Parole Board of Canada | Commission des libérations conditionnelles du Canada

Record Suspension User Fee – Consultation Report

May 9 to June 10, 2016

This report provides an overview of the comments, ideas, and suggestions received on the record suspension program.

8/31/2016

Canada

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Section I - Overview

The PBC conducted an online consultation with key stakeholders (i.e., general public, criminal justice system partners, individuals who have a criminal record, record suspension companies, offender advocacy groups, and Indigenous groups) to get their input on its record suspension user fee regime. Specifically, the objective of the consultation was to seek input on:

- The current application process;
- The user fee (i.e., three possible scenarios);
- Any barriers the current application process, fee or service standards (or possible future scenarios) may present to applicants seeking a record suspension; and
- Adequacy of current service standards.

The consultation ran from May 9 to June 10, 2016. Stakeholders were invited to share feedback and information about the Record Suspension Program and user fee by visiting the PBC Consultation webpage, which included background information, possible service delivery scenarios, and a series of questions – many of which were open-ended.

Individual invitations to participate in the consultation were sent out to 31 stakeholder organizations. For a listing of these organizations, see Annex D – Stakeholders. In addition, notices promoting the consultation were prominently displayed on Canada.ca, including on the Policing, justice and emergencies theme page. A notice was also posted on the Consulting with Canadians website. Additionally, links to the consultation were strategically posted throughout the PBC's website, including the Record Suspension section of the site.

Responses were also received via email and/or correspondence from various interested individuals and parties.

Individual, stakeholder, and/or third party service provider quotes, without attribution to protect confidentiality, have been highlighted throughout this report to illustrate responses.

Section II - Participation

Participation in the online consultation was significant, with a total of 1,607 responses received. The feedback received through this consultation will help inform the options that will be put forward as part of this exercise. In addition, the PBC also received a number of submissions, via email and correspondence, which were taken into consideration while preparing this report.

Submissions were received from individuals representing a wide range of backgrounds and interests, including:

- Former, current, and future record suspension applicants;
- Stakeholders (i.e., advocacy organizations, criminal justice organizations, etc.);
- Members of the public;
- Third party service providers (i.e., pardon companies);
- Indigenous groups; and
- Others.

The online consultation included twenty five (25) questions. The questionnaire contained fifteen (15) quantitative (i.e., multiple choice/close ended) and ten (10) qualitative (i.e., open ended) questions.

What We Heard

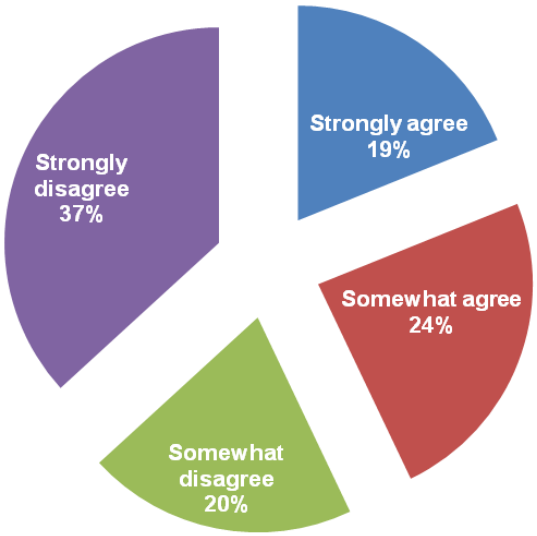
In order to provide context to the comments received, qualitative responses were categorized into key themes. The following provides an overview of the feedback received through the consultation process.

The current application process

The questionnaire asked –

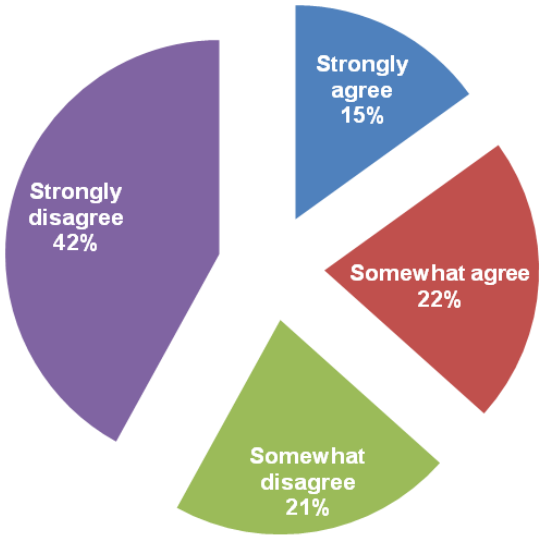
- Do you agree or disagree that the current approach for applying for a record suspension is fair and reasonable to those seeking a record suspension?

There were 1,582 responses indicating:



- ❑ Do you agree or disagree that the current process for applying for a record suspension makes the program accessible?

There were 1,567 responses indicating:



The questionnaire asked for comments on the current process for applying for a record suspension, including any barriers it may present to applicants trying to access the program.

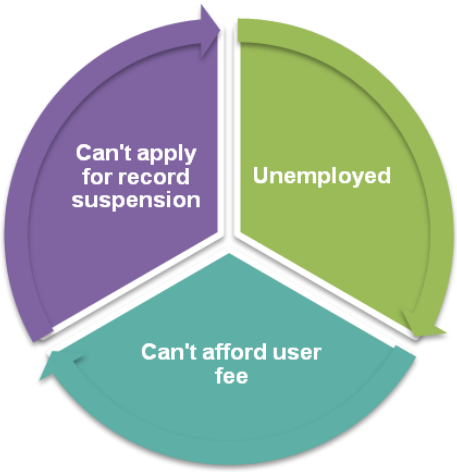
Many respondents indicated that the current record suspension application process needs to change as it takes too long and is complicated. Many elaborated to say that the time to gather information to support an application takes too long and is extremely labour intensive. Many went on to explain that:

- The number of organizations an applicant must contact varies and it is difficult and time consuming to determine who to contact;
- Dealing with various police agencies and courts present unique difficulties, such as delays in processing information requests, the type of information provided (i.e., format and/or relevance), how long information is retained, etc.; and
- There are many additional costs (i.e., other than the record suspension user fee) required to obtain this supporting information.

Furthermore, many said they believe the process represents further punishment.

Respondents also stated that the total number and amount of the various fees are out of grasp for many, creating barriers to reintegration.

Moreover, the user fee of $631 is viewed as prohibitive and perpetuating to the cycle below:



"This process is difficult and expensive. For people who want to move forward with their lives, this current process is a barrier to employment."

"I think the price is a huge barrier for people who have little income and can't get a job because of it."

"Outstanding fines are a significant problem that sometimes reach absurd levels. We have clients who have outstanding surcharges (not the fines itself, just a surcharge because the fine was paid a few days late) from 30+ years who cannot apply for another ten years. The requirement that they be paid is reasonable but there needs to be some leeway on exceptional cases. The rule should be that the fines must be paid before applying without exception, but they should not affect eligibility waiting periods."

Given the concerns raised about the current process, many respondents also provided suggestions on how it could be improved:

- Creating a centralized record keeping for record suspension applicants (i.e., the PBC would have access to criminal partner information as opposed to applicants having to seek this information on their own);
- Offering an online submission process for applications;
- Investigating further efficiencies for the Record Suspension Program (i.e., compare to other programs, such as applying for a passport);
- Allowing monthly installments to cover the application cost when money is scarce due to lack of employment; and
- Providing the ability to fast track applications (i.e., through face-to-face or interview processes).

"Although there certainly needs to be a process in place for individuals to apply for a Pardon (record suspension), the current process is onerous and expensive. Additionally, private firms have capitalized on charge fees to assist individuals to apply and this increases the cost. Something similar to a passport application or visa would be more appropriate (letters of reference and a police clearance)."

While many respondents voiced their concerns, other respondents were supportive of the current application process and believe the fee is reasonable. They expressed the view that the work involved in obtaining a record suspension demonstrates the applicant's devotion to the process, and that the current process is a great opportunity for individuals to gain a second chance and a clean start.

> *"It would be good if there are services to help people with this, such as Legal Aid."*
>
> *"I feel like there should be one data base to easily access all of Canada, instead of every area that people has lived in."*
>
> *"...The service should be pro-active, positive and supportive of restoring the person to a status of contributing to both family and society."*

In addition, many respondents commented that they find the eligibility periods (i.e., 5-year and 10-year waiting period for summary and indictable offences respectively) unfair as they negatively affect rehabilitation. For instance, the eligibility periods have a significant impact on education, housing, and employment. Also, outstanding fines are a significant problem for some applicants (i.e., an unknown fine can result in further delays in eligibility periods, starting from when the fine was paid).

Finally, some respondents believe that the "record suspension" program should be changed back to the "pardon" program (i.e., reinstating the previous program), including changing the term "record suspension" back to "pardon" as the latter describes forgiveness/removal as opposed to setting a record aside.

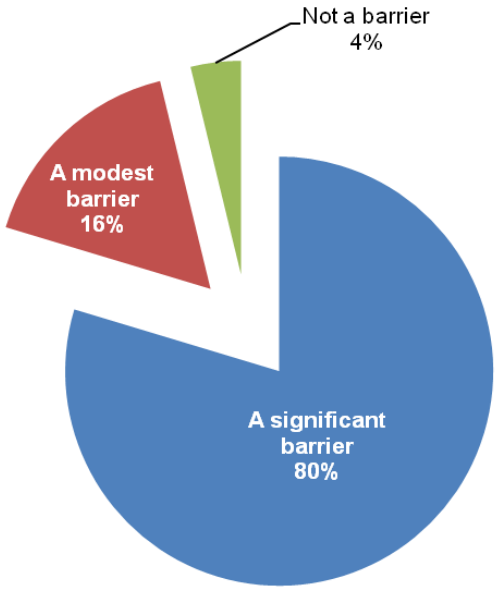
> *"I wish the word "pardon" would (again) replace "record suspension". It carries a greater weight of meaning: namely society is showing mercy in response to the good work to remain law-abiding by the ex-offender."*
>
> *"The Pardon system was one of the most successful programs in criminal justice with success rates at 98%. Rather than tinkering with standards, the original program must be reinstated."*

Input on the User Fee

The questionnaire asked –

- ❑ To what extent do you think the current user fee is a barrier to those seeking a record suspension?

There were 1,499 responses indicating:



Three service delivery scenarios (i.e., options) were outlined in the questionnaire and respondents were asked to comment on each of the following:

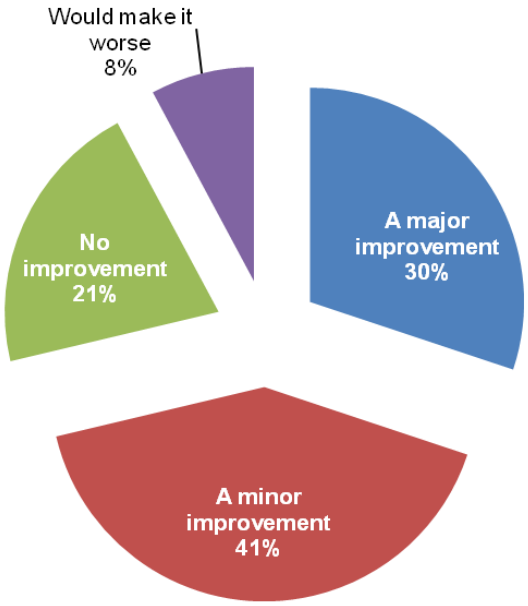
Scenario – Option 1: Two distinct user fees - one fee for applications for offences tried summarily and one fee for applications for offences tried by indictment.

- The user fee for a summary offence application would be lower than the user fee for an indictable offence application to reflect the level of work required to process each type of application.

The questionnaire asked –

- ❑ To what extent would this change improve the record suspension application process?

There were 1,352 responses indicating:



Respondents were asked why this would be an improvement or not, or why it would make the process worse.

Overall, the majority of respondents saw some value and relevance to the scenario that would have two separate user fees for summary and indictable offences (i.e., generally, the user fee would be linked to the amount of work required to process the application). Respondents stated that they felt that this approach could not only help reduce overall costs, but also potentially speed up processing times. In their opinion, since there were fewer stigmas, lower punishments, and less administrative work involved in processing summary offence applications, the lower fee could possibly make the process more accessible for the applicants with a summary conviction.

Conversely, some respondents were of the opinion that a lower fee for summary convictions would actually unfairly discriminate against those applicants who have been convicted by indictment. It was conveyed that these applicants would be more discouraged by having to pay the higher fee and might choose not to apply, making it increasingly difficult for them to secure long-term employment.

While respondents recognized that any measure taken to reduce the user fee cost would be appreciated by applicants, it was also widely noted that having two separate costs for summary and indictable offences would not be a major improvement if the fee remains at the current level. While the reduction in the price of a record suspension for summary offences would reflect the reduced amount of work needed to complete an application, many respondents indicated that they would like to see the fee be more accessible and geared towards the ability of the applicant to pay, not the level of administrative work required to process an application. A significant number of respondents felt that the issue of successful reintegration should be viewed in a broader context and should consider the larger impact that barriers to record suspension can create.

Another predominant concern voiced about Option 1 was the perceived unfairness that a two-tiered system would cause for applicants convicted of a hybrid offence (i.e., offences that can be charged either summarily or by indictment under the *Criminal Code of Canada*). It was expressed that the decision on how to proceed is often arbitrary and at the discretion of the Crown attorney. This ambiguity could potentially make the process more frustrating for record suspension applicants as it could lead to a situation where the same offence would have two different user fees.

Compounding the perceived unfairness created for those convicted of hybrid offences is the fact that some offences, from several years ago, may not have accurate court information in order to verify whether the charge was processed summarily or by indictment in court. For these hybrid offences, a person who cannot prove through court documentation that the charge was a summary offence would therefore be subject to the longest waiting period (10 years), which means the file is being processed according to the longer timeframe, similar to an indictable file. Respondents indicated it would not be fair for an individual applying for the record suspension to pay a higher fee simply because the court is unable to clarify what type of offence the person in question was charged with.

"We believe a user fee system based on applications for offences tried summarily versus those tried by indictment would make the record suspension application process worse. A summary or indictable conviction is useful as an eligibility qualification to apply for a pardon, but the distinction should not be used to charge different fees. We do not believe there is a material difference in the processing effort for the PBC to grant a record suspension application for a summary offence in comparison to an indictable offence. This observation is largely evidenced from the fact that there is only one application process for summary and indictable offence applications. This process requires applicants to provide the same documentation (RCMP record, court records, local police checks, Measurable Benefits form, etc.), regardless of whether their offence was tried summarily or by indictment."

"Whether a case proceeds summarily or by indictment is not necessarily an indication of its complexity, nor of the capacity of the convicted individual to integrate successfully to society following the expunging of the sanction. The decision may be a result of pressures within the court system or the expertise of the assistance received by the accused. The individual may have benefited from programming during the sentence regardless of the nature of the court proceeding. The materials available for the consideration of the record suspension application may be well presented regardless of the nature of the proceeding. This would be a completely arbitrary classification resulting in a two tier fee structure without foundation."

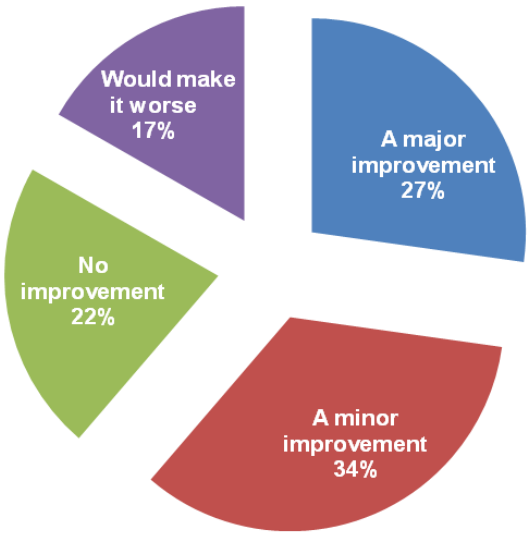
Scenario – Option 2: Under this scenario, the user fee would be split into two stages. Applicants would submit a separate screening fee AND processing fee.

- The screening fee would be non-refundable.
- The processing fee, however, would only be charged if the application is accepted as eligible at the screening phase.

The questionnaire asked –

- ❑ To what extent would this change improve the record suspension application process?

There were 1,297 responses indicating:



Respondents were asked why this would be an improvement or not, or why it would make the process worse.

Overall, there was positive feedback to this scenario. Many respondents indicated that this option could possibly reduce the overall fee for applicants and ease the financial burden of having to pay one user fee at the beginning of the process. However there was considerable concern about the overall current cost being too high and inaccessible to the majority of applicants and fear that this added step would be an administrative burden on the process.

While there was considerable support of a modest screening fee, some respondents believe that having a non-refundable screening fee could act as a further deterrent for low-income applicants. Many individuals who do not have access to disposable income may be hesitant to pay a screening fee if there is a possibility that they would lose their money if their application is rejected, and subsequently have to pay the fee a second time once they resubmit their application. As well, there was the belief that there is a perceived unfairness inherent in retaining a fee for an application which neither imposes processing costs on the program nor delivers any benefit to the applicant.

There were numerous suggestions on how to handle the non-refundable aspect of the screening fee, including allowing applicants to resubmit without an additional charge and having the screening fee applied to the processing fee if an applicant was eligible. Additionally, many respondents recognized that the current process is quite complicated and offered various options for dealing with this complexity, while also supporting the concept of having a separate screening and processing fee.

Whether it is PBC employees or other government organizations (i.e., Service Canada), many respondents felt that the process could be more cost-effective and efficient if applicants had access to support and guidance (including an updated application guide) from someone knowledgeable in the program and process to review the application before it is submitted. It was suggested that this approach would provide applicants with a better understanding of the eligibility criteria and reduce the need to pay for additional assistance from pardon service companies. In addition, this could not only reduce the number of incomplete or ineligible applications, but also reduce the workload for those people processing applications, which would make the non-refundable screening fee a non-issue and reduce the overall cost for applicants.

For those applications that were assessed as being ineligible, it was suggested that a clear explanation as to why their application is not continuing on after the screening stage would be very beneficial. This would help the process become more efficient as applicants would have a clear understanding of what would be required in order to resubmit their applications.

"Unless the overall fee is reduced to a reasonable amount, tinkering with the system will not result in improvement. Persons applying for this relief are mostly socio-economically underprivileged. If we value reintegration, the process must be made affordable for them. A criminal record vastly restricts the ability of a person to obtain appropriate employment which is known to be a major contributor to successful community living. However, should the screening fee be nominal, perhaps $10.00, it would permit persons to seek assurance that any further fee to process the application would be assured, at the least, of the eligibility of the application. The $10.00 would weed out frivolous applications. Again, this will not be an improvement unless the overall fee is returned to a reasonable amount."

"If the screening fee is minor (say $ 25 or even as much as $50) this would appear to make sense. People would understand the need for a screening fee as screening applications also costs money. If the screening fee is any more than that, it will not seem fair, because it is not refundable. If there is a screening fee, applicants will pay more attention to making sure their application is complete and compliant. The downside to the screening fee is that prospective applicants may not apply - it could prove a barrier. Another advantage is that they would not be charged the whole amount (for screening and processing) all at once if the application is actually processed; the fees would be charged in clear stages".

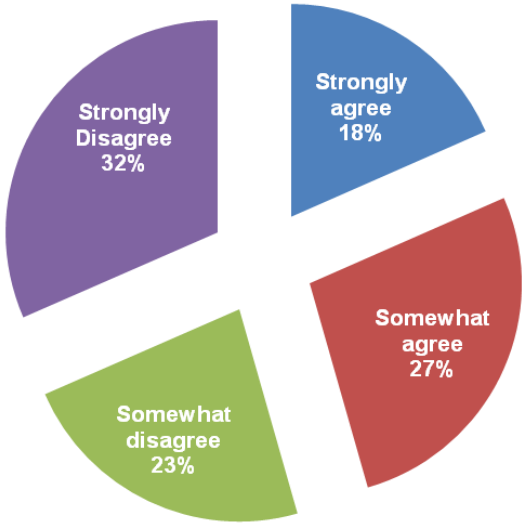
Scenario – Option 3: Under this scenario, applicants would continue to pay one user fee that covers the costs of both screening and processing the application.

- This scenario is identical to the current user fee process. For applicants who are deemed ineligible at the screening stage, the full user fee would be returned to them.

The questionnaire asked –

- Do you agree or disagree with this approach to the user fee?

There were 1,255 responses indicating:



Respondents were asked to comment on this approach to the user fee and why PBC should or should not continue with this model.

Many of the concerns and comments for the current application process (as outlined above) were reiterated in this response (i.e., the cost is prohibitive, gathering information to prepare an application for submission is lengthy and difficult, the time to process an application is too long, this is a further punishment, the process is punitive and inhibits reintegration into communities).

Some respondents were supportive of the current application process, but feel that the current user fee is too high. Respondents were in favour of a single user fee as opposed to multiple user fees (i.e., Options 1 and 2 above). Many expressed that the one fee approach allows for people to easily apply for a record suspension and avoids further confusion.

> *"Regardless of the approach to fee used, the barrier set by the level of the current fee is an insurmountable problem. The fee needs to be significantly reduced to encourage individuals to move forward with community reintegration. Individuals with criminal records tend to have limited academic and employment achievements, and low incomes. To encourage, in fact to make it possible, for them to have a chance at successful community living, the fee must be reduced."*
>
> *"This model is fine, but it is the cost of the fee that is too high."*

Adequacy of current service standards

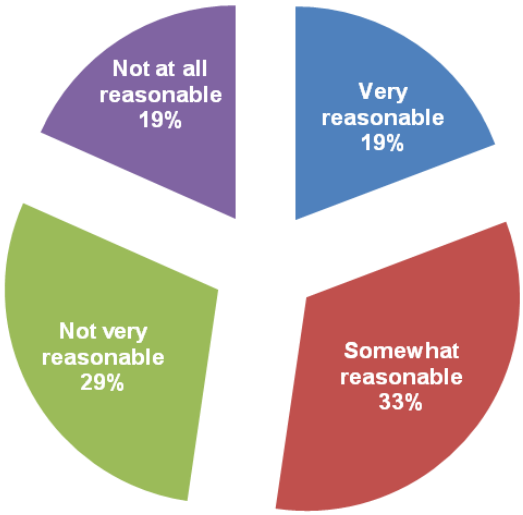
The current user fee for a record suspension application includes specific service standards that the PBC must meet when processing an application.

The service standard for a summary offence is 6 months. Specifically, once an applicant is found to be eligible for review, a decision will be reached on the application for record suspension within 6 months.

The questionnaire asked –

- ❑ Do you think 6 months is a reasonable amount of time to wait for a determination on applications based on a summary offence?

There were 1,248 responses indicating:



The responses to this question were almost evenly split with a slightly higher majority who think 6 months is a somewhat or very reasonable amount of time to wait. However, when asked in what ways, if any, does the 6 month service standard create a barrier for applicants, the most common barrier identified by respondents was that the wait time prevents applicants from securing employment. Other barriers included preventing travel and restricting educational opportunities.

Many respondents noted that the 6-month service standard was a barrier in itself because they felt as though the time symbolized further punitive measures (e.g., causing them to feel discouraged, anxious, and emotionally unstable, rather than encouraged and supported toward reintegration). The most common suggestions for a more appropriate service standard length for summary offences were between 30 days and 3 months.

Several respondents indicated that they felt 6 months was a more appropriate time for indictable offences, and that summary offences should take half the time considering the amount of time applicants have already waited to become eligible to apply, and the amount of time it takes to gather the necessary information for an application.

Some additional ideas from respondents included:

- Expediting applications which have proof of a job offer or emergency;
- Allowing applicants to pay an additional fee for expedited service;
- Moving the process completely online so as to speed up the service standard;
- Allowing applicants to apply 6 months before the end of their waiting period in order to include the 6 months service standard as part of the waiting process; and
- Considering the severity of the offence, the sentence, and the time passed since the offence in order to adjust the service standard per application.

Third party service provider (e.g., pardon companies) respondents had mixed responses to whether the 6-month service standard to process an application for a summary offence presents a barrier to applicants. However, out of these respondents, the majority found the standard too long (65%), while 32% supported the standard, generally referring to it as “reasonable”.

Stakeholders who received an invitation to participate in the consultation were unanimous in stating that the service standard for processing summary offence applications was too long, for either general reasons or as a barrier to employment. Of the respondents in this category, two also included support for the standard in their response; one stakeholder acknowledging that the time has improved from past wait times, and the other acknowledging that it takes time to review applications effectively.

“If it could be less time it would clearly be better since obtaining a pardon is often one of a series of steps an ex-offender has to make in order to take charge of his or her life in order to fashion improvements therein in their chances for employability and reduce or eliminate their reliance on social supports and assistance in the future. Time is of the essence.”

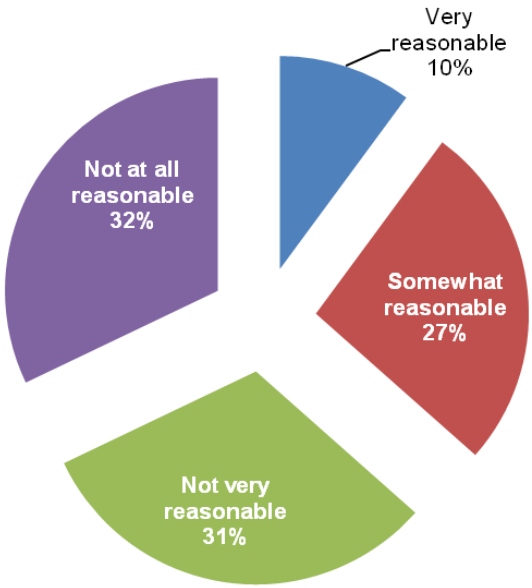
“We do not believe 6 months is a reasonable amount of time to wait for a determination on applications based on a summary offence. Summary offences are deemed to be the least harmful of offences under the Criminal Code. Most importantly, many people with criminal records only apply for a record suspension after an incident where the record was disclosed. In these circumstances, it is impossible to undo the damage; however, it should not be unreasonably long to regain one's footing and moving forward by obtaining a record suspension in a reasonable period of time.”

Currently, the service standard for making a determination on a record suspension for an indictable offence is 12 months.

The questionnaire asked –

- ❑ Do you think 12 months is a reasonable amount of time to wait for a determination on applications based on an indictable offence?

There were 1,237 responses indicating:



Respondents were asked in what ways, if any, does the 12 month service standard create a barrier for applicants.

In general, a majority of respondents found that the 12 month service standard to process an application is too lengthy and created various barriers for applicants, especially when viewed in conjunction with the legislated waiting period they have already endured and the length of time to gather all the necessary information required to submit an application. A majority of respondents were of the view that the main barriers created by this service standard relate to the length of time and its impact on employment, education, and travel opportunities. Many respondents felt that the length of time for the process as a whole (including the waiting period, information gathering, and service standard) increases the likelihood of recidivism and that it severely limits an applicant's ability to be a fully contributing member of society.

In contrast with the view held by some respondents relating to the service standard for summary offences, for this question many respondents felt the service standard should be the same for both summary and indictable offences. A considerable number of respondents questioned and could not comprehend why applications concerning indictable offences take an extra 6 months to process as compared to those for summary offences. The most commonly mentioned appropriate length of time for processing applications for indictable offences was in the 6 month range.

A number of respondents provided the same two suggested approaches to improve the record suspension system:

1) Allow applicants to apply in advance of the end of the waiting period (so that the determination of the application could coincide with the end of the waiting period); and
2) Allow applicants with indictable offences to pay an additional fee to expedite their applications (i.e., similar to the expedited fee to process a passport application).

All stakeholder and third-party service provider respondents deemed the 12 month service standard as too lengthy. The main emphasis on the barriers caused by the service standard related to the applicant's inability to fully reintegrate into society and the effects that a long service standard has on employability. As with other respondents, a number of stakeholder and third-party service provider respondents questioned the need for a processing time for indictable offences that is double in length of time for summary offences.

One organization suggested that the 12 month service standard would be reasonable for applicants convicted of violent offences.

"All of the inconveniences and difficulties of a criminal record would persist for an additional twelve months. These include notably travel restrictions, difficulties in obtaining employment and entering certain professions, barriers to permanent residence and citizenship requests, bars to entering Canada, prejudice in child custody disputes, and bars to contact with friends or family members subject to parole conditions not to associate with anyone with a record. In some cases, the waiting period postpones individuals' ability to present their social circle with the evidence that they truly have reformed."

"When the harmful aspects of the waiting period are balanced against the administrative needs of the program, we find that a response time of nine months in indictable cases would be fair to the system, and considerably fairer to the applicant than twelve months."

"Doubling the length will make it even less beneficial in the big picture, to the person trying to find his/her way back into meaningful employment and community connections."

"Bearing in mind as well the long ineligibility period, if eligible at all, for indictable offences probably means a lifetime of no work, no income and welfare substance. In terms of social policy goals, this is self defeating for society."

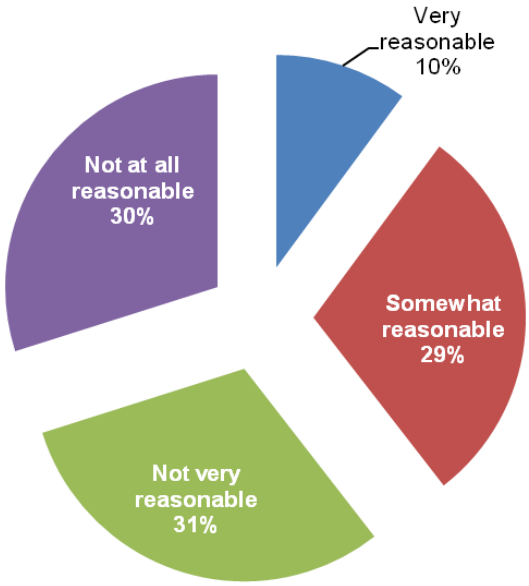
"If the person has already completed the waiting period, why should they also have to wait a set time for a determination of application? The time it takes to process the application should equal the time to wait for a determination. Anything else creates a barrier to their employment, a burden to their family and a less successful reintegration."

The current service standard to process applications in which the PBC is proposing to refuse to order a record suspension is up to 24 months after application acceptance. This allows an applicant to make representations to the PBC to support their application.

The questionnaire asked –

- Do you think 24 months is a reasonable amount of time for this?

There were 1,208 responses indicating:



Respondents were asked for comments on this service standard, including any barriers it may present to applicants seeking a record suspension.

Generally, there appears to be some confusion among respondents about the 24 month service standard. Many respondents expressed the belief that the PBC will use the entire wait period of 24 months every time it proposes to refuse to order a record suspension. In addition, respondents were unclear about the structure of the 24 month service standard (i.e., how much time is allocated for the applicant to make his/her representation and how much time is set aside for the PBC's processes).

A significant number of respondents indicated that the 24 month service standard is too long and prevents applicants from securing gainful employment. Travel and educational opportunities were also identified as areas negatively impacted by the 24 month service standard. Terming the service standard as "unreasonable" and "excessive", some respondents questioned how much of the delay is due to the PBC's internal/operational processes. Some respondents suggested 12 months as an alternative service standard.

While some respondents said they were happy with the extra time available to make representations, some asked that the time necessary for the PBC's operations be specified to be transparent so that the 24 month period does not appear to be arbitrary.

A large number of respondents suggested that this service standard should be two-tiered, similar to the existing 6 and 12 month service standards for processing record suspension applications (e.g., a shorter wait time for summary offences and a longer wait time for indictable offences).

Lastly, the nature of some responses seems to indicate the need to better communicate the PBC's record suspension decision-making processes in this area.

"If one has met all qualifications laid out in the process, why would this happen, again failure to communicate."

"[24 months] seems a reasonable amount of time if that is the maximum amount of time given to the applicant. If the applicant applying for the suspension is prepared before the 24 months is up, they should be allowed to proceed at that time. If this is not the case, 24 months seems to be an excessive amount of time, and would create possible barriers to a person who requires the Suspension to obtain work."

"The extra time allotted to obtain information is beneficial to applicants, as long as once the information is presented the process is activated immediately and they are not made to wait an extra amount of time."

"*The service standard to process an application should not be based on the time an applicant requires to make a representation. Instead, as soon as an applicant has made representations to the Board to support their application, the Board should have a fixed period of time to make their decision. Any request or requirement for further information from the applicant should be accompanied by more time for them to collect it."*

"Depending on the individual circumstance of the record suspension, many people are painted with the same brush. Everyone waits regardless of the seriousness of the record."

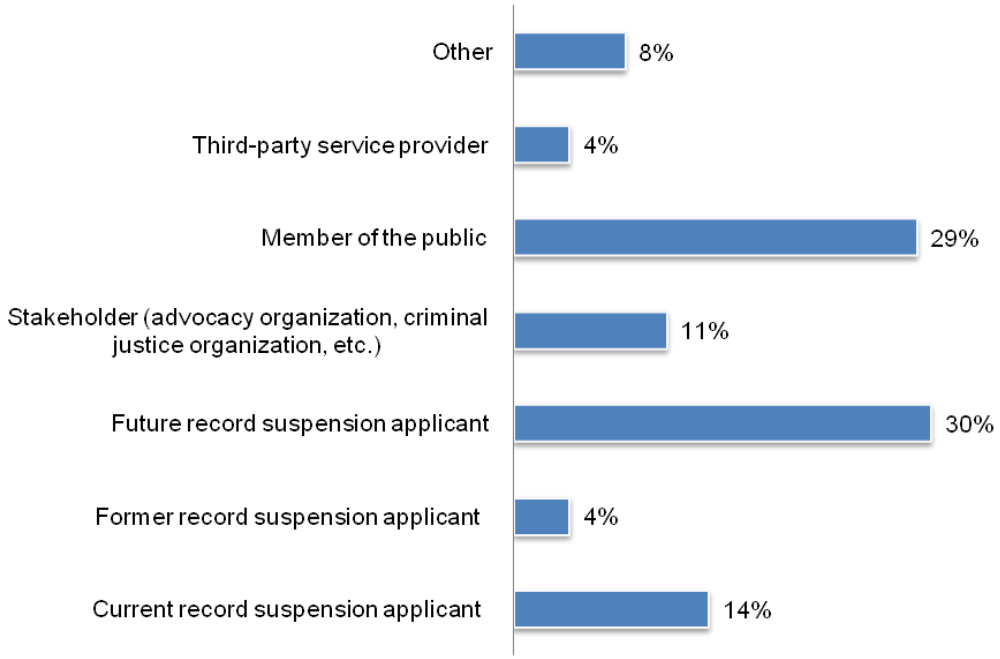
"*...we think the following delays constitute a fair and realistic timeline for treatment of applications. Six months for the Board to respond in summary conviction cases. Nine months for the Board to respond in indictable cases. Where this response is negative, whether summary conviction or indictable, the applicant will be given another two months to submit representations after the refusal is received, with the option of additional time on request to get rebuttal material together. At the end of the applicant's two month period for representations, or such longer period as was requested and granted, whether summary conviction or indictable, a four month period would begin for the Board to take a final decision."*

"...please consider changing the text of the 'propose to refuse' letter... It's very unclear for some people, especially those with intellectual or reading challenges."

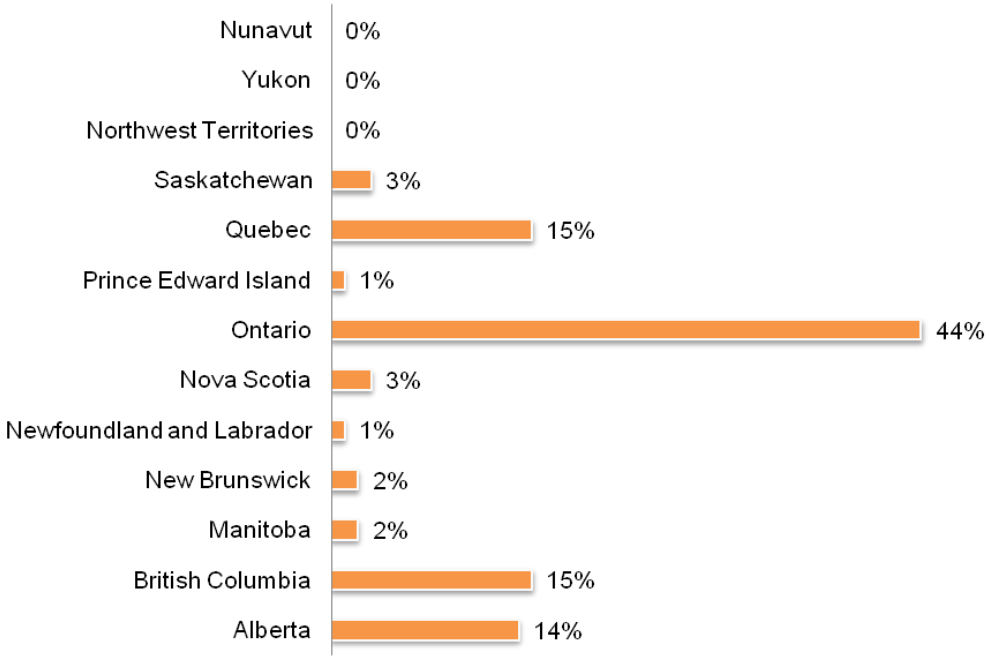
Who We Heard From

The following provides an overview of the demographic characteristics of the respondents.

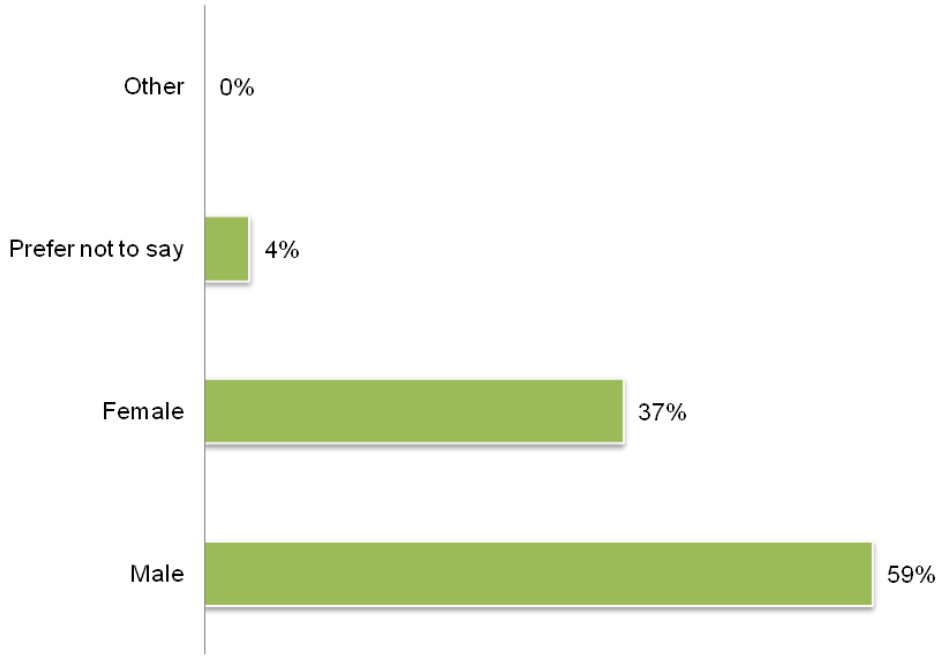
- Individuals who responded to this questionnaire self-identified as:



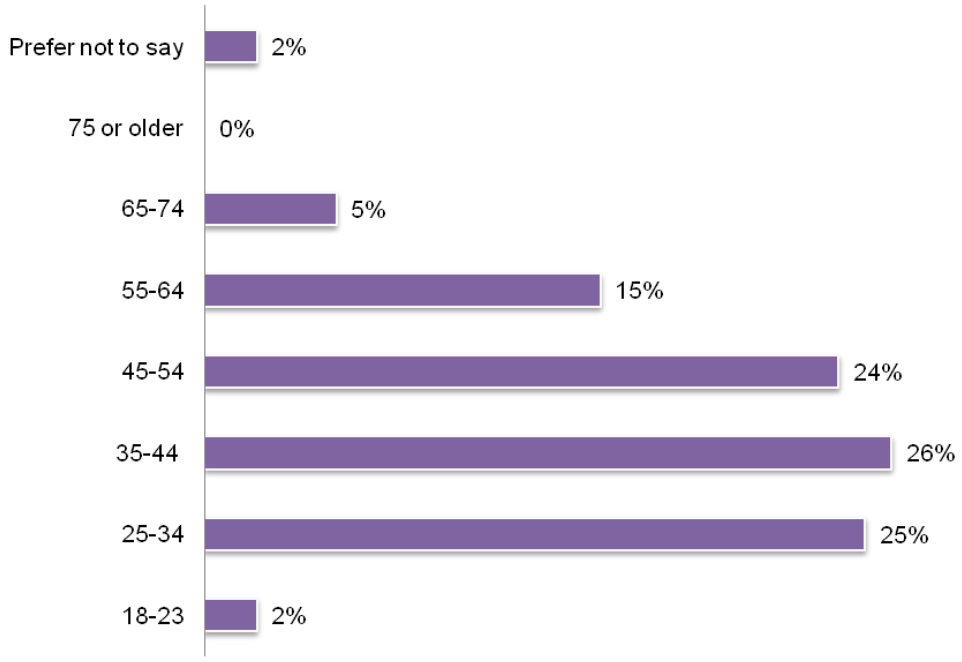
- The province of residence for respondents included:



- A breakdown of respondent by gender included:



- The age category for respondents included:



- The level of education of the respondents included: