

McGill Law Journal accessible summary:

The typo that undermined Canadian pardons

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Topic and importance

A judge who is determining the appropriate punishment for a criminal offence must consider the offender's criminal record: the existence of a criminal record typically increases the punishment that the sentencing judge will impose. Some persons have criminal records but have also received pardons. A pardon represents a decision by the government to diminish the effect of a prior criminal conviction because the person who was convicted has subsequently rehabilitated themselves. Before 1977, it was unclear what a sentencing judge could do with a pardoned conviction on a person's criminal record: could they consider it, or did they have to ignore it?

In 1977 an important judgment, *Regina v. Spring*, answered this question. It appeared to say that a judge had a choice or "discretion" as to whether to ignore pardoned offences on a person's criminal record.

Main arguments

This article argues:

Regina v. Spring actually forbids sentencing judges to consider pardoned offences. A commercial publication of the judgment contained a typo that changed the meaning of a critical sentence: the supposed “discretion” to ignore pardoned offences was actually a “direction” to do so.

This typo profoundly damaged the common understanding of the law on this point. For nearly 50 years, this erroneous version of Regina v. Spring was widely cited and reproduced in numerous authoritative legal sources, including digests, case reporters, legal encyclopedias, and sentencing handbooks used by lawyers and judges. This has resulted in some persons’ pardoned criminal records being considered in cases where they should not have been.

The Canadian pardon in general is now much weaker than it was intended to be when Parliament created it. The pardon was originally intended to erase the prior conviction so that it would have no further effect on the person receiving the pardon. The modern Canadian pardon no longer erases the person’s criminal record. It instead diminishes some of the effects of having a criminal record, but does not provide the full protection intended by Parliament at the time it created the pardon.

The typo in Regina v. Spring contributed to this decline of the Canadian pardon. The erroneous version of Regina v. Spring was relied on in an important Supreme Court of Canada decision in 2001 that initiated a series of changes that greatly weakened the effects of the Canadian pardon. The typo was only one factor in the overall decline of the pardon, but its contribution represents a very serious impact for something as small as a typo in a legal judgment.

Conclusion and additional considerations

Although much of the damage is done, a positive step is to re-report Regina v. Spring accurately. This article includes an image of the original judgment from the 1977 court file which lacks the typo. More serious rehabilitation of the Canadian pardon will require a reassessment by Parliament and by the courts.