



Exhibition Place

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April 6, 2016

To: Business Development Committee

FOR INFORMATION

From: Dianne Young
Chief Executive Officer

Subject: **Vulnerable Sector Searches / Clearances of Employees**

Summary:

At its meeting of February 9, 2016, in discussion with the Mr. Sinopoli, tenant of the QE Theatre, about use of the Theatre for dance recitals for children dance studios, the Committee inquired whether or not IATSE unionized employees who work the event were required to have Vulnerable Sector Searches / Clearances. Mr. Sinopoli indicated that the tenant had been operating these types of events since he entered the lease in 2008 and to date there had been no requirement for such searches / clearances for any IATSE unionized personnel working such events. The Committee requested that this question be further explored by Exhibition Place staff. This report provides the information and advice received from the City Labour Relations consultant and based on this information no policy changes are being recommended.

Financial Implications:

There are no financial implications to this report.

Decision History:

The Exhibition Place 2014 – 2016 Strategic Plan had a Public Space and Infrastructure Goal to *establish Exhibition Place as a destination and gathering place for the community*, and as a strategy to support this goal *we will in partnership with the private sector, enhance public amenities to service our patrons and local community visitors*

A letter dated February 1, 2016 from Jim Karygiannis invited Liberty Grand Entertainment, Muzik Clubs Inc., and Q.E. Theatre/Fountainblu, to attend the meeting of the Business Development Committee of February 9, 2016, to canvas tenant views on events being held at Exhibition Place and how working together can make the grounds a more attractive and more family friendly destination for Toronto citizens and visitors.

<http://www.explace.on.ca/database/rte/files/Item%202-JKLetter%20to%20Tenants.pdf>

Issue Background:

The issue considered in this report is whether there is a requirement or need to impose criminal reference checks for any IATSE staff who provide services within the QE Theatre during dance competitions.

Comments:

Attached as Appendix "A" is the Board's Policy on Criminal Reference Checks and attached as Appendix "B" is a summary provided by the Board's Labour Relations consultant about the general parameters that must be considered with respect to introducing a requirement for Vulnerable Sector Searches / Clearances and changing the Board's Policy and past practice.

With respect to the dance competition events held at the QE Theatre, generally the IATSE requirement, as requested by the tenant through Exhibition Place Facility Services, is for (4) four technicians: one sound technician to operate the sound console; one lighting technician to operate the lighting console; and two technicians for the stage for scenery or props, and rigging floor. The IATSE Technicians are located in the following areas during the event: the auditorium, on stage, rigging floor, or the crew room for their break periods. IATSE Technicians are not located or allowed in areas where the children are getting ready or receiving instructions from their teachers (ie dressing rooms; meeting / practice areas within Fountainblu). IATSE Technicians are not interacting directly with the children or supervising them directly but would be meeting or interacting with the dance teachers/event organizers.

Dance competitions have been taking place in the QE Theatre since 2006, (booked by Exhibition Place in advance of occupation of the Theatre by the tenant). IATSE Technicians have been working with these events since that date and there have been no incidents of any kind that would have raised concerns with respect to presence of IATSE Technicians and the vulnerable children performing in the dance competitions.

It should also be noted that the IATSE Technicians who work at the QE Theatre are called in from the union hall by seniority for the particular event, generally 24 hours in advance of the event. There can be a significant delay in the hiring process when requesting criminal records checks. The Toronto Police Records Management website states, for example, that it can take 5-10 days for a clearance letter, 2 weeks for a Vulnerable Sector Search, and considerably longer if the Vulnerable Sector Search reveals that the individual, or an individual with the same name, is on file with a Federal, Provincial or Local Database

Conclusion:

Upon review of relevant information regarding Vulnerable Sector Searches and the positions that comprise the complement of staff at Exhibition Place and in consultation with the City LR consultant, it is not recommended that Exhibition Place implement a Vulnerable Sector Search policy at this time. Nor is it recommended that the existing Board Policy 'Police Reference Check' be amended to include the requirement for existing staff to undergo a Police Reference Check. Exhibition Place can take the steps necessary to require a Vulnerable Sector Search in the event that Exhibition Place installs a position that requires one.

Contact:

Dianne Young
Chief Executive Officer
Tel: 416-263-3611
Fax: 416-263-3690
Email: dyoung@explace.on.ca

Appendix "A" Board Policy



Police Reference Check

FORMERLY **Police Background Checks**
CALLED:

DATE OF ISSUANCE		
Nov	4	2011

SUPERCEDES POLICY DATED		
Feb	27	2009

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Exhibition Place has the responsibility to ensure a safe and secure environment for its employees and visitors to the site.

Exhibition Place has identified a number of positions including but not limited to: Found Children Attendants who are required to care for unsupervised children, Exhibitor Services Representatives and Ticket Sellers / cash handlers that require incumbents to handle cash related transactions and / or electronic cash related transfers and transactions.

Effective March 1, 2009, the criteria for these positions as it relates to newly hired employees only will be amended to include the requirement of a police reference check. The requirement of a police reference check will be duly noted on job postings where applicable.

The purpose of the check is to determine the suitability of the candidate with respect to their honesty and integrity. The police reference check forms part of Exhibition Place's screening process that includes other methods of assessing appropriateness such as interviews and reference checks.

A police reference check will not be requested until the employer has decided that the candidate is suitable for the position and an offer of employment has been made. The offer of employment is conditional until a satisfactory police reference check has been provided.

Setting aside summer staff, those positions identified will be required to provide, at their own expense and within 60 days of their start date, an original police reference check. Exhibition Place shall retain the original police reference check and will ensure documentation is filed in a secure location.

Appendix "B" Vulnerable Sector Searches / Clearances

Definition of Vulnerable Persons

Vulnerable members of society are defined in the *Criminal Records Act* as persons who, because of age, disability, or other circumstances, whether temporary or permanent are:

- In a position of dependence on others or
- Are otherwise at a greater risk than the general population of being harmed by a person in a position of authority or trust relative to them.

This includes children, youth, senior citizens, people with physical, developmental, social, emotional, or other disabilities, as well as people who are victims of crime or harm.

Considerations for Identifying a Position of Authority or Trust

Being in a position of trust or authority is more than just having contact with children or vulnerable persons. To meet the legal requirements for a vulnerable sector check the nature of the position must cause the person to have authority over, or trust of, children or vulnerable persons. Under the City's policy, consideration is given to the following:

- Is the person in the job is in a position of influence over a vulnerable person?
- Is there repetitive, frequent, unsupervised access to the vulnerable person (one-on-one)?
- What is the level of risk to the participants?
- What duration and frequency of contact with a vulnerable person?

Pre- vs Post-hire Criminal Reference Check

Criminal reference checks are primarily supported when they are part of the hiring process. This is done by making a criminal reference check that is satisfactory to the employer, a condition of employment that the prospective employee must fulfil in order to be employed. In such circumstances, the employer must review and approve the prospective employee's criminal reference check before he/she commences training and/or employment with the employer. The employer may not be able to rely on information obtained from a criminal reference check if obtained after the individual has commenced employment.

In this context, if the reference check reveals a criminal offence the employer can withdraw its offer of employment. For the prospective employee, notice of a criminal reference check will allow a prospective candidate to choose to protect their privacy and seek employment elsewhere.

In the context of employees who is already gainfully employed, imposition of criminal reference checks as a requirement puts the employee in a much more precarious position with possible termination. Furthermore, an existing employee is in a no-win situation where they can only keep their job by consenting to disclose their private information. This is why arbitrators have consistently held that a policy that requires existing employees to undergo police reference checks constitutes an infringement their privacy rights in excess of management's rights under the collective agreement. A policy requiring post-hire police reference checks will generally only be upheld at arbitration if it is a legislative requirement for the position or if the employee works in a highly safety sensitive workplace (i.e. a police station).

Employment / Labour Relations / Human Rights / Privacy Frameworks for Consideration

While the employer is entitled to introduce rules and policies into the workplace these must be reasonable. Whether a rule or policy is reasonable depends on many factors which may include the nature of services at issue, classification of employees being checked, the checking process as well as the employer's response to a prior record being revealed.

The employer may be required to provide evidence of past problems in the workplace, safety concerns, and other such evidence that demonstrates that criminal reference checking is necessary in the workplace.

In addition, the employer must demonstrate compelling reasons for infringing upon an employee's fundamental right of privacy. The labour arbitration jurisprudence continues to uphold workers' privacy vigorously. The legitimate business interests of the employer, in light of alternatives available, must be balanced against the employees' concern for privacy and freedom from an unreasonable search.

The *Human Rights Code* protects against discrimination in employment on the basis of an individual's record of offences. "Records of offences" is defined in the Human Rights Code as:

- an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- an offence in respect of any provincial enactment; ("casier judiciaire")