BRIEF BY THE BARREAU DU QUÉBEC

Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis

June 2019

Barreau du Québec
Mission of the Barreau du Québec

To ensure the protection of the public, the Barreau du Québec oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

Acknowledgements

The Barreau du Québec thanks the members of the Advisory Committee on Criminal Law:

Pascal Lévesque, Chair
Claude Beaulieu
Nicolas Bellemare
Alex Dalpé Sophie Dubé
Lucie Joncas
Pénélope Lemay Provencher
Michel Marchand
Patrick Michel
Julie Pelletier
Danièle Roy
Richard Roy
Ana Victoria Aguerre, Secretary

Published June 2019 by the Barreau du Québec


Legal Deposit: Bibliothèque et Archives nationales du Québec, 2019

Legal Deposit: Library and Archives Canada, 2019
Overview of the position of the Barreau du Québec

The bill is generally positive, but it contains several inconsistencies regarding the goal of encouraging the social reintegration of people who have completed their sentences.

Our comments focus on the following aspects:

1. **The proposed expedited suspension is restricted to simple possession of cannabis.**

The proposed process concerns only simple cannabis offences, even though other activities are legal under the *Cannabis Act*. In the interest of consistency and to give full effect to Parliament’s intent, the bill should include all legal cannabis-related activities.

2. **Although Parliament opted for records to be suspended, we wonder if the bill should provide for them to be expunged.**

This issue requires consideration in the interest of social justice, given that members of the Black community and Indigenous peoples are over-represented in convictions for simple possession of cannabis.

3. **A broader review of the *Criminal Records Act* is necessary.**

The purpose of this review would be to eliminate possible workplace discrimination against people with a criminal record. We make a suggestion in this regard.

4. **The bill is unclear about the possibility of a “combined” expedited record suspension related to several offences.**

In the interest of clarity, especially for persons without legal counsel, there is a need to clarify whether an individual can submit one application for expedited suspension that would apply to several eligible offences.

5. **Payment of a fine is no longer a prerequisite for applying for an expedited record suspension but it is still required.**

Although its application is restricted, we welcome this amendment, as it brings the *Criminal Records Act* in line with the findings of the Supreme Court of Canada in *Boudreault*, and we ask Parliament to take a broad view in this regard.
Contents
Introduction .................................................................................................................................................. 5
1. The proposed expedited suspension is restricted to simple possession of cannabis ...................... 5
2. Parliament chose to suspend rather than expunge records................................................................. 5
3. A full review of the Criminal Records Act is needed to limit or eradicate workplace discrimination .. 5
4. The bill could be clarified regarding the possibility of one expedited record suspension application for several eligible offences ................................................................. 6
5. The payment of fines and surcharges has been removed as a prerequisite for applying for an expedited record suspension.................................................................................................................. 6
Introduction
The Barreau du Québec has carefully reviewed Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis.

Close to half a million Canadians have been convicted for simple possession of cannabis.\(^1\) Currently, they must wait five or 10 years after serving their sentence before they can apply for a pardon. This process costs $631.

Under the provisions of the bill, individuals can apply for a record suspension for simple possession of cannabis before the above-mentioned periods expire, and the application fees are waived.

We support the proposed changes. The Barreau du Québec believes that people who have served their sentence have paid their debt to society and can be productive citizens.

However, we would like to point out several inconsistencies between the objectives of the bill and their implementation.

1. The proposed expedited suspension is restricted to simple possession of cannabis

Firstly, we question Parliament’s decision to restrict “expedited” record suspension to cases of simple possession, even though the Cannabis Act legalizes other cannabis-related activities by adults. These activities include, for example, giving up to 30 grams of cannabis to another adult or having up to four cannabis plants in the home. In our view, these instances should also be eligible for an application for record suspension under the terms in Bill C-93.

2. Parliament chose to suspend rather than expunge records

We also question Parliament’s decision to suspend records rather than expunge them, which would entail their permanent destruction rather than their suspension. This option should be examined in the interest of social justice, particularly given that members of the Black and Indigenous communities are over-represented in convictions for simple possession of cannabis.

3. A full review of the Criminal Records Act is needed to limit or eradicate workplace discrimination

Generally speaking, there are many consequences to having a record, including difficulty finding a job.

---


Brief by the Barreau du Québec, Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis, June 2019
We are particularly concerned by the questions that are often asked at job interviews and their impact on people who have received a pardon or record suspension. We suggest a more comprehensive reform of record suspensions to take this issue into account.

We would also like to take this opportunity to suggest an overall review of the provisions on record suspensions, formerly called pardons.

4. The bill could be clarified regarding the possibility of one expedited record suspension application for several eligible offences

The bill could be clarified regarding the possibility of a “combined” expedited record suspension for several offences listed in Schedule 3. Given that a “person who has been convicted only of an offence referred to in Schedule 3 may apply for a record suspension in respect of that offence before the expiration of the period”, could the person combine various offences listed in Schedule 3 in the same application for record suspension?

In the interest of clarity and legal predictability, it would be worthwhile including a provision that expressly allows individuals to apply for an expedited record suspension covering one or more offences listed in Schedule 3 at the same time.

5. The payment of fines and surcharges has been removed as a prerequisite for applying for an expedited record suspension

We would also like to address the removal of the payment of fines and surcharges as a prerequisite for applying for an expedited record suspension. This amendment was adopted by the House of Commons Standing Committee on Public Safety and National Security (SECU). Fines and surcharges are not being eliminated, but failure to pay them can no longer be used as a reason to reject an eligible application for expedited record suspension. The original draft of the bill stipulated that a person was ineligible to apply for a record suspension until after the expiry of any sentence, including the payment of any fine or surcharge.²

The Supreme Court of Canada stated in Boudreault that this requirement “adds to the gross disproportionality imposed on impecunious offenders.”³ The Court also found that the “inability of offenders to repay their full debt to society and to apply for reintegration and forgiveness strikes at the very foundations of our criminal justice system.”⁴

² Clause 4, proposed section 4(3.2).
⁴ Ibid., para. 79. When the unpaid amount involves a surcharge, application for a remedy can be made under s. 24(1) of the Charter: see Boudreault, paras. 107 to 109.
Brief by the Barreau du Québec, Bill C-93, An Act to provide no-cost, expedited record suspensions for simple possession of cannabis, June 2019
We therefore support SECU’s amendment to the bill, which is more consistent with the Supreme Court’s ruling. However, we find it inconsistent for this amendment to apply only to cases that are eligible for an expedited record suspension. For example, a person who is in financial need can receive a pardon for simple possession of cannabis, but not for a breach of probation for which there is an outstanding surcharge. In our view, Parliament must apply the Supreme Court’s findings in *Boudreault* to all record suspension applications.