

Could a criminal charge hinder my ability to land a new job?

ANDREA YU

NINE TO FIVE

The question

I was charged with assault under Criminal Code 266. Since the nature of the assault was not serious and I didn't have a previous criminal record, the court is withdrawing the charges upon completion of a Partner Assault Response (PAR) program and a six-month peace bond. My PAR program will end in July. The charges will stay until I complete the program and finish my six-month peace bond.

My current employment contract is ending soon and I have to find new employment as soon as possible. I got an offer from one company, but I'm afraid that since the charges are still live, it could hinder my employment. Could you please advise what to do in this scenario?

The first answer

Stuart Rudner

Founder, Rudner Law, Markham, Ont.

There are actually two questions that need to be addressed:

George Cottrelle

Partner, Keel Cottrelle LLP, Toronto

The presumption of innocence is a fundamental principle of our legal system. Absent special circumstances, an employer should not make hiring decisions based on the existence of criminal charges. In certain provinces, human-rights legislation specifically prohibits discrimination in employment on the basis of criminal charges.

Employers in vulnerable sectors require applicants to consent to a vulnerable sector check, which will disclose outstanding criminal charges. Criminal charges must be pertinent to the position in order to be relevant to the hiring decision. You should consider disclosing your outstanding charge if you are working in a vulnerable sector, explaining all the surrounding circumstances.

Employers in other sectors may require a criminal record check for job applicants, which vary widely in the information provided, but may disclose outstanding criminal charges. If the charge is materially relevant to your employment, including the safety of your co-workers, then it is appropriate for the employer to consider it in the hiring decision.

If the outstanding assault charge is raised by a prospective employer after a criminal background record check, you should respond that the charge likely will be withdrawn and has no impact on your ability to do the job or on the safety of co-workers.

If you accept the job offer, there is no general duty to disclose the charge, but it could remain a potential issue depending on your position.

Have a question for our experts? Send an email to NineToFive@globeandmail.com.