CORRECTIONS AND CONDITIONAL RELEASE ACT

BACKGROUNDER

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BACKGROUNDER ON PROPOSED CORRECTIONS AND CONDITIONAL RELEASE ACT

Introduction

Recognizing the need for comprehensive and integrated reform in the criminal justice system the federal government in July, 1990, introduced a wide-ranging series of proposals called Directions For Reform: Sentencing, Corrections and Conditional Release.

Following extensive consultations, the Solicitor General has announced his intention to move ahead with the correctional reform proposals through the introduction of the Corrections and Conditional Release Act. The new Act will replace the existing Penitentiary Act and the Parole Act.

The Corrections and Conditional Release Act contains significant measures to reform correctional legislation so that it better reflects the values and concerns of Canadians. Above all, these measures assert that the primary duty of the corrections system is protection of the public.

The legislation responds to a number of long-standing concerns, including the need to reduce over-reliance on incarceration for less serious offenders, the need for more predictability in conditional release decision-making and more stringent measures for those offenders who are of greatest concern to the public. It addresses the need to make the system more fair, open and accountable and to ensure its components function effectively together.

The legislation includes a major reform and modernization of correctional law to bring it into step with social and legal changes over the years, such as the Canadian Charter of Rights and Freedoms, and to reflect the progressive changes that have occurred in the federal correctional system.

In keeping with the goal of fairness in the system, the Act also incorporates provisions that will formally establish the Office of the Correctional Investigator in statute. The Office of the Correctional Investigator provides an independent and impartial avenue through which to hear complaints lodged by and on behalf of federal offenders in penitentiary or on conditional release.

Together, these reforms represent a major step forward for the Canadian correctional system. They will succeed in bringing the system into the 90s.

The following is an explanation of the major changes that would occur under the new legislation.

Part 1 - Institutional and Community Corrections

Proposal: A new legislative framework will be created within the Corrections and Conditional Release Act to govern the operation of federal penitentiaries. Included in the legislation is a statement of the purpose and principles of federal corrections. This statement would provide direction to staff and inmates as to how a sentence of imprisonment is to be served.

The statement also recognizes the need for effective rehabilitation programs in penitentiaries and in the community. Further, it states that correctional policies, programs and practices should respect gender, ethnic and cultural differences and be responsive to the needs of women, aboriginal peoples and other offender groups with special needs.

The Corrections and Conditional Release Act also contains criteria for decisions regarding:

- placement of offenders;
- transfers;
- administrative segregation;
- search and seizure;
- interception of communications;
- federal inquiries;
- disciplinary procedures; and
- disclosure of information to offenders, victims and other criminal justice system components.

Various provisions are aimed at improving the collection and exchange of information about offenders - between courts and police and correctional and releasing authorities.

The new legislation would formally recognize the presence of inmate grievance procedures.

Current Situation: The Penitentiary Act, which is the law governing federal penal institutions, was originally adopted in 1868 and has been amended in a piecemeal fashion since then. While the Correctional Service of Canada has implemented a Mission Statement and progressive internal policies that conform to current legal and correctional principles, there is nonetheless a need for a modernized and coherent legislative framework for federal corrections.

Rationale: Over the past decades, the federal correctional system has undergone tremendous growth, change and innovation. The legislative framework must reflect the broader range of correctional services, define the authorities that are necessary, and regulate many aspects of the more complex system that has evolved. It must also reflect societal values and legal and constitutional developments, particularly the Canadian Charter of Rights and Freedoms. The proposed Corrections and Conditional Release Act reflects these changes and provides a clear framework of rules to govern federal corrections.

These rules would be based on a legislated statement of purposes and principles of federal corrections, which would be a clear statement of Parliament's intention with respect to the federal correctional system.

The proposals for a new legislative framework for corrections were developed based on extensive consultations with provincial representatives, the voluntary sector, professional groups, judges, correctional staff and management, and other interested groups and individuals as part of Solicitor General Canada's Correctional Law Review. Further consultations were undertaken following release of the consultation package called Directions For Reform in July, 1990.

WORK RELEASE PROGRAM

Proposal: A work release program would be created under the authority of the Correctional Service of Canada. This would allow offenders to participate in a structured program of release of a specified duration for work or community service outside the penitentiary. This work would be carried out under the supervision of a staff member or other person or organization authorized by the Correctional Service of Canada. Offenders who are eligible for the unescorted temporary absence program and who are classified as minimum or medium security would be eligible for the work release program.

Current Situation: Participation of offenders in work-related projects is currently accommodated through the day parole program. However, proposed changes to the purposes for which day parole can be used and the time limits imposed under temporary absence provisions would make participation in community work programs prohibited under the terms of these programs. A new category of release is therefore required to accommodate the participation of offenders in community service work of longer duration.

Rationale: Participation in work-related projects of service to the community has been an integral part of correctional programming for lower security offenders for some time. This type of program fulfills a two-fold function: that of providing offenders with a chance to gain useful experience through work or projects of assistance to the community.

Part II - Conditional Release

All of the changes below, with exceptions that are noted, would affect federal offenders only.

STATEMENT OF PURPOSE AND PRINCIPLES OF PAROLE

Proposal: The legislation would establish a statement of purpose and principles of parole and would entrench public safety as the paramount consideration in decisions relating to the conditional release of inmates. These proposals would apply to all offenders, federal and provincial.

Current Situation: Currently, there is no statement of purpose and principles of parole in law.

Rationale: A statement of purpose within the Corrections and Conditional Release Act would serve as a guide to those responsible for making conditional release decisions, and would clearly identify for the public the rights and responsibilities relating to conditional release decision-making. This statement would be consistent with those developed for sentencing and corrections as part of the Directions For Reform consultation package. Although risk to the public has always been one of the statutory criteria in parole decision-making, the legislation will entrench public protection as the paramount consideration in decisions regarding parole.

DAY PAROLE

Proposal: Day parole is a program that authorizes an offender to be absent from a penitentiary or provincial institution for specified periods of time, often to reside in a halfway house. Under new provisions, day parole eligibility would be limited to six months before full parole eligibility. There would be no change in the actual date of day parole eligibility for offenders serving up to three years. However, offenders serving longer sentences would be required to serve more of their sentences in penitentiary prior to becoming eligible for day parole. Eligibility for day parole for offenders serving mandatory life sentences would remain at three years before full parole eligibility in order to give these offenders an opportunity to reintegrate into the community after a lengthy period of incarceration. The legislation would clearly specify that the purpose of day parole is to prepare the inmate for full parole or statutory release. Review for day parole would no longer be automatic, but would be only on application by the offender.

Current Situation: Offenders are currently eligible for day parole after serving one-sixth of their sentence or six months, whichever is greater.

Rationale: This proposal would ensure that the time served in penitentiary more accurately reflects the intention of the sentence. While most offenders are not released at very early stages in their sentence, such releases, when they do occur, are seen by some to undermine both the sentence and the public's confidence in the system.

FULL PAROLE

Proposal: Sentencing judges would be given authority in law to set the full parole eligibility date at one-half of the sentence for violent offenders and serious drug offenders instead of one-third. The parole eligibility date set at one-half of sentence would not exceed 10 years. Violent offences that would be included under this proposal would be those on Schedule A of the Act, including robbery, manslaughter, arson, assault and sexual assault. A Schedule has also been created for serious drug offences and includes offences such as trafficking, laundering of the proceeds of drug offences and possession of property obtained by trafficking in drugs.

Current Situation: Other than those offenders serving mandatory life sentences or indeterminate sentences, inmates are eligible for parole after serving one-third of their sentence or seven years, whichever is less.

Rationale: This provision reflects the belief that the courts should be able to order that serious offenders spend a longer portion of their sentences in penitentiary before becoming eligible for parole in order to emphasize the public denunciation of serious offences.

PAROLE REVIEW

Proposal: First-time penitentiary inmates who are not serving sentences for violent offences would receive a streamlined parole review before their first parole eligibility date. A panel of Board members would review the case without a hearing to determine whether there were reasons to believe that there was a risk of violence. If there was not, these offenders would be released under supervision in the community after serving 1/3 of their sentence. If there is in any doubt about the case, the case would be referred for a hearing for decision. Federal offenders who serve their sentences in provincial or territorial facilities under Exchange of Service Agreements would be eligible for the streamlined review in the same manner as offenders in federal penitentiaries.

Current Situation: Other than those who are serving mandatory life sentences or indeterminate sentences, offenders are eligible for parole after serving one-third of their sentences or seven years, whichever is less. However, many non-violent offenders are released on parole considerably later than their first parole eligibility date.

Rationale: This approach emphasizes the reintegration of non-violent offenders into the community where supervision and programs consistent with the needs of these offenders can be provided. While incarceration removes offenders from society, it is a costly option that has not proven to be the most effective deterrent for many offenders. Many studies and official commissions have criticized the overuse of incarceration in Canada.

This provision would provide the necessary safeguards for protection of the community, including risk assessment by correctional and parole authorities of each offender and community supervision at the appropriate level for the offender.

DETENTION OF DRUG OFFENDERS

Proposal: The National Parole Board would be given authority to detain serious federal drug offenders until the end of their sentence under legislation similar to that introduced in 1986 for violent offenders. A schedule of serious drug offences has been created as Schedule B to the Act and includes trafficking, laundering of the proceeds of drug offences and possession of property obtained by trafficking in drugs.

Current Situation: There is no such provision at the present time.

Rationale: This would increase the time served in custody by offenders whom authorities believe would commit another serious drug offence upon release. This provision could prevent the statutory release of serious drug offenders into the community under supervision at the 2/3 point of their sentence, if the Parole Board considers that they are likely to commit another serious drug offence on release.

ABOLITION OF EARNED REMISSION

Proposal: The system of earned remission for federal inmates would be replaced by a fixed statutory release period at the 2/3 point in the sentence. Offenders serving penitentiary sentences would still be subject to supervision and could be returned to penitentiary for a breach of conditions, as is the case now. Detention provisions would apply to violent or serious drug offenders if deemed appropriate by the National Parole Board.

Current Situation: Inmates within the federal and provincial correctional systems can now earn remission of their sentence for good behaviour and program participation. If all remission is earned, the inmate is entitled to release under mandatory supervision at the 2/3 point in the sentence.

Rationale: Since the vast majority of offenders earn all or nearly all remission, a change to statutory release would not significantly change the amount of time served by offenders. Earned remission has limited impact in controlling or motivating inmates. It is awkward to administer, and there is some disparity in how remission is awarded.

TEMPORARY ABSENCES

Proposal: A new type of unescorted temporary absence would be created. It would allow offenders to participate in voluntary community service or personal development programs outside the institution. This unescorted temporary absence would be used only for purposes that are linked to correctional treatment for the offender as opposed to preparation for release. Offenders classified at the maximum security level would not be eligible for this type of temporary absence. The statutory limits on the length of individual temporary absences would not change except in the case of personal development temporary absences. In these cases, the normal 15-day limit would be amended to allow extensions to enable offenders to attend specific treatment programs.

Current Situation: Although offenders are currently allowed to participate in some types of community service projects and programs there is no formal recognition of this purpose for temporary absences, nor separate mechanisms to guide an offender's participation in these activities.

Rationale: The proposed changes would more clearly define the purpose and rules governing the granting of unescorted temporary absences. Creation of a new type of unescorted temporary absence would enable offenders to participate in personal development and community work programs and to gain experience through opportunities in the community which are consistent with the correctional objectives for the offender.

POST RELEASE INTERVENTIONS FOR CONDITIONAL RELEASE

Proposal: The criteria for the suspension, termination or revocation of conditional release are being made more explicit. Where a suspension of an offender serving a penitentiary sentence has taken place and the offender is held in custody, the Correctional Service of Canada would have thirty days to either cancel the suspension or refer the case to the National Parole Board for review.

The National Parole Board's decision-making powers would be expanded to include cancellation of the suspension, reprimand of the offender, the ability to impose additional release conditions, the ability to detain the offender for a further 30-day period, and the right to terminate or revoke parole or statutory release, based on clear criteria. An offender whose parole or statutory release has been revoked would be eligible for statutory release only after serving two-thirds of the remaining portion of the sentence.

Current Situation: The National Parole Board or its designate may suspend a conditional release when a condition of that release has been breached or when it is necessary to either protect society or prevent a breach in release conditions. The Correctional Service of Canada must then either cancel the suspension or refer the case within fourteen days to the National Parole Board for its review.

The National Parole Board must then review the case and must either cancel the suspension, terminate or revoke parole.

Rationale: In order to ensure that protection of public safety is the priority in such decisions, the criteria for suspension, termination and revocation are being made more explicit and related directly to the assessment of risk.

Correctional authorities are being given broader powers to intervene in order to ensure the best possible protection of the public interest.

ANNUAL PAROLE REVIEWS

Proposal: The National Parole Board would be required to conduct annual case reviews once an offender has reached parole eligibility.

Current Situation: Reviews are currently required every two years.

Rationale: This proposal is consistent with the government's desire to reintegrate as soon as possible those offenders who have benefitted from treatment or program participation and pose no undue risk to society when released under conditions necessary to ensure public safety.

PAROLE BY EXCEPTION FOR DEPORTATION

Proposal: Remove from parole boards the authority and the responsibility to consider for parole in advance of normal eligibility date cases for removal from the country by deportation. This proposal would apply to all offenders, federal and provincial.

Current Situation: Under current Parole Regulations offenders may be granted parole in advance of eligibility under certain circumstances. These circumstances include the presence of a deportation order under the Immigration Act or an order to be surrendered under the Extradition Act or the Fugitive Offenders Act where the order requires the inmate be detained until deported or surrendered.

Rationale: This amendment would prevent the use of parole by exception as a procedure to free foreign nationals subject to deportation from custody prior to the normal eligibility date for parole.

INCREASED ACCESS TO PAROLE DECISIONS

Proposal: The National Parole Board would make the reasons for Board decisions publicly available, subject to certain conditions, through a decision registry. The information would also be made available for general research purposes, in a manner that would not identify individuals.

Current Situation: The Board prepares written reasons for its decisions, but the distribution of this information is restricted.

Rationale: The proposed amendment would contribute to increased openness, accountability and public understanding of Board decisions.

INCREASED PUBLIC ACCESS TO PAROLE HEARINGS

Proposal: New provisions would allow the National Parole Board to permit observers at hearings. Decisions on access to hearings would be governed by a number of factors. These include: protection of third parties, including victims; preservation of the hearing process without undue disruption; institutional security; and the public and the offender's interests in effective reintegration and rehabilitation.

Current Situation: Offenders have a veto in determining who can observe the hearing.

Rationale: This provision would increase the openness and accountability of the National Parole Board by increasing the public's access to the parole decision-making process. It would also contribute to a better public understanding of the parole process.

Other Proposals:

Other proposed changes include: measures to enhance professionalism in the National Parole Board; an increase in the maximum number of National Parole Board members to be appointed on a regular or full-time basis to allow increases when and if necessary and without the requirement for legislative change; recognition of the regional structure of the National Parole Board; entrenchment of the appeal process and; specification of the membership of the Executive Committee.

Part III - Correctional Investigator

Proposal: The Office of the Correctional Investigator would be formally established in statute. The Correctional Investigator will still report to the Solicitor General, but the latter will be required to table before Parliament all such reports.

The legislated mandate of the Correctional Investigator will include all matters pertaining to the mandate and activities of the Correctional Service of Canada, including case preparation and parole supervision. In addition, the Correctional Investigator will have the authority to initiate investigations in addition to undertaking them at the request of inmates or the Solicitor General. The Correctional Investigator will be appointed for a term of up to five years.

Current Situation: The Office of the Correctional Investigator was created in 1973 under Part II of the Inquiries Act. The Correctional Investigator is responsible for investigating complaints made by or on behalf of inmates in penitentiary or on conditional release who fall within the authority of the Solicitor General of Canada and for reporting these findings to the Solicitor General.

Rationale: Creation of this act will result in a stronger, more independent mandate for the Correctional Investigator. From the time of establishment of the office, there has been criticism that a correctional ombudsman should have a more clearly defined and more independent role in the correctional system. Criticism in recent years has also focused on the continued use of the Inquiries Act which was intended as a short-term measure, and which does not provide specific details on the responsibilities and authority of the Correctional Investigator.

The new legislation will formally define the mandate, investigative powers, procedures and management of the Office of the Correctional Investigator.