

What is A Discharge?

WHAT IS A DISCHARGE?

A discharge is a type of sentence passed by the Court on a person after a finding of guilt. It happens after a person is found guilty at trial or if they voluntarily enter a guilty plea.

Upon being granted a discharge a person is considered guilty, but is 'deemed not to have been convicted'. Therefore a person granted a discharge may honestly answer that they have not been convicted of a criminal offence. While not a conviction, a record of the discharge is kept by the police for 3 years.

There are two kinds of discharges that may be granted in Canada, Conditional and Absolute.

In the case of an Absolute Discharge the person is deemed not convicted immediately upon the sentence being passed.

In the case of a Conditional Discharge a person is put on probation, typically for 6-18 months (but possibly longer). Upon successful completion of the term of probation the conditional discharge is then made absolute.

It is much more common to be granted a Conditional Discharge than an Absolute one.

More Questions? Please call one of our offices.

Main Office

Emily Murphy House, University of Alberta
11011 88th AVE NW
Edmonton, Alberta T6G-0Z2
Main: (780) 492-2226 OR Civil: (780) 492-8244

Criminal Law-Corona Office

Unit 203
9924-106 Street NW
Edmonton, Alberta, T5K-1C4
Criminal: (780) 425- 3356

Copyright and Disclaimer:

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer. Copyright 2010, Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source and thus there may be difference restrictions on the reproduction of this material. Student Legal Services is not liable for any loss or damage used by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individuals agree that any usage is at their own risk. In some instances, information obtained by Student Legal Services may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and Information provided by third parties does not represent that of Student Legal Services of Edmonton.

Discharges



Student Legal
Services of
Edmonton

Are You Eligible for a Discharge?

According to the Criminal Code, in order to be eligible for a discharge the following conditions must be met:

1. No minimum penalty for the offence
2. Maximum penalty for the offence is no greater than 14 years in jail
3. The discharge must be in the best interest of the accused and not contrary to the public interest

The practical effect of these rules is to limit the availability of a discharge to relatively minor offences where the person being charged has no prior criminal record. Some offences a discharge may be available for include Theft Under \$5000, Fraud Under \$5000, Assault, and Mischief. Please note; this is in no way an official nor is a complete list of offences where a discharge is possible. Also, the granting is a Discharge is at the discretion of the sentencing Judge and is subject to the factors identified in the 'Factors Considered' section.



Student Legal Services of Edmonton

Factors Considered

The general factors considered in awarding a discharge are outlined in the case *R. v. Macfarlane*, and are commonly known as the *Macfarlane* factors.

1. Discharges are designed to be used sparingly so it is uncommon for them to be granted. If a person asks for a Discharge usually the sentencing Judge must be given some very good reasons to grant one.
2. The best interests of the accused are also considered. It is always in the interest of an accused to avoid a criminal record.
3. To decide if the discharge is contrary to the public interest the following factors are considered:
 - The nature of the offence
 - o It is rare that a Discharge will be granted for violent crimes or crimes where a trust between two or more people is breached (employment for family relationships)
 - Prevalence in the community
 - o The more common the crime, the less likely a discharge will be granted
 - If the accused stood to make a personal gain a discharge is less likely to be granted
 - In property offences, the value of the property is considered
 - o The greater the property taken or damaged, the more difficult it is to get a discharge
 - Is the crime committed as a matter of impulse?
 - o The more a crime was planned before being executed, the less likely it is a discharge will be granted
 - Should the offence be a matter of record?
 - o Would members of the public (ie: potential employers) benefit from knowing the accused committed this particular crime? If so, then a discharge is less likely

Factors that may weigh in favour of the accused include entering a plea within a couple of months of a first appearance, and an accused accepting responsibility for their actions by entering a guilty plea.

In practice most judges are very aware of the *Macfarlane* factors, and therefore instead of going through the entire list with the sentencing judge one may be better served by focusing on a few factors that are the most beneficial in any given case. For example if a person pleads guilty to the theft of a small item from a store they may focus on the small value of the property, that it was a crime of impulse, and that even though it was a theft there was a very limited gain to be made from it, and that responsibility is being accepted by entering a guilty plea.