



June 7, 2019

Via email: serge.joyal@sen.parl.gc.ca

The Honourable Serge Joyal, M.P.
Chair, Legal and Constitutional Affairs
Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Joyal:

Re: Bill C-93, *Criminal Records Act*

The Criminal Justice Section of the Canadian Bar Association (CBA Section) is pleased to comment on Bill C-93, *Criminal Records Act*. The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section consists of a balance of prosecutors and defence lawyers from all parts of the country.

The CBA Section fully supports the intended purpose of Bill C-93, to provide, “no-cost, expedited record suspensions for simple possession of cannabis.” We have concerns about the limited scope and complexity of the Bill. An ideal process from an access to justice perspective would be to require nothing from individuals with a record for simple possession to have their record expunged. Certainly, some people will be able to take advantage of the expedited, free process proposed in Bill C-93 and elsewhere¹, which would eliminate significant barriers. Others – for example, people with addiction issues or cognitive disabilities – may find any application process such an impediment as to make the initiative meaningless. However, recognizing the practical challenges likely to be involved by eliminating the application process entirely, we offer a few simple changes to the *Criminal Records Act* that we believe would serve the intended purpose more effectively.

We support the additions and proposed amendments to the Bill in sections 2(1), 2(2), 4(1) and 4(3), and (3.3), and believe that Schedule 3 should be retained in its current form.

We propose deleting the word “only” from section 4(3.1). This would expand the scope of the expedited record suspension to all persons with a conviction for simple possession of cannabis,

¹ For example, see Private Members’ Bill C-415, proposed by NDP MP Murray Rankin, [online](#).

whether they have any other unrelated criminal record or not. We also recommend deleting section 4(3.11) for the same reason.

The CBA Section suggests that all other provisions in the proposed Bill be deleted. Instead, we support an automatic process for record suspensions for this limited category of offences. A small change to the Record Suspension provision in Bill C-93 would have this effect:

Record Suspension

4.1 (1) Subject to subsection (1.1), the Board may order that an applicant's record in respect of an offence be suspended if the Board is satisfied that

...

Record Suspension – person referred to in subsection 4(3.1)

(1.1) In the case of an application referred to in subsection 4(3.1), the Board through its designate as stated in Section 2.1(2), shall order the applicant's record in respect of any offence included in Schedule 3 be suspended.

We also suggest adding two sections similar to those below, to ensure that the stigma associated with convictions for these offences would be efficiently and effectively minimized.

Non-Disclosure of Record

No record in respect of a conviction for an offence included in Schedule 3 that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be disclosed to any person, nor shall the existence of the record be disclosed to any person.

Purging of CPIC

The Commissioner shall remove all references to a discharge under section 730 of the Criminal Code or to a record of a conviction respecting offences included in Schedule 3 from the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police without delay.

The CBA Section believes that, by implementing this automatic process to purge convictions as articulated in Schedule 3, the federal government would not need the other changes proposed in the Bill. All other convictions and record suspension applications could continue to be handled through the current process. To eliminate the need for transitional provisions, the Section suggests that this expedited process be applied to all applications immediately when the amendments come into force, whether the application is new or pending.

In our view, the onus on applicants in Bill C-93 is inappropriate. It purports to waive inquiries into an applicant's "conduct" but then requires applicants to prove that the conviction at issue is their only conviction. Now that Canada has accepted the legality of possessing up to 30 grams of cannabis for personal use, this question should be omitted. Bill C-93 seems intended to remove the stigma associated with these types of convictions, and this aspect of the bill would only perpetuate it.

The CBA Section appreciates the opportunity to comment on Bill C-93 and would like to add our support for more significant reforms to the *Criminal Records Act*. We believe that "pardons" should be available to a larger segment of the population convicted of criminal offences. Currently, the application cost is prohibitive for many Canadians, and it should be lowered.

Legislated wait times before allowing an application to be made are inappropriate. In the recent case of *Chu v. Canada*², the BC Supreme Court held that the retroactive application of longer pardon periods was unconstitutional. We suggest returning to wait times that existed prior to the 2013 amendments (five years for indictable offences and three years for summary conviction offences).

Finally, the limitations imposed by section 4(2) of the current legislation, particularly Schedule 1, should be reconsidered.

We trust that our comments will be helpful and would be pleased to provide further clarification.

Yours truly,

(original letter signed by Gaylene Schellenberg for Ian Carter)

Ian Carter
Chair, CBA Criminal Justice Section

² 2017 BCSC 630, final paragraph, [online](#).