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# Policy Review

## Police Information Checks

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## Introduction

Capital Region Housing (CRH) has a policy of requiring prospective tenants to undergo a Police Information Check (PIC) before moving forward with an offer of housing. A review of this policy was requested. The policy review involved an examination of CRH's current policy, a review of the practices of other social housing providers, a literature review and consultation with external and internal stakeholders. The policy review was requested with the goal of generating a policy recommendation for CRH going forward. This document includes details of the current policy, a literature and housing sector review and what was heard from the stakeholders who provided feedback on the requirement of a PIC.

## Current Policy at Capital Region Housing

The policy requiring a PIC has existed at CRH since 2007. It applies to all housing managed or owned by CRH in both the Affordable Housing and Community Housing Programs; it is not a requirement for recipients of the rent supplement programs. The requirement was introduced at the same time that CRH adopted the Multi Family Crime Free Housing Program.

To begin the offer process, an applicant household is contacted when it becomes the next household in priority for an available unit. The household is asked to view the unit and indicate if they would be willing to accept the offer of housing. If the household indicates that they are willing to rent the offered unit, all household members over the age of 18 years must complete a PIC. The only exception to this requirement is where those members have been in Canada for less than one year. Any adult applying to become an additional occupant in an existing tenancy with CRH is required to complete a PIC and is subject to this policy.

Prospective tenants who have indicated an acceptance of a unit must obtain the appropriate form for the PIC at CRH's office. Submitting the CRH-identified form to the Edmonton Police Service (EPS) means that the cost of the PIC is charged to CRH rather than the client. EPS provides the PIC documentation to the requestor and it is then incumbent on the requestor to present it to CRH. CRH staff review the PIC once it is presented to identify if there are any convictions or charges listed. If there is nothing contained on the PIC, the household is considered to have "passed" the PIC and are able to move forward with their tenancy. If there are convictions or charges on the PIC, a member of the Verification and Compliance Unit (VCU) is called to meet with the member of the household.

CRH's current policy states that if in the past five (5) years, a person has been convicted of a violent crime or is still subject to conditions of a sentence related to a conviction (e.g. parole or probation), or if they have charges relating a violent crime before the courts, that person will be denied housing. Violent crimes are defined as sexual assault, physical assault, unlawful confinement, sexual interference, murder/manslaughter, kidnapping, drug trafficking, impaired driving causing injury or death, weapons offenses, arson, criminal harassment; persons registered in the National Sex Offender Database are also included.

If, within the past three (3) years, a person has been convicted of a non-violent crime, or is still subject to conditions of a sentence relating to a conviction of a non-violent crime, that person will be denied housing. If a person is facing outstanding charges of a non-violent crime but has no previous convictions, they shall not be denied housing with CRH.

However, having a criminal conviction is not an automatic bar to tenancy with CRH. The policy sets out the process for a household member to follow to appeal the decision to deny housing because of what was revealed in the PIC.

In practice when VCU staff meet with prospective tenants about their PIC, they will inquire into the circumstances of an offence, even those listed under violent crimes. In some cases, even though a conviction will be within the time period outlined above, a person may be housed in a CRH building depending on the circumstances around the conviction.

### Policies at Other Housing Providers

In Edmonton, Home Ed and Metis Capital Housing both require PICs to be completed by applicants. Large, private property management bodies such as Metcalf and Boardwalk do not ask, as a general policy, for PICs from applicants. Greater Edmonton Foundation does not require a PIC of their tenants.

A quick survey of other housing providers indicates that there is not a practice of requiring PICs. Calgary Housing Company requires PICs from prospective tenants for only one of their buildings located in the downtown area; they had experiences of high crime rates in that building and subsequently instituted a PIC screening procedure. The building caters to people with multiple barriers and also includes services in the building. Lethbridge Housing Authority and the Bethany Group do not have a PIC requirement in their process.

BC Housing applicants to social housing do not provide a criminal record check report; however the application form does indicate that this may be asked of applicants prior to being offered housing. A PIC would be required if an applicant has lived in BC for less than five years, or if the applicant's name appears on the BC Court Service website. BC Housing scans every applicant's name on the BC Court Services website. A person would be denied housing if they have a history of sexual interference with children. Other criminal histories may require a positive landlord reference in order to be housed, specifically cases of safety, harassment and property damage. For e.g. the current landlord would state in writing that the criminal behaviour has not occurred in the last 6-12 months.

Two of the largest housing providers in Canada, Toronto Community Housing and Ottawa Community Housing (through The Housing Registry which manages their applications) do not require applicants to complete a Police Information Check.

In the United States, under the *One Strike* legislation enacted in the 1980s and 1990s, many public housing authorities have imposed blanket bans on tenants with criminal records without any policy for discernment between convictions, or any ability for appeal. However, this has

recently been challenged on many fronts in American courts, arguing that this policy is contradictory to the *Fair Housing Act* and a violation of human rights.

## Literature Review

There is a significant body of literature about the use of criminal record checks in housing. It is important to note that the use of Police Information Checks or Criminal Record Checks by landlords (both private and public) is currently being discussed both locally and internationally. As Ehman and Reosti (2015) note, many landlords have started using some kind of records check (whether a PIC or a Criminal Record Check) as a screening tool because of the increased fear of their liability in the face of crimes committed by a tenant. While Ehman and Reosti (2015) detail this fear as a motivator for including checks, they note that in the United States, private landlords have not been found to have a duty to screen tenants and to conduct background checks.

In the current research on the impacts of criminal records checks (CRCs), there are four main findings.

1. There is no empirical evidence that a criminal record predicts that people will not be good tenants.
2. Housing is a key factor to reducing rates of recidivism.
3. Based on the current issues around disproportionate representation of certain populations in the criminal justice system, there is the likelihood that a CRC requirement for housing causes disparate effects on Aboriginals, people of African descent, and other racialized groups, as well as people living with mental illness.
4. The use of CRCs has been referred to as “institutional exclusion” and prevents people from applying.

### *Lack of Empirical Evidence*

Ehman and Reosti (2015) argue that a criminal record check is not predictive of an unsuccessful tenancy. They suggest that in research where ex-offenders have stable housing, their record did not predict that they would offend again, or be bad tenants. While many of the findings that Ehman and Reosti (2015) site are based on supportive housing models, they argue that background checks that include criminal records should not be used to predict what kind of tenancy the applicant may have. Indeed, there are even some crimes that would not impact the kind of tenancy someone would hold. For example, in some jurisdictions crimes such as intellectual property theft or illegal downloading are not considered to count against applicants.

Malone (2009) outlines many facets often considered in evaluating peoples' records, including the nature of the criminal history, the time elapsed since the conviction, the number of prior offences and the seriousness of them. Interestingly, it is suggested that none of these facets were statistically predictive of the success of tenants with criminal records. Interestingly, Malone

(2009) suggests that this “runs counter to common beliefs that housing needs to be free of offenders in order to be safe for other residents” (p. 228).

### *Housing and Recidivism*

There *is* data supporting the need for housing for those with criminal records. For example, Meredith et al. (2003) found that housing was the key factor that reduced rates of recidivism. They found that each change of address while on parole was associated with a twenty-five percent increase in the likelihood of re-arrest. In another study in the United States (Shah et al. 2013), participants who had secured permanent housing had the lowest rates of recidivism and the highest rates of employment, medical coverage and substance abuse treatment.

Alongside of the research demonstrating the need for permanent housing to promote reintegration into community, there is also the finding that formerly incarcerated people experience homelessness and housing instability at double the rate of the population who has not been incarcerated. If one were to not accept the premise of the first point (that there is no proof that a criminal history can be assumed to lead to future criminal behaviour or bad tenancies), it is of note that housing is difficult for formerly incarcerated folks to secure, and yet is one of the key factors to promoting reintegration and rehabilitation. While one might believe that people with criminal records are likely to re-offend, the data suggests this is less likely to happen with secure housing.

### *Impact of Criminal Justice System*

In Canada, Aboriginal and Black or African Canadian people are over-represented in the criminal justice system. In Alberta provincial statistics, per 100,000 population, the rate of incarceration for Aboriginal people is 800.3, while for Non-Aboriginal people is 67.7. In the federal system, the difference is 330.4 Aboriginal people to 44.6 Non-Aboriginal people, which is a variance of 7.43. The Supreme Court of Canada has noted this overrepresentation and their remarks in *R. v. Gladue* are pertinent to this issue:

*The circumstances of aboriginal offenders differ from those of the majority because many [A]boriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions. (1999:42 at 68)*

In addition to a concern about the overrepresentation of racialized people in the criminal justice system, people with mental health disabilities as a group tend to have more frequent contact with the police and overrepresented in prisons.

The idea that policies relating to criminal records would have disparate effect on specific populations has been argued in the courts in the United States as well. Scholars have argued that the policy of exclusion based on criminal records has a disparate impact on people of color because of their overrepresentation in the system (Morris 2016; Oyama 2009).

It is important to note that it is not only that racialized populations are overrepresented in prisons, but that they are also overrepresented in interactions with police, and receive harsher measures in the criminal justice system. Research in this area shows that “Blacks are overrepresented in local police stops in Canada” (Millar and Owusu-Bempah 2013, p. 654). In addition,

...youth belonging to a high-risk, visible minority category (that is, youth identified as Aboriginal, Black and West Asian racial/ethnic origin) were approximately three times more likely than other youth to report having had contact with the police in the past year. We feel that this is a conservative estimate of DMC [disproportionate minority contact] in Canada, given that other Canadian research has demonstrated significant overrepresentation of particular minority groups at different stages in the justice system. For example, the odds of an Aboriginal person being identified by the police as an offender were nearly seven times higher than the odds for a non-Aboriginal person in a central Canadian city (Fitzgerald and Carrington 2011, p. 472).

According to the Ontario Human Rights Commission, the Special Investigations Unit, which investigates death by police force members, Aboriginal and African Canadians are overrepresented as victims (OHRC, 2014).

#### *Institutional Exclusion*

Current literature examining the practice of requiring Criminal Record Checks for housing suggests that people who have been involved in many institutions, particularly the criminal justice system, may be reluctant to share their history, even if there is a chance of housing, and thus do not apply. Thacher (2008) calls this “institutional exclusion” while others refer to this kind of outcome of a criminal record as a “collateral consequence.” Thacher (2008) suggests that while individual policies of exclusion may not seem as impactful as incarceration, for example, that many institutions are exclusionary, adding up to a kind of incapacitation to be able to participate in society and community.

Similarly, Brayne (2014) uses the concept of “system avoidance” to describe the ways that people who have had contact with the criminal justice system avoid institutions that keep formal records or require them to submit records. Brayne (2014) suggests that there are many reasons which may contribute to this avoidance; it is significant because there is documented avoidance of institutions by those who have criminal records and this avoidance of systems would disproportionately affect those who are overrepresented in the criminal justice system.

Overwhelmingly, the literature suggests that having policies that involve a mandatory submission of criminal records will have a disparate effect on some populations and will lead to some of those in need of housing to not apply. It also suggests that it does not serve the community in providing stable housing as a factor to reducing recidivism, and finally, that it is not an effective risk management tool.

## What We Heard

There were numerous contacts made with CRH internal and external stakeholders to understand how the policy was being administered, the purposes of the policy, how it was understood by community members, and to gain insight into the implications of this policy on clients of various organizations. The stakeholders who provided feedback are listed in Appendix A.

There were no limitations provided on what CRH would consider as the policy moving forward and stakeholders were invited to suggest if the policy should remain in place as is, if CRH should maintain the requirement of a PIC but change the denial criteria, or if the PIC requirement should be discontinued in its entirety. The summary of feedback provided below is grouped using those options as a theme.

### *Keep the Policy As Is*

For those who we spoke with who saw value in the current policy remaining as it is, the reasons included preventing crime on our sites and providing a perception of safety. It was stated by those who were familiar with CRH properties prior to 2007 that there was a decline in criminal activity when the PIC requirement was introduced.

### *Keep the Policy but with Amendments*

Many stakeholders reflected that there was acceptance with requiring a PIC, notably for similar reasons as provided by the stakeholders in the theme above but suggested that the policy be changed. They identified four main problems with CRH's current policy:

1. There was not enough transparency about the policy and possibility for appeal
2. There were grey areas in convictions that were not being captured by the process
3. CRH's policy includes looking at charges of which the applicant has not been convicted.
4. The timing of requesting a PIC was demoralizing for those denied housing who had been waiting a substantial time on the waitlist.

The most commonly accepted criteria for exclusion was if a prospective tenant had a conviction relating to harm against a child (such as sexual interference). While some stakeholders raised concern about that threshold because the circumstances for the offence were contextual (e.g. a woman being charged with child endangerment for not leaving an abusive partner "soon enough"), many of those consulted indicated that setting criteria around a particular offence rather than a broad sweep of "violent crime" would be preferable.

We heard from people working with Housing First participants that they often did not even send their clients to CRH because they had criminal records, and if they did, suggested they only apply for subsidy. Other organizations highlighted concerns with the language used by CRH

such as indicating applicants had to “pass” a Police Information Check, leading applicants to believe they needed to have a clear record to be eligible for housing.

Some organizations suggested that if CRH were to continue with such a policy, it would be important to be clear that there are some crimes that are a product of the circumstances within which many of our clients live. For example, cycles of abuse or surviving residential schools, or self-medicating. Stakeholders felt strongly that keeping people from housing for these kinds of crimes and circumstances was punitive. Understanding this context means that CRH would have to develop a clear policy on which convictions are understood as crimes for survival. Many of the stakeholders were concerned that maintaining a policy that excluded some of those with criminal records (or criminal charges) also is not likely to reduce recidivism or to support clients to live their best lives.

Finally, there were concerns raised about the timing of the PIC. Currently, applicants must submit their PIC at the time of offer of a unit. During consultation, many people reported that this was demoralizing for those who were subsequently denied housing after being on the waiting list for a significant amount of time, and seeing a unit they wanted to accept. Some stakeholders suggested asking for the PIC at an earlier date in order to avoid false hope for applicants who would not be admitted into CRH housing and would allow them to put their efforts into finding other housing solutions.

### *Discontinue the Policy*

Many stakeholders felt that the PICs were a poor risk management strategy, and that the policy is more punitive than helpful. It was suggested that CRH look at different methods for evaluating risk and creating security on sites. Additionally, the point was made that PICs do not reveal criminal behaviour, just those criminal behaviours for which people are evicted.

Stakeholders who held the view that the policy should be discontinued were adamant that this was an issue of ethics and justice. Those who have been convicted have served their time and to bar them from CRH housing is to extend the punishments which have already been determined for them in a court of law. They suggested that this impacts vulnerable people much more significantly than others, and that a denial of housing will put them in a much more precarious position than if they had access to stable housing. It was also explained that this policy keeps families apart because they are unable to live together in CRH housing; one family member may have a criminal record that falls within the thresholds of CRH. It was strongly recommended that rather than requiring a PIC, CRH instead put those resources into developing public responsibility and sense of community in their buildings, and suggested CRH could build a crime prevention strategy.

While EPS advised CRH that PICs do not reveal mental health information, there are some convictions reported that are tied to mental health diagnoses that can be read on a PIC. The

possibility of having access to mental health information was articulated as a deep concern, particularly given the vulnerable populations served by CRH. Additionally, because CRH is not able to keep the information on file, the long-term possibilities of appeal are impossible as there is no documentation as to the decision made. The final concern heard from stakeholders included that there was an increased demand on those who access many systems to “tell their story” and that applicants who have a criminal record are required to do so through the CRH policy. Not having a PIC policy would eliminate the subjective nature of who would feel capable and have the time to appeal, as well as those who are less in a position to advocate for themselves.

## Conclusion

CRH has done an extensive review of literature, current practices and the opinions of our key stakeholders. This report will inform the process of reviewing the PIC policy at CRH, and will lead to increased transparency.

## Appendix A

The organizations who provided feedback for this policy review include:

- Capital Region Housing
- Centre to End All Sexual Exploitation (CEASE)
- The City of Edmonton (Financial Empowerment Team and Community Inclusion and Investment Team)
- C5 as represented by the Edmonton Mennonite Centre for Newcomers, Boyle Street Community Services, Terra Centre, Norwood Child and Family Resource Centre and Bent Arrow Traditional Healing Society
- Edmonton Community Legal Centre
- John Howard Society
- The Today Centre
- Housing First providers, including those from the Bissell Centre, the YMCA, Pathways to Housing
- Homeward Trust Edmonton
- Home Ed
- Metis Capital Housing
- Members from the Edmonton Police Service (Project Watch and Multi-Family Crime Free Housing Program)
- Prolific Offenders Program (Justice and Solicitor General)