

STRATEGIC PLANNING EXERCISE:

**LEGISLATIVE FRAMEWORK CONSISTENT WITH
EVIDENCE-BASED POLICY AND BEST PRACTICES**

CCRA 2.0

**OFFICE OF THE CORRECTIONAL INVESTIGATOR
MAY 2019**

THE CORRECTIONS AND COMMUNITY REINTEGRATION ACT

2019

An Act respecting corrections and the reintegration of offenders and the office of the Penitentiary and Reintegration Ombudsman

PREAMBLE

Whereas the foundation of a just, peaceful and safe democratic society rests on the adherence to the rule of law and respect for human rights for all, as well as effective independent oversight to ensure compliance;

Whereas Canada was a partner in the development of and is committed to United Nations international standards including the Nelson Mandela Rules, Tokyo Rules, Universal Declaration of Human Rights, Convention Against Torture, Declaration on the Rights of Indigenous Peoples, Declaration of Basic Principles of Justice for Victims of Crime, and Bangkok Rules;

Whereas Canada is committed to the fulfillment of the Truth and Reconciliation Commission Calls to Action;

Whereas domestic and internationally recognized human rights principles require parsimony in the use of the criminal law to resolve social problems, the use of the least restrictive measures consistent with the protection of society, sending people to prison as punishment not for punishment, and the holding accountable of people through humane and just sanctions that take into account the particular circumstances of individuals and groups with special needs; and

Whereas federal correctional legislation should ensure that correctional policies, programs and practices are sound and evidence-based, respect gender, ethnic, cultural and linguistic differences and respond to the special needs of women, Indigenous peoples, persons requiring mental health care and other groups to achieve the best correctional and therefore public safety outcomes;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1 This Act may be cited as The Corrections and Community Reintegration Act.

PART I: INSTITUTIONAL AND COMMUNITY CORRECTIONS

INTERPRETATION

Definitions

2 (1) In this Part,

Commissioner

Commissioner means the Commissioner of Corrections appointed pursuant to subsection 6(1);
(*commissaire*)

contraband

contraband means

- (a) an intoxicant,
- (b) a weapon or a component thereof, ammunition for a weapon, and anything that is designed to kill, injure or disable a person or that is altered so as to be capable of killing, injuring or disabling a person, when possessed without prior authorization,
- (c) an explosive or a bomb or a component thereof,
- (d) currency over any applicable prescribed limit, when possessed without prior authorization, and
- (e) any item not described in paragraphs (a) to (d) that could jeopardize the security of a penitentiary or the safety of persons, when that item is possessed without prior authorization;
(*objets interdits*)

day parole

day parole has the same meaning as in Part II; (*semi-liberté*)

dynamic security

dynamic security means regular, consistent and positive interaction with inmates including meaningful engagement and rapport building, and timely analysis of information and observations; (*sécurité dynamique*)

independent review officer

independent review officer means a person appointed by the Minister to review cases of inmates held in conditions that constitute restrictive confinement; (*agent de révision indépendant*)

inmate

inmate means

- (a) a person who is in a penitentiary pursuant to
 - (i) a sentence, committal or transfer to penitentiary, or
 - (ii) a condition imposed by the Parole Board of Canada in connection with parole or statutory release, or
- (b) a person who, having been sentenced, committed or transferred to penitentiary,
 - (i) is temporarily outside penitentiary by reason of a temporary absence or work release authorized under this Act, or
 - (ii) is temporarily outside penitentiary for reasons other than a temporary absence, work release, parole or statutory release, but is under the direction or supervision of a staff member or of a person authorized by the Service; (*détenu*)

institutional head

institutional head, in relation to a penitentiary, means the person who is normally in charge of the penitentiary; (*English only*)

intoxicant

intoxicant means a substance that, if taken into the body, has the potential to impair or alter judgment, behaviour or the capacity to recognize reality or meet the ordinary demands of life, but does not include caffeine, nicotine or any authorized medication used in accordance with directions given by a staff member or a registered health care professional; (*substance intoxicante*)

long-term supervision

long-term supervision means long-term supervision ordered under subsection 753(4), 753.01(5) or (6) or 753.1(3) or subparagraph 759(3)(a)(i) of the *Criminal Code*; (*surveillance de longue durée*)

Minister

Minister means the Minister of Public Safety and Emergency Preparedness; (*ministre*)

offender

offender means

- (a) an inmate, or
- (b) a person who, having been sentenced, committed or transferred to penitentiary, is outside penitentiary
 - (i) by reason of parole or statutory release,
 - (ii) pursuant to an agreement referred to in subsection 112(1), or
 - (iii) pursuant to a court order; (*délinquant*)

parole

parole has the same meaning as in Part II; (*libération conditionnelle*)

penitentiary

penitentiary means

- (a) a facility of any description, including all lands connected therewith, that is operated, permanently or temporarily, by the Service for the care and custody of inmates, and
- (b) any place declared to be a penitentiary pursuant to section 7; (*pénitencier*)

prescribed

prescribed means prescribed by regulation; (*English only*)

provincial parole board

provincial parole board has the same meaning as in Part II; (commission provinciale)

sentence

sentence means a sentence of imprisonment and includes

- (a) a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act*, and

(b) a youth sentence imposed under the *Youth Criminal Justice Act* consisting of a custodial portion and a portion to be served under supervision in the community subject to conditions under paragraph 42(2)(n) of that Act or under conditional supervision under paragraph 42(2)(o), (q) or (r) of that Act; (*peine ou peine d'emprisonnement*)

Service

Service means the Correctional Service of Canada described in section 5; (*service*)

staff member

staff member means an employee of the Service; (*agent*)

statutory release

statutory release has the same meaning as in Part II; (*libération d'office*)

unescorted temporary absence

unescorted temporary absence has the same meaning as in Part II; (permission de sortir sans escorte)

use of force

use of force means any planned or spontaneous action by staff that is intended to obtain the cooperation and gain control of an offender or group of offenders, by using one or more of the following measures:

- (a) non-routine use of restraint equipment
- (b) physical handling or control
- (c) a chemical or inflammatory agent is intentionally displayed or aimed at an individual or dispensed to gain compliance
- (d) use of batons or other intermediary weapons
- (e) display and/or use of firearms
- (f) any direct intervention by an emergency response team with an offender or group of offenders; (*recours à la force*)

victim

victim, in respect of an offence, means an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of the offence; (*victime*)

visitor

visitor means any person other than an inmate or a staff member; (*visiteur*)

working day

working day means a day on which offices of the federal public administration are generally open in the province in question; (*jour ouvrable*)

Exercise of powers, etc.

(2) Except as otherwise provided by this Part or by regulations made under paragraph 134(b),

(a) powers, duties and functions that this Part assigns to the Commissioner may only be exercised or performed by the Commissioner or, where the Commissioner is absent or incapacitated or where the office is vacant, by the person acting in the place of the Commissioner; and

(b) powers, duties and functions that this Part assigns to the institutional head may only be exercised or performed by the institutional head or, where the institutional head is absent or incapacitated or where the office is vacant, by the person who, at the relevant time, is in charge of the penitentiary.

Acting on victim's behalf

(3) For the purposes of this Act, any of the following individuals may act on the victim's behalf if the victim is dead or incapable of acting on their own behalf:

(a) the victim's spouse, or if the victim is dead, their spouse at the time of death;

(b) the individual who is or was at the time of the victim's death, cohabiting with them in a conjugal relationship, having so cohabited for a period of at least one year;

(c) a relative or a dependant of the victim;

(d) an individual who has in law or fact custody, or is responsible for the care or support, of the victim; and

(e) an individual who has in law or fact custody, or is responsible for the care or support, of a dependant of the victim.

Exception

(4) For the purposes of this Act, an individual is not a victim, or entitled to act on a victim's behalf, in relation to an offence, if the individual is the offender.

Application to persons subject to long-term supervision order

(5) A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 3, 4, 22, 26-33, 46, 47, 94 and 95, subsections 96(2) and 106(3), sections 108 to 113, paragraph 119(b) and sections 126 and 127 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.

PURPOSE AND PRINCIPLES

Purpose of correctional system

3 The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by

- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Principles that guide Service

4 The principles that guide the Service in achieving the purpose referred to in section 3 are:

- (a) public safety is paramount;
- (b) the Service uses the least restrictive measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act;
- (c) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;
- (d) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the Parole Board of Canada and information obtained from victims, offenders and other components of the criminal justice system;
- (e) the Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public;
- (f) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;
- (g) correctional decisions are made in a forthright and fair manner, with access by the offender to redress mechanisms such as an effective, fair and timely grievance procedure;
- (h) correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous peoples, persons requiring mental health care, visible minorities, younger and older adults and other groups;

- (i) the Service maintains an evidence-based approach to maintaining a balance between security and rehabilitation, and between institutional and community corrections investments; and
- (j) staff members are properly selected and trained and are given
 - (i) appropriate career development opportunities,
 - (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and
 - (iii) opportunities to participate in the development of correctional policies and programs.

CORRECTIONAL SERVICE OF CANADA

Correctional Service of Canada

5 There shall continue to be a correctional service in and for Canada, to be known as the Correctional Service of Canada, which shall be responsible for

- (a) the care and custody of inmates;
- (b) the provision of programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community;
- (c) the preparation of inmates for release;
- (d) parole, statutory release supervision and long-term supervision of offenders; and
- (e) maintaining a program of public education and communication about the operations of the Service.

Commissioner

6 (1) The Governor in Council may appoint a person to be known as the Commissioner of Corrections who, under the direction of the Minister, has the control and management of the Service and all matters connected with the Service.

National headquarters

(2) The national headquarters of the Service and the offices of the Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Regional headquarters

(3) The Commissioner may establish regional headquarters of the Service.

Penitentiaries

7 (1) Subject to subsection (3), the Commissioner may, by order, declare any prison as defined in the *Prisons and Reformatories Act*, or any hospital, to be a penitentiary in respect of any person or class of persons.

Same

(2) Subject to subsection (3), the Governor in Council may, by order, declare any place to be a penitentiary.

Provincial approval

(3) No prison, hospital or place administered or supervised under the authority of an Act of the legislature of a province may be declared a penitentiary under subsection (1) or (2) without the approval of an officer designated by the lieutenant governor of that province.

Lands constituting penitentiary

8 In any proceedings before a court in Canada in which a question arises concerning the location or description of lands alleged to constitute a penitentiary, a certificate purporting to be signed by the Commissioner, setting out the location or description of those lands as constituting a penitentiary, is admissible in evidence and, in the absence of any evidence to the contrary, is proof that the lands as located or described in the certificate constitute a penitentiary.

Lawful custody

9 For greater certainty, a person who is an inmate by virtue of subparagraph (b)(ii) of the definition “inmate” in section 2 shall be deemed to be in the lawful custody of the Service.

Peace officer status

10 The Commissioner may in writing designate any staff member, either by name or by class, to be a peace officer, and a staff member so designated has all the responsibilities, powers, authority, protection and privileges that a peace officer has by law in respect of

- (a)** an offender subject to a warrant or to an order for long-term supervision; and
- (b)** any person, while the person is in a penitentiary.

Partnerships

11 (1) The Service shall maintain active relationships with other government and non-government partners in the criminal justice and social justice fields, including education, health and employment.

Same

(2) The Service shall consult and collaborate with such partners in all its initiatives of mutual interest.

Research and communication

12 (1) The Service shall continuously conduct research on existing and emerging issues in corrections, publish the results on a timely basis, including copies in all institutional libraries, and maximize their collaboration with colleges and universities.

Same

(2) The Service shall also proactively publish up-to-date information about institutional and community operations, including programs and services.

RECEPTION OF INMATES

General

13 A person who is sentenced, committed or transferred to penitentiary may be received into any penitentiary, and any designation of a particular penitentiary in the warrant of committal is of no force or effect.

Recommitment to custody

14 Where a person who is sentenced, committed or transferred to penitentiary is at large without lawful authority before the expiration of the sentence according to law and where no alternative means of arrest are available, the institutional head may, by warrant, authorize the apprehension and recommitment of the person to custody in a penitentiary.

Fifteen day delay

15 In order to better enable a person who has been sentenced to penitentiary or who is required by law to be transferred to penitentiary to file an appeal or attend to personal affairs, such a person shall not be received in a penitentiary until the expiration of fifteen days after the day on which the person was sentenced, unless the person agrees to be transferred to a penitentiary before the expiration of those fifteen days.

Confinement in provincial facility

16 A person who, by virtue of section 15, is not received into a penitentiary shall be confined in a provincial correctional facility.

Same

17 The person in charge of the provincial correctional facility to whom a person referred to in section 16 is delivered shall, on being presented with

(a) the warrant of committal to penitentiary, or

(b) a copy of the warrant of committal certified by any judge of a superior or provincial court, by any justice of the peace, or by the clerk of the court in which the person was convicted,

confine the person in the provincial correctional facility until the person is transferred to penitentiary or released from custody in accordance with law.

Newfoundland and Labrador

18 (1) Notwithstanding any requirement in the Criminal Code or under the Youth Criminal Justice Act that a person be sentenced, committed or transferred to penitentiary, such a person in the Province of Newfoundland and Labrador shall not be received in a penitentiary without the approval of an officer designated by the Lieutenant Governor of Newfoundland and Labrador.

Same

(2) A person who, pursuant to subsection (1), is not received in a penitentiary shall be confined in the provincial correctional facility in Newfoundland and Labrador known as *Her Majesty's Penitentiary*, and is subject to all the statutes, regulations and rules applicable in that facility.

Agreement re cost

(3) The Minister may, with the approval of the Governor in Council, enter into an agreement with the Province of Newfoundland and Labrador providing for the payment to the Province of the cost of maintaining persons who are confined pursuant to subsection (2).

PLACEMENT AND TRANSFER OF INMATES

Criteria for selection of penitentiary

19 (1) If a person is or is to be confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which they are confined is one that provides them with an environment that contains optimal rehabilitative conditions and only the necessary restrictions, taking into account

- (a)** the degree and kind of custody and control necessary for
 - (i)** the safety of the public,
 - (ii)** the safety of that person and other persons in the penitentiary, and
 - (iii)** the security of the penitentiary;
- (b)** accessibility to
 - (i)** the person's home community and family,
 - (ii)** a compatible cultural environment, and
 - (iii)** a compatible linguistic environment; and
- (c)** the availability of appropriate community and institutional programs and services and the person's willingness to participate in those programs.

Transgender persons

(2) Transgender inmates shall be placed in a men's or women's institution according to their self-identity, subject to any reasonable and necessary restrictions to ensure the safety of any person.

Transfers

20 (1) The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary to

(a) another penitentiary in accordance with the regulations made under paragraph 134(d), subject to section 19; or

(b) a provincial correctional facility or hospital in accordance with an agreement entered into under paragraph 25(1)(a) and any applicable regulations.

(2) Where a person confined in a penitentiary receives, at any time, a diagnosis of a serious mental illness or similar disorder and placement in a provincial hospital is recommended by the health care team established under subsection 118 (5), the Commissioner shall forthwith take reasonable steps to facilitate a transfer under paragraph (1) (b).

SECURITY CLASSIFICATION

Service to classify each inmate

21 (1) The Service shall assign a security classification of maximum, medium or minimum to each inmate in accordance with the regulations made under paragraph 134(z.9).

Service to give reasons

(2) The Service shall give each inmate reasons, in writing, for assigning a particular security classification or for changing that classification.

(3) Security classification of an inmate shall be based on empirically validated and reliable methods, and all methods shall have been independently validated for male and female inmates, Indigenous persons and other groups.

INFORMATION AND NOTIFICATIONS

Information

22 (1) Upon admission, every offender shall be promptly provided with written information about the law and institutional rules, his or her obligations, and methods of seeking information as well as procedures for making requests or complaints.

Accessibility

(2) Information shall be provided in the offender's choice of official language or, where the offender does not understand those languages, interpretation assistance shall be provided.

Same

(3) If the offender is illiterate or visually or hearing impaired, the information shall be provided in a manner appropriate to their needs.

CORRECTIONAL AND REINTEGRATION PLANS

Objectives for offender's behaviour

23 (1) Staff and the offender shall jointly develop a correctional and reintegration plan as soon as practicable after the offender's reception in a penitentiary, which shall include:

(a) the necessary level and type of intervention and support in respect of the offender's risk, needs, and responsivity, with specific timelines for those interventions and services;

(b) in the case of Indigenous offenders, a culturally appropriate social history; and

(c) objectives for

(i) the offender's behaviour, including

(A) to conduct themselves in a manner that demonstrates respect for other persons and property,

(B) to obey penitentiary rules and respect the conditions governing their conditional release, if any,

taking into account the offenders' personal capabilities and cultural practices;

(ii) their participation in programs; and

(iii) the meeting of any court-ordered obligations, including restitution to victims or child support.

Maintenance of plan

(2) The plan shall be maintained and adjusted as necessary by the offender and staff in order to ensure that the offender receives the most effective programs and services in the most timely manner in their sentence, in order to prepare them for, and support them in, reintegration into the community as a law-abiding citizen.

Progress towards meeting objectives

(3) In making decisions on program selection for, or the transfer or conditional release of, an offender, the Service shall assess and take into account CSC's provision of the necessary programs and services as well as the offender's progress towards meeting the objectives of their correctional and reintegration plan.

Low risk offenders

(4) Rehabilitative programs shall conform with risk, need and responsivity principles as well as other independently validated and peer-reviewed research and, for greater certainty, there shall be minimal or no rehabilitative program expectations for offenders presenting a low risk to reoffend.

Incentive measures

24 The Commissioner may provide offenders with positive incentives to encourage them to make progress towards meeting the objectives of their correctional plans.

EXCHANGE OF SERVICE AGREEMENTS

Agreements with provinces

25 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with the government of a province for

- (a) the confinement in provincial correctional facilities or hospitals in that province of persons sentenced, committed or transferred to penitentiary; and
- (b) the confinement in penitentiary of persons sentenced or committed to imprisonment for less than two years for offences under any Act of Parliament or any regulations made thereunder.

Effect of confinement

(2) Subject to subsection (3), a person who is confined in a penitentiary pursuant to an agreement entered into under paragraph (1)(b) is, despite section 743.1 of the *Criminal Code*, subject to all the statutes, regulations and rules applicable in the penitentiary in which the person is confined.

Release date

(3) The release date of an offender who is transferred to penitentiary pursuant to an agreement entered into under paragraph (1)(b) shall be determined by crediting against the sentence

- (a) any remission, statutory or earned, standing to the offender's credit on the day of the transfer; and

(b) the maximum remission that could have been earned on the balance of the sentence pursuant to the *Prisons and Reformatories Act*.

INFORMATION

Service to obtain certain information about offender

26 (1) When a person is sentenced, committed or transferred to penitentiary, the Service shall take all reasonable steps to obtain, as soon as is possible,

- (a) relevant information about the offence;
- (b) relevant information about the person's personal history, including the person's social, economic, criminal and young-offender history;
- (c) any reasons and recommendations relating to the sentencing or committal that are given or made by
 - (i) the court that convicts, sentences or commits the person, and
 - (ii) any court that hears an appeal from the conviction, sentence or committal;
- (d) any reports relevant to the conviction, sentence or committal that are submitted to a court mentioned in subparagraph (c), including any report on indigenous social history; and
- (e) any other information relevant to administering the sentence or committal, including existing information from the victim, the victim impact statement and the transcript of any comments made by the sentencing judge regarding his or her reasons or expectations.

Access by offender

(2) Where access to the information obtained by the Service pursuant to subsection (1) is requested by the offender in writing, the offender shall be provided with access in the prescribed manner to such information as would be disclosed under the Privacy Act and the Access to Information Act.

Disclosure to Service

(3) No provision in the Privacy Act or the Access to Information Act shall operate so as to limit or prevent the Service from obtaining any information referred to in paragraphs (1).

Accuracy, etc., of information

27 (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.

Correction of information

(2) Where an offender who has been given access to information by the Service pursuant to subsection 26(2) believes that there is an error or omission therein,

(a) the offender may request the Service to correct that information; and

(b) the Service shall correct the information in the manner requested unless the Service can demonstrate that the information does not require correction.

(3) Where the Service does not correct the information in the manner requested, the Service shall attach to the information a notation setting out the correction requested and the reason for the Service's denial.

Service to give information to parole boards, etc.

28 (1) The Service shall give, at the appropriate times, to the Parole Board of Canada, provincial governments, provincial parole boards, police, and anybody authorized by the Service to supervise offenders, any information under its control that is relevant to the obligations of those bodies in relation to decision-making regarding, or the supervision of, particular offenders.

Police to be notified of releases

(2) Before the release of an inmate on an unescorted temporary absence, parole or statutory release, the Service shall notify all police forces that have jurisdiction at the final destination of the inmate if that destination is known, and thereafter if the offender moves to a different community.

(3) Subsection (2) does not apply to any temporary travel undertaken by the offender during the release period, unless the Service believes on reasonable grounds that such notification is necessary for the safety of any community or person.

Service to give information to police in some cases

(4) Where the Service has reasonable grounds to believe that an inmate who is about to be released by reason of the expiration of the sentence will, on release, pose a threat to any person, the Service shall, prior to the release and on a timely basis, take all reasonable steps to give the police all information under its control that is relevant to that perceived threat.

Disclosure of information to victims

29 (1) At the request of a victim of an offence committed by an offender, the Commissioner

(a) shall disclose to the victim the following information about the offender:

(i) the offender's name,

(ii) the offence of which the offender was convicted and the court that convicted the offender,

- (iii) the date of commencement and length of the sentence that the offender is serving, and
- (iv) eligibility dates and review dates applicable to the offender under this Act in respect of temporary absences or parole,

(b) may disclose to the victim any of the following information about the offender, where in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure:

- (i) the offender's age,
- (ii) the name and location of the penitentiary in which the sentence is being served,
- (iii) if the offender is transferred, a summary of the reasons for the transfer and the name and location of the penitentiary in which the sentence is being served,
- (iv) programs that were designed to address the needs of the offender and contribute to their successful reintegration into the community in which the offender is participating or has participated,
- (v) any serious disciplinary offences that the offender has committed,
- (vi) information pertaining to the offender's correctional plan, including information regarding the offender's progress towards meeting the objectives of the plan,
- (vii) the date of any hearing for the purposes of a review under section 178,
- (viii) if the offender has been removed from Canada under the *Immigration and Refugee Protection Act* before the expiration of the sentence,
- (ix) whether the offender is in custody and, if not, the reason why the offender is not in custody;
- (x) the date, if any, on which the offender is to be released on temporary absence, work release, parole or statutory release,
- (xi) the conditions attached to the offender's temporary absence, work release, parole or statutory release,
- (xii) the destination of the offender on any temporary absence, work release, parole or statutory release, whether the offender will be in the vicinity of the victim while travelling to that destination and the reasons for any temporary absence; and
- (xiii) access to the most recent photograph of the offender.

Continuing duty to disclose

(2) The Commissioner shall disclose to the victim any changes to the information referred to in paragraphs (1)(a) and (b).

Same

(3) Where a person has been transferred from a penitentiary to a provincial correctional facility, the Commissioner may, at the request of a victim of an offence committed by that person, disclose to the victim the name of the province in which the provincial correctional facility is located, if in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the person's privacy that could result from the disclosure.

Disclosure of information to other persons

(4) Subsections (1) to (3) also apply, with such modifications as the circumstances require, to a person who satisfies the Commissioner

(a) that the person suffered physical or emotional harm, property damage or economic loss, as the result of an act of an offender, whether or not the offender was prosecuted or convicted for that act; and

(b) that a complaint was made to the police or the Crown attorney, or an information was laid under the *Criminal Code*, in respect of that act.

Representative

(5) A victim may designate a representative to whom the information referred to in subsections (1) to (3) is to be disclosed on the victim's behalf, and in such case, the victim shall provide the Commissioner with the representative's contact information.

Withdrawal of request

(6) A victim who has made a request referred to in subsections (1) to (3) may inform the Commissioner in writing that they no longer want the information to be disclosed to them, and in such case, the Commissioner shall not contact them, or their representative, if any, unless the victim subsequently makes the request again.

Deemed withdrawal of request

(7) The Commissioner may consider a victim to have withdrawn a request referred to in subsection (1) to (3) if the Commissioner has made reasonable efforts to contact the victim and has failed to do so.

Victim-offender mediation services

30 (1) The Service shall provide every victim and offender, and every person referred to in subsection 29(4), who has registered themselves with the Service for the purposes of this section with information about its restorative justice programs and its victim-offender mediation services, and, on receipt of any such request, shall provide those services.

Consent required

(2) The Service's victim-offender mediation services are to be provided in accordance with the regulations and in particular may be provided only with the informed and voluntary consent of the participants.

Information to be given to offenders

31 (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.

Same

(2) Where an offender is entitled by this Part or the regulations to be given reasons for a decision taken by the Service about the offender, the person or body that takes the decision shall, subject to subsection (3), give the offender, forthwith after the decision is taken, all the information that was considered in the taking of the decision or a summary of that information.

Exceptions

(3) Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize

- (a) the safety of any person,
- (b) the security of a penitentiary, or
- (c) the conduct of any lawful investigation,

the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (a), (b) or (c).

Right to interpreter

(4) An offender who does not have an adequate understanding of at least one of Canada's official languages is entitled to the assistance of an interpreter

- (a) at any hearing provided for by this Part or the regulations; and
- (b) for the purposes of understanding information or instructions provided to the offender.

LIVING CONDITIONS

Instruments of restraint

32 No person shall apply an instrument of restraint to an offender as punishment.

Cruel treatment, etc.

33 No person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender.

Living conditions, etc.

34 (1) The Service shall take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity.

Dynamic security

(2) The Service shall ensure that both the penitentiary infrastructure and the organizational culture of staff members are conducive of dynamic security principles.

Same

(3) Every inmate shall, to the extent possible, be housed in living conditions that reflect as closely as possible those of free society and that reinforce the skills necessary for a safe return to the community.

(4) Every inmate shall be housed in a space in the institution that, at a minimum,

(a) provides the inmate with access to natural light and fresh air,

(b) has adequate bedding, subject to any limits that are necessary for protecting the security of the institution or the safety of persons,

(c) is kept in a state of cleanliness and good repair,

(d) accommodates any mobility or age-related needs, and

(e) does not place two or more inmates in a space built for one inmate.

Nourishment

(5) Every inmate shall be provided with food and water on a daily basis that,

(a) complies with and respects the inmate's spiritual, religious and dietary needs; and

(b) meets the individual inmate's nutritional requirements.

Same

(6) Subsection (4) shall not be satisfied by requiring an inmate to purchase items from the institutional canteen.

Same

(7) Reasonable efforts shall be made to provide inmates with food items appropriate to significant religious or cultural holidays.

Non-institutional food

(8) The institutional head shall make reasonable efforts to facilitate the occasional purchase of non-institutional meals where inmates have collectively contributed sufficient resources.

Geriatric needs

(9) The Service shall accommodate the needs of aging offenders in all matters, including timely placement in community housing, and in so doing shall be guided by gerontology experts.

Clothing

35 Every inmate shall be provided with clothing that fits and is suitable to their personal dignity as well as the conditions of the institution and, where necessary, the outdoor climate, subject to any limits as are reasonable and necessary for protecting the security of the institution or safety of persons.

Hygiene

36 (1) Every inmate shall be provided with access to a toilet and reasonable and necessary toiletries.

Same

(2) For greater certainty, subsection (1) includes an entitlement to any reasonable and necessary feminine hygiene products.

Same

(3) Every inmate shall be provided at least once every second day with,

- (a)** access to a shower; or
- (b)** water and equipment sufficient for bathing.

Library

37 (1) The institutional head shall maintain a library, and all inmates shall have access to its collection at reasonable times during the day or evening.

Content

(2) The library shall include educational and leisure reading as well as relevant legal resources, including current information about legal aid programs in the province as well as legal resources in the community.

(3) The library or similar space shall provide adequate access to technology such as computers, to ensure that inmates are able to gain or retain modern technological skills as well as to facilitate communication with approved persons outside the institution.

Letters

38 (1) Every inmate shall be permitted to send and receive letters.

(2) The institutional head may provide alternative methods of communication, such as non-internet based email, as prescribed.

Telephone

39 Every institution shall have a telephone system that is physically and financially accessible to all inmates.

Contacts and visits

40 (1) In order to promote relationships between inmates and the community, an inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable and necessary limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

In-person

(2) The visits under subsection (1) shall be in-person and allow for physical contact between the inmate and the visitor, subject only to such limits as are reasonable and necessary for protecting the security of the penitentiary or the safety of persons.

Use of technology

(3) The institutional head may provide audio-visual technology that can be used for communication, but such communications shall not be considered to meet the requirement of subsection (1) unless it is the only method considered reasonable and necessary for protecting the security of the penitentiary or the safety of persons.

Visitors' permitted items

(4) At each penitentiary, a conspicuous notice shall be posted at the visitor control point, listing the items that a visitor may have in possession beyond that point.

Where visitor has non-permitted item

(5) Where a visitor has in possession, beyond the visitor control point, an item not listed on the notice mentioned in subsection (4) without having previously obtained the permission of a staff member, a staff member may terminate or restrict the visit.

Members of Parliament, judges

41 Every member of the House of Commons, every senator and every judge of a court in Canada has the right to

- (a) enter any penitentiary,
- (b) visit any part of a penitentiary, and
- (c) visit any inmate, with the consent of the inmate,

subject only to such reasonable limits as are necessary for protecting the security of the penitentiary or the safety of persons.

Parent-child programs

42 (1) Every penitentiary or indigenous healing lodge for women shall maintain a mother-child program including a live-in component, as prescribed by the regulations.

Same

(2) The Service shall accommodate the needs of inmate fathers and extended family, as prescribed by the regulations.

Assembly and association

43 Inmates are entitled to reasonable opportunities to assemble peacefully and associate with other inmates within the penitentiary, subject only to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

Inmate input into decisions

44 The Service shall proactively consult with offenders and provide offenders with the opportunity to contribute to decisions of the Service affecting the offender population as a whole, or affecting a group within the offender population, except decisions relating to security matters.

Religion

45 An inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons.

PROGRAMS FOR OFFENDERS

General

46 (1) The Service shall provide a range of programs designed to address the needs, risks and learning mode of offenders and contribute to their successful reintegration into the community.

Sexual violence

(2) The Service shall provide a comprehensive program to prevent incidents of sexual violence in penitentiaries and in community correctional facilities, including education, data collections and annual reporting.

Timeliness

(3) Programs intended to prepare the offender for release shall be provided prior to the release eligibility date.

Programs for female offenders

47 Without limiting the generality of section 46, the Service shall

(a) provide programs designed particularly to address the needs of female offenders, including trauma-informed care; and

(b) consult regularly about programs for female offenders with

(i) women's groups, and

(ii) other appropriate persons and groups

with expertise on, and experience in working with, female offenders.

Payments to offenders

48 (1) For the purpose of

(a) encouraging offenders to participate in programs provided by the Service, or

(b) providing financial assistance to offenders to facilitate their reintegration into the community,

the Commissioner shall authorize payments to offenders at rates reflecting current costs of living and approved by the Treasury Board.

Deductions

(2) Where an offender receives a payment referred to in subsection (1) or income from a prescribed source, the Service may

(a) make deductions from that payment or income in accordance with regulations made under paragraph 134(z.3); and

(b) require that the offender pay to Her Majesty in right of Canada, in accordance with regulations made pursuant to paragraph 134(z.4), an amount, not exceeding twenty-five per cent of the gross payment referred to in subsection (1) or gross income, for reimbursement of the costs of the offender's food and accommodation incurred while the offender was receiving that income or payment.

COMMUNITY REINTEGRATION

Process

49 Planning for community reintegration shall commence at the time the offender is received into the institution.

ESCORTED TEMPORARY ABSENCE

Temporary absences may be authorized

50 (1) The institutional head may, subject to section 746.1 of the Criminal Code, subsection 140.3(2) of the National Defence Act and subsection 15(2) of the Crimes Against Humanity and War Crimes Act, authorize the temporary absence of an inmate if the inmate is escorted by a staff member or other person authorized by the institutional head and, in the opinion of the institutional head,

- (a) the inmate will not, by reoffending, present an undue risk to society during an absence authorized under this section;
- (b) it is desirable for the inmate to be absent from the penitentiary for medical or administrative reasons, community service, family contact, including parental responsibilities, personal development for rehabilitative purposes or compassionate reasons;
- (c) the inmate's behaviour while under sentence does not preclude authorizing the absence; and
- (d) a structured plan for the absence has been prepared.

(2) The temporary absence may be for an unlimited period if it is authorized for medical reasons or for a period of not more than five days or, with the Commissioner's approval, for a period of more than five days but not more than 15 days if it is authorized for reasons other than medical reasons.

Conditions

(3) The institutional head may impose, in relation to a temporary absence, conditions that are the least restrictive consistent with public safety and that the institutional head considers reasonable and necessary in order to protect society.

Cancellation

(4) The institutional head may cancel a temporary absence either before or after its commencement.

Reasons to be given

(5) The institutional head shall give the inmate written reasons for the authorizing, refusal or cancellation of a temporary absence.

Travel time

(6) In addition to the period authorized for the purposes of a temporary absence, an inmate may be granted the time necessary to travel to and from the place where the absence is authorized to be spent.

Delegation to provincial hospital

(7) Where, pursuant to an agreement under paragraph 25(1)(a), an inmate has been admitted to a hospital operated by a provincial government in which the liberty of patients is normally subject to restrictions, the institutional head may confer on the person in charge of the hospital, for such period and subject to such conditions as the institutional head specifies, any of the institutional head's powers under this section in relation to that inmate.

WORK RELEASE

Definition and use of *work release*

51 (1) In this section, *work release* means a structured program of release of specified duration for work or community service outside the penitentiary, under the supervision of a staff member or other person or organization authorized by the institutional head.

(2) The institutional head shall actively seek out work release opportunities in the community for inmates, and shall proactively liaise with community groups, other government organizations, and private business in order to identify and implement suitable work activities on an ongoing basis.

Work releases may be authorized

(3) Where an inmate is eligible for unescorted temporary absences under Part II or pursuant to section 746.1 of the *Criminal Code*, subsection 226.1(2) of the *National Defence Act* or subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, and, in the opinion of the institutional head,

- (a) the inmate will not, by reoffending, present an undue risk to society during a work release,
- (b) it is desirable for the inmate to participate in a structured program of work or community service in the community,

(c) the inmate's behaviour while under sentence does not preclude authorizing the work release, and

(d) a structured plan for the work release has been prepared,

the institutional head may authorize a work release, for such duration as is fixed by the institutional head, subject to the approval of the Commissioner if the duration is to exceed sixty days.

Conditions

(4) The institutional head may impose, in relation to a work release, conditions that are the least restrictive consistent with public safety and that the institutional head considers reasonable and necessary in order to protect society.

Suspension or cancellation

(5) The institutional head may suspend or cancel a work release either before or after its commencement.

Reasons to be given

(6) The institutional head shall give the inmate written reasons for the authorizing, refusal, suspension or cancellation of a work release.

Warrant

(7) Where a work release is suspended or cancelled after its commencement, the institutional head may cause a warrant in writing to be issued authorizing the apprehension and recommitment to custody of the inmate.

INVESTIGATIONS

General

52 (1) Where an inmate dies or suffers serious injury the Service shall, unless subsection 53(1) applies, forthwith investigate the matter and report thereon to the Commissioner or to a person designated by the Commissioner.

Medical assistance in dying

(2) Subsection (1) does not apply to a death that results from an inmate receiving *medical assistance in dying*, as defined in section 241.1 of the *Criminal Code*, in accordance with section 241.2 of that Act.

Notification to the Ombudsman

(3) The Commissioner shall forthwith notify the Ombudsman, as defined in Part III, each time an inmate receives medical assistance in dying as defined in section 241.1 of the *Criminal Code*.

Special investigations

53 (1) The Commissioner may appoint a person or persons to investigate and report on any matter relating to the operations of the Service.

Required

(2) The Commissioner shall make an appointment under subsection (1) where a death referred to in subsection 52(1) occurred during a riot or while in segregation or following a use of force.

Investigation by person independent from the Service

(3) The person or persons appointed by the Commissioner in the cases referred to by subsection (2) must be independent from the Service.

Copy to Ombudsman

(4) The Service shall give the Ombudsman a copy of any reports referred to in subsections 52(1), 53(1) and 53(2), without delay.

Application of Inquiries Act

54 Sections 7 to 13 of the *Inquiries Act* apply in respect of investigations carried on under section 53

(a) as if the references to “commissioners” in those sections were references to the person or persons appointed under section 53; and

(b) with such other modifications as the circumstances require.

DEATH OR DISABILITY

Notification of next of kin

55 (1) When an inmate dies in custody, the institutional head shall forthwith notify the inmate’s next of kin and any other person(s) previously specified by the inmate, in a dignified and respectful manner.

Same

(2) The institutional head shall assist in funeral arrangements and the return of the offender’s personal effects, in a dignified and respectful manner.

Compensation

56 The Minister or a person authorized by the Minister may, subject to and in accordance with the regulations, pay compensation in respect of the death or serious injury of

- (a) an inmate, or
- (b) a person on day parole

that is attributable to the participation of that inmate or person in an approved program, and shall pay compensation to such a person where the death or serious injury is attributable to the unlawful use of force by a staff member against that inmate or person.

USE OF FORCE

Definition

57 For the purposes of this Part and any regulations thereto, *serious injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Reporting

58 All incidents involving the use of force including the threatened or implied use, or the displaying, drawing or pointing of a weapon, shall be considered a reportable use of force.

Amount of force

59 (1) No person shall use force against an inmate unless no other alternative is reasonably available in order to,

- (a) enforce discipline and maintain order within the institution;
- (b) defend a person from assault;
- (c) control a rebellious or disturbed inmate who presents an imminent risk to themselves or others; or
- (d) conduct a search.

Reasonable

(2) The amount of force used against an inmate shall be reasonable, the least restrictive option consistent with the safety of any person, and not excessive having regard to the nature of the threat posed and all other circumstances of the case.

No force

- (3)** For greater certainty, no force shall be used
- (a)** where the inmate or group of inmates is compliant;
 - (b)** where the inmate is confined in a cell or elsewhere and no immediate harm to any person is threatened;
 - (c)** until all reasonable efforts to de-escalate the situation have been used, including intervention by a mental health professional where appropriate.

Labour, childbirth, etc.

- 60 (1)** No instruments of restraint shall be used on an inmate,
- (a)** during labour if, in the opinion of a physician, nurse, midwife or prescribed health care practitioner, the use of instruments of restraint during that period would compromise the health of the inmate or the inmate's baby;
 - (b)** during childbirth; and
 - (c)** within 48 hours after giving birth or such longer period after giving birth as a physician, nurse, midwife or prescribed health care practitioner may recommend if, in the opinion of the physician, nurse, midwife or prescribed health care practitioner, the use of instruments of restraint during that period would compromise the health of the inmate or the inmate's baby.

Exception

- (2)** Subsection (1) does not apply if there is an imminent risk of harm or serious injury to any person.

Consistency of policies and procedures

- 61** The Commissioner shall ensure that the law, policies and procedures relating to use of force are implemented in a consistent manner across all regions and institutions.

DISCIPLINE

Purpose of disciplinary system

- 62** The purpose of the disciplinary system established by sections 64 to 68 and the regulations is to encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates' rehabilitation and successful reintegration into the community.

System exclusive

63 Inmates shall not be disciplined otherwise than in accordance with sections 64 to 68 and the regulations.

Disciplinary offences

64 An inmate commits a disciplinary offence who

- (a) disobeys a justifiable order of a staff member;
- (b) is, without authorization, in an area prohibited to inmates;
- (c) wilfully or recklessly damages or destroys property that is not the inmate's;
- (d) commits theft;
- (e) is in possession of stolen property;
- (f) is disrespectful toward a person in a manner that is likely to provoke them to be violent or toward a staff member in a manner that could undermine their authority or the authority of staff members in general;
- (g) is abusive toward a person or intimidates them by threats that violence or other injury will be done to, or punishment inflicted on, them;
- (h) fights with, assaults or threatens to assault another person;
- (i) is in possession of, or deals in, contraband;
- (j) without prior authorization, is in possession of, or deals in, an item that is not authorized by a Commissioner's Directive or by a written order of the institutional head;
- (k) takes an intoxicant into the inmate's body;
- (l) fails or refuses to provide a urine sample when demanded pursuant to section 93 or 94;
- (m) creates or participates in
 - (i) a disturbance, or
 - (ii) any other activity
 that is likely to jeopardize the security of the penitentiary;
- (n) does anything for the purpose of escaping or assisting another inmate to escape;
- (o) offers, gives or accepts a bribe or reward;
- (p) without reasonable excuse, refuses to work or leaves work;
- (q) engages in gambling;
- (r) willfully disobeys a written rule governing the conduct of inmates;

- (s) knowingly makes a false claim for compensation from the Crown;
- (t) throws a bodily substance towards another person; or
- (u) attempts to do, or assists another person to do, anything referred to in paragraphs (a) to (t).

Informal resolution

65 (1) Where a staff member believes on reasonable grounds that an inmate has committed or is committing a disciplinary offence, the staff member shall take all reasonable steps to resolve the matter informally.

Charge may be issued

(2) Where an informal resolution is not achieved, the institutional head may, depending on the seriousness of the alleged conduct and any aggravating or mitigating factors, issue a charge of a minor or serious disciplinary offence.

Notice of charge

66 An inmate charged with a disciplinary offence shall be given a written notice of the charge in accordance with the regulations.

Hearing

67 (1) A charge of a disciplinary offence shall be dealt with in accordance with the prescribed procedure.

Presence of inmate

- (2)** A hearing mentioned in subsection (1) shall be conducted with the inmate present unless
- (a) the inmate is voluntarily absent;
 - (b) the person conducting the hearing believes on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or
 - (c) the inmate seriously disrupts the hearing.

Decision

(3) The person conducting the hearing shall not find the inmate guilty unless satisfied beyond a reasonable doubt, based on the evidence presented at the hearing, that the inmate committed the disciplinary offence in question.

Disciplinary sanctions

68 (1) An inmate who is found guilty of a disciplinary offence is liable, in accordance with the regulations made under paragraphs 134(i) and (j), to one or more of the following:

- (a) a warning or reprimand;

- (b) a loss of privileges;
- (c) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence;
- (d) a fine;
- (e) performance of extra duties; and
- (f) in the case of a serious disciplinary offence, restrictive confinement – without restrictions on visits with family – for a maximum of 30 days.

Collection of fine or restitution

(2) A fine or restitution imposed pursuant to subsection (1) may be collected in the prescribed manner.

SUMMARY CONVICTION OFFENCES

Summary conviction offences

- 69 Every person commits a summary conviction offence who
- (a) is in possession of contraband beyond the visitor control point in a penitentiary;
 - (b) is in possession of anything referred to in paragraph (b) or (c) of the definition “contraband” in section 2 before the visitor control point at a penitentiary;
 - (c) delivers contraband to, or receives contraband from, an inmate;
 - (d) without prior authorization, delivers jewelry to, or receives jewelry from, an inmate; or
 - (e) trespasses at a penitentiary.

RESTRICTIVE CONFINEMENT

Prohibition

70 (1) Solitary confinement as defined by the United Nations Standard Minimum Rules for the Treatment of Prisoners is prohibited.

Purpose

- (2) The purpose of restrictive confinement is to maintain the security of the penitentiary or the safety of any person by providing
- (a) a disciplinary sanction pursuant to paragraph 68(1)(f);

- (b) an appropriate temporary living environment for an inmate who cannot be maintained in the mainstream population for security or other reasons; and
- (c) services that respond to the inmate's specific needs and risks.

Application of provisions

(3) This section and sections 71-73 and 78-81 apply to all persons in restrictive confinement, and for greater certainty sections 74-77 and 82 do not apply to persons in restrictive confinement as a result of a disciplinary sanction.

Conditions

(4) Inmates held in conditions that constitute restrictive confinement retain all rights and privileges of inmates in general population housing except those that can only be enjoyed in association with other inmates and those that cannot be enjoyed due to security requirements.

Programs and services

(5) Inmates held in conditions that constitute restrictive confinement shall be given access to all programs and services individually or as a group, adapted to the circumstances to the least restrictive extent reasonable and necessary for the security of the institution and any person.

Prohibitions

- (6) An inmate shall not be held in conditions that constitute restrictive confinement if the inmate,
- (a) is pregnant or has recently given birth;
 - (b) is chronically self-harming or suicidal;
 - (c) has a mental disorder, intellectual or emotional disability that a health care professional believes on reasonable grounds would be exacerbated by conditions constituting restrictive confinement;
 - (d) needs medical observation; or
 - (e) has a mobility impairment that meets the prescribed conditions.

Registry

(8) For every unit or subunit of every penitentiary, the institutional head shall maintain a registry of the daily amount of time for which inmates are allowed out of their cells.

Use

71 (1) Restrictive confinement shall be used only in exceptional cases, as a last resort when all other options have been considered or used, and for as short a time as possible.

Other options

(2) For the purposes of subsection (1), all other options include the transfer of the inmate to another institution.

Consecutive day maximum

(3) Subject to subsection 72(2), inmates shall not be held in conditions that constitute restrictive confinement for more than 30 consecutive days.

Transfers

(4) For the purposes of this section and section 72, a transfer of an inmate who was held in conditions that constitute restrictive confinement in one institution to a different institution does not constitute a break in his or her consecutive days of being held in those conditions.

60-day aggregate maximum

72 (1) The institutional head shall ensure that no inmate is held in conditions that constitute restrictive confinement for more than 60 days in the most recent 365-day period, subject to subsection (2).

Exception

(2) In exceptional circumstances an inmate may be held in conditions that constitute restrictive confinement for more than 30 consecutive days or 60 aggregate days in a 365-day period if,

(a) an Independent Adjudicator ensures no other less restrictive housing is possible for the inmate and all options have been explored; and

(b) the Independent Adjudicator has authorized the institutional head to exceed the 30 and 60-day limits.

Independent review

73 The Minister shall appoint and maintain a roster of Independent Adjudicators appropriate to the needs of the institutions in all regions, who shall review the confinement of the inmate as prescribed and, subject to this Act, shall make all decisions relating to the continued confinement or release of the inmate.

Grounds

74 (1) Subject to sections 70 to 73, an inmate may be held in conditions that constitute restrictive confinement if the institutional head believes on reasonable grounds that,

(a) the inmate has committed, attempted to commit or plans to commit acts representing a serious and immediate threat to the physical security of the institution or the personal safety of any person in the institution;

(b) association of the inmate with other persons in the institution would substantially interfere with the disciplinary process for serious misconduct or a criminal investigation; or

(c) association of the inmate with other persons in the institution would jeopardize the inmate's own safety.

Same

(2) The institutional head shall maintain a written record of the options that were exhausted before the decision was made to hold an inmate in conditions that constitute restrictive confinement.

Preliminary review and notice

75 Within one working day after deciding to hold an inmate in conditions that constitute restrictive confinement, the institutional head shall,

(a) review the matter and either release the inmate from those conditions or prepare written reasons for continuing to hold the inmate in those conditions; and

(b) give the inmate a written copy of those reasons as soon as reasonably possible and, at the inmate's request, provide the inmate with a reasonable number of copies.

Visit required

76 (1) In conducting the review under ss. 75, the institutional head shall visit the inmate and speak with him or her.

Communication through a meal hatch insufficient

(2) Communication through a meal hatch does not constitute a visit for the purposes of subsection (1), unless there is a safety or security concern that cannot be addressed in any other manner.

Record if not face to face

(3) If a safety or security concern prevents the institutional head from having a face to face visit under subsection (2), the institutional head shall maintain a written record of the reason why the visit could not be conducted face to face.

Long period

(4) Where the inmate is detained in restrictive confinement as a result of the preliminary review, a Review Board shall be convened no later than 5 calendar days later.

Review Board

(5) The Review Board shall be comprised of the institutional head and staff from programs, case management, and security, and shall consult with staff from health care.

15 days

(6) Where the Review Board at any time decides that the inmate should remain in restrictive confinement for 15 consecutive calendar days, the Board shall refer the matter to an Independent Adjudicator.

Health risk

(7) Notwithstanding this section, if at any time a health care professional notifies the institutional head that the continued restrictive confinement of the inmate poses a risk to the inmate's health, the case shall be forwarded to an Independent Adjudicator forthwith unless the inmate is released from restrictive confinement.

Independent adjudicators

77 (1) Where a case is referred to an Independent Adjudicator, the Adjudicator shall convene a hearing as soon as practicable.

Notice

(2) The inmate shall be advised in writing of the date and time of the hearing, the information that will be used at the hearing, and of their right to appear at the hearing with or without an assistant.

Procedure

(3) The inmate shall be advised in writing of their rights under the *Canada Evidence Act*, the *Charter of Rights and Freedoms*, their right to testify and present relevant documents, to call witnesses and to cross-examine witnesses.

Representative

(4) The institutional head shall appoint a representative to present the institution's case at the hearing, who may call such witnesses as they consider reasonable and necessary, and who shall provide the institution's plan for reintegrating the inmate into the general population.

Health care evidence

(5) The Adjudicator shall hear evidence from health care staff who have been assessing or treating the inmate or who are in a position to offer treatment.

Decision

(6) The Adjudicator shall render a decision as soon as possible and within 24 hours, and shall provide a written summary to the inmate and the institutional head.

Exceptional detention

(7) Where the Adjudicator orders the release of the inmate from restrictive confinement, the inmate shall be released forthwith unless the Adjudicator is satisfied on an exceptional basis that a maximum of a 48 hour transition period is reasonable and necessary.

Further reviews

(8) Where the Adjudicator orders the continued restrictive confinement of the inmate, an Adjudicator shall conduct another hearing within 15 calendar days and within every 15 days thereafter with the same authority under this section.

Review by hearing

(9) Reviews by the Independent Adjudicators shall be conducted by way of hearings with the inmate present unless

- (a) the inmate is voluntarily absent;
- (b) the person or persons conducting the hearing believe on reasonable grounds that the inmate's presence would jeopardize the safety of any person present at the hearing; or
- (c) the inmate seriously disrupts the hearing.

Implementation of restrictive confinement

(10) In addition to the decision-making authority of the Independent Adjudicator under this section, the Adjudicator shall also report on the compliance of the institutional head and the Service with their obligations under sections 78-80.

Opportunities for movement or association with others

78 (1) The institutional head shall, at regular intervals, offer opportunities for movement and association with others to an inmate who is being held in restrictive confinement and shall maintain records of the offers and the inmate's response to them.

Obligations of Service

(2) For greater certainty, the Service shall provide an inmate in conditions that constitute restrictive confinement, every day between the hours of 7 a.m. and 10 p.m.,

- (a) an opportunity to spend a minimum of four hours outside the inmate's cell;
- (b) an opportunity for meaningful interaction, for a minimum of two hours a day, with others, through activities including, but not limited to,
 - (i) programs, interventions and services that encourage the inmate to make progress towards the objectives of their corrections and reintegration plan or that support the inmate's reintegration into the mainstream inmate population, and
 - (ii) leisure time; and

(c) reasonable and safe family contact.

Time included

(3) Time spent interacting under paragraph (2)(b) outside an inmate's cell counts as time spent outside the inmate's cell under paragraph (2)(a).

Time not included

(4) If an inmate takes a shower outside their cell, the time spent doing so does not count as time spent outside the inmate's cell under paragraph (2)(a).

Exceptions

79 (1) Paragraph 78(2) does not apply

- (a) if the inmate refuses to avail themselves of the opportunity referred to in that paragraph;
- (b) if the inmate, at the time the opportunity referred to in that paragraph is provided to them, does not comply with reasonable instructions that are necessary to ensure their safety or that of any other person or the security of the penitentiary; or
- (c) in the prescribed circumstances, which may include natural disasters, fires, riots and work refusals under section 128 of the *Canada Labour Code*, and those circumstances must be limited to what is reasonable and necessary for security purposes.

Record

(2) The Service shall maintain a record of every instance that an inmate has refused to avail themselves of any opportunity referred to in paragraph 78(2) or has not been given such an opportunity.

Ongoing monitoring

80 (1) The Service shall ensure that measures are taken to provide for the ongoing monitoring of the health of inmates being held in conditions that constitute restrictive confinement.

Daily visits

(2) The Service shall ensure that the measures include a visit to the inmate at least once every day by a registered health care professional employed or engaged by the Service.

Same

(3) The institutional head shall visit a restrictive confinement area at least once every day and meet with individual inmates on request, who shall be apprised of the right to request a visit.

Recommendations

81 (1) A registered health care professional employed or engaged by the Service may, for health reasons, recommend to the institutional head or the Independent Adjudicator that the restrictive conditions of confinement of the inmate be altered or that the inmate not remain in the unit.

Same

(2) The institutional head or the Independent Adjudicator, as the case may be, shall give written reasons if he or she does not follow the recommendations noted in subsection (1).

Inmate's request

82 Where an inmate requests to be placed or continue in restrictive confinement and the institutional head does not intend to grant the request, the institutional head shall, as soon as is practicable, meet with the inmate

- (a)** to explain the reasons for not intending to grant the request; and
- (b)** to give the inmate an opportunity to make oral or written representations.

SEARCH AND SEIZURE

INTERPRETATION

Definitions

83 In sections 84 to 101,

body cavity

body cavity means the rectum or vagina; (*cavité corporelle*)

body cavity search

body cavity search means the physical probing of a body cavity, in the prescribed manner; (*examen des cavités corporelles*)

body scan search

body scan search means search of a body by means of a prescribed scanner that is conducted in the prescribed manner; (*examen par imagerie*)

frisk search

frisk search means

(a) a manual search, or a search by technical means, of the clothed body, in the prescribed manner, and

(b) a search of

(i) personal possessions, including clothing, that the person may be carrying, and

(ii) any coat or jacket that the person has been requested to remove,

in accordance with any applicable regulations; (fouille par palpation)

non-intrusive search

non-intrusive search means

(a) a search of a non-intrusive nature of the clothed body by technical means, in the prescribed manner, and

(b) a search of

(i) personal possessions, including clothing, that the person may be carrying, and

(ii) any coat or jacket that the person has been requested to remove,

in accordance with any applicable regulations; (fouille discrète)

strip search

strip search means

(a) a visual inspection of the naked body, in the prescribed manner, and

(b) a search, in accordance with any applicable regulations, of all clothing, things in the clothing, and other personal possessions that the person may be carrying; (fouille à nu)

urinalysis

urinalysis means a prescribed procedure by which a person provides a urine sample, by the normal excretory process, for analysis. (*prise d'échantillon d'urine*)

SEARCHES – GENERAL

Dignity

84 Any person conducting a search during which any person is required to partially or totally undress shall conduct the search in a place and manner such that the person is not subject to embarrassment or humiliation.

SEARCHES OF INMATES

Routine non-intrusive or frisk searches

85 (1) A staff member may conduct routine non-intrusive searches or routine frisk searches of inmates, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably and necessarily required for security purposes.

Same

(2) A person providing services of a prescribed class to the Service under a contract has the power to search that a staff member is authorized to conduct under subsection (1) if

- (a)** the conducting of such searches is provided for in the contract but does not constitute the person's principal services under the contract;
- (b)** the searches are reasonably related to the person's principal services under the contract; and
- (c)** the person has received the prescribed training to conduct such searches.

Routine strip search of inmates

86 A staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion,

- (a)** in the prescribed circumstances, which circumstances must be limited to situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or
- (b)** when the inmate is entering or leaving a restrictive confinement area.

Frisk search of inmate

87 (1) Where a staff member suspects on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, the staff member may conduct a frisk search of the inmate.

Same

(2) A person providing services of a prescribed class to the Service under a contract has the powers of search of a staff member under subsection (1) if

- (a)** the conducting of such searches is provided for in the contract but does not constitute the person's principal services under the contract;
- (b)** the searches are reasonably related to the person's principal services under the contract; and
- (c)** the person has received the prescribed training to conduct such searches.

Strip search of inmate**(3)** Where a staff member

(a) believes on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, and that a strip search is the least intrusive measure necessary to find the contraband or evidence, and

(b) satisfies the institutional head that there are reasonable grounds to so believe,

a staff member of the same sex as the inmate may conduct a strip search of the inmate.

Emergency search**(4)** Where a staff member

(a) satisfies the requirements of paragraph (3)(a), and

(b) believes on reasonable grounds that the delay that would be necessary in order to comply with paragraph (3)(b) or with the gender requirement of subsection (3) would result in danger to human life or safety or in loss or destruction of the evidence,

the staff member may conduct the strip search without complying with paragraph (3)(b) or the gender requirement of subsection (3).

Search by body scan

88 A staff member may, in the prescribed circumstances, conduct a body scan search of an inmate, and those circumstances must be limited to what is reasonably required for security purposes.

Staff member to inform institutional head

89 Where a staff member believes on reasonable grounds that an inmate is carrying contraband in a body cavity, the staff member may not seize or attempt to seize that contraband, but shall inform the institutional head.

Use of dry cell

90 (1) If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing the detention of the inmate in a cell without plumbing fixtures on the expectation that the contraband will be expelled.

Visits by registered health care professional

(2) The inmate must be visited at least once every day by a registered health care professional.

Body cavity search

91 Where the institutional head is satisfied that there are reasonable grounds to believe that an inmate is carrying contraband in a body cavity and that a body cavity search is the least intrusive measure necessary in order to find or seize the contraband, the institutional head may authorize in writing a body cavity search to be conducted by a qualified medical practitioner, if the inmate's consent is obtained.

Exceptional power of search

92 (1) Where the institutional head is satisfied that there are reasonable grounds to believe that

(a) there exists, because of contraband, a clear and substantial danger to human life or safety or to the security of the penitentiary, and

(b) a frisk search or strip search of all the inmates in the penitentiary or any part thereof is necessary in order to seize the contraband and avert the danger,

the institutional head may authorize in writing such a search, subject to subsection (2).

Gender requirement

(2) A strip search authorized under subsection (1) shall be conducted in each case by a staff member of the same sex as the inmate.

Urinalysis

93 Subject to section 95 and subsection 96(1), a staff member may demand that an inmate submit to urinalysis

(a) where the staff member believes on reasonable grounds that the inmate has committed or is committing the disciplinary offence referred to in paragraph 64(k) and that a urine sample is necessary to provide evidence of the offence, and the staff member obtains the prior authorization of the institutional head;

(b) as part of a prescribed random selection urinalysis program, conducted without individualized grounds on a periodic basis and in accordance with any regulations; or

(c) where urinalysis is a prescribed requirement for participation in

(i) a prescribed program or activity involving contact with the community, or

(ii) a prescribed substance abuse treatment program.

Urinalysis

94 Subject to section 95 and subsection 96(2), a staff member, or any other person so authorized by the Service, may demand that an offender submit to urinalysis

(a) at once, where the staff member or other authorized person has reasonable grounds to suspect that the offender has breached any condition of a temporary absence, work release,

parole, statutory release or long-term supervision order that requires abstention from alcohol or drugs, in order to monitor the offender's compliance with that condition; or

(b) at regular intervals, in order to monitor the offender's compliance with any condition of a temporary absence, work release, parole, statutory release or long-term supervision order that requires abstention from alcohol or drugs.

Information requirements

95 Where a demand is made of an offender to submit to urinalysis pursuant to section 93 or 94, the person making the demand shall forthwith inform the offender of the basis of the demand and the consequences of non-compliance.

Right to make representations

96 (1) An inmate who is required to submit to urinalysis pursuant to paragraph 93(a) shall be given an opportunity to make representations to the institutional head before submitting the urine sample.

Same

(2) An offender who is required to submit to urinalysis at regular intervals pursuant to section 94(2) shall be given reasonable opportunities to make representations to the prescribed official in relation to the length of the intervals.

SEARCHES OF CELLS

Searches of cells

97 (1) A staff member may, in the prescribed manner, conduct searches of cells and their contents in the prescribed circumstances, which circumstances must be limited to what is reasonably and necessarily required for security purposes.

Same

(2) The Service shall inform an inmate of any seizure or damage to property belonging to the inmate arising from a search conducted without the knowledge or the presence of the inmate.

SEARCHES OF VISITORS

Routine and other searches

98 (1) A staff member may conduct routine non-intrusive searches or routine frisk searches of visitors, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably and necessarily required for security purposes.

Frisk search

(2) A staff member may conduct a frisk search of a visitor where the staff member suspects on reasonable grounds that the visitor is carrying contraband or carrying other evidence relating to an offence under section 64.

Strip search

(3) Where a staff member

(a) suspects on reasonable grounds that a visitor is carrying contraband or carrying other evidence relating to an offence under section 64 and believes that a strip search is necessary to find the contraband or evidence, and

(b) satisfies the institutional head that there are reasonable grounds

(i) to suspect that the visitor is carrying contraband or carrying other evidence relating to an offence under section 64, and

(ii) to believe that a strip search is the least intrusive measure necessary to find the contraband or evidence,

a staff member of the same gender identity as the visitor may, after giving the visitor the option of voluntarily leaving the penitentiary forthwith, conduct a strip search of the visitor.

Search by body scan

99 A staff member may, in the prescribed circumstances, conduct a body scan search of a visitor, and those circumstances must be limited to what is reasonably and necessarily required for security purposes.

SEARCHES OF VEHICLES

Routine searches

100 (1) A staff member may, in the prescribed manner and circumstances, conduct routine searches of vehicles at a penitentiary, which circumstances must be limited to what is reasonably and necessarily required for security purposes.

Searches for contraband

(2) A staff member who believes on reasonable grounds that contraband is located in a particular vehicle at a penitentiary in circumstances constituting an offence under section 64 may, with prior authorization from the institutional head, search the vehicle.

Emergency searches

(3) Where a staff member believes on reasonable grounds that the delay that would be necessary in order to comply with the prior authorization requirement of subsection (2) would result in danger to human life or safety or the loss or destruction of the contraband, the staff member may search the vehicle without that prior authorization.

Exceptional power to search

(4) An institutional head may, in writing, authorize a staff member to search the vehicles at a penitentiary if the institutional head has reasonable grounds to believe that

(a) there is a clear and substantial danger to the security of the penitentiary or the life or safety of persons because evidence exists that there is contraband at the penitentiary or that a criminal offence is being planned or has been committed at the penitentiary; and

(b) it is necessary to search the vehicles in order to locate and seize the contraband or other evidence and to avert the danger.

Warnings about searches

101 At each penitentiary, a conspicuous warning shall be posted at the entrance to the lands and at the visitor control point, stating that all visitors and vehicles at the penitentiary are subject to being searched in accordance with this Part and the regulations.

SEARCHES OF STAFF MEMBERS

Routine non-intrusive or frisk searches

102 A staff member may conduct routine non-intrusive searches or routine frisk searches of other staff members, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably and necessarily required for security purposes.

Frisk search or strip search

103 (1) Where a staff member believes on reasonable grounds that another staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence,

(a) the staff member may detain the other staff member in order to

(i) obtain the authorization of the institutional head to conduct a frisk search or strip search, or

(ii) obtain the services of the police; and

(b) where the staff member satisfies the institutional head that there are reasonable grounds to believe that the other staff member is carrying contraband or carrying evidence relating to a criminal offence and that a frisk search or strip search is necessary to find the contraband or evidence, the institutional head may

- (i) authorize a staff member to conduct a frisk search of the other staff member, or
- (ii) authorize a staff member of the same sex as the other staff member to conduct a strip search of that other staff member.

Rights of detained staff member

- (2) A staff member who is detained pursuant to subsection (1) shall
- (a) be informed promptly of the reasons for the detention; and
 - (b) before being searched, be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right.

Search by body scan

104 A staff member may, in the prescribed circumstances, conduct a body scan search of another staff member, and those circumstances must be limited to what is reasonably and necessarily required for security purposes.

POWER TO SEIZE

Power to seize

105 (1) Subject to section 89, a staff member may seize contraband, or evidence relating to a disciplinary or criminal offence, found in the course of a search, except a body cavity search or a body scan search.

Same

(2) A medical practitioner conducting a body cavity search may seize contraband or evidence relating to a disciplinary or criminal offence found in the course of that search.

Same

(3) A person conducting a search pursuant to subsection 85(2) or 87(2) may seize contraband found in the course of that search.

SEARCHES IN COMMUNITY-BASED RESIDENTIAL FACILITIES

Frisk search, room search

106 (1) An employee of a community-based residential facility who is so authorized by the Service may

- (a) conduct a frisk search of an offender in that facility, and
- (b) search an offender's room and its contents,

where the employee suspects on reasonable grounds that the offender is violating or has violated a condition of the offender's temporary absence, parole, statutory release or long-term supervision order and that such a search is necessary to confirm the suspected violation.

Power to seize

(2) An employee who conducts a search pursuant to subsection (1) may seize any evidence of a violation of the offender's conditions of release found in the course of the search.

Definition of "community-based residential facility"

(3) In this section, *community-based residential facility* means a place that provides accommodation to offenders who are on parole, statutory release, temporary absence or under a long time supervision order.

REPORTS RELATING TO SEARCHES AND SEIZURES

Reports to be submitted

107 (1) Reports in respect of searches conducted pursuant to this Part, and in respect of the seizure of items in the course of those searches, must be submitted where required by regulations made under paragraph 134(p) and in accordance with those regulations.

Disposal of contraband

(2) Subject to subsection (3), contraband seized by the Service is forfeit to the Crown.

Same

(3) If the institutional head determines that the forfeiture of contraband belonging to an offender would cause undue hardship to the offender, the institutional head shall hold the contraband in trust until the offender's release from the institution.

Disposal

(4) The institutional head shall dispose of contraband that is forfeit to the Crown under subsection (2),

- (a) if the contraband is money, by depositing it in the Consolidated Revenue Fund;
- (b) if the contraband has significant resale value, by forwarding it to the authority responsible for disposal of Crown assets, who may dispose of it in a manner that they consider appropriate;
- (c) if the contraband is useful property that does not have significant resale value, by donating it to a person or an organization that undertakes to use it for a charitable purpose; and
- (d) if the contraband is not described in clause (a), (b) or (c), by destroying it.

INDIGENOUS OFFENDERS

Definitions

108 In sections 109 to 116,

Indigenous

Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982; (*autochtone*)

indigenous community

community means a first nation, tribal council, band, community, organization or other group with a predominantly Indigenous leadership; (*collectivité autochtone*)

correctional services

correctional services means services or programs for offenders, including their care, custody and supervision. (*services correctionnels*)

Factors to be considered

109 (1) In making decisions under this Act affecting an Indigenous offender, the Service shall take into consideration:

- (a) systemic and background factors affecting Indigenous peoples of Canada;
- (b) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system, that may have contributed to the offender's involvement in the criminal justice system and that may impact on the offender's reintegration into the community; and
- (c) the Indigenous culture and identity of the offender.

(2) For greater clarity, no risk assessment instrument shall be used with an Indigenous offender unless it is reliable and has been independently validated.

Deputy Commissioner

110 The Commissioner shall establish the position of Deputy Commissioner for Indigenous Persons, who shall be responsible for all matters affecting Indigenous offenders.

Programs

111 Without limiting the generality of section 46, the Service shall provide evidence-based programs designed to address the needs of Indigenous offenders including taking into account the cultural variations among the particular First Nation, Metis or Inuit population with which the offender identifies.

Agreements

112 (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an Indigenous community for the provision of correctional services to Indigenous offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

Scope of agreement

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-Indigenous offender.

Advisory committees

113 (1) The Service shall establish a National Indigenous Advisory Committee, and may establish regional and local Indigenous advisory committees, which shall provide advice to the Service on the provision of correctional services to Indigenous offenders.

Committees to consult

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with Indigenous communities and other appropriate persons with knowledge of Indigenous matters.

Spiritual leaders and elders

114 (1) For greater certainty, Indigenous spirituality and Indigenous spiritual leaders and elders have the same status as other religions and other religious leaders.

Same

(2) The Service shall take all reasonable steps to make available to Indigenous inmates the services of an Indigenous spiritual leader or elder after consultation with

(a) the National Indigenous Advisory Committee mentioned in section 113; and

(b) the appropriate regional and local Indigenous advisory committees, if such committees have been established pursuant to that section.

Release to Indigenous community

115 Upon admission into a penitentiary, the Service shall inquire of every inmate who self-identifies as Indigenous whether the inmate is interested being released at the appropriate time to the care and custody of an Indigenous community, and, in accordance with any agreement, if an inmate expresses such an interest the Service shall, with the inmate's consent, give the Indigenous community

- (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and
- (b) an opportunity to propose a plan for the inmate's release and integration into that community.

Plans with respect to long-term supervision

116 If an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an Indigenous community, the Service shall, if the offender consents, give the Indigenous community

- (a) adequate notice of the order; and
- (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the Indigenous community.

HEALTH CARE

Definitions

117 In sections 118 and 125,

health care

health care means therapeutic and preventive medical care, dental care and mental health care, provided by registered health care professionals, and without limiting the generality of the foregoing includes:

- (a) prevention and treatment of disease or injury;
- (b) health promotion;
- (c) vision care;
- (d) hearing care;
- (e) addictions and substance abuse care;
- (f) medication prescribed by a health professional;

- (g) pre- and post-natal care, including care for a child while in an institutional mother-child program;
- (h) gender identity care;
- (i) geriatric care;
- (j) traditional Indigenous healing and medicines; and
- (k) any other prescribed health care services. (*soins de santé*)

mental health care

mental health care means the care of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life. (*soins de santé mentale*)

treatment

treatment means health care treatment.

Obligations of Service

118 (1) The Service shall provide every inmate with

- (a) essential health care;
- (b) reasonable access to non-essential health care; and
- (c) an annual health check-up, upon request.

Same

(2) The Assistant Commissioner Health Care shall report to the Commissioner and to the Deputy Minister, Health Canada, as prescribed by the regulations.

(3) The Commissioner and the Deputy Minister, Health Canada, shall establish and maintain a Health Care Advisory Committee comprised of licensed health care professionals from a variety of disciplines, to advise and support the Assistant Commissioner for Health Care on all health-related policy and program matters.

Standards

(4) The provision of health care under subsection (1) shall conform to the same professionally accepted standards as those applicable to patients in the community, including the confidentiality of medical information, unless maintaining such confidentiality would result in a real and immediate threat to the offender or to others.

Health care service teams

(5) The Service shall establish the following teams for each institution:

- (a) a health care service team consisting of at least a physician, a nurse and any other prescribed members, and
- (b) a mental health care service team consisting of at least a psychiatrist, a psychologist, a nurse and any other prescribed members.

Same

- (6) Sufficient representation from both teams shall be present in the institution at all times.

Service to consider health factors

119 (1) The Service shall take into consideration an offender's state of health and health care needs

- (a) in all decisions affecting the offender, including decisions relating to placement, transfer, restrictive confinement and disciplinary matters; and
- (b) in the preparation of the offender for release and the supervision of the offender.

Clinical decisions

(2) Clinical decisions may only be taken by the responsible health care professionals and shall not be over-ruled or ignored by non-medical staff.

Health care obligations

120 When health care is provided to inmates, the Service shall

- (a) support the professional autonomy and the clinical independence of registered health care professionals and their freedom to exercise, without undue influence, their professional judgment in the care and treatment of offenders;
- (b) support those registered health care professionals in their promotion, in accordance with their respective professional code of ethics, of patient-centered care and patient advocacy; and
- (c) promote decision-making that is based on the appropriate health care criteria, including avoidance of the use of medication as a first resort as well as over-medication.

Designation of health care unit

121 (1) The Commissioner may designate a penitentiary or any area in a penitentiary to be a health care unit.

Purpose

(2) The purpose of a health care unit is to provide an appropriate living environment to facilitate an inmate's access to health care.

Admission and discharge

(3) The admission of inmates to and the discharge of inmates from health care units must be in accordance with regulations made under paragraph 134(h).

When treatment permitted

122 (1) Except as provided by subsection (5),

(a) treatment shall not be given to an inmate, or continued once started, unless the inmate voluntarily gives an informed consent thereto; and

(b) an inmate has the right to refuse treatment or withdraw from treatment at any time.

Meaning of "informed consent"

(2) For the purpose of paragraph (1)(a), an inmate's consent to treatment is informed consent only if the inmate has been advised of, and has the capacity to understand,

(a) the likelihood and degree of improvement, remission, control or cure as a result of the treatment;

(b) any significant risk, and the degree thereof, associated with the treatment;

(c) any reasonable alternatives to the treatment;

(d) the likely effects of refusing the treatment; and

(e) the inmate's right to refuse the treatment or withdraw from the treatment at any time.

Special case

(3) For the purpose of paragraph (1)(a), an inmate's consent to treatment shall not be considered involuntary merely because the treatment is a requirement for a temporary absence, work release or parole.

Treatment demonstration programs

(4) Treatment under a treatment demonstration program shall not be given to an inmate unless a committee that is independent of the Service and constituted as prescribed has

(a) approved the treatment demonstration program as clinically sound and in conformity with accepted ethical standards; and

(b) reviewed the inmate's consent to the treatment and determined that it was given in accordance with this section.

Where provincial law applies

(5) Where an inmate does not have the capacity to understand all the matters described in paragraphs (2)(a) to (e), the giving of treatment to an inmate shall be governed by the applicable provincial law.

Force-feeding

123 The Service shall not direct the force-feeding, by any method, of an inmate who had the capacity to understand the consequences of fasting at the time the inmate made the decision to fast.

Patient advocacy services

124 The Service shall provide timely access to independent patient advocacy services

- (a) to support inmates in relation to all their health care matters; and
- (b) to enable inmates and their families or an individual identified by the inmate as a support person to understand the rights and responsibilities of inmates related to health care.

Hospital or other health facility

125 (1) The institutional head shall arrange for an inmate to be conveyed to a hospital or other health facility if the inmates requires medical treatment that cannot be provided at the institution or would be more effectively provided at a hospital or other health care facility.

(2) Every pregnant inmate shall be provided the opportunity to give birth in a medical or birthing facility outside of the institution.

GRIEVANCE OR COMPLAINT PROCEDURE

Grievance procedure

126 (1) There shall be a procedure for fairly and expeditiously resolving offenders' complaints and grievances on matters within the jurisdiction of the Commissioner, and the procedure shall operate in accordance with the regulations made under paragraph 134(v).

(2) Wherever possible, matters shall be resolved through informal processes, but no complaint or grievance shall be rejected or delayed solely because an inmate declines to participate in such processes.

Access to complaint and grievance procedure

127 (1) Every offender shall have complete access to the offender complaint and grievance procedure without delay or negative consequences.

(2) For greater certainty,

- (a) Complaints and initial grievances shall be responded to within 10 calendar days; and
 - (b) Final grievances shall be responded to within 20 calendar days.
- (3) The response times in (2) shall not be extended without an explanation and the consent of the offender.
- (4) Where the response times in (2) or (3) are not complied with, the grievance shall be deemed to be well-founded and corrective action taken.

Frivolous complaints, etc.

128 (1) If the Commissioner is satisfied that an offender has persistently submitted complaints or grievances that are frivolous, vexatious or not made in good faith, the Commissioner may, in accordance with the prescribed procedures, prohibit an offender from submitting any further complaint or grievance except by leave of the Commissioner.

Review of prohibition

(2) The Commissioner shall review each prohibition under subsection (1) annually and shall give the offender written reasons for his or her decision to maintain or lift it.

Volume of complaints

(3) For greater certainty, the Commissioner shall not make a finding under subsection (1) based solely on the number of complaints or grievances submitted by an offender.

Regulations

129 The Governor in Council may make regulations respecting the complaints and grievances regime with respect to offenders who are subject to a prohibition under subsection 128(1).

RELEASE OF INMATES

General

130 An inmate may be released from a penitentiary or from any other place designated by the Commissioner.

Timing of release from penitentiary

131 (1) Except as provided by subsection (2), an inmate who is entitled to be released from penitentiary on a particular day by virtue of statutory release or the expiration of the sentence shall be released during normal business hours on the last working day before that day.

Earlier release in some cases

(2) Where the institutional head is satisfied that an inmate's re-entry into the community will be facilitated by an earlier release than that provided for by subsection (1), the institutional head may release the inmate up to five days before the day on which the inmate is entitled to be released by virtue of statutory release or the expiration of the sentence.

When inmate deemed released

(3) An inmate who is released pursuant to subsection (2) shall be deemed to have been released by virtue of statutory release or the expiration of the sentence, as the case may be, at the moment of actual release.

Release on request

(4) Where an inmate who is in penitentiary pursuant to subsection 132(1) requests to be released, the Service shall release the inmate as soon as reasonably possible, but is not required to release the inmate except during normal business hours on a working day.

TEMPORARY ACCOMMODATION IN PENITENTIARY

Temporary stay in penitentiary

132 (1) At the request of a person who has been or is entitled to be released from a penitentiary on parole or statutory release, the institutional head may allow them to stay temporarily in the penitentiary in order to assist their rehabilitation, but the temporary stay may not extend beyond the expiration of their sentence.

Person deemed an inmate

(2) A person staying temporarily in a penitentiary pursuant to subsection (1) shall be deemed to be an inmate while in the penitentiary.

Continuation of parole or statutory release

(3) Notwithstanding subsection (2), the parole or statutory release, as the case may be, of a person staying temporarily in a penitentiary pursuant to subsection (1) is deemed to be in force and subject to the provisions of this Act.

INSTITUTIONAL AND COMMUNITY STAFF

Conduct

133 (1) All staff shall at all times exhibit attitudes and behaviours consistent with being a positive role model.

Dynamic security

(2) Staff members shall promote and prioritize the principles of dynamic security in their interactions with offenders.

Education

(3) All staff shall possess an adequate and relevant education and shall be given the ability and means to carry out their duties in a professional manner in accordance with this Act and regulations.

Training

(4) Before commencing their employment, all staff shall be provided with training appropriate to their duties and reflective of contemporary evidence-based best practices in penal sciences.

Continuous

(5) All staff shall be provided with continuous training with a view to maintaining and improving their knowledge and professional capacity.

Minimum requirements

(6) All training shall include at a minimum

- (a) relevant domestic legislation, regulations and policies as well as applicable international human rights obligations;
- (b) rights and responsibilities of institutional and community staff in the exercise of their functions, including respecting the human dignity of all offenders and other staff and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;
- (c) security and safety, including dynamic security, the use of force and instruments of restraint, and the management of violent behaviour, with full consideration of preventive and defusing techniques, such as negotiation and mediation;
- (d) first aid, the psychosocial needs of inmates and offenders and the corresponding dynamics in custodial settings, as well as social care and assistance, including early detection of mental health issues; and
- (e) preventive self-care and care of other staff.

(7) Training modalities shall be appropriate to the subject matter and without limiting the generality of the foregoing, training under paragraph (5) (c) shall be conducted in person.

(8) Without limiting the generality of the foregoing, training for community staff shall be oriented towards supporting the success of the offender and using independently validated approaches such as positive incentives.

REGULATIONS

Regulations

134 The Governor in Council may make regulations

- (a) prescribing the duties of staff members;
- (b) for authorizing staff members or classes of staff members to exercise powers, perform duties or carry out functions that this Part assigns to the Commissioner or the institutional head;
- (c) respecting, for the purposes of section 56,
 - (i) the circumstances in which compensation may be paid,
 - (ii) what constitutes a disability,
 - (iii) the manner of determining whether a person has a disability, and the extent of the disability,
 - (iv) what constitutes an approved program,
 - (v) to whom compensation may be paid, and
 - (vi) the compensation that may be paid, the time or times at which the compensation is to be paid, the terms and conditions in accordance with which the compensation is to be paid, and the manner of its payment;
- (d) respecting the placement of inmates pursuant to section 19 and their transfer pursuant to section 20;
- (e) providing for the matters referred to in section 34;
- (f) respecting allowances, clothing and other necessities to be given to inmates when leaving penitentiary either temporarily or permanently;
- (g) respecting the restrictive confinement of inmates;
- (h) respecting the admission of inmates to and the discharge of inmates from health care units;
- (i) prescribing the contents of the notice to be given to an inmate under section 66, and the time when the notice is to be given to the inmate;
- (j) in connection with the disciplinary sanctions described in section 68,
 - (i) prescribing the maximum of each of those sanctions, which maxima shall be higher for serious disciplinary offences than for minor ones,
 - (ii) prescribing factors and guidelines to be considered or applied in imposing those sanctions,

- (iii) prescribing the scope of each of those sanctions, and
- (iv) respecting the enforcement, suspension and cancellation of those sanctions;
- (k) providing for a review of the decisions of the person or persons conducting a disciplinary hearing;
- (l) providing for
 - (i) the appointment of persons other than staff members to conduct disciplinary hearings or to review decisions pursuant to regulations made under paragraph (j), and
 - (ii) the remuneration and travel and living expenses of persons referred to in subparagraph (i);
- (m) prescribing the manner in which a search referred to in
 - (i) paragraph (b) of the definition “frisk search” in section 83,
 - (ii) paragraph (b) of the definition “non-intrusive search” in section 83, or
 - (iii) paragraph (b) of the definition “strip search” in section 83
 shall be carried out;
- (n) prescribing the procedures to be followed in conducting a urinalysis and the consequences of the results of a urinalysis;
- (o) prescribing the effect that a visitor’s refusal to undergo a search can have on the visitor’s right to visit an inmate or remain at the penitentiary;
- (p) respecting
 - (i) the submission of reports referred to in section 107, and
 - (ii) the return or forfeiture of items seized under section 105 or subsection 106(2) or otherwise in possession of the Service;
- (q) authorizing the institutional head — or a staff member designated by him or her — to, in the prescribed circumstances, restrict or prohibit the entry into and removal from a penitentiary and the use by inmates of publications, video and audio materials, films and computer programs;
- (r) providing for inmates’ moneys to be held in trust accounts;
- (s) respecting inmates’ work and working conditions;
- (t) respecting penitentiary industry, including regulations authorizing the Minister to establish advisory boards and appoint members to them and regulations providing for the remuneration of those members at rates determined by the Treasury Board and for the reimbursement of any travel and living expenses that are consistent with directives of the Treasury Board and are

incurred by those members in performing their duties while away from their ordinary place of residence;

(u) respecting the conducting of businesses by inmates;

(v) prescribing an offender grievance procedure;

(w) for the organization, training, discipline, efficiency, administration and good management of the Service;

(x) providing for inmates' access to

(i) legal counsel and legal reading materials,

(ii) non-legal reading materials, and

(iii) a commissioner for taking oaths and affidavits;

(y) respecting inmates' attendance at judicial proceedings;

(z) respecting the procedure to be followed on the death of an inmate, including the circumstances in which the Service may pay transportation, funeral, cremation or burial expenses for a deceased inmate;

(z.1) prescribing the procedure governing the disposal of the effects of an escaped inmate;

(z.2) for the delivery of the estate of a deceased inmate to the inmate's personal representative in accordance with the applicable provincial law;

(z.3) prescribing the sources of income from which a deduction may be made pursuant to paragraph 48(2)(a) or in respect of which a payment may be required pursuant to paragraph 48(2)(b);

(z.4) prescribing the purposes for which deductions may be made pursuant to paragraph 48(2)(a) and prescribing the amount or maximum amount of any deduction, which regulations may authorize the Commissioner to fix the amount or maximum amount of any deduction by Commissioner's Directive;

(z.5) providing for the means of collecting the amount referred to in paragraph 48(2)(b), whether by transferring to Her Majesty moneys held in trust accounts established pursuant to paragraph 134(r) or otherwise, and authorizing the Commissioner to fix, by percentage or otherwise, that amount by Commissioner's Directive, and respecting the circumstances under which payment of that amount is not required;

(z.6) providing for remuneration and travel and living expenses of members of committees established pursuant to subsection 113(1);

(z.7) for the involvement of members of the community in the operation of the Service;

(z.8) prescribing procedures to be followed after the use of force by a staff member;

(z.9) respecting the assignment to inmates of security classifications and subclassifications under section 21 and setting out the factors to be considered in determining the security classification and subclassification;

(z.10) authorizing the institutional head — or a staff member designated by him or her — to, in the prescribed circumstances, monitor, intercept or prevent communications between an inmate and another person;

(z.11) respecting escorted temporary absences — including the circumstances in which the releasing authority may authorize an absence under section 50 — and work releases;

(z.12) respecting the manner and form of making requests to the Commissioner under section 29 and respecting how those requests are to be dealt with;

(z.13) imposing obligations or prohibitions on the Service for the purpose of giving effect to any provision of this Part;

(z.14) prescribing anything that by this Part is to be prescribed; and

(z.15) generally for carrying out the purposes and provisions of this Part.

RULES

Rules

135 (1) Subject to this Part and the regulations, the Commissioner may make operational rules

(a) for the management of the Service;

(b) for the matters described in section 4; and

(c) generally for carrying out the purposes and provisions of this Part and the regulations.

Accessibility

(2) The rules shall be accessible at all times to offenders, staff members and the public.

COMMISSIONER'S DIRECTIVES

Commissioner's Directives

136 (1) The Commissioner may designate as Commissioner's Directives any or all rules made under subsection 135(1).

Same

(2) Ss. 135 (2) and (3) apply.

PART II: COMMUNITY REINTEGRATION

INTERPRETATION

Definitions

137 (1) In this Part,

Board

Board means the Parole Board of Canada and includes a provincial parole board where it exercises jurisdiction in respect of parole as provided by section 152 or in respect of which any other provision of this Part is, by virtue of section 153, rendered applicable; (*Commission*)

Commissioner

Commissioner has the same meaning as in Part I; (*commissaire*)

community-based residential facility

community-based residential facility has the same meaning as in subsection 106(3); (*établissement résidentiel communautaire*)

day parole

day parole means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release; (*semi-liberté*)

directed parole release

directed parole release means release under sections 171 and 172; (*liberté conditionnelle dirigée*)

full parole

full parole means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence; (*libération conditionnelle totale*)

Indigenous

Indigenous has the same meaning as in Part I; (*autochtone*)

institutional head

institutional head has the same meaning as in Part I; (*anglais seulement*)

long-term supervision

long-term supervision has the same meaning as in Part I; (surveillance de longue durée)

Minister

Minister has the same meaning as in Part I; (*ministre*)

offender

offender means

(a) a person, other than a young person within the meaning of the [Youth Criminal Justice Act](#), who is under a sentence imposed before or after the coming into force of this section

(i) pursuant to an Act of Parliament or, to the extent that this Part applies, pursuant to a provincial Act, or

(ii) on conviction for criminal or civil contempt of court if the sentence does not include a requirement that the offender return to that court, or

(b) a young person within the meaning of the [Youth Criminal Justice Act](#) with respect to whom an order, committal or direction under section 76, 89, 92 or 93 of that Act has been made,

but does not include a person whose only sentence is a sentence being served intermittently pursuant to section 732 of the [Criminal Code](#); (*délinquant*)

parole

parole means full parole or day parole; (*libération conditionnelle*)

parole reduced

parole reduced means parole conditions pursuant to subsection 182(2); (*libération conditionnelle limitée*)

parole stayed

parole stayed means parole conditions pursuant to subsection 182(3); (*libération conditionnelle statique*)

parole supervisor

parole supervisor has the meaning assigned by the definition ***staff member*** in subsection 2(1) or means a person entrusted by the Service with the guidance and supervision of an offender; (*surveillant de liberté conditionnelle*)

penitentiary

penitentiary has the same meaning as in Part I; (*pénitencier*)

provincial parole board

provincial parole board means the Ontario Board of Parole, la Commission québécoise des libérations conditionnelles, or any other parole board established by the legislature or the lieutenant governor in council of a province; (*commission provinciale*)

regulations

regulations means regulations made by the Governor in Council pursuant to section 216; (*règlement ou réglementaire*)

sentence

sentence has the same meaning as in Part I; (*peine ou peine d'emprisonnement*)

serious harm

serious harm means severe physical injury or severe psychological damage; (*dommage grave*)

Service

Service has the same meaning as in Part I; (*service*)

statutory release

statutory release means release from imprisonment subject to supervision before the expiration of an offender's sentence, to which an offender is entitled under section 174; (*libération d'office*)

statutory release date

statutory release date means the date determined in accordance with section 174; (*date de libération d'office*)

unescorted temporary absence

unescorted temporary absence means an unescorted temporary absence from penitentiary authorized under section 156; (*permission de sortir sans escorte*)

victim

victim has the same meaning as in Part I; (*victime*)

working day

working day has the same meaning as in Part I. (*jour ouvrable*)

References to expiration of sentence

(2) For the purposes of this Part, a reference to the expiration according to law of the sentence of an offender shall be read as a reference to the day on which the sentence expires, without taking into account

- (a) any period during which the offender could be entitled to statutory release;
- (b) in the case of a youth sentence imposed under the *Youth Criminal Justice Act*, the portion to be served under supervision in the community subject to conditions under paragraph 42(2)(n) of that Act or under conditional supervision under paragraph 42(2)(o), (q) or (r) of that Act; or
- (c) any remission that stands to the credit of the offender on November 1, 1992.

Exercise of powers, etc.

(3) Except as otherwise provided by this Part or by the regulations,

- (a) powers, duties and functions assigned to the Commissioner by or pursuant to this Part may only be exercised or performed by the Commissioner or, where the Commissioner is absent or incapacitated or where the office is vacant, by the person acting in the place of the Commissioner; and
- (b) powers, duties and functions assigned to the institutional head by or pursuant to this Part may only be exercised or performed by the institutional head or, where the institutional head is absent or incapacitated or where the office is vacant, by the person who, at the relevant time, is in charge of the penitentiary.

Application to persons subject to long-term supervision order

138 A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part, and sections 140, 141, 149 to 151 and 194 to 201 apply, with such modifications as the circumstances require, to the person and to the long-term supervision of that person.

Young persons

139 In this Part, a young person within the meaning of the *Youth Criminal Justice Act* with respect to whom a committal or direction under section 89, 92 or 93 of that Act has been made begins to serve his or her sentence on the day on which the sentence comes into force in accordance with subsection 42(12) of that Act.

PURPOSE AND PRINCIPLES

Purpose of conditional release

140 The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

Principles guiding parole boards

141 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:

- (a) the protection of society is the paramount consideration in the determination of all cases;
- (b) respect for human rights and the rule of law is the foundation of all parole board decisions and operations;
- (c) parole boards make the least restrictive decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;
- (d) parole boards take into consideration all relevant and reliable available information, including the stated reasons and recommendations of the sentencing judge, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;
- (e) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about their operations with victims, offenders and the general public;
- (f) parole boards and staff are provided with the training necessary to continuously implement this Act; and
- (g) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair, coherent and timely reintegration process.

Criteria for granting parole

142 The Board or a provincial parole board may grant parole to an offender if, in its opinion,

- (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
- (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

CONSTITUTION AND JURISDICTION OF BOARD

Board continued

143 The Parole Board of Canada consists of not more than 60 full-time members and a number of part-time members all of whom are appointed by the Governor in Council, on the recommendation of the Minister, to hold office during good behaviour for periods not exceeding 10 years and three years, respectively.

Chairperson and Executive Vice-Chairperson

144 The Governor in Council shall designate one of the full-time members of the Board to be its Chairperson and, on the recommendation of the Minister, one of the full-time members to be its Executive Vice-Chairperson.

Membership

145 (1) Members appointed to the Board shall be sufficiently diverse in their backgrounds to be able to collectively represent community values and views in the work of the Board and to communicate with the community with respect to conditional release.

Part-time members

(2) A part-time member of the Board has the same powers and duties as a full-time member of the Board.

Divisions

(3) Each member of the Board other than the Chairperson and the Executive Vice-Chairperson shall be assigned to a division of the Board specified in the instrument of appointment.

Same

(4) All members of the Board other than members of the Appeal Division are *ex officio* members of every division of the Board and may, with the approval of the Chairperson, sit on a panel of any division of the Board, subject to such conditions and during such periods as are approved by the Chairperson.

Quorum

(5) Subject to subsection 209(3), the review under this Part of any case within a particular class of cases shall be made by a panel that consists of at least the number of members of the Board specified in the regulations as the minimum number of members for cases of that class.

Substitute members

146 (1) In the event that a full-time member of the Board is absent or unable to act, the Governor in Council, on the recommendation of the Minister, may appoint a substitute member to act in the place of that member.

Same

(2) A substitute member appointed pursuant to subsection (1) has all the powers and duties of a full-time member of the Board, subject to any limitation on those powers and duties that the Chairperson directs.

Jurisdiction of Board

147 (1) Subject to this Act, the [Prisons and Reformatories Act](#), the [International Transfer of Offenders Act](#), the [National Defence Act](#), the [Crimes Against Humanity and War Crimes Act](#) and the [Criminal Code](#), the Board has exclusive jurisdiction and absolute discretion

- (a) to grant and direct parole to an offender;
- (b) to terminate or to revoke the parole or statutory release of an offender, whether or not the offender is in custody under a warrant of apprehension issued as a result of the suspension of the parole or statutory release;
- (c) to cancel a decision to grant or direct parole to an offender, or to cancel the suspension, termination or revocation of the parole or statutory release of an offender;
- (d) to review and to decide the case of an offender referred to it pursuant to section 177; and
- (e) to authorize or to cancel a decision to authorize the unescorted temporary absence of an offender who is serving, in a penitentiary,
 - (i) a life sentence imposed as a minimum punishment or commuted from a sentence of death,
 - (ii) a sentence for an indeterminate period, or
 - (iii) a sentence for an offence set out in Schedule I or II.

Offences under provincial Acts

(2) The jurisdiction of the Board under subsection (1) extends to any offender sentenced to a sentence imposed under a provincial Act that is to be served in a penitentiary pursuant to section 743.1 of the [Criminal Code](#), whether that sentence is to be served alone or concurrently with or consecutively to one or more other sentences imposed under an Act of Parliament or a provincial Act.

Jurisdiction where no provincial board

148 (1) Where a provincial parole board has not been established in a province, the Board has, in respect of offenders serving sentences in a provincial correctional facility in that province, the same jurisdiction and discretion that it has in respect of offenders under paragraphs 147(1)(a) to (c).

Offences under provincial Acts

(2) Subject to subsection (3), the jurisdiction of the Board under subsection (1) extends to any offender sentenced to a sentence imposed under a provincial Act that is to be served concurrently with or consecutively to a sentence imposed under an Act of Parliament.

Complementary legislation

(3) Subsection (2) does not apply in a province until a day fixed by order of the Governor in Council made after the enactment of a provincial Act authorizing the Board to exercise the jurisdiction referred to in that subsection.

Prohibition orders re vehicles, etc.

149 The Board may, on application, cancel or vary the unexpired portion of a prohibition order made under section 259 of the [Criminal Code](#) after a period of

- (a) ten years after the commencement of the order, in the case of a prohibition for life; or
- (b) five years after the commencement of the order, in the case of a prohibition for more than five years but less than life.

Clemency

150 The Board shall, if so directed by the Minister, make or cause to be made any investigation or inquiry desired by the Minister in connection with any request made to the Minister for the exercise of the royal prerogative of mercy.

Dissemination of information

151 The Board shall maintain

- (a) a program of research and statistics, to be publicly available;
- (b) consultation and exchange of information with the other components of the criminal justice system;
- (c) a program to communicate its operations to offenders, victims and their families, victims' groups, other groups and organizations with a special interest in matters dealt with under this Part, and to the general public; and
- (d) a program to communicate information to offenders about release options.

CONSTITUTION AND JURISDICTION OF PROVINCIAL BOARDS

Jurisdiction of boards

152 (1) Subject to subsection (2), a provincial parole board for a province shall exercise jurisdiction in accordance with this Part in respect of the parole of offenders serving sentences in provincial correctional facilities in that province, other than

- (a) offenders sentenced to life imprisonment as a minimum punishment;
- (b) offenders whose sentence has been commuted to life imprisonment; or
- (c) offenders sentenced to detention for an indeterminate period.

Day parole jurisdiction

(2) A provincial parole board may, but is not required to, exercise its jurisdiction under this section in relation to day parole.

Incorporation by reference

153 (1) Where a provincial parole board has been established for a province, the lieutenant governor in council of the province may, by order, declare that all or any of the provisions of this Part that do not otherwise apply in respect of provincial parole boards shall apply in respect of that provincial parole board and offenders under its jurisdiction.

Provincial regulations

(2) The lieutenant governor in council of a province may, in respect of the provincial parole board for the province and offenders under its jurisdiction, make regulations in the same manner and for the same purposes as the Governor in Council may make regulations pursuant to section 216 in respect of the Board and offenders under its jurisdiction.

Change of province of residence

154 (1) Subject to any agreement entered into pursuant to this section, an offender who is released on parole in one province and moves to another province remains under the jurisdiction of the board that granted the parole.

Federal-provincial agreements

(2) The Minister, with the approval of the Governor in Council, may enter into an agreement with the government of a province for which a provincial parole board has been established for the transfer of jurisdiction in respect of offenders who move to the province after their release by the Board on parole from a provincial correctional facility in another province for which no provincial parole board has been established.

Same

(3) The government of a province for which a provincial parole board has been established may enter into an agreement with the Government of Canada for the transfer to the Board of jurisdiction in respect of offenders released on parole by the provincial parole board who move to a province for which no provincial parole board has been established.

Interprovincial agreements

(4) The governments of provinces may enter into agreements with one another for the transfer of jurisdiction in respect of offenders released on parole by one provincial parole board who move to the territorial jurisdiction of another provincial parole board.

Statutory release

(5) Subsections (1) to (4) apply, with such modifications as the circumstances require, in respect of offenders released on statutory release.

UNESCORTED TEMPORARY ABSENCE

Minimum time to be served

155 (1) Subject to subsection (2), the portion of a sentence that must be served before an offender serving a sentence in a penitentiary may be released on an unescorted temporary absence is

(a) in the case of an offender serving a life sentence, other than an offender referred to in paragraph (b), the period required to be served by the offender to reach the offender's full parole eligibility date less three years;

(b) in the case of an offender described in subsection 746.1(3) of the [Criminal Code](#), the longer of

(i) the period that expires when all but one fifth of the period of imprisonment the offender is to serve without eligibility for parole has been served, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 164, less three years;

(c) in the case of an offender serving a sentence for an indeterminate period, other than an offender referred to in paragraph (d), the longer of

(i) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with section 761 of the [Criminal Code](#), less three years, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 164, less three years;

(d) in the case of an offender serving a sentence for an indeterminate period as of the date on which this paragraph comes into force, the longer of

(i) three years, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 164, less three years; and

(e) in any other case, the longer of

(i) six months, and

(ii) one half of the period required to be served by the offender to reach their full parole eligibility date.

Exceptions

(2) Subsection (1) does not apply to an offender whose life or health is in danger and for whom an unescorted temporary absence is required in order to administer emergency medical treatment.

Maximum security

(3) Offenders who, pursuant to subsection 21(1) and the regulations made under paragraph 134(z.9), are classified as maximum security offenders are not eligible for an unescorted temporary absence.

Conditions for authorization

156 (1) The Board may authorize the unescorted temporary absence of an offender referred to in paragraph 147(1)(e) where, in the opinion of the Board,

(a) the offender will not, by reoffending, present an undue risk to society during the absence;

(b) it is desirable for the offender to be absent from the penitentiary for medical, administrative, community service, family contact, personal development for rehabilitative purposes, or compassionate reasons, including parental responsibilities;

(c) the offender's behaviour while under sentence does not preclude authorizing the absence; and

(d) a structured plan for the absence has been prepared.

Same

(2) The Commissioner or the institutional head may authorize the unescorted temporary absence of an offender, other than an offender referred to in paragraph 147(1)(e), where, in the opinion of the Commissioner or the institutional head, as the case may be, the criteria set out in paragraphs (1)(a) to (d) are met.

Medical reasons

(3) An unescorted temporary absence for medical reasons may be authorized for an unlimited period.

Personal development or community service

(4) Subject to subsection (6), an unescorted temporary absence for reasons of community service or personal development may be authorized for a maximum of fifteen days, at the rate of not more than three times a year for an offender classified by the Service as a medium security offender and not more than six times a year for an offender classified as a minimum security offender.

Intervals

(5) An unescorted temporary absence authorized for reasons referred to in subsection (4) must be followed by a period of custody of at least seven days before the next such absence.

Exception

(6) An unescorted temporary absence for purposes of a specific personal development program may be authorized for a maximum of sixty days and may be renewed, for periods of up to sixty days each, for the purposes of the program.

Absences for other reasons

(7) Unescorted temporary absences for reasons other than those referred to in subsection (3) or (4) may be authorized for a maximum total of forty-eight hours per month for an offender classified by the Service as a medium security offender, and for a maximum total of seventy-two hours per month for an offender classified as a minimum security offender.

Regulations

(8) The circumstances and manner in which, and the time at which, an application for an unescorted temporary absence must be made shall be prescribed by the regulations.

Travel time

(9) In addition to the period authorized for the purposes of an unescorted temporary absence, an offender may be granted the time necessary to travel to and from the place where the absence is authorized to be spent.

Cancellation of absence

(10) The Board, the Commissioner or the institutional head, whichever authorized a particular unescorted temporary absence of an offender, may cancel that absence, either before or after its commencement,

(a) where the cancellation is considered necessary and reasonable to prevent a breach of a condition of the absence or where such a breach has occurred;

- (b) where the grounds for granting the absence have changed or no longer exist; or
- (c) after a review of the offender's case based on information that could not reasonably have been provided when the absence was authorized.

Delegation to Commissioner

157 (1) The Board may confer on the Commissioner or the institutional head, for such period and subject to such conditions as it specifies, any of its powers under section 156 in respect of any class of offenders or class of absences.

Delegation to provincial hospital

(2) Where, pursuant to an agreement under paragraph 25(1)(a), an offender referred to in paragraph 147(1)(e) or subsection 156(2) has been admitted to a hospital operated by a provincial government in which the liberty of persons is normally subject to restrictions, the Board, the Commissioner or the institutional head, as the case may be, may confer on the person in charge of the hospital, for such period and subject to such conditions as they specify, any of their respective powers under section 156 in relation to that offender.

Suspension by institutional head

(3) Where the Board has not authorized the Commissioner or the institutional head under subsection (1) in respect of the offender or in respect of the absence, the institutional head of the penitentiary from which an unescorted temporary absence has been effected may suspend the absence if, in the opinion of the institutional head, the offender's retention in custody or recommitment to custody is justified in order to protect society, on the basis of information that could not reasonably have been provided to the Board when the absence was authorized.

Referral of suspension to Board

(4) An institutional head who suspends the unescorted temporary absence of an offender shall forthwith refer the offender's case to the Board, and the Board shall decide whether the absence should be cancelled.

Warrant for arrest and recommitment

158 A person who cancels an unescorted temporary absence pursuant to subsection 156(10) or pursuant to a delegation of power under subsection 157(1) or (2), or who suspends an unescorted temporary absence pursuant to subsection 157(3), shall cause a warrant in writing to be issued authorizing the apprehension and recommitment to custody of the offender pursuant to section 191, where the offender is not in custody in a penitentiary or in a hospital referred to in subsection 157(2).

ELIGIBILITY FOR PAROLE

Time when eligible for day parole

159 (1) Subject to section 746.1 of the [Criminal Code](#), subsection 226.1(2) of the [National Defence Act](#) and subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#), the portion of a sentence that must be served before an offender may be released on day parole is

- (a) one year, where the offender was, before October 15, 1977, sentenced to preventive detention;
- (b) where the offender is an offender, other than an offender referred to in paragraph (c), who was sentenced to detention in a penitentiary for an indeterminate period, the longer of
 - (i) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with section 761 of the [Criminal Code](#), less three years, and
 - (ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 164, less three years;
- (c) where the offender was sentenced to detention in a penitentiary for an indeterminate period as of the date on which this paragraph comes into force, the longer of
 - (i) three years, and
 - (ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 164, less three years;
- (d) where the offender is serving a sentence of two years or more, other than a sentence referred to in paragraph (a) or (b), the greater of
 - (i) the portion ending six months before the date on which full parole may be granted, and
 - (ii) six months; or
- (e) one half of the portion of the sentence that must be served before full parole may be granted, where the offender is serving a sentence of less than two years.

Time when eligible for day parole

(2) Notwithstanding section 746.1 of the [Criminal Code](#), subsection 226.1(2) of the [National Defence Act](#) and subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#), an offender described in subsection 746.1(1) or (2) of the [Criminal Code](#) or to whom those subsections apply pursuant to subsection 226.1(2) of the [National Defence Act](#) or subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#), shall not, in the circumstances described in subsection 164, be released on day parole until three years before the day that is determined in accordance with subsection 164.

When eligible for day parole — young offender sentenced to life imprisonment

(3) Notwithstanding section 746.1 of the [Criminal Code](#), subsection 226.1(2) of the [National Defence Act](#) and subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#), in the circumstances described in subsection 164.2(2), the portion of the sentence of an offender described in subsection 746.1(3) of the [Criminal Code](#) or to whom that subsection applies pursuant to subsection 226.1(2) of the [National Defence Act](#) or subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#) that must be served before the offender may be released on day parole is the longer of

(a) the period that expires when all but one fifth of the period of imprisonment the offender is to serve without eligibility for parole has been served, and

(b) the portion of the sentence that must be served before full parole may be granted to the offender, determined in accordance with subsection 164, less three years.

Short sentences

(4) The Board is not required to review the case of an offender who applies for day parole if the offender is serving a sentence of less than six months.

Definition of *sentence*

160 For the purposes of sections 161 to 165, and unless the context requires otherwise, *sentence* means a sentence that is not constituted under subsection 193(1).

Youth sentence

161 For the purposes of sections 162 to 166, the eligibility for parole of a young person in respect of whom a youth sentence is imposed under paragraph 42(2)(n), (o), (q) or (r) of the [Youth Criminal Justice Act](#) and who is transferred to a provincial correctional facility for adults or a penitentiary under section 89, 92 or 93 of that Act shall be determined on the basis of the total of the custody and supervision periods of the youth sentence.

Time when eligible for full parole

162 (1) Subject to sections 746.1 and 761 of the [Criminal Code](#) and to any order made under section 743.6 of that Act, to subsection 226.1(2) of the [National Defence Act](#) and to any order made under section 226.2 of that Act, and to subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#), an offender is not eligible for full parole until the day on which the offender has served a period of ineligibility of the lesser of one third of the sentence and seven years.

Life sentence

(2) Subject to any order made under section 743.6 of the [Criminal Code](#) or section 226.2 of the [National Defence Act](#), an offender who is serving a life sentence, imposed otherwise than as a minimum punishment, is not eligible for full parole until the day on which the offender has served a period of ineligibility of seven years less any time spent in custody between the day on

which the offender was arrested and taken into custody, in respect of the offence for which the sentence was imposed, and the day on which the sentence was imposed.

Multiple sentences on same day

163 (1) A person who is not serving a sentence and who receives more than one sentence on the same day is not eligible for full parole until the day on which they have served a period equal to the total of

(a) the period of ineligibility in respect of any portion of the sentence constituted under subsection 193(1) that is subject to an order under section 743.6 of the *Criminal Code* or section 226.2 of the *National Defence Act*, and

(b) the period of ineligibility in respect of any other portion of that sentence.

One or more additional consecutive sentences

(2) If an offender who is serving a sentence, or is serving a sentence that was constituted under subsection 193(1), receives an additional sentence that is to be served consecutively to the sentence they are serving when the additional sentence is imposed — or receives, on the same day, two or more additional sentences to be served consecutively and the additional sentences are to be served consecutively to the sentence they are serving when the additional sentences are imposed — the offender is not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, the total of the following periods:

(a) any remaining period of ineligibility in respect of the sentence they are serving when the additional sentence is or sentences are imposed, and

(b) the period of ineligibility in respect of the additional sentence or, in the case of two or more additional sentences, a period equal to the total of the periods of ineligibility in respect of all of the additional sentences.

Additional sentence to be served consecutively to portion of sentence

(3) Despite subsection (2), if an offender who is serving a sentence or a sentence that was constituted under subsection 193(1) receives an additional sentence or two or more sentences that are to be served consecutively to a portion of the sentence they are serving when the additional sentence is imposed — or receives, on the same day, two or more additional sentences including a sentence to be served concurrently with the sentence being served and one or more sentences to be served consecutively to the additional concurrent sentence — they are not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, any remaining period of ineligibility to which they are subject and the longer of the following periods:

(a) one third of the period that equals the difference between the length of the sentence that was constituted under subsection 193(1), including the additional sentence or sentences, and

the length of the sentence that they are serving when the additional sentence is or sentences are imposed; or

(b) the period of ineligibility of the additional sentence that is or sentences that are ordered to be served consecutively.

Additional concurrent sentence

164 (1) Subject to subsection (2), if an offender who is serving a sentence, or is serving a sentence that was constituted under subsection 193(1), receives an additional sentence that is to be served concurrently with the sentence they are serving when the additional sentence is imposed, they are not eligible for full parole until the day that is the later of

(a) the day on which they have served the period of ineligibility in respect of the sentence they are serving when the additional sentence is imposed, and

(b) the day on which they have served

(i) the period of ineligibility in respect of any portion, of the sentence that includes the additional sentence as provided by subsection 193(1), that is subject to an order under section 743.6 of the *Criminal Code* or section 226.2 of the *National Defence Act*, and

(ii) the period of ineligibility in respect of any other portion of that sentence.

One or more sentences in addition to life sentence

(2) If an offender who is serving a life sentence or a sentence for an indeterminate period receives a sentence for a determinate period — or receives, on the same day, two or more sentences for a determinate period — they are not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, the total of the following periods:

(a) any remaining period of ineligibility to which they are subject, and

(b) the period of ineligibility in respect of the additional sentence or, in the case of two or more additional sentences, the period of ineligibility — determined in accordance with subsection (1) or section 163, as the case may be — in respect of the additional sentences.

Reduction of period of ineligibility for parole

(3) If there has been a reduction — under section 745.6 of the *Criminal Code*, subsection 226.1(2) of the *National Defence Act* or subsection 15(2) of the *Crimes Against Humanity and War Crimes Act* — in the number of years of imprisonment without eligibility for parole of an offender referred to in subsection (2), the offender is not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, the total of the following periods:

(a) any remaining period of ineligibility to which they would have been subject after taking into account the reduction, and

(b) the period of ineligibility in respect of the additional sentence or, in the case of two or more additional sentences, the period of ineligibility — determined in accordance with subsection (1) or section 163, as the case may be — in respect of the additional sentences.

Maximum period

165 Subject to section 745 of the [Criminal Code](#), subsection 226.1(1) of the [National Defence Act](#) and subsection 15(1) of the [Crimes Against Humanity and War Crimes Act](#), the day on which an offender is eligible for full parole shall not be later than

(a) in the case of a person who is not serving a sentence and receives more than one sentence on the same day, the day on which they have served 15 years from the day on which the sentences are imposed;

(b) in the case of an offender who is serving a sentence — or is serving a sentence that was constituted under subsection 193(1) — and who receives an additional sentence that changes the day on which they are eligible for parole, the day on which they have served 15 years from the day on which the additional sentence is imposed; and

(c) in the case of an offender who is serving a sentence — or is serving a sentence that was constituted under subsection 193(1) — and who receives, on the same day, two or more additional sentences that change the day on which they are eligible for parole, the day on which they have served 15 years from the day on which the additional sentences are imposed.

Other cases

166 (1) Subject to section 142 — and despite sections 162 to 165 of this Act, sections 745.51, 745.63, 746.1 and 761 of the [Criminal Code](#), subsection 226.1(2) of the [National Defence Act](#) and subsection 15(2) of the [Crimes Against Humanity and War Crimes Act](#) and any order made under section 743.6 of the [Criminal Code](#) or section 226.2 of the [National Defence Act](#) — parole may be granted at any time to an offender

(a) who is terminally ill;

(b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement;

(c) who has satisfied the specific objectives of the sentence expressly stated by the sentencing or an appellate court;

(d) for whom continued confinement as a result of a mandatory sentence would constitute an excessive hardship; or

(e) who is the subject of an order of surrender under the [Extradition Act](#) and who is to be detained until surrendered.

PAROLE REVIEWS

Day parole review

167 (1) Subject to subsection 159(2), the Board shall, on application, at the time prescribed by the regulations, review, for the purpose of day parole, the case of every offender other than an offender referred to in subsection (2).

Special cases

(2) The Board may, on application, at the time prescribed by the regulations, review, for the purpose of day parole, the case of an offender who is serving a sentence of two years or more in a provincial correctional facility in a province in which no program of day parole has been established for that category of offender.

Decision or adjournment

(3) With respect to a review commenced under this section, the Board shall decide whether to grant day parole, or may adjourn the review for a reason authorized by the regulations and for a reasonable period not exceeding the maximum period prescribed by the regulations.

Subsequent review

(4) The Board may but is not required to consider an application for day parole for one year after the date of the Board's decision if, following a review, the Board does not grant day parole or cancels or terminates parole.

Maximum duration

(5) Day parole may be granted to an offender for such period as the Board determines, and may be continued for additional periods following reviews of the case by the Board.

Withdrawal of application

(6) An offender may not withdraw an application for day parole within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control.

Presumption of home residence

168 (1) The Board may impose such conditions on the day parole as are required in conformity with this Part, including a return to a penitentiary, community-based residential facility, provincial correctional facility or other location each night or at another specified interval, but in no case shall a return to a penitentiary, community-based residential facility or provincial correctional facility be required if suitable accommodation exists elsewhere.

(2) For greater certainty, a person granted day parole shall be required to reside in their own or other private home if that does not present an unmanageable risk, and may be required to report by telephone or otherwise at specified intervals.

(3) A person granted day parole shall only be required to return to a penitentiary, community-based residential facility or provincial correctional facility each night or at another specified interval if their own or other private home has been assessed as not providing sufficient support to manage any risk.

Full parole review

169 (1) The Board shall, within the period prescribed by the regulations and for the purpose of deciding whether to grant full parole, review the case of every offender who is serving a sentence of two years or more and who is not within the jurisdiction of a provincial parole board.

Waiver of review

(2) The Board is not required under subsection (1), (5) or (6) to review the case of an offender who has advised the Board in writing that they do not wish to be considered for full parole and who has not in writing revoked that advice.

Review by Board

(3) The Board shall, on application within the period prescribed by the regulations, review, for the purpose of full parole, the case of every offender who is serving a sentence of less than two years in a penitentiary or provincial correctional facility in a province where no provincial parole board has been established.

Short sentences

(4) The Board is not required to review the case of an offender who applies for full parole if the offender is serving a sentence of less than six months.

Decision or adjournment

(5) With respect to a review commenced under this section, the Board shall decide whether to grant full parole, or may grant day parole, or may adjourn the review for a reason authorized by the regulations and for a reasonable period not exceeding the maximum period prescribed by the regulations.

Further review — Board does not grant parole

(6) If the Board decides not to grant parole following a review under subsection (1) or section 167 or if a review is not made by virtue of subsection (2), the Board shall conduct another review within two years after the later of the day on which the review took place or was scheduled to take place and thereafter within two years after that day until

- (a) the offender is released on full parole or on statutory release;
- (b) the offender's sentence expires; or
- (c) less than four months remain to be served before the offender's statutory release date.

Further review — Board terminates or cancels parole

(7) If the Board cancels or terminates parole, it shall conduct another review within two years after the cancellation or termination and, after that date, within two years after the day on which each preceding review takes place until

- (a) the offender is released on full parole or statutory release;
- (b) the offender's sentence expires; or
- (c) less than four months remain to be served before the offender's statutory release date.

Withdrawal of application

(8) An offender may not withdraw an application for full parole within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control.

Offenders unlawfully at large

170 (1) The Board is not required to review the case of an offender who is unlawfully at large during the period prescribed by the regulations for a review under section 167 or 169 but it shall review the case as soon as possible after being informed of the offender's return to custody.

Timing of release

(2) Where an offender is granted parole but no date is fixed for the offender's release, the parole shall take effect, and the offender shall be released, forthwith after such period as is necessary to implement the decision to grant parole.

Cancellation of parole

(3) If an offender has been granted parole under section 167 or 169, the Board may, after a review of the case based on information that could not reasonably have been provided to it at the time parole was granted, cancel the parole if the offender has not been released or terminate the parole if the offender has been released.

Review

(4) If the Board exercises its power under subsection (3), it shall, within the period prescribed by the regulations, review its decision and either confirm or cancel it.

DIRECTED PAROLE RELEASE

Application

171 (1) This section and section 172 apply to an offender sentenced, committed or transferred to penitentiary for the first time, otherwise than pursuant to an agreement entered into under paragraph 25(1)(b), other than an offender

- (a) serving a sentence for one of the following offences, namely,
 - (i) murder,
 - (ii) an offence set out in Schedule I or a conspiracy to commit such an offence,
 - (iii) an offence under section 83.02 (providing or collecting property for certain activities), 83.03 (providing, making available, etc. property or services for terrorist purposes), 83.04 (using or possessing property for terrorist purposes), 83.18 (participation in activity of terrorist group), 83.19 (facilitating terrorist activity), 83.2 (to carry out activity for terrorist group), 83.21 (instructing to carry out activity for terrorist group), 83.22 (instructing to carry out terrorist activity) or 83.23 (harbouring or concealing) of the *Criminal Code* or a conspiracy to commit such an offence,
 - (iv) an offence under section 463 of the *Criminal Code* that was prosecuted by indictment in relation to an offence set out in Schedule I, other than the offence set out in paragraph 1 (z.9) of that Schedule,
 - (v) an offence set out in Schedule II in respect of which an order has been made under section 743.6 of the *Criminal Code*,
 - (vi) an offence contrary to section 130 of the *National Defence Act* where the offence is murder, an offence set out in Schedule I or an offence set out in Schedule II in respect of which an order has been made under section 140.4 of the *National Defence Act*, or
 - (vii) a criminal organization offence within the meaning of section 2 of the *Criminal Code*, including an offence under subsection 82(2);
- (b) convicted of an offence under section 240 of the *Criminal Code*;
- (c) serving a term of imprisonment pursuant to s. 193 of ten years or more;
- (d) serving a life sentence imposed otherwise than as a minimum punishment; or
- (e) whose day parole has been revoked.

Same

(2) For greater certainty, this section and section 172

- (a) apply to an offender referred to in subsection (1) who, after being sentenced, committed or transferred to penitentiary for the first time, is sentenced in respect of an offence, other than

an offence referred to in paragraph (1)(a), that was committed before the offender was sentenced, committed or transferred to penitentiary for the first time; and

(b) do not apply to an offender referred to in subsection (1) who, after being sentenced, committed or transferred to penitentiary for the first time, commits an offence under an Act of Parliament for which the offender receives an additional sentence.

Review of cases by Service

(3) The Service shall, at the time prescribed by the regulations, review the case of an offender to whom this section applies for the purpose of referral of the case to the Board for a determination under section 172.

Evidence to be considered

(4) A review made pursuant to subsection (2) shall be based on all reasonably available information that is relevant, including

- (a) the social and criminal history of the offender obtained pursuant to section 26;
- (b) information relating to any criminogenic behaviour of the offender while under sentence; and
- (c) any information that discloses a potential for violent behaviour by the offender.

Referral to Board

(5) On completion of a review pursuant to subsection (2), the Service shall, within such period as is prescribed by the regulations preceding the offender's eligibility date for full parole, refer the case to the Board together with all information that, in its opinion, is relevant to the case.

Delegation to provincial authorities

(6) The Service may delegate to the correctional authorities of a province its powers under this section in relation to offenders who are serving their sentences in provincial correctional facilities in that province.

Review by Board

172 (1) The Board shall review without a hearing, at or before the time prescribed by the regulations, the case of an offender referred to it pursuant to section 171.

Release on full parole

(2) Notwithstanding section 142, if the Board is satisfied that there are no reasonable grounds to believe that the offender, if released, is likely to commit an offence involving violence before the expiration of the offender's sentence according to law, it shall direct that the offender be released on full parole subject to the least restrictive conditions consistent with public safety and that it considers reasonable and necessary.

Report to offender

(3) If the Board does not direct, pursuant to subsection (2), that the offender be released on full parole, it shall report its refusal to so direct, and its reasons, to the offender.

Reference to panel

(4) The Board shall refer any refusal and reasons reported to the offender pursuant to subsection (3) to a member or panel of members other than those who reviewed the case under subsection (1), and the panel shall review the case at the time prescribed by the regulations.

Refusal of parole

(5) An offender who is not released on full parole pursuant to subsection (5) is entitled to subsequent reviews in accordance with subsection 169(6).

Definition of "offence involving violence"

(6) In this section, *offence involving violence* means murder or any offence set out in Schedule I, but, in determining whether there are reasonable grounds to believe that an offender is likely to commit an offence involving violence, it is not necessary to determine whether the offender is likely to commit any particular offence.

Termination or revocation

(7) Where the parole of an offender released pursuant to this section is terminated or revoked, the offender is not entitled to another review pursuant to this section.

Release on day parole

173 Sections 171 and 172 apply, with such modifications as the circumstances require, to a review to determine if an offender referred to in subsection 161 should be released on day parole.

STATUTORY RELEASE

Entitlement

174 (1) Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law.

Sentence for past offences

(2) Subject to this section, the statutory release date of an offender sentenced before November 1, 1992 to imprisonment for one or more offences shall be determined by crediting against the sentence

(a) any remission, statutory or earned, standing to the offender's credit on that day; and

(b) the maximum remission that could have been earned on the balance of the sentence pursuant to the *Penitentiary Act* or the *Prisons and Reformatories Act*, as those Acts read immediately before that day.

Sentence for future offences

(3) Subject to this section, the statutory release date of an offender sentenced on or after November 1, 1992 to imprisonment for one or more offences is the day on which the offender completes two thirds of the sentence.

Sentences for past and future offences

(4) Subject to this section, the statutory release date of an offender sentenced before November 1, 1992 to imprisonment for one or more offences and sentenced on or after November 1, 1992 to imprisonment for one or more offences is the later of the dates determined in accordance with subsections (2) and (3).

If parole or statutory release revoked

(5) Subject to subsections 178(3) and (8), the statutory release date of an offender whose parole or statutory release is revoked is

(a) the day on which they have served two thirds of the unexpired portion of the sentence after being recommitted to custody as a result of a suspension or revocation under section 186; or

(b) if an additional sentence is imposed after the offender is recommitted to custody as a result of a suspension or revocation under section 186, the day on which they have served two thirds of the portion of the sentence — including the additional sentence — that begins on the day on which they are recommitted and ends on the day on which the sentence expires.

If additional sentence

(6) If an offender receives an additional sentence for an offence under an Act of Parliament and their parole or statutory release is not revoked, their statutory release date is the day on which they have served, from the earlier of the day on which they are recommitted to custody as a result of the suspension of their parole or statutory release and the day on which they are recommitted to custody as a result of the additional sentence,

(a) any time remaining before the statutory release date in respect of the sentence they are serving when the additional sentence is imposed; and

(b) two thirds of the period that equals the difference between the length of the sentence that includes the additional sentence and the length of the sentence that they are serving when the additional sentence is imposed.

Failure to earn and forfeiture of remission

(7) Where an offender receives a sentence to be served in a provincial correctional facility and fails to earn or forfeits any remission under the *Prisons and Reformatories Act* and is transferred

to penitentiary, otherwise than pursuant to an agreement entered into under paragraph 25(1)(b), the offender is not entitled to be released until the day on which the offender has served

(a) the period of imprisonment that the offender would have been required to serve under this section if the offender had not failed to earn or had not forfeited the remission; and

(b) the period of imprisonment equal to the remission that the offender failed to earn or forfeited and that was not recredited under that Act.

Supervision after release

(8) An offender sentenced, committed or transferred (otherwise than pursuant to an agreement entered into under subsection 251(1)) to penitentiary on or after August 1, 1970 who is released on statutory release is subject to supervision in accordance with this Act, but no other offender released under this section is subject to supervision.

Youth Criminal Justice Act

175 Subject to this Act, a young person in respect of whom a youth sentence is imposed under paragraph 42(2)(n), (o), (q) or (r) of the [Youth Criminal Justice Act](#) and who is transferred to a penitentiary under subsection 89(2), 92(2) or 93(2) of that Act is entitled to be released from the penitentiary by virtue of statutory release on the day on which the custodial portion of their youth sentence would have expired.

EFFECT OF PAROLE, STATUTORY RELEASE OR UNESCORTED TEMPORARY ABSENCE

Continuation of sentence

176 (1) An offender who is released on parole, statutory release or unescorted temporary absence continues, while entitled to be at large, to serve the sentence until its expiration according to law.

Freedom to be at large

(2) Except to the extent required by the conditions of any day parole, an offender who is released on parole, statutory release or unescorted temporary absence is entitled, subject to this Part, to remain at large in accordance with the conditions of the parole, statutory release or unescorted temporary absence and is not liable to be returned to custody by reason of the sentence unless the parole, statutory release or unescorted temporary absence is suspended, cancelled, terminated or revoked.

Sentence deemed to be completed

(3) Despite subsection (1), for the purposes of paragraph 50(b) of the [Immigration and Refugee Protection Act](#) and section 64 of the [Extradition Act](#), the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked, the

unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.

Removal order

(4) Despite this Act, the [Prisons and Reformatories Act](#) and the [Criminal Code](#), an offender against whom a removal order has been made under the [Immigration and Refugee Protection Act](#) is not eligible for day parole or an unescorted temporary absence until they are eligible for full parole.

Parole inoperative where parole eligibility date in future

(5) If, before the full parole eligibility date, a removal order is made under the [Immigration and Refugee Protection Act](#) against an offender who has received day parole or an unescorted temporary absence, on the day that the removal order is made, the day parole or unescorted temporary absence becomes inoperative and the offender shall be reincarcerated.

Exception

(6) An offender referred to in subsection (4) is eligible for day parole or an unescorted temporary absence if the removal order is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the [Immigration and Refugee Protection Act](#).

Exception

(7) Where the removal order of an offender referred to in subsection (5) is stayed under paragraph 50(a), 66(b) or 114(1)(b) of the [Immigration and Refugee Protection Act](#) on a day prior to the full parole eligibility of the offender, the unescorted temporary absence or day parole of that offender is resumed as of the day of the stay.

DETENTION DURING PERIOD OF STATUTORY RELEASE

Review of cases by service

177 (1) Before the statutory release date of an offender who is serving a sentence of two years or more that includes a sentence imposed for an offence set out in Schedule I or II or an offence set out in Schedule I or II that is punishable under section 130 of the [National Defence Act](#), the Commissioner shall cause the offender's case to be reviewed by the Service.

Referral of cases to Board

(2) The Service shall, more than six months before the day on which an offender is entitled to be released on statutory release, refer the case to the Board — and provide the Board with any information that, in the Service's opinion, is relevant to the case — if the Service is of the opinion that

(a) in the case of an offender who is serving a sentence that includes a sentence for an offence set out in Schedule I, including an offence set out in Schedule I that is punishable under section 130 of the [National Defence Act](#),

(i) the commission of the offence caused the death of or serious harm to another person and there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law, or

(ii) the offence was a sexual offence involving a child and there are reasonable grounds to believe that the offender is likely to commit a sexual offence involving a child or an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law; or

(b) in the case of an offender who is serving a sentence that includes a sentence for an offence set out in Schedule II, including an offence set out in Schedule II that is punishable under section 130 of the [National Defence Act](#), there are reasonable grounds to believe that the offender is likely to commit a serious drug offence before the expiration of the offender's sentence according to law.

Referral of cases to Chairperson of Board

(3) If the Commissioner believes on reasonable grounds that an offender is likely, before the expiration of the sentence according to law, to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence, the Commissioner shall refer the case to the Chairperson of the Board together with all the information in the possession of the Service that, in the Commissioner's opinion, is relevant to the case, as soon as practicable after forming that belief. The referral must be made more than six months before the offender's statutory release date unless

(a) the Commissioner formed that belief on the basis of the offender's behaviour or information obtained during those six months; or

(b) as a result of a change in the statutory release date due to a recalculation, the statutory release date has passed or the offender is entitled to be released on statutory release during those six months.

Detention pending referral

(4) Where paragraph (3)(b) applies and the statutory release date has passed, the Commissioner shall, within two working days after the recalculation under that paragraph, make a determination whether a referral is to be made to the Chairperson of the Board pursuant to subsection (3) and, where appropriate, shall make a referral, and the offender is not entitled to be released on statutory release pending the determination.

Request for information by Board

(5) At the request of the Board, the Service shall take all reasonable steps to provide the Board with any additional information that is relevant to a case referred pursuant to subsection (2) or (3).

Deadlines for review by Board

(6) Where the case of an offender is referred to the Chairperson of the Board pursuant to subsection (3) during the six months preceding the statutory release date of the offender, or on or after that date, the Board shall

(a) if the case is referred to the Chairperson more than four weeks before that date, review the case pursuant to subsection 178(1) before that date;

(b) if the case is referred to the Chairperson during the four weeks preceding that date but more than three days before that date,

(i) review the case pursuant to subsection 178(1) before that date, if possible, or

(ii) make an interim review of the case before that date; or

(c) if the case is

(i) referred to the Chairperson on the statutory release date or during the three days preceding that date, or

(ii) referred to the Chairperson pursuant to paragraph (3)(b) after the statutory release date has passed,

make an interim review of the case during the three days following the day on which the case was so referred.

Interim review

(7) An interim review required by subsection (6) shall be made in the manner prescribed by the regulations.

Decision to review

(8) On completion of an interim review pursuant to subsection (6), if the Board is of the opinion, on the basis of all the information provided, that a sufficient case is made for a review pursuant to subsection 178(1), the Board shall conduct a review of the case as soon as is practicable and not later than four weeks after the case was referred to the Chairperson of the Board.

Delegation to provincial authorities

(9) The Commissioner may delegate to the correctional authorities of a province the powers of the Service and of the Commissioner under this section in relation to offenders who are serving their sentences in a correctional facility in that province.

Definitions

(10) In this section and sections 178 and 180,

serious drug offence

serious drug offence means an offence set out in Schedule II; (

sexual offence involving a child

sexual offence involving a child means

(a) an offence under any of the following provisions of the [Criminal Code](#) that was prosecuted by way of indictment, namely,

- (i) section 151 (sexual interference),
- (ii) section 152 (invitation to sexual touching),
- (iii) section 153 (sexual exploitation),
- (iv) subsection 160(3) (bestiality in presence of child or inciting child to commit bestiality),
- (v) section 163.1 (child pornography),
- (vi) section 170 (parent or guardian procuring sexual activity by child),
- (vii) section 171 (householder permitting sexual activity by child),
- (viii) section 172 (corrupting children),
- (ix) section 172.1 (luring a child),
- (x) section 279.011 (trafficking — person under 18 years),
- (xi) subsection 279.02(2) (material benefit — trafficking of person under 18 years),
- (xii) subsection 279.03(2) (withholding or destroying documents — trafficking of person under 18 years),
- (xiii) subsection 286.1(2) (obtaining sexual services for consideration from person under 18 years),
- (xiv) subsection 286.2(2) (material benefit from sexual services provided by person under 18 years), and
- (xv) subsection 286.3(2) (procuring — person under 18 years);

(b) an offence under any of the following provisions of the [Criminal Code](#) involving a person under the age of eighteen years that was prosecuted by way of indictment, namely,

- (i) section 155 (incest),

- (ii) section 159 (anal intercourse),
 - (iii) subsections 160(1) and (2) (bestiality and compelling bestiality),
 - (iv) section 271 (sexual assault),
 - (v) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm), and
 - (vi) section 273 (aggravated sexual assault);
- (c) an offence under any of the following provisions of the [Criminal Code](#), as they read from time to time before the day on which this paragraph comes into force, that was prosecuted by way of indictment:
- (i) subsection 212(2) (living on the avails of prostitution of person under 18 years), and
 - (ii) subsection 212(4) (prostitution of person under 18 years);
- (d) an offence under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 1, 1988, that was prosecuted by way of indictment, namely,
- (i) section 146 (sexual intercourse with a female under 14),
 - (ii) section 151 (seduction of a female between 16 and 18), and
 - (iii) section 167 (householder permitting defilement);
- (e) an offence involving a person under the age of eighteen years under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 1, 1988, that was prosecuted by way of indictment, namely,
- (i) section 153 (sexual intercourse with step-daughter),
 - (ii) section 155 (buggery or bestiality),
 - (iii) section 157 (gross indecency), and
 - (iv) section 166 (parent or guardian procuring defilement); or
- (f) an offence involving a person under the age of eighteen years under any of the following provisions of the [Criminal Code](#), chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983, that was prosecuted by way of indictment, namely,
- (i) section 144 (rape),
 - (ii) section 145 (attempt to commit rape),
 - (iii) section 149 (indecent assault on female), and

(iv) section 156 (indecent assault on male). (*infraction d'ordre sexuel à l'égard d'un enfant*)

Determination of likelihood of offence

(11) In determining whether an offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence, it is not necessary to determine whether the offender is likely to commit any particular offence.

Review by Board of cases referred

178 (1) Where the case of an offender is referred to the Board by the Service pursuant to subsection 177(2) or referred to the Chairperson of the Board by the Commissioner pursuant to subsection 177(3) or (4), the Board shall, subject to subsections 177(6), (7) and (8), at the times and in the manner prescribed by the regulations,

(a) inform the offender of the referral and review, and

(b) review the case,

and the Board shall cause all such inquiries to be conducted in connection with the review as it considers necessary.

Detention pending review

(2) An offender referred to in subsection (1) is not entitled to be released on statutory release before the Board renders its decision under this section in relation to the offender.

Decision of Board

(3) On completion of the review of the case of an offender referred to in subsection (1), the Board may order that the offender not be released from imprisonment before the expiration of the offender's sentence according to law, except as provided by subsection (5), where the Board is satisfied

(a) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, or for an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit an offence causing the death of or serious harm to another person or a sexual offence involving a child before the expiration of the offender's sentence according to law,

(b) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule II, or for an offence set out in Schedule II that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit a serious drug offence before the expiration of the offender's sentence according to law,

(c) in the case of an offender whose case was referred to the Chairperson of the Board pursuant to subsection 177(3) or (4), that the offender is likely, if released, to commit an offence causing the death of or serious harm to another person, a sexual offence involving a

child or a serious drug offence before the expiration of the offender's sentence according to law,

and that there is no reasonable alternative to control the offender's risk.

When order takes effect

(4) An order made under subsection (3) takes effect on the day on which it is made.

Effect of order where additional sentence

(5) Where, before the expiration of a sentence in respect of which an order under subsection (3) has been made, an offender receives an additional sentence and the date of the expiration of the sentence that includes the additional sentence as provided by subsection 193(1) is later than the date of the expiration of the sentence that the offender was serving before the additional sentence was imposed,

(a) the Board shall review the order at the time and in the manner prescribed by the regulations where, as a result of the additional sentence, the statutory release date has already passed or is within nine months after the day on which the offender received the additional sentence; and

(b) the order is cancelled where, as a result of the additional sentence, the statutory release date is nine months or more after the day on which the offender received the additional sentence.

Board's powers on review

(6) The Board shall, on completing a review under paragraph (5)(a)

(a) confirm the order to prevent the release of the offender until the expiration of the sentence in respect of which the order was made; or

(b) amend the order to prevent the release of the offender until the expiration of the sentence that includes the additional sentence as provided by subsection 193(1).

Detention pending review

(7) An offender in respect of whom an order, that is subject to review under paragraph (5)(a), has been made is not entitled to be released on statutory release before the Board renders its decision under subsection (6) in relation to the order.

Special order by Board

(8) Where the Board is not satisfied as provided in subsection (3) but is satisfied that

(a) at the time the case was referred to it, the offender was serving a sentence that included a sentence for an offence set out in Schedule I or II, or for an offence set out in Schedule I or II that is punishable under section 130 of the [National Defence Act](#), and

(b) in the case of an offence set out in Schedule I or an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*, the commission of the offence caused the death of, or serious harm to, another person or the offence was a sexual offence involving a child,

it may order that if the statutory release is later revoked, the offender is not entitled to be released again on statutory release before the expiration of the offender's sentence according to law.

Temporary absence with escort

(9) An offender who is in custody pursuant to an order made under subsection (3) or amended under paragraph (6)(b) is not eligible to be released from imprisonment, except on a temporary absence with escort under Part I for medical or administrative reasons.

Where order for release revoked

(10) Where an offender is ordered under subsection (3) or paragraph (6)(b) not to be released and is subsequently released pursuant to an order made under subparagraph 179(3)(a)(ii) or (iii) and the statutory release is later revoked, the offender is not entitled to be released again on statutory release before the expiration of the offender's sentence according to law.

Annual review of orders

179 (1) The Board shall review every order made under subsection 178(3) within one year after the date the order was made, and thereafter within one year after the date of each preceding review while the offender remains subject to the order.

Board to inquire

(2) The Board shall cause such inquiries to be conducted in connection with each review under subsection (1) as it considers necessary to determine whether there is sufficient new information concerning the offender to justify modifying the order or making a new order.

Board's powers on review

(3) The Board, on completing a review under subsection (1), shall

(a) with respect to an order made under subsection 178(3) or paragraph 178(5)(b),

(i) confirm the order,

(ii) order the statutory release of the offender subject to the condition that the offender reside in a community-based residential facility, psychiatric facility or, subject to subsection (4), a penitentiary designated pursuant to subsection (5), where the offender has been detained for a period during statutory release and the Board is satisfied that the condition is reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender, or

(iii) order the statutory release of the offender without such a residence requirement; or

- (b) with respect to an order made under subparagraph (3)(a)(ii),
- (i) confirm or modify the order, or
 - (ii) order the statutory release of the offender without such a residence requirement.

Consent of Commissioner

(4) A condition under subparagraph (3)(a)(ii) that an offender reside in a penitentiary designated pursuant to subsection (5) is valid only if consented to in writing by the Commissioner or a person designated, by name or by position, by the Commissioner.

Designation

(5) The Commissioner may designate penitentiaries for the purposes of orders made under subparagraph (3)(a)(ii).

Relevant factors in detention reviews

180 (1) For the purposes of the review and determination of the case of an offender pursuant to section 177, 178 or 179, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is empirically validated as relevant in determining the likelihood of the commission of an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law, including

- (a) a pattern of persistent violent behaviour established on the basis of any evidence, in particular,
 - (i) the number of offences committed by the offender causing physical or psychological harm,
 - (ii) the seriousness of the offence for which the sentence is being served,
 - (iii) reliable information demonstrating that the offender has had difficulties controlling violent or sexual impulses to the point of endangering the safety of any other person,
 - (iv) the use of a weapon in the commission of any offence by the offender,
 - (v) explicit threats of violence made by the offender,
 - (vi) behaviour of a brutal nature associated with the commission of any offence by the offender, and
 - (vii) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;
- (b) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;

(c) reliable information compelling the conclusion that the offender is planning to commit an offence causing the death of or serious harm to another person before the expiration of the offender's sentence according to law; and

(d) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

Same

(2) For the purposes of the review and determination of the case of an offender pursuant to section 177, 178 or 179, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is empirically validated as relevant in determining the likelihood of the commission of a sexual offence involving a child before the expiration of the offender's sentence according to law, including

(a) a pattern of persistent sexual behaviour involving children established on the basis of any evidence, in particular,

(i) the number of sexual offences involving a child committed by the offender,

(ii) the seriousness of the offence for which the sentence is being served,

(iii) reliable information demonstrating that the offender has had difficulties controlling sexual impulses involving children,

(iv) behaviour of a sexual nature associated with the commission of any offence by the offender, and

(v) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;

(b) reliable information about the offender's sexual preferences indicating that the offender is likely to commit a sexual offence involving a child before the expiration of the offender's sentence according to law;

(c) medical, psychiatric or psychological evidence of the likelihood of the offender committing such an offence owing to a physical or mental illness or disorder of the offender;

(d) reliable information compelling the conclusion that the offender is planning to commit such an offence; and

(e) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

Same

(3) For the purposes of the review and determination of the case of an offender pursuant to section 177, 178 or 179, the Service, the Commissioner or the Board, as the case may be, shall take into consideration any factor that is empirically validated as relevant in determining the likelihood of the commission of a serious drug offence before the expiration of the offender's sentence according to law, including

- (a) a pattern of persistent involvement in drug-related crime established on the basis of any evidence, in particular,
 - (i) the number of drug-related offences committed by the offender,
 - (ii) the seriousness of the offence for which the sentence is being served,
 - (iii) the type and quantity of drugs involved in any offence committed by the offender,
 - (iv) reliable information demonstrating that the offender remains involved in drug-related activities, and
 - (v) a substantial degree of indifference on the part of the offender as to the consequences to other persons of the offender's behaviour;
- (b) medical, psychiatric or psychological evidence of such likelihood owing to a physical or mental illness or disorder of the offender;
- (c) reliable information compelling the conclusion that the offender is planning to commit a serious drug offence before the expiration of the offender's sentence according to law; and
- (d) the availability of supervision programs that would offer adequate protection to the public from the risk the offender might otherwise present until the expiration of the offender's sentence according to law.

CONDITIONS OF RELEASE

Definition of releasing authority

181 (1) In this section, *releasing authority* means

- (a) the Board, in respect of
 - (i) parole,
 - (ii) statutory release, or
 - (iii) unescorted temporary absences authorized by the Board under subsection 156(1);
- (b) the Commissioner, in respect of unescorted temporary absences authorized by the Commissioner under subsection 156(2); or

(c) the institutional head, in respect of unescorted temporary absences authorized by the institutional head under subsection 156(2).

Conditions of release

(2) Subject to subsection (6), every offender released on parole, statutory release or unescorted temporary absence is subject to any conditions imposed by the releasing authority.

Conditions set by releasing authority

(3) The releasing authority may impose conditions on the parole, statutory release or unescorted temporary absence of an offender that are limited to the least restrictive consistent with public safety and only what it considers reasonable and necessary in order to protect society and to facilitate the offender's successful reintegration into society, and for greater certainty, the conditions must be only those that are empirically validated as directly related to documented risk factors causing the offender's criminal behaviour.

Conditions to protect victim

(4) If a victim or a person referred to in subsection 29(4) or 198(3) has provided the releasing authority with a statement describing any safety concerns, the releasing authority shall impose any conditions on the parole, statutory release or unescorted temporary absence of the offender that it considers reasonable and necessary in order to protect the victim or the person, including a condition that the offender abstain from having any contact, including communication by any means, with the victim or the person or from going to any specified place.

Written reasons

(5) If a statement referred to in subsection (4) has been provided to the releasing authority and the releasing authority decides not to impose any conditions under that subsection, it shall provide written reasons for the decision.

For greater certainty

(6) For greater certainty, if no statement has been provided to the releasing authority, nothing in subsection (4) precludes the releasing authority from imposing any condition under subsection (3).

Residence requirement

(7) In order to facilitate the successful reintegration into society of an offender, the releasing authority may, as a condition of unescorted temporary absence, parole or statutory release, require that the offender reside in a community-based residential facility or a psychiatric facility if the releasing authority is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by re-offending before the expiration of the release period.

Definition of community-based residential facility

(8) In subsection (7), *community-based residential facility* includes a community correctional centre but does not include any other penitentiary.

Not necessary to determine particular offence

(9) For the purposes of subsection (7), the releasing authority is not required to determine whether the offender is likely to commit any particular offence.

Consent of commissioner

(10) A condition under subsection (7) that an offender reside in a community correctional centre is valid only if consented to in writing by the Commissioner or a person designated, by name or by position, by the Commissioner.

Duration of conditions

(11) The releasing authority shall specify the duration of a condition imposed pursuant to subsection (3) or (7).

Relief from conditions

182 (1) Notwithstanding paragraphs (2) and (3) of this section, the releasing authority shall review the conditions on its own initiative or upon request by an offender and may at any time, before or after the release of an offender, relieve the offender from compliance with any condition, vary the application to the offender of any condition, or add any condition in compliance with this section.

Parole reduced

(2) Where an offender has served five continuous years on full parole with no convictions for indictable offences, the Board shall alter the number of conditions to:

- (a) keep the peace and be of good behaviour,
- (b) notify the parole supervisor of any change of address, and
- (c) report to the parole supervisor once every calendar year,

unless the Board determines there are reasonable and probable grounds to believe that as a consequence the offender will present an undue risk of reoffending prior to the expiry of the sentence.

Parole stayed

(3) Where an offender has served three continuous years on parole reduced with no convictions for indictable offences, the Board shall stay the application of all conditions unless the Board determines there are reasonable and probable grounds to believe that as a consequence the offender will present an undue risk of reoffending prior to the expiry of the sentence.

(4) Where an offender whose parole has been stayed is convicted of an indictable offence, the stay shall cease to have effect.

Obligation — removal or variance of condition

(5) Before removing or varying any condition imposed under subsection 181(4) on an offender, the releasing authority shall take reasonable steps to inform every victim or person that provided it with a statement referred to in that subsection in relation to that offender of its intention to remove or vary the condition and it shall consider their concerns, if any.

Instructions to released offenders

183 (1) An offender who has been released on parole, statutory release or unescorted temporary absence shall comply with any instructions given by a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or the Commissioner, or given by the institutional head or by the offender's parole supervisor, respecting any conditions of parole, statutory release or unescorted temporary absence in order to prevent a breach of any condition or to protect society.

(2) Such instructions shall provide operational details to support the conditions imposed on the offender and shall not materially exceed or contradict those conditions.

CONDITIONS FOR LONG-TERM SUPERVISION

Conditions for long-term supervision

184 (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by the releasing authority.

Conditions set by Board

(2) The Board may establish only those conditions for the long-term supervision of the offender that are the least restrictive consistent with public safety and that it considers reasonable and necessary support the successful reintegration into society of the offender.

Conditions to protect victim

(3) If a victim, or a person referred to in subsection 198(3), has provided the Board with a statement describing any safety concerns, the Board shall impose any conditions on the long-term supervision of the offender that it considers reasonable and necessary to protect the victim or the person, including a condition that the offender abstain from having any contact, including communication by any means, with the victim or the person or from going to any specified place.

Written reasons

(4) If a statement referred to in subsection (3) has been provided to the Board and it decides not to impose any conditions under that subsection, it shall provide written reasons for its decision.

For greater certainty

(5) For greater certainty, if no statement has been provided to the Board, nothing in subsection (4) precludes the Board from imposing any condition under subsection (2).

Duration of conditions

(6) A condition imposed under subsection (2) or (3) is valid for the period that the Board specifies.

Relief from conditions

(7) The Board shall review the conditions on its own initiative or upon request by an offender and may at any time during the long-term supervision of an offender relieve the offender from compliance with any such condition, vary the application to the offender of any such condition or add any condition in compliance with this section.

Obligation — removal or variance of condition

(8) Before removing or varying any condition imposed under subsection (3) on an offender, the Board shall take reasonable steps to inform every victim or person who provided it with a statement referred to in that subsection in relation to that offender of its intention to remove or vary the condition and it shall consider their concerns, if any.

Instructions to offenders subject to long-term supervision order

185 (1) An offender who is supervised pursuant to a long-term supervision order shall comply with any instructions given by a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or by the Commissioner, or given by the offender's parole supervisor, respecting any conditions of long-term supervision in order to prevent a breach of any condition or to protect society.

(2) Such instructions shall provide operational details to support the conditions imposed on the offender and shall not materially exceed or contradict those conditions.

SUSPENSION, TERMINATION, REVOCATION AND INOPERATIVENESS OF PAROLE, STATUTORY RELEASE OR LONG-TERM SUPERVISION

Suspension of parole or statutory release

186 (1) A member of the Board or a person, designated by name or by position, by the Chairperson of the Board or by the Commissioner, when an offender breaches a condition of parole or statutory release or when the member or person is satisfied that it is necessary and reasonable to suspend the parole or statutory release in order to prevent a breach of any condition thereof or to protect society, may, by warrant,

(a) suspend the parole or statutory release;

- (b) authorize the apprehension of the offender; and
- (c) authorize the recommitment of the offender to custody until the suspension is cancelled, the parole or statutory release is terminated or revoked or the sentence of the offender has expired according to law.

Automatic suspension of parole or statutory release

(2) If an offender who is on parole or statutory release receives an additional sentence, other than a conditional sentence under section 742.1 of the [Criminal Code](#) that is being served in the community or an intermittent sentence under section 732 of that Act, for an offence under an Act of Parliament, their parole or statutory release, as the case may be, is suspended on the day on which the additional sentence is imposed.

Apprehension and recommitment

(3) If an offender's parole or statutory release is suspended under subsection (2), a member of the Board or a person designated, by name or position, by the Chairperson of the Board or the Commissioner may, by warrant, authorize the offender's apprehension and recommitment to custody until

- (a) the suspension is cancelled;
- (b) the parole or statutory release is terminated or revoked; or
- (c) the sentence expires according to law.

Transfer of offender

(4) A person designated under subsection (1) may, by warrant, order the transfer to a penitentiary of an offender who is recommitted to custody under subsection (1) or (2) or as a result of an additional sentence referred to in subsection (2) in a place other than a penitentiary.

Cancellation of suspension or referral

(5) Subject to subsection (4), the person who signs a warrant under subsection (1) or any other person designated under that subsection shall, immediately after the recommitment of the offender, review the offender's case and

- (a) where the offender is serving a sentence of less than two years, cancel the suspension or refer the case to the Board together with an assessment of the case, within fourteen days after the recommitment or such shorter period as the Board directs; or
- (b) in any other case, within thirty days after the recommitment or such shorter period as the Board directs, cancel the suspension or refer the case to the Board together with an assessment of the case stating the conditions, if any, under which the offender could in that person's opinion reasonably be returned to parole or statutory release.

Referral to Board — additional sentence

(6) If an offender's parole or statutory release is suspended under subsection (2), or if an offender whose parole or statutory release is suspended under subsection (1) receives an additional sentence referred to in subsection (2), the suspension may not be cancelled and the case is to be referred to the Board by a person designated by name or position by the Commissioner, together with an assessment of the case, within the applicable number of days set out in subsection (5).

Review by Board

(7) The Board shall, on the referral to it of the case of an offender serving a sentence of less than two years, review the case and, within the period prescribed by the regulations, either cancel the suspension or terminate or revoke the parole.

Review by Board — sentence of two years or more

187 (1) The Board shall, on the referral to it of the case of an offender who is serving a sentence of two years or more, review the case by way of a hearing and — within the period prescribed by the regulations unless, at the offender's request, the review is adjourned by the Board or is postponed by a member of the Board or by a person designated by the Chairperson by name or position —

(a) if the Board is satisfied that the offender will, by reoffending before the expiration of their sentence according to law, present an undue risk to society and the measures in subsection (6) of this section have already been used during the current sentence to which the offender is subject,

(i) terminate the parole or statutory release if the undue risk is due to circumstances beyond the offender's control, and

(ii) revoke it in any other case;

(b) if the Board is not satisfied as in paragraph (a), cancel the suspension; and

(c) if the offender is no longer eligible for parole or entitled to be released on statutory release, cancel the suspension or terminate or revoke the parole or statutory release.

Terms of cancellation

(2) If in the Board's opinion it is necessary and reasonable to do so in order to protect society or to facilitate the reintegration of the offender into society, the Board, when it cancels a suspension of the parole or statutory release of an offender, may

(a) reprimand the offender in order to warn the offender of the Board's dissatisfaction with the offender's behaviour since release;

(b) alter the conditions of the parole or statutory release; and

(c) order the cancellation not to take effect until the expiration of a specified period not exceeding thirty days after the date of the Board's decision, where the offender violated the conditions of parole or statutory release on the occasion of the suspension and on at least one previous occasion that led to a suspension of parole or statutory release during the offender's sentence.

Transmission of cancellation of suspension

(3) Where a person referred to in subsection 186 (1) or the Board cancels a suspension under this section, the person or the Board, as the case may be, shall forward a notification of the cancellation of the suspension or an electronically transmitted copy of the notification to the person in charge of the facility in which the offender is being held.

If parole eligibility date in future

(4) If the Board cancels a suspension of parole under subsection (1) and the day on which the offender is eligible for parole, determined in accordance with any of sections 163 to 165, is later than the day on which the parole suspension is cancelled, the day or full parole is, subject to subsection (2), resumed on the day parole eligibility date or the full parole eligibility date, as the case may be.

Cancellation of parole — parole eligibility date in future

(5) If an offender's parole is to resume under subsection (4), the Board may — before the parole resumes and after a review of the case based on information with which it could not reasonably have been provided at the time the parole suspension was cancelled — cancel the parole or, if the offender has been released, terminate the parole.

Review

(6) If the Board exercises its power under subsection (5), it shall, within the period prescribed by the regulations, review its decision and either confirm or cancel it.

Additional power of the Board

188 (1) Independently of sections 187, where the Board is satisfied that the continued parole or statutory release of an offender would constitute an undue risk to society by reason of the offender reoffending before the expiration of the sentence according to law, the Board may, at any time,

(a) where the offender is no longer eligible for the parole or entitled to be released on statutory release, terminate or revoke the parole or statutory release; or

(b) where the offender is still eligible for the parole or entitled to be released on statutory release,

(i) terminate the parole or statutory release, where the undue risk to society is due to circumstances beyond the offender's control and there is no reasonable alternative, or

(ii) revoke the parole or statutory release, where the undue risk to society is due to circumstances within the offender's control and there is no reasonable alternative.

Power not affected by new sentence

(2) The Board may exercise its power under subsection (1) notwithstanding any new sentence to which the offender becomes subject after being released on parole or statutory release, whether or not the new sentence is in respect of an offence committed before or after the offender's release on parole or statutory release.

Review by Board

(3) Where the Board exercises its power under subsection (1), it shall review its decision at times prescribed by the regulations, at which times it shall either confirm or cancel its decision.

Non-application

(4) Unless the lieutenant governor in council of a province in which there is a provincial parole board makes a declaration under subsection 153(1) that subsection (2) applies in respect of offenders under the jurisdiction of that provincial parole board, subsection (2) does not apply in respect of such offenders, other than an offender who

(a) is serving a sentence in a provincial correctional facility pursuant to an agreement entered into under paragraph 25(1)(a); or

(b) as a result of receiving an additional sentence referred to in subsection (2), is required, under section 743.1 of the [Criminal Code](#), to serve the sentence in a penitentiary.

Parole inoperative

(5) If an offender to whom subsection (2) does not apply, and who is on parole that has not been revoked or terminated, receives an additional sentence that is to be served consecutively with the sentence the offender was serving when the additional sentence was imposed, the parole becomes inoperative and the offender shall be reincarcerated until the day on which the offender has served, from the day on which the additional sentence was imposed, the period of ineligibility in relation to the additional sentence. On that day, the parole is resumed, subject to the provisions of this Act, unless, before that day, the parole has been revoked or terminated.

Continuation of sentence

(6) For the purposes of this Part, an offender who is in custody by virtue of this section continues to serve the offender's sentence.

Time at large during suspension

(7) For the purposes of this Act, where a suspension of parole or statutory release is cancelled, the offender is deemed, during the period beginning on the day of the issuance of the suspension and ending on the day of the cancellation of the suspension, to have been serving the sentence to which the parole or statutory release applies.

Suspension of long-term supervision

189 (1) A member of the Board or a person designated, by name or by position, by the Chairperson of the Board or by the Commissioner, when an offender breaches a condition of a long-term supervision order or a condition referred to in section 181 or when the member or person is satisfied that it is necessary and reasonable to suspend the long-term supervision in order to prevent a breach of any condition of it or to protect society and there is no reasonable alternative, may, by warrant,

(a) suspend the long-term supervision;

(b) authorize the apprehension of the offender; and

(c) authorize the commitment of the offender to a community-based residential facility or a mental health facility or, where the member or person is satisfied that commitment to custody is necessary, to custody until the suspension is cancelled, new conditions for the long-term supervision have been established or the offender is charged with an offence under section 753.3 of the [Criminal Code](#).

Limit on commitment

(2) The period of the commitment of the offender mentioned in paragraph (1)(c) shall not exceed ninety days.

Where offender committed

(3) Where an offender is committed under paragraph (1)(c), the period of the commitment is included in the calculation of the period of long-term supervision ordered under a long-term supervision order, but if there is a period between the issuance of the warrant and the commitment to custody, that period is not included in that calculation.

Transfer of offender

(4) A person designated pursuant to subsection (1) may, by warrant, order the transfer to penitentiary of an offender who is committed under paragraph (1)(c) in a place other than a penitentiary.

Cancellation of suspension or referral

(5) The person who signs a warrant pursuant to subsection (1), or any other person designated pursuant to that subsection, shall, immediately after the commitment of the offender, review the offender's case and, as soon as possible but in any case no later than thirty days after the commitment, cancel the suspension or refer the case to the Board together with an assessment of the case.

Review by Board

(6) The Board shall, on the referral to it of the case of an offender, review the case and, before the end of the period referred to in subsection (2),

(a) cancel the suspension, if the Board is satisfied that, in view of the offender's behaviour while being supervised, the resumption of long-term supervision would not constitute a substantial risk to society by reason of the offender reoffending before the expiration of the period of long-term supervision; or

(b) where the Board is satisfied that no appropriate program of supervision can be established that would adequately protect society from the risk of the offender reoffending, and that it appears that a breach has occurred, recommend that an information be laid charging the offender with an offence under section 753.3 of the [Criminal Code](#).

Laying of information

(7) Where the Board recommends that an information be laid pursuant to paragraph (6)(b), the Service shall recommend to the Attorney General who has jurisdiction in the place in which the breach of the condition occurred that an information be laid charging the offender with an offence under section 753.3 of the [Criminal Code](#).

Terms of cancellation

(8) If in the Board's opinion it is necessary and reasonable to do so in order to protect society or to facilitate the reintegration of the offender into society, the Board, when it cancels a suspension of the long-term supervision order of an offender, may

(a) reprimand the offender in order to warn the offender of the Board's dissatisfaction with the offender's behaviour while being supervised;

(b) alter the conditions of the long-term supervision; and

(c) order the cancellation not to take effect until the expiration of a specified period that ends on a date not later than the end of the ninety days referred to in subsection (2), in order to allow the offender to participate in a program that would help ensure that society is protected from the risk of the offender reoffending.

Transmission of cancellation of suspension

(9) Where a person referred to in subsection (4) or the Board cancels a suspension under this section, the person or the Board, as the case may be, shall forward a notification of the cancellation of the suspension or an electronically transmitted copy of the notification to the person in charge of the facility in which the offender is being held.

Warrant for apprehension and recommitment

190 A member of the Board or a person designated, by name or position, by the Chairperson of the Board or the Commissioner may, by warrant, authorize an offender's apprehension and recommitment to custody if

(a) their parole is terminated or revoked or becomes inoperative under section 187; or

(b) their statutory release is terminated or revoked or they are no longer entitled to be released on statutory release as a result of a change to their statutory release date under subsection 174(6).

Execution of warrant

191 (1) A warrant of apprehension issued under section 14, 51, 158, 186, 189 or 190 or by a provincial parole board, or an electronically transmitted copy of such a warrant, shall be executed by any peace officer to whom it is given in any place in Canada as if it had been originally issued or subsequently endorsed by a justice or other lawful authority having jurisdiction in that place.

Arrest without warrant

(2) A peace officer who believes on reasonable grounds that a warrant is in force under this Part or under the authority of a provincial parole board for the apprehension of a person may arrest the person without warrant and remand the person in custody.

Where arrest made

(3) Where a person has been arrested pursuant to subsection (2), the warrant of apprehension, or an electronically transmitted copy thereof, shall be executed within forty-eight hours after the arrest is made, failing which the person shall be released.

Serving balance of sentence

192 (1) Where the parole or statutory release of an offender is terminated or revoked, the offender shall be recommitted to custody and shall serve the portion of the sentence that remained unexpired on the day on which the parole or statutory release was terminated or revoked.

Effect of termination on parole and statutory release

- (2) An offender whose parole or statutory release has been terminated is
- (a) eligible for parole in accordance with section 162, 163, 164 or 165, as the case may be; and
 - (b) entitled to be released on statutory release in accordance with section 174.

No forfeiture of remission

- (3) An offender whose parole or statutory release has been terminated is not liable to forfeit
- (a) any remission with which the offender was credited pursuant to the [Prisons and Reformatories Act](#); or
 - (b) any credits under the [International Transfer of Offenders Act](#).

Effect of revocation on parole

(4) An offender whose parole or statutory release has been revoked is eligible for parole in accordance with section 162, 163, 164 or 165, as the case may be.

Exception

(5) Notwithstanding sections 167 and 169, the Board is not required to conduct a review for the purpose of parole of the case of an offender referred to in subsection (4) within one year after the date on which the offender's parole or statutory release is revoked.

Effect of revocation on statutory release

(6) Subject to subsections 178(4) and (6), an offender whose parole or statutory release has been revoked is entitled to be released on statutory release in accordance with subsection 174(5).

MERGED SENTENCES

Multiple sentences

193 (1) For the purposes of the *Criminal Code*, the *Prisons and Reformatories Act*, the *International Transfer of Offenders Act* and this Act, a person who is subject to two or more sentences is deemed to have been sentenced to one sentence beginning on the first day of the first of those sentences to be served and ending on the last day of the last of them to be served.

Interpretation

(2) This section does not affect the time of commencement, pursuant to subsection 719(1) of the *Criminal Code*, of any sentences that are deemed under this section to constitute one sentence.

REVIEW HEARINGS

Mandatory hearings

194 (1) The Board shall conduct the review of the case of an offender by way of a hearing, conducted in whichever of the two official languages of Canada is requested by the offender, unless the offender waives the right to a hearing in writing or refuses to attend the hearing, in the following classes of cases:

- (a) the first review for day parole pursuant to subsection 167(1), except in respect of an offender serving a sentence of less than two years;
- (b) the first review for full parole under subsection 169(1) and subsequent reviews under subsection 169(5), (6) or (7);
- (c) a review conducted under section 170 or sections 178 or 179;

- (d) a review following a suspension or cancellation of parole; and
- (e) any review of a class specified in the regulations.

Discretionary hearing

(2) The Board may elect to conduct a review of the case of an offender by way of a hearing in any case not referred to in subsection (1).

Dispensing with hearing

(3) Notwithstanding subsection (1), in respect of any class of offenders specified in the regulations, the Board may conduct a review referred to in paragraph (1)(a) or (b) without a hearing in order to decide whether

- (a) to grant parole, subject to the offender's acceptance in writing of the conditions of parole; or
- (b) to hold a hearing before the rendering of a decision.

Attendance by observers

(4) Subject to subsections (5) and (6), the Board or a person designated, by name or by position, by the Chairperson of the Board shall, subject to such conditions as the Board or person considers appropriate and after taking into account the offender's views, permit a person who applies in writing therefor to attend as an observer at a hearing relating to an offender, unless the Board or person is satisfied that

- (a) the hearing is likely to be disrupted or the ability of the Board to consider the matter before it is likely to be adversely affected by the presence of that person or of that person in conjunction with other persons who have applied to attend the hearing;
- (b) the person's presence is likely to adversely affect those who have provided information to the Board, including victims, members of a victim's family or members of the offender's family;
- (c) the person's presence is likely to adversely affect an appropriate balance between that person's or the public's interest in knowing and the public's interest in the effective reintegration of the offender into society; or
- (d) the security and good order of the institution in which the hearing is to be held is likely to be adversely affected by the person's presence.

Exclusion of observers

(5) Where in the course of a hearing the Board concludes that any of the possible situations described in subsection (4) is likely to exist, it may decide to continue the hearing in the absence of observers or of a particular observer.

Attendance by victim or member of their family

(6) In determining whether to permit a victim or a member of the victim's family to attend as an observer at a hearing, the Board or its designate shall make every effort to fully understand the need of the victim and of the members of his or her family to attend the hearing and witness its proceedings. The Board or its designate shall permit a victim or a member of his or her family to attend as an observer unless satisfied that the presence of the victim or family member would result in a situation described in paragraph (4)(a), (b), (c) or (d).

Attendance not permitted

(7) If the Board or its designate decides under subsection (6) to not permit a victim or a member of his or her family to attend a hearing, the Board shall provide for the victim or family member to observe the hearing by any means that the Board considers appropriate.

Assistance to offender

(8) Where a review by the Board includes a hearing at which the offender is present, the Board shall permit the offender to be assisted by a person of the offender's choice unless the Board would not permit the presence of that person as an observer pursuant to subsection (4).

Role of assistant

- (9) A person referred to in subsection (8) is entitled
- (a) to be present at the hearing at all times when the offender is present;
 - (b) to advise the offender throughout the hearing; and
 - (c) to address, on behalf of the offender, the members of the Board conducting the hearing.

Right to interpreter

(10) An offender who does not have an adequate understanding of at least one of Canada's official languages is entitled to the assistance of an interpreter at the hearing and for the purpose of understanding materials provided to the offender pursuant to subsection 197(1) and paragraph 199(2)(b).

Presentation of statements

- 195 (1)** If they are attending a hearing as an observer,
- (a) a victim may present a statement describing the harm, property damage or loss suffered by them as the result of the commission of the offence, and any current safety concerns; and
 - (b) a person referred to in subsection 198(3) may present a statement describing the harm, property damage or loss suffered by them as the result of any act of the offender in respect of which a complaint was made to the police or Crown attorney or an information laid under the [Criminal Code](#), and any current safety concerns.

Consideration of statement

(2) The Board shall, in deciding whether an offender should be released and what conditions might be applicable to the release, take into consideration any statement that has been presented in accordance with paragraph 195 (1).

Forms of statement

(3) A victim or a person referred to in subsection 198(3) may have their statement presented at the hearing in the form of a written statement or an audio or video recording, or in any other form prescribed by the regulations, whether or not they are attending the hearing.

Communication of statement in writing

(4) A victim or a person referred to in subsection 198(3) shall, before the hearing, deliver to the Board a transcript of the statement that they plan to present under subsection this section.

Audio recording

(5) Subject to any conditions specified by the Board, a victim, or a person referred to in subsection 198(3), is entitled, on request, after the hearing in respect of a review referred to in paragraph 199 (1)(a) or (b), to listen to an audio recording of the hearing or view a sign language interpretation of it, other than portions of the hearing that the Board considers

(a) could reasonably be expected to jeopardize the safety of any person or to reveal a source of information obtained in confidence; or

(b) should not be heard by the victim or a person referred to in subsection 198(3) because the privacy interests of any person clearly outweighs the interest of the victim or person referred to in that subsection.

Access to information

(6) If an observer has been present during a hearing or a victim or a person has exercised their right under this section, any information or documents discussed or referred to during the hearing shall not for that reason alone be considered to be publicly available for purposes of the [Access to Information Act](#) or the [Privacy Act](#).

Transcript

196 (1) If a transcript of the hearing has been made, the Board shall, on written request and free of charge, provide a copy to the offender and a copy to the victim or a member of the victim's family; however, the copy provided to the victim or member of the victim's family shall not include any portion of the transcript of a part of the hearing that, under subsection 194(5), was or would have been continued in the absence of observers or of a particular observer.

Personal information

(2) The Board may delete from a copy of the transcript any personal information about a person other than the offender, the victim or a member of the victim's family.

Access to information

(3) Information discussed or referred to in the transcript of the hearing are not publicly available for the purposes of the [Access to Information Act](#) or the [Privacy Act](#).

DISCLOSURE OF INFORMATION

Disclosure to offender

197 (1) At least fifteen days before the day set for the review of the case of an offender, the Board shall provide or cause to be provided to the offender, in writing, in whichever of the two official languages of Canada is requested by the offender, the information that is to be considered in the review of the case or a summary of that information.

Same

(2) Where information referred to in subsection (1) comes into the possession of the Board after the time prescribed in that subsection, that information or a summary of it shall be provided to the offender as soon as is practicable thereafter.

Waiver and postponement

(3) An offender may waive the right to be provided with the information or summary or to have it provided within the period referred to in subsection (1). If they waive the latter right and they receive information so late that it is not possible for them to prepare for the review, they are entitled to a postponement and a member of the Board or a person designated by name or position by the Chairperson of the Board shall, at the offender's request, postpone the review for the period that the member or person determines. If the Board receives information so late that it is not possible for it to prepare for the review, a member of the Board or a person designated by name or position by the Chairperson of the Board may postpone the review for any reasonable period that the member or person determines.

Exceptions

- (4) Where the Board has reasonable grounds to believe
- (a) that any information should not be disclosed on the grounds of public interest, or
 - (b) that its disclosure would jeopardize
 - (i) the safety of any person,
 - (ii) the security of a correctional institution, or

(iii) the conduct of any lawful investigation,

the Board may withhold from the offender as much information as is strictly necessary in order to protect the interest identified in paragraph (a) or (b).

Disclosure of information to victims

198 (1) At the request of a victim of an offence committed by an offender, the Chairperson

(a) shall disclose to the victim the following information about the offender:

(i) the offender's name,

(ii) the offence of which the offender was convicted and the court that convicted the offender,

(iii) the date of commencement and length of the sentence that the offender is serving, and

(iv) eligibility dates and review dates applicable to the offender under this Part in respect of unescorted temporary absences or parole; and

(b) may disclose to the victim any of the following information about the offender, where in the Chairperson's opinion the interest of the victim in the disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure, namely,

(i) the offender's age,

(ii) the location of the penitentiary in which the sentence is being served,

(iii) the date, if any, on which the offender is to be released on unescorted temporary absence, escorted temporary absence where the Board has approved the absence as required by subsection 746.1(2) of the [Criminal Code](#), parole or statutory release,

(iv) the date of any hearing for the purposes of a review under section 178,

(v) any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release and the reasons for any unescorted temporary absence,

(vi) the destination of the offender when released on unescorted temporary absence, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination,

(vii) whether the offender is in custody and, if not, the reason that the offender is not in custody,

(viii) whether or not the offender has appealed a decision of the Board under section 204, and the outcome of that appeal, and

(ix) the reason for a waiver of the right to a hearing under subsection 169 if the offender gives one.

Same

(2) Where an offender has been transferred from a penitentiary to a provincial correctional facility, the Chairperson of the Board may, at the request of a victim of an offence committed by the offender, disclose to the victim the name of the province in which the provincial facility is located if in the Chairperson's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offender's privacy that could result from the disclosure.

Disclosure of information to other persons

(3) Subsections (1) and (2) also apply, with such modifications as the circumstances require, to a person who satisfies the Chairperson

(a) that person suffered physical or emotional harm, property damage or economic loss, as the result of an act of an offender, whether or not the offender was prosecuted or convicted for that act; and

(b) that a complaint was made to the police or the Crown attorney, or an information was laid under the [Criminal Code](#), in respect of that act.

Representative

(4) A victim may designate a representative to whom the information referred to in subsections (1) and (2) is to be disclosed on the victim's behalf. In that case, the victim shall provide the Chairperson with the representative's contact information.

Withdrawal of request

(5) A victim who has made a request referred to in subsection (1) or (2) may inform the Chairperson in writing that they no longer want the information to be disclosed to them. In that case, the Chairperson shall not contact them or their representative, if any, unless the victim subsequently makes the request again.

Deemed withdrawal of request

(6) The Chairperson may consider a victim to have withdrawn a request referred to in subsection (1) or (2) if the Chairperson has made reasonable efforts to contact the victim and has failed to do so.

Other persons

(7) Subsections (4) to (6) also apply, with any necessary modifications, to a person who has satisfied the Chairperson of the matters referred to in paragraphs (3)(a) and (b).

Regulations

(8) The manner and form of making requests to the Chairperson under subsection (1) or (2), and how those requests are to be dealt with, may be provided for by the regulations.

Designation by Chairperson

(9) In this section, “Chairperson” includes a person or class of persons designated, by name or by position, by the Chairperson.

RECORDS OF REVIEWS AND DECISIONS**Records of proceedings**

199 (1) Where the Board conducts a review of the case of an offender by way of a hearing, it shall maintain a record of the proceedings for the period prescribed by the regulations.

Decisions to be recorded and communicated

(2) Where the Board renders a decision with respect to an offender following a review of the offender’s case, it shall

- (a) record the decision and the reasons for the decision, and maintain a copy of the decision and reasons for the period prescribed by the regulations; and
- (b) provide the offender with a copy of the decision and the reasons for the decision, in whichever of the two official languages of Canada is requested by the offender, within the period prescribed by the regulations.

Registry of decisions

200 (1) The Board shall maintain a registry of the decisions rendered by it under this Part or under paragraph 746.1(2)(c) or (3)(c) of the [Criminal Code](#) and its reasons for those decisions.

Access to registry

(2) Any person shall, on written application to the Board, have access to the decisions in the registry, other than information the disclosure of which could reasonably be expected

- (a) to jeopardize the safety of any person;
- (b) to reveal a source of information obtained in confidence; or
- (c) if released publicly, to adversely affect the reintegration of the offender into society.

Same

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

Copy of decision

201 At the request of a victim, or a person referred to in subsection 198(3), the Board shall, despite section 200, provide the victim or person with a copy of any decision rendered by it under this Part or under paragraph 746.1(2)(c) or (3)(c) of the [Criminal Code](#) in relation to the offender and its reasons for that decision, unless doing so could reasonably be expected

- (a) to jeopardize the safety of any person;
- (b) to reveal a source of information obtained in confidence; or
- (c) to prevent the successful reintegration of the offender into society.

REVIEW AND EVIDENCE

Documents admissible

202 A decision, order, warrant or certificate purporting to be signed by a member of the Board or a person designated by the Chairperson of the Board is admissible in any court and is evidence of its contents without proof of the signature or official character of the person appearing to have signed it.

ORGANIZATION OF THE BOARD

APPEAL DIVISION

Constitution of Appeal Division

203 (1) There shall be a division of the Board known as the Appeal Division, consisting of not more than six full-time members — one of whom shall be designated Vice-Chairperson, Appeal Division — and a number of part-time members designated in both cases by the Governor in Council, on the recommendation of the Minister, from among the members appointed under section 143.

Disqualification

(2) A member of the Appeal Division may not sit on an appeal from a decision in which the member participated.

Same

(3) A member of a panel of the Appeal Division that orders a new review of a case pursuant to subsection 204(4) may not sit on the panel of the Board that reviews the case or on a panel of the Appeal Division that subsequently reviews the case on an appeal.

APPEAL TO APPEAL DIVISION

Right of appeal

204 (1) An offender may appeal a decision of the Board to the Appeal Division on the ground that the Board, in making its decision,

- (a) failed to observe a principle of fundamental justice;
- (b) made an error of law;
- (c) breached or failed to apply a policy adopted pursuant to subsection 208(2);
- (d) based its decision on erroneous or incomplete information; or
- (e) acted without jurisdiction or beyond its jurisdiction, or failed to exercise its jurisdiction.

Decision of Vice-Chairperson

(2) The Vice-Chairperson, Appeal Division, may refuse to hear an appeal, without causing a full review of the case to be undertaken, where, in the opinion of the Vice-Chairperson,

- (a) the appeal is frivolous or vexatious;
- (b) the relief sought is beyond the jurisdiction of the Board;
- (c) the appeal is based on information or on a new parole or statutory release plan that was not before the Board when it rendered the decision appealed from; or
- (d) at the time the notice of appeal is received by the Appeal Division, the offender has ninety days or less to serve before being released from imprisonment.

Time and manner of appeal

(3) The time within which and the manner in which a decision of the Board may be appealed shall be as prescribed by the regulations.

Decision on appeal

(4) The Appeal Division shall complete its review of a decision within 30 working days from receipt of the appeal and may

- (a) affirm the decision;
- (b) affirm the decision but order a further review of the case by the Board on a date earlier than the date otherwise provided for the next review;
- (c) order a new review of the case by the Board and order the continuation of the decision pending the review; or
- (d) reverse, cancel or vary the decision.

Conditions of immediate release

(5) The Appeal Division shall not render a decision under subsection (4) that results in the immediate release of an offender from imprisonment unless it is satisfied that

(a) the decision appealed from cannot reasonably be supported in law, under the applicable policies of the Board, or on the basis of the information available to the Board in its review of the case; and

(b) a delay in releasing the offender from imprisonment would be unfair.

HEAD OFFICE AND REGIONS

Head office

205 (1) The head office of the Board shall be located in the National Capital Region as described in the schedule to the *National Capital Act*, but meetings of the Board or of the Executive Committee of the Board may be held at such times and places as the Chairperson of the Board directs.

Specific duties

(2) The Chairperson may assign Board members for a specified period of time to exclusive duties under the *Criminal Records Act*, as prescribed.

Regional offices

(3) The Board shall maintain at least one regional office at a place determined by the Chairperson, after consultation with the Minister, in each of the following regions of Canada, namely, the Atlantic region, Quebec, Ontario, the Prairie region and the Pacific region.

Regional divisions

206 (1) There shall be regional divisions of the Board consisting of the members assigned to them, who shall exercise such functions of the Board, under this or any other Act of Parliament, as are designated by the Chairperson of the Board for a region or, where there is more than one regional office in a region, for the portion of a region designated by the Chairperson.

Residence

(2) Full-time members of the Board assigned to a regional division pursuant to subsection (1) shall reside within reasonable commuting distance of the office of that division.

Presumption

(3) Any act or thing done or any decision rendered by a panel of the Board constituted pursuant to section 143 is, for the purposes of this Part, an act or thing done or a decision rendered by the Board.

Vice-Chairpersons

207 (1) A full-time member shall be designated by the Governor in Council, on the recommendation of the Minister, to be Vice-Chairperson for each regional division of the Board.

Same

(2) A Vice-Chairperson for a division is responsible to the Chairperson for the professional conduct, training, and quality of decision-making of Board members assigned to that division, in conformity with policies and procedures established by and for the Board as a whole.

GENERAL**Executive Committee**

208 (1) There shall be an Executive Committee of the Board consisting of the Chairperson, the Executive Vice-Chairperson, the Vice-Chairperson, Appeal Division, the regional Vice-Chairpersons and two other members of the Board designated by the Chairperson after consultation with the Minister.

Functions

(2) Subject to subsection (3), the Executive Committee

(a) shall, after such consultation with Board members as it considers appropriate, adopt policies relating to reviews under this Part;

(b) shall, where requested by the Chairperson, advise the Chairperson on any other matters concerning the functions of the Board or of the Chairperson under this or any other Act of Parliament; and

(c) may direct that the number of members required to constitute a panel for the review of any class of cases shall be greater than the number fixed by the regulations.

(3) The Vice-Chairperson, Appeal Division and Board members of that office shall not take part in any of the matters under subsection (2)(a) and (b) or in any other Board matters that could be the subject of an appeal under s. 204.

Respect for diversity and law

(4) Policies adopted under paragraph (2)(a) must respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and Indigenous persons, as well as to the needs of other groups of offenders with special requirements, and, for added clarity, shall not materially exceed or contradict any law or regulation.

Chair

(5) Meetings of the Executive Committee shall be chaired by the Chairperson.

Chief Executive Officer

209 (1) The Chairperson of the Board is its chief executive officer and as such has supervision over and direction of the work and the staff of the Board, and the Chairperson shall chair general meetings of the Board.

Withdrawal of member

(2) The Chairperson may direct that a member of the Board not participate in a review panel where, in the opinion of the Chairperson, the participation of the member in the review may result in a reasonable apprehension of bias.

Constitution of review panels

(3) The Chairperson may direct that the number of members required to constitute a panel for the review of any particular case shall be greater than the number fixed by the regulations.

Investigations

(4) The Chairperson may appoint a person or persons to investigate and report on any matter relating to the operations of the Board, and sections 7 to 13 of the *Inquiries Act* apply in respect of such investigations, with such modifications as the circumstances require, as if the references to “commissioners” in those sections were references to the person or persons so appointed.

Delegation

(5) The Chairperson may authorize any full-time member of the Board, other than the Vice-Chairperson, Appeal Division, to exercise any of the Chairperson’s functions under this Part, in accordance with any conditions specified by the Chairperson, and a function so exercised shall be deemed to have been exercised by the Chairperson.

Manner of exercising

(6) Where the Chairperson is authorized by this Part to designate a person to exercise a power, the Chairperson may specify the conditions under which that person may exercise the power.

Absence, incapacity or vacancy

(7) In the event of the absence or incapacity of the Chairperson or a vacancy in the office of Chairperson, the Executive Vice-Chairperson may exercise all the powers of the Chairperson.

Same

(8) In the event of the absence or incapacity of, or a vacancy in the offices of, the Chairperson and the Executive Vice-Chairperson, a full-time member of the Board, other than the Vice-Chairperson, Appeal Division, designated by the Minister may exercise all the powers of the Chairperson.

Remuneration of full-time and substitute members

210 (1) Each full-time and substitute member of the Board shall be paid such remuneration as is fixed by the Governor in Council, and is entitled to be paid reasonable travel and living expenses incurred while performing duties away from the administrative centre to which the member is assigned.

Leave of absence from public service

(2) An employee in the public service appointed as a full-time member of the Board shall be given leave of absence without pay from the public service.

Remuneration of part-time members

(3) Each part-time member of the Board shall be paid such remuneration as is fixed by the Governor in Council for each day that the member is serving as such, and is entitled to be paid reasonable travel and living expenses incurred while performing duties away from the member's ordinary place of residence.

Pension

(4) The full-time members and employees of the Board shall be deemed to be employed in the public service for the purposes of the [Public Service Superannuation Act](#).

Immunity of members

211 No criminal or civil proceedings lie against a member of the Board for anything done or said in good faith in the exercise or purported exercise of the functions of a member of the Board under this or any other Act of Parliament.

Board members not to be witnesses

212 A member of the Board is not a competent or compellable witness in any civil proceedings in respect of any matter coming to their knowledge in the course of the exercise or purported exercise of their functions under this or any other Act of Parliament.

Impartiality

213 (1) A full-time member of the Board shall not hold any office or engage in any occupation incompatible with the exercise of the member's functions under this or any other Act of Parliament.

Same

(2) A member of the Board may not participate in a review of a case in circumstances where a reasonable apprehension of bias may result from the participation of that member.

Inquiries

214 (1) The Chairperson may recommend to the Minister that an inquiry be held to determine whether any member of the Board should be subject to any disciplinary or remedial measures for any reason set out in any of paragraphs 215(2).

Same

(2) If the Minister considers it appropriate that an inquiry under this section be held, the Minister shall appoint a person to conduct the inquiry.

Powers

(3) The person conducting an inquiry under this section has the power

(a) to issue to any person a summons requiring the person to appear at the time and place mentioned in the summons to testify with respect to all matters within the person's knowledge relative to the inquiry and to bring and produce any document, book or paper that the person has or controls relative to the inquiry; and

(b) to administer oaths and examine any person on oath.

Inquiry public

(4) Subject to subsections (5) and (6), an inquiry under this section shall be conducted in public.

Confidentiality

(5) A person conducting an inquiry under this section may, on application, take any measures or make any order that the person considers necessary to ensure the confidentiality of the inquiry where the person is satisfied that, during the inquiry or as a result of the inquiry being conducted in public, as the case may be,

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosures of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that the inquiry be conducted in public; or

(c) there is a reasonable likelihood that the life, liberty or security of a person would be endangered.

Same

(6) Where a person conducting an inquiry under this section considers it appropriate to do so, the person may take any measures or make any order that the person considers necessary to ensure the confidentiality of any hearing held in respect of an application referred to in subsection (5).

Rules of evidence

(7) A person conducting an inquiry under this section is not bound by any legal or technical rules of evidence and, in any proceedings of the inquiry, the person may receive and base a decision on evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case.

Right to grant standing

(8) A person conducting an inquiry under this section may grant standing to the hearing to any party where the person determines such an order to be appropriate.

Right to be heard

(9) Every person in respect of whom an inquiry under this section is conducted shall be given reasonable notice of the subject-matter of the inquiry and of the time and place of any hearing thereof and shall be given an opportunity, in person or by counsel, to be heard at the hearing, to cross-examine witnesses and to adduce evidence.

Report of inquiry

215 (1) After an inquiry under section 214 has been completed, the person who conducted the inquiry shall prepare a report of the conclusions of the inquiry and submit it to the Minister.

Recommendations

(2) Where an inquiry under section 214 has been held and, in the opinion of the person who conducted the inquiry, the member of the Board in respect of whom the inquiry was held

(a) has become incapacitated from the due execution of the member's office by reason of infirmity,

(b) is guilty of misconduct,

(c) has failed in the due execution of the member's office, or

(d) has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of the member's office,

the person may, in the report of the inquiry, recommend that the member be suspended without pay or be removed from office or may recommend that such disciplinary or remedial measure as the person considers necessary be taken.

Governor in Council may suspend or remove

(3) Where the Minister receives a report under subsection (1), the Minister shall send a copy of the report to the Governor in Council, who may suspend the member of the Board to whom the report relates without pay, remove the member from office or take any other disciplinary or remedial measure.

REGULATIONS

Regulations

216 (1) The Governor in Council may make regulations providing for anything that by this Part is to be provided for by regulation, including defining terms that are to be defined in the regulations for the purposes of this Part, and, generally, for carrying out the purposes and provisions of this Part.

Application

- (2)** Regulations may be made pursuant to subsection (1) that are applicable
- (a)** in respect of offenders within the jurisdiction of a provincial parole board; and
 - (b)** in respect of a specified class, or specified classes, of offenders.

Regulations

- (3)** The Governor in Council may, by regulation, amend Schedule I or II.

Same

- (4)** The Governor in Council may make regulations respecting the method of determining
- (a)** pursuant to sections 162 to 165 and 171 to 172, the period that an offender must serve before being eligible for parole;
 - (b)** pursuant to section 174, the period that an offender must serve before being entitled to statutory release; and
 - (c)** the manner in which subsection 193(1) applies in respect of sentences.

PART III: PENITENTIARY & REINTEGRATION OMBUDSMAN

INTERPRETATION

Definitions

217 In this Part,

Commissioner

Commissioner has the same meaning as in Part I; **long-term supervision**

long-term supervision has the same meaning as in Part I;

Minister

Minister has the same meaning as in Part I; **Ombudsman**

Ombudsman means the Penitentiary and Reintegration Ombudsman of Canada appointed pursuant to section 219; (*ombudsman*)

offender

offender has the same meaning as in Part II; (

parole

parole has the same meaning as in Part II; (

penitentiary

penitentiary has the same meaning as in Part I; (

provincial parole board

provincial parole board has the same meaning as in Part II; (

statutory release

statutory release has the same meaning as in Part II. (

Application to persons subject to long-term supervision order

218 A person who is required to be supervised by a long-term supervision order is deemed to be an offender for the purposes of this Part.

PENITENTIARY AND REINTEGRATION OMBUDSMAN

Appointment

219 (1) The Governor in Council may appoint a person to be known as the Penitentiary and Reintegration Ombudsman of Canada.

(2) The Ombudsman may designate an employee as the Deputy Ombudsman.

Eligibility

220 A person is eligible to be appointed as the Ombudsman or to continue in that office only if the person is a Canadian citizen ordinarily resident in Canada or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* who is ordinarily resident in Canada.

Tenure of office and removal

221 (1) The Ombudsman holds office during good behaviour for a term not exceeding seven years, but may be suspended or removed for cause at any time by the Governor in Council.

Further terms

(2) The Ombudsman, on the expiration of a first or any subsequent term of office, is eligible to be reappointed for a further term not exceeding seven years.

Absence, incapacity or vacancy

222 In the event of the absence or incapacity of the Ombudsman, or if the office of Ombudsman is vacant, the Deputy Ombudsman may assume the function and duties of the Ombudsman until such time as the Governor in Council may appoint another qualified person to hold the office during the absence, incapacity or vacancy, and that person shall, while holding that office, have the same function as and all of the powers and duties of the Ombudsman under this Part and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Devotion to duties

223 The Ombudsman shall engage exclusively in the function and duties of the office of the Ombudsman and shall not hold any other office under Her Majesty in right of Canada or a province for reward or engage in any other employment for reward.

Rank and Powers

224 The Ombudsman has the rank, and all the powers, of a deputy head of a department.

Salary and expenses

225 (1) The Ombudsman shall be paid such salary as may be fixed by the Governor in Council and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Part.

Pension benefits

(2) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Ombudsman, except that a person appointed as Ombudsman from outside the public service, as defined in subsection 3(1) of the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided for in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Ombudsman from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

Other benefits

(3) The Ombudsman is deemed to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

PURPOSE AND PRINCIPLES

Purpose of the office of the ombudsman

226 The Office of the Penitentiary and Reintegration Ombudsman serves Canadians and contributes to safe, lawful and humane corrections through independent oversight of the Correctional Service of Canada by providing accessible, impartial and timely investigation of individual and systemic concerns.

Principles that guide the Ombudsman

227 The principles that guide the Ombudsman in achieving the purpose referred to in section 226 are as follows:

- (a)** Access to the Ombudsman is timely and unimpeded;
- (b)** Open and respectful communication in all matters is a priority, with appropriate protection of confidentiality where required; and
- (c)** Staff of the Office are provided with training and resources to ensure the effective discharge of their duties.

MANAGEMENT

Management

228 The Ombudsman has the control and management of all matters connected with the office of the Ombudsman.

Staff of the Ombudsman

229 (1) Such officers and employees as are necessary to enable the Ombudsman to perform the function and duties of the Ombudsman under this Part shall be appointed in accordance with the *Public Service Employment Act*.

Technical assistance

(2) The Ombudsman may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Ombudsman to advise and assist the Ombudsman in the performance of the function and duties of the Ombudsman under this Part and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

Oath or affirmation

230 The Ombudsman and every person appointed pursuant to section 222 or subsection 229(1) shall, before commencing the duties of office, take an oath or solemn affirmation in the following form:

“I, (name), swear (or solemnly affirm) that I will faithfully and honestly fulfil the duties required of me as (Ombudsman, Acting Ombudsman or officer or employee of the Ombudsman) and that I will not, without due authority, disclose or make known any matter that comes to my knowledge by reason of such employment. (*Add, in the case where an oath is taken, “So help me God” (or name of deity).*) ”

FUNCTION

Function

231 (1) It is the function of the Ombudsman to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of, the Commissioner that affect offenders either individually or as a group.

Restrictions

(2) In performing the function referred to in subsection (1), the Ombudsman may not investigate

(a) any decision, recommendation, act or omission of

(i) the Parole Board of Canada in the exercise of its exclusive jurisdiction under this Act, or

- (ii) any provincial parole board in the exercise of its exclusive jurisdiction;
- (b) any problem of an offender related to the offender's confinement in a provincial correctional facility, whether or not the confinement is pursuant to an agreement between the federal government and the government of the province in which the provincial correctional facility is located; and
- (c) any decision, recommendation, act or omission of an official of a province supervising, pursuant to an agreement between the federal government and the government of the province, an offender on temporary absence, parole, statutory release subject to supervision, mandatory supervision or long-term supervision where the matter has been, is being or is going to be investigated by an ombudsman of that province.

Exception

(3) Notwithstanding paragraph (2)(b), the Ombudsman may, in any province that has not appointed a provincial parole board, investigate the problems of offenders confined in provincial correctional facilities in that province related to the preparation and supervision of cases of parole by any person under the control and management of, or performing services for or on behalf of, the Commissioner.

Further

(4) For greater certainty, the Ombudsman may investigate the problems of offenders confined in any place designated as a penitentiary under Part I of this Act, and any place designated as a Healing Lodge and operated by the Service or a partner agency.

Application to Federal Court

232 Where any question arises as to whether the Ombudsman has jurisdiction to investigate any particular problem, the Ombudsman may apply to the Federal Court for a declaratory order determining the question.

INFORMATION PROGRAM

Information program

233 The Ombudsman shall maintain a program of communicating information to offenders, criminal justice system partners and the public including

- (a) the function of the Ombudsman;
- (b) the circumstances under which an investigation may be commenced by the Ombudsman; and
- (c) the independence of the Ombudsman.

INVESTIGATIONS

Commencement

- 234 (1)** The Ombudsman may commence an investigation
- (a) on the receipt of a complaint by or on behalf of an offender;
 - (b) at the request of the Minister or a Parliamentarian; or
 - (c) on the initiative of the Ombudsman.

Discretion

- (2)** The Ombudsman has full discretion as to
- (a) whether an investigation should be conducted in relation to any particular complaint or request;
 - (b) how every investigation is to be carried out; and
 - (c) whether any investigation should be terminated before its completion.

Right to hold hearing

235 (1) In the course of an investigation, the Ombudsman may hold any hearing and make such inquiries as the Ombudsman considers appropriate, but no person is entitled as of right to be heard by the Ombudsman.

Hearings to be *in camera*

(2) Every hearing held by the Ombudsman shall be *in camera* unless the Ombudsman decides otherwise.

Right to require information and documents

- 236 (1)** In the course of an investigation, the Ombudsman may require any person
- (a) to furnish any information that, in the opinion of the Ombudsman, the person may be able to furnish in relation to the matter being investigated; and
 - (b) subject to subsection (2), to produce without delay, for examination by the Ombudsman, any document, paper or thing that, in the opinion of the Ombudsman, relates to the matter being investigated and that may be in the possession or under the control of that person.

Return of document, etc.

(2) The Ombudsman shall return any document, paper or thing produced pursuant to paragraph (1)(b) to the person who produced it within ten days after a request therefor is made to the Ombudsman, but nothing in this subsection precludes the Ombudsman from again requiring its production in accordance with paragraph (1)(b).

Right to make copies

(3) The Ombudsman may make copies of any document, paper or thing produced pursuant to paragraph (1)(b).

Right to examine under oath

237 (1) In the course of an investigation, the Ombudsman may summon and examine on oath

(a) where the investigation is in relation to a complaint, the complainant, and

(b) any person who, in the opinion of the Ombudsman, is able to furnish any information relating to the matter being investigated,

and for that purpose may administer an oath.

Representation by counsel

(2) Where a person is summoned pursuant to subsection (1), that person may be represented by counsel during the examination in respect of which the person is summoned.

Right to enter

238 For the purposes of this Part, the Ombudsman may, on satisfying any applicable security requirements, at any time enter any premises occupied by or under the control and management of the Commissioner and inspect the premises and carry out therein any investigation.

FINDINGS, REPORTS AND RECOMMENDATIONS

Decision not to investigate

239 Where the Ombudsman decides not to conduct an investigation in relation to a complaint or a request from the Minister or a Parliamentarian or decides to terminate such an investigation before its completion, the Ombudsman shall inform the complainant, the Minister or the Parliamentarian, as the case may be, of that decision and, if the Ombudsman considers it appropriate, the reasons therefor, providing only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

Complaint not substantiated

240 Where, after conducting an investigation in relation to a complaint, the Ombudsman concludes that the complaint has not been substantiated, the Ombudsman shall inform the complainant of that conclusion and, where the Ombudsman considers it appropriate, the reasons therefor, providing the complainant with only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

Informing of problem

241 Where, after conducting an investigation, the Ombudsman determines that a problem referred to in section 231 exists in relation to one or more offenders, the Ombudsman shall inform

- (a) the Commissioner, or
- (b) where the problem arises out of the exercise of a power delegated by the Chairperson of the Parole Board of Canada to a person under the control and management of the Commissioner, the Commissioner and the Chairperson of the Parole Board of Canada

of the problem and the particulars thereof.

Opinion re decision, recommendation, etc.

242 (1) Where, after conducting an investigation, the Ombudsman is of the opinion that the decision, recommendation, act or omission to which a problem referred to in section 231 relates

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) was based wholly or partly on a mistake of law or fact,

the Ombudsman shall indicate that opinion, and the reasons therefor, when informing the Commissioner, or the Commissioner and the Chairperson of the Parole Board of Canada, as the case may be, of the problem.

Opinion re exercise of discretionary power

(2) Where, after conducting an investigation, the Ombudsman is of the opinion that in the making of the decision or recommendation, or in the act or omission, to which a problem referred to in section 231 relates a discretionary power has been exercised

- (a) for an improper purpose,
- (b) on irrelevant grounds,
- (c) on the taking into account of irrelevant considerations, or
- (d) without reasons having been given,

the Ombudsman shall indicate that opinion, and the reasons therefor, when informing the Commissioner, or the Commissioner and the Chairperson of the Parole Board of Canada, as the case may be, of the problem.

Recommendations

243 (1) When informing the Commissioner, or the Commissioner and the Chairperson of the Parole Board of Canada, as the case may be, of a problem, the Ombudsman may make any recommendation that the Ombudsman considers appropriate.

Recommendations in relation to decision, recommendation, etc.

(2) In making recommendations in relation to a decision, recommendation, act or omission referred to in subsection 231(1), the Ombudsman may, without restricting the generality of subsection (1), recommend that

- (a)** reasons be given to explain why the decision or recommendation was made or the act or omission occurred;
- (b)** the decision, recommendation, act or omission be referred to the appropriate authority for further consideration;
- (c)** the decision or recommendation be cancelled or varied;
- (d)** the act or omission be rectified; or
- (e)** the law, practice or policy on which the decision, recommendation, act or omission was based be altered or reconsidered.

Recommendations not binding

(3) Neither the Commissioner nor the Chairperson of the Parole Board of Canada is bound to act on any finding or recommendation made under this section, but shall give timely written reasons for not acting.

Notice and report to Minister and Parliament

244 If, within a reasonable time after informing the Commissioner, or the Commissioner and the Chairperson of the Parole Board of Canada, as the case may be, of a problem, no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman shall inform the Minister or Parliament of that fact and provide whatever information was originally provided to the Commissioner, or the Commissioner and the Chairperson of the Parole Board of Canada, as the case may be.

Complainant to be informed of result of investigation

245 Where an investigation is in relation to a complaint, the Ombudsman shall, in such manner and at such time as the Ombudsman considers appropriate, inform the complainant of the results of the investigation, providing the complainant with only such information as can be disclosed pursuant to the *Privacy Act* and the *Access to Information Act*.

CONFIDENTIALITY

Confidentiality

246 Subject to this Part, the *Privacy Act* and the *Access to Information Act*, the Ombudsman and every person acting on behalf or under the direction of the Ombudsman shall not disclose any information that comes to their knowledge in the exercise of their powers or the performance of their functions and duties under this Part.

Disclosure authorized

247 (1) Subject to subsection (2), the Ombudsman may disclose or may authorize any person acting on behalf or under the direction of the Ombudsman to disclose information

(a) that, in the opinion of the Ombudsman, is necessary to

(i) carry out an investigation, or

(ii) establish the grounds for findings and recommendations made under this Part; or

(b) in the course of a prosecution for an offence under this Part or a prosecution for an offence under section 131 (perjury) of the *Criminal Code* in respect of a statement made under this Part.

Exceptions

(2) The Ombudsman and every person acting on behalf or under the direction of the Ombudsman shall take every reasonable precaution to avoid the disclosure of, and shall not disclose, any information the disclosure of which could reasonably be expected

(a) to disclose information obtained or prepared in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,

(ii) the enforcement of any law of Canada or a province, where the investigation is ongoing, or

(iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,

if the information came into existence less than twenty years before the anticipated disclosure;

(b) to be injurious to the conduct of any lawful investigation;

(c) in respect of any individual under sentence for an offence against any Act of Parliament, to

(i) lead to a serious disruption of that individual's institutional or conditional release program, or

(ii) result in physical or other harm to that individual or any other person;

(d) to disclose advice or recommendations developed by or for a government institution within the meaning of the *Access to Information Act* or a minister of the Crown; or

(e) to disclose confidences of the Queen's Privy Council for Canada referred to in section 260.

Definition of "investigation"

(3) For the purposes of paragraph (2)(b), *investigation* means an investigation that

(a) pertains to the administration or enforcement of an Act of Parliament or of a province; or

(b) is authorized by or pursuant to an Act of Parliament or of a province.

Communication

248 (1) Notwithstanding any provision in any Act or regulation, where

(a) a letter or other written communication from an offender is addressed to the Ombudsman, or

(b) a letter or other written communication from the Ombudsman is addressed to an offender,

the letter or written communication shall immediately be forwarded unopened to the Ombudsman or to the offender, as the case may be, by the person in charge of the institution at which the offender is incarcerated.

(2) Notwithstanding any provision in any Act or regulation, where an offender has a conversation either in person or by telephone with the Ombudsman or his or her staff, the conversation shall not be monitored or recorded.

DELEGATION

Delegation by Ombudsman

249 (1) The Ombudsman may authorize any person to exercise or perform, subject to such restrictions or limitations as the Ombudsman may specify, the function, powers and duties of the Ombudsman under this Part except

(a) the power to delegate under this section; and

(b) the duty or power to make a report to Parliament under section 256 or 257.

Delegation is revocable

(2) Every delegation under this section is revocable at will and no delegation prevents the exercise or performance by the Ombudsman of the delegated function, powers and duties.

Continuing effect of delegation

(3) In the event that the Ombudsman who makes a delegation under this section ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

RELATIONSHIP WITH OTHER ACTS

Power to conduct investigations

250 (1) The power of the Ombudsman to conduct investigations exists notwithstanding any provision in any Act to the effect that the matter being investigated is final and that no appeal lies in respect thereof or that the matter may not be challenged, reviewed, quashed or in any way called into question.

Relationship with other Acts

(2) The power of the Ombudsman to conduct investigations is in addition to the provisions of any other Act or rule of law under which

(a) any remedy or right of appeal or objection is provided for any person, or

(b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Part limits or affects any such remedy, right of appeal, objection or procedure.

LEGAL PROCEEDINGS

Acts not to be questioned or subject to review

251 Except on the ground of lack of jurisdiction, nothing done by the Ombudsman, including the making of any report or recommendation, is liable to be challenged, reviewed, quashed or called into question in any court.

Protection of Ombudsman

252 No criminal or civil proceedings lie against the Ombudsman, or against any person acting on behalf or under the direction of the Ombudsman, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any function, power or duty of the Ombudsman.

No summons

253 The Ombudsman or any person acting on behalf or under the direction of the Ombudsman is not a competent or compellable witness in respect of any matter coming to the knowledge of the

Ombudsman or that person in the course of the exercise or performance or purported exercise or performance of any function, power or duty of the Ombudsman, in any proceedings other than a prosecution for an offence under this Part or a prosecution for an offence under section 131 (perjury) of the *Criminal Code* in respect of a statement made under this Part.

Libel or slander

254 For the purposes of any law relating to libel or slander,

(a) anything said, any information furnished or any document, paper or thing produced in good faith in the course of an investigation by or on behalf of the Ombudsman under this Part is privileged; and

(b) any report made in good faith by the Ombudsman under this Part and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

OFFENCE AND PUNISHMENT

Offences

255 Every person who

(a) without lawful justification or excuse, willfully obstructs, hinders or resists the Ombudsman or any other person in the exercise or performance of the function, powers or duties of the Ombudsman,

(b) without lawful justification or excuse, refuses or willfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Part, or

(c) willfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of the function, powers or duties of the Ombudsman

is guilty of an offence punishable on summary conviction and liable to a fine not exceeding five thousand dollars.

ANNUAL AND OTHER REPORTS

Annual reports

256 (1) The Ombudsman shall, within three months after the end of each fiscal year, submit to the Speaker of the Senate and the Speaker of the House of Commons a report of the activities of the office of the Ombudsman during that year.

Tabling

(2) The Speaker of the Senate and the Speaker of the House of Commons shall each table the report in the House over which he or she presides forthwith after receiving it or, if that House is not then sitting, on any of the first fifteen days on which that House is sitting after the Speaker receives it.

Referral to Committee

(3) After it is tabled, every report of the Ombudsman stands referred to the committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for the purpose of reviewing the Ombudsman's reports.

Other reports

257 (1) The Ombudsman may, at any time, submit to the Speaker of the Senate and the Speaker of the House of Commons a report referring to and commenting on any matter within the scope of the function, powers and duties of the Ombudsman.

(2) Subsections 256(2) and (3) apply.

Reporting of public hearings

258 Where the Ombudsman decides to hold hearings in public in relation to any investigation, the Ombudsman shall indicate in relation to that investigation, in the report submitted under section 256 or 257, the reasons why the hearings were held in public.

Adverse comments

259 Where it appears to the Ombudsman that there may be sufficient grounds for including in a report under section 256 or 257 any comment or information that reflects or might reflect adversely on any person or organization, the Ombudsman shall give that person or organization a reasonable opportunity to make representations respecting the comment or information and shall include in the report a fair and accurate summary of those representations.

CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL

Confidences of the Queen's Privy Council for Canada

260 (1) The powers of the Ombudsman under sections 235, 236 and 237 do not apply with respect to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,

- (a) memoranda the purpose of which is to present proposals or recommendations to Council;
- (b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

- (c) agenda of Council or records recording deliberations or decisions of Council;
- (d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d);
- (f) draft legislation; and
- (g) records that contain information about the contents of any record within a class of records referred to in paragraphs (a) to (f).

Definition of *Council*

(2) For the purposes of subsection (1), ***Council*** means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

Exception

- (3) Subsection (1) does not apply with respect to
- (a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or
 - (b) discussion papers described in paragraph (1)(b)
 - (i) if the decisions to which the discussion papers relate have been made public, or
 - (ii) where the decisions have not been made public, if four years have passed since the decisions were made.

REGULATIONS

Regulations

261 The Governor in Council may make such regulations as the Governor in Council deems necessary for carrying out the purposes and provisions of this Part.

HER MAJESTY

Binding on Her Majesty

262 This Part is binding on Her Majesty in right of Canada.