

Introduction

Honourable Senators, I rise to speak to Bill S-258, *An Act to amend the Criminal Records Act and to make consequential amendments to other Acts*. This bill will increase public safety by removing unnecessary obstacles to successful community integration for those who have been held accountable for their actions, fulfilled all aspects of their sentences and are trying to move on with their lives.

Failed Approach: 2010-12 Amendments

The criminal record system as we know it is beyond counterproductive. Long wait periods, onerous review processes, and the threat of a long-suspended record springing back to life do not increase public safety.

Between 2010 and 2012, Canada entrenched a so-called “tough on crime” approach to pardons. Fees increased from \$50 to \$631,¹ and wait periods increased from 3 and 5 years to 5 and 10 years.² “Pardons” became “record suspensions”, and the more invasive and complex review process for a record suspension

¹ *Pardon Services Fees Order*, SOR/95-210: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-95-210/page-1.html>; *Order Amending the Pardon Services Fees*, SOR/2010-306; *Pardon Services Fees Order — Order Amending*, SOR/2012-12.

² *Safe Streets and Communities Act*, S.C. 2012, c. 1: https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_1/.

currently takes between 162 and 490 days, compared to the previous wait time of 20 to 121 days for a pardon.³

These changes have not made us safer. In fact, the rate of those who meet stringent “good conduct” requirements after obtaining a pardon or record suspension have remained steady at more than 95 per cent.⁴ These changes have, however, resulted in a decrease in the number of people applying annually by over 40 per cent.⁵

Those previously convicted of criminal offences are most likely to remain crime-free if they have a place to live, means to support themselves and something meaningful to do with their time. By effectively extending the reach and impact of criminal records, the state actively interferes with the abilities of people to move on and not only integrate, but contribute to the community.

³ Parole Board of Canada, *2017/18 Report to Parliament* at 4, <https://www.canada.ca/en/parole-board/corporate/transparency/reporting-to-canadians/record-suspension-report-to-parliament-2017-2018.html>.⁴

Parole Board of Canada, *Performance Monitoring Report 2016/2017* at 60. See also the discussion of *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 270-271 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

⁴ Parole Board of Canada, *Performance Monitoring Report 2016/2017* at 60. See also the discussion of *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 270-271 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

⁵ Standing Committee on Public Safety and National Security, M-161 Study, testimony of Mr. Daryl Churney (Executive Director General, Parole Board of Canada), December 6, 2018: <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

Purpose of Record Suspension/Expiry

Sealing records is sometimes characterized as a way of helping people find jobs, housing, and education and volunteer opportunities, but to put it this way is to get it backward. When a record is sealed, the state is supposed to stop actively punishing individuals and cease its interference with rehabilitation, remediation and related community integration efforts.

Currently, five jurisdictions in Canada—the Yukon, British Columbia, Quebec, Prince Edward Island and Newfoundland—offer some form of protection against discrimination on the grounds of a criminal record that has not been pardoned or suspended. Other provinces and territories, and the *Canadian Human Rights Act*, only protect against discrimination on the basis of a criminal record *when a pardon or a record suspension has been granted*.⁶

The current process is not accessible to many and therefore effectively results in indefinite punishment of people who have already been held accountable for their actions. It can bar them from housing, employment, education and even volunteering. It is a punishment that extends to their families—particularly their

⁶ *Canadian Human Rights Act*, RSC 1985 c H-6. On the differing human rights regimes in Canada, see CCLA, *False Promises* at 27–29.

children—and their communities, with no increase to public safety. Indeed, the former Federal Ombud for Victims of Crime described the 2010 and 2012 amendments restricting access to record suspensions as “a stupid thing to do” precisely because of the adverse impact on public safety.⁷

Key Measures

Bill S-258 proposes three key changes to the *Criminal Records Act*:

First, except where records are required for vulnerable sector checks, it would allow records to expire, rather than merely be suspended. Those who have been held accountable for their actions and are trying to move on with their lives should not have records held forever over them in the Damocles-sword style of limbo created by the 2012 “suspension” regime.

Second, the bill would do away with the current costly and bureaucratic application process. Returning to wait periods closer to previous time frames⁸, after two years, for summary convictions, or five years, for indictable offences, without new convictions or pending charges, convictions would expire. Records would be

⁷ Steve Sullivan, “Jobs and justice: How the pardon crackdown made Canada less safe”, iPolitics, 2 July 2014.

⁸ *Safe Streets and Communities Act*, S.C. 2012, c. 1: https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_1/.

removed from the RCMP's database without need for an application by the individual or a review by the Parole Board of Canada.

Third, with the reduction in costs associated with streamlining and removing unnecessary bureaucracy from the expiry process, application fees could be eliminated.

Context

Other Government + Legislative Work

This bill builds on a flurry of recent government and legislative work. Public consultations, parliamentary committee work, Parole Board and ministerial pronouncements have recognized the discriminatory impact of the current system, particularly for those who are poor.

In January 2016, Public Safety Minister Ralph Goodale announced his intention to consider meaningful reforms to the *Criminal Records Act*, and in particular the \$631 application fee, which he identified as “punitive”.⁹

⁹ Alison Crawford, *Public safety minister vows to overhaul 'punitive' criminal pardons system*: <https://www.cbc.ca/news/politics/liberal-criminal-justice-pardons-1.3412533>.

In the three years since that commitment, two public consultations, one by Public Safety and the other by the Parole Board of Canada, have demonstrated an overwhelming consensus that the current, onerous application process and fees are unacceptable. Bill C-66 has sought to attenuate current failures in the record suspension system and ensure its effectiveness for those with convictions arising from discrimination against members of the LGBTQ2S community.¹⁰ The Public Safety and National Security Committee in the other place issued a report recognizing, “that a criminal record has a negative impact on a person’s ability to find employment, housing, education, travel, adoption and custody of children” and yet again urging the Government to review the record suspension process.¹¹

Most recently, two pieces of legislation¹² currently in the other place have proposed measures for either expungement or expedited, cost-free record suspension for those with convictions resulting from simple possession of cannabis. These are good first steps, but in the face of such thorough consultation and near-unanimous agreement that the current system is untenable, it is time for more meaningful legislative change. The bill before you will allow for immediate

¹⁰ Bill C-66: <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9273414&Language=E>.

¹¹ *30th Report of the Standing Committee on Public Safety and National Security*, 42nd Parl, 1st Sess (December 11, 2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/report-30/>.

¹² Murray Rankin’s private Bill C-415: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10050727>; and Public Safety Bill C-93: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-93/first-reading>.

expiry of records relating to possession of cannabis, in addition to other decriminalized offences. Problems of access to record suspensions are not, however, limited to those with cannabis convictions, and nor should our legislative response be so limited.

Increasing Use of Record Checks

The attention given to the record suspension process in recent years is indicative of the magnitude of the problem it represents. In particular, as restrictions on record suspensions have increased, so has the use of police record checks. The decision to label, single out and discriminate against those with a past criminal conviction is usually framed as a false dichotomy:¹³ a trade-off between the community's interest in public safety and the individual's interest in reintegration into society. These objectives are not at odds. In fact, we know that they go hand-in-hand. Under the guise of this false dichotomy, however, what began as a matter of police record-keeping in the early twentieth century has increasingly been used for "civil screening", checks conducted by police at the request of individuals and required by employers, volunteer organizations, educational institutions and landlords.¹⁴

¹³ Joy Radice, "The Reintegrative State" (2017) 66 Emory LJ 1315 at 1390.

¹⁴ The expression "civil screening" is from *Chu v. Canada (Attorney General)*, 2017 BCSC 630 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

The Canadian Civil Liberties Association determined that, between 2003 and 2012, rates of criminal record checks rose by approximately 7 per cent *per year*, a substantial increase.¹⁵ A John Howard Society survey published in 2018 indicated that sixty percent of Toronto employers require police background checks for all of their new employees, and the majority of employers had never knowingly hired anyone with a record.¹⁶

Indigenous and Black Communities

The increased use of criminal record checks also places a disproportionate burden on those who are already unjustly stigmatized. For instance, one study from the United States found that the likelihood of a callback for a job interview drops by 50% for white applicants who have had to reveal a criminal record to a prospective employer. For Black applicants, it drops by about 65%, an impact that is 40% stronger.¹⁷

In Canada, the Prime Minister recently acknowledged with respect to cannabis convictions: “We know that, because there is a disproportionate representation of

¹⁵ Canadian Civil Liberties Association, *False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada* at 33—34

¹⁶ John Howard Society of Ontario, *The Invisible Burden: Police Records and Barriers to Employment in Toronto* (2018) at 24–25, online: < <http://policerecordhub.ca/invisibleburden/>>.

¹⁷ Devah Pager, “The Mark of a Criminal Record” (2003) 108:5 *Am J Sociology* 937 at 955.

young people, from minorities and racialized communities, who are saddled with criminal convictions for simple possession [records are] ... a significant further challenge to success in the job market.”¹⁸

Unfortunately, this over-representation is not limited to cannabis possession convictions. Though only two per cent of Canada’s population, Black individuals account for nine per cent of federal prisoners.¹⁹ Twenty-eight per cent of those in federal prisons—and 40 per cent of women in federal penitentiaries—are Indigenous.²⁰ Without a doubt, racialized communities are disproportionately burdened by the punitive nature of the current record suspension system.

Honourable Senators, this body of government and legislative work makes clear that it is no longer enough to simply recognize that we have a problem. We know that criminal records interfere substantially with efforts to find employment, education and housing after serving a sentence. We know that they create barriers to successful reintegration and can undermine, rather than enhance, public safety.

¹⁸ Kathleen Harris, *Liberal government to waive fee, waiting time for pot pardons*: <https://www.cbc.ca/news/politics/pardon-pot-possession-goodale-1.4866175>

¹⁹ Office of the Correctional Investigator, *Annual Report 2016-2017*: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx#fn33-rf> (note that comparable statistics regarding Black prisoners were not included in the 2017-18 report).

²⁰ Office of the Correctional Investigator, *Annual Report 2017-2018*: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx>.

We know that the process for suspending criminal records is punishingly costly and complex. It is time for legislative change.

Expiry, Not Suspension

As a first key measure, Bill S-258 provides for the definitive deletion of all records not required for vulnerable sector checks. Before we had record suspensions, we had pardons. The word “pardon” understandably conveyed the impression that, unless the state held someone’s conviction against them for the rest of their life, it was “forgiving” them for their actions.²¹ In some cases, forgiveness for past wrongdoing may be sought or provided by victims or the community, but it may not always be an appropriate characterization of the post-conviction process.

The expiry of criminal records reflects the principle that when we, as a society, decide to hold someone accountable for their wrongdoing, we can only inflict so much hardship before we ourselves are perpetrating an injustice. It also reflects the empirical data demonstrating that after a period of crime-free years, those with a

²¹ On forgiveness as something that must be deserved by through contrition and a credible commitment to reform, see the leading philosophical treatment by Charles Griswold, *Forgiveness: A Philosophical Exploration* (2007: Cambridge University Press) at 49–51. For a discussion that is critical of this “transactional forgiveness” (identified as a strand of the Judeo-Christian tradition) and urges an attitude of mercy and generosity (drawn from classical philosophy) in its stead, see Martha Nussbaum, *Anger and Forgiveness* (2016: Oxford University Press) who writes at 73: “The forgiveness process is itself a harsh inquisitorial process. ... The person who administers the process is controlling and relentless toward the penitent, an inquisitor of acts and desires—even if in the end forgiveness is given.”

previous conviction are effectively no more likely than the rest of the population to be convicted of another offence.²² A record expiry scheme is not a scheme for forgiveness: it simply reflects the principle that punishment should, at some time, come to an end.

No Fees

A second component of Bill S-258 is the removal of the \$631 application fee. Most applicants are seeking a record expiry in order to secure employment. In addition to this fee, applicants currently pay hundreds of dollars in associated costs, including for fingerprinting and other record search fees.

Too many of those who are criminalized are amongst the poorest and most marginalized in our society. Especially following a prison sentence, many are forced to rely on social assistance because criminal records come between them and stable, lawful employment, educational and even housing and volunteer

²² Megan C Kurlychek, Robert Brame & Shawn D Bushway, “Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?” (2006) 5:3 *Criminology & Pub Pol’y* 483.; Alfred Blumstein & Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks” (2009) 47:2 *Criminology* 327.

opportunities. A \$631 application fee is beyond the means of most people on social assistance, minimum wage or other limited income.²³

Parole Board of Canada data clearly demonstrates what a barrier this fee represents. When fees increased from \$50 to \$150 and then to \$631 between 2010 and 2012, applications decreased by as much as 40 per cent. Between 2002-03 and 2011-12, prior to the \$631 fees, the Parole Board received about 25,000 applications per year. In 2017-2018, it received only 14,000.²⁴

In 2012, the government portrayed its fee hike as a simple cost-recovery measure. Representatives of the Parole Board of Canada recently testified that the record suspension system is the only program within Public Safety Canada for which full cost recovery is pursued.²⁵ Furthermore, Public Safety officials recognize that every dollar invested in expiry of criminal records translates into two dollars of

²³ In Nova Scotia, a single person living alone on social assistance can only receive up to \$575 per month (except under certain circumstances): https://novascotia.ca/coms/employment/income_assistance/BasicAssistance.html; in Ontario, most single adults without children receive \$733: <http://incomesecurity.org/public-education/ow-and-odsp-rates-and-the-ocb-2018-les-taux-dot-du-posph-et-de-la-poe-2018/>.

²⁴ Standing Committee on Public Safety and National Security, M-161 Study, testimony of Mr. Daryl Churney (Executive Director General, Parole Board of Canada), December 6, 2018: <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

²⁵ House Public Safety Committee, M-161 Study (Dec 6, 2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

revenue for the government if individuals are able to secure employment and pay income tax.²⁶

In reality, the application fees are an additional punishment, and Canadians see them as such. When the last government was forced to consult with Canadians before it hiked the user fee, less than one per cent thought an increase was acceptable.²⁷ Consulted again in 2016 by the Parole Board of Canada, 4 out of 5 Canadians described the user fee as a “significant barrier” to those seeking record suspensions²⁸ and more than 3 out of 5 described the fee—as well as the long, stressful application process itself—as further punishment.²⁹ 96 per cent of Canadians rightly expressed concern that the exorbitant fee contributes to a vicious cycle in which people do not have employment and are unable to afford the fee; and, they can’t find employment because clearing their criminal record is too expensive.³⁰

²⁶ House Public Safety Committee, M-161 Study (Dec 6, 2018):

<https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

²⁷ Regulatory Impact Analysis Statement accompanying SOR/2012-12 February 8, 2012, Order Amending the Pardon Services Fees Order, online: <<http://www.gazette.gc.ca/rp-pr/p2/2012/2012-02-29/html/sor-dors12-eng.html>>.

²⁸ PBC, “Record Suspension User Fee—Consultation Report”, *supra* at 6.

²⁹ PBC, Pardon 3, 11, 12.

³⁰ Parole Board of Canada, “Record Suspension User Fee—Consultation Report” (2016) at 4, online: <<https://www.canada.ca/content/dam/pbc-clcc/documents/publithecations/Consultation-Record-Suspension-2017.pdf>>.

The cost-recovery argument, in addition to being counterproductive, is also very expensive. By making the process more cumbersome and invasive, the 2010 to 2012 amendments to the *Criminal Records Act* more than tripled the administrative cost of each record suspension.³¹ However the fees did nothing to improve the already high rates of successful community integration of those granted pardons.³² They merely barred more individuals from the application process. This bill replaces that costly process with a streamlined system that is more efficient and more effective. In doing so, it eliminates the bureaucracy and the fee, not by subsidizing it, but by eliminating the expense.

Automatic Expiry

The bill's third key measure removes the requirement for an application and allows records to expire at the end of a fixed period of time without subsequent convictions or pending charges. Currently, Canada imposes indefinite criminal records for all convictions. Courts have recognized that criminal records constitute

³¹ Regulatory Impact Analysis Statement accompanying SOR/2012-12 February 8, 2012, Order Amending the Pardon Services Fees Order.

³² Parole Board of Canada, *Performance Monitoring Report 2016/2017* at 60. See also the discussion in *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 270-271 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

punishment³³ and in the absence of an accessible procedure for expiry, they too often result in punishment that is needless, senseless and indefinite.

Historical Consensus

It is often wrongly assumed that lifelong criminal records are a necessity. Only a few decades ago, however, there was cross-partisan consensus in Canada that punishment must at some point come to an end—without the payment of a hefty fee. In 1970, the Honourable Robert McCleave, Conservative critic to the Solicitor General, offered the unanimous support of his party for the free and comparatively humane pardon scheme originally created by the *Criminal Records Act*. He said: “It is of importance that people should not be punished in a monetary way because of an offence for which they have served their time or otherwise paid their debt to society. They should not have a bad name hanging over them for the rest of their lives.”³⁴

³³ *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 233 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

³⁴ House of Commons Debates, 28th Parliament, 2nd Session at 6864. Remarkably, when the pardon system was created in 1970, a key concern expressed by Conservative parliamentarians was that the process of applying for a pardon was too lengthy and expensive. In committee, it was Conservatives who successfully pushed to lower the waiting period for summary offences to two years (it was raised to three by *An Act to amend the Criminal Records Act*, SC 1992 c 22, under a Conservative government). Mr. McCleave applauded the fact that, in the original scheme, a pardon application would be “processed without any cost to the person concerned except the cost of the stamp and his own time in writing the letter.” (*Ibid* at 6863)

In 2017, public consultations showed that Canadians have not retreated from this consensus that values humanity, fairness and common sense. More than four out of five Canadians support some form of “automatic” record expiry³⁵--that is, expiry of a record without need for an application. Three in four Canadians thought the current five-year waiting period for summary conviction offences is too long.³⁶ Almost as many thought the same of the ten-year waiting period for indictable offences, responding that the period should be between one and five years.³⁷ Last December, the House Public Safety Committee studied record suspensions and concluded that the Government needs to “review record suspension fees, ... the complexity of the record suspension process, ... consider other measures that could be put in place to support applicants through the record suspension process and make it more accessible, ... and examine a mechanism to make record suspensions automatic.”³⁸

Factors linked to successful community integration

This interest in exploring expiry of records based on passage of time alone is fully supported by empirical data. The factors most likely to promote successful community integration simply do not require an application and review by the

³⁵ Ekos Research Associates, Inc., Public Consultation on the Record Suspension Program at 17

³⁶ *Ibid* at 14.

³⁷ *Ibid* at 15.

³⁸ *30th Report of the Standing Committee on Public Safety and National Security*, 42nd Parl, 1st Sess (December 11, 2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/report-30/>.

Parole Board of Canada. Indeed, they are undermined by restrictions on record expiry.

Passage of time

First, desistance research makes clear that after a number of crime-free years, those with a past conviction are no more likely to be convicted again than those who have never been criminalized.³⁹ Over the past fifteen years, more than ninety-five percent of those who have received pardons or record suspensions have remained crime-free.⁴⁰ This is not only a strong endorsement of the value of a clean slate in promoting safe and successful community integration and positive contribution to one's community, it also reflects research that the high success rate of pardon and record suspension recipients is not the result of stringent review criteria, exorbitant fees or the longer wait periods added between 2010 and 2012.

Rather, it is exactly what we should expect from those several years following conviction and sentence expiry. When a person no longer poses a greater risk than

³⁹ Megan C Kurlychek, Robert Brame & Shawn D Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" (2006) 5:3 *Criminology & Pub Pol'y* 483.; Alfred Blumstein & Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks" (2009) 47:2 *Criminology* 327.

⁴⁰ Parole Board of Canada, *Performance Monitoring Report 2016/2017* at 60. See also the discussion in *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 270-271 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional).

anyone else, and when they have already completed the sentence that a court imposed to hold them accountable, there is simply no justification for continuing to burden them with a record nor for requiring an application to lift the burden.

Employment

Criminologists agree that sealing records actually reduces the risk of future conviction,⁴¹ notably by increasing access to employment opportunities. Empirical evidence strongly suggests that finding employment significantly reduces the likelihood of criminalization. In one American study, out of a random sample of 401 people released from prison, those who were able to find employment were almost half as likely to be re-arrested.⁴² A five-year follow-up with more than six thousand people found that, no matter what offence had led to a person's criminalization and incarceration in the first place, employment was the most significant factor determining successful community integration.⁴³ The same study also confirmed that the likelihood of recidivism decreases significantly as years go by.⁴⁴ These findings should come as no surprise, given the importance of

⁴¹ See *Chu v. Canada (Attorney General)*, 2017 BCSC 630 at paras 275 <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc630/2017bcsc630.html?resultIndex=2> (retrospective application of record suspension regime unconstitutional), where it is noted that the experts on both sides agreed that restricting access to a person's criminal record lowers the risk of recidivism.

⁴² Mark T Berg & Beth M. Huebner, "Reentry and the Ties That Bind: An Examination of Social Ties, Employment, and Recidivism" (2011) 28 Just Q 382 at 398.

⁴³ John M Nally et al, "Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year follow-up Study in the United States" (2014) 9:1 Int J Crim Just Sciences 16 at 28.

⁴⁴ *Ibid* at 25.

employment when it comes to finding a place in our society, by providing meaning, validation of one's contributions, and a means of supporting oneself and one's family.

This bill restores eligibility while also preserving the mechanism of vulnerable sector checks, which can detect expired records when someone applies to work with children or other vulnerable people. It should, however, be noted that given the paucity of reporting when it comes to violence against women and children, experts do not support the use of record checks as an effective means of protecting children from harm.⁴⁵

Legal Systems Currently Using Automatic Expiry

In most legal systems that are comparable to Canada's, the stigma of a record disappears if a person remains crime-free for a number of years. Canada already provides mechanisms for record expiry without an application for absolute and conditional discharges and for youth records,⁴⁶ but lags far behind when it comes to adult records.

⁴⁵ Ian Froese, "Criminal record checks aren't enough to spot predators, expert says", CBC News, 22 August 2018, online: < <https://www.cbc.ca/news/canada/manitoba/education-paramount-nathan-george-rieger-pastor-sex-crimes-1.4794162>>.

⁴⁶ Youth Criminal Justice Act s 119(2) sets out the period during which a youth record can be accessed, depending on the disposition in the particular case. If a youth is sentenced for a summary conviction offence, the record expires 3 years after sentence completion, (sub g) and if it is an indictable offence the period is 5 years after sentence completion.

Record expiry after a number of years is the norm in Europe, and has proven to be a safe and effective system. In Germany, most convictions automatically stop appearing on “conduct certificates” whenever someone has gone five years without a further conviction after the completion of their sentence.⁴⁷ In France, after three to ten years all but the most serious offences are expunged from the bulletins that the *Casier Judiciaire National* makes available for civil purposes.⁴⁸

Among the common law jurisdictions most often compared to Canada, only the United States fails to provide some form of sealing of criminal records without an application—the UK, Australia and New Zealand all allow this.⁴⁹ The United States, a country which jails its people on the most massive scale in all the world⁵⁰ does not make good company for Canada when it comes to criminal justice policy.

⁴⁷ *Bundeszentralregistergesetz* (BZRG) [Central Federal Register Law] §34 (Ger). See also Christine Morgenstern, “Judicial Rehabilitation in Germany – The Use of Criminal Records and the Removal of Recorded Convictions” (2011) 3:1 *Eur J Probation* 20 at 29–30

⁴⁸ Art. 133-13 *Code Pénal* (Fr). See also Martine Herzog-Evans, “Judicial rehabilitation in France: Helping with the desisting process and acknowledging achieved desistance” (2011) 3:1 *Eur J Probation* 4 at 7–11.

⁴⁹ In the United Kingdom, the *Rehabilitation of Offenders Act 1974* provides for the automatic expiry of all convictions for which a person was sentenced to up to four years in prison (after 7 offence-free years after sentence in this case, but with shorter waiting periods for shorter sentences and other dispositions—including no waiting period for simple cautions: see s 5 of the act for details). In New Zealand the *Criminal Records (Clean Slate) Act 2004* expunges convictions after a 7-year waiting period, but excludes all prison sentences and requires applications in the case of sexual offences and decriminalized offences. Australia has a mix of regimes because both the states and the commonwealth have jurisdiction over criminal law, but the scheme in Part VIIC of the Commonwealth *Crimes Act 1914* is representative: it provides for the removal of conviction records after ten offence-free years *post-conviction*, but excludes prison sentences of more than thirty months.

⁵⁰ World Prison Brief, online: <prisonstudies.org>

Canada's recent experience with Bill C-66, concerning expungement of records arising from historical discrimination against LGBTQ2S communities, has further clarified that application-based processes are too often insufficient when dealing with records that significantly limit access to such basic needs as housing, education and employment. As of October 2018, despite Bill C-66's cost-free application process, designed to be infinitely more accessible than the standard record suspension process, only seven individuals had applied and only two out of an estimated 9,000 records had been expunged.⁵¹ On what possible basis should we not just eliminate those records? Why must we add to the historical indignities and injustices by requiring even historically wrongfully convicted folks to apply for the removal of their records? This bill would also address and offer a remedy to the men and women whose records should have been eliminated with the passage of Bill C-66.

It will also offer a more fulsome response than the one currently proposed in Bill C-93, for those with records relating to simple possession of cannabis. It will allow for expiry, rather than suspension, of records relating to decriminalized offences, without need for an application. Furthermore, it will do so in a way that does not

⁵¹ Bill C-66, *Expungement of Historically Unjust Convictions Act*: <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9273414&Language=E>; Kathleen Harris, *Law permitting destruction of LGBT criminal records has seen low uptake so far*: <https://www.cbc.ca/news/politics/expungement-lgbt-criminal-record-1.4872703>.

burden the parole board with the cost and complexity of managing **four** streams of application and review processes: original pardon applications from pre-record suspension days; record suspension applications; record expungement applications under Bill C-66; and now, with Bill C-93, cannabis record suspension applications.

The added hardship that we impose indefinitely on those who have finished their sentences is not a necessary consequence of a criminal conviction: it is a policy choice, and one to which fewer and fewer jurisdictions are cleaving.

Conclusion

Canada is choosing to impose the burden of a criminal record on those who have gone many years without being criminalized and are no more likely to be convicted of a crime than anybody else. This decision is not only a waste of time and money. It is also fundamentally unjust when we know the real costs associated with the current record suspension system.

The majority of federally incarcerated people are parents.⁵² Children disproportionately bear the costs when their parents' criminal records prevent them from being able to provide both economic and other supports.

To name just one of many examples, a woman named Alia was sentenced to five years in prison when she was 19. Her imprisonment on drug and assault charges was a result of her attempts to negotiate poverty and support her son. She is now 30, and her younger son, born after her release from prison, begs her to volunteer at his school, most recently to build gingerbread houses. Even though she regularly speaks at schools about her past in an effort to prevent kids from getting involved in crime, she is precluded from volunteering in her son's classroom because of her criminal record. She lives with her son in an apartment that runs out of water in the summer. The ads for other accommodations require her to "pass criminal [a] record check".⁵³

⁵² Gordana Eljdupovic-Guzina, "Parenting Roles And Experiences Of Abuse In Women Offenders: Review Of The Offender Intake Assessments", CSC <<http://www.csc-scc.gc.ca/publications/fsw/gordana/toc-eng.shtml>>. Samantha Sarra, "Too many moms and kids are in prison", The Vancouver Sun, June 14, 2013, online: <http://www.vancouversun.com/life/many+moms+kids+prison/8529118/story.html>> André Picard, "Babies need their mothers, even when mom's in jail", The Globe and Mail, February 23, 2016, online: <https://www.theglobeandmail.com/opinion/babies-need-their-mothers-even-when-moms-in-jail/article28844556/> ; Lloyd Withers & Jean Folsom, "Incarcerated Fathers: A Descriptive Analysis", CSC <http://www.csc-scc.gc.ca/research/r186-eng.shtml>

⁵³ Nicole Ireland, "Pardons system's harsher rules block ex-criminals from jobs, housing", CBC News, 24 January 2016, online: <<https://www.cbc.ca/news/canada/criminal-justice-pardons-impact-1.3416380>>

It does not make economic sense for the state to punish people by interfering indefinitely with their participation in the economy, especially since there is evidence that people with records can be especially good workers when given a chance.⁵⁴ In many cases, they choose to run their own businesses, knowing that a criminal record can be a hurdle to applying for jobs, and end up creating much-needed jobs in their communities. That was the case for a Calgary man who has turned his life around since pleading guilty to a weapons charge almost ten years ago. He's since set up a successful café in a trendy part of Calgary, but fears he may have to close because all his competitors are getting liquor licenses—which he can't do because of his criminal record.⁵⁵

Those who are affected by criminal records legislation include mothers working to support their children and small-business owners struggling against to get ahead. They continue to be punished and are required to pay the price of criminal justice policy that wants so badly to appear “tough on crime” that it disregards empirical evidence about what will actually benefit communities.

⁵⁴ Jennifer Hickes Lundquist, Devah Pager & Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from One of America’s Largest Employers” (2018) 96:3 *Social Forces* 1039. The study considered a large sample of recruits in the US Army, and found that “[t]hose with a felony background show no difference in attrition rates due to poor performance compared to those without criminal records. Moreover, ex-felons are promoted more quickly and to higher ranks than other enlistees.”

⁵⁵ Nicole Ireland, “Pardons system's harsher rules block ex-criminals from jobs, housing”, CBC News, 24 January 2016, online: <<https://www.cbc.ca/news/canada/criminal-justice-pardons-impact-1.3416380>>. Municipal alcohol beverage sales licences in Calgary do indeed require a record check: <<http://www.calgary.ca/PDA/pd/Pages/Business-licenses/Liquor-Services.aspx>>.

It is not only counterproductive to stigmatize people for life. It is also at odds with key Canadian values. The Supreme Court of Canada has said so, in no uncertain terms: “The right of individuals with criminal convictions to employment and to re-enter the labour market are important values in our society [...]. Individuals who have paid their debt to society are entitled to resume their place in society and to live in it without running the risk of being devalued and unfairly stigmatized.”⁵⁶

All of us, at some point, have done something that we know was wrong, that we regret. But none of us are forever defined by the negative things we’ve done.

Those of us without criminal records live without the burden and the stigma of having that moment raised in the job interviews or education and housing applications that introduce us to our neighbours, our would-be employers, colleagues, or friends.

It is fundamentally unjust to continue punishing and stigmatizing, without reason, those who have long since been held accountable and served their sentence. Public safety is enhanced when individuals are allowed to find stable employment and

⁵⁶ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Maksteel Québec Inc* 2003 SCC 68 at para 63.

housing and volunteer or otherwise contribute to their communities as valued members.

Honourable colleagues, let us work together to bring about long-overdue, evidence-based changes to the criminal records system in Canada. I look forward to your support of this bill.

Merci, miigwetch, thank you.