



APPENDIX B: DETERMINING RECORD SUSPENSION ELIGIBILITY

NUNAVUT COURT OF JUSTICE COURT RECORDS ACCESS POLICY

The following guidelines are based on the *Criminal Records Act, R.S.C., 1985, c. C-47 [CRA]*.

Offenders who have been convicted of more than three offences, each of which was prosecuted by indictment, are never eligible for record suspensions. Similarly, offenders who are convicted of the offences listed in *CRA* Schedule 1 are never eligible for record suspensions *unless* they were not in a position of trust or authority towards the victim, the victim was not in a relationship of dependency the offender; the offender did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and the offender was less than five years older than the victim (*CRA* s. 4(2)-(3)). Schedule 1 offences are as follows:

1. Offences

- a) under the following provisions of the *Criminal Code*:
 - i. section 151 (sexual interference with a person under 16),
 - ii. section 152 (invitation to a person under 16 to sexual touching),
 - iii. section 153 (sexual exploitation of a person 16 or more but under 18),
 - iv. subsection 160(3) (bestiality in the presence of a person under 16 or inciting a person under 16 to commit bestiality),
 - v. section 163.1 (child pornography),
 - vi. section 170 (parent or guardian procuring sexual activity),
 - vii. section 171 (householder permitting sexual activity),
 - viii. section 172 (corrupting children),
 - ix. section 172.1 (luring a child),
 - x. subsection 173(2) (exposure),
 - xi. subsection 212(2) (living on avails of prostitution of a person under 18),
 - xii. subsection 212(2.1) (aggravated offence — living on avails of prostitution of a person under 18),
 - xiii. subsection 212(4) (obtain, or attempt to obtain, sexual services of a person under 18),

- xiv. paragraph 273.3(1)(a) (removal of child under 16 from Canada for purposes of listed offences),
 - xv. paragraph 273.3(1)(b) (removal of child 16 or more but under 18 from Canada for purpose of listed offence),
 - xvi. paragraph 273.3(1)(c) (removal of child under 18 from Canada for purposes of listed offences),
 - xvii. paragraph 348(1)(a) with respect to breaking and entering a place with intent to commit in that place an indictable offence listed in any of subparagraphs (i) to (xvi), and
 - xviii. paragraph 348(1)(b) with respect to breaking and entering a place and committing in that place an indictable offence listed in any of subparagraphs (i) to (xvi);
- b) under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1, 1988:
- i. subsection 146(1) (sexual intercourse with a female under 14),
 - ii. subsection 146(2) (sexual intercourse with a female 14 or more but under 16),
 - iii. section 151 (seduction of a female 16 or more but under 18),
 - iv. section 166 (parent or guardian procuring defilement), and
 - v. section 167 (householder permitting defilement);
- c) that are referred to in paragraph (a) and that are punishable under section 130 of the *National Defence Act*;
- d) that are referred to in paragraph (b) and that are punishable under section 120 of the *National Defence Act*, R.S.C. 1970, c. N-4; and
- e) of attempt or conspiracy to commit an offence referred to in any of paragraphs (a) to (d).

2. Offences

- a) involving a child under the following provisions of the *Criminal Code*:
- i. section 153.1 (sexual exploitation of a person with a disability),
 - ii. section 155 (incest),
 - iii. section 162 (voyeurism),
 - iv. paragraph 163(1)(a) (obscene materials),
 - v. paragraph 163(2)(a) (obscene materials),
 - vi. section 168 (mailing obscene matter),
 - vii. subsection 173(1) (indecent acts),
 - viii. section 271 (sexual assault),
 - ix. subsection 272(1) and paragraph 272(2)(a) (sexual assault with firearm),
 - x. subsection 272(1) and paragraph 272(2)(b) (sexual assault other than with firearm),
 - xi. section 273 (aggravated sexual assault),

- xii. paragraph 348(1)(a) with respect to breaking and entering a place with intent to commit in that place an indictable offence listed in any of subparagraphs (i) to (xi), and
 - xiii. paragraph 348(1)(b) with respect to breaking and entering a place and committing in that place an indictable offence listed in any of subparagraphs (i) to (xi);
- b) involving a child under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1, 1988:
- i. section 153 (sexual intercourse with stepdaughter, etc., or female employee), and
 - ii. section 157 (gross indecency);
- c) involving a child under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 4, 1983:
- i. section 144 (rape),
 - ii. section 145 (attempt to commit rape),
 - iii. section 149 (indecent assault on female),
 - iv. section 156 (indecent assault on male),
 - v. section 245 (common assault), and
 - vi. subsection 246(1) (assault with intent to commit an indictable offence);
- a) that are referred to in paragraph (a) and that are punishable under section 130 of the *National Defence Act*;
- b) that are referred to in paragraph (b) or (c) and that are punishable under section 120 of the *National Defence Act*, R.S.C. 1970, c. N-4; and
- c) of attempt or conspiracy to commit an offence referred to in any of paragraphs (a) to (e).

All other offenders become eligible for a record suspension after 5 or 10 years has passed since they completed their sentence, whether that was a period of imprisonment, probation or the payment of any fine. A person convicted of a summary offence becomes eligible 5 years after the end of their sentence, while a person convicted of an offence prosecuted by indictment becomes eligible 10 years after the end of their sentence.