Ships Ahoy! The RCN forges ahead with NSPS

The history of modern camouflage
Hidden in plain view

PLUS:
- Canadian ace over Libya
- Keeping memories alive
- Christmas at war, 1944
LAW & ORDER

Judicial pardons and the Forces:

Why expunge a record?

by Michel W. Drapeau & Joshua M. Juneau

CRIMINAL RECORD
The term "criminal record" has no specific legal meaning in Canada. Though the term is not defined in any statute or regulation, it is most commonly understood as the documentation of a person's criminal conviction. The record of a criminal conviction is kept on file by government agencies (police, courts, prosecutors and correctional programs) and by private agencies (newspapers, credit firms, bonding companies and employment agencies, for example).

HOW DOES A CF MEMBER GET A CRIMINAL RECORD?
In accordance with sub-section 196.27(1) of the National Defence Act, any person who is charged with or convicted by a court martial of a "designated offence" [this includes those under section 95 (abuse of subordinates); section 114 (stealing); section 124 (negligent performance of duties); section 128 (conspiracy); section 130 (service trial of civil offences)] may be fingerprinted, photographed or have any other measurement process done pursuant to the Identification of Criminals Act. The results may be published for the purpose of providing information to officers and others engaged in the execution or administration of the Identification of Criminals Act.

Therefore, a CF member sentenced by a summary trial does not get a criminal record. Similarly, a conviction by a court martial does not automatically result in a criminal record. To get a criminal record, one must be convicted of a designated offence. These offences are listed in subsection 196.26 of the National Defence Act.

CANADIAN POLICE INFORMATION CENTRE
The chief source of information about criminal offenders in Canada today is the automated Canadian Police Information Centre (CPIC) maintained by the RCMP. The CPIC is a central national police repository of fingerprint and criminal record information that is disseminated to authorized law enforcement agencies throughout Canada, the U.S. and abroad, to government departments for security reliability investigations, and to individuals requiring police certificates for employment, visas and travel documents.

As a matter of RCMP policy, criminal records are retained until the subject of the record is 80 years of age with no criminal activity reported in the last 10 years, except where the subject has been, for example, sentenced to life imprisonment, or has been designated a dangerous offender or has attained 100 years of age.

IMPACT OF A CRIMINAL RECORD
With a conviction comes great stigma with damaging consequences long after an offender serves his or her sentence. Consider that a criminal record affects many areas of that person's life including:
Employment: Many employers conduct local and/or federal criminal record searches before hiring. Discovery of a criminal record may negatively affect one’s application for employment. It can also prevent someone from studying or practising law, medicine, teaching or other professions. It can even preclude the operation of a taxi or employment that requires bonding or licensing.

Self-employment: Before sub-contracting to an individual or to a business, many companies require criminal record searches for all employees and owners.

Career advancement: Many companies and organizations have started conducting criminal record searches for employees who have applied for promotions. Discovery of a criminal record may lead to denial of that promotion, or even termination of employment.

Child custody: Child custody and visitation rights may be reduced or eliminated because of a criminal record.

The ability to rent an apartment: Standard rental application forms ask if you have a criminal record. One may find it difficult to find a place to live if they have a criminal record.

Educational opportunities: Many educational programs require criminal record checks.

Travel: Having a criminal record may restrict one’s ability to obtain travel visas outside of Canada.

PURGING A CRIMINAL RECORD

Most people are consciously or subconsciously distressed by past criminal records. Removing a criminal record is a large part of removing the stigma and shame associated with a criminal past.

TAKE ANOTHER LOOK AT COMMISSIONAIRES.

And get a whole new career.

At Commissionaires we value the experience you’ve gained serving in the Canadian Forces. Maybe you already know that many of our commissionaires in the field, as well as our business leaders, are veterans of the Canadian military or RCMP. But have you heard that we also offer diverse employment opportunities and competitive pay? We’ll help you keep the familiar respect and camaraderie of donning a uniform. We’re Canada’s leading security provider, and we can offer you new possibilities that may surprise you.

Rethink Commissionaires.

Call us first to start your second career.

To find out more, visit us online at www.commissionaires.ca/cf
Purging a criminal record means removing it from the CPIC system, and leaving no indication that a record has ever existed. This can be accomplished either by obtaining a discharge (absolute or conditional) received on or after July 1992, or the granting of a pardon by the Clemency and Pardons Division of the National Parole Board.

PARDONS OR RECORD SUSPENSION
The purpose of granting a judicial pardon (now known as record suspension) is to clear the person for all infamy and from all consequences of the offence for which it is granted, and in doing so to vanquish the stigma associated with a criminal conviction. The effect is that a convicted individual is placed in a social position so that their conviction cannot be used to their detriment. To accomplish this, all public record of the original offence should become unavailable.

Anyone convicted by an offence under an Act of Parliament or regulation may apply to the Parole Board of Canada for a pardon in respect to that offence. This applies to ANY offence under any act, not only those listed as designated offences under subsection 195.26 of the National Defence Act. This means, for example, that a CF member wishing to purge his or her conviction of a non-designated offence by a summary trial or a court martial from the CF may apply to the Parole Board of Canada for a pardon.

However, before a pardon may be considered by the National Parole Board, the following period must have elapsed after either the sentence of imprisonment or the period of probation has been served, or that any fine imposed for the offence has been paid.
- Five years, in the case of a service offence for which the offender was punished by a fine of more than $2,000, detention of more than six months, dismissal, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the National Defence Act.
- Three years, in the case of a service offence as defined in the National Defence Act.

After the granting of a pardon, the Clemency and Pardons Division of the National Parole Board notifies the RCMP and all other federal agencies holding the record to purge it. The Criminal Records Act then requires that government departments and agencies remove all reference from their records concerning a criminal conviction and that all records concerning the original conviction become sealed. In doing so, all records of the offence are placed in the custody of the commissioner of the RCMP, and those records are “kept separate and apart from other criminal records, and no such records shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without the prior approval of the minister.”

WHAT HAPPENS WHEN A PARDON IS GRANTED TO A CF MEMBER
In respect to a pardon, Défense Administrative Order and Directive 7016-1 – Administration directs that the following action be taken by CF authorities on receipt of a pardon:

- The Record of Disciplinary Proceedings, charge sheet, charge report and certificate of conviction, for an offence for which a pardon has been granted, are removed from the CF member’s service records, the Unit Registry of Disciplinary Proceedings and any other unit files;
- Any mention of or reference to the conviction, in respect of which a pardon has been granted, that is contained in any report, assessment, correspondence or other record, is removed and that only expunged copies are retained; and
- Any record related to the granting of the pardon is treated in the same fashion as set out above in order that it does not remain in any file or document.

All electronic documents removed are electronically sealed using the Personnel Electronic Records Management Information System. All paper documents removed shall be stored separate and apart from other disciplinary and personnel documents.

However, all criminal convictions at court martial remain published and available for download on the website of the Office of the Chief Military Judge (OCMJ). That said, the OCMJ has developed a “web robot exclusion protocol” whereby major search engines such as Google will not identify court martial decisions or sentencing orders when an individual’s name is used as a search term.

While implementation of the web robot exclusion protocol is a step in the right direction, the policy initiative of the OCMJ does not go far enough, because it does not entirely prevent a conviction for which a pardon has been granted from being used as an adverse reflection on an individual’s character. To give full effect to the pardon, we believe that the original record should be unavailable on publication of a pardon and no longer published on the Office of the Chief Military Judge website.

CONCLUSION
The effect of granting a judicial pardon cannot be realized unless the full stigma of the original conviction is silenced. For members of the Forces who have been convicted at court martial (or summary trial for that matter), being forgiven for their indiscretion by having the act pardoned should also mean that any record of the original offence be sealed.