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Suspension, not expungement: Rationalizing misguided policy decisions around cannabis amnesty in Canada

Abstract: Hundreds of thousands of Canadians continue to carry the burden of convictions for minor possession of cannabis obtained prior to legalization. Despite support for an automatic expungement process to eliminate the collateral consequences of punishment, the Trudeau government opted for a less favourable policy instrument – record suspensions. Drawing from parliamentary debate and committee hearings, the author summarizes the discussion and debate on Bill C-93 and analyzes this misguided decision using Miljan's work on policy instrument choice and rationality. The emphasis on bureaucratic rationality specifically resulted in a maintenance of the status quo when it comes to criminal justice policy and an uninspiring approach to cannabis amnesty in Canada.

Sommaire : Des centaines de milliers de Canadiennes et de Canadiens continuent de porter le fardeau de peines pour possession de cannabis, écopées avant la légalisation. En dépit de l'appui exprimé à un processus de radiation de façon systématique afin d'éliminer les conséquences collatérales d'une peine judiciaire, le gouvernement Trudeau a choisi une politique moins favorable, soit celle de la suspension de casier. En s'appuyant sur des débats parlementaires et des audiences en comité, l'auteur fait état des discussions et des débats entourant la loi C-93, et analyse cette décision malavisée en se fondant sur la rationalité et le choix d'instrument politique de Miljan. L'emphase sur la rationalité bureaucratique a conclu spécifiquement sur le maintien du statu quo quant aux politiques en matière de justice pénale. Ceci est loin d'être une approche gagnante dans le contexte d'une amnistie pour le cannabis au Canada.

Introduction

While some are quick to claim that legalization of cannabis in Canada is "the most profound drug policy shift this country has seen in nearly a century" (Visser 2018: para. 4), not everyone shares this enthusiastic sentiment. Hundreds of thousands of Canadians continue to carry the burden of simple cannabis possession convictions obtained prior to 17 October 2018, and despite tireless advocacy from researchers, activists, lawyers, practitioners, cannabis users, and some politicians – this burden has yet to be lifted. As

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stigma around cannabis use has seemingly decreased, and "social norms in Canada are more accepting of cannabis use compared to many other countries" (Leos-Toro, Shiplo, and Hammond 2018: 628, see also: Haines-Saah et al. 2014; Hathaway, Comeau, and Erickson 2011), stigma associated with a criminal record still contributes to much hardship, especially for individuals and groups who are already marginalized, including members of low-income, racialized, and Indigenous communities (Devah Pager 2007; Owusu-Bempah 2019; Valleriani, Lavalley, and McNeil 2018; Owusu-Bempah, Luscombe, and Finlay 2019). Despite this, most of the regulatory and legal concerns outlined in the Cannabis Act (S.C. 2018, c.16) demonstrate a preoccupation with public health and safety whereas issues pertaining to social justice were largely sidelined (Wesley 2019). Specifically, one significant question remained unanswered in the days leading up to legalization: Would Canada suspend or expunge the records of people who have criminal convictions for simple cannabis possession?

The day before legalization, under mounting pressure, Minister of Public Safety Ralph Goodale announced that the government would allow people with simple cannabis convictions to suspend their records (Harris 2018a). Months later, Goodale tabled Bill C-93 (An Act to Provide No-Cost, Expedited Record Suspensions for Simple Possession of Cannabis, 42nd Parliament, 1st Session, 2015) and outlined a process that "would allow applicants to immediately apply to the Parole Board of Canada (PBC) for a [record suspension]" (Vigliotti 2019a: para. 6).

The proposed legislation received instant scrutiny from advocates, lawyers, practitioners, politicians, and researchers who had been clear about their desire for full expungement of the records in question. Annamaria Enenajor, criminal defence lawyer and Director for the Campaign for Cannabis Amnesty[1], called Bill C-93 "woefully deficient" (Balkissoon 2018: para. 18). Her concerns, shared by many others, lie primarily in the fact that black and Indigenous peoples were consistent targets of cannabis-related arrests in Canada (Timothy 2018; Browne 2018; Maynard 2017; Marshall 2015; Owusu-Bempah 2017; Morgan 2018; Rankin, Contenta, and Bailey 2017), and as a result are now disproportionately burdened by lingering criminal records.

While record suspensions (formerly known in Canada as pardons) do provide *some* relief from the collateral consequences of punishment, Goodale's plan does not go far enough to repair the harm and injustice caused by decades of criminalization. Many individuals will not be eligible under the application guidelines, others will not apply due to costs, lack of resources, and complicated bureaucratic processes, and finally, the suspension of convictions (rather than full expungement) means that records will remain accessible by public safety officials at any time in the future.

The promise of "Real Change" from Trudeau and his Ministers at the outset of their four-year majority government mandate included a more

collaborative, transparent, evidence-based, and innovative approach to policymaking (Shepherd and Stoney 2018). Why then, given that other jurisdictions have opted to expunge criminal records in light of evidence that demonstrates the benefits of doing so (Prescott and Starr 2019a, 2019b), does Canada stand to fall behind on progressive criminal justice and cannabis policy as the government moves forward with the status quo process outlined in Bill C-93? To answer this question, what follows borrows from Lydia Miljan's work on policy instrument choice and rationality as it helps clarify the decision-making process that resulted in choosing record suspensions over full record expungement. Miljan states that, in addition to questions of cost-effectiveness and efficiency, "[p]olitical considerations, past experience, bureaucratic preferences, and random factors like the personal values of key decision-makers may all play a role in the selection of the means to accomplish policy goals" (2018: 116). She claims that three types of rationality – technical, political, and bureaucratic – are all at play throughout the policymaking process and knowing this can contribute to a more complete understanding of why one policy instrument is chosen over another.

This article highlights the discussion and debate on Bill C-93 by drawing from a variety of publicly available sources (parliamentary debates and committee hearings, media coverage, and materials produced by advocacy groups and politicians) and analyzes the policy decision-making process using Miljan's three rationalities. The narrative that carries through the debate around Bill C-93 presents record suspensions and record expungement as two different policy instruments that were available to policymakers to achieve the overarching goal of the Bill, which, according to a news release from Public Safety, was to make it easier for people with minor cannabis possession convictions "to work, go to school, travel and actively participate in their communities" (Public Safety Canada 2019: para. 1). While elements of technical and political rationality played a role in the final rendition of Bill C-93, it was bureaucratic rationality that largely influenced the choice of a record suspension application program over a more automatic (and thus less bureaucratic) record expungement process. Additionally, as a result of leaning on this bureaucratic rationality the government chose a policy instrument (record suspensions) that does not fully realize the goal of Bill C-93 and serves only to maintain the status quo when it comes to criminal justice policy.

The question of record suspension versus record expungement has shed light not only on the collateral consequences of punishment that continue to plague the lives of people with cannabis possession convictions, but it has also raised important concerns about the record suspension system itself and the obstacles faced by *all* criminalized people in Canada. So while the focus of recent public and political discussion has revolved specifically around meaningful and progressive action that allows for cannabis amnesty, there

is hope that these conversations also result in broader reforms to Canada's Criminal Records Act (RSC 1985, c 47) and the way in which criminal records are created, maintained, and managed across the country.

Background

Before delving further into Bill C-93, the author will clarify some of the concepts and processes encompassed in the discussion and debate around this legislation. First, the author will explain what is meant by "collateral consequences of punishment" and outline some common obstacles faced by people with criminal records. The author will then break down the record suspension process, a key element of Bill C-93, providing a foundation for the debate between suspensions and expungement. Finally, the author presents other pieces of legislation introduced by Members of Parliament and Senators that are relevant to this conversation about cannabis amnesty.

Collateral consequences of punishment

In April 2017, during the lead-up to cannabis legalization in Canada, Prime Minister Trudeau participated in a town hall discussion facilitated by VICE News (VICE Staff 2017). In responding to a question from a young black Torontonian concerned about the impact of having a criminal record for cannabis possession, Trudeau disclosed that his younger brother Michel was once arrested for the same offence. Thankfully for Michel, he was connected to a top-tier lawyer through his father (former Prime Minister Pierre Elliott Trudeau) and avoided charges. What Trudeau highlighted with this anecdote is twofold: first, he pointed to Canada's two-tiered justice system that criminalizes those who are poor and marginalized but benefits those with power and privilege. Second, he demonstrated the fear his brother and his family had of facing the collateral consequences of punishment. Had Michel not had access to the best lawyers, he would have faced obstacles finding work, getting an education, and traveling.

There is an ever-growing literature on the collateral consequences of punishment in criminology, sociology, social work, and other related fields. Researchers from many jurisdictions have been paying more attention to what people experience post-arrest, post-charge, post-sentence, and post-incarceration as well as the increasing discrimination and disadvantages faced by those with criminal records in the community. Jeremy Travis (2002: 16) refers to the collateral consequences of punishment as "invisible punishment" as they "typically take effect outside of the traditional sentencing framework" and "they are not typically considered by judiciary committees." He points to a "new wave" of invisible punishments through which people with criminal records "can be denied public housing, welfare

benefits, the mobility necessary to access jobs that require driving, child support, parental rights, [and] the ability to obtain an education" (p. 18). In Canada, evidence demonstrates that discrimination from employment, education and training opportunities, volunteering, and safe and suitable housing options is enough to hold people back from full participation in the community (McAleese 2017, 2019a; Murphy 2018; McMurtry and Doob 2015; Sullivan 2014; Canadian Civil Liberties Association 2014; John Howard Society of Ontario & Canadian Civil Liberties Association 2014; John Howard Society of Ontario et al. 2019; Ricciardelli and Peters 2017).

While many Canadians are in favour of forgiveness or amnesty for these convictions (Public Safety Canada 2017), the tension around this amnesty plan mostly concerns which form it should take – record suspension or full expungement.

A good understanding of the obstacles faced by people with criminal records is essential before entering the discussion on Bill C-93. Given that criminalized people are at the mercy of discerning employers, landlords, and others in the community (Pager 2007; Pager and Quillian 2005; Albright and Denq 1996; Leasure 2019; Thacher 2008), is it fair for those with cannabis possession convictions – records obtained for something that is now legal – to continue to endure the collateral consequences of punishment? While many Canadians are in favour of forgiveness or amnesty for these convictions (Public Safety Canada 2017), the tension around this amnesty plan mostly concerns which form it should take – record suspension or full expungement.

Record suspensions (pardons) and expungement

Language has created some confusion in the discussion and debate on Bill C-93 – this section clarifies the terminology used along with the associated processes (or, policy instruments) for managing criminal records in Canada.

Record suspensions (pardons)

Between 1970 and 2012, people with criminal records in Canada could apply for a pardon. The process of applying for a pardon through the Parole Board of Canada (PBC) was outlined in the Criminal Records Act, and the purpose of the program "was to formally acknowledge successful desistance from crime and allow individuals to move forward with their lives without harbouring the mark of a criminal record" (McAleese 2017: 85; see also Ruddell

Table 1. *Summary of the Changes Made to Canada's Pardon System*

	Pardons		*Record Suspensions*	
Wait times before eligibility	Summary Offences Indictable Offences	3 Years 5 Years	Summary Offences Indictable Offences	5 Years 10 Years
Application fee	$50		$631	
Exceptions	No exceptions, anyone in Canada with a criminal record can apply.		Cannot apply if criminal record includes more than three indictable offences, each with a prison sentence of two years or more. Cannot apply if criminal record includes a Schedule 1 offence (which is any offence involving a child).	

and Winfree 2006). Simply put, a pardon sealed and set aside criminal records in the Canadian Police Information Centre (CPIC) so that individuals would no longer be required to disclose their conviction history when searching for employment, housing, volunteer opportunities, or participating in other social domains and activities.

In 2010, the federal Conservative government began the overhaul of the pardon program as part of their broader tough-on-crime agenda. The first set of changes, outlined in the Limiting Pardons for Serious Crimes Act (S.C. 2010, c.5), increased the pardon application fee from $50 to $150, extended the wait times before eligibility, and set more stringent (and arbitrary) investigation and evaluation criteria for pardon applications. Less than two years later, further changes were made to the Criminal Records Act via Bill C-23B (An Act to amend the Criminal Records Act and to make consequential amendments to other Acts, 40th Parliament, 3rd Session, 2010) which was part of the Harper government's omnibus crime bill, the Safe Streets and Communities Act (S.C. 2012, c.1). It was at this point, on 3 March 2012, that the pardon program was effectively eliminated and replaced with the record suspension regime. The change in language, a response to Minister of Public Safety Vic Toews assurance that "it's not the state's business to be in the forgiveness business" (Ibbitson 2010: para. 4), was part of this phase in addition to new wait times, a $631 application fee, and new criteria which prevents some people with criminal records from applying all together.

The elimination of the pardon program had a devastating impact on criminalized people in Canada.

These changes to the Criminal Records Act (summarized in Table 1) were made in response to the sensationalized case of Karla Homolka[2] of Graham James[3] and were not at all grounded in evidence. As we have seen repeatedly in Canada, specifically when it comes to criminal justice policy and practice, "the mobilization of some stories… is an effective strategy to gain political support by intensifying emotions that increase the demand for immediate change" (McAleese and Kilty 2019: 835; see also, Grace 2018).

The elimination of the pardon program had a devastating impact on criminalized people in Canada (McAleese and Latimer 2017; Ireland 2016; McMurtry and Doob 2015; Cheadle 2015). The application fee alone (in addition to the other costs associated with the application process) is a barrier – especially for those who are already poor and marginalized – and means that many people with criminal records will continue to live with the damaging stigma long after they have served their formal sentence.

In January 2016, not long after the Liberals secured a majority federal government, Minister Goodale promised to reform the Criminal Records

Act by, at the very least, undoing the changes made by the Conservatives (Crawford 2016). Alas, after two public consultations (Public Safety Canada 2017; Parole Board of Canada 2016), two successful constitutional challenges (*Chu V. Canada (Attorney General)*, [2017] BCSC 630; Seymour 2017), and an in-depth parliamentary study of the record suspension program (Canada, Parliament, Standing Committee on Public Safety and National Security 2019d) we have yet to see this promised reform.

Expungement

While reforms to Canada's Criminal Records Act remain unseen, the Expungement of Historically Unjust Convictions Act (S.C. 2018, c.11) did receive Royal Assent in June 2018 and allows eligible individuals to apply to the PBC to permanently expunge and destroy certain conviction records. This expungement legislation was part of the Trudeau government's historical apology to LGBTQ2S+ Canadians and an acknowledgement that the "[l]aws and policies enacted by the government legitimized hatred and violence" (Harris 2017: para. 8). Unfortunately, even though approximately 9,000 convictions remain in RCMP databases, as of October 2018 only seven applications for expungement had been submitted to the PBC. Advocates "[blame] the low uptake on a lack of promotion and an onerous application process" (Harris 2018b: para. 7) and, similar to what we see in the debate around Bill C-93, many people wish the process for expungement was automatic.

Other relevant legislation

Apart from the Liberal government's efforts to relieve people with cannabis possession convictions of the collateral consequences of punishment by allowing them to apply for expedited record suspensions, others made legislative suggestions that move beyond the process outlined in Bill C-93.

Bill C-415

On 4 October 2018, NDP MP Murray Rankin introduced Bill C-415 (An Act to Establish a Procedure for Expunging Certain Cannabis-Related Convictions, 42nd Parliament, 1st Session, 2015). This Private Member's Bill was tabled in response to the government's forthcoming plan for record suspensions, which Rankin described as "a half-measure" (Aiello 2018: para. 6). Although C-415 was defeated at Second Reading on 1 May 2019, discussion and debate around the Bill was valuable as it highlighted the benefit of expungement over record suspension. Several individuals, advocacy groups, and non-profit organizations endorsed Rankin's efforts,

including Cannabis Amnesty, the John Howard Society of Canada, and Senator Kim Pate.

Bill S-258

In her own efforts to urge the government to deliver bold and progressive criminal justice policy, Senator Kim Pate introduced Bill S-258 (An Act to Amend the Criminal Records Act and to Make Consequential Amendments to Other Acts, 42nd Parliament, 1st Session, 2015) on 20 February 2019. S-258 addresses problems with the record suspension regime more broadly and "would allow criminal records to expire after a set time period without a complicated application process and with no fee" (Spratt and McAleese 2019: para. 10). Additionally, Senator Pate's legislation would amend the Criminal Records Act so that records for crimes that are no longer illegal – such as minor cannabis possession – would automatically expire as well. The Bill is only at Second Reading and it is not likely to move much further before a federal election is called in Fall 2019, but Senator Pate has promised to re-introduce this legislation when the new federal government forms.

Debating Bill C-93 and making (rational) policy decisions

Now that some key terms, processes, and legislation have been clarified, the following section will draw primarily from parliamentary debate and committee meeting minutes to illuminate the decision-making process that resulted in the final version of Bill C-93.

Three rationalities

In her introductory text on public policy in Canada, Lydia Miljan (2018: 3) writes that policymaking "involves conscious choices that lead to deliberate action." To better understand how these choices are made, Miljan outlines three types of rationality (summarized below in Table 2) that come into play when policymakers are deliberating about what instrument(s) will best meet the goal(s) of the overarching policy: technical rationality, political rationality, and bureaucratic rationality. These three rationalities demonstrate that policy decisions are not always made solely based on cost-effectiveness (technical rationality) and reveal other motivations for specific policy choices. The selection of a policy instrument might also be politically motivated (political rationality), meaning that decisions are made to enhance the positive perception of the current government. Bureaucratic preferences (or, bureaucratic rationality) might also influence instrument choice, leading to decisions that "favour measures that involve increased government

Table 2. *Three Types of Rationality in Policy Making and Implementation*

Technical Rationality	"The classical-rational model of decision-making, based on two main considerations: which measures are most likely to achieve the desired goals, and how those goals can be accomplished at the least cost" (Miljan 2018:127).
Political Rationality	"The reasoning behind implementation decisions that will benefit the governing party—for example, by strengthening its popular support in a particular region" (ibid).
Bureaucratic Rationality	"[L]eads bureaucrats to favour measures that involve increased government intervention on the grounds that more bureaucracy will be needed to carry them out" (ibid).

intervention on the grounds that more bureaucracy will be needed to carry them out" (p. 127). Bureaucratic rationality might not lead to the most cost-effective solution, as it often requires increasing budgets and resources to implement the chosen policy instruments, but it can lead to an efficient outcome – which is ideal when time is running out.

As politicians and policymakers aired their endorsements and critiques of Bill C-93, we saw elements of each of the three rationalities described above. In what follows, the author identifies – through analysis of parliamentary debates and committee hearings – evidence of each rationality at play, revealing how and why record suspensions remained the policy instrument of choice for Minister Goodale and the Trudeau government.

Technical rationality

Miljan (2018: 116) writes that "[t]he decision making process that leads to technical rational decisions is characterized by studies, interdepartmental committees, impact assessments, and perhaps commissions and task forces that solicit and distill expert opinion." It is through these studies, discussions, and assessments that policymakers will decide on an instrument that best meets the goal(s) of the policy. When Karen McCrimmon (Parliamentary Secretary to the Minister of Public Safety) opened the debate on Bill C-93 on 8 April 2019, she was already convinced that the legislation met this technical requirement.

After reminding everyone that people with cannabis-related convictions broke the law "and there were consequences for that" (Canada, Parliament, House of Commons 2019b: 26830), McCrimmon acknowledged that these individuals "should be able to shed their criminal record and the associated burdens and stigma as quickly and as easily as possible" (ibid.). According

to McCrimmon and her government, the "streamlined and simplified" process for accessing record suspensions (ibid.) achieves this overall goal of the policy by removing the wait times before eligibility (which is usually five or ten years, depending on whether an offence was tried by summary or indictment) and eliminating the $631 application fee. Bill C-93 also removes the requirement for "applicants to demonstrate that they have been of good conduct and that receiving a [record suspension] would provide them with a measurable benefit" (Canada, Parliament, House of Commons 2019b: 26831). These are the more subjective and arbitrary elements of the record suspension application process which typically leave room for members and staff of the PBC to "make a judgment call about whether to grant the [record suspension]" (ibid.). This component of the legislation, according to the government, would speed up the process for obtaining a record suspension and therefore provide more timely protection from the collateral consequences of punishment.

In her response to McCrimmon, NDP MP Jenny Kwan shared concerned from lawyers, researchers, advocates, and people with criminal records (As It Happens 2018; Balkissoon 2018; Campbell 2019; Lupick 2018; Pinkerton 2019a; Spratt and McAleese 2019), emphasizing that despite the changes to the record suspension application process outlined in Bill C-93, the requirement of an application still creates a barrier for those who are most marginalized. She went further to say that "this process will create a bureaucracy" (Canada, Parliament, House of Commons 2019b: 26833) and NDP MP Robert Aubin echoed these concerns claiming that the proposed legislation is a "smokescreen" that "does not go far enough" (ibid.). Kwan and other MPs urged "the government to reconsider this process, with particular consideration to its impact on the Indigenous community and people from racialized communities" (26832). All in all, these critiques suggest that record suspensions do not meet the goal of Bill C-93 and therefore this policy instrument was not a technically rational choice.

In terms of the second requirement of technical rationality, the consideration of cost-effectiveness, we saw this through comments from Conservative MPs who were concerned about the potential cost of expungements or suspensions to "honest taxpayers" (Canada, Parliament, House of Commons 2019a: 27423) who "should not be on the hook for paying for the suspensions" (Canada, Parliament, House of Commons 2019b: 26837). Conservative MP Glen Motz also called out the government on its lack of meaningful consultation on Bill C-93 and was worried about the last-minute effort on this file. Despite the concerns around cost though, many Conservative members were in favour of full expungement of minor cannabis possession records. This position could be related to the parliamentary committee study on the record suspension program, during which many Conservative MPs expressed concerns about the process (Canada, Parliament, Standing

Committee on Public Safety and National Security 2019d). Conservative MP Michael Cooper stated in the House of Commons that "it seems… fundamentally unjust that individuals can be burdened with a criminal record for an activity that today is perfectly legal" (Canada, Parliament, House of Commons 2019a: 27419). Cooper pointed to other jurisdictions, like California, who are "moving forward with expungement" and insists that "in the interests of justice, [Canada] should do the same" (ibid.).

Unfortunately, even though many MPs clearly saw expungement as a policy instrument that better reflected the goal of Bill C-93, the government continued to throw its weight behind record suspensions.

Political rationality

Perception is everything in politics, and it is no secret that politicians avidly avoid being perceived as soft on crime. This political rationality alone could be justification for why Goodale and his government chose record suspensions over expungements, as the former, while providing some relief from the collateral consequences of punishment, does not delete records – a process that would acknowledge an initial wrongdoing on the part of the state. Even though Parliamentary Secretary McCrimmon acknowledged the disproportionate impact of cannabis laws on black and Indigenous peoples in Canada, she reiterated the government's stance that this does not meet the threshold of a historical injustice which is required for full expungement. We heard repeatedly, both in the House of Commons and during parliamentary committee meetings, that "[t]he prohibition of cannabis was bad policy, but it did not violate the Charter" (Canada, Parliament, House of Commons 2019b: 26831). Minister Goodale, and other supporters of Bill C-93, insisted that "the effect of a [record suspension] or an expungement would be virtually the same" (26832) due to protections afforded under the Canadian Human Rights Act (R.S.C., 1985 c. H-6). Therefore, despite the identified issues with the record suspension regime, the government stands by this process as the best way to offer reparation and restoration to people in Canada with minor cannabis possession convictions without inviting critiques from the tough-on-crime crowd.

Perhaps unsurprisingly, Conservative MPs who endorsed Bill C-93 also emphasized that they did not wish to see records completely erased from CPIC or from any other record keeping systems. During the debate on 8 April 2019, Conservative MP Pierre Paul-Hus stressed his own support for suspension over expungement by reminding Canadians that "[c]rime is crime. We need to remember that the law is the law and must be obeyed" (Canada, Parliament, House of Commons 2019b: 26837). This connects back to the Liberal government's initial reminder that people in possession of cannabis prior to 17 October 2018 were in fact breaking the law and such

arguments have been used repeatedly to show support for Bill C-93 which opts to only suspend, not expunge, these convictions. These tough-on-crime sentiments were echoed throughout the discussion and debate on this legislation but were not shared by all.

Interestingly, the harshest reviews of Bill C-93 came from Liberal MP Nathaniel Erskine-Smith. During the debate in the House of Commons on 6 May 2019, Erskine-Smith expressed his own opinion that "[a]n expungement will help Canadians who are impacted by a criminal record more so than a [record suspension] would" (Canada, Parliament, House of Commons 2019a: 27418). He shared concern that a record suspension merely sets a record aside rather than destroying it and reminded the Minister of Public Safety that "[a] different government could actually restore records" (ibid.) – something that could never happen if the records are instead expunged. He also reminded the government of a party resolution passed in 2012 which reads "that a new Liberal government will extend amnesty to all Canadians previously convicted of simple and minimal marijuana possession, and ensure the elimination of all criminal records related thereto" (ibid.).

Finally, Erskine-Smith challenged his own party's stance that cannabis-related convictions do not meet the threshold of a historical injustice and insists that "[t]he criminalization of cannabis *was* a racial injustice in original purpose and current effect" (ibid., *emphasis added*). He highlights that "[w]e fear different drugs today because we used to fear different people" (ibid.) and reiterates the concerns about targeted arrests and unequal treatment under Canada's cannabis laws shared by various groups including Cannabis Amnesty, the Federation of Black Canadians, the Canadian Association of Black Lawyers, and the Native Women's Association of Canada. While Erskine-Smith agrees that Bill C-93 is a move in the right direction, he fears that his party "is not going far enough" (27419).

Erskine-Smith's open challenge to the tough-on-crime narrative, shared by many of his NDP counterparts, was also a good test of the political rationality being deployed by Goodale and other supporters of the legislation. Unfortunately, these critiques were still not enough to demonstrate the faults inherent in this policy instrument.

Bureaucratic rationality

As Miljan (2018: 117) reminds us: "as a general rule it is unwise to count on bureaucrats for non-bureaucratic solutions to public policy problems." This is exactly what we got with Bill C-93. Instead of implementing a free and automatic record expungement process, the policy relies upon expanding program budgets, resources, and staff at the Parole Board of Canada to receive and process the cannabis record suspension applications. In her endorsement of Bill C-93, Parliamentary Secretary McCrimmon assured

Canadians that the PBC "is redesigning the application form to make it simpler to understand and faster to complete" and "devoting resources to work with people to ensure that applications are properly submitted" (ibid.). In addition to guaranteeing these supplementary resources, the government also insisted that they did what is best for Canadians who have convictions for minor cannabis possession and claim that full expungement was "a practical impossibility" (Canada, Parliament, House of Commons 2019b: 26831). McCrimmon specified that in Canada "we have a patchwork of different law enforcement authorities at various levels of government, each with its own records and record-keeping systems" (ibid.). This complicated system means that records are difficult to locate and therefore granting expungements, as Liberal MP Michel Picard put it, "[involves] more than a simple click of a button" (Canada, Parliament, House of Commons 2019a: 27422). In essence, Canada's inconsistent and outdated web of bureaucratic, record keeping practices hindered the ability for the government to produce a more meaningful and progressive policy.

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One of the recurring critiques of Bill C-93 from members of all political parties is that it does not offer enough protections to people with minor cannabis possession convictions who wish to travel, particularly to the United States. As it stands right now, United States Customs and Border Protection does not recognize record suspensions (or pardons) and therefore Canadians with conviction records must apply for costly travel waivers if they wish to cross the border. Some Liberal MPs, including Peter Schiefke, maintain that record suspensions are preferable to full expungement because "with the expungement process, there is no way that other countries could get access to those documents showing that the individuals' criminal record no longer exists" (Canada, Parliament, House of Commons 2019a: 27427). But this argument was discredited during a parliamentary committee meeting on 29 April 2019 when Brigitte Lavigne (Director, Clemency and Record Suspensions, Parole Board of Canada) stated that individuals would receive a document confirming the expungement of their record (Canada. Parliament. House of Commons. Standing Committee on Public Safety and National Security. 2019a). Arguably, this document could be used at the US border the same way a confirmation of a record suspension could be used to advocate for entry.

The author shares this critique and solution above to demonstrate that even though there were bureaucratic solutions proposed to address the government's concerns and hesitations around expungement, their support for record suspensions as the policy instrument of choice remained strong. Goodale stood by his "no-cost" record suspension plan, despite being reminded on several occasions that there are still costs associated with preparing the application. Conservative MP Glen Motz pointed out that "[t]here is a fee to get fingerprints. There is a fee to get your record from a police service, and there is a fee, generally, to get your records from the court" (Canada. Parliament. House of Commons. Standing Committee on Public Safety and National Security. 2019a: 15). These costs can quickly add up to hundreds of dollars and this will be a significant barrier (and bureaucratic nightmare) for people with criminal records who are already living in poverty due to their criminalized status and inability to find employment. This is a concern about the record suspension process that was shared during the parliamentary committee study of the program (Canada, Parliament, Standing Committee on Public Safety and National Security 2019d).

Overall, the government ignored the endorsements for a free and automatic expungement process in favour of a standard bureaucratic process that has already been the subject of comprehensive critique. Despite seeming to meaningfully engage and reflect on evidence presented by experts during the parliamentary committee hearings on Bill C-93, Goodale and others within the government settled for the status quo as a result of time constraints and a lack of innovation. We are often hopeful that through evidence-based policymaking, "governments can better learn from experience and both avoid repeating the errors of the past as well as better apply new techniques to the resolution of old and new problems" (Howlett 2009: 154). Unfortunately, this was not the case with Bill C-93, and the application of a bureaucratic rationality to the policy goal resulted in a lacklustre approach to cannabis amnesty in Canada (McAleese 2019b).

Discussion

"[E]ven a government's more sincere efforts can misfire; sometimes policy fails to achieve the intended goals, and may even aggravate the situation it was intended to improve" (Miljan 2018: 5).

If the goal of Bill C-93 was to quickly eliminate the collateral consequences of punishment for people who have convictions for minor possession of cannabis, the chosen policy instrument – record suspensions – does not achieve this goal. An important critique of Bill C-93 concerns its reach. According to various reports, somewhere between 250,000 and 500,000 people in Canada have a conviction record for simple possession of cannabis (Canadian

Nurses Association 2017; Raymer 2019). While there is disagreement over the exact number of people affected, what is of primary concern here is that the government estimates only about 10,000 people will apply for an expedited record suspension (Canada, Parliament, House of Commons 2019a). This low expectation is worrisome to Conservative MPs who are troubled about an under-estimation of the costs associated with Bill C-93, and to advocates who hoped that cannabis amnesty would extend to *everyone* affected by punitive prohibition laws – not just those who have the knowledge and ability to apply for a record suspension. As Annamaria Enenajor shared during a parliamentary committee meeting: "I hope [C-93] would have benefited more people, which is one of the reasons why [the Campaign for Cannabis Amnesty is] asking for it to be automatic" (Canada. Parliament. House of Commons. Standing Committee on Public Safety and National Security. 2019b: 5). Although officials from Public Safety and the PBC claim that efforts will be made to reach out to individuals via social media and by connecting with community-based non-profit organizations, this did not relieve the apprehensions from MPs and advocates.

It has become quite clear that this proposed legislation does not offer meaningful reparations to people with minor cannabis possession convictions, but simply maintains the status quo.

During his final comments at the clause-by-clause consideration of Bill C-93 on 27 May 2019, NDP MP Matthew Dubé claimed that "[t]he absolute bare minimum was done for what should have been part of a flagship piece of this government's agenda" (Canada, Parliament, Standing Committee on Public Safety and National Security 2019c: 17). Others, including NDP MP Murray Rankin whose own proposed legislation (Bill C-415) outlined a process for expungement, also insisted that "it is too little too late" (Canada. Parliament. House of Commons. 2019b: 26837) and strongly believes that Bill C-93 "ignores the historical injustice [and] the disproportionate impact of cannabis possession offences on marginalized Canadians" (ibid.). Although Minister Goodale stresses that the Liberals wants things done quickly as it pertains to cannabis amnesty, many feel that they are not taking enough time to do things right – or that these discussions should have taken place much earlier in the government's mandate. This concern was expressed by members of the Senate who, despite passing Bill C-93 at third reading without amendments (Pinkerton 2019b), were disappointed with how the government proceeded with this legislation. A Senate committee report emphasizes a "need for broader reform to the criminal record system" (Canada, Parliament, Senate, 2019) and calls for technological advancements

to improve record-keeping practices in Canada to ensure better protections for Canadians from the collateral consequences of punishment.

The hesitations about Bill C-93 shared by MPs on Parliament Hill are echoed by advocates in the community. It has become quite clear that this proposed legislation does not offer meaningful reparations to people with minor cannabis possession convictions, but simply maintains the status quo. Additionally, as we have seen with other issues, like immigration (Rivas-Garrido and Koning 2019), the government "engaged with evidence [presented during committee parliamentary hearings] only in selective and superficial ways" (414). The lack of amendments made in response to evidence demonstrated that the cannabis amnesty plan was decided upon before hearing from experts and advocates, with little room (and time) left for adjustments. Overall, the critiques of C-93 demonstrate that – as Liberal MP Nathaniel Erskine-Smith put it – the government is "not taking the opportunity to correct [an] injustice when that opportunity stares [them] in the face" (Canada, Parliament, House of Commons 2019a: 27419). In other words the chosen policy instrument – record suspensions – does not satisfy the goal of the policy, but merely reflects the application of a bureaucratic rationality to an issue that required far more boldness and innovation.

Conclusion

It is important to remember that although Prime Minister Trudeau's brother and others with power and privilege were able to avoid the prolonged punishment associated with a criminal record, upwards of 500,000 Canadians continue to endure the collateral consequences of punishment associated with minor cannabis convictions. While Trudeau's initial support for cannabis legalization seemed to stem from a concern about social justice (Raj 2014), his stance shifted before and during the 2015 federal election campaign when the Liberals became more focused on public health, safety, and the economics of legal cannabis (Potter and Weinstock 2019). Therefore, as people are trying to figure out how to properly invest in and profit from the legal cannabis market (La Monica 2018) others are struggling to find work in this industry (and elsewhere) due to criminal record checks required by employers. While Bill C-93 received Royal Assent on 21 June 2019 (Vigliotti 2019b), it should *not* be applauded as progressive policy as it relies completely on a process and policy instrument (applying for a record suspension) that is fundamentally flawed. A truly progressive cannabis amnesty law would have allowed for free, automatic, and full expungement of cannabis possession convictions and might have also provided an impetus for broader reforms to the Criminal Records Act that would be of benefit to *all* criminalized people in Canada.

Notes

1 The Campaign for Cannabis Amnesty brings together lawyers, researchers, community builders, entrepreneurs, cannabis activists, and others to advocate for amnesty for people in Canada with convictions for simply cannabis possession. More information about the campaign can be found here: https://www.cannabisamnesty.ca/.

2 Karla Homolka was convicted of manslaughter for the role she played (alongside her husband, Paul Bernardo) in the 1990 murder of her sister, Tammy. Homolka is often "presented as a rare and sensational figure of dangerousness" in Canadian media (Kilty and Frigon 2006: 57) and her case is regularly used by politicians to incite fear and garner support for penal policies in Canada.

3 Graham James is a former Canadian hockey coach who was charged and convicted of several accounts of sexual assault against his minor hockey players. While James was granted a pardon in 2010, it was subsequently revoked due to new charges against him (Cheadle and Bronskill 2010).

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