

**CCRA 5 YEAR REVIEW**

**THE NATIONAL PAROLE BOARD  
REGISTRY OF DECISIONS**

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Ce rapport est disponible en français



This report is part of a series of 24 research/evaluation reports (listed below) that were prepared as background to the Consolidated Report of the Working Group studying the provisions and operations of the Corrections and Conditional Release Act and related Consultation Paper.

The Working Group is composed of representatives from the following agencies:

Correctional Service Canada  
National Parole Board  
Correctional Investigator  
Justice  
Department of the Solicitor General

Research/Evaluation Reports:

Information about Offenders  
Security Classification of Inmates  
Judicial Determination  
The Temporary Absence Program: A Descriptive Analysis  
Personal Development Temporary Absences  
Work Release Program: How it is used and for what purposes  
Day Parole: effects of the CCRA (1992)  
Case Management: Preparation for Release and Day Parole Outcome  
Accelerated Parole Review  
Statutory Release and Detention Provisions  
Community Supervision Provisions  
Provisions Relating to Victims  
Observers at National Parole Board Hearings  
The National Parole Board Registry of Decisions  
CSC Human Resources  
Administrative Segregation  
Search, Seizure and Inmate Discipline  
Offender Grievance System  
Urinalysis Testing Program  
Inmate's Input in Decision-making  
Information to Offenders  
Aboriginal Offenders  
Health Services  
Women Offenders



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**CCRA REVIEW**  
***THE NATIONAL PAROLE BOARD***  
***REGISTRY OF DECISIONS***

***SUBJECT***

The National Parole Board registry of decisions with respect to the conditional release of offenders, and use of this registry by the public for case specific and research purposes.

***CCRA REFERENCE***

*Corrections and Conditional Release Act*, Section 144 and *Corrections and Conditional Release Regulations*, Section 167

***PERCEIVED INTENT OF THE CCRA***

To increase the openness of decision-making, the accountability of the Board and public understanding of discretionary conditional release by allowing access by the public to National Parole Board decisions and the reasons for each decision.

***SCOPE AND METHODOLOGY***

Statistical information about use of the decision registry has been provided by NPB regional staff. Other information has been derived from monitoring of issues which have arisen since implementation through consultations and from document review.

***INTRODUCTION***

The *Corrections and Conditional Release Act* required the National Parole Board to establish and to maintain a registry of the decisions it made with respect to the conditional release of offenders, and to allow access to that registry by the public. The reason for adding this requirement to the Act was stated in the consultation paper:

*To increase the openness of decision-making, the accountability of the Board and public understanding of discretionary conditional release, it is proposed that there be access to the decisions of the Board, subject only to the restrictions necessary to respect the privacy of third parties, including the victim, victim's family and the offender's family. **The government accepts the recommendations of the Canadian Bar Association that there be publicly available reasons for the decisions of the Board.**<sup>1</sup>*

Provision was made for access to specific decisions, and for access for research purposes. The effect of this provision has been significant, especially for case specific access, which has opened decisions made by the Board to public scrutiny. This has, in turn, provided a vehicle for expanded public understanding of the decision-making processes of the National Parole Board and has promoted openness and accountability. Most consequential has been the increasing access to the decision registry by media representatives and Members of Parliament.

## **IMPLEMENTATION**

### **Case Specific Applications**

The legislation states

**S.144.** (1) *The Board shall maintain a registry of the decisions rendered by it under this Part and its reasons for each such decision.*

#### ***Access to registry***

- (2) *A person who demonstrates an interest in a case may, on written application to the Board, have access to the contents of the registry relating to that case, other than information the disclosure of which could reasonably be expected*
- (a) to jeopardize the safety of any person;*
  - (b) to reveal a source of information obtained in confidence; or*
  - (c) if released publicly, to adversely affect the reintegration of the offender into society.*

### **Content of, and access to, the registry**

The legislative provisions did not define what the contents of the “registry of decisions” should be, nor what would constitute demonstrating interest in a case. These determinations were left to the discretion of the National Parole Board. In keeping with the concepts of openness and accountability, the Board chose to make available the complete risk assessment and decision-making documentation of the Board members for each decision. The Board also decided that an individual would be considered to have demonstrated an interest in the case by writing to the Board to ask for access to the decision registry.

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<sup>1</sup> Ottawa: Supply and Services Canada 1990: Solicitor General of Canada: *Directions for Reform, Corrections and Conditional Release*, p.20.



The NPB makes approximately 30,000 decisions annually, all of which are potentially subject to a decision registry access request. Additionally, the legislation does not provide a termination date for the registry of decisions so the number of decisions which must be available is accumulating constantly.

Regional Offices of the NPB respond to applications for individual decisions, which provides the most efficient service possible. Recently, the Board has been completing decisions in many cases at the hearing, with the support of hearing assistants who produce the formal documentation. Consequently, decisions are frequently released the day of the hearing, or very shortly thereafter. Initially, copies of all decisions were sent to National Office to provide a central registry. At present, decisions are entered on the Offender Management System (OMS), which makes them available nationally.

## ***DISCUSSION OF ISSUES***

### ***Whether the registry of decisions has increased the openness of decision-making and public understanding of discretionary conditional release***

Regional staff have reported to National Office about decisions sent to requesters since September 1993, when it became clear that interest in having access to decisions was beginning to increase noticeably. There has been some inconsistency between regions with respect to reporting the actual number of copies of decisions sent out which has resulted in significant underreporting. For example, in some regions, only the number of decisions where there was a request was reported, not the actual number of copies of the decision sent out (a single decision may have numerous requesters). Additionally, a person with an interest in a case may ask to receive decisions on a continuing basis, or decisions made before they applied. Consequently, the number of copies of decisions sent out by the Board is higher than indicated by our records. Nevertheless, the following conclusions can be drawn from the available information:

- a) Use of the registry is increasing steadily with the number of requesters up 61.7% from fiscal year 1994/95 to 1996/97;
- b) Victims are the most frequent users;
- c) Media representatives are the next most frequent and their usage has increased significantly (by 127% from fiscal year 1994/95 to 1996/97).

As mentioned previously, the increasing use by media representatives is most likely to result in information about conditional release decisions being brought to the attention of the public.

**Types of persons requesting access to the registry and number of decisions issued,  
October 1, 1993 - March 31, 1997**

<b>Requesters</b>	<b>October 1, 1993 - March 31, 1994</b>		<b>April 1, 1994 - March 31, 1995</b>		<b>April 1, 1995 - March 31, 1996</b>		<b>April 1, 1996 - March 31, 1997</b>	
<b>Victims</b>	233	53.3%	522	51.2%	635	45.6%	719	43.6%
<b>Media</b>	87	19.9%	258	25.3%	448	32.2%	586	35.5%
<b>Other*</b>	117	26.8%	240	23.5%	309	22.2%	344	20.9%
<b>Total</b>	437	100%	1,020	100%	1,392	100%	1,649	100%
<b>Decisions issued</b>	(six months) 361		1,280		1,855		1,849	

\* All other persons, including the offender's family or assistant, members of victims' groups, and students.

The registry of decisions has increased the openness of the conditional release decision-making process. Whether it has also increased public understanding of discretionary conditional release is more difficult to determine. However, relatively detailed reports in the media about Board decisions, often including specific information about the Board members' assessment of the case, are increasingly common. Prompt access to Board decisions in cases with considerable public interest is a valuable resource for the media. For the Board, and for conditional release in general, media coverage which indicates the type of factors taken into consideration by Board members, the type of programming available for offenders both in institutions and the community, the different kinds of conditional release available to offenders, and the range of options for release, can help to inform the public and provide a better understanding of the complexity of the system.

Victims who choose to seek information throughout the sentence about an offender, typically want all the information they can obtain on that offender. Those who contact the Board are routinely sent information about accessing the decision registry which can provide them with an additional source of information.

**Privacy Issues**

The accessibility of the complete decision documentation has been of concern to the Privacy Commissioner<sup>2</sup>, to offenders and offender advocacy groups, and to some staff of the Correctional Service of Canada. These provisions, particularly subsection 144(4)<sup>3</sup>, effectively prevail over the *Privacy Act*. The Board attempts to alleviate these concerns as outlined below. However, due to legislative restraints or the nature of the problem,

<sup>2</sup> It is stated in the 'Submission by the Privacy Commissioner of Canada on Bill C-36, the Corrections and Conditional Release Act, Standing Committee on Justice and Solicitor General (1992)', that information in the registry of decisions should be depersonalized. His staff continue occasionally to express concern about the contents of the decision registry.

<sup>3</sup> 144(4) *Notwithstanding subsection (2), where any information contained in a decision in the registry has been considered in the course of a hearing held in the presence of observers, any person may, on application in writing, have access to that information in the registry.*

satisfying them is not possible in all situations. Staff of the Privacy Commissioner have also objected to the Board sending decisions by facsimile which is a practice in response to media requests. Facsimile response to media requests appears to the Board to be in the interest of providing prompt, timely, and accurate information to reporters. Since some or all of this information may be published, its dissemination by facsimile, lacking practicable alternatives, has been continued.

### **Screening by Information/Community Liaison Officers**

NPB Information Officers and/or Community Liaison Officers have been assigned the responsibility of reviewing decisions in relation to the exclusion criteria in ss.144(2) when there has been an access request. In 1996/97 they reported applying exclusion of some information in 25% of these decisions (460 of 1849). However, subsection 144(4) has considerable impact on the ability of the Board to apply exclusions. Many cases which attract requests for access to the decision registry are high-profile and/or cases where the offender killed or seriously injured the victim. It is this type of case which is most likely to have observers present, thereby making the decision accessible without exclusions.

Access to Information and Privacy staff from the National Office is planning to hold workshops throughout the country to achieve more consistency in applying these exclusions.

### **Board Member Training**

The legislative provision for a registry of Board decisions and reasons, and the commitment of the Board to respect the spirit of openness by releasing the full decision documentation has led to emphasis in Board member training on the importance of careful documentation. The Board member training manual points out that Board decisions are available to the public and that sensitive and/or confidential information discussed at the hearing may not be able to be withheld if it is documented in the decision. Board members are advised to examine whether specific references need to be recorded in their reasons, or whether the necessary information can be conveyed to the offender without such references. Names of third parties are particularly sensitive. For example, Board members may, in writing their decision, refer to “your prospective employer” rather than use the name of an individual or company. They can refer to reports about the offender’s participation in programs, or to psychological or psychiatric assessments, and to professional assessments of the impact on the risk presented by the offender, without documenting specifics about treatments or report content as long as the Board members’ reasons indicate that the information was evaluated.

This need for careful documentation of sensitive or third party information is recognized as a continuing concern, is a fundamental part of initial training on decision documentation, and is re-inforced in on-going training. However, in some cases Board members may believe such references are essential to making their decision complete and understandable, and the wording of decisions is the responsibility of individual Board members.

### **Correctional Service of Canada Concerns**

The following concerns have been raised by CSC.

#### **Offender Access:**

In at least one instance an inmate obtained NPB decisions relating to another offender. CSC believed this might affect the safety of others in the institution. The Board has amended its policy to exclude inmates from access to the registry.

#### **The amount of personal information about the offender which may be in a Board decision:**

Some case management staff have expressed concern about the amount of personal information about the offender which may be in a Board decision because they consider it an unfair invasion of the offender's privacy. Others, particularly those in contact with victims, have expressed frustration at being placed in the position of refusing to tell victims about the participation of the offender in programming because of *Privacy Act* restrictions<sup>4</sup>, and then having the victim obtain similar information after accessing a decision. They believe they are made to appear to be unco-operative or secretive and to be acting in contradiction to organizational commitments to openness and accountability.

Nevertheless, while information documented in a decision can, and often does, contain brief references to the offender's participation in programs and progress in addressing criminogenic factors, this is selective, very case specific and sporadic information. It should not be equated to a generalized legislative expansion of releasable personal information and should not be used to justify release of personal information by other staff members. It is the responsibility of staff who are authorized to release information to victims or the media to explain the legislative limitations which govern their duties.

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<sup>4</sup> Sections 26 and 142 of the CCRA which itemize the specific information which may be released to victims prevail over the *Privacy Act*, but do not include information about the progress of the offender in programming or treatment, and other types of personal information which may be included in a Board decision.

### **Format of Board Decisions**

The complete decision, especially in the format printed directly from the Offender Management System, has been described as confusing and difficult to understand in some cases. The Board simplified the format of its decision documentation following the implementation of the Bill C-45 amendments to the CCRA, and recently simplified it further to clarify the documentation of reasons.

### **Research Applications**

Applications for access to the decision registry for research purposes are managed at National Office, and all case specific decisions released for research purposes are screened by the Coordinator, Access to Information and Privacy to remove all identifiers, including those relating to offenders.

There have been fourteen research applications until October 31, 1997. Five were from lawyers, two from students, one from a person preparing a documentary, and six from offenders, including two from a single offender. Since all identifiers are removed from decisions, offenders may access the registry for research purposes.

The lack of public knowledge about the size and complexity of the decision registry<sup>5</sup> can lead to requests which are difficult, if not impossible, to fulfill without further definition by the applicant. For example, one request involved 15,000 decisions; another specified a level of detail in decision-making which could not be identified for retrieval. The researcher may be contacted by Board staff to clarify a request and to discuss the best way the Board can respond to their information needs. Depending on the nature of the request, response by means of a data run on the Offender Management System may be used.

The technical capacity to manage all decisions in a single location for research purposes has been problematic. In particular, implementation of a search and retrieval system to allow decision retrieval by certain key characteristics, such as offence type, has only recently been developed for decisions made before the implementation of the Offender Management System (OMS). These decisions, while individually available, were not previously able to be systematically analyzed by characteristics or groups. The introduction of OMS by the Correctional Service of Canada and the National Parole Board, allowed the Board to identify individual decisions in categories (e.g. by decision or offence type) and then retrieve the decisions from the NHQ registry, or, for decisions which had been entered in OMS, to retrieve them from that system. The decision registry as now constituted is a data base containing Board decisions made up to December 31, 1995, with a Folio-based search system. Subsequent decisions are accessed through OMS.

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<sup>5</sup> As noted above, the Board makes approximately 30,000 decisions a year and the decision registry is continually expanding, and has no termination date.

There can be a significant cost incurred in processing requests for hundreds of pieces of documentation. However, currently no fees are charged for this service. If the number of requests for research access increases significantly, the Board may need to review whether a fee should be charged.

Procedures for accessing the decision registry for research purposes have been developed, and will be made available to applicants to improve their understanding of the information available and to inform them of help available from NPB staff for clarifying their requests.

## ***CONCLUSION***

The intent of the legislation to increase public awareness and understanding of discretionary conditional release appears to be being met, and media reporting of National Parole Board decisions is more extensive. The release of individual decisions, and the reasons for each decision, to the media and members of the public has increased the openness of National Parole Board decision-making and the accountability of the Board. The utility of the research provisions is not as apparent given the limited number of requests.