

# DISCHARGES

## (Form of Sentence / Punishment)

### What impact will an Absolute or Conditional Discharge (“Discharges”) have on Employment and / or Border Crossings?

- With few exceptions, a person who receives an absolute or conditional discharge is deemed or considered not to have been convicted of a criminal offence.
- It is important to note however that even though an absolute or conditional discharge is deemed not a criminal conviction, discharges still result in a finding of guilt. Furthermore, anyone who receives an absolute discharge should be aware that it is recorded in an automatic Criminal Conviction Records Retrieval System (C.P.I.C.) for a period of one year after the sentence is imposed. In the case of a conditional discharge, it is recorded for a period of three years after the probation period ends; for example, if you receive a conditional discharge and 1 year probation, it is recorded for a period of 4 years (3+1).
- A Judge may give an absolute or conditional discharge to prevent a person from having a criminal “conviction” that would otherwise cause problems with employment or when crossing the border into the United States.
- With respect to border crossing, a person who has received a discharge or is being offered a discharge in exchange for pleading guilty should consider the following:
  - It would seem that the American border officials have access to the automatic criminal conviction records retrieval system (C.P.I.C.). It is likely that they can identify the criminal record of any Canadian who is attempting to enter the United States – even people who have received a discharge.
  - It is also important to note that Americans do not have absolute or conditional discharges in their criminal justice system and therefore may not recognize discharges as a lower form of punishment.
- Therefore, there is no guarantee how the American border official will react when dealing with a Canadian who has received a discharge. In reality, the nature of the charge itself (i.e., charges that are drug-related or violent in nature) may be more relevant to the American border official than whether the person received a discharge for committing the offence.
- With respect to employment, although a person can honestly say they have never been convicted of a criminal offence in the case of a discharge, it should be noted that the discharge results from a finding of guilt that is recorded in the automatic criminal conviction records retrieval system (C.P.I.C.) until the above periods of time have expired. Therefore, there are no guarantees that a prospective employer will not find out about a person receiving a discharge as a punishment in a criminal matter. However, an employer will NOT have access to this information unless YOU sign a waiver giving this employer access to this information as it is deemed private and confidential. Those waivers are, however, a requirement for certain jobs such as teachers, childcare workers, etc.
- If a person does have an absolute or conditional discharge, it is a good idea to have your records searched upon the completion of the above noted time periods to confirm that the records have indeed been removed. This is especially advisable where the person may have particular concerns about his or her record being checked for such purposes as employment and/or immigration.
- A person should get legal advice from a lawyer who has experience in the areas of employment and/or immigration law. Furthermore, a person may want to speak to the American border officials to be properly informed about American border policies regarding their unique situation.
- A discharge is one of the least serious forms of punishment under the Canadian criminal law. Once the relevant period of time has passed (i.e., one year in case of an absolute discharge or three years, after the probation period is over, for a conditional discharge), a person can go through life without any reference being made to their involvement in the criminal justice system.

**\*\*Note:** This information sheet was prepared by Metro North Duty Counsel and is for general information purposes only. If you have any questions regarding the information provided in this handout, please consult the Duty Counsel office or another criminal lawyer. This information is made available by The Salvation Chaplain’s office.

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