilar to those carried out by the Crown in” *R. v. Latimer*.<sup>78</sup> One key difference between the two cases is that, in *R. v. Perlett*, no Crown or police official had made direct contact with any prospective jurors. Rather, the Crown attorney spoke to approximately 20 people to obtain their opinion of the prospective jurors named on the jury panel list, and made notes of these discussions on the jury panel list.<sup>79</sup> Justice Terrence Platana stated that the gathering of this additional information “went well beyond what is acceptable.”<sup>80</sup>

On June 8, 2009, just days after the concerns over juror background checks were reported by the media, in a case arising in Windsor, Ontario called *R. v. Huard*,<sup>81</sup> the court commented on the Crown attorney’s practice of obtaining background information on prospective jurors from the police. In particular, in that case, the local police service had done searches of its own police database and provided the Crown attorney with information about a wide range of previous contacts that prospective jurors had had with the police, including provincial offence tickets, information on criminal charges where there had been no conviction (or where a discharge had been granted), and information on a criminal conviction where a pardon had been granted. Further, notations made by the police included “criminal associates,” “family issues,” “dislikes police,” and “Y.O. or young offender record.”<sup>82</sup> While Justice Bruce

72 *R. v. Fagan* at paras. 2-3.

73 [1997] S.C.J. No. 11; see also *R. v. Kirkham*, [1998] S.J. No. 458 (Q.B.) for a discussion of the facts relating to the prosecutor’s conduct in *Latimer*.

74 *R. v. Latimer* at para. 43.

75 *R. v. Latimer* at para. 13.

76 *R. v. Kirkham* at para. 8.

77 *R. v. Perlett*, [1998] O.J. No. 5521 (Gen. Div.).

78 *R. v. Perlett* at para. 19.

79 *R. v. Perlett* at para. 19.

80 *Latimer* and *Perlett* prompted discussions within MAG that ultimately lead to the issuance of a Crown attorney Practice Memorandum, as described in detail below.

81 *R. v. Huard*, unreported decision (June 8, 2009), Windsor Doc. CR-08-1324 (S.C.J.).

82 *R. v. Huard* at p. 5.

Thomas specifically declined to rule on whether these record checks violated any statutes,<sup>83</sup> he expressed his disapproval by stating:

I find the process of accessing personal information on the Police Service Data Bank and passing it along for this purpose to be offensive.

This was not a CPIC check for indictable offence convictions nor a check for sentence terms. In fact, there was no effort to see if there was even a conviction registered. I strongly doubt that citizens calling the Windsor Police Service, often on very private matters, contemplate that the Crowns might be reading this information as they are being called to the front of the courtroom for the purpose of jury selection.<sup>84</sup>

The case law in Ontario currently indicates that whatever background information about prospective jurors the Crown obtains must be shared with the defence. In *R. v. Fagan*, the court stated:

I think any information about a juror that would realistically affect a decision as to whether to accept or challenge that juror is information which should be shared by the Crown with the defence.<sup>85</sup>

Similar findings were made by the court in *R. v. Huard*<sup>86</sup> and in a second recent case arising in Barrie.<sup>87</sup>

## The Critical Juncture: MAG Practice Memorandum of March 31, 2006

### *Introduction*

As our investigation unfolded, my team learned that the issue of juror background checks had been raised and discussed within MAG on numerous occasions, over a period of more than 16 years.

As a result, my team asked MAG to provide additional details, including complete supporting documents. MAG was very cooperative and responded with a package of documents, including several memoranda that we had not previously seen. While this was helpful, there were still several gaps in time that required further explanation. In response to an additional request, MAG provided a separate narrative description of the origins and development of the 2006 Practice Memorandum. While it shed some further light on the matter, there were still a number of gaps that remained unexplained. Our subsequent inquiry to MAG did not reveal any additional information, in my view, because there was simply no more information available.

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83 *R. v. Huard* at p. 2.

84 *R. v. Huard* at p. 24.

85 *R. v. Fagan* at para. 2.

86 *R. v. Huard* at p. 16.

87 *R. v. Bradey*, unreported decision (May 14, 2009), Barrie Doc. 09-124 (S.C.J.) at pp. 7, 9, per Justice Alfred Stong.

### ***Discussions stemming from the 1993 R. v. Fagan decision***

The March 8, 1993 release of Justice Humphrey’s decision in *R. v. Fagan* prompted internal discussions among MAG officials regarding the practice of conducting juror background checks.

On March 26, 1993, shortly after the *R. v. Fagan* decision, the Regional Director of Crown Operations for Toronto requested a report from the local Crown attorney’s office on “jury lists.” Days later, the Crown attorney assigned to the *R. v. Fagan* case responded with a memorandum dated March 30, 1993 on the “provision of marked jury lists to defence Counsel,” in which he concluded that, in future, Crown attorneys will most likely be required to share “marked jury lists” with the defence.

Based on the potential legal impediments to sharing “marked jury lists” with defence counsel, the Toronto Regional Director of Crown Operations, in a memorandum to MAG’s “Divisional Management Committee,”<sup>88</sup> dated March 31, 1993, recommended that *the practice of obtaining background information on prospective jurors should stop*; he stated quite clearly, “*if the defence can’t have it, we shouldn’t be getting it either.*” However, there is no indication that the practice of juror background checks actually ceased. My team spoke directly to this former Toronto Regional Director of Crown Operations. He advised that he cannot recall any discussions taking place at MAG on the juror background checks issue, subsequent to his March 31, 1993 memorandum. Further, my team spoke to the then Director of MAG’s Crown Law Office — Criminal, who similarly stated that he does not recall any specific discussions on the issue after the *R. v. Fagan* decision was released.

We made every effort to find out what happened after this critical memorandum had been issued, which represented such a significant milestone — were there any subsequent steps taken? Did the Divisional Management Committee move this forward to the Deputy Attorney General or the Attorney General? Was any action taken as a result of this pivotal memorandum issued in 1993, recommending that the practice of obtaining background information on prospective jurors stop? To the best of our knowledge, no further action resulted from this memorandum, for six years, until 1999 when the issue resurfaced again. However, there were a number of other developments along the way.

### ***1994 Crown Policy Manual***

On January 15, 1994, MAG issued its first Crown Policy Manual to all Crown attorneys in Ontario. The manual did not, however, include any reference to the issue of juror background checks. My team was advised by a Crown attorney who was the chairperson of the small group of Crown attorneys who had drafted the manual that the issue of background checks was not brought to her group’s attention at the time the manual was drafted.

### ***1996 Discussions***

In a December 23, 1996 memorandum, the Crown attorney in Barrie identified a problem “where jurors have been selected and later discovered to be in violation of” the criminal conviction eligibility provision in section 4(b) of the *Juries Act*. This Crown attorney also stated that the jury panel lists

<sup>88</sup> At that time, MAG’s Divisional Management Committee consisted of the Assistant Deputy Attorney General of the Criminal Law Division, the six Regional Directors of Crown Operations, and the Director of Crown Law Office - Criminal.

generated by the PJC “are not of much help to our counsel in selecting a jury in compliance with the *Juries Act*.” He stated that the list is deficient because:

- it arrives too late for effective screening by the police for criminal records; and
- it lacks a birthdate or age which makes it impossible to effectively run the [juror] name through CPIC.

He then asked his Regional Director for suggestions on how Crown attorneys in his region “can be effective in implementing changes which will help us in jury selection.” It does not appear that any action was taken as a result of this memorandum, despite the fact that problems with the process of conducting background checks had clearly been identified.

### ***1998 Discussions***

In a May 15, 1998 memorandum, prompted by a recent case in which a Crown attorney had received criminal conviction information of prospective jurors from CPIC, the Director of Crown Operations for the North Region instructed all Crown attorneys in his region “to discontinue CPIC background checks until further notice.”

### ***1999 Crown Attorney Survey***

At the very late stages of my investigation, I received copies of additional documents revealing that, in 1999, MAG had conducted a survey of Crown attorneys on this very issue of juror background checks.

On March 26, 1999, at the request of the Assistant Deputy Attorney General of MAG’s Criminal Law Division, the Director of Crown Operations (North Region) sent a survey to all Crown attorneys in the province, asking numerous questions about the practice of conducting “CPIC checks” on jury lists. The covering letter to the survey indicated that MAG was “looking into possible revisions” to the *Juries Act*.

The survey asked Crown attorneys the following questions:

1. In your office, is it currently the practice to CPIC Jury lists?
2. Has your office in the last five years caused Jury lists to be CPIC’ed for selective cases, e.g. murder or sexual assault?
3. If it is your current practice or if it is your practice on a selective basis to CPIC Jury lists within the last five years, have the results of these CPIC checks been disclosed to the defence?
4. In the event that you have disclosed the results of CPIC checks to the defence, do you disclose all results, e.g. convictions and outstanding charges or convictions only?
5. Have you or anyone in your office (including Provincial Prosecutors) prosecuted any individual for an offence under the *Juries Act*?

On April 26, 1999, the same individual, the Director of Crown Operations (North Region), sent out a memorandum to the Assistant Deputy Attorney General, Criminal Law Division, outlining the results of the survey. The results were as follows:

1. Twenty per cent of offices routinely conducted CPIC checks on jury lists, while 80 per cent did not.
2. Forty-eight per cent selectively conducted CPIC checks on jury lists in the preceding five years, while 52 per cent did not.
3. Twenty-nine per cent of those offices that had done any CPIC checks on jury lists disclosed the results to the defence, while 71 per cent did not share the information with defence counsel.
4. Of the offices that had disclosed CPIC search results to the defence, three indicated that they had limited their disclosure to convictions only.
5. No offices had ever prosecuted an individual for an offence under the *Juries Act*.

In the April 26, 1999 memorandum, the Director of Crown Operations noted that comments on the survey indicated that “there was a practice, usually in smaller jurisdictions, by which court officers and [police] officers of long service were consulted informally about ‘undesirable’ jurors.” The Director of Crown Operations also noted that, through comments made on the survey, Crown attorneys had raised concerns about “providing information regarding prospective jurors and [FIPPA],” presumably in the context of whether such practices were in compliance with the statute.

In addition, the Director of Crown Operations stated that the PJC’s “lack of personnel mandates a superficial review” of the juror questionnaire. One may infer that the Director held the view that the PJC did not have adequate staff to verify the accuracy of information provided by prospective jurors on the questionnaires. The Director also proposed several amendments to the *Juries Act*, mainly aimed at revising the juror eligibility criteria.

A MAG e-mail dated October 18, 1999, from this same Director of Crown Operations (North Region) to the Assistant Deputy Attorney General, Criminal Law Division, included an agenda for an upcoming conference call: the agenda involved a proposed national survey on jury vetting practices, and a proposal for changes to provincial and federal legislation on jury selection.

### ***1999-2000 Discussions***

On December 21, 1999, more than six years after MAG’s Divisional Management Committee had received a recommendation to stop juror background checks, a special sub-committee of the Divisional Management Committee met to review “Crown disclosure” practices (*i.e.*, the extent of the Crown’s duty to disclose information to the defence). At that meeting, there was a discussion on whether juror background checks should be included as part of the disclosure practice memorandum or whether it was worthy of a separate, independent practice memorandum. As a result of this meeting, the special committee recommended that there be an independent practice memorandum

prepared on this subject, based on “Saskatchewan’s policy,” which limits background checks on prospective jurors to “criminal records checks.”<sup>89</sup>

MAG then drafted a practice memorandum on juror background checks. The first draft was dated January 4, 2000. The memorandum stated that “Crown counsel should not request that any investigation be taken (other than criminal record checks) into the background of jurors.” My team was advised by a Crown attorney who had been involved in these 1999-2000 discussions, that although the intention was that this draft memorandum be distributed to all Crown attorneys, she cannot say with any certainty that this occurred. It would appear that the memorandum was not distributed, absent any evidence of its occurrence.

MAG created a second draft memorandum dated October 16, 2000, which contained the identical language quoted above, indicating that there was a clear acceptance of the message that background checks on prospective jurors should be limited to criminal record checks alone.

While MAG management may have intended to finalize the practice memorandum to Crown attorneys, dated October 16, 2000, it is clear that this did not occur. We have been provided with no evidence of any communication having been distributed to Crown attorneys, and no explanation of why this omission took place.

### ***September 2001 Management Conference***

My team was advised by MAG that on September 10-13, 2001, a management conference was scheduled for MAG Crown attorneys, Directors and non-legal managers. It was led by the Assistant Deputy Attorney General of the Criminal Law Division. A workshop on juror background checks was scheduled to take place on the second day of the conference. Unfortunately, that workshop did not take place; the conference adjourned early due to the tragic events of September 11, 2001. The Crown attorney who was to deliver this workshop advised my team that she could not recall whether any materials (which were to include the October, 2000 draft Practice Memorandum) were ever distributed, prior to the workshop. Similarly, the then Assistant Deputy Attorney General of the Criminal Law Division, also could not recall whether any materials had ever been distributed. It would appear highly unlikely that they were.

### ***2005: Draft Practice Memorandum***

Another five years passed before the 2000 draft practice memorandum was to resurface. MAG issued Practice Memorandum No. 17, on April 26, 2005<sup>90</sup>, which it distributed to all Crown attorneys in the province. (This Practice Memorandum did not actually take effect until almost another year had passed — March 31, 2006.) The 2005 draft Practice Memorandum read (in part):

In choosing a jury, both Crown counsel and defence should have access to the same background information material. To that end, results of criminal record checks of potential jurors, if obtained by Crown counsel, should be disclosed to defence counsel. Crown counsel should not request police to undertake any further or other investigation

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89 See a more detailed description of the Saskatchewan policy below in section 5.2.

90 See Appendix 3.

into the list of jurors. Crown counsel should not request police to conduct out-of-court investigations into private aspects of potential jurors' lives.<sup>91</sup>

While the Practice Memorandum contemplated in 1993 finally came into effect in 2006, it did not prove to be sufficiently clear, as we will demonstrate below. The term “criminal record checks,” for example, is vague, and does not provide clear guidance as to precisely what type of information may be sought, or in what manner.

### ***2006: Implementation of Practice Memorandum***

As noted, the Practice Memorandum described above did not come into effect until March 31, 2006. MAG explains that this additional delay of roughly a year was for the purpose of including the memorandum in “the official rollout of the Crown Policy Manual.”

At that time, the Practice Memorandum was distributed by including it in the Crown Policy Manual, *along with all the other memoranda and policies*. The manual was distributed widely within MAG and to outside bodies, including other government ministries and agencies, the courts, and non-government organizations, including the CLA, the LSUC and law schools.

MAG stated, “When the Crown Policy Manual was issued, Crowns were reminded of their responsibility to read, understand and implement the advice contained therein and to review the information periodically to ensure they remain familiar with the materials.” In other words, mixed in with a large number of other policy documents, Crown attorneys were expected to make themselves aware of the Practice Memorandum and its import. While MAG held regular, semi-annual education conferences for Crown attorneys, no one could recall the subject of juror background checks being addressed. No specific flag was attached to this memorandum, nor any specific training provided. To the best of our knowledge, no training or attention was ever drawn to this Practice Memorandum — not at the time that it was issued, nor when it came into effect in 2006.

### ***2009: Direction and Reminder***

On May 26, 2009, as a result of media coverage on juror background checks, the Assistant Deputy Attorney General, Criminal Law Division, issued a “Direction and Reminder” on juror background checks,<sup>92</sup> which attached the Practice Memorandum that became effective on March 31, 2006, and stated definitively (in part):

If a criminal record check is requested, it should only be for Indictable matters, and should be disclosed to the defence. In no case, should any other information be requested.

This reminder represents a clear improvement in that it specifies that criminal record checks should only be conducted for indictable matters. However, additional clarity is required — for example, would background checks be permitted to ascertain *charges* for indictable matters, or would this relate only to convictions? In addition, there is no guidance regarding the manner in which these checks should be performed.

91 PM[2005] No. 17 — Juror Background Checks, Ontario Ministry of the Attorney General, Criminal Law Division, signed by the Assistant Deputy Attorney General, Criminal Law Division.

92 See Appendix 4.

## Summary

A close examination of the history of the development of the 2006 Practice Memorandum reveals a failure on the part of MAG's senior management to provide leadership and direction on an important issue, of which they were clearly made aware, over the years.

Almost immediately after *R. v. Fagan* was released in the spring of 1993, a strong recommendation was made that the practice of conducting background checks should cease, yet it appears that MAG took no action to respond to this recommendation.

In 1996, a memorandum issued at that time indicated that background checks may have been taking place, at least in Simcoe County.

In 1998, five years after *R. v. Fagan*, one regional director instructed his Crown attorneys to cease conducting "CPIC background checks." And yet, there was still no indication that MAG had taken any steps at the senior management level to give direction on the proper conduct of background checks.

In 1999, MAG conducted a province-wide survey of Crown attorneys, which indicated that nearly half of Crown attorney offices had conducted at least one criminal record check on prospective jurors within the preceding five years. The survey also revealed inconsistent practices among Crown attorneys in conducting background checks. In addition, practices varied in the sharing of information with the defence. Further, the survey revealed that some Crown attorneys had privacy-related concerns regarding the practice of conducting these checks.

In late 1999 and into 2000, the senior management of MAG finally discussed the issue of background checks, and drafted two virtually identical versions of a Practice Memorandum, limiting the conduct of background checks. Yet MAG still took not steps to finalize or distribute this memorandum to Crown attorneys.

I find it remarkable that for a period of another five years, MAG took no further steps to address this matter, until it finally issued its Practice Memorandum in 2005. And it was not for another year until the draft memorandum came into effect, in March 2006, with no attention or fanfare being drawn to it, or any specific training provided. As stated by MAG, "the issuance of Practice Memoranda is educative in itself."

As documented above, it appears that MAG, on numerous occasions, missed key opportunities to develop a consistent and effective policy regarding the practice of conducting background checks on prospective jurors.

Further, the 2006 Practice Memorandum, and the 2009 reminder, proved to be insufficiently clear and did not provide adequate guidance to Crown attorneys, as we will demonstrate in the empirical data gathered during our investigation, in Chapter 6.0.

## Conclusions

To conclude, there are no specific statutory provisions indicating whether or not background checks may be performed on prospective jurors in Ontario.

What little case law exists suggests that background checks for the purpose of obtaining information relevant to statutory criminal conviction eligibility criteria are permissible, while broader background checks are not.

The existing, though limited, case law indicates that where Crown attorneys obtain background information on prospective jurors, that information should be shared with defence counsel.

As documented above, it appears that MAG, on numerous occasions, missed key opportunities to develop a consistent and effective policy regarding the practice of conducting background checks on prospective jurors. Further, the 2006 Practice Memorandum, and the 2009 reminder, were insufficiently clear and in need of additional instruction.

## 5.2 Ontario Compared with Other Jurisdictions in Canada

### Introduction

As stated above, the provinces and territories have jurisdiction over the “out-of-court” jury selection process. Accordingly, every Canadian provincial and territorial jurisdiction has legislation that regulates juror eligibility, most of which provide that individuals are disqualified from jury service on the basis of criminal charges and/or convictions.<sup>93</sup> However, like Ontario, none of these statutes explicitly addresses whether background checks may be performed on prospective jurors, nor does there appear to be any case law in these jurisdictions that explicitly deals with this issue. For a chart summarizing jury selection law and practices in other jurisdictions across Canada, see Appendix 10.

### Statutory Disqualification Based on Criminal Charges and/or Convictions

At one end of the spectrum, Quebec disqualifies individuals from jury service on the sole basis of only having been *charged* with a criminal act. By contrast, Saskatchewan does not bar individuals with criminal *convictions* whatsoever from serving on a jury.

The great majority of cases, (11 of 13 jurisdictions, or 85 percent), including Ontario, lie somewhere in between these two extremes, and have varying provisions disqualifying individuals based on criminal charges and/or convictions. In these jurisdictions, a disqualifying charge or conviction may include:

<sup>93</sup> Newfoundland and Labrador: *Jury Act, 1991*, S.N.L. 1991, c. 16 and Jury Regulations, C.N.L.R. 17/96; Nova Scotia: *Juries Act*, S.N.S. 1998, c. 16 and Juries Regulations, N.S. Reg. 126/2000; New Brunswick: *Jury Act*, S.N.B. 1980, c. J-3.1; Prince Edward Island: *Jury Act*, R.S.P.E.I. 1988, c.J-5.1 and General Regulations, P.E.I. Reg. EC431/92; Manitoba: *Jury Act*, C.C.S.M. c.J30 and Jury Regulation, Man. Reg. 320/87 R; Saskatchewan: *Jury Act 1998*, S.S. 1998, c. J-4.2 and Jury Regulations, 2000, R.R.S. c. J-4.2 Reg. 1; Alberta: *Jury Act*, R.S.A. 2000, c. J-3 and Jury Act Regulation, Alta. Reg. 68/1983; British Columbia: *Jury Act*, R.S.B.C. 1996, c. 242 and Jury Regulation, B.C. Reg. 282/95; Yukon: *Jury Act*, R.S.Y. 2002, c.129; Northwest Territories: *Jury Act*, R.S.N.W.T. 1988, c.J-2 and Jury Regulations, N.W.T. Reg. 034-99; Nunavut: *Jury Act*, R.S.N.W.T. 1988, c. J-2 and Jury Regulations, N.W.T. Reg. 034-99.

- charges where sentences may include imprisonment exceeding 12 months;<sup>94</sup>
- charges for an indictable offence;<sup>95</sup>
- convictions under the *Criminal Code* and two other federal statutes;<sup>96</sup>
- convictions where sentences may include imprisonment exceeding 12 months;<sup>97</sup>
- convictions for unpardoned indictable offences;<sup>98</sup>
- convictions for indictable offences where a sentence included a period of imprisonment;<sup>99</sup> and
- convictions where a sentence included a period of imprisonment of two years or more.<sup>100</sup>

## Crown Policies

New Brunswick and Saskatchewan have written policies regarding jury selection. Similar to the Ontario Crown Attorney Practice Memorandum,<sup>101</sup> both provinces restrict background checks on prospective jurors to “criminal record checks,” and require that information obtained be shared.

The New Brunswick policy states:

Crown prosecutors should not request any investigation be undertaken other than criminal record checks into the list of jurors, which, if obtained by Crown prosecutors, should be disclosed to defence counsel.<sup>102</sup>

The Saskatchewan policy states:

Crown prosecutors should not request any investigation be undertaken other than criminal records checks into the list of jurors. If the case before the Court raises issues which the Crown feels may require an inquiry into whether potential jurors are able to judge the case without bias, prejudice or partiality, the challenge for cause process should be followed, not out-of-court investigations into private aspects of the potential jurors lives.<sup>103</sup>

94 Manitoba (with the qualifying words “within the previous two years;” see also the disqualification for charges “where the person has not been acquitted, the charge has not been dismissed or withdrawn, and a stay of proceedings has not been entered in respect of the trial for the offence”), British Columbia.

95 Newfoundland and Labrador.

96 New Brunswick, with the two federal statutes being the *Food and Drugs Act* and the *Controlled Drugs and Substances Act*, with the qualifying words “unless pardoned.”

97 Prince Edward Island, Manitoba and British Columbia (all with the qualifying words “within the previous five years” and “unless pardoned”), Northwest Territories and Nunavut (both with the qualifying words “unless pardoned”), Alberta, Yukon.

98 Ontario, Manitoba.

99 Newfoundland and Labrador, limited by the words “without the option of a fine, unless pardoned, within five years of the taking of the jury list.”

100 Nova Scotia.

101 Practice Memorandum No. 17.

102 Public Prosecutions New Brunswick, Jury Lists: Background Checks, DPP Guideline 21 (March 10, 2003).

103 Saskatchewan Policy and Practice Directive (JUR1), Jury Lists: Background Checks.

Again, similar to the Ontario Crown attorney policy, the New Brunswick and Saskatchewan<sup>104</sup> policies indicate that Crown attorneys should share any background information they obtain with the defence.

## Crown Practices

Manitoba, Alberta and British Columbia do not conduct criminal record or any other background checks on prospective jurors. In the Yukon, Northwest Territories and Nunavut, counsel may request CPIC checks only for the purpose of confirming a disqualifying conviction. Similarly, Quebec conducts criminal record checks only to confirm prospective jurors' self-reporting of convictions. Newfoundland and Labrador, New Brunswick, and Saskatchewan conduct criminal record checks only.<sup>105</sup>

In Prince Edward Island, the Crown attorney checks his or her own internal files for prospective jurors' outstanding or previous charges. In Nova Scotia, Crown counsel submits the jury list to police, who conduct criminal record and other background checks and indicate "OK" or "possible" next to names on the list.

## Summary

In conclusion, similar to Ontario, none of the other jurisdictions in Canada have statutory provisions that explicitly address whether it is permissible to conduct background checks on prospective jurors. Further, there does not appear to be any case law in these jurisdictions that specifically addresses this issue.

In nine provinces and territories, Crown attorneys request the police to conduct criminal record checks on prospective jurors.<sup>106</sup> Two of those (Ontario and Nova Scotia) also request the police to conduct additional background checks, in at least some cases.

In four provinces (British Columbia, Alberta, Manitoba and Prince Edward Island),<sup>107</sup> Crown attorneys do not request the police to conduct any criminal or other background checks on prospective jurors.

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104 Saskatchewan policy, which requires that "any concrete information provided by police to the Crown suggesting that an individual may not be impartial should be disclosed."

105 Based on IPC discussions with Crown officials in these jurisdictions.

106 Yukon, Northwest Territories, Nunavut, Ontario, Quebec, Newfoundland and Labrador, New Brunswick, Saskatchewan, Nova Scotia.

107 In Prince Edward Island, Crown counsel check internal files for any outstanding or previous charges.

## 5.3 The United States

### Constitutional Right to a Jury Trial

Similar to Canada, under the U.S. Constitution, the right to a jury trial is guaranteed for defendants facing a potential imprisonment of more than six months.<sup>108</sup> In addition, several states provide a statutory right to trial by jury that surpasses the constitutional minimum. For example, some states provide for jury trials in all cases where there is potential imprisonment.<sup>109</sup>

### Civic Duty to Serve as a Juror

Jury duty in the United States is a civic responsibility — an obligation of all qualified citizens, and a constitutional right of citizens, recognized by the U.S. Supreme Court.<sup>110</sup>

### Jury Management

Most jury trials in the United States take place in the institutional frameworks established within each state; however, specific jury management practices may vary widely from court to court within a given state.<sup>111</sup> Twenty states have established an office or formal organization responsible for managing or overseeing jury operations for the state.<sup>112</sup>

### Disqualification Based on Criminal Conviction

At the federal level, the *Jury Selection and Service Act of 1968* disqualifies individuals convicted of a felony, who have not had their civil rights restored, from serving on a federal jury.<sup>113</sup> The American Bar Association’s “Standards Relating to Juror Use and Management” encourage the uniform adoption of this standard at the state level.<sup>114</sup> At the state level, criminal convictions of some form almost universally disqualify a person from jury service.<sup>115</sup>

### Verification of Disqualification based on Criminal Conviction — Out-of-Court

Similar to Ontario, disqualification by criminal conviction is self-reported by prospective jurors in qualification questionnaires. However, as one scholar has suggested:

Self-reporting is not always an effective means of discovering prior felony convictions. Neither the prohibition of convicted felons from voting nor from purchasing firearms is

108 Sixth Amendment of the Constitution of the United States, as interpreted by the US Supreme Court in *Blanton v. Las Vegas*, 489 U.S. 538 (1989). This guarantee is applicable to the States through the Fourteenth Amendment; see *Duncan v. Louisiana*, 391 U.S. 145 (1968).

109 See, e.g., FLA.STAT. §918.0155 (1986).

110 ABA Standards Relating to Juror Use and Management, Standard 1, at p. 3; *Powers v. Ohio*, 111 S. Ct. 1364 (1991).

111 Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D., *The State-of-the-States - Survey of Jury Improvement Efforts: A Compendium Report*. National Center for States Courts (April 2007) Executive Summary 1 at p. 7.

112 State-of-the-States Survey at p. 9.

113 *Federal Jury Selection and Service Act of 1968*, Public Law 99-274, 28 U.S.C. Section 1863 *et seq.*, as amended.

114 ABA Standards Relating to Juror Use and Management, Standard 4 at p. 34.

115 Colorado does not disqualify convicted felons, except for grand jury duty; COLO. REV. STAT. § 13-71-105(3) (2002). Maine does not disqualify convicted felons; ME. REV. STAT. ANN. tit. 14, § 1211. Bureau of Justice Statistics, State Court Organization, 2004, US Department of Justice at Table 39, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco04.pdf>; see also Kalt, Brian C., “The Exclusion of Felons from Jury Service,” *American University Law Review* Vol. 53:65 (2004).

enough to prevent felons from denying their prior convictions, even though these denials are crimes themselves.<sup>116</sup>

This has led several jurisdictions to conduct checks to verify the accuracy of jurors' stated criminal histories. For example, Massachusetts explicitly provides court officials with the authority to check jurors' criminal records for the limited purpose of ensuring that the jurors are qualified.<sup>117</sup> In New Jersey, the jury management office verifies that information provided by individuals on their juror qualification forms is accurate. The jury management office also notifies prospective jurors that the information provided on the questionnaire will be verified by staff.<sup>118</sup>

### Use of Juror Background Information in the Voir Dire Process — In Court

Canada and the U.S. approach jury selection differently. In Canada, prospective jurors are “presumed to be indifferent or impartial.”<sup>119</sup> By contrast, in the U.S., “every candidate for jury duty may be challenged and questioned as to preconceptions and prejudices . . .”<sup>120</sup>

To ensure impartiality, the U.S. courts have established a *voir dire* process by which prospective jurors are questioned about their backgrounds and potential biases before being chosen to sit on a jury.<sup>121</sup> The purpose of the *voir dire* is to identify and remove prospective jurors who are unable to serve fairly and impartially. Prospective jurors may be challenged by either party for cause, or the party may elect to use one of its limited “peremptory challenges” to remove individuals for reasons known only to that party. While many jurisdictions rely solely on jurors' answers during *voir dire*, some jurisdictions allow the in-court use of juror questionnaires and/or criminal records of jurors.<sup>122</sup>

The ABA's “Standards for Juror Use and Management” suggests that a “*voir dire* examination should be limited to matters relevant to determining whether to remove a juror for cause and to exercising peremptory challenges.” Specifically, “basic background information regarding panel members should be made available in writing to counsel for each party on the day on which jury selection is to begin.”<sup>123</sup> Further, “[t]he judge should ensure that the privacy of prospective jurors is reasonably protected, and that questioning is consistent with the purpose of the *voir dire* process.” The commentary suggests that “[n]o independent investigation by attorneys or any others is contemplated nor should it be countenanced by the court.”<sup>124</sup>

### Prosecutors' Statutory Access to Prospective Juror Information

In many states, access to prospective juror information is restricted by state legislation or court rule. More than one-quarter of U.S. courts do not provide attorneys with any home address information

116 Salyers, Lance. “Invaluable tool vs. unfair use of private information: examining prosecutors' use of jurors' criminal history records in voir dire,” *Washington and Lee Law Review* (Summer 1999).  
117 Mass. Gen. Laws Ch. 234A, 33 (1986).  
118 New Jersey Jury Management Office website, FAQ: <http://www.judiciary.state.nj.us/hudson/jury/juryfaq.htm#12>.  
119 *R. v. Williams*, [1998] S.C.J. No. 49 at para. 13.  
120 *R. v. Williams* at para. 12.  
121 Juries In-Depth: Choosing Who Serves, American Judicature Society, at [http://www.ajs.org/jc/juries/jc\\_whoserves\\_overview.asp](http://www.ajs.org/jc/juries/jc_whoserves_overview.asp).  
122 Campbell, Penelope. “Criminal Background Check of Prospective Jurors: A Necessity or an Intrusion?” *Journal of the DuPage County Bar Association*, DCBA Brief (January 2008).  
123 The ABA considers basic background information to include: name, gender, age, occupation, educational level, marital status, dates of any prior jury service, geographic area in which he or she lives, occupation of his/her spouse, and age(s) of his/her children, if any. Precise address should not be included, to protect prospective juror safety and privacy. ABA Standards Relating to Juror Use and Management, Standard 11 at p. 104.  
124 ABA Standards Relating to Juror Use and Management, Standard 7 at pp. 58-62.

for prospective jurors, and more than one-third do not provide full street addresses before the *voir dire*, which makes it difficult for attorneys to conduct background checks. However, in other states, such as Hawaii, Minnesota, New Hampshire, and Massachusetts, attorneys may have access not only to prospective jurors' names and addresses, but also marital status, occupation, children, and other information.<sup>125</sup>

Courts in Delaware, Massachusetts and New York do not provide attorneys with access to prospective jurors' questionnaires. In addition, New York explicitly exempts juror qualification questionnaires from public disclosure.<sup>126</sup> However, at least some of the courts in all other states allow access to the questionnaires. Some jurisdictions, such as Arizona, require segregation of qualification and administrative information from information provided to the litigants during the *voir dire*. In nine states, all courts allow attorneys to access juror questionnaires.<sup>127</sup>

The ABA's "Standards Relating to the Administration of Criminal Justice" recognizes that prosecutors may investigate prospective jurors. The Standards do caution, however, that the investigation should normally be restricted to "records and sources already in existence" and should "neither harass nor unduly embarrass prospective jurors or invade their privacy."<sup>128</sup>

### Prosecutors' Access to Jurors' Criminal Records — Case Law

U.S. case law shows that prosecutors can usually obtain access to prospective jurors' criminal records. Courts have generally been willing to interpret the relevant statutes in a way that authorizes prosecutors to access prospective jurors' criminal records under such purposes as "law enforcement," "prosecution," "litigation," and/or "administration of criminal justice."<sup>129</sup>

One early judgment by the Supreme Court of Iowa determined that the use of jurors' criminal records does not fall within the scope of a prosecutor's prescribed duties. The court held that the prosecution may only be able to access these records if there is a reasonable belief that the criminal record contains information warranting disqualification.<sup>130</sup> However, this line of reasoning has not been followed in recent years. Generally, cases have confirmed that prosecutors may access prospective jurors' criminal records. In fact, in a recent appeal in which two jurors were dismissed late in the trial for having lied about their criminal records during *voir dire*, the court concluded that much time had been wasted during the trial because the prosecution had not conducted criminal background checks on prospective jurors early on.<sup>131</sup>

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125 State-of-the-States Survey at pp. 25-26, 80.

126 N.Y. JUD. LAW at Article 16 s. 509.

127 Arkansas, Connecticut, Hawaii, Indiana, Maine, Montana, New Hampshire, New Mexico, Wyoming. State-of-the-States Survey at p. 81.

128 ABA Standards Relating to the Administration of Criminal Justice, Standards 3-5.3 and 4-7.2.

129 *Tagala v. State*, 812 P.2d 604, 611 (Alaska Ct. App. 1991); *State v. McMahan*, 821 SW 2d 110, 113 (Mo. Ct. App. 1991); *Salmon v. Commonwealth*, 529 SE 2d 815, 819 (Va. App. 2000).

130 404 NW 2d 134, 136 (Iowa 1987). The court reversed a conviction based on the prosecutor's use of jurors' criminal history data, because this use is not one of the prosecutor's prescribed statutory duties. However, an exception might be available if there is a reasonable belief that the criminal history contains information warranting disqualification, because prosecutors do have a duty to prosecute violations of law.

131 *U.S. v. Warner, et al.*, 2006 WL 2583722 (N.D. Ill.); affirmed 498 F.3d 666, 685 (7th Cir. 2007).

## Access by Defence to Jurors' Criminal Records — Case Law

Case law on the issue of sharing criminal record checks with the defence tends to be fairly evenly split.<sup>132</sup> The rationale against sharing this information is that defendants do not have the same level of need for criminal records because they are not concerned with a general bias against defendants.<sup>133</sup>

A defendant's constitutional right to an impartial jury could be violated if the defence could show that the prosecutor's access to and use of criminal records of prospective jurors, and the defendant's lack of access, resulted in a partial jury by which the defendant was harmed; however, the burden rests on the defence to show that the jury was prejudiced.<sup>134</sup>

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132 *Tagala v. State* at p. 611; *Salmon v. Commonwealth* at p. 819.

133 *Commonwealth v. Joseph Cousin*, 499 Mass. 809, 816 (2007).

134 *State v. Goodale*, 740 A.2d 1026, 1030 (N.H. 1999).

# 6.0

## Results of the Investigation

## 6.0 RESULTS OF THE INVESTIGATION

### 6.1 Site Visits and Interviews

#### Introduction

As noted above, my investigative team began their site visits in Windsor, then went to Thunder Bay and Barrie. They also conducted site visits in Toronto. In each of these locales, my team held four meetings. First they met with the local Court Services staff to gain an understanding of its particular practices with respect to the handling of jury panel lists. They also met with the Crown attorney and the Regional Director of Crown Operations to determine if there was a practice of requesting background checks on prospective jurors, and if so, what was that practice. My team then met with the local police service to obtain information on whether background checks were conducted and, if so, what databases were accessed, what information was provided to the Crown attorney handling the matter, and in what form. Further, my team also interviewed the criminal defence counsel in the cases identified in the media where background checks had been conducted, to obtain their knowledge and views of the practice.

In addition, after a preliminary review of the responses to our formal empirical survey, the team held follow-up telephone interviews with the Crown attorneys at seven additional jurisdictions. These jurisdictions were identified as ones that had indicated in their survey responses that a database had been accessed at the Crown's request, on at least one occasion, to obtain background information on prospective jurors. These seven jurisdictions are:

- Brockville/Leeds and Grenville Counties;
- London/Middlesex County;
- Owen Sound/Grey County;
- Sarnia/Lambton County;
- St. Thomas/Elgin County;
- Sudbury/District of Sudbury; and
- Woodstock/Oxford County.

Finally, my team interviewed staff at the Provincial Jury Centre (PJC) in London, and staff at an RCMP office and at the OPP with special expertise with CPIC.

The detailed results of the interviews in these 13 locations are set out below.

## Windsor

### *Court Services*

The team met with the Manager of Court Operations (Manager) for the Windsor courthouse. As noted above, the presiding judge in the case reported on in Windsor had declared a mistrial. Leading up to this mistrial, the judge had held a *voir dire* — a procedural hearing — where the Manager and the Assistant Trial Coordinator/Jury Clerk were required to respond to questions regarding their policies and practices with respect to the handling of jury panel lists. As a result, during our meeting, the Manager felt that it was important to first provide us with information regarding their past practice in this area. He advised that in the past, 10 days prior to the jury trial date, his staff automatically provided the jury panel list to the Crown attorney's office. It was put in the inter-office mail delivery system as the Crown attorney's office was located in the courthouse. The defence counsel, upon request and payment of a \$2 fee, would be provided with a copy of the panel list. Any request for a copy of the list earlier than the 10 days was refused, in compliance with the *Juries Act*.

The Manager also advised that the PJC provides his office with two different sets of jury panel lists: the administrative list and the jury panel list. As noted above in Section 4.2, the one key difference between the two lists is that the administrative list contains the telephone numbers for each prospective juror to enable Court Services staff to contact the prospective jurors, where necessary.

However, the Manager advised that, in Windsor, it was the historical practice to provide the administrative list containing the telephone numbers of prospective jurors to the Crown attorney, and the jury panel list (without telephone numbers) to the defence counsel.

As a result of the recent case in Windsor involving background checks on jurors, the practice for handling jury panel lists was changed. The current practice is that representatives of both Crown and defence counsel must attend at the court office to pick up a copy of the jury panel list. They must sign for a copy of the list, and a log of the transaction is maintained. The administrative list remains the property of Court Services and is used for administrative purposes only.

### *Crown Attorney*

My team met with the Crown attorney, the Deputy Crown attorney and the Acting Regional Director of Crown Operations. They advised that there is no routine practice of asking for background checks of prospective jurors in Windsor. They indicated that the incident reported in the media was an isolated one.

When asked about such practices, the Crown attorney indicated that more than 10 years ago, the jury panel lists, when provided to the Crown, already contained background check notations on them, but he had no idea how that happened, or why. This practice stopped at some unspecified point in the past. The Crown attorney advised that when he received the March 31, 2006 Practice Memorandum from MAG, he queried the other Crown attorneys in the office and was told that they did not request background checks on prospective jurors.

The Crown attorney noted that the circumstances surrounding the case reported in the *Windsor Star* were investigated by the trial judge during the *voir dire* — these ultimately led him to dismiss the jury panels.<sup>135</sup>

In addition, the acting Regional Director of Crown Operations stated that, in his experience in London, Ontario as a Crown attorney, he did not have a consistent approach with respect to the handling of jury panel lists, upon completion of jury selection. He indicated he would do different things with the jury panel lists — in some cases, he would retain the list in his file, while in other cases, he would leave the list on the counsel table in court after the jury selection process was completed, for Court Services staff to deal with.

My team contacted the Manager of Court Operations in London, to confirm the procedure regarding any lists that may have been left behind in the courtroom. The Manager advised that a Court Services Officer is assigned to each court room, and that this officer is responsible for ensuring that, at the end of each day's hearing, all documents are properly removed from the room. The Manager also advised that in the event that a Court Services Officer found a jury panel list abandoned in the courtroom, he would either return it to the Crown attorney's office, or place the list in a locked shredding bin in the Court Services office. The Manager stated that this practice would be in accordance with MAG's 2007 directive to Court Services staff regarding the handling, storage and disposal of confidential documents — a jury panel list being considered a “confidential document” under the directive.

### ***The Police***

My team also met with the Chief of Police (Chief), the Deputy Chief, and legal counsel for the Windsor Police Service, who advised that background checks were rarely done. It was explained that a police officer would normally attend court with the Crown attorney during a criminal trial, including the jury selection process. If the officer noted someone in the jury pool that they believed had a criminal record, then a background check may be requested in order to verify the officer's belief. The Chief noted that in *R. v. Huard* the transcript of the judge's ruling on the mistrial and the *voir dire* evidence indicated that it was the first time the officer involved had conducted background checks on prospective jurors. The Chief also advised that he had not found any other incidents where an officer had been given a jury panel list to “vet.” The Chief further indicated he recalled that in the early 1980's, the jury panel list was provided to the police, but he did not recall by whom. CPIC background checks would be conducted and the list would then be returned to the sheriff. Some time during the 1990's, this practice stopped, according to the Chief.

### ***Defence Counsel***

My team spoke to a defence counsel representing one of the accused in the case in question. He had been quoted in the media as being highly critical of the background checks that had been done by the Windsor Police at the request of the Crown. He was also critical of the investigation that I had recently initiated, suggesting that “this could be seen as a cover-up.” Prior to being interviewed by my team, we spoke with him to explain the nature of our investigation and the process we planned to follow. This was reiterated when the full team interviewed him. He indicated that the media

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135 *R. v. Huard*.

reports did not accurately reflect his views and that he was pleased to participate in the investigation — he offered to provide as much assistance as possible, for which we were grateful.

Defence counsel advised that he had read media reports regarding the “jury vetting” case in Barrie. Given that he was in the midst of a major case in Windsor (*R. v. Huard*), he asked the Crown attorney prosecuting the case to confirm that a similar process had not occurred. The next day he was advised by the Crown attorney that background checks of the jury panel had in fact been done, but had not been disclosed to the defence. When given a copy of the marked jury panel list, he felt that much of the background check information put on the list by the police was inappropriate — for example — “dislikes police,” “criminal associate,” “handgun in residence,” and other notations regarding young offender records and individuals who had received pardons. The defence counsel referred the team to the transcript of the mistrial and indicated that what happened in the case in Windsor was accurately reflected in the transcript.

Defence counsel was of the view that, in assembling jury panel lists, jurors are taken at their “ill-informed word” in filling out the juror questionnaire. For example, in his opinion, most members of the public do not know the difference between a summary offence conviction and an indictable offence conviction. Defence counsel agreed that some level of check should be done to ensure that individuals who have been convicted of an indictable offence (for which a pardon has not been granted) do not end up on jury panels. However, he did not feel that such checks should be done by the Crown attorney’s office or the police. Rather, in order to ensure a “level playing field,” a neutral office, such as the sheriff, in his view, should be responsible. The prosecuting Crown attorney and defence counsel should then receive exactly the same information. In his view, neither the Crown nor defence counsel should receive the type of information that was being disclosed by the police, in this case.

Further, it was defence counsel’s view that a Crown attorney should not receive assistance during the jury selection process from the investigating police officer. It was his opinion that a good police officer will have internalized a great deal of local knowledge that would assist the Crown in selecting a favourable jury, even without resorting to database checks. This would represent an unfair advantage to the Crown.

According to defence counsel, the jury system depends on citizens coming to court for jury duty, and, in his view, they would not want to be there if they believed they were being “dissected.” In the words of this counsel, “justice is not expected to be perfect but it is expected to be perfectly open — pristine.”

Finally, when asked by my team if he had any knowledge of a defence counsel ever checking on the background of prospective jurors, he responded “I have never done it; I suppose you can Google someone, but I’ve never done it.”

### ***Transcript of Court Proceeding***

In order to verify the information provided at the Windsor interviews, my team acquired a copy of the transcript from the *voir dire* in *R. v. Huard* that resulted in the jury being dismissed. This included the ruling made by Justice Thomas.

According to the transcript, the detective, a member of the Windsor Police Service since 1987, upon seeing that the Crown attorney had a jury panel list, asked if the Crown wanted him to do a background check on the jurors. His recollection was that the Crown attorney asked, “Is that something you do here?” The detective answered that he didn’t know, but that he would undertake to do the background check if the Crown attorney desired it. The Crown attorney answered in the affirmative.

At that point, with the assistance of another detective, they checked each of the jurors named on the two jury panel lists. The detectives ran the names through the Windsor Police Service computerized database known as the “Versadex” system. This system is an in-house computer system of the Windsor Police Service that allows them to conduct local background checks by name, event, and address. This system records any contact that persons may have with the Windsor Police Service, and is therefore not limited to criminal offence convictions. Information gleaned from that system by the detectives, and deemed to be useful to the Crown for jury selection, was written on the list of jurors, beside the relevant names. The list was subsequently conveyed to Crown counsel. The detective confirmed that he did not perform any CPIC checks.

The police notations available to the Crown prior to selecting the jury included information regarding criminal convictions. However, it also provided additional information including:

- provincial offence tickets;
- information regarding criminal charges where there had been no conviction or where a discharge had been granted;
- a criminal conviction where a pardon had been granted; and
- notations such as criminal associates, family-related issues and comments reflecting judgments, such as “dislikes police.”

When asked what his particular motivation was, as a police officer, for asking if the Crown attorney wanted Versadex information to be used during the jury selection process, the detective replied:

I don’t know that I had any motivation. I was putting the information out there for [the Crown attorney] to do with it what he wanted. I thought in my mind it would be fair, a fair thing to do for picking a jury.

The officer characterized the information as details that might indicate a “negative attitude towards the law.”

The officer also confirmed that he had never done a Versadex nor similar database search as part of the jury selection process. When asked by the defence counsel for one of the accused whether the detective had ever done this before and whether he had heard about this practice from anyone in the Windsor Police Service, the detective responded “no” to both questions. He confirmed that the idea of running prospective jurors through Versadex was completely his idea. He did not turn his mind to the issue of disclosure and had very limited knowledge of how his actions impacted upon privacy rights, or may have offended other legislative provisions.

## Thunder Bay

### *Court Services*

My investigative team met with the Supervisor and Manager of Court Operations in Thunder Bay. They advised that it was never their practice to provide the jury panel list more than 10 days prior to the jury trial date. Usually, one week prior to the date, upon request, they would provide the parties to the matter with a copy of the jury panel list.

### *Crown Attorney*

My team met with the acting Crown attorney, and the acting Regional Director of Crown Operations, who joined in via teleconference. My team was provided with copies of three template letters that the Crown attorney's office routinely sent to the Thunder Bay Police Service prior to jury selection. These three letters are very similar in nature, varying only slightly in what the Crown attorney was requesting to be undertaken. The three letters consist of an original version, and two updated versions. Each version indicates it is enclosing a copy of the jury panel list for an upcoming jury trial, and requests that checks be undertaken.

The November 12, 2008 version of the memorandum states:

Would you kindly have someone check over the list and card the names. We do not require you to do CPIC report. *If your records show anything regarding any of the names of which I should have knowledge, I would appreciate your supplying me with same as soon as possible, and please attach photocopies of information cards only.* Enquiries should not be made outside the confidentiality of your office. [emphasis added]

The June 2, 2009 version states:

Would you kindly have someone check over the list and card the names only for records of indictable matters. We do not require you to do CPIC report. If your records show anything regarding any of the names of which I should have knowledge, I would appreciate your supplying me with same as soon as possible, and please attach photocopies of information cards only. Enquiries should not be made outside the confidentiality of your office.

Finally, the June 17, 2009 version, which is the version that was currently being used at the time of the interview, states as follows:

Would you kindly have someone check over the list and provide us with the names of persons convicted of indictable offences. We do not require you to produce a CPIC report. If your records show any information regarding indictable offences for which a potential juror has been convicted please include that information as well. Enquiries should not be made outside the confidentiality of your office. Please be aware that any information provided will be shared with the defence counsel.

In practice, the letter that goes to the police is generated by administrative staff in the Thunder Bay Crown attorney's office when they receive the jury panel list from Court Services, and is sent to the Records Department of the Thunder Bay Police Service.

The acting Crown attorney explained that the purpose of the memorandum was to request the police to check the list of prospective jurors through their “Niche” system. Niche is a records management system that is used widely by police services across the province. Like Windsor’s Versadex, Niche contains a wide variety of information, including information about interactions between the police and the public. It contains information on accused individuals, victims, complainants and witnesses. As such, it is clearly not limited to criminal conviction information.

My team was also provided with a sample of the type of information generated by the Thunder Bay Police Service, in response to one of these letters. This includes an information card and a computer printout from the Niche database when a prospective juror’s name appears. The card contains the name, address and date of birth of the individual, as well as any charges. The computer printout lists, for example, whether the individual was a “vehicle driver,” an “accused” or a “complainant.” In addition, the printout lists the occurrence number, the date and time of the occurrence and the specific location.

The acting Crown attorney advised that whatever is received from the police is shared with defence counsel. The team was also provided with a template form that defence counsel was asked to sign. This form outlines the conditions of disclosure; for example, that the materials will be used solely for the purpose of defending the charges at issue, and will be kept secure and not published or distributed without the Crown’s consent.

### ***The Police***

My team met with the Chief of Police, the Records Manager and legal counsel for the Thunder Bay Police Service. The Records Manager provided a template of the letter she would normally receive from the Crown, attaching a jury list. This letter was consistent with the June 2, 2009 template letter provided to the team by the acting Crown attorney. The Records Manager advised that upon receipt of the request from the Crown attorney, a search would be performed of the Niche database for each individual listed on the jury panel list. For each individual with a “hit,” a printout is generated and provided to the Crown attorney. The Records Manager recalled that in approximately 2002, her office did both a CPIC and a Niche database check, but then stopped — she could not recall the reason why.

The Records Manager confirmed that all requests are handled by the records department and once the checks are completed, the information generated is packaged and physically taken to the Crown attorney’s office by a police officer. The package of information is simply returned to the Crown attorney’s office with no cover letter generated. The police do not retain copies of the package.

The Records Manager stated that she assumed that any disclosure made to the Crown attorney would be lawful. Neither she nor the police service ever provided any information to other persons, such as defence counsel.

### ***Defence Counsel***

The team contacted and spoke with the defence counsel involved in a current case in Thunder Bay regarding jury background checks. This defence counsel commented that he did not know if the above was the practice in Thunder Bay or whether or not it was an issue. At the time of the

interview, defence counsel was still trying to determine if there was anything he could do post-conviction. In the current case, he had been provided with a copy of the jury panel lists containing notations only five minutes before the jury selection. The Crown attorney had never mentioned to him that this background information had been sought and obtained.

The defence counsel said he was not comfortable receiving such information and had never been presented with such information in the past. He has been practicing for 19 years and has been involved in 15 jury trials, all in Thunder Bay. He indicated that since the conviction, he has looked more closely at the list and was surprised to see that the background check information was recorded *whenever* a person had called into the police — not only if they were charged.

Defence counsel said he did not believe that either Crown attorneys or defence counsel should ever receive this type of detailed background information on a prospective juror. If, however, the background check information was limited to convictions for indictable offences for which a pardon had not been granted, and if the law allowed for the information to be confined to convictions for indictable offences, then it would be acceptable to defence counsel.

## **Barrie**

### ***Court Services***

My team met with the Manager of Court Operations (Manager) in Barrie. She explained that their past practice was to automatically provide the Crown attorney's office with a copy of the jury panel list via inter-office mail, sometimes 14 days in advance of the trial. The office did not keep track of the date that the list was provided to the Crown or when defence counsel came to obtain a copy. This practice has since been changed. The current practice is to release the jury panel list no earlier than 10 days prior to the trial sitting date, and to track who has received it. Now, everyone is required to sign for the list. The Manager indicated that it is not common practice for defence counsel to request a copy of the panel list.

The Manager informed my team that there had recently been an incident where confidential documents (not jury lists) that were left in a courtroom ended up in the parking lot of a courthouse in the Barrie area, rather than being shredded. As a result, Barrie Court Services created a stamp that reads, "CONFIDENTIAL: THIS DOCUMENT MUST BE SHREDDED, DO NOT DISPOSE IN GARBAGE CANS OR RECYCLE BINS." The Manager indicated that her office began using this stamp in late 2008, or early 2009, for documents considered to be confidential, including jury panel lists, in accordance with MAG's 2007 directive regarding confidential documents, (referred to above.) The jury panel lists we received from the Barrie Crown attorney's office confirmed this explanation.

### ***Crown Attorney***

The team met with the Deputy Crown attorney (there was no one officially in the position of Crown attorney in Barrie at the time of this interview), and the Regional Director of Crown Operations.

The Deputy Crown attorney advised that for each jury trial in Barrie, a memorandum was automatically generated by the Legal Administrative Assistant and sent to five local OPP

detachments (Collingwood, Huronia West, Nottawasaga, Orillia and Southern Georgian Bay) and one local municipal police service (Midland). The memorandum, sent under the name of the Deputy Crown attorney, attaches the jury panel list for the upcoming trial and makes the following request to the police:

Please check the attached jury panel lists(s) for the persons listed in your locality, and advise if any have criminal records. We are not able to provide birth dates.

*It would also be helpful if comments could be made concerning any disreputable persons we would not want as a juror. All we can ask is that you do your best considering the lack of information available to us. [emphasis added]*

The Deputy Crown attorney advised my team that he had been unaware that the memorandum was generated and sent out under his name until the issue was recently reported in the media. He confirmed that the practice, as outlined in the memorandum, as well as the “template” for the memo, was the historical practice in Barrie. His name was apparently added to the memorandum as of March 2009, due to the imminent retirement of the previous Crown attorney.

According to the Deputy Crown attorney, once generated, the memo was faxed with the jury panel list to the six police services. The responses sent back by the police services to the Crown office came in various forms:

- the Southern Georgian Bay OPP responded via fax, as well as in-person delivery of hard copy information. This office added a line under the juror’s name with the date of birth (DOB). If information was found on the juror, the police would add this information next to the name. The information was then transferred onto a master jury list maintained by an assistant in the Crown attorney’s Office;
- the Nottawasaga OPP responded via fax only. The police put a line with either “Negative” or “Possible” under the name of the prospective juror. The assistant then marked “Neg” (for no criminal record) or “Possible” (indicating that it is possible there was a criminal record) on the master jury list; and
- the Midland Police Service, and the OPP detachments in Collingwood, Huronia West and Orillia, replied to the Assistant via e-mail. They indicated the jury panel list date, panel number, and the juror number; beside that they marked “OK” (if no criminal record), “NO DOB” if they could not locate the date of birth, and where information was available, marked what information they had located. The assistant then transferred the information to the master jury list. The assistant provided a copy to the applicable Crown attorney prior to the jury trial date.

The Deputy Crown attorney noted that, while the practice and the wording in the memorandum dated back to 2004 or earlier, some of the police services previously listed had been removed — for example — the Barrie Police Service and the Barrie detachment of the OPP. He understood that these offices felt that, without a date of birth for each juror, the practice of conducting checks was too labour-intensive and lacking in accuracy. At some point in the past, these offices therefore declined to perform background checks.

In order to provide some context as to how this practice had developed in Barrie, the Deputy Crown attorney discussed a jury trial that took place in 1996. While the trial was ongoing, a juror had contacted his probation officer and advised him that he was on a jury. The probation officer contacted the presiding judge to inform him of this fact and the judge took the necessary action to have the individual removed from the jury panel. The judge felt that the Crown attorney had failed in not “vetting” the jury to ensure that there were no individuals with indictable offence convictions — he admonished the Crown in court. The judge clearly had an expectation that some form of screening would have been conducted by the Crown attorney to ensure that persons who were not qualified to be on the jury panel would indeed be removed.

The Deputy Crown attorney commented that the intent behind requesting background checks of prospective jurors was not to get a “leg-up” on the jury selection process, but instead, to ensure that Crown attorneys performed their jobs as this judge expected them to do. On the issue of sharing the information with defence counsel, the Deputy Crown attorney was not aware of any practice of doing so.

Finally, the Deputy Crown attorney confirmed that as of May 15, 2009, there have been no requests made of any of the police services to conduct police background checks on any jury panel lists scheduled for trials in Barrie.

### ***Barrie Police Service***

Although we were advised by the Crown attorney’s office that the Barrie Police Service did not conduct background checks on prospective jury members, we chose to meet with the Chief of Police and the Staff Sergeant responsible for court services.

They advised that they had stopped doing background checks for the Crown attorney’s office approximately three to three and a half years ago, because it was largely ineffective. They would only receive the name, address and occupation of the prospective juror on the jury panel list. Checking CPIC without a date of birth could result in multiple hits for individuals with the same name. They said that, as a result, since the practice was not serving any practical purpose, it was stopped.

### ***OPP Detachments***

We also arranged to interview the commanders in the five OPP detachments referenced in the Crown attorney’s memo noted above, as well as the Barrie OPP detachment. We confirmed that the information provided to the Crown attorney’s office by each of the detachments was consistent with the information provided by the Crown attorney’s office noted above. Although the practice was not uniform across the five detachments, both CPIC and Niche were accessed to provide background information to the Barrie Crown attorney’s office. Similar to the Barrie Police Service, the Barrie OPP detachment had stopped performing searches for the Crown attorney’s office within the past three to four years.

The site visit to Orillia also included an interview with the Auditor/Analyst of the CPIC database for the OPP and the Unit Manager for the OPP’s Record Management System. My team was provided with a thorough overview of both databases.

## *Defence Counsel*

The team also met with the defence counsel for the case in Barrie where, as noted above, the judge had ordered two jury panels dismissed. Defence counsel advised that his client was scheduled to go to trial on June 1, 2009. On May 28, 2009, he received a fax from the Crown attorney containing copies of the vetted jury panel list. The defence counsel reviewed the list over the weekend and was uncomfortable with the type of background information that was recorded on the jury panel list. For example, some of the notations on the list included the following:

- “witness to parent’s domestic;”
- “dad is a drinker & assaultive to her mother;”
- “suicidal in 2001;”
- “calls a lot for minor complaints;”
- “ongoing neighbour dispute;” and
- “neighbour shot his cat.”

As a result, defence counsel called the Crown attorney and advised her of his concerns — he also raised the issue in court. He indicated that on June 2, 2009, the background checks that had been performed were raised in the media; the Crown attorney then agreed that new panel lists were needed. The case was subsequently adjourned to June 15, 2009.

According to the defence counsel, simply stopping the vetting process now would not necessarily save the “tainted” panels. Once a panel list has been the subject of background checks, names from that list that have been vetted may resurface on future lists. Once the Crown is in possession of information on any prospective juror on a list, impartiality has been lost.

Defence counsel was of the view that neither defence counsel nor the Crown attorney should have any information on prospective jurors other than what appears on the jury panel list. He was concerned that an imbalance is created by the police and Crown attorney having access to a great deal more information than the defence. Defence counsel did not believe that he had received full disclosure in this case because he was not given an explanation for the notations that appeared on the jury panel list; for example, what did “OK” mean? He felt that if background checks are to be performed to ensure that individuals convicted of indictable offences are not included on jury panel lists, such checks should be conducted completely independent of the police or the Crown.

## **Toronto**

### *Court Services*

My team met with the acting Director of Court Operations for the Toronto Region; the acting Manager of Court Operations, Criminal, Superior Court of Justice; and the acting Manager, Criminal and Jury, Jury Office. They advised that all jury trials in the Toronto Region are held in one location in downtown Toronto. We were advised that 10 days prior to the jury trial date, the

Crown attorney is routinely provided with one list that is sealed in an envelope, delivered to his office, and signed for. Defence counsel must appear at the counter with identification if they wish to obtain a copy of the list.

Given the high number of jury trials at the downtown Toronto courthouse location, and the corresponding need for large numbers of jurors at any sittings, the process for managing the jury panel lists during sittings varies from the other locations discussed above. However, these variations relate to providing accurate panel lists to multiple trials that may be engaged in jury selection, at the same time.

### ***Crown Attorney***

My team also met with the Crown attorney and the Deputy Director of Crown Operations for the Toronto Region. The Crown attorney advised that they had gone through their files and had found two cases where Crown attorneys had asked police to conduct background checks on prospective jurors. Based on their file reviews and her direct conversations with the lawyers in her office, the Crown attorney was satisfied that these were the only two occasions since March 31, 2006 when background checks had been performed at the request of the Crown attorney's office.

The first case had been identified in the media on June 30, 2009. In this case, the prosecuting Crown attorney had been called in from Ottawa to assist with the case. He made a verbal request to the investigating officer to have CPIC checks conducted on the jury panel list as he understood that this was the practice in Toronto. The officer attempted to conduct CPIC checks, but because there were no dates of birth provided with the panel list, the officer made the decision to stop conducting the CPIC checks. The jury panel list was destroyed after jury selection. The visiting Crown attorney was unable to remember how he had formed the view that conducting CPIC checks was the practice in Toronto, at that time. Similarly, he was unable to remember who had advised him of this practice, nor how he had learned about this.

The second case involved a high profile murder trial. In that case, while searching jury trial files in order to respond to our questionnaire, a chart was found that indicated that a background check had been performed. This chart was prepared by the lawyer who was assisting the senior Crown attorney in this matter. It appears that the police had provided information obtained from searches of CPIC as well as its own databases.

Subsequent to our team meeting with the Crown attorney and the Deputy Director of Crown Operations for the Toronto Region, I requested a meeting with both the senior Crown attorney and his co-counsel who had worked on the case. Both of them, along with the Crown attorney acting for the Deputy Director of Crown Operations for the Toronto Region, attended at my office.

The Crown attorneys spoke frankly about their experiences with a practice dating back to the 1980's when the Crown routinely received copies of jury panel lists that already contained additional background information. The nature of the additional information indicated that the police had conducted CPIC checks. The Crown attorneys did not believe that this was done at the request of the Crown attorney's office. However, they were not certain how the police would have obtained the jury panel lists. This was similar to what my investigative team had heard when they interviewed the Crown attorney in Windsor (see comments above). They believed that the practice

had stopped in the 1990's as a result of a judgment issued on March 8, 1993, by Justice Humphrey (*R. v. Fagan*). As described above in Section 5.1, Justice Humphrey expressed concerns about the practice of conducting background checks and its impact on both the privacy of prospective jurors and the fairness of the trial.

I note that before 1993 and the establishment of the PJC in London, the jury selection process was managed locally. Each jurisdiction in the province had a sheriff who was appointed by an order-in-council and who was responsible for the creation of the jury roll, the handling of the jury panel lists, etc. In 1993, when the PJC was created, the jury process was centralized. It can thus be surmised that the jury panel lists may have been provided by the then local sheriff's office to the police, to conduct background checks; the "vetted" list would then be provided to the Crown attorney for the jury selection process.

During my interview with the senior Crown attorney, he confirmed that he believed he had never requested background checks in the past. However, when he was shown the chart found in the file, he recognized his handwriting on a notation in the chart, and said that he must have requested the checks. Presumably, he had asked that the checks be undertaken for prior assaults or drinking offences, as these offences related to the issues to be tried.

The co-counsel on the case understood that there was no general practice in Toronto to request criminal record checks. This was the only case she had worked on where a check had been conducted. As far as she can remember, in this particular case, the police were only asked to perform a CPIC check on prospective jurors. Due to the notoriety of the case, a large number of jurors had been summoned. From the sizable panel list, individuals were separated into different pools during the normal jury selection process. The co-counsel decided to create a chart dividing prospective jurors in each pool, in the sequential order they were called. She was unable to recall whether she had actually added the information that appeared as highlighted, onto the chart. She said that when she looked at it now, she believed that, based on the notations made, it was probably done by the police officer involved.

The Crown attorneys acknowledged that, although only a CPIC check had been requested, additional information, above and beyond criminal convictions, was provided. For example, one notation indicated that a prospective juror had a charge withdrawn. Another notation indicated that the prospective juror had been subject to charges other than *Criminal Code* charges. A third indicated that the individual was the possible victim of a domestic assault incident, that was over a decade old.

Neither the senior Crown attorney nor his co-counsel could recall who had specifically asked the police to conduct these checks. However, the senior Crown attorney took full responsibility — to the extent that it had been authorized by the Crown attorney's office, he said that he was responsible for its authorization. He was clear, however, that the decision to request the checks had not originated from one of his superiors.

### ***The Police***

My team met with the Toronto Police Service Superintendent for Court Services, and the acting Director of Legal Services. The Superintendent explained that he was in charge of the Court Services Unit, comprised of special constables, police officers and civilian members, for a total of

approximately 750 staff. As a matter of policy and practice, this group does not conduct background checks on prospective jurors. They do not see any jury panel lists.

However, the police conduct background checks for Court Services. At the request of the Court Administration Jury Coordinator, the police will conduct a CPIC search to verify an individual's claim at court that he or she is exempt from jury duty on the basis of a self-reported indictable criminal conviction. When they report back to Court Services, they will simply indicate "able to serve" (*i.e.*, no such conviction), or "unable to serve" (*i.e.*, individual has been convicted of an indictable offence).

### ***Defence Counsel***

The team also spoke with the two defence counsel for the Toronto case identified by the media, involving the prosecutor on loan from Ottawa who had served as the Assistant Crown attorney. Both counsel advised that they had been approached by the Assistant Crown attorney prior to the start of the trial and given copies of the juror panel lists that were to be used for jury selection. One of the five panel lists had several juror numbers marked by yellow highlighter. The Assistant Crown attorney told them that the highlighting indicated that the juror associated with that number had had previous contact with the police. One defence counsel indicated that the highlighting did not play a role in the defence team's jury selection. In fact, it was not until the publicity generated by the cases in Barrie and Windsor that the defence counsel considered the implications of the potential vetting that had been performed. At that point in time, the trial was completed and had moved to the sentencing stage. The trial judge was therefore not in a position to consider the implications of the Crown's actions. Both defence counsel confirmed that this experience was unique and that they had never previously had any reason to believe that jury panel lists used in Toronto were being vetted.

The defence counsel subsequently provided us with a copy of the jury panel lists used in this case. As they had indicated, one panel list had 14 of the 120 juror numbers highlighted in yellow marker. The other four panel lists contained no highlighting. This was consistent with the information provided by the Crown attorney's office that the police had been requested to conduct CPIC checks but had not completed the task.

### **Brockville/Leeds and Grenville Counties**

The survey response received from Brockville/Leeds and Grenville Counties indicated that they had only requested a background check in one case. On that occasion, a request had been made to the OPP, with the consent of defence counsel, to access CPIC and OMPAC, which was the former records management system used by the police.

The team spoke with the Crown attorney who confirmed that this was the only case since March 31, 2006, in which criminal record checks had been conducted. This case was unique to the office since the victim was a local police officer who had worked in Brockville for some time. Both the Crown and the defence wanted to know if any of the prospective jurors had been investigated by the officer, charged by him, served as a witness for him, or had had any other professional contact with him. The Crown made a request to the lead OPP investigator and asked him to check CPIC and OMPAC to determine if any such interactions had taken place between the officer and prospective jurors. Notations were made on the panel lists and the information was shared with the defence. Some of the

notations made on the jury panel list were also made by the Crown attorney, based on his experience as a prosecutor. A copy of the jury panel list was provided to my office and the information obtained during the follow-up interview was consistent with what was contained on the list.

### **London/Middlesex County**

The survey response received from London/Middlesex County indicated that on one occasion the London Police Service had been verbally asked to conduct a criminal record check. The police checked CPIC and Versadex. The fact that the Crown attorney was in possession of a list of juror numbers with criminal records attached was communicated to the defence counsel.

My team conducted a follow-up interview with the Crown attorney and the acting Regional Director of Crown Operations. The Crown attorney advised that on one occasion, in the context of a homicide prosecution, the assigned Crown attorney had verbally requested the police to conduct criminal record checks on prospective jurors. The Crown received a list by juror number with any applicable notations. The Crown did not retain the jury lists; however, they contacted the police and obtained a copy of two jury panel lists, both of which had been used to try the same offences. These lists were provided to my office. They contained notations next to the names of a number of prospective jurors, indicating, for example, “anti police,” “drugs,” and “impaired — 1986.” The Crown attorney confirmed that this was not their normal practice but that they had most likely deviated from their practice because of the type of charges involved.

### **Owen Sound/Grey County**

The survey response received from Owen Sound/Grey County indicated that since 2006, criminal record checks had been done twice. The checks were conducted through CPIC, and the results were disclosed to defence counsel.

When the team spoke to the Crown attorney, he confirmed that background checks had only been conducted twice since March 31, 2006, and both times as part of serious sexual assault trials. Requests were made for CPIC checks to the Owen Sound Police Service and the local OPP detachments. A notation was made on the jury panel list that said either “record” or “no record,” with no other details provided regarding the nature of the record. It was not the practice to retain jury panel lists in Owen Sound. All lists would have been destroyed following the selection of the jury panel.

Later in the investigation, it was determined that the Crown attorney for Owen Sound/Grey County had routinely requested and received background checks and other background information about prospective jurors.

### **Sarnia/Lambton County**

The survey response received from Sarnia/Lambton County indicated that their practice was to routinely ask for criminal record checks. The jury lists provided with the survey were consistent with a CPIC-only check.

My team subsequently spoke to the Crown attorney and the acting Regional Director of Crown Operations. In Sarnia, it was a routine practice to request CPIC checks on prospective jurors. The

administrative support staff person responsible for jury matters, upon receiving the jury lists for a particular sitting, would forward them to the local police services for CPIC checks to be conducted. The list would be returned with notations to this staff person, who then prepared a master list, which would be given to the Crown attorney who was selecting the jury. The master list did not include any notation or details other than “no” next to the name of any prospective juror. None of the notations or details contained in separate documents, such as a database printout, were provided to or shared with the Crown. However, it is apparent that “no” appears next to the names of individuals that generated a CPIC “hit.” In numerous cases, this hit did not relate to either a summary or indictable offence conviction. The panel lists provided by the Sarnia Crown attorney’s office to my office verified this information. The Crown attorney advised that it was the practice in Sarnia to share the information they received with the defence counsel.

### **St. Thomas/Elgin County**

The survey response received from St. Thomas/Elgin County indicated that they routinely asked for criminal record checks. The jury lists that were initially provided with the survey confirmed their responses. After receiving the Practice Memorandum from MAG, in 2006, they started sharing results with defence counsel.

My team spoke to the Crown attorney and the acting Regional Director of Crown Operations. The Crown attorney advised that when a jury list was received, an administrative staff member sent it to three police services (Aylmer and St. Thomas Police Services, and the Elgin detachment of the OPP), who were asked to conduct criminal record checks. It appears that the police checked both CPIC and their local databases. The list would be returned with markings indicating “okay” for no record, or “record” to indicate the possibility of a criminal record. The Crown indicated that it was his understanding that “record” did not simply mean there was a “hit,” but reflected a criminal conviction. Other markings included a check mark beside a juror’s name which meant the individual had no record, or an “x” if they had a record.

Subsequent to this interview, the Crown attorney sent along additional jury lists that had later been located. These lists are generally consistent with the survey and the information provided during the Crown attorney’s interview. Checks were performed by the three police services, although the Crown attorney’s office did not always receive a response from all three for each trial. Generally, the police services simply indicated whether or not an individual on the jury panel list had a criminal conviction. On a few occasions however, additional information may have been provided, such as charges having been dismissed, or that an individual had been a complainant to a domestic assault.

### **Sudbury/District of Sudbury**

The survey response received from Sudbury/District of Sudbury indicated that, on one occasion, the Crown attorney’s office had requested a CPIC and Niche check. The notations on the jury lists provided to this office appear to include non-conviction information. The information received by the Crown attorney was disclosed to defence counsel.

My team spoke with the Crown attorney. He advised that there was only one instance when a CPIC check had been requested. The Assistant Crown attorney assigned to the matter felt it was necessary to obtain an unbiased jury. It was the Assistant’s first jury trial. She asked for CPIC and

Niche checks to be conducted by the Greater Sudbury Police Service. The information returned on the jury panel lists included non-conviction information. A copy of the panel list provided to my office confirmed the information provided by the Crown attorney.

## Woodstock/Oxford County

The survey response received from Woodstock/Oxford County indicated that, on one occasion, the Crown attorney had verbally requested a police officer to check for criminal records — the police officer verbally responded that no criminal records had been found. In addition, one Crown attorney routinely asked police and other Crown attorney office staff to review the lists and provide any anecdotal comments on the suitability of prospective jurors.

My team spoke to the Crown attorney and the acting Regional Director of Crown Operations. The Crown attorney confirmed that the office had had only one case where CPIC checks were requested. The request was made verbally and the police had responded verbally that no convictions were found. No markings appeared on the jury panel list. The Crown also advised that he was aware that, in some cases, the Crown attorney assigned to a jury trial would circulate the list to other office staff, asking if they knew anyone or if they were aware of any issues with any prospective juror. The Crown attorney confirmed that the notations marked on the list provided were made by the senior secretary based on her own personal knowledge.

## Provincial Jury Centre

My investigative team also met with staff at the PJC in London, Ontario, who confirmed the jury selection process as outlined in Section 4.2 of this Order.

In addition to outlining the process for developing and circulating the jury panel lists, a number of important points were discussed that were relevant to the issues examined in this Order. Staff of the PJC expressed the view that, in preparing the jury rolls, they were required by the wording of the *Juries Act* to rely solely on the answers provided by individuals on their juror questionnaires. In other words, if an individual responded that he or she had not been convicted of an indictable offence for which he or she had not received a pardon, the PJC staff had no authority to independently verify that information.

Similarly, the staff at the PJC took the view that their powers and duties were as set out in the *Juries Act*. Any expansion of those powers and duties would require legislative amendment.

Subsequently, my team made further inquiries with respect to the following three areas: the process by which juror information is communicated between the PJC and its agents, the extent of the privacy and security measures, and the nature of any agreements with these entities. These details are discussed above in Chapter 4.0, as well as in the discussion of my Recommendations, contained in Chapter 11.0.

## RCMP

My team also arranged to speak with an RCMP Auditor/Analyst who works with the CPIC database, and attended the RCMP's Newmarket location to observe a demonstration of how the CPIC database operates.

Again, a number of important points were learned from this interview that are relevant to the issues examined in this Order. CPIC was originally developed as an officer safety tool, and this remains its primary function. This purpose has shaped the functionality of the system.

In terms of search capabilities, although queries may be made without an individual's date of birth, this is not recommended by the RCMP as the accuracy of the search results will be questionable.

It is also not possible to limit the parameters of a CPIC search to indicate only an individual's *indictable* offence convictions, or whether the individual had been sentenced to a term of imprisonment of more than 12 months.

## 6.2 Formal Empirical Survey

### Introduction

As part of our investigation into the potential violation of prospective jurors' privacy rights, my office conducted a formal empirical survey of all Crown attorney offices in the province of Ontario, to determine past practices with respect to background checks on prospective jurors.<sup>136</sup> I would like to thank the Attorney General for offering his complete support for this survey in order to assist in gathering comprehensive and meaningful results.

In this section I will outline the methodology behind the empirical survey and offer an in-depth discussion of our overall findings. Please refer to Section 6.5 for a synopsis and analysis of all conclusions that were drawn from both the survey results, as well as additional information that came to light during the course of this investigation.

### Methodology

My office sent surveys to the 55 Crown attorney offices that conduct trials in the province of Ontario. The Crown attorney offices that were included in the survey represented 53 geographical locations throughout Ontario, as well as the Crown Law Office – Criminal, and the Guns and Gangs initiative. The survey was designed to elicit information about the practices of Crown attorneys with respect to the collection, retention, use and disclosure of personal information about prospective jurors, since the time that the Practice Memorandum on background checks of prospective jurors came into effect on March 31, 2006.

Specifically, Crown attorney offices were asked to report their practices with respect to criminal conviction checks (*i.e.*, checks from police to determine if a prospective juror had been convicted of any indictable offences), the collection of additional personal information from the police (*i.e.*, other than criminal conviction checks), and the collection of personal information from other sources.

<sup>136</sup> See Appendix 1.

Crown attorney offices were also asked to indicate whether they had either routinely or ever received jury panel lists in advance of ten days prior to the sitting of the court for which the panel had been drafted. (Under the *Juries Act*, jury panel lists are to be kept confidential until this time.)

Crown attorney offices were also asked whether or not these practices took place “routinely.” For the purposes of the survey, routinely was defined as “a matter of course, for a significant portion of trials or as a matter of course, for certain types of trials, such as murder trials.” A copy of the survey is attached to this Order.

To verify the information provided in the survey, Crown attorney offices were asked to send copies of all jury panel lists used by the office (including any annotations), since March 31, 2006. Crown attorney offices were also asked to confirm that they had canvassed all Assistant Crown attorneys to determine their practices and to confirm that they had reminded all Crown attorneys about the Direction and Reminder issued by the Assistant Deputy Attorney General on May 26, 2009 regarding this matter. My office later followed up with all 55 Crown attorney offices by telephone to confirm that they had provided us with all available jury panel lists and, if necessary, to clarify the information that was provided in the survey.

The response rate to our survey was a staggering 100 per cent – all 55 Crown attorney offices in Ontario completed the survey. This is a remarkable response rate, rarely achieved, for which we are grateful to the Attorney General and the Crown attorney offices across the province. Jury panel lists that could be located were sent to us along with the surveys, or at times following a telephone call from my office. Alternatively, they were identified as part of the document capture review conducted by my office, with the assistance of the Auditor General.

## Summary of Survey Results

### *No Collection of Personal Information in the Majority of Cases*

In the majority of cases — two-thirds, Crown attorney offices reported that they had never sought out any personal information about prospective jurors. Specifically, 67 per cent of the Crown attorney offices (37 out of 55) indicated that since March 31, 2006, they had never requested or received any personal information about prospective jurors, from any source.

Following a review of the responses to the survey received by my office, and after receiving additional information from several Crown attorney offices, the total of 37 offices in this category remains the same. However, two offices comprising this group did change. Initially, the Ottawa Crown attorney office indicated that they had conducted criminal records checks on one occasion. However, this related to the activities of an Assistant Crown attorney from Ottawa who had been called in to assist with a trial in Toronto. This incident is described in detail above in Section 6.1 of this Order. Since this particular trial occurred at the Downtown Toronto Crown attorney office, and was also included in that office’s survey, I have determined that the Ottawa Crown attorney office properly belongs in the category of offices that had never sought out any personal information about prospective jurors.

The second change relates to Simcoe/Norfolk County. After submitting its survey, this office located a jury panel list indicating that, contrary to what had been reported in its survey, the police *had*, on one occasion, provided the Crown attorney office with personal information about prospective jurors in advance of the jury selection process. Simcoe/Norfolk County was therefore added to the *Occasional Criminal Record Checks and Collection of Other Personal Information* category, with the details of the case discussed in that section.

Two of the 37 Crown attorney offices that had not requested or received personal information about prospective jurors indicated that they had changed their practices on March 31, 2006 as a result of the Practice Memorandum issued. Prior to March 31, 2006, one Crown attorney office (Perth/Lanark) had asked the police to conduct criminal records checks, as well as to provide anecdotal personal information about prospective jurors. The other Crown attorney office (Kitchener/Waterloo) had also previously requested criminal record checks on prospective jurors, prior to March 31, 2006.

### ***Were Jury Panel Lists Provided with the Survey?***

In two cases (Kapusksasing/Cochrane North and Picton/Prince Edward), no jury panel lists were provided because no jury trials had been convened in the time period covered by the survey. Of the remaining 35 Crown attorney offices that had conducted jury trials, 91 per cent (32 out of 35) provided one or more jury panel lists to verify that no personal information had been requested or received from any external sources. Nine per cent (3 out of 35) of the Crown attorney offices did not provide any jury panel lists. In most cases, the jury panel lists that were provided to us did not cover all the jury trials that had been conducted, as many Crown attorney offices had routinely disposed of jury panel lists once the juries had been selected. In addition, in some cases, the jury panel lists had no notations marked on them. Some Crown attorney offices noted that where the jury panel lists had no notations marked on them, they would not have been the ones that were actually used by the Crown during the jury selection process.

The remainder of this section will focus on the roughly one third of Crown attorney offices (18 out of 55) that reported they had collected some form of personal information about jurors from external sources, since March 31, 2006.

### ***Collection of Personal Information in One-Third of Cases***

Thirty-three per cent of the Crown attorney offices (18 out of 55) indicated that since March 31, 2006, they had requested and/or received, either routinely or on one or more occasions, personal information about prospective jurors, from external sources.

A discussion of the survey results for these 18 Crown attorney offices is presented below and organized according to the four general practices we observed were in place following the Practice Memorandum of March 31, 2006:

- No Criminal Records Checks but Routine Collection of Other Personal Information;
- Occasional Criminal Records Checks and Collection of Other Personal Information;

- Routine Criminal Records Checks; and
- Routine Criminal Records Checks and Collection of Other Personal Information.

### **1. No Criminal Records Checks but Routine Collection of Other Personal Information**

Twenty-eight per cent or five of the 18 Crown attorney offices (Bracebridge/Muskoka; Cobourg/Northumberland; Cornwall/Stormont/Dundas/Glengarry; Haileybury/Temiskaming; Chatham/Kent) indicated they had not requested criminal conviction checks, but had requested and received *other* personal information about prospective jurors from the police and/or other sources. In all five cases, the police were not asked to conduct formal database checks, but rather were asked to provide comments and opinions about prospective jurors based on their own personal knowledge. Personal comments and opinions were provided through notations made on jury panel lists, written notes and/or verbal remarks made to the Crown attorney during the jury selection process.

In addition, the Crown attorney office for Goderich/Huron initially indicated in its survey that it did not conduct criminal conviction checks on prospective jurors but did collect other background information. However, after a follow-up telephone call from my office, they located an additional jury panel list that indicated that criminal conviction checks on prospective jurors had been done on one occasion. Thus, the Crown attorney office for Goderich/Huron will be added to the *Occasional Criminal Record Checks and Collection of Other Personal Information* category, with the details of that case discussed in that section.

The Crown attorney office for Cornwall/Stormont/Dundas/Glengarry indicated that the jury panel list was shown to the investigating officer in advance of jury selection, to identify any potential conflicts. The Crown attorney office for Cobourg/Northumberland indicated that the police were asked to comment on the jury panel list and that their practice was to have the police provide administrative staff with written notes.

The Crown attorney offices for Chatham/Kent and Bracebridge/Muskoka reported that the investigating officer would sit at the counsel table during the jury selection process to provide comments based on their personal knowledge about prospective jurors. The Crown attorney for Bracebridge/Muskoka County also noted that the court liaison officer would also be present to provide additional comments during the jury selection process.

The Crown attorney office for Haileybury/Temiskaming reported having requested information about jurors by way of a form letter which stated, “Please have a senior officer and the investigating officer in the above-noted case review the list and make any appropriate comments or concerns and return to this office... **\*\*DO NOT RUN ANY CRIMINAL RECORDS\***” [emphasis in original].

The Crown attorney office for Cornwall/Stormont/Dundas/Glengarry reported that the jury panel lists were also vetted using the personal knowledge of staff in the Crown attorney office.

### *Was Information Shared With Defence Counsel?*

When asked if the information obtained from the police or other sources was shared with defence counsel, four of the five Crown attorney offices (Chatham/Kent; Cornwall/Stormont/Dundas/Glengarry; Cobourg/Northumberland; Bracebridge/Muskoka) reported that the information about prospective jurors was *not* shared with the defence counsel. The Crown attorney office for Haileybury/Temiskaming indicated that the information would be shared if it involved a personal relationship with anyone involved in the court proceeding (*e.g.*, disgruntled ex-OPP officer, niece of Crown's office staff).

### *Were Jury Panel Lists Provided With the Survey?*

Four of the five Crown attorney offices (Haileybury/Temiskaming; Cornwall/Stormont/Dundas/Glengarry; Cobourg/Northumberland; Bracebridge/Muskoka) provided copies of one or more jury panel lists to support the information provided in the survey. The Crown attorney office for Cornwall/Stormont/Dundas/Glengarry initially indicated that the jury panel lists included with the survey were not the ones used by the Crown during the jury selection process. However, the Crown attorney was subsequently able to locate two jury lists that had been used by the Crown during jury selection. The Crown attorney office for Chatham/Kent indicated that jury panel lists had been disposed of at some point after the juries were selected.

## **2. Occasional Criminal Record Checks and Collection of Other Personal Information**

Forty-four per cent or eight out of the 18 Crown attorney offices (Brockville/Leeds/Grenville; Goderich/Huron; Simcoe/Norfolk; Sudbury/District of Sudbury; Downtown Toronto; London/Middlesex; Windsor/Essex; Woodstock/Oxford) indicated that they had conducted criminal records checks on prospective jurors, on one or more occasions. However, in each of these cases, the personal information that had been received about prospective jurors by the Crown attorney offices was not strictly limited to criminal conviction checks for indictable offences. This category includes the Crown attorney offices for Goderich/Huron and Simcoe/Norfolk that had initially indicated that they had neither requested nor received criminal records checks on prospective jurors, but subsequently located a jury panel list that indicated otherwise.

In some of these cases, although the intent may have been to check for criminal records, the information about prospective jurors received from the police was not limited to criminal convictions for indictable offences. In other cases, police background checks were specifically done to elicit more than just criminal convictions for indictable offences. For example, in one case involving the death of a local police officer (Brockville/Leeds/Grenville), with the consent of defence counsel, checks were done to determine if any of the jurors had been charged, investigated or had been victims or witnesses in any of the deceased police officer's investigations. Further, in some cases, Crown attorney offices would routinely request and receive from the police anecdotal information about prospective jurors based on their local knowledge. Some Crown attorney offices also reported receiving personal information about prospective jurors from administrative staff and courthouse employees. Surprisingly, the Crown attorney for Goderich/Huron reported relying on the *personal* knowledge of family members who had experience with the criminal justice system, in the process of vetting jury panel lists.

As mentioned previously, the Crown attorney office for Simcoe/Norfolk located a jury panel list after submitting its survey. The list indicated that the police had, on one occasion, provided personal information about prospective jurors prior to the jury selection process. However, the prosecuting Crown attorney in this case had no recollection of seeing the information or being advised of its existence before or during the jury selection process. Thus, to the best of their knowledge, the information had never been used in the jury selection process.

In most cases, criminal conviction checks were done using CPIC, but a variety of other police databases (e.g., Niche, Versadex, Manix, eCOPS, CIPS and OMPAC) were also used to obtain personal information about prospective jurors. Information was relayed by the police to the Crown attorney offices in various ways: through notations made by hand on the jury panel lists, by attaching printouts from police databases to jury panel lists and/or during conversations with the Crown attorney during the jury selection process.

#### *Was Information Shared With Defence Counsel?*

Three of the eight Crown attorney offices (Downtown Toronto; Sudbury/District of Sudbury; Brockville/Leeds/Grenville) indicated that their practice was to disclose the information obtained about prospective jurors to defence counsel. The Crown attorney office for London/Middlesex indicated that the fact of having a list of juror numbers with criminal records was relayed to defence counsel. In a follow-up call, they also indicated that their policy was to share personal information about prospective jurors with defence counsel. The Crown attorney office for Goderich/Huron indicated that the information would be shared in court with defence counsel, but only if it was relevant to the case. The remaining three Crown attorney offices (Woodstock/Oxford County; Windsor/Essex County; Simcoe/Norfolk County) indicated that the information was not shared with defence counsel.

#### *Were Jury Panel Lists Provided With the Survey?*

One or more jury panel lists were provided by each of the eight Crown attorney offices to support the information provided in their surveys. Far from all of the jury panel lists were provided. We were advised that in most cases, jury panel lists were routinely destroyed after jury selection.

### **3. Routine Criminal Record Checks**

Eleven per cent or two of the 18 Crown attorney offices (St. Thomas/Elgin County and Sarnia/Lambton County) indicated that they routinely conducted criminal conviction checks on prospective jurors.

In both cases, information was solicited from the police by way of a written letter. The Crown attorney office for St. Thomas/Elgin County characterized their letter as a form letter, whereas the Crown attorney office for Sarnia/Lambton County indicated that they did not use a form letter (although the copy of the letter provided for multiple checks appeared to be standard). In any event, both letters asked the police to check the jury panel lists, without specifying what they should be checked for.

In both cases, the police provided information through written notations they made directly onto jury panel lists. Depending on the source, the Crown attorney office for St. Thomas/Elgin County received annotated lists with a check mark, an “X,” or the words “record,” “no record” or “unable to do accurate check.” In the case of Sarnia/Lambton County, the police made notations onto jury panel lists specifying the nature of the offences. The Sarnia Police Service also attached copies of police database printouts. In both cases, the checks were made through CPIC. In both cases, information about prospective jurors was also shredded at some point after the cases were closed.

#### *Was Information Shared With Defence Counsel?*

The Crown attorney office for St. Thomas/Elgin County indicated that their practices had changed as of March 31, 2006 in that, after that date, the defence counsel was routinely advised of the prospective jurors who had criminal convictions. The Crown attorney office for Sarnia/Lambton County indicated that its practice was to share the information with the defence counsel, but noted that the practice may have varied over time, and with individual Crown attorneys.

#### *Were Jury Panel Lists Provided With the Survey?*

Both Crown attorney offices provided copies of the jury panel lists that had not been disposed of. The jury panel lists confirmed the fact that both offices had conducted criminal conviction checks on prospective jurors. It was clear from the documentation submitted with the surveys that the police had provided the Crown attorney with information that went beyond criminal convictions for indictable offences (e.g., charges [not convictions] for which prospective jurors had received conditional discharges, and charges for which prospective jurors had yet to be convicted, were included).

#### **4. Routine Criminal Record Checks and Collection of Other Personal Information**

Seventeen per cent or three of the 18 Crown attorney offices (Barrie/Simcoe County; Owen Sound/Grey County; Thunder Bay/District of Thunder Bay) indicated that they had routinely requested and/or received criminal conviction information and other personal information about prospective jurors from police databases. This category includes the Crown attorney office for Owen Sound/Grey County that had initially indicated that criminal record checks had only been done on two occasions, both involving sexual assault trials, but subsequently reported that criminal records checks on prospective jurors had been routinely requested and received since March 31, 2006.

In Thunder Bay/District of Thunder Bay and Barrie/Simcoe, personal information about prospective jurors was routinely requested from the police via a form letter. In Thunder Bay/District of Thunder Bay, the police were specifically asked not to do CPIC checks on jurors, but were asked to report anything else which the Crown attorney should have knowledge, and to attach photocopies of information cards. In Barrie/Simcoe County, the police were asked to advise if any of the prospective jurors had criminal records and to provide personal comments concerning “disreputable persons.” In the case of Owen Sound/Grey County, requests were made verbally and, in some cases, unsolicited information about prospective jurors was provided by the police (e.g., MTO database checks).

In all three cases, information was relayed from the police to the Crown attorney office through written notations marked on the jury panel lists and through attaching copies of printouts from police databases. In the case of Barrie/Simcoe County, the written notations included check marks, “OK,” “positive,” “possible,” and a variety of other comments. In the case of Thunder Bay/District

of Thunder Bay, the notations included check marks, and the words “No CR,” “No Card,” “not on Niche,” “negative,” and “unable to verify.” Where information about a prospective juror was found, a printout was inserted into the jury panel list. In the case of Owen Sound/Grey County, the written notations included a check mark, an “X,” and the words “CR,” “no record,” “charged,” “suspect,” and numerous other notations relating to various charges and convictions. Copies of printouts from databases were also attached to some of the jury panel lists that had been vetted.

In Thunder Bay/District of Thunder Bay, police checks were made using Niche and the police card system. In the case of Barrie/Simcoe, police checks were made using Niche and CNI (Criminal Name Index — a subset of CPIC). In the case of Owen Sound/Grey County, both CNI and CPIC were used to provide information about prospective jurors.

In all three cases, the personal information that was received from the police was not limited to criminal convictions as defined in the survey (*i.e.*, checks to determine if a prospective juror has been convicted of any indictable offences). The type of personal information received from the police was wide-ranging and included the following five categories:

1. criminal convictions *including* those for which prospective jurors had been pardoned;
2. charges that had been laid *including* those that had been withdrawn;
3. crimes that prospective jurors had been suspected of committing *regardless* of whether or not charges were laid;
4. offenses under the *Highway Traffic Act*; and
5. *all* contacts involving the police, *regardless* of whether prospective jurors had been witnesses, victims, or accused.

In one case (Owen Sound/Grey County), the police provided a notation indicating that the son of a prospective juror had an extensive record, although the prospective juror had no criminal record.

#### *Was Information Shared with Defence Counsel?*

The Crown attorney office for Barrie/Simcoe County reported that the information obtained from the police was not disclosed to defence counsel, whereas the Crown attorney offices for Thunder Bay/District of Thunder Bay and Owen Sound/Grey County indicated that the information was disclosed to defence counsel.

#### *Were Jury Panel Lists Provided with the Survey?*

The Crown attorney offices for each of these jurisdictions reported that jury panel lists were sometimes destroyed by shredding them after the trial. Nonetheless, all three offices provided copies of existing jury panel lists that confirmed they had regularly received information about criminal convictions and other background information about prospective jurors from the police, as described above.

## Collection of Personal Health Information

None of the 55 Crown attorney offices included in the survey reported requesting and/or receiving any personal *health* information about prospective jurors. It was certainly the case that no one had *requested* any health information. However, several offices noted, and it became apparent from some of the annotations made on jury panel lists that were provided to us, that the personal information received from the police sometimes included information about the mental health history of prospective jurors, including suicide threats made and suicide attempts.

## Receipt of Jury Panel Lists in Advance of 10 Days Prior to Sitting

Three of the 55 Crown attorney offices (Sault Ste. Marie/Algoma; Napanee/Lennox/Addington; Barrie/Simcoe) reported they had routinely received jury panel lists in advance of 10 days prior to the sittings of the court for which the panel had been drafted. The Crown attorney office for Cobourg/Northumberland reported that they had on one or more occasions received jury panel lists in advance of 10 days. In addition, the Crown attorney offices for Lindsay/Kawartha/Haliburton and Goderich/Huron reported that they were not certain if they had received jury panel lists in advance of 10 days.

In total, 49 of the 55 offices, or 89 per cent, were able to confirm in the survey that they had never received jury panel lists in advance of the 10 days stipulated in the *Juries Act*.

## Conclusions from the Survey

The majority of Crown attorney offices in the province of Ontario (two-thirds) reported that, since March 31, 2006, they had never requested or received any personal information about prospective jurors.

A significant proportion, however, roughly one-third, reported that they had requested and/or received significant amounts of personal information about prospective jurors from the police. While many of the Crown attorney offices reported that they had only requested and/or received criminal conviction information for indictable offences, the documentation sent back with the surveys (*i.e.*, annotated jury panel lists and printouts from police databases), revealed that, in actuality, the information received from the police exceeded that. In all cases, we found that the information was not limited to criminal convictions for indictable offences.

Many of the Crown attorney offices reported that they had specifically requested and/or received personal information other than criminal conviction checks. Some Crown attorney offices considered this practice to be acceptable for certain types of trials, especially in smaller jurisdictions where prospective jurors were likely to be known by the Crown attorney office and the investigating police officer. A number of Crown attorney offices also indicated that they believed it was acceptable to have the investigating officer at the Crown table during the in-court jury selection process.

It was clear from the comments made on the surveys that what was considered to be acceptable practice regarding the conduct of background checks on prospective jurors varied substantially across the province. We observed little consistency in the practices relating to obtaining background information on prospective jurors.

## 6.3 Sworn Affidavits

On July 17, 2009, I sent a letter to the Honourable Chris Bentley, Attorney General for Ontario, confirming that the Assistant Deputy Attorney General had agreed to “direct each of the seven regional directors of Crown operations to provide my office with a sworn affidavit to bolster the information provided” in the formal empirical surveys sent out to each of the 55 Crown attorney offices. Our intent was to strengthen the reliability of the self-reported data provided through our survey results.

Specifically, we requested that each affidavit, at a minimum, indicate the following:

- (a) that the Director of Crown Operations had spoken directly to each of the Crown attorneys within their jurisdiction to obtain information about the jury matter (where that had not occurred, include an explanation as to why not): each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction;<sup>137</sup>
- (b) that each Crown attorney within the Director’s jurisdiction had advised the Director that the Crown attorney’s office has reviewed the material in each file in each jury trial that commenced between March 31, 2006 and the date the survey was completed: each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction;<sup>138</sup>
- (c) that each Crown attorney within the Director’s jurisdiction had advised the Director that the Crown attorney had provided my office with a copy of every jury panel list contained in those files that was used by the Crown attorney in the matter: each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction;<sup>139</sup>
- (d) that each Crown attorney within the Director’s jurisdiction had advised the Director that where a jury panel list had not been provided with respect to a specific case, that the Crown attorney had not done so because the file did not contain a list: each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction;<sup>140</sup>
- (e) that each Director confirms that, as we had learned to our surprise during the investigation, there was no policy, procedure or practice within the Director’s jurisdiction that addresses the retention of jury lists: each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction;
- (f) that each Crown attorney within the Director’s jurisdiction had advised the Director that the Crown attorney had spoken to all Crown attorneys within

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137 In circumstances where the Crown attorney was not available, the Director spoke to the Acting Crown attorney.

138 The Crown attorneys advised that they had made “best efforts” to locate and review each relevant file; where a file could not be located, the Crown attorneys provided the Director with an explanation.

139 In some cases, as described above in section 6.2 and below in section 6.4, Crown attorney offices provided additional jury panel lists after returning their survey results.

140 In some cases, as stated above, Crown attorneys indicated that relevant files could not be located despite best efforts.

his or her jurisdiction who were assigned to jury trials within the relevant time period and asked them the questions set out in the survey (if not, an explanation as to why not): each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction, who in turn spoke to each of the Assistant Crown attorneys in their offices;<sup>141</sup> and

- (g) that each Crown attorney within the Director’s jurisdiction had advised the Director that he/she was satisfied that, based on discussions with the Crown attorneys, the completed survey fully and accurately reflected the practice in that jurisdiction, within the relevant time period: each Director responded affirmatively, having spoken with each of their Crown attorneys within their jurisdiction.

In addition, the Assistant Deputy Attorney General offered “to provide his own affidavit that confirms he has had direct discussions with each of the Regional Directors and that they have confirmed to him, that to the best of their knowledge, the information they received from staff in their jurisdictions is accurate and complete.”

On August 28, 2009, the Assistant Deputy Attorney General provided my office with the eight affidavits.<sup>142</sup>

I have reviewed the eight affidavits, and each affidavit provides all the information requested, subject to the explanations set out elsewhere in this Chapter.

## 6.4 Auditor General: Document Capture Review

As part of my investigation, I requested the assistance of the Auditor General of Ontario, Jim McCarter (the Auditor General), and his office. The purpose of this request was to assist my team in verifying that Crown attorney offices had, in actuality, reviewed their files of all jury trials that had occurred since March 31, 2006, and provided my office with all existing jury panel lists from those files.

The Auditor General graciously offered his office’s assistance for this task, for which I am very grateful. A review team was therefore assembled comprised of several Auditor General staff, and a staff member from my office.

A protocol was agreed to by my office and MAG to set the parameters for the document capture review. The protocol established that the review team would search through jury matter files in Crown attorney offices, to be selected by my office.

“Jury matter files” were identified as files in criminal prosecution cases where a jury panel list was provided to a Crown attorney on or after March 31, 2006, until the date of the search. Matters prosecuted under the *Youth Criminal Justice Act* were excluded from the scope of the document capture review, as well as matters that were under appeal and trials that had not been completed.

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141 Where Crown attorneys did not speak to each Assistant Crown attorney, it was because the individual was no longer with MAG, or was appointed as a judge, or was away on extended leave due to illness or other reasons, or was otherwise unavailable in the time period during which the investigation was being conducted.

142 See a sample sworn affidavit at Appendix 2.

The purpose of the search was to determine whether files within the scope of the review contained any jury panel lists, and to obtain copies of lists that were found, in order to determine the accuracy and completeness of the information previously provided to my office. The protocol also set out a process for dealing with privileged and/or confidential documents that might be present in these files, for example, documents subject to solicitor-client privilege or records that would disclose the identity of a confidential police informer.

Each selected Crown attorney office identified and made available to the review team all files that met the above threshold. The team reviewed, at a minimum, a statistically representative number of files at each location. The review team relied on the Crown attorney office to identify jury matter files that met the threshold criteria. In the circumstances, and given the need for confidentiality, the review team did not perform procedures to detect if there were any other files, in addition to those identified by the Crown attorney office. Staff from each Crown attorney office were present during the review and available to confirm or clarify information revealed by file searches.

Originally, three offices were identified to be reviewed: Barrie/Simcoe, Milton/Halton and North York/Toronto. Prior to visiting each of these locations, the empirical survey provided by the offices was reviewed, along with any accompanying jury panel lists. However, at each of the three locations, the arrival of the review team led to additional jury panel lists being provided that had not been submitted with the corresponding survey for that office. This suggested that all jury matter files had not been reviewed *prior* to the survey being completed and returned to my office. As a result, seven additional locations were added to the review leading to a total of 10 document capture reviews. The results of these reviews are discussed below.

### **Milton/Halton**

Fifteen jury matter files at the Milton/Halton Crown attorney office met the threshold criteria and were searched. Jury panel lists were not located in those files. However, handwritten notes made by the Crown attorney at the time of jury selection were located which had not been previously provided to my office. In addition, at the time of the review, the Crown attorney provided copies of jury panel lists from three files that had also not been previously provided to my office.

### **North York/Toronto**

Ninety-four jury matter files at the North York Crown attorney office met the threshold criteria. Of these, 32 files were searched, representing 34 per cent of eligible files. Prior to the file search by the review team, the Crown attorney's office provided jury panel lists relating to five jury matters that formed part of the 32 files searched. These lists had not been previously provided to my office. In those five cases, the files were searched to verify that the jury panel lists in the file were consistent with the lists provided to the review team. Jury panel lists were not located in the remaining files. However, handwritten notes made by the Crown at the time of jury selection were located, which had not been previously provided to my office.

### **Barrie/Simcoe**

There were 254 eligible jury matter files at the Crown attorney office in Barrie/Simcoe. Of these, 85 (34 per cent) were searched and no jury panel lists were found, as the Crown attorney had previously reviewed all the files and placed any existing jury lists in a separate file. The original

jury lists in this separate file were consistent with the copies that had been previously provided to my office. The Crown attorney also provided the review team with 38 jury panel lists, including four jury panel lists that had not previously been submitted to my office.

### **Guelph/Wellington**

The review team searched 31 of the 62 eligible jury matter files (50 per cent) at the Guelph/Wellington Crown attorney office. Five jury panel lists were located. These lists were consistent with the five lists that had previously been provided to my office.

### **Orangeville/Dufferin**

All 35 eligible jury matter files were searched at the Orangeville/Dufferin Crown attorney office. Four jury panel lists relating to one jury matter file were found that had not previously been provided to my office. The Crown attorney reported that the jury matter file had been searched and the failure to locate the panel lists was an oversight.

### **Cayuga/Haldimand**

The review team searched all four eligible jury matter files at the Cayuga/Haldimand Crown attorney office. In addition to the one jury panel list that had been provided to the team in advance of the searches, an additional jury panel list was found. It appears that this file had not previously been searched due to a misunderstanding of the original request for jury panel lists — the particular matter had started as a jury trial, but the defendant subsequently elected to be tried by a judge alone.

### **Owen Sound/Grey County**

All 15 eligible jury matter files at the Owen Sound/Grey Crown attorney office were searched. Jury panel lists from seven files were provided to the review team prior to the search. These lists had not previously been provided by the Crown attorney office when returning the survey. It was explained that, following the completion of the initial survey, the Regional Director responsible for the Owen Sound/Grey office had personally attended the office to examine the Superior Court files that met the criteria for this review. As a result of his review of the files, he directed that a second search be conducted and a new survey completed. The seven jury panel lists were found by the Assistant Crown attorney during the second review and provided to the review team.

### **Lindsay/Kawartha/Haliburton**

The review team searched 46 of the eligible 49 jury matter files (94 per cent) at the Lindsay/Kawartha/Haliburton Crown attorney office. Two jury panel lists were provided to the review team on their arrival. In addition, two panel lists, including handwritten notes made by a Crown attorney during jury selection, were located which had previously been provided to my office.

### **Whitby/Durham**

At the Whitby/Durham Crown attorney office, 66 of the eligible 69 jury matter files (96 per cent) were searched. One jury panel list was located in a jury matter file, a copy of which had previously been provided to my office. In addition, the Crown attorney provided a copy of a jury panel list in another file which had recently been located and had not been provided to my office.

## Cobourg/Northumberland

All six eligible jury matter files were searched at the Cobourg/Northumberland Crown attorney office. One jury panel list was located which had previously been provided to my office.

### Conclusions from the Document Capture Review

At the majority of document review locations (seven out of 10), upon their arrival, the review team was presented with jury panel lists that had not previously been provided to my office. This indicates that, for these seven offices, all jury matter files had not been reviewed prior to completing and returning their surveys.

In addition, a jury panel list was found by the review team in each of Orangeville/Dufferin and Cayuga/Haldimand that had not previously been provided to my office, or that was not provided to the team upon its arrival. However, I am satisfied that the failure of the Crown attorney offices to locate these lists was an oversight and not an attempt to hinder this investigation. As a result of the discovery of these lists, the review team obtained new jury lists at a total of eight out of the 10 review locations (Cayuga/Haldimand was already included among the seven offices discussed above.)

While additional lists were located as a result of the document capture review, either by the Crown attorney offices prior to the arrival of the review team, or through the review itself, this material confirmed the background check practices of the Crown attorney offices reported in their surveys. In other words, the jury lists that were provided to the review team, and the additional lists found in Orangeville/Dufferin and Cayuga/Haldimand, did not change the overall survey findings that 18 out of the 55 Crown attorney offices in the province had received background information about prospective jurors from external sources.

#### The 18 Crown attorney offices that received information on prospective jurors

Crown attorney office	Primary section where cited
Barrie/Simcoe County*	Section 6.1
Brockville/Leeds and Grenville Counties	Section 6.1
London/Middlesex County	Section 6.1
Owen Sound/Grey County*	Section 6.1
Sarnia/Lambton County	Section 6.1
St. Thomas/Elgin County	Section 6.1
Sudbury/District of Sudbury	Section 6.1
Thunder Bay	Section 6.1
Toronto*	Section 6.1
Windsor/Essex	Section 6.1
Woodstock/Oxford County	Section 6.1
Bracebridge/Muskoka	Section 6.2
Chatham/Kent	Section 6.2
Cobourg/Northumberland County*	Section 6.2
Cornwall/Stormont/Dundas/Glengarry	Section 6.2
Goderich/Huron	Section 6.2
Haileybury/Temiskaming	Section 6.2
Simcoe/Norfolk County	Section 6.2

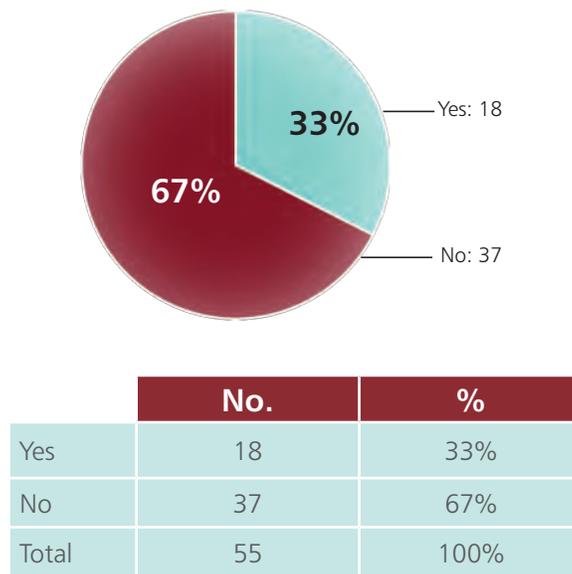
\* These offices were also subject to a review of their document capture processes as reported in Section 6.4.

## 6.5 Analysis and Conclusions

The following summary of findings was derived from the formal empirical survey, the jury panel lists that were provided, follow-up interviews, and reviews of Crown attorney offices in the province of Ontario.

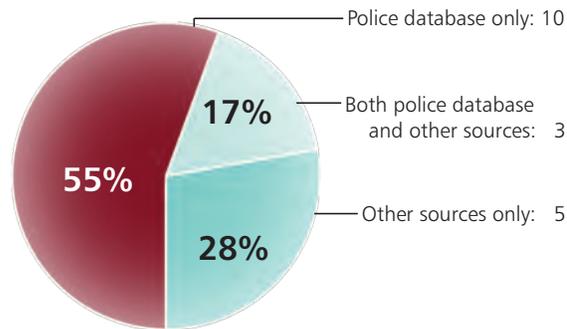
### Collection of Personal Information

**Figure 1.0 Did the Crown attorney office receive background information about prospective jurors from external sources?**



Sixty-seven per cent of Crown attorney offices (37 out of 55) had neither requested nor received any personal information about prospective jurors from the police or any external source since March 31, 2006. A total of 33 per cent of Crown attorney offices (18 out of 55) had requested and/or received some form of personal information about prospective jurors.

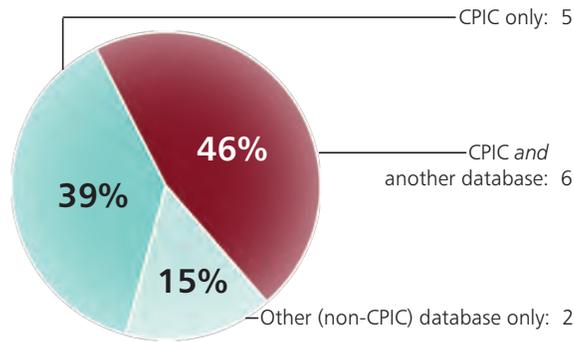
**Figure 2.0 Did the Crown attorney office receive background information from an official police database, or another source?**



	No.	%
Police database only	10	55%
Both police database and other sources	3	17%
Other sources only	5	28%
Total	18	100%

Of the 18 Crown attorney offices that had requested and/or received personal information about prospective jurors, 10 received information from a police database only, three received personal information from a police database and a non-database source, and five received personal information from a non-database source only.

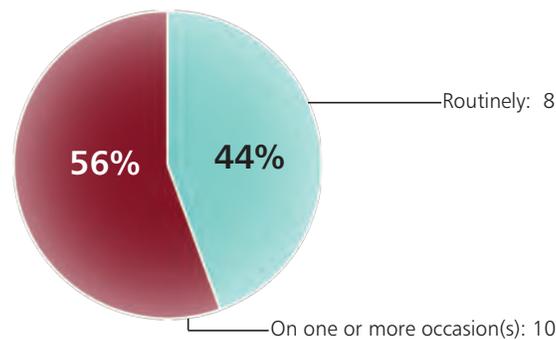
**Figure 2.1** If the Crown attorney office received police database information, was it from the CPIC database only, or from another database?



	No.	%
CPIC only	5	39%
CPIC and another database	6	46%
Other (non-CPIC) database only	2	15%
Total	13	100%

Of the 13 Crown attorney offices that received personal information from a police database, five received personal information from CPIC only, six received personal information from CPIC as well as another police records management database, while two received personal information only from a police records management database other than CPIC.

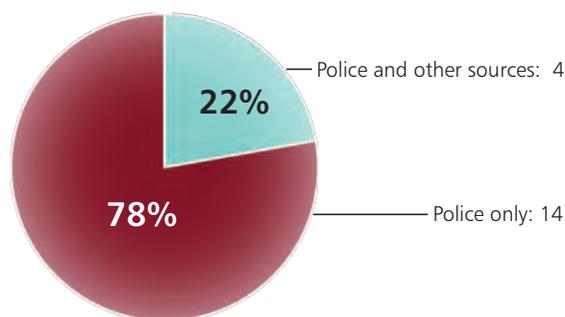
**Figure 3.0** How often did the Crown attorney office receive background information on prospective jurors?



	No.	%
Routinely	8	44%
On one or more occasion(s)	10	56%
Total	18	100%

Eight of the 18 Crown attorney offices that received personal information about prospective jurors requested this information on a routine basis, while 10 Crown attorney offices requested personal information about prospective jurors on an occasional, or non-routine, basis.

**Figure 4.0 Did the Crown attorney office request the background information on prospective jurors from police services only, or also from non-police sources?**



	No.	%
Police and other sources	4	22%
Police only	14	78%
Total	18	100%

Of the 18 Crown attorney offices that received personal information about prospective jurors, 14 offices received this information from the police only. Four offices received personal information about prospective jurors from the police as well as other sources.

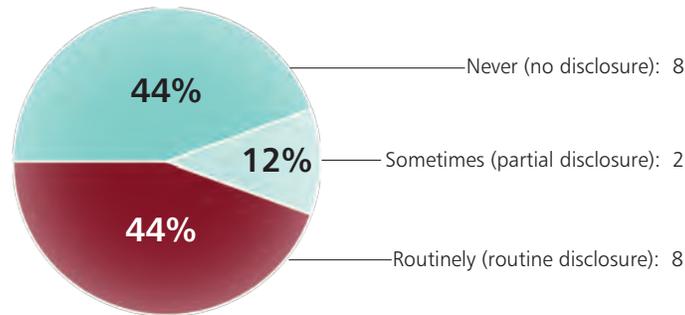
In virtually no jurisdictions was there any attempt to limit the information requested from and provided by the police or other sources to criminal convictions only. In fact, all 18 offices that received personal information about prospective jurors received personal information that went beyond criminal convictions.

### Collection of Personal Health Information

None of the 55 Crown attorney offices included in the survey reported requesting and/or receiving any personal *health* information about prospective jurors. It was certainly the case that no one had *requested* any personal health information. However, several offices noted, and it became apparent from some of the annotated jury panel lists provided, that the personal information received from the police sometimes included information about the mental health history of prospective jurors, including suicide threats made and suicide attempts.

## Disclosure of Personal Information to Defence Counsel

**Figure 5.0** How often did the Crown attorney office share background information on prospective jurors with defence counsel?

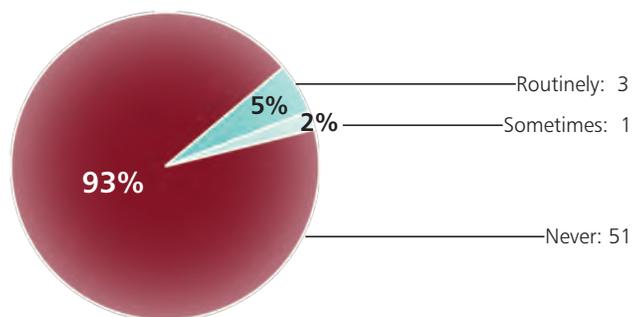


	No.	%
Never (no disclosure)	8	44%
Sometimes (partial disclosure)	2	12%
Routinely (routine disclosure)	8	44%
Total	18	100%

In cases where personal information about prospective jurors had been requested and/or received, eight Crown attorney offices (Woodstock/Oxford; Chatham/Kent; Cornwall/Stormont/Dundas/Glengarry; Cobourg/Northumberland; Bracebridge/Muskoka; Windsor/Essex; Barrie/Simcoe; Simcoe/Norfolk) reported that the personal information about prospective jurors was *not* shared with defence counsel. However, eight Crown attorney offices reported that their practice was to routinely disclose this information to defence counsel. In addition, two Crown attorney offices reported that the information would only be shared if it indicated a personal relationship between the prospective juror and an individual involved in the case (Haileybury/Temiskaming), or if it was relevant to the case (Goderich/Huron). Overall, 56 per cent of the Crown attorney offices that received background information shared it with defence counsel at some point (10 out of 18 offices).

## Receipt of Jury Panel Lists in Advance of Ten Days

**Figure 6.0** How often did the Crown attorney office receive prospective juror lists in advance of the 10-day period permitted in the *Juries Act*, prior to the applicable court sitting date?



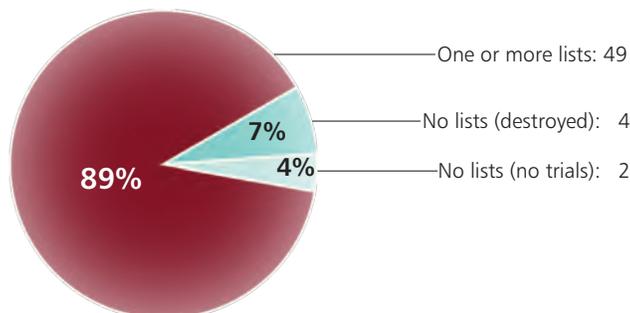
	No.	%
Routinely	3	5%
Sometimes	1	2%
Never	51	93%
Total	55	100%

Three of the 55 Crown attorney offices (Sault Ste. Marie/Algoma; Napanee/Lennox/Addington; Barrie/Simcoe) reported they had routinely received jury panel lists in advance of 10 days prior to the sittings of the court for which the panel had been drafted. The Crown attorney office for Cobourg/Northumberland reported that they had on one or more occasions received jury panel lists in advance of 10 days.

In total, 51 offices, or 93 per cent, were eventually able to confirm that they had never received jury panel lists in advance of the 10 days stipulated in the *Juries Act*.

## Verification Through Jury Panel Lists

**Figure 7.0 Did the Crown attorney office submit copies of jury panel lists to verify the information provided?**



	No.	%
One or more lists	49	89%
No lists (destroyed)	4	7%
No lists (no trials)	2	4%
Total	55	100%

One or more jury panel lists were provided by 89 per cent of Crown attorney offices (49 out of 55). Two Crown attorney offices were unable to provide any jury panel lists because no jury trials had been conducted since March 31, 2006. Very few Crown attorney offices were able to provide a complete set of jury panel lists for all jury trials, as many jury panel lists had been shredded or could not be located (very few had been sealed by the court). Further, in some cases, the jury panel lists that were provided were either completely or almost completely without annotations and were unlikely to have been the actual copies used by the Crown attorney offices during the jury selection process.

As noted, 49 Crown attorney offices eventually provided at least one jury panel list. However, in many cases, these lists were sent to my office well after the initial survey had been completed, even though the survey clearly set out the expectation that *all* jury trial files were to be reviewed.

I accept that, in some cases, additional time was required to retrieve case files from the archives, which led to a delay in reviewing the files and providing my office with all jury panel lists that may have been found. However, I also note that two events directly increased the flow of jury panel lists to my office. First, I requested and received sworn affidavits from each Regional Crown attorney and the Assistant Deputy Attorney General, as detailed in Section 6.3. In order to swear these affidavits, the Regional Directors of Crown Operations were required to ensure that each Crown attorney in their office had reviewed the files for every jury trial since March 31, 2006.

Second, with the generous assistance of the Auditor General, the document capture processes of 10 Crown attorney offices were reviewed, with jury trial files selected at random to determine if jury panel lists were contained within these files.

In summary, it appears that the request for sworn affidavits and the document capture review of selected offices prompted a more detailed and thorough review of jury trial files, leading to more information surfacing on the subject.

## Summary of Findings

Offices that routinely received juror background information	Information shared with defence counsel?	Estimated No. of jury trials where jury vetting may have occurred *
Barrie/Simcoe County	Never	53**
Cobourg/Northumberland County	Never	6
Goderich/Huron County	Occasionally	9
Haileybury/Temiskaming District	Occasionally	3
Owen Sound/Grey County	Routinely	11
Sarnia/Lambton County	Routinely	12
St. Thomas/Elgin County	Routinely	12
Thunder Bay/Thunder Bay District	Routinely	10
Offices that occasionally received juror background information		
Bracebridge/Muskoka District	Never	8
Chatham/Kent County	Never	0
Cornwall/Stormont, Dundas, Glengarry Counties	Never	8
Simcoe/Norfolk County	Never	1
Windsor/Essex County	Never	1
Woodstock/Oxford County	Never	4
Brockville/Leeds and Grenville Counties	Routinely	1
London/Middlesex County	Routinely	1
Sudbury/Sudbury District	Routinely	1
Toronto (Downtown)/Toronto Region	Routinely	2
		<b>Total = 143</b>

\* These numbers include all jury trials where there was a potential for a collection of personal information in excess of what is permitted under *FIPPA/MFIPPA*.

\*\* These numbers may be higher than the Ministry of the Attorney General's because the Ministry's focus relates to cases where there was a conviction and there was no disclosure to defence counsel.

# 7.0

## Legal Issues Arising from the Investigation

## 7.0 LEGAL ISSUES ARISING FROM THE INVESTIGATION

I have identified the following legal issues arising from this investigation, each of which will be discussed in turn:

- Issue A: Is the information at issue “personal information” as defined under section 2(1) of *FIPPA* and *MFIPPA*?
- Issue B: Does Part III of *FIPPA* apply to the collection, use and disclosure of personal information by Court Services?
- Issue C: What is Court Services’ authority to collect personal information from assessment rolls?
- Issue D: What is Court Services’ authority to collect personal information from prospective jurors?
- Issue E: Would Court Services have the authority to collect the personal information of prospective jurors from other individuals or organizations for the purpose of verifying information supplied on the juror qualification questionnaire?
- Issue F: What is Court Services’ authority to disclose personal information to Crown attorneys and accused persons or their counsel?
- Issue G: Is the collection of personal information by Crown attorneys from Court Services authorized under section 38(2) of *FIPPA*?
- Issue H: Is the disclosure of personal information by Crown attorneys to police services authorized under section 42(1) of *FIPPA*?
- Issue I: Is the collection of personal information by Crown attorneys from police services authorized under section 38(2) of *FIPPA*?
- Issue J: Is the disclosure of personal information by Crown attorneys to accused persons or their counsel authorized under section 42(1) of *FIPPA*?
- Issue K: Is the collection of personal information by police services from Crown attorneys authorized under section 28(2) of *MFIPPA* and/or section 38(2) of *FIPPA*?
- Issue L: Is the use of personal information by police services authorized under section 31 of *MFIPPA* and/or section 41(1) of *FIPPA*?
- Issue M: Is the disclosure of personal information by police services to Crown attorneys authorized under section 32 of *MFIPPA* and/or section 42(1) of *FIPPA*?

# 8.0

## Legal Analysis and Conclusions

## 8.0 LEGAL ANALYSIS AND CONCLUSIONS

### 8.1 Introduction

Before I set out my analysis with respect to the collection, use and disclosure of personal information relating to prospective jurors by Court Services, Crown attorneys and the police under *FIPPA* and *MFIPPA*, I will first describe the general approach I will bring to bear on these important issues.

As I indicated above, I received four submissions on the legal issues raised by this matter from MAG/MCSCS, the CLA, the U of T Asper Centre, and the CCLA.

The submissions of the Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services were comprehensive and thorough, addressing all of the issues under *FIPPA* and *MFIPPA* on which I sought their views. These ministries also provided a detailed description of the jury selection process, which I found to be very helpful.

The Criminal Lawyers' Association is comprised of criminal lawyers and others concerned with the criminal justice system in Ontario. It seeks to assist its members in all aspects of the practice of criminal litigation. The University of Toronto's David Asper Centre for Constitutional Rights is focussed on advocacy, research and education in the area of constitutional rights in Canada. The submissions of both the CLA and the U of T Asper Centre were directed primarily at the *Charter* issues raised by this matter.

The Canadian Civil Liberties Association is a citizen-based advocacy group that seeks to protect fundamental freedoms. The CCLA's submissions were focussed on both the relevant *Charter* issues and the substantive issues under *FIPPA* and *MFIPPA*.

I will refer to each of these submissions during the course of my legal analysis below, where relevant issues have been raised.

### 8.2 Interpretive Approach to the Legislation

#### Fundamental Charter Values

##### *Introduction*

There are two fundamental *Charter* values that arise from this investigation.

On the one hand, this case clearly implicates the privacy rights of prospective jurors. Section 8 of the *Charter* provides that “everyone has the right to be secure against unreasonable search and seizure,” and background checks on prospective jurors arguably constitute a search.

On the other hand, section 11(d) of the *Charter* guarantees that a person charged with an offence has the right to “a fair . . . hearing by an independent and impartial tribunal.” An accused has an interest in a properly constituted jury consisting only of eligible jurors. Further, the accused has

the right to receive all relevant information from the Crown; the Crown's decision to withhold information may infringe the right of the accused to a fair hearing.

### ***Right to Privacy***

The Supreme Court of Canada has held that to constitute a search within the meaning of section 8, a person must show that the action by the state invades a reasonable expectation of privacy.<sup>143</sup>

On this point, the CCLA submits:

People who serve as jurors do so in accordance with certain expectations. Like all Canadians, their privacy rights are protected under both the *Charter* and various pieces of federal and provincial legislation. While being called as a juror may necessarily require the provision of limited personal information, it does not give the state the right to delve deeply into one's personal history.

The CLA submits that prospective jurors have a reasonable expectation of privacy for several reasons, including:

- police databases contain highly sensitive information;
- prospective jurors' expectation is objectively reasonable because the police hold this information confidentially;
- prospective jurors have a reasonable expectation that the police would not use this information for purposes unrelated to the original purpose for which it was collected; and
- prospective jurors have a subjective expectation of privacy, as illustrated by media reports of jurors' reactions upon learning about the background checks.

In its submissions on this point, the CLA highlights several media reports of prospective juror reactions. These reports included the following statements:

- "You kind of lose your faith in the justice system," said one juror who described himself as angry and in disbelief;<sup>144</sup>
- "The cops should be fired," fumed another [juror]. "Them too," he said of the "inexperienced" Crown lawyers who ignored government policy and violated his privacy;<sup>145</sup>
- "Golly, that was a long, long, time ago," said a retired Orillia man, whose name on the list showed a drunk driving offence from 1978. "Let's put it this way," he said. "I don't trust the judicial system and I don't trust the police;"<sup>146</sup> and

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143 *R. v. A.M.*, [2008] S.C.J. No. 19 at para. 8.

144 "Jurors irate over checks," *Windsor Star* (June 10, 2009).

145 "Jurors irate over checks," *Windsor Star* (June 10, 2009).

146 "Privacy chief launches jury probe," *Barrie Examiner* (June 11, 2009).

- “This jury vetting is wrong . . . It’s supposed to be our peers. We are judging flawed people. We don’t need to be perfect.”<sup>147</sup>

The U of T Asper Centre similarly submits that there is a reasonable expectation of privacy in information contained in police databases. Their reasons include:

- the information at issue is intensely private information and its dissemination would impact the subject individuals;
- jurors have an objectively reasonable expectation of privacy in the contents of their police files;
- the police obtained the information for the purpose of a police investigation, not for the different purpose of vetting prospective jurors; and
- jurors are innocent participants in a criminal trial.

Both the CLA and the U of T Asper Centre submit that the practice of conducting background checks violates prospective jurors’ reasonable expectation of privacy under section 8 of the *Charter* and, further, constitutes an unreasonable search under that provision.

### ***Right to a Fair Hearing***

As stated above, an accused has an interest in a properly constituted jury consisting only of eligible jurors. An improperly constituted jury could compromise the right of an accused to a fair hearing. Where a juror is discharged for any reason, which may include ineligibility, this action may result in a mistrial.<sup>148</sup>

Further, the accused has the right to receive all relevant information from the Crown; the Crown’s decision to withhold information may infringe the right of the accused to a fair hearing. Any diminishment of the role of the accused in jury selection could result in an appearance of unfairness.<sup>149</sup>

### ***Application of Charter Principles***

While I am mindful of the privacy and fair hearing *Charter* values outlined above, and their importance in a free and democratic society, I will not be engaging in a full analysis of whether or not the practices in question violate the *Charter*, since no party has challenged the constitutionality of any provision of *FIPPA* or *MFIPPA*.<sup>150</sup>

Further, while I will be mindful of the *Charter* values raised in this case, it is not necessary for me to use them as an interpretive principle in analyzing the provisions of *FIPPA* and *MFIPPA*. The Supreme Court of Canada has stated that this can be done only in cases of “genuine ambiguity,”

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147 “Privacy chief launches jury probe,” *Barrie Examiner* (June 11, 2009).

148 *R. v. Burke*, [2002] S.C.J. No. 56 at para. 74; *R. v. Khan*, [2001] S.C.J. No. 83 at para. 79.

149 *R. v. Bain* at para. 112.

150 *Tadros v. Peel Regional Police Service*, [2009] O.J. No. 2158 (C.A.) at para. 48.

that is, where a statutory provision is subject to differing, but equally plausible, interpretations.<sup>151</sup> That is not the case here, for the reasons set out below.

## Charter Values and Interpretation of Privacy Legislation

In a recent decision known as *Cash Converters Canada Inc. v. Oshawa (City)*,<sup>152</sup> the Court of Appeal for Ontario articulated the *Charter* right to privacy and its appropriate application to the interpretation of privacy legislation:

The right to privacy of personal information is interpreted in the context of the history of privacy legislation in Canada and of the treatment of that right by the courts. The Supreme Court of Canada has characterized the federal *Privacy Act* as quasi-constitutional because of the critical role that privacy plays in the preservation of a free and democratic society. In *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, Gonthier J. observed that exceptions from the rights set out in the *Act* should be interpreted narrowly, with any doubt resolved in favour of preserving the right and with the burden of persuasion on the person asserting the exception (at paras. 30-31). In *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, the court articulated the governing principles of privacy law including that protection of privacy is a fundamental value in modern democracies and is enshrined in ss. 7 and 8 of the *Charter*, and privacy rights are to be compromised only where there is a compelling state interest for doing so (at paras. 65, 66, 71) . . .

I adopt the views of the Court of Appeal and will approach my interpretation and application of the provisions of *FIPPA* and *MFIPPA* below in a similar fashion. I will also be mindful of one of the key purposes of my statutes, which is:

to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.<sup>153</sup>

## 8.3 Personal Information

### Issue A: Is the information at issue “personal information” as defined under section 2(1) of *FIPPA* and *MFIPPA*?

In order for information to be subject to *FIPPA*/*MFIPPA*, it must qualify as “personal information” under the definition set out in section 2(1) of both statutes. The definition states:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

<sup>151</sup> *Bell ExpressVu Limited Partnership v. Rex*, [2002] S.C.J. No. 43 at para. 62.

<sup>152</sup> [2007] O.J. No. 2613 (C.A.) at para. 29.

<sup>153</sup> *FIPPA*, s. 1(b); *MFIPPA*, s. 1(b).

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

As stated above, the process for jury selection begins with the PJC (a part of MAG's Court Services) gathering individuals' names and addresses from MPAC. When individuals return the juror questionnaire, they provide the following additional information to Court Services:

- occupation, trade or profession;
- business and residential telephone number;
- ability to read, speak and understand French or English;
- Canadian citizenship status;
- whether the person has a conviction for an unpardoned indictable offence;
- whether the person previously attended for jury service in the last two years;
- whether the person's occupation, trade or profession exempts him or her from jury service; and
- whether the person has a physical or mental disability that would impair his or her ability to serve as a juror.

When Court Services compiles individuals' names into jury roll lists, it assigns a unique personal identifier to each individual, known as a jury roll number.

The jury panel lists that Court Services provides to the litigants in a criminal matter contain each individual's name, address, occupation and jury roll number.

Where Crown attorneys supply jury panel lists to police services, the police receive the name, address, occupation and jury roll number of prospective jurors. In some cases, the police return copies of the list to the Crown attorney with additional background information relating to the individuals. That additional information may include criminal charges or convictions, or other information about contacts with the police. In addition, in some cases, the police provide brief notations that convey more detailed information about the individuals such as whether or not the police found information about them.

The information described above clearly qualifies as “personal information” as that term is defined in section 2(1) of *FIPPA/MFIPPA*. The information appears in recorded form, whether electronically or on paper, and is linked to identifiable individuals through the presence of individual names. With the possible exception of paragraph (f), the information at issue may fall within the scope of any of the other paragraphs under the definition.

In summary, the information at issue qualifies as “personal information” as defined in section 2(1) of *FIPPA/MFIPPA*.

## 8.4 Court Services

### **Issue B: Does Part III of *FIPPA* apply to the collection, use and disclosure of personal information by Court Services?**

The protection of individual privacy provisions in Part III of *FIPPA* apply only to “institutions” as defined in section 2(1) of *FIPPA*. Because MAG is a ministry of the government of Ontario, it clearly qualifies as an institution under paragraph (a) of the definition of institution. However, this office has found that, although MAG has some administrative responsibility for Court Services staff,<sup>154</sup> courts operate independently of government.<sup>155</sup> Accordingly, this office has ruled that *FIPPA* does not apply to records generated by Court Services staff carrying out their functions under the *Juries Act*.<sup>156</sup>

MAG/MCSCS submit that “*FIPPA* does not apply to the collection, use and disclosure of personal information of prospective jurors under the *Juries Act* because the process is being conducted on behalf of the court.” I accept this submission.

### **Issue C: What is Court Services’ authority to collect personal information from assessment rolls?**

I stated above under Issue B that the privacy provisions of *FIPPA* do not apply to Court Services’ collection, use and disclosure of personal information of prospective jurors under the *Juries Act*. Despite this view, I will proceed to examine Court Services’ authority, outside of *FIPPA*, to collect, use and disclose personal information under Issues C through F.

<sup>154</sup> *Ministry of the Attorney General Act*, s. 5(c); *Courts of Justice Act*, s. 72.

<sup>155</sup> *Courts of Justice Act*, ss. 73, 76.

<sup>156</sup> Order P-1151, *Ministry of the Attorney General*, [1996] O.I.P.C. No. 122; Order P-994, *Ministry of the Attorney General*, [1995] O.I.P.C. No. 342; *Juries Act*, ss. 9, 10, 12, 13, 14, 19, 22, 23.

Court Services, in particular the PJC, routinely collects the names and addresses of prospective jurors from assessment rolls held by MPAC under the *Assessment Act*. MAG/MCSCS submit, and I agree, that sections 5(3) and 6(2) of the *Juries Act* provide Court Services with the explicit authority to collect the names and addresses of prospective jurors from assessment rolls held by MPAC.

**Issue D: What is Court Services' authority to collect personal information from prospective jurors?**

By way of the questionnaire under the *Juries Act*,<sup>157</sup> Court Services routinely collects a range of personal information directly from prospective jurors, as described above under Issue A.

This collection of personal information is expressly authorized under sections 6(1) and (5) of the *Juries Act* as well as Ontario Regulation 680, which prescribes the form to be used as the juror questionnaire.<sup>158</sup>

**Issue E: Would Court Services have the authority to collect the personal information of prospective jurors from outside sources for the purpose of verifying information supplied on the questionnaire?**

At this time, Court Services does not collect information from outside sources to verify information provided by individuals who complete and return the juror questionnaire. However, to assist in my analysis of information handling in the jury selection process, it may be useful to examine whether Court Services would have the authority to do this.

MAG/MCSCS submit that there is no authority under the *Juries Act* or any other legislation that would permit Court Services to conduct verification checks on prospective jurors. The Ministry refers to section 8(1), which states:

The sheriff shall open the returns to jury service notices received by the sheriff and shall cause the name, address and occupation of each person making such a return, *who is shown by the return to be eligible for jury service*, to be entered in the jury roll alphabetically arranged and numbered consecutively [emphasis added]

MAG/MCSCS state that the language of section 8(1) “suggests that the sheriff is not to look behind the return or second-guess any of the answers to the questions.” MAG/MCSCS conclude that “the *Juries Act* and/or regulation would need to be amended to permit Court Services to conduct verification checks on prospective jurors.”

The U of T Asper Centre submits that the *Juries Act* “does not provide express authorization” to confirm eligibility information beyond the questionnaire.

I am aware that the *Juries Act* contains no express authorization for Court Services to confirm eligibility information provided by prospective jurors on the questionnaire. However, further analysis of that legislation reveals that it may be reasonable to interpret the *Juries Act* as providing Court Services with the implicit authority to collect personal information from outside sources,

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157 Ontario Regulation 680, s. 1, Form 1, “Questionnaire as to Qualifications for Jury Service.”

158 Ontario Regulation 680, s. 1, Form 1, “Questionnaire as to Qualifications for Jury Service.”

for the purpose of verifying juror questionnaire information. I will elaborate on this point below in my Recommendations in Chapter 11.0.

### **Issue F: What is Court Services' authority to disclose personal information to Crown attorneys and accused persons or their counsel?**

Section 20 of the *Juries Act* states that during the period of 10 days before the sittings of the court for which a jury panel has been drafted, Court Services “shall permit the inspection . . . of the panel list” by Crown attorneys and accused persons or their counsel. Section 20 also provides that Court Services “shall furnish” Crown attorneys and accused persons or their counsel “upon request and payment of a fee of \$2, with a copy of any such panel list.”<sup>159</sup> The panel list contains the name, address, occupation and jury roll number of each prospective juror. Accordingly, this section constitutes Court Services' authority to disclose the above-described personal information to Crown attorneys and accused persons or their counsel.

During the course of our investigation I discovered that, in some cases, Court Services staff disclosed the jury panel list to counsel more than 10 days before the court sittings. This disclosure is a clear breach of section 20 of the *Juries Act*. I will address this issue below in my Recommendations in Chapter 11.0.

I also learned that, in a number of cases, Court Services staff routinely disclosed the jury panel list to the Crown, without a specific request as required by section 20. I will also address this issue below in my Recommendations in Chapter 11.0.

Further, I learned that, in addition to the jury panel list that is provided to counsel, Court Services receives a companion “administrative” list that contains individuals' telephone numbers, as well as information contained on the external list. Court Services uses the telephone numbers where prospective jurors need to be contacted quickly, for example, in the event of a scheduling change. It appears that in some cases, Court Services inadvertently disclosed the administrative list to counsel. This disclosure of telephone numbers is not consistent with the *Juries Act* or regulation.<sup>160</sup> Again, I will address this issue below in my Recommendations in Chapter 11.0.

## **8.5 Crown Attorneys**

### **Issue G: Is the collection of personal information by Crown attorneys from Court Services authorized under section 38(2) of FIPPA?**

When a Crown attorney in a particular matter obtains a jury panel list from Court Services under section 20 of the *Juries Act*, MAG, through the Crown attorney, is collecting personal information of prospective jurors, in particular, their name, address, occupation and jury roll number. Section 38(2) prohibits the collection of personal information except in certain circumstances. That section reads:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

<sup>159</sup> *Juries Act*, s. 20.

<sup>160</sup> *Juries Act*, s. 20; Ontario Regulation 680, s. 9, Form 9, “Jury Panels for the Ontario Court (General Division).”

This collection is expressly authorized by section 20 of the *Juries Act*, which explicitly permits counsel to inspect jury panel lists in accordance with that provision. Therefore, MAG's collection of jury panel lists is in compliance with section 38(2) of *FIPPA*.

This view is also consistent with section 64(1) of *FIPPA*, which states:

This *Act* does not impose any limitation on the information otherwise available by law to a party to litigation.

Section 20 of the *Juries Act* is a statutory provision that makes jury panel lists "available by law" to Crown attorneys as parties to litigation.

### **Issue H: Is the disclosure of personal information by Crown attorneys to police services authorized under section 42(1) of *FIPPA*?**

Section 42(1) prohibits an institution from disclosing personal information in its custody or under its control, except in certain circumstances listed in paragraphs (a) through (i) of that provision. It appears that only paragraphs (c), (e) and (f)(ii) are relevant here. Those sections read:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
  - (ii) to another law enforcement agency in Canada;

I will first consider the application of paragraph (e), then paragraphs (c) and (f)(ii) of section 42(1).

#### ***Section 42(1)(e): Compliance with a Statute***

This office has stated that the section 42(1)(e) exception may apply only where the statutory provision in question provides explicit and specific authority to disclose.<sup>161</sup>

MAG/MCSCS submit:

Part XX (20) of the *Criminal Code* and the *Juries Act* create eligibility criteria and thereby implicitly provide a statutory basis for police agencies to conduct criminal record checks on potential jurors. Individuals are ineligible who fall into a number of different categories including, but not limited to:

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<sup>161</sup> Investigation I93-023P, *Ontario Labour Relations Board*, [1993] O.I.P.C. No. 390; Investigation I94-057M, *A Police Services Board*, [1995] O.I.P.C. No. 144.

- a conviction for which the offender received a sentence of more than 12 months imprisonment; and
- a conviction for an indictable offence.

Conducting criminal record checks on potential jurors ensures that federal and provincial legislation is complied with. Relying solely on self-identification of a prospective juror’s ineligibility creates some risk of having an improperly constituted jury. For the general public, the distinction between summary and indictable offences may not be clear.

In my view, neither the *Criminal Code* nor the *Juries Act* contains a provision that explicitly authorizes Crown attorneys to disclose jury panel information to police services. While it is arguable that those statutes create an implicit authority to disclose this information, this is insufficient to trigger the application of the section 42(1)(e) exception to the prohibition against disclosure. Accordingly, section 42(1)(e) does not apply to the information at issue.

### ***Section 42(1)(c): Purpose Obtained or Compiled/Consistent Purpose***

This exception applies where an institution discloses personal information for the same purpose for which it was obtained or compiled, or for a consistent purpose.

#### **Purpose of Original Collection**

The first step in the analysis under this section is to ascertain the original purpose for which the institution obtained or compiled the information contained in the jury panel lists.

MAG/MCSCS’s position appears to be that MAG collects jury panel lists for the purpose of verifying prospective jurors’ “status in circumstances where a criminal record limits their participation” on a jury.

I stated above that Crown attorneys collect jury panel lists under section 20 of the *Juries Act*. In my view, the purpose of this collection is to enable Crown attorneys to participate in the jury selection process under Part XX (20) of the *Criminal Code*<sup>162</sup> and the *Juries Act*.

#### **Does MAG Disclose Jury Panel Lists for the Same Purpose for which the Information was Originally Obtained or Compiled?**

MAG discloses jury panel lists to the police for the purpose of obtaining background information that may be relevant to the jury selection process. In some cases, Crown attorneys seek any information to which the police have access regarding prospective jurors. In other cases, Crown attorneys seek only criminal conviction information that may impact a prospective juror’s eligibility to serve on a jury.

In my view, where Crown attorneys seek information restricted to statutory criminal conviction eligibility criteria, they are disclosing the jury panel lists for the same purpose for which they were originally obtained or compiled, that is, to facilitate their participation in the jury selection process. Where Crown attorneys seek criminal conviction eligibility information on prospective jurors, they are seeking to fulfill their role as officers of the court in a criminal jury trial. Obtaining this conviction information assists in verifying a person’s eligibility to sit as a juror under the *Juries Act*, and gives the Crown the informational tools it needs to make an informed decision regarding a challenge for cause based on the criminal conviction criterion under the *Criminal Code*. Without

<sup>162</sup> Part XX, ss. 626-644.

this information, it is not reasonable to expect Crown attorneys to meaningfully participate in jury selection in this regard.

However, in cases where Crown attorneys seek any information to which the police have access regarding prospective jurors, the Crown attorneys are not disclosing the jury panel lists for the same purpose for which they were originally obtained or compiled. Therefore, disclosure of the jury panel lists in these cases is not in compliance with section 42(1)(c), unless such disclosure is made for a “consistent purpose.” I will consider this question below.

### **Does MAG Disclose Jury Panel Lists for a Purpose that is Consistent with the Purpose for which they were Originally Obtained or Compiled?**

MAG collects the information in jury panel lists from Court Services, rather than directly from the prospective jurors. Where personal information is collected indirectly, a “consistent purpose” is one which is reasonably compatible with the purpose for which the information was obtained or compiled.<sup>163</sup>

Where Crown attorneys seek information that goes beyond criminal conviction information that may impact a prospective juror’s eligibility, their purpose exceeds the original purpose for collection. In my view, it is not necessary to seek this additional information in order to fulfill the original purpose of participating in the jury selection process. Accordingly, disclosure of the jury panel lists for the wider purpose of obtaining any information to which the police may have access is not reasonably compatible with the original purpose for collection. Therefore, the section 42(1)(c) exception does not apply to this disclosure.

### **Conclusion on Section 42(1)(c)**

MAG’s disclosure of jury panel lists to the police for the specific purpose of obtaining information relevant to statutory criminal conviction eligibility criteria is in compliance with section 42(1)(c) of *FIPPA*.

MAG’s disclosure of jury panel lists to the police for the purpose of obtaining any information to which the police may have access is not in compliance with section 42(1)(c) of *FIPPA*.

### **Section 42(1)(f)(ii): Law Enforcement**

This exception applies where a law enforcement institution discloses personal information to a law enforcement agency in Canada.

This office has stated that for this section to apply, the disclosure must be made for the purpose of a specific law enforcement matter.<sup>164</sup> As stated in Privacy Complaint Report MC-040012-1:

In my view, it would be inconsistent and irrational for the legislature to have intended that law enforcement agencies may [collect] . . . only where the collection is for law enforcement purposes, yet permit those same agencies to share information with each other for any purpose whatsoever, even if unrelated to a law enforcement purpose.<sup>165</sup>

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163 Investigation Report I95-008M, *A Separate School Board*, [1995] O.I.P.C. No. 543; Privacy Complaint Report MC-010032-1, MC-010036-1, *York Region District School Board, York Catholic District School Board*, [2003] O.I.P.C. No. 103.

164 Privacy Complaint Report MC-040012-1, *Sarnia Police Service*, [2005] O.I.P.C. No. 28 at para. 21.

165 Privacy Complaint Report MC-040012-1 at para. 28.

In addition, the personal information must be relevant to the specific law enforcement matter. In Privacy Complaint Report MC-040012-1, this office stated:

Here, the Police have not persuaded me that the disclosure of the personal information in question was for the purpose of law enforcement *or in any way connected to either of the law enforcement matters* involving the complainant to which the Police refer. [emphasis added]

### **Specific Law Enforcement Matter**

The first question to decide is whether a specific law enforcement matter exists where Crown attorneys disclose jury panel lists to the police.

The term “law enforcement” is defined in section 2(1) of *FIPPA* as follows:

law enforcement means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b);

The investigation of a criminal offence clearly constitutes “law enforcement” under paragraph (b) of the definition, since such investigations lead or could lead to criminal proceedings in a court where a penalty or sanction may be imposed in those proceedings. Further, under paragraph (c), the actual conduct of the criminal proceeding meets the definition of law enforcement.

In my view, the jury selection process is considered a part of the conduct of a criminal jury trial.<sup>166</sup> When Crown attorneys disclose jury panel lists to the police, they do so for the purpose of the jury selection process in a specific, pending criminal proceeding in a court. Therefore, Crown attorneys disclose jury panel lists to the police for the purpose of a specific law enforcement matter.

### **Relevant to a Specific Law Enforcement Matter**

The next question is whether the information disclosed by Crown attorneys to the police is “relevant” to a specific law enforcement matter.

I am satisfied that where Crown attorneys seek information that is relevant to statutory criminal conviction eligibility criteria with respect to a jury panel for a pending trial, the “relevance” test under section 42(1)(f)(ii) is met. However, where Crown attorneys seek information that is not relevant to these eligibility criteria, the “relevance” test is not met.

### **Law Enforcement Entities**

Where Crown attorneys obtain jury panel lists from Court Services for a pending criminal trial, they are engaging in the conduct of a “law enforcement” matter, and therefore MAG qualifies as a law enforcement institution in this context. In addition, the police meet paragraph (a) of the

<sup>166</sup> *R. v. Barrow* at para. 25.

law enforcement definition in these circumstances, and therefore qualify as a “law enforcement agency” for the purpose of section 42(1)(f)(ii) of *FIPPA*.

### **Conclusion on Section 42(1)(f)(ii)**

MAG’s disclosure of jury panel lists to the police for the purpose of obtaining information that is relevant to jury selection in a specific criminal proceeding is in compliance with section 42(1)(f)(ii) of *FIPPA*.

MAG’s disclosure of jury panel lists to the police for the purpose of obtaining information that is not relevant to jury selection in a specific criminal proceeding is not in compliance with section 42(1)(f)(ii) of *FIPPA*.

### ***Summary of Issue H***

MAG’s disclosure of jury panel lists to the police for the purpose of obtaining information relevant to criminal conviction juror eligibility criteria under the *Criminal Code* and the *Juries Act* is in compliance with sections 42(1)(c) and (f)(ii) of *FIPPA*.

However, MAG’s disclosure of jury panel lists to the police for the purpose of obtaining additional information on prospective jurors to which the police have access, or of which they have knowledge, is not in compliance with sections 42(1)(c) and (f)(ii) of *FIPPA*.

Section 42(1)(e) of *FIPPA* does not apply to permit disclosure of the information at issue.

### **Issue I: Is the collection of personal information by Crown attorneys from police services authorized under section 38(2) of *FIPPA*?**

As stated above, in some cases, police services that receive copies of jury panel lists from Crown attorneys return them to the Crown with additional personal information relating to prospective jurors, such as criminal charges or convictions, other information about contacts with the police, or brief notations as to whether the police found information about them.

Section 38(2) of *FIPPA* prohibits the collection of personal information except in certain listed circumstances. This section reads:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

MAG/MCSCS rely on the third exception only, and submit that Crown attorneys’ collection of personal information from the police is necessary to the proper administration of a lawfully authorized activity.

### ***Expressly Authorized by Statute***

For a collection to be “expressly authorized by statute,” it must meet the following test:

- the specific types of personal information to be collected must be expressly described in the statute; or
- the statute sets out a general reference to the activity, and a regulation under the statute contains a specific reference to the personal information to be collected.<sup>167</sup>

There is no express statutory or regulatory provision in or under the *Criminal Code*, the *Juries Act*, or any other statute or regulation that specifically describes the types of personal information to be collected by the Crown from the police in these circumstances.

Therefore, Crown attorneys’ collection of personal information as described above is not in compliance with the “expressly authorized by statute” exception in section 38(2) of *FIPPA*.

### ***Necessary to the Proper Administration of a Lawfully Authorized Activity***

#### **Lawfully Authorized Activity**

The first step in analyzing whether this exception under section 38(2) applies is to ascertain the “lawfully authorized activity” in which Crown attorneys are engaged.

In my view, consistent with my statements set out above, the lawfully authorized activity in question is the Crown attorneys’ participation in the jury selection process in criminal trials.

MAG/MCSCS rely on the Law Society’s commentary under rule 4.05(1), suggesting that this forms a basis for lawfully authorizing background checks. That commentary reads:

A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the juror or with any member of the juror’s family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.<sup>168</sup>

While this commentary is instructive to counsel in terms of their professional obligations, it does not authorize any particular conduct as would a statute or regulation. In addition, it is vague with respect to the method by which any such investigation could take place, and the scope of the information that may be collected.

<sup>167</sup> *Cash Converters Canada Inc. v. Oshawa (City)* at para. 36; see also Privacy Investigation I95-030P, *A College of Applied Arts and Technology*, [1995] O.I.P.C. No. 546 and Privacy Investigation I96-057M, *A Board of Education*, [1996] O.I.P.C. No. 449 at paras. 17-18.

<sup>168</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, Commentary under rule 4.05(1).

## Necessary

The next step is to consider whether the collection of personal information at issue is “necessary” to that activity. In its 2007 decision in *Cash Converters Canada Inc. v. Oshawa (City)*,<sup>169</sup> the Ontario Court of Appeal stated the following with respect to the necessity element:

... [I]n order to meet the necessity condition, the institution must show that each item or class of personal information that is to be collected is necessary to properly administer the lawfully authorized activity. Consequently, where the personal information would merely be helpful to the activity, it is not “necessary” within the meaning of the *Act* . . .

In my view, it is necessary for Crown attorneys to collect information relevant to criminal conviction juror eligibility criteria under the *Criminal Code* and the *Juries Act*.

During my investigation I heard from both Crown attorneys and defence counsel that, in their view, the self-reporting system is not effective in ensuring that ineligible people are excluded from jury panel lists. Specifically, they expressed the opinion that the question relating to unpardoned indictable criminal convictions in the *Juries Act* questionnaire was likely to cause significant confusion among individuals who may have been convicted of an offence.

As stated by MAG/MCSCS:

The general public does not necessarily appreciate that a criminal conviction remains on their record unless and until they are pardoned. The general public does not necessarily understand the terms summary and indictable offence and the distinction between them.

I agree that there is a reasonable likelihood that the unpardoned criminal conviction question in the *Juries Act* would cause confusion among a significant number of individuals with criminal records. Specifically, there is likely to be confusion among these individuals about the distinction between an indictable and a summary offence. As discussed above, individuals who were convicted of a hybrid offence may well be unaware of whether their conviction is technically classified as a summary or indictable conviction.

In addition, individuals may not fully understand the definition of a pardon under the federal *Criminal Records Act*.

Accordingly, ineligible individuals could, in all honesty and in good faith, answer this question incorrectly.

In addition, it is possible that individuals could intentionally provide false information in response to the questionnaire, for a variety of reasons. In fact, there are reported decisions indicating that ineligible individuals appeared on jury panel lists.<sup>170</sup>

With regard to the right to challenge for cause based on criminal conviction under section 638(1)(c) of the *Criminal Code*, the view that it is necessary for Crown attorneys to obtain

169 *Cash Converters Canada Inc. v. Oshawa (City)* at para. 40.

170 *R. v. Cece*, [2004] O.J. No. 3938 (S.C.J.) at para. 3; *R. v. Fisher*, [2005] B.C.J. No. 1042 (C.A.) at para. 26; *R. v. Rushton*, [1974] O.J. No. 763 (C.A.) at para. 10; *R. v. Stewart*, [1932] S.C.J. No. 41.

information relevant to this provision is reasonable. A criminal conviction record check is the only reasonably practical and reliable means by which a Crown attorney may obtain information necessary to exercise the right to use this challenge.

The view that it is necessary for Crown attorneys to collect information relevant to criminal conviction eligibility criteria under the *Juries Act* and the *Criminal Code* is supported by court decisions. In *R. v. Fagan*, the court implied that it would be permissible for jurors to be checked for disqualifying criminal convictions.<sup>171</sup> Similarly, in *R. v. Huard*, the court implied that it would have no concerns with “a CPIC check for indictable offence convictions or a check for sentence terms.”<sup>172</sup>

Conversely, MAG’s collection of additional information not relevant to criminal conviction eligibility criteria from the police is not necessary to the proper administration of the lawfully authorized activity under section 38(2) of *FIPPA*. This information does not assist Crown attorneys in ensuring that ineligible jurors are excluded from jury service, nor is it useful for Crown attorneys in exercising their right to challenge for cause a prospective juror on the basis of a conviction.

Further to this point, CCLA referred to the Supreme Court of Canada’s decision in *R. v. Sherratt*,<sup>173</sup> which states that challenges for cause would “stray into illegitimacy if used merely [...] as a ‘fishing expedition’ in order to obtain personal information about the juror.” This reinforces my conclusion with respect to information irrelevant to criminal conviction eligibility.

My view is also consistent with the views of the U of T Asper Centre, which submits that the “collection and use of information, beyond the specific challenge for cause, by parties to the criminal trial process, is unlikely to be ‘necessary’ to the proper administration of jury selection.”

### **Conclusion on Necessary to the Proper Administration of a Lawfully Authorized Activity**

Where Crown attorneys collect information relevant to criminal conviction eligibility criteria under the *Juries Act* and the *Criminal Code* from the police, this collection is necessary to the proper administration of a lawfully authorized activity under section 38(2) of *FIPPA*.

Where Crown attorneys collect information that goes beyond information relevant to criminal conviction eligibility criteria, this collection is not necessary to the proper administration of a lawfully authorized activity under section 38(2) of *FIPPA*.

### ***Used for the Purposes of Law Enforcement***

When Crown attorneys collect personal information from the police about prospective jurors that is relevant to the statutory criminal conviction eligibility criteria, they are collecting this information to be “used for the purposes of law enforcement” under section 38(2). This is consistent with my statement above in my discussion of section 42(1)(f)(ii) that the jury selection process is a specific law enforcement matter.

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171 *R. v. Fagan* at paras. 1-2.

172 *R. v. Huard* at p. 24.

173 *R. v. Sherratt* at para. 59.

However, when Crown attorneys collect any additional personal information, beyond that which is relevant to the conviction eligibility criteria, that collection cannot reasonably be said to be “used for the purposes of law enforcement” under section 38(2).

This view is consistent with Ontario case law. In *R. v. Huard*, the court found that conducting background checks from police databases, other than CPIC checks for conviction information, was “offensive.”<sup>174</sup> In *R. v. Fagan*, the court had concerns that the practice of collecting any additional information, beyond that which is relevant to eligibility criteria, could “stigmatize” prospective jurors. The court ordered that the Crown and the defence counsel work from a “clean” jury panel list for the purpose of jury selection.<sup>175</sup> Further, in *R. v. Perlett*, the court found “unacceptable” the practice of seeking out individuals to ask their opinion of prospective jurors.

Finally, I note that while MAG/MCSCS make the simple assertion that MAG “collect[s] the information relating to prospective jurors . . . for the purpose of law enforcement,” they do not elaborate on this point.

### ***Summary of Issue I***

Crown attorneys’ collection of personal information relevant to criminal conviction eligibility criteria from the police is permissible under section 38(2) of *FIPPA* because it is both “necessary to the proper administration of a lawfully authorized activity” and “used for the purposes of law enforcement.”

Crown attorneys’ collection of personal information beyond information relevant to criminal conviction eligibility criteria is not permissible under section 38(2) of *FIPPA* because it is not “necessary to the proper administration of a lawfully authorized activity,” nor is it “used for the purposes of law enforcement.”

Crown attorneys’ collection of personal information of prospective jurors from police is not “expressly authorized by statute” under section 38(2) of *FIPPA*.

### **Issue J: Is the disclosure of personal information by Crown attorneys to accused persons or their counsel authorized under section 42(1) of *FIPPA*?**

Section 42(1) prohibits an institution from disclosing personal information in its custody or under its control, except in certain circumstances listed in paragraphs (a) through (i) of that provision.

In *R. v. Stinchcombe*,<sup>176</sup> the Supreme Court of Canada ruled that the Crown has a duty to disclose all relevant information to the defence. In *Ontario (Attorney General) v. Big Canoe*,<sup>177</sup> the Ontario Divisional Court stated that:

Nothing in *FIPPA* affects the *Stinchcombe* obligations of the Crown to make timely disclosure of all relevant materials in its possession to the accused person prior to the trial.

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<sup>174</sup> *R. v. Huard* at p. 24.

<sup>175</sup> *R. v. Fagan*.

<sup>176</sup> *R. v. Stinchcombe* (1995), 96 C.C.C. (3d) 318 (S.C.C.).

<sup>177</sup> *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.) at para. 41.

Further, decisions of the Ontario Superior Court in *R. v. Fagan*, *R. v. Huard* and *R. v. Bradey* appear to indicate that any background information of prospective jurors obtained by the Crown should be shared with the accused or their counsel.

In addition, section 64(1) states that *FIPPA* does not impose any limitation on the information otherwise available by law to a party to litigation.

While it is beyond my purview to make a definitive finding on the extent to which information of prospective jurors must be shared in the context of a criminal trial, based on common law duties of disclosure, there is nothing in *FIPPA* that would preclude such disclosure. To the extent that this duty to share exists at common law, any disclosure made to comply with this duty would not be in violation of section 42(1) of *FIPPA*.

## 8.6 Police Services

**Issue K: Is the collection of personal information by police services from Crown attorneys authorized under section 28(2) of *MFIPPA* and/or section 38(2) of *FIPPA*?**

As indicated above, in some cases Crown attorneys disclose jury panel lists to provincial and/or municipal police services.

Section 38(2) of *FIPPA* and section 28(2) of *MFIPPA* prohibit the collection of personal information except in certain listed circumstances. These sections read:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

I stated above that Crown attorneys' disclosure of jury panel lists to the police for the purpose of obtaining information relevant to juror eligibility relating to criminal convictions is in compliance with the "consistent purpose" and "law enforcement" exceptions in paragraphs (c) and (f)(ii) of sections 42(1) of *FIPPA*.

However, I also stated that Crown attorneys' disclosure of jury panel lists to the police for the purpose of obtaining additional information on prospective jurors to which the police have access is not in compliance with sections 42(1)(c) and (f)(ii) of *FIPPA*.

In my view, consistent with the above, where the police collect jury panel lists for the purpose of obtaining information relevant to juror criminal conviction eligibility, this collection is "necessary to the proper administration of a lawfully authorized activity," namely Crown attorneys' participation in the jury selection process.

On the other hand, where the police collect jury panel lists for the purpose of obtaining other information, not relevant to juror criminal conviction eligibility, the necessity test is not met, for essentially the same reasons I set out above under Issue I. Further, there clearly is no express

statutory authorization for the police to collect jury panel lists for this broader purpose, nor would this collection meet the “used for the purposes of law enforcement” test, for the reasons explained above under Issue I.

To summarize, where the police collect jury panel lists for the purpose of obtaining information relevant to juror criminal conviction eligibility, this collection is in compliance with section 28(2) of *MFIPPA* and section 38(2) of *FIPPA*.

Where the police collect jury panel lists for the purpose of obtaining additional information, not relevant to juror criminal conviction eligibility, this collection is not in compliance with section 28(2) of *MFIPPA* or section 38(2) of *FIPPA*.

### **Issue L: Is the use of personal information by police services authorized under section 31 of *MFIPPA* and/or section 41(1) of *FIPPA*?**

As indicated above, in some cases municipal police services and/or the OPP receive jury panel lists from Crown attorneys. In some cases, using the names of prospective jurors on the lists, the police gain access to various sources of information for the purpose of providing Crown attorneys with additional information about these individuals. These sources may include the Ontario Ministry of Transportation driver’s license database, CPIC or local police databases (for example, Niche, Versadex or Manix).

My office has stated that where police services gain access to databases such as CPIC or local police service databases, this constitutes a “use” of personal information.<sup>178</sup>

Section 41(1) of *FIPPA* and section 31 of *MFIPPA* prohibit an institution from using personal information except where:

- the individual has consented to its use;<sup>179</sup>
- the institution uses the information for the purpose for which it was obtained or compiled or for a consistent purpose;<sup>180</sup>
- the institution uses the information for a purpose for which it may be disclosed to the institution under the disclosure provisions<sup>181</sup> of *FIPPA* or *MFIPPA*.<sup>182</sup>

#### ***Consent***

I have not received any submissions supporting the proposition that prospective jurors have consented to the police using their personal information to obtain additional information about them, and there is insufficient evidence to support such a view.

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178 See, for example, Privacy Investigation Report I94-048M, *A Regional Police*, [1994] O.I.P.C. No. 428.

179 *FIPPA*, s. 41(1)(a); *MFIPPA*, s. 31(a).

180 *FIPPA*, s. 41(1)(b); *MFIPPA*, s. 31(b).

181 *FIPPA*, s. 42; *MFIPPA*, s. 32; note also that s. 42(1)(d) of *FIPPA* contains an additional exception that is not relevant here since it is applicable only to educational institutions.

182 *FIPPA*, s. 41(1)(c); *MFIPPA*, s. 31(c).

### ***Purpose Obtained or Compiled/Consistent Purpose***

This exception applies where an institution uses personal information for the same purpose for which it was obtained or compiled, or for a consistent purpose.

### **Purpose of Original Collection**

The first step in this analysis is to ascertain the original purpose for which the institution obtained or compiled the information.

Here, the police may use both the personal information on the jury panel lists, as well as personal information contained in police databases.

Consistent with my analysis above, Crown attorneys collect jury panel lists under section 20 of the *Juries Act* for the purpose of enabling them to participate in the jury selection process. In addition, Crown attorneys disclose jury panel lists to the police for the purpose of Crown attorneys obtaining additional information on prospective jurors, to facilitate their participation in jury selection.

MAG/MCSCS submit, and I have accepted in previous investigation reports, that the police compile information in databases such as CPIC and their local databases for the general purpose of the “detection, prevention or suppression of crime.”<sup>183</sup>

### **Do the Police Use Jury Panel Lists and Police Database information for the Same Purpose for which the Information was Originally Obtained or Compiled?**

The police use the jury panel lists for the purpose of providing Crown attorneys with additional information on prospective jurors to facilitate Crown attorneys’ participation in jury selection.

Consistent with my views set out above, where the police use the personal information in the jury panel lists for the limited purpose of obtaining information relevant to criminal conviction juror eligibility, the police are using this information for the same purpose for which it was originally obtained or compiled.

However, where the police use the jury panel list information for the purpose of obtaining additional information, not relevant to criminal conviction juror eligibility, the police are no longer using this information for the same purpose for which it was originally obtained or compiled.

Similarly, where the police use their databases or other sources of information for the purpose of obtaining additional information, not relevant to juror criminal conviction eligibility, the police also are no longer using this information for the same purpose for which it was originally obtained or compiled, namely the “detection, prevention or suppression of crime.” In my view, this purpose cannot be equated to the purpose of facilitating participation in the jury selection process.

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183 Privacy Investigation Report I94-048M, *A Regional Police*, [1994] O.I.P.C. No. 428.

## **Do the Police Use Jury Panel Lists and Police Database Information for a Purpose Consistent with the Purpose for which the Information was Originally Obtained or Compiled?**

Where personal information is collected directly from the individual, the purpose of a use of that information is a “consistent purpose” only if the individual “might reasonably have expected” such a use.<sup>184</sup>

Where personal information is collected indirectly, a “consistent purpose” is one which is reasonably compatible with the purpose for which the information was obtained or compiled.<sup>185</sup>

Jury panel list information is collected indirectly from a source other than the prospective jurors.

I stated above that where the police use the jury panel list information for the purpose of obtaining additional information not relevant to criminal conviction juror eligibility, the police are not using this information for the same purpose for which it was originally obtained or compiled. Further, where the police use the jury panel list information in this way, their purpose is not reasonably compatible with the original purpose for which the information was obtained or compiled.

Personal information that is contained in police databases may either be collected directly from the subject individual, or indirectly from other sources.

In my view, consistent with the above, where the police use police database information for the limited purpose of obtaining information relevant to criminal conviction juror eligibility, the police are using this information for a purpose consistent with the purpose for which it was originally obtained or compiled. To the limited extent of information relevant to criminal conviction eligibility criteria, I agree with MAG/MCSCS that “[i]ndividuals would fully expect that their criminal histories — which are otherwise collected and maintained — can be used to verify their status in circumstances where a criminal record limits their participation in an aspect of public service.” For these same reasons, the purposes in question are “reasonably compatible” with one another.

Once again, any use of police databases beyond that which is relevant to criminal conviction eligibility criteria does not meet either of the two “consistent purpose” tests.

### **Conclusion on Purpose Obtained or Compiled/Consistent Purpose**

Where the police use personal information in jury panel lists and in police databases for the limited purpose of obtaining information relevant to juror criminal conviction eligibility criteria, that use is in compliance with section 41(1)(b) of *FIPPA* and 31(b) of *MFIPPA*. Any use beyond this limited purpose is not in compliance with these provisions.

### ***Use for a Purpose for which the Information may be Disclosed to the Institution under the Disclosure Provisions of FIPPA or MFIPPA***

Neither MAG/MCSCS nor any other party made any submissions on this exception to the prohibition against the use of personal information in section 41(1)(c) of *FIPPA* and section

<sup>184</sup> *FIPPA*, s. 43; *MFIPPA*, s. 33.

<sup>185</sup> Investigation Report I95-008M, *A Separate School Board*, [1995] O.I.P.C. No. 543; Privacy Complaint Report MC-010032-1, MC-010036-1, *York Region District School Board, York Catholic District School Board*, [2003] O.I.P.C. No. 103.

31(c) of *MFIPPA*. In the circumstances, my view is that these provisions do not allow for any disclosure beyond that which I stated would be in compliance with the same purpose/consistent purpose provisions in section 41(1)(b) of *FIPPA* and section 31(b) of *MFIPPA* above.

### ***Summary of Issue L***

Where the police use personal information in jury panel lists and in police databases for the limited purpose of obtaining information relevant to juror criminal conviction eligibility criteria, that use is in compliance with section 41 of *FIPPA* and section 31 of *MFIPPA*. Any use beyond this limited purpose is not in compliance with these provisions.

### **Issue M: Is the disclosure of personal information by police services to Crown attorneys authorized under section 32 of *MFIPPA* and/or section 42(1) of *FIPPA*?**

As stated above, in some cases, police services that receive copies of jury panel lists from Crown attorneys return them to the Crown with additional personal information relating to prospective jurors, such as criminal charges or convictions, other information about contacts with the police, or brief notations as to whether any additional information about police encounters had been found.

Section 42(1) of *FIPPA* and section 32 of *MFIPPA* prohibit an institution from disclosing personal information in its custody or under its control, except in certain listed circumstances.

MAG/MCSCS rely on certain provisions of the *Police Services Act (PSA)* and a regulation under that statute<sup>186</sup> that describe circumstances in which the police may disclose personal information.

### ***Deemed Compliance with Section 42(1)(e) of FIPPA/Section 32(e) of MFIPPA***

The *PSA* states that, despite any other *Act*, the police may disclose personal information about an individual in accordance with the regulations.<sup>187</sup> The *PSA* further states that any disclosure made under this provision must be “for one or more of” eight listed purposes. The two purposes that may apply here are “law enforcement”<sup>188</sup> and “administration of justice.”<sup>189</sup> Finally, the *PSA* states that any disclosure made for these purposes is “deemed to be in compliance with” the disclosure provisions of *FIPPA* and *MFIPPA*.<sup>190</sup>

Under the *PSA* regulation, if an individual is convicted of an offence, the police may disclose personal information to any person engaged in the administration of justice or the enforcement of or compliance with any federal or provincial *Act*, regulation or government program.<sup>191</sup>

Further, the regulation stipulates that, in deciding whether or not to disclose personal information, the police must consider (among other things):

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186 Ontario Regulation 265/98.

187 *Police Services Act*, s. 41(1.1).

188 Ontario Regulation 265/98, s. 41(1.2)4.

189 Ontario Regulation 265/98, s. 41(1.2)6.

190 *Police Services Act*, s. 41(1.3).

191 Ontario Regulation 265/98, ss. 5(1), (2).

- the availability of resources and information;
- what is consistent with the law and the public interest; and
- what is reasonable in the circumstances of the case.<sup>192</sup>

MAG/MCSCS submit that:

[P]olice record checks to ensure that only legally entitled jurors sit on the jury is necessary to achieve both law enforcement and administration of justice purposes. The disclosure of this information, accepting that it is for a valid purpose and in accordance with the regulations, is deemed to be in compliance with section 42(1)(e) of *FIPPA*/32(e) of *MFIPPA*. Accordingly, if a police chief or designate is satisfied that the disclosure of the potential juror's personal information to Crown counsel is required for the administration of justice, etc. and is reasonable in the circumstances of a particular case, then he or she has discretion to so disclose under s. 42(1)(e) of *FIPPA* through the *PSA* and Regulation.

For essentially the same reasons expressed above, my view is that where the police disclose information relevant to juror criminal conviction eligibility criteria, the police may rely on the discretionary disclosure provision in the *PSA* and regulation described above. Consistent with my earlier statements, my view is that such disclosure meets valid law enforcement and administration of justice purposes. Therefore, such disclosures are deemed to be in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*.

Again, however, disclosure of additional personal information of prospective jurors, beyond information relevant to criminal conviction eligibility criteria, does not validly meet those law enforcement and administration of justice purposes, and is, therefore, not deemed to be in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*.

Accordingly, it is not necessary for me to consider whether any of the additional exceptions under section 42(1) of *FIPPA* and section 32 of *MFIPPA* apply.

### ***Summary of Issue M***

Where the police disclose to Crown attorneys the personal information of prospective jurors relevant to juror criminal conviction eligibility, that disclosure is in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*.

Where the police disclose to Crown attorneys additional personal information of prospective jurors, beyond that which is relevant to juror criminal conviction eligibility, that disclosure is not in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*.

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<sup>192</sup> Ontario Regulation 265/98, s. 6.

# 9.0

## Summary of Results of the Investigation

## 9.0 SUMMARY OF RESULTS OF THE INVESTIGATION

In summary, I have set out below the results of my investigation:

- A. The information contained in jury roll lists (consisting of eligible prospective jurors), jury panel lists, and additional background information about prospective jurors provided by the police qualifies as “personal information” as defined in section 2(1) of *FIPPA* and *MFIPPA*.
- B. *FIPPA* does not apply to the collection, use and disclosure of personal information of prospective jurors under the *Juries Act* because the process is being conducted on behalf of the court, which does not fall under *FIPPA*.
- C. Court Services has the authority under sections 5(3) and 6(2) of the *Juries Act* to collect the names and addresses of prospective jurors from assessment rolls held by MPAC under the *Assessment Act*.
- D. Court Services has the authority under sections 6(1) and (5) of the *Juries Act*, as well as Ontario Regulation 680, to collect personal information from prospective jurors.
- E. The *Juries Act* contains no express authorization for Court Services to confirm eligibility information provided by prospective jurors. However, Court Services may have an implicit authority under the *Juries Act* to collect personal information from outside sources for the purpose of verifying juror questionnaire information.
- F. Court Services has the authority under section 20 of the *Juries Act* to disclose the personal information contained on jury panel lists to Crown attorneys and accused persons or defence counsel.
- G. MAG has the authority under section 20 of the *Juries Act* to collect the personal information contained in jury panel lists, therefore, this collection is in compliance with section 38(2) of *FIPPA*.
- H. MAG’s disclosure of jury panel lists to the police for the purpose of obtaining information that is relevant to jury selection in a specific criminal proceeding is in compliance with section 42 of *FIPPA*. However, MAG’s disclosure of jury panel lists to the police for the purpose of obtaining information that is not relevant to jury selection in a specific criminal proceeding is not in compliance with section 42 of *FIPPA*.
- I. MAG’s collection of personal information relevant to criminal conviction eligibility criteria from the police is in compliance with section 38(2) of *FIPPA*. However, MAG’s collection of personal information beyond information relevant to criminal conviction eligibility criteria is not in compliance with section 38(2) of *FIPPA*.
- J. To the extent that MAG has a common law duty to share personal information of prospective jurors, any disclosure made pursuant to this duty would be in compliance with section 42(1) of *FIPPA*.

- K. The collection by the police of personal information of prospective jurors in jury panel lists for the purpose of obtaining information relevant to juror criminal conviction eligibility is in compliance with section 28(2) of *MFIPPA* and section 38(2) of *FIPPA*. However, the collection by the police of personal information of prospective jurors in jury panel lists for the purpose of obtaining other information, not relevant to juror criminal conviction eligibility, is not in compliance with section 28(2) of *MFIPPA* or section 38(2) of *FIPPA*.
- L. The use by the police of personal information of prospective jurors in jury panel lists and in police databases for the purpose of obtaining information relevant to juror criminal conviction eligibility criteria is in compliance with section 41 of *FIPPA* and section 31 of *MFIPPA*. Any use beyond this limited purpose is not in compliance with these provisions.
- M. The disclosure by the police to MAG of personal information of prospective jurors relevant to juror criminal conviction eligibility is in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*. However, the disclosure by the police to MAG of additional personal information of prospective jurors, beyond that which is relevant to juror criminal conviction eligibility, is not in compliance with section 42(1)(e) of *FIPPA* and section 32(e) of *MFIPPA*.

10.0

The Order

## 10.0 THE ORDER

### 10.1 Power to Issue an Order

Under *FIPPA*, there are two types of Orders that I may issue with respect to the collection of personal information. These remedial powers are set out in section 59(b), which reads:

The Commissioner may,

after hearing the head, order an institution to,

- (i) cease collection practices, and
- (ii) destroy collections of personal information,

that contravene this Act;

These Orders are legally binding and must be complied with. I will address these two different types of Orders below.

### 10.2 Discussion

#### Cease Collection Order against Ministry of the Attorney General

MAG submits that a cease collection Order would not be appropriate in these circumstances because, “This collection is valid and necessary, and is also subject to the supervision of the judiciary.” The U of T Asper Centre, the CLA, and the CCLA made no submissions on this point or on the necessity of a destruction Order.

I have concluded that MAG’s collection of personal information from the police, beyond information relevant to criminal conviction eligibility criteria, is not in compliance with section 38(2) of *FIPPA*.

In my view, it is not only appropriate but necessary to order MAG to cease collection of any information that exceeds what may be collected, in compliance with section 38(2) of *FIPPA*. Given the lack of clarity in the written policies of MAG’s Criminal Law Division, and the absence of a consistent understanding among Crown attorneys as to what is appropriate, I am not satisfied that the *status quo* of inconsistent practices is sufficient. This Order will provide a clear direction to Crown attorneys throughout the province as to what personal information may or may not be collected in the jury selection process.

I acknowledge, however, as stated above, that the Superior Court of Justice has the power to control what information may be available to the parties in the context of the criminal trial process and jury selection. Consistent with this, *FIPPA* explicitly states that it is not to be interpreted in a manner that limits the information available by law to the parties to litigation.<sup>193</sup>

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<sup>193</sup> *FIPPA*, s. 64(1).

Accordingly, I will explicitly state in the terms of my Order below that it is subject to the overriding authority of a justice of the Superior Court of Justice.

## Cease Collection Order Against the Police

I concluded that collection by the police, of the personal information of prospective jurors in jury panel lists, for the purpose of obtaining information not relevant to juror criminal conviction eligibility, is not in compliance with section 28(2) of *MFIPPA* nor section 38(2) of *FIPPA*.

It is clear that the police conduct these background checks at the behest of Crown attorneys. Below, I order MAG to cease collecting personal information not relevant to juror criminal conviction eligibility. Once this Order is in effect, the police will no longer be requested to obtain or provide irrelevant personal information to Crown attorneys. Accordingly, this would render any order against the police moot, and as such, unnecessary.

## Destruction Order

MAG/MCSCS submit that personal information relating to prospective jurors:

must be retained to keep a record of a proceeding, particularly if there may be a challenge to the validity of a proceeding. As a result, an Order to destroy a collection of personal information — that is information relating to a juror in a particular proceeding — could interfere with an ongoing court matter.

In some cases, Crown attorneys have collected personal information that went well beyond what should have been collected. However, I do not believe that ordering the immediate destruction of this information would serve the interests of either prospective jurors or accused persons.

If this information were to be destroyed, it could interfere with a prospective juror's right of access to it. I note that the regulations under *FIPPA* and *MFIPPA* require that personal information be retained for specified minimum time periods, namely one year after its last use.<sup>194</sup> The reason for this is to enable individuals to exercise their rights of access to their own personal information, and their rights to ensure its accuracy.

Further, the destruction of this information could interfere with the potential rights of accused persons, in regard to a fair trial.

Accordingly, I will make no order with regard to the destruction of personal information; however, I will be making Recommendations regarding appropriate destruction practices.

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<sup>194</sup> *FIPPA*, s.40(1), Ontario Regulation 460, s.5; *MFIPPA*, s. 30(1), Ontario Regulation 823, s.5.

### 10.3 Cease Collection Order against Ministry of the Attorney General

Based on section 59(b) of *FIPPA*, and my findings set out above, I order as follows:

1. I order the Ministry of the Attorney General to immediately take the necessary legal and administrative steps to ensure that it cease collecting personal information beyond that which is necessary to confirm whether or not a prospective juror has:
  - (a) an unpardoned conviction for an indictable offence, rendering him or her ineligible for jury duty under section 4(b) of the *Juries Act*; or
  - (b) a conviction for an offence for which he or she was sentenced to death or to a term of imprisonment exceeding 12 months and may therefore be subject to a challenge for cause under section 638(1)(c) of the *Criminal Code*.
2. Order Provision 1 does not affect the overriding authority of the Superior Court of Justice to control what information may be available to the parties in a criminal proceeding.
3. For the purpose of verifying compliance with this Order, I require that the Ministry of the Attorney General provide me with proof of its compliance with Order provision 1 by **October 30, 2009**.
4. I remain seized of this matter to address any issues that may arise with respect to the Ministry of the Attorney General's compliance with Order provision 1.

11.0

Recommendations

## 11.0 RECOMMENDATIONS

### 11.1 Introduction

In addition to the Order set out above, I will be making several Recommendations, based on the results of my investigation, which are designed to minimize the risk of excessive background checks on prospective jurors.

For over 20 years, my office has achieved strong success in securing compliance with Recommendations stemming from our privacy investigations. Government institutions appear to value the expertise of this office in privacy matters (having had it recognized by the courts in numerous cases), and our ability to translate this specialized knowledge into pragmatic solutions.<sup>195</sup> As a result, my Recommendations appear to have become an effective tool in resolving difficult privacy issues, due to a very high compliance rate.

In light of the conclusions contained in this Order, I will make specific Recommendations directed to the Provincial Jury Centre of MAG, MAG's Crown attorneys and court staff, the police (including MCSCS and municipal police services), and the Law Society of Upper Canada. Before setting out my specific Recommendations, I will discuss the reasons for each of them.

### 11.2 Ministry of the Attorney General

#### Court Services

##### *Provincial Jury Centre (PJC)*

The lack of a rigorous criminal conviction verification process at the central PJC has effectively shifted the burden of verifying criminal conviction eligibility, as stipulated in the *Juries Act*, on to various third parties. Unfortunately, this has led to Crown attorneys and the police engaging in a number of privacy-invasive practices that I have found in contravention of *FIPPA* and *MFIPPA*.

The current “self-reporting” process expected of prospective jurors under the *Juries Act* is, in my view, seriously flawed. When faced with the question regarding prior criminal convictions in the juror questionnaire, some individuals may understandably respond incorrectly, perhaps because they do not appreciate the distinction between an indictable and a summary offence conviction (or indeed between a criminal offence and a provincial offence), or they do not understand whether they have been officially pardoned.

If an individual answers “no” to having a criminal conviction on the juror questionnaire, the PJC will automatically include that individual on the jury roll (assuming they meet the other eligibility criteria). The PJC takes no further steps to verify a “no” response, believing that they do not have the authority to do so. Therefore, some individuals who are ineligible to serve as jurors under the *Juries Act* may, nonetheless, be placed on jury panel lists.

It should come as no surprise that both Crown attorneys and defence counsel lack confidence in the current screening process. In these circumstances, some Crown attorneys have come to believe

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<sup>195</sup> The Court of Appeal for Ontario has recognized my office's expertise in privacy matters; see *Cash Converters Canada Inc.* at para. 28.

that they are the screening mechanism of “last resort.” It is for this reason that a number of Crown attorneys have sought background checks from the police. In part due to the lack of a clear policy, or consistency in its application, these background checks have strayed into inappropriate areas. I note that the LSUC’s *Rules of Professional Conduct* state that a Crown attorney’s “prime duty is not to seek to convict but to see that justice is done through a fair trial, on the merits.”<sup>196</sup>

One measure that could greatly reduce the risk of unlawful intrusion into the background of jurors through the inconsistent practices of Crown attorneys is by centralizing the process. The pressure on Crown attorneys could be relieved by having the central PJC assume primary responsibility for seeking criminal conviction information. However, the PJC must be given the tools to do a better job in reducing the incidence of ineligible individuals appearing on jury panel lists. I believe this is a logical solution since the *Juries Act* already places an initial central duty on Court Services to screen out all ineligible individuals, by way of administering the juror questionnaire. As a result, the PJC already receives the names and personal information of all prospective jurors.

This proposed measure of centralizing the jury screening process in the PJC should also be effective in addressing the administrative barriers to performing accurate CPIC criminal conviction checks, as identified by at least one Crown attorney as far back as 1996 (discussed above in Section 5.1). For example, MPAC is already in possession of date of birth information, and the PJC could obtain this additional data from MPAC. The use of this information would then alleviate the need to conduct additional searches for such information in other databases, such as the Ministry of Transportation’s driver’s licence database.

Further, this approach will significantly reduce privacy risks in comparison to the current process, for a number of reasons outlined below:

- individuals who incorrectly answer “no” to the criminal conviction question, but are found to have a disqualifying conviction, will not be placed on any jury panel list; therefore, their personal information will not be sent to anyone outside the PJC;
- as a single entity operating from a single location, the PJC can implement strict privacy and security measures that can be strongly enforced, thereby providing a consistently high degree of protection for personal information; by contrast, it would be much more difficult to provide such a consistent degree of protection for the same information and process to be followed, in a decentralized manner, across all police services in multiple locations throughout the province; and
- the parties to a criminal proceeding will no longer have a need to seek out criminal conviction information, because they may now be confident that the PJC has excluded from jury panel lists any persons ineligible under the *Juries Act* due to criminal conviction.<sup>197</sup>

Since the process of preparing jury panel lists is already centralized at the PJC, it strikes me as logical that any future verification process should take place within the same office. Accordingly,

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<sup>196</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, Commentary under rule 4.01(3).

<sup>197</sup> With regard to the last point, I acknowledge that there may be cases where the parties will wish to obtain more up-to-date information due to the passage of time between the PJC’s conviction checks and the date of jury selection; however, this is unlikely to occur with any frequency.

I will recommend that MAG take the necessary legal and administrative steps to implement a central criminal conviction verification process at the PJC, including the addition of any necessary resources to the PJC.

I note that, as discussed above, MAG (on behalf of the PJC) retains two agents — a private third party vendor (DST Output Canada Inc.), and the Ministry of Finance — to provide various administrative services to the PJC. As discussed above in Chapters 4.0 and 6.0, my team made extensive inquiries with respect to the process by which information is communicated between the PJC and its agents, the extent of the privacy and security measures in place, and the nature of any agreements with these entities.

I have reviewed the agreements that MAG has entered into with its two agents. The contract for services with the third party vendor contains extensive confidentiality and security provisions which I believe are reasonable, under the circumstances. One shortcoming is that this contract lacks specificity with respect to some of the procedures and standards that should be implemented in communicating information between this agent and the PJC. The agreement with the Ministry of Finance, however, requires significant redrafting to address the privacy and security concerns involved with respect to the management of personal information. My Recommendations below will address these concerns.

Overall, I am satisfied that the existing methods used to transfer personal information between and among the PJC and its agents satisfy current industry standards for ensuring privacy and security, taking into account the specific context involved. My wish is to enhance these measures so that they may not only meet, but exceed industry standards.

### ***Juror Questionnaire***

As noted above, I personally received a juror questionnaire during the course of my investigation. I carefully reviewed it and found it to be deficient in a number of ways — I found the questionnaire to be confusing, poorly laid out, and difficult to respond to. I will recommend that a significant redesign of the juror questionnaire be undertaken by MAG.

I noted above that the criminal conviction question in the juror questionnaire is likely to cause confusion among some prospective jurors. MAG should improve the wording on the form such that the difference between a summary conviction and an indictable offence conviction is more clearly explained. For anyone wishing to have more information, the form could also direct individuals to a Web page containing specific explanatory information.

Further, the questionnaire does not contain a sufficiently clear or detailed notice of collection of personal information, as required by section 39(2) of *FIPPA*. Such a notice needs to include much more specific information about the collection of personal information. In addition, once the PJC implements a criminal conviction verification process, the questionnaire should include a clear statement that notifies individuals that the information they provide in response to the criminal conviction question may be independently verified. This will ensure greater transparency in Court Services' collection practices.

Finally, the questionnaire's accessibility should be improved by making changes to its physical formatting, as well as introducing the use of plain language. For example, the misalignment of the check boxes to the questions they relate to is very confusing and, as mentioned above, the language surrounding the criminal conviction question is unclear.

### ***Jury Panel Lists***

I have found that, in some cases, contrary to section 20 of the *Juries Act*, Court Services staff inappropriately disclose jury panel lists by:

- disclosing the jury panel list to counsel more than 10 days before court sittings;
- routinely disclosing the jury panel list to Crown attorneys without a specific request; and
- inadvertently disclosing to counsel the administrative lists containing individual jurors' telephone numbers.

I will recommend that MAG take steps to stop each of these unlawful disclosures, to ensure compliance with the *Juries Act*.

### ***Jury Manual***

MAG informed me that Court Services is currently consolidating its instructions to staff on jury processes, into an online manual. MAG provided me with a draft version of this manual. I will recommend that MAG revise this manual and ensure that it adequately addresses the concerns raised by this Order, and my corresponding Recommendations.

### ***Training for Court Services Staff***

MAG advised me that it will provide “refresher and ongoing training to court staff . . . to ensure awareness and compliance with *Juries Act* requirements.” The need for this training is clear, especially in light of the practices in some locations that were in violation of the *Juries Act*. I am pleased that MAG has undertaken to provide this much-needed training. Again, I will recommend that MAG ensure that its training adequately addresses the issues raised by this Order and my corresponding Recommendations.

## Crown Attorneys

### *Disclosing Jury Panel Lists to the Police*

I concluded that *FIPPA* and *MFIPPA* do not prohibit Crown attorneys from disclosing jury panel lists to the police, for the limited purpose of obtaining information that is relevant to jury selection in a specific criminal proceeding.

However, as described above, I will be recommending that the PJC assume central responsibility for verifying the accuracy of individuals' self-reported responses to the criminal conviction question in the juror questionnaire.

As noted above, once the PJC implements this Recommendation, Crown attorneys will have a significantly diminished need to seek criminal conviction information from the police. For any given trial, both the Crown attorney and defence counsel should have greater confidence that the jury panel list does not contain the names of individuals who have been convicted of an indictable offence.

Accordingly, I will recommend that, upon the PJC implementing its criminal conviction verification process, Crown attorneys cease the routine practice of requesting the police to provide criminal conviction information relating to prospective jurors. This is in addition to my Order that Crown attorneys immediately cease the collection of information not relevant to criminal conviction juror eligibility criteria.

Based on the above Recommendation, MAG will no longer request criminal conviction searches, as a matter of course. I acknowledge that MAG may still require an occasional search in exceptional cases (for example, in a situation where there is an unusually long delay between the preparation of the jury panel list and jury selection). To ensure that I am fully apprised of the effects of this Order on Crown attorneys' practices, I will recommend that MAG annually provide me with statistical information on the frequency, location and nature of any criminal conviction searches requested by Crown attorneys.

I will also recommend that, in the interim, prior to the PJC implementing its central verification process, Crown attorneys disclose jury panel lists to the police only for the limited purpose of obtaining information relevant to criminal conviction eligibility criteria in the context of a specific criminal proceeding. Further, I will recommend that, in this interim period, in accordance with MAG's Practice Memorandum and reminder, Crown attorneys should share any criminal conviction information they receive from the police with defence counsel.<sup>198</sup>

### *Retention and Disposal Policy*

During my investigation I discovered that MAG had no policy, written or otherwise, directed to the retention and disposal of jury panel lists. I also learned that the practices of Crown attorneys in this regard vary widely. Some Crown attorneys retain jury lists for long periods, others routinely destroy lists shortly after they are used, while others abandon lists in the courtroom, simply leaving them on their desks at the end of the day on which the jury selection process is

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<sup>198</sup> This recommendation is subject to any overriding rulings that may be made by the courts.

completed. *FIPPA*<sup>199</sup> and its regulations<sup>200</sup> contain provisions regarding the retention and disposal of personal information, and I will recommend that MAG develop and implement a policy that complies with these provisions.

### ***Revised Practice Direction***

I found there was a lack of clarity in the written policies of MAG's Criminal Law Division on the issue of juror background checks. In particular, the language of the 2006 Practice Memorandum is imprecise and unclear. The term "criminal record checks," for example, is vague, and does not provide guidance as to precisely what type of information may be sought, nor in what manner. "Criminal record checks" would appear to include information that goes well beyond criminal convictions alone, which is the only information that is permitted to be obtained under the *Juries Act*. The 2009 reminder memorandum does little to resolve the existing ambiguity.

I also found that there appears to be no clear or consistent understanding among Crown attorneys about what type of background checks are appropriate. In this regard, I will recommend that MAG issue a new practice direction that gives clear and concise instructions to Crown attorneys on the appropriate manner in which to employ juror background checks, consistent with the contents of this Order.

### ***Training for Crown Attorneys***

The need for training Crown attorneys on what is and is not permissible has been highlighted by the lack of knowledge of the meaning of the Practice Memorandum of March 31, 2006, across the province. My investigation has underscored the need for greater awareness in this regard. My office learned that, in some cases, Crown attorneys were not even aware of the existence of the Practice Memorandum, while in other cases, Crown attorneys misunderstood the Practice Memorandum and carried out checks that were not permissible, yet excluded checks that would have been permissible. MAG advised me that it will now provide, on an annual basis, "refresher training to ensure that all Crown counsel are aware of any Policy, Practice or Confidential Legal Memorandums in effect and are adhering to them." I commend MAG for undertaking to perform this task, and I will recommend that MAG ensure that its training adequately addresses the issues raised by this Order and the attendant Recommendations.

### ***Review of the Juries Act and Regulation***

I note that the provisions of the *Juries Act* and regulation have remained essentially unchanged since 1950. The legislation contains outdated concepts such as "lock and key" and "sheriff," and contains no explicit reference to the PJC — the office that performs virtually all of the functions performed relating to the out-of-court jury selection process.

Also, as described above, there are many shortcomings in the process of screening out individuals who are ineligible under the *Juries Act*, due to criminal conviction. Having the PJC assume primary responsibility for screening out ineligible individuals should be effective in reducing the risk of unjustified invasions of privacy. I will, however, be proposing additional legislative and regulatory measures that will further reduce this risk.

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199 *FIPPA*, s. 40.

200 Ontario Regulation 459.

At a minimum, the revisions to the legislation and regulation should include detailed provisions regulating the collection, use and disclosure of personal information. My office would be pleased to assist in this regard.

I am also aware that amendments to the *Juries Act* may be required to implement my Recommendation regarding the PJC assuming primary responsibility for performing background conviction checks on prospective jurors.

MAG advised me that it is currently reviewing the *Juries Act* and regulation, stating that while it has not made any decisions as to how the legislation should be amended, it will consult with my office before moving forward with any recommendations.

I am pleased that MAG intends to engage in this review, in consultation with my office. For the sake of completeness, I will recommend that MAG treat this as a priority and continue with its review, seeing it to completion in 2010. I look forward to contributing to MAG's legislative review.

## 11.3 The Police

### Policies on criminal background checks

Consistent with the Recommendations I outlined with respect to MAG and its policies, police services throughout Ontario should have in place policies that clearly describe the appropriate manner in which to employ jury background checks, in accordance with this Order.

To ensure consistency, I will recommend that MCSCS develop a single model policy for use by all police services throughout Ontario.

### Training for the Police

As stated above, MAG intends to provide training to its Court Services and Crown attorney staff. Similarly, I will recommend that MCSCS develop a model training program for use by all police services throughout Ontario.

## 11.4 Law Society of Upper Canada

As noted above, the Law Society of Upper Canada's *Rules of Professional Conduct* address the issue of background checks on prospective jurors. However, beyond the prohibition on contact, the rule is not clear as to the scope of what background information is permissible for lawyers to collect. I will recommend that the Law Society review this rule and make any changes that it considers warranted, in light of the contents of this Order.

## 11.5 22 Recommendations

I recommend the following:

### Ministry of the Attorney General — Court Services

1. That the Ministry of the Attorney General, in consultation with my office, take the necessary legal and administrative steps to centralize the process of jury verification through the PJC, including the addition of any necessary resources to the PJC, and discontinue its existing practice of Crown attorneys conducting background checks (see Recommendations 10 and 11). I recommend that MAG ensure that the PJC implement a central juror verification process to screen out individuals who are ineligible for jury duty based on the criminal conviction criterion in section 4(b) of the *Juries Act*.
2. That the Ministry of the Attorney General, in consultation with my office and experts in the field of information security, take the necessary legal and administrative steps to develop an ironclad protocol to ensure that the PJC implements strong privacy and security measures to protect the personal information of prospective jurors that is collected, used or disclosed in the criminal conviction verification process (described in Recommendation 1). This protocol should extend to any and all agents of the PJC. Specifically, the Ministry of the Attorney General should:
  - (a) conduct a privacy impact assessment of the criminal conviction verification process;
  - (b) ensure that existing memoranda of understanding with its agents be amended to include best practices relating to privacy protection for outsourcing practices; and
  - (c) ensure that the above activities are carried out to the satisfaction of the province's Chief Information and Privacy Officer, and that copies of both the privacy impact assessment and amended memoranda of understanding are provided to my office.
3. That, pursuant to Recommendation 1, the Ministry of the Attorney General ensure that the PJC's verification process include receiving date of birth information, in addition to the information presently received from the Municipal Property Assessment Corporation.
4. That, pursuant to Recommendation 3, the Ministry of the Attorney General ensure that the PJC securely destroys the information relating to date of birth, immediately after its use, when it is no longer needed.
5. That the Ministry of the Attorney General co-operate in an annual privacy and security audit of the PJC's handling of prospective jurors' personal information, to be conducted by an independent third party, and that a copy of the audit report be provided to my office.
6. That the Ministry of the Attorney General take the necessary legal and administrative steps to redesign the "Questionnaire as to Qualifications for Jury Service" form under the *Juries Act*, to make it more accessible and understandable. Initial changes should include reformatting

the questionnaire, and making greater use of plain language. In addition, I recommend that the Ministry of the Attorney General ensure that the questionnaire complies fully with the notice of collection provisions of section 39(2) of *FIPPA*, to include a notification to individuals that the information they provide in response to the criminal conviction question may be independently verified.

7. That the Ministry of the Attorney General take the necessary steps to ensure that Court Services staff comply with the jury panel list disclosure provisions in section 20 of the *Juries Act*, including the 10-day time limitation on disclosure.
8. That the Ministry of the Attorney General update and amend its draft jury manual for Court Services staff, ensuring that it adequately addresses the concerns raised by the contents of this Order, including these Recommendations, and make any necessary revisions.
9. That the Ministry of the Attorney General provide two-pronged training to Court Services staff, consisting of written communications, accompanied by in-person instruction, to ensure awareness and compliance with the provisions of the *Juries Act*, and ensure that its training adequately addresses the concerns raised by the contents of this Order, including these Recommendations.

### **Ministry of the Attorney General — Crown Attorneys**

10. That, on an interim basis leading up to the Ministry of the Attorney General's implementation of Recommendation 1, Crown attorneys:
  - (a) only disclose jury panel lists to the police for the limited purpose of obtaining information relevant to criminal conviction eligibility criteria; and
  - (b) share any information obtained through this process with defence counsel, in accordance with the Ministry of the Attorney General's Practice Memorandum No. 17.
11. That upon the Ministry of the Attorney General's implementation of Recommendation 1, barring exceptional and compelling circumstances, Crown attorneys cease the practice of requesting the police to provide criminal conviction information relating to prospective jurors, and that Crown attorneys share any information obtained in these circumstances with defence counsel, in accordance with the Ministry of the Attorney General's Practice Memorandum No. 17.
12. That, upon the Ministry of the Attorney General's implementation of Recommendation 1, the Ministry of the Attorney General provide me with statistical information on the frequency, location and nature of criminal conviction searches requested by Crown attorneys, on an annual basis.
13. That the Ministry of the Attorney General develop and implement a policy for Crown attorneys relating to the appropriate retention and disposal of jury panel lists. Jury lists should be securely retained for a period of one year after their use, consistent with *FIPPA* and its regulations. At the end of one year, all jury lists should be securely destroyed, unless a strong business case may be made for their retention.

14. That the Ministry of the Attorney General issue a new “Practice Memorandum” to all Crown attorneys, providing clear and concise instruction on the appropriate manner in which to employ juror background checks, consistent with the contents of this Order, including these Recommendations.
15. That the Ministry of the Attorney General provide two-pronged training to all Crown attorneys, consisting of written communications, accompanied by in-person instruction, to raise awareness and compliance with Ministry of the Attorney General’s policies and to ensure that its training adequately addresses the concerns raised by the contents of this Order, including these Recommendations.
16. That the Ministry of the Attorney General continue with its ongoing review of the *Juries Act* and regulations, seeing it to completion in 2010, consulting with this office as necessary.
17. That the Ministry of the Attorney General provide my office with proof of compliance or an update on the status of its compliance with Recommendations 1-4, by **December 31, 2009**.
18. That the Ministry of the Attorney General provide my office with proof of compliance or an update on the status of its compliance with Recommendations 5-16, by **October 30, 2009**.

### **The Police**

19. That the Ministry of Community Safety and Correctional Services develop a single model policy, for use by all police services in Ontario, for the interim period prior to the Ministry of the Attorney General’s implementation of Recommendation 1, that clearly describes the appropriate manner in which to employ jury background checks, consistent with the contents of this Order, including these Recommendations.
20. That the Ministry of Community Safety and Correctional Services develop a model training program for use by all police services in Ontario that ensures appropriate use of juror background checks, consistent with the contents of this Order, including these Recommendations.
21. That the Ministry of Community Safety and Correctional Services provide my office with proof of compliance or an update on the status of its compliance with Recommendations 19 and 20, by **December 31, 2009**.

### **Law Society of Upper Canada**

22. That the Law Society of Upper Canada review its *Rules of Professional Conduct* and make any changes that may be warranted, in light of the contents of this Order.



Ann Cavoukian, Ph.D.  
Information and Privacy Commissioner,  
Ontario, Canada

October 5, 2009

---

Date

# Appendices

## APPENDICES

### 1 IPC's Formal Empirical Survey of Crown Attorney Offices



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

#### Instructions for Completing the Survey

The Office of the Information and Privacy Commissioner of Ontario (IPC) in conjunction with the Ministry of the Attorney General (the Ministry) is conducting a formal survey of all Crown Attorney's offices in the province of Ontario to determine past practices with respect to background checks on prospective jurors. The survey is being conducted as part of the IPC's investigation into the prospective violation of prospective jurors' privacy rights.

The IPC is particularly interested in the practices of Crown Attorney's offices since the Ministry of the Attorney General issued a Practice Memorandum with respect to background checks on prospective jurors on March 31, 2006.

The survey is divided into four parts. The first three parts contain questions about the practices of Crown Attorney's offices with respect to the following personal information about jurors:

- Part 1 – Criminal Conviction Checks (i.e., criminal convictions for indictable offences)
- Part 2 – Other Personal Information from the Police (i.e., other than criminal convictions for indictable offences)
- Part 3 – Personal Information from Other Sources

Part 4 of the survey requests additional information that may be relevant to the IPC's investigation.

Each Crown Attorney's office is expected to complete one survey. In responding to the survey, please canvass all of the Assistant Crown Attorneys in your office with respect to their practices and respond to all applicable questions as directed in the survey. If you have questions about the survey, please contact Mona Wong at [mona.wong@ipc.on.ca](mailto:mona.wong@ipc.on.ca).

When you have completed the survey, return it in the enclosed envelope no later than July 6, 2009.

In addition, please include with your survey copies of all jury panel lists (including any annotations) used by the Crown Attorney's office in your area, since March 31, 2006.

***Please be advised that the information you provide in the survey may be verified through other sources.***



2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
M4W 1A8

2, rue Bloor est  
Bureau 1400  
Toronto (Ontario)  
M4W 1A8

416-325-3333  
1-800-387-0073  
Fax/Téléco: 416-325-8198  
TTY: 416-325-9539  
<http://www.ipc.on.ca>

# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commission of Ontario

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Location \_\_\_\_\_

## Part 1 – Criminal Conviction Checks

1. Since March 31, 2006, has it been a routine practice of the Crown Attorney's office in your area to ask the police to conduct criminal convictions checks (i.e., checks to determine if the prospective juror has been convicted of any indictable offences)? (*Routine means as a matter of course, for a significant portion of trials or as a matter of course, for certain types of trials, such as murder trials*) Yes   
No

2. Since March 31, 2006, has the Crown Attorney's office in your area ever asked the police to conduct criminal conviction checks? Yes   
No

3. Since March 31, 2006, has the Crown Attorney's office in your area routinely received from the police criminal conviction checks on prospective jurors in response to requests for this information? Yes   
No

4. Since March 31, 2006, has the Crown Attorney's office in your area routinely received from the police unsolicited criminal conviction checks on prospective jurors? Yes   
No

5. Since March 31, 2006, has the Crown Attorney's office in your area ever received from the police solicited or unsolicited criminal conviction checks on prospective jurors? Yes   
No

a. If the answer to question 5 is yes, please provide copies of all documents received from the police (e.g., written notations on the jury panel lists, separate reports or documents etc.). If the documents include comments originating from the Crown Attorney's office in your area, then please indicate this.

6. Did the practices of the Crown Attorney's office in your area with respect to criminal conviction checks change after the issuing of the Practice Memorandum dated March 31, 2006? Yes   
No

- 2 -



# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commissioner of Ontario

11. How were the criminal conviction checks conveyed to the Crown Attorney by the police (e.g., written notations on the jury panel list, separate report or document, verbal confirmation, etc.)?

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12. To whom were the criminal conviction checks conveyed (e.g., the Crown assigned to the prosecution, the managing Crown, administrative staff)?

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13. Please describe the source(s) for the criminal conviction checks (e.g., CPIC database, Versadex, etc.).

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14. Did the criminal conviction checks include hybrid offences? Yes   
No

15. Did the criminal conviction checks include any personal health information (i.e., information about the physical or mental health of prospective jurors)? Yes   
No

- 4 -



# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commissioner of Ontario

19. If the criminal convictions checks were disclosed to anyone other than defence attorneys, who were they disclosed to?

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20. How long were the criminal conviction checks retained?

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21. Where were the criminal conviction checks retained?

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22. What safeguards were in place to prevent unauthorized access to the criminal conviction checks?

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23. Were the criminal conviction checks disposed of when they were no longer needed? Yes   
No

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# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

## Part 2 – Other Personal Information from the Police

1. Since March 31, 2006, has it been a routine practice of the Crown Attorney's office in your area to ask the police to provide any other personal information (other than criminal conviction checks as defined in Part 1) about jurors?  
*(Routine means as a matter of course, for a significant portion of trials or as a matter of course, for certain types of trials, such as murder trials)*  
Yes   
No
2. Since March 31, 2006, has the Crown Attorney's office in your area ever asked the police to provide any other personal information (other than criminal conviction checks) about jurors?  
Yes   
No
3. Since March 31, 2006, has the Crown Attorney's office in your area routinely received from the police personal information (other than criminal conviction checks) about prospective jurors in response to requests for this information?  
Yes   
No
4. Since March 31, 2006, has the Crown Attorney's office in your area routinely received from the police unsolicited personal information (other than criminal conviction checks) about prospective jurors?  
Yes   
No
5. Since March 31, 2006, has the Crown Attorney's office in your area ever received from the police solicited or unsolicited personal information (other than criminal conviction checks) about prospective jurors?  
Yes   
No 
  - a. If the answer to question 5 is yes, please provide copies of all documents received from the police (e.g., written notations on the jury panel list, separate reports or documents etc.). If the documents include comments originating from the Crown Attorney's office in your area, then please indicate this.
6. Did the practices of the Crown Attorney's office in your area with respect to other personal information (other than criminal conviction checks) about jurors change after the issuing of the Practice Memorandum dated March 31, 2006?  
Yes   
No

# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commission of Ontario

7. If the practices of the Crown Attorney's office in your area with respect to personal information (other than criminal conviction checks) about jurors changed on March 31, 2006, describe the nature of the changes.

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**If since March 31, 2006 the Crown Attorneys office in your area has never received other solicited or unsolicited personal information about jurors from the police, please proceed to Part 3.**

8. If requests for other information were made to the police, were they made administratively by way of a form letter? Yes   
No

b. If the answer to question 8 is yes, please attach a copy of the form letter requesting other information (if different from the form letter provided in Part 1).

9. Please describe any other means of asking the police for other information about prospective jurors.

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10. Under what circumstances and based on what criteria has the Crown Attorney's office asked the police to provide other personal information about prospective jurors?

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# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commission of Ontario

15. Did the other personal information received from the police include any Yes   
personal health information (i.e., information about the physical or mental No   
health of prospective jurors)?

a. If personal health information was included, please describe the source(s) of the  
personal health information that was included.

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b. If personal health information was included, please describe in detail that nature of  
the personal health information that was included.

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16. How was the personal information received from the police used by the Crown Attorney's  
office?

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17. Who at the Crown Attorney's office had access to the other personal information?

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-11-

# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commissioner of Ontario

18. Was the other personal information disclosed to defence attorneys? Yes   
No

19. If the other personal information was disclosed to anyone other than defence attorneys, who was it disclosed to?  
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20. How long was the other personal information retained?  
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21. Where was the other personal information retained?  
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22. What safeguards were in place to prevent unauthorized access to the other personal information?  
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23. Was the other personal information disposed of when it was no longer needed? Yes   
No

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# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

Information and Privacy Commission of Ontario

## Part 3 – Personal Information from Other Sources

1. Since March 31, 2006, has it been a routine practice of the Crown Attorney's office in your area to seek personal information about prospective jurors from any source other than the police? (*Routine means as a matter of course, for a significant portion of trials or as a matter of course, for certain types of trials, such as murder trials*)

Yes   
No

2. Since March 31, 2006, has the Crown Attorney's office in your area ever sought personal information about prospective jurors from any source other than the police?

Yes   
No

3. Since March 31, 2006, has the Crown Attorney's office in your area routinely received personal information about prospective jurors from any source other than the police in response to requests for information?

Yes   
No

4. Since March 31, 2006, has the Crown Attorney's office in your area routinely received unsolicited personal information about prospective jurors from any source other than the police?

Yes   
No

5. Since March 31, 2006, has the Crown Attorney's office ever received solicited or unsolicited personal information about prospective jurors from any source other than the police?

Yes   
No

a. If the answer to question 5 is yes, please provide copies of all documents received from any source other than the police (e.g., written notations on the jury panel list, separate reports or documents etc.). If the documents include comments originating from the Crown Attorney's office in your area, then please indicate this.

6. Did the practices of the Crown Attorney's office in your area with respect to personal information about jurors from sources other than the police change after the issuing of the Practice Memorandum dated March 31, 2006?

Yes   
No

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# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commission of Ontario

7. If the practices of the Crown Attorney's office in your area with respect to personal information about jurors from sources other than the police changed on March 31, 2006, describe the nature of these changes.

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If since March 31, 2006 the Crown Attorneys office in your area has never received solicited or unsolicited personal information about jurors from sources other than the police, please proceed to Part 4.

8. If requests for information about prospective jurors were made to other sources, were they made administratively by way of a form letter? Yes   
No

a. If the answer to question 8 is yes, please attach a copy of the form letter requesting information.

9. Please describe any other means of requesting information about prospective jurors from sources other than the police.

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- 15 -

# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

10. Under what circumstances and based on what criteria has the Crown Attorney's office in your area asked for personal information about prospective jurors from sources other than the police?

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11. How was the personal information about jurors conveyed to the Crown Attorney by these other sources (e.g., written notations on the jury panel list, separate report or document, verbal confirmation, etc.)?

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12. To whom was the personal information about jurors conveyed (e.g., the Crown assigned to the prosecution, the managing Crown, administrative staff)?

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# 1. IPC's Formal Empirical Survey of Crown Attorney Offices

  
Information and Privacy  
Commission of Ontario

13. Please describe the source(s) for the personal information?

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14. Please describe the nature of the personal information?

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15. Did the personal information include any personal health information (i.e., information about the physical or mental health of the jurors)? Yes   
No

a. If personal health information was included, what was the source(s) of the personal health information?

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b. If personal health information was included, please describe in detail the nature of the personal health information that was included?

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-17-







## 2. Sample Sworn Affidavit from a Regional Director of Crown Operations

**AFFIDAVIT OF  
SWORN August 25, 2009**

I, \_\_\_\_\_ of the City of \_\_\_\_\_ in the Regional Municipality of \_\_\_\_\_  
MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as the Acting Director of Crown Operations in the Criminal Law Division of the Ministry of the Attorney General, responsible for the \_\_\_\_\_ Region. I have held this position since \_\_\_\_\_ In this capacity I have primary responsibility for \_\_\_\_\_ Region. This includes responsibility for \_\_\_\_\_

As such, I have

knowledge of the matters deposed to herein, except where stated that my evidence is based on information and belief.

2. I am aware of a request for information made by the Information and Privacy Commissioner [hereinafter "IPC"] by way of letter dated July 17, 2009 addressed to The Honourable Chris Bentley, Attorney General for Ontario. This request for information is made in the context of an investigation by the IPC into the past practices of all Crown Attorney's offices with respect to background checks on prospective jurors.

1

## 2. Sample Sworn Affidavit from a Regional Director of Crown Operations

3. I make this affidavit as part of the Ministry's response to the request for information made by way of the letter referred to in paragraph 2, and for no other or improper purpose.

4. I have spoken directly to each of the seven Crown Attorneys and two Acting Crown Attorneys within my jurisdiction to obtain information about the jury matter.

5. I have impressed upon those Crown Attorneys and acting Crown Attorneys the solemnity of the issues surrounding this investigation, and the need to provide detailed and accurate information in response to the request for information from the IPC.

6. I have been advised by each Crown Attorney and Acting Crown Attorney within my jurisdiction, and believe to be true, that their offices have made best efforts to locate and review the material in each file in each jury trial that commenced between March 31, 2006 and the date the survey was completed by their office [hereinafter, "the relevant time period"]. These efforts included, but are not limited to, the following:

- Identifying and preparing a complete list of threshold cases
- Identifying assistant crown attorneys assigned to threshold cases on the list
- Locating and inspecting the physical file for every threshold case on the list, looking for a jury panel list
- Speaking to the assistant crown attorneys assigned to the threshold cases
- Photocopying any newly discovered jury panel lists and forwarding to IPC

## 2. Sample Sworn Affidavit from a Regional Director of Crown Operations

7. I have been advised by each Crown Attorney and Acting Crown Attorney within my jurisdiction and believe to be true that they have provided the IPC with a copy of every jury panel list contained in those files which they were able to identify and locate in which a jury trial was commenced within the relevant time period.

8. I have been advised by each Crown Attorney and Acting Crown Attorney within my jurisdiction and believe to be true that where a jury panel list has not been provided with respect to a specific case that was identified as being potentially responsive to the IPC's request for information, it is because the file does not contain a list, or because the particular file could not be located, though best efforts were made to locate it. In those cases where a file was identified as being potentially responsive to the IPC's request for information but was not located, a full search was conducted of the Crown Attorney's office, storage facilities, and reviewing archived file lists, to locate the file.

9. Apart from the relevant provisions of the *Archives and Recordkeeping Act*, 2006 S.O. 2006, Chapter 34, Schedule A, I am not aware of any current policy, procedure or practice within my jurisdiction that addresses the retention of jury lists.

10. I am advised by each Crown Attorney and Acting Crown Attorney within my jurisdiction and I believe to be true, that they have made best efforts to speak to all Assistant Crown Attorneys within their offices who were assigned to jury trials

## 2. Sample Sworn Affidavit from a Regional Director of Crown Operations

within the relevant time period and to ask them the questions set out in the IPC survey. I am advised that where this has not been done, it has not been done because the individual Assistant Crown Attorneys assigned to those files are no longer with the Ministry, are away on extended leave due to illness or other reasons, or are otherwise unavailable in the time period during which this investigation is being conducted.

11. I am advised by each Crown Attorney and acting Crown Attorney in my jurisdiction and I believe to be true, that they are satisfied that, based on their discussions with the Assistant Crown Attorneys as described in the preceding paragraph, the completed survey that was submitted to the IPC by their office fully and accurately reflects the practice in that jurisdiction within the relevant time period.

Sworn before me in the )  
City of )  
in the Province of Ontario )  
this 25<sup>th</sup> day of August, 2009 )  
)  
)  
)  
Commissioner for Taking Affidavits )

### 3. MAG Practice Memorandum No. 17 - March 31, 2006

PM [2005] No. 17  
Page 1 of 2

**Ontario Ministry of the Attorney General  
Criminal Law Division**

720 Bay Street  
Toronto, Ontario M5G 2K1  
Phone: (416)326-2615  
Fax: (416)326-2063

720 rue Bay  
Toronto, Ontario M5G 2K1  
Télé : (416)326-2615  
Télééc. : (416)326-2063



PM [2005] No. 17

**PRACTICE MEMORANDUM  
To Counsel, Criminal Law Division**

**Date:** March 31, 2006

**Subject:** JUROR BACKGROUND CHECKS

**Synopsis:** This memorandum provides guidance to Crown counsel on practice and procedure relating to the background of prospective jurors. Other than criminal record checks, Crown counsel should not request the police to undertake an investigation into the list of jurors. Furthermore, criminal record checks, if done, and any concrete information provided by police to the Crown suggesting that an individual may not be impartial, should be disclosed to the defence. Reference should also be made to the Policy and Practice Memorandum on Disclosure.

**Opinion/Advice:**

It is the duty of Crown counsel to attempt to obtain a jury that is impartial, not a jury that is favourable to its position. Further, the issue of impartiality between the Crown and the accused is not determined by whether the potential juror has personal opinions of one sort or another on matters peripheral to the case.

In choosing a jury, both Crown counsel and defence should have access to the same background information material. To that end, results of criminal record checks of potential jurors, if obtained by Crown counsel, should be disclosed to defence counsel. Crown counsel should not request police to undertake any further or other investigation into the list of jurors. Crown counsel should not request police to conduct out-of-court investigations into private aspects of potential jurors' lives.

Any concrete information provided by police to Crown counsel suggesting that a prospective juror may not be impartial should be disclosed to the defence. If background information relating to a prospective juror raises the issue of whether he/she is able to judge the case without bias, prejudice or partiality, Crown counsel should utilize the challenge for cause process to address these concerns.

**Attachment:** None

**Contact:** Criminal Law Policy Branch  
416-314-2955

3. MAG Practice Memorandum No. 17 - March 31, 2006

PM [2005] No. 17  
Page 2 of 2

**Signed by:**

Paul Lindsay  
Assistant Deputy Attorney General  
Criminal Law Division

**Practice Memoranda are not considered to be confidential and may be given to defence counsel or other interested persons, upon request.**

## 4. MAG Direction and Reminder - May 26, 2009



Criminal Law Division  
Ministry of the Attorney General

CROWN POLICY

### Juror Background Checks

**From:** Ayre, John (JUS)  
**Sent:** Tuesday, May 26, 2009 12:26 PM  
**To:** @JUS-L-MAG-CLD-All Assistant Crown Attorneys

To: All Directors / All Crowns /All Assistant Crowns

Date: May 26, 2009

Re: Juror Background Checks **Direction and Reminder**

Colleagues

Attached please find **Practice Memo PM 2005 No. 17 re Juror Background Checks**.

Events reported in the media in recent days have raised some concerns as to the processes used and the information obtained in the course of Juror background checks.

I am sending this Direction and Reminder that the Intent of the Practice Memo should be followed as well as the letter of the PM.

If a Criminal Record check is requested, it should only be for Indictable matters, and should be disclosed to the defence. In no case, should any other information be requested.

If by happenstance other information does come to the knowledge of the Crown, then the PM further directs that this information must be disclosed to defence.

I am confident the premise of the Practice Memo is sound. It is of importance to the administration of justice, society at large and victims in particular that no person with a criminal record for an Indictable offence sits as a Judge of the facts on a trial.

These issues are of serious concern to the Ministry.

Please ensure that all Crowns in your office are aware of this Direction and Reminder and that they operate within the four corners of the PM as I have outlined.



#### 4. MAG Direction and Reminder - May 26, 2009

I have complete confidence in the dedication and skill that Crowns bring to bear every day across the province. I will take the opportunity to thank all of you across the province in the challenging work you perform on behalf of the public every day.

Thank you.

John Ayre

Assistant Deputy Attorney General

Criminal Law Division

**WARNING:** This message is only for the use of the intended recipients and may be privileged and confidential. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message is strictly prohibited and may be illegal. If you are not the intended recipient, please notify me immediately by return email and delete this from your system.

John D. Ayre

Assistant Deputy Attorney General

Criminal Law Division

Ministry of the Attorney General

Ontario

## 5. OPP Commissioner Memorandum and News Release - June 10, 2009

Ontario Provincial Police



Police provinciale de l'Ontario

**Julian Fantino**

Commissioner Le Commissaire File #: 660-00

June 10, 2009

**MEMORANDUM TO:**

BUREAU COMMANDERS  
REGIONAL COMMANDERS  
COMMANDER, INVESTIGATION AND  
ENFORCEMENT BUREAU, AGCO  
CHIEF FIREARMS OFFICE

**Re: Background Checks on Potential Jurors**

The issue of the police conducting background checks on potential jurors for Crown Attorneys remains at the forefront and, as a result, I take this opportunity to update you on the Ontario Provincial Police (OPP) response to this matter.

As you are aware, I ordered an immediate stop to the practice of OPP locations conducting background checks on potential jurors upon request of Crown Attorneys, and also initiated a review into the matter to ensure OPP policy reflects the privacy rights of individuals. The Operational Policy and Strategic Planning Bureau is currently conducting this policy review, in consultation with Legal Services Branch and Freedom of Information and Protection of Privacy.

On May 25, 2009, Deputy Commissioner Chris D. Lewis, Provincial Commander, Field Operations, corresponded with Regional/Divisional Commanders, directing that "as an interim measure, criminal record checks and/or other vetting processes regarding jurors or potential jurors shall not be conducted under any circumstances." This direction remains in effect. It is my understanding that the Ministry of the Attorney General recently distributed correspondence to Crown Attorneys outlining procedures regarding criminal record/background checks on potential jurors. Until the OPP completes its policy review, OPP personnel shall **not** conduct any type of background check on potential jurors, including accessing records via the Canadian Police Information Centre (CPIC), Niche RMS or any other police database.

Please ensure all employees under your command are made aware of the content of this memorandum.

  
for Julian Fantino

/kaj  
c: Provincial Commanders

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5. OPP Commissioner Memorandum and News Release - June 10, 2009



1909 100 YEARS 100 ANS 2009  
A century of policing  
Un siècle de services policiers  
ONTARIO PROVINCIAL POLICE  
POLICE PROVINCIALE DE L'ONTARIO

ONTARIO PROVINCIAL POLICE  
POLICE PROVINCIALE DE L'ONTARIO

**NEWS RELEASE/  
COMMUNIQUÉ**

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**FROM/DE: Corporate Communications Bureau      DATE: June 10, 2009**

**OPP WELCOMES INVESTIGATION BY ONTARIO'S INFORMATION AND PRIVACY COMMISSIONER**

**(ORILLIA, ON.)** – The Ontario Provincial Police (OPP) welcomes the investigation by Ontario's Information and Privacy Commissioner into the release, by police, of information on prospective jurors to Crown Attorneys.

Ontario's Information and Privacy Commissioner launched an investigation today into whether the privacy rights of prospective jurors were breached when police provided information on potential jurors to certain Crown Attorneys.

"The OPP takes the privacy of information in our possession very seriously. We will work cooperatively with the Information and Privacy Commissioner towards developing sound policies and practices to protect the confidentiality of personal information," said Commissioner Julian Fantino. "In May of 2009, I put an immediate stop to providing personal information on prospective jurors to requesting Crown Attorneys and initiated a comprehensive review of our internal information release policies."

- 30 -

Contact:      Inspector Dave Ross  
                    705-329-6874

## 6. Excerpts from the Canada *Criminal Code*

**626.** (1) A person who is qualified as a juror according to, and summoned as a juror in accordance with, the laws of a province is qualified to serve as a juror in criminal proceedings in that province.

...

**627.** The judge may permit a juror with a physical disability who is otherwise qualified to serve as a juror to have technical, personal, interpretative or other support services.

...

**632.** The judge may, at any time before the commencement of a trial, order that any juror be excused from jury service, whether or not the juror has been called pursuant to subsection 631(3) or (3.1) or any challenge has been made in relation to the juror, for reasons of

- (a) personal interest in the matter to be tried;
- (b) relationship with the judge presiding over the jury selection process, the judge before whom the accused is to be tried, the prosecutor, the accused, the counsel for the accused or a prospective witness; or
- (c) personal hardship or any other reasonable cause that, in the opinion of the judge, warrants that the juror be excused.

...

**634.** (1) A juror may be challenged peremptorily whether or not the juror has been challenged for cause pursuant to section 638.

(2) Subject to subsections (2.1) to (4), the prosecutor and the accused are each entitled to

- (a) twenty peremptory challenges, where the accused is charged with high treason or first degree murder;
- (b) twelve peremptory challenges, where the accused is charged with an offence, other than an offence mentioned in paragraph (a), for which the accused may be sentenced to imprisonment for a term exceeding five years; or
- (c) four peremptory challenges, where the accused is charged with an offence that is not referred to in paragraph (a) or (b).

(2.1) If the judge makes an order for alternate jurors, the total number of peremptory challenges that the prosecutor and the accused are each entitled to is increased by one for each alternate juror.

(2.2) For the purposes of replacing jurors under subsection 644(1.1), the prosecutor and the accused are each entitled to one peremptory challenge for each juror to be replaced.

(3) Where two or more counts in an indictment are to be tried together, the prosecutor and the accused are each entitled only to the number of peremptory challenges provided in respect of the count for which the greatest number of peremptory challenges is available.

## 6. Excerpts from the Canada *Criminal Code*

- (4) Where two or more accused are to be tried together,
  - (a) each accused is entitled to the number of peremptory challenges to which the accused would be entitled if tried alone; and
  - (b) the prosecutor is entitled to the total number of peremptory challenges available to all the accused.

...

**638.** (1) A prosecutor or an accused is entitled to any number of challenges on the ground that

- (c) a juror has been convicted of an offence for which he was sentenced to death or to a term of imprisonment exceeding twelve months;

(2) No challenge for cause shall be allowed on a ground not mentioned in subsection (1).

## 7. Excerpts from the Ontario *Juries Act* and Regulation

### Excerpts from the *Juries Act*

2. Subject to sections 3 and 4, every person who,
  - (a) resides in Ontario;
  - (b) is a Canadian citizen; and
  - (c) in the year preceding the year for which the jury is selected had attained the age of eighteen years or more,is eligible and liable to serve as a juror on juries in the Superior Court of Justice in the county in which he or she resides.
3. (1) The following persons are ineligible to serve as jurors:
  1. Every member of the Privy Council of Canada or the Executive Council of Ontario.
  2. Every member of the Senate, the House of Commons of Canada or the Assembly.
  3. Every judge and every justice of the peace.
  4. Every barrister and solicitor and every student-at-law.
  5. Every legally qualified medical practitioner and veterinary surgeon who is actively engaged in practice and every coroner.
  6. Every person engaged in the enforcement of law including, without restricting the generality of the foregoing, sheriffs, wardens of any penitentiary, superintendents, jailers or keepers of prisons, correctional institutions or lockups, sheriff's officers, police officers, firefighters who are regularly employed by a fire department for the purposes of subsection 41 (1) of the Fire Protection and Prevention Act, 1997, and officers of a court of justice.(2) Repealed: 1994, c. 27, s. 48 (2).  
(3) Every person who has been summoned as a witness or is likely to be called as a witness in a civil or criminal proceeding or has an interest in an action is ineligible to serve as a juror at any sittings at which the proceeding or action might be tried.  
(4) Every person who, at any time within three years preceding the year for which the jury roll is prepared, has attended court for jury service in response to a summons after selection from the roll prepared under this Act or any predecessor thereof is ineligible to serve as a juror in that year.
4. A person is ineligible to serve as a juror who,
  - (a) has a physical or mental disability that would seriously impair his or her ability to discharge the duties of a juror; or
  - (b) has been convicted of an indictable offence, unless the person has subsequently been granted a pardon.
5. (1) The sheriff for a county shall on or before the 15th day of September in each year determine for the ensuing year for the county,

## 7. Excerpts from the Ontario *Juries Act* and Regulation

- (a) the number of jurors that will be required for each sittings of the Superior Court of Justice;
- (b) the number of persons that will be required for selection from the jury roll for the purposes of any other Act; and
- (c) the aggregate number of persons that will be so required.

(2) In a territorial district, after determining the number of persons that will be required for service during the ensuing year, the sheriff shall fix the total number of persons that shall be selected from municipalities, and the total number that shall be selected from territory without municipal organization. Transmission of resolutions

(3) The sheriff shall forthwith upon making the determination under subsection (1) certify and transmit,

- (a) to the Director of Assessment,
  - (i) a copy of the determination declaring the aggregate number of persons required for the jury roll in the county in the ensuing year, and
  - (ii) a statement of the numbers of jury service notices to be mailed to persons in the county; and
- (b) to the local registrar of the Superior Court of Justice, a copy of the determination for the number of jurors under clause (1) (a).

**6.** (1) The Director of Assessment shall in each year on or before the 31st day of October cause a jury service notice, together with a return to the jury service notice in the form prescribed by the regulations and a prepaid return envelope addressed to the sheriff for the county, to be mailed by first class mail to the number of persons in each county specified in the sheriff's statement, and selected in the manner provided for in this section.

(2) The persons to whom jury service notices are mailed under this section shall be selected by the Director of Assessment at random from persons who, from information obtained at the most recent enumeration of the inhabitants of the county under section 15 of the Assessment Act,

- (a) at the time of the enumeration, resided in the county and were Canadian citizens; and
- (b) in the year preceding the year for which the jury is selected, are of or will attain the age of eighteen years or more,

and the number of persons selected from each municipality in the county shall bear approximately the same proportion to the total number selected for the county as the total number of persons eligible for selection in the municipality bears to the total number eligible for selection in the county, as determined by the enumeration.

(3) In a territorial district for the purposes of subsection (2), all the municipalities in the district shall together be treated in the same manner as

## 7. Excerpts from the Ontario *Juries Act* and Regulation

a county from which the number of jurors required is the number fixed under subsection 5(2) to be selected from municipalities.

(4) The jury service notice to a person under this section shall be mailed to the person at the address shown in the most recent enumeration of the inhabitants of the county under section 15 of the Assessment Act.

(5) Every person to whom a jury service notice is mailed in accordance with this section shall accurately and truthfully complete the return and shall mail it to the sheriff for the county within five days after receipt thereof.

(6) For the purposes of subsection (5), the notice shall be deemed to have been received on the third day after the day of mailing unless the person to whom the notice is mailed establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control did not receive the notice or order, or did not receive the notice or order until a later date.

(7) The Director of Assessment shall furnish to the sheriff for the county a list of persons in the county arranged alphabetically to whom jury service notices were mailed under this section forthwith after such mailing and the list received by the sheriff purporting to be certified by the Director of Assessment is, without proof of the office or signature of the Director of Assessment, receivable in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the mailing of jury service notices to the persons shown on the list.

(8) In the selecting of persons for entry in the jury roll in a county or district in which an Indian reserve is situate, the sheriff shall select names of eligible persons inhabiting the reserve in the same manner as if the reserve were a municipality and, for the purpose, the sheriff may obtain the names of inhabitants of the reserve from any record available.

7. The sheriff shall in each year prepare a roll called the jury roll in the form prescribed by the regulations.

8. (1) The sheriff shall open the returns to jury service notices received by the sheriff and shall cause the name, address and occupation of each person making such a return, who is shown by the return to be eligible for jury service, to be entered in the jury roll alphabetically arranged and numbered consecutively.

(2) The jury roll prepared under subsection (1) shall be divided into three parts, as follows:

1. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand English.
2. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand French.
3. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand both English and French.

(3) The sheriff may, with the written approval of a judge of the Superior Court of Justice, omit the name from the roll where it appears such person will be unable to attend for jury duty.

## 7. Excerpts from the Ontario *Juries Act* and Regulation

(4) The sheriff may request the Director of Assessment to mail such number of additional jury service notices and forms of returns to jury service notice as in the opinion of the sheriff are required.

(5) Upon receipt of a request from the sheriff under subsection (4), the Director of Assessment shall forthwith carry out such request and for such purpose section 6 applies with necessary modifications with respect to the additional jury service notices requested by the sheriff to be mailed.

(6) In a territorial district, the sheriff shall select names of eligible persons who reside in the district outside territory with municipal organization in the numbers fixed under subsection 5(2) and for the purpose may have recourse to the latest polling list prepared and certified for such territory, and to any assessment or collector's roll prepared for school purposes and may obtain names from any other record available.

**9.** As soon as the jury roll has been completed but not later than the 31st day of December in each year, the sheriff shall certify the roll to be the proper roll prepared as the law directs and shall deliver notice of the certification to a judge of the Superior Court of Justice, but a judge of the court may extend the time for certification for such reasons as he or she considers sufficient.

**10.** The Chief Justice of the Superior Court of Justice may, upon the request of the sheriff for a county, extend any times prescribed by this Act in connection with the preparation of the jury roll for the county to such date as the Chief Justice considers appropriate and may authorize the continued use of the latest jury roll until the dates so fixed.

...

**12.** A judge of the Superior Court of Justice may issue precepts in the form prescribed by the regulations to the sheriff for the return of such number of jurors as the sheriff has determined as the number to be drafted and returned or such greater or lesser number as in his or her opinion is required.

**13.** (1) Where a judge of the Superior Court of Justice considers it necessary that the jurors to form the panel for a sittings of the Superior Court of Justice be summoned in more than one set, the judge may direct the sheriff to return such number of jurors in such number of sets on such day for each set as he or she thinks fit.

(2) The sheriff shall divide such jurors into as many sets as are directed, and shall in the summons to every juror specify at what time his or her attendance will be required.

(3) Each set shall for all purposes be deemed a separate panel.

**14.** (1) A judge of the Superior Court of Justice, after the issue of the precept, at any time before or during the sittings of the court, by order under his or her hand and seal, may direct the sheriff to return an additional number of jurors.

(2) The sheriff, upon the receipt of an order under subsection (1), shall forthwith draft such additional number of jurors in the manner provided by this Act, and shall add their names to the panel list, and shall forthwith thereafter summon them, and where there are not a sufficient number of jurors on the jury roll for the purpose of the additions, section 11 applies.

## 7. Excerpts from the Ontario *Juries Act* and Regulation

**15.** Every sheriff to whom a precept for the return of jurors is directed shall, to such precept, return a panel list of the names of the jurors contained in the jury roll, whose names shall be drafted from such roll in the manner hereinafter mentioned.

...

**19.** (1) The sheriff shall summon every person drafted to serve on juries by sending to the person by ordinary mail a notice in writing in the form prescribed by the regulations under the hand of the sheriff at least twenty-one days before the day upon which the person is to attend, but when the sheriff is directed to draft and summon additional jurors under this Act, such twenty-one days service is not necessary.

(2) The sheriff may excuse any person summoned for a jury sittings on the ground,

- (a) of illness; or
- (b) that serving as a juror may cause serious hardships or loss to the person or others,

but unless a judge of the Superior Court of Justice directs otherwise and despite any other provision of this Act, such person shall be included in a panel to be returned for a sittings later in the year or, where there are not further sittings in that year, in a panel to be returned for a sittings in the year next following.

**20.** The jury roll and every list containing the names of the jury drafted for any panel shall be kept under lock and key by the sheriff, and except in so far as may be necessary in order to prepare the panel lists, and serve the jury summons, shall not be disclosed by the sheriff, the sheriff's deputy, officer, clerk, or by the justice of the peace mentioned in section 16, or by any other person, until ten days before the sittings of the court for which the panel has been drafted, and during such period of ten days, the sheriff, or the sheriff's deputy, shall permit the inspection at all reasonable hours of the jury roll and of the panel list or copy thereof in his or her custody by litigants or accused persons or their solicitors and shall furnish the litigants or accused persons or their solicitors, upon request and payment of a fee of \$2, with a copy of any such panel list.

...

**22.** A judge of the Superior Court of Justice who considers it necessary may direct that the jurors summoned for a sittings of the Court be divided into two or more sets as he or she may direct, and each set shall for all purposes be deemed a separate panel.

**22.1.** A judge of the Superior Court of Justice who considers it necessary may direct that two or more panels of jurors, including panels established by division under section 22, be merged into a single panel.

**23.** (1) A person summoned for jury duty may be excused by a judge from service as a juror on the ground that service as a juror is incompatible with the beliefs or practices of a religion or religious order to which the person belongs.

## 7. Excerpts from the Ontario *Juries Act* and Regulation

(2) A person summoned for jury duty may be excused by a judge from attending the sittings on the ground,

(a) of illness; or

(b) that serving as a juror may cause serious hardships or loss to the person or others,

and the judge may excuse the person from all service as a juror, or the judge may direct that the service of a person excused be postponed and that despite any provision of this Act, the person be included in a panel to be returned for a sittings later in that year or in a panel to be returned for a sittings in the year next following.

(3) A person summoned for jury service may be excused under subsection (1) or (2),

(a) before the day for attendance, by any judge of the Superior Court of Justice;

(b) on or after the day for attendance, by the judge presiding at the sittings,

and the application to be excused may be made to the sheriff.

## 7. Excerpts from the Ontario *Juries Act* and Regulation

### Juries Act

#### ONTARIO REGULATION 680

1. The jury service notice and return to the jury service notice referred to in subsection 6 (1) of the Act shall be in Form 1.
2. The jury roll referred to in section 7 of the Act shall be in Form 2.
3. The precept referred to in section 12 of the Act shall be in Form 3.
4. The summons referred to in subsection 19 (1) of the Act shall be in Form 4.
5. The notice that the attendance of jurors is not required referred to in subsection 21 (1) of the Act shall be in Form 5.
6. The notice referred to in subsection 21 (2) of the Act shall be in Form 6.
7. The notice to a juror that his or her attendance is not required referred to in subsection 21 (3) of the Act shall be in Form 7.
8. The notice to a juror that his or her attendance is not required until a day specified referred to in subsection 21 (3) of the Act shall be in Form 8.
9. The jury panel lists referred to in section 18 of the Act shall be in Form 9.
10. The following areas are established as jury areas:
  1. The Timmins Jury Area, consisting of that part of Dundonald Township that is within the municipal boundary of the City of Timmins, those parts of Walker Township and Benoit Township that are within the Municipality of Black River-Matheson, as well as all of the following townships: Adams; Beatty; Black; Blackstock; Bond; Bowman; Bristol; Byers, Cote; Carman; Carr; Carscallen; Cody; Cook; Cowan; Currie; Deloro; Denton; Egan; Eldorado; Evelyn; Flayfair; German; Godfrey; Hislop; Hoyle; Jamieson; Jessop; Keefer; Kidd; Langmuir; Loveland; MacDiarmid; Macklem; Massey; Matheson; McCann; McEvay; Melba; Mountjoy; Murphy; Ogden; Price; Robb; Shaw; Sheraton; Stock; Taylor; Thomas; Thorneloe; Timmins; Tisdale; Tolstoi; Turnbull; Wark; Whitesides; Whitney.
  2. The Cochrane Jury Area, consisting of all territory in the District of Cochrane other than the territory described in paragraph 1.

## 7. Excerpts from the Ontario *Juries Act* and Regulation

### FORM 1

### QUESTIONNAIRE AS TO QUALIFICATIONS FOR JURY SERVICE

	<p>FORM 1 / FORMULE 1 JURIES ACT, REGULATION / LOI SUR LES JURYS, RÉGLEMENT</p> <p><b>QUESTIONNAIRE AS TO QUALIFICATIONS FOR JURY SERVICE</b>  <b>QUESTIONNAIRE CONCERNANT LES QUALITÉS REQUISES POUR</b>  <b>REPLIR LES FONCTIONS DE JURÉ</b></p>	<p>RETURN TO JURY SERVICE NOTICE</p> <p>DECLARATION RELATIVE À L'AVIS DE SÉLECTION DE JURE</p>		
<p><b>NOTE: ► YOU ARE ONLY BEING CONSIDERED AS A POSSIBLE JUROR. ON CONSIDÈRE SEULEMENT LA POSSIBILITÉ DE VOUS CONVOQUER COMME JURÉ</b></p> <p>FILE NO. / NUMÉRO DE DOSSIER</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>RETURN COMPLETED FORM TO SHERIFF'S OFFICE</p> <p>RENOYER LA FORMULE DUMENT REMPLIE AU BUREAU DU SHERIFF</p> </div>				
<p><b>JURIES ACT, c. J.3, R.S.O., 1990</b></p> <p>SUBSECTION 38(3) of the <i>Juries Act</i> reads as follows: "Every person who is required to complete a return to a jury service notice and who,</p> <p>(a) without reasonable excuse fails to complete the return or mail it to the sheriff as required by subsection 6(5); or</p> <p>(b) knowingly gives false or misleading information in the return, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000, or to imprisonment for a term of not more than six months, or to both."</p> <p>THIS IS NOT A SUMMONS FOR JURY SERVICE. YOU ARE BEING CONSIDERED AS A POSSIBLE JUROR IN ORDER THAT YOUR QUALIFICATIONS FOR SUCH SERVICE MAY BE DETERMINED BEFORE YOU ARE SUMMONED TO APPEAR. IF YOU ARE CHOSEN FOR JURY SERVICE YOU WILL BE NOTIFIED OF THE TIME AND PLACE TO APPEAR.</p> <p>YOU ARE REQUIRED TO COMPLETE AND RETURN THE QUESTIONNAIRE BELOW WITHIN FIVE (5) DAYS OF RECEIPT; MAIL THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED PRE-ADDRESSED ENVELOPE WHICH REQUIRES NO POSTAGE. THIS MATTER MUST BE GIVEN YOUR IMMEDIATE ATTENTION.</p>	<p><b>LOI SUR LES JURYS, chap. J.3, L.R.O. 1990</b></p> <p>LE PARAGRAPHE 38(3) de la <i>Loi sur les jurys</i> se lit comme suit : «Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus six mois, ou d'une seule de ces peines, toute personne qui est tenue de remplir le formulaire de rapport qui accompagne l'avis de sélection de juré et qui :</p> <p>(a) soit omet, sans excuse raisonnable de remplir le formulaire de rapport ou de le renvoyer au shérif conformément au paragraphe 6(5);</p> <p>(b) soit fournit sciemment des renseignements faux ou trompeurs sur la formule».</p> <p>CE T AVIS NE CONSTITUE PAS UNE ASSIGNATION À SIÉGER COMME JURÉ. ON CONSIDÈRE SEULEMENT LA POSSIBILITÉ DE VOUS CONVOQUER COMME JURÉ AFIN DE DÉTERMINER SI VOUS AVEZ LES QUALITÉS REQUISES POUR REMPLIR LES FONCTIONS DE JURÉ AVANT QUE VOUS SOYEZ ASSIGNÉ(E) À COMPARAÎTRE. SI VOUS ÊTES CHOISI(E) POUR REMPLIR LES FONCTIONS DE JURÉ, ON VOUS AVISERA DU LIEU, DE LA DATE ET DE L'HEURE DE VOTRE COMPARUTION.</p> <p>VOUS ÊTES TENUE(E) DE RETOURNER LE QUESTIONNAIRE CI-DESSOUS, DUMENT REMPLI, DANS LES CINQ JOURS QUI SUIVENT SA RÉCEPTION. VEUILLEZ ENVOYER PAR LA POSTE LE QUESTIONNAIRE DUMENT REMPLI DANS L'ENVELOPPE ADRESSÉE CI-INCLUSE, SANS L'AFFRANCHIR. VEUILLEZ PORTER UNE ATTENTION IMMÉDIATE À CE QUESTIONNAIRE.</p>			
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> <li>• PLEASE HAND PRINT YOUR ANSWERS</li> <li>• ANSWER ALL QUESTIONS AND SIGN THE QUESTIONNAIRE</li> <li>• RETURN THE COMPLETED FORM IN THE ENCLOSED, STAMPED, PRE-ADDRESSED ENVELOPE, TO THE SHERIFF'S OFFICE WITHIN FIVE (5) DAYS.</li> </ul> </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> <li>• ÉCRIRE À LA MAIN EN LETTRES MOULÉES</li> <li>• RÉPONDRE À TOUTES LES QUESTIONS ET SIGNER LE QUESTIONNAIRE</li> <li>• RENOYER DANS LES CINQ JOURS LA FORMULE DUMENT REMPLIE AU BUREAU DU SHERIFF, EN UTILISANT L'ENVELOPPE ADRESSÉE ET AFFRANCHIE CI-INCLUSE.</li> </ul> </td> </tr> </table>			<ul style="list-style-type: none"> <li>• PLEASE HAND PRINT YOUR ANSWERS</li> <li>• ANSWER ALL QUESTIONS AND SIGN THE QUESTIONNAIRE</li> <li>• RETURN THE COMPLETED FORM IN THE ENCLOSED, STAMPED, PRE-ADDRESSED ENVELOPE, TO THE SHERIFF'S OFFICE WITHIN FIVE (5) DAYS.</li> </ul>	<ul style="list-style-type: none"> <li>• ÉCRIRE À LA MAIN EN LETTRES MOULÉES</li> <li>• RÉPONDRE À TOUTES LES QUESTIONS ET SIGNER LE QUESTIONNAIRE</li> <li>• RENOYER DANS LES CINQ JOURS LA FORMULE DUMENT REMPLIE AU BUREAU DU SHERIFF, EN UTILISANT L'ENVELOPPE ADRESSÉE ET AFFRANCHIE CI-INCLUSE.</li> </ul>
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<p><b>1 GIVE CURRENT OCCUPATION, TRADE OR PROFESSION EMPLOI, MÉTIER OU PROFESSION ACTUEL(LE)</b></p> <p>IF YOU ARE RETIRED OR NOT WORKING, GIVE LAST OCCUPATION, TRADE OR PROFESSION HERE: SI VOUS ÊTES RETRAITÉ(E) OU SI VOUS NE TRAVAILLEZ PAS, INDIQUEZ VÔTRE DERNIER EMPLOI, OU LE MÉTIER OU LA PROFESSION QUE VOUS AVEZ EXERCÉ EN DERNIER</p>				
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## 7. Excerpts from the Ontario *Juries Act* and Regulation

### FORM 1

#### QUESTIONNAIRE AS TO QUALIFICATIONS FOR JURY SERVICE

ANSWER QUESTIONS 3 TO 10 BY MARKING AN "X" IN THE PROPER BOX.		RÉPONDRE AUX QUESTIONS 3 À 10 EN MARQUANT D'UN «X» LA CASE APPROPRIÉE	
	YES/OUI	NO/NON	
<b>3</b> CAN YOU READ, SPEAK AND UNDERSTAND THE FRENCH LANGUAGE?			LISEZ-VOUS, PARLEZ-VOUS ET COMPRENEZ-VOUS LA LANGUE FRANÇAISE?
<b>4</b> CAN YOU READ, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE?			LISEZ-VOUS, PARLEZ-VOUS ET COMPRENEZ-VOUS LA LANGUE ANGLAISE?
<b>5</b> ARE YOU A CANADIAN CITIZEN?			ÊTES-VOUS CITOYEN(NE) CANADIEN(NE)?
<b>6</b> ARE YOU 18 YEARS OF AGE OR MORE?			ÊTES-VOUS ÂGÉ(E) DE 18 ANS OU PLUS?
<b>7</b> HAVE YOU BEEN CONVICTED OF AN INDICTABLE OFFENCE FOR WHICH YOU HAVE NOT BEEN GRANTED A PARDON? An indictable offence is a serious offence and does not include violations of provincial statutes such as traffic and liquor laws. Nor are some Criminal Code offences indictable; for example, causing a disturbance, taking a motor vehicle without the owner's consent and vagrancy are not indictable offences. A person who has been convicted of an indictable offence is ineligible to serve as a juror, unless he or she has subsequently been granted a pardon.			AVEZ-VOUS DÉJÀ ÉTÉ RECONNU(E) COUPABLE D'UN ACTE CRIMINEL POUR LEQUEL UN PARDON NE VOUS A PAS ÉTÉ ACCORDÉ? Un acte criminel est une infraction criminelle grave, à l'exclusion des contraventions aux lois provinciales telles que les lois relatives à la circulation et à l'alcool. Quelques infractions au Code criminel ne constituent pas des actes criminels, par exemple, le fait de troubler la paix publique, la prise d'un véhicule à moteur sans le consentement du propriétaire et le vagabondage ne constituent pas des actes criminels. Une personne est inhabile à remplir les fonctions de juré si elle a été reconnue coupable d'un acte criminel, sauf si un pardon lui a été accordé par la suite.
<b>8</b> HAVE YOU ATTENDED COURT FOR JURY SERVICE IN RESPONSE TO A SUMMONS IN THIS OR THE TWO PRECEDING YEARS?			VOUS ÊTES-VOUS PRÉSENTÉ(E), CETTE ANNÉE OU AU COURS DES DEUX ANNÉES PRÉCÉDENTES, POUR REMPLIR LES FONCTIONS DE JURÉ EN RÉPONSE À UNE ASSIGNATION?
<b>9</b> DOES YOUR OCCUPATION, PROFESSION OR POSITION EXEMPT YOU FROM JURY SERVICE. THE FOLLOWING PERSONS ARE INELIGIBLE TO SERVE AS JURORS: 1. Every member of the Privy Council of Canada or the Executive Council of Ontario. 2. Every member of the Senate, the House of Commons of Canada or the Assembly. 3. Every judge, every justice of the peace, every barrister and solicitor and every student-at-law. 4. Every legally qualified medical practitioner and veterinary surgeon who is actively engaged in practice and every coroner. 5. Every person engaged in the enforcement of law including, without restricting the generality of the foregoing, sheriffs, wardens of any penitentiary, superintendents, jailers, or keepers of prisons, correctional institutions or lockups, sheriff's officers and constables, police officers and constables, and officers of a court of justice. 6. Armed forces personnel of the regular and special forces and members of the reserve forces on active service. 7. Firefighters except volunteer firefighters as described in section 41(1) of the Fire Protection and Prevention Act, 1997.			ÊTES-VOUS EXEMPT(E) DES FONCTIONS DE JURÉ DE PAR VOTRE EMPLOI, MÉTIER OU PROFESSION? LES PERSONNES CI-DESSOUS SONT INHABILES À REMPLIR LES FONCTIONS DE JURÉ: 1. Les membres du Conseil privé du Canada ou du Conseil des ministres de l'Ontario. 2. Les membres du Sénat, de la Chambre des Communes ou de l'Assemblée. 3. Les juges, les juges de paix, les avocats et les étudiants en droit. 4. Les médecins dûment qualifiés et les chirurgiens-vétérinaires qui exercent effectivement leur profession, ainsi que les coroners. 5. Les personnes dont la fonction est de faire exécuter la loi, y compris notamment les shérifs, directeurs de pénitenciers, chefs d'établissements, les gardiens de prisons, d'établissements correctionnels ou de lieux de détention provisoire, les représentants et les constables du shérif, les agents de police et les constables ainsi que les officiers de justice. 6. Le personnel des Forces armées ordinaires et spéciales et les membres de la réserve en service actif. 7. Les pompiers, excepté les pompiers volontaires au sens du paragraphe 4(1) de la Loi de 1997 sur la prévention et la protection contre l'incendie.
<b>10</b> DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITY WHICH WOULD SERIOUSLY IMPAIR YOUR ABILITY TO SERVE AS A JUROR? IF "YES", ATTACH AN EXPLANATORY LETTER FROM YOUR DOCTOR OR COMPLETE THE "AUTHORIZATION FOR DOCTOR TO PROVIDE MEDICAL INFORMATION" BELOW.			SOUFFREZ-VOUS D'UNE INFIRMITÉ PHYSIQUE OU MENTALE INCOMPATIBLE AVEC L'ACCOMPLISSEMENT DES DEVOIRS D'UN JURÉ? SI «OUI», VEUILLEZ JOINDRE UNE LETTRE EXPLICATIVE DE VOTRE MÉDECIN OU REMPLIR L'AUTORISATION AU MÉDECIN DE DIVULGUER DES RENSEIGNEMENTS MÉDICAUX CI-DESSOUS.



7. Excerpts from the Ontario *Juries Act* and Regulation

FORM 2  
JURY ROLL

.....  
(county/district)

Roll Number	Name	Address	Age	Occupation	Number of Panel

I hereby certify the foregoing roll to be the proper roll prepared pursuant to the directions of the *Juries Act*.

Witness my hand this ..... day of ....., 19.....

E. F., Sheriff

7. Excerpts from the Ontario *Juries Act* and Regulation

FORM 3

PRECEPT FROM JUDGE TO SHERIFF

In the Ontario Court (General Division)

Reigning Sovereign, etc.

Ontario

County (or District) of

To Wit:

To the Sheriff of the ..... of .....

You are commanded that you cause to come before the Judge or other person holding the sittings of the Ontario Court (General Division) at ..... in your Bailiwick, on the ..... day of ..... 19..... all panels concerning such sittings; and

also summon a competent number, being not less than ..... good and lawful persons duly qualified to serve as Jurors for the trial of (Criminal and) Civil issues; and that you and your deputy Sheriff, Bailiffs, and other officers then and there attend in your proper persons to do those things which to your and their offices appertain. And that you have then and there the names of all Jurors whom you shall cause to come before us. And have then and there this Precept.

Dated at ..... this ..... day of ..... , 19.....

## 7. Excerpts from the Ontario *Juries Act* and Regulation

### FORM 4

	Ministry of the Attorney General	Ministère du Procureur général	Sheriff's Office Bureau du Shérif
---	--	--------------------------------------	--------------------------------------

TAKE NOTICE THAT YOU ARE REQUIRED TO ATTEND THE SITTINGS OF THE ONTARIO COURT (GENERAL DIVISION) TO BE HELD AT THE COURT HOUSE (address shown above)

IN THE

ON THE/LE ..... DAY OF ..... AT  
                                  JOUR ..... 19 ..... À .....

JUROR NO/JURÉ N°: OCCUPATION/EMPLOI :
--

TO/À

<b>Summons to Juror</b>	<b>Court House Address</b>
<b>Assignment à siéger comme juré</b>	<b>Adresse du palais de justice</b>

*VEUILLEZ PRENDRE NOTE QUE VOUS ÊTES REQUIS D'ÊTRE PRÉSENT AUX SÉANCES DE LA COUR DE L'ONTARIO (DIVISION GÉNÉRALE) QUI SE TIENDRONT AUX PALAIS DE JUSTICE (à l'adresse ci-dessus)*

AS A JUROR, IF YOU DO NOT ATTEND YOU WILL BE LIABLE TO THE PENALTIES PROVIDED BY THE *JURIES ACT*.

*EN VOTRE QUALITÉ DE JURÉ, SI VOUS FAITES DÉFAUT D'ÊTRE PRÉSENT TEL QUE REQUIS VOUS ÊTES PASSIBLE DES PEINES PRÉVUES À LA LOI SUR LES JURYS.*

DATED AT/FAIT À .....

THIS ..... DAY OF .....  
LE ..... JOUR ..... 19 .....

SHERIFF OF THE  
SHÉRIF DU

7. Excerpts from the Ontario *Juries Act* and Regulation

FORM 5

NOTICE TO SHERIFF REGARDING NUMBER OF JURORS REQUIRED

To the Sheriff of the ..... of .....

Take notice that there is no (civil or criminal, as the case may be) business requiring the attendance of a jury at the ensuing sittings of the Ontario Court (General Division) to be held on the ..... day of ....., 19 ....., and that the attendance of jurors at such sittings is not required.

Dated at ..... this ..... day of ....., 19 .....

.....  
Local Registrar of the  
Ontario Court (General Division)  
for the County or District of  
.....

7. Excerpts from the Ontario *Juries Act* and Regulation

FORM 6

NOTICE TO SHERIFF REGARDING NUMBER OF JURORS REQUIRED ON OPENING DAY

To the Sheriff of the ..... of .....

Take notice that there is no (civil or criminal, as the case may be) business requiring the attendance of a jury at the ensuing sittings of the Ontario Court (General Division) to be held on the ..... day of ....., 19....., and that the attendance of jurors at such sittings is not required on that date.

Further take notice that the attendance of jurors is required to attend the sittings of this court on the ..... day of ..... 19....., at the hour of ..... o'clock in the ..... noon.

Dated at ..... this ..... day of ....., 19.....

.....  
Local Registrar of the  
Ontario Court (General Division)  
for the County or District of  
.....

7. Excerpts from the Ontario *Juries Act* and Regulation

FORM 7

NOTICE TO JUROR REGARDING CANCELLATION OF SUMMONS

To .....

Take notice that there being no business requiring the attendance of jurors at the sittings of the Ontario Court (General Division) to be held on (date) your attendance as a juror at such sittings is not required, and the summons served upon you for your attendance is cancelled.

Further take notice that in case you attend at such sittings after the receipt by you of this notice you will not be entitled to any fees or mileage for such attendance.

This notice is given pursuant to the *Juries Act*.

Dated at ..... this ..... day of ..... , 19.....

.....  
Sheriff of the County (or District) of  
.....

FORM 8

NOTICE TO JUROR REGARDING AMENDMENT OF DATE TO REPORT FOR SERVICE

To .....

Take notice that there being no business requiring the attendance of jurors at the sittings of the Ontario Court (General Division) on the opening day thereof to be held on ..... (date).....

..... your attendance as a juror on that day is not required, and in so far as the summons served upon you requires your attendance on that day it shall be disregarded.

Further take notice that you are required to attend the sittings of this court on (date) at (time).

And further take notice that in case you attend at such sittings on any day prior to that last above mentioned, you will not be entitled to any fees or mileage for such attendance.

Dated at ..... this ..... day of ..... , 19.....

.....  
Sheriff of the County (or District) of  
.....

## 7. Excerpts from the Ontario *Juries Act* and Regulation

### FORM 9

#### JURY PANELS FOR THE ONTARIO COURT (GENERAL DIVISION)

**FOR THE ONTARIO COURT (GENERAL DIVISION)**  
(See Note 1)  
No. (of panel)

Panel of Jurors returned upon a Precept from the Honourable G. H., the Honourable I. J., (etc.), Justices of the Ontario Court (General Division), tested ..... day of .....  
19..... as drafted on ....., the .....  
day of ..... 19.....  
by A.B., Sheriff, in the presence of K. L., Justice of the Peace for the County, pursuant to the directions of the *Juries Act*.

No. on Panel	Name	Address	Occupations	No. on Roll	Remarks

Witness our hands, the day and year last written.

A. B., Sheriff  
K. L., J. P.

(See Note 2)

NOTES: (1) So much of this Sub-Title as ends with this word to be placed at the head of each page appropriated to this class of entries.

(2) The subsequent Panels following immediately may be commenced on the same page on which the preceding one is closed.

## 8. Sample Juror Qualification Questionnaire under the *Juries Act*

Ministry of the Attorney General	Ministère du Procureur général	
Office of the Minister	Cabinet du ministre	Ontario
CAVOUKIAN ANN		0015967
Dear Prospective Juror:	Madame, Monsieur,	
Your name was selected at random from a municipal enumeration list to be considered for inclusion in a Jury Roll, which is a list of potential jurors. The Roll lists the names of citizens resident in a jurisdiction who, if summoned, would be eligible during the ensuing year to serve as jurors.	Nous avons extrait au hasard votre nom d'un recensement municipal en vue de le porter à la liste des jurés. Cette liste comporte les noms de personnes qui résident dans une localité donnée et qui, une fois convoquées, pourraient être admises à faire partie d'un jury au cours des douze prochains mois.	
In order to prepare the Roll, your assistance and cooperation are required. You are required by law to fill out the enclosed questionnaire. Please read each question carefully to ensure that your answer is complete and accurate. Within five days, return the completed questionnaire using the enclosed, pre-addressed postage-paid envelope.	Nous vous saurions gré de bien vouloir nous aider à dresser la liste des jurés en répondant au questionnaire ci-joint, ainsi que la loi l'exige. Veuillez lire attentivement les questions afin d'y apporter des réponses exactes et complètes. Vous êtes prié(e) ensuite de retourner le questionnaire dûment rempli dans les cinq jours suivant sa réception en le glissant dans l'enveloppe pré-affranchie et pré-adressée ci-jointe.	
Please note that receipt of this letter and completion of the questionnaire does not mean that you have actually been chosen to serve on a jury. Your eligibility to serve as a juror will be determined based on the answers you have provided to the questions in the questionnaire.	Sachez par ailleurs que le fait de recevoir la présente lettre et de répondre au questionnaire ne veut pas dire que vous avez été effectivement choisi(e) comme juré. Votre admissibilité à faire partie d'un jury sera en effet déterminée d'après vos réponses au questionnaire.	
In conclusion, I want to stress that the jury system is one of the most important elements of our justice system. Jurors are responsible for determining, with the guidance of a judge, questions of fact in either civil or criminal court proceedings. Service as a juror is one of the most valuable contributions members of our society can make.	J'aimerais par la même occasion souligner que les procès devant jury constituent l'un des éléments les plus importants de notre système judiciaire. C'est en effet au jury qu'il incombe, avec l'assistance du juge, de trancher les questions de fait en matière civile ou pénale. Les fonctions de juré comptent parmi les contributions les plus importantes que l'on puisse apporter à la société.	
Thank you for contributing your time to this important endeavour.	En vous remerciant d'avance du temps que vous consacrerez à cet aspect important de la vie en société, je vous prie de recevoir, Madame, Monsieur, l'expression de mes sentiments distingués.	
Yours truly,		
Chris Bentley Attorney General / Procureur général		

## 8. Sample Juror Qualification Questionnaire under the *Juries Act*

 Ontario	<b>FORM 1 / FORMULE 1 JURIES ACT, REGULATION / LOI SUR LES JURYS, RÉGLEMENT</b> <b>QUESTIONNAIRE AS TO QUALIFICATIONS FOR JURY SERVICE</b> <b>QUESTIONNAIRE CONCERNANT LES QUALITÉS REQUISES</b> <b>POUR REMPLIR LES FONCTIONS DE JURÉ</b>	<b>RETURN TO JURY SERVICE NOTICE</b> <b>DÉCLARATION RELATIVE À L'AVIS DE</b> <b>SÉLECTION DE JURÉ</b>		
<b>CAVOUKIAN ANN</b>	<b>NOTE:</b> YOU ARE ONLY BEING CONSIDERED AS A POSSIBLE JUROR. ON <b>CONSIDÈRE</b> SEULEMENT LA POSSIBILITÉ DE VOUS CONVOQUER COMME JURÉ	FILE NO. / NUMÉRO DE DOSSIER _____		
RETURN COMPLETED FORM TO SHERIFF'S OFFICE P.O. BOX 80102 STN BRM B TORONTO ON M7Y 9T2 C.P. 80102 SUCCURSALE BRM B TORONTO ON M7Y 9T2 RENOYER LA FORMULE DUMENT REMPLIE AU BUREAU DU SHÉRIF				
IF YOUR NAME OR ADDRESS IS NOT CORRECT, SHOW THE NECESSARY CORRECTIONS ABOVE.				
S'IL Y A UNE ERREUR DANS LE NOM OU L'ADRESSE, FAIRE LES RECTIFICATIONS NÉCESSAIRES.				
<b>JURIES ACT, c.J.3, R.S.O. 1990</b>  <b>SUBSECTION 38(3) of the Juries Act reads as follows:</b> " Every person who is required to complete a return to a jury service notice and who, (a) without reasonable excuse fails to complete the return or mail it to the sheriff as required by subsection 6(5); or (b) knowingly gives false or misleading information in the return, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000, or to imprisonment for a term of not more than six months, or to both."	<b>LOI SUR LES JURYS, chap. J.3, L.R.O. 1990</b>  <b>LE PARAGRAPHE 38(3) de la Loi sur les jurys se lit comme suit :</b> «Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus six mois, ou d'une seule de ces peines, toute personne qui est tenue de remplir la formule de rapport qui accompagne l'avis de sélection de juré et qui : (a) soit omet, sans excuse raisonnable de remplir la formule de rapport ou de la renvoyer au shérif conformément au paragraphe 6(5); (b) soit fournit sciemment des renseignements faux ou trompeurs sur la formule».			
THIS IS NOT A SUMMONS FOR JURY SERVICE. YOU ARE BEING CONSIDERED AS A POSSIBLE JUROR IN ORDER THAT YOUR QUALIFICATIONS FOR SUCH SERVICE MAY BE DETERMINED BEFORE YOU ARE SUMMONED TO APPEAR. IF YOU ARE CHOSEN FOR JURY SERVICE YOU WILL BE NOTIFIED OF THE TIME AND PLACE TO APPEAR.  YOU ARE REQUIRED TO COMPLETE AND RETURN THE QUESTIONNAIRE BELOW WITHIN FIVE (5) DAYS OF RECEIPT. MAIL THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED PRE-ADDRESSED ENVELOPE WHICH REQUIRES NO POSTAGE. THIS MATTER MUST BE GIVEN YOUR IMMEDIATE ATTENTION.	<b>CET AVIS NE CONSTITUE PAS UNE ASSIGNATION À SIÉGER COMME JURÉ. ON CONSIDÈRE SEULEMENT LA POSSIBILITÉ DE VOUS CONVOQUER COMME JURÉ AFIN DE DÉTERMINER SI VOUS AVEZ LES QUALITÉS REQUISES POUR REMPLIR LES FONCTIONS DE JURÉ AVANT QUE VOUS SOYEZ ASSIGNÉ(E) À COMPARAÎTRE. SI VOUS ÊTES CHOISI(E) POUR REMPLIR LES FONCTIONS DE JURÉ, ON VOUS AVISERA DU LIEU, DE LA DATE ET DE L'HEURE DE VOTRE COMPARUTION.</b>  <b>VOUS ÊTES TENU(E) DE RETOURNER LE QUESTIONNAIRE CI-DESSOUS, DUMENT REMPLI, DANS LES CINQ JOURS QUI SUIVENT SA RÉCEPTION. VEUILLEZ ENVOYER PAR LA POSTE LE QUESTIONNAIRE DUMENT REMPLI DANS L'ENVELOPPE ADRESSÉE CI-INCLUSE, SANS L'AFFRANCHIR. VEUILLEZ PORTER UNE ATTENTION IMMÉDIATE À CE QUESTIONNAIRE.</b>			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <ul style="list-style-type: none"> <li>• PLEASE HAND PRINT YOUR ANSWERS</li> <li>• ANSWER ALL QUESTIONS AND SIGN THE QUESTIONNAIRE</li> <li>• RETURN THE COMPLETED FORM IN THE ENCLOSED, STAMPED, PRE-ADDRESSED ENVELOPE, TO THE SHERIFF'S OFFICE WITHIN FIVE (5) DAYS</li> </ul> </td> <td style="width: 50%; border: none;"> <ul style="list-style-type: none"> <li>• ÉCRIRE À LA MAIN, EN LETTRES MOULÉES</li> <li>• RÉPONDRE À TOUTES LES QUESTIONS ET SIGNER LE QUESTIONNAIRE</li> <li>• RENOYER DANS LES CINQ JOURS LA FORMULE DUMENT REMPLIE AU BUREAU DU SHÉRIF, EN UTILISANT L'ENVELOPPE ADRESSÉE ET AFFRANCHIE CI-INCLUSE</li> </ul> </td> </tr> </table>			<ul style="list-style-type: none"> <li>• PLEASE HAND PRINT YOUR ANSWERS</li> <li>• ANSWER ALL QUESTIONS AND SIGN THE QUESTIONNAIRE</li> <li>• RETURN THE COMPLETED FORM IN THE ENCLOSED, STAMPED, PRE-ADDRESSED ENVELOPE, TO THE SHERIFF'S OFFICE WITHIN FIVE (5) DAYS</li> </ul>	<ul style="list-style-type: none"> <li>• ÉCRIRE À LA MAIN, EN LETTRES MOULÉES</li> <li>• RÉPONDRE À TOUTES LES QUESTIONS ET SIGNER LE QUESTIONNAIRE</li> <li>• RENOYER DANS LES CINQ JOURS LA FORMULE DUMENT REMPLIE AU BUREAU DU SHÉRIF, EN UTILISANT L'ENVELOPPE ADRESSÉE ET AFFRANCHIE CI-INCLUSE</li> </ul>
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<b>1</b> GIVE CURRENT OCCUPATION, TRADE OR PROFESSION EMPLOI, MÉTIER OU PROFESSION ACTUEL(LE)				
IF YOU ARE RETIRED OR NOT WORKING, GIVE LAST OCCUPATION, TRADE OR PROFESSION HERE: SI VOUS ÊTES RETRAITÉ(E) OU SI VOUS NE TRAVAILLEZ PAS, INDIQUEZ VOTRE DERNIER EMPLOI, OU LE MÉTIER OU LA PROFESSION QUE VOUS AVEZ EXERCÉ EN DERNIER.				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <b>2</b> BUSINESS TELEPHONE ( )          N° DE TÉLÉPHONE AU BUREAU       </td> <td style="width: 50%; border: none;">         RESIDENTIAL TELEPHONE ( )          N° DE TÉLÉPHONE À DOMICILE       </td> </tr> </table>			<b>2</b> BUSINESS TELEPHONE ( ) N° DE TÉLÉPHONE AU BUREAU	RESIDENTIAL TELEPHONE ( ) N° DE TÉLÉPHONE À DOMICILE
<b>2</b> BUSINESS TELEPHONE ( ) N° DE TÉLÉPHONE AU BUREAU	RESIDENTIAL TELEPHONE ( ) N° DE TÉLÉPHONE À DOMICILE			
PLEASE COMPLETE QUESTIONS ON REVERSE				
VEUILLEZ RÉPONDRE AUX QUESTIONS AU VERSO				

## 8. Sample Juror Qualification Questionnaire under the *Juries Act*

ANSWER QUESTIONS 3 TO 10 BY MARKING AN "X" IN THE PROPER BOX.		RÉPONDEZ AUX QUESTIONS 3 À 10 EN MARQUANT D'UN «X» LA CASE APPROPRIÉE.	
<b>3</b>	CAN YOU READ, SPEAK AND UNDERSTAND THE FRENCH LANGUAGE?	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non LISEZ-VOUS, PARLEZ-VOUS ET COMPRENEZ-VOUS LA LANGUE FRANÇAISE?
<b>4</b>	CAN YOU READ, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE?	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non LISEZ-VOUS, PARLEZ-VOUS ET COMPRENEZ-VOUS LA LANGUE ANGLAISE?
<b>5</b>	ARE YOU A CANADIAN CITIZEN?	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non ÉTES-VOUS CITOYEN(NE) CANADIEN(NE)?
<b>6</b>	ARE YOU 18 YEARS OF AGE OR MORE?	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non ÉTES-VOUS ÂGÉ(E) DE 18 ANS OU PLUS?
<b>7</b>	HAVE YOU BEEN CONVICTED OF AN INDICTABLE OFFENCE FOR WHICH YOU HAVE NOT BEEN GRANTED A PARDON? <small>An indictable offence is a serious offence and does not include violations of provincial statutes such as traffic and liquor laws. Nor are some Criminal Code offences indictable; for example, causing a disturbance, taking a motor vehicle without the owner's consent and vagrancy are not indictable offences. A person who has been convicted of an indictable offence is ineligible to serve as a juror, unless he or she has subsequently been granted a pardon.</small>	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non AVEZ-VOUS DÉJÀ ÉTÉ RECONNU(E) COUPABLE D'UN ACTE CRIMINEL POUR LEQUEL UN PARDON NE VOUS A PAS ÉTÉ ACCORDÉ? <small>Un acte criminel est une infraction criminelle grave, à l'exclusion des contraventions aux lois provinciales telles que les lois relatives à la circulation et à l'alcool. Quelques infractions au Code criminel ne constituent pas des actes criminels, par exemple, le fait de troubler la paix publique, la prise d'un véhicule à moteur sans le consentement du propriétaire et le vagabondage ne constituent pas des actes criminels. Une personne est inéligible à remplir les fonctions de juré si elle a été reconnue coupable d'un acte criminel, sauf si un pardon lui a été accordé par la suite.</small>
<b>8</b>	HAVE YOU ATTENDED COURT FOR JURY SERVICE IN RESPONSE TO A SUMMONS IN THIS OR THE TWO PRECEDING YEARS?	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non VOUS ÊTES-VOUS PRÉSENTÉ(E), CETTE ANNÉE OU AU COURS DES DEUX ANNÉES PRÉCÉDENTES, POUR REMPLIR LES FONCTIONS DE JURÉ EN RÉPONSE À UNE ASSIGNATION?
<b>9</b>	DOES YOUR OCCUPATION, PROFESSION OR POSITION EXEMPT YOU FROM JURY SERVICE? <small>THE FOLLOWING PERSONS ARE INELIGIBLE TO SERVE AS JURORS: 1. Every member of the Privy Council of Canada or the Executive Council of Ontario. 2. Every member of the Senate, the House of Commons of Canada or the Assembly. 3. Every judge, every justice of the peace, every barrister and solicitor and every student-at-law. 4. Every legally qualified medical practitioner and veterinary surgeon who is actively engaged in practice and every coroner. 5. Every person engaged in the enforcement of law including, without restricting the generality of the foregoing, sheriffs, wardens of any penitentiary, superintendents, jailers or keepers of prisons, correctional institutions or lockups, sheriff's officers and constables, police officers and constables, and officers of a court of justice. 6. Armed forces personnel of the regular and special forces and members of the reserve forces on active service. 7. Firefighters except volunteer firefighters as described in section 41(1) of the Fire Protection and Prevention Act, 1997.</small>	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non ÉTES-VOUS EXEMPT(E) DES FONCTIONS DE JURÉ DE PAR VOTRE EMPLOI, MÉTIER OU PROFESSION? <small>LES PERSONNES CI-DESSOUS SONT INHABILES À REMPLIR LES FONCTIONS DE JURÉ: 1. Les membres du Conseil privé du Canada ou du Conseil des ministres de l'Ontario. 2. Les membres du Sénat, de la Chambre des Communes ou de l'Assemblée. 3. Les juges, les juges de paix, les avocats et les étudiants en droit. 4. Les médecins dûment qualifiés et les chirurgiens-vétérinaires qui exercent effectivement leur profession, ainsi que les coroners. 5. Les personnes dont la fonction est de faire exécuter la loi, y compris notamment les shérifs, directeurs de pénitenciers, chefs d'établissements, les gardiens de prisons, d'établissements correctionnels ou de lieux de détention provisoire, les représentants et les constables du shérif, les agents de police et les constables ainsi que les officiers de justice. 6. Le personnel des Forces armées ordinaires et spéciales et les membres de la réserve en service actif. 7. Les pompiers, excepté les pompiers volontaires au sens du paragraphe 41(1) de la Loi de 1997 sur la prévention et la protection contre l'incendie.</small>
<b>10</b>	DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITY WHICH WOULD SERIOUSLY IMPAIR YOUR ABILITY TO SERVE AS A JUROR? IF "YES", ATTACH AN EXPLANATORY LETTER FROM YOUR DOCTOR OR COMPLETE THE "AUTHORIZATION FOR DOCTOR TO PROVIDE MEDICAL INFORMATION" BELOW.	<input type="checkbox"/> yes/oui	<input type="checkbox"/> no/non SOUFFREZ-VOUS D'UNE INFIRMITÉ PHYSIQUE OU MENTALE INCOMPATIBLE AVEC L'ACCOMPLISSEMENT DES DEVOIRS D'UN JURÉ? SI «OUI», VEUILLÉZ JOINDRE UNE LETTRE EXPLICATIVE DE VOTRE MÉDECIN OU REMPLIR L'AUTORISATION AU MÉDECIN DE DIVULGUER DES RENSEIGNEMENTS MÉDICAUX CI-DESSOUS.

**AUTHORIZATION FOR DOCTOR TO PROVIDE MEDICAL INFORMATION  
AUTORISATION AU MÉDECIN DE DIVULGUER DES RENSEIGNEMENTS MÉDICAUX**

This is to authorize Doctor (Name/ Nom)  
*Par la présente, j'autorise le médecin*

Address Phone No.  
N° de téléphone  
*Adresse*

to provide the sheriff with medical information and opinion for the purpose of verifying my physical or mental infirmity (or both) incompatible with the discharge of my duties as juror. *à donner au shérif des renseignements médicaux et son avis aux fins de confirmer que l'infirmitté physique ou mentale, ou les deux, dont je souffre me rend(ent) inhabile à remplir les fonctions de juré.*

Municipality / Municipalité	Day / Jour	Month / Mois	Year / Année	Signature of prospective juror
Dated at / Fait à	the / le	of / de		Signature of juré éventuel

I CERTIFY THAT ALL ANSWERS AND STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.  
JE CERTIFIE QUE, À MA CONNAISSANCE, TOUTES MES RÉPONSES ET DÉCLARATIONS SONT VÉRIDIQUES.

**X** \_\_\_\_\_

SIGN HERE / SIGNER ICI DATE

## 9. Mock Vetted Jury Panel List

Superior Court of Justice  
 County of Doeville  
 List of Jurors - Juror Details  
 Date Issued: 01/04/2009    Sitting Date: 04/05/2009  
 Panel Number 4:

	Roll#	Name	Address	Occupation
1.	3	DOE, JAMES <i>9 Sep 47</i>	RR4 ANYTOWN, ON A1B 2C3 <i>excused</i>	TEACHER <i>no record Calls a lot for minor complaints</i>
2.	15	DOE, JANE <i>8 Jan 68</i>	326 BLANK CRES VILLAGE, ON X8Y 9Z0	ENGINEER <i>no record</i>
3.	32	DOE, JANICE <i>No DOB</i>	123 ANY STREET DOEVILLE, ON E5F 6G7	LIBRARIAN <i>neighbour of L.K. Good guy!</i>
4.	45	DOE, JASON <i>1 Jun 77</i>	345 UNKNOWN ROAD WHERETOWN, ON T4U 5V6	HOMEMAKER <i>no record hearing impaired</i>
<del>5.</del>	<del>51</del>	<del>DOE, JOHN</del>	<del>PO BOX 1, RR9 ANYTOWN, ON Q2R 3S4</del>	<del>TECHNOLOGY</del>
6.	72	ROE, JEREMY <i>28 Dec 51</i>	89 SOMEWHERE STREET SOMEWHERE, ON I5J 6K7	MANAGER <i>record (attached)</i>
<del>7.</del>	<del>85</del>	<del>ROE, JOCELYN</del>	<del>12345 COUNTY STREET, RR5 WHERESVILLE, ON R3S 4T5</del>	<del>MECHANIC</del>
8.	94	ROE, JULIE <i>15 Nov 47</i>	4321 MAIN ROAD MAINSVILLE, ON U1V 2W3 <i>excused</i>	SALESPERSON <i>charged over 80 2002</i>
9.	116	ROE, JUNE <i>29 July 70</i>	11 VILLAGE LANE ANYTOWN, ON O5P 6Q7	UNEMPLOYED <i>no record but father has extensive CR</i>

## 10. Chart of Jury Selection in Jurisdictions across Canada

### DISQUALIFICATION FROM JURY SERVICE IN CANADIAN PROVINCES DUE TO CRIMINAL CONVICTION

	NL	NS	NB	PEI	QC	MB	SK	AB	BC
<b>ENABLING STATUTE</b>	<i>Jury Act, 1991</i> , S.N.L. 1991, c. 16 Jury Regulations, C.N.L.R. 17/96	<i>Juries Act</i> , S.N.S. 1998, c. 16 Juries Regulations, N.S. Reg. 126/2000	<i>Jury Act</i> , S.N.B. 1980, c. J-3.1	<i>Jury Act</i> , R.S.P.E.I. 1988, c. J-5.1 General Regulations, P.E.I. Reg. EC431/92	<i>Jurors Act</i> , R.S.Q. c. J-2 Regulations, R.Q. c. J-2, r.2	<i>Jury Act</i> , C.C.S.M. c. J30 Jury Regulation, Man. Reg. 320/87 R	<i>Jury Act</i> 1998, S.S. 1998, c. J-4.2 Jury Regulations, 2000, R.R.S. c. J-4.2 Reg. 1	<i>Jury Act</i> , R.S.A. 2000, c. J-3 Jury Act Regulation, Alta. Reg. 68/1983	<i>Jury Act</i> , R.S.B.C. 1996, c. 242 Jury Regulation, B.C. Reg. 282/95
<b>EXEMPTION</b>	Disqualified if: charged with indictable offence; or served a period of imprisonment or other detention for an indictable offence without the option of a fine, unless pardoned, within 5 years of the taking of the jury list (JA, s. 5 (m) (n))	Disqualified if: convicted of criminal offence for which the person was sentenced to a term of imprisonment of 2 years or more (JA, s. 4 (e))	Ineligible if: convicted of an offence under the <i>Criminal Code</i> , <i>Food and Drugs Act</i> , or <i>Controlled Drugs and Substances Act</i> , unless pardoned (JA, s. 3 (r))	Disqualified if: convicted within the previous 5 years of an offence for which the punishment could have been a fine of \$3000 or more or a sentence of imprisonment exceeding 12 months, unless pardoned (JA, s. 5 (i))	Disqualified if: charged with or convicted of a criminal act (JA, s. 4 (j))	Disqualified if: convicted of an indictable offence, unless pardoned; the previous offence for which the punishment could be a fine of \$5000 or more or imprisonment for 1 year or more, unless pardoned; charged within the previous 2 years with an offence for which the punishment could be a fine of \$5000 or more or imprisonment for 1 year or more or where the person has not been acquitted, the charge has not been dismissed or withdrawn and a stay of proceedings has not been entered in respect of the trial for the offence (JA, s. 3 (p) (q) (r))	Excluded from service if: legally confined in an institution (JA, s. 6 (h))	Excluded from service if: convicted of criminal offence for which a sentence of imprisonment exceeding 12 months could have been imposed; persons confined in an institution (JA, s. 4 (h) (j))	Disqualified if: convicted within previous 5 years of an offence for which the punishment could be a fine of more than \$2000 or imprisonment for 1 year or more, unless pardoned; under a charge for which the punishment could be a fine of more than \$2000 or imprisonment for 1 year or more (JA, s. 3 (1) (p) (q))

## 10. Chart of Jury Selection in Jurisdictions across Canada

### DISQUALIFICATION FROM JURY SERVICE IN CANADIAN PROVINCES DUE TO CRIMINAL CONVICTION (continued)

	NL	NS	NB	PEI	QC	MB	SK	AB	BC
<b>METHOD OF ASSESSMENT</b>	Sheriff issues summons at least 7 days prior to trial on prescribed form. Person summoned who is not qualified applies to be exempted by mail addressed to Sheriff. (JA, ss. 22, 23)	Jury Coordinator issues summons within a reasonable time before the person is to appear. Every person who receives summons shall be accurately and truthfully complete the juror information form and return it to the jury coordinator; coordinator removes disqualified persons. (JA, s. 10)	Sheriff issues summons on prescribed form within reasonable time before the person is to appear. Summoned person completes juror's certificate in the prescribed form and returns it within 5 days of receipt of receipt If the sheriff is satisfied the person is not qualified, person is relieved (JA, s. 13.1)	Sheriff issues summons on prescribed form. Every person who is served with a juror information return and summons shall accurately and truthfully complete it and mail it to the Sheriff within 5 days of receipt (JA, s. 9)	Sheriff summons jurors 30 days before trial, or a lesser time as ordered by a judge, so long as the lesser time is not less than 8 days. Person summoned has 10 days to apply for an exemption on the prescribed form (JA, ss. 25, 29)	Sheriff summons from the jury roll the required number of jurors at least 12 days before the day of appearance (JA, ss. 21, 23) Ineligible persons must provide declaration to the Sheriff within 1 week of receipt of summons; Sheriff enters the grounds for disqualification in the jury list (JA, ss. 26 (1), 28)	Sheriff summons jurors with Juror Information Return and Summons. Every person served with a Juror Information Return and Summons shall accurately and truthfully complete it and mail or deliver it to the Sheriff within 5 days of receipt. (JA, s. 7 (7), s. 9)	Sheriff summons jurors with prescribed form. At the time of the selection of the jury, the judge may conduct any inquiry the judge considers necessary regarding the qualification or exclusion of any person on the jury panel and direct discharge or grant exemption from service (JA, s. 8 (3), s. 10)	Criminal Trials: sheriff delivers notice to jurors 15 days before the required date of attendance (JA, s. 11) Civil Trials: sheriff delivers notice to jurors 30 days before the required date of attendance (JA, s. 18)

## 10. Chart of Jury Selection in Jurisdictions across Canada

### DISQUALIFICATION FROM JURY SERVICE IN CANADIAN PROVINCES DUE TO CRIMINAL CONVICTION (continued)

	NL	NS	NB	PEI	QC	MB	SK	AB	BC
<b>POLICY ON BACKGROUND CHECKS?</b>	No written policy. Crown counsel search for criminal records only; enquiries are made.	No written policy. Senior Crown Counsel says he passes the list to the police who conduct criminal record checks and background checks; the information is not generally shared with the defence; Legal Assistant to Crown Counsel sends jury list to Halifax Police, who conduct internal record check and indicate "OK" or "possible" next to names on the list; unknown the extent of police inquiry	Director of Public Prosecutions (DPP) Guideline 21 (copy in IPC files): Crown Prosecutors should not request any investigation be undertaken other than criminal record checks into the list of Jurors; If criminal record checks obtained, results should be disclosed to Defence; Any further investigations into private aspects of potential jurors' lives are not to be undertaken Asst. Deputy AG says background checks never happened in NB before policy	No Written Policy; Senior Crown says it's never come up; Crown and Defence receive jury panel lists 2-3 days prior to trial; Crown checks own internal files to check for any outstanding or previous charges; no CPIC checks because they aren't given birth dates.	No Written Policy, if juror indicates on the Sheriff's form that he or she has a criminal conviction, the crown office will do a criminal record check to confirm; no further inquiries are made	Reliance is on self-reporting; no record checks of any kind, even in respect of criminal convictions.	Written Policy (JUR1, copy in IPC files); Crown prosecutors should not request any investigation be undertaken other than criminal records checks; no out of court investigations into private aspects of the potential jurors' lives; results of criminal records checks to be disclosed to defence counsel	No written policy or procedure; Crown and Defence get list at exactly the same time, 15 minutes before jury selection begins; list only contains name address and occupation of potential jurors; crown cannot copy the list; must return it at the end of jury selection; No vetting of jurors in any way	No written policy or procedure; Crown counsel do not conduct any checks on potential jurors at all; no CPIC checks conducted; any challenges to the jury panel happen in open court

## 10. Chart of Jury Selection in Jurisdictions across Canada

### EXEMPTION OR DISQUALIFICATION FOR JURY SERVICE IN CANADIAN TERRITORIES AND FEDERAL PROSECUTIONS IN THE PROVINCES DUE TO CRIMINAL CONVICTIONS

	YUKON	NORTHWEST TERRITORIES	NUNAVUT	FEDERAL PROSECUTIONS IN PROVINCES
<b>ENABLING STATUTE</b>	<i>Jury Act</i> , R.S.Y. 2002, c. 129	<i>Jury Act</i> , R.S.N.W.T. 1988, c. J-2 Jury Regulations, N.W.T. Reg. 034-99	<i>Jury Act</i> , R.S.N.W.T. 1988, c. J-2 Jury Regulations, N.W.T. Reg. 034-99 [Enacted in Nunavut upon territory's creation in 1999; Nunavut can repeal and replace with its own Act]	The <i>Jury Act</i> of the relevant province; Federal Crown Prosecutors prosecute offences under various federal statutes, including Controlled Drugs and Substances Act, Fisheries and Substances Act, Food and Drugs Act
<b>EXEMPTION</b>	No person is qualified to serve as a juror who has been convicted of an offence against an Act of Parliament for which a term of imprisonment exceeding 12 months could have been imposed (JA, s. 5 (a))	No person is qualified to serve as a juror who has been convicted of an offence for which he or she was sentenced to a term of imprisonment exceeding 1 year, not having been subsequently granted a free pardon	No person is qualified to serve as a juror who has been convicted of an offence for which he or she was sentenced to a term of imprisonment exceeding 1 year, not having been subsequently granted a free pardon	Depends on exemptions and exclusions in the province in which the prosecution takes place
<b>METHOD OF ASSESSMENT</b>	Sheriff assembles list; delivers it to clerk of the Supreme Court; Judge reviews the panel list and removes from the list any persons who would suffer undue hardship or serious inconvenience were they to be called as jurors; returns the revised list to the Sheriff, who issues summonses (JA, ss. 14, 15); A person may apply to the sheriff to be excused from jury service (JA, s. 21)	Sheriff assembles list and issues summons in accordance with the regulations; Persons summoned may apply orally or in writing to the Sheriff to be excused; Sheriff may excuse any person who has good reason to be excused (JA, ss. 16, 17) (JR, s. 8) Judge may, for good cause, excuse from service as a juror any person who has been summoned but has not been sworn (JA, s. 22)	Sheriff assembles list and issues summons in accordance with the regulations; Persons summoned may apply orally or in writing to the Sheriff to be excused; Sheriff may excuse any person who has good reason to be excused (JA, ss. 16, 17) (JR, s. 8) Judge may, for good cause, excuse from service as a juror any person who has been summoned but has not been sworn (JA, s. 22)	Depends on process in the province in which the prosecution takes place

**EXEMPTION OR DISQUALIFICATION FOR JURY SERVICE IN CANADIAN TERRITORIES AND FEDERAL PROSECUTIONS IN THE PROVINCES DUE TO CRIMINAL CONVICTIONS (continued)**

**10. Chart of Jury Selection in Jurisdictions across Canada**

	<b>YUKON</b>	<b>NORTHWEST TERRITORIES</b>	<b>NUNAVUT</b>	<b>FEDERAL PROSECUTIONS IN PROVINCES</b>
<b>POLICY ON BACKGROUND CHECKS?</b>	<p>Written policy is being developed under auspices of George Dolhai, Deputy Director of the Public Prosecution Service of Canada; Interim guidelines have been released:</p> <p>Counsel may request that the police conduct CPIC checks ONLY for the purpose of confirming whether or not the juror has a conviction for which he/she was sentenced for 12 months or more for which a pardon has not been received, as referred to in section 638(1)(c) of the Criminal Code. The request should be made to the police in writing and should be specific.</p> <p>In the northern territories, counsel may also ask victims/witnesses and CWCs to review the jury list and provide any information that they may have about family or other personal relationships between the juror and the victim/witness and/or the accused. This information is relevant to the juror's ability to be impartial, and to whether the juror ought to be excused from jury duty.</p> <p>Counsel will not seek out any additional information about the jurors.</p> <p>Counsel will not search iCase for information about jurors.</p> <p>All information obtained will be disclosed to defence.</p>	<p>Written policy is being developed under auspices of George Dolhai, Deputy Director of the Public Prosecution Service of Canada; Interim guidelines have been released:</p> <p>Counsel may request that the police conduct CPIC checks ONLY for the purpose of confirming whether or not the juror has a conviction for which he/she was sentenced for 12 months or more for which a pardon has not been received, as referred to in section 638(1)(c) of the Criminal Code. The request should be made to the police in writing and should be specific.</p> <p>In the northern territories, counsel may also ask victims/witnesses and CWCs to review the jury list and provide any information that they may have about family or other personal relationships between the juror and the victim/witness and/or the accused. This information is relevant to the juror's ability to be impartial, and to whether the juror ought to be excused from jury duty.</p> <p>Counsel will not seek out any additional information about the jurors.</p> <p>Counsel will not search iCase for information about jurors.</p> <p>All information obtained will be disclosed to defence.</p>	<p>Written policy is being developed under auspices of George Dolhai, Deputy Director of the Public Prosecution Service of Canada; Interim guidelines have been released:</p> <p>Counsel may request that the police conduct CPIC checks ONLY for the purpose of confirming whether or not the juror has a conviction for which he/she was sentenced for 12 months or more for which a pardon has not been received, as referred to in section 638(1)(c) of the Criminal Code. The request should be made to the police in writing and should be specific.</p> <p>In the northern territories, counsel may also ask victims/witnesses and CWCs to review the jury list and provide any information that they may have about family or other personal relationships between the juror and the victim/witness and/or the accused. This information is relevant to the juror's ability to be impartial, and to whether the juror ought to be excused from jury duty.</p> <p>Counsel will not seek out any additional information about the jurors.</p> <p>Counsel will not search iCase for information about jurors.</p> <p>All information obtained will be disclosed to defence.</p>	<p>Written policy is being developed under auspices of George Dolhai, Deputy Director of the Public Prosecution Service of Canada; Interim guidelines have been released:</p> <p>Counsel may request that the police conduct CPIC checks ONLY for the purpose of confirming whether or not the juror has a conviction for which he/she was sentenced for 12 months or more for which a pardon has not been received, as referred to in section 638(1)(c) of the Criminal Code. The request should be made to the police in writing and should be specific.</p> <p>Counsel will not seek out any additional information about the jurors.</p> <p>Counsel will not search iCase for information about jurors.</p> <p>All information obtained will be disclosed to defence.</p>

## GLOSSARY

Assistant Crown attorney	Person who prosecutes criminal cases on behalf of the Ministry of the Attorney General, and who generally reports to a Crown attorney
Background check	The gathering of information about an individual from any source other than the individual
CCLA	Canadian Civil Liberties Association
<i>Charter</i>	<i>Canadian Charter of Rights and Freedoms</i>
CIPS	Criminal Information Processing System, a type of Records Management System used by police services
CLA	Criminal Lawyers' Association
Court Services	Courts Services Division, a part of the Ministry of the Attorney General
CPIC	Canadian Police Information Centre database maintained by the Royal Canadian Mounted Police and used by police services across Canada
Criminal conviction check	The gathering of information about an individual from a police database, <i>limited to criminal convictions for indictable criminal offences</i>
Criminal record check	The gathering of information about an individual from a police database, limited to criminal convictions, as well as outstanding (non-disposed of) criminal charges
Crown attorney	Person who supervises Assistant Crown attorneys and Deputy Crown attorneys in a specific Crown attorney office; also used as a generic term to describe any Crown prosecutor who prosecutes on behalf of the state
Deputy Crown attorney	A Crown attorney who is senior to an Assistant Crown attorney
eCOPS	Enterprise Case Occurrence Processing System, a type of records management system used by police services
<i>FIPPA</i>	<i>Freedom of Information and Protection of Privacy Act in Ontario</i>

IPC	Information and Privacy Commissioner of Ontario
Jury panel list	A list of names of potential jurors, randomly selected from jury rolls, from which a jury is selected
Jury roll	A list of names of potential jurors from which jury panel lists are assembled
LSUC	Law Society of Upper Canada, Ontario
MAG	Ministry of the Attorney General, a ministry of the Ontario government
Manix	Master Name Index, a type of records management system used by police services
MCSCS	Ministry of Community Safety and Correctional Services, a ministry of the Ontario government
<i>MFIPPA</i>	<i>Municipal Freedom of Information and Protection of Privacy Act in Ontario</i>
MTO	Ministry of Transportation
Niche	A type of records management system used by police services
OACP	Ontario Association of Chiefs of Police
OBA	Ontario Bar Association
OMPAC	Ontario Municipal and Provincial Police Automation Co-operation, a type of records management system used by police services
OPP	Ontario Provincial Police, a part of the Ministry of Community Safety and Correctional Services
<i>PHIPA</i>	<i>Personal Health Information Protection Act in Ontario</i>
PJC	Provincial Jury Centre, based in London, Ontario, a part of the Ministry of the Attorney General

Police background check	The gathering of information about an individual from a police database, which may include any information about contacts with the police, such as whether the individual has been charged with an offence, convicted of an offence, or been a suspect, witness, victim or complainant
Police RMS	Records management system of a police service, including CPIC, Niche, Versadex, CIPS, Manix, eCOPS, and OMPAC
RCMP	Royal Canadian Mounted Police
Regional Director of Crown Operations	Person who supervises Crown attorneys in a region
U of T Asper Centre	Asper Centre for Constitutional Rights, a part of the University of Toronto, Ontario
Versadex	A type of records management system used by police services