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Legal Brief*

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DISCHARGES: WHO, WHAT, WHY... AND WHY NOT?

Discharge—a sentence that is not a sentence. Indeed, the law provides that a person who receives a discharge is deemed never to have been convicted. But who can benefit from such a discharge? Section 730 of the *Criminal Code* specifies that a person, whether the person pleads guilty or is found guilty, can obtain a discharge if the following conditions have been met:

- There is no minimum sentence for the offence or the offence is not punishable by imprisonment for fourteen (14) years or more: A discharge is therefore available for a multitude of offences: fraud under \$5,000, mischief, theft, voyeurism, assault causing bodily harm, sexual assault and many others. Thus, when faced with an offence that qualifies for a discharge, the court must verify whether the following two criteria apply.
- It is in the best interests of the accused to obtain such a discharge: This implies that the offender is a person of good character. The offender usually has no prior criminal record and does not present a specific deterrence and rehabilitation problem, and a conviction could result in disproportionate consequences for the offender.¹ The real possibility of such consequences occurring is sufficient. For example, consider a young person who is at the beginning of their adult life and is still exploring their choices. Should we treat their situation as less important in weighing the consequences? The answer is no, as the Court of Appeal noted in *Berish*.² That being said, the offender's job or academic profile are certainly relevant factors for the court's assessment of the offender's best interests.
- **Granting a discharge would not be contrary to the public interest:** IMPORTANT! The discharge does not have to be in the public interest—it must simply not be contrary to the public interest. The public interest is assessed in terms of the seriousness of the offence, the need for general deterrence and the importance of maintaining public confidence in the justice system. This refers to the reasonable and informed person, particularly regarding the principles and objectives of sentencing (i.e., deterrence, denunciation, rehabilitation, reparation and promotion of a sense of responsibility).

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* The information set out in this document is not a legal interpretation.

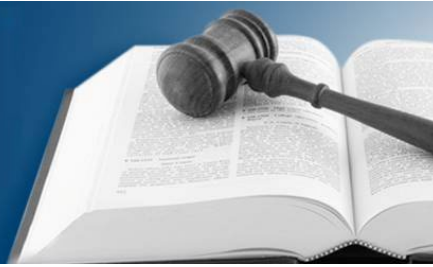
The masculine is used to designate persons solely in order to simplify the text.

¹ *Rozon v. R.*, 1999 CanLII 11146 (QC SC), para. 33.

² *R. v. Berish*, 2011 QCCA 2288.



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DISCHARGES: WHO, WHAT, WHY... AND WHY NOT? (Continued)

It is clear that the legislature has opened the door to this avenue being considered as often as is relevant, for a multitude of offences.

It is important to note that a discharge can be unconditional or conditional. When it is conditional, the offender may be required to perform a certain number of hours of community service, make reparations to any person for any loss or damage suffered as a result of the commission of the offence, as well as abide by other conditions, such as abstaining from the use of drugs and/or alcohol or refraining from communicating with the victim or witness. It is important to note that the court may impose any reasonable conditions that it considers desirable to ensure the protection of society and to facilitate the reintegration of the person concerned.

The following is one of the features of a conditional discharge: If the offender fails to comply with the conditions imposed by the court, the court may revoke the discharge and impose the sentence for the original offence in addition to any other sentence if the offender has committed a new offence.³

In a recent judgment, the Honourable Éric Côté stated the following: [TRANSLATION] "No punishment, no matter how severe, can make up for the victim's suffering. Nevertheless, the Court must be wary of imposing an inappropriate sanction in a vain attempt to console the victim. Certainly, a sentence is a punishment intended to repress and punish, but it must never become an instrument of revenge."⁴

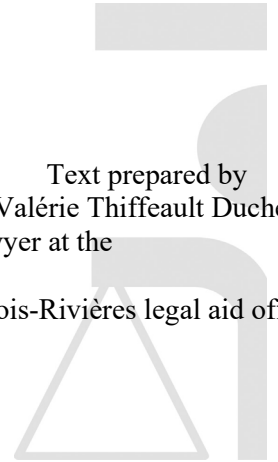
In short, a discharge should be considered whenever the circumstances warrant!

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To find the contact information for your legal aid office, please click on the following link www.csj.qc.ca/.

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³ Section 730(4) *Criminal Code*.

⁴ *R. v. Côté-Nault*, 2020 QCCQ 1975, para. 33.