



## Issue Note – Changing Environment/Complexity

### BACKGROUND

The PBC operates in a challenging environment and is subject to considerable public scrutiny in relation to its decisions. The PBC has been impacted by several important legislative changes and key court decisions over the past ten years. With regard to the conditional release business line, the workload of the PBC has been increasing in complexity as a result of the following seven Bills and several influential court decisions.

- 2011: Bill C-59 *Abolition of Accelerated Parole Review* eliminated a streamlined parole review process and required hearings for first-time non-violent offenders.
- 2012: Both Bill C-10 *Safe Streets and Communities Act* and Deficit Reduction Action Plan (DRAP) introduced a number of changes for the Board, raised the maximum number of full-time Board Members to 60, reduced quorum, eliminated hearings for post-suspension cases, and increased use of video conferencing.
- 2014: Bill C-489 *Restrictions on Offenders Act*, required Board members to impose any conditions on the parole, statutory release or unescorted temporary absence of an offender that are reasonable and necessary to protect a victim or person who provided a statement to the Board.
- 2014: Bill C-483 *Escorted Temporary Absences*, provided authority to PBC for Escorted Temporary Absences (ETAs) for offenders serving sentences of life minimum following their day parole eligibility date; and for ETAs on or after day parole eligibility until an ETA for community service, family contact, or personal development for rehabilitative purposes has been authorized and completed without breach of condition.
- 2014: *Whaling vs. Attorney General*, Supreme Court of Canada (SCC) found that the transitional provisions of Bill C-59 violated the *Charter*, PBC reinstated Accelerated Parole Review (APR) for people sentenced before the Bill came into force. Provincial court of appeal rulings (e.g., *Liang*) extended this to people who had committed their offences before C-59 came into force.
- 2015: Bill C-32 *Canadian Victims Bill of Rights*, enshrined in law victims' statutory rights to information, protection, participation and restitution.
- 2015: Bill C-479 *An Act to Bring Fairness for the Victims of Violent Offenders*, provided amendments to legislated review periods, and victim-centered elements.
- 2016: *Twins v. Canada*, which outlined that consideration of systemic and background factors applies to conditional release decision-making, and that Board members must demonstrate consideration of these factors in their decisions.

- 2018: Bill C-58 amendments to extend ability to hear the audio recording to victims who had attended parole hearings as well as those who had not.
- 2019: *R. v. Bird*: In the *Bird* decision, the Supreme Court of Canada held that the Board is a court of competent jurisdiction under 24(1) of the *Charter*. This means that it can consider the constitutionality of its enabling legislation and other constitutional questions that arise in the context of its mandate.

In addition, the number of victims and observers attending PBC hearings has increased steadily over the past four years (from 3,998 in 2015/16 to 5,084 in 2018/19). This can increase the complexity of the hearing process, particularly when high-profile offenders are involved with multiple victims and high media attendance.

The record suspension program has also had several legislative changes and litigation decisions which has resulted in four parallel legislative schemes in two provinces:

1. 2010: C-23A *Limiting Pardons for Serious Crimes Act* changed the eligibility periods to 3 (summary offences), 5 (indictable), or 10 years (serious personal injury offences/schedule 1), required an assessment of good conduct for all offences, included the criteria of disrepute, measurable benefit and sustained rehabilitation for indictable offences.
2. 2012: C-10 *Safe Streets and Communities Act* introduced eligibility periods of 5 years (summary) and 10 years (indictable) and added ineligible offences (sexual offences against children and more than three federal sentences).
3. 2017 *Attorney General of Canada v. Chu* (British Columbia) and *Charron/Rajab v. the Queen* (Ontario). Both court decisions held that the transitional provisions of legislation that amended the CRA in 2010 and 2012 are contrary to sections 11(h) and (i) of the *Canadian Charter of Rights and Freedoms* (the Charter).
4. 2019: C-93 *An Act to provide no-cost, expedited record suspensions for simple possession of cannabis* introduced expedited pardons for simple possession of cannabis.

The Board is responsible for adhering to legislation. It does not develop the law. Policy and procedures for conditional release and record suspension decision making must also be followed. It is under direct scrutiny from the public and despite the high success rates in conditional release and rare instances of violent recidivism, it is impossible to eliminate all risk that an offender may pose to the community.

Board members rely on sound actuarial assessments and a wide variety of information to make decisions related to conditional release. The PBC has also made considerable effort in the past two years to implement initiatives aimed at adapting the hearing process for Indigenous people and women offenders as a way to address the growing proportions of these offenders in the federal penitentiary population. Moreover, the PBC

has made it a priority to conduct outreach as a way of enhancing its legislative mandate related to information exchange/public education and to create partnerships with community based organizations to strengthen approaches to conditional release and community corrections.

### Key Messages

- The PBC is working in a challenging environment. It is under direct scrutiny from the public despite the high success rates in conditional release and rare instances of violent recidivism.
- The Board has implemented over seven Bills related to conditional release and three related to record suspensions over the past ten years, in addition to a number of landmark litigation decisions.
- The number of observers at PBC hearings has been increasing steadily which can increase the complexity of the process, particularly in relation to high-profile offenders.
- The PBC has also made considerable effort in the past two years to implement initiatives aimed at adapting the hearing process for Indigenous people and women offenders as a way to address the growing proportions of these offenders in the federal penitentiary population.
- Moreover, the PBC has made it a priority to conduct outreach as a way of enhancing its legislative mandate related to information exchange/public education and to create partnerships with community-based organizations to strengthen approaches to conditional release and community corrections.

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