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Opinion: On criminal law reform, federal Liberals earn an F

Though receiving a strong mandate for change, the Liberals have failed to roll back the Harper criminal justice agenda.

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"The Liberal record on criminal law reform has been deeply disappointing.," Ralph Mastromonaco writes. DAMIEN MEYER / AFP/Getty Images

The federal Liberal Party bears little resemblance to the party that once saw, in a mandate to govern, the moral imperative to build a just society.

The Liberal record on criminal law reform has been deeply disappointing. During the 2015 election campaign, Canadians were urged to vote Liberal to avoid going back to the dark Harper years. Though receiving a strong mandate for change, the Liberals have embraced and continued the so-called "safe streets" Harper criminal justice agenda.

Consider the Liberal record.

The Harper government introduced a mandatory victim surcharge requiring all convicted offenders to pay 30 per cent of any fine, or \$ 100 for a lesser offence and \$200 for a more serious offence. This was a regressive cash grab that particularly hurt the poor and the marginalized. The Liberal government chose, at considerable cost to the litigants and Canadian taxpayers, to defend this Harper “reform,” leaving it to the Supreme Court of Canada to do what everyone knew it would do: strike down the law as cruel and unusual punishment under section 12 of our Charter of Rights.

The Harper government also greatly increased the number of criminal offences for which mandatory minimum sentences apply. These burden our criminal justice system, as an accused facing the certainty of imprisonment will, not surprisingly, take even a slim-chance case to trial, significantly contributing to court docket congestion.

The Liberals have left the Harper legacy of mandatory minimum sentences intact, preferring, again, to leave it to our courts to right flagrant wrongs. Costly charter challenges resulting in court judgments declaring that mandatory minimum sentences violate the Charter and do not accomplish the sentencing goals contained in section 718 of the Criminal Code have not motivated the Liberal government to dismantle this Harper legacy.

Canada believes in second chances. This societal act of forgiveness for the convicted offender used to be appropriately called a pardon. The Harper government walked back our country’s capacity for empathy, changing our expression of forgiveness to the sterile, perfunctory term of a “record suspension.” The burden of proving a “measurable benefit” was also imposed on applicants. The waiting period to apply for this “record suspension” was increased from three years to five years for persons convicted of lesser offences, and from five years to 10 years more serious offences.

In the Harper universe, delaying a convicted offender’s right to a “record suspension” that improves employment opportunities somehow enhances the rehabilitation of an offender and keeps Canadians safer.

The pardon system is in woeful need of reform.

Many cannot afford the filing fee. The procedure is so byzantine that a service industry has been spawned to help the convicted, for a fee, complete the “record suspension” paperwork much like the companies that help Canadians deal with that other byzantine legislation called the Income Tax Act. Yet the Liberals dutifully continue the Harper pardon regime.



The dark Harper years have never left us.

The Liberals also demonstrated the ability to create their own brand of injustice. The tough-on-crime Liberals increased the jail sentence a court can impose on a person convicted of impaired driving to 10 years. A permanent resident who is now convicted of impaired driving is deemed to have committed serious criminality under Section 36 of the Immigration and Refugee Protection Act, which puts Canadian immigrant status in jeopardy. The immigrant offender now faces the added stress and cost of protecting his or her Canadian immigration status — courtesy of the Liberals. Even Harper Conservatives did not do this to our immigrants.

Our prime minister was once a teacher. A tough-love report card from a Liberal to our prime minister would indicate a F for criminal law reform.

The comment would be the one that's the bane of every parent: Capable of doing better.

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