



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

March 8, 2023

Via email: lcjc@sen.parl.gc.ca

The Honourable Brent Cotter
Chair, Standing Committee on Legal and Constitutional Affairs
Senate of Canada
Ottawa ON K1A 0A4

Dear Senator Cotter:

Re: *Bill S-212, An Act to amend the Criminal Records Act, to make consequential amendments to other Acts and to repeal a regulation*

I write on behalf of the Canadian Bar Association's Criminal Justice Section (CBA Section) in support of Bill S-212, *An Act to amend the Criminal Records Act, to make consequential amendments to other Acts and to repeal a regulation*. The CBA Section generally supports Bill S-212 and make recommendations to extend its reach to prohibit the public dissemination of non-conviction information.

The CBA is a national association of 37,000 lawyers, notaries, law teachers and law students with a mandate to protect the rule of law, promote access to justice and equality, and seek improvements to the law and the administration of justice. The CBA Section includes lawyers specializing in criminal law from all parts of Canada, and a balance of Crown and defence lawyers.

Criminal record checks proliferate in Canadian society. They are a feature of everyday life, needed for job and volunteer applications, adoption applications, applications for post-secondary education, and many other routine and important activities. The stigma associated with historical convictions is real and directly inhibits the ability of thousands of Canadians from making positive advances in their lives. This problem disproportionately affects persons from marginalized communities, who historically have greater and more negative interactions with police.

The CBA Section supports a faster, more reliable method to expunge or remove historical criminal convictions that are no longer relevant to the public at large. The record suspension system, while improved from years past, remains difficult to navigate. It is a lengthy and time-consuming process. Shifting to an expiry system, as proposed by Bill S-212, would alleviate some of these concerns.

Bill S-212 does not address another problem that routinely arises in criminal record checks, namely the dissemination of non-conviction information held by police databases like CPIC. "Non-conviction information" is a term to describe police information collected in databases to record police interactions

that ultimately did not result in a criminal conviction. This includes files describing a person as a suspect, an arrestee, a victim of drug overdose or a person apprehended under a mental health law. These highly prejudicial outcomes from police interactions are recorded and disseminated to the public in record checks even though the individual was never convicted.

The unnecessary disclosure of non-conviction information can create subsequent barriers to employment, housing, government benefits and other important aspects of day-to-day life.¹

These records are prevalent: in a 2014 study conducted in British Columbia, 72% of all criminal record checks that returned a relevant result (“hit”) were solely for non-conviction information. This result means that 72% of applicants had to explain why the police had suspected them of some criminal activity, without ever having been convicted, and in many instances, without ever having even been charged.²

The Ontario government has adopted ground-breaking legislation to prohibit dissemination of such prejudicial information in criminal record checks conducted by provincial police forces.³

In 2018, the CBA supported a Uniform Law Conference of Canada recommendation to create a uniform act to address these issues.⁴ In 2019, the CBA called on governments at all levels to adopt or amend policies limiting disclosure of non-conviction information that is held in police databases.⁵

The CBA Section supports the spirit of Bill S-212, because it seeks to limit the prejudice and stigma that arises from historical convictions that are no longer relevant to events like employment and volunteer opportunities. Once a conviction loses this relevance, it only remains prejudicial to the individual’s attempts at rehabilitation.

The same logic should extend to non-conviction information. The CBA Section recommends that Bill S-212 be amended to prohibit the public dissemination of non-conviction information from federally-held police databases. The *Criminal Records Act* already does this for offences resulting in a discharge (ss. 6.1 and 6.2). This same protection should extend to records where an individual was not found guilty at all, but for whatever reason had a negative interaction with police. This would not limit the police from accessing the information for investigatory purposes – the proposal is simply to limit sharing this prejudicial information with the public at large.

We hope these observations are helpful in your deliberations.

Yours truly,

(original letter signed by Julie Terrien for Kevin Westell)

Kevin Westell
Chair, Criminal Justice Section

¹ See, for example, Canadian Civil Liberties Association reports and resources at [False Promises, Hidden Costs](#).

² Office of the Information and Privacy Commissioner for British Columbia, Investigation Report F14-01, [Use of Police Information Checks in British Columbia](#), 2014 BCIPC No. 14.

³ Police Record Checks Reform Act, 2015, S.O. 2015, c. 30.

⁴ Letter from Canadian Bar Association re [Uniform Police Record Checks Act](#), August 31, 2020.

⁵ Canadian Bar Association, Resolution 19-03-A, [Disclosure of Non-Conviction Records](#).