



London Police Service

Explanation of Discharges as a Criminal Record

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Is a Conditional Discharge or Absolute Discharge a Criminal Record? An examination of applicable sections of the Criminal Code and other federal statutes indicates that, in fact, a Discharge is a Criminal Record for the life of the Discharge (although it is not a record of "conviction").

Definition of an Absolute or Conditional Discharge

*Section 730 of the Criminal Code sets out the discharge provisions:
Conditional and absolute discharge -- s. 730(1)*

*730. (1) Where an accused, other than an organization, **pleads guilty to or is found guilty of an offence**, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).*

Period for which appearance notice, etc., continues in force -- s. 730(2)

Comments: This section defines a Discharge as a finding of guilt without registering a conviction.

Definition of “Offender”

This is an excerpt is from the Criminal Code , R.S.C. 1985, Chap. C-46, s. 2: "offender"

"offender" means a person who has been determined by a court to be guilty of an offence, whether on acceptance of a plea of guilty or on a finding of guilt;

Comments: This defines an “offender” as someone who is guilty of an offence, which would include those who have received a Discharge.

Length of Time that Discharges are kept as a Record

*Criminal Records Act
Discharges -- s. 6.1(1)*

6.1 (1) No record of a discharge under section 730 of the Criminal Code that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be disclosed to any person, nor shall the existence of the record or the fact of the discharge be disclosed to any person, without the prior approval of the Minister, if
(a) more than one year has elapsed since the offender was discharged absolutely; or
(b) more than three years have elapsed since the offender was discharged on the conditions prescribed in a probation order.

Comments: This prescribes the time that Discharges may be kept on the national registry, after which they must be removed. While local police agencies are not bound by this direction, most police agencies including the London Police Service have a process by which the offender may request the destruction of the record after the prescribed time.

Opening Words of Section 730

Section 730 of the Criminal Code sets out the discharge provisions and opens up with this comment:

SYNOPSIS-- Criminal Code s. 730

This section provides the court with a sentencing option which results in the accused not having a criminal record in connection with the offence in question.

Comments: This paragraph would seem to indicate that there is no Criminal Record when an offender receives a Discharge. However, within context this is deemed to mean that there would be no criminal record after the prescribed times (one year or three years) have passed, since the Criminal Records Act is very clear about how long they should be kept on file. While they are not a record of convictions, they are classed as a criminal record and are printed with convictions when printed from the national repository.

For all of the above reasons, the London Police Service, and most other police agencies including the RCMP, considers an Absolute Discharge or Conditional Discharge to be a Criminal Record during its prescribed retention. After the prescribed retention period the offender may apply to the London Police Service for the destruction of the file on the form titled "Request for Destruction of Criminal Records". The conditions under which the file may be deleted are listed on the back of the form.

When Defence lawyers are speaking with their clients in regard to Discharges the following points are important:

- Absolute Discharges are kept by the RCMP for one year under the Criminal Records Act and then are automatically deleted. During this time there is a record of the Discharge kept both nationally and locally.
- Conditional Discharges are kept by the RCMP for three years under the Criminal Records Act and then are automatically deleted. During this time there is a record of the Discharge kept both nationally and locally.
- The national (RCMP) record disappears automatically after the allotted times mentioned above.
- Destruction of the local (London Police Service) record is not automatic. The form to request destruction is available at London Police Service headquarters or on the London Police Service web site (www.police.london.ca)