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PAROLE DECISION-MAKING

MYTHS AND REALITIES



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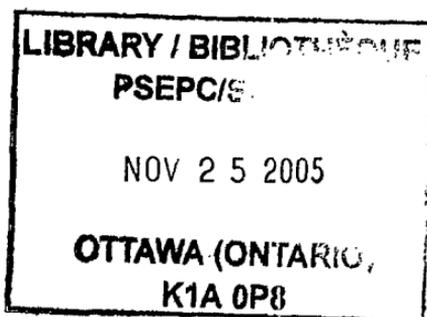
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Commission nationale des
libérations conditionnelles

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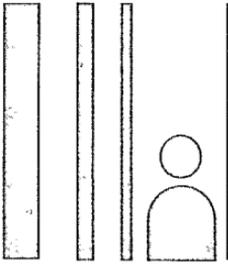
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PAROLE DECISION-MAKING

INTRODUCTION

Responsibility for federal corrections in Canada is shared between two agencies within the Department of the Solicitor General – the National Parole Board (NPB or the Board) and the Correctional Service of Canada (CSC). Both agencies operate under the same law - the *Corrections and Conditional Release Act (CCRA)*.

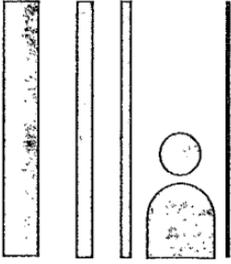
CSC is responsible for managing penitentiaries which house offenders serving sentences of two years and more. CSC is also responsible for the delivery of programs, the preparation of cases and making recommendations to NPB for parole and for the supervision of offenders while they are in the community.

The Board is an administrative tribunal that has exclusive authority under the *CCRA* to grant, deny or revoke parole or, under certain circumstances, to order the detention of offenders subject to statutory release.

NPB has authority to make conditional release decisions for offenders in federal and territorial prisons. The Board also makes parole decisions for offenders serving sentences of less than two years in provinces that do not have their own parole boards (only the provinces of Quebec, Ontario and British Columbia have their own parole boards).

Other NPB responsibilities include deciding on whether to issue, grant, deny or revoke a pardon under the *Criminal Records Act (CRA)* and making clemency recommendations to the Government of Canada.

Parole and conditional release are among the most controversial and misunderstood areas of Canadian criminal justice. By addressing and dispelling a number of widely-held misconceptions and popular myths about parole, this document is intended to help the reader better understand how parole works and how it contributes to the long-term protection of society by the safe reintegration of offenders into the community.



PAROLE DECISION-MAKING

MYTHS AND REALITIES

Myth 1

Parole reduces the sentence imposed by the courts.

Reality

Parole does not reduce the sentence imposed by the courts.

Parole affects only the way in which a sentence will be served. It allows offenders to serve their sentences in the community under strict conditions of release and the supervision of a parole supervisor. If they abide by their conditions of release, they will remain under sentence in the community until their sentence is completed in full, or for life in the case of offenders serving life or indefinite sentences.

By law, federal offenders are normally eligible for full parole after serving one-third of their sentence, or seven years, whichever is less. Different eligibility rules apply for offenders serving life sentences for murder or indeterminate sentences. The fact that offenders are **eligible** for parole, however, does not mean parole will be granted.

Myth 2

Parole is automatically granted when an inmate becomes eligible for parole consideration.

Reality

Parole is not automatically granted when inmates become eligible.

Because an offender is eligible for parole does not mean that it will be granted. In fact, NPB denies full parole to approximately six out of ten offenders at their first parole review date.

The law gives NPB absolute discretion in decisions to grant or deny parole. In arriving at a decision, Board members consider the risk that the offender may present to society if released and determine if, and to what extent, that risk can be managed in the community. The protection of society is the overriding consideration in any release decision.

Myth 3

Statutory release is the same as parole.

Reality

Statutory release is not the same as parole.

Both statutory release and parole are forms of conditional release that require offenders to conform to conditions of release and supervision. Statutory release, however, is a legal provision that automatically entitles **most** offenders, who have not been granted parole, to serve the final one-third of their sentence in the community. Offenders serving life and indeterminate sentences are not entitled to statutory release.

Parole, on the other hand, is subject to a discretionary decision by NPB, after a rigorous process of risk and needs assessment with the protection of society as the prime consideration.

In both cases, however, NPB has the power to set special conditions and return the offender to prison for failing to abide by these conditions. (*See Appendix 1 for Glossary*)

Myth 4

There is no difference between probation and parole.

Reality

Probation and parole are completely different.

Probation is a sentence imposed by a judge, usually instead of, but sometimes in addition to, a term of imprisonment. It allows the person to live in the community under the supervision of a probation officer. Probation is exclusively under the jurisdiction of the provinces and is not used for federal offenders serving sentences of more than two years.

Parole is part of a sentence and may be granted only by a board of parole*. It always includes an initial period of imprisonment following which the offender may live in the community for the remainder of the sentence, under the supervision of a parole supervisor and under certain conditions. Failure to abide by these conditions could mean the offender is returned to prison.

* Ontario, Quebec and British Columbia also have parole boards, which have jurisdiction only over those offenders serving sentences of less than two years in those provinces.

Myth 5

Offenders on parole and statutory release are free to live their lives as they please.

Reality

Offenders on parole and statutory release are not free to live their lives as they please.

All offenders on parole as well as on statutory release must remain within a specific area determined by their parole supervisor. In other words, they are usually restricted to the area of residence and of work and they must remain in Canada.

They must keep the peace, be of good behaviour and obey the law, report to a parole supervisor and the police as required and keep the parole supervisor informed of changes in residence or employment.

If necessary, NPB may impose special conditions of release such as: to reside in a halfway house; to abstain from alcohol and non-prescribed drugs; to avoid contact with their victims or children unless accompanied by an adult; and, to refrain from associations with people involved in criminal activity.

NPB has the power to revoke the release and return the offender to prison for failure to abide by these conditions.

Myth 6

When making parole decisions the Board considers such things as prison overcrowding, quotas, the political climate and public outrage about certain high-profile offenders.

Reality

The first and foremost consideration of the National Parole Board in all its decisions is the safety of the public.

NPB is an independent administrative tribunal free from any political or bureaucratic interference or external pressure. Neither the Solicitor General of Canada, nor the Commissioner of Corrections, nor the Chairperson of NPB can influence a Board member's vote.

Board members assess each case individually in terms of risk and public safety. The Board's assessment of the risk presented by an offender on parole is based on three major factors:

- 1) criminal history;
- 2) institutional behaviour and benefit from programs; and,
- 3) release plan.

Myth 7

The Board grants parole to offenders who express remorse for the offences they have committed.

Reality

Whether or not offenders express remorse is only one of the many factors that the Board considers in assessing risk.

Of greater importance are whether the offenders understand their offences, the factors that contributed to their criminal behaviour, the progress they are able to demonstrate as a result of their participation in treatment programs, and the soundness of their release plans.

Myth 8

Most of the offenders released on parole are convicted of new crimes.

Reality

Most offenders released on parole successfully complete their sentences without committing new offences.

Between 1995 and 2000, more than 70% of 11,466 offenders, released on **full parole**, completed their sentence successfully. A little over 16% had their parole revoked for breach of conditions while 12.5% had their parole revoked as a result of committing a new offence.

In the same five-year period, the Board granted more than 16,000 releases for **day parole**. Nearly 83% were completed successfully. Revocations for breach of conditions amounted to slightly less than 12% while 5.7% were revoked for committing new offences.

Although violations of parole do occur, the number of offenders who meet the terms and conditions of their release provides impressive evidence of the effectiveness of the parole system in Canada.

Myth 9

Society would be better protected if criminals remained in prison until the end of their sentence.

Reality

Evidence clearly shows that a gradual, controlled and supervised release is the most effective way of ensuring public safety.

Research over many years has shown that offenders are more likely to become productive law-abiding citizens when they have been returned to the community through parole or other forms of conditional release than when they stayed in prison until the end of their sentence.

Long-term studies show that 50 per cent of offenders who were released directly from prison 12 years ago, without the benefit of gradual and controlled supervision, were later re-admitted for having committed new offences. By contrast, only 10 per cent of those who were released on parole and completed their sentences under parole supervision, were subsequently re-admitted to federal penitentiary with new offences.

Myth 10

A life sentence in Canada means that offenders only have to serve 25 years before they are released.

Reality

A life sentence means life. Lifers will never again enjoy total freedom.

Offenders, convicted of first-degree murder, serve life as a minimum sentence with their first parole eligibility set by law at 25 years. For offenders convicted of second-degree murder, the judge may set parole eligibility at a point between 10 and 25 years.

Lifers can only be released from prison if granted parole by the Board. Unlike most inmates who are serving a sentence of fixed length, i.e. 2, 10, or 20 years, lifers are not entitled to statutory release. If granted parole they will, for the rest of their lives, remain subject to the conditions of parole and the supervision of a parole officer. Parole may be revoked and offenders returned to prison at any time if they violate the conditions of parole or commit a new offence.

Not all lifers will be granted parole. Some may never be released on parole because they continue to represent too great a risk to re-offend.

Myth 11

The “faint hope clause” automatically results in lifers being released on parole after serving only 15 years.

Reality

A judicial review under Section 745.6 of the *Criminal Code of Canada*, popularly referred to as the “faint hope clause,” is not an early parole hearing.

When offenders have served at least 15 years of a life sentence for first degree murder or second degree murder (with a parole eligibility date set at more than 15 years), they may apply to the Chief Justice of the province or territory where they were convicted to have their parole eligibility date advanced.

A favourable decision by the Court only advances the eligibility date. It allows the offender to apply to the Board at an earlier date for parole. Whether the offender is released, and when, is decided solely by NPB on the basis of a thorough assessment of risk with protection of the public as the first and foremost consideration.

Myth 12

NPB decisions are made in secret and are not available to the public.

Reality

Parole decisions are not secret.

Members of the public may apply to attend hearings as observers. More than 5,500 people, including victims and journalists, have attended parole hearings in the past six years.

NPB decisions, including reasons for the decisions, are available to the public. Members of the public can obtain a copy of these decisions on **written** request. More than 13,000 parole decisions have been provided to the public in the past six years.

Myth 13

*NPB can prevent **any** inmate from being released on statutory release by detaining them in prison until the end of their sentence.*

Reality

Only certain offenders will be detained in prison until the end of their sentences.

Detention means that the offender will not be released on statutory release but will remain in prison.

The Board can order the detention of an offender if there are reasonable grounds to believe that the offender is likely to commit an offence involving death or serious physical or psychological harm, or a sexual offence involving a child or a serious drug offence before the sentence ends. However, NPB may only review those cases that have been referred by CSC for a detention review.

By law, an offender who is ordered detained is entitled to a yearly review by NPB. The detention order will remain in force until the end of the sentence, unless the Board is satisfied that the offender no longer poses a risk to commit an offence involving death or serious physical or psychological harm, or a sexual offence involving a child or a serious drug offence before the end of the sentence.

Myth 14

Victims do not have a role in the conditional release process and their views are not taken into account.

Reality

Victims or their families have a significant role in the conditional release process.

Victims have a voice at Parole Board hearings. They have the opportunity to present a prepared statement directly to the Board members about the continuing impact of the crime and any concerns they have for their safety or the safety of the community. A victim may also choose to present his/her statement on audio or videotape.

NPB policy specifically states that if a release is being contemplated, information from victims must be considered, as must requests from victims to impose release conditions deemed necessary for their protection.

The *CCRA* permits NPB and CSC officials to release certain prescribed information about offenders to their victims. Victims may remain in contact with NPB and CSC while the offender is under sentence and provide any additional information they believe should be considered. This information is used in decisions about an offender's institutional placement, programs and release. It may be a critical factor in those decisions where the physical security of the victim may be at risk.

Finally the *CCRA* allows victims as well as other members of the public to attend and observe parole hearings and to request copies of the Board's written decisions from the decision registry.

Since the *CCRA* came into force, thousands of victims have taken advantage of these provisions. Once established, there is usually continuing contact with the victim by staff of both NPB and CSC. This contact has been made easier by providing toll free telephone access to NPB offices. A list of NPB offices and toll free telephone numbers is included at the end of this booklet. (See Appendix 2)

Myth 15

Board Members are political patronage appointments.

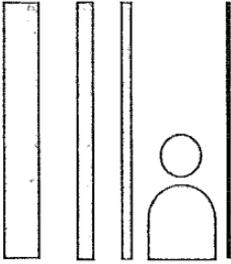
Reality

Board members are not political patronage appointments.

The Government appoints only candidates who have successfully met all the selection and screening requirements of the National Parole Board.

Vacancies are advertised in the Canada Gazette and any interested candidates may apply for the positions. Applicants are first screened against a set of criteria, which includes an assessment of their background and related experience. This may include criminology, law, journalism, law enforcement, education, business and community service. They must have a good understanding of the criminal justice system.

Candidates who meet these initial selection criteria must then undertake a written test and an in-depth interview. A list of qualified candidates is then submitted to the Solicitor General and appointments are made by the Government from this list of qualified individuals. The same selection process is used to select the Chairperson and Executive Vice-Chairperson of the Board.



Appendix 1

GLOSSARY

Administrative tribunal: An independent decision-making body created by law that makes decisions free from outside influence which affect an individual's rights and liberties.

Clemency (or Royal Prerogative of Mercy): An act of mercy which may be granted by Cabinet or the Governor General. It is only considered in very exceptional circumstances for deserving individuals who suffer excessive hardship as a result of a court imposed penalty, and where no other remedy exists under the law.

Day Parole: A form of conditional release granted at the discretion of the National Parole Board for a period of up to six months to prepare the inmate for full parole or statutory release. The offender must return to a penitentiary, a provincial correctional facility or a halfway house each night.

Detention: A decision by the National Parole Board ordering an offender to remain in custody until the end of sentence rather than being released on statutory release at the two-thirds point of a determinate sentence. An offender may be detained only if the case has been referred by Corrections Service Canada and if the National Parole Board is satisfied that the offender is likely to commit an offence causing serious harm, or death, prior to the expiry of the sentence.

Determinate sentence: A sentence of fixed length imposed by the court. A determinate sentence has an expiry date at which time the offender is completely free.

Eligibility: The date when an offender is entitled to be considered for some form of conditional release, such as temporary absence, work release, day parole, full parole and statutory release.

Full parole: A form of conditional release granted at the discretion of the National Parole Board that allows an offender to live in the community, subject to conditions, providing him or her with an opportunity to demonstrate that he or she can be a law-abiding member of society.

Indeterminate sentence: A life sentence for offences that may not otherwise carry a minimum sentence of life. By law, offenders designated by the court as “Dangerous Offenders” receive automatic indeterminate sentences. Although offenders serving an indeterminate sentence may not spend their entire lives in prison (i.e. they may eventually be paroled), they will remain under sentence, subject to control and supervision, for the rest of their lives. Parole eligibility, in these cases, is set by law at seven years.

Judicial Review: A provision in the *Criminal Code of Canada* that allows an offender, who was convicted of murder and has spent at least 15 years of a life sentence in custody, to apply to the court to seek a reduction of the waiting period before being considered for parole.

Life sentence: A life sentence means life. Offenders serving life sentences remain under sentence until the day they die. Although “lifers” may not spend their entire lives in custody (i.e. they may eventually be paroled), they remain subject to control and supervision for the rest of their lives. A first-degree murder conviction carries an automatic twenty-five year parole eligibility. For second-degree murder, the Court may set the eligibility anywhere between ten and twenty five years.

Pardon: A formal recognition that a person, who was convicted of a criminal offence and has completed a sentence, has demonstrated law-abiding behavior in the community over a period of time.

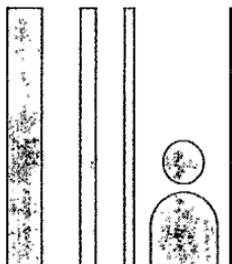
Parole (day parole, full parole): Parole may be granted after the offender has served part of the sentence in an institution, allowing the offender to live in the community under conditions and supervision for the remainder of the sentence. The decision to grant parole is discretionary and is the responsibility of a board of parole.

Probation: A sentence imposed by a judge, either as an alternative to incarceration or following a sentence in an institution. It allows a person to live in the community subject to specific conditions and to the supervision of a probation officer under provincial authority.

Revocation: A decision made by the National Parole Board to terminate an offender's release because of a violation of a condition or conviction for a new offence. A decision to revoke results in the offender's return to custody.

Special conditions (applies to all types of release): In addition to the conditions of release provided for by law, the National Parole Board may impose additional conditions (i.e.: abstinence from all intoxicants) as considered appropriate to further reduce the risk and to prevent the offender from returning to criminal activity.

Statutory release: By law, most offenders who are serving determinate sentences, and who have not been granted parole or had their parole revoked, must be released on statutory release automatically after having served two-thirds of their sentence. Statutory release does not require a decision by the National Parole Board. (See Detention) The Board may, however, impose special conditions.



Appendix 2

For more information, contact the NPB office nearest you:

National Office

National Parole Board
410 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Ph. (613) 954-7474
Fax. (613) 954-4380

Atlantic Regional Office

National Parole Board
1045 Main Street, 1st Floor Unit 101
Moncton, New Brunswick
E1C 1H1
Ph. (506) 851-6345
Fax. (506) 851-6926

Victims Information Line

1-800-265-8744/8644
1-888-396-9188

Quebec Regional Office

National Parole Board
200 René-Lévesque Blvd. West
West Tower, 10th Floor, Suite 1001
Montreal, Quebec
H2Z 1X4
Ph. (514) 283-4584
Fax. (514) 283-5484

Victims Information Line

1-877-333-4473

Ontario Regional Office

National Parole Board
516 O'Connor Drive
Kingston, Ontario
K7P 1N3
Ph. (613) 634-3857
Fax. (613) 634-3861

Victims Information Line

1-800-518-8817

Prairies Regional Office

National Parole Board
101 - 22nd Street East, 6th Floor
Saskatoon, Saskatchewan
S7K 0E1
Ph. (306) 975-4228
Fax. (306) 975-5892

Victims Information Line

1-888-616-5277

Pacific Regional Office

National Parole Board
32315 South Fraser Way, 3rd Floor
Abbotsford, British Columbia
V2T 1W6
Ph. (604) 870-2468
Fax. (604) 870-2498

Victims Information Line

1-888-999-8828