



# Nishnawbe Aski Nation

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## MEMORANDUM

To: All NAN Chiefs and Potential Nominees for NAN Elections  
From: NAN Electoral Officer  
Date: May 7, 2021  
RE: Clarity Regarding Criminal Reference Checks

Wachay Misiway,

This memo serves to provide information and clarity regarding the requirement for a criminal reference check for nominees for the NAN Elections.

### Background

The Head Electoral Officer (HEO) has been made aware of some questions regarding the requirement for NAN Grand Chief and Deputy Grand Chief nominees to provide a criminal reference check as stated in the NAN Elections Code. This memorandum serves to provide some clarity with respect to the criminal reference check requirement.

To develop this memorandum, I reviewed the following documents: NAN Election Code, NAN Bylaws, NAN Executive Council Code of Conduct, *Canada Not-for-Profit Corporations Act*, *Criminal Records Act*, *Police Record Checks Reform Act*, RCMP website regarding criminal reference checks<sup>1</sup>, and the Keewaywin Resolution 19/27: *Amendment to NAN Election Code*.

### Summary

This information applies to the nominees for the positions of Grand Chief and Deputy Grand Chiefs.

Nominees will be required to submit a Criminal Record Check (CRC) that confirms no convictions under the *Criminal Code of Canada*. A CRC will report summary convictions that are less than 5 years old and indictable convictions. The difference between a summary and indictable offence are outlined below. Charges with no convictions will not be disclosed.

Nominees will **not** be required to submit a Criminal record and judicial matters check (CRJMC) or Vulnerable Sector Check (VSC).

All documents will be treated with confidence and only the HEO will have access. The Checks will only be used to determine eligibility for the roles. The HEO will inform nominees directly if they are ineligible based on the results. The results will not be published. All documents pertaining to the

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<sup>1</sup> <https://www.rcmp-grc.gc.ca/en/types-criminal-background-checks>

election, including the reference checks, will be destroyed in a confidential manner by the HEO immediately prior to my completion of my term.

### **What is the updated NAN Election Code?**

The updated NAN Election Code was approved by the NAN Chiefs at the Keewaywin conference in 2019 via *Resolution: 19/27, Amendment to the NAN Election code*. The resolution purpose was to make some fundamental updates to the previously outdated Election Code. The updated Election Code includes a requirement for a criminal reference check for all nominees.

According to section 3.1:

*Each Candidate:*

*e) Must not have been convicted of a criminal offence under the Criminal Code of Canada.*

According to section 4.1:

*Nominations for Grand Chief and Deputy Grand Chief*

*All nominations for Grand Chief and Deputy Grand Chiefs must meet the following criteria:*

***(2) Shall be accompanied a Police Information Check, a Police Vulnerable Sector Check, and proof of no convictions under the Criminal Code of Canada. [Emphasis Added]***

This language is also echoed in the Executive Council Code of Conduct that was passed in 2017. Under the Executive Council Code of Conduct:

#### *II. CRIMINAL RECORD*

*It is a condition of holding a position on Executive Council that a member must submit to and provide the results of a Police Information Check and a Police Vulnerable Sector Check.*

*No member of Executive Council may hold office if he or she is convicted of a criminal offence under the Criminal Code of Canada.*

#### *XIII. DISCREDITABLE CONDUCT*

*Executive Council shall refrain from engaging in conduct that would discredit or compromise the integrity of NAN or any NAN community.*

*Discreditable conduct includes:*

*5. Conviction of an indictable offence*

In this way, the Election Code aligns with the pre-existing Executive Council Code of Conduct.

As the HEO, it is my role to follow the Election Code as determined by the NAN Chiefs, uphold and comply with the provisions of the Election Code and all other by-laws and policies of NAN, fulfill my duties faithfully, honestly, impartially, and professionally, and make determinations with respect to the rules acting in the best interests of NAN, and remain neutral in the conduct of this office.

### **What kind of reference check is required by the Grand Chief and Deputy Grand Chief nominees?**

Each nominee will be asked to submit a criminal record check.

There are three kinds of reference checks:

- 1) Criminal record check (CRC)
- 2) Criminal record and judicial matters check (CRJMC)
- 3) Vulnerable sector check (VSC)



1) Criminal record check (CRC)

A CRC will disclose:

- Every criminal offence of which the individual has been convicted for which a pardon has not been issued or granted, including summary convictions that are less than five years after the date of the summary conviction.<sup>2</sup>
- Every finding of guilt under the *Youth Criminal Justice Act* (Canada) in respect of the individual during the applicable period of access under that Act.

2) Criminal record and judicial matters check (CRJMC)

The CRJMC discloses much more information, including every criminal offence for which there is an outstanding charge or warrant to arrest and every court order made against the individual, except for where the individual received an absolute discharge within specified timeframes.<sup>3</sup>

3) Vulnerable sector check (VSC)

A VSC is a police information check plus a check to see if a person has a record suspension (pardon) for sexual offences. People who volunteer or have jobs where they are in positions of trust or authority over children or vulnerable persons can be asked to obtain a vulnerable sector check. 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, or trust of, children or vulnerable persons. It is illegal for police service to conduct a vulnerable sector check if the position is not in a position of trust or authority over children or vulnerable persons.<sup>4</sup>

The positions of Grand Chief and Deputy Grand Chief do not meet the VSC criteria. As such, it is unlikely that a police service would permit the search. Therefore, the nominees for NAN Grand Chief and Deputy Grand Chief will **not** be required to submit a VSC.

For the purposes of the election proceedings, the CRC will report enough information for the purposes of determining the eligibility of nominees. Therefore, only the CRC will be required of nominees.

### What will a CRC disclose?

There are different offences in the *Criminal Code of Canada*: summary, indictable and hybrid.

A summary offence is a criminal offence that is considered less serious. Typically, summary offences must be charged with the crime less than 6 months after the act occurred, will be tried in provincial court, and the accused does not need to submit fingerprints.

An indictable offence is a charge that is considered more serious. There are no time limits for when accused can be charged and accused must submit fingerprints.

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<sup>2</sup> Note: summary convictions that are older than 5 years will likely not appear on a CRC.

<sup>3</sup> *Police Record Checks Reform Act*, 2015, S.O. 2015, c. 30.

Online:<<https://www.ontario.ca/laws/statute/15p30>>

<sup>4</sup> <https://www.rcmp-grc.gc.ca/en/types-criminal-background-checks>; Criminal Records Act, s 6.3(1). Online:<<https://laws-lois.justice.gc.ca/PDF/C-47.pdf>>



A hybrid offence can be considered summary or indictable based on the circumstances or seriousness of the crime.

As mentioned, summary offences that are older than 5 years will not appear on a CRC.

### **How do I get a CRC?**

The Nishnawbe Aski Nation police services, Ontario Provincial Police, Thunder Bay police and Timmins police all offer CRC services. All websites of each police service have links to an online request for a CRC.

There is a cost for the service as the Grand Chief and Deputy Grand Chief roles would be considered employment. The costs are the responsibility of the nominee.

CRCs may take anywhere from a day to several days or even weeks to receive. **I recommend that all potential nominees apply as soon as possible to avoid any delays in receiving their CRC.**

### **What will happen to my CRC when I submit?**

Nominees will receive a copy of their CRC first. At that time, they can choose to complete their acceptance and verification form.

When nominees submit their CRC to the Head Elections Officer, it will remain confidential. CRCs received by email directly to the email address [nanelections2021@outlook.com](mailto:nanelections2021@outlook.com) can only be accessed by the Head Electoral Officer.

CRCs received by fax or courier will be delivered to the NAN offices. NAN staff have been instructed not to view any correspondence intended for the HEO and to forward any materials pertaining to the election to me unopened. While the Head Electoral Officer has full confidence in NAN staff, there is still the chance that confidential documents may be inadvertently viewed by NAN staff. To ensure full confidentiality, I advise it best to email a scanned copy directly to me.

CRCs will **not** be published and the contents will **not** be shared publicly. The Head Electoral Officer will use the information to determine the eligibility of the nominee based on the Election Code. In the event of ineligibility, this will be communicated directly to the nominee from the Electoral Officer. Only eligible nominees will be published on the candidate list. Any nominees who were not eligible, including any reasons for ineligibility, will not be published.

All documents will be destroyed in a confidential manner by the HEO upon completion of my term.

### **Conclusion**

This memo will be posted on the NAN Elections website. For further questions or clarifications, please contact me via phone: 613-864-7033 or email: [nanelections2021@outlook.com](mailto:nanelections2021@outlook.com)

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Jocelyn Formsma, H.B.Soc.Sci, J.D.  
Head Electoral Officer, NAN Elections 2021

