

# Hires, Dismissals And Criminal Records: What Quebec Employers Need To Know



In Quebec, provisions of the *Charter of Human Rights and Freedoms* (Charter) govern an employer's right to dismiss an employee or refuse to hire a candidate on the basis of a criminal or penal conviction. Employers should pay close attention to the parameters developed by case law in this context.

The strict legal framework established by section 18.2 of the Charter is intended to protect individuals from sanctions considered unjustified stemming from their criminal record. Employers must ensure that any decision taken in this regard complies with the fundamental rights recognized by the Charter, notably by demonstrating a genuine and relevant link between the individual's perpetrated offence and the duties of the position.

## **Section 18.2 of the Charter**

Section 18.2 of the Charter reads as follows:

*No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.*

In other words, an employer cannot dismiss an employee, refuse to hire a candidate or otherwise penalize a candidate or an employee for a criminal offence if the offence is unrelated to the duties of the position or if the candidate or employee has been pardoned for the offence. The prohibition set out in section 18.2 also applies to individuals who have been arrested, charged with committing an offence, are awaiting trial or whose charges have been withdrawn.

## **Link Between Offence and Employment**

Several factors may be analyzed in determining whether a criminal offence is related to employment:

- The seriousness of the offence
- When the offence took place and the circumstances surrounding it
- The nature of the duties and responsibilities of the position
- The characteristics of the customers or users served

- The impact that the perpetrated offence may have on customers or users, on the reputation of the business or establishment and on the quality of the services offered, as well as the possibility of repeat offending

When an employer assesses the relevance of a link between an employee or candidate's criminal record and the duties of a position, it is recommended that the assessment be based on concrete facts and an individualized analysis of the situation.

In addition, an individual who obtains a conditional or unconditional pardon or record suspension is granted full protection. Therefore, an employer may not take that individual's conviction into account, regardless of whether there is a link between the offence and the duties of the position.

## **Recent Decision**

In its recent decision in [\*Roussin Bizier c. Cliche Auto Ford Thetford inc.\*](#) (available in French only), Quebec's labour tribunal, the Tribunal administratif du travail (Tribunal) overturned the dismissal of a car salesman who had been convicted of two sexual assault offences in January 2024 (Employee). The Tribunal ordered the Employee's reinstatement and the payment of his unpaid wages. His employer, a car dealership (Employer), had dismissed the Employee based on the latter's criminal conviction.

In mid-September 2022, the Employee was charged with sexual assault. He was arrested and then conditionally released. The Employer suspended him without pay, while maintaining the employment relationship, despite negative media coverage.

Although the media coverage died down towards the end of September 2022, the Employee's suspension continued until January 30, 2023, on which date the Employee was reinstated in his duties by the Employer, while the matter was pending. The Employee held his position until his conviction on January 11, 2024.

Following the conviction, the Employer dismissed the Employee, citing the risk of repeat offences and arguing that there was an objective link between the duties performed by the Employee and the latter's perpetrated offences. According to the Employer, the Employee's position led him to be alone with clients on test drives, which could position them in vulnerable situations.

The Tribunal rejected this argument. In analyzing the context in which the offences had occurred, i.e., at the Employee's bachelor party at a bar, the Tribunal found that the Employer had failed to establish an objective link between the Employee's position and the circumstances of the offences underlying the conviction. In the Tribunal's view, the invoked risk of a repeat offence was based on a restrictive interpretation of section 18.2 of the Charter and on generalizations that, if accepted, would make the application of this section almost theoretical in cases of sexual offences.

The Tribunal noted that the Employer's concern that an assault could occur during a test drive solely because the Employee's conviction of assault in a private context was based on unsupported assumptions and stereotypes.

According to the Tribunal, assuming the potential vulnerability of female customers was insufficient to establish an objective link between the nature of the offences and the Employee's professional duties. In the absence of such a link, the Employer had failed to demonstrate that the offences committed had a detrimental, tangible, concrete and genuine impact on the Employee's ability to perform his duties.

The Employer had also claimed that the media coverage surrounding the Employee's conviction had damaged the reputation, image and credibility of its business, which was located in a small municipality. However, the Tribunal indicated that such a link required proof of objective elements linking the offence and the position. The Employer had presented no evidence of any change in customer traffic or decrease in sales following the arrest and conviction of the Employee.

In the Tribunal's view, the media coverage relating to the convictions for acts perpetrated by the Employee in the context of the latter's private life did not automatically damage the Employer's reputation as to infer the existence of an objective link between the Employee's position and offences.

Therefore, the Tribunal determined that the dismissal was contrary to section 18.2 of the Charter.

## **Key Takeaways**

In Quebec, criminal records may be considered when deciding whether to hire candidates or dismiss employees, provided that all decisions are in compliance with the legal framework established by section 18.2 of the Charter. This provision does not prohibit employers from making such decisions but encourages them to do so in a thoughtful manner, based on concrete facts and an individualized assessment of each situation.

By considering factors such as the nature of the position, the seriousness and circumstances of the offence and the potential risks to the organization, employers can make informed and fair decisions that comply with the Charter. Employers may be able to justify refusing to hire a candidate or dismissing an employee where a genuine link can be demonstrated between the duties of the position and the offences perpetrated by the individual.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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