PAROLE IN CANADA

REPORT OF THE

STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, Q.C.

Chairman

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The Standing Senate Committee on
Legal and Constitutional Affairs
(as of March 19, 1974)

The Honourable H. Carl Goldenberg, Chairman

and

The Honourable Senators:

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The following also participated in the Parole

Study: The Honourable Senators:

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CONTENTS

PREFACE

Terms of Reference

On October 19, 1971, in the Third Session of the Twenty-eighth Parliament, the Senate passed the following motion:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada.

On February 22, 1972, in the Fourth Session of the Twenty-eighth Parliament, the Committee's mandate was renewed as follows:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;
>
> That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;
>
> That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and
>
> That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

On February 5, 1973, in the First Session of the Twenty-ninth Parliament, the Senate renewed the Committee's mandate broadening the scope of the study:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;
>
> That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;
>
> That the Committee, or any sub-committee so authorized by the committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and
>
> That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

The mandate was again renewed on March 20, 1974, in the Second Session of the Twenty-ninth Parliament as follows:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;
>
> That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination; and
>
> That the papers and evidence received and taken on the subject in the Third and Fourth Sessions of the 28th Parliament and the First Session of the 29th Parliament be referred to the Committee.

While the scope of the examination was widened, the Committee had already interpreted its terms of reference very broadly when it published a booklet inviting the submission of written briefs and listing the topics the Committee intended to consider.[1] This clearly indicated that we were seeking views on all aspects of parole in Canada. The topics included matters such as basic principles, relevant legislation, sentencing, National Parole Board Jurisdiction, Federal Provincial division of responsibility, parole termination procedures, temporary absences, after-care, parole data gathering, information dissemination and community involvement in parole.

A substantial number of these "Invitations" were distributed or posted inside various provincial and federal correctional institutions across the country.

Since the evidence submitted and the time schedule made it impossible to deal with all the topics listed in the Invitation Booklet and in the submissions made by interested groups and individuals, the Committee selected a number of topics most closely related to the important issues. It considers that it has reviewed the major issues.

Consultation Process

This Report is based mainly on a multi-faceted consultation process which the Committee decided upon at the outset. Although the main thrust of this process was in the public hearings, other facets provided additional information.

The public hearings opened on December 15, 1971 when the Solicitor General of Canada was heard. A total of 26 public hearings involving approximately 75 witnesses were held, (See Appendix A). This afforded the Committee the opportunity to question witnesses in detail about parole matters, as well as to bring certain issues to the attention of the public for broader discussion. A small number of hearings were held *in camera* to hear some witnesses on matters of a confidential nature.

In response to the Committee's invitation, 116 briefs were submitted by individual organizations or informal groups across the country and by inmates and ex-inmates, (See Appendix B). The wide circulation given the Invitation Booklet produced submissions from many sectors in the field of criminal justice. In addition, a number of reports were commissioned for the specific purpose of stating the position of a service or agency involved in the parole administration.

Early in our study, Dr. Justin Ciale of the University of Ottawa was commissioned by the Committee to prepare a special report on parole decisions and parole supervision. It is reprinted in the proceedings of the public hearings.[1]

Some Committee members and staff attended meetings and conferences during 1972 and 1973, two of which dealt with parole exclusively. The Manitoba Society of Criminology organized a meeting in Winnipeg in May 1972 and the Ontario Association of Criminology and Corrections sponsored a Toronto meeting during the same month.

Other meetings attended were:

- The 14th Congress of Criminology of the Quebec Society of Criminology held in Montreal, March 15-16, 1973.
- The National Seminar on the Administration of Criminal Justice sponsored by the Institute of Public Administration of Canada and held in Banff, June 15-17, 1973.
- The Canadian Congress of Criminology and Corrections held in Regina, June 24-29, 1973.

In addition to the Conferences, where informal discussions with various individuals and groups were held, the Committee staff toured the country to meet with representatives of the National Parole Service, Canadian Penitentiary Service, various after-care agencies and provincial corrections services. These consultations involved several hundred persons.

Acknowledgements

The Committee expresses its thanks to those who submitted briefs, appeared at our hearings or made themselves available for consultation. Their co-operation was most helpful.

The Committee also wishes to acknowledge the services of the Honourable Senator J. Harper Prowse as Chairman of the Committee from the beginning of the project until February 1973.

We are particularly indebted to Mr. Réal Jubinville, the Executive Director, and Dr. James Vantour, the Assistant Director, for their valuable contribution to our study and Report. They were ably assisted by Ms. Cecile Suetal, and Miss Simone Lafrance, Special Editorial Assistants. To Mr. Denis Bouffard, Clerk of the Committee, we express our appreciation for his patient handling of numerous administrative tasks. Finally, a special word of thanks for the diligent work of our secretaries.

[1] Standing Committee on Legal and Constitutional Affairs. Examination of the parole system in Canada. *Invitation to submit written briefs on Parole*. Ottawa. The Senate. January 1972.

[2] The Senate of Canada. *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*. Ottawa. April 27, 1973. Appendix A.

SUMMARY AND RECOMMENDATIONS

Our enquiry into the parole system in Canada has led us to propose a fundamentally different approach to parole. The Committee has developed a concept of parole very different from the idea of the benevolent state giving clemency-type freedom to the deserving few.

Parole must be a fair and consistent measure of public protection so that it will be respected and supported by the public and the offender. Fairness and consistency in the parole system require sweeping changes in both the correctional system and the parole decision-making process.

We have concluded that parole must be a legal procedure created for the benefit of society and offender in which the release of inmates from incarceration will be effected in a systematic manner under regulated conditions. We think that parole supervision, where assistance is provided and control exercised, should be substantially intensified. We are not convinced that brief and infrequent contact is sufficient to provide public protection or assistance to the paralee. To assist in achieving the purpose outlined, we have re-defined parole as a basic coherent component of the criminal justice system. Parole must be a positive step in the correctional process. It is not to be regarded as sentence amelioration, clemency, proof of rehabilitation, reward, a right or a prison management function.

Substantial changes in the sentencing provisions of the *Criminal Code* will be required. Modifications in the area of remission and temporary absence directives will also be required if priority is to be given to release on some form of parole. In the decentralized parole system that we propose, legal provisions are necessary to ensure that all parole authorities perform in a consistent manner. Disparities must not be so great as to be unfair.

We believe that parole legislation should set standards with respect to:

- Independence of parole tribunals
- Powers of parole tribunals
- Criteria for granting discretionary and temporary parole
- Automatic collection of reports and case examinations

- Eligibility requirements for discretionary, temporary and minimum parole
- Right to apply for parole
- Rules governing parole application hearings
- Rules governing suspension, revocation and forfeiture procedures
- International and interprovincial exchange of parole supervision
- Uniform data collection

Recommendations

1) The National Parole Board should be relieved of all clemency functions. P. 40

2) The responsibility for sentencing should remain with the courts as provided in the *Criminal Code* P. 50

3) *Criminal Code* provisions which permit the courts to impose a sentence of probation following imprisonment should be repealed. P. 53

4) The definite-indeterminate sentences provided in the *Prisons and Reformatories Act* should be abolished. P. 54

5) The *Criminal Code* should be amended to provide for a limit on the cumulation of sentences. P. 55

6) The present statutory and earned remission provisions of the *Penitentiary Act* and the *Prisons and Reformatories Act* should be repealed. (See Recommendation 41 for an alternative to present remission provisions.) P. 59

7) All parole tribunals should be formally recognized in the law as independent tribunals within their respective jurisdictions. P. 62

8) Parole decision-making should be regionalized. P. 63

9) The Federal Government should maintain a parole authority for inmates sentenced to imprisonment in federal institutions. P. 64

10) The authority to parole inmates sentenced to imprisonment in provincial institutions should be transferred to provincial governments. P. 64

11) The federal parole authority should consist of a Headquarters Division and Regional Divisions corresponding to Canadian Penitentiary Service Regions, all to constitute one board. P. 64

12) The Headquarters Division and each Regional Division of the federal parole authority should consist of not fewer than five and not more than nine members. P. 67

13) One member of the Headquarters Division of the parole authority should be designated as Chairman who shall be the chief executive officer of the full parole board. P. 67

14) One member of each Regional Division of the federal parole authority should be designated as Chairman of that Division for administrative purposes. P. 67

15) The structure of provincial parole authorities should, where possible, be patterned on the structure of the federal parole authority. P. 67

16) The Headquarters Division of the parole authority should have the following functions.

a) review of decisions rendered by a Regional Division.

b) coordinating public relations, and public education.

c) originating and coordinating formulations of policy.

d) monitoring the operations of Regional Divisions and maintaining liaison with them.

e) collecting and coordinating data. P. 68

17) The Regional Divisions of the parole authority should have the following functions:

a) deciding on applications for parole and temporary parole, suspension, revocation and other forms of parole terminations.

b) public relations and public education.

c) originating policy ideas and participating in setting policy.

d) data collection. P. 68

18) Members of the Headquarters and Regional Divisions of parole authorities should meet periodically to discuss and decide on policy questions and other relevant matters. P. 69

19) The Headquarters and Regional Divisions should exchange members for short periods of time to provide experience and a broader perspective. P. 69

20) The composition of the various Divisions of parole authorities should not be rigidly prescribed by law but members should be selected on the basis of broad experience, knowledge of the criminal justice field, maturity, independence and, as far as possible, should be from the region where they will act. Representatives of native groups should be selected wherever appropriate. P. 70

21) The appointment of members to various Divisions should be for a term of years sufficiently long to make it professionally interesting and the term may be renewable. P. 70

22) The National Parole Service should be required by law to provide case investigation and supervision services to the federal parole authority either directly or through contracts with other public or private agencies. A corresponding legal provision would be required to provide case investigation and supervision services to provincial parole authorities. P. 71

23) The National Parole Service should be restructured on a regional basis similar to the recommended reorganization of the federal parole authority. P. 71

24) The roles of the National Parole Service and the Canadian Penitentiary Service in developing and monitoring correctional plans of inmates and exercising supervision over parolees must be carefully defined and coordinated. Whether coordination is achieved by

integration of the two services or through separate and autonomous administrations, we attach the utmost importance to the coordinated delivery of service to the inmate.

P. 71

25) Every offender sentenced to a federal or provincial institution should have the right to apply for parole and this right should be incorporated in the parole legislation. P. 74

26) The administrator of an institution should be required to forward a parole application to the appropriate parole authority within seven days of receipt. P. 74

27) Institutions should be required to keep available for inmates information and documents relating to parole. P. 74

28) An inmate may refuse to be released on parole. P. 74

29) In cases of imprisonment for six months or more, parole legislation should provide for automatic collection of reports, for automatic setting and notification of discretionary parole eligibility and minimum parole entitlement dates and for automatic case examination. P. 75

30) In cases of imprisonment for less than six months, parole should only be considered upon application by the inmate or someone on his behalf. P. 75

31) In all cases where parole has been denied and there remains a period of two years or more before the inmate becomes entitled to minimum parole or if the inmate is serving a life sentence or an indeterminate period in detention, the parole authority should be required to reconsider the case at least once every two years following the date of the previous review. P. 76

32) The minimum time to be served before eligibility for release on parole should be prescribed by statute rather than by regulation. P. 77

33) The minimum time to be served prior to becoming eligible for release on discretionary parole should be one-third of the term of imprisonment or seven years whichever is the lesser and ten years for persons serving sentences of life imprisonment as a minimum punishment. P. 77

34) Where, at the time of sentencing, a sentencing court or, subsequently, a court of appeal makes a recommendation, the parole authority may make an exception to parole eligibility time requirements. P. 78

35) Parole legislation should provide for the following parole release criteria. The parole authority shall not grant parole:

a) unless the inmate has served one-third of his term of imprisonment or seven years whichever is the lesser, or, ten years in the case of persons serving sentences of life imprisonment as a minimum punishment, subject to the exception set out in Recommendation 34.

b) unless the inmate has undertaken to carry out a correctional plan.

c) unless the inmate's release on parole will aid in carrying out the correctional plan.

d) if the inmate's release on parole constitutes a serious danger or undue risk. P. 80

36) Parole legislation should provide for the right to a hearing for inmates who have applied for discretionary parole. P. 80

37) Parole legislation governing discretionary parole application hearings should include provision:

a) for written notice of hearing,

b) for disclosure of relevant information,

c) for the right to be present *and* to be heard,

d) that reasons for the decision be given. P. 82

38) In special circumstances, a parole authority may authorize support, other than legal assistance, for the applicant at the parole hearing. P. 83

39) Rules of procedure governing parole proceedings should be published. P. 84

40) Parole legislation should provide for the review of parole decisions by the Headquarters Division of parole authorities. P. 84

41) The provisions for mandatory supervision as they now exist in the *Parole Act*, should be repealed and, in lieu thereof, the law should provide that the last third of every definite term of imprisonment should be a period of minimum parole to which the inmate is entitled. P. 88

42) An inmate who refuses release on minimum parole should not be eligible for temporary parole or temporary absence for rehabilitative reasons. P. 89

43) At any point after serving two-thirds of his sentence, an inmate who had previously refused minimum parole may request it and serve the remaining portion of his sentence on minimum parole. P. 89

44) Inmates serving a minimum parole of at least two months should be subject to all conditions applicable to inmates released on discretionary parole. P. 89

45) An inmate serving a minimum parole of less than two months should not be subject to supervision, suspension and revocation, but his parole should be subject to forfeiture upon commission of an indictable offence. P. 89

46) Temporary absence, from time to time, as provided in the *Penitentiary Act* and *Prisons and Reformatories Act* should be retained but "from time to time" should not be interpreted as permitting releases in sequence for a continuous period for rehabilitative purposes. P. 92

47) The term "temporary parole" should designate the temporary release measure, authorized by a parole authority, which aids in the fulfilment of an inmate's correctional plan. P. 93

48) The parole authority may grant temporary parole if:

a) the inmate has served one-half of the time prior to the eligibility date for discretionary parole or, in the case of persons serving sentences of life imprisonment or preventive detention, five years;

b) the release of the inmate does not constitute a serious danger or undue risk; and

c) the reasons for temporary parole constitute an integral part of the inmate's correctional plan and thus is oriented toward his eventual reintegration into the community. P. 94

49) A hearing should not be required in the case of an application for temporary parole. P. 94

50) Temporary parole should automatically terminate when the purpose for which the inmate was released is completed. P. 94

51) A parole authority may terminate a temporary parole at any time if the inmate is not fulfilling the conditions of the parole agreement. P. 94

52) Parole supervision resources should be expanded by:

a) increasing the staff of public services.

b) contracting for services with private after-care agencies.

c) contracting for services with community residential centres. P. 100

53) Parole legislation should provide for an efficient exchange of parole supervision between parole authorities in cases of parolees who, with or without permission, move into another jurisdiction. Such exchange should ensure:

a) continuation of parole supervision.

b) authority to enforce parole conditions or provide assistance to a parolee.

c) execution of arrest warrants upon suspension, revocation or forfeiture of parole issued by a parole authority. P. 102

54) Canadian governments should consider the possibility of agreements with foreign governments on exchange of parole supervision. P. 103

55) Standard parole conditions should require the parolee to: P. 104

a) obey the law.

b) meet his social and family obligations.

c) endeavour to obtain and maintain steady employment or follow an occupational or educational program.

d) reside at a specified place, and remain within specified geographic limits unless written permission to leave has been obtained beforehand from the proper authority.

e) notify the parole authority of any change of address or employment.

f) report in person to the police as instructed by the parole authority.

g) report to the parole officer and obey his instructions.

h) obtain written permission from the parole authorities before:

i) purchasing or operating a motor vehicle.

ii) incurring debts.

iii) assuming additional responsibilities such as marrying.

iv) owning or carrying firearms or other weapons.

i) refrain from associating with persons known to him to be engaged in criminal activities or, without permission of the parole authority, with persons known to him to have been convicted of a crime.

j) provide accurate information regarding income and expenditures as required by his parole officer.

k) advise his parole officer if arrested or questioned by police. P. 104

56) Parole authorities should be authorized by parole legislation to impose special parole conditions. P. 104

57) Parole authorities should be empowered to amend, vary, add to or delete parole conditions on their own initiative or upon application by the parolee. P. 104

58) Parole legislation should not be utilized to terminate sentences and the power to discharge from parole before its expiry should be abolished. P. 109

59) Parole legislation regarding suspension of parole should provide that suspension be justified only:

a) when the parolee has breached any of the terms or conditions of parole, or is about to commit an offence, or

b) for the protection of society. P. 109

60) The suspended parolee should be brought before a member of the parole authority within fourteen days of execution of the warrant of suspension, unless the suspension has been cancelled in the meantime by the authorized representative of the parole authority.

When the parolee is brought before a member of the parole authority, the member should be required to:

a) inform the parolee in writing of the alleged parole violations with which he is charged and set a date for a revocation hearing to be held no later than thirty days after his appearance before that member, or

b) cancel the suspension.

The parole authority should be required, within fifteen days of the revocation hearing, to:

a) revoke the parole, or

b) cancel the suspension.

If the parole authority fails to respect the time limits herein set out, the warrant of committal should become null and void and the parole automatically reinstated, except where the delay is caused by legal procedures instituted by the parolee. P. 110

61) The parole authority should be required to revoke parole without a hearing if the parolee has not been found and arrested within sixty days of the date on which the warrant was issued. P.110

62) Parole legislation should empower the parole authority to order detention of a parolee upon suspension, revocation or forfeiture of parole without reference to a court.

It should also permit delegation of the power to order detention upon suspension of parole to designated officers of the parole authority. P. 111

63) Parole legislation governing revocation hearings should include provision:

a) for written notice of hearing,

b) for disclosure of relevant information,

c) for the right to be present and to be heard,

d) for giving reasons for the decision. P. 112

64) The remainder of the sentence to be served following revocation of parole should be considered a new term. P. 112

65) Parole legislation should provide:

a) for forfeiture of parole upon conviction of an indictable offence punishable by a term of two years or more,

b) for issuance of warrants of apprehension and/or committal upon forfeiture of parole,

c) that the new sentence be consecutive to the remainder of the original sentence. P. 113

66) The parole regulation which requires the serving of one-half of the term imposed or seven years, whichever is the lesser, should be repealed in the case of those who have forfeited parole. P. 113

67) Time successfully served on parole should be credited toward completion of sentence. P. 114

68) Where appropriate, correctional authorities should employ native workers in all phases of the correctional process. P. 116

69) Where appropriate, parole authorities should contract with native service groups or agencies for supervision and related correctional work. P. 116

70) Consideration should be given to the desirability and feasibility of establishing community correctional centres staffed mainly by natives and primarily for native offenders. P. 116

71) The present legislation on habitual criminals and dangerous sexual offenders should be repealed and replaced by dangerous offender legislation which would set criteria for identification of dangerous offenders and a mechanism for the assessment of persons alleged to be dangerous. P. 118

72) Dangerous offender legislation should provide for preventive detention for an indeterminate period as now provided for dangerous sexual offenders and habitual criminals. P. 122

73) Dangerous offenders should be required to serve a minimum of ten years before being eligible for discretionary parole. P. 122

74) The Headquarters Division of the federal parole authority should review all decisions of Regional Divisions in the case of the dangerous offender. P. 122

75) Inmates serving sentences of life imprisonment for murder or as a result of commutation of a death sentence should be eligible for parole when they have served ten years. P. 129

76) Parole decisions in cases of inmates serving sentences of life imprisonment for murder or as a result of commutation of a death sentence should be made by the Regional Division and, in all cases, should be reviewed by the Headquarters Division. P. 123

77) The administrative, research and public accounting objectives of the parole program should be defined in measurable terms and data collection should be established accordingly. P. 130

78) Statistics Canada should be charged with the responsibility for parole data collection, analysis and publication. P. 130

PAROLE TODAY

Historical Perspective

In Canada, release of offenders* from penitentiaries and prisons, other than by normal expiration of sentence, has been effected by state intervention either through clemency or parole. Three distinct periods of state intervention can be identified.

1) *Prior to 1899 Royal Prerogative of Mercy*

Until 1899, release from penitentiaries and prisons was obtainable under the Royal Prerogative of Mercy powers vested in the Governor General. Such release was basically an exercise of clemency for humanitarian reasons and was generally unconditional because staff was not appointed to enforce any conditions.

2) *1899 to 1958 Ticket of Leave Act*

The proclamation of *An Act to provide for the Conditional Liberation of Penitentiary Convicts (Ticket of Leave Act)* in 1899 initiated a period of state intervention in release of prisoners which was based on a federal statute. Under the Act, the Governor General, acting on the advice of a member of the Cabinet, could grant "to any convict . . . a licence to be at large in Canada."[1] This Act did not establish criteria of eligibility and inmates could be released at any time prior to completion of sentence. In practice, certain unwritten rules eventually were developed to guide officers of the Department of Justice in making enquiries and advising the minister.

The early administration of the *Ticket of Leave Act* was still based on clemency considerations.[2] Through experience and as rules of procedure were adopted, the possible reform of the offender became a more important factor in the decision to release him. This change became more pronounced as more after-care agencies were established and supervision of those conditionally released was delegated to them. Wherever after-care agencies were not available, supervision generally consisted of offenders reporting monthly to the police.‡ Provisions of the *Ticket of Leave Act* applied to all inmates of federal and provincial‡ institutions convicted of criminal offences against the laws of Canada.

There were two exceptions to the universal applicability of the *Ticket of Leave Act*. The *Prisons and Reformatories Act*[3] was amended in 1913 in response to provincial requests to permit imposition of definite-indeterminate sentences in Ontario. The *Ticket of Leave Act* continued to apply to the definite portion of these sentences but not to the indeterminate portion. The *Prisons and Reformatories Act* was further modified in 1916 to permit creation of the Ontario Parole Board with jurisdiction over the indeterminate portion.

*References to offenders in this Report include female offenders.

‡ References to provinces include the Northwest Territories and Yukon Territory.

The second exception was made for British Columbia in 1948 when definite-indeterminate sentences were authorized for convicted offenders between the ages of sixteen and twenty-three (reduced to twenty-two in 1969). The British Columbia Board of Parole was established at the same time.

The system of definite-indeterminate sentences thus created overlapping jurisdictions between the provincial parole board and the National Parole Board. This confusion was criticized by the Archambault Commission[4] in 1938 and by the Fauteux Committee in 1956.

3) *1958 – The Parole Act*

In late 1953, the federal government authorized an inquiry into the principles and procedures followed in the Remission Service. This inquiry led to the Fauteux Committee Report in 1956. It recommended that the *Ticket of Leave Act* be repealed and that a comprehensive statute be enacted to replace the *Prisons and Reformatories Act* and certain sections of the *Penitentiary Act*[5] and, at the same time, incorporate other parole provisions. Within three years of the publication of the Fauteux Report, new parole legislation was enacted and the National Parole Board came into existence.

The new legislation, *An Act to provide for the Conditional Liberation of Persons Undergoing Sentences of Imprisonment* (known by the short title *Parole Act*[6]), transferred the authority to grant conditional release to a board with members appointed by Governor in Council. The concepts of reform and rehabilitation were incorporated into the law as statutory considerations in the grant of parole. The concept of clemency, which had permeated decisions until the enactment of the *Parole Act*, was perpetuated to some extent in that the National Parole Board was assigned certain clemency functions.

The Structure of the Present System

National Parole Board

The National Parole Board operates as an independent statutory body not answerable for its operations and decisions to any department or minister except for the supervision and direction of the National Parole Service.

Section 3(1) of the *Parole Act* provides that the Board will consist of "not less than three and not more than nine members to be appointed by the Governor in Council. . . for a period not exceeding ten years". On December 21, 1973, *An Act to amend the Parole Act* received Royal Assent. It provides for the appointment of "not more than ten additional *ad hoc* members to the Board, if and as required. . .for a period not exceeding five years". Such appointments were made on April 16, 1974 and two members were assigned to each of the five regions: British Columbia and Yukon Territory, Prairie provinces and Northwest Territories, Ontario, Quebec, and the Atlantic provinces. The other nine members, including the Chairman and Vice-Chairman, are stationed in Ottawa.

In the decision-making process of the National Parole Board, a majority of members, sitting in Ottawa, constituted a quorum. Section 5(1) of the *Parole Act* provides that the "Chairman may from time to time establish divisions of the Board, each consisting of two or more members of the Board". This was the practice from March, 1971 to April, 1973 when the Board conducted personal interviews or panel "hearings" in penitentiaries with

parole applicants. Although this practice has been discontinued, it is expected to begin again with the addition of ten new *ad hoc* Board members. This procedure did not change the decision-making process insofar as parole applications from provincial prisons were concerned. They were still decided by the members of the Board sitting in Ottawa.

POWERS OF THE NATIONAL PAROLE BOARD. Section 6 of the *Parole Act* specifies that the Board has exclusive jurisdiction and absolute discretion to grant, refuse to grant or revoke parole. However, the *Parole Act* and the *Prisons and Reformatories Act* limit its powers. For example, the Board has jurisdiction over "a person who is under a sentence of imprisonment imposed pursuant to an Act of the Parliament of Canada or imposed for criminal contempt of court".[7] It does not have jurisdiction over:

- a child within the meaning of the *Juvenile Delinquents Act*;[8]
- a person who has violated laws of provincial legislatures.[9]
- indeterminate portions of sentences imposed under Sections 44 and 150 of the *Prisons and Reformatories Act* in Ontario and British Columbia respectively.

Further limitations on the jurisdiction of the National Parole Board are found in Section 2(3) and (4) of the Regulations made under the *Parole Act*. It provides that the Board may not grant parole to a person who is serving a sentence of imprisonment as a result of a commutation or who is serving a life sentence imposed as a minimum punishment. The power to release is vested in the Governor in Council and the power of the Board is limited to making a recommendation. Since the recent amendments to the capital punishment provisions of the *Criminal Code*[10], a National Parole Board recommendation to grant parole requires a vote by at least two-thirds of its members. Furthermore, these amendments provide that the minimum time to be served prior to eligibility for parole may be set at "a number of years that is not more than twenty but more than ten".[11]

It should be noted that the authority of the National Parole Board to grant parole is governed by three legal criteria set out in Section 10(1)(a) of the *Parole Act* which states:

> The Board may
>
> (a) grant parole to an inmate, subject to any terms or conditions it considers desirable, if the Board considers that
>
> (i) in the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment,
>
> (ii) the reform and rehabilitation of the inmate will be aided by the grant of parole, and
>
> (iii) the release of the inmate on parole would not constitute an undue risk to society.

The National Parole Board is also charged with other responsibilities. In matters of parole, it has authority to:

- review and determine whether parole would be granted or recommended for every inmate who is committed to a penitentiary.
- consider every application requesting parole from inmates in provincial institutions.

- review every year the case of every inmate serving a term of preventive detention.
- revoke or suspend parole.

The National Parole Board has additional jurisdiction regarding clemency or the Royal Prerogative of Mercy. These are:

- to make decisions concerning revocation or suspension of any order under the *Criminal Code* which prohibits a person from operating a motor vehicle.[12]
- to carry out inquiries desired by the Solicitor General in connection with a request for clemency, and to make recommendations, through the Chairman, to the Solicitor General.[13]
- to conduct inquiries in connection with any application for the grant of a pardon under the *Criminal Records Act* and make recommendations to the minister.[14]

National Parole Service

The National Parole Service operates as a departmental service subject to direction and control by the Solicitor General. The Chairman of the National Parole Board however, by virtue of Section 4(3) of the *Parole Act* "has supervision over and direction of the work and the staff of the Board". This makes him responsible to the Solicitor General for the National Parole Service in contrast to his autonomy in his capacity as Chairman of the National Parole Board. (The Solicitor General is in the process of removing this responsibility for the Service from the Chairman.[15])

The National Parole Service has two basic responsibilities:

1) *Case Preparation.* This involves the collection and collation of material required by the National Parole Board. Officers are responsible for making recommendations to the Board after visiting penitentiaries and prisons to conduct interviews with inmates, and arranging community investigations to determine the probability of success of parole for a particular individual.

2) *Supervision of Parolees.* Officers are responsible for the actual supervision of parolees or arranging for their supervision through various other agencies, including provincial government services and after-care agencies.

With the expansion of the National Parole Service, the number of parolees supervised by its own officers increased and, consequently, less of the total supervision was handled by other agencies than was the case during the *Ticket of Leave* system. Prior to 1970, after-care agencies received partial fees to help cover their operating costs. In 1971 the Solicitor General negotiated agreements whereby a mutually acceptable fee for service was substituted for the system of grants. These agreements are re-negotiated annually. At present, the Parole Service is responsible for approximately fifty per cent of the supervision, while the remainder is handled by "other" agencies including government services and private after-care.

The National Parole Board has established approximately thirty-four district offices of the Parole Service throughout the country. There is one regional office for Quebec. Reports from district offices in Quebec are forwarded to the Regional Office and then directly to the Executive Director of the Service.

The Parole Process

The description of the parole process will be outlined in the various stages indicating the requirements of the National Parole Board, types of decisions the Board is authorized to make, and what an inmate can expect after applying for parole.

Figure 1 represents, in composite form, a model of the present system as it applies to an offender sentenced to a three year term in a federal penitentiary. It does not illustrate the case of a person sentenced to a provincial prison although we point to similarities and differences in the parole process for federal and provincial inmates.

The term "custody", as used in this Report, includes its common usage[1] designating confinement in an institution but, in addition, confinement through parole conditions. The parole contract limits the freedom of the parolee by placing certain restrictions on his behaviour and he is held accountable. Thus, our definition does not distinguish between custody behind bars and custody without bars.

SENTENCE OF IMPRISONMENT. Jurisdiction for incarceration of offenders is based on length of sentence. Section 659 of the *Criminal Code* specifies that:

> (1) Except where otherwise provided, a person who is sentenced to imprisonment for
> (a) life,
> (b) a term of two years or more, or
> (c) two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more,
> shall be sentenced to imprisonment in a penitentiary.

Inmates confined in penitentiaries are the responsibility of the federal government. Section 659(3) specifies that:

> A person who is sentenced to imprisonment and who is not required to be sentenced as provided in subsection (1) or (2) shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or other place of confinement within the province in which he is convicted, other than a penitentiary. . .

Thus responsibility for detention of such an offender rests with the provincial government. He will, however, be eligible for parole unless he falls into one of the categories over which the National Parole Board has no authority or jurisdiction as outlined above.

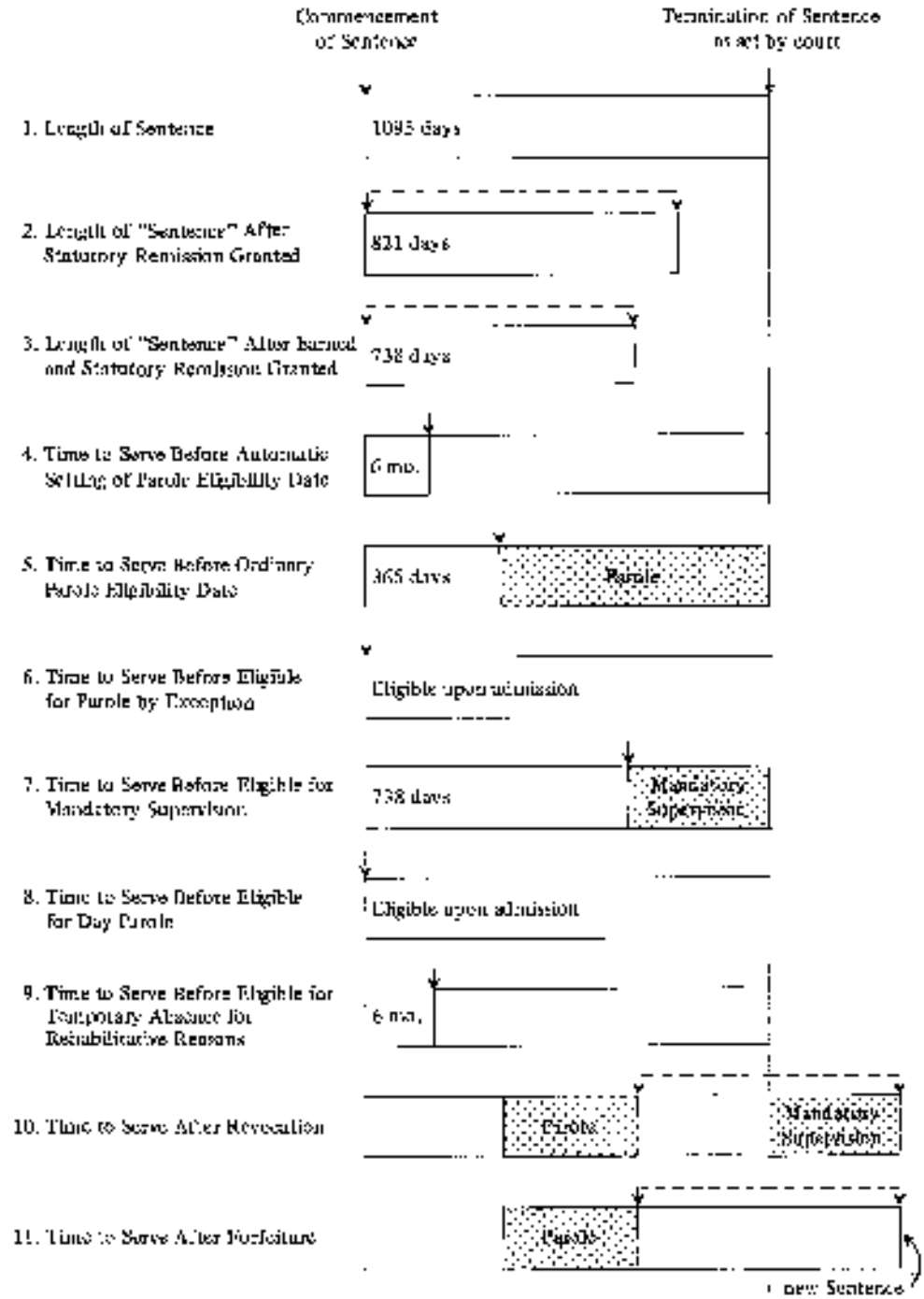
REMISSION. Remission is a procedure covered by the *Penitentiary Act* and the *Prisons and Reformatories Act*. It affects, and is affected by, the parole system. Traditionally known as "good time," remission is the procedure whereby an inmate has a portion of his sentence remitted as a reward. There are two types of remission: statutory and earned.

1) *Statutory Remission.* At one time, the practice of remitting a portion of the sentence was seen as an incentive to good institutional behaviour, but now statutory remission is considered a right of the offender. He is advised at the time of incarceration

FIGURE 1

THE PAROLE PROCESS

(based on a three-year sentence of imprisonment)



Legend:

Designates time served in institutional custody.

Designates time served on parole or mandatory supervision.

of the amount of "good time", fixed by law, that he will receive. Section 22(1) of the *Penitentiary Act* states:

> Every person who is sentenced or committed to penitentiary for a fixed term shall, upon being received into a penitentiary, be credited with statutory remission amounting to one-quarter of the period for which he has been sentenced or committed as time off subject to good conduct.

Section 17(1) of the *Prisons and Reformatories Act* makes the same provision for offenders serving sentences of less than two years.

Today, statutory remission may be seen more as a punishment than a reward since it is credited to the offender upon admission to the institution and will be taken away from him for various types of misbehaviour in the institution. Section 22(3)(4) of the *Penitentiary Act* states that such remission may be forfeited, in whole or in part, if an inmate is convicted by an Institutional Disciplinary Board of a disciplinary offence, or if an inmate is convicted of an escape, or of being unlawfully at large. Section 17(2) (3) of the *Prisons and Reformatories Act* contains the same provisions.

Both Acts also provide that forfeited remission may be re-credited to the inmate if it is in the interest of his rehabilitation.

In Figure 1, Step 2 indicates that an inmate, sentenced to a term of imprisonment of three years, or 1095 days, is credited with 274 days of statutory remission, one-quarter of his total sentence. This decreases the length of his sentence by that amount, if he does not forfeit any of this time credited to him.

2) *Earned Remission.* Section 24(1) of the *Penitentiary Act* states:

> Every inmate may be credited with three days remission of his sentence in respect of each calendar month during which he has applied himself industriously, as determined in accordance with any rules made by the Commissioner in that behalf, to the program of the penitentiary in which he is imprisoned.

Section 18(1) of the *Prisons and Reformatories Act* makes a similar provision for inmates serving less than two years. It should be noted that every inmate receives earned remission provided the appropriate conditions are met whereas those sentenced to indefinite periods are not eligible for statutory remission.

Although earned remission may not be credited for any given month if the inmate does not apply himself industriously, once an inmate has earned and been credited with three days for any given month, he will not lose it.

Step 3 of Figure 1 illustrates the length of time to be served after the inmate has been credited with all his statutory remission plus all possible earned remission, at the rate of three days per calendar month. Since statutory remission has reduced the amount of time to be served from 1095 days to 821 days, his earned remission totaling 88 days further reduces the period of incarceration to 738 days, or approximately two-third of the sentence handed down by the court.

Prior to proclamation of the mandatory supervision provision in the *Parole Act* in August, 1970, any inmate who had started to serve his sentence before that date would be released unconditionally after serving 738 days. The effect of mandatory supervision on remission is discussed below.

Automatic Parole Review

When an offender is admitted to a penitentiary, institution officials collect basic information on the offender and forward it to the National Parole Board and thus a parole file is initiated.

The next step is specified in Section 3(1) of the Regulations made under the *Parole Act* which states that:

> In the case of every inmate serving a sentence of imprisonment of two years or more, the Board shall
>
> (a) consider the case of the inmate as soon as possible after the inmate has been admitted to a prison, and in any event within six months thereof, and fix a date for his parole review,

There is no automatic parole review for inmates serving sentences of less than two years. The National Parole Board does not act on such cases until it has received an application from the inmate or on his behalf. Section 3(2) of the Regulations states that:

> ...the case shall be reviewed upon completion of all inquiries that the Board considers necessary but, in any event, not later than four months after the application is received by the Board.

Step 4 in Figure 1 designates the point in the sentence at which an examination of the file must take place for penitentiary inmates in order to set the parole eligibility date. On the parole eligibility date, a decision is made whether the inmate should be granted parole and, if it is to be granted, the date upon which it is to commence.

There are a number of options open to the National Parole Board, in lieu of a grant of ordinary parole. They are available for penitentiary and prison inmates. The Board may:

1) *grant Parole in Principle*. This means that parole is granted subject to satisfactory conditions being met, such as accommodation or employment arrangements. No date is specified.

2) *reserve the decision*. Generally, decision is reserved pending completion of investigations or further reports. Normally, the case would be reviewed again after one month and, if necessary, monthly thereafter.

3) *defer the parole*. This means that parole is specified for review. According to Section 3(1)(c) of the Regulations, in cases when the Board does not grant or recommend parole, it must continue to review the case at least once during every two years until parole is granted or sentence completed.

4) *deny parole*. Parole is refused.

The number of votes required is the same for both penitentiary and prison inmates. In deciding most cases, only two members of the National Parole Board, if in agreement, need to vote. If not in agreement, the case is usually referred to a third member to break the tie. There are, however, some exceptions usually based on the type of offence. The number of votes required may, in some cases, be five, in others, seven.[16]

In reserved decisions and in cases of automatic parole review deferred or denied, only one Board member need endorse the recommendation of the parole officer. The latter

situation could arise when an inmate whose case must automatically be reviewed has not applied for parole. Parole would be denied, and if the sentence is long enough to include another automatic parole review date, deferred to that time.

The travelling panel, consisting of two members, was authorized to make decisions immediately following the interview, advise the applicant of the decision and the reasons for so deciding. If members of the panel could not reach a decision, the case was reserved and referred to Ottawa for action. The applicant was then notified in writing of the decision. Such panels have been temporarily discontinued due to the heavy workloads of members.

TYPES OF PAROLE RELEASES. There are several types of parole releases. Only the most common are discussed in detail here. Others are simply defined.

1) *Ordinary Parole.* Amendments to the parole Regulations proclaimed June 5, 1973 stated that an inmate must ordinarily serve one-third of the term imposed, or seven years, whichever is the lesser, before he will be eligible for ordinary parole. Prior to the amendment, an inmate was required to serve one-third of the term imposed, or four years whichever was the lesser. Notwithstanding the above, an inmate in a penitentiary must serve at least nine months before he may be paroled.

Step 5 in Figure 1 indicates that portion of the sentence which must normally be served before release on parole.

There are five exceptions to this general rule:

- Paragraph 2 (1) (b) of the Regulations specifies that where an inmate is serving a sentence of life imprisonment but it is not a sentence of preventive detention, or a sentence of life imprisonment to which a sentence of death has been commuted, or a sentence of life imprisonment as a minimum punishment, he will be eligible for parole after seven years minus the time spent in confinement from the day on which he was arrested for the offence.
- For persons serving a sentence of life imprisonment as a result of a commutation or a life sentence imposed as a minimum punishment, eligibility for parole is at ten years and, in the case of conviction after December 29, 1972, eligibility is set by the court and must be a number of years that is not less than ten but no more than twenty.
- Section 694 of the *Criminal Code* specifies that:

> Where a person is in custody under a sentence of preventive detention, the National Parole Board shall, at least once in every year, review the condition, history and circumstances of that person for the purpose of determining whether he should be granted parole under the *Parole Act*, and if so, on what conditions.

- Amendments to the parole Regulations made June 5, 1973 specify that, when an inmate has forfeited his parole, he will serve one-half of the term imposed including the aggregate of the portion of the term that remained unexpired at the time parole was granted, including any period of remission, and the term to which he is sentenced.

This applies to all inmates who have forfeited parole, including those whose paroles were forfeited prior to June 5, 1973.

- Section 3(2) of the Regulations states that:

> Where an application for parole is made by or on behalf of an inmate who is serving a sentence of imprisonment of less than two years, the case shall be reviewed upon completion of all inquiries that the Board considers necessary but, in any event, not later than four months after the application is received by the Board.

When the Board grants parole, according to Section 13(1) of the *Parole Act*,

> The term of imprisonment of a paroled inmate shall, while the parole remains unrevoked or unforfeited, be deemed to continue in force until the expiration thereof according to law . . .

This means that parole will expire on the date the original sentence would expire, as shown in Step 5. When the inmate is paroled after one-third of his sentence, he will serve 730 days on parole, including his remission time.

2) *Parole by Exception.* Section 2(2) of the Regulations specifies that:

> where in the opinion of the Board special circumstances exist, the Board may grant parole to an inmate before he has served the portion of his sentence of imprisonment required under subsection (1) to have been served before a parole may be granted.

This is seen in Step 6.

An inmate serving a sentence of death commuted to life imprisonment, or life as a minimum punishment, is not eligible for exceptional consideration.

Guidelines for selection of inmates for parole by exception are:

(a) Clemency or Compassionate Grounds

- death in family, involving close relationship and/or tragic or traumatic circumstances
  dependent suffering from cystic fibrosis or other debilitating ailment
- extraordinary hardship to dependent of inmate, more extensive and extreme than normally encountered
  birth of baby, either by female inmate or an inmate's wife
- Christmas, consistent with the spirit of executive clemency

(b) Employment and School

- release to accommodate deadlines, either school or seasonable employment, (e.g. maple sugar season, lobster fishing, etc.)
  to preserve a particular job, especially if physically handicapped
- inmate indispensable to employer for certain specialized duties
  inmate a student prior to short sentence, and his return to school expedited, especially where exams forthcoming

(c) Preservation of Equity

- meritorious service to administration, during institutional riot, etc.
  sentence being served in default of payment of fine, where non payment results from genuine financial hardship
  time in custody prior to sentence
- changes in the law following conviction
- minimum mandatory sentences
- administrative inequity (e.g. two equally culpable accomplices, different judges, different dates of sentences, different sentences)

- accomplice released by exception for any reason but especially if relevant to present case also
- to provide identical eligibility dates for accomplices in light of information not available to the Court
  extenuating circumstances in the offence

(d) Interdepartmental Co-operation

generally to accommodate the reasonable needs of other government departments or agencies

- parole for deportation before a newly obtained travel document expires, or to otherwise avoid embarrassment with foreign governments
- entry into special treatment programs (e.g. Special Narcotic Addiction Programmes, Indian Affairs Training Courses, etc.)
  transfer from adult to juvenile correctional institution, for reasons of treatment, by a special Certificate of Parole

(e) Special Representation from the Judiciary, Crown Prosecutor, etc.

- Judge advises that, upon reflection or in light of new information, the sentence should have been shorter
- Appeal Court dismisses appeal stating case should have early parole consideration
  Crown Prosecutor advises of unusual co-operation by inmate during investigation, etc.
  Judge or Crown Prosecutor recommends early consideration because a more culpable accomplice was acquitted on a legal technicality

(f) Maximum Benefit Derived from Incarceration

- lack of facilities for self improvement within the institution
- deleterious effects anticipated from further incarceration
- low mental capacity limiting absorption of institutional programme
- age of offender, either youth or extreme age
- combination of inter-related factors (e.g. first offender, unsuitable institutional programme, universally favourable reports, receptive community, special offer of employment)
- ethnic cultural patterns or language at variance with those extended institutionally
- the accidental offender[17]

The guidelines further specify that "while the factors are listed individually, one in itself will often not have proven sufficient to warrant an exception."[18]

3) *Mandatory Supervision.* Mandatory supervision is a new provision in the *Parole Act* whereby anyone sentenced or transferred to a federal penitentiary after August 1, 1970, will be, on his release, subject to supervision under the authority of the National Parole Board. More specifically, Section 15(1) of the *Parole Act* states:

> Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.

This provision does not apply either to inmates serving life or indeterminate sentences or to those serving sentences in provincial institutions.

The portion of the sentence which must be served prior to release on mandatory supervision is illustrated in Step 7. The same provision that applied to ordinary parole applies here: namely, that the inmate's sentence will expire at the date set by the court.

On a three year sentence and in the absence of ordinary parole, as illustrated, the inmate will serve 357 days, or approximately one-third of his sentence, under mandatory supervision, making a total of 1095 days served.

This means that prior to August 1, 1970, an inmate credited with all his remission was unconditionally released *after* serving 738 days of a 1095 day sentence. Inmates sentenced to a penitentiary since that time receive a conditional release and are subject to the same conditions as the one who is granted an ordinary parole.

On the other hand, the inmate presently being released from a provincial institution receives an unconditional discharge *after* serving the term of imprisonment imposed by the court minus his remission time.

Mandatory supervision is "based on the view that if a person selected for parole requires counselling and supervision, those persons who are not so selected need such counselling and supervision even more."[19]

4) *Day Parole.* Both day or temporary parole and the temporary absence program differ from other types of conditional release because the inmate to whom it is granted is conditionally discharged from the institution for only a short period of time. Barring revocation or forfeiture, (discussed on pages 30-32) the inmate paroled under ordinary parole, parole by exception, or under mandatory supervision will not return to the institution during the portion of his sentence which he serves on the street under supervision.

Day parole, on the other hand, is defined in Section 2 of the *Parole Act* as:

> parole the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period.

The National Parole Board suggests that day parole should be granted for special rehabilitation purposes, e.g., extended training periods outside the institution, continuation of regular employment, or gradual release preceding expiration of a sentence.

Internal policy of the National Parole Board provides that an inmate becomes eligible for day parole one year prior to his eligibility date for ordinary parole. If the eligibility date for ordinary parole is less than one year from admission to penitentiary, the inmate is eligible for day parole immediately upon admission. This is shown in Step 5. Day parole cannot normally exceed three months without special approval from the Board.

Temporary absence is the responsibility of institutional authorities. The federal officials designated to make these decisions are the Commissioner of Penitentiaries and the officer in charge of an institution. Section 26 of the *Penitentiary Act* states:

> Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time
>
> (a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or

(b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate.

The Commissioner of Penitentiaries, in Directive No. 228, June 27, 1973 states that "an inmate may be considered for temporary absence six months after admission to a penitentiary".[20]

The eligibility date for temporary absence is illustrated by Step 9.

The directive adds that exceptions are made for humanitarian or medical reasons as provided for in paragraph 7 which states:

> An Institutional Director may, in exceptional circumstances, i.e., medical reasons, serious illness or death in the family, grant a temporary absence with escort to an inmate including those under "Special Restrictions and Conditions" – at any time follow-up admission.

There are some exceptions to the general rule regarding temporary absences which are covered in paragraph 6 of the Commissioner's Directive:

> SPECIAL RESTRICTIONS AND CONDITIONS
>
> a. Any inmate who:
>
> (1) is serving a life sentence,
>
> (2) Has been declared by the courts to be an habitual criminal and has been sentenced to preventive detention,
>
> (3) has been identified by the police, through a pre-sentence or community assessment report, as having been affiliated with organized crime.
>
> shall not be granted a Temporary Absence for rehabilitative reasons until at least three years after his admission to a penitentiary. The first two absences of three days or less shall be granted only with the concurrence of the Regional Director. Where the requested absence exceeds three days, the Regional Director's recommendation must accompany the request to the Commissioner.
>
> b. A parolee under suspension of parole shall not be granted a temporary absence, except if he is confined in a Community Correctional Centre, and the temporary absence has been requested by the Parole Board.
>
> c. When parole is forfeited or revoked, the inmate shall not be eligible for Temporary Absence until a further six months has been served since re-admission.
>
> d. When parole is forfeited or revoked, inmates who are included under Paragraph 6(a), (1), (2) and (3) above shall not be eligible for Temporary Absence until three years have been served since re-admission.
>
> e. An inmate serving sentence for kidnapping or abduction under Section 247 of the Criminal Code of Canada, or an inmate serving sentence for hijacking, under sub-section 76.1 of the Criminal Code of Canada, shall not be granted a Temporary Absence for rehabilitative reasons without the concurrence of the Commissioner.
>
> f. Subject to the conditions specified in Paragraph 7 (EXCEPTIONS) of this directive, an inmate declared by the Courts to be a dangerous sexual offender shall not be granted a Temporary Absence.
>
> g. In the case of those inmates not declared by the Courts as being dangerous sexual offenders, under Section 689 of the Criminal Code of Canada, but who have either been convicted of a sexual offence or have a history of sexual offences, the Institutional Director must exercise great caution before granting temporary absences.

In the provincial correctional systems, the official responsible for temporary absence decisions must be designated by the Lieutenant Governor of the province. His authority to act is found in Section 36 of the *Prisons and Reformatories Act* which states:

> Where, in the opinion of an official designated by the Lieutenant Governor of the province in which a prisoner is confined in a place other than a penitentiary, it is necessary or desirable that the prisoner should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the prisoner at any time during his period of imprisonment, the absence of the prisoner may be authorized from time to time by such official for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the prisoner.

Obviously, there is considerable overlap in a correctional system which permits two different bodies to determine whether an inmate, and which inmates, will be released from the institution temporarily.

In fact, until June 9, 1973, the Penitentiary Service was providing some inmates with back-to-back temporary absences which, in effect, became very much like parole. In his statement in the House of Commons on June 1, 1973, the Solicitor General, the Honourable Warren Allmand, indicated that such a practice would be terminated. For inmates who were, at that time, on successful back-to-back absences or where it may be considered necessary or desirable in the future, greater use would be made of day parole. The expression "temporary parole" now designates the vehicle by which inmates may receive *ad hoc* releases which may not be related to full release. Provincial authorities still provide back-to-back temporary absences.

In the Directive of June 27, 1973, the Commissioner of Penitentiaries also ordered that a community investigation must be completed before an inmate is granted an unescorted temporary absence for rehabilitative reasons. Requests for community assessments must be addressed to the National Parole Service.

The following are other types of parole releases:

5) *Parole in Principle*. Parole is granted subject to satisfactory conditions being met, e.g., housing, employment, etc.

6) *Parole for Deportation*. The applicant will be deported on being granted parole. Immigration authorities make the necessary arrangements for escort to port of departure.

7) *Parole for Voluntary Departure*. The inmate is paroled to go to another country of which he is a citizen, or which will accept him. The National Parole Service arranges for escort to port of departure. The paroled person is not permitted to re-enter Canada without prior consent of the National Parole Board.

8) *Parole with Gradual*. Permission is given for an inmate to leave the institution during the day, with or without escort, for short periods prior to his final release on parole to assist in his readjustment to community life.

Parole with Gradual is an order from the National Parole Board that an inmate, usually one serving a long term of imprisonment and one to whom full parole will be ultimately granted, be released for short periods prior to full release on ordinary parole. The actual date on which he is granted full parole is decided by the Regional Parole

Officer. This type of parole is similar to day parole (discussed on page 26) except that it is not assumed that every inmate on day parole will eventually be granted ordinary parole.

9) *Short Parole.* This applies only in jail cases, usually for less than thirty days. Immediately prior to expiry of sentence, to assist in rehabilitation of the inmate, e.g., offer of steady employment. Supervision is not provided.[21]

10) *Minimum Parole.* It is applicable to inmates of penitentiaries and other federal institutions. It refers to a release based on one month on parole for each year of sentence up to a maximum of six months.

Termination of Parole

There are several methods by which parole may be terminated, including cancellation of parole before the National Parole Board has executed its order for release. All other terminations occur after the inmate has left the institution.

1) *Normal Expiration.* The parolee successfully completes the term of his parole.

2) *Discharge in Advance of Normal Expiration.* Section 10(1)(d) of the *Parole Act* gives the National Parole Board power to:

> grant discharge from parole to any paroled inmate, except an inmate on day parole or a paroled inmate who was sentenced to death or to imprisonment for life as a minimum punishment.

This power is normally used for long paroles and is enforced when the Board is confident that the parolee, after a lengthy period of supervision, has made a satisfactory adjustment to the community.

Prior to discharge from parole, the Board may reduce the number of parole conditions, e.g., it may no longer require the parolee to report monthly to the Police. This "Parole Reduced" procedure may be used to remove any or all conditions of the parole agreement. Discharge from parole means that the individual is not subject to suspension, revocation or forfeiture.

3) *Parole Suspended.* Section 16(1) of the *Parole Act* states:

> A member of the Board or any person designated by the Board may, by a warrant in writing signed by him, suspend any parole, other than a parole that has been discharged, and authorize the apprehension of a paroled inmate whenever he is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole, or for the rehabilitation of the inmate or the protection of society.

The National Parole Board, or its designated officer, may suspend parole for a variety of reasons including suspicion that the paroled inmate is engaging in criminal activity, fear that he may, or perhaps for "therapeutic"[22] reasons.

When a warrant for suspension is issued, the paroled inmate is brought before a magistrate and is remanded and confined until the suspension is cancelled or his parole is revoked or forfeited. The case must be reviewed within fourteen days and, at that time,

the suspension must either be cancelled or referred to the National Parole Board which will, after completing its investigations, either cancel the suspension or revoke the parole.

It should be noted that an inmate who is incarcerated on a suspension order is considered to be serving his sentence.

4) *Parole Revoked.* This refers to an order of the National Parole Board terminating parole for misbehaviour, perhaps a minor offence, or breach of conditions of the parole agreement. It is usually preceded by a parole suspension during which parole officials investigate the case. In cases where the paroled inmate commits an indictable offence, forfeiture of parole is automatic. Section 20(1) of the *Parole Act* specifies:

> Where the parole granted to an inmate has been revoked, he shall be recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, *to serve the portion of his term of imprisonment that remained unexpired at the time parole was granted to him, including any period of remission, including earned remission, then standing to his credit*, less any time spent in custody as result of a suspension of his parole. *(emphasis added)*

An inmate whose temporary or day parole is revoked must serve the portion of his sentence remaining unexpired at the time continuous day parole was granted.

A crucial aspect of the revocation procedure is the relationship to remission and its subsequent effect on the length of time a person serves in some form of custody. In the event of a revocation, he must serve time spent in jail during suspension of parole. This results in his serving more time in custody than the court originally ordered.

Step 10 in Figure 1 illustrates this situation. It is assumed that the inmate is paroled after one-third or 365 days which means that he will have to serve on parole 730 days including remission credited to him (274 days statutory remission and thirty-six days earned remission). He is suspended after 365 days on parole. After fourteen days in jail, his parole is revoked. He is returned to the institution to serve the time remaining at the point when parole was granted minus the fourteen days under suspension. So even though he has been in custody for 730 days, only the 379 days during which he was confined are counted as time served.

Upon re-admission to the institution to serve 716 days, he is credited with earned remission from the first 365 days during which he was incarcerated (36 days) and statutory remission (1/4 of 716) which is 179 days. This means that, if he is not re-paroled he must serve 501 days in the penitentiary. Since remission credited to him exceeds sixty days (it is 215) he will be granted mandatory supervision. Therefore, the total time spent in custody (institutional and parole) is:

365 days in penitentiary
365 days on parole
14 days on suspension
501 days in penitentiary
215 days under mandatory supervision

The total is 1460 days, not 1065 to which he was originally sentenced. This total exceeds the original sentence of the court by about a year.

It is not unusual for an inmate whose parole has been revoked to be granted another ordinary parole. If a second parole results in another revocation, or if mandatory supervision is revoked, then the actual time spent in custody will further exceed the original sentence of the court even though he may not have committed another offence since the one for which he was originally sentenced.

5) *Parole Forfeited.* Section 17(1) of the *Parole Act* states:

> Where a person who is, or at any time was, a paroled inmate is convicted of an indictable offence, punishable by imprisonment for a term of two years or more, committed after the grant of parole to him and before his discharge therefrom or the expiry of his sentence, his parole is thereby forfeited and such forfeiture shall be deemed to have taken place on the day on which the offence was committed.

In the event of forfeiture, the paroled inmate is then readmitted to an institution. Section 21 of the *Parole Act* specifies where the remainder of the original sentence and the new sentence will be served and the amount of time to be served:

> (1) When any parole is forfeited by conviction for an indictable offence, the paroled inmate shall undergo a term of imprisonment, commencing when the sentence for the indictable offence is imposed, equal to the aggregate of
>
> (a) the portion of the term to which he was sentenced that remained unexpired at the time his parole was granted, including any period of remission, including earned remission, then standing to his credit,
>
> (b) the term, if any, to which he is sentenced upon conviction for the indictable offence, and
>
> (c) any time he spent at large after the sentence for the indictable offence is imposed except pursuant to parole granted to him after such sentence is imposed,
>
> minus the aggregate of
>
> (d) any time before conviction for the indictable offence when the parole so forfeited was suspended or revoked and he was in custody by virtue of such suspension or revocation, and
>
> (e) any time he spent in custody after conviction for the indictable offence and before the sentence for the indictable offence is imposed.
>
> (2) The term of imprisonment prescribed by subsection (1) shall be served as follows:
>
> (a) in a penitentiary, if the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him was a penitentiary;
>
> (b) in a penitentiary, if the total term of imprisonment prescribed by subsection (1) is for a period of two years or more; and
>
> (c) if the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him was not a penitentiary and the term of imprisonment prescribed by subsection (1) is less than two years, in that place of confinement or, where the place of his conviction is not within the territorial division in which that place of confinement is situated, in the corresponding place of confinement for the territorial division within which he was so convicted.

Step 11 of Figure 1 show the length of time that the inmate will serve after forfeiture.

It is assumed that he is paroled after one-third of his three year sentence and parole is forfeited after 365 days. At that point, he is convicted of an indictable offence.

punishable by more than two years, and is returned to serve the aggregate of the remainder of his original sentence (730 days assuming no time spent under suspension) and the new sentence, hypothetically three years. The actual time to be served, then is 1825 days. He will be credited with statutory remission of one-quarter of 1825 days and may be credited with earned remission at the rate of three days per month. Nevertheless, as long as his remission exceeds sixty days, he will eventually be under mandatory supervision so that the actual time in custody (institutional and parole) will be the total of the original 730 days and 1825 days on the new term, i.e., 2555 days or seven years when the actual sentences imposed by the court total six years.

An amendment to paragraph 2(1)(a) of the parole Regulations on June 5, 1973 states that if the term of imprisonment is one imposed under forfeiture, the inmate will serve one-half of the term imposed or seven years, whichever is the lesser, before he may be granted another ordinary parole.

The Committee has pointed to many complexities of the existing system. A number of issues arose in the examination and the Committee's recommendations for their resolution are discussed in detail in subsequent chapters.

References

[1]Canada, Department of Justice. *Report of a Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada.* Ottawa, Queen's Printer, 1956, p. 130, (Fauteux Report)

[2]Fauteux Report, p. 66.

[3]*Prisons and Reformatories Act*, R.S.C. 1970, c. P-21.

[4]Canada. *Royal Commission to Investigate the Penal System of Canada*, Ottawa, King's Printer, 1938. (Archambault Report)

[5]*Penitentiary Act*, R.S.C. 1970, c. P-21.

[6]*Parole Act*, R.S.C. 1970 (as amended to 1974), c. P-2.

[7]*Parole Act*, Section 2.

[8]*Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.

[9]Section 7(1) of the *Parole Act* provides an exception:

> Where, in the case of a person sentenced to a term of imprisonment in respect of which the Board has exclusive jurisdiction to grant, refuse to grant or revoke parole, that person is at the time of such sentence or at any time during such term of imprisonment sentenced to a term of imprisonment imposed under an enactment of a provincial legislature that is to be served either concurrently with or immediately after the expiration of the term of imprisonment in respect of which the Board has exclusive jurisdiction, the Board has, subject to this Act, exclusive jurisdiction and absolute discretion to grant, refuse to grant or revoke parole in relation to both such terms of imprisonment.

[10]*Criminal Code*, R.S.C. 1970 (as amended to 1974), c. C-34.

[11]Bill C-2, *An Act to amend the Criminal Code*, October 24, 1973, Section 3.

[12]*Parole Act*, Section 22(1).

[13]*Parole Act*, Section 22(2).

[14]*Criminal Records Act*. R.S.C. 1970. c. 12. 1st Supp.

[15]Scott, S., *Montreal Star*. "Parole service's new system smoothes road to release", January 11. 1974.

[16]National Parole Board. List revised June 7, 1973.

[17]Committee Proceedings. December 16 and 17. 1971. pp. 50-52.

[18]Committee Proceedings. December 16 and 17, 1971. p. 51.

[19]Committee Proceedings. December 16 and 17. 1971. p. 46.

[20]Canadian Penitentiary Service. *Commissioner's Directive No. 226*. "Authorization of Temporary Absences," Paragraph 5. June 27, 1973.

[21]National Parole Board. *Statistics 1971. Part I. Parole Clientele Statistics*. Glossary of Terminology Used in The Report. Ottawa. Undated.

[22]The expression "therapeutic suspension" was often used by parole supervisors in public and private agencies in conversations with our Committee staff.

REDEFINING PAROLE

Parole in the Criminal Justice System

The term "parole", before being used to designate a method of releasing offenders from incarceration, referred to the limited freedom granted to prisoners of war by their captors on condition that they gave their word of honour they would not try to escape. Prisoners so liberated were said to be "on parole". Such use was common in the 15th and 16th centuries. At that time, the term had no connection with the criminal justice system. The situation has changed to the extent that parole is now very much a part of this system. In Canada, legislation has provided for conditional release of offenders for almost seventy-five years although the word "parole" has been used in the statutes only since 1958.

The number released conditionally has increased gradually and, despite temporary set-backs, has generally increased faster than the growth of the population in institutions. Over time, fewer and fewer incarcerated offenders have been released simply through normal expiration of sentence. Since 1970, the *Parole Act* provides that those prisoners in federal institutions who have not been granted parole and who have enough remission to their credit are to be released on mandatory supervision which is really a form of parole. Consequently, the number of prisoners given conditional releases is increasing substantially and the role of parole in criminal justice is becoming that much more important. Most prisoners in provincial prisons are still released at the expiry of their sentences.

Dr. J. Ciale, in testimony before the Committee, demonstrated that over the period 1959-60 to 1970-71, paroles from federal penitentiaries constituted one release in three at the beginning and one in two releases at the end of this twelve year period.[1] In the course of a year, the parole authority released as few as one thousand and as many as 3494 from federal and provincial institutions. We believe that parole, while it already plays a substantial role in the criminal justice process, should expand its role still further. Canadian society has not only the right but also the obligation to release offenders from prison systematically and under controlled conditions rather than in a haphazard manner, which would be the case if release were solely on termination of sentence.

The Committee adopts the basic principle put forward by the Ouimet Committee: "The law enforcement, judicial and correctional processes should form an inter-related sequence".[2] The Fauteux Report, which led to creation of the present parole system, also contemplated an integrated approach to the offender. As a first goal, the Fauteux Committee urged that a Canadian correctional system should strive to attain "a high degree of integration between all parts of the correctional system".[3]

We find, however, continued disorganized and conflicting approaches to crime and the offender. There is validity in the description of the present situation by Professor

W. R. Outerbridge,* at the 1973 Canadian Congress of Criminology and Corrections, in which he said:

> Our present agencies of law enforcement, administration of justice and corrections can best be described as a series of self-contained, adjacent compartments, through each of which the offender is passed in sequence. Each compartment is relatively independent of the one before and of the one after. Each regards itself as the fulcrum of the total set. Decisions are made by the personnel in each compartment.
>
> These decisions have a marked bearing upon the operations of the personnel in other compartments but are made without reference to them. As a matter of fact, some of the decisions made in one compartment appear to contradict the perceived function of those in other compartments. As a result, suspicion, misunderstanding and thinly veiled hostility frequently characterize relations between persons working at different stages of the "process". The result is that although the compartments are all devoted to feeding the offender through this process, the only person who sees it as a total system is the offender! [4]

We hope in our Report to contribute to the coordination of and unity in the criminal justice system.

Toward a Definition

We believe that the basis for meeting the challenge of unity is a redefinition of parole. To some, our definition will seem to be only a reaffirmation of how they already view parole; for others, it may amount to a significant reorientation of their thinking. In developing its definition, the Committee has adopted basic assumptions. It has set forth what it considers parole should be and at the same time, has restricted the concept of parole to what it feels are its essential elements by eliminating common misconceptions from its meaning. Our definition is the foundation on which rest the parole structures we propose in later chapters.

In the remainder of the Report, we deal with the major problems or issues in the present system. However, we have not isolated such issues merely for their immediate or practical solution. To resolve issues in a patchwork manner only results in a further mixture of diverse parts and does not resolve the problem of incoherence which presently characterizes parole in this country. Rather, such issues are best resolved in their relation to the total parole system, beginning with the basic philosophy of what parole should be. In this way, the final product – a new system - is, in fact, just that – a system rather than a potpourri of solutions to isolated and diverse issues.

There are two sets of assumptions which the Committee has made to set the framework for a new definition. In the first set, we state our philosophy of parole and, in the second, recognize the legislative and constitutional arrangement that exists and is likely to continue in Canada.

*Appointed Chairman of the National Parole Board, April 16, 1974.

Underlying Principles

1) The Committee's definition of parole is based on the same fundamental principles as were expressed in the Ouimet Report. As a necessary part of the criminal justice process, the parole system's basic purpose is the protection of all members of society from seriously harmful and dangerous conduct.[5] Since the offender is a member of society, his protection must also be guaranteed. The criminal justice process involves prohibitions and sanctions which include not only various measures for custody, correction and control of offenders but also provisions for compensation and restitution to victims of crime. All combine to ensure protection to members of society. We share the view of the Ouimet Report that protection of society operates by deterrence, rehabilitation and control over offenders.[6] Consequently, we think that parole measures must deter, aid in the social reintegration of offenders, and provide for varying degrees of control over them.

2) The Committee believes that the parole system must be based on the principle of fairness as expressed in the Ouimet Report. Principle 8 in the latter report called for a criminal justice process, including the correctional process, that is respected and supported by the public because it is fair and just.[7] It should, as much as possible, be perceived by the offender in the same light. Few submissions to this Committee made reference to this concept. The Canadian Criminology and Corrections Association noted the complexity of the system and the need to simplify it to make it "understandable". Its recommendations regarding appeals of National Parole Board decisions to the Federal Court, parole hearing procedures and those relating to suspension, revocation and forfeiture come closest to the basic consideration of fairness in the system.

Dr. K. Hawkins, in a recent evaluation of the British parole system, emphasized fair procedure in relation to selection of prisoners for parole. He outlined basic premises that should underlie a fair selection procedure, one being that "fairness is a good in itself, and certain minimum standards are necessary in contemporary society"[8]. But he warned that "fairer" does not necessarily mean "better". He added that "arguments about fairness do not rest primarily on this ground (better decisions), and those who criticise fairness in these terms miss the point"[9].

The question of fairness is a crucial one in the Canadian system. For example, a system which gives unrestricted discretion to make exceptions to time rules creates an unfair situation for those not chosen. Such discretion makes the system highly selective and discriminatory and, in effect, nullifies minimum requirements for parole applicants.

The wording of the law is ambiguous. Section 13(1) of the *Parole Act* states:

> The term of *imprisonment* of a paroled inmate shall, while the parole remains unrevoked and unforfeited, *be deemed to continue in force until the expiration thereof according to law*, and, in the case of day parole, the paroled inmate *shall be deemed to be continuing to serve his term of imprisonment* in the place of confinement from which he was released on such parole. *(emphasis added)*

The implications of this provision are that the term of imprisonment of a paroled inmate continues in force until its expiry, that the sentence (or term) is being served on parole and that, as time passes, the remainder of the sentence becomes shorter since the section refers to the expiry according to law. The condition that parole remain

unrevoked or unforfeited does not suggest that, when revocation or forfeiture does occur, time spent successfully on parole does not or should not count. It is only when Section 20 (1) is applied that we find that the paroled inmate who later violates parole conditions must start again to serve the sentence at the point when he was released on parole. We consider this unfair. This Section reads as follows:

> Where the parole granted to an inmate has been revoked, he shall be recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, to serve *the portion of his term of imprisonment that remained unexpired at the time parole was granted to him, including any period of remission, including earned remission*, then standing to his credit, less any time spent in custody as a result of a suspension of his parole. (*emphasis added*)

The National Parole Board also clearly states that parole "does shorten the time spent in prison but the inmate is still serving the remaining portion of his sentence in the community under control".[10] In fact, when parole is violated the time he did on parole does not count on his sentence and he must serve it in confinement. The forfeiture provisions of the *Parole Act* are similar in effect. This means that the parole violator must "serve" a certain portion of his sentence twice which results in a prolongation of the sentence handed down by the court. Such prolonging of sentences is effected without further trial or due process.

Further examples of unfairness could be cited. It was a source of complaint by incarcerated offenders as well as by those who are either on parole or have completely terminated their sentences. The submissions they made to this Committee were particularly critical of the loss of time done on parole by the operation of revocation and forfeiture procedures. This criticism ranked almost as high as that of the mandatory supervision section of the *Parole Act*, which, in effect, removes any time benefits that can accrue from remission given under the *Penitentiary Act*.

3) The Committee believes that a parole system should be coherent. It regrets that the present system is a mixture of diverse parts that have no logical connections. In addition, to some extent, the system relates rather poorly to other parts of the criminal justice system. We recognize that the principles of fairness and coherence are related and overlap. Nevertheless, we suggest that any attempt to modify the parole system or any other part of the criminal justice system should also start from the principle of coherence.

The incoherence of the present system can be illustrated in many ways. An example of internal incoherence is the law as it relates to time served on parole referred to in (2) above.

An outstanding example of inconsistency which is external to the parole system and, yet very much affects it, is the *Criminal Code* provision which permits courts to impose a sentence of probation to follow a period of imprisonment. The essence of parole is release from incarceration under conditions while an essential feature of probation has traditionally been conditional freedom in lieu of incarceration. In the present situation, parole can be granted to an offender serving a sentence of imprisonment which is followed by probation. The confusion that arises would be comic if the offender's situation were not so tragic.

The other patently obvious incoherence is the one mentioned in (2) above in relation to mandatory supervision and remission. On the one hand, the courts impose sentences of various lengths on the assumption that the time span will be respected. The *Prisons and Reformatories Act* and the *Penitentiary Act*, however, directly cut these same sentences by approximately one-third through their remission provisions. This is followed by further intervention of the mandatory supervision provisions of the *Parole Act* which have the opposite effect of requiring the inmate to serve this time granted to him. And, to compound the incoherence, such provisions apply only to offenders in federal institutions.

Assumptions

The following assumptions refer mainly to the constitutional framework within which parole is likely to continue to operate.

1) Because it is not likely that one hundred years of history will change markedly in the predictable future, the Committee assumes that, for the present, the two year limit will continue to determine the respective federal and provincial responsibilities for incarceration of convicted offenders.

The Fauteux Committee and the Ouimet Committee briefly outlined the origins of the two year cut-off which separates the federal from the provincial jurisdiction in matters of detention of convicted offenders. The former proposed a modification in the direction of a larger federal role which has never been accepted. On the other hand, the latter concluded that the present division should remain. The recommendations of the Ouimet Report that governments should contract for correctional services with each other and the developments in this area may lead to a different allocation of responsibilities.[11] However, the situation has not yet developed sufficiently to indicate what might eventually be an appropriate division. To be consistent, all responsibility for convicted offenders should lie with one level of government and the provincial would be the most logical level since it has authority over the administration of justice and such services as health, education and welfare, which provide support to the correctional system.

2) The Committee assumes that the present legislative authority for parole will be retained, i.e., offenders against federal statutes will continue to be subject to federal parole legislation and offenders against provincial and municipal laws to provincial parole legislation. As we have already seen, Parliament enacted the *Parole Act* creating the National Parole Board and the *Prisons and Reformatories Act* creating provincial parole boards in British Columbia and Ontario. Some provinces have also passed legislation establishing parole tribunals with jurisdiction limited to those who breach provincial laws. Although different practical arrangements may be proposed, we assume that this division of legislative power will continue.

The New Definition

The Limits of Parole

The Committee has set limits within which it considers parole should operate. These limits are established according to our basic principles. Our purpose is to remove the

confusion which results from the complexity of the present procedures and the mixture of functions in the same system. The Committee has been particularly sensitive to this confusion and does not accept that a parole system and its relationships with other systems must inevitably be burdened by conflicting functions[12] and bewildering complexity. We submit that parole is not

- clemency
- amelioration, equalization or review of sentence
- a means of managing prisons
- a reward
- a right
- proof of rehabilitation

1) *Parole is not clemency.* That parole is taken to be clemency was obvious to this Committee when it examined the briefs that were submitted. Even the Fauteux Report specifically proposed that the National Parole Board should have a clemency function[13] and its proposals were incorporated in Section 22 of the *Parole Act*. There is also the *Criminal Records Act* which assigns duties with respect to the grant of pardons under that Act.[14] Clemency considerations are still more obviously being embedded in parole decisions by the guidelines the National Parole Board laid down for determining exceptions to the Regulations that specify eligibility for parole. (These guidelines were reproduced in the previous chapter.) In spite of this, the former Chairman of the National Parole Board asserted publicly before the Committee that "granting parole is not a question of being unduly sympathetic to criminals."[15] On many other occasions he has expressed the view that parole is not clemency and even published such an opinion.[16] This Committee feels that clemency considerations should not be mixed with parole. They proceed from a philosophy completely different from the one on which parole is based.

Recommendation

1. The National Parole Board should be relieved of all clemency functions.

2) *Parole is not amelioration, equalization or review of sentence.* Review of sentences for whatever reason is a function of appeal courts. Even the National Parole Board tends to agree with this view and the former Chairman testified to this effect before the Committee.[17] Most submissions that made any mention of this matter shared the same view. Nevertheless, the guidelines already quoted specifically refer to "Preservation of Equity" and "Special Representation from the Judiciary, Crown Prosecutor, etc.". The special circumstances outlined are matters that are properly within the ambit of an appeal tribunal and not a parole authority. The effect of taking such factors into consideration creates confusion and is a justification for the criticism of the parole authority by the courts. (See Chapter III.)

Furthermore, we have not found any provision in the *Parole Act* authorizing the National Parole Board to exercise a sentence review function.

3) *Parole is not a means of managing prisons.* Submissions to the Committee generally avoided making a direct suggestion that parole be used as a method of managing

prisons although some proposals have come very close to it. We believe that parole should not be used to offset institutional deficiencies, nor to eliminate overcrowding. It is not the role of the parole authority to solve prison discipline problems by releasing troublesome inmates.

4) *Parole is not a reward.* The Committee supports the position that the parole authority should not grant parole as a reward for good behaviour or assistance to the administration or for any similar reason. Parole is not a carrot to be dangled before the covetous eyes of prisoners to lead them to betray *their* fellow inmates. The betrayal of trust is not a particularly appropriate form of behaviour that offenders should be taught or encouraged to adopt by official agencies of criminal justice.

5) *Parole is not a right.* Many submissions to the Committee tended to suggest that parole should be obtainable as a right. Offenders were by no means the only source of such suggestions. The matter should be seen in a wider perspective than the question of right to parole. In a speech entitled "Bringing the Rule of Law to Corrections", Professor R. Price told delegates at the 1973 Canadian Congress of Criminology and Corrections that "corrections is facing a compelling civil liberties challenge". He added:

> The challenge is evident in the claims increasingly pressed upon paroling authorities and correctional administrators, and now more and more brought to the courts. It is evident in the rapidly growing literature – by prisoners and others – about prisoners' rights questions, literature that runs the gamut from the conventional catalogue of grievances, to political and ideological tract, to tear-down-the-walls utopianism. It is reflected more and more in the official literature of investigation committee and commissioned report. The consciousness of these issues has contributed, with other things, to the unrest that has swept through our penitentiary institutions in the past three or four years. As has frequently been observed, the challenge is not confined to backward correctional systems, but often accompanies what the field regards as progressive correctional change.[18]

Professor Price concluded that some legal protection must be introduced into the system. The Committee agrees that some measure of due process is required but does not hold that parole should be obtainable as a right. The system should be so structured as to provide a substantial amount of predictability that parole will be available and it is to this end that our recommendations will be made later in this Report.

6) *Parole is not proof of rehabilitation.* The Committee was struck by the number of submissions that assume that an inmate is granted parole because he is rehabilitated. They failed to examine the flaw in such thinking and were quick to damn the parole authority for violations of parole conditions and for the commission of further offences by parolees. They assume a one-to-one relationship between granting of parole and rehabilitation. This is a misconception which must be destroyed. To some extent the National Parole Board's own publications and statements by its members often associate parole with "rehabilitation" but the relationship is never too clearly defined.

In the *Parole Act*, Section 10(1)(a), the powers of the National Parole Board are defined largely in terms of reform and rehabilitation. The Board's publication for the use of judges, magistrates and the police, from the first to the last paragraph, places an emphasis on this concept.[19] The testimony of National Parole Board members and of many other witnesses before this Committee constantly repeated the same association of

ideas – parole and rehabilitation. We submit, however, that parole is not proof of rehabilitation; that parole is not a seal of approval placed on the forehead of the offender proclaiming to the world that this offender is magically transformed – "rehabilitated". We believe that parole can be no more than an aid, sometimes, to successful social reintegration of the offender.

The Elements of Parole

The Committee has not adopted any one existing definition of parole. To some extent the elements of its definition can be found in a combination of the United Nations definition and the one proposed by the Quimet Committee.[20] We submit that parole is

- one step in the correctional process
- a rational method of release
- a legal measure authorizing the conditional release of incarcerated offenders
- an aid to social control of offenders
- an aid to social reintegration of offenders
- custody
- supervision

No attempt will be made to develop a concise definition incorporating all the seven elements listed above but we propose to elaborate on the meaning the Committee attaches to each item.

1) *Parole is one step in the correctional process.* Consistent with the Quimet principles and with our view that parole is part of the broader system of criminal justice, there should be a smooth, efficient progression of the offender from incarceration to parole. Transition from prison to community, under controlled conditions, should be deliberately planned from the day he is imprisoned. All incarcerated offenders should plan their release on parole with institutional and parole staff. When the date of release on parole arrives, it should be a natural and logical outcome.

An important consequence of this approach is that it is not so much who is selected for release on parole but the timing of all parole releases for the maximum protection of society. This approach, described in several briefs, was considered to be more consistent with the diversity in types of institutional facilities now available and with the resources which could be mobilized to develop individual correctional plans.

This element and the next one may arouse fears that dangerous offenders will be unleashed in the community. How would dangerous criminals plan their correctional plans? If parole selection becomes more a matter of when offenders are released rather than which ones, how will this allow for public protection? In Chapter XI, proposals are made to provide as much social control of dangerous offenders as possible.

2) *Parole is a rational method of release.* Since the Committee views parole as a systematic and methodical program of releasing offenders, arbitrariness should be reduced as much as possible. There should be a certain amount of predictability so that the offender will know and expect that each step that he takes towards obtaining parole will

lead to the next. If any deviation occurs from the planned program, he should know why so that he can adjust his own plans. This approach is in keeping with the accent the Committee places on the supervision function of the parole system.

We believe the parole system as a whole should operate in as predictable and methodical a manner as possible and the number of paroles granted should neither fluctuate with events nor personalities. The fact that large numbers of parolees fail to observe parole conditions does not justify denial of parole to others who have made plans. These "failures" in no way render the parole system invalid. Both failures and successes are necessary features of any criminal justice system.

3) *Parole is a legal measure authorizing the conditional release of incarcerated offenders.* The mechanics of a parole system must be incorporated in a statute to give it a formal and universal status in the eyes of all — law-abiding as well as law-breaking. If it were based on nothing more than the charitable intentions of the warden and a few local citizens, it would not have the official status that is required.

Parole is essentially for convicted persons in confinement. This is not as obvious as it appears since other legal measures such as probation, bail, temporary absence, suspended sentence, etc., are often mistaken for parole, even by criminal justice officials. It is often forgotten that release on parole is conditional. Some people will express indignation that an offender "got off" or that "he is free to roam the streets" once he has been released from confinement. Even paroled inmates are misled, fail to appreciate the restrictions on their conduct and get into deeper trouble. Our conception of parole is that a parolee should not be able to make the mistake of thinking he is free nor should members of the public have that impression. Enforcement of parole conditions should be strict for the common good, but also flexible in order to make the best use of resources, both inside and outside the institution, that are allocated to the enforcement aspect of the system. In fact, more such resources should be created. (See Chapter VIII.)

4) *Parole is an aid to social control of offenders.* One of the principles of this Report is that the core of parole is the protection of society. The parole system must protect the members of society - and the offender himself — at each stage of the process. If situations arise when the welfare of the public and that of the parolee appear to conflict, the welfare of society must take precedence. This is not to suggest that risks cannot be taken nor does it favour any particular viewpoint that may have been expressed by individuals or groups before this Committee. What is being suggested is that the parole authority must show wise judgment in deciding what action will benefit both society and the individual.

As will be seen in subsequent sections and in our recommendations, we believe that parole should be extended to the greatest possible number of incarcerated offenders. Those who fear risk-taking in the parole process may not be aware of the risks that they take every day as members of society, e.g., they do not object to allowing the possession of weapons although they have no means of knowing how they will be used and, therefore, the danger they represent. Again, psychiatrists claim that they have occasionally had to release individuals from mental institutions even when they suspect that these individuals may one day explode in anger and destruction. But in our society this is

accepted because no measures exist to detain these people. We submit that parole risks are not as great and believe that our proposals will further minimize them.

The Committee is not asserting that parole is protection of society. It can only be an aid, one tool. We cannot reasonably assume that supervised release automatically brings complete public protection. All that parole can offer is the opportunity to exercise some control over offenders in a given testing and helping situation. If the offender responds favourably, the public has gained, if he has problems, parole permits quick intervention and/or assistance thus lessening the risks of other offences. However, if he is to be released only at the expiration of his sentence, no intervention, no assistance and no safeguard would be available for the protection of society.

5) *Parole is an aid to social reintegration of offenders.* Parole is no more than an aid to social reintegration. The concept of social reintegration was deliberately adopted because it reflects more accurately the opinion of the Committee that offenders can be reintegrated into society even though they may not yet have reformed. Parole helps offenders to return to, and function in society sometimes for a long period of time before they make a final decision to commit themselves to a law-abiding life. For those who have made this commitment before release, parole obviously should be used as it involves a minimum of risk. But parole should not be limited to those cases. It should be a testing situation for many more.

The parole authority can return offenders to the community but it has a further obligation, and that is preparing the community to receive offenders. In the reintegration process, the parole authority provides whatever controls and support necessary to the offender but, in this process, the community itself must be moulded to some extent to receive him. There is an obligation on the part of the parole authority to inform the public systematically about parole and its impact on the community.

6) *Parole is custody.* Most definitions of parole refer to the fact that the offender is serving his sentence at large but, the moment he violates parole conditions and returns to prison, he is required, in most jurisdictions, to serve in confinement all or most of the time he spent on parole. The Committee opposes this practice. It considers that parole should constitute custody without bars which is credited to the serving of the sentence on the same basis as custody behind bars.

7) *Parole is supervision.* As a measure of social protection, the credibility and viability of any parole system rest on supervising the conduct of paroled inmates who are completing their sentences within the community. To the Committee, this aspect of the present parole system has not been assigned the priority it deserves. Estimates were made of the time and resources available now which are allocated to the supervision function. Many of the field parole officers that were interviewed complained that they were chained to paperwork and other administrative duties between sixty and seventy per cent of the time. Although such figures are meaningless unless placed in the proper context, the field complaints were repeated too often to be disregarded.

Parole supervision operates in two ways: surveillance of and control over the activities of the offender and support and assistance to him during his social reintegration. Both

surveillance and control of parolees may be distasteful to some and they may prefer to achieve a desirable level of supervision by establishing rapport and trust with their clients. That may be a good method and we do not propose to pass judgment on such an attitude. However, it is suggested that a high level of surveillance and control must be achieved while making maximum use of the opportunities to offer support, guidance and assistance to the individual.

References

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Chapter III

PAROLE AND SENTENCING

Parole Authority and Courts in Conflict

The Committee has given consideration to criticism of the parole system from different sources. We were particularly concerned by the criticism by some judges. Both the courts and the parole system are responsible for the offender at different times but their responsibilities to him overlap. The wider the discretion of the courts, the more likely their sentences will encroach into the parole field. If courts consider that it is their prerogative or their duty to counter the parole system's effect on their sentences, they will impose longer terms of imprisonment. The parole authority, with broad discretion at its command, could, in turn, act to offset the effect of the longer court sentences by intervening earlier. We think the situation is developing in this direction with all the elements of a conflict. For example, one member of the bench felt so strongly about the parole authority's actions that he resigned in order to be free to speak against its "abuses" and claimed that an overwhelming majority of judges shared his views.[1] Another provincial court judge assembled a forty page analysis of more than sixty cases and publicly charged that they were mishandled by the National Parole Board. He suggested that the Board should be required to consult the judge who passed sentence before considering an application for parole. This, in his view, would "keep the power where it belongs".[2]

It is not unusual for a member of the bench to take the National Parole Board to task in open court and on public platforms. This has occurred in practically every part of Canada. Among the many charges made by judges and reported by the media, the National Parole Board has been accused of:

- "flagrant dereliction of duty" for paroling an habitual criminal too soon after conviction;[3]
- granting paroles too easily to certain inmates and apparently attaching no importance to the judge's reasons in imposing sentence;[4]
- negating sentences imposed on hardened criminals and being too indulgent and lacking enough experienced staff which results in paroling hardened criminals without consulting those who best know their cases, i.e., the sentencing judge and police investigators;[5]
- being a group of civilians upsetting court sentences.[6]

The former Chairman of the National Parole Board has answered the judges to some extent in the media. In providing the usual justifications for parole, he has carried the public debate further by advocating longer sentences for recidivists and dangerous offenders. However, he also pointed out that many criminals should not have been incarcerated and that prisons do not reform but rather make criminals.[7] He thereby criticized the decisions of judges and magistrates who use prison penalties either too frequently or indiscriminately. A long recital of public pronouncements by other

National Parole Board members and staff would not add substantially to the present point that courts and the Board are in conflict. Protestations by the former Chairman that relations between the Board and the courts are good do not change the situation.

We cite two observers of the criminal law system on the conflict. A.W Mewett said of the current situation:

> . . there is a conflict between the judicial function and the release function. Where a judge will consider all factors — public protection, rehabilitation, treatment, the gravity of the offence, punishment for the individual and whatever else is involved — a parole board is precluded, by its very nature, from considering the gravity of the offence or the degree of punishment that the offender merits if it is to perform its function honestly. So long as a parole board, with its objective, is a separate institution from the sentencing judge with his objectives, it is inevitable that a conflict must exist.[8]

A.J. MacLeod, involved for many years in the administration of Ticket of Leave procedures and penitentiaries, told a meeting of municipal judges in 1965 that:

> . . .the judge tends too much to work in isolation in determining what sentence to impose and, in making that determination, to take into consideration only information that has been presented in open court.[9]

This was the only criticism of the courts by penologists that he found justified and he, therefore, proposed, as a solution to this lack of sharing of the sentencing function, that:

> . . .procedures (be devised) whereby criminal court judges will have the opportunity, before passing sentence, of receiving advice and assistance in individual cases from the psychiatrist, the psychologist, the sociologist and other penologists. . .[10]

Yet, he did not advocate that the sentencing function be removed from the courts. He suggested that the method still has to be invented for incorporating the input of social scientists into the court's sentencing functions.

The need for redefining the role of courts and the parole authority in the sentencing process springs from another situation which has arisen in the past two or three years. Many groups recommended to us the repeal of the *Criminal Code* provision that permits the court to impose a period of probation to follow a period of imprisonment. One of their arguments was that "it confuses probation with parole. A period of control and supervision following a period of imprisonment is in the nature of parole and should be left to the parole authority."[11] The oral evidence given to the Committee staff by provincial corrections personnel is that courts are making substantial use of probation following imprisonment.

The number of sentences involving a relatively short definite prison sentence followed by a period of probation apparently is increasing. These sentences very often are such that the definite portion over which the National Parole Board has jurisdiction is too short to justify release on parole. Consequently, the offender is released on probation which is under the control of the court. This is more prevalent in provincial institutions but has also occurred in cases of penitentiary inmates. Courts are unlikely to go further in this direction since the authorized prison sentence under the provision of the *Criminal Code* is limited to two years. Nevertheless, this Committee views this development as undesirable.

The separate roles of the parole authority and the courts in the sentencing process were defined indirectly in observations made by a number of commissions of enquiry. As early as 1938 the Archambault Commission expressed the view that magistrates or judges should not have a veto power in the matter of releases of prisoners: "The report of the trial judge or magistrate is an important consideration, but it should not be conclusive."[12] In 1956 the Fauteux Committee also noted that a judge "should not, as a matter of routine, be asked to express his opinion on the question whether or not parole should be granted . . . (except) in special cases".[13] The Ouimet Committee in 1969, although not referring specifically to the role of the parole authority in sentencing, concluded that:

> The greatest obstacles to the development of a unified system of criminal law and corrections have been the absence, to date, of any clearly articulated sentencing policy.[14]

It was obviously unhappy with the total situation because it proposed what it considered to be a more rational arrangement. Finally, the Hugessen Task Force said that: "under the existing system parole bears a necessary although not always a logical relationship to the sentence of the court".[15] It went on to suggest a sentencing structure of statutorily fixed maxima for all sentences over two years.[16]

Toward a Solution

We have rejected the idea that parole authorities should be abolished, as some have suggested, in favour of broader discretion and more power for the courts in the administration of sentences. The evidence we have examined provides justification for independently administered parole systems. However, it also indicates that the role of the courts in sentencing should be maintained. The Prévost Commission in Quebec suggested separating verdict and sentence with the court remaining the arbiter of verdicts and a team of social science professionals deciding on sentences.[17] The Hugessen Report proposed changes that would lead in that direction.[18] The practice in some jurisdictions such as California, Washington and others, like the "juge de l'application des peines" in France, are often proposed as models. Mr. Justice S.H.S. Hughes of the Ontario Supreme Court expressed some alarm about this when he said: "the pressure is there and it is as if the courts rather than the criminal were on trial. In short, a great many people seem anxious to relieve us of the task of sentencing".[19]

Suggestions in briefs to this Committee envisaged some type of sentencing tribunal composed of social science professionals.[20] In our view the principles on which courts base their decisions and those on which the parole authority must act are the same. We are not convinced that a case has been made to remove the present sentencing function from the courts. Some of the existing conflict could be removed by reducing the wide discretion of judges through a sentencing system and sentencing guidelines to assist them in imposing sentences. There must also be restrictions on the National Parole Board's discretion as proposed later in this Report.

Recommendation

2. The responsibility for sentencing should remain with the courts as provided in the *Criminal Code*.

Changing the Sentencing System

In the course of our study, we became convinced that the conflict between the parole authority and the courts could be resolved, in part, by redefining the role of courts in sentencing. This could be achieved by redesigning the sentencing system and, at the same time, setting guidelines for the courts in the use of such a new sentencing scheme. To those who would prefer to retain the present system and merely add guidelines, we reply that this would meet only part of the objective because the present system is too complex. As our examination of this matter could not be as complete as we would have liked, we make no formal recommendations. Nevertheless, we think that any redesigning of the parole system should be accompanied by an overhaul of the sentencing system. The machinery to accomplish this is already at work. The Law Reform Commission of Canada was created in 1971 to "study and keep under review, . . . the laws of Canada".[21]

Reviews of sentencing systems have been undertaken in the United States, where a commission to reform the federal criminal law was established in 1966. In his introduction to the *Study Draft of a New Federal Criminal Code* (1970), the Chairman of the Commission, Edmund G. Brown, indicated the agreement of the commissioners on three major issues. "The time has come to create, for the first time in our history, a systematic, consistent, comprehensive federal criminal code to replace the hodgepodge that now exists."[22] He referred to the lack of a statutory basis for matters like self-defence, entrapment, limits of permissible imprisonment upon conviction of multiple crimes (problem of consecutive sentences): "it seems clear that such matters should not be left entirely to shifting and contradictory disposition by judges."[23] The commissioners also agreed on the necessity of expressing the federal interest in criminal law. The third issue was sentencing. It was agreed that the whole system be overhauled with the main features of this rearrangement being: an orderly classification of offences into six categories, offences carrying very high penalties being "legislatively graded," and every felony sentence involving a period of post-imprisonment supervision.[24]

The drafters of the *Model Sentencing Act*, the *Model Penal Code*, the *Standards Relating to Sentencing Alternatives and Procedures*, and the *Manual of Correctional Standards* have all, to some extent, based their proposed sentencing and parole systems on some form of grading of offences.[25] The sentencing proposals in the Hugessen Report are also based on grading of offences.[26]

To determine the seriousness of offences, the courts now have limited guidance – the maximum penalties provided by the *Criminal Code* and previous judgements. In most instances, these two guideposts are very unreliable. For example, the maximum penalty for breaking, entering and theft in a dwelling house is life imprisonment and the court can literally award any "penalty" from absolute discharge to life in prison. In fact, decisions of the courts have been as wide ranging.[27] This has placed situations before the National Parole Board in which the consideration of sentence equalization has become a factor, as is evident from the "Guidelines for the selection of inmates for parole by exception" referred to in Chapter I.

We have come to the conclusion that *Criminal Code* offences should be regrouped to make sentencing more orderly and consistent and, consequently, to make paroling more orderly and consistent. A consistent sentencing system resulting from a reorganized system of offences would have to make special provisions for dangerous offenders. Without such provisions, a parole system would be exposed to serious breakdown because it would lack a mechanism to identify and deal with dangerous criminals, members of organized crime and those who commit offences with violence that are sometimes punished by a relatively short definite term only. The parole authority must have some assurance that dangerous offenders have been identified and that the possibility of exercising control over them for a long time (possibly for life) exists. (See Chapter XI.)

In cases of offenders convicted of less serious offences who are sentenced to a shorter definite term of confinement, the sentencing system should not allow the courts to impose sentences which could nullify any action the parole authority can take by law. The system, for example, should provide that a court could not impose a maximum sentence of ten years of which nine years and six months would be the minimum to be served before the inmate becomes eligible for parole. Such a sentence is possible in some United States jurisdictions thus effectively preventing parole authorities from intervention. Another example is reported in the Working Papers of the Commission responsible for the Study Draft of the new United States Criminal Code which illustrates to what lengths a court can go in opposing a parole authority: "In one State case, for example, a judge imposed an 'indeterminate' term with a minimum of 199 years and a maximum of life."[28]

In his presentation to the Committee, Dr. Ciale's evidence suggests that Canadian courts have been attempting to counteract the effect of the parole system.[29] If the facts established by Hogarth about Ontario judges hold true for all of Canada, it means that there is a substantial effect on average sentences in Canada. Hogarth found in his study on Ontario judges that two out of three admitted that they sometimes increased the length of sentence imposed to compensate for the effect of parole.[30]

Sentencing Guidelines

Our examination of sentencing systems has convinced us that the broad discretion of the courts has led not only to great sentence disparities but also has left judges without assistance to make their difficult decisions. We examined various proposals for sentencing guidelines and suggest consideration of the following, by way of example, for incorporation into the *Criminal Code*. The courts should be required to deal with a convicted offender without imposing sentence of imprisonment:

> unless, having regard to the nature and circumstances of the offence and to the history and character of the defendant, it is satisfied that his imprisonment is necessary for the protection of the public because:
>
> (a) there is undue risk that during a period of probation the defendant will commit another crime;
>
> (b) the defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment under Chapter 52; or
>
> (c) a sentence to probation or unconditional discharge will unduly depreciate the seriousness of the defendant's offence, or undermine respect for law.[31]

In applying these criteria the following list of factors might be considered. They are not the only factors nor is it suggested that they should completely control the discretion of the court in deciding to withhold a sentence of imprisonment:

> (a) the defendant's criminal conduct neither caused nor threatened serious harm to another person or his property;
>
> (b) the defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;
>
> (c) the defendant acted under strong provocation;
>
> (d) there were substantial grounds which, though insufficient to establish a legal defence, tend to excuse or justify the defendant's conduct;
>
> (e) the victim of the defendant's conduct induced or facilitated its commission;
>
> (f) the defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained;
>
> (g) the defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offence;
>
> (h) the defendant's conduct was the result of circumstances unlikely to recur;
>
> (i) the character, history and attitudes of the defendant indicate that he is unlikely to commit another crime;
>
> (j) the defendant is particularly likely to respond affirmatively to probationary treatment;
>
> (k) the imprisonment of the defendant would entail undue hardship to himself or his dependants; and
>
> (l) the defendant is elderly or in poor health.[32]

In Section 10 of the *Model Sentencing Act* drafted by the National Council on Crime and Delinquency we find a procedure for sentence hearings which could usefully be incorporated into our *Criminal Code*. It provides for the statement of reasons for decisions, a record of the hearing and a pre-sentence investigation which would be available to correctional agencies. We think that guidelines should also be developed to assist courts in imposing fines, intermittent sentences, restitution and any other sanction or disposition that may be devised in the future.

Probation Following Imprisonment

Section 663(1)(b) of the *Criminal Code* reads:

> Where an accused is convicted of an offence the court may, having regard to the age and character of the accused, the nature of the offence and the circumstance surrounding its commission . . .
>
> (b) in addition to fining the accused or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, for a term not exceeding two years, direct that the accused comply with the conditions prescribed in a probation order.

This is the authority for the courts to sentence an offender to a term of imprisonment of up to two years to be followed on "the expiration of that sentence" by a period on probation which could be "in force for . . . three years from the date on which the order came into force."[33] One who fails to comply with such a probation order "is guilty of an offence punishable on summary conviction."[34]

Courts have used Section 663(1)(b) in various ways. Some have consistently held to a policy of imposing a short term ("short, sharp, shock") ranging from a few days or weeks to rarely more than three months followed by a fairly long period of probation. This type

of sentence is sensible in some respects but fails in principle since it places the court in the role of a parole authority thus duplicating the parole system. Other dispositions involving relatively long prison or penitentiary terms followed by probation of various lengths also constitute an intrusion of the court in parole matters but the guessing by the court on the effect of longer imprisonment becomes less accurate. There is no requirement for the detention administration to furnish information to the court about progress in detention and, even if information were to be provided, the court can do nothing about releasing earlier or later since it is bound by its own sentence.

Many groups and individuals recommended to us that this provision of the *Criminal Code* be abolished. The Canadian Criminology and Corrections Association justified its recommendation as follows:

> b) Confusion is created in the mind of the offender. He sees both parole and regular probation in a positive light as an alternative to imprisonment. He sees probation to be served after he has completed his prison term in a negative light as an unwarranted continuation of his punishment.
>
> c) There is a contradiction in such a sentence. One of the functions of probation is to protect the offender against exposure to undesirable prison influences. To precede probation by a period of imprisonment negates this aim.
>
> d) The court cannot anticipate the effect on the offender of the period of imprisonment and is therefore in no position to estimate the period of supervision that will be required following the imprisonment.
>
> e) Jurisdictional confusion arises when an inmate who has been sentenced to a period of imprisonment to be followed by a period on probation is paroled. Who is responsible for his supervision? Is he to be supervised by a parole officer during the parole period and then by a probation officer during the probation period? These two supervisions may come from different jurisdictions.
>
> f) Enforcement of the probation conditions is most difficult. The offender has completed his prison sentence and his probation cannot be revoked. Thus the supervisor finds himself with very little authority. All he can do is seek a conviction for breach and that is an unsatisfactory process. It must be recognized, too, that this offender may present more difficulties than most probationers as a result of his period of imprisonment.
>
> g) One result of this provision is that the judge creates a new offence punishable by imprisonment since the offence of breach is defined by the conditions he attaches to the probation order.[35]

Evidence obtained by the Committee indicated that courts have been making considerable use of this Section of the *Code*. As a parallel parole system, this is adding to the administrative confusion and the incoherence of the criminal justice system. The Ouimet Committee condemned this encroachment of the court into parole and said that such use of probation was inconsistent with good probation practice. This Committee has come to the same conclusion.

Recommendation

3. ***Criminal Code*** **provisions which permit the courts to impose a sentence of probation following imprisonment should be repealed.**

Indeterminate Sentence

A discussion of sentencing as it relates to parole would be incomplete without some reference to the indeterminate sentence, which is generally recognized as the sentence

most fitting the concept of parole. It is based on the premise that correctional agencies can reform an offender and that the sentence must be tailored to fit the requirements of each individual. The determination of when to end the confinement is then left to a releasing authority because it, ideally, keeps in close touch with each offender's situation and can therefore make a better estimate on the appropriate time to release him.

Generally speaking, the role of the court in indeterminate sentencing is limited to setting a maximum time for which an offender can be detained. In some jurisdictions, the judge is authorized to set this maximum within a range of years provided by statute; in others, the statute merely sets a maximum with no option on the part of the court to set any other sentence for the offence committed. In still others, the court is only authorized to commit the offender to the care of authorities which then decide on the length of sentence.

Indeterminate sentences are often subjected to what is called "a minimum". This minimum is the period which a prisoner is required to serve before he becomes eligible for parole. It is frequently set by statute and does not allow any discretion to the court. Other jurisdictions set a range within which the court can set the minimum and still others leave the court completely free to establish any minimum. Some types of indeterminate sentence apply only to certain categories of offenders, e.g., habitual offenders or dangerous sexual psychopaths. In fact, there is almost an endless variety of indeterminate sentences.[36]

The Committee has reached the conclusion that it would not be appropriate to establish a sentencing system in Canada based on the indeterminate sentence except for one category of offender, i.e., the dangerous offender. (See Chapter XI.) There would be no gain in changing the present system of definite sentences as provided in the *Criminal Code*. A system of indeterminate sentences merely complicates matters in a system already plagued with complexities.

The definite-indeterminate sentences permissible under the *Prisons and Reformatories Act* were condemned by several official investigating commissions and there is no need to elaborate on the matter in this Report.

Recommendation

4. The definite-indeterminate sentences provided in the *Prisons And Reformatories Act* should be abolished.

Consecutive Sentences

A sentencing system must make provision for consecutive sentences. If a court imposes a sentence to be served concurrently with other sentences, this has little or no effect on the coherence of a system of definite sentences. Such a sentence merely merges with the other. The result is far different in consecutive terms. The objective of a consistent sentencing system which we propose is to achieve some rationality and coherence and reduction in sentence disparities. The consequence would be coherence and rationality in the parole system as well as the elimination of the temptation for the parole authority to equalize sentences. Disparity in sentences results not only from the fact that very different lengths of sentence are imposed for substantially similar offences

but also from stringing sentences together almost indefinitely to ridiculous lengths. There are two solutions: that the *Criminal Code* provide that all sentences be served concurrently; or that there be a reasonable limit set for cumulation of sentences. The first solution disregards the possibility that an offender may commit such a large number of separate offences that the total amounts to an offence which deserves more severe sanction. We prefer the second solution.

Recommendation

5. **The *Criminal Code* should be amended to provide for a limit on the cumulation of sentences.**

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Chapter IV

REMISSION

The relationship between remission procedures provided for in the *Penitentiary Act* and the *Prisons and Reformatories Act*, and the parole system were discussed in Chapter I. The mandatory supervision provisions under the *Parole Act* in particular, have led to a serious questioning of remission.

The use of remission procedures has, historically, been a source of inequity in the treatment of inmates. Before 1959 an inmate in a federal penitentiary was granted statutory remission for good conduct and industry up to a maximum of six days per month until he had accumulated seventy-two days. Thereafter he earned remission at the rate of ten days per month. However, in provincial institutions declared by the Governor in Council to be "improved prisons", inmates were granted up to five days per month statutory remission for good conduct and industry. Inmates confined in institutions not designated as "improved" did not receive any remission.

There were inequities prior to 1959 between federal and provincial systems. The federal prisoner serving a sentence of two years would in fact serve a shorter sentence than one in a provincial institution, provided each was credited with all his remission. The provincial inmate would serve approximately two months longer. Also, certain inmates, simply because of the nature of the institution in which they were incarcerated, received no remission and were required to serve the full sentence handed down by the court.

The Fauteux Committee recognized the unfairness of the system: "The goal should be to put into effect a more uniform and practical system of statutory remission that would eliminate anomalies and inequities."[3]

In 1961, Sections 22(1) and 24(1) of the *Penitentiary Act* were amended to provide an inmate with statutory remission, "as time off subject to good conduct," of one-quarter of his sentence and earned remission of three days for each month "during which he has applied himself industriously." No changes were made in the *Prisons and Reformatories Act* at that time so that the inequity in treatment between federal and provincial inmates continued. In fact, the federal inmate serving two years could be released after approximately sixteen months whereas the provincial inmate serving two years less one day would not be released before serving twenty-one months.

The Ouimet Report drew attention to this problem again in 1969 with the recommendation that "the same remission provisions apply to inmates of federal and provincial prisons".[4] The *Prisons and Reformatories Act* was amended in the same year to provide for remission procedures for inmates in provincial institutions similar to those provided in the *Penitentiary Act* for federal prisoners. But Section 15(1) of the *Parole Act* was amended at the same time to provide that:

> Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall, notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.

This amendment applies only to inmates in penitentiaries and has the effect of reintroducing inequality in remission procedures. For example, an inmate in a provincial prison serving a sentence of two years less one day, if he is granted all his remission both earned and statutory (totalling 229 days), will be released unconditionally after having served 490 days of a 719 day sentence. An inmate serving one day more, and thus incarcerated in a federal penitentiary, will serve, if credited with all his remission, 490 days but his release will be a conditional one. For 229 days he will be under the supervision of the National Parole Service and subject to the same conditions as those that apply in the case of an ordinary parole, i.e., he is still subject to suspension, revocation and forfeiture and, if parole is revoked or forfeited he will have to serve his remission time again.

We consider any procedure which discriminates between categories of inmates without a valid reason as unacceptable because it is not consistent with the principle of fairness. All inmates, regardless of length of sentence or institution in which they are incarcerated, should be treated in a similar manner.

The Committee does not see the provision for mandatory supervision for all inmates as an answer to the problem of remission. The conflict remains between the grant of remission and mandatory supervision which is, in effect, continued custody. The system is not coherent if, on the one hand, one Act grants "time off for good behaviour" and another Act requires that such time be served under supervision.

In addition to being inequitable, remission alters the original sentence of the court substantially. To earn time off one's sentence for good institutional behaviour and for applying oneself industriously may be an incentive and have some merit in theory. However, where once statutory remission was an incentive to good institutional conduct, it is now granted automatically to all inmates upon admission to the institution. It is no longer something they must gain but rather something they may lose through violation of institutional expectations. The system, then, is not one of rewarding for good conduct but rather one of punishing the inmate for failure to abide by institutional rules. It could be more accurately described as a threat than an incentive.

The notion that statutory remission should be an incentive to good institutional conduct that should be rewarded is questionable. This could be interpreted to mean that institutional criteria of behaviour have priority over community criteria. Rather than orienting himself to the community through a correctional plan, the inmate becomes institutionalized thus making the transition from confinement to freedom in the community more difficult. Similarly, for earned remission, we believe that "to apply oneself industriously" may constitute good institutional behaviour but it does not necessarily have any bearing on the inmate's future.

It is doubtful whether remission procedures serve any useful purpose as a threat. There is no data available on the extent to which inmates lose any of their statutory remission. But, during the Committee staff meetings with penitentiary and parole staff throughout the country, the view most often heard was that most inmates, even if they forfeit part of their remission during incarceration, are released with most of the remission to their credit. Even though they may have forfeited some remission, it has been reinstated prior to their release date which was established upon admission to the

institution. Thus, it is unlikely that remission procedures represent either an incentive or a threat to good institutional behaviour. Their use as a mechanism of institutional control is questionable.

It is difficult to justify the existence of a procedure that so drastically alters the original sentence of the court, especially since it becomes almost automatic and appears to serve no useful purpose. It may in fact have the deleterious effect of creating a gap between the judiciary and corrections. In the absence of sound reasons to the contrary, the original judgment of the court must be respected. Remission procedures as such have no influence on a correctional plan and do not provide a rational method of release.

In summary, the Committee is of the opinion that:

- Remission procedures, insofar as they are affected by the mandatory supervision provision, are inconsistent with the Committee's principle of fairness since all inmates are not treated in a similar manner.
- The concepts of remission and mandatory supervision are incompatible.
- Normally, inmates should not be unconditionally released before the lawful completion of their sentences imposed by the court.
- Remission is a complex and time consuming procedure of little value since there is no evidence that it is an effective institutional control mechanism and since it does contribute to disunity in the criminal justice system.

Recommendation

6. The present statutory and earned remission provisions of the *Penitentiary Act* and the *Prisons and Reformatories Act* should be repealed.

References

[1]Fauteux Report, p. 64.

[2]Ouimet Report, p. 351.

Chapter V

THE STRUCTURE OF PAROLE AUTHORITY

The Nature of Parole Tribunals

In 1956 the Fauteux Committee recommended that parole be administered by a quasi-judicial body rather than by a minister of the Crown.[1] The concern was that the parole authority should not be subjected to pressures, but it should be free to act independently. Having examined the operations of the National Parole Board, the Ouimet Committee in 1969 reaffirmed the need for independence so that it would be free "from the possibility of ministerial direction in any aspect of the function of the Board or any member of the Board".[2] It also reasserted the quasi-judicial nature of the National Parole Board's functions and recommended that it establish panels of three members to interview parole applicants in institutions, decide whether to grant parole and give reasons for the decisions. The Ouimet Committee was thereby responding to the need to bring decision-makers closer to the parole applicant.

The Hugessen Task Force proposals go further. They advocate a completely decentralized parole system of Local and Regional Boards which would be quasi-judicial tribunals subject to the superintending power of the courts.[3]

We concur with the idea that parole tribunals should be independent. They should be free from pressures wherever these might originate and, in our opinion, free from administrative responsibility for the National Parole Service. Parole decisions should be final and without appeal to the courts and legislation should so provide.

We are concerned with other desirable characteristics of parole tribunals: efficiency, specialization, fair procedures. In Chapters VI to XI, we describe a model for decision-making which we believe is consistent with the principle of fairness. The model demonstrates the extent to which specialized knowledge is required. Ordinary courts are not expected (nor should they be) to have such special knowledge. We have, therefore, rejected recommendations that the parole decision-making function be transferred to the courts.

Parole tribunals must be able to make decisions rapidly. They must meet time requirements as laid down in the parole legislation and must not accumulate large backlogs of undecided cases. Parole decisions cannot be subject to delays as are court proceedings because time constraints are set by the length of sentence. If the sentence in a given case is one year in prison, it cannot be prolonged to two years because the decision-making authority is unable to meet the eligibility date. To be efficient, parole tribunals must therefore be structured to meet time demands. In our opinion, the independence of the parole tribunal is a prerequisite and the legislation should provide for it.

Recommendation

7. All parole tribunals should be formally recognized in the law as independent tribunals within their respective jurisdictions.

Regionalization

As already pointed out in the Report, for a short period of time parole applicants were granted interviews with National Parole Board members. This experiment was discontinued because it became too exhausting physically for the members. As a result, the parole system is highly centralized with all decisions made in Ottawa. The parole applicant is neither seen by Board members nor provided with a satisfactory opportunity to show why he should be granted parole. He makes his written application, usually on a prescribed form, but has no opportunity to discuss with the decision-makers directly what he can and cannot do. Others acting on his behalf are generally restricted to written presentations. The only avenue left to the applicant is an interview with a parole officer who reports in writing to the decision-makers.

The Committee finds the present situation unsatisfactory. We believe that the decision-makers should be in direct contact with parole applicants and that the parole structure should make this possible. Since it is not possible under the present highly centralized system operated by a small number of people, we find that the structure must be reorganized.

The population dependent on the present federal parole authority for release on parole consists of the total penitentiary population and prisoners in all provincial institutions who are serving sentences for offences against federal laws. The federal authority has no jurisdiction over offenders in provincial institutions who are serving sentences for breaches of provincial statutes nor over juvenile offenders charged under the *Juvenile Delinquents Act*. The prisoner population is scattered throughout Canada in more than two hundred institutions, approximately three-quarters of which are under provincial jurisdiction. Provincial governments confine in their prisons approximately twelve thousand of some twenty thousand prisoners in Canadian institutions. All who want to be released on parole (except, to some extent, those sentenced to definite-indeterminate terms in British Columbia and Ontario) depend on the Board of nine people sitting in Ottawa. Whether this prisoner population generates fifteen thousand or only one or two thousand applications for parole, it is clear that nine people cannot travel to all the institutions in Canada to hear parole applicants explain their point of view, plans and expectations.

Nine studies of provincial criminal justice and/or corrections services have been produced since 1968, or are in the process of being published.[4] Most of the reports agree that provincial parole authorities should be established with responsibility for all offenders in provincial institutions. The Prince Edward Island and the Newfoundland reports do not agree with this view.

The basic principles of this Report also lead to the conclusion that the parole system must be restructured. It is essential that any reorganization respect the following three assumptions discussed in Chapter II.

1) *Protection of Society.* A parole system can achieve some measure of protection of society by the control it exercises over the offenders under its supervision and by the assistance it provides to those who need help to reintegrate into the community. It follows that the more communities the parole system covers the more effective it will be. In terms of supervision, the parole service now operates in approximately thirty-four communities in Canada. Through the assistance of other public and private agencies, the parole system covers many more.

The need to restructure the system also arises from the requirements of decision-making. We believe that the parole authority should be as close as possible to the local situation to discover the best moment to release the offender in order to achieve maximum protection. Occasional or even regularly scheduled visits from a distant point do not permit the parole authority to maintain the close contact that is necessary.

2) *Fairness.* All offenders under the jurisdiction of the parole authority should be dealt with in the same just manner. Prisoners in federal penitentiaries should not be more entitled to have their cases examined automatically or to have personal interviews with the decision-makers than those detained in provincial prisons. All should have the same opportunities. But the principle of fairness goes further. It requires contact between the decision-makers and the inmates affected by their decisions and it should not be just a *pro forma* meeting but one that is governed by rules. It is clear that, unless the number of decision-makers in the federal parole authority is greatly expanded, such regulated contacts with provincial parole applicants are impossible.

Fairness also requires that decisions made about prisoners should, as far as possible, be made by the authorities who have the responsibility, other than by contract, for their detention. In such case, the responsibility for provincial prisoners would be with the provincial authorities. In our opinion the parole system must be adapted accordingly.

3) *Coherence.* The present parole system lacks coherence except insofar as a large proportion of parole decision-making is the responsibility of one central parole body. While this provides some consistency of approach, there are exceptions. The National Parole Board does not have exclusive jurisdiction over offenders sentenced to definite-indeterminate terms in British Columbia and Ontario and, unless provinces have agreed to give up their jurisdiction, it cannot parole offenders sentenced for breaches of provincial statutes. A more serious type of incoherence arises where the provincial authorities detain the prisoner, clothe him, feed and shelter him, observe his behaviour, provide counselling, training and treatment but are prevented from granting him parole. We therefore find that a re-allocation of parole decision-making structures is necessary.

Recommendation

8. **Parole decision-making should be regionalized.**

While there are a number of ways to accomplish this reorganization, they fall into three basic patterns:

- Creating many sub-units of an enlarged federal parole authority to meet parole needs of all federal and provincial inmates.

- Assigning parole decision-making to provincial authorities for all federal and provincial inmates.
- Dividing an enlarged federal parole authority into a relatively small number of sub-units and assigning responsibility for paroling of provincial inmates to provincial governments.

We reject the first two patterns as not meeting the requirements of our basic assumptions. The first would lead to incoherence because the provincial authority detaining the prisoner would have no jurisdiction over his parole. There would be no assurance of continuity of treatment of the inmate even if there were promises of cooperation between two independent agencies responsible to two different levels of government.[5] The second alternative is rejected on the same grounds since it merely reverses this situation. We find that the third offers the most coherent pattern of parole administration because, in the present constitutional framework, it meets, as far as possible, the assumptions we have made in our concept of parole.

There is a further justification for the arrangement under which each level of government would provide its own parole administration. The National Parole Service now provides service to provincial correctional systems by interviewing inmates, by obtaining reports from agencies and by exercising supervision over inmates paroled from provincial institutions. But, the situation is changing. The National Parole Service and the Canadian Penitentiary Service are merging into a single corrections agency.[6] The National Parole Service may, thereby, cease to be a free agent. Its primary responsibility would be to the federal inmate, which is probably as it should be if a coordinated approach to an inmate's correctional plan is to be achieved. Provinces should, therefore, establish their own parole authorities and make use of their own resources to provide case preparation and supervision services.

We believe that the structure of the federal parole authority should be adapted to the administrative organization of the institutional services. Since the Canadian Penitentiary Service is divided into five regions, the parole authority in our opinion should also constitute five sub-units in addition to a headquarters unit.

Recommendations

9. The Federal Government should maintain a parole authority for inmates sentenced to imprisonment in federal institutions.

10. The authority to parole inmates sentenced to imprisonment in provincial institutions should be transferred to provincial governments.

11. The federal parole authority should consist of a Headquarters Division and Regional Divisions corresponding to Canadian Penitentiary Service Regions, all to constitute one board.

CONTRACTS. In recent years the federal and provincial governments have entered into contracts for correctional services and there are possibilities of more such contracts in the future. This results in a situation where provincial prisoners can be detained in a federal institution or federal inmates in a provincial facility. We believe that governments

entering into such contracts should retain parole responsibility for their own inmates. Provincial parole authorities would be structured to decide short term cases; the federal parole authority, long term cases.

Organizational Framework

1) *Federal Parole Authority.* Part of the structure of the proposed federal parole authority has been outlined above in relation to regionalization. Our concept is that the six Divisions (five Regional and one Headquarters) constitute a single parole tribunal with all members having equal status in every respect with the exception of one who would be appointed to carry out additional duties as Chairman. All Divisions would be under the direction of the Chairman who would have responsibility for deployment of the members of Headquarters Division and, in a general manner, members of Regional Divisions. In turn, each Regional Division would be directed by a Regional Chairman in its day to day operations subject to the long term demands that may be made by the Headquarters Division Chairman. It is not our purpose to determine the administrative requirements in detail. But certainly, the Chairman of the federal parole authority will have to delegate some administrative duties to the Regional Chairmen.

We cannot predict accurately the caseloads of Regional Divisions and the Headquarters Division and, therefore, cannot determine the number required to administer the parole statute in the federal system. The Hugessen Task Force examined this problem and attempted some calculations for their proposed system. These calculations cannot be applied to the system we recommend since they are based on the creation of numerous Local Parole Boards and several Regional Parole Boards some of which would have jurisdiction in provincial institutions. The Task Force also proposed that parole authorities have a role in sentencing, classification and transfers of inmates, review of Local Parole Board decisions by the Regional Parole Boards, etc. It recognized that the logistics are difficult and its conclusions remain tentative.[7]

Our proposals are based on transfer of parole authority to the provinces for prisoners under provincial jurisdiction and formation of six Divisions of the federal parole authority to deal with prisoners under federal jurisdiction. We believe that a minimum of five full-time members in a Regional Division of the parole tribunal could provide the expertise and wisdom necessary to make all types of decisions. Protection against "undesirable" decisions would come from the review and monitoring procedures. As some Regional Divisions would have difficulty in managing their workload with only five members, provision should be made for the appointment of up to nine full-time members.

The Headquarters Division will also require at least five full-time members. Whether more than five are required will only be determined by experience with reviews over a period of time. The Headquarters Division, pursuant to rules of practice which it will develop will screen applications for reviews and reject those that are frivolous or have no merit. While we do not foresee a need for more than five members we believe it desirable that provision should be made to allow appointment of as many as nine members.

Since workloads are impossible to predict, we believe that provision should be made in the legislation for appointments of part-time members who would work for short periods as required. This would provide the kind of flexibility that is needed to respond

to fluctuating workloads. Such part-time members could also provide assistance when full-time members are ill, away on leave or absent for any other official assignments. They would have to be appointed for an appropriate length of time to acquire experience and to provide the maximum amount of feedback to the community generally and to the professions to which they belong. The cost of a part-time member to the system would certainly be less than that of a full-time member who is not kept busy. The dividends in public participation and information might not be available otherwise. Use of part-time members should be arranged so that more time to study case files would be provided for them than is allotted to full-time members.

2) *Provincial Parole Authorities.* We believe that the structure of provincial parole authorities should be patterned on that proposed for the federal. Can such "complex" parole structures be justified for small provincial jurisdictions? We think they are justified in principle. In practice, the structures could be tailored to the size of the workload. In a small province with few prisoners in its institutions like Prince Edward Island, parole decisions were required in less than twenty cases for each of the last six years for which National Parole Board statistics are available.[6] In the system proposed in Chapter VI, we would expect many more parole applications than under the present parole system, but the number cannot be determined with accuracy on the basis of available statistics. In 1969, those convicted of indictable offences in Prince Edward Island were disposed of in the following manner.

Convictions for summary offences resulted in 370 prison terms, but this number does not represent the actual number of persons convicted since one person may have been convicted more than once. What is known is that 364 of these convictions involved intoxication which probably means a very short period in detention (a few weeks or even a few days) for an unknown number of people. In any event, the numbers are small and

TABLE 1

Sentences of persons convicted of indictable offences in Prince Edward Island, 1969

Type of sentence	Number
Suspended sentence without probation	16
Suspended sentence with probation	19
Fine	70
Gaol (under 1 month)	4
Gaol (1 month-under 2)	4
Gaol (2 months-under 3)	2
Gaol (3 months-under 6)	13
Gaol (over 6 months)	9
Penitentiary (2 years-under 5)	15
Total	152

Source: Statistics Canada, *Statistics of criminal and other offences, 1969*, Cat. 85-201.

the caseload of the parole authority would also be small, perhaps no more than five or six cases per month. This might represent less than one day's work studying the files and approximately the same amount of time for the parole application hearing for each of two part-time parole authority members who would need to be assigned. Surely, individuals can be found who would consider devoting their time to this task for an acceptable honorarium and expenses. Sufficient numbers of part-time parole authority members could be appointed to constitute the parole tribunal which could decide on the original parole application and review the decision should it be necessary. The two required to interview the parole applicant would not also hear the review if one should be made. Consequently, a parole authority with five part-time members would probably be able to do the job.

For provinces with larger inmate populations, it would be a matter of adjusting the number of part-time and full-time members to suit the workload. For provinces with very large numbers, members of the parole authority would be appointed on a full-time basis. The framework would be the same as for the federal authority, i.e., one Headquarters Division and an appropriate number of Regional Divisions.

Recommendations

12. The Headquarters Division and each Regional Division of the federal parole authority should consist of not fewer than five and not more than nine members.

13. One member of the Headquarters Division of the parole authority should be designated as Chairman who shall be the chief executive officer of the full parole board.

14. One member of each Regional Division of the federal parole authority should be designated as Chairman of that Division for administrative purposes.

15. The structure of provincial parole authorities should, where possible, be patterned on the structure of the federal parole authority.

Functions of Parole Authorities

1) *Headquarters Division.* In our concept of parole authorities, we see the need for a central unit which would be responsible for matters that are different from those dealt with by the five regional units. In later chapters, we outline how parole application hearings would be conducted, requirements for review procedures and similar questions which have a bearing on the functions of the various units of parole authorities. The Headquarters Division is seen as the Division responsible for reviewing some of the decisions of the Regional Divisions. The other functions are mainly those that have to be centralized and integrated for greater efficiency: monitoring the operations of the Regional Divisions and maintaining liaison with them; coordinating public education; coordinating policy formulation; and collecting data. Regional Divisions cannot operate in isolation because there is a danger of creating disparities in spite of adherence to common standards. Consequently, the Headquarters Division must be actively involved with the Regional Division in various ways, such as exchanging members on a temporary basis; keeping all Divisions aware of the activities of the others; assigning public relations tasks as required in the regions; requesting participation in policy questions, etc. The value and credibility of the Headquarters Division will rest on the extent of its contacts

with the Regional Divisions. The Regional Divisions will also function more efficiently and credibly if they are kept informed on happenings in the other Divisions. A desirable degree of uniformity must be maintained both by standards established by law and by the action of the Headquarters Division.

Recommendation

16. The Headquarters Division of the parole authority should have the following functions:

a) review of decisions rendered by a Regional Division.

b) coordinating public relations and public education.

c) originating and coordinating formulations of policy.

d) monitoring the operations of Regional Divisions and maintaining liaison with them.

e) collecting and coordinating data.

2) *Regional Divisions.* Basically the need for Regional Divisions of the parole authority is to bring the decision-making process closer to the parole applicant and to ensure that a decision made by a Regional Division can be reviewed by the Headquarters Division without the same decision-makers passing judgment on the same case twice. Our concern is that the process be completely fair. We consider that the Regional Division should have full parole jurisdiction for all cases within its region. It would be inappropriate for the Regional Division not to have full jurisdiction. If certain categories of cases were reserved for Headquarters Division such as dangerous offenders, murderers, dangerous sexual psychopaths, it would mean that there would be no other opportunity within the system to review such cases. The necessary protection against capricious or unwise decisions by a Regional Division lies in the review process and in monitoring and information procedures that must be established.

Regional Divisions also have a role to play in public relations and education, policy formulation and data collection. While some public education programs are of such universal character that they should originate in the Headquarters Division, there are others that have a more regional focus and it should be the role of the Regional Division to carry them out. In policy formulation, we believe that Regional Divisions will encounter situations and practices that will require examination and perhaps adoption by other units. Consequently, we see a role for Regional Divisions in originating policy ideas. They should be submitted to the Headquarters Division which would be responsible for coordinating discussion with other Divisions and their eventual adoption or rejection. Data collection is an essential feature of the system and the Regional Divisions must be bound to provide the information. Failure to do so by any Regional Division could paralyze the whole system.

Recommendation

17. The Regional Divisions of the parole authority should have the following functions:

a) deciding on applications for parole and temporary parole, suspension, revocation and other forms of parole terminations.

b) public relations and public education,

c) originating policy ideas and participating in setting policy,

d) data collection.

MEETINGS. To achieve the degree of uniformity desirable in the operations of Regional Divisions and to decide on policies, we do not consider it adequate that Headquarters Division only take charge of the proposals submitted and coordinate the gathering of opinions on those proposals. Headquarters Division members should acquire experience or maintain their involvement in deciding cases by being assigned periodically to Regional Divisions. These periodic assignments might be only to replace an absent member of the Regional Division but they should be deliberately arranged if such opportunities are too infrequent. Regional Division members should also acquire experience in other regions than their own as well as hearing reviews by sitting on the Headquarters Division. Clearly, they must not be assigned to review a decision in which they originally participated. We further consider that, in addition to these interchanges, a policy of regular annual or more frequent meetings should be adopted.

Recommendations

18. Members of the Headquarters and Regional Divisions of parole authorities should meet periodically to discuss and decide on policy questions and other relevant matters.

19. The Headquarters and Regional Divisions should exchange members for short periods of time to provide experience and a broader perspective.

Composition of Parole Authorities

In our view, most of the members of a parole authority should, if possible, be full-time members. For emergencies and short periods of time part-time members might be required. One of the criteria for selection of part-time members should be that their regular time schedules are flexible so they can discharge their parole duties on short notice.

The Fauteux Report, after setting general qualification requirements for members of the National Parole Board, made specific suggestions about the composition of the Board.[9] The Ouimet Committee recommended that the National Parole Board include representatives "from different disciplines appropriate to its functions".[10] The Hugessen Report took a different view in suggesting a more rigid composition. It proposed representation from specified disciplines and fields of work and that each board have the recommended full complement of the designated categories.[11] In our view, the composition of the membership of the parole authority should not be set by law in a rigid pattern. The requirements should be of a more general nature. Where conditions warrant, for example, a Regional Division should include representation from native groups in the region. All members of Regional Divisions should, as far as possible be from the region in which they will act. Members of a parole tribunal should have broad experience, be well established in their careers, mature and independent. When fully constituted, any Division of the parole authority should be able to call on a wide variety of professional opinion.

Recommendations

20. The composition of the various Divisions of parole authorities should not be rigidly prescribed by law but members should be selected on the basis of broad experience, knowledge of the criminal justice field, maturity, independence and, as far as possible, should be from the region where they will act. Representatives of native groups should be selected wherever appropriate.

21. The appointment of members to various Divisions should be for a term of years sufficiently long to make it professionally interesting and the term may be renewable.

The Structure of Parole Services

1) *National Parole Service.* Reorganizing the structure of the federal parole authority into various Regional Divisions to carry out the functions we have proposed has profound implications for the National Parole Service. It too must regionalize its delivery of case investigation and supervision services. Another factor to be considered is our recommendation regarding the independence of parole tribunals which would remove the National Parole Service from the direction of the National Parole Board. It then becomes accountable for its operations through the departmental structure to the minister without receiving any input from the National Parole Board. Testimony before our Committee referred to the gradual integration of the National Parole Service and the Canadian Penitentiary Service into what has been called a corrections agency. This also would drastically affect the structure of the service.

If integration of the services is completed soon, how should the new corrections agency be structured so that it provides the case investigation and supervision services required by the proposed restructured independent parole authority? If integration is not achieved and the National Parole Service remains an autonomous agency, what should its structure be? There are probably as many answers to both questions as there are administrators.

Our interest is that restructuring the National Parole Service (or new corrections agency) should meet the standards that we propose. The case investigation function must be so organized and carried out as to ensure that correctional plans for individual inmates are prepared and monitored. We also attach great importance to the supervision function and whatever organizational framework is created must meet improved supervision standards. This new structure must be required by law to carry out these two functions, either directly or through contracts with private agencies. A conflict or a refusal to cooperate could paralyze the parole authority.

2) *Provincial Parole Services.* In most provinces, there are probation agencies that can carry out the information gathering and parolee supervision functions since they already have a similar role in relation to other offenders released conditionally by the courts. Where a province does not have a probation agency, it has other services that could be assigned the parole service functions without too many adjustments. We have reference to welfare services that have similar roles in collecting information on applicants for welfare and maintaining a close and continuing contact with recipients. Very often they are the ones that have the first contact with an offender's family and are familiar with all the circumstances of the offender. A provincial government would, therefore, not

be prevented from establishing a parole authority because of lack of resources to gather information on an offender for the parole authority and to exercise supervision over the parolee. Provincial authorities could also contract with private agencies for community assessments and supervision of parolees. Consequently, there is no need for very elaborate reallocation of resources.

Recommendations

22. The National Parole Service should be required by law to provide case investigation and supervision services to the federal parole authority either directly or through contracts with other public or private agencies. A corresponding legal provision would be required to provide case investigation and supervision services to provincial parole authorities.

23. The National Parole Service should be restructured on a regional basis similar to the recommended reorganization of the federal parole authority.

24. The roles of the National Parole Service and the Canadian Penitentiary Service in developing and monitoring correctional plans of inmates and exercising supervision over parolees must be carefully defined and coordinated. Whether coordination is achieved by integration of the two services or through separate and autonomous administrations, we attach the utmost importance to the coordinated delivery of service to the inmate.

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[2] Ouimet Report, p. 339.

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[5] Committee Proceedings, March 8, 1972, p. 26.

[6] Committee Proceedings, June 14, 1973, p. 12.
Committee Proceedings, December 16 and 17, 1971, p. 45.

[7] Hoffman Report, pp. 14–16.

[8] National Parole Board, Statistical Reports for 1966 to 1971.

[9] Fortas Report, p. 80.

[10] Ouimet Report, p. 339.

[11] Hoffman Report, p. 51.

A MODEL FOR "DISCRETIONARY PAROLE"

The Committee recognizes that some limitations must be placed on the discretion of parole authorities just as it believes that the discretion of the courts in sentencing should be restricted. We have stated that parole authorities should not consider cases from a clemency viewpoint, nor should they assume the role of sentence review tribunals, nor should they be in the business of managing institutions through opportunely timed parole releases. Their concern is confined to the timing of inmate release to achieve both the maximum social protection and the optimum benefit to the offender in his social reintegration.

We suggest the following limitations on the exercise of discretion by parole authorities. As a general rule, the power to intervene during the first third of a definite sentence should be strictly limited. During the last third, release on "minimum parole" should be, to a large extent, at the discretion of the parole applicant. (See Chapter VII.) It is during the middle third of definite sentences (usually after the parole eligibility date) that parole authorities should be able to exercise their widest discretion. Even though this discretion would be regulated by legal criteria and procedures, we have designated this release as "discretionary parole".

Right to Apply for Parole

It is a popular misconception about the parole system that all inmates have the right to apply for parole and that this right is protected by law. The fact that the federal Parliament enacted the *Parole Act*, which obliges the parole authority to review cases of federal inmates when they apply, appears to be the basis of that right. However, there is sufficient doubt that this right is effectively protected to justify amending the legislation in order to protect it.

There is a well recognized tradition that everyone has the right to petition the Crown for redress of grievances or to submit any matter for consideration by the Crown. The ordinary citizen has no problems since his freedom to act is not restricted. But the prisoner is in no such position: his movements are restricted; his right to communicate has never been fully defined; and there is nothing to prevent institutional authorities from denying or severely restricting whatever rights he may have. In fact, his communications could be intercepted. Deliberate interceptions or negligence in forwarding applications promptly are both very serious matters that can remain undetected or overlooked with impunity.

Another way to deny the right to apply for parole is to refuse to provide information on how to exercise the right. Information about parole is contained in statutes, booklets, forms and other official documents. Without them, an inmate can be prevented from stating his case. In some institutions relevant documents are rare; in others, non-existent. The reason given for not obtaining documents to assist inmates in making their applications is usually that there is no provision in the budget to buy them. Institutional

administrations that are guilty of this approach should be required to correct the situation.

To ensure protection of the right to apply for parole we recommend below the expansion of a system of automatic collection of information which would bring most cases of inmates to the attention of parole authorities. We also propose, in the next chapter, inmate entitlement to parole for the last third of definite sentences. Nevertheless, it should be understood that inmates should be free to refuse any kind of parole. We think they should have the right to serve their sentence in confinement.

Recommendations

25. Every offender sentenced to a federal or provincial institution should have the right to apply for parole and this right should be incorporated in the parole legislation.

26. The administrator of an institution should be required to forward a parole application to the appropriate parole authority within seven days of receipt.

27. Institutions should be required to keep available for inmates information and documents relating to parole.

28. An inmate may refuse to be released on parole.

Automatic Collection of Reports

One of the features of the present parole system which distinguishes between federal and provincial inmates is the automatic review of cases. The *Parole Act* and Regulations oblige the National Parole Board to review automatically the case of "every inmate who is sentenced to imprisonment in or transferred to a penitentiary for two years or more."[1] But review of cases of inmates serving a sentence of imprisonment of less than two years is made "upon application by or on behalf of the inmate."[2] The law also requires that an inmate, whose case is being reviewed automatically, must advise the parole authority in writing if he does not wish to be granted parole. If he changes his mind after giving such a written notice, he must submit another notice in writing.

The automatic system has several advantages over the system of review upon application. It ensures that the parole authority will take cognizance of the case and this, to some extent, protects the inmate's right to apply for parole. Since collecting reports is automatic, the file in which documents are accumulated is created as soon as the offender enters the institution and his admission form is forwarded to the parole authority. The parole authority is then able to obtain information about every aspect of the case within a short time after admission and, at the appropriate time, establish the parole eligibility date. Notice of this date is forwarded to everyone concerned. The file is returned to the parole authority on the parole eligibility date for a decision whether to grant or deny parole. This system applies to federal cases only and operates automatically whether or not an application for parole is received. We assume that it would be continued.

Can the automatic system be extended to all cases in provincial institutions, thereby creating an obligation on provincial parole authorities to review cases automatically? Unfortunately, the answer must be no. Some provincial correctional systems are so well organized and managed that, within a few hours after admission, a file on the new inmate

has been created and information is already being accumulated. Others, for the present, are not as well equipped to collect information in a central location for use by the provincial parole authority. Also, sentences served by provincial inmates are generally very short, sometimes of a few hours' or days' duration. Despite difficulties that will no doubt ensue, we recommend that the automatic review system apply to all sentences of six months or more. There is evidence that some correctional institutions are able to process inmates within a few weeks through a variety of complex programs. It is therefore feasible to adopt and carry out a correctional plan in sentences of six months or more. Should inmates serving less than six month sentences undertake similar intensive programs and become good candidates for parole, they should also have the right to be considered for parole upon application.

Proposals are made in Chapter VII to change the present mandatory supervision provisions of the parole system to make the last third of the sentence a period of parole to which an inmate is entitled. This is called "minimum parole". It requires an extension of the automatic system which will provide for notification to the inmate, and all concerned, of the date on which he becomes entitled to this form of parole. Again, as with the parole eligibility date, the inmate would be obliged to signify, in writing, whether he wishes to be released on parole or serve the remainder of his sentence in detention.

Recommendations

29. In cases of imprisonment for six months or more, parole legislation should provide for automatic collection of reports, for automatic setting and notification of discretionary parole eligibility and minimum parole entitlement dates and for automatic case examination.

30. In cases of imprisonment for less than six months, parole should only be considered upon application by the inmate or someone on his behalf.

SUBSEQUENT REVIEWS. Section 3(1)(c) of the parole Regulations now require the parole authority, when it denies parole, to:

> ... continue to review the case of the inmate at least once during every two years following the date the case was previously reviewed upon parole is granted or the sentence of the inmate is satisfied.

This ensures that the case of the inmate serving a long sentence will be brought forward periodically if he is not granted parole on the first date on which he became eligible for release on parole. This automatic review every two years is a desirable feature of the present parole system which should apply to all who have long or indeterminate terms.

At present, Section 694 of the *Criminal Code* requires an annual review by the parole authority of the condition, history and circumstances of the person sentenced to preventive detention to determine whether he should be paroled. The reason for creating a special obligation for this category of offenders is not clear except that incarceration is for an indeterminate period. Those sentenced to life imprisonment are in the same situation yet no such review requirements have been act. We found no justification for making provisions for persons undergoing preventive detention that should not also be

made for those serving life sentences or vice versa. In fact, it is our view that eligibility requirements for both categories should be the same, i.e., once every two years.

Recommendation

31. In all cases where parole has been denied and there remains a period of two years or more before the inmate becomes entitled to minimum parole or if the inmate is serving a life sentence or an indeterminate period in detention, the parole authority should be required to reconsider the case at least once every two years following the date of the previous review.

Eligibility for Parole

MINIMUM TIME TO BE SERVED. The history of eligibility time rules is not a glorious one. During the Remission Service period when the *Ticket of Leave Act* was in force, the rule was: no interference until approximately one-half of the sentence has been served. It was followed to a large extent. There were many other restrictions regarding previous records, use of drugs, and previous clemency, etc.[3] The result was a relatively predictable system.

Time requirements under the *Parole Act* have, for the most part, been more generous. The minimum time to be served was one-third of the sentence or four years until recently when the rule was modified to one-third or seven years. Over the years, several changes were made for commuted death sentences. The rule changed as modifications were made to the law regarding the death penalty in recent years. The discretion of the parole authority in these cases has been transferred to the Governor in Council. The National Parole Board, by law, can only recommend parole to the Governor in Council but not before at least ten years have been served. The rules have also recently been changed for those whose paroles have been forfeited. They now must serve one-half of the term of imprisonment, rather than one-third, before again becoming eligible for parole. Time rules are thus becoming more complex. The complexity is compounded by the fact that parole Regulations provide very broad powers for exceptions to be made. The only rules which allow no exceptions are those applying to cases which must be decided by Governor in Council. Time rules make a system predictable but frequent changes and the power to make exceptions tend to do the opposite; they make it unpredictable, arbitrary, erratic and even unfair.

There are two opposing views towards time requirements. Some advocates of time restrictions would make them so rigid and lengthy as to require the serving of one-half to three-quarters of a term of imprisonment before an inmate could be considered eligible for release on parole. There would be no exceptions. Others propose a system without any restrictions. They would allow the parole authority complete discretion to release anyone on parole whenever it considered the time appropriate. The system would be so flexible that there would be no need to provide for exceptions since all cases would be judged on their individual merits. We have chosen a position which accords with our definition of parole and our proposed system of sentencing.

Time requirements are now set by parole Regulations which can be modified by Order in Council. The advantage of this procedure is that there is no need to enact legislation to change the Regulations. The matter can be dealt with quickly without public discussion. In our view, however, it is the responsibility of Parliament to decide what behaviour should be defined as criminal and, by the maximum penalty it sets, to determine the gravity of the behaviour. Time regulations which set the minimum time to be served before parole eligibility are the lower limits of the seriousness of this behaviour. It is our view, therefore, that Parliament should set out in the law both the maximum and minimum limits of the gravity which it attaches to criminal behaviour. This would lead to less flexibility but it would prevent frequent and hasty changing of Regulations to meet events which have no relation to the seriousness of the behaviour. More stable time regulations will be fairer in the long run.

The Committee has concluded that the time requirements should be simplified. Special categories with different time rules should not be created needlessly. The recent change which made a special category of those who have forfeited parole does not seem justified. We do not accept the reasoning that, because a parolee commits one offence which results in forfeiting his parole, he should be treated differently under parole legislation from the offender who has committed many offences.

We believe that the following time requirements should be incorporated in parole legislation:

- An inmate should be required to serve one-third of his sentence before parole may be granted. This should apply to all sentences whether they are being served in federal or provincial institutions. The longest minimum provided should be seven years for definite sentences.
- For life sentences and indeterminate sentences of preventive detention, the minimum time required to be served before parole may be granted should be ten years. (See Chapter XI.)

It must be clearly understood that the setting of time requirements does not mean that an inmate will be automatically released after one-third of his sentence. All that is meant is that he becomes eligible for parole after one-third but eligibility does not mean automatic parole.

Similarly, murderers serving life imprisonment will not be granted parole automatically after ten years. If and when parole is granted, whether after ten or twenty years or more, will only be determined on the facts of each case.

Recommendations

32. The minimum time to be served before eligibility for release on parole should be prescribed by statute rather than by regulation.

33. The minimum time to be served prior to becoming eligible for release on discretionary parole should be one-third of the term of imprisonment or seven years whichever is the lesser and ten years for persons serving sentences of life imprisonment as a minimum punishment.

The power to make exceptions should be used sparingly and certainly not on the basis of the "Guidelines" quoted in Chapter I. It was represented to us that releases sometimes have to be arranged to meet school entrance dates, seasonal employment, and other similar deadlines. We recognize that these may have to be met but we believe that temporary parole (see Chapter VII) provides the flexibility to meet such time limits. The broad discretion needed to make exceptions to eligibility time requirements is not necessary for most cases. The only instance where it might properly be exercised would be on the special representations of a court to a parole authority at the time of sentencing. While the authority should not be bound by such recommendation, it should have the power to act.

Recommendation

34. Where, at the time of sentencing, a sentencing court or, subsequently, a court of appeal makes a recommendation, the parole authority may make an exception to parole eligibility time requirements.

OTHER RELEASE CRITERIA. The powers of the National Parole Board to grant parole are limited by three criteria set out in Section 10 (1) (a) of the *Parole Act*. These are stated in terms which are vague and, in our opinion, of little use in determining when and if parole may be granted. The Board must consider whether "the inmate has derived the maximum benefit from imprisonment", whether his reform and rehabilitation will be "aided by the grant of parole", and that his release "would not constitute an undue risk to society". It is difficult enough to determine what constitutes "an undue risk" without having to establish what is meant by "maximum benefit from imprisonment" or "reform and rehabilitation. . . will be aided. . ." The instruments measuring human behaviour are still so imprecise that the three criteria do not really restrict the power of the National Parole Board nor do they provide very much assistance in making decisions. What are the benefits of extended confinement in relative isolation? Would release on parole aid such a "program of rehabilitation"? How risky would it be? In our view, legal criteria to determine whether to grant or refuse parole should be more easily measurable. Subjective judgments should be reduced to a minimum.

One measurable criterion which we approve is the minimum time limit of one-third of the sentence or seven years whichever is the lesser. The other criteria should be based on the principle of protection of society and on the concept of parole as one step in the correctional process. For protection of society, the law must require that the parole authority shall not grant parole if the release of the inmate constitutes a serious danger or undue risk. This is admittedly the uncertain aspect of parole decision-making which is unavoidable — the one point where reasonable guidelines are lacking. In relation to the correctional plan concept, the requirement should be that the parole authority shall not grant parole unless the inmate has undertaken to carry out a correctional plan and release or parole will aid in carrying out that plan.

The correctional plan has been called many things: prescription programming,[4] contract programming, a step in the correctional process, a treatment program, etc. These terms have been used to designate the processing of the inmate in a methodical manner according to a plan developed jointly by him and the institutional and parole staff, from

the moment he enters an institution. We view parole as a substantial benefit that an inmate must earn by undergoing a testing process. If he wants parole, he must meet the requirements of the correctional plan so established. If he decides that he does not want parole, his alternative is to serve the sentence in confinement.

A correctional plan should cover all aspects of the life of an inmate, provide an outline of goals to be achieved while he is incarcerated, extend through his parole, and be reviewed periodically to assess progress and to redefine the goals to be attained.[5] For example, an inmate should strive to attain objectives in various spheres of his life, e.g., social, vocational, legal, family, financial, etc. He should be assessed on the extent to which he improves his educational or vocational skills. He should repay his victim, if any, even if it is only a nominal amount and he should be judged on the effort he devotes to this undertaking. Should he require psychiatric treatment or counselling, his response to the treatment should be taken into account. His total life situation might require only a minimal amount of readjustment and effort on his part but it should be fulfilled before he is judged to have passed the test and earned consideration for release on parole. In brief, the complexity of the correctional plan would be related to the level of the individual's needs.

While correctional plans must be tailor-made to suit the needs of the individual, they cannot disregard statutory limitations affecting institutional and parole agencies. They cannot be viewed on the same basis as a medical treatment plan in a hospital setting where the patient's recovery is not restricted by considerations of public protection, deterrence, moral condemnation of behaviour, etc. Written submissions and several witnesses appearing before the Committee proposed the partial or complete removal of time restrictions.[6] This suggests that any correctional plan must be like the medical model which provides for the patient's release as soon as he is able to function on his own. Because medical treatment is limited only by the ability of the patient to get well, it does not follow that correctional treatment should be similarly restricted. We do not accept that correctional plans can be based entirely on the same considerations.

As for the role of the parole authority in a correctional plan, we are of the view that it should be informed periodically of the plans as they are formulated in order to examine the extent to which they meet legal requirements and to express opinions on their adequacy without committing itself to granting parole. It should rather commit itself gradually to another stage of the plan as various goals are attained thus making parole decision-making a gradual process.

It is impossible to foresee all possible combinations which may constitute a correctional plan. Proposals must necessarily deal with matters in a general manner and leave the sorting out of individual cases to the officials directly responsible for them. But we believe that the concept of an individual correctional plan is applicable to all those sentenced to incarceration whether for long or short periods of time and whether they are capable of formulating plans or not. Parole and prison services should supplement and coordinate this kind of individual correctional programming to attain the maximum good for the community and the offender.

Recommendation

35. Parole legislation should provide for the following parole release criteria. The parole authority shall not grant parole:

a) unless the inmate has served one-third of his term of imprisonment or seven years whichever is the lesser, or, ten years in the case of persons serving sentences of life imprisonment as a minimum punishment, subject to the exception set out in Recommendation 34.

b) unless the inmate has undertaken to carry out a correctional plan.

c) unless the inmate's release on parole will aid in carrying out the correctional plan.

d) if the inmate's release on parole constitutes a serious danger or undue risk.

Hearings

Canada's *Parole Act* does not refer specifically to hearings as a part of parole application procedures but only to "personal interviews". Neither is the parole authority obliged to grant an interview to the applicant nor to any person acting on his behalf. Personal interviews are part and parcel of many other parole systems, e.g., British Columbia, Ontario and several U.S. jurisdictions. The written briefs we received favoured the practice although there were minor criticisms on length of interview, rules of procedure, etc. We have already referred to the experiment under which the nine members of the National Parole Board travelled across Canada to meet inmates on their own ground. The practice was discontinued but we trust that with the increase in the number of Board members, it will be resumed and that a procedure to meet standards of fairness is established more formally. We believe that the legislation should provide for the right to a hearing.

Recommendation

36. Parole legislation should provide for the right to a hearing for inmates who have applied for discretionary parole.

Arguments for and against hearings, the right to due process, representation by counsel, and other related protections have been discussed by many others.[7] The Committee took cognizance of these views and proposes rules governing hearings that meet what it considers to be minimum standards of fairness, as follows:

- written notice of hearing,
- disclosure of relevant information,
- right to be present and to be heard,
- giving reasons for the decision.

1) *Written notice of hearing.* Two parties are interested in the outcome of the hearing: the inmate and the Crown in the person of the Attorney General of the province where the inmate is detained. In our view, there should be a designated official named by the Attorney General to represent the public interest in the outcome of the hearing. It might even be necessary to forward notice of the hearing to the Attorney General of the

province where the inmate was originally convicted and/or in the province of destination, if he is released on parole, should it be different from the province of incarceration. Should either or both of the latter wish to make representations they would act through the Attorney General of the province where the inmate is detained and the hearing is being held. The Attorney General should not be required to designate an official to attend all hearings but there may be occasions when it would be desirable for the official to attend in order to submit representations to the parole authority in the presence of the inmate.

Seven days notice should be given to everyone concerned to prepare for the hearing. The inmate would have to decide who, if anyone, will assist him. Refusal to extend the deadline should not be grounds for reviewing the decision. The restrictions would be equally applicable to the Attorney General.

2) *Disclosure of relevant information.* Rules of procedure for a hearing must provide for disclosure of facts on which the decision will be based. This is the only way that a parole applicant can take issue with information that is erroneous. To make decisions on inaccurate or false information is unjust and the applicant must be able to contest it. He should have the right to see the complete information on which the decision will be based at the time he receives notice of the hearing date. This will give him time to prepare for the hearing. The Attorney General would have the same right to information.

There can be two exceptions to this right to disclosure. The parole authorities could deny right of access to information which, if revealed, would:

- endanger the security of the state,
- endanger the security, mental or physical, of the parole applicant or any third parties.

When denying an inmate access to certain information, the parole tribunal would be obligated to tell him that it is being withheld and he could, if he wishes, seek review of this decision through the review procedures provided.

Whenever correctional authorities suggest disclosing the information they receive, there are objections by the agencies supplying it. In our view, for the proper functioning of the parole authority, it is essential that information be provided in such a manner that it can be disclosed at the appropriate hearings, subject to the two exceptions noted above. Reporting agencies such as the police, aftercare agencies and institutional services must trust the parole authority to exercise good judgment when determining what information can be shown to the inmate. The parole authorities will also have to develop complete guidelines to deal with information received. Experience with pre-sentence reports prepared for the courts already exists and, since files on parole applicants contain similar information, there should be enough knowledge available to avoid serious problems. No such problems have been brought to the attention of this Committee.

3) *Right to be present and to be heard.* A parole system that claims to act fairly in deciding on a parole application without the presence of the applicant may always act fairly but it will never convince the applicant of this if the decision is unfavourable. The system must not only act fairly but must be seen to act fairly by the person directly affected. No parole decision should be taken without a hearing and no hearing should

take place without the presence of the parole applicant. Consequently, hearings requiring the presence of a complete parole tribunal should be scheduled when all members can participate. Decisions must not be reserved by an incomplete tribunal to be taken later behind closed doors in the absence of the applicant. If information is still lacking at the time of the hearing, the full tribunal should reserve its decision and return as a complete tribunal when the information has been obtained.

It would be unfair to an inmate who is present at the hearing to hear what is said about him but to be unable to explain his plans or to refute evidence. The parole applicant should not only be aware of the information gathered about him but he should also be able to state his opinions and, if necessary, refute the evidence he considers erroneous. The parole authority would then be obligated to verify the information in question, which might delay a final decision until the evidence has been re-examined. This would mean setting a new hearing date as early as conveniently possible. There should be no long delays of two to six months such as now occur for reserved decisions.

4) *Giving reasons for the decision.* The hearing should terminate only after reasons for the decision have been given to the parole applicant. For a favourable decision, the parole tribunal should not only give reasons in writing but also explain the implications and particularly, any special conditions of the release on parole. For an unfavourable decision, the reasons must also be explicit and in writing and should point out the implications of the unfavourable decision in terms of re-examinations, if any, "minimum parole" (see Chapter VII), review procedures, etc.

All reasons cannot always be given in all cases. Sometimes the reasons would place others in jeopardy, or might be detrimental to the parole applicant himself. The parole authority should also be authorized to refuse to give the applicant any reasons for the decision which would:

- endanger the security of the state,
- endanger the security, mental or physical, of the parole applicant or any other third parties.

Since the hearing would not be a trial, a verbatim record should not be required; a summary of the hearing and the reasons for the decision would be sufficient for the purposes of a review, if any.

Recommendation

37. Parole legislation governing discretionary parole application hearings should include provision:

a) for written notice of hearing,

b) for disclosure of relevant information,

c) for the right to be present and to be heard,

d) that reasons for the decision be given.

The Hugessen Report pointed out that some inmates are incapable of presenting their own cases adequately to the parole authority and may, therefore, require assistance. But it cautioned that a person providing such assistance "need not and probably should not

be a lawyer in most cases. Other possibilities would include prison personnel, relatives and friends."[8] The Canadian Bar Association also expressed reservations about the introduction of a right to counsel in that it "can result in development much against the granting of parole."[9] The Committee agrees that some inmates need assistance while others can handle their affairs without help. To avoid converting the process into a trial or a re-hearing of the original case, we recommend that inmates should not be assisted by lawyers except with permission of the parole authority. This permission should only be granted if, in the opinion of the authority, it is warranted in a special situation such as relationship or close acquaintance with the parole applicant. Such acquaintance or relationship should flow from other contacts than merely previous legal representation of the inmate.

Except for this restriction, the inmate should be free to choose whomever he wishes – another inmate, an institutional officer, a clergyman, a parole officer, a member of his family, etc. The choice would be his own and it would be his responsibility to arrange for this person to be at the hearing at the time set by the parole authority. Failure to do so would not be grounds for review. The inmate, according to the automatic system proposed, would be advised of the date on which he becomes eligible for release on parole. In the case of long sentences, he would learn of the eligibility date several months prior to the date itself; for short sentences, he may have no more than one week's notice. In either case, the time required to find someone to assist in the preparation for a parole hearing would be sufficient and it should not be grounds to delay the hearing or to request a review. The onus is on the inmate to find someone to help him but whoever is selected should not have the right to dominate the hearing nor to prevent the parole authority from addressing the parole applicant directly. He would attend the hearing to provide moral support rather than as an advocate and the conduct of the hearings should reflect this restricted role.

The use of Canada's two official languages is directly related to the provision of assistance at parole hearings.[10] The responsibility for providing assistance in either or both official language should be with the administration. For the hearing process to be fair, the inmate must be assisted through translation or interpretation wherever services cannot be provided in the other official language. Should the inmate use the interpretation services during the hearing, the costs should be borne by the administration.

Recommendation

38. In special circumstances, a parole authority may authorize support, other than legal assistance, for the applicant at the parole hearing.

To establish rules of procedure does not ensure that a methodical approach in arriving at fair decisions will be followed. All participants must know what the rules are. Parole authorities should publish manuals or guidelines which set out the rights and obligations of the inmate who applies for parole and describe the procedure of the parole authority in carrying out its mandate. These publications should be distributed free to those sentenced to incarceration for more than a few days.

Recommendation

39. Rules of procedure governing parole proceedings should be published.

REVIEWS. Parole legislation should provide for an internal review process. One of the basic reasons for the structures proposed in Chapter V will be found in the review provisions we here propose. A parole applicant may feel that his case was improperly decided and wish to have another tribunal review it. Similarly, the Attorney General may have reason to believe that a decision was not in the public interest. At present, there is no possibility of having cases re-examined by an independent tribunal since both parties have to make their requests for review to the same parole tribunal which made the original decision. However, if there is a review, fairness requires that both parties should be able to submit their case to another tribunal. We do not propose that the right to a review be unrestricted. In our opinion, either party interested in the decision should be required to obtain leave from the Headquarters Division of a parole authority for review of a decision of a Regional Division. Moreover, the Headquarters Division should have the authority to review any decision on its own initiative or at the request of a representative of the parole or institutional services.

The power of review by the Headquarters Division should extend to dealing with the questions raised by the applicant or any other question related to the case. It should either confirm the original decision or set it aside and substitute its own decision which would be final. Whenever the review of a decision to parole an inmate is requested, the release order would have to be suspended until the review has been completed. Such requests for review should be made within fifteen days from the date on which the original decision of the Regional Division was rendered.

For the internal review system to be workable the rules of procedure cannot be entirely the same as those for the original hearings. The applicant would have a right to a notice and to seek assistance in submitting his application; he would have the same limited right to disclosure, the right to present a written statement and to refute evidence and the right to a written statement of the reasons for the decision. He would not have the same right to be present since the Headquarters Division could decide on the basis of the written record, but it would have the right to call the applicant or any other witness.

A screening procedure to eliminate cases that are frivolous or without merit would be essential.

Recommendation

40. Parole legislation should provide for the review of parole decisions by the Headquarters Division of parole authorities.

References

[1] *Parole Act*, Section 8 (1) (a).

[2] *Parole Act*, Section 8 (1) (b).

[3] Fauteux Report, pp. 62-65.

[4]National Parole Board, Circular Letter to all District Representatives re: *Prescription Programming*. Ottawa. August 21, 1973.

[5]United States. The President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington, U.S. Government Printing Office. 1967. p. 62. (Katzenbach Commission)

[6]Committee Proceedings. June 20, 1972, June 22, 1973, March 7, 1973, April 10, 1975. Briefs Nos. 6, 14, 16, 20, 42, 52, 73, 74, 77, 114, 115.

[7]Price, R., "Bringing the Rule of Law . . ."
Katzenbach Commission, pp. 82-87.
Fauteux Report, pp. 80-83.
Ouimet Report, pp. 339-343.
Boyle, D., "Some Aspects of Parole in Canada," *Queen's Law Journal*, Vol. 1, No. 2, November 1971, p. 167.
Jobson, K., "Fair Procedure in Parole", *University of Toronto Law Journal*, Vol. 23, 1972, pp. 267-303.
Committee Proceedings, March 13, 1973, (Issue No. 5.)

[8]Hugessen Report, pp. 34-35.

[9]Committee Proceedings, May 30, 1975, p. 55.

[10]Hugessen Report, p. 36.

Chapter VII

"MINIMUM" PAROLE AND TEMPORARY RELEASES

The Committee has recommended in Chapter IV that both statutory and earned remission be abolished. This has a significant bearing on two particular release procedures for federal inmates who are not granted discretionary parole. Mandatory supervision and minimum parole are determined, at least in part, by the amount of remission credited to an inmate. For provincial inmates, short parole is closely tied to remission procedures.

Defining a New "Minimum" Parole

MANDATORY SUPERVISION. Mandatory supervision is the conditional release of a federal inmate who was not granted an ordinary parole, the term of such release being equal to the amount of remission, both earned and statutory, credited to him provided that it exceeds sixty days.

This procedure was criticized as unfair in submissions by inmates to the Committee.[1] While on the one hand, the inmate is credited with remission for good conduct, on the other, he is forced to accept mandatory supervision which, in his view, takes his "good time" away from him. If the present remission system is abolished, this contradiction disappears and there would no longer be any basis on which to calculate the period of supervision. It would be simple, however, to designate arbitrarily a point in the sentence when an inmate shall be released under mandatory supervision to serve the remainder subject to parole conditions. But, there are additional matters related to mandatory supervision which must be considered.

Present inequities in the treatment of federal and provincial inmates in the use of mandatory supervision were pointed out in Chapter IV. The provision applies only to federal inmates. This means that they are required to complete the original sentence handed down by the court whereas the provincial inmate is given an unconditional release after approximately two-thirds of his sentence. The Committee regards any system that imposes a conditional release on some inmates and not on others as unfair.

We are also concerned about the "mandatory" aspect of mandatory supervision because of the difficulty of imposing supervision on an inmate who is unwilling to cooperate with a supervisor. The lack of at least a minimal commitment on the part of the inmate raises questions as to the value of supervision for such a person.

MINIMUM PAROLE. Minimum parole is also determined, in part, by the amount of remission credited to an inmate. It is a release procedure whereby a federal inmate exchanges a short period of incarceration for a longer period of supervision. He is given one month on parole for each year of his sentence up to a maximum of six months. In addition, he is required to serve his statutory and earned remission time under supervision. Such a procedure is available only to inmates in federal institutions except those serving life or preventive detention or whose remaining sentence is less than one year.[2]

The paroled inmate on minimum parole, like the one under mandatory supervision, is required to serve time which was previously credited to him for good behaviour in the institution. Also, as it is granted during the middle third of a sentence or the "discretionary" period, minimum parole does not differ from discretionary parole. We find little need for it since the advent of mandatory supervision in 1970. It only adds complexity to the parole system.

SHORT PAROLE. Short parole is a procedure for inmates in provincial prisons which is similar to the minimum parole procedure for federal inmates. It is usually granted for "less than thirty days, immediately prior to expiry of sentence".[3] An inmate granted short parole would then serve that portion of the thirty days granted to him plus all his remission time. Apparently, supervision is not provided in these cases.[4] It is, in fact, discretionary parole, since it is granted to an inmate during the middle third or the discretionary period of his sentence.

Like minimum parole, short parole is really indistinguishable from discretionary parole. The use of these categories by the National Parole Board is, therefore, redundant. It may also be misleading since the use of a different term implies a different or special program.

Although the Committee rejects existing procedures, we approve the principle of conditional release after two-thirds of a sentence has been completed. We propose the expression "minimum parole" to designate such a procedure but suggest a different meaning from that which it now has. While we use the same term, it is in no way related to minimum parole procedures as they were used in the past. Our concept of minimum parole is more closely related to mandatory supervision but differs from it, first, in that the release would not be mandatory. It is a release to which the inmate would be entitled but he would also be entitled to refuse it. Secondly, in order that the system be equitable, all inmates, both provincial and federal, except those serving life and indeterminate sentences, would be entitled to minimum parole.

Because of difficulties of adjustment facing ex-offenders, the proposed new minimum parole for all inmates would be a more rational method of release from incarceration. It would provide the inmate with aid during the reintegration period while at the same time providing the public with maximum protection and some degree of control through supervision.

Recommendation

41. The provisions for mandatory supervision, as they now exist in the *Parole Act*, should be repealed and, in lieu thereof, the law should provide that the last third of every definite term of imprisonment should be a period of minimum parole to which the inmate is entitled.

Inmates would then serve their entire sentence as handed down by the court. In effect, every sentence would consist of three parts: the first third being a period of incarceration in an institution; the middle third, a period during which the parole authority may release the inmate on discretionary parole; and should the inmate not be granted discretionary parole, he would be entitled to be released on minimum parole to serve the last third of his sentence under supervision in the community.

The Committee recognizes the difficulties of supervision and control in cases when the inmate rejects the idea of parole and fails to commit himself to such a release procedure. We therefore agree that an inmate be entitled to refuse minimum parole. When he refuses minimum parole, he is making a statement of intent. His unwillingness to accept it could be interpreted as indicative of his attitude. This should be explored with him since he may change his mind.

Recommendations

42. An inmate who refuses release on minimum parole should not be eligible for temporary parole or temporary absence for rehabilitative reasons.

43. At any point after serving two-thirds of his sentence, an inmate who had previously refused minimum parole may request it and serve the remaining portion of his sentence on minimum parole.

44. Inmates serving a minimum parole of at least two months should be subject to all conditions applicable to inmates released on discretionary parole.

The level of supervision and conditions of minimum parole must be the same as those applying to the inmate who is granted discretionary parole. (See Chapter VIII.) Although the Committee believes that all inmates, regardless of the length of sentences, should receive minimum parole, we recognize the difficulties in attempting to supervise very short terms.

Recommendation

45. An inmate serving a minimum parole of less than two months should not be subject to supervision, suspension and revocation, but his parole should be subject to forfeiture upon commission of an indictable offence.

An inmate who has not been granted discretionary parole should, within a reasonable period of time prior to his minimum parole entitlement date, be advised of such date, as fixed by the parole authority, so that he may arrange for his release on minimum parole.

Our suggestions for implementing minimum parole procedures in the three possible situations are as follows.

All inmates serving sentences of six months or more would be subject to automatic case examination. If discretionary parole is denied, either by decision of the parole authorities or because the inmate has not applied for parole, he should be advised of the decision. We suggest that the parole authorities advise him of his minimum parole entitlement date at the same time.

For inmates serving less than six months, there would be no automatic case examination. Therefore, if he applies for parole and it is denied, the parole authority should, at the time of advising him of parole denial, also advise him of his minimum parole entitlement date.

If an inmate serving less than six months does not apply for parole, the responsibility for advising him of his minimum parole entitlement date should lie with the provincial official responsible for institutions through an automatic case examination procedure. An

officer of the institution may have to be assigned responsibility for fixing entitlement dates, authorizing releases under minimum parole provisions and advising the parole authority since the inmates concerned are, in many cases, serving very short sentences. Institutional authorities should also be required to notify the inmate within a reasonable period prior to his entitlement date. He should be notified at least seven days prior to such date or, for short sentences, as soon as possible following admission to the institution.

Similarly, if an inmate, having refused minimum parole, changes his mind, he should be released as soon as possible thereafter but not later than seven days after notification of the authorities.

A minimum parole procedure such as the one outlined above ensures that all inmates may – and most will – be granted conditional releases from penitentiaries and prisons. The same quality of supervision as provided for those on discretionary parole is necessary for those released on minimum parole provided their parole is two months or more. However, it is the poor risks – those refused discretionary parole – who still receive shorter paroles when, in fact, the community needs greater protection from such individuals. A greater degree of public protection may be achieved through the intensity of supervision provided although it is for only a short period.

Day Parole, Temporary Parole and Temporary Absence

One of the major contradictions and sources of confusion in the present system is the day parole – temporary parole - temporary absence controversy.

The problem lies in the delegation of responsibility for the administration of such programs: both day parole and temporary parole are administered by the National Parole Board and temporary absences by the Canadian Penitentiary Service for inmates in federal institutions, and by provincial authorities for inmates in provincial prisons.

Disregarding, for the moment, whether there is a need for two types of temporary releases available through the National Parole Board, the Committee is of the opinion that the issue can be resolved without either service relinquishing its authority to grant temporary leaves. A clear distinction can be made between the purposes of temporary releases through the National Parole Board and those through institutional authorities.

We have emphasized that parole must be an integral part of any correctional plan and we re-emphasize the primacy of parole as a release procedure. In the system that we propose, all inmates, unless they refuse, will leave the institution under some form of conditional release, either discretionary parole or minimum parole. The inmate's correctional plan must be oriented toward some form of parole release. Existing day parole – temporary parole provisions may play a part in the fulfilment of the correctional plan which is aimed at releasing the inmate, under the best possible conditions, to ensure public protection and minimize the risk of recidivism.

Before discussing day and temporary paroles, however, it is appropriate to outline the Committee's view of the operation of temporary absence programs in federal and provincial institutional systems.

TEMPORARY ABSENCE. We must avoid the confusion which has existed between the two procedures, and the possible substitution of one for the other. An inmate, who has been granted temporary absence by institutional authorities, should not interpret this release as a substitute for temporary parole and expect that discretionary parole will be granted. The decision lies with a different body.

We accept the provisions of Section 26 of the *Penitentiary Act* which reads:

> Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time
>
> (a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or
>
> (b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate

Similarly, we accept the provisions of Section 36 of the *Prisons and Reformatories Act* which reads:

> Where, in the opinion of an official designated by the Lieutenant-Governor of the province in which a prisoner is confined in a place other than a penitentiary, it is necessary or desirable that the prisoner should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the prisoner at any time during his period of imprisonment, the absence of the prisoner may be authorized from time to time by such official for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the prisoner.

The Committee accepts the three distinct categories of temporary absence as outlined in the Acts:

1) *Medical Reasons.* Unlimited temporary absence for medical reasons.

2) *Humanitarian Reasons.* "Humanitarian" leave of absence for reasons outlined in the Commissioner's Directive of June 27, 1973:[5]

> (a) To attend funeral services for a member of the family,
> (b) to visit a member of the family who is seriously ill,
> (c) to provide support in certain instances of hardship being endured by the family where the inmate's presence would be beneficial,
> (d) to attend special events such as graduations or religious ceremonies that normally call for family participation.

3) *Rehabilitative Reasons.* This provision is most closely related to parole matters and day parole in particular. There are a number of reasons why an inmate should be granted temporary absence in the interests of his adjustment to the institution and his correctional plan. The Committee accepts some but not all the reasons outlined in the Commissioner's Directive. We accept the following.

> (a) to visit members of the family,
> (c) to attend functions, lectures, seminars, or trade exhibitions in connection with special studies or interests,

(d) to prepare for or undertake examinations, assessments or evaluations (where facilities are not available within the institution),
(f) to engage in socio-cultural activities, such as music, art, drama performances, as a participant or spectator,
(g) to engage in community service projects of an individual or group nature,
(h) to make interim arrangements regarding personal business activities, and
(i) to participate in sports (recreational) activities.

But there are two "rehabilitative" reasons unacceptable to the Committee. First, Section 8 (2)(b) of the Directive states:

> to have pre-parole interviews with prospective employers, landlords, sponsors and others, to enhance potential success upon parole or mandatory supervision.

If temporary absence is an institutional matter which has no necessary effect on the inmate's parole, then an absence for such a reason is inappropriate. It may lead an inmate to believe that parole is forthcoming. We suggest that, since this reason is more related to full release under parole conditions, it should more appropriately be the responsibility of the parole authorities to arrange such absences. Secondly, Section 8 (2)(c) states:

> to visit within the immediate community to ease the transition from confinement to freedom,

This implies a gradual release and suggests that the inmate may anticipate parole. If this reason is deemed wise for one particular inmate, it should be authorized and administered through the parole authorities.

The acceptable reasons listed above for all three types of temporary absence are obviously situations of a very limited duration. We are convinced that there should be no provision for "back-to-back" temporary absences since continuous absence constitutes parole and is therefore the responsibility of the parole authorities. Temporary absence provisions should not become, as they have in the past and are now in some provincial systems, substitutes for parole.

The reasons for the absences outlined apply only to inmates in penitentiaries. We feel that provinces should regulate temporary absence procedures in a similar manner since, at the present time, extended absences are common in provincial systems. The establishment of provincial parole boards will bring about the same conflict of roles and repeat the problems encountered in the federal system recently.

ELIGIBILITY FOR TEMPORARY ABSENCES. Temporary absences for medical or humanitarian reasons are situational and unpredictable and there is no need to regulate when an inmate becomes eligible. Any inmate should be granted temporary absence for either reason should the need arise. If penitentiary or prison authorities fear there is a risk in granting temporary absence to certain inmates, they may provide escort. Temporary absences for rehabilitative reasons are more predictable and should be determined by, and contribute to the inmate's adjustments.

Recommendation

46. Temporary absence, from time to time, as provided in the *Penitentiary Act* and *Prisons and Reformatories Act*, should be retained but "from time to time" should not be

interpreted as permitting releases in sequence for a continuous period for rehabilitative purposes.

DAY PAROLE AND TEMPORARY PAROLE. The Committee sees no value in continuing the present distinction between day parole and temporary parole. Both are administered by the National Parole Board and both serve essentially the same purpose.

Recommendation

47. The term "temporary parole" should designate the temporary release measure, authorized by a parole authority, which aids in the fulfilment of an inmate's correctional plan.

The reasons for temporary parole are clearly distinct from those for temporary absence for rehabilitative purposes. Temporary absence is a short term release procedure, authorized by institutional authorities, for reasons more specifically related to an inmate's institutional experience and having less direct relationship with parole decisions. Temporary parole, on the other hand, provides the inmate an opportunity to further his progress in his correctional plan which is more specifically directed to long-term, rather than institutional, adjustment. This may be done in several ways. For example, regarding temporary absences for rehabilitative reasons, we suggested that two of the reasons for such absences were more appropriately reasons for temporary parole since they are more specifically linked to the inmate's eventual return to the community. Temporary parole for purposes of interviews with prospective employers, landlords or sponsors may be crucial to his eventual success on parole. Similarly, opportunities to visit within the community may aid in the transition from institutional to community life. Such leaves would not require lengthy temporary parole and may, in fact, require only one day.

Using another example, an inmate may request temporary parole to begin or continue vocational or academic courses which are not available in the institution or to take advantage of employment opportunities which have long range consequences. Such a request, if granted, would require temporary parole for a relatively long period.

In view of the diverse reasons which might appropriately result in temporary parole, the Committee recognized the difficulties in establishing a maximum period of time allowable to an inmate. The maximum should not be set by a formula but rather established for each individual case, according to the correctional plans of the inmate.

Since there are numerous justifiable reasons for lengthy temporary paroles, there must be guidelines for conditions under which the inmate may live in the community. As we do not want to substitute temporary paroles for discretionary paroles, we feel that an inmate's freedom should be restricted to the purpose for which he was granted leave. For example, an inmate released to attend university or a community college should return to the institution or a designated institution when he is not attending classes. For short temporary paroles which exceed one day, the inmate should, if facilities are available, return to an institution or approved residence in the evenings. But, in this instance also, there is no formula. The requirements of the correctional plan should be followed.

CRITERIA FOR ELIGIBILITY. The Committee emphasizes that, in addition to requirements unique to temporary parole, certain requirements for eligibility for discretionary parole must be respected. The following are the minimum criteria for temporary parole eligibility.

Recommendation

48. The parole authority may grant temporary parole if:

a) the inmate has served one-half of the time prior to the eligibility date for discretionary parole or, in the case of persons serving sentences of life imprisonment or preventive detention, five years;

b) the release of the inmate does not constitute a serious danger or undue risk; and

c) the reasons for temporary parole constitute an integral part of the inmate's correctional plan and thus is oriented toward his eventual reintegration into the community.

No hearing is necessary prior to the decision to grant or refuse to grant temporary parole. However, there may be cases when the parole authority will interview applicants to clarify areas of concern. As there is no requirement for a hearing, no provision for reviewing the Board's decision is provided.

Recommendation

49. A hearing should not be required in the case of an application for temporary parole.

TERMINATION OF TEMPORARY PAROLE. Temporary parole should not exceed the period required for completion of the task for which parole was granted. For example, temporary parole granted to an inmate so that he may attend classes at a university or community college will terminate when the academic year is completed. Should he want to continue his studies the following year, an application for a new temporary parole would be necessary. The inmate should not assume that his temporary release is renewable.

Recommendations

50. Temporary parole should automatically terminate when the purpose for which the inmate was released is completed.

51. A parole authority may terminate a temporary parole at any time if the inmate is not fulfilling the conditions of the parole agreement.

The Committee does not feel there is need to establish a new eligibility date for another temporary parole for an inmate whose temporary parole has been cancelled. If he reapplies, the same criteria must be met. However, more serious consideration should be given to the case by the parole authorities.

Parole With Gradual and Parole In Principle.

Two types of discretionary parole are closely related to temporary parole.

"Parole with Gradual" is, in effect, discretionary parole preceded by temporary parole. This may occur because of the length of time the inmate has been confined. It is a method by which parole authorities attempt to ease the inmate's transition from confinement to community. It is assumed that discretionary parole is imminent. The date on which release is effected is determined by field officers of the Parole Service.

"Parole in Principle" is given when the inmate is granted discretionary parole subject to certain conditions, such as housing or employment arrangements. One of the conditions may be a probationary period of temporary parole. In such a case, discretionary parole will follow only if the period of temporary parole is successfully completed.

References

[1]Committee Proceedings, June 22, 1972.
Brief Nos. 20, 52, 74.

[2]National Parole Board, *Statistics 1971...*

[3]National Parole Board, *Statistics 1971...*

[4]National Parole Board, *Statistics 1971...*

[5]Canadian Penitentiary Service, *Commissioner's Directive No. 228...* pp. 4-6.

Chapter VIII

PAROLE SUPERVISION

Importance of Supervision

This Report has emphasized the concept of parole as a fair and rational measure for public protection. Whether it is such a measure will be determined by the effectiveness of the supervision provided. We consider supervision as the most important function of a parole system. It is the aspect of parole through which the resources are mobilized to control the offender and to assist him in becoming a law-abiding member of the community.

Supervision permits parole authorities to determine how each paroled inmate is meeting their expectations and to assist him in overcoming problems. Should the parolee fail to respond to expectations, the parole supervisor can intervene either by assisting, if the difficulties are not of the parolee's own making, or by having him arrested if his behaviour has led to more encounters with the law.

Supervision is also the process whereby the parolee continues the correctional plan which he undertook while in detention. He can make use of community resources to reestablish himself according to this plan. His parole supervisor maintains contact with him to ensure that he carries out his social and legal obligations.

The parole supervisor has twin roles in this process: he is the authority who controls and the therapist who treats and counsels. How he blends these roles depends on his knowledge and experience and the needs of his client. We are not suggesting that one role is more important than the other – both are necessary for the smooth functioning of the system and for public protection. The more frequent the direct contact between the supervisor and the parolee, the more likely the supervisor will be aware of the problems and needs of his client and take appropriate action. If he is deskbound and paper oriented, he will lose this contact and the result is less public protection and less assistance to the parolee.

Direct contact can be defined in various ways, e.g., contact by phone, office interviews, interviews at home, at work, etc. It can also take place prior to release and after reincarceration when a parole has been suspended or revoked. In his testimony before the Committee, Dr. Chile said that research in other jurisdictions suggests that the amount of time a supervisor spends with his parolees has a significant impact on the outcome of their paroles. The more time spent with them the less serious are their difficulties on parole, they commit fewer offences while on parole and they are able to remain longer under parole supervision in the community.[1] This confirms our view that the parole system should be designed to maximize the number and length of contacts between supervisor and parolee.

A study of attitudes of prisoners toward parole showed that seventy-five per cent of the prisoner sample considered that supervision helps a parolee go "straight". The most positive aspects were judged to be guidance, support and material aid.[2] These constitute the core of direct contact supervision. Witnesses before our Committee were substantially of the same view.[3]

While our evidence is not conclusive, it suggests that resources deployed for direct contacts with parolees are not sufficient. Many field parole officers in the National Parole Service who were interviewed by Committee staff estimated that they spend sixty to seventy per cent of their time closeted in their offices doing paperwork with no direct contact with clients. Two recent surveys, carried out by the Management Consulting Service, Ministry of the Solicitor General, examined the time National Parole Officers devoted to their various tasks.[4] The purpose of the studies was to establish the size of the labour force needed for the workload. The finding was that National Parole Service officers, on the average, devoted three hours per month to each case. Parole Service officers must visit the parolees; see them in their office; meet employers, relatives, friends, prepare warrants and investigate breaches of parole conditions; and write progress reports. All these tasks were included in the monthly average of three hours devoted to the individual parolee. It follows that very little of the three hours is direct contact since only the first two tasks involved face-to-face meetings. A detailed analysis of supervision by these parole officers would probably reveal that direct contacts last only a few minutes.

National Parole Service officers often exercise an indirect form of supervision over some individuals while the direct contact is provided by a private agency caseworker or workers in other public agencies such as provincial probation services. The National Parole Service estimated in the 1971 survey that fifteen minutes per month per case was needed but discovered, in the 1973 survey, that each case required thirty minutes per month. There was no indication that officers had any direct contact with the parolee except in special circumstances. Insofar as concerns caseworkers in agencies and services other than the National Parole Service, it appears that here again the larger proportion of the time involves administration while face-to-face interviews absorb only a portion of direct contact supervision.[5]

Contracts between the Solicitor General and private after-care agencies stipulate that the "society shall, in providing parole supervision, provide the requisite degree of supervision according to the needs of the individual (in accordance with the rules in Appendix B)".[6] With respect to "requisite degree of supervision" and "needs of the individual", the preamble to the Appendix makes the point that the rules are merely guidelines "not restricting flexibility in providing uniquely appropriate service to each individual". In defining contacts, the Appendix states:

> The contacts with the parolee will be as frequent as considered necessary depending on the needs and circumstances of each case. They will be more frequent during the first months following the release from an institution; not less than once a month during the whole release period.
>
> The contacts of the supervisor with the parolee will take place either in an office set-up or preferably they should happen also in the home or place of residence of the parolee. Employers should also be contacted unless they are not aware of the status of their employees as parolees. Contacts made through group counselling meetings and community orientations are also encouraged.[7]

There is nothing in the contracts to suggest that private agencies and other public services must provide more direct contact with the parolee than the National Parole Service. In fact, the contracts provide for payment of approximately $40 per case per month of supervision. The sum will not pay for much more than two or three hours of a

caseworker's time and the costs of administration. An agency contracting for parole supervision may be pressured into minimizing direct contact with the parolee to avoid losing money on the program. If direct contact were to take up all the time paid by contract, there would be no time left for the other necessary work units such as writing reports, travelling to the parolee's home or place of work, making enquiries when problems arise, telephone calls with the parolee, his employer, his family and friends, etc.

After examining the evidence, we can only conclude that the National Parole Service devotes less than an average of three hours per month to direct contact with each parolee and that agencies and services which have contracted with the government for parole supervision, are providing no more. Thus an inmate leaves an institution where he was under guard 24 hours per day to be in direct contact with a parole officer for less than an average of 3 hours per month. It is clear that the system devotes too little time to direct contact supervision to meet the challenge it faces. Staff resources must therefore, either be increased or relieved of other functions in order to devote more time to the more important function of supervision.[8]

Private After-Care Agencies

The Fauteux and Ouimet Reports both described the role of private agencies in the field of corrections generally and in parole in particular.[9] Over the years, the growth of the private after-care agencies has paralleled the increased demand for services through the greater use of probation and parole. The Outerbridge Report documented the involvement and contribution of private agencies in developing community residential centres for released offenders.[10] The importance of the role of private agencies in these developments is recognized.

Nevertheless, representatives of private after-care agencies who appeared before this Committee shared a common uneasiness. The agencies observed the expansion of the public service sector of the parole system from two parole district offices in 1956 to more than thirty in 1974. Expansion of provincial parole services, where they exist, is less dramatic but still leaves private agencies wondering whether they will be pushed out of the parole supervision field by public agencies. Their portion of the work has been gradually dwindling over the years to the point where they are now supervising less than twenty-five per cent of the cases.[11] Their anxiety appears justified. The development of public agencies in recent years has left the private agencies behind and the gap between them is widening.

The Committee noted the important contribution of private after-care agencies in the parole system and considers that their involvement must be maintained. They are an effective channel for public participation that should not be weakened. At a time when parole and other correctional programs are being attacked, greater effort must be made to encourage citizens to participate in these programs. If our proposals are adopted, there will be more opportunities for people to become directly involved.

While we cannot arbitrarily decide what portion of parole supervision responsibilities should be assigned to private agencies, we are concerned about the small fraction of the

workload now being handled by them. Since publication of the Ouimet Report, two important developments have occurred:

1) the announcement by the Solicitor General of dividing the parole supervision caseload equally between the National Parole Service and other agencies (public and private);

2) the replacement of grants to private agencies by payment for services according to contractual arrangements. These have not reversed the trend we have noted and the portion of work assigned to private agencies apparently remains relatively small.[12]

To achieve a standard of direct contact supervision which provides more than the present three-hour-per-month-per-case standard, it will be necessary to expand both public and private services. As public services are expanded, contractual arrangements with private agencies should also be revised. Agencies that can respond to increased demands should be asked to provide more services and consideration should be given to assisting those that cannot meet increased demands. Contracts with private agencies, however, should not exempt them from maintaining high standards of service. Contracts should determine a minimum time of direct contact with parolees or, in some manner, set a supervision standard which provides for more than the existing National Parole Service standard. We do not suggest that supervision be twenty-four hours of surveillance daily. No doubt each case requires individual attention but the requirements of public protection and assistance to parolees cannot be satisfactorily met by periodical office interviews of a few minutes and a few telephone calls. Such an approach is unsatisfactory whether practised by a public or private agency.

Increasing the time of direct contact between parolee and supervisor can also be achieved by using community residential centres. Certainly, for parolees without homes, or those needing a more structured environment to be able to function, community residential centres are ideal. The Outerbridge Task Force found that sixty-five per cent of 714 inmates questioned replied "they would prefer to live in a *post*-release centre for a short period than anywhere else. . ."[13] Parolees can benefit from residing in such centres and can more easily be supervised and assisted since they are in contact with the parole supervisor or his representative sometimes for several hours daily.

Direct contact between parolee and supervisor could also be increased if parole officers provided emergency services on a standby basis. Parole offices should be open during evenings and week-ends when crises tend to occur. Furthermore, supervisors should actively seek ways of making direct contact with parolees. For example, they could meet the parolee at the bus, train or air terminal when he arrives in his community on release from the institution. Selection and training of staff should emphasize the techniques of establishing and maintaining direct contact as well as the skills and sensitivity to enforce parole conditions wisely.

Recommendation

52. **Parole supervision resources should be expanded by:**

a) increasing the staff of public services.

b) contracting for services with private after-care agencies.

c) contracting for service with community residential centres.

Role of the Police in Parole Supervision

Some presentations, written and oral, advocated complete exclusion of police from any role in the administration of parole. Police groups were somewhat divided on this issue: some only wanted to know when a parolee comes to their area; others said that they should have more than a peripheral influence on parole release decisions. A few briefs suggested that agencies other than the parole tribunal should have a direct influence on decisions and some came very close to saying that police should have a veto power. The Committee takes the view that the parole tribunal should be the only authority responsible for decisions. Others may express opinions but they must be prepared to make them known in the course of the parole application hearings. A wise parole tribunal will consult as many agencies as possible on a parole applicant; but it should be only consultation and not binding.

The Committee sees a role for police agencies in supervision through surveillance. Police can effectively exercise surveillance functions as part of their routine but surveillance must not become harassment. Surveillance of parolees by police must be discreet and as thorough as resources permit, but for breaches of parole conditions, only the parole supervisor should intervene. Police surveillance of parolees should not interfere with the freedoms made possible by parole. We think it should respect the principle set out in the Ouimet Report: "The basic purposes of the criminal law should be carried out with no more interference with the freedom of individuals than is necessary."[14] In this way, police agencies could contribute to more effective parole supervision.

We deplore the distrust and hostility that appears to exist between agencies, police, parole and after-care. It is urgent that these barriers be broken in order that parole supervision attain maximum effectiveness. Parole supervision is a cooperative enterprise involving many community agencies, police services, and parole staff.

Exchange of Supervision

a) *Interprovincial and federal-provincial exchanges.* Creation of numerous parole authorities in Canada would require ground rules for exchange of supervision. With only one authority for the entire country, movements of parolees do not create particular problems since transfer of responsibility can be made quickly within one bureaucracy. With a number of parole authorities and several bureaucracies as recommended herein, there would have to be a mechanism for the exchange of supervision between jurisdictions.

Parole conditions could provide for strict residence requirements forbidding movements across provincial boundaries. But this would be an unreasonable restriction especially for parolees seeking work or wishing to return to families, or for other valid reasons. Parole supervision exchanges between jurisdictions could be established by interprovincial contracts or agreements, or through a procedure similar to that provided in the *Criminal Code* for exchange of probation supervision. Whatever the arrangements agreed upon, it should be efficient and expeditious.

Recommendation

53. Parole legislation should provide for an efficient exchange of parole supervision between parole authorities in cases of parolees who, with or without permission, move into another jurisdiction. Such exchange should ensure:

a) continuation of parole supervision,

b) authority to enforce parole conditions or provide assistance to a parolee,

c) execution of arrest warrants upon suspension, revocation or forfeiture of parole issued by a parole authority.

2) *International exchange.* Mobility of offenders is not limited to interprovincial travelling; they can cross international boundaries almost as easily. There are probably several hundred Canadian citizens in foreign prisons and an equally large number of foreign citizens in Canadian institutions. Canadian parole legislation and international agreements should provide for an exchange of supervision between countries. When an inmate is released from an institution for deportation or voluntary departure to another country his sentence is in effect reduced to the time he has spent in detention. These two types of parole release do not include supervision at the final destination. The only condition of the inmate's release is that he must not return to Canada. If he does, his parole is revoked. Most offenders released in this way do not return and, consequently, receive what amounts to preferential treatment by not having any restrictions on their freedom for the remainder of their sentence. In the system we are proposing, all sentenced offenders would be subject either to discretionary parole or minimum parole. In order that such parole not be completely discredited, become meaningless, or constitute preferential treatment, some form of supervision should be arranged in the country where the parolees are going.

The issue of Canadian citizens in foreign prisons should also be settled. There are no statistics available on the numbers involved. We believe that arrangements should make it possible for them to obtain parole from the foreign jurisdiction where they are detained on the same basis as citizens residing in that country. There is a temptation to pay little attention to foreigners in our institutions and to forget or ignore Canadians who have committed a crime while in another country. Such a view disregards the injustice created: they either do not obtain parole or receive unjustifiable advantages because of their status.

The international exchange of supervision of parolees is a complex matter and cannot be treated in the same way as the proposed solution for exchanges between provincial and federal governments. How can parole conditions imposed in one country be enforced in another? Do all countries define offences in the same way? What about so-called political offences? How would suspension, revocation and forfeiture procedures be standardized? How would supervision standards be set? Every aspect of the definition of offences, court procedures, correctional measures and parole decision-making would probably have to be examined before reaching agreements. Despite the difficulties, an effort should be made to provide for this category of offenders.

Recommendation

54. Canadian governments should consider the possibility of agreements with foreign governments on exchange of parole supervision.

Conditions of Parole

In our redefinition of parole, we specifically referred to parole as a conditional release. When the parole authority decides to return offenders to the community, it attaches conditions. If they fail to respect the conditions, they can be returned to correctional institutions to continue serving their sentences in confinement. Our concern, as this point, is with the obligations and restrictions in the agreement between the parole authority and the paroled inmate.

The Committee holds that the conditions of parole should conform to its basic principles of public protection, fairness and coherence. Wise enforcement of the conditions should also lead to protection against further criminal activity. Enforcement which is either too harsh or too lenient could make it difficult for the parolee to function properly. The basic purpose of parole conditions is to regulate the relationship between the parole authority and the parolee and benefits should accrue to both parties.

To ensure some degree of fairness parole agreements should contain the same standard conditions which should be incorporated in the parole legislation. Whenever the parole authority decides to release an offender on parole, it could strike out the conditions which are not considered applicable to his case, e.g., the condition obliging the parolee "to meet his family obligations" if he is unmarried and orphaned. Should he later marry, the condition could be reinserted. In addition to standard conditions, parole agreements must be sufficiently flexible to provide for conditions that may apply in special circumstances, e.g., the need for special medical treatment. The standard conditions should apply to all released on discretionary parole and minimum parole. However, (as explained in the previous Chapter) for those serving sentences of less than six months who are released on minimum parole, only one condition should be necessary, i.e., parole shall be automatically forfeited by conviction for any indictable offence committed during the period of minimum parole.

Failure to conform to parole conditions may lead to the paroled inmate being returned to confinement. It is relatively easy to decide when the parolee has committed an offence and social protection requires his confinement. There are also situations where he may have failed to abide by conditions set in his parole agreement but the issue of social protection is unclear. Violations of parole conditions should therefore be subject to examination in revocation hearings together with the appropriateness and reasonableness of the conditions themselves. The principle of fairness requires this since the parole authority could have imposed unreasonable restrictions for which the parolee should not be held responsible.

Parolees should be bound by all conditions until the expiry of their sentence unless they are specifically exempted by the parole authority. The authority should have the power to delete or vary conditions at the time of release or any time thereafter on its own initiative or at the request of the parolee. It should also be empowered to add special parole conditions to the standard conditions but these should be subject to examination

as to their reasonableness during revocation hearings. Special conditions could provide for: implementation of certain aspects of a correctional plan; abstention from intoxicants; residence in or attendance at a community residential centre, half-way house, medical or psychiatric treatment centre; restrictions on associations with specified persons, etc. They should also be subject to deletion or amendment on the initiative of the parole authority or at the request of the parolee.

Recommendations

55. Standard parole conditions should require the parolee to:

a) obey the law.

b) meet his social and family obligations.

c) endeavour to obtain and maintain steady employment or follow an occupational or educational program.

d) reside at a specified place, and remain within specified geographic limits unless written permission to leave has been obtained beforehand from the proper authority.

e) notify the parole authority of any change of address or employment.

f) report in person to the police as instructed by the parole authority.

g) report to the parole officer and obey his instructions.

h) obtain written permission from the parole authorities before:

i) purchasing or operating a motor vehicle.

ii) incurring debts.

iii) assuming additional responsibilities such as marrying.

iv) owning or carrying firearms or other weapons.

i) refrain from associating with persons known to him to be engaged in criminal activities or, without permission of the parole authority, with persons known to him to have been convicted of a crime.

j) provide accurate information regarding income and expenditures as required by his parole officer.

k) advise his parole officer if arrested or questioned by police.

56. Parole authorities should be authorized by parole legislation to impose special parole conditions.

57. Parole authorities should be empowered to amend, vary, add to or delete parole conditions on their own initiative or upon application by the parolee.

References

[1] Committee Proceedings, April 27, 1972, pp. 16, 29-31.

[2] James L., *Prisoners' Perceptions of Parole: a Survey of the National Parole System Conducted in the Penitentiaries of Ontario, Canada*, Toronto, University of Toronto, Centre of Criminology, 1971, pp. 134-135.

[3] Committee Proceedings, December 16 and 17, 1971, March 1, 1972, April 27, 1972, June 15, 1972, June 28, 1972, March 6, 1973, March 15, 1973, April 10, 1973.
Brief Nos. 15, 21, 61, 73, 75, 116.

[4] Canada, Ministry of the Solicitor General, Management Consulting Service, *National Parole Service: Study on Staffing Standards*, Report No. 32, Ottawa, 1971, and *Revision of Staffing Standards*, Report No. 49, Ottawa, 1973.

[5] Cause, K., Executive Director of the John Howard Society of Ontario, Letter to the Committee dated August 23, 1973.
Cause, K., *Time Study*, Unpublished Memorandum on Use of Time in the Toronto Office of the John Howard Society of Ontario, December 29, 1966.

[6] Standard form for Memorandum of Agreement between the Government of Canada and "... the Society", Appendix A (Procedures for Community Assessment), Appendix B (Parole Supervision).

[7] Standard Form for Memorandum, ..Appendix B, pp. 2-3.

[8] Committee Proceedings, April 27, 1972, pp. 29-31.
Committee Proceedings, June 28, 1972, pp. 28-29.
Committee Proceedings, March 8, 1973, pp. 21-24.

[9] Fauteux Report, Chapter X.
Ouimet Report, Chapters 18-20.

[10] Canada, Ministry of the Solicitor General, *Report of the Task Force on Community-Based Residential Centres*, Ottawa, Information Canada, 1973, Part II, p. 9, (Outerbridge Report)

[11]

Table 2

Per cent of parole cases supervised by private agencies, 1962 - 1971

Year	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
%	50	45	42	49	43	33	30	33	27	22

Source: National Parole Board Statistics for 1962 to 1971.

[12] See reference 11.
Canada, Ministry of the Solicitor General, *Annual Report 1971 - 1972*, Ottawa, Information Canada, 1972, p. 71.
National Parole Board, *Statistics 1971*, Table 2.3, Private and public agencies other than the National Parole Service supervise together less than 50% of the cases.

[13] Outerbridge Report, p. 20.

[14] Ouimet Report, p. 11.

TERMINATION OF PAROLE

There are various ways in which parole may be terminated. We propose changes in the termination procedures to conform with the basic principles which we believe should govern in matters of parole. They affect termination by:

- expiry of sentence
- parole reduced and discharge from parole
- suspension
- revocation
- forfeiture

1) *Expiry of sentence.* In our opinion, this should be the most common form of parole termination. We consider the others, that is, suspension, revocation and forfeiture, as merely temporary stops in the process of completing sentences because, under the system which we propose, an offender who is returned to detention after spending some time on parole would become eligible again for both discretionary and minimum parole. Many such offenders may not be granted discretionary parole but most of them will eventually choose to take their minimum parole entitlement. This process would continue until the full sentence has been completed. Under the proposed system, there would be no parole termination for life sentences, indeterminate sentences of preventive detention, or for sufficiently long definite sentences. These sentences would only be terminated by the death of the offender.

2) *Parole reduced and discharge from parole.* The present parole authority now has the power to change parole conditions at any time, even to the extent of relieving the paroled inmate of all the terms and conditions of his parole agreement. Gradual reduction of the number of conditions usually takes place as the parolee progresses in social reintegration. After several months on parole, there is generally sufficient indication whether he can function on his own and no longer requires either frequent contacts with his parole supervisor or control by reporting to the police. The latter obligation can be lifted and visits to the parole officer can be spaced out. Other restrictions on his mobility, and those relating to employment, income, expenditures, ownership and operation of a motor vehicle, debts, etc., can be removed as the parolee demonstrates his readiness to meet his obligations without being specifically required to do so by parole conditions. This process of lifting parole restrictions is called "parole reduced" by the parole administration. Nevertheless, the parole authority retains and should continue to retain the power to suspend and revoke parole.

The National Parole Board is further authorized to grant discharge from parole under Section 10 (1) (d) of the *Parole Act*, which reads as follows:

> grant discharge from parole to any paroled inmate, except an inmate on day parole or a paroled inmate who was sentenced to death or to imprisonment for life as a minimum punishment,

"Discharge from parole" is defined in relation to suspension, revocation and forfeiture procedures in Sections 10 (1) (e), 16(1) and 17(1) of the *Parole Act*, which provide that, if a parolee is discharged from parole, the parole authority cannot suspend, revoke or forfeit his parole even though the sentence of the court has not yet expired.

Accordingly, except in the case of inmates released on day parole (temporary parole) and of paroled inmates serving commuted death sentences or life sentences imposed as a minimum punishment, the parole authority is now empowered to remove parole conditions to the point where it can no longer intervene in the sentences. For example, an offender serving a thirty year sentence who has completed seven years in penitentiary and six years on parole may be granted a discharge. If, during the fourteenth year of his sentence, his behaviour starts deteriorating and he is in danger of committing a serious offence, the parole authority can no longer suspend his parole. This power to discharge from parole extends to dangerous sexual offenders, habitual criminals and other types of dangerous offenders who have been on parole for approximately six years. In our opinion, the power is now too broad.

The Hugessen Report proposed a relatively automatic method of terminating parole after eighteen months. It would be mandatory for the parole authority to review the case after the inmate has been on parole for eighteen months and to justify the continuation of parole beyond that period. This is based on statistical data which show that breaches of parole tend to occur within one year of release, or soon after, and the fear that prosecuting authorities will, in some way, pressure parole authorities to revoke parole rather than "go through the difficulties and uncertainties of prosecution in the courts in the normal way".[1] A responsible parole authority does not submit to such pressure. It should act as an independent tribunal and should not use its powers to suit the prosecuting authorities any more than it should act as a clemency tribunal or prison management board. Even though parolees tend to violate parole within one year of release and there may be occasion at that point (twelve months or eighteen months) to reduce parole conditions substantially, the power to intervene by way of revocation or forfeiture should be retained for public protection and, perhaps, the interests of the parolee.

The Committee agrees that parole tribunals must have the power to alter some parole conditions by additions or deletions to suit each case. Consequently, a process of reviewing cases as parolees progress towards their goal of successful social reintegration should be maintained. Such a process should involve gradual reduction of parole conditions but should stop short of removing the power of revoking or forfeiting parole. Offenders serving long definite terms or life or indeterminate sentences may do well on parole, apparently justifying removal of all parole conditions. But, if, later in life during their parole, they threaten the security of the public, it should be the duty of the parole authority to intervene. A parole authority which is given power to determine that a sentence is to be served in the community should not have the power to prevent itself from taking appropriate action when necessary. If termination of the sentence is the desired objective, it should be effected by the appropriate clemency tribunal.

Recommendation

58. Parole legislation should not be utilized to terminate sentences and the power to discharge from parole before its expiry should be abolished.

3) *Suspension.* Suspension of parole is an interim measure rather than final termination of parole. It is used to initiate a review of the case to determine whether the parolee should be returned to detention by revocation or allowed to remain on parole despite uncertainty about his behaviour. We examine certain aspects of suspension procedures that need modification to conform with our basic principles. The following have been drawn to our attention by reports, oral testimony and written briefs:

- statutory reasons for suspension"...that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole, or for the rehabilitation of the inmate or the protection of society."[2]
- time taken by the parole authority to decide whether to revoke parole.
- committal warrant upon suspension of parole must be endorsed by the magistrate.

i) *Reasons for suspension.* Parole conditions, except that which requires parolees to obey the law, relate to behaviour which would not be considered criminal or reprehensible in the case of a person other than a parolee. It is, therefore, difficult to understand why a parolee should be arrested to prevent a breach of any term or condition of parole.[3] This implies the inevitability of a violation or breach. We question that this can be clearly foreseen.

A "therapeutic suspension", i.e., arresting for the rehabilitation of the paroled inmate, is similarly questionable. It is not clear what "arrest for the parolee's rehabilitation" means. No evidence has been submitted on the rehabilitative effects of arrest and incarceration for a brief time. In the absence of such evidence, it appears wrong to incarcerate paroled inmates without evidence of an actual substantial breach or of serious danger. There are other controls available to the parole supervisor. Parole conditions can be modified and made more stringent. If the parolee has committed a crime, arrest is justified. If the crime is an indictable offence punishable by a term of two years or more, his parole may be forfeited automatically by conviction. If the courts decide to keep him in custody until his trial, there is no further danger to the public but, if he is released on bail, it may be necessary to consider whether his total behaviour constitutes a breach of parole and, perhaps, suspension should be ordered. If he has not committed a crime or breached parole conditions, or otherwise became a danger to the public, we do not see how incarceration for "rehabilitation" can be justified. There should be more specific reasons to justify arrest upon suspension of parole. In our opinion, the only instance in which broad discretion should be allowed, because specific guidelines cannot be provided, is arrest for the protection of society.

Recommendation

59. Parole legislation regarding suspension of parole should provide that suspension be justified only:

a) when the parolee has breached any of the terms or conditions of parole, or is about to commit an offence, or

b) for the protection of society.

ii) *Delays in suspension cases.* Present suspension procedures involve two separate instances when a decision to release or to detain the suspended parolee must be made. The first occurs fourteen days after the arrested parolee has been remanded in detention by a magistrate. At that time, the person who signed the warrant or the one designated by the parole authority for that purpose must either cancel the suspension or refer the case to the National Parole Board.[4] If he cancels the suspension, the parolee returns to his former status. If the case is referred to the parole authority, the latter is required to make inquiries and "forthwith upon completion of such inquiries and its review. . .either cancel the suspension or revoke the parole".[5] This procedure raises two problems. First, if the parole tribunal delays making a decision, there are no provisions whereby the parolee can determine when the decision will be made. Evidence submitted to this Committee referred to delays of more than six months. The word "forthwith" is, in practice, meaningless. Secondly, there is no requirement for the signer of the warrant or the "person designated" to tell the arrested parolee what is happening and when. He is not required to inform the arrested parolee if he has referred the matter to the parole authority and the situation will not be clear to the parolee until he receives the decision of the authority.

Recommendations

60. The suspended parolee should be brought before a member of the parole authority within fourteen days of execution of the warrant of suspension, unless the suspension has been cancelled in the meantime by the authorized representative of the parole authority.

When the parolee is brought before a member of the parole authority, the member should be required to:

a) inform the parolee in writing of the alleged parole violations with which he is charged and set a date for a revocation hearing to be held no later than thirty days after his appearance before that member, or

b) cancel the suspension.

The parole authority should be required, within fifteen days of the revocation hearing, to:

a) revoke the parole, or

b) cancel the suspension.

If the parole authority fails to respect the time limits herein set out, the warrant of committal should become null and void and the parole automatically reinstated, except where the delay is caused by legal procedures instituted by the parolee.

61. The parole authority should be required to revoke parole without a hearing if the parolee has not been found and arrested within sixty days of the date on which the warrant was issued.

iii) *Committal warrant – role of the court.* The *Parole Act* now requires that the parolee whose parole has been suspended be brought before a magistrate after his arrest as soon as conveniently possible. The Act then requires the magistrate to "remand the

inmate in custody until the suspension of his parole is cancelled or his parole is revoked or forfeited".[6] The magistrate has no discretion in the matter. We have no evidence that the courts need to be involved in this process. Immigration officers have the power to issue committal warrants which do not require court intervention and this does not appear to cause any difficulty. We believe that parole officers, authorized to issue warrants of apprehension, should also be able to order the detention of a parolee without referring the case to court. This should also apply to warrants of committal upon revocation and forfeiture.

Recommendation

62. Parole legislation should empower the parole authority to order detention of a parolee upon suspension, revocation or forfeiture of parole without reference to a court. It should also permit delegation of the power to order detention upon suspension of parole to designated officers of the parole authority.

4) *Revocation.* Revocation is a method of terminating parole which is directly related to violations of parole conditions. It is a discretionary procedure as opposed to the automatic procedure of parole forfeiture. Parole revocation in the system we are proposing would not be very different. It would still involve a substantial degree of discretion but would not be complicated by the remission provisions and, furthermore, the time to be served following revocation would be limited to that which remains to be completed at the time the warrant of apprehension was issued (as indicated on page 114). Complaints of unfairness centering on loss of remission time and less of time served on parole will thus be eliminated but complaints about the lack of fair procedure will continue if the revocation procedures are not improved. These complaints relate basically to uncontrolled discretion.

In our opinion, parole revocation procedures must be regulated. In all cases where revocation is being considered, except those where a warrant of suspension has not been executed within sixty days, a hearing should be held before the decision to revoke is made. The hearings should be governed by the same rules as those governing parole application hearings (Chapter VI) with the following additional features:

i) *Written notice of hearing.* The notice would generally be given to the parolee by the member of the parole authority before whom he appears after his arrest upon suspension of parole. The only exception would be in the case of the parolee who has disappeared and cannot be found within sixty days of the date of issue of the arrest warrant.

ii) *Disclosure of relevant information.* Along with the written notice of the revocation hearing, the parolee would be provided with a written statement of the alleged parole violations. Procedures should ensure that information about the violations required for the hearing is produced at least seven days prior to the hearing.

iii) *Right to be present and to be heard.*

iv) *Giving reasons for the decision.* In the case of cancellation of the suspension order, the paroled inmate is merely returned to the community with the same status. If, however, the decision is to revoke parole, he must be made aware of the length of term

he will be required to serve and what he must do to qualify for parole consideration again. He should also be told when he will become entitled to minimum parole. Finally, he should be told how the revocation decision may be reviewed.

Recommendation

63. Parole legislation governing parole revocation hearings should include provision:

a) for written notice of hearing,

b) for disclosure of relevant information,

c) for the right to be present and to be heard.

d) for giving reasons for the decision.

ASSISTANCE AT REVOCATION HEARINGS. Parolees should not have the right to legal counsel but assistance should be permitted on the same basis as proposed in Chapter VI.

REVIEWS. The review of revocation decisions should follow the same process as recommended for parole application hearings in Chapter VI.

Eligibility for Parole Following Revocation.

Parole legislation now specifies where the parolee whose parole has been revoked will serve the remainder of his sentence, and the length of time he will serve. In the system we recommend the length of time would be different since there would be no remission and time successfully completed before a suspension warrant was issued would be credited towards completion of the sentence. The present provisions for determining where he will serve the remainder of his sentence are adequate. If released from a provincial institution, he should be returned to the same institution or one which corresponds to it where he is arrested and parole is revoked in a different territorial jurisdiction. With respect to eligibility for parole in the future, it is our view that the time to be served upon revocation should be considered a new term and subject to the same process as the original term, i.e., eligibility at one-third for discretionary parole and minimum parole entitlement at two-thirds.

Recommendation

64. The remainder of the sentence to be served following revocation of parole should be considered a new term.

5) *Forfeiture.* If a parolee commits an indictable offence punishable by a term of imprisonment of two years or more, his parole is automatically forfeited. He is returned to detention to serve the remainder of the original sentence plus any new term imposed for the second offence. The law now provides that these two terms must be served consecutively. The role of the parole authority is limited to taking cognizance of the conviction for another offence and issuing warrants of arrest and/or committal upon forfeiture. Section 18(1), of the *Parole Act* provides that: "If any parole is . . . forfeited, the Board . . . *may*, by a warrant in writing, authorize the apprehension of the paroled inmate" (emphasis added). As we have already seen, conviction for an offence

automatically forfeits the parole, but issuing the warrant is not made mandatory or automatic in the case of the offender who is not detained following conviction for the offence committed while on parole. But the effect of forfeiture, as provided in Section 21 (1) (a) to (c) of the *Parole Act*, is to require the serving of the two terms.

It appears that the original intent was to make the commission of an indictable offence during parole a serious breach which left no discretion to the parole authority or the courts. However, the statute, as it is now written, leaves the issuing of a warrant of apprehension upon forfeiture of parole to the discretion of the parole authority. In our opinion, discretion is inappropriate because the commission of serious offences during parole and violation of a trust are grave matters. The offender should return to detention to serve both terms consecutively if a sentence is imposed for the second offence, and re-establish his suitability as a parole applicant as if he were imprisoned for the first time. We do not consider that such an offender should have to serve more than one-third of the total new term before becoming eligible for discretionary parole. The regulation which requires serving of one-half before this eligibility does not appear to be justified.

Recommendations

65. Parole legislation should provide:

a) for forfeiture of parole upon conviction of an indictable offence punishable by a term of two years or more,

b) for issuance of warrants of apprehension and/or committal upon forfeiture of parole,

c) that the new sentence be consecutive to the remainder of the original sentence.

66. The parole regulation which requires the serving of one-half of the term imposed or seven years, whichever is the lesser, should be repealed in the case of those who have forfeited parole.

TERMINATION OF MINIMUM PAROLE. The procedures for parole termination outlined in this chapter can apply to all cases of discretionary and minimum parole except those of minimum parole of less than two months.

The category of short sentences, i.e., less than six months, would be treated somewhat differently. These cases are not examined for parole automatically but only upon application. There is no automatic procedure for setting an eligibility date for discretionary parole but special provisions are proposed to establish the minimum parole entitlement date. Inmates in this category released on minimum parole would not be supervised nor subjected to standard or special parole conditions. In fact, there is only one condition that should be set out in the minimum parole certificate: if the parolee commits any indictable offence during his minimum parole, it would be automatically forfeited. The effect of forfeiture would be that any offender whose minimum parole has been forfeited by conviction for an indictable offence would have to serve the remainder of his parole in confinement plus any new term that may be imposed. The forfeiture should be deemed to have taken place on the day on which the offence was committed. Because of the short time involved, it would be incumbent upon the courts and police to determine whether the person had completed his parole when he committed the

subsequent offence and to communicate with the appropriate parole authority. The parole authority would then issue its warrant of arrest and/or committal upon forfeiture of parole.

CREDIT FOR TIME SERVED ON PAROLE. Under our present parole system the time served successfully on parole is not credited to the serving of the sentence. The Ouimet and Hugessen Reports recommended partial crediting of parole time,[7] as in some systems. In our opinion, it is unfair not to allow credit for time not on parole. All time served on parole should count so that sentences terminate as prescribed by the courts.

There are only three cases where there could be an "apparent" loss:

1) the time between the date on which a warrant of apprehension upon parole suspension was issued and the date of arrest, if the arrest does not take place immediately.

2) the time between the date on which a warrant of apprehension upon suspension of parole was issued and the date of arrest on a revocation warrant, if the arrest does not take place before revocation is ordered.

3) the time between the date on which an indictable offence punishable by a term of two years or more is committed and the date of conviction which automatically forfeits the parole.

In the first two examples, time can only be counted after committal on suspension or revocation because the authority to remain out on parole will have been withdrawn. In the third instance, the conviction for the offence determines whether parole is forfeited. Until found guilty, he is presumed innocent and, consequently, his parole situation is uncertain. If he is not found guilty, the time counts towards the completion of the sentence whether he was detained while awaiting trial or released on bail. These are the only exceptions and they arise either because the parolee successfully eludes arrest or is awaiting final determination of his guilt or innocence. If found innocent, he loses no time; if guilty, he pays the penalty for having committed another offence while on parole.

Recommendation

67. Time successfully served on parole should be credited toward completion of sentence.

References

[1] Hugessen Report, p. 29.

[2] *Parole Act*, Section 16 (1).

[3] *Parole Act*, Section 16 (1).

[4] *Parole Act*, Section 16 (4).

[5] *Parole Act*, Section 16. (4).

[6] *Parole Act*, Section 16 (2).

[7] Ouimet Report, p. 350.
Hugessen Report, p. 41.

Chapter X

PAROLE AND NATIVE OFFENDERS

Approximately eight per cent of the total penitentiary population is composed of native people. They comprise as much as one-quarter of the population of some federal institutions in Western Canada.[1] The number of natives in provincial institutions is also known to be very large.[2] Considering the ratio of native people to total population, the native population in correctional institutions is disproportionately high. But the sources of the native offender's problems reach well beyond parole or the criminal justice system. They originate in the economic, social and cultural conditions of native people. We concur with the "Native Viewpoint" expressed in the brief on behalf of the inmates of Drumheller Institution that there is "no doubt that any final answer to the problem of Native offenders must await a solution to the general social and economic conditions under which the Native people live."[3]

In its brief to the Committee, the Federation of Saskatchewan Indians submitted that:

> ...the Indian parolee was obliged to tailor his parole plan in order to meet supervision requirements regardless of whether or not his preference lay in returning to the reserve. With a move to the city often came a burden of general cultural adjustment, the stigma of being a criminal coupled with the pressures of prejudice and discrimination experienced because of his Indianness, and the culturally based problems in communication between himself and his non-Indian parole supervisor.[4]

We believe that the preference expressed by the native offender regarding his destination upon release on parole should be respected within reasonable limits. To ask those from relatively isolated rural areas to fulfill their parole conditions in cities because supervision is more readily available risks their further alienation. Although there is a greater availability of resources, both educational and occupational, in urban areas, these should not necessarily determine whether native offenders should serve their parole time in such centres unless they have expressed a desire to move to the city and have initiated a correctional plan which may be completed in the city. Similarly, the urbanized native offender should not be forced to return to a rural area simply because it was his "home".

The system proposed in this Report may contend more adequately with some of the problems of native offenders because our concept of a correctional plan for each inmate is designed to ensure greater consideration for individual cases. It is possible, at present, for release plans to be formulated only at the time the offender applies for parole.

The correctional plan proposal, with direct participation of more native workers, would be valuable in determining realistic alternatives for native offenders. At present, there are a small number of native workers in the correctional field. The Commissioner of Penitentiaries, in his presentation to the Committee, on March 8, 1972, stated that the Penitentiary Service at that time employed eleven native staff members.[5] The National Parole Service as of March 6, 1973, had, according to the testimony of the Vice-Chairman of the National Parole Board, "four or five" native workers.[6] Provincial systems also have some native staff workers. For example, of approximately ninety supervisors in the

Alberta Adult Probation Branch, nine are Indian or Métis. Clearly, their numbers do not meet the need, particularly in light of difficulties in communication between native offenders and their supervisors. Besides the need to involve them in correctional planning, we believe that greater use should be made of native workers in all phases of corrections, including supervision, in urban areas, on reservations and in more remote areas. If it is impossible to provide professional workers, members of native service groups or agencies and suitable native people should be recruited.

We believe that institutional programs should be representative of the sum total of individual correctional plans. In some instances, therefore, they would be oriented to the cultural, social and economic needs of native offenders. The same effect on parole programs could be expected and could result in the creation of appropriate community based institutions.

Recommendations

68. Where appropriate, correctional authorities should employ native workers in all phases of the correctional process.

69. Where appropriate, parole authorities should contract with native service groups or agencies for supervision and related correctional work.

70. Consideration should be given to the desirability and feasibility of establishing community correctional centres staffed mainly by natives and primarily for native offenders.

The Committee also believes and has recommended (in Chapter V) that, in regions where there is a large native inmate population, natives should be represented on parole boards.

References

[1]Committee Proceedings, March 8, 1972, p. 41.

[2]Canadian Corrections Association, *Indians and the Law*, Ottawa, Information Canada, 1967, Chapter VI.

[3]Committee Proceedings, June 22, 1972, p. 30.

[4]Committee Proceedings, April 11, 1973, p. 20.

[5]Committee Proceedings, March 8, 1972, p. 41.

[6]Committee Proceedings, March 6, 1973, p. 36.

SPECIAL CASES

The *Criminal Code* contains special provisions covering certain categories of offenders. These include individuals under preventive detention (dangerous sexual offenders and habitual criminals) and those convicted of murder. We find the existing provisions in Part XXI of the *Code* governing dangerous sexual offenders and habitual criminals to be inadequate and we recommend dangerous offender legislation as an integral part of the parole system which we propose. Determining which offenders are dangerous should not be the sole responsibility of parole authorities.

Dangerous Offenders

Offenders considered to be dangerous without being dangerous sexual offenders are presently incarcerated for a period of preventive detention. Section 688 of the *Criminal Code* provides that an accused is an habitual criminal if, since the age of eighteen, he has on three separate occasions been convicted of an indictable offence punishable by five years and is leading a persistently criminal life, therefore requiring preventive detention for the protection of the public.

The Ouimet Committee, after examining life records of eighty individuals who, on February 26, 1968, were serving sentences of preventive detention, concluded that the legislation has been applied in large part to offences against property. It pointed out:

> 1. that almost 40 per cent of those sentenced to preventive detention would appear not to have represented a threat to the personal safety of the public.
>
> 2. That perhaps a third of the persons confined as habitual offenders would appear to have represented a serious threat to personal safety.
>
> 3. That there is a substantial number within the 80 persons with respect to whom there is not enough evidence to warrant a conclusion that they represented a serious threat to personal safety.[1]

The legislation thus appears to be too broad in that application has resulted in the incarceration of a number of offenders who, although persistently criminal, may not be dangerous.[2] At the same time, it is not broad enough because, as suggested in the Ouimet Report, it does not provide for indefinite incarceration of those who may be dangerous:

> ...clearly seriously dangerous offenders are beyond its reach because of the requirement of three previous convictions for an indictable offence for which the offender could have been sentenced to imprisonment for five years or more. The present legislation does not protect society against the offenders from whom society requires maximum protection.[3]

The Committee accepts the opinion of the Ouimet Committee that persistent offenders can be dealt with by appropriate sentences provided by the *Criminal Code*. This means that preventive detention should be used exclusively for those considered to be serious threats to public safety.

Dangerous sexual offender legislation, as contained in Section 687 of the *Criminal Code*, defines a dangerous sexual offender as:

> . . . a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses.

Where an accused has been convicted of rape, sexual intercourse with a female under fourteen years, indecent assault on a male or female, buggery, bestiality, or gross indecency, or of an attempt to commit any of these offences, the court must, upon application, hold a hearing to determine whether the accused is a dangerous sexual offender.[4] The evidence presented at the hearing must include the expert testimony of at least two psychiatrists, one of whom is nominated by the Attorney General.

We accept the conclusion of the Ouimet Committee that this legislation is "capable of being applied against, and has in fact been applied against, sexual offenders who are not dangerous."[5] It suggested that the basis upon which dangerous sexual offenders are defined is inadequate and concluded that the dangerous sexual offender is "only one class of dangerous offender and the present legislation obscures this fact."[6]

Recommendation

71. The present legislation on habitual criminals and dangerous sexual offenders should be repealed and replaced by dangerous offenders legislation which would set criteria for identification of dangerous offenders and a mechanism for the assessment of persons alleged to be dangerous.

Criteria for Identification

Dangerous offender legislation must be formulated to provide for incarceration of dangerous individuals but explicitly excluding persistent petty offenders who are not dangerous. Criteria for identifying dangerous offenders should not be based so much on the number of offences as on the type and circumstances of the offences and on the character of the offender.

The *Model Sentencing Act* covers two distinct categories of dangerous offenders: the assaultive criminal and the racketeer.[7] An offender would be sentenced as a dangerous offender if any one of the following applies:

> . . . (1) he inflicted or attempted to inflict serious bodily harm, and he has a propensity to commit crime; (2) he committed a crime (such as arson) which, intended or not, seriously endangered the life or safety of another, he has a previous criminal conviction, and he has a propensity to commit crime; (3) he is a participant in organized crime, racketeering.[8]

The Ouimet Report, on the other hand, defined a dangerous offender as one who:

> . . . has been convicted of an offence specified in this Part (of the Criminal Code) who by reason of character disorder, emotional disorder, mental disorder or defect constitutes a continuing danger and who is likely to kill, inflict serious bodily injury, endanger life, inflict severe psychological damage or otherwise seriously endanger the personal safety of others.[9]

It should be noted that this definition excludes persons involved in organized crime. The Ouimet Report suggested that, since definite terms of suitable length for such persons are now provided, "no special statutory provisions are required to deal with the offender who has committed an offence involving organized crime."[10]

In addition, the Ouimet Committee made a further distinction between the person involved in organized crime and the offender who is suffering from a severe personality disorder:

> The punitive or deterrent aspect of sentencing is absent in the case of the offender who is dangerous because of a character or personality disorder.
>
> The emphasis is on the protection of the public by segregation and treatment. . .
>
> It would appear to the Committee that in this case (organized crime) the deterrent aspects of sentencing become paramount, although the protection of the public is also achieved by the removal of the offender from society by the imposition of long terms of imprisonment.[11]

Our Committee accepts the definition of individuals involved in organized crime set out in the *Model Sentencing Act*, and we agree that such individuals should be considered dangerous offenders.

In determining whether an offender is dangerous, we suggest that the following factors be taken into account:

1) *The offence with which a person is charged.* The Ouimet Committee proposed a tentative list of offences, any one of which, when accompanied by certain circumstances, would be sufficient to consider the offender as dangerous.[12]

We concur with its list, which is as follows:

(a) Manslaughter (punishable by life imprisonment) when caused by deliberate violence.

(b) Attempted murder (punishable by life imprisonment).

(c) Causing bodily harm with intent or shooting with intent under section 216 of the Code (punishable by fourteen years imprisonment).

(d) Robbery (punishable by life imprisonment).

(e) Arson committed under such circumstances as to endanger human life (punishable by fourteen years imprisonment).

(f) Doing anything with intent to cause an explosion with an intent to cause death or serious bodily injury or which is likely to endanger life (punishable by life imprisonment).

(g) Kidnapping or forcible confinement under s. 233 (1) of the Criminal Code (punishable by life imprisonment).

(h) Rape (punishable by imprisonment for life).

(i) Attempted rape (punishable by imprisonment for ten years).

(j) Carnal knowledge of a girl under the age of fourteen (punishable by life imprisonment).

(k) Indecent assault on a female (punishable by five years imprisonment).

(l) Buggery (punishable by fourteen years imprisonment) when committed against a person under a stated age.

(m) Indecent assault on a male person (punishable by ten years imprisonment) when committed against a person under a stated age,

(n) Gross indecency (punishable by five years imprisonment) when committed with or against a person under a stated age,

(o) Breaking and entering a dwelling house (punishable by life imprisonment) when accompanied by violence against any person therein.

We would add the offence of hijacking (punishable by life imprisonment).

The Ouimet Report goes on to point out that:

> The majority of those who commit the offences which would permit the proposed dangerous offender legislation to be invoked are not dangerous in the sense that they are likely to continue to commit violent crimes.[13]

We re-emphasize this point. The offence with which the person is charged serves as the initial indicator or warning signal to the authorities of the possibility that he may be dangerous. We simply submit that, because of the offence, he warrants consideration as a dangerous person. It is then necessary to determine if, in fact, the offender could continue to be dangerous.

2) *Circumstances surrounding the offence.* Circumstances surrounding an offence rather than the offence itself may be a better indicator of whether the offender is dangerous. There is a considerable difference between the offender who assaults another person in the course of an argument and the one who assaults with weapons or in a planned, rational manner.

3) *The offence being part of a continuing dangerous criminal career or activity.* An offender, who, in the past, has committed offences similar to the one which warrants consideration of application of dangerous offender legislation, is more likely to be categorized as dangerous than one who has no such previous convictions. His criminal career may be periodically marked by such offences.

The term "activity" is used to denote ongoing involvement in illegal behaviour of an organized nature. We believe that it is unreasonable to define a specified number of offences as in the existing legislation. Previous offences must, however, be considered. The proposed system has the advantage of providing for incarceration of those who have committed only one dangerous act if they are considered dangerous.

4) *The offender having a propensity toward violence.* This can only be determined by a thorough examination of the character of the accused using the most sophisticated techniques available, i.e., psychiatric examinations and social case histories.

The Committee recognized the difficulty of defining "propensity toward violence" for purposes of predicting future behaviour. The criteria we have set out are not infallible but the proposed system offers an advantage over the old system in that it would be applicable to a greater number of dangerous offenders. A system that is designed to protect society cannot take chances. If dangerous offender legislation is invoked, the system would retain some control over the offender for his lifetime after he has been released from incarceration. For the offender who proves not to be dangerous, this would not be an unreasonable hardship since it is likely that he would have received a long

definite sentence for the offence. We stress the need for control even in cases where there may be some doubt.

Mechanism for Assessment

The Committee feels that procedures similar to those outlined in the Ouimet Report for the assessment of dangerous offenders are appropriate:[14]

- That dangerous offender legislation empower the court, when it is of the opinion that an offender may be dangerous, to remand him to a diagnostic institution for a maximum period of six months for assessment.
- Should the offender be diagnosed dangerous, he will be given suitable notice that the issue will be decided by the court.
- The offender will have the right to defend himself, and be provided with counsel if he is unable to retain counsel himself.
- If the diagnostic facility does not assess the offender as dangerous, or where the court does not find the offender dangerous, he will be dealt with like an ordinary offender.
- If the court finds the offender is dangerous, he will be sentenced according to provisions of the dangerous offender legislation.
- Such legislation should provide the offender with the right of appeal on any ground of law or fact.

Term of Imprisonment

The advantages and disadvantages of long definite sentences and indeterminate sentences have been well documented. This Committee believes that an indefinite sentence is appropriate for dangerous offenders. Long definite sentences may be imposed under the provisions of the *Criminal Code* for those who commit certain offences considered dangerous. For example, anyone who commits robbery is liable to imprisonment for life; causing bodily harm with intent is punishable by fourteen years. We suggest that anyone who commits such an act should be assessed to determine if in fact he is dangerous. It is reasonable that, if the offender is considered dangerous, his sentence should exceed that of the non-dangerous offender, since dangerous offender legislation is applied because of the probability that he will continue to represent a danger. An indefinite sentence thus provides the public with maximum protection through a long term of imprisonment during which careful study can be given to the offender's eventual release. Some of this protection would be provided because the offender will be on parole for life. The indefinite sentence does not, then, preclude the possibility of parole nor does it preclude a subsequent reduction in parole conditions. It does, however, provide some degree of social protection for the duration of the offender's life.

Recommendation

72. Dangerous offender legislation should provide for preventive detention for an indeterminate period as now provided for dangerous sexual offenders and habitual criminals.

The Committee believes that a minimum period of incarceration prior to parole for dangerous offenders should be set by law. This ensures that a dangerous offender will be treated like other offenders who must serve at least one-third of their sentences. It is important, too, that an adequate period of time be provided for assessment and treatment within an institution.

Recommendation

73. Dangerous offenders should be required to serve a minimum of ten years before being eligible for discretionary parole.

Dangerous offenders should be treated like other inmates in such parole matters as his right to apply for parole, right to refuse parole, collection of data and case examination, subsequent examinations and review procedures. (See Chapter VI.)

Considerable emphasis must be placed on the question of risk since all inmates incarcerated under dangerous offender legislation would, at least initially, be considered high risks. Supervision must be more intense than in other parole cases because of the element of risk and the fact that dangerous offenders have been incarcerated for a period of at least ten years. A high degree of control may be necessary particularly during the early parole period.

Their eligibility for temporary parole should be set at one-half of the time required before eligibility for discretionary parole. (See Chapter VII.) This applies to all inmates and, for dangerous offenders, it would be five years. They will not, of course, be eligible for minimum parole since their term of imprisonment is indeterminate.

In view of the element of risk involved, we believe that parole decisions in the case of dangerous offenders should be reviewed by the Headquarters Division of the federal parole authority. In the recommended system, the Headquarters Division would have authority to change decisions made at the regional level.

Recommendation

74. The Headquarters Division of the federal parole authority should review all decisions of Regional Divisions in the case of the dangerous offender.

Murderers

Individuals sentenced to life imprisonment as a minimum punishment, or to life imprisonment following commutation are necessarily a special category of offenders. Their incarceration as well as their parole are subject to special legislation.

The *Criminal Law Amendment (Capital Punishment) Act* enacted in November, 1973 provides that a person sentenced to life imprisonment for murder or a person whose death sentence was commuted to imprisonment for life, shall not be released on parole

until at least ten years of the sentence have expired and the National Parole Board, by a vote of at least two-thirds of its members, decided that parole should be granted, subject to the approval of the Governor in Council. Section 3 (2) of the Act provides that the judge may, with or without the recommendation of the jury, substitute "a number of years that is not more than twenty but more than ten" as the minimum time to be served before becoming eligible for parole.

The Committee finds no evidence justifying special parole provisions for this category of offenders. A person convicted of murder may not need to be incarcerated any longer than dangerous offenders, rapists or hijackers. Moreover, for reasons set out in Chapter III, we believe that responsibility for parole decisions should lie with the parole authorities and not with the courts. In our opinion, it is not possible to predict many years in advance when a man will be ready for parole.

Recommendations

75. Inmates serving sentences of life imprisonment for murder or as a result of commutation of a death sentence should be eligible for parole when they have served ten years.

76. Parole decisions in cases of inmates serving sentences of life imprisonment for murder or as a result of commutation of a death sentence should be made by the Regional Division and, in all cases, should be reviewed by the Headquarters Division.

If our recommendation is implemented, there would be no need for the Governor in Council to take responsibility for parole decisions. The Headquarters Division would provide a check on the Regional Division. Since at least five Board members and possibly up to nine would be involved in the decision at the regional level and perhaps the same number at the Headquarters Division, murderers, like dangerous offenders, would be subject to more careful consideration in respect of parole.

Individuals convicted of murder should be treated like other inmates with respect to the right to apply for parole, right to refuse parole, collection of data and case examination, subsequent examinations and review procedures. (See Chapter VI.)

Section 3 (2) of the recently proclaimed *Criminal Law Amendment (Capital Punishment) Act* provides that: no inmate serving a life sentence shall become eligible for temporary absence or day parole (temporary parole) until three years before his eligibility for ordinary parole. The Committee has recommended in Chapter VII that the eligibility date for temporary absences and temporary parole for those convicted of murder should be the same as for all other inmates, that is, one-half of the time served prior to their eligibility for discretionary parole.

Evidence by the Commissioner of Penitentiaries before our Committee indicated that, from 1968 to January 1972, 220 inmates serving life, indefinite sentences, or classified as dangerous sexual offenders were granted 5,986 temporary absences. Only twelve negative incidents occurred.[15] Since only 220 individuals were granted temporary absences it would appear that some selection had already been made resulting in a very low failure rate. We are of the opinion that temporary parole, as well, should be available in advance of the inmate's possible release date on discretionary parole.

References

[1]Quinet Report, pp. 251-252.

[2]Quinet Report, p. 252.

[3]Quinet Report, pp. 257-258.

[4]*Criminal Code*, Section 689 (1) (a) and (b).

[5]Quinet Report, p. 258.

[6]Quinet Report, p. 258.

[7]N.C.C.D. *Model Sentencing Act*, Article III . . . p. 9.

[8]N.C.C.D. *Model Sentencing Act*, Article III . . . p. 10.

[9]Quinet Report, p. 258.

[10]Quinet Report, p. 265.

[11]Quinet Report, p. 265.

[12]Quinet Report, pp. 259-260.

[13]Quinet Report, p. 260.

[14]Quinet Report, p. 259.

[15]Committee Proceedings, March 8, 1972, p. 33.

Chapter XII

PAROLE STATISTICS

This Report has made little use of statistics on parole because the information is inadequate. It is not reliable enough to give even accurate head counts. It neither permits accurate statistical descriptions nor meaningful assessments of various programs. Parole statistics are not alone in this sorry state. Statistical information on other programs such as remission, probation following imprisonment, temporary absence, etc., is either non-existent or almost meaningless.

A number of illustrations will demonstrate what we have said. First, the information about parole denials, parole releases and parole terminations for 1971 is contained in the National Parole Board publication *Statistics 1971, Part I, Parole Clientele Statistics*. In Tables 2.1, 2.4 and 2.6, the total number of short paroles is never the same. Secondly, in the category of parole release where no supervision is involved, i.e., short parole, parole for deportation and parole for voluntary departure, the total number reported is 166 in Table 2.1, 162 in Table 2.3 and 164 in Table 2.5. There is no justification for these differences and no explanations are given.

If one attempts to determine what happened to a certain category of offenders on parole, statistics do not help. The frequently published failure rate is established on the basis of the number of paroled inmates who are returned to detention for parole violations compared with the number released on parole in a given year. The numbers refer to all categories of offenders who were granted parole and all those who violated their parole during the year. Consequently, no calculation can be made for specific categories. For example, offenders convicted of murder released on parole during 1971 are fewer in number than those in the same category who terminated their paroles.[1] There is no way of measuring their success rate, but this would be more meaningful than an overall rate which combines all categories, i.e., the most serious offender and petty offenders. Parole supervision cannot be equally successful with all categories of offenders and it would be valuable to have statistics to indicate how well certain categories of offenders respond to parole supervision. Information on murderers who have been released on parole would have been useful in the recent debate on capital punishment.

Parole legislation requires that a person ordinarily serve one-third of his term of imprisonment before parole may be granted. The parole authority has the power to make exceptions, in special circumstances, to this general rule. Nowhere in the parole statistics is there any report on the number who have been released at one-third of the time served nor is there any information on the number released by exception and the reasons for such exceptions. Parole statistics, for some unexplained reason, report on those who, when released, have completed less than thirty-five per cent of the time served. In 1971, this category constituted more than thirty-five per cent of the 5126 releases, but there is no information about the exceptions, that is, those released before normal eligibility, or about ordinary parole releases at one-third of sentence.[2]

Parole Clientele Statistics offers other unusual statements. For example, in 1971, there was one life sentence and one preventive detention sentence which were terminated

by expiration.[3] "Expiration" was defined this way: "The individual has completed the full sentence of imprisonment awarded by the Court (Warrant Expiry Date)".[4] There is no explanation to indicate how a life sentence or a sentence of preventive detention can terminate other than by death of the offender.

In previous chapters, reference was made to the power of the parole authority to discharge offenders from parole. This category of parole termination is not reported separately but lumped in with several other categories.[5] Furthermore, there is no explanation of the reasons for which parolees were granted discharge. The only hint is in the "Glossary of Terminology" of *Parole Clientele Statistics* which states: "It (discharge) is normally considered after at least six years have elapsed from time of release on parole."[6] That is hardly a complete description of the program of parole discharge.

Another program that remains completely unreported is the day parole program. There is no information on the number who have been denied day parole, granted day parole or had day parole terminated for whatever reason.

During our study, we searched for information on the use of remission. In Chapters I and IV, we indicated how this program affects sentences and parole. It was impossible to obtain data showing to what extent remission is lost, why it is lost, and how often and for what reason it is returned to the prisoner prior to his release as permitted by law. Prison administrators questioned about this were unable to refer to data that would be useful. They could only describe in general terms how they administered the program.

The program of probation following imprisonment is in the same state. Information now available does not indicate how many of these sentences are being imposed, under what circumstances and on whom. No one is able to assess the effect these sentences are having on offenders. Absence of data makes it impossible to examine this court-administered "parole" program and to compare it with ordinary parole.

For temporary absences, the Canadian Penitentiary Service on two occasions provided us with statistical data and claimed a very high success rate.[7] Although the claim appears well founded, the statistics are misleading. Defining "temporary absence" and the method of collecting data are at the root of the problem. Temporary absence leave to go out to lunch is equated with one for a three-day family visit. Obviously, there is not the same kind of risk involved in the two cases. Also, the total number of temporary absences increases significantly if temporary absence is granted to every member of two baseball teams that go out to play a three-hour supervised exhibition game. Committee staff encountered cases in some community correctional centres where the director claimed he sometimes issued six different temporary absences to the same person in the same day. In others, the practice was different and only one temporary absence permit was issued for several absences in a given period of time. In the circumstances, one may well ask what a failure rate of .5 per cent actually means.

Where they exist, statistics on parole or on programs related to parole are not satisfactory. The incomplete and unsatisfactory state of the data has been recognized.[8] Delays in preparation and publication were acknowledged and breakdowns in the collection system were mentioned. Perhaps the most serious fault in parole data is the collection of a great deal of meaningless facts that clog the system to the point that useful analyses are seldom, if ever, produced.

A background paper, prepared recently for the Economic Council of Canada, discussed the availability of data to measure the effectiveness of criminal justice agencies. It concluded that judicial statistics in Canada "are diffuse and not particularly helpful for evaluating decisions. . ." It suggested that "the numbers are collected for the sheer joy of collecting rather than because they serve any useful purpose. . ."[9] On parole data, the remarks were equally unflattering: "For the great majority of Canadian citizens, these data are meaningless numbers."[10] To make the data meaningful to all those who need them is complex and difficult but it is a task that must be undertaken immediately. The parole system we propose will only operate efficiently if usable data are made available quickly.

Purposes of Data Collection

It is generally recognized that collecting data has a threefold purpose: administration, research and public accounting. Administrative statistics are needed because planning and organizing delivery of services cannot be done without accurate and relevant data. Costs of programs must not continue to be measured by inaccurate yardsticks or by guessing. Research on parole makes similar demands. There is nothing that discourages research more quickly than inaccurate data.

While we recognize the importance of the two foregoing purposes of data collection, our prime interest is in data collection for public accounting. We find that the published information is less than satisfactory. It does not accurately describe the various parole programs established by law and, insofar as their objectives are defined, does not assist in determining to what extent these are met. In fact, we found very little evidence that objectives were even defined.

To establish objectives for social programs where unpredictable human behaviour is involved and where social groups often push in different or opposite directions is not easy. It requires wisdom of the first order. Objectives of the present parole program are usually formulated in terms of rehabilitation of the offender and protection of society.[11] How are these abstract expressions translated into measurable terms? We found no evidence that indicators of rehabilitation or protection were defined. Is the number of parole denials a measure of rehabilitation or protection? Is the number of parole releases an indicator of rehabilitation? Would a high number of parole terminations by revocation and forfeiture indicate the level of protection? These questions and many more merely point to the major task which has not been attempted -- defining objectives in quantifiable terms. Public accounting of a parole program cannot be done properly before objectives are set and measured.

Defining objectives in measurable terms for the system we propose will not be easier. The definition must take into account our basic premises, criteria for eligibility, rules for decision-making and the importance we attach to supervision. These have to be translated into quantifiable terms at the very beginning. A delay of several years will make the task impossible because the data will not have been collected from the start to answer the questions that will be asked. The right questions must be asked now in order that a proper evaluation of the program in later years is not hindered by inadequate information.

The present unsatisfactory state of data for public accounting purposes has been well described as follows:

> "... It has to be said that most of the data production in the administration of justice has given headaches to specialists who have tried to cull information from them and the data are certainly inaccessible to public understanding. If one looks at accounts derived from these data by even some highly skilled specialist one often shudders. It therefore comes as no surprise that whenever contentious issues arise, some of the data create more confusion than clarity. One can think of a number of crime trend studies which do not take into account the variation in completeness of reporting, and some issues such as capital punishment and parole in which the real picture is more hidden than revealed. One cannot complain about public attitudes towards crime and criminals as long as the public has no meaningful access to information it can understand and is at the mercy of ideologists and verbal interests. Anxiety mongers have already succeeded in destroying a good part of the urban scene in the United States, a lesson which we must heed. There is good reason to believe that no increase in serious crime did not precede, but followed, the anxiety waves. If there is no clear and rational accounting system, then there is no bulwark against such anxiety waves.
>
> One could conceive that national statistical accounts in this area could be produced in a way which would give simple graphic presentations understandable to school children. Crime, after all, is an interesting story and this story can be told even with data. It is also a phenomenon of great general concern, and accounts therefore should have extensive general distribution."[12]

Success/Failure Rate

The parole success or failure rate was perhaps the subject most frequently discussed at our public hearings and in the briefs submitted. We find that it was misunderstood and, as a concept, misused.

Over the years, the National Parole Board has published two different kinds of rates. It does not really matter whether one refers to failure or success rates since they are opposite sides of the same coin. If a program fails in five per cent of the cases it can usually be said to succeed in ninety-five per cent. The parole failure rate (FR) was established by the number of parole violations (PV) divided by the number of paroles granted (PG) multiplied by 100, i.e., $\frac{PV}{PG} \times 100 = FR$. A success rate (SR) would use the number of successfully completed paroles (PC) instead of parole violations (PV), i.e., $\frac{PC}{PG} \times 100 = SR$. At the beginning of the National Parole Board operations, the rate was an annual rate which included only parole violations (PV) and paroles granted (PG) in a given year. More recently, the rate has been based on the number of parole violations (PV) and paroles granted (PG) since the beginning of the Board's operations.

In both cases, the Board defined parole violations as those cases where the offender breached conditions of parole (revocation) or, committed, while still on parole, an indictable offence punishable by two years or more in detention (forfeiture).

There are many deficiencies in a success/failure rate established in this way. The principal ones are:

1) Statistics used for paroles granted include all offenders who are still on parole and who may be in violation later. A more appropriate rate would be based only on paroles that have terminated.

2) Statistics used for paroles granted and paroles violated may involve duplication. Some persons have been granted parole and may have violated it several times on the same sentence or have had several sentences and been granted several paroles.

3) The rate is based on all categories of offenders, i.e., those with long sentences and those with short terms. There are many more paroles with short (provincial cases) than with long terms. They are less likely to violate parole because they just do not have time. Moreover, a rate based on all offenders implies that the parole failure of a dangerous bank robber is the equivalent of the failure of a petty thief.

4) A parole failure rate does not take into account the effect of other agencies of criminal justice. Police, courts and institutions all influence the number and kinds of individuals who are eventually released on parole. To attribute all failures to the parole system, is to assume that other agencies had previously reformed the offenders and the parole system simply undid their work. It therefore appears that a criminal justice index would be more appropriate than a parole failure rate.

5) A parole failure rate can be modified too easily by the selection process that now operates in the parole system. The rate can be artificially "improved" by selecting only the few good risks. A failure rate for those who are not selected for release on parole would have to be established in order to compare the two and determine if the parole selection process is worth the effort. There are already indications that release on mandatory supervision is "better" than release on ordinary parole.[15]

6) A parole failure rate does not measure the improvement that parole supervision may achieve in individual cases. A persistent offender who, because of parole, changes from offences of violence to less serious criminal activity or substantially delays going back to crime has become a lesser risk even though he is counted as a "failure".

We conclude that parole failure rates are not very useful. They distort the picture and convey wrong impressions about the parole system. As a method of public accounting for the system, they do not say anything meaningful. It is possible to establish other kinds of failure rates that would not have the flaws of those now most commonly used. For example, one has been developed based on prisoners released on parole from federal institutions with some form of supervision involved. For the purpose of this rate, failure is defined in terms of parole violation by "revocation or forfeiture of parole or conviction for an indictable offence following release on parole and within the 5-year follow-up period".[16] While it is better than the existing ones, this recidivism rate has too many of the same defects to be a good social accounting measure.

Recommendation

77. The administrative, research and public accounting objectives of the parole program should be defined in measurable terms and data collection should be established accordingly.

Parole Data Collection Centre

A data collection system that would serve the purposes of management, research and public accounting must be established in the most economical and most efficient manner possible. One solution could be for each parole authority to be responsible for collection of its own data for all three purposes and an exchange of information with other users would be left to *ad hoc* arrangements. In the parole system we propose, this would mean a multiplicity of data collection centres and an inconsistency of collection which would not permit reliable comparisons. It would be an inefficient way of collecting the necessary information. The other solution is a central depository collecting information on the same basis from all parole jurisdictions. Such a depository would have to provide users with the necessary management, research and public accounting data as required. This would mean the ability to turn around quickly to feed information back to the user in a matter of weeks and sometimes days.

Recommendations on statistics in the Ouimet Report emphasized the research and planning purposes which call for high quality data. It was assumed that Statistics Canada would be the depository of criminal statistics.[15] The Hugessen Report also dealt with the question of parole data and the need for a highly efficient system of data collection and distribution to monitor and service the numerous parole boards that it proposed. It suggested that the Ministry of the Solicitor General and Statistics Canada enter into an agreement to create a National Parole Institute.[16]

There is no doubt that data collection on parole decision-making should be centralized for higher efficiency and consistency. But such a data depository could be located wherever the necessary equipment and technical expertise are available. We do not believe that establishment of a system for parole purposes alone would be justified. Much of the data on parole clientele is the same as that collected in federal and provincial institutions. Duplication and, consequently, higher expense should be avoided. A parole data system should be part of a larger all-inclusive corrections data system. The central depository would have to deal with provincial institutions and parole authorities and collect information from the private and public agencies that have contracted to do parole supervision. It is economically indefensible to create more than one depository if a single operation could provide all users efficiently. At the moment, it seems that there is no agency which has either the mandate or the capability of providing information on the basis outlined above to the same extent as Statistics Canada.[17]

Recommendation

78. Statistics Canada should be charged with the responsibility for parole data collection, analysis and publication.

References

[1] National Parole Board, *Statistics 1971* . . . Tables 2.7 and 3.3.

[2] National Parole Board. *Statistics 1971* . . . Table 2.10.

[3] National Parole Board. *Statistics 1971* . . . Table 3.4.

[4] National Parole Board. *Statistics 1971* . . . Glossary of Terminology.

[5] National Parole Board. *Statistics 1971* . . .

[6] National Parole Board. *Statistics 1971* . . . Glossary. . .

[7] Committee Proceedings. March 8, 1972. Appendix B.
Committee Proceedings. June 14, 1973. Appendix C.

[8] Committee Proceedings. March 15, 1972. p. 18.

[9] Evans, R., *Developing Policies for Public Security and Criminal Justice.* Special study prepared for the Economic Council of Canada. Ottawa. Information Canada. 1973. p. 9.

[10] Evans, R., *Developing Policies* . . . p. 101.

[11] Committee Proceedings. December 16 and 17, 1971. p. 40.

[12] Working Group on Judicial Statistics for the Inter-departmental Committee on Judicial Statistics. *Towards a Justification of Justice.* Ottawa, July 1973. pp. 25-26.

[13] Unpublished tabulation by Statistical Information Centre. February 1973. Provides data showing a total "failure rate" of less than twenty per cent.
National Parole Board. *Statistics 1971* . . .
The failure rate for ordinary parole is running at more than thirty per cent according to National Parole Board unpublished data.

[14] Canada. Ministry of the Solicitor General. Management Data Centre, *Parole Recidivism Study, as of June, 1972.* Introduction.

[15] Ouimet Report. pp. 427-430.

[16] Hugessen Report. p. 18.

[17] *Statistics Act.* R.S.C. 1970-1971-1972. c. 15.

APPENDIX A

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Third Session – Twenty-eighth Parliament 1970-1971

Issue no.	Date and Proceedings no.	Organizations and Witnesses	Brief no.
11	December 15, 1971 First Proceedings	Ministry of the Solicitor General Honourable Jean-Pierre Goyer J.L. Hollies	1
12	December 16 and 17, 1971 Second Proceedings	National Parole Board T. George Street F.P. Miller W.F. Carabine Lieutenant-Colonel P. Hart B.K. Stevenson J.H. Lemieux	2

Fourth Session — Twenty-eighth Parliament 1972

Issue no.	Date and Proceedings no.	Organizations and Witnesses	Brief no.
1	March 1, 1972 Third Proceedings	National Parole Board T. George Street D.P. Miller B.K. Stevenson M. Maccagno	2
2	March 8, 1972 Fourth Proceedings	Canadian Penitentiary Service P.A. Faguy J.W. Braithwaite	11
3	March 9, 1972 Fifth Proceedings	Royal Canadian Mounted Police W.L. Higgitt E.W. Willes	12
4	March 15, 1972 Sixth Proceedings	Statistics Canada, Judicial Division K.A. Holt	17
5	March 16, 1972 Seventh Proceedings	Dr. T. Grygier Centre of Criminology, Ottawa	13
7	April 27, 1972 Eighth Proceedings	Dr. J. Hall Centre of Criminology, Ottawa	
9	June 14, 1972 Ninth Proceedings	Ontario Association of Chiefs of Police S.W. Ralke E.A. Tschirhart	35
10	June 15, 1972 Tenth Proceedings	St. Leonard's Society of Canada R.E. Barnes Reverend T.N. Libby	39
11	June 21, 1972 Eleventh Proceedings	Montreal Policemen's Brotherhood Inc. G. Marcil	26
12	June 22, 1972 Twelfth Proceedings	Inmates of Drumheller Institution G. Hewlett L. Lyding R. Royer	5
13	June 28, 1972 Thirteenth Proceedings	The John Howard Society of Canada G.H. Lockwood F.C.P. Lowis A.W. Kirkpatrick	47
14	June 29, 1972 Fourteenth Proceedings	Psychologists of the Canadian Penitentiary Service, Quebec Region M. Thomas P. Bélanger C. Bourgeois J.-G. Albert Y. Carlier A. Cyr	45

First Session — Twenty-ninth Parliament 1973

Issue no.	Date and Proceedings no.	Organizations and Witnesses	Brief no.
1	March 6, 1973 Fifteenth Proceedings	S.P. Sommerfeld D.R. Watson Department of Justice J.W. Braithwaite Canadian Penitentiary Service A. Therrien National Parole Board	
2	March 7, 1973 Sixteenth Proceedings	School of Criminology of Montreal P. Lamareville M. Nicolas A. Beaudoin R. Blain G. Paradis	97 98
3	March 8, 1973 Seventeenth Proceedings	The Elizabeth Fry Society M. Freedman, Kingston C. Parry, Ottawa P. Haslam, Toronto K. Shaw, Ottawa D. Flaherty, Ottawa J. MacLatchie, Ottawa J. Moody, Toronto	82 88
4	March 8, 1973 Eighteenth Proceedings	Association of Social Rehabilitation Agencies, Quebec Division P. Asselin J.L. Côté S. Cumas	81
5	March 13, 1973 Nineteenth Proceedings	Canadian Criminology and Corrections Association R.R. Price W.C. McCabe W.T. McGrath T.C. Willett	110
6	March 13, 1973 Twentieth Proceedings	Canadian Association of Chiefs of Police, Inc. W.H. Kelly B.E. Palmer	95
7	March 15, 1973 Twenty-first Proceedings	The Salvation Army of Canada Brigadier F. Watson Lieutenant-Colonel T. Ellwood Brigadier V. MacLean Major T. Worthylake	101
8	April 10, 1973 Twenty-second Proceedings	John Howard Society of Ontario (Parolee Group) J. Smerchak H. Sauer E. Elliott	71

		Montreal Urban Community Police Department A. Ledoux D. Crépeau J. Rutelle J. Charbonneau	112
9	April 11, 1973 Twenty-third Proceedings	Federation of Saskatchewan Indians F. Dubois D. Ahenakew B. Fotheringham A. Kennedy	100
10	May 29, 1973 Twenty-fourth Proceedings	National Parole Board T. George Street J.-P. Gilbert	2
11	May 30, 1973 Twenty-fifth Proceedings	Canadian Bar Association L.-P. de Grandpré E.L. Teed J. Cassells	113
13	June 14, 1973 Twenty-sixth Proceedings	Canadian Penitentiary Service P.A. Fogny J.W. Braithwaite	11

APPENDIX B

Brief No.	Briefs Received by the Committee
1	Department of the Solicitor General, The Honourable Jean-Pierre Goyer
2	National Parole Board, T. George Street, Chairman
3	Inmate, Collins Bay Institution
4	X-Kalay Foundation Society, Vancouver
5	Group of Inmates, Drumheller Institution
6	P. McMurtry, Toronto
7	Inmate, Dorchester Farm Annex
8	Group of B.C. Penitentiary Correctional Supervisors
9	Inmate Committee, Agassiz Correctional Camp
10	Special Inmate Committee, Landry Crossing Correctional Camp
11	Canadian Penitentiary Service, P.A. Fagny, Commissioner
12	Royal Canadian Mounted Police, W.L. Higgitt, Commissioner
13	T. Grygier, Ottawa
14	Inmate, Saskatchewan Penitentiary, Prince Albert
15	Parole Office Staff, Calgary
16	Inmate, Agassiz Correctional Camp
17	Judicial Division, Statistics Canada, K.A. Holt
18	Government of Northwest Territories
19	K.B. Johnson, Halifax
20	Special Inmate Committee, Springhill Institution
21	Beverley Lodge, Toronto
22	R.W. Dent, Toronto
23	Unidentified Inmate, British Columbia Penitentiary
24	Inmate, British Columbia Penitentiary
25	Inmate, British Columbia Penitentiary
26	Montreal Policemen's Brotherhood Inc.
27	L. James, Toronto
28	(Saskatchewan) Freedom Group, Regina
29	Inmate, Springhill Institution
30	Jacques Laplante, Quebec
31	Attorney General, British Columbia
32	Inmate, Joyceville Institution
33	Inmate, Special Correctional Unit, City of Laval
34	Inmate, Leclerc Institution
35	Ontario Association of Chiefs of Police
36	Riederer, P.C., Ottawa
37	Inmate, Archambault Institution
38	G.T. Vincent, Hamilton

39 St. Leonard's Society of Canada, Windsor
40 Inmate, Saskatchewan Penitentiary, Prince Albert
41 Inmate, Collins Bay Institution
42 Inmate, Stony Mountain Institution
43 Inmate, Kingston Penitentiary
44 Unidentified Inmate, Millant Head Institution
45 Psychologists of the Canadian Penitentiary Service, Quebec Region
46 Inmate, Agassiz Correctional Camp
47 The John Howard Society of Canada, Toronto
48 Inmate, British Columbia Penitentiary
49 Inmate, Leclerc Institution
50 Inmate, Dorchester Penitentiary
51 Inmate, Dorchester Penitentiary
52 Quarter Century Group, Millhaven Institution
53 Inmate, Dorchester Penitentiary
54 Inmate, Collins Bay Institution
55 The Street Haven at The Crossroads, Toronto
56 Inmates, Leclerc Institution
57 Inmate, Leclerc Institution
58 Attorney General, Alberta
59 Minister of Justice, Prince Edward Island
60 Inmate, Matsqui Institution
61 The John Howard and Elizabeth Fry Society of Manitoba
62 Inmate, Saskatchewan Penitentiary, Prince Albert
63 Correctional Services Committee, Anglican Diocese of Toronto
64 Resident Council, Headingley Correctional Institution
65 D. Betz, Winnipeg
66 D.R. Tubb, Winnipeg
67 Inmate, Stony Mountain Institution
68 J.W. Kisyne, Acting Director, Stony Mountain Farm Annex
69 D.K. O'Connell, Ottawa
70 Union of New Brunswick Indians
71 Parolee Group/The John Howard Society of Ontario, Toronto
72 Inmate, Leclerc Institution
73 The John Howard Society of Nova Scotia
74 Group of Inmates, St. Vincent de Paul Penitentiary
75 The Elizabeth Fry Society of British Columbia
76 Atlantic Provinces Corrections Association
77 Community Welfare Planning Council, Winnipeg
78 Inmate, Special Correctional Unit, City of Laval

79 Inmate, Burwash Correctional Centre
80 United Church of Canada, Toronto
81 Association of Social Rehabilitation Agencies, Quebec Division
82 The Elizabeth Fry Society, Toronto Branch
83 Clné-Criminology Group, Archambault Institution
84 The Citizen's Advisory Committee, Beaver Creek Correctional Camp
85 Inmate, Fort Saskatchewan Correctional Institution
86 Inmate, Mountain Prison
87 Ex-Parolee, Millhaven Institution
88 The Elizabeth Fry Society of Ottawa
89 Group of Inmates, Laval Minimum Security Institution, City of Laval
90 Government of Yukon Territory
91 Inmate, Fort Saskatchewan Correctional Institution
92 Inmate, Collins Bay Institution
93 Future Society, Edmonton
94 Group of Inmates, Collins Bay Institution
95 Canadian Association of Chiefs of Police, Inc., Ottawa
96 Inmate, British Columbia Penitentiary
97 Research Group (P. Landreville, Director), School of Criminology, University of Montreal
98 Research Group (A. Normandeau, Director), School of Criminology, University of Montreal
99 Inmate, Saskatchewan Penitentiary
100 Federation of Saskatchewan Indians
101 Salvation Army of Canada, Toronto
102 St. Clair College, Windsor
103 Inmate, Matsqui Institution
104 West Wing Remand Unit, Lower Mainland Regional Correctional Centre, B.C.
105 Inmate, Lower Mainland Regional Correctional Centre, B.C.
106 Inmate, Lower Mainland Regional Correctional Centre, B.C.
107 Inmate, Lower Mainland Regional Correctional Centre, B.C.
108 Inmate, Lower Mainland Regional Correctional Centre, B.C.
109 Inmate, Lower Mainland Regional Correctional Centre, B.C.
110 Canadian Criminology and Corrections Association, Ottawa
111 Inmate, British Columbia Penitentiary
112 Montreal Urban Community Police Department
113 Canadian Bar Association
114 The Saskatchewan Criminology and Corrections Association
115 Professional Association of Criminologists of Quebec
116 The John Howard Society of Alberta