

Corporation of the Township of McMurrich/Monteith

By-law 24-2019

Being a By-law to establish a Records Check Policy

WHEREAS Council has authority under the Municipal Act S.O. 201 c 25, 10 (2), as amended to pass by-laws for the health, safety and well-being of persons of the municipality;

AND WHEREAS Council is desirous of establishing and maintaining a Records Check Policy to specify checks, where legally appropriate, to be done by Employees, Committee members and volunteers in order to protect participants in programs and to protect the liability of the municipality.

THEREFORE the Council of the Township of McMurrich/Monteith ENACTS as follows:

1. That the Council of the Corporation of the Township of McMurrich/Monteith establishes, maintains and hereby adopts the Records Check Policy, attached hereto as Schedule "A".

This By-law shall come into force and take effect immediately after the final passing thereof.

Read a first and second time this 3rd day of September, 2019

With Special permission of Council, Read a third time and finally passed this 3rd day of September, 2019

Original Signed by:
Reeve

Original Signed by:
Clerk/Treasurer

By-Law 24-2019
RECORDS CHECK POLICY

1 PURPOSE:

The purpose of this Statement of Policy and Procedure is to specify checks, where legally appropriate, to be done by Employees, Committee members and volunteers in order to protect participants in programs and to protect the liability of the municipality.

2 SCOPE

This Statement of Policy and Procedure applies to all employees, including but not limited to regular, temporary, contract employees, volunteers, students and Committee members.

- 2.1 Applicants being offered a job with the municipality and volunteer applicants will be required to obtain Records Checks appropriate to their positions as detailed below or as detailed in all related legislation.
- 2.2 Every Volunteer is required to sign a request for “Self-Disclosure” every calendar year by January 31st except in the year in which the Records Checks required, on hire or commencement, were obtained.
- 2.3 Drivers Abstracts will be required on a yearly basis for those positions for which these checks are deemed necessary.

3 DEFINITIONS

3.1 “**Record Check**” for the purpose of this policy means:

- (i) Criminal Record Check
- (ii) Criminal Record and Judicial Matters Check
- (iii) Vulnerable Sector Check
- (iv) Request for Self-Disclosure
- (v) Driver Abstract

3.2 Name Based “**Criminal Record Check**” means using names and dates of birth is the most common way to check a person’s criminal history.

As defined by the *Police Record Checks Reform Act, 2015*, information disclosed on this level of Record Check may include unparoled criminal convictions, summary convictions for five years, and findings of guilt under the *Youth Criminal Justice Act* within the applicable disclosure period. Details on this Record Check can be found in the *Police Record Checks Reform Act, 2015*.

A Criminal Records Check will be obtained at the time an employee is offered a position with the municipality or a current employee is assigned or promoted to a position requiring a criminal record check and/or vulnerable sector screening check or when a

volunteer applies for a position. This will only be done if the “Reasonable Grounds Test” applies to the position in question.

- 3.3 **“Criminal Record and Judicial Matters Check”** is a check that includes everything in the Criminal Record Check and the following information:
- Criminal offences where the person has been found guilty and received an absolute discharge within the past year.
 - Criminal offences where the person has been found guilty and received a conditional discharge within the past three years.
 - Criminal offences where there is an outstanding criminal charge or arrest warrant.
 - Some types of outstanding court orders.

A Criminal Records and Judicial Matters Check will be obtained at the time an employee is offered a position with the municipality or when an employee is assigned or promoted to a position requiring such check or when a volunteer applies for a position. This will only be done if the “Reasonable Grounds Test” applies to the position in question.

- 3.3 **“Vulnerable Sector Check”** is a police information check that may include, but is not limited to, whether an individual has unpardoned criminal convictions, non-conviction information, summary convictions for five years, absolute and conditional discharges, finding of guilt under the *Youth Criminal Justice Act* within the applicable disclosure period, as well as any record suspensions for sexual offences and outstanding charges relevant to the position being sought. Details on this Record Check can be found in the *Police Record Checks Reform Act, 2015*.

This is the most “in depth” Record Check and is used when applicants are seeking employment and/or volunteering directly with vulnerable populations as defined in legislation.

The following criteria will be utilized to determine the requirement for a vulnerable sector check:

- The need for the vulnerable sector check is made in good faith with the belief that it is necessary to ensure the safety and well-being of the vulnerable clients served.
- The vulnerable sector check is a *bona fide occupational requirement that is* rationally connected to the responsibilities of the position; and
- The standard is reasonably necessary.

A Vulnerable Sector Check will be obtained at the time an employee is offered a position with the municipality or when an employee is assigned or promoted to a position requiring such check or when a volunteer applies for a position. This will only be done if the “Reasonable Grounds Test” applies to the position in question.

- 3.4 **“Working in the Vulnerable Sector”** means people who volunteer or have jobs where they are in positions of trust or authority over children or vulnerable persons. 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, not the person, must cause the person to have authority over, trust of, children or vulnerable persons and the possible requirement of regular direct and solitary contact.

The following types of roles require a vulnerable sector check:

- Nurses & Doctors
- Teachers
- Social workers
- Daycare workers
- Adoptive parents
- Sport Coaches

3.5 **“Children”** means as being anyone under the age of 18.

3.6 **“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:

- (a) In a position of dependence on others or,
- (b) 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. The vulnerability may be a temporary or permanent condition.

3.7 **“Self-Disclosure”** is a process by which the person is asked to declare his or her Canadian criminal conviction history, in writing. A form will be supplied for this purpose.

Every volunteer is required to sign a “self-disclosure” every calendar year by January 31, except in the year the required Records Check is obtained.

Each self-disclosure declaration shall address the period since the most recent offence declaration.

All employees and volunteers have the continuing obligation to report any incidents, as soon as reasonably possible, any time he or she is convicted of an offence under the Criminal Code of Canada, that happens while they are employed or volunteering with the township. Failure to report such incidents may result in discipline, up to and including dismissal for cause.

This self-disclosure shall relate to only those type of checks that reasonably relate to the persons position as set out in this policy.

- 3.8 **“Drivers Abstract”** Employees whose position requires the operation of a motor vehicle must present and maintain a valid driver's license and a driving record acceptable to our insurer. As a result, a Drivers Abstract, which is a report obtained from the Ministry of Transportation summarizing an employee's driving record, will be obtained and submitted on a yearly basis.

Any changes in an employee's driving record must be reported to the Clerk-Treasurer and/or designate, immediately.

4 **REASONABLE GROUNDS TEST:**

The following criteria will be utilized to determine the requirement for all Records Checks:

- The need for the any or all Records Check is made in good faith with the belief that it is necessary to the performance of the duties of the position held or being offered;
- Any or all Records Checks are a “*bona fide occupational requirement*” that is rationally connected to the responsibilities of the position;
- Legislation or funding agreements require the organization or program to conduct a Record Check for the position;
- Having a criminal record would directly interfere with core job requirements;
- The position involves control over a large amount of organizational or client assets, and supervision, safeguards or auditing procedures are not feasible because of the nature of the work;
- The position involves unsupervised and ongoing contact with individuals in the vulnerable sector; and
- The standard is reasonably necessary.

When the township of McMurrich Monteith requests that an applicant undergo a Record Check it will only consider information that is relevant to employment or volunteering with the township.

Appendix A attached to this policy is a list of current positions that may require a Record Check including an explanation as to why the Record Check is required and what type of Record Check is necessary.

5 **DETERMINING RELEVANCE: (WHAT TO DO WHEN CHARGE OR CONVICTION INFORMATION IS OBTAINED)**

Efforts will be made to determine whether conviction information is relevant to employment or volunteering with the municipality of McMurrich Monteith.

If there are convictions on any type of Record Check, the following questions will be

asked to determine whether the convictions are relevant to the position:

- Does the behavior that resulted in the conviction, if repeated, pose any threat to the employer's ability to carry on its business safely and efficiently?
- What were the circumstances that led to the conviction and the particulars of the offence involved – e.g., how old was the individual when the events in question occurred, and were there any extenuating circumstances?
- How much time has elapsed between the conviction and the employment/volunteer decision? What has the individual done during that period of time?
- Are there measures that can be put in place to address any remaining concerns, thereby continuing the applicant's role within the organization?

Having considered all of the above and any other relevant considerations, the township of McMurrich Monteith will determine whether rejecting an application for employment, promotion, new position or a volunteer position, or taking action with a current employee, including discipline or termination of employment, is warranted by the nature and circumstances of the conviction.

6 PROCEDURE FOR OBTAINING & REVIEWING A RECORD CHECK:

The municipality requires the applicant's consent before it can obtain and/or review any type of Record Check. The applicant's consent must be informed and voluntary. See Appendix B for a copy of the Release and Consent form. If an applicant is asked to undergo a Record Check, it will generally be the last step in the application process. An offer of employment, promotion, placement to a different position or volunteer position will be conditional on passing this requirement, as per this policy. Applicants are advised to review their Record Check results prior to sharing them with the municipality. If they do not consent to a required Record Check or choose to not share the results of a Record Check, they must understand that this constitutes a forfeiture of offer of employment, promotion, reassignment or volunteer position.

In addition to a Record Check required when hired or retained as a volunteer, the Municipality may require a volunteer to consent to a Record Check being conducted if it has reasonable grounds to believe that a volunteer has been charged or convicted of a criminal offence which has not been disclosed. Refusal to provide consent in such circumstances will be considered an offence under this policy that warrants the imposition of discipline, up to and including dismissal for cause of a volunteer.

7 CONFIDENTIALITY:

In accordance with the Personal Information Protection and Electronic Documents Act (PIPEDA) the results of a Record Check are an applicant's personal information. Results will be reviewed by human resources personnel and by Council. Records Check documents will be kept confidential and will be kept in the individuals Human Resources file in a locked cabinet for the duration of the applicants or volunteer's tenure with the

municipality.

8 RESPONSIBILITY:

8.1 The Clerk-Treasurer and/or designate is responsible for issuing a request, at the time of a job offer, promotion, offer of new position or new volunteer applicant for those positions that require a Vulnerability check containing the following information:

- A description of the position
- The name of the organization staffing the position.
- Details about the children or vulnerable persons (e.g. age, or other factors that can show how the person is vulnerable)
- If the position is volunteer, provide an assurance stating the person will not be paid for services or any other personal expenses incurred.

8.2 The Clerk-Treasurer and/or designate is responsible for issuing, on an annual basis, a self-declaration form, for volunteers, to be filed out, signed and returned prior to January 31st of each year. A letter will accompany this form informing the volunteer of the details of this policy and of their responsibility and requirement to complete this document, as it relates to their position with the municipality and as defined by this policy.

8.3 The Clerk-Treasurer and/or designate is responsible for ensuring that all required checks are received, in a timely manner, consistent with the provisions of this Statement of Policy and Procedure.

7 RELATED LEGISLATION

- 7.1 *Criminal Records Act*
- 7.2 *Police Record Checks Reform Act, 2015*
- 7.3 *Ontario Human Rights Code*
- 7.4 *Personal Information Protection and Electronic Documents Act (PIPEDA)*

8 Cost:

The municipality will pay for all costs to obtain these Records Checks.

9 Failure to Obtain Checks:

- (a) If an applicant, for municipal employment or promotion or volunteer position, fails to supply the Records Checks required for their position, as per this policy, within 2 weeks of the request, said position will be forfeited.

Existing Positions:

- (b) after 4 weeks of being given their letter requesting annual “self-disclosure” or

“Drivers Abstract” the individual has not supplied the required checks a letter of warning will be issued.

- (c) Non-compliance after an additional 2 weeks (6 weeks total) the individual will be suspended from their position until they have complied with this requirement.
- (d) Non-compliance after an additional 2 weeks (8 weeks total) will result in the individual being terminated from their position.

APPENDIX A
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EMPLOYEES:

	Criminal Record Check	Criminal Record & Judicial Matters Check	Vulnerable Sector Check	Self- Disclosure (Annual)	Drivers Abstract (Annual)
Clerk Treasurer		X		X	
Public Works Working Superintendent		X		X	X
Fire Chief		X		X	X
Deputy Clerk Treasurer		X		X	
Administration Assistant		X		X	
Landfill Attendant/Rink Attendant		X	X	X	
Heavy Equipment Operator/Maintenance		X		X	X
Heavy Equipment Operator		X		X	X
Summer Roads Worker		X		X	X
Custodian/Handyman		X	X	X	X
Landfill Assistant		X		X	
MMCAP Assistant		X	X	X	

VOLUNTEERS:

	Criminal Record Check	Criminal Record & Judicial Matters Check	Vulnerable Sector Check	Self- Disclosure (Annual)	Drivers Abstract (Annual)
Adhoc School House Committee		X		X	
Cemetery Board		X		X	
Fire Board		X		X	
MMCAP Committee		X	X	X	
Recreation Committee		X	X	X	
Strategic Planning Committee		X		X	
Volunteer Fire Fighters		X		X	X
Medical First Responders		X	X	X	X

APPENDIX B - By-Law 24-2019

Release & Consent

I _____ hereby consent to the Township of McMurrich Monteith reviewing the results of a Criminal Record Check, Criminal Record & Judicial Matters Check, Vulnerable Sector Check, Request for Self-disclosure, or Driver Abstract (circle all that apply)(the "Record Check") as the last step in my application process for the position of

_____.

I understand that providing this information is voluntary and in no way am I being compelled to provide this information. I have reviewed the results of the Record Check and am willingly providing it to the Township of McMurrich Monteith in order to satisfy the conditions of my conditional offer of employment or of a volunteer position, as the case may be. I understand and agree that if the results of the Record Check are found to be unsatisfactory then my conditional offer of employment or of a volunteer position will be void and that this decision is at the sole discretion of the Township of McMurrich Monteith.

I know that I have the option to forgo my application if I do not wish to disclose the results of the Record Check requested.

DATE

SIGNATURE OF APPLICANT

WITNESS

APPENDIX C - By-Law 24-2019

Annual Self-Disclosure Form

As per the Township of McMurrich Monteith Records Check Policy #24-2019 all employees committee members and volunteers must update Criminal Record and Judicial Matters and Vulnerable Sector Checks annually. Submission of false information may result in termination of employment or volunteer activities.

I, _____

declare since the Criminal Record and Vulnerable Sector Checks collected by the Municipality of McMurrich Monteith, or since the last Declaration given by me to the Municipality of McMurrich Monteith, that:

I have **no convictions** for offences under the Criminal Code of Canada, up to and including the date of this Declaration, for which a pardon has not been issued or granted under the Criminal Records Act (Canada)
OR

I have **been convicted of criminal offences** under the Criminal Code of Canada.

If there are any convictions, please submit a separate page to provide information regarding the specifics of the conviction(s), date of the conviction(s), court location and sentence.

I have **no unresolved charges** under the Criminal Code of Canada, up to and including the date of this Declaration, **OR**

I have **unresolved charges** under the Criminal Code of Canada.

If there are any unresolved changes, please submit a separate page to provide information regarding the specifics of the offence(s), date of the offence(s) and court location.

DATED at City: _____

DATE: (DDMMYY) _____

SIGNATURE

Please submit the completed form to the Clerk Treasurer and retain a copy for your own records.

The personal information on this form is collected, used, and disclosed in accordance with the McMurrich Monteith Records Check Policy, the Criminal Records Act, Police Record Checks Reform Act, 2015, Ontario Human Rights Code, and the Personal Information Protection and Electronic Documents Act (PIPEDA), to determine suitability for employment or engagement as a volunteer. The information collected is kept confidential and used consistent with the purpose provided under the Personal Information Protection and Electronic Documents Act (PIPEDA),