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## HOW TO AVOID A CRIMINAL RECORD

Let's say you've been nabbed by police and charged with a crime - whether it's drug possession, shoplifting, or perhaps a driving offence. You're over 18 years old, it's your first time, and it's a relatively minor charge. Is a criminal record a sure thing?

Maybe not.

There are several ways that you may be able to avoid a criminal record. First, your criminal defence lawyer may be able to talk the Crown prosecutor into a guilty plea to a lesser, non-criminal offence (such as a motor vehicle infraction in the case of a driving offence), or win a "not guilty" verdict for you at trial. In either case, you'd avoid a criminal record. But what if she says that's unlikely?

Let's be clear - you want to avoid a criminal record if you can. Partly that's because of the stigma attached. Nobody likes being branded a criminal.

A criminal record has other negative consequences too. It may jeopardize your current job and disqualify you from holding certain jobs altogether (think teacher, nurse or bank teller, for example). You may also have to disclose it when looking for a job - clearly it won't help you land one in future. Also, a criminal record may result in travel restrictions. In many cases, you may not be able to get into certain countries, like the United States.

So what can you do to avoid a criminal record?

Several options may be available, and your lawyer will discuss these with you.

One example: If you plead (or are found) guilty, the Court might be persuaded that an absolute discharge is justified in your case.

Maybe you are young and show remorse, and it's clear to the Court the offence was totally out of character. The Court may lean against branding you a criminal and discharge you on the spot, without a criminal record.

Another example: Even if you plead (or are found) guilty, the Court might be persuaded that a conditional discharge is appropriate. You would have to abide by a set of conditions similar to probation for a specified time period. If you live up to those conditions, you will not have a criminal record. Any breach, however, can lead to additional criminal charges for failing to obey the Court's orders.

In the case of either an absolute or conditional discharge, you can honestly say that you have never been convicted of a crime and you don't have a criminal record.

Yet another, lesser known option is the Alternative Measures Program, sometimes called "diversion." Maybe the Crown prosecutor can be persuaded that in your particular circumstances an alternative consequence is appropriate, rather than the criminal justice process. You would have to admit your guilt, take responsibility for what you did, and try to make amends to the community. Typically this involves apologizing to those hurt by your actions, returning or paying for things that were taken, counselling and/or doing community service. But if the Crown agrees to alternative measures, it beats a criminal trial - and avoids a criminal record.

If you're facing a criminal charge, even one that seems minor, see a good criminal defence lawyer - the consequences of a conviction and criminal record can be serious and long-lasting.

*Written by Janice Mucalov, LL.B. with contribution by JENNIFER THORNE.*

*This column provides information only and must not be relied on for legal advice. Please contact JENNIFER THORNE for legal advice concerning your particular case.*