

SECTION: Interpretation

Effective date: August 16, 2002
Revised date: September 30, 2020

SUBJECT: CRIMINAL RECORD

Purpose:

This policy is intended to assist in the understanding and application of The Human Rights Code ("*The Code*"). Where there is any conflict between this policy and *The Code*, *The Code* prevails.

Context:

Alleged discrimination on the basis of a criminal charge or conviction may constitute the basis of a complaint under section 9(1)(a) of *The Code* (A.B. v. University of Manitoba, 2020 MBHR 1).

Whether a charge or conviction has a bona fide relationship to the employment or service 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 or service provider'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 since the charge or conviction? What has the individual done during that period of time? Have they shown any tendencies to repeat the kind of behaviour for which they were convicted? Has the individual shown a firm capacity to rehabilitate themselves?;
- (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 or service provider 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 organization is so severe that the mere possibility of a conviction warrants the discriminatory decision.

APPROVED BY:

"John Burchill"
A/Chairperson

September 30, 2020
Date