

Vulnerable Sector Scenarios - Answers

The answers to the scenarios are provided in **red**.

Scenario 1

A provincial soccer association has decided that they do not want VS Checks performed on their employees/volunteers and only want regular criminal record checks conducted. Can the police service perform a VS Check anyway?

No.

Section 6.3(3) of the Criminal Records Act reads “At the request of any person or organization responsible for the well-being of a child or vulnerable person...”. This means that the request must originate with the organization not the police service.

Section 6.3(4) prohibits doing a VS check unless the requirements of 6.3(4) are met.

The CRA provides a mechanism for conducting VS checks. There is no federal legislation that requires VS checks to be conducted

What can a police service do in this case?

Possible actions include:

- Confirm if there is provincial legislation that requires a check for this type of organization. If so, bring it to the attention of the soccer association.
- Contact the association and explain the importance of VS checks.
- Add a note to each check that is done for the association indicating that a check for pardoned sex offences has not been conducted.
- Refuse to conduct the criminal records checks unless a VS check is requested.

Scenario 2

“Kinship” refers to situations where children are placed in the care of family members. An example would be when a child was placed in the care of her grandparents while its mother was unable to care for her. Can a VS Check be performed for kinship screening or are these positions treated the same as adoptions?

Yes.

Kinship situations are generally temporary placements and are under some level of supervision by child welfare organizations. As such they are more like foster care than adoptions.

Section 6.3(3) of the Criminal Records Act states that organizations can request VS checks when “...an application is made for a paid or volunteer position,...”. The word “position” implies that a person can be fired or otherwise terminated.

In the case of adoptions, once the adoption is completed, the person cannot be “fired”. The only way to remove the child is through an apprehension or other mechanism.

In the case of foster care or kinship situations the child welfare organization can terminate the arrangement (“fire” the individual) and make other arrangements for the care of the child without having to obtain a court or other order.

Scenario 3

An intercity bus line has requested that VS checks be performed on all its drivers. Does this type of position meet the requirements for a VS check?

Yes. Section 6.3(3)(a) of the CRA states that

VS checks can be done when “...the position is one of trust or authority towards that child or vulnerable person...”.

Part 2.(1)(c) of the Criminal Records Regulation requires applications for VS checks to show how “...the position is one of trust or authority towards that child or vulnerable person...”. Note that the regulation refers to the position not the person.

Intercity buses frequently have children or vulnerable persons travelling without escorts. It is reasonable to expect that they would view the driver as someone they could trust. Also drivers have the responsibility the safety of the passengers. Thus the drivers have positions of both trust and authority.

Nb. There is no concrete definition of what would constitute a position of trust. People conducting the screening could ask themselves if it is reasonable to believe that the nature of the position (not the person) is such that a child or vulnerable person would go the person for help.

Scenario 4

A school board has requested that all of its contractors get VS checks. This includes the cafeteria workers and people coming in to do renovations. Can VS checks be done on all contractors working for the school board?

It depends on the nature of the position.

With a few exceptions, contractors do not normally occupy positions of authority over the students however in a number of cases they may occupy positions of trust.

In the case of cafeteria workers, the students see them in the school every day, and could very well view them as employees of the school. For this reason it is entirely reasonable to believe that a child could turn to a cafeteria worker if (s)he needed help. This would meet the requirement for a position of trust.

In the case of contractors doing renovations, such as painting the building after hours, it is not likely that the students would view the contractors as representing the school and, as a result, people they should trust. In cases such as this the best solution is to control or supervise access to the children rather than undertaking VS checks for people who may only be in the building for a day or two.

Nb. There is no concrete definition of what would constitute a position of trust. People conducting the screening could ask themselves if it is reasonable to believe that the nature of the position (not the person) is such that a child or vulnerable person would go the person for help.

Scenario 5

Your city is hosting a major sporting event that includes competitors under eighteen. Do all positions that involve access to the competitors require a VS Check?

It depends on the nature of the position.

Some positions clearly meet the requirements. An example would be security personnel.

Some positions clearly would not meet the requirements. An example would be hot dog vendors.

Some positions may or may not require a VS check depending on the duties of the position. For example, chauffeurs would require VS checks if they were required to shuttle unescorted children or vulnerable persons but not if they were only driving VIP's. In cases such as this, it is important that the consent for a VS check (form 1) clearly outline how the position relates to children or vulnerable persons.

Scenario 6

A woman is opening a home-based day care centre. Can she perform a VS check on herself?

No.

It is not possible to conduct a VS check on oneself. The reason is that, under sec 6.3(3) CRA, VS checks are performed to by the people or organizations that are hiring someone. The results are only to be used as part of the staffing process.

Should one of her clients request a VS check, one can be done for the client as the client would be using it as part of the process of deciding whether or not to hire her.

Scenario 7

A children's charity is screening a records manager. The person does not have contact with the children but does have access to children's information including photographs and addresses. Can the organization get a VS check for this position?

No.

Section 6.3(3)(a) of the CRA states that VS checks can be done when "...the position is one of trust or authority towards that child or vulnerable person...".

Part 2.(1)(c) of the Criminal Records Regulation requires applications for VS checks to show how "...the position is one of trust or authority towards that child or vulnerable person...".

Since the records manager will have no contact with the children, there is no position of trust of authority, therefore a VS check cannot be done.

Scenario 8

A person will be teaching English to children in a school in a foreign country. The school requests a VS check. Can the school get a VS check?

No.

The Criminal Records Act imposes strict limits on how information from record suspensions can be used. Because these provisions cannot be enforced outside of Canada, and because VS checks are a search for this information, VS checks cannot be done if the information is to be sent outside of Canada.

Scenario 9

A Canadian charity is screening employees that will work in orphanages in third world countries. Can that charity get VS checks for its employees?

Yes.

But the results must remain in Canada

Scenario 10

An organization wants to provide the results of a VS check to multiple organizations. This will save applicants time and money. Can they do this?

No.

Section 6.3(3) of the Criminal Records Act states "... any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, ...". This is written in the singular tense.

The Criminal Records Regulations requires the minister to consider "... and the relevancy of the offences to the purpose for which disclosure is being considered..." when deciding whether or not to authorise disclosure. This means that the ministerial decision is made based on the individual circumstances of the VS check.

Scenario 11

Can a VS check be done for employees of crisis help lines even though they have not direct contact with their clients?

Yes.

Despite no direct contact, the person so employed remains in a position of trust/authority and could conceivably counsel a vulnerable person into meeting for the purposes of committing a sexual offence, or simply counselling the person in an inappropriate manner.

Scenario 12

An organization that takes care of children has requested that all members of the board of directors get VS checks. Can VS checks be done for these people?

No.

Members of boards of directors do not normally have direct contact with the organization's clients so they would not be in positions of trust or authority over them.

Exception: If a member of the board of directors also performs duties that entailed a position of trust or authority over children, that individual could have a VS check.

Scenario 13

A university has a homestay program where they find families for foreign students to stay with while they are studying in Canada. The university requires all adult residents of the home plus frequent visitors to it to get VS checks. The program is only open to foreign students 18 and over. Can VS checks be done for this purpose?

Yes and No.

VS checks may be conducted on people who live in the house but it is not appropriate for VS checks to be conducted on visitors.

Although the students are likely to be 18 or over, this program is intended for international students who would not likely have a great deal of knowledge with respect to Canadian laws, norms and cultural practices. The student may or may not have a rudimentary knowledge of English or French and is dependent on the host family for food, shelter, and knowledge.

Living in the home of the host family is an intimate setting, and with the emphasis on providing the student with necessities and information as well as all of the communal activities, therefore, the host family is in a position of trust and authority.