

SECTION: Legislation

Effective date: August 16, 2002

SUBJECT: CRIMINAL RECORD

This policy is intended to assist in the understanding and application of *The Human Rights Code*.

Alleged discrimination in employment on the basis of a criminal charge or conviction may constitute the basis of a complaint under section 9(1)(a) of *The Human Rights Code*.

Whether a charge or conviction has a bona fide relationship to the occupation or employment will depend upon all of the circumstances of the individual case, including, at least, the following:

- (i) Does the behaviour that is the subject of the charge or conviction, if repeated, pose a significant threat to the employer's ability to carry on its business safely and efficiently?;
- (ii) What were the circumstances of the charge and the particulars of the offense involved: e.g. how old was the individual when the events in question occurred; were there extenuating circumstances?;
- (iii) How much time has elapsed between the charge or conviction and the employment decisions? What has the individual done during that period of time? Has s/he shown any tendencies to repeat the kind of behaviour for which s/he was convicted? Has the individual shown a firm capacity to rehabilitate him/herself?;
- (iv) Although not determinative in and of itself:
 - a. has a pardon been secured in relation to the offence?
 - b. have all the conditions been met in relation to an offence for which a conditional discharge was received?
- (v) Having considered all of the above, was the severity of the particular action taken against the Complainant warranted by the nature and circumstances of the charge or conviction?

The onus is on the employer to establish that the existence of the criminal charge or conviction is a reasonable disqualification.

The Commission recognizes an individual's fundamental right to be presumed innocent until proven guilty subject to only such reasonable limits as prescribed by law as can be demonstrably justified in a free and democratic society. Therefore, where the discrimination is based on a criminal charge, as opposed to a conviction, the evidentiary onus on the employer will be greater. In addition to the factors (i) to (v) above, the employer must clearly demonstrate that the risk to the public, co-workers or the employer's business is so severe that the mere possibility of a conviction warrants the discriminatory employment decision.

In relation to services and housing, the Commission's position is that the same considerations listed above apply, with necessary modifications as the circumstances may dictate.

APPROVED BY:

Original Signed By

"Janet Baldwin"
Chairperson

12 February 2003
Date