



November 28, 2022

The Honourable Marco Mendicino  
Minister of Public Safety  
269 Laurier Avenue West  
Ottawa ON K1A 0P8

Dear Minister Mendicino,

Thank you very much for taking the time to meet with the Canadian Civil Liberties Association and the individuals and organizations we are working with to reform Canada's record suspension system. At our meeting last month, you heard from a wide range of people — yet the participants you met represented only a small proportion of the organizations and individuals who are working with the Fresh Start Coalition. We have included a full list of organizations that are part of the broader coalition for your interest.

It was wonderful to hear your commitment to changing the law in this area and moving towards an automatic record suspension system. We know that this is an issue that you care about, both as a Minister and as the elected representative of a community that is significantly impacted by the criminal justice system. We are hopeful that legislation will be introduced soon and are very much looking forward to continuing to work with you to bring forward meaningful changes to the *Criminal Records Act*.

We know that you and your staff are likely considering various policy options that may form the basis of legislative reform in this area. As such, this follow up letter will outline our key policy touchpoints for meaningful reform. We hope that this will assist you and your staff as you move forward in your work and deliberations.

We would welcome the opportunity to discuss these policy points with you, your staff, or public safety officials as you continue your work, and would appreciate any further updates you can provide on the timelines for internal policy development and introducing legislation.

There are four key aspects that the coalition is hoping to see reflected in an amended *Criminal Records Act*: an automated system; a focus on a lack of new convictions as the eligibility criteria; shortened wait times; and a legislative scheme where all categories and types of convictions would be eligible for an automatic record suspension. Each of these points is described more fully below.

## 1. *Get rid of the application process*

*I helped my son go through the process of getting a record suspension and it was unbelievably complicated and confusing... We were successful in getting a pardon for my son, but I think it would be virtually impossible for someone in a more vulnerable or marginalized situation.*

— *Parent and supporter of the Fresh Start Coalition*

A record suspension should be automatic so long as an individual has successfully completed the waiting period after their sentence.

The current application-based system is cumbersome, complicated to navigate, and inaccessible to the most marginalized groups of people. The process requires applicants to collect a range of paperwork from multiple different police services and courthouses. Applicants must explain, in depth, the circumstances leading up to and surrounding their conviction; for many this is retraumatizing and forces them to relive a period of their life that was marked by abuse, homelessness, addiction, isolation, mental health crises, poverty, and/or social instability. Many people who have lived through this are unable to fully remember all the details of their convictions, much less relive the trauma in order to complete a record suspension application.

The current application process also requires people to show they have been of good conduct – a wide-ranging inquiry in which the Parole Board can take into account any manner of police contact – and demonstrate how a record suspension would provide a measurable benefit to their lives. Many people who have attempted to apply for record suspensions report that these requirements are vague and intimidating to attempt to respond to. The operation of the good conduct requirement in particular furthers systemic discrimination.

None of these inquiries are justifiable based on the social science evidence regarding the utility of criminal records. The evidence shows that criminal record checks are not useful as general workplace, volunteer, or housing safety screening tools.<sup>1</sup> A criminal record alone cannot be used to predict the likelihood of future violent actions, and therefore cannot be used to accurately identify and mitigate risks specific individuals may pose to organizations, staff, and clients. Particularly after a few years have passed, accessing

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<sup>1</sup> For more information on the evidence supporting these conclusions, please see the joining submissions a number of coalition members provided to Public Safety Canada dated June 30, 2022, available at <https://freshstartcoalition.ca/wp-content/uploads/2022/07/2022-06-30-ASCR-Consultation-Joint-Written-Submission.pdf>.

information about an individual's criminal history has no value in predicting future involvement with the justice system.

On the other hand, social science research has demonstrated that the widespread use of criminal records has clear negative impacts on individuals' rehabilitation and reintegration.<sup>2</sup> Ultimately, the barriers posed by a criminal record negatively impact public safety by making it harder for a person to remain crime-free after they have finished their sentence. The automated sequestering of criminal records would help break down barriers that exist for people with criminal records, thus furthering the objectives of public safety, rehabilitation and reintegration.

**2. *Make sure the system combats systemic discrimination by making a record suspension contingent on a lack of new convictions, as opposed to including considerations such as police contact or unproven allegations***

*I've been applying myself and I've been going to interviews and then when it comes down to a background check, that's when they start asking me questions about what happened and they act very suspicious about the explanation I'm giving them, right? I have to explain that I have a mental illness, that I incurred these charges because of my delusional state of mind, it wasn't me at the time. I've been trying my best to maintain good mental health since and trying to obtain some meaningful employment ever since.*

— [Tareq](#)

Anyone who has finished their sentence and completed the waiting period without new convictions should be eligible for a record suspension.

While focusing on new convictions is not perfect, other possible considerations (e.g. requiring no police contact or withdrawn charges) when determining eligibility for an automatic record suspension would significantly entrench systemic discrimination and disproportionately disadvantage individuals from marginalized communities.

**3. *Shorten the timelines***

*I've tried to pay it. It's been almost impossible because we've been in touch with the courts, they've sent us paperwork. They've told us to go to different courthouses... It's*

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<sup>2</sup> See Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, *The Social Reintegration of Offenders and Crime Prevention* (Ottawa: National Crime Prevention Centre, 2007); Dominique Fleury and Myriam Fortin, "When working is not enough to escape poverty: An analysis of Canada's working poor," *Human Resources and Social Development Canada* (2006); Christopher Uggen, "Work as a turning point in the life course of criminals: A duration model of age, employment and recidivism," *American Sociological Review* 65, no. 4 (2000): 529.

*just been very hard to nail down where everything is, because it was done such a long time ago that I think it got lost in the system.*

— [Tom](#), who has an unpaid \$400 fine from the 1990s and is therefore ineligible to apply for a record suspension

Currently people are required to wait far too long (five or ten years *after* completing their sentence) before they can get a record suspension. We support lowering these timeframes and ensuring that a failure to pay a fine or complete some other minor administrative portion of a sentence does not ‘reset the clock’ on the waiting period.

We are also concerned about a one-size-fits-all approach to the waiting periods. There may be individuals who, due to delays in the court system, are not sentenced until years after they have committed an offence. The reliance on the difference between summary and indictable offences also presents difficulties. A very wide range of behaviours and circumstances can be captured within each of these categories. Moreover, due to recent legislative changes, almost all *Criminal Code* offences are hybrid offences. As a result, the current system of dividing waiting periods depending on whether the Crown elected to pursue a charge summarily or by indictment makes the applicable wait period entirely dependent on the almost unreviewable discretion of a single justice actor. These highly discretionary decision points provide opportunities for discriminatory bias — often unconscious ones — to influence criminal justice outcomes.

One way to address this difficulty would be to add a clause that allows a record suspension to be granted for humanitarian and compassionate reasons even though a person has not completed the waiting periods. We are using the term humanitarian and compassionate grounds because we have taken inspiration in part from the *Immigration and Refugee Protection Act*, which allows individuals who would otherwise be inadmissible to apply for permanent residency and present their situation on a case-by-case basis. A similar system for record suspensions would give people who would not normally be eligible for an automatic suspension an avenue to have their particular circumstances considered.

#### **4. *Make it a comprehensive system that applies to all offences***

*Pretty much every time my criminal record comes up, when it’s pertaining to employment, I usually have a full-on meltdown for a couple of days where I’m crying in bed. I go into shutdown mode, because I know I have to talk about my personal life again. I’ve got to talk about the things that I’ve worked so hard to socially overcome, mentally overcome, physically overcome. And every time, it’s right back on my doorstep.*

— [Kimberly](#), a survivor of physical and sexual abuse

One of the central policy discussions during the summer consultations on this issue was whether an automatic system should apply to all offences. An evidence-based approach that focuses on community safety, reintegration, rehabilitation and equality clearly supports including all types of offences in an automatic system.

There is no evidence that a history of certain types of offences makes it more likely that an individual will commit similar acts in the future. Categories of offences that are considered “violent”, for example, frequently encompass a wide range of conduct. Women, for example, are often charged with assault with a weapon when they use regular household objects – cases have included items such as a telephone, a tea towel, or a water bottle – to defend themselves from their abusive partners.<sup>3</sup> Similarly, categories of exclusion in the current legislation (e.g. sex offences) are based on stigma, not evidence. The Supreme Court of Canada’s recent decision striking down mandatory lifetime registration of sex offenders relied on expert evidence that having committed a sex offence is, on its own, an unreliable indicator of future risk.<sup>4</sup> The current record suspension regime, which excludes large numbers of people based solely on the category of offence or number of convictions, suffers from the same defects. It is worthwhile noting that, as with the current regime, applicants to high risk positions could still have their records unsealed through a vulnerable sector check.

Community safety would be best served by ensuring that all people who have completed their sentence and exited the criminal justice system have the greatest possible access to jobs, housing and stability.

Implementing changes in these four areas will fundamentally transform the process for hundreds of thousands of individuals. We are cognizant of the fact, however, that persons serving a life sentence will continue to be ineligible for a record suspension under our policy proposals. This leaves people who have successfully reintegrated and positively contributed to their communities impacted by the constraints and limitations of criminal records for their natural lifetimes. As you know, a significant number of the individuals currently serving a life sentence are Indigenous. Some organizations within the coalition are currently examining broader legal changes in this area. The specific organizations within the coalition that are working on this topic would be very happy to discuss these issues with you and your colleagues.

Thank you again for taking the time to listen to just a few of the hundreds of thousands of individuals in Canada who are being held back by a criminal record. We are very grateful for

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<sup>3</sup> See Women Abuse Council of Toronto, *Women Charged with Domestic Violence in Toronto: The Unintended Consequences of Mandatory Charge Policies* (March 2005) at 7-9; see also Canadian Civil Liberties Association and Education Trust, *Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention* (July 2014) at 22.

<sup>4</sup> *R. v. Ndhlovu*, 2022 SCC 38.

your dedication and commitment to working to dismantle unnecessarily punitive, discriminatory barriers that have been incorporated into our criminal justice system.

We sincerely believe that simply changing how this country administers criminal records would have a transformative impact on individuals and communities, and would immediately and significantly combat systemic discrimination within the justice system, the labour market, the housing market, and beyond.

As noted at the outset of this letter, we would welcome the opportunity to discuss these policy points with you, your staff, or public safety officials as you continue your work, and would appreciate any further updates you can provide on the timelines for policy milestones and introducing legislation.

Sincerely,



Abby Deshman

Director, Canadian Civil Liberties Criminal Justice Program, on behalf of the Fresh Start Coalition

Cc: MP Pam Damoff, Parliamentary Secretary to the Minister of Public Safety

Reem Zaia, Director of Policy and Legal Affairs, Office of the Minister of Public Safety

Keith Torrie, Policy Advisor, Office of the Minister of Public Safety

Conor Lewis, Parliamentary Secretary Assistant, Office of the Minister of Public Safety

## Appendix A: List of Fresh Start Coalition organizational members

- Aboriginal Legal Services
- Alliance for Healthier Communities
- Alter Justice
- Assaulted Women's Helpline
- Association des avocats de la défense de Montréal-Laval-Longueuil
- Association des avocats de la défense de Québec
- Association des avocats et avocates en droit carcéral du Québec
- Association des services de réhabilitation sociale du Québec (ASRSQ)
- Association québécoise des avocats et avocates de la défense
- Barbra Schlifer Commemorative Clinic
- Bethesda House
- Black Community Action Network Peel
- Black Legal Action Centre
- British Columbia Civil Liberties Association
- Canadian Association of Black Lawyers
- Canadian Association of Elizabeth Fry Societies
- Canadian Association of People who Use Drugs (CAPUD)
- Canadian Association of Social Workers
- Canadian Civil Liberties Association
- Canadian Council of Muslim Women
- Canadian Friends Service Committee (Quakers)
- Canadian Mental Health Association National
- Canadian Mental Health Association Ontario
- Canadian Prison Law Association
- Cannabis Amnesty
- Centre for Addiction and Mental Health (CAMH)
- Centre for Justice Exchange
- Centre to End All Sexual Exploitation (CEASE)
- Clinique juridique de Saint-Michel
- Criminal Lawyers' Association
- Elizabeth Fry Society of Cape Breton
- Elizabeth Fry Society of Kamloops
- Elizabeth Fry Society of Mainland Nova Scotia
- Elizabeth Fry Society of New Brunswick
- Elizabeth Fry Society of Newfoundland and Labrador
- Elizabeth Fry Society of Northeastern Ontario
- Elizabeth Fry Society of Northern Alberta
- Elizabeth Fry Society of Ottawa

- Elizabeth Fry Society of Quebec
- Elizabeth Fry Society of Saskatchewan
- Elizabeth Fry Toronto
- Elliot Lake Women's Group Inc.
- Empowerment Council
- Grassroots NB
- Halton Community Legal Services
- Health Justice Program
- HIV & AIDS Legal Clinic Ontario
- HIV Legal Network
- Hope 24/7
- Huron Women's Shelter
- Inasmuch House & Women's Services, Mission Services of Hamilton
- Indigenous Bar Association
- John Howard Society of British Columbia
- John Howard Society of Canada
- John Howard Society of New Brunswick
- John Howard Society of Ontario
- John Howard Society of Quebec
- John Howard Society of Saskatchewan
- Keep6ix
- Kinna-aweya Legal Clinic
- Lanark County Interval House
- Ligue des droits et libertés
- Luke's Place
- Mothers Offering Mutual Support (MOMS)
- Muskoka Parry Sound Sexual Assault Services
- Neighbourhood Legal Services
- Network of Women with Disabilities NOW
- Niagara Community Legal Clinic
- Ontario Alliance to End Homelessness
- Ontario Association of Interval and Transition Houses
- Ontario Coalition of Rape Crisis Centres
- Ottawa Coalition to End Violence Against Women
- PASAN
- Peel Alliance to End Homelessness
- Prisoners' Legal Services
- Pro Bono Law Saskatchewan
- Queen's Prison Law Clinic
- Resolve Counselling Services

- Saint John Learning Exchange
- Saskatchewan Literacy Network
- Social Economy Through Social Inclusion Coalition (SETSI)
- St. Leonard's Society of Canada
- Thunder Woman Healing Lodge Society
- Timmins and Area Women in Crisis
- Toronto Prisoners' Rights Project
- Victim Services of Durham Region
- West Island Black Community Association
- Women & Children's Shelter of Barrie
- Women's Legal Education and Action Fund (LEAF)
- Women's Shelters Canada
- YWCA Cambridge