

# RECORD SUSPENSIONS: A SPENT REGIME FOR CANADA

A criminal conviction remains on an individual's record after the sentence has been served unless a record suspension (formerly called a pardon) is granted under the *Criminal Records Act*. An individual must apply to have his or her record "suspended", which essentially means that the record is sealed, but not erased, and would not show up in a record check process.



WAIT TIMES FOR SOME OFFENCES HAVE **DOUBLED**



COST HAS INCREASED **12x**

|                                      | PREVIOUS* | CURRENT (As of 2017) |
|--------------------------------------|-----------|----------------------|
| Wait Time <u>Summary</u> Offences    | 3 Years   | 5 Years              |
| Wait Time <u>Indictable</u> Offences | 5 Years   | 10 Years             |
| Cost of Application**                | \$50      | \$631                |

*Note: Wait times do not commence until after all sentences, including probation, have been completed and all fines have been paid.*  
*\* Changes to the Criminal Records Act between 2010 and 2012 have led to the current wait time periods, and also made some classes of offences ineligible for a record suspension.*  
*\*\* In 2010 the application fee was raised from \$50 to \$150; in 2012, it was raised to \$631. The application fee is in addition to any costs associated with obtaining court and police documents (i.e. fingerprints, record check).*

## A "SPENT" OR AUTOMATIC REGIME

There are two primary effects to a record suspension: 1) the record no longer shows up on someone's criminal record check and; 2) an applicant to a job can legally say they have no criminal record. Spent record regimes create an automatic process for "suspending" a criminal record.

The principles underlying a spent regime include rehabilitation, recognition of the stigma attached to criminal records, and recognition of the principle that sentences (punishment) must have some end point. Research shows a close relationship between employment and crime. Criminal records of any kind create significant barriers to employment. A fair, evidence-based process can help individuals move beyond their criminal record, expand pools of human resource potential and improve public safety.

## SPENT REGIME AND NON-CONVICTION RECORDS

The *Criminal Records Act* is silent on protections for individuals who have records of non-conviction (such as withdrawn, stayed charges, acquittals). Millions of Canadians have these types of records. These records can show up on a person's record check indefinitely. In other words, even if someone is legally innocent, an employer can use very old non-conviction information to discriminate against that applicant. A spent model must address both conviction and non-convictions records.

## MODELS OF SPENT REGIMES

Some countries employ a "spent" model or have "stale laws" which automatically seal certain records of conviction after specific criteria are met. These criteria typically relate to the nature of the offence, and require individuals to be crime-free for a set time-frame, after which their records are automatically sealed or expunged.

**83%** OF SURVEY RESPONDENTS IN CANADA AGREED THAT RECORD SUSPENSIONS (PARDONS) SHOULD BE AUTOMATIC<sup>1</sup>

### CANADA'S CURRENT (PARTIAL) SPENT REGIME

Canada has a limited spent regime for adults which only include Absolute and Conditional Discharges. For youth, Canada has a more robust automatic record closure system under the Youth Criminal Justice Act (YCJA). The youth regime covers both conviction and non-conviction records.

### ELEMENTS OF A IDEAL SPENT REGIME

Based on evidence and best-practice models in other jurisdictions, a spent regime must include the following:

- ✓ Automatic & No fee (Similar to YCJA)
- ✓ Individual receives certificate of spent conviction record
- ✓ Wait times that are fair and evidence based
- ✓ Covers non-conviction records
- ✓ Rights-respecting timeframes for sealing non-conviction records
- ✓ Available for summary and indictable offences<sup>2</sup>

1. A 2017 Survey conducted by Public Safety indicated that 83% of respondents believed record suspensions should be automatic for some crimes, see: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rcrds-sspnsn-prgrm/rcrds-sspnsn-prgrm-en.pdf>

2. Limiting the spent regime to only summary (less serious offences) would be a partial solution to the negative consequences of a criminal record. There is little evidence to suggest that more serious crimes have a higher risk of recidivism. For some limited categories of offences, there could be exceptions to the spent process. For example, at sentencing, law could give judges the discretion to require an application (rather than automatic) for some offences.