Issue Note – Record Suspensions and Pardons

BACKGROUND

In 2010 and 2012, the *Criminal Records Act* (CRA) was amended to change the eligibility criteria and wait times for a Records Suspension application following completion of an individual's sentence. These amendments increased the waiting periods to five years for a conviction for a summary offence and 10 years for an indictable offence. Amendments were also made to the decision-making criteria for ordering a record suspension. In addition to assessing whether the applicant is of good conduct for indictable offences, applicants must demonstrate that the record suspension would provide them with a measurable benefit, sustain their rehabilitation and would not bring the administration of justice into disrepute. These changes were applied retrospectively.

On April 18, 2017, the Supreme Court of British Columbia (B.C.) released its decision in the matter of the *Attorney General of Canada v. Chu* in favour of the applicant. On June 14, 2017, the Ontario Superior Court mirrored the *Chu* ruling in the *Charron / Rajab v. the Queen* case. Both court decisions held that the transitional provisions of legislation that amended the CRA in 2010 and 2012 to increase waiting periods for obtaining record suspensions and change eligibility and decision-making criteria, were contrary to sections 11(h) and (i) of the *Canadian Charter of Rights and Freedoms.*

The decisions are binding in the provinces of B.C. and Ontario and an individual who resides in B.C. or Ontario must have their application for a record suspension processed in accordance with the legislative criteria that was in place at the time the applicant committed his or her most recent offence(s).

The result of these decisions is that the PBC is now operating four legislative schemes, including one for cannabis record suspension, which significantly increases program complexity, and puts the integrity of the program at risk.

Issues

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Further, there is a need to modernize program delivery and information sharing, as noted through the study of Bill C-93 (*An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*). As well, as noted through past public consultation and the M-161 (*Record Suspension Program*) study undertaken by the House of Commons Standing Committee on Public Safety and National Security

(SECU), many stakeholders and Parliamentarians have expressed the view that the fee is prohibitive for some applicants.

Any reforms should also respond to the findings of recommendations and observations made by SECU and the Senate Standing Committee on Legal and Constitutional Affairs during the study of Bill C-93. These recommendations and observations address the need to modernize the program to permit for online applications, increase public education efforts and study the potential for record expirations/automatic pardons.

KEY MESSAGES

- Since 1970, more than 500,000 Canadians have received pardons and record suspensions. Approximately 95% of these are still in force, indicating that the vast majority of pardon/record suspension recipients remain crime-free in the community.
- A pardon/record suspension assists individuals in overcoming barriers associated with a criminal record and increases access to employment, education and volunteer opportunities in the community.
- Research in the United States (US) has shown that those who receive a record suspension (set aside or expungement in the US) experience large gains in employment rates and wages. As well, 99% of those who receive set asides in Michigan are not convicted of a felony in the next five years and 96% are not convicted of any crime at all.

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