

H

ighlights in the history of day parole

by **Louis Brunet¹**

Operational Planning, Corporate Development, Correctional Service of Canada

Day parole will be 29 years old June 27, 1998. It was legislated in Bill C-150, the famous omnibus bill that, among other things, revised the Criminal Code on abortion, decriminalized homosexuality, introduced lotteries, set the tolerance level of alcohol in the blood for drivers at .08 mg per cc and established mandatory supervision. At the second reading of the bill, the Right Honourable John Turner, then Minister of Justice, said “No bill concerning the Criminal Code has been as much scrutinized and commented upon by members of the legal profession, as well as people in general. This bill will be remembered, I am sure, as a high point in penal reform in Canada.”

The article introducing day parole, 94-1-b, was not discussed during the review by the Standing Committee on Justice and Legal Affairs; it was simply approved. During

the second reading, the Minister of Justice did not mention either the article or “day parole” per se. Two members of Parliament mentioned their approval of this new type of release. The first legal definition of day parole, from the Parole Act proclaimed in 1969, reads as follows: “Day Parole” means parole the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period.”

Over the years, this type of release has become a major form of conditional release. Table 1 shows the ratio of day parole over full parole for the 29 years. When it was established, the ratio was 9 inmates on day parole to 91 on full parole (532:5,161); full parole was predominant. In 1997–1998, the ratio was 62:38 (3,861:2,319). For every full parole

Table 1

Parole and Day Parole Grant (Pre-release Decisions)

	Full parole				Day parole				Grand total
	Federal	Provincial	Total	%	Federal	Provincial	Total	%	
1969–1970	2,060	3,101	5,161	0.91	532		532	0.09	5,693
1970–1971	2,825	3,228	6,053	0.88	812		812	0.12	6,865
1971–1972	2,351	3,393	5,744	0.83	1,186		1,186	0.17	6,930
1972–1973	1,617	1,750	3,367	0.74	1,201		1,201	0.26	4,568
1973–1974	1,195	1,655	2,850	0.66	763	703	1,466	0.34	4,316
1974–1975	1,575	1,597	3,172	0.57	1,709	668	2,377	0.43	5,549
1975–1976	2,732		2,732	0.56	2,108		2,108	0.44	4,840
1976–1977	2,317		2,317	0.53	2,027		2,027	0.47	4,344
1977–1978	3,076		3,076	0.58	2,203		2,203	0.42	5,279
1978–1979	3,130		3,130	0.52	2,932		2,932	0.48	6,062
1979–1980	1,507	743	2,250	0.44	2,674	206	2,880	0.56	5,130
1980–1981	1,391	839	2,230	0.42	2,776	333	3,109	0.58	5,339
1981–1982	1,627	1,018	2,645	0.41	3,427	308	3,735	0.59	6,380
1982–1983	1,697	1,169	2,866	0.44	3,233	451	3,684	0.56	6,550
1983–1984	1,839	1,077	2,916	0.42	3,519	559	4,078	0.58	6,994
1984–1985	1,664	1,089	2,753	0.42	3,215	537	3,752	0.58	6,505
1985–1986	1,595	912	2,507	0.36	3,942	496	4,438	0.64	6,945
1986–1987	2,097	987	3,084	0.37	4,656	547	5,203	0.63	8,287
1987–1988	2,240	1,242	3,482	0.41	4,453	640	5,093	0.59	8,575
1988–1989	1,782	1,008	2,790	0.38	4,127	504	4,631	0.62	7,421
1989–1990	1,851	901	2,752	0.37	4,113	474	4,587	0.63	7,339
1990–1991	2,026	932	2,958	0.36	4,795	419	5,214	0.64	8,172
1991–1992	2,252	914	3,166	0.36	5,095	445	5,540	0.64	8,706
1992–1993	2,625	853	3,478	0.38	5,159	436	5,595	0.62	9,073
1993–1994	2,660	711	3,371	0.41	4,510	334	4,844	0.59	8,215
1994–1995	2,247	584	2,831	0.40	3,986	323	4,309	0.60	7,140
1995–1996	1,956	446	2,402	0.41	3,163	288	3,451	0.59	5,853
1996–1997	1,737	463	2,200	0.43	2,693	279	2,972	0.57	5,172
1997–1998	1,967	352	2,319	0.38	3,636	225	3,861	0.62	6,180

granted now, 1.5 day paroles are granted. This change has not been linear.

As we examine the evolution of day parole, we will look at four major periods: its beginning; the middle years, the 1980s; the 1990s and the impact of the Corrections and Conditional Release Act; and the present.

In the beginning

Under the *Parole Act* enacted in 1959, the National Parole Board granted full paroles and four types of gradual release: short parole, gradual parole, temporary parole and minimum parole.

Short parole allowed inmates to be released up to 30 days early for rehabilitation purposes or to look for work. There was no supervision. Gradual parole allowed inmates who had been granted full parole to leave the institution for short periods before their final release to help them readjust to society.

Temporary parole, a predecessor of day parole, was defined in the annual reports (but not in the legislation) as the same as gradual parole except that it applied to inmates not granted full parole. Minimum parole allowed the release of an inmate up to six months (one month per year served) before his or her possible release date as a result of remission.

These forms of gradual release disappeared in 1969 with the introduction of mandatory supervision and day parole. The first administrative problem was to fit day parole in with the other types of releases. It was soon established that temporary absences would be shorter than 15 days and day paroles would be longer. By 1970–1971, the Service defined day parole in its annual report as follows: “Day parole is granted by the Board and involves the offender in the community for longer than 15 days. The offender is required to return to the institution, though not necessarily on a daily basis. Day parole is granted to allow an inmate to attend school, to take training not available in the institution, or to continue employment where this is beneficial to his career and his dependants.”

Under the *Parole Act* enacted in 1959, the National Parole Board granted full paroles and four types of gradual release: short parole, gradual parole, temporary parole and minimum parole.

Eligibility for day parole was defined at one year before full parole eligibility date (FPED) but this was changed to one sixth of the sentence or six months before FPED in 1978. The 1973–1974 annual report shows a clearer definition of the purpose of day parole: “The Board has found that granting an inmate day parole before a full release is an effective way to find out how he may act on an ordinary parole.”

The availability of accommodation for day parolees became an issue: the network of community-based residential centres was not well established, so there were not enough of them to meet the new demands.

The first decade of day parole saw it go from a 9:91 ratio (532:5,161) to full parole to a ratio of 59:42 (3,109:2,230) in 1981 when a working group presented the *Solicitor General’s Study on*

Conditional Release. How was day parole viewed by that time?

The middle years: The 1980s

The Working Group recognized day parole as a major type of release. The tone of its comments was sometimes harsh:

Day Parole is an extremely flexible power and an extremely fluid concept. To the extent that a day parole program may resemble full parole, day parole is a program where offenders are largely “out.” To the extent that it encompasses temporary or irregular absences, day parole is also a program where offenders are almost entirely still “in” penitentiary. Unfortunately, less is known about day parole than any other release program other than remission...

The study identified seven functions of day parole:

1. a form of gradual release and testing;
2. a form of mitigation of punishment;
3. a way to employ inmates on special projects in the community;

4. an aid to the community adjustment of resourceless offenders;
5. a way to provide access to community resources or programs;
6. a way to ease socialization; and
7. a cost-effective method of sentence management.

The concluding remarks on day parole indicate the concerns as it entered its second decade:

The Working Group shares the view that the objectives of day parole need to be more precisely articulated, as do the criteria for granting it. The National Parole Board also needs to come to grips with those regional disparities in the approach to and use of day parole which are not (as many are) a product of differences in available resources. In particular, a policy is needed as to whether day parole should be used in cases of relatively good risks or should be oriented more towards risky cases, and whether day parole prior to the expiration of one-third of the sentence is appropriate on grounds of justice and humanness. Our overall view is that day parole with CCC [community correctional centre] or CRC [community residential centre] should be used more where there is a real need for resources or a perceived need for short-term extra structure or “surveillance” before full parole or MS [mandatory supervision]. It is not necessary that day parole be used as prerequisite for full parole, nor should it be permitted to delay full parole in large number of cases...

The application of day parole was more clearly defined in July 1986 when the *Parole Act* was amended in Bill C-67. The new legislation required the National Parole Board to *automatically* review the case of every offender serving a sentence of two years or more at the eligibility date for day parole; for offenders serving three years or less in custody, the Board had to decide whether to grant day parole and to consider a release on full parole

to be effective on the inmate’s eligibility for full parole. Because the old legislation required inmates to apply for day parole, the new legislation led to an increase in day parole releases.

The *Evaluation of the Automatic Day Parole Review Provisions of Bill C-67*, completed in March 1989, explains the rationale for an automatic review at the first eligibility:

- a) to provide equal opportunity to all inmates...;
- b) to provide for early National Parole Board involvement in a case to help in the overall program planning;
- c) to enhance overall program planning so that there is improved co-ordination and use of the various release options... ;
- d) to identify early in their sentence inmates who could be paroled so that they could take advantage of suitable release options at an earlier opportunity; and
- e) to remove the confusion and disparity between inmates and Correctional Service Canada case preparation staff as to when to apply for releases...

What effect did this provision have on the actual use of day parole?

In 1984–1985, one year before Bill C-67 took effect, the ratio of day parole to full parole was 58:42 (3,752:2,753); in 1985–1986, the ratio went to its highest level before or since, 64:36 (4,438:2,507).

The new legislation required the National Parole Board to automatically review the case of every offender serving a sentence of two years or more at the eligibility date for day parole.

The 1990s and the impact of the *Corrections and Conditional Release Act*

Day parole reached an all-time high in 1991–1992 and 1992–1993 (5,540 and 5,595 respectively) but, by then, the new act consolidating correctional issues was in preparation.

The legal definition of day parole was modified for the first time in November 1992, with the proclamation of the *Corrections and Conditional Release Act* (CCRA):

“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 term of imprisonment in order to prepare the offender for a full parole or statutory release, the conditions of which require the offender to return to a penitentiary, a community-based residential facility or a provincial correctional facility each night, unless otherwise authorized in writing.

This definition is more precise:

- it has a purpose: “in order to prepare the offender for full parole or statutory release;
- it defines the leeway for mobility: “to return to a penitentiary, a community-based residential facility or a provincial correctional facility each night, unless otherwise authorised in writing;”
- it limits eligibility to six months before full parole eligibility date; and
- it removes the automatic review provision — the evaluation had shown that the requirements in Bill C-67 could not be met in both spirit and letter.

In 1991–1992 (that is, before the CCRA), the ratio of day parole to full parole was 64:36 (5,540 to 3,166). This ratio remained fairly stable for the next few years (62:38 in 1992–1993, 59:41 in 1993–1994, 60:40 in 1994–1995, 59:41 in 1995–1996, 57:43 in 1997–1998), but this ratio, which helps to explain day parole’s early history, is now misleading. A non-discretionary form of release, statutory release, becomes more important. The ratio remained stable because both day parole and full parole declined at similar rates; from a combined total high of 9,073 in 1992–1993, these two forms of conditional release hit a combined low of 5,172 in 1997–1998.

Some of the aspects of day parole in the CCRA were modified by Bill C-55, enacted in July 1997. Although the definition was not changed, sections 119.1 and 126.1 provided the following clarifications:

119.1 The portion of the sentence of an offender who is eligible for accelerated parole review under sections 125 and 126 that must be served before the offender may be released on day parole is six months, or one sixth of the sentence, whichever is longer.

126.1 Sections 125 and 126 apply, with such modifications as the circumstances require, to a review to determine if an offender referred to in subsection 119.1 should be released on day parole.

To maximize its reintegration efforts, the Service will have to rediscover day parole. This form of release is more flexible than full parole or statutory release.

These two sections brought back the notion of eligibility at one sixth of the sentence or six months, and the notion of accelerated release on day parole for a group of offenders considered at lower risk of recidivism. It is projected (December 1997 and February 1998 data) that the ratio of day parole to full parole will move back to 62:38, with a significant increase in day parole (3,861, vs. 2,972 the previous year) and a slight increase in full parole (2,319 vs. 2,200) the previous year.

The present

Day parole has evolved from a minor form of release to the most dominant form, even eclipsing full parole. For every two full paroles granted, three day paroles are granted.

The first impact of the modifications of the CCRA on conditional release was a significant reduction in both day paroles and full paroles. The most recent modification to the eligibility criteria and the accelerated process for a group of offenders has caused an important increase in the number of day paroles (3,636) but we are still far from the 5,600 day paroles granted in 1992–1993.

To maximize its reintegration efforts, the Service will have to rediscover day parole. This form of release is more flexible than full parole or statutory release. ■

¹ 340 Laurier Avenue West, Ottawa, Ontario K1A 0P9.