

## Criminal Records and Discrimination

### Denial of Human Rights Protections

Sentences imposed by criminal courts in Canada deny offenders liberties and/or property as a form of punishment. However, even after sentences are completed and debts to society are repaid, a denial of liberties continues. Those with criminal records face significant barriers and experience discrimination.

The awarding of a pardon or a record suspension under the *Criminal Records Act*<sup>1</sup>, however, provides legal protection from discrimination. Section 3(1) of the *Canadian Human Rights Act*<sup>2</sup> defines prohibited grounds of discrimination as including a ‘conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.’ Accordingly, those with a record suspension or a pardon have human rights protections in the federally-regulated sector against discriminatory practices such as a denial of goods services, facilities or accommodation, or being subject to adverse differentiation because of a criminal conviction. Ontario’s human rights code<sup>3</sup> provides similar protections.

The clear implication is that those who have completed their sentences but have not yet received a pardon or record suspension suffer a lack of human rights protections. They will continue to experience a denial of liberties as a result of the conviction beyond the proportionate sentence imposed for the crime until a record suspension is awarded under the *Criminal Records Act*, which will trigger some human rights protections.

Those with criminal records experience discrimination in the following areas:

### Employment

Finding employment is possibly the largest problem for individuals with criminal records. Increasingly employers seek criminal record checks as part of the hiring process. Generally

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<sup>1</sup> Criminal Records Act (R.S.C., 1985, c. C-47)

<sup>2</sup> Canadian Human Rights Act (R.S.C., 1985, c. H-6)

<sup>3</sup> Human Rights Code, R.S.O. 1990, c. H.19

employers can simply decline to hire individuals with criminal records. For many employment opportunities a criminal record will immediately disqualify an applicant. For many other jobs, while it may be possible to apply with a criminal record, it could be a considerable disadvantage. In competitive situations individuals with even a non-conviction criminal record can be treated with extreme prejudice when applying for jobs.

Discrimination in employment against those with criminal records has significant consequences. Those who are gainfully employed after leaving prisons are much less likely to reoffend. If people are unable to find employment, they easily feel cut off from society. The John Howard Society of Ontario argues that the Stigma of a criminal record actually makes society less safe.<sup>4</sup>

Individuals with criminal records may be desperate to get a job and are therefore vulnerable to exploitation by employers who might offer them below market wages.<sup>5</sup>

## Bondability

Individuals with a criminal record may be unable to be bonded. This in turn could be a hindrance to individuals as they try to find employment. Many employers will require that their employees can be insured in situations where the work may include sensitive data, handling of financial information or cash, interaction with customers or work in the vulnerable sector.<sup>6</sup> Bondability will therefore affect a great number of job opportunities.

## Adoption Rights

In Canada, all those wanting to adopt a child will be subject to a criminal records check. While having a criminal record may not be an absolute bar to adopting in Canada, it makes the process more difficult and the outcome more uncertain. Many countries, such as China, specify that no one with a criminal record is eligible to adopt.<sup>7</sup> The adoption process is very difficult and if the individual is qualified in all other respects then it would be unfair for a criminal record to prevent adoption.

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<sup>4</sup> <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/counter-point-6-police-records-and-stigma-challenging-stereotypes.pdf>

<sup>5</sup> <http://www.canadianlawyermag.com/legalfeeds/1601/jobs-program-for-offenders-could-lead-to-discrimination.html>

<sup>6</sup> <https://pardonservicescanada.com/blog/are-you-bondable-the-implications-for-canadians-with-a-criminal-record>

<sup>7</sup> <https://www.adoption.on.ca/international-adoption>

## Child Custody

Criminal records can arise in child custody disputes. When assessing the character of a parent seeking custody, a judge can take a criminal record into account. If it is in the best interests of the child to remain with or have access to a parent, a past criminal conviction could have a disproportionately harsh consequences for both the parent and the child.

## Housing

It is often more difficult for those with a criminal records to find housing. Applications for apartment rentals can ask if prospective tenants have criminal records. Without adequate housing, the likelihood of further criminal involvement is greater.

## Education

An individual with a criminal record may be unable to pursue certain areas of study or certain career paths. Studies in medicine, nursing, child care and other fields, particularly involving the vulnerable sector, require a criminal records check. This will also have an effect on employment opportunities.

## Voluntary Sector

Many organizations, particularly those dealing with vulnerable members of society, will screen out volunteers with criminal records. The inability to volunteer is unfortunate because it allows those who have harmed society in the past to make a positive contribution. Volunteering could also be a step towards full employment or work experience for some individuals. It can also deny organizations committed to helping prisoners and supporting safe reintegration from benefiting from successful peer-support programs.

Changes to the *Income Tax Act*<sup>8</sup> which took effect in 2012 identify those convicted of a “relevant criminal offence” as “ineligible persons” to serve on boards of charitable organizations. “Relevant criminal offences” are defined as criminal offences under the laws of Canada or an act that would be a criminal offence if committed in Canada. Once a pardon or a record suspension has been awarded, then they are no longer “relevant criminal offences” for the purposes of the Income Tax Act. While there is a belief tht the new legislative provisions would be interpreted narrowly to apply only to crimes relating to financial dishonesty (misappropriation of funds, intentional misstatements in financial records, forgery or alteration

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<sup>8</sup> Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.), s. 149.1(1)

of financial documents, and fraud) or relevant to the operation of the charity, the provisions may have a chilling effect on the charities' willingness to have people with criminal records on their boards of directors. Some charities, like the John Howard Society which has a charitable objective of helping prisoners and supporting their reintegration back into communities, may be denied the guidance of those with relevant experience.

## General Social Stigmatization

While about 10% of Canadians have a criminal record and most do not reoffend, there are many public misperceptions about what it means to have a criminal record. If it becomes known that neighbours and acquaintances have criminal records, they may become ostracized. Due to the fear and stigma associated with past criminal behaviour, those with criminal records experience social exclusion. Those who have lived crime-free for years after completing their sentences have demonstrated a strong commitment to overcoming their pasts becoming contributing members of our society.

## Cost

The fee for a Criminal Records Act record suspension application have increased significantly over the years to over \$600 or more if it is necessary to acquire fingerprints, court documents or other resources.<sup>9</sup> The John Howard Society of Manitoba has argued that this creates an additional barrier for economically disadvantaged applicants. Individuals who may be eligible for a record suspension may find themselves unable to apply for one given the cost. This problem will be exacerbated if the time for pardon eligibility is increased. Problems finding employment are the most prevalent issues with a criminal record and an individual who struggles to find employment for ten years will be in a far more difficult financial situation.

## Travel

Travel restrictions limit the civil liberties of an individual. While those with criminal records may travel within Canada, foreign travel is often a problem. When traveling to the US, a criminal record can create a great deal of uncertainty. US officials have discretion to refuse admittance to individuals with a criminal record. The uncertainty will lead to many individuals seeking out expensive waivers.<sup>10</sup> There is also no guarantee that foreign governments, such as

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<sup>9</sup> [http://pbc-clcc.gc.ca/infocntr/factsh/pardon-eng.shtml#\\_13](http://pbc-clcc.gc.ca/infocntr/factsh/pardon-eng.shtml#_13)

<sup>10</sup> <http://globalnews.ca/news/1886768/crossing-the-canada-us-border-with-a-criminal-record/>

the United States, would recognize a Canadian record suspension. For some individuals being limited in terms of travel will also be a detriment in job opportunities.

## Commercial Victimization

For many individuals there will be a desperate attempt to seek relief from the effects of a criminal record. Many individuals with criminal records are vulnerable to unscrupulous companies that promise more relief from criminal records than they can deliver. An internet searches may confuse websites of private companies with official Government of Canada websites. Certain companies may charge significant fees to process record suspension applications for those who may not even be eligible for a record suspension. These companies may also charge significant fees to assist individuals seeking waivers to the US.

Individuals with criminal records are vulnerable to marketing strategies of companies that seek to profit from assisting in record suspension applications. These companies may give individuals false hope or distort the reality of record suspensions.

## Conclusion

Those who have completed their sentences face significant discrimination in many areas because of their criminal records. They have limited human rights protections. Those seeking record suspensions or pardons have led crime-free lives for years after completing their sentences and have demonstrated a positive transformation. Relief from the discrimination of a criminal record will allow individuals to pursue improved employment opportunities, to secure housing and to contribute more fully to their communities. The granting of pardons or record suspensions under the *Criminal Records Act* results in significant human rights protections under the *Canadian Human Rights Act*. Until a pardon or record suspension is granted, those with criminal records will continue to experience stigma and a denial of liberties beyond the proportionate penalty initially imposed for the crime.



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