



Formerly Pardon Services Canada

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House of Commons
Ottawa, Ontario
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13 December 2017

The Honourable Jody Wilson-Raybould,
Minister of Justice and Attorney General of Canada

Re: Changes to the *Criminal Records Act* regarding the eligibility requirements for a Record Suspension

I am writing with respect to the recent decisions of the B.C. Supreme Court and the Ontario Superior Court that determined that the retrospective transitional provisions of the *Limiting Pardons for Serious Crimes Act* and the *Safe Streets and Communities Act*, which amended the eligibility requirements for a Record Suspension under the *Criminal Records Act*, (the "Transitional Provisions") are unconstitutional.

On October 27, 2017, our office received the enclosed e-mail from the Parole Board of Canada advising that only those individuals currently residing in B.C. or Ontario will have their applications for a Record Suspension processed in accordance with the recent Court decisions. As the CEO of AllCleared, a company originally founded in 1989 under the name Pardon Services Canada that has assisted over 100,000 clients with clearing their criminal records, I was disappointed to learn that only those applicants currently residing in B.C. or Ontario who were convicted and sentenced prior to the Transitional Provisions coming into effect will have their constitutional rights respected in the processing of their applications.

In that e-mail, the Parole Board's Director of Clemency and Record Suspension states that "the court decisions do not have jurisdiction outside of B.C. and Ontario." While that may be true, we have received a legal opinion that there is jurisprudence from Canadian courts that states it is "legally unacceptable" for a law within the jurisdiction of the federal government "to be inapplicable in one



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province and in force in all of the others" (*Hendrick c. Québec (2004)*, 238 DLR (4th) 577 at para. 28, and *Dunbar v. Yukon Territory*, 2004 YKSC 54 at para. 22). This is especially true when the Attorney General of Canada has decided not to appeal a lower court decision striking down a federal law as unconstitutional.

In your role as Attorney General, you have a duty to the public interest and to ensure that the rule of law is upheld. By deciding not to appeal the B.C. court decision, and by consenting to the decision in Ontario, you have signalled that the Attorney General of Canada agrees that the Transitional Provisions are unconstitutional. However, you have not taken any further steps to ensure that the constitutionally offending laws are removed from the books.

In our view, this failure to act is constitutionally irresponsible as applicants for a Record Suspension from B.C. and Ontario who were convicted and sentenced before the Transitional Provisions came into effect are now entitled to more favourable treatment than the same applicants in other provinces. This result offends section 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees all citizens the right to be treated equally before and under the law.

In her decision finding that the Transitional Provisions violated sections 11(h) and (i) of the *Charter*, Madam Justice MacNaughton reviewed expert evidence which confirmed that having a criminal record impacts on an offender's ability to find employment and obtain housing, and contributes to an offender's social exclusion. She also determined that the evidence showed that "offenders experience stigma because of an unsuspended criminal record" (*Chu v. Attorney General of Canada*, 2017 BCSC 630 at para. 235).

The current state of the law unfairly furthers that stigma for offenders outside of B.C. and Ontario who were convicted and sentenced before the Transitional Provisions came into effect. These offenders should not have to wait for similar constitutional challenges to be brought in their home provinces, especially when the Attorney General of Canada has made it clear that it agrees that the Transitional Provisions are unconstitutional.

On behalf of the forty percent of AllCleared's clients who reside outside of B.C. and Ontario, I urge you to introduce legislation to immediately remove the unconstitutional Transitional Provisions from the books. This action is necessary





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to ensure that all offenders who were convicted and sentenced before the Transitional Provisions came into effect are treated equally regardless of their province of residence.

I look forward to your response.

Sincerely,

Azmajrin Jadayji, CEO
AllCleared (Formerly Pardon Services Canada)

Cc: The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness

Mr. Harvey Cenaiko, Chairperson, Parole Board of Canada

Enclosure



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