

Policy for Failed Screening

Preamble:

Definition of Rehabilitate:

- To restore to a former capacity a person's physical, sensory, and mental capabilities;
- To restore to useful life/ repute, as through therapy and education or to restore to good condition, operation, or capacity.

For persons who have lapsed into wrongdoing, the fundamental goal of rehabilitation is that the offender will no longer offend and to assist him/ her in becoming productive, contributing members of society. It includes renunciation by the offender of his/ her wrongdoing and his/ her establishment or re-establishment as an honourable law abiding citizen.

King CJ explained in *Vartzokas v Zanker* (1989) 51 SASR 277, 279 that "Rehabilitation is not confined to those who fall into wrongdoing by reason of physical or mental infirmity or a disadvantaged background. It applies equally to those who, while not suffering such disadvantages, nevertheless lapse into wrongdoing ... Very often a person who is not disadvantaged and whose character has been formed by a good upbringing, but who has lapsed into criminal behaviour, will be a good subject for rehabilitative measures precisely because he possesses the physical and mental qualities and, by reason of his upbringing, the potential moral fibre to provide a sound process for rehabilitation..."

Kovacevic v Mills [2000] SASC 106 states "The protection of the public must remain our first concern, but if, consistently with that, we can, in our compassion, assist another human being to avoid making ruin of his life, we surely ought to do so..."

With the foregoing preamble, recommendations for the protocol for a "failed screening" include:

1. Automatic disqualification of a potential applicant is appropriate when the Vulnerable Sector Screening results indicate that the individual, **as an adult**, perpetrated any crime involving a child or a dependent adult, regardless of how long ago the incident occurred.

For purposes of this policy;

i) a child is considered a dependant age 19 and under. In all cases, a child will continue to be considered a dependant, regardless of age, if they have depended on their parents for financial support because of a disability in physical or mental functions. The provincial definitions of 'age of majority' is currently evenly split between age 18 and age 19 across provinces and territories.

ii) a dependant adult means:

- a) an adult who needs assistance to carry out normal activities or to protect their rights. This person normally resides with a relative due to low income or a disability in physical and/ or mental functions;
- b) a person in respect of whom a guardianship order is in effect;
- c) a person in respect of whom a trusteeship is in effect;
- d) a person in respect of whom a guardianship order and a trusteeship order are in effect.

2. Automatic disqualification of a potential applicant is appropriate when the Vulnerable Sector Screening results indicate that the applicant, **as an adult**, perpetrated any violent crime regardless of how long ago the incident occurred. Canada classifies homicides, attempted murder, all assaults, all sexual offences, and abduction as violent crimes, and for purposes of the CVRP, we will adopt the same classification for violent crimes. (Refer to Appendix A at end of this policy section for definition of violent crimes.)
3. Disqualification for all other offences **is to be discretionary** when the Vulnerable Sector Screening results indicate that the applicant, **as an adult**, perpetrated a non-violent offence(s) within 5 years of the date of application. An applicant must satisfy a minimum waiting period of 5 years before he/ she becomes eligible to apply to the CVRP regardless of the offence(s) committed, and this waiting period will be deemed as an acceptable window of time for exclusion of the offence(s). The waiting period is designed to afford the applicant a reasonable period of time in which to demonstrate an ability to lead a responsible, productive and law-abiding life. The waiting period begins at the end of the applicant's sentence. (Refer to Appendix A at end of this policy section for definition of non-violent crimes.)

The offence(s) will be evaluated on the basis of consultation with appropriate professionals, if applicable, and the following factors:

- i) The relationship between the offence(s) and the type of employment or service that the applicant will provide. The offence(s) on the record may or may not have direct bearing on the CVRP designation or may be unrelated.
 - ii) The applicant's employment and/ or avocational/ volunteer history after the offence(s) to determine if the applicant is leading a responsible, productive, and law-abiding life.
 - iii) The applicant's efforts and success at rehabilitation.
 - iv) The circumstances and/ or factors indicating if the offence(s) is/are likely to be repeated.
 - v) The nature, severity, and frequency of the offence(s) disclosed. The offence(s) may be recent or in the distant past (refer to point no. 4 for discussion on distant past). The number and frequency of the offence(s) may indicate a possible pattern of behaviour or they may be viewed as an isolated incident(s).
4. No disqualification for the applicant applying to the CVRP who has only been convicted once for a non-violent offence and has not been convicted of another offence (including non-violent offences), which occurred more than 5 years before the passing of the Omnibus Crime Bill (Bill C10) passed in March of 2012 (i.e., offence(s) that occurred on or before March 2007), especially if the applicant is leading a productive, law-abiding life as demonstrated by his/ her post-offence(s) employment and/ or avocational/ volunteer history. Should these non-violent offence(s) show up on the Vulnerable Sector Screening, the information contained in same should be held in "the strictest confidence" by the Registrar of the College and not shared with those on the Review Committee (if required for consult) nor disclosed on the Public Registry of the College.

The protocol for the failed screening is to refer the matter to the Review Committee. The committee is to review the file and make a recommendation to the Registrar, or hold a hearing with applicant, if applicable and forward recommendations to the Registrar.

Sensitive personal information generally requires an extra level of protection and a higher duty of care. The College of Vocational Rehabilitation Professionals appoints the Registrar of the College to be responsible for the collection, retention, and destruction of the Vulnerable Sector Screenings, which must be under the Registrar's control and

secured in a safe storage area separate from CVRP files. This is because most individuals consider police (law enforcement) information, as well as medical information, about themselves to be examples of highly sensitive personal information. This type of information should be protected by special security measures and should have minimal secondary use and no disclosure to third parties.

Appendix A

A violent crime or crime of violence is a crime in which an offender uses or threatens force upon a victim. This entails both crimes in which the violent act is the objective, such as murder, as well as crimes in which violence is the means to an end, such as robbery. Violent crimes may, or may not, be committed with weapons. Examples violent crimes include homicides; assault and battery; domestic violence; robbery; sexual assault and abuse; and false imprisonment.

Other sample offences which automatically deem the Applicant ineligible to participate in any capacity as a CVRP as determined by the Risk Management Protocol include sexual interference; sexual exploitation; invitation to sexual touching; making, distributing or possessing child pornography; indictable offences for child abuse; luring a child; voyeurism; use of firearm in the commission of an offence; any other offences pertaining to violence, whether or not involving weapons; any offences perpetrated by the applicant, as an adult, involving a child or a dependant adult.

Non-violent crimes are those crimes that do not involve the threat of force or the use of any force or injury to another person. Non-violent offences include property crimes (theft, embezzlement, receipt of stolen goods, arson, shoplifting, vandalism, non-violent crimes committed in commercial or business situations for financial gain); drug and alcohol-related crimes; prostitution; bribery.