



News Release

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Commissioner Cavoukian Orders Crown attorneys to stop collecting personal information on prospective jurors – Recommends single screening process, in light of widespread background checks

Investigation finds one-third of Crown attorney offices engaged in excessive background checks, in a practice that “should have been put to a stop 16 years ago.”

TORONTO – Ontario Information and Privacy Commissioner, Dr. Ann Cavoukian, today ordered Crown attorneys to cease collecting any personal information of potential jurors, beyond that which is necessary under the *Juries Act* and *Criminal Code*. Proposing a fundamental shift in the way that prospective jurors are screened, the Commissioner also called on the Ministry of the Attorney General (MAG) to implement a single, centralized juror screening process through the existing Provincial Jury Centre, minimizing the need for numerous background checks to be conducted across multiple offices. The new process addresses the lack of consistency in the “patchwork of practices” presently employed by Crown attorney offices and the police.

The Commissioner’s office (IPC) conducted a major investigation into whether the privacy rights of prospective jurors were breached when the police, on behalf of Crown attorneys, conducted background checks through a variety of means, ranging from accessing confidential databases, to informally gathering anecdotal information. Key findings include:

- One third, or 18 of the 55 Crown attorney offices in Ontario had received background information about prospective jurors since March 31, 2006 – this practice extended well beyond the four locales previously identified in the media;
- All 18 Crown attorney offices had gathered personal information that exceeded the criminal conviction eligibility criteria set out in the *Juries Act* and *Criminal Code* – in doing so, they had also failed to comply with applicable privacy legislation; and
- There were varying practices regarding the disclosure of this information by Crown attorney offices to defence counsel.

“I want to be clear that we are not talking about a sweeping epidemic – in a relatively small number of cases, the violation of jurors’ privacy was a routine practice,” said Commissioner Cavoukian. “However, while these practices varied in terms of their invasiveness, the fact remains that 18 Crown attorney offices across the province gathered personal information that exceeded the criminal conviction eligibility criteria set out in the *Juries Act* and *Criminal Code*. What I find regrettable is that this invasive practice should have been put to a stop 16 years ago.”



Under the *Juries Act* and *Criminal Code*, an individual is ineligible to serve as a juror if they have been convicted of an indictable offence for which they have not received a pardon. The *Criminal Code* also allows a juror to be successfully challenged for cause by the Crown and defence counsel if they have been convicted of an offence for which a term of imprisonment exceeding 12 months has been given. The investigation found that practices had developed across Ontario that, in some cases, went far beyond these limits.

This issue of jury vetting was formally flagged by MAG in 1993, after Ontario Superior Court Justice Humphrey questioned the appropriateness of jury background checks. Within weeks, a memorandum on the issue had been written by a senior Crown attorney, culminating in a recommendation that the practice should stop. But it did not stop, and no further action was taken, at that time. Since then, a series of opportunities to provide clear guidance to Crown attorneys were missed, despite this issue surfacing again and again over the years. It was not until March 31, 2006 that a formal instruction to Crown attorneys came into effect, in the form of a MAG 'Practice Memorandum.'

"Unfortunately, the 2006 Practice Memorandum was not sufficiently clear as to what practices were acceptable," added the Commissioner. "We found that a patchwork of practices developed across the province, with a wide variety of opinions across Crown attorney offices as to what background checks were appropriate. My Order will hopefully provide clear direction as to what personal information may or may not be collected in the jury selection process."

The Investigation

On May 25, 2009, media reports emerged that, in Barrie, Ontario, police services had been conducting background checks of prospective jurors, at the request of Crown attorneys. Upon learning that the practice extended beyond Barrie to include other Ontario locations, Commissioner Cavoukian launched an investigation under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* into the practices of conducting background checks of prospective jurors, and whether these practices violated the privacy provisions of the legislation.

The Commissioner's investigation received the full support of the Ontario Government. The Premier, the Honourable Dalton McGuinty, expressed the following view as part of a news conference: "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 We will offer whatever cooperation is required in order to ensure that [Commissioner Cavoukian] can conduct whatever full review that she might and we look forward to receiving any recommendations."

To ensure a comprehensive investigation, the Commissioner's office pursued multiple channels of inquiry, including:

1. Conducting in-person interviews at four different Ontario locations with various parties: Crown attorneys, court staff, police officials and defence counsel;
2. Undertaking an intensive province-wide empirical survey of all 55 Crown attorney offices;

3. Receiving sworn affidavits from senior Crown attorneys;
4. Retaining the services of the Auditor General's staff to review the document capture process involving jury lists; and
5. Receiving 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 David Asper Centre for Constitutional Rights, and the Canadian Civil Liberties Association.

"We have made every effort to deliver a full review of the issues associated with background checks, and to provide workable solutions, to bring to an end any unacceptable practices," said Commissioner Cavoukian.

The Order and Recommendations

Based on the findings of the investigation, the Commissioner is ordering Crown attorneys to cease collecting any personal information of potential jurors beyond that which is permitted under the *Juries Act* and the *Criminal Code*, relevant to criminal conviction eligibility.

Further, the Commissioner is recommending a fundamental shift in the way that prospective jurors are screened in Ontario. Proposing a complete overhaul of the existing system, the Commissioner has recommended that MAG, through its Provincial Jury Centre (PJC), be the only central body to screen jurors who are ineligible for jury duty, based on criminal conviction. As the single entity 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 in London, Ontario, 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.

In total, the Commissioner made 22 recommendations directed primarily at Ministry of the Attorney General (MAG), including:

- The Provincial Jury Centre of MAG should be the only central body to screen out jurors who are ineligible for jury duty, based on criminal conviction;
- Crown attorneys should cease the practice of requesting the police to provide criminal conviction information relating to potential 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 re-write and re-design the jury service qualification questionnaire in order to make it more clear, transparent and user-friendly for all prospective jurors;
- MAG should develop and implement a policy for Crown attorneys on the appropriate retention and disposal of jury panel lists.

“Any practice that taints, or is perceived to taint, the jury process strikes at the heart of the values we share as citizens of a free and democratic society,” said Commissioner Cavoukian. “My Order and Recommendations should 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 increased accountability surrounding the entire jury selection process.”

For a complete copy of the Order, visit www.ipc.on.ca

The Information and Privacy Commissioner is appointed by and reports to the Ontario Legislative Assembly, and is independent of the government of the day. The Commissioner's mandate includes overseeing the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, as well as the *Personal Health Information Protection Act*, which applies to both public and private sector health information custodians, in addition to educating the public about access and privacy issues.

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