

Criminal Background Check Policy - Vulnerable Sector

Intent

El Sistema Grey Bruce – The Big Sound (also referred to as The Big Sound and/or TBS) will comply with all Federal and Provincial legislation regarding the protection of human rights for applicants when conducting Criminal Background Checks. As The Big Sound deals with vulnerable populations, we have a responsibility to protect and maintain their safety, and may do so by conducting thorough screening protocols for potential program staff and volunteers.

Guidelines

Criminal Background Checks

The Criminal Background Check (also referred to as Criminal Record Check) includes a check of the Royal Canadian Mounted Police's (RCMP) national Canadian Police Information Centre (CPIC) database for the following:

- All records of Criminal Code (Canada) convictions
- All pardoned sexual offences
- All records of convictions under the Controlled Drugs and Substances Act
- All records of convictions under the Narcotic Control Act
- All records of convictions under the Food and Drugs Act
- Any undertakings to enter into a Surety to Keep the Peace
- Any Restraining Orders issued under the Criminal Code (Canada) or the Family Law Act
- All outstanding warrants and charges.

In addition to the above, Vulnerable Sector Screening (also referred to as Vulnerable Sector Search) may provide the following information:

- All records of Criminal Code convictions for young persons
- Records of "Not guilty: Not Criminally responsible on account of mental disorder"
- Apprehension under the Mental Health Act
- Probation orders in effect.

Criminal Record Checks will be required for all individuals that will work with, work in close proximity to, or have access to children and youth, including any vulnerable children, youth and/or adults with disabilities. This requirement is in place to make sure that program staff, independent contractors and/or volunteers have not engaged in harmful behaviour in the past that could pose future risk.

Criminal Record Checks will be utilized upon the completion of all other previously established organizational hiring/recruitment/screening procedures, including applications, interviews and personal/professional reference checks.

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An offer of employment and/or volunteer placement with The Big Sound is contingent on a “Clear” Criminal Background Check. In the event that a potential employee, independent contractor and/or volunteer has a “Not Clear” status on their Criminal Background Check, The Big Sound will review the situation and proceed as appropriate. Where it is deemed appropriate, the Board of Directors may interview a potential employee, independent contractor and/or volunteer to gain insight into any pertinent circumstances surrounding the results of their Criminal Background Check, and determine if accommodation is possible or appropriate.

Persons with mental illness, or who have had a mental health crisis in their lives, may have been taken to hospital by the police under the authority of Ontario’s Mental Health Act. Disclosure of such non-criminal activity and other contacts may have a lifelong impact when people apply for employment or a volunteer position. The Big Sound recognizes this potential risk/danger, and will act in good faith to ensure that these persons are not adversely impacted by an illness, or unjustly discriminated against.

Under no circumstances will a Criminal Record Check be used to discriminate against potential program employees, independent contractors and/or volunteers. However, it is critically important that The Big Sound hires/recruits personnel appropriately in such a way as to protect our program’s participants, staff, independent contractors and/or volunteers.

When posting employment/volunteer opportunities, The Big Sound shall list essential duties of the position, and state clearly where any applicant may be required to pass a Criminal Background Check.

In all cases The Big Sound shall obtain the individual’s written consent before conducting a Criminal Background Check.

Criminal Record Checks

Criminal Record Checks relate only to criminal activity under the Criminal Code.

Criminal Record Checks are allowed under the Ontario Human Rights Code for unpardoned offences. Criminal Record Checks for some pardoned offences, such as pardoned sex offences, might be appropriate, but only for positions that deal with vulnerable persons. Criminal Record Checks are normally processed by an investigation firm through the Canadian Police Information Centre (CPIC).

Bona Fide Occupational Requirement

It is critically important to establish that a position has a bona fide occupational requirement associated where a Criminal Record Check serves a legitimate purpose.

Police record checks that are not required for a legitimate purpose may have an unfair impact on people with mental health disabilities who have had non-criminal police contact.

The Supreme Court of Canada has set out a three-step test for justifying a discriminatory standard, factor, requirement or rule as a bona fide occupational requirement. In general the requirement should be:

- For a purpose or goal that is rationally connected to performing the job

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- Adopted in the belief that it is necessary to fulfill a legitimate work-related purpose
- Reasonably necessary to accomplish the work-related purpose.

As a result of this test, the rule or standard must be inclusive and must accommodate individual differences up to the point of “undue hardship”. An example of undue hardship is when the health and safety of others is put at risk.

Vulnerable Persons

The Criminal Records Act says vulnerable persons are:

“persons who because of their age, a disability or other circumstances, whether temporary or permanent, are in a position of dependence on others: or are otherwise at greater risk than the general population of being harmed by persons in a position of authority or trust relative to them” (*Criminal Records Act, (R.S., 1985, c.C-47) Section 6.2*).

Before Requesting a Criminal Record Check

The Big Sound shall only request that a candidate consent to a Criminal Record Check following the standard hiring/recruitment procedures, and after providing the candidate with a written offer of employment and/or volunteer placement, conditional on a satisfactory outcome.

Prior to making the conditional offer, The Big Sound will not ask applicants anything related to mental or physical conditions, involvement with police, or pardoned offences.

Police Record Check Process

A first step in the hiring/recruitment process shall be to develop a detailed job and/or volunteer position description. The description will show how the position has responsibility for vulnerable persons and reasons why a Criminal Record Check will be required.

Such requirements shall also be set out briefly in any position ad.

The Big Sound will explain to the applicant why a Police Record Check is needed.

The Big Sound will carefully review all the information before making a conditional offer. When the offer is made, the individual must be asked for their written consent if a Criminal Record Check is required.

If seeking more than a Criminal Record Check (i.e. Vulnerable Sector Search), The Big Sound shall certify that all relevant information has been reviewed, and that organization personnel responsible for the review have undertaken available training in regard to human rights and other procedural obligations regarding a genuine need for Mental Health Act apprehension information, and explained this to the applicant.

Police will first share the results of a Police Record Check with the applicant. The applicant may then decide whether to proceed with the application and share it with The Big Sound. Before doing so, the applicant could first choose to ask the police Service to clarify, revise, suppress or remove information in the record.

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The Big Sound will withdraw any conditional offers made where it does not receive required information.

The Big Sound shall review the information provided to see if it is relevant to the job/volunteer placement. The Big Sound, the applicant and the police service should all be open to discuss the results.

The Big Sound will remain open to the possibility of providing accommodation for the applicant if appropriate and possible.

The Big Sound shall ensure that all applicants' information is kept confidential.