

A SHORT HISTORY OF CONDITIONAL RELEASE



Prior to the *Ticket of Leave Act* of 1899ⁱ, the concept of being released before the end of a sentence only existed through the intervention of the Governor General in the exercise of the Royal Prerogative of Mercy.

1899 - 1959

As society progressed, it became apparent that changes were required to assist in reintegrating offenders back into society. Through the period 1899 to 1959, the *Ticket of Leave Act* brought into play the concepts that: release was an important part of the rehabilitative process; the granting of release should be the function of a specialized body; and there should be supervision during release with penalties for violations of that releaseⁱⁱ.

1959 - 1969

Following the Second World War, it was determined that the existing release process again required review. That review conducted by the Fauteux Committeeⁱⁱⁱ, as appointed by the Minister of Justice, focussed on the principles of the Royal Prerogative of Mercy and the granting of tickets of leave.

The report produced by this committee was instrumental in effecting two major legislative changes:

1. revisions to the *Penitentiary Act* which created two categories of remission - statutory remission amounting to one-quarter of the sentence and earned remission amounting to three days per month^{iv};
2. abolition of the *Ticket of Leave Act*, proclamation of the *Parole Act* on 15 Feb 59 and introduction of a board whose members would be responsible for the granting and revocation of parole and who would make such decisions without the benefit of a face-to-face interview with the parole applicant.

1969-1977

In this time period, the parole system again came under scrutiny with the establishment of the Ouimet Committee whose mandate was “to study the broad field of corrections, in its widest sense . . . including . . . release, parole pardon, post release supervision and guidance and rehabilitation”^v.

Many of this Committee’s recommendations^{vi} were not adopted but some of the more significant ones that were adopted included the following:

1. the introduction of mandatory supervision on 01 Aug 70 where all offenders released from federal custody as a result of accrued remission in excess of 60 days would be subject to supervision;

2. offenders continued to receive NO credit for time spent under supervision if their release was revoked and lost all statutory remission standing to credit as well;
3. the size of the Board was increased to allow for personal interviews to happen but such interviews were still not mandatory.

The concept of day parole was introduced by the *Criminal Law Amendment Act* 1968-69, which came into force 26 Aug 69^{vii}.

1977-1978

A series of legislative amendments occurred over this time period, repealing such items as automatic forfeiture, no credit for street time^{viii} and lack of procedural protections in the parole granting and revocation process^{ix}.

Through changes to the *Criminal Code of Canada* via the *Criminal Law Amendment Act (No. 2) 1976^x* and changes to the *Parole Act* via the *Criminal Law Amendment Act 1977^{xi}*, the Board was now involved in the granting of unescorted temporary absences in specific cases, a responsibility previously carried out by penitentiary officials.

The remission scheme changed again 01 Jul 78, via the *Criminal Law Amendment Act 1977*, whereby offenders could earn 15 days remission for each month served.

1986

Legislation was introduced in the form of Bills C-67 and C-68 giving authority to the National Parole Board to prevent the release on mandatory supervision of offenders believed to be considered dangerous. This process, referred to as detention, came into force 25 Jul 86 and served to legislate the practice of “gating” that had been occurring since 1982.

1992

The next major change to conditional release provisions occurred with the implementation of the *Corrections and Conditional Release Act* on 01 Nov 92. This Act repealed the *Parole and Penitentiary Acts* and abolished the remission system.

Mandatory supervision became known as statutory release. If an offender did not receive a grant of parole, s/he no longer had to **earn** remission to determine their statutory release date as it was now provided as an automatic credit for those offenders serving determinate sentences in federal institutions.

Accelerated parole review was introduced for first-time, non-violent federal offenders to facilitate the release of this class of offender.

1996


Bill C-45 was proclaimed in force on 24 Jan 96, changing parole eligibility rules to ensure that offenders receiving a consecutive sentence would always have a parole eligibility date in the future and introducing automatic revocation.

1997

Accelerated parole review was extended to encompass day parole when **Bill C-55** was proclaimed in force on 03 Jul 97.

The second stage of **Bill C-55** came into force on 01 Aug 97 changing parole eligibility dates for dangerous offenders and introducing long term supervision orders.

Regular Day Parole Eligibility Date


SENTENCE TYPE	Eligibility Period
Determinate Sentence	<p><u>Sentence of 2 years or more</u> - GREATER of 6 months of sentence or 6 months before PED^{xii}</p> <p><u>Sentence of 6 months to 2 years less a day</u> - 1/2 of time to PED</p> <p><u>Sentence of less than 6 months</u> - not required to be reviewed</p>
Indeterminate Sentence	<p><u>Preventive Detention before 15 Oct 77</u> - 1 year from date of arrest^{xiii}</p> <p><u>Indeterminate (before 01 Aug 97)</u> - 3 years from date of arrest^{xiv}</p> <p><u>Indeterminate (after 01 Aug 97)</u> - GREATER of 3 years or (PED - 3 years) with PED determined by ss. 120.2(2) CCRA when new determinate sentence imposed^{xv}</p>
LIFE - maximum	6 months before PED ^{xvi}
LIFE - minimum	3 years before parole eligibility date ^{xvii}
	<p><u>Murder - Transfer of Offenders Act</u> 3 years before parole eligibility date^{xviii}</p>
LIFE - minimum U/18	GREATER of 4/5th's of parole restriction or (PED - 3 years) with PED determined by ss. 120.2(2) when new determinate sentence imposed ^{xix} .
EXCEPTIONS	Inmates detained during a period of statutory release are not entitled to day parole ^{xx} .
	

LIFE Sentences

While LIFE imprisonment as a punishment has existed since the turn of the twentieth century, this section will deal with the more contemporary provisions relative to establishing day parole eligibility dates on LIFE-MAXIMUM and LIFE-MINIMUM sentences.

Establishing the Day Parole Eligibility Date

Guiding Principles

 Some aspects of establishing day parole eligibility dates on LIFE sentences are universal:

- ◆ with the exception of LIFE MAXIMUM sentences imposed before 01 Nov 92, day parole eligibility dates for both LIFE MINIMUM and LIFE MAXIMUM sentences are all predicated on the parole eligibility date, i.e. the parole eligibility date must first be determined before the day parole eligibility date can be established;
- ◆ the **date of sentence** will determine the eligibility rules to be followed;
- ◆ the day parole eligibility date will **never** be established as a date that **precedes** the sentence date^{xxi};
- ◆ the **age** of the offender at the time of commission of the offence for which a LIFE sentence was imposed will impact on the day parole eligibility rules to be followed^{xxii};
- ◆ if the parole eligibility date changes as a result of any time lawfully (bail) or unlawfully at large, the day parole eligibility date will change.

General Rules

LIFE MAXIMUM - The day parole eligibility date will be six (6) months before the parole eligibility date^{xxiii} **except** in the following circumstances:

1. LIFE MAXIMUM imposed **before** 01 Nov 92 will have a day parole eligibility date of five (5) years from the date of arrest^{xxiv}; and,
2. LIFE sentences imposed on offenders who were under 18 years of age at the time of the offence.

LIFE MINIMUM - The day parole eligibility date will be three (3) years before the parole eligibility date^{xxv} with the exception of those offenders who were sentenced to LIFE **and** who were under 18 years of age at the time of the offence.

UNDER 18 AT THE TIME OF THE OFFENCE - If sentenced **on or after 15 May 92**, offenders under 18 years of age at the time of commission of First of Second Degree Murder would not be entitled to be released on day parole until the expiration of all but one-fifth of the period of imprisonment the person is to serve without eligibility for parole^{xxvi}. In other words, this means the day parole eligibility date is four-fifths (4/5th's) of the parole ineligibility period.

If this category of offender were to receive additional determinate sentences **on or after 01 Aug 97**, the day parole eligibility date would be determined in accordance with **subsection 119(1.2) CCRA**^{xxvii} which states the portion of the sentence that must be served before being eligible for day parole is the **LONGER** of:

- (a) four-fifth's (4/5th's) of the parole ineligibility period; and,
- (b) the parole eligibility date as determined by applying **subsection 120.2(2) CCRA**^{xxviii}, LESS three (3) years.

INDETERMINATE Sentences

Prior to 15 Oct 77

Prior to 15 Oct 77, sentences of preventive detention could be imposed if an offender was found to either be an habitual criminal, criminal sexual psychopath or a dangerous sexual offender (DSO).

In all cases, the day parole eligibility date for these offenders was one (1) year from the date of arrest^{xxix}.

On or After 15 Oct 77 and Before 01 Aug 97


On or after 15 Oct 77 **and** before 01 Aug 97, if an offender was found to be a dangerous offender (DO), the wording of **section 753 CCC** gave the judge discretion as to the type of sentence imposed, i.e. determinate or indeterminate. The section stated "*... the court ... may thereupon impose a sentence of detention in a penitentiary for an indeterminate period*" The word "*shall*" would have had to be used for the imposition of an indeterminate sentence to be mandatory.

Where an indeterminate sentence was imposed, the day parole ineligibility period was three (3) years from the date of arrest^{xxx}.

If the judge chose to impose a determinate sentence, then the ineligibility period for day parole would be calculated on the basis of the rules set out for determinate sentences.

If an additional sentence is imposed after 01 Aug 97, the day parole eligibility date becomes the GREATER of three (3) years or PED, as determined by applying *subsection 120.2(2) CCRA*, less three (3) years^{xxxii}.

On or After 01 Aug 97

 With the implementation of *Bill C-55* on 01 Aug 97, a person found to be a dangerous offender on or after 01 Aug 97 would receive an indeterminate sentence only. The **parole** ineligibility period was raised to be seven (7) years from the date of arrest to bring this parallel with the eligibility restrictions for offenders serving a LIFE MAXIMUM sentence.

The **day parole** eligibility date received a coincident increase to be three (3) years before the parole eligibility date (PED - 3 years)^{xxxiii} as established by *section 761(1) CCC*.

Should the offender receive additional determinate sentences, the day parole eligibility date will be the **LONGER** of:

- i) parole eligibility date, as determined in accordance with *section 761(1) CCC*, less 3 years (DPED = [PED of 7 years - 3 years]; and,
- ii) parole eligibility date, as determined in accordance with *subsection 120.2(2) CCRA*^{xxxiii}, less 3 years.

Full Parole Eligibility Date^{xxxiv}

Sentence	Eligibility Period
Determinate Sentences	<p><u>General rule:</u> LESSOR of 1/3 of sentence or 7 years^{xxxv}</p> <p><u>If additional sentences imposed:</u></p> <p><i>fully consecutive:</i> TOTAL of: a) time to PED on sentence was serving b) period of ineligibility on additional sentence^{xxxvi}</p> <p><i>partially consecutive:</i> LATER of: a) existing PED b) 1/3 of consecutive sentence from date it was imposed c) 1/3 of merged sentence from original SCD^{xxxvii}</p> <p><i>concurrent sentence:</i> LATER of: a) existing PED b) 1/3 of merged sent from original SCD^{xxxviii}</p>
Determinate Sentences (continued)	<p><u>maximum period</u> - 15 years from day on which last of sentences was imposed^{xxxix}</p> <p><u>EXCEPTIONAL CIRCUMSTANCE:</u> <i>judicial determination</i> - if certain criteria are met, judge can order that the portion of the sentence that must be served before release on full parole is the LESSOR of 1/2 of the sentence or 10 years^{xl}</p>
Indeterminate Sentences	<p><u>Preventive Detention before 15 Oct 77</u> - 1 year from date of arrest^{xli}</p> <p><u>Indeterminate (before 01 Aug 97)</u> - 3 years from date of arrest^{xlii}</p> <p><u>Indeterminate (after 01 Aug 97)</u> - 7 years from date of arrest^{xliii}</p>
LIFE - maximum	7 years from date of arrest ^{xliv}
LIFE - minimum	<p><u>1st Degree Murder & High Treason</u> - 25 years from date of arrest^{xlv}</p> <p><u>2nd Degree Murder with Previous Homicide</u> - 25 years from date of arrest^{xlvi}</p>

2nd Degree Murder

- 10 to 25 years, from date of arrest^{xlvi}

Murder - *Transfer of Offenders Act*^{xlvi}

- 10 years from date of conviction
- if offence would have constituted 1st Degree Murder in Canada, 15 years from date of conviction

Additional Sentence^{xlvi}

TOTAL of:

- a) remaining ineligibility period
- b) ineligibility period of each new sentence to 15 years maximum¹

Under 18 - before 01 Dec 95

1st & 2nd Degree Murder

- 5 to 10 years as specified by the judge, from the date of arrest

LIFE Sentences



Prior to 26 Jul 76, Canada had the death penalty for Capital Murder. When the death penalty was abolished by the *Criminal Law Amendment Act* and death sentences were subsequently commuted to LIFE imprisonment, full parole eligibility for persons convicted of murder prior to 26 Jul 76 became subject to complex transitional provisions enacted by Parliament^{li}.

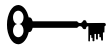
Those complex provisions will not be discussed here given the passage of time and the less-than-likely possibility of having to deal with such cases but it is historically significant in the evolution of the establishment of eligibility for parole in the case of LIFE sentences.

While LIFE imprisonment as a punishment has existed since the turn of the twentieth century, this section will deal with the more contemporary provisions relative to establishing parole eligibility dates on LIFE-MAXIMUM and LIFE-MINIMUM sentences.



The terminology **LIFE MINIMUM** refers to sentences imposed for offenders where the minimum punishment allowable by the *Criminal Code of Canada* is LIFE imprisonment. In other words, no lesser penalty than LIFE can be imposed. Under the current *Code* provisions, this applies to three offences:

1. First Degree Murder (Capital Murder under old provisions);
2. Second Degree Murder (Non-Capital Murder under old provisions);
and,
3. High Treason.



LIFE MAXIMUM refers to all other offences that the *Criminal Code of Canada* or *Controlled Drugs and Substances Act* allows a maximum penalty of life imprisonment but where a lesser definite sentence may also be imposed. Examples of these offences include Manslaughter, Aggravated Sexual Assault, Robbery, or Traffic in Schedule I/II Substance (*Controlled Drugs and Substances Act*).

Establishing the Parole Eligibility Date

Guiding Principles




Some aspects of establishing parole eligibility dates on LIFE sentences are universal:

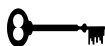
- ◆ parole eligibility dates are established from the **date of arrest** relative to the offence for which the offender received the LIFE sentence^{liii};
- ◆ the parole eligibility date will **never** be established as a date that **precedes** the sentence date^{liiii};

- ◆ the **date of sentence** will determine the eligibility rules to be followed;
- ◆ the **age** of the offender at the time of commission of the offence for which a LIFE sentence was imposed will impact on the eligibility rules to be followed^{liv};
- ◆ in those instances where the judge has the discretion to choose the eligibility restriction from an expressed range of years but does **not** exercise that discretion, the parole restriction will be the **lowest** number of years in that range;
- ◆ in the case of multiple LIFE sentences, the LIFE sentence which produces the **longest** parole eligibility date will govern what the parole eligibility date will be;
- ◆ if an offender is in custody when s/he commits an offence for which a LIFE sentence is imposed, the date of arrest in these circumstances is considered to be **the date the offender was charged** with the offence^{lv};
- ◆ any time lawfully (bail) or unlawfully at large, either before or after conviction and sentence, does not count as part of the parole ineligibility period^{lvi}.

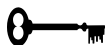
General Rules

 **LIFE MAXIMUM** - Up to 24 Jan 96, if an offender received LIFE as a MAXIMUM punishment, s/he would have a parole eligibility period of seven (7) years from the date of arrest for the offence for which the LIFE sentence was imposed.

With the proclamation of **Bill C-45** on 24 Jan 96, the *Criminal Code of Canada* provision to delay parole was clarified, allowing a judge to order that the offender serve 10 years before being eligible for parole if the offender was sentenced to LIFE MAXIMUM on conviction for an offence set out in Schedule I or II and prosecuted by indictment^{lvii}.

 **LIFE MINIMUM** - For offenders 18 years of age and over at the time of commission of the offences of First Degree Murder, Second Degree Murder or High Treason, the parole restrictions have remained constant since 26 Jul 76:

High Treason	25 years from date of arrest
First Degree Murder	25 years from date of arrest
Second Degree Murder	10-25 years (at judge's discretion) from date of arrest
Second Degree Murder with previous homicide -	25 years from date of arrest

 **UNDER 18 AT THE TIME OF THE OFFENCE** - If sentenced on or after 15 May 92 but before 01 Dec 95, offenders who were under 18 at the time of commission of First or Second Degree Murder would have a parole restriction of five (5) to ten (10) years, as specified by the judge, from the date of arrest^{lviii}.

If sentenced after 01 Dec 95, this was modified to a multi-level provision, based on age at the time of the commission of the offence for which a LIFE sentence was imposed^{lix}:

a) if age 16 or 17 years of age:

- First Degree Murder - 10 years from date of arrest
- Second Degree Murder - 7 years from date of arrest

b) if under 16 years of age:

- First Degree Murder:
 - 5 to 7 years, as specified by judge, from date of arrest
- Second Degree Murder:
 - 5 to 7 years, as specified by judge, from date of arrest
 - in the absence of any direction by the judge, 5 years from

date of arrest


With a few noted exceptions, the majority of legislative provisions dealing with the establishment of parole eligibility dates on LIFE sentences are contained in the *Criminal Code of Canada*, and are detailed in the following chart:

SECTION NUMBER	DESCRIPTION
743.6(1)CCC ^{lx}	Details the power of the court to delay parole for 10 years if offender is sentenced, after coming into force of this section (01 Nov 92), to LIFE-MAXIMUM upon conviction for Schedule I or II offence prosecuted by indictment.
745(a)CCC ^{lxi}	Sets out 25-year parole restriction for First Degree Murder and High Treason.
745(b)CCC ^{lxii}	Sets out 25-year parole restriction for Second Degree Murder with a previous homicide conviction.
745(c)CCC ^{lxiii}	Sets out 10 to 25-year parole restriction for Second Degree Murder.
745(d)CCC ^{lxiv}	Sets out that any other sentence of life imprisonment will have normal eligibility for parole ^{lxv} . (Normal eligibility means eligibility as stipulated in the CCRA.)
745.1(a) CCC ^{lxvi}	If under 16 years of age at time of committing First or Second Degree Murder, parole restriction will be 5-7 years as specified by the judge. If restriction not specified, 5 years ^{lxvii} .
745.1(b) CCC ^{lxviii}	If 16-17 years of age at time of committing First Degree Murder, parole restriction will be 10 years ^{lix} .

745.1(c) CCC ^{lxx}	If 16-17 years of age at time of committing Second Degree Murder, parole restriction will be 7 years ^{lxxi} .
745.6(1) CCC ^{lxxii} (Judicial Review)	Sets out that offender who has served at least 15 years of their sentence may apply for a reduction in their parole restriction.
746 CCC ^{lxxiii}	Details that time spent in custody since time of arrest for the life offence will count towards parole eligibility.
120(2)CCRA ^{lxxiv}	Subject to any other section, sets parole eligibility on LIFE-MAXIMUM as 7 years from date of arrest.
120.2(2) CCRA ^{lxxv}	Sets out parole eligibility formula for offender serving a LIFE sentence who receives an additional determinate sentence, be it concurrent or consecutive.
120.2(3) CCRA ^{lxxvi}	States that should the parole restriction be reduced following judicial review, the same process as was used in <i>ss. 120.2(2)</i> will be employed to determine the new parole eligibility date
120.3 CCRA ^{lxxvii}	Other than for First & Second Degree Murder and High Treason, the maximum parole ineligibility period is 15 years from the day on which the last of the sentences was imposed

Section 120.2(2) CCRA

Where Sentence in Addition to LIFE Sentence

 With the modifications brought about by *Bill C-45* on 24 Jan 96, **an offender serving a LIFE sentence who receives any new sentence on or after 24 Jan 96**, regardless of whether it is silent in its direction or it has been directed to be **consecutive or concurrent**, the parole eligibility date will be affected^{lxxviii}. Certain limitations will apply such as the 15-year cap on the ineligibility period as dictated by *section 120.3 CCRA*.

This section insures that the receipt of a new sentence has definite impact of the offender's parole ineligibility period.

The formula set out by this section is as follows:

PED = TOTAL of:

- a) remaining ineligibility period on original sentence as of date of new sentence; and,
- b) ineligibility period on new sentence commencing from date of the new sentence.

INDETERMINATE Sentences

Prior to 15 Oct 77

Prior to 15 Oct 77, sentences of preventive detention could be imposed if an offender was found to either be an habitual criminal, criminal sexual psychopath or a dangerous sexual offender (DSO)^{lxxxix}.

In all cases, the parole eligibility date for these offenders was one (1) year from the date of arrest^{lxxx}.

On or After 15 Oct 77 and Before 01 Aug 97

If an offender was found to be a dangerous offender (DO) on or after 15 Oct 77 **and** before 01 Aug 97, that offender could be sentenced to detention for an indeterminate period OR could also be sentenced to a determinate sentence.

For those offenders sentenced to an indeterminate period, the parole ineligibility period was three (3) years from the date of arrest^{lxxxi}. **Normal parole eligibility rules applied if a determinate sentence was imposed.**

On or After 01 Aug 97

With the implementation of *Bill C-55* on 01 Aug 97, the parole ineligibility period was increased to seven (7) years from the date of arrest^{lxxxii} to bring this parallel with the eligibility restrictions for offenders serving a LIFE MAXIMUM sentence.



Even after the legislative change to this provision was enacted, sentencing transcripts indicated that Crowns and judges were of the view that the old provisions, i.e. the three-year parole ineligibility period, should apply when the criminal justice process commenced before 01 Aug 97.

Legal opinions provided by the Department of Justice, Constitutional and Administrative Law Section and Human Rights Law Section concluded that these offenders are entitled to the lesser penalty if the offence was committed prior to the coming into force of the revised provision.

It was further stated that the corresponding unescorted temporary absence and day parole eligibility provisions (as they read prior to 01 Aug 97) should apply^{lxxxiii}.


Establishing the Parole Eligibility Date

Guiding Principles

🔑 Some aspects of establishing parole eligibility dates on INDETERMINATE sentences are universal:

- ◆ parole eligibility dates are established from the **date of arrest** relative to the offence for which the offender received the INDETERMINATE sentence^{lxxxiv};
- ◆ the **date of each sentence** will determine the eligibility rules to be followed;
- ◆ the parole eligibility date will **never** be established as a date that **precedes** the sentence date^{lxxxv};
- ◆ in the case of a combination of LIFE and INDETERMINATE sentences, the sentence which produces the **longest** parole eligibility date will govern what the parole eligibility date will be;
- ◆ if an offender is in custody when s/he commits an offence for which another INDETERMINATE sentence is imposed, the date of arrest in these circumstances is considered to be **the date the offender was charged** with the new offence^{lxxxvi};
- ◆ any time lawfully (bail) or unlawfully at large, either before or after conviction and sentence, does not count as part of the parole ineligibility period^{lxxxvii}.

Indeterminate Sentences

 Indeterminate sentences, imprisonment of undetermined length^{lxxxviii}, have enjoyed different incarnations over the years.

Prior to 15 Oct 77, sentences for an offence could be imposed as follows - 1 year definite, 6 months indeterminate or indefinite. Indeterminate sentences of this type were not served in a penitentiary. Either they became definite and had to be served or were deemed, by virtue of *subsection 659(6)* of the *Criminal Code of Canada* (as it stood on 15 Oct 77^{lxxxix}), not to have been imposed.

Only determinate sentences were incorporated when determining whether or not a sentence was to be served in federal or provincial jurisdiction. If the offender was transferred to a penitentiary, the indeterminate sentence was deemed not to have been imposed.

Historically, offenders could receive a sentence of preventive detention, i.e. detention in a penitentiary for an indeterminate period^{xc} in addition to, or in lieu of, any other sentence(s) for the particular offence(s)^{xcii}. The definition of preventive detention included the fact that the individual would be detained in a “penitentiary.”

Prior to 15 Oct 77, such sentencing practices could occur with the following categories of offenders:

1. **Habitual Criminals**

Individuals who, since attaining the age of 18 years, had, on at least three separate occasions, been convicted of an indictable offence for which s/he was liable to imprisonment for five years or more and was leading a persistently criminal life (repealed 15 Oct 77)^{xcii}.

Legislation at the time allowed the following options:

- a) convicted, not sentenced and then found to be a habitual criminal for which an indeterminate sentence would be imposed; or,
- b) convicted, sentenced and then found to be a habitual criminal with the indeterminate sentence replacing the original sentence imposed.

2. **Criminal Sexual Psychopaths**

Persons who, by a course of misconduct in sexual matters, have shown a lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, pain or other evil on any person (repealed 1960-61 and replaced with “dangerous sexual offender” provisions)^{xciii}.

3. **Dangerous Sex Offenders (DSO)**

Persons who, by their conduct in any sexual matter, have shown a failure to control their sexual impulses and, who are likely to cause injury, pain or other evil to any person, through failure in the future to control their sexual impulses (repealed 15 Oct 77)^{xciv}.

When the “DSO” and “Habitual Criminal” provisions were replaced with the “Dangerous Offender” provisions (“DO”) on 15 Oct 77, the *Criminal Code of Canada* gave the judge who, upon finding the offender to be dangerous offender, the discretion to impose a definite sentence **or** an indeterminate sentence. When an indeterminate sentence **or** a definite sentence of two years or more was imposed in such cases, it would be served in a penitentiary.

These particular provisions were again amended 01 Aug 97^{xv}, limiting the judge’s discretion as to sentence by requiring that a sentence of detention in a penitentiary for an indeterminate period be imposed upon finding an offender to be a dangerous offender^{xvii}.

There are two types of offender with regard to which the Crown may seek to invoke the dangerous offender provisions^{xvii}:

- ◆ an individual who has been convicted of a serious personal injury offence defined in *section 752 CCC* and constitutes a threat to the life, safety, physical or mental well-being of other persons; OR,
- ◆ an individual who has been convicted of a serious personal injury offence defined in *subsection 752(b) CCC* and the individual, by his conduct in any sexual matter, including the instant offence, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses.

ⁱ *An Act to Provide for the Conditional Liberation of Convicts*, S.C. 1899, c. 49; R.S.C. 1906, c. 150; R.S.C. 1927, c. 197; R.S.C. 1952, c. 264.

ⁱⁱ Cole, David and Manson, Allan; *Release From Imprisonment, The Law of Sentencing, Parole and Judicial Review*, (Scarborough: Carswell, 1990) at p. 165.

ⁱⁱⁱ *Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice (Fauteux Report)* (Ottawa: Queen’s Printer, 1956.)

^{iv} In force 01 Apr 62. If parole was not granted, release free and clear of any supervision requirements would occur when the combined value of the earned and statutory remissions equalled the unexpired portion of the sentence.

^v *Supra*, note 3, at p. 178.

^{vi} Report of the Canadian Committee on Corrections; *Towards Unity: Criminal Justice and Corrections (Ouimet Report)* (Ottawa: Queen’s Printer, 1969).

^{vii} S.C. 1968-69, c. 38, ss. 94, 100 and 101.

^{viii} S.C. 1976-77, c. 53, s. 31 [in force 15 Oct 77].

^{ix} *Supra*, note 6, at p. 189. Repeal of automatic forfeiture and no credit for street time occurred 15 Oct 77.

^x S.C. 1974-75-76, c. 105, s. 21 [proclaimed in force 26 Jul 76].

^{xi} S. 23 [proclaimed in force 01 Mar 78].

^{xii} Subsection 119(1)(c) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c.17, s. 20.

^{xiii} Subsection 119(1)(a) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.

^{xiv} Subsection 119(1)(b.1) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.

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- ^{xv} Subsection 119(1)(b) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.
- ^{xvi} Subsection 745(d) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.
- ^{xvii} Subsection 746.1(2)(a) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6; 1995, c. 42, s. 87; 1997, c. 17, s. 2.
- ^{xviii} Section 10, *Transfer of Offenders Act*; R.S.C. 1985, Chap. T-15; 1977-78, c. 9, s. 10; 1992, c. 20, s. 209.
- ^{xix} Subsection 746.1(3)(a) *CCC* (R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6; 1995, c. 42, s. 87; 1997, c. 17, s. 2; 1995, c. 22, s. 6; 1995, c. 42, s. 87; 1997, c. 17, s. 2 and subsection 120.2(2) *CCRA* (S.C. 1992, c. 20; 1995, c. 42, s. 34.)
- ^{xx} Subsection 130(5) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 45.
- ^{xxi} If it happens that the time spent in custody **prior** to conviction and sentencing is sufficiently long enough to cause the parole eligibility date to fall before the sentence date, the parole eligibility date will equal the sentence date. This also holds true for the day parole eligibility date
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- ^{xxii} Subsection 746.1(3) *CCC*; R.S.C. 1985, c. C-46; ; 1995, c. 42, s. 87; 1997, c. 17, s.2
- ^{xxiii} Post-01 Nov 92 - ss. 119(1)(c)(i) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 33 , 69; 1997, c. 17, s.20.
- ^{xxiv} Subsection 10(a) *Parole Regulations*, SOR78/428 as they read immediately prior to 01 Nov 92 and direction of 02 Jun 83 circulated by the Chairman, National Parole Board.
- ^{xxv} Pre-01 Nov 92 - ss. 747(2) *CCC*, R.S.C. 1985, Chap. C-46; R.S., c. C-34, s. 674; 1974-75-76, c. 105, s. 21; 1992, c. 11, s. 17. Post-01 Nov 92 - ss. 747(2) *CCC*, R.S.C. 1985, Chap. C-46; R.S., c. C-34, s. 674; 1974-75-76, c. 105, s. 21; 1992, c. 11, s. 17; 1992, c. 20, s. 228; 1995, c. 42, s. 76. **Currently** in force as ss. 746.1(2) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6; 1995, c. 42, s. 87; 1997, c. 17, s.2 following re-numbering by Bill C-41 on 03 Sep 96.
- ^{xxvi} Subsection 747(2.1) *CCC*, R.S.C. 1985, Chap. C-46; R.S. , c. C-34, s. 674; 1974-75-76, c. 105, s. 21, 1992, c. 11, s. 17, as it read on 15 May 92. Currently, subsection 746.1(3)(a) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c 22, s. 6; 1995, c. 42, s. 87; 1997, c. 17, s.2as re-numbered by Bill C-41 on 03 Sep 96.
- ^{xxvii} S.C. 1992, Chap. 20; 1995, c. 42, ss. 33,69; 1997, c. 17, s. 20.
- ^{xxviii} S.C. 1992, Chap. 20; 1995, c. 42, s. 34. Subsection 120.2(2) *CCRA* states PED is determined from date of new sentence by adding (remaining eligibility on existing sentence) + (PED on new sentence).
- ^{xxix} Subsection 119(1)(a) *CCRA*; S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.
- ^{xxx} Subsection 119(1)(b.1)(i) *CCRA*; S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.
- ^{xxxi} Subsection 119(1)(b.1) *CCRA*; S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.
- ^{xxxii} Subsection 119(1)(b)(i) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, ss. 33, 69; 1997, c. 17, s. 20.
- ^{xxxiii} Subsection 120.2(2) *CCRA* states PED is determined from date of new sentence by adding [(remaining eligibility on existing sentence) + (PED on new sentence)].
- ^{xxxiv} *Supra*, note 24.
- ^{xxxv} Subsection 120.1(1) *CCRA*, S.C. 1992, c. 20; 1995, c. 22, s. 13; 1995, c. 42, s. 34.
- ^{xxxvi} Subsection 120.1(1) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 34.
- ^{xxxvii} Subsection 120.1(2) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s.34.
- ^{xxxviii} Subsection 120.2(1) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 34.
- ^{xxxix} Section 120.3 *CCRA*; S.C. 1992, c. 20; 1995, c. 42, s. 34.
- ^{xl} Subsection 743.6(1) *CCC*, 1995, c. 22, s. 6; 1995, c. 42, s. 86(b); 1997, c. 23, s. 18. If an offender is sentenced to a term of imprisonment of 2 years or more upon conviction, by indictment, of Schedule I

or II offences or upon conviction for a criminal organization offence, judge can order the offender to serve the lessor of 1/2 of the sentence or 10 years.

^{xli} Subsection 761(2) *CCC*, R.S.C. 1985, Chap. C-46; 1976-77, c. 53, s. 14; 1992, c. 20, s.215; 1997, c. 17, s. 8.

^{xlii} Subsection 761(1) *CCC*, R.S.C. 1985, Chap. C-46; 1976-77, c. 53, s. 14; 1992, c. 20, s.215 (as it read prior to 01 Aug 97.)

^{xliii} Subsection 761(1) *CCC*, R.S.C. 1985, Chap. C-46; 1976-77, c. 53, s. 14; 1992, c. 20, s.215; 1997, c. 17, s. 8, as amended by Bill C-55 on 01 Aug 97.

^{xliv} Subsection 120(2) *CCRA*; S.C. 1992, c. 20; 1995, c.22, s. 13; 1995, c. 42, s. 34.

^{xlvi} Subsection 745(a) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{xlvi} Subsection 745(b) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{xlvi} Subsection 745(c) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{xlviii} Section 9, *Transfer of Offenders Act*, R.S.C. 1985, Chap. T-15; 1977-78, c. 9, s. 9; 1980-81-82-83, c. 47, s. 47.

^{xlix} Subsection 120.2(2) *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 34.

^l Section 120.3 *CCRA*, S.C. 1992, c. 20; 1995, c. 42, s. 34.

ⁱⁱ *Criminal Law Amendment Act (No. 2)*, ss. 25-28 [proclaimed in force 26 Jul 76].

ⁱⁱⁱ Section 746 *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{liii} If it happens that the time spent in custody prior to conviction and sentencing is sufficiently long enough to cause the parole eligibility date to fall before the sentence date, the parole eligibility date will equal the sentence date.

^{liv} Section 745.1 *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, ss. 6,21.

^{lv} Policy decision taken by the Correctional Service of Canada.

^{lvi} *Supra*, note 19 and subsection 719(2) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{lvii} Subsection 743.6(1) *CCC*, R.S.C. 1985, Chap. C-46; 1995, c. 42, s. 86(b); 1997, c. 23, s. 18.

^{lviii} Section 742.1 *CCC*, R.S.C. 1985, Chap. C-46; 1992, c. 11, s. 16.

^{lix} Section 742.1 *CCC*, R.S.C. 1985, Chap. C-46; 1992, c. 11, s. 16; 1995, c. 19, s. 38. [re-numbered to section 745.1 on 03 Sep 96 by Bill C-41.]

^{lx} *Supra*, note 110.

^{lxi} R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.

^{lxii} *Ibid.*

^{lxiii} *Ibid.*

^{lxiv} *Ibid.*

^{lxv} In these cases, parole eligibility date will be governed by section 120(2) *CCRA* (S.C. 1992, c. 20), which states offender must serve period of ineligibility for parole of 7 years less any time spent in custody between arrest and sentencing.

^{lxvi} R.S.C. 1985, Chap. C-46; 1995, c. 22, ss. 6,21.

^{lxvii} Proclaimed in force 01 Dec 95.

^{lxviii} *Supra*, note 119.

^{lxix} *Ibid.*

^{lxx} *Ibid.*

^{lxxi} *Ibid.*

^{lxxii} R.S.C. 1985, Chap. C-46; 1993, c. 28, Sch. III, s. 35; 1995, c. 22, s. 6; 1996, c. 19, s. 6; 1996, c. 34, s. 2(2).

^{lxxiii} *Supra*, note 105.

^{lxxiv} S.C. 1992, c 20; 1995, c. 22, s. 13; 1995, c. 42, s. 34.

^{lxxv} S.C. 1992, c 20; 1995, c. 42, s. 34.

^{lxxvi} *Ibid.*

^{lxxvii} *Ibid.*

^{lxxviii} It must be noted that Canadian case law states any sentences imposed in addition to a LIFE sentence must be concurrent rather than consecutive. However, improper consecutive directions do occur.

^{lxxix} “Dangerous sexual offender” was defined by the *Criminal Code of Canada* of the day as “a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses.”

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- ^{lxxx} Section 694 CCC, R.S.C. 1970, Chap. C-34; 1958, c. 38, s. 24(b); 1960-61, c. 43, s. 39; 1966-67, c. 25, s. 45, as it stood at the time. It also remains in the current legislation at subsection 761(2) CCC, R.S.C. 1985, Chap. C-46, 1976-77, c. 53, s. 14; 1992, c. 20, s. 215; 1997, c. 17, s. 8.
- ^{lxxxii} Subsection 761(1) CCC, R.S.C. 1985, Chap. C-46; 1976-77, c. 53, s. 14; 1992, c. 20, s. 215, as it read prior to 01 Aug 97.
- ^{lxxxiii} Subsection 761(1) CCC, R.S.C. 1985, Chap. C-46; 1976-77, c. 53, s. 14; 1992, c. 20, s. 215; 1997, c. 17, s. 8.
- ^{lxxxiii} Sentence Management Instruction entitled "*Parole Eligibility Period - Dangerous Offenders*," issued 19 Oct 99.
- ^{lxxxiv} Section 746 CCC, 1985, Chap. C-46; 1995, c. 22, s. 6.
- ^{lxxxv} If it happens that the time spent in custody prior to conviction and sentencing is sufficiently long enough to cause the parole eligibility date to fall before the sentence date, the parole eligibility date will equal the sentence date.
- ^{lxxxvi} Policy decision taken by the Correctional Service of Canada.
- ^{lxxxvii} *Supra*, note 19 and subsection 719(2) CCC, R.S.C. 1985, Chap. C-46; 1995, c. 22, s. 6.
- ^{lxxxviii} Daphne Dukelow & Betsy Nuse, *The Dictionary of Canadian Law* (Barrie: Thomson Professional Publishing Canada, 1991) at p. 505.
- ^{lxxxix} R.S.C. 1970, Chap. C-34; 1953-54, c. 51, s. 634; 1968-69, c. 38, s. 74.
- ^{xc} Section 687 CCC, 1953-54, c. 51, s. 659; 1960-61, c.43, s. 32; 1968-69, c. 38, s.76.
- ^{xc} Subsection 688(1), CCC; 1953-54, c. 51, s. 660; 1960-61, c. 43, s. 33; 1968-69, c. 38, s. 77.
- ^{xcii} *Ibid*, subsection 688(2).
- ^{xciii} Subsection 659(b) and subsection 661(3) CCC; 1953-54, c. 51.
- ^{xciv} Subsection 687 and subsection 689(3) CCC, 1960-61, c. 43, s. 34; 1968-69, c. 38, s.78.
- ^{xcv} Bill C-55, 1997, c. 17, s. 4.
- ^{xcvi} Subsection 753(4) CCC, R.S.C. 1985, Chap. C-46; R.S., c. C-34, s. 688; 1976-77, C. 53, s. 14; 1997, c. 17, s. 4.
- ^{xcvii} Ruby, Clayton; *Sentencing (Fourth Edition)* (Toronto: Butterworths Canada Ltd, 1994), at p. 118.