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The Parole Process

A study of the national parole board

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Prepared for

The Law Reform Commission of Canada

by

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Pierre Carrière
Sam Silverstone

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Preface

This study is the second in a series of studies of federal administrative agencies, boards and tribunals commissioned by the Law Reform Commission of Canada.[1] Like its companions,[2] the study attempts to shed light on a particular agency's administrative and legal context, its powers, practices and procedures, its administrative, adjudicative and legislative functions and how it has coped with its mandate and workload.

The emphasis here, however, is not on comprehensive description. Rather, the study focuses on how members of the National Parole Board make parole decisions and the contexts in which these decisions emerge. The study does *not* consider the effectiveness of parole decision-making, the success-rate of paroles nor attempt to define appropriate criteria for parole.

Studies of this nature have long been recognized as extremely relevant to the reform of administrative law and procedure. But reformers have rarely attempted detailed examination of an agency's actual practices and procedures. The pressures of time, problems of cost and difficulties in obtaining access to agency operations have been prohibiting factors. So too, however, has the view held by some that agencies should use courts as models for procedural purposes. And since the courts have largely fashioned our administrative law through reviewing agency

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[1] A "prominent feature of the legal system" (Richard Posner, "The Behaviour of Administrative Agencies", (1972) J. of Legal Studies 305), an administrative agency is a statutorily created governmental or public authority, neither court nor legislative body, but often possessing attributes of each, that through the exercise of discretionary power conferred by statute affects private parties through adjudication or through an important or initiating role in the making of rules or regulations. "An administrative agency may be called a commission, board (or tribunal), authority, bureau, office, officer, administrator, department, (Crown) corporation, administration, division, or agency. Nothing of substance hinges on the choice of name, and usually the choices have been entirely haphazard." (Davis, *Administrative Law* (1965), 1.)

[2] That includes studies of the Immigration Appeal Board, the National Energy Board, the Atomic Energy Control Board, the Canadian Transport Commission, the Unemployment Insurance Commission, the Pension Appeals Board, the Canadian Radio-television and Telecommunications Commission and the Anti-Dumping Tribunal, all carried out under the general guidance of the Commission's Administrative Law and Procedure Project.

decisions, a natural focus of reform has been to expedite judicial review as the best method for guaranteeing fair administrative action.

Although such initiatives are often needed, they neglect the fact that very few agency decisions ever reach the courts. To know whether administrative justice exists (with its related components of fairness and efficiency), one must look closely at what administrative agencies actually do, when exercising their discretionary powers.[3]

Our sense of where reform might most be needed and practical considerations (the large number of federal agencies) caused us to limit this series to studies of agencies whose powers of adjudication or involvement in the making of rules or regulations affect private rights or interests in a substantial way. Apparent independence of close departmental direction has been a characteristic of most of the agencies studied. Most important, every study in the series has only been possible because of the agency's cooperation with our researchers.

Two general and methodological studies preceded the research work for the studies in this series. The first identified the basic characteristics of the federal administrative agencies that might possibly meet our criteria.[4] And second, since other disciplines provide important insights and research techniques for studying administrative agencies, a multidisciplinary group at Carleton University prepared a report on the approaches and perspectives of political scientists, public administrators, economists, sociologists and lawyers towards federal administrative agencies.[5] This report has proved useful in the preparation of some of the studies in this series as well as helping to stimulate and focus increasing academic concern with the techniques and effectiveness of economic regulation.

After having decided that certain aspects of the National Parole Board's activities merited study, the support of Chairman William Outerbridge and members of the Board was sought and received. The Board selected a convenient time for the research to begin (December 1974) and was of great assistance throughout. Because of the nature of the Board's

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[3] The frequent practice of our legislators of granting substantial discretion to agencies in determining how agency objectives will be met underlines the need for examining how this discretion is exercised. See "A Catalogue of Discretionary Powers", Law Reform Commission of Canada, 1975 (available from Dept. of Supply and Services Canada, Printing and Publishing, Cat. No. J31-4/1975).

[4] By David Cuthbertson, *A Profile of the Federal Administrative Process* (1973), on file in the Ottawa office of the Law Reform Commission of Canada.

[5] G. Bruce Doern, Ian A. Hunter, Donald Swartz and V. Seymour Wilson, *Approaches to the Study of Federal Administrative and Regulatory Agencies, Boards, Commissions and Tribunals* (1974), on file in the Ottawa office of the Law Reform Commission of Canada. An article based on the report has been published in 18 Canadian Public Administration, 189-215 (1975).

work, the researchers involved in this study, Pierre Carrière and Sam Silverstone, were experienced in sociological, criminological and legal studies. Mr. Carrière had also been a Parole Service Officer for several years. Their research ended in July, 1975.

Other concerns also motivated the undertaking of this particular study. In our Report, *Dispositions and Sentences in the Criminal Process,*[6] we have called for fair procedures for all decisions affecting sentences of imprisonment including the decision to release. Although we see an important role for the court and judiciary in guaranteeing fairness, even more important is how the decision is taken within the responsible agency. This study flows then from our earlier recognition that it is difficult to design better parole or release procedures without a better sense of day-to-day parole decision-making. A clearer and more detailed picture is needed than those painted by earlier researchers. This study, we believe, helps to provide just this sort of picture.

As readers will discover, some of the details revealed are cause for concern. These must, however, be balanced against the initiatives that parole professionals are taking to improve procedures and decisions as well as the Law Reform Commission's recommendations for more basic reforms in sentencing and disposition policies and practices. The latter argue that society demands new perspectives and institutions when using imprisonment in sentencing. The former are needed responses if the process will be able to hobble along with somewhat increased effectiveness, at least until more basic changes occur.

Even during research for this study, improvements within the National Parole Board and Parole Service were in the wind. Plans to simplify policies and practices — such as reducing the needlessly great number of possible kinds of parole decisions — are now close to implementation. Recently introduced legislation if enacted would end temporary absences, replacing them with day paroles entirely under the jurisdiction of the Parole Board.[7] Reduced workloads for Parole Board members — workloads the study finds to be excessive — are also a possible result of this legislation. So too, are improved rules and procedures that could flow from expanded and more specific regulation-making powers, given Board initiative (that our researchers have observed) and Cabinet approval.[8] This could mean increased access to information and

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[6] *Report on Dispositions and Sentences in the Criminal Process: Guidelines*, Law Reform Commission of Canada, 1976 (available from Dept. of Supply and Services Canada, Printing and Publishing, Cat. No. J31-16/1975).

[7] See The Criminal Law Amendment Bill No. C-83 (No. 1), 1976, Part III.

[8] *Id.*, s. 23, repealing and replacing s. 9 of the Parole Act.

assistance for inmates and an expanded possibility for them to participate in parole decision-making.

Whatever the administrative agency that is called on to exercise discretion in releasing people serving sentences of imprisonment, whether it be the National Parole Board or the Sentencing Supervision Board that we have recommended,[9] its success will to a great extent depend on the use of fair procedures that promote inmate responsibility, allow accurate information gathering, assessment and recording and stress the stating of the criteria used in decisions.

We hope that this study will be useful to the National Parole Board, the people affected by its decisions and those engaged in devising new release procedures. The observations and suggestions in it are those of the researchers and consultants involved and should not be considered as recommendations of the Law Reform Commission of Canada. Like other studies in these series, it will, of course, influence our thinking about the reform of administrative law and procedure, generally.

[9] In our Report in Dispositions and Sentences, *supra* note 6.

Foreword*

A number of recent studies and reports[1] recommend that greater procedural fairness and specificity of criteria be introduced into parole decision-making. But not one of these studies or reports is based upon a close examination of what is actually involved in deciding to release a prisoner on parole.

This makes this study rather unique. Research for it involved observing at close hand how parole decisions are made. It included gathering empirical data on the parole decision-making process and on any elements or factors which play a role in shaping this process. It encompassed the powers of parole decision-makers and how they are exercised, the procedures followed, the criteria applied and how they have evolved, and the kind of information supporting parole decisions.

Central to parole decision-making is the National Parole Board, a federal agency delegated substantial discretionary power by Parliament[2] to release inmates conditionally into Canadian society. A major concern of this study has been how the Parole Board exercises its discretion[3] in carrying out its important and difficult role.

The study deals only with the making of parole decisions for inmates serving sentences for federal offences in federal institutions.[4] And among these inmates, this study monitored the parole decision-making process only as it operated for inmates whose applications for parole led to hearings before the Quebec and Ontario regional Parole Board members in February, 1975. These members handle the largest volume of cases in Canada.[5]

Our concern has been to discover how parole decisions are made rather than attempting to determine how successful decisions granting parole have been. The study in no way deals with recidivism among inmates granted parole. However, as well as describing the process of parole decision-making, we do offer suggestions for improving it. Although fairness is a predominant concern, so too are general acceptability, the accuracy and efficiency of the various phases of information-

*EDITOR'S NOTE: All further notes appear as endnotes on pages 147 to 157.

gathering, testing, deliberation and decision that culminate in the release or continuance of incarceration for persons sentenced to imprisonment.

The study has nine chapters. To assist readers unfamiliar with the area, Chapter I provides a general verbal and graphic description of the parole process and how it operates. It includes summaries of the composition, powers and responsibilities of the National Parole Board and charts illustrating the sequence of events in imprisonment, parole and other forms of release.

Chapter II sets out the methodology we used and describes the sample of inmates whose parole decisions we studied.

Chapter III indicates the kinds of decisions that Parole Board members can make, and the decisions they did make for inmates in our sample.

We begin our description of the parole process in Chapter IV. Here, we describe the case preparation phase for inmates in our sample. Included is an explanation of the types of documentation typically found in the Parole Service file that serves as a major source of information for Board members. We then analyse and evaluate the actual documentation in the Parole Service files of inmates in our sample.

Chapter V comments on the contributors to the Parole Service file, their performance and the influence they have on the parole decision. We also consider the influences that affect their performance.

Chapter VI assesses the parole hearing phase and decision-making by regional Board members for the inmates in our sample. We also suggest what the role of the inmate should be, and comment on inmates' access to information and assistance.

Parole decision-making by Ottawa Board members is the subject of Chapter VII. We indicate how they dealt with the cases in our sample and describe the voting procedures that brought these cases to them. We also comment on the suitability of these procedures.

Chapter VIII attempts to describe the criteria that appeared to us as prominent in the decisions we observed. The Board's slow progress towards stating the criteria it uses is described. So too, very briefly, are a number of other influences on parole decisions.

Finally, Chapter IX briefly deals with policy-making and dissemination by the Board and suggests a number of ways these important functions could be improved. Suggestions for improving the parole decision-making process are found in Chapters IV to IX, as the Table of Contents indicates.

CHAPTER I

A Brief Introduction to the Parole Process

What is the parole process, and who is responsible for it? How, in a nutshell, does it operate? This chapter attempts to answer these questions. We hope that it provides an adequate background for those readers who have no special familiarity with sentencing and parole.

a) A General Description of the Imprisonment and Release Process

Parole, as Chart I illustrates, is one of four ways that bring people serving sentences of imprisonment back into society. It is not the only way in which an inmate of a federal penitentiary can be released before the expiration of his sentence.

Even when parole is not granted, an inmate may be released before the end of his sentence essentially because of good conduct.[6] A sentence can be reduced by as much as a quarter of its term plus three days for every month spent in prison. If the reduction (or earned and statutory remission in the language of the Penitentiary Act) exceeds sixty days and the inmate was sentenced or transferred to a federal penitentiary after August 1, 1970, he will be subject on release to mandatory supervision by the National Parole Board.[7] This supervision, under similar conditions to parole, normally lasts for a period of time equal to one-third of the inmate's term of imprisonment.

Those inmates not granted parole and not subject to mandatory supervision are released without any type of supervision at the expiration of their sentence, or earlier where there is remission time to their credit.

In certain instances, mandatory supervision and parole can be suspended, revoked or forfeited[8] and imprisonment reimposed.[9] However, inmates released prior to the expirations of their sentence without mandatory supervision or parole are not subject to these procedures.

Parole, in contrast to the other ways that imprisonment can end, is a conscious decision to release an inmate so that he may serve the balance

of his term of imprisonment in the community[10] under the guidance and supervision of the Parole Service or a private social agency. It is a decision that for inmates serving sentences for federal offences[11] can only be made by members of the National Parole Board, on "terms or conditions considered desirable by (them)".[12]

b) The Federal Parole Process

Chart II attempts to sketch the more important details of the federal parole process for inmates serving penitentiary sentences. Later chapters of this study provide detailed explanations of the intricacies of this process. For the moment, certain aspects merit emphasis for readers lacking familiarity in the parole and corrections area.

(i) *The Beginning of a Sentence*

Offenders begin serving their terms of imprisonment in the regional reception centres of the region in which they are sentenced. There, they are classified as minimum, medium or maximum security risks, a classification that determines the type of institution in which the offender will initially be imprisoned.

During the first two weeks of an inmate's stay at a regional reception centre, he receives a group briefing by a Parole Service officer on the nature and purpose of parole. These briefing sessions normally last forty-five minutes and usually involve about twenty newly-admitted inmates. (In the Ontario region, the John Howard Society also provides a short briefing on parole to the same groups at this time.)

After reception and classification (it lasts from three weeks to three months), the inmate is transferred to a federal penitentiary.[13]

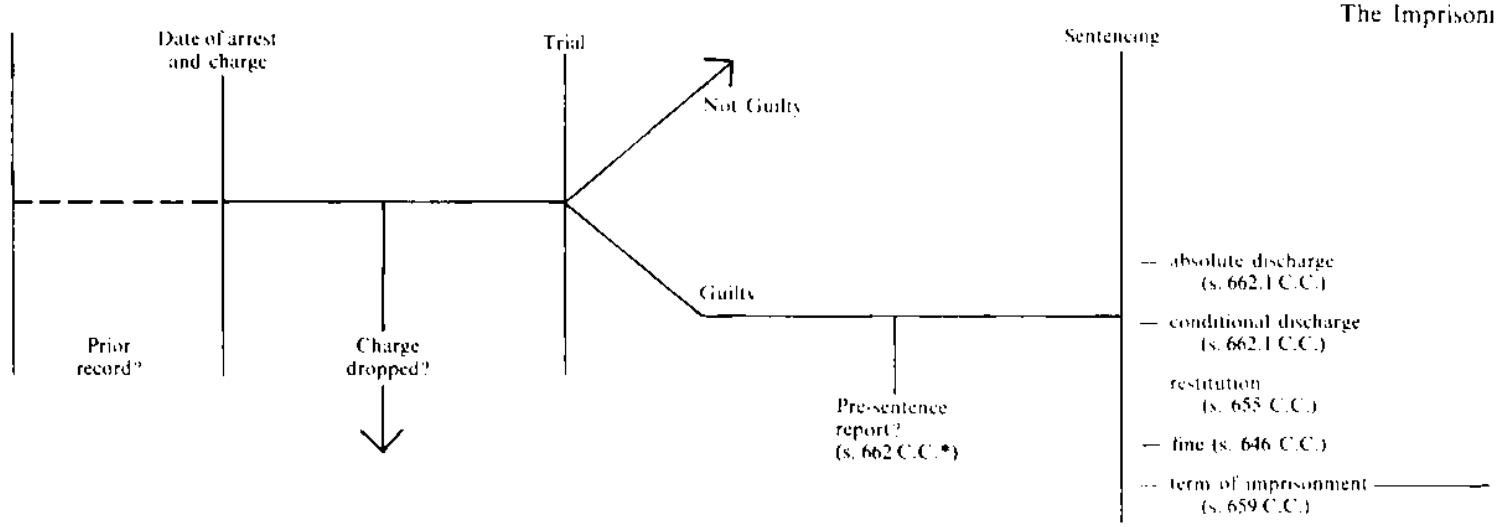
(ii) *During the Sentence*

Within six months of admission to a penitentiary,[14] the National Parole Board must inform the inmates of the date on which he becomes eligible for parole.[15] The letter doing this also notifies the inmate that if he is planning to apply for parole, he must do so five months before his parole eligibility date.[16]

Four months is the minimum period of time considered necessary for adequate case preparation by the Parole and Penitentiary Services and the Board. Consequently, case preparation should begin about a month after an inmate's application for parole is received, and some four months prior to the inmate's parole eligibility date.

Although the Parole Act calls upon the Board to review the case of every inmate serving a sentence of two or more years,[17] the Board's

The Imprisoni



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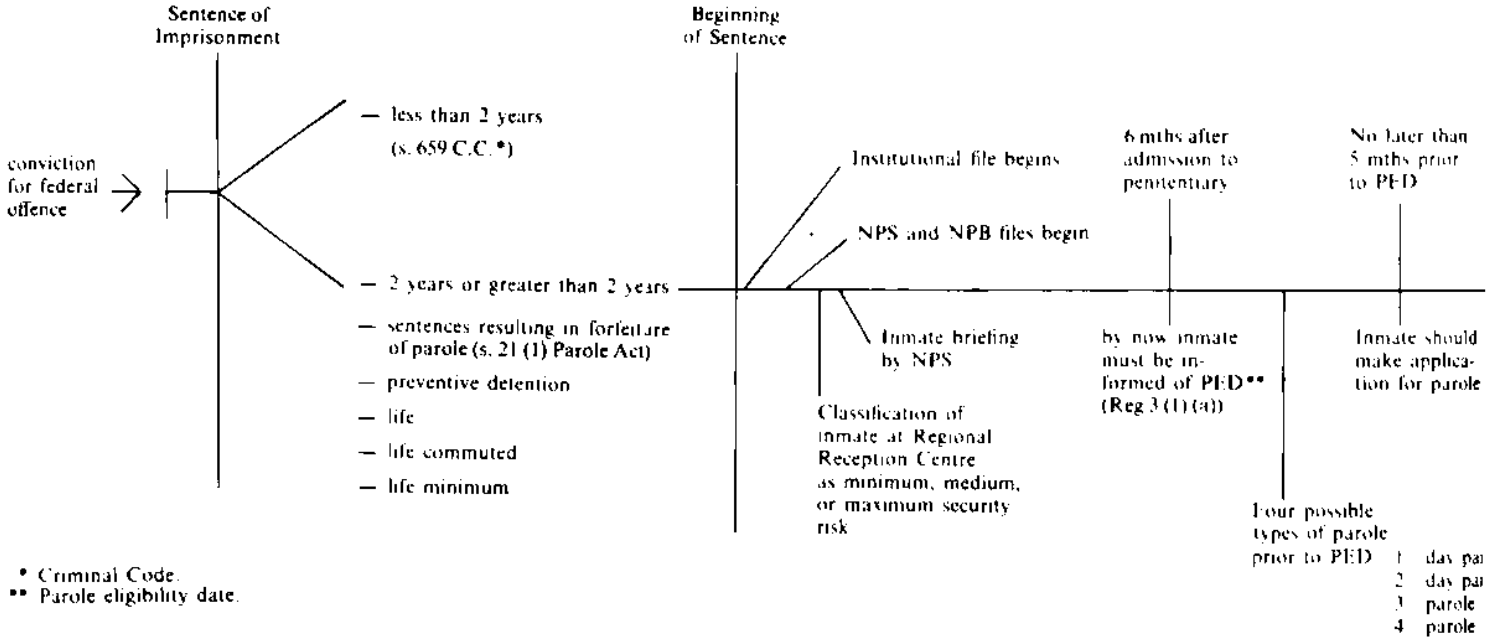
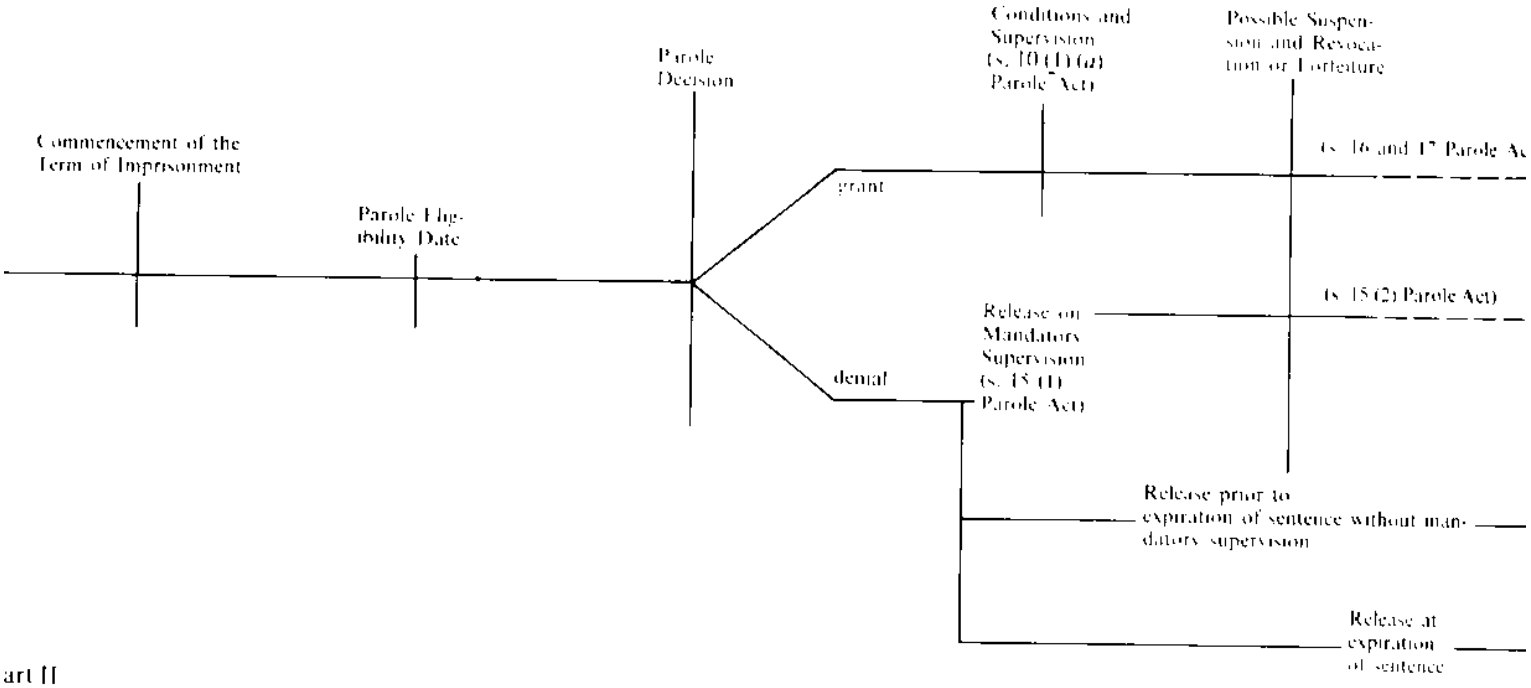


* Criminal Code.
** Parole eligibility date.

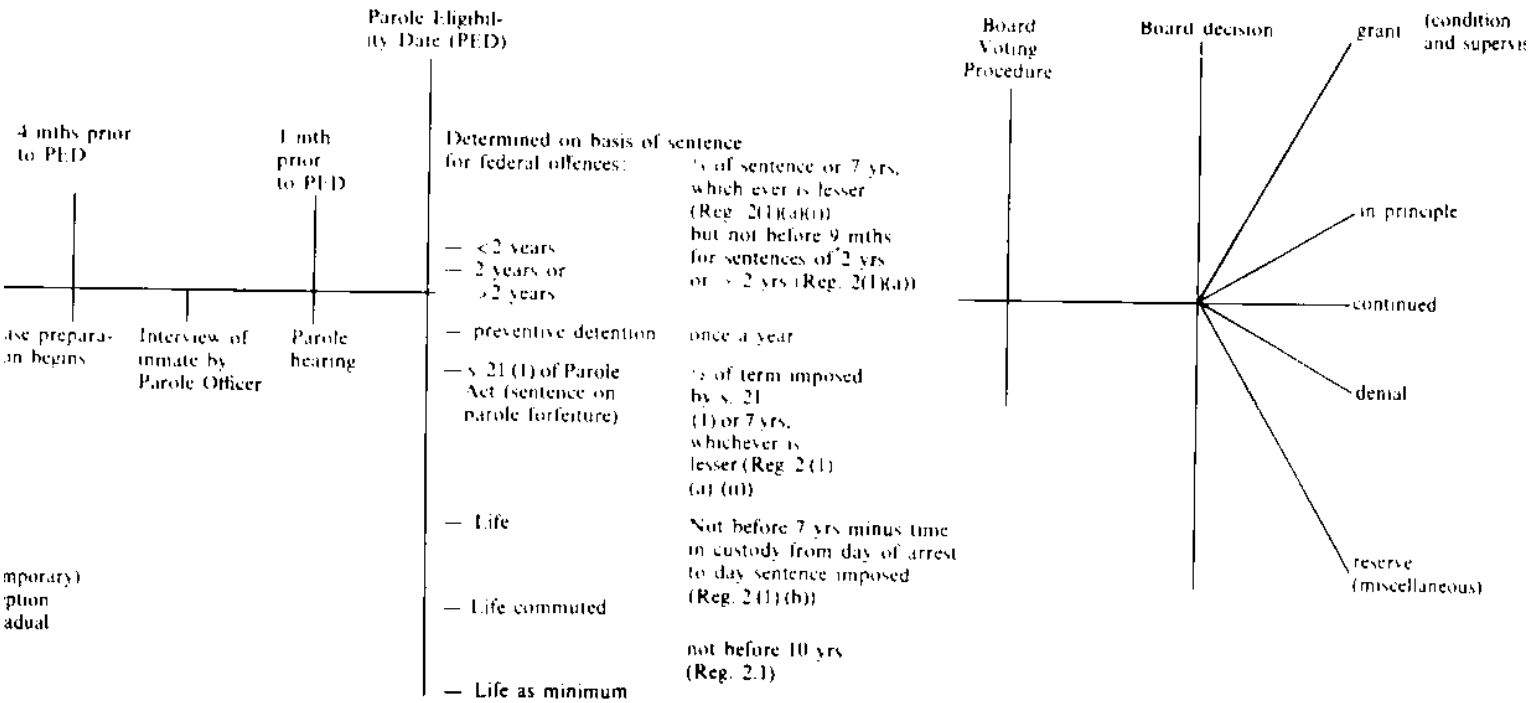
Chart I

nt and Release Process



art II

Parole Process



reviews in practice normally result in a denial of parole or a deferral decision unless the inmate has made an application for parole.[18] Without an application, these reviews occur without the benefit of any case preparation by the Parole Service. It is the inmate's application for parole that initiates the Service's case preparation activities.[19] For inmates serving sentences of less than two years, a review would normally take place only on the application of the inmate. Review is automatic for inmates serving longer sentences, unless the inmate has informed the Board in writing of a decision not to be granted parole.

(iii) *The Parole Eligibility Date*

Determining the date on which an inmate becomes eligible for parole is a rather complicated exercise. The National Parole Board Regulations set out how the date is established. Its calculation depends for the most part upon the nature and length of a sentence.

Where the term of imprisonment in a sentence is not for life, preventive detention or imposed on a forfeiture or revocation of parole,[20] the parole eligibility date (or PED) occurs after the lesser of one-third of the term imposed or seven years.[21] However, for terms of two years or more in federal institutions, nine months imprisonment must precede the PED.[22] An escape and other sentences of imprisonment force the selection of a new PED.[23] The original term of imprisonment has changed. Here, the PED falls at the half-way mark of the term imposed or seven years, whichever comes first.[24]

For persons serving sentences of life imprisonment, the PED occurs from seven to twenty years after the sentence has begun, depending on the date of the sentence and the power of the sentencing judge to increase the minimum eligibility period.[25]

Inmates serving sentences of preventive detention in theory become eligible for parole annually, since their cases must be reviewed at least once a year by the Parole Board.[26]

Eligibility for certain types of parole, such as parole by exception or day parole, begins at least in theory on the day a sentence of imprisonment begins. Nevertheless, the Board's policy during our research was to postpone eligibility for day parole until a year before an inmate's normal PED. However, if the PED fell within the first year of imprisonment, eligibility for day parole was considered to begin on admission.[27] Parole by exception — or ordinary parole granted before the inmate's PED — is in theory and with some exceptions possible, at the Board's discretion, from the time the inmate is imprisoned.[28]

(iv) *The Parole Hearing and Decision*

About a month before the inmate's parole eligibility date, a hearing is held at which the inmate appears before two regional Board members. Also present in the normal hearing are the inmate's classification and Parole Service officers. The inmate has the opportunity to address the Board members and respond to questions posed by them. A parole hearing, in our experience, lasted on average about 45 minutes, including discussion and deliberations when the inmate was not present. The Board reached its decision after a few minutes' deliberation, and immediately related it to the inmate. If the case required additional votes by Ottawa members, the inmate was normally given the decision of the regional members and is then advised by them of the need for further votes.[29]

If the Board's decision is to grant parole, the inmate is released, under certain conditions and supervision. If on the other hand the Board denies parole, the inmate may apply again. Even without a further application, the Board will review the case once every two years following the initial denial decision.[30] Without parole, an inmate must wait for release, and the possibility of mandatory supervision.[31]

c) The National Parole Board — Its Composition

Responsible for parole is the National Parole Board. It has twenty members: ten in Ottawa and another ten regionally. Nine of the Ottawa members are appointed by the federal Cabinet "to hold office during good behaviour for a period not exceeding ten years".[32] The tenth Ottawa member is a part-time member who acts "as a substitute member in the event that a member is absent or unable to act".[33] The Cabinet designates one of the Ottawa members Chairman and one Vice-Chairman.[34]

Regional members are appointed for period not exceeding five years and are eligible for re-appointment.[35] Two regional members serve each of the five parole regions into which the country has been divided. Regional members may exercise all of the powers conferred on the Board by the Parole Act.[36]

The Board members range in age from 35 to 66 years. Three are women. The professional backgrounds of members are varied: seven were criminologists, five social workers, two penitentiary directors, two judges, one a lawyer, one a psychologist, one an advisor to the federal Cabinet, and one a chief of police. Many have also had experience in other areas relevant to corrections. For example, one of the criminologists is also a psychologist. Another was at one time chief of police in one of Canada's largest cities. A former social worker has been

an inmate. And another was an official in the Parole Board's operational counterpart, the Parole Service.

This wide range of experience, particularly in the corrections field, would appear, as we shall see, to be well-suited to the daily tasks facing Board members.[37]

d) The Board's Powers and Responsibilities

The two major responsibilities of Board members — both regionally and in Ottawa — are individual case decision-making and parole policy-making.[38]

(i) *Parole Decision-Making*

As the *Parole Act* provides:

> Subject to this Act and the Prisons and Reformatories Act, the Board has exclusive jurisdiction and absolute discretion to grant, refuse to grant or revoke parole.[39]

This jurisdiction is limited, however, by the Board not having any powers over children within the meaning of the Juvenile Delinquents Act,[40] persons who have violated laws of provincial legislatures,[41] and the indeterminate portions of sentences imposed in Ontario and British Columbia under the Prisons and Reformatories Act.[42]

Further guidance for the Parole Board is found in section 10 (1) of the Parole Act. This provides that the Board may:

> (a) *grant parole* to an inmate subject to any terms or conditions it considers desirable, *if* the Board considers that
> (i) in the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment,
> (ii) the reform and rehabilitation of the inmate will be aided by the grant of parole, and
> (iii) the release of the inmate on parole would not constitute an undue risk to society;
>
> (b) *impose any terms and conditions* that it considers desirable in respect of an inmate who is subject to mandatory supervision;
>
> (c) *provide for the guidance and supervision* of paroled inmates for such period as the Board considers desirable;
>
> (d) *grant discharge from parole* to any paroled inmate, except an inmate on day parole or a paroled inmate who was sentenced to death or to imprisonment for life as a minimum punishment; and
>
> (e) *in its discretion, revoke the parole* of any paroled inmate other than a paroled inmate to whom discharge from parole has been granted, or revoke the parole of any person who is in custody pursuant to a warrant issued under section 16 notwithstanding that his sentence has expired.
>
> (Our emphasis)

In addition the Board, or any person designated by it, has the discretion to terminate the day parole of any paroled inmate.[43] It is noteworthy that Parliament has drawn a distinction between ordinary and day parole. The Board may only grant ordinary parole if it considers the inmate has derived maximum benefit from imprisonment, a requirement from which day parole is specifically exempted.

(ii) *Parole Policy-making*

Consistency and fairness requires that every administrative agency has policies, be they explicit or not. And every agency must inevitably decide what policies it prefers either as a conscious choice, or indirectly as it goes about making its day-to-day decisions. The Parole Board is no exception. Its involvement in policy formulation is formally recognized by one of its Rules, which provides:

> The Chairman may from time to time call a general meeting of the Board to discuss and settle questions of policy and procedure and such other matters as are necessary for carrying out the duties and functions of the Board or of divisions of the Board.[44]

No specific authority for the Board's policy-making activities exists, apart from a qualified rule-making provision in the Parole Act. This gives the Board the power to "make rules for the conduct of its proceedings and the performance of its duties and functions" under the Parole Act, but requires that such an exercise have the approval of Cabinet.[45] The Board, of course, must base its policies on the policies enunciated in the Parole Act. These, however, are brief and expressed in general terms — for example, the considerations in section 10, quoted above, that the Board is to follow in making a parole decision. So general are these policies that they could clearly not be implemented without adding flesh to their bare bones.

Board policies are to be found in many documents. Policy statements appear not just in the Parole Act, but also in the Parole Regulations and Rules, Board memoranda, Board and Parole Service directives, the minutes of the Board, the National Parole Service's Procedures Manual, the Parole Board's Procedures Manual, the Board's annual reports, reported public statements of Board members, press releases by the Board or by the Ministry of the Solicitor General, to name most of the sources we have relied upon. The number and thrust of pronouncements setting out what the Board will do that can be found in these sources establishes very clearly the Parole Board's heavy involvement in the making of policy.

(iii) *How the Board Divides Its Responsibilities*

The regional members of the Board initiate most parole decisions. They hold hearings and render decisions in all federal parole cases within

their regions. As well, they keep close contact with officials in the Parole Service, the Penitentiary Service, inmates and members of the public.[46]

Ottawa members of the Board are responsible for decisions on cases sent to them by regional members under Board procedures that require more than two votes for certain types of cases.[47] They also must deal with applications for parole from inmates serving sentences for federal offences in provincial institutions. An additional responsibility involves deciding on applications for revocation or suspension of orders made under the Criminal Code prohibiting persons from operating motor vehicles.[48] Until recently and except for the Maritime region, Ottawa members handled all parole revocation cases. However, in keeping with the Board's decision to regionalize its operations, this function is gradually being transferred to the regional members.

This brief description of the parole process and the Parole Board will hopefully enable all readers to cope more easily with what follows.

CHAPTER II

Methodology and Description of Sample

a) Organization of Research Work

For research purposes, we divided our examination of parole decision-making into what could be recognized as three phases of this process: first, the preparation of documentation for the file on each inmate that is, in principle, reviewed by Board members; second, the parole hearing; and third, post-hearing events in the eventual reaching of a parole decision. After describing our methodology and the sample and decisions we observed, this study then considers our findings for each of these three phases. To become familiar with the National Parole Board's operations generally and to gather information on the first phase, we spent part of November and December 1974 in the Ottawa headquarters office of the National Parole Board. There we immersed ourselves in the legislation, regulations, directives, procedures and organizational structures that provide direction and guidance to Board activities. Our presence hopefully did not further complicate the ongoing reorganization separating the National Parole Service from the National Parole Board.

Study of the first phase continued in January 1975 when we examined all Parole Service files in the Ontario and Quebec regions with parole eligibility dates or parole hearings scheduled in March of the same year. The files for our sample of parole cases were located in Parole Service district offices in Kingston, Peterborough, Laval, Granby and St-Jérôme.[49]

Phase two required attendance and observation at all Parole Board hearings of inmates whose files we had already examined. This took most of the month of February even though we again divided the work, one researcher covering the hearings in Quebec, the other the hearings in Ontario. The hearings were held at the institutions in which the inmates were incarcerated.[50]

In March, we concentrated on phase three, post-hearing, and monitored the decision process at the Ottawa headquarters offices of the Board for those cases requiring more than two votes.[51] Decisions on such

cases by Ottawa members of the Board involve no hearing, in the formal sense.

Apart from analysing the cases in our sample, we also gathered information through formal and informal interviews and discussions with regional and Ottawa members of the Board, parole officers, Parole Service support staff, district parole office personnel, John Howard Society representatives in Ontario, staff members (notably classification officers) and directors in several of the institutions we visited as well as with some of the inmates whose parole hearings we observed. Varied contacts of this nature throughout our research, by providing us with the insights of people closely involved in the parole process, served to check, test and clarify our observations, many of which were initially uncertain.

(i) *Recording Information About File Preparation and Hearings*

Our observations on the parole process were for every case in our sample recorded on specially designed forms that reflected what we thought were the procedures of the Board and the nature of the observations we hoped to make.[52]

The information we gathered included summaries of personal information about the inmates in the sample, sentencing data relevant to parole eligibility, a summation of information, evaluations or recommendations found in each inmate's Parole Service file that we viewed as being in some way possibly pertinent or related to parole and an indication of the source of this information. A detailed record was kept of the hearings we attended. This covered who was there, what happened before the inmate arrived, while the inmate was there, and after, the procedures followed, how the case was discussed and a decision reached.

(ii) *Constraints on Research*

Although we had full access to files, their confidential nature meant that we could only examine them in the district office where they are normally kept. Confidentiality also increased the task of summarizing information in the files. We soon realized how dependent we had become on the photocopying machine.[53]

Obtaining the consent of inmates to attend their parole hearing caused us to miss some sixteen hearings in the Ontario region. How inmates were informed of our research varied.[54] In twelve instances, the inmates concerned had not been previously informed and so we did not attend. In only four cases did inmates refuse to allow us to be present at their hearings.

b) Description of Sample

Since Ontario and Quebec cases were studied separately, a separate description of the portion of our sample in each of these parole regions follows. Tables allowing a comparison and composite picture to emerge of both portions of the sample may be found at pages 13 to 23.

(i) *Ontario Region*

Our sample here was based on ninety-nine inmates[55] who were on the Ontario region's list for federal parole hearings to be held in February, 1975. These inmates were serving sentences in federal penitentiaries,[56] as indicated by Table I on page 13.

Late addition to the hearing list forced us to exclude five inmates.[57] There was not enough time before their hearings to review their files. We also omitted three inmates in the Landry Correctional Camp. Ottawa Board members normally deal directly with inmates in this institution, no doubt because of its proximity.

The Ontario sample covered a wide range of offences, as Table III on page 15 illustrates. Inmates in the sample were serving sentences ranging from two years to life. Table V at page 17 sets out details on their sentences.

Files on ninety-eight inmates in the sample were analysed before the scheduled hearings. Because the file for an inmate from the Prison for Women could not be obtained in time, we did not attend the hearing.

We attended seventy-nine parole hearings in the Ontario region in all. Lack of notification about our research (12), inmate refusal of our presence (4), transfer out of the region (1) and withdrawal of parole application (2) explain why some nineteen hearings were excluded from the sample. The Parole Board made decisions in ninety-seven cases. Only when an inmate was transferred out of the Ontario region and an inmate withdrew her application before her hearing did the Board members not reach some form of decision concerning readiness for parole. Table VII on page 19 shows what these decisions were.

Nineteen decisions from the Ontario sample under Board procedures required additional votes by Ottawa members; either because of the offence involved or the decision reached by the regional members. In only three cases was a decision by the regional members reversed by their Ottawa colleagues. Table IX on page 21 summarizes regional and Ottawa decisions according to the security level of the inmate's penitentiary.

(ii) *Quebec Region*

Our sample in Quebec was made up of the 109 inmates on the regional list for federal parole hearings scheduled in February, 1975. As in Ontario, most of these inmates became eligible for parole in March, 1975. Some inmates in the sample, however, were scheduled for a review hearing following an earlier consideration of their cases by Board members. Table II on page 14 indicates the institutions housing the inmates in the Quebec sample.

Late additions to the hearing list meant we were able to examine the files on only seventy-three of the inmates in the sample. The list, we discovered, is never closed; names being added up to the last possible minute. As a result, we lacked adequate file information on thirty-six inmates.

Table IV at page 16 gives an overall view of the criminal characteristics of the Quebec sample. We have included only dominant offences in this Table — the offence generating the longest sentence. For example, a dominant sentence under the Parole Act is forfeiture or loss of parole.

Property offences made up thirty-six per cent of all dominant offences in the Quebec sample; in Ontario, these offences comprised some fifty-six per cent of all inmate offences. Property offences were second offences for seventeen per cent of the inmates in the Quebec sample, particularly when the dominant offence involved physical harm. The Ontario and Quebec parts of our sample appear to be similar in this respect, as a comparison of Tables III and IV may indicate. Table VI on page 18 sets out the length of sentence being served by inmates in the Quebec sample.

Ninety-nine decisions emerged from the one hundred and nine cases in the Quebec sample. One case involved merely an explanation by Board members of an inmate's status and two day parole applications were not subjected to a vote. The lack of a decision in some seven other cases is dealt with in Chapter V. Tables VIII and X on pages 20 and 22 show the decisions reached regionally and in Ottawa. Only twenty-one cases required decisions by both regional and Ottawa members.

Table XI summarizes information about both portions of the sample. We trust that our readers will keep in mind our methodology and the nature of the sample studied as they peruse the observations and findings set out in the chapters that follow.

Table I
Ontario Sample: Inmate Distribution
by Security Level of Institution

Security Level	Institution	Number of Resident Inmates in Sample	
Maximum	Millhaven	8	
	Regional Reception Centre	2	
	Regional Medical Centre	6	
	Prison for Women (the only women in the sample)	7	23
Medium	Warkworth	28	
	Joyceville	17	
	Collin's Bay	16	61
Minimum	Beaver Creek Correctional Camp	2	
	Bath	1	
	Pittsburgh	4	
	Frontenac	8	15
		TOTAL	99 inmates

Table II
Quebec Sample: Inmate Distribution
By Security Level Of Institution

Security Level	Institution	Number of Resident Inmates in Sample	
Maximum	Laval	7	
	Archambault	14	
	Regional Reception Centre	1	
	Pinel	3	25
Medium	Cowansville	17	
	Leclerc	21	
	Federal Training Centre	18	
	Tanguay Home (women)	2	58
Minimum	Montée St-François	15	
	Archambault	10	25
	TOTAL		108 inmates

Table III
Ontario Sample: Total Inmate Offences*

Offence Under:	Parole Act	Narcotic Control Act	Criminal Code**			Security Level of inmate's Institution
			Property	Physical	Sexual	
	4	2	12	5	5	maximum
	7	7	43	6	4	medium
	6	2	10	3	—	minimum
	17	11	65	14	9	

* A conviction for perjury was omitted.

** Offences under the Criminal Code are broken into offences against property, offences where physical harm is involved, and offences of a sexual nature.

Table IV
Quebec Sample: Inmate Dominant Offences

Offence Under:	Parole Act	Narcotic Control Act	Criminal Code			Security Level of inmate's Institution
			Property	Physical	Sexual	
	3 11 5	2 5 0	4 16 12	9 21 4	2 2 4	maximum medium minimum
	19	7	32	34	8	

Table V
Ontario Sample: Length of Sentences*

Length of Sentence (in years)	Inmates Serving Such a Sentence (number)	Length of Sentence (as percent of Ontario sample)
2	8	50.5% under 4 years
2-3 (e.g., 24 to 35 months)	14	
3	14	
3-4	11	
4	3	
4-5	9	30.3% from 4-10 years
5-6	2	
6	4	
6-8	12	
8-10	3	
10-15	3	19.2% greater than 10 years
15-20	2	
Life	6	
Indeterminate (Preventive Detention)	8	
	99	

* For aggregate sentences, the longest sentence.

Table VI
Quebec Sample: Length of Sentences*

Length of Sentence (in years)	Inmates Serving Such a Sentence (number)	Length of Sentence (as percent of Quebec sample)
2 (e.g., 24 to 35 months) 3	25 19	55% under 4 years
4 5-7 8-10	7 15 7	37% from 4-10 years
10 or greater	6	8% greater than 10 years
	Total 79	

* For aggregate sentences, the total sentence.

Table VII
Ontario Sample: Parole Board Decisions

Parole granted	Parole approved in principle	Parole denied or deferred	Decision reserved or no action	Security level of Inmate's Institution
4	2	12	4	maximum
15	8	28	9	medium
6	2	4	3	minimum
25	12	44	16	

GRAND TOTAL 97

Table VIII
Quebec Sample: Parole Board Decisions

Parole granted	Parole approved in principle	Parole denied or deferred	Decision reserved or no action	Security Level of Inmate's Institution
4	4	9	7	maximum
8	11	20	13	medium
12	5	5	1	minimum
24	20	34	21	

GRAND TOTAL 99

Table IX
Ontario Sample: Final Decisions by Regional and National Board Members By Security Level of Inmate's Institution

Security Level of Inmate's Institution	Regional	Ottawa
Maximum	14	3
Medium	41	11
Minimum	7	5
Totals (see Chapter V for discussion of voting procedures)	62	19

Table X
Quebec Sample: Final Decisions by Regional and Ottawa Board Members by Security Level of Inmate's Institution

Security Level of Inmate's Institution	Regional	Ottawa
Maximum	16	3
Medium	24	13
Minimum	17	5
Totals (see Chapter V for discussion of voting procedures)	57	21

Table XI
Summary of Sample Information

	Ontario	Quebec	Total
Inmates on February/1975 Hearing List	107	108	215
Inmate Files Reviewed	98	73	171
Hearings Attended	79	100	179
Board Decisions	97	99	196
Decisions Involving Ottawa Members	19	21	40

CHAPTER III

Parole Decisions in Our Sample Described

The parole decision is a culmination of Parole Service case preparation efforts and Parole Board decision-making. To understand the process requires some understanding of the range of decisions that can be made. Many parole decisions, however, are neither full grants or denials. This chapter describes the decisions Board members could make and describes the decisions affecting our sample they actually did make.

As already mentioned, the Ontario part of the sample consisted of ninety-nine inmates serving sentences in various federal institutions in the Ontario regional division of the National Parole Board scheduled[58] for parole hearings in the month of February, 1975. The Board made ninety-seven decisions. There were two cases in which no decision was taken: one case involved an inmate from Joyceville Institution who was transferred out of the Ontario Region prior to the parole hearing;[59] another involved an inmate from the Prison for Women who withdrew her application for parole just before the parole hearing.[60]

In the Quebec part of the sample, of 109 inmates scheduled for parole hearings in the same month, 99 decisions were made by the Board. The hearing did not take place in seven cases for reasons discussed in Chapter VI, two cases involved an application for day parole and, in one case, the hearing was held to discuss a previous decision not yet carried out.

a) The Decision to Grant Parole

Table XII summarizes the decisions to grant parole in our sample. We now consider in turn each of the various types of parole grant decisions.

(i) *Parole Granted*

This is a decision allowing an inmate of a federal institution to be "released conditionally under supervision to carry out the remainder of his sentence in the community" on the inmate's parole eligibility date, or on a new review date.[61] The conditions under which parole is granted are

set forth on the parole certificate which the Board must issue to each paroled inmate. There were twelve such decisions in the Ontario part of the sample after the final voting by the Ottawa Board members (or 12.4 per cent of the Ontario part of the sample) and ten in the Quebec part of the sample (or 10 per cent of the Quebec part of the sample).

Eight of the ten decisions in Quebec were granted parole on the eligibility date of the inmates concerned, one decision came two years after five annual reviews, and one parole was granted to an inmate under preventive detention. Seven of the twelve Ontario decisions granted parole on the inmates' eligibility date, five granted parole after this date.

(ii) *Parole with Gradual*

This type of parole decision is in essence an ordinary grant of parole preceded by one or more preparatory stages.[62] The imposition of these stages is in effect part of the parole decision. Three of the four Quebec cases in which a decision of the type was made involved inmates with allegedly weak personalities who were judged in need of a gradual approach to full parole. The fourth case involved an inmate who had a number of promising opportunities that very likely would appreciably alter his way of life. Here, Board members wished to give the inmate a regular opportunity to consolidate his plans before experiencing a full parole. An Ottawa member indicated that a day parole might well have been a more appropriate decision in this case.[63]

The Ontario part of the sample had no parole with gradual decision.

(iii) *Day Parole*

The *Parole Act* defines day parole as:

> Parole the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period.[64]

As with ordinary parole, an inmate on day parole is "deemed to be continuing to serve his term of imprisonment in the place of confinement from which he was released".[65] Day parole is granted for special rehabilitation purposes (e.g., for employment, training, education, etc.) and is normally seen by the Board as part of a gradual release program leading up to a grant of ordinary parole.[66]

As we will describe later, there is a difference in the treatment of a day parole application submitted before the parole eligibility date of the inmate and those submitted after.[67] In the former cases, there is no provision for a hearing; in the latter, the inmate is heard. There were eight grants of day parole involving hearings in the sample (or 4.0 per cent of

Table XII
Paroles Granted According to Security Level of Institution

Nature of Parole Decision	Security Level of Inmate's Institution						Totals		
	Maximum		Medium		Minimum				
	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	
Parole granted	—	3**	3*	7****	7**	2*	10	12	22
Parole with gradual	—	—	—	—	4*	—	4	—	4
Day parole	—	1	2	3*	1	1	3	5	8
Day parole (temp.)	4**	—	—	3*	—	1	4	4	8
Parole for deportation	—	—	3****	1*	—	—	3	1	4
Parole by exception	—	—	—	—	—	1*	—	1	1
	4	4	8	14	12	5	24	23	47

(The number of asterisks indicates decisions made by Ottawa members)

the total number of decisions). We did not monitor the granting of day parole prior to the PED.

The policy of the Board concerning the timing and length of day paroles in force during our study was as follows:

> The normal length of Day Parole is four months but a lengthier period may be recommended where there appear special circumstances which might warrant it. The Board is prepared to extend the length of the Day Parole, if needed, up to a period of one year prior to parole eligibility. However, every departure from the norm must be specified in detail for approval by the Board [68]

(iv) *Day Parole (Temporary)*

This type of day parole seems to be used to allow an inmate's involvement in special projects. It is not necessarily viewed as part of a gradual release program leading to ordinary parole, and herein lies the essential difference between the day parole and day parole temporary decisions.[69] The Board's policy on the timing of this type of parole argues against it being granted sooner than two years before the inmate's PED. "In cases involving any kind of violence, it is normally not applicable early in the sentence."[70]

Two of the four Quebec cases in which this type of parole was granted were classified as dangerous sexual offenders. They were granted parole solely for the purpose of attending a conference, with an escort. One of the four inmates had problems with alcohol as well as in finding a place of residence that he had to solve by contacting a halfway house. The fourth inmate needed two weeks to go through the usual registration steps in a special treatment centre.

(v) *Parole for Deportation*

This decision means that the applicant will be deported on being granted parole. Clearly, the applicant must be deportable under the *Immigration Act* to be considered for such a decision by the Parole Board.[71] There were four such decisions in the sample, one in Ontario and three in Quebec.

One of the inmates attached a long letter to his parole application, expressing his desire to remain in Canada and indicating serious release plans. However, the decision to deport had already been made by immigration officers.

(vi) *Parole by Exception*

Parole granted before the parole eligibility date is known as parole by exception.[72] The Ontario part of the sample contained two applications for parole by exception: one was granted and the other

deferred. The Quebec part of the sample contained two applications for parole by exception: one was granted parole with gradual and the other denied. Although our sample contained only these four instances, this type of parole decision merits special attention precisely because it is exceptional.

Board members could review the case of an inmate at any time during imprisonment to determine whether parole would be appropriate. Such a review need not be initiated by the inmate.[73] If justified by special circumstance, the inmate could be paroled before serving the normal minimum of his sentence — the lesser of seven years or one-third.[74] Inmates serving sentences of commuted life imprisonment or life as a minimum punishment are not eligible for early parole.[75]

Guidelines have been established by the Board to provide instances in determining whether special circumstances justify parole.[76] These guidelines list particular circumstances under a number of headings:

— clemency and compassionate grounds
— employment and school
— preservation of equity
— interdepartmental cooperation
— special representation from the judiciary, the prosecutor, etc.
— maximum benefits derived from incarceration.

We learned during the course of our research that Parole Service officers were instructed to watch for inmates who might deserve early parole. We learned too that few inmates are aware of the special circumstances that might allow parole by exception. Although inmates could apply for parole by exception, unless the application clearly indicated the existence of these special circumstances, it would be treated by Board staff as a premature application for ordinary parole. In other words, request for early parole from the Parole Service carried more weight than an inmate's application.

It is our impression that Board members would rarely grant an early parole without the Parole Service's support or concurrence. For example, we learned of an inmate, serving a five-year sentence who applied for parole by exception in November, 1973.[77] A Parole Service officer then interviewed him twice and ffled a report in February of 1974. After a psychiatric report was completed and filed in the following month, the office recommended that no action be taken. The Parole Board, in May of the same year agreed, even though the inmate's institutional report and a number of people from the inmate's community supported an early parole. Board members then do tend to rely heavily on the views of Parole Service officers, although this reliance is not restricted to cases in-

volving a possible parole by exception. When it is coupled with the improbability that an inmate could ever submit an adequate application for early parole, reliance becomes control by Parole Service officers of paroles by exception.

One of the obvious reasons for early parole is that imprisonment is or has become an unsuitable form of sentence for a particular inmate. But given the way in which early parole is handled, it seems inevitable that some deserving but unaware inmates will be forced to serve out the normal period of imprisonment before eligibility for ordinary parole occurs. An obvious way to counter this possibility would be to provide more detailed information about all types of parole — as we suggest in Chapter V — and about the special circumstances that might justify early parole.

Unsuccessful early paroles, and the adverse publicity they usually generate, do not encourage Parole Service officers or Board members to seek out deserving inmates. But bad publicity alone should not cause inmates to remain in prison if they have derived maximum benefit from imprisonment unless the purpose of such a sentence is purely to punish offenders.

b) The Decision to Grant Parole in Principle

Paroles approved in principle arose in situations which were indefinite and require finalizing. The decision becomes operative when the situation becomes clarified. For example, parole could be granted in principle provided certain conditions were met first, such as the obtaining of suitable employment or housing.[78] Table XIII shows decisions "in principle" for our sample.

(i) *Ordinary Parole in Principle*

There were seven such decisions in the Ontario part of the sample (7 per cent of all Ontario decisions). Of these seven decisions, one was a decision of parole for deportation in principle, provided the necessary arrangements were made for the deportation trip for both the inmate and her child.[79]

In the five Quebec decisions of parole in principle, the "principles" attached involved employment, a place to live, acceptance by a social agency and treatment in an out-patient clinic.

(ii) *Minimum Parole in Principle*

This type of parole is granted in the months immediately preceding release on mandatory supervision.[80] It is granted "in principle" because

this allows paroles to begin on the date set for mandatory supervision without the need for a further decision by Parole Board members. Only one grant of this type of parole occurred for cases in our sample. It involved an inmate who had previously been refused parole on his PED but who had made a further application.

(iii) *Parole in Principle with Gradual*

Paroles in principle with gradual are usually granted for a period of four months.[81] In theory, a parole in principle with gradual could be granted before the inmate's PED. It is a final decision; it does not require a review or another decision after the "gradual" period. However, a technical report is prepared before the certificate is issued. Only two of the nine decisions of this type in our sample were reviewed before the inmate's PED. One case involved a premature parole. The seven other inmates were granted this type of parole on the date set for their case review. The concept of a preparatory stage amounts to a simple parole with gradual. The expression "in principle" emphasizes the necessity to pass successfully through this first stage.

(iv) *Day Parole in Principle and Day Parole (Temporary) in Principle*

Day paroles in principle are granted for the purpose of allowing inmates to finalize the release plans they are submitting in support of their day parole applications.

Four of the five decisions in the Quebec part of the sample were made to allow inmates to receive official acceptances from centres of transition. One day parole (temporary) in principle was granted to allow an inmate to leave his institution with escort, but without a predetermined schedule.

In Ontario, one of the day parole (temporary) in principle decisions was to allow the inmate to attend a university course but required that the inmate had to be escorted at all times.[82] The other decision was to allow the inmate to take a Canada Manpower course in motor mechanics if accepted.[83] The three decisions of day parole in principle were for employment, the condition or principle being that employment be found.[84]

c) The Decision to Maintain and Continue a Previous Decision

There was only one such decision in the sample[85] that maintained and continued an existing day parole (temporary) decision.

Table XIII
Paroles in Principle According to Security Level of Institution

Decision	Security Level of Inmate's Institution						Totals		
	Maximum		Medium		Minimum				
	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	
Parole in Principle	1	—	2*	6*	2	—	5	6	11
Minimum parole in principle	1	—	—	—	—	—	1	—	1
Parole with gradual in principle	1*	—	6**	—	2*	—	9	—	9
Day parole (temp.) in principle	—	—	1	2**	—	—	1	2	3
Day parole in principle	1	—	2**	1	1	2*	4	3	7
Parole for deportation in principle	—	1*	—	—	—	—	—	1	1
	4	1	11	9	5	2	20	12	32

(The number of asterisks indicates decisions made by Ottawa members)

d) The Decision to Deny or Defer Parole

Paroles are denied by Board members when they do not consider it advisable to release an inmate on parole for the purpose of serving the remainder of his sentence in the community. The inmate receiving such a decision can either apply again, await the Board's review of his case at least once every two years following the denial decision[86] or simply wait for release on mandatory supervision.[87] A denial rather than a deferral is normally given when the remaining portion of the sentence to be served is less than two years. A deferral is a postponement of a parole decision until a specified future date when the case will be reviewed.[88] Table XIV sets out these types of decisions for cases in our sample.

There were 32 denials of parole, fourteen in Quebec and 18 in Ontario. There were 12 deferral decisions in the Quebec part of the sample and 27 in the Ontario part of the sample. It normally occurs where the Board saw promise in the inmate but required more effort before considering parole. Deferral may not be for more than two years. We noted too that the district representative of the Parole Service has the authority to re-submit a case before the deferral date.

Seven day parole applications in our sample were denied. This normally happens when the release plan submitted is not thought to meet the inmate's needs or when day parole itself is not considered to be a necessary or useful measure. Three decisions in the Quebec part of the sample denied day parole because of inadequacies in release plans. Another denied day parole because of the nearness of the PED. In three cases, day parole was thought to be unadvisable.

e) Miscellaneous Decisions

This category of decision refers to decisions which do not directly involve parole but which express the Board's intention to take some future action or to take no action at all. Table XV sets out the miscellaneous decisions we noted in our sample.

The "no actions" decisions of the Board involved premature applications, that is, applications which had been presented before the PED.

(i) *Decision Reserved* ·

This is a decision by the Board to postpone its decision pending completion of investigations or further preparation of reports required by the Board. Such decisions are normally reserved for a month and can be reserved for each month after that, if necessary.[89] However, the sample indicated that reserves of two or three months are not uncommon and are usually based on the need for a particular type of report or treatment which may require more than a month to prepare.

Table XIV
Paroles Denied or Deferred According to
Security Level of Institution

Decision	Security Level of Inmate's Institution						Totals		
	Maximum		Medium		Minimum				
	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	
Parole denied	—	2	12	14	2	2	14	18	32
Day Parole denied	1	—	4*	—	2	—	7	—	7
Parole deferred	8	10	3	14	1	3*	12	27	39
	9	12	19	28	5	5	33	45	78

(The asterisk indicates a decision made by Ottawa members)

Table XV
"Miscellaneous" Decisions According to
Security Level Category of Institution

Decision	Security Level of Inmate's Institution						Totals		
	Maximum		Medium		Minimum				
	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	(Que.)	(Ont.)	
Decision reserved	5	5	13	8	1	3	19	16	35
No action	2	—	—	—	—	—	2	—	2
Proposed action	—	—	—	1	—	—	—	1	1
	7	5	13	9	1	3	21	17	38

In Ontario, the sample contained 16 decisions to reserve. Eight of these decisions were due specifically to the absence of information in the case file (two lacked community assessments, two lacked sufficient information generally and four lacked psychiatric reports).

In Quebec, the sample contained 19 decisions to reserve. The reasons for reserving in these cases are as follows:

a) A change in the release plan due to changes in the community ..... 2 cases
b) Absence of release plan or inadequate release plan ..... 6 cases
c) Psychological or psychiatric reports required by the Board members ..... 4 cases
d) Additional information required to complete the file presentation (police report, community assessment)..... 4 cases
e) Incomplete case preparation: requested reports not received ..... 3 cases

It should be noted that of these 19 decisions to reserve, two were varied because of recent events in the communities where the inmates would reside, three arose from delays in case preparation, and eight decisions requested additional file information or case preparation. Six cases were reserved to allow the inmate to prepare, modify or consolidate their release plans. One would have thought that many of the inadequacies would have been discovered before the hearing.

(ii) *Proposed Action*

This is a decision by the Board proposing a particular action. It may be a request by the Board for clarification of problems raised by the release plan, the community assessment, the psychiatric report, etc. It could be simply a way of achieving a result that could have been done more directly through another type of decision. The advantage, from the inmate's perspective, of the Board using the "proposed action" approach is that this decision requires only two Board member votes. Another type of decision though achieving the same result might require more than two votes. In the one decision of "proposed action" in the sample, this is in fact what occurred.[90] The recommendation of the Parole Service officer was for "day parole in principle", because the Board was enthusiastic over the success of this inmate. The inmate was a habitual criminal and thus required seven votes for any type of parole decision. However, by using the "proposed action" approach, the Board members involved were able to continue and extend the inmate's existing three day per week day parole to five days per week for another three months. While this technique may have achieved a good result in this case, it might not in

others. The use of such an approach raises a question of possible inequality of treatment of similar cases. For example, in the Ontario part of the sample a similar case (a dangerous sexual offender requiring seven votes) received a regional members' decision of "day parole continued and extended" and a request by these regional members for one additional vote.

The additional vote of an Ottawa member led to a request for a further two votes. And the end result was the alteration of the regional decision to "day parole continued".[91] Had the regional Board members undertaken the same course of action by "proposed action", the question of additional votes would not have arisen and the end result would have been different. Clearly, the regional members were prepared to see this latter case suffer the possibility of denial or alteration although they were not prepared to do so in the other case we mentioned.

f) Summary

From the information displayed in Tables XII, XIII, XIV and XV it can be seen as might be expected that of the 195 decisions in our sample, most grants of parole (including "in principle" approvals) were for inmates of minimum security institutions (68 per cent) with fewer in the medium security institutions (38 per cent) and even fewer still in the maximum security institutions (28 per cent).

Similarly, most denials were for inmates in maximum security institutions (46 per cent), with slightly fewer in medium security institutions (42 per cent), and the smallest number in minimum security institutions (23 per cent).

Most miscellaneous decisions were for inmates in maximum security institutions (26 per cent), a lesser number were for those in medium security institutions (20 per cent), and the smallest number in minimum security institutions (9 per cent). While the kinds of decisions made by Parole Board members demonstrated an attempt to tailor decisions to the needs of individual inmates, we could not distinguish any trends in favouring one kind of decision over another.

CHAPTER IV

Phase I: Preparing for the Parole Decision — Information in the Parole Service File

We now consider the first phase of the parole process — the preparation of documentation for the inmate's Parole Service file. Parole Board members, charged with the responsibility of determining the readiness for parole of penitentiary inmates, must to some extent base their decisions on information in the inmate's Parole Service file. It is usually the major source of information that Board members have, apart from what they may learn in a parole hearing.

This chapter describes the kinds of information found in the Parole Service files we reviewed. Given the diversity, nature and importance of this information, our description is lengthy. Based on one hundred and forty-two Parole Service files that we were able to examine, it begins our assessment of the relationship we found between information available to Board members and their decisions regarding parole.[92]

A number of concerns guided our examination of Parole Service files, notably the clarity, consistency and uniformity of documentation. Underlying these are more general concerns about fairness, equality of treatment, and the adequacy of particular information for parole decision-making. This analytical framework reflects our awareness of some of the Board's unstated criteria for decision-making that we examine in greater detail in Chapter VIII.

a) Inmate Files Generally

Although we reviewed only Parole Service files, similar, related files are kept for every inmate by the inmate's institution and the regional office of the Parole Board.[93] No inmate ever sees any of these files. The institutional file is the responsibility and property of the Canadian Penitentiary Service. It is opened when an offender arrives at one of the five regional reception centres in the country. There, as mentioned earlier, the offender is classified by officers of the Penitentiary Service as a minimum, medium or maximum security risk.

The first document in the institutional file is the penitentiary admission form assigning an offender to an institution of an appropriate security level. Classification officers, working with inmates in the institutions, and playing a significant role in the parole process, contribute to the inmate's institutional file and rely upon its contents as a source of information on the inmate's penitentiary life.

The inmate files kept by the regional offices of the Parole Board and the district offices of the Parole Service are opened upon receipt of copies of the penitentiary admission form from the Penitentiary Service.[94] The Board and the Service attempt to keep these files identical. But in practice, the Parole Service file is the working file with copies of its contents being fed to the file in the Parole Board's regional office. Although our focus in this chapter is on the Parole Service file, the other files we have mentioned may also provide information to Board members when they are considering the results of particular parole cases, as Chapter V describes.

b) The Parole Service File

We noted in the files we read that some four months after incarceration in a federal institution, the inmate was sent a form letter by the Parole Board. The letter told the inmate his parole eligibility date and that the Board must receive his parole application five months before that date.[95] We learned that application for parole by the inmate activated the Parole Service to begin what is known as case preparation.[96] This included the collection and filing of information to help Board members make an appropriate parole decision. A Parole Service officer normally had about three months before the hearing to prepare a case although the officer was working on a number of cases simultaneously.[97]

(i) *Organization of the Parole Service File*

Documentation in the Parole Service files was placed either on the left or right-hand side of the file as it was added. On the left were reports, letters, assessments and summaries of the Penitentiary and Parole Services as well as any previous Parole Board decisions. On the right was correspondence to the inmate from family, friends, potential employers and others supporting release on parole. Copies of temporary absence passes and penitentiary transfer forms were also found here.

The right side occasionally contained documentation on previous parole efforts, such as old supervision reports, institutional assessments and so on. Documents and information on past sentences and parole performance were marked "dead file" in some Parole Service Files.[98]

(ii) *Contents of The Parole Service File*

Almost all the documents described in the following pages were usually found on the left side of Parole Service files. We begin with the earliest documentation.

1. *Penitentiary Admission Form*

As mentioned above, this form was completed whenever an offender was assigned to a federal institution. This occurred on a new conviction, a forfeiture or a revocation of parole. The forms we examined were designed to contain basic information about the offender.[99] Spaces were provided, for example, for such data as the type of admission, any previous admissions and operable sentence credits (statutory and earned remission). Also called for were a brief description of the inmate's offence, and the names of the sentencing judge, court and investigating police.

Since the form contained details of the inmate's term of imprisonment, Board members and Parole Service officers used it to calculate the parole eligibility date and to schedule the parole hearing. The form served as a source for the information about the inmate's sentence normally included on the Parole Board's decision sheet — the form on which the parole decision was recorded.

2. *Diagnostic Test Report*[100]

This report recorded the results of academic, intelligence, vocational aptitude, psychological and any other tests conducted by staff psychologists at regional reception centres. We noted that space was provided on the report for recommendations for further testings or referral to a psychiatrist.

3. *Pre-Sentence Report*

A sentencing judge may, in his discretion, call for the preparation of a pre-sentence report by a probation officer to assist the court in sentencing or in deciding whether an absolute or conditional discharge would be appropriate.[101] Consequently, unlike most material in Parole Service files, the pre-sentence report was not a standard inclusion. We found only thirty-five pre-sentence reports in the 142 files we examined. References in some documentation to the existence of such reports not present in the files indicated that not all pre-sentence reports found their way into Parole Service files. Those reports that did normally included details of an offender's offence and circumstances surrounding it, his background and criminal record, his general attitude as well as an assessment by the probation officer of the offender's criminal propensities. Since it often provided a description of the inmate's life and behaviour before the oc-

currence of the offence leading to imprisonment, we found the pre-sentence report to be a unique and helpful document.[102]

4. *Post-Suspension Report*

As alluded to earlier, parole can be suspended and the paroled inmate apprehended and returned to penitentiary. Suspension is essentially a discretionary decision made "to prevent a breach of any term or condition of the parole or for the rehabilitation of the inmate and the protection of society".[103] Part of the required procedure on a suspension is a post-suspension interview and the preparation of a post-suspension report and recommendation by a Parole Service officer[104] responsible for investigating the circumstances of the suspension. This report normally is filed after documentation relating to an earlier parole and may be labelled as "dead" file. We noted that the same officer usually signed the warrant of suspension that provided the necessary authority for apprehending a parole inmate[105] *and* the post-suspension report.

The reports we read occasionally were accompanied by a number of parole supervision reports.[106] We learned that these reports are submitted regularly to the Parole Service's regional representative by every parole supervisor.[107] If a suspension had occurred, an inmate's file then contained additional information on his activities, attitudes, efforts and general behaviour. The existence of several post-suspension reports in a file usually demonstrated a pattern of parole violation or inability to cope with parole supervision.

5. *RCMP Fingerprint Section Sheet*[108]

This document normally contained information about the degree and length of known involvement by the inmate in criminal activities. Since it seemed to be based on the charges, dispositions and court appearances[109] that led to the taking of the inmate's fingerprints, we considered it to be a partial criminal record. The sheets we examined were prepared by the Criminal Records Section of the Royal Canadian Mounted Police from summaries submitted by various law enforcement agencies across the country. About ninety per cent of the files examined in the Ontario sample contained a copy of this document.

6. *Police Report*

Normally solicited by the Parole Board in a form letter request,[110] this report usually contained a brief description by the investigating police of the circumstances surrounding the commission of the offence. Police reports appeared in 109 of the 142 files we examined. The Board's

standard request was for extensive details, including information about the offender's reputation and behaviour as well as a prediction of probable public reaction or support for parole. But only a few police reports attempted to respond fully to the Board's request.

7. *Comments from the Sentencing Judge*

Six of the files we reviewed contained contributions from sentencing judges. These varied from documents entitled "Reasons for Sentence" to letters explaining a judge's approach to a particular sentence and in some cases, recommending parole. There appeared to be no general policy of including in inmates' files any comments on sentencing and parole that a sentencing judge might have made in a written or reported judgment. Documentation in several files contained references to, but no copies of, a sentencing judge's reasons for sentence.[111]

8. *Psychological Reports*

Sixty of the 142 files we read contained psychological reports. Of varying length and detail, these reports went beyond the inmate's scores on the diagnostic tests included in the diagnostic test report mentioned earlier to provide a description of the inmate's mental attitude or condition at the time of admission into penitentiary. Psychological testing only occurs if the inmate consents.

9. *Letter Regarding Inmate's Parole Eligibility Date*

A copy of this letter was found in all files.[112] It was normally sent by the Parole Board to inmates about four months after a penitentiary service began to inform the inmate of the need to apply for parole at least five months before a stated parole eligibility date.

10. *Psychiatric Report*

Suggestions that an inmate be examined by a psychiatrist appeared in many file documents. It was usually, however, the Parole Service that arranged such examinations, and psychiatrists either in the employ of the Penitentiary Service or in private practice that carried them out.[113] Only twenty-three of the files examined contained psychiatric reports and only ten of these were less than a year old. Documents in many case files that lacked psychiatric reports referred to existing psychiatric reports or psychiatric problems and occasionally strongly recommended psychiatric treatment. This was most frequent in reports prepared by Penitentiary Service classification officers, who see the inmate regularly.

11. *Application for Parole*

Almost always in the inmate's handwriting, applications in the files we reviewed were all made on a one-page special form provided by the

Parole Service.[114] This form called for information about the inmate's release plans concerning a proposed residence, employment, dependents, support and assistance. Most applications were brief and without supportive detail.

Eight files in our 142 file samples lacked an application for parole. These concerned inmates whose cases had been deferred or reserved from an earlier date or who were serving sentences of preventive detention that were reviewed automatically by Board members once a year.

Only two inmates in the sample did not submit their application themselves — one probably being submitted by another inmate, the other by the inmate's lawyer. Parole Service procedures appear to require all inmates to submit their own applications.[115]

Our review of inmate files did not, and perhaps could not, reveal late,[116] missing or non-applications.[117] For example, inmates not knowing they may apply for parole would not have been included in our sample. We did, however, discover one mishandled application that was received late by the Board because it had not been immediately forwarded on receipt by Penitentiary Service officers. The particular inmate received a letter from the Board informing him that he had applied too late for his case to be heard when it should have been in February, 1975. However, the inmate was eventually added to the hearing list for the month, and so appeared not to have been prejudiced.[118]

12. *Letter of Acknowledgement*

In every case, the Board acknowledged and accepted the application for parole by sending a letter to the inmate.[119] Early applications, we noted, were also acknowledged but with the additional notation that the application was premature.[120]

13. *General Correspondence Concerning Parole*

Correspondence received by the Board or the Parole Service concerning an inmate's parole is acknowledged[121] and placed in the inmate's Parole Service file. The correspondence we noted varied greatly, including everything from a deportation order to a letter supporting parole from an inmate's wife. Usually, however, correspondence in a file consisted of such communications as letters supporting the inmate's application for parole from family and friends, offers of employment, acceptances into programs, transcripts of marks or progress evaluations from education institutions and letters from an inmate's lawyer. Also noted were letters to the Board from the inmate concerning release plans, the calculation of the parole eligibility date, the reasons for a particular parole decision, and so on.

Sixty-one of the 142 case files analysed contained copies of correspondence of the kind we have described. In a number of files, Penitentiary Service officials referred to correspondence concerning such matters as an offer of employment on release, or acceptance into an alcohol or drug abuse program, without copies of the correspondence appearing in the file.

Responses to correspondence by the Board and Parole Service that were recorded in the files we scrutinized tended to be rather tersely worded "form letter" acknowledgements of receipt.[122] Occasionally, however, responses showed both thoughtful preparation and understanding.[123]

14. *Penitentiary Service "Part I" Form*

This three page form, officially known as Cumulative Summary Part I — or simply Part I[124] — was completed by the Classification Department of the admitting institution on admission or readmission of an offender. The form called for extensive information about the inmate, particularly concerning certain "developmental patterns" such as parental separation or divorce, truancy record, sibling criminal behaviour and alcohol or drug use. It also provided for both official and inmate versions of the offence leading to imprisonment, including its effect on victims and any attempts by the offender to make amends. Other sections on the form required classification officers to record their general impression of the inmate, assess his institutional needs, his capacity for coping with imprisonment and potential for improvement.

The form concluded with the classification officer's proposed program, training and treatment recommendations and the inmate's comments on the proposed program. Space was provided for the signature of the inmate, the classification officer and his supervisor. We discovered only six files in our sample that did not have a Part I form included.

15. *Penitentiary Service "Part IIA" Form*

The Institutional Pre-parole Report — or Part IIA as it is more commonly known — contained the Penitentiary Service's evaluation of an inmate.[125] It was prepared after the inmate had applied for parole or, so we understand, when an inmate was to be released under mandatory supervision or on the expiry of his sentence. We found 102 Part IIA reports in the 142 files under examination.

All of these Part IIA reports described and commented on the feasibility of the inmate's release plans. They also summarized the inmate's penitentiary experience and achievements. Space was provided for

the comments of classification officers on such matters as the effect of confinement, and institutional progress and rehabilitative prospects in areas described as custodial, employment training, visits and correspondence and psycho-social adjustments. We understand these comments should incorporate the reports from such institutional officials as the Warden, the Chaplain, psychologists, psychiatrists, treatment supervisors, vocational training officers and censor clerks. But this was usually impossible to verify in the files we reviewed.

The Part IIA reports conclude with the classification officer's prognosis and recommendation regarding parole. Most officers in the reports we read attempted to predict what the inmate would do "on the outside" and thus his potential for success or failure on parole.

The Part IIA was normally signed by both the classification officer who prepared it, and his supervisor of Classification, as the form required. Occasionally, we noted that special reports prepared by the classification officer had been attached to the Part IIA report. These elaborated on some pertinent facet of the inmate's behaviour or progress and appeared to be based on reports from other institutional officials.

16. *Parole Service "Part IIB" Form*

The Parole Service Interim Investigation and Review — known as Part IIB[125] — was prepared by a Parole Service officer once an application for parole had been received. It served to update and amend information in the Part IIA report. Included were summaries of significant views from law enforcement agencies and judges that were thought to be relevant to consideration of the inmate's parole. Also mentioned were representations from those expressing interest in the inmate, an interest that could have been expressed by letter, telephone or visit to Board or Parole Service officers.

The Part IIB form also required a review and assessment by the Parole Service officer of the inmate's previous parole experiences. Preparation for completing the form normally included an interview with the inmate. Space was provided on the form for the officer's impressions of the inmate in that interview. Most Part IIB forms we read contained an assessment of the inmate's release plans that pinpointed possible problems. If the officer considered it useful or necessary, he at this point requested what was called a community assessment.

17. *Community Assessment "Part III"*

The community assessment was recorded in the Parole Service inmate files we read on the Cumulative Summary Part III form.[127] The 107 assessments we found in our sample of 142 files were prepared by officers

of the Parole Service or private agencies such as the John Howard Society or the Salvation Army. The person contributing a community assessment to an inmate's file was often the person who could eventually have responsibility for the inmate's supervision on parole.

Community assessments appeared to be investigations of the viability of inmates' parole release plans. These investigations normally assessing the stability of an inmate's relationships with significant family members and friends. They included examining the feasibility of a release plan in terms of accommodation, employment or education and financial support. They covered the possibility of the inmate returning or reverting to activities likely to involve him again in criminal behaviour. An important aspect of any community assessment was a sounding of community attitudes towards the inmate. Since a parolee must report periodically to a parole supervisor and the local police, the community assessment also involved finding out whether supervision was possible in the community proposed by the inmate. A related area of inquiry was the understanding by an inmate's family and friends of the conditions of parole, the need for supervision and the seeking of early help with potential problems.

The community assessments we examined concluded with an overall assessment of an inmate's release plans, and if this was positive, named a willing supervisor and recommended any special conditions of parole thought necessary. Space was provided on the Part III form for listing people contacted and describing the nature of the contact.

We noted that community assessments for temporary absences granted by the Penitentiary Service were briefer and less detailed than those prepared for parole applicants.[128]

18. *Parole Service Appraisal and Recommendation "Part IV"*

The Cumulative Summary Part IV form recorded the Parole Service officer's appraisal of a case and his recommendation regarding parole.[129] Unlike other documents in the Parole Service file, the Part IV was considered a confidential document by the Parole Service and Board. As a result, it was only found in an inmate's Parole Service file, unlike other documentation in this file that was duplicated elsewhere.[130] All but twelve of the 142 files we analysed contained completed Part IV forms.

19. *The Decision Sheet*

Normally, the last document to enter the Parole Service file was the completed decision sheet form.[131] This was considered as the "official record of the Board's decision".[132] We understand that while the preparation of this sheet has been the responsibility of the Parole Service,

Reorganization of the Service and Board assigns the function to the regional offices of the Parole Board.[133]

20. *The Case Face Sheet*

Our exposure to Parole Service files confirmed that the quantity of information they contain and how it is organized presented a formidable barrier to any user, whether or not they may be familiar with Parole Service forms, terminology and procedures. To assist Parole Board members in getting over this barrier in their review of an inmate's file before a parole hearing, we noted the insertion in the file of what was known as a case face sheet.[134] Often prepared by Parole Board regional office staff (and sometimes prepared by Board members), this one-page form attempted the rather awesome task of summarizing the inmate's file.[135]

The case face sheets we read indicated in a word or brief phrase the conclusions reached in reports by Penitentiary and Parole Service officers and in community assessments as well as describing the inmate's release plans and major problems. Sparse descriptions of the inmate's offences, sentences, criminal and parole history and family and marital situation rounded out the sheet's contents.

Board members found the case face sheet useful. We noticed that many of the questions they asked of inmates in hearings mirrored the organization of information in the case face sheet form. In fact, their workload probably forced them to rely on it more than they realized.

(iii) *Summary of Contents of Parole Service Files*

Table XVI indicates how frequently certain documents occurred in the files we examined. It also indicates the number of documents we relied on as a basis for the previous description and the analysis that follows.

(iv) *Information in Parole Service Files*
— Preliminary Conclusions

No one file contained every document named in Table XII. However, the total number of documents gives some idea of the amount of information accumulated in Parole Service files, and of the work involved in preparing for a parole decision.

There was, of course, a good deal of repetition in all the files we examined. Information was frequently restated or recast in different forms. In fact, the size of files could probably be reduced substantially by requiring that original information appear only once, in a particular place on a particular form. There should be no need to summarize or to restate information that is already succinctly stated in this way.

Table XVI
Frequency Of Documentation In
142 Sample Files

Document*	Ontario Sample (65)	Quebec Sample (77)	Total Sample (142)
Pre-sentence Report	23	12	35
Police Report	53	56	109
Psychological Report	50**	10	(60)
Psychiatric Report	19	4	23
Correspondence (of any kind)	45	16	61
Parole Application by Inmate	57	77	134
Case Summary Report			
Part I	62	74	136
Part IIA	60	42	102
Part IIB	63	66	129
Part III	44	63	107
Part IV	63	65	128
	539	485	1,024

* Appearing at least once in a file.
** Includes admission tests, Quebec sample does not.

Repetitiousness contributed to making our reading of Parole Service files a tedious exercise. Our method was partially to blame for this — we sought all the information in a file, not just the specific bit of information that many users would probably be seeking.

However, if the primary purpose of the Parole Service file is to provide information for the parole decision-maker, then our method should parallel the method used by Board members.

Ideally, Board members should review all available information on an inmate in preparing for his parole hearing. Yet, in our experience, Board members rarely appeared to have done this. Their workload left them with little time for preparation. The size, organization and complexity of the Parole Service file, and the nature of its contents, all contributed to the reliance by Board members on such aids as the case face sheet and the most recent summaries and recommendations in a file. This raises important questions not only about the influence of those who prepare this documentation, but also about the adequacy of information collection and use that the Board will no doubt be considering as it makes plans for more effective information systems.

How useful Board members find Parole Service files depends on many factors. We now consider a number of these.

(v) *Analysis of Information in the Parole Service File*

Our reading and examination of files brought to the surface a number of ways in which the usefulness of these files could be improved. The analysis that follows presumes that clearly written, internally consistent files, prepared in a similar manner for all inmates, would be of great assistance to Parole Board members.

1. *Clarity*

The Parole Service files we read represented attempts by perhaps as many as a dozen people to communicate fact and opinion to Board members. These communications were all too frequently difficult to understand.[136]

Consider the probation officer who wrote without further explanation in a pre-sentence report:

> We have evidenced some conscience awareness by the offender.

A psychological report that said only "low self concept".

A classification officer's unsupported statement that:

> (There are) several things (the inmate) has not been able to deal with.

A pre-parole report containing the bald assertion:

> (T)aking into consideration this woman's background and recent life-style prior to incarceration, her behaviour and response to our limited programs is not entirely negative.[137]

Or others that concluded, without suggesting that parole be granted or denied:

> This is not a particularly strong case for parole.
>
> The prognosis is poor and he is not ready to learn from his past failings.[138]

What is one to make of repeated descriptions by a classification officer of an inmate's wife as a "drug-user",[139] a statement that another inmate "has used marijuana"[140] even though drug abuse was not at issue?

Nor is understanding enhanced by the use of ambiguous expressions that we found were employed by different Parole Service officers to convey different meanings. Particularly abused expressions were "con-wise", "insight", "drug use" and "criminogenic behaviour".[141]

Misunderstanding and even bias could result from the manner in which some statements by Parole Service officers were made. Consider:

> Drug use by the inmate has not yet progressed beyond soft drugs.

Psychological and psychiatric reports lost much of their message by the manner in which they were written. We found that most psychological reports were so brief and similar that it soon became difficult to distinguish one from another. A more discerning choice of language and succinct explanations where necessary would increase the relevance of these reports.

Psychiatric reports, on the other hand, were at times needlessly vague. Some went beyond an assessment of an inmate's mental health. For example, after describing a very brief interview with an inmate serving a sentence for rape, one psychiatrist concluded:

> Parole is felt to be a reasonable chance.[142]

Problems of clarity of expression were nowhere so prevalent or serious than in the pre-parole reports prepared by classification officers. Fully a third of these reports left us not knowing just what the classification officer recommended. Of course, the classification officer is in an unusual position. Although this officer likely knows the inmate better than any Parole Service officer, he is asked to predict how an inmate will behave outside the penitentiary walls when his knowledge is limited to behaviour within those confines. Lack of clarity in the pre-parole report may be the classification officer's way of protecting himself should his prognosis, based as it is on a limited experience, turn out to be wrong.

The crucial recommendation in the Parole Service file was often that of the Parole Service officer. We observed that the contributions of these officers to the files in our sample varied significantly in both clarity and consistency. Some officers could not hold back their conclusions and recommendations for the appropriate space in the Part IV — appraisal and recommendations — form. As a result, unless the Part II — investigation and review — form was read as well, the thrust of their comments was lost.

What many contributors to Parole Service files seemed to forget was that it is their contribution, and not themselves, that was stapled into the file. If at all possible, a contribution should be able to stand on its own. And this is as necessary for classification and Parole Service officers as for other contributors, even though they plan to attend the parole hearing. Such plans can go awry, and did so in a number of hearings we attended.

Some comments in the files we read lacked clarity because without further explanation they lacked relevancy. Several of the examples we have already mentioned illustrate this. A further example was the statement by a classification officer that there had been "no church attendance" by the inmate.[143] Without using this observation as an illustration of a broader behavioural pattern — such as a general withdrawal from formal or social settings — the classification officer's statement is of no help whatsoever because, as far as we discovered, attending church was not a prerequisite for parole.

2. *Consistency*

Internal inconsistencies occurred in a number of the files we reviewed. Most of these no doubt arose through hurried preparation and inadequate consultation between file contributors, notably Penitentiary and Parole Service officers. Whatever the cause, these inconsistencies affect the reliability of facts or opinions on which a Parole Board member may wish to rely.

We noted a Part I form in our file[144] that mentioned the inmate had a "very good supervision relationship on his last parole". The Part IV form directly contradicted this statement and described the last supervision relationship as "poor". Since the file did not contain any copies of parole supervision reports, we could not verify which assertion was correct.

Another file's Part I described the inmate as divorced, while the Part IIB stated that the inmate's wife was thinking of divorcing him.[145] We examined a case file in which the Part IIA stated that the inmate's release plan involved deportation to England. The Part IIB, on the other hand, described his plan as involving deportation to the United States, where he happened to face a number of outstanding charges.[146] Another file con-

tained a Part IIA statement that the inmate lacked support from his family, while Part IIB spoke of a "good relationship with his mother". In addition, the file contained supportive letters from the inmate's sister and father.[147]

We have already mentioned inconsistencies in a number of files that asserted the existence of a pre-sentencing or psychiatric report or other important document that was not present in the file. This led in some cases to Board members not seeing such documents, or delaying decision until they could.

3. *Uniformity*

A fairly obvious observation flowing from our study was that the nature and extent of information in an inmate's Parole Service file determined to a significant degree the Board's parole decision. In other words, the presence or absence of certain information or documents in a file in some cases resulted in parole being granted, or denied or reserved. In fact, Parole decisions were more easily and confidently reached when an inmate's files contained extensive documentation. But whether a particular inmate's file provided Parole Service officers with a basis for a firm recommendation, or Board members with a sound basis for decision, often seemed to be a matter of chance. Our sample's files exhibited a distinct lack of uniformity in the presence of various types of information and documentation. The dependence of the Parole Service and Board on sources of information outside of their control explains in part this lack of uniformity — a lack that in our view prejudices effective parole decision-making and fair treatment of inmates who are eligible for parole.

(a) *Contribution by the Sentencing Judge*

Take, for example, our finding that sentencing judges contributed to only four per cent of the files we reviewed. Given their discretion and unique position, it is surprising that so few judges expressed direct interest or concern in the possible actions of Parole Board members who may, in a sense, undo the sentences they have imposed.[148] It is also surprising that only a quarter of the files we examined contained pre-sentence reports, a report requested by trial judges in a clear minority of cases in our sample that can be helpful in making sentencing and parole decisions.

(b) *Presence of a Psychiatric Report*

Whether an inmate had undergone psychiatric examination and a report prepared also appeared to be a question of chance. Only sixteen per cent of the files we examined contained psychiatric reports and less than half of these were under a year old. Many other files contained

suggestions, requests or information that would indicate the need for psychiatric examination, but yet a psychiatric report was absent from the file. For example, a 1971 Board decision stated:

> (This is) a very disturbed suicidal inmate. The classification officer and the Parole Service officer urged us not to give him an adverse decision at this time since he is too disturbed.[149]

Despite this observation, and four intervening years, no psychiatric report had been filed.

Another file referred to an old, unfiled, psychiatric report that apparently described the inmate as on the "brink of suicide". In 1970, it was noted that his mother had committed suicide. Again, no psychiatric report could be found in the file.[150]

In yet another case, both a penitentiary psychologist and classification officer strongly recommended psychiatric treatment of an inmate. But there was no record of either a psychiatric assessment or treatment in the inmate's file.[151] If an inmate has psychiatric problems, then surely this should be discovered and assessed early in his incarceration so that he can receive treatment before any type of release. We were unable to discover when an examination was suggested, why some inmates saw psychiatrists, and some didn't.

Lack of uniformity was also present among the psychiatric reports we read. Some were no more than brief comments on the condition of an inmate. Others had been thoroughly prepared by an expert team. Some went beyond an assessment of the inmate's mental health and beyond the competence of the reporting psychiatrist to recommend whether or not the inmate should be paroled. Some were specific, some general. We can only conclude that this lack of uniformity hampers Parole Board members in making effective decisions, and as well, is unfair to many inmates.

(c) *Contribution by Investigating Police*

Another possible source of information in an inmate's file that is outside the control of the Parole Service and Board is the report by investigating police. Present in some seventy-seven per cent of the files we reviewed, the average police report was no more than a brief description of the offence. Although the Board asks police to provide a fairly detailed report, including an assessment of community reaction to or support for parole, only a handful of police reports in our sample attempted to do this.

This lack of uniform treatment, however, may not have harmed inmates whose files contained only a skeletal police report. We noted that

some police reports were written in a manner that affected their reliability. For instance, a police report in one file stressed the offender's "extreme potential" for violence, an evaluation that was challenged later in the file as a "gross exaggeration" by two psychiatrists.[152] Another police report described an offender as

> ... a lesbian (who) has caused much damage to (X) and (Y) institutions. She is a prostitute, a drug addict and an alcoholic. It is undeniable that she will never accomplish any honest work and is considered an undesirable being by society.[153]

Other contributions to the offender's Parole Service file did not support this evaluation.

In general, we gained the impression that more frequent contacts have led to improved cooperation between Parole Service, Board and police. Differences of opinion, whether stated publicly or in contributions to Parole Service files, have apparently not hampered this trend.

(d) *Contributions by Penitentiary and Parole Services*

Lack of uniformity also existed among the contribution to inmate files by Penitentiary and Parole Service officers. Differences often were probably attributable to differing levels of skill, sensitivity and experience.

There were also differences stemming from variation in the assessment and reporting practices in several institutions. Classification officers at Warkworth Institution, for example, added to their Part IIA report the comments and recommendations of what was known as the "mini-board". These normally represented the combined or individual views of other prison staff, notably the living unit supervisor, the chairman of the inmate training board and occasionally the supervisor of classification. At Cowansville, we noted that the Part IIB was gradually being replaced by a report generated in a case conference of institutional and district Parole Service officers.

(e) *Community Assessments*

We observed significant differences between community assessments. Some of these were prepared by Parole Service officers, most by private agencies or individuals. Consequently, a lack of uniformity was to some extent understandable. However, the relevance of comments in community assessments was often questionable. One Part III, for example, criticized an inmate who disclosed in requesting a temporary absence pass that he wished to see three women. It went on to recommend that the inmate should "clarify his versatile love life for the

authorities" before any pass was granted.[154] Many contributors of community assessments could benefit from Board guidelines and instruction on the most desirable way of preparing and presenting these very important reports.

As we have already mentioned, community assessments appeared in about seventy-five per cent of the files we read. Whether this report was prepared or not rested with the responsible Parole Service officer. Without it, Board members in our estimation were hampered in considering the full implication of a grant of parole. Those inmates whose files lacked this document were consequently sometimes at a disadvantage when their case was considered. We shall have more to say later in this Chapter about the role of the Parole Service officer in providing information for parole decision-making.

(f) *Previous Experience on Parole*

Another document — the parole supervision report — was not always present in the files we read of inmates who had been paroled before. We found this strange since an inmate's previous experience while on parole would appear to be relevant and useful information for Board members.

(g) *Correspondence Supporting Parole*

While we could not firmly establish that the Board equates the amount of correspondence supporting parole with community support for parole, we are left with the impression that letters of support increase the likelihood that parole will be granted. The nature and extent of correspondence was described at two places in most files, as "Representations" in the Part IIB form, and under "Visits and Correspondence" in the Part IIA form.[155] Board members were normally aware of the extent of recent correspondence and indeed such correspondence often provided useful information concerning the viability of the inmate's release plan.

However, more than half of the files we examined contained no correspondence at all. Is the possibility of parole reduced for the inmate without family or friends or contacts in his community who receives no correspondence supporting his parole?

4. *Contributions by the Inmate*

One source of information uniformly undeveloped in the files we examined was the inmate. In most files, the object of the whole exercise appeared as a passive object.

This is not to say that the inmates in our sample had no opportunity to contribute. The first opportunity arose on admission to a penitentiary.

The Part I form contained a section providing for "Inmate's Comments re Program Plans".[156] These plans were the suggestions of a classification officer for treatment, education, training, and social activities during imprisonment. But in not one file that we reviewed had the inmate placed his comments in the appropriate space.

Inmates also had an opportunity to contribute when they applied for parole. The size and format[157] of the application form did little to further this means of contribution. Most of the information required by the form was difficult or impossible for the inmate to provide. How can the inmate in a short time obtain offers of employment, living accommodation and commitments from family and friends when he is incarcerated? As a result, the contents of most applications for parole were brief and void of meaningful detail. They were couched in terminology garnered from classification officers, institution psychologists and Parole Service officers. Inmates, in applications we examined, stated they had gained "insight" or altered their "self-concept". It is ironic that the very terms employed and used inconsistently by institutional and Parole Service staff were the subject of mimicry by inmates who obviously believed there to be some type of magic attached to them.

Another way inmates could contribute was by writing to the Parole Board. Their letters were added to their Parole Service file and thus constituted at least in theory a source of information that may be considered by Board members when deciding on parole. Few inmates in our sample availed themselves of this opportunity.

(vi) *The Crucial Role of the Parole Service Officer in Case Preparation*

Our examination of Parole Service inmate files and subsequent monitoring of the parole hearings and Board decision-making for these inmates demonstrated the importance of the Parole Service Officer's role in case preparation. As Chapter VI will show, Board members followed the Parole Service officer's recommendations in the Part IV form in the great majority of cases in our sample.

In carrying out his case preparation responsibilities, the Parole Service officer has considerable discretion. He must sort and sift the facts and opinions of other file contributors and sources of information. He must acquire a sense of the inmate's potential for parole although he normally will have met and talked with the inmate for less than an hour.

In summarizing and updating the case file from the time when the Part I and Part IIA forms entered the file, the Parole Service officer must cover a period ranging from a year to a large number of years.

This task may be simplified if several parole applications and Board decisions have occurred during this period. There would then be earlier documentation: such as Part IIA, Part IIB, and Part IV forms in the file. If the Parole Service officer relies upon these, his work will be reduced, but possibly less accurate and less reliable. If the officer chooses not to rely totally on earlier documentation, his work will be increased by the need to seek new information. His recommendation would then be based on more up-to-date information and should thus be more reliable.

What the Parole Service officer decides to do at this stage in case preparation settles what information Board members will have at their disposal when they must reach a decision regarding parole.

If, for example, the officer decides not to request a community assessment, our experience indicated that the inmate's chances for parole were greatly reduced. Board members were understandably reluctant to grant parole without a community assessment although they did so in about ten per cent of the cases in which they granted parole. Even when a Parole Service officer decided to request a community assessment, his selection for the community investigator of those aspects of the inmate's release plan requiring special attention shaped to a considerable degree the final assessment.

The discretion exercised by the Parole Service officer at this juncture in case preparation appeared to reflect his evolving preference, based on his short interview with the inmate and available information, for or against parole. If the officer had decided against parole,[138] his preparation of the Part IIB was brief, he did not request a community assessment or a completed Part III form, and he immediately prepared the Part IV form containing his recommendation against parole to the Parole Board. It also appeared that the officer would not pursue the preparation of a psychiatric report, even though he might have done so were he to recommend that parole be granted. Board members disagreeing with a Parole Service officer's recommendation in such circumstances must decide without the help of a more fully prepared file.

The Parole Service officer's discretion also affected his listing and summaries of "significant" representation made on behalf of the inmate. So too did his impressions of his interview with the inmate that were recorded in the inmate's Parole Service file reflect the officer's selection of what he considered to be relevant and useful to Parole Board members as well as his own preference or decision regarding parole.

Although we generally were impressed by the integrity and sincerity of Parole Service officers, their crucial influence in parole decision-making should not be under-emphasized.

(vii) *Delay in Filing Information*

Our examination of case preparations also included the timing of entry of certain standard forms or documents into the Parole Service files. We noted that all documents entering these files were stamped with the date of entry and the name of the district Parole Service office originating the document. Comparing this date of entry with the actual date of an inmate's parole hearing resulted in a time span with three-fold significance. First, it was a rough indication of the amount of time taken preparing a particular document. Second, it showed the maximum amount of time Board members have had to analyse the information in the document. And third, it reflected the reliability of the information in the documents, reliability being reduced by the aging of information produced by investigation or other fact-finding.

Reliability, especially of the information in documents like the community assessment, would appear to call for the gathering of information as close to the date of the parole hearing as possible. On the other hand, Board members need time to read and analyse this information. Obviously, a balance must be reached. Increased reliability gained through "late" preparation would be of no benefit if Board members lacked adequate preparation time.

We have correlated dates of entry for the documents Cumulative Summary Part IIA, Part III and Part IV for the files we reviewed. Part IIB was neglected since it almost always entered the file at about the same time as Part IV. Tables XVII and XVIII compare these dates with the date of the parole hearing for the Ontario and Quebec samples. Table XIX combines these tables to give an overall picture of the sample.

1. *Comments and Suggestions on Delay*

For sixty-two per cent of the files we examined, the institutional preparole report (Part IIA) was prepared and filed more than a month before the parole hearing. It is likely that such a report would need updating to be of maximum assistance to Board members.

This need for updating was recognized, of course, by a section in the Part IIB form, entitled "Amendments to Previous Parts". But although Part IIA was completed by a classification officer familiar with the inmate's institutional behaviour, Part IIB "Amendments" were provided by a Parole Service officer. Presumably, consultation between these officers could lead to a satisfactory updating of the institutional report. However, our experience indicated that consultation of this nature was exceptional, in part because of the heavy caseloads most officers seemed to be carrying.

Table XVII
Ontario Sample: Delay in Filing

Filing Date (Proximity to Hearing)	Documents		
	Part IIA	Part III*	Part IV
None (document absent)	5	42	2
Less than 1 week before	0	5	12
Less than 1 month before	3	11	20
More than 1 month before	57	18	41

* Include only inquiries requested at the time files examined.

Table XVIII
Quebec Sample: Delay in Filing

Filing Date (Proximity to Hearing)	Documents		
	Part IIA	Part III*	Part IV
None (document absent)	33**	12	20
Less than 1 week before	2	3	21
Less than 1 month before	10	4	36***
More than 1 month before	30	56	8

* Includes all community inquiries in six months preceding the hearing date.
** For Cowansville, a case conference serves as Part III.
*** Includes twelve special reports prepared in previously deferred cases.

Table XIX
Total Sample: Delay in Filing

Filing Date (Proximity to Hearing)	Documents		
	Part IIA	Part III	Part IV
None (document absent)	28	54	22
Less than 1 week before	2	8	33
Less than 1 month before	13	15	61
More than 1 month before	87	74	49

The situation could perhaps be improved by stressing consultation or by the later submitting of the Part IIA report by classification officers. Delay, in some instances, could be beneficial! Where cases are deferred or reserved, classification officers should update the original Part IIA report no earlier than a month before the scheduled hearing.

Community Assessments, the Part III report, were admittedly difficult for officers to schedule since they were sometimes carried out by other district Parole Service officers or private agencies. Again, many Part III reports were received more than a month before the hearing and as a result could require updating. If, however, all parole applicants had the benefit of a community assessment, the resultant delay might cause most Part III reports to enter the Parole Service file some two or three weeks before the hearing.

Later filing may increase reliability but leave Board members with too little time for file review. Some twenty per cent of the files in our sample were ready for viewing by Board members only in the last week before the parole hearing. A number were completed a day or two in advance of the hearing. And some were not completed at all. Delay here made it difficult at times for Board members to organize their work.

The Parole Service officer's Part IV report and recommendations for parole could not, of course, be completed until Part II and Part III, if requested, were filed. This no doubt accounted for the late filing of this document that we observed.

Late filing, however, was not the only barrier to adequate preparation by Parole Board members. Our experience indicated they did not have sufficient time for preparation. The scheduling of hearings and other duties means that the conscientious Board member spent many evenings reading files for the next day's hearings. Even if a late document entered an inmate's file three days before his parole hearing, a Board member facing several consecutive days of hearings often did not have time to consider its contents fully.

2. *Postponing Decisions Because of Case Preparation*

Since delay sometimes meant that documents were not available at the time of the parole hearing, Board members on occasion decided to defer or reserve consideration of their decisions. This meant the inmate could not then expect to be paroled on his parole eligibility date even if his case merited such a decision.

The documents we have used to consider the problems of delay were not, if missing from the file at the time of the hearing, the cause of most decisions to reserve. The presence of the responsible classification and

Parole Service officers at many hearings provided a means of supplying some of the missing information to Board members.

Most of the Board's decisions to reserve stemmed from delays in completing or submitting psychiatric reports and community assessments. And most of these were to be prepared by people outside the control of either the Parole Service or Board. However, we did note substantial delays in receiving psychiatric reports from the Penitentiary Service's psychiatric staff.

c) Conclusions

(i) *The Need for Specific Guidelines*

The difficulties and inadequacies in the Parole Service files that we observed and have described in this Chapter, such as lack of clarity, consistency and uniformity, needless repetition, and so on, may be caused in part by the generality of the only single obvious objective for collecting and recording information in these files. This objective would seem to be the amassing of the greatest possible number of aspects of the case being prepared. Consider the following instruction given to Parole Service officers in their Procedures Manual.

> In order to arrive at a decision the Board first considers all possible information about the offender that will help measure his readiness for release, and the readiness of the community for his return. This requires a study of all pertinent information relating to the offender's social and behavioural background and development, the motivation underlying his criminal behaviour, his adjustment and significant changes in insight and attitudes towards improving his knowledge and skills while in the institution, and a satisfactory parole plan for his return to the community where the potential for living and employment are favourable.[159]

The Manual goes on to describe the Parole Service officer as

> ... A skilled analyst who can winnow out the significant and pertinent factors from the irrelevant and inconsequential.[160]

But nowhere could we find further guidance to these officers and other file contributors giving them more specific directions on what was significant, pertinent, relevant or consequential to parole decision-making. The Parole Board's lack of specific stated criteria for the granting or denial of parole is one explanation for this. Without such criteria, it would be difficult to design guidelines for file contributors. And without specific guidelines, what gets into an inmate's file, or doesn't, is left to the discretion of officers responsible for case preparation.[161]

We noted that in general these officers to the best of their abilities attempt to collect information that will be useful to Parole Board

members. They considered the opinions of others whom they thought knowledgeable. Apart from their own preferences, relevance seemed to be determined on the basis of the kind of information they thought Parole Board members had relied upon in past decisions.

In our view, the usefulness of information in files would be greatly improved by the existence of guidelines indicating in fairly specific terms the kinds and sources of information that are relevant to parole decision-making. The dependence of these guidelines on criteria for granting and denying parole is obvious. We will have more to say about the latter in Chapter VIII.

(ii) *Quality Control*

Problems of clarity, consistency and uniformity could be reduced by closer control over case preparation, more training for file contributors, and increased consultation between file contributors. The control exercised by the Board's district representative and headquarters staff, or by the new quality control officers of the Parole Service,[162] is a start. But a more comprehensive and systematic approach is needed.

Streamlined forms could reduce repetition. File contributors should be trained to write clearer and more objective reports, identifying what is original or new information and what is not, and frankly assessing the reliability of second-hand information. File contributors should see case preparation as a team effort by all contributors, and the forms for their reports and recommendations designed accordingly. Consequently, the Parole Service Part IV report and recommendations should not be a confidential document.

The need for up-to-date information should be stressed. Contributors should be asked to screen all information rigorously to prevent irrelevant data from entering Parole Service files. Supervision over the contributions of outside sources should be exercised on the substance as well as the form of these contributions. Information from outside sources that is useful to Board members should be obtained for every inmate, even if this involves mandatory reporting. Where special examinations or reports are suggested or clearly needed, these should be obtained and filed at least several days before the parole hearing. And uniform procedures should govern the carrying out of such activities as psychiatric examination and reporting.

Inmates should not be prejudiced by not having a community assessment in their files when their parole is considered. The community assessment should be mandatory requirement for all case files, whatever the final recommendation of the responsible Parole Service officer.

(iii) *Participation of the Inmate*

An important source of information in case preparation that was uniformly overlooked in our sample was the inmate. Inmates first learned something about parole on admission, when their immediate concerns were far from the very distant prospect of parole. The second contact with parole usually occurred in the interview conducted by the Parole Service officer responsible for case preparation. And here, the interview was in most cases merely a recitation by the inmate of basic information required by the officer. The final contact was the parole hearing — an event greeted with some trepidation by most inmates whose involvement in case preparation and awareness of the information the Board members had before them or the mechanics and criteria of their decision-making was minimal.

If one objective of incarceration and parole is to increase the social responsibility of the offender, one method of attempting to do this would be to increase participation by inmates in the preparation of their case for decision by members of the Parole Board. The inmate in some instances is quite clearly the best person for testing the accuracy of certain information that may enter his file. Yet he is unable to object to any information in the file unless he becomes aware of it indirectly or at the parole hearing.

This study has convinced us that inmates should have a greater opportunity to participate in the gathering of information for consideration by members of the Parole Board. Effective participation, however, requires that inmates be better informed about parole, the Parole Board's criteria for decision, the correctional system generally, and the contents of the inmates' Parole Service files. The inmates in our sample were never aware of all the information in their file although they often surmised what the files did contain. While concerned, because of a lack of knowledge or the assistance to use what knowledge they had, they were doomed to function on the basis of rumour and hearsay, dependent and subservient to officers and Board members whose procedures and reasoning they often did not comprehend. We return to the question of inmate access to their files in Chapter VI.

One additional way of fostering inmate participation would be to provide inmates with the assistance of knowledgeable and impartial persons in order to prepare a written submission to the Parole Board. Although the level and relevance of such submission would obviously vary greatly, we believe that exercise could occasionally be helpful to Board members, and also to inmates who might be forced to realize the shortcomings of their own parole applications.

(iv) *Investing in Case Preparation*

An impression gained during this study is that additional investment in case preparation may yield long term savings. The study's scope excluded any assessment of the success of Board decisions to grant parole. However, reviewing the information available to the Board for its parole decisions, and how that information is gathered or prepared, indicates that Board members must often operate with lower standards of accuracy and reliability than those demanded by the courts that sent the parole applicant to prison. This is not to suggest that the Board use court-like methods of finding facts and testing opinions. However, the Parole Board should seriously consider ways of improving the information base for its decisions.[163]

Not all Board members view case preparation and the information available to them with complacency. Some members considered the hearing as a good opportunity to check the accuracy of information in an inmate's files. Whatever its effectiveness for this purpose, the hearing cannot generate many kinds of information that could be useful, and perhaps even crucial, to parole decision-making. Improved case preparation, particularly if file contributors have more guidance, should produce better parole decisions.

CHAPTER V

Phase I: Comments on Contributors to the Parole Service File

As we indicated in the previous chapter, the persons providing documentation for the inmate's Parole Service file play an influential role in parole decision-making. This chapter attempts to assess the influence file contributors have on the decisions reached by Parole Board members for the cases in our sample. We then consider a number of influences on major file contributors and their effect on case preparation.

a) The Influence of File Contributors on Parole Decisions

Many people contributed, directly or indirectly, to the documentation that entered the Parole Service files in our sample. Among these people were Parole Service officers, Penitentiary Service classification officers, Parole Board members, custodial authorities, police, judges, the inmate's family and friends, potential employers, private social agencies, members of the public, and rarely, the inmate.

Although Parole Board members made the decision that determined whether or not an inmate was paroled, all of these people had some form of input into the process leading to this decision. Some inputs involved no more than a few facts — some relevant, some not — conveyed by telephone to a Parole Service officer or in an unsolicited letter. Others were major contributions in the form of mandatory formal reports. Some were specific in thrust, a summary of information relevant to an inmate's potential for parole, an evaluation of the inmate's attitudes or mental health, or a recommendation that the inmate remain in prison, or be released on parole. Understandably, we have focused our attention on these kinds of contributions. Within them, whether stated or not, was a message to the Parole Board to make one sort of decision or another.

Some of these contributions, or pre-decision contacts as we have called them, were more narrowly based than others. A psychiatrist's report, for example, rested on a number of observations concerning an inmate's mental condition. A Parole Service officer's pre-decision con-

tact, on the other hand, was more broadly based, relying on information from a variety of sources such as a pre-sentence report, institutional and community assessments, and a personal interview.

A number of pre-decision contacts were standard inclusions in nearly all files. Penitentiary Service classification officers and Parole Service officers must make several types of file contributions as part of their responsibilities. Other pre-decision contacts arose voluntarily — a letter from a sentencing judge, for example.

(i) *Pre-Decision Contacts in the Sample*

We analysed 148 case files in our sample, 73 in Ontario and 75 in Quebec, for the number and nature of pre-decision contacts, and then compared these with the Parole Board's decision in each case. To qualify as a pre-decision contact, a contribution had to include a summary, evaluation or recommendation that conveyed a fairly definite idea of the decision the contributor would like to see the Parole Board make.

Table XX lists the sources of pre-decision contacts and the nature and form in which the contact appeared. Contacts were ranked in descending order of importance according to impact our assessment of their frequency of appearance and specificity.

Excluded from our analysis was unsolicited correspondence unless sent to the Parole Board or Service by a source listed on Table XX. Correspondence from family, friends or potential employers was difficult to assess and often was too imprecise or biased to be influential. The attention of Board members was usually drawn to significant correspondence by the "Representations" section in the Part IIB form.

In general, the number of pre-decision contacts varied widely from one file to another. Sometimes the only pre-decision contact was the Part IV recommendation by a Parole Service officer. In other cases, there were so many pre-decision contacts that our count had to be limited to the more recent and significant ones. Normally, however, there were no more than nine or ten pre-decision contacts relating to the February 1975 parole decision in each of the files we examined.

Our ranking of several types of pre-decision contacts or "messages from contributors..." requires some explanation. We ranked contributions from police, for example, fairly high (7th out of 16) because of their frequency. The Parole Board had not, in the cases we studied, formally requested any recommendations or evaluations from police regarding parole.[164] However, as we mentioned earlier, the intent of a number of police contributions was clearly to prevent a grant of parole.

Table XX
Messages from File Contributors to Parole Board Members
(Pre-decision Contacts)

	SOURCE	NATURE	FORM
Most Important	1. Parole Service officer	recommendation	Part IV
	2. Classification officer	recommendation	Part IIA
	3. Board members	evaluation and/or recommendation	Past Board decision
	4. Parole Service officer, or social agency	summary or evaluation	Part III (community assessment)
	5. Probation officer	evaluation	Pre-sentence report
	6. Psychiatrist	evaluation	Psychiatric report
	7. Police	evaluation or recommendation	Local or regional police report
	8. Judge	recommendation	Report or letter
	9. Parole Service officer or District Representative	evaluation	Post-suspension report
	10. "Mini-board" (Chairman of Inmate Training Board, Living Unit Supervisor, etc.)	evaluation	Mini-board comments Part IIA
	11. Psychologist	evaluation	Diagnostic Test
	12. Prosecutor	recommendation	Letter
	13. Classification officer	evaluation	Part I
	14. Chaplain and/or Warden	recommendation	Letter
	15. Social Agency	evaluation	Interview report
Least Important	16. Parole Service officer	evaluation	Part IIB

Since the post-suspension reports in the files we reviewed provided an indication of inmate behaviour on a past parole, we considered these contributions to be pre-decision contacts even though they were not prepared with the parole decision current during our study in mind. In the same way, past Parole Board decisions and reasons were included because Board members often referred to them when making decisions in cases in our sample. In fact, Board members often used previous decisions denying or deferring parole as guidelines for evaluating the progress an inmate may have made, particularly if they had participated in the previous decision. The regionalizing of the Board and the recording of reasons for decision will likely increase this practice.

The relatively infrequent contribution of sentencing judges was rated quite highly (at 8th out of 16) as a pre-decision contact because judges usually were quite specific in their recommendations about parole.

Although the Cumulative Summary Part IIB form was not designed for evaluation or recommendation, we considered it to contain a pre-decision contact because it occasionally included evaluations of inmate behaviour or attitudes relevant to parole that were not included in the appropriate place on the Part IV form. The infrequency of this practice led, however, to the Part IIB's low listing (at 16th out of 16).

Also ranked low but through generality as well as infrequency were reports generated by private social agencies. These usually resulted from an interview requested by the inmate with an officer of a social agency active in the corrections field. They normally recorded what was discussed and tendered personal assessments of the inmate, occasionally suggesting readiness for parole.

1. *Pre-Decision Contacts by Parole Service Officers*

By far the most significant pre-decision contact was the Parole Service officer's contribution in the Part IV form.[165] This understandably became a focal point for the consideration of most cases by Board members.

We noted that Parole Service procedures specifically state that

> when a (Part IV) recommendation is accepted without comment by the Board, the reasons for the Board decision are to be found in the (Part IV) submissions.[166]

As previously mentioned, the Parole Service officers we met had considerable discretion in deciding on the amount of preparation or investigation necessary for the proper consideration of a case by the Parole Board. We observed that the Parole Service officer's recommendations tended to determine what work was done at this stage.[167] A limited

preparation could possibly force Board members to place an even heavier reliance on this pre-decision contact. And the efforts we noticed by many Parole Service officers to anticipate or predict the reaction of a Board member to particular types of cases or modes of preparation would have a similar result.[168]

The thrust of the Parole Service officer's Part IV contribution for most cases in our sample, however, was consistent with most other pre-decision contacts. The officer's recommendation regarding parole tended to agree with other evaluations and suggestions present in a particular inmate's file in eighty-three percent of the seventy-three files in which we undertook this internal comparison.

Table XXI compares Parole Board decisions with Parole Service officer Part IV recommendations for 172 cases in our sample; 73 in Ontario and 99 in Quebec. Board members followed the basic recommendations of Parole Service officers 80 per cent of the time, adding modifications to only fifteen per cent of these cases. In only fifteen per cent of the cases we reviewed were the Board's decision in direct opposition to the outcome suggested by the Part IV form. There were, as Table XXI indicates, significant differences between Ontario and Quebec Board members' tendencies to modify or oppose the recommendations of Parole Service officers.

b) Influences on File Contributors

Our consideration of major influences on file contributors will focus on Parole Service and classification officers. We examine four areas of influence — workload, background and experience, conflicts of role and function, and institutional setting.

(i) *Workload*

We observed that a common burden for classification officers, Parole Service officer and Board members alike was a demanding and sometimes excessive workload. At first glance, the workload of the Parole Service officer seemed fairly light. However, as we gradually listed this officer's normal tasks, a different picture emerged. In any one month, a Parole Service officer would:

- prepare for inmate interviews;
- interview inmates with scheduled parole hearings two months ahead;
- provide weekly briefing sessions on parole for inmates at regional reception centres;
- attend and participate at Parole Board hearings held in a number of institutions;

Table XXI
Parole Board Decisions
and
Parole Service Officers' Part IV Recommendations
Compared

	172 PAROLE BOARD DECISIONS		
	PART IV RECOMMENDATION		
	Exactly followed	Followed with modifications	Not followed
ONTARIO	36 (50%)	26 (35%)	11 (15%)
QUEBEC	74 (75%)	1 (1%)	24 (25%)
TOTAL	110 (65%)	27 (15%)	35 (20%)

— attend and participate in day parole application conferences;
— consult with classification officers;
— respond to telephone calls, correspondence and personal visits concerning inmates whose cases the officer was preparing;
— read case files;
— obtain information from outside sources (e.g., community assessment);
— gather and check information for evaluation and recommendation;
— participate in case conferences on inmate release plans as part of case preparation or implementation of a Parole Board decision;
— cope with unexpected occurrences affecting inmates for whom the officer had responsibility;
— prepare Cumulative Summaries forms;
— undertake any follow-up work requested by Board members; and
— read and assimilate changes in regulation and policies, etc.
— supervision of parolees

The diversity of tasks performed by Parole Service officers in part arose because of their ongoing responsibility for inmates at all stages of case preparation. At any given time, these officers would be starting case preparation for inmates with parole eligibility dates four months hence, in the midst of preparation for inmates with parole hearings scheduled in the next two months, and concluding preparation and attending parole hearings for inmates who could be paroled in the following month. Every month they receive new cases, whether or not they have been able to complete the cases they received three month ago. They must cope with disruptions of the normal cycle caused by requests by Board members or by delays in case preparation beyond their control, such as the completion of community assessments and psychiatric reports. Interviews with a number of classification officers revealed workloads that were similarly heavy.

Three observable consequences flowed from heavy workloads. First, less time was spent in preparing each case. And as a result, accuracy, consistency and clarity suffered. Speedy preparation resulted in poorly reasoned release plans and recommendations. Officers usually needed more time than they had to weigh and assess available information. Much of the effort that had gone into a well prepared file was lost when an appraisal and recommendation were prepared in a few minutes.

Second, the pressure of time made it difficult for officers to read, understand and absorb changes in rules and policies filtered down from Parole Board and Service headquarters. In fact, we observed that while some made recommendations relying on up-to-date policies, others continued to rely on policies that were no longer in force. This no doubt was the cause of both inefficiency and inequity.

Third, heavy workloads and little time prevented adequate consultation that could have been useful and indeed may have been essential to the proper preparation of a case. Of course, the ability of officers to cope with their workloads differed greatly, and seemed to be a function of their aptitudes, backgrounds and, most important, experience.

(ii) *Background and Experience*

The Parole Service and classification officers we encountered had a great variety of backgrounds and experience. Some were recent graduates with degrees in psychology or sociology. Some were student interns. Others had a number of years' experience on the job. Some Parole Service officers had previously been classification officers.

This mix of background and experience while no doubt a rich source of perspectives on the problem faced by these officers, we believe was a primary cause for inconsistency in preparation for parole decisions. The individual discretion of Parole Service and classification officers meant that there was considerable variation in the way cases were prepared.

It was often difficult for us to understand why some inmates had received the benefit of working closely with their classification officer in preparing a realistic release plan and, for example, working on vocational or educational needs, while other inmates, superficially similar, had not. It was not difficult, however, to distinguish the file contribution of the more experienced and responsible officer. Such officers rarely demonstrated indecisiveness in their pre-decision contacts. Their less experienced colleagues however, perhaps for good reason, often were unable to make and support definite evaluations or recommendations. One officer, for example, changed from recommending "parole deferred for nine months" to "full parole granted" because the inmate would "just get more bitter otherwise".[169]

Visits to five Parole Service district offices as well as observations on our sample seemed to indicate that preparation was better in terms of extent, clarity and internal consistency where the same Parole Service officer believed he would also bear responsibility for the inmate on parole. However, the administrative practice of rotating officers between institutions prevented this from happening often.

Some Parole Service officers suggested to us that rotation helped develop new approaches by exposing them to many cases. They also felt that rotation served as a check on the accuracy of previous file contributions because more officers then reviewed each file. Our research, however, did not verify these presumptions. Another alternative is for each officer to specialize in particular kinds of cases. Unfortunately, we had little opportunity to assess case preparation by such officers.

(iii) *Role and Function Conflicts*

Conflicts, real or imagined, existed between many participants in the parole process. These were particularly prevalent between the officers and members of the Penitentiary Service, Parole Service and Board, all of whom had significant discretionary power in case preparation or decision. They appeared to arise because of overlapping concern yet divided authority and responsibility. We have concluded that case preparation and parole decision suffered because of these conflicts.

1. *Who Best Knows the Inmate?*

Classification officers tended to believe that they, not the Parole Service officers, knew the inmate best, since they saw him day to day and were therefore most competent to evaluate the inmate and make recommendations regarding parole.[170] Yet, as we have mentioned earlier, the classification officer's view of the inmate tended to be an institutional one, based for the most part on the inmate's behaviour while incarcerated. This limitation may explain why a third of the file contributions by classification officers in our sample were nebulous and vague, lacking clear evaluation or recommendation. Nevertheless, the overall control over case preparation and apparently greater influence over parole decision-making by the Parole Service officer irritated many classification officers and the irritation seemed to hinder cooperation.

2. *Divided Authority for Parole and Temporary Absences*

The Penitentiary Service may grant temporary absence passes to inmates in federal institutions,[171] passes that are similar in result to day paroles granted by the Parole Board. Different policies govern these alternative methods of allowing inmates short periods of liberty. For example, some Penitentiary Service officials were reluctant to grant temporary absence passes for the seeking of eventual employment while Parole Board members were not similarly motivated in granting day paroles. We also gained the impression that the timing and frequency of temporary absence passes often frustrated the very reason for seeking them.

No one had overall control over this divided authority. Parole Board members were uncertain whether they should even recommend to Penitentiary Service officials that a temporary absence pass be granted. And lack of coordinated policy and authority had undesirable consequences.[172]

In one case in our sample,[173] the Parole Service officer's recommendation in the Part IV form was for a grant of day parole. However, we learned that the officer would have preferred a grant of day parole "in

principle", provided the inmate obtain a particular type of employment. To do this, the inmate would have needed several temporary absence passes from the institution in which he was imprisoned. But, in the officer's experience, Penitentiary Service officials at the institution were not cooperative in providing passes at times and intervals that best suited looking for work. The result was the Parole Service officer making a recommendation that fit the reality of divided authority but not what the officer considered to be the needs of the inmate.

3. *What are ALL the Criteria for Parole?*

A number of conflicts we observed could be attributed to the non-existence of specific, explicit criteria for the granting of parole. The officers preparing a case were hampered by not knowing all of the elements of the case that Board members might consider to be relevant to their decision. This added to the perhaps inevitable conflict between Parole Service officers and Board members at the hearing. At this setting, we often noted the latter testing the file contributions of the former and attempting at times to obtain additional information about matters normally dealt with completely during case preparation. The lack of criteria has also led to attempts by some Parole Service officers to reduce conflict by framing their file contributions in ways that harmonize with what they thought were the predilections of particular Board members. We now consider in turn these consequences of not having explicit criteria for parole.

(a) *Discords in Preparation and Decision*

Given their discretion and responsibility, it is understandable that Board members would want to exercise great care in making parole decisions. This care, though, led in some cases to Parole Service officers feeling that Board members were overlooking their work in case preparation. Officers point to longer hearings,[174] and an increasing tendency for Board members to reject or modify their recommendations. This adds to the workload of Parole Service officers and to some extent more work may underlie their complaints.

Our discussions with Parole and Penitentiary Service officers, and with Board members and our observations at hearings indicated, however, that Board members were occasionally reluctant to rely only on case preparation as documented in the inmate's file. The frequency of inadequate, inconsistent and late preparation was a cause for this reluctance. Another was the heavy workload of Board members and their resultant use of the case face sheet rather than their own review of the file's contents. The parole hearing became in some cases the only opportunity for Board members to acquire information and opinion, to test

them through questioning, to request further work. And this caused, quite understandably, some officers to believe their case preparation efforts were being ignored.

For us, the problem here was clearly each side not knowing what the other needed, even though the need was identical. No matter how much or how well a case is prepared, if the people preparing it don't really know what the Board members deciding the case think is "relevant", few cases will be adequately prepared. Case preparation without a full knowledge of all possible criteria for decision is inevitably inadequate. Can decisions based on such preparation be acceptable?

(b) *Anticipating the Parole Decision*

That, as we observed, officers attempted to anticipate the reaction of Board members to their recommendations is understandable. It was, after all, an obvious adjustment by seeking guidance from what the decision-maker may have considered relevant in past decisions when no other detailed guidance existed. It was also an attempt to be successful in one of the ways available to these officers — having Board members accept the officer's evaluation and recommendation.

Whether an officer's primary concern was the inmate, or the Board, it seems obvious that personal objectives would have a greater opportunity to influence how a case is prepared when specific criteria for parole are lacking. Those engaged in case preparation need to know exactly what information Board members require in order to decide whether an inmate should be paroled. And this can only come from the Parole Board stating its policies, and the criteria to be used by its members in carrying out these policies.

4. *The Institutional Setting*

The Classification and Parole Service officers we met did not, of course, work as independent contractors. Both were employees of government agencies that demanded compliance to organizational goals that conflicted at times with the officer's own preferences in case preparation.

It was our impression that conflicts of this nature occurred more frequently for classification officers working within penitentiaries. These officers saw inmates regularly, both before and after parole decisions. They were exposed to the natural concerns of their colleagues in the Canadian Penitentiary Service with discipline and the tendency to categorize inmates by offence. While our research made us aware of these influences, it did not allow us to discover exactly what effects the institutional setting had on file contributors. But whatever their impact,

designing a parole process that eliminated them would be next to impossible.

(c) *Conclusion: File Contributors Need Guidance and Control*

Parole Board members depended very heavily on the case preparation work of contributors to the Parole Service file in the great majority of cases in our sample. The influence of file contributors on the parole decision was crucial in eighty per cent of these cases. But as we believe we have demonstrated in both this chapter and the previous one, case preparation needs improvement if the Parole Board wishes to improve the effectiveness of parole decision-making.

Our assessment of the workload, background and experience, conflicts in role and function of such major file contributors as Parole Service and classification officers have not produced simple techniques for improving case preparation. Nevertheless, it has confirmed the need for explicit, specific criteria for parole as guidelines for file contributors. It has also indicated the need for more administrative control over case preparation, as well as the beneficial effect on case preparation of more continuing responsibility by individual Parole Service officers for individual inmates both before and during parole.

Administrative controls would have been particularly helpful to file contributors who lacked experience. They could also, for example, have improved case preparation by reassessing the disbribution of cases, and promoting consultations between file contributors. Controls could prevent the situation we witnessed where the responsible Parole Service or classification officer did not attend the parole hearing and thus Board members lost a valuable, perhaps essential opportunity, to expand and verify the information available in the inmate's file.[175]

CHAPTER VI

Phase II: The Parole Hearing and Decision-Making at the Regional Level

This chapter is based on our observations of 180 parole hearings in Ontario and Quebec during February of 1975 and discussions with people attending or for some reason concerned with these hearings. We describe in turn the parole hearing, the making of the parole decision and constraints imposed on decision-making by existing workloads. Comments on the inmate's role in the parole process follow, focussing on the inmate's access to information and assistance.

a) The Parole Hearing

(i) *General Observations*

Perhaps the most striking fact about the parole hearing is that the Board does not have an express statutory obligation to see or hear any inmate. As the Parole Act provides:

> The Board, in consideration whether parole should be granted or revoked, is not required to grant a personal interview to the inmate or to any person on his behalf.[176]

Nevertheless, since March of 1971 the Board has granted hearings before two regional Board members to all applicants for full parole who are inmates of federal penitentiaries. During our research, these hearings were held in the various institutions where the applicants were incarcerated.[177] At these hearings were normally the two Board members, the inmate's classification and Parole Service officers, and the inmate. Hearings were closed to the public.[178] We were present only by permission of the National Parole Board, the two Board members holding the hearing and the inmate.

For research purposes, we considered that the parole hearing included all discussions and consideration of an inmate's case by those attending, before, during and after what could be called the hearing proper. The usual hearing unfolded in the following stages:

(1) the pre-hearing conference: a discussion of the case by other participants before the inmate arrives;
(2) the hearing proper: with all participants present;
(3) the pre-decision conference: a discussion, consideration and deliberation of the case in the absence of the inmate;
(4) the decision: when Board members told the inmate what their decision was, and in varying detail why it was made;
(5) the post-decision conference: a discussion of the case by participants after the inmate had left.

As proceedings that determine an individual's liberty, the parole hearings we attended were unique. Our legislators have called the event a personal interview.[179] The Board, in its Rules has used the word "hearing" to describe the proceedings, and we have followed the Board's lead.[180] However, in our experience, most parole hearings were not "hearings" in the ordinary formal sense of the word. They were more like informal interviews and discussions among those participating regarding the parole of the inmate present.

The tone of the hearings we witnessed tended to be informal and "clinical" rather than formal or court-like. The Board members, having discussed the case with the classification and Parole Service officers during the pre-hearing conference, used the hearing proper to question the inmate in a way that might prompt him to speak freely about himself, his interests, work, problems, criminal record and so on. Generally, both Board members posed questions and influenced the pattern of response and discussion, with neither member dominating the proceedings. The substantive questions asked usually included questions like, "what are your problems?", or "do you admit to these shortcomings?". In some hearings, inmates, though visibly tense, nervous and not always articulate, managed to express themselves with frankness and candour. And this was not always easy, no doubt because of their day-to-day environments of severe physical, psychological and emotional deprivation. Some Board members attempted to help inmates feel more at ease by the way in which they started the proceedings, introduced themselves and sometimes the other people present. Other members did not, and the participation of the inmate usually suffered as a result.

All inmates entered the hearing room alone. Many lacked a clear understanding of what was required of them or what they should do. They were uncertain of the purpose of the parole hearing and its relationship to the parole decision. And Board members rarely provided explanations that settled these uncertainties.

Although the parole hearing was obviously an event of importance for the inmate, no record was kept of what transpired during the hearings

we attended. Evidence that the hearing actually occurred appeared in the inmate's file — the decision sheet, the memorandum containing the comments of Board members, the Cumulative Summary Part IV.[181] But the inmate never saw these or indeed usually received any written statement of the parole decision. Nothing remained after the hearing that preserved the various contributions to the parole decision made in the course of a hearing.

Parole Board members had no guidelines[182] for the conduct of parole hearings nor for the making of their decision to grant or deny parole.[183] These were particularly striking features that added to the uniqueness of the parole hearings we witnessed and that appear to be attributes of all such hearings.[184]

(ii) *Preparation for the Hearing by Inmates*

Most inmates had known of the date of the parole hearing for some weeks. We learned that some inmates rehearsed their "hearing performance" even to the extent of practising before a mirror.[185] Some inmates, however, discovered only a few days beforehand when their hearings were to be held. And an inmate in Quebec found out he would be seen by Board members a mere ten minutes before the hearing.[186] Rarely were inmates certain about the identity of Parole Board members presiding over the hearings, of what procedure would be followed, how long the hearing would last, and so on, even though such information is apparently a major topic of rumour and conversation in penitentiaries.

We noticed that institutions varied in the efficiency with which information was communicated to inmates. No inmate, of course, had an opportunity to know for certain what information would be before Board members as they saw him during his hearing and made their decision.

(iii) *Attendance at the Parole Hearing*

1. *The Inmate*

The general practice and policy of the Board during our research called for inmates to attend their parole hearings as scheduled. However, three inmates in our sample missed their hearings because they had been transferred to other institutions.[187] Poor communication seems to have been the cause for this although attempts have been made to improve liaison between the Penitentiary and Parole Services. We understand that the practice now is to send the names of inmates scheduled for parole hearings to their institutions five or six weeks before the hearing date.[188]

We should note that no hearings are held for inmates who have not applied for parole before their parole eligibility dates. In such cases, the Board merely issues a decision denying or deferring parole.

We observed that some applicants for early day parole attended their parole hearings, while others did not. Although the general policy of the Board was not to provide hearings for inmates applying for day parole before their parole eligibility date, Quebec Board members were prepared to hear five such applicants and did in fact hear three.[189]

Each of the applications for early day parole we monitored were processed in about five minutes by two Board members sitting with the responsible Parole Service and Classification officers.[190] Inmates who had applied for day parole commencing on their parole eligibility date participated in a full-scale hearing as if the application was for full parole.

Why applications for early day parole should be treated in this way escaped us. Part of the answer may lie in the distinction drawn by Parliament in the Parole Act that permits the Parole Board to grant day parole without considering whether or not the inmate has derived maximum benefit from imprisonment, whatever the criterion might mean.

2. *General Attendance*

As we have mentioned, there were usually five people, excluding us, at most of the hearings we witnessed. Ontario Board members expressed concern about having any more people attend a parole hearing for fear of inhibiting the inmate's participation. And indeed, the presence of an audience during the possible discussion of the inmate's intimate problems could well increase his anxiety and nervousness.

At the Ontario hearings we monitored, other people than the standard five were only allowed to attend the preliminary conference before the inmate arrived.[191]

The practice in Quebec differed. Board members there permitted more people to attend their hearings. We note the Quebec region's better record of attendance by case preparation officers, but doubt that having an audience caused this. Table XXII documents our findings on general attendance and Table XXIII provides details of the persons attending Quebec parole hearings.

Although there is probably some validity to the concern of Ontario Board members and their attempts to limit to an absolute minimum the number of people attending hearings, we were unable to determine what impact this had on the inmate, the hearing and the parole decision. Of course, our presence too may very well have had some effect on the process we were studying.

Table XXII
General Attendance at Parole Hearings
(Excluding Inmate and Researcher)

Number of People Present	Quebec (100 Hearings)	Ontario (80 Hearings)
3	1	0
4	39	80
5	33	0
6	23	0
7	4	0

Table XXIII
Who Attended Quebec Parole Hearings
(Excluding Inmate and Researcher)

STANDARD	OCCASIONAL	FREQUENCY (No. of Hearings)
Board Members (2) Classification Officer (1) Parole Service Officer (1)		99 (No others in 39 hearings except inmate and researcher)
	Institution Psychologist	4
	Another Parole Service Officer	8
	Two Other Parole Service Officers	2
	Another Classification Officer	28
	Two Other Classification Officers	12
	A Trainee	13
	Two Trainees	3
	One Other Person (e.g., psychiatrist, chaplain, physician, teacher, etc.)	6
	Two Other Persons	1

3. *Attendance of Responsible Parole Service and Classification Officers*

A factor that limits the effectiveness of some hearings we attended was the non-attendance of the Parole Service or classification officer responsible for the case's preparation. Table XXIV indicates how frequently this happened in our sample of 180 hearings.

In 54 hearings out of a total of 180, one or other of the Parole Service or classification officers involved in preparing the case was absent. Furthermore, in two hearings one of these officers missed the preliminary conference although not the hearing proper. At another hearing included in Table XXIV, no classification officer attended. At still another hearing a living unit officer substituted for the classification officer even though the officer had noted in the inmate's file his intent to present an oral report at the hearing because his case preparation work was not completed.

The officers who attended the hearing as substitutes were usually and understandably poor substitutes because they had not been involved in the particular case. In these hearings, Board members lacked an important if not essential resource and the inmate concerned was badly served.

Although Board members expressed concern over the non-attendance of officers, there was little they could do, lacking any administrative authority. Parole Service and classification officers were occasionally absent without reason but most often because of holidays, other work duties, changes in employment, illness, or because when an inmate was moved or transferred other classification officers had acquired responsibility.

(iv) *Participation*

1. *Board Members*

We have already described in general terms the tone and format of what in our experience was the typical hearing. What we witnessed was no doubt shaped in very large measure by the presiding Parole Board members. How these members acted during the hearing usually determined the nature and extent of participation by the other people present.

Of particular interest was how Board members dealt with the materials in the inmate's file prepared for their assistance. We noted that Board members in some cases relied heavily on the information and recommendations of Parole Service officers, and in other cases, in our view equally well prepared, did not. Some Board members viewed the officers responsible for case preparation as but two of the various information sources available at a hearing. They looked to these officers for

Table XXIV
Presence at Parole Hearing of Officers
Responsible for Case Preparation

	ONTARIO	QUEBEC	TOTAL
PAROLE SERVICE OFFICER			
Present	65	96	161
Absent	15	4	19
CLASSIFICATION OFFICER			
Present	52	93	145
Absent	28	7	35

additional facts, for explanation of file contents, for information or interpretation not in the file. These members saw their role as encompassing the gathering and testing of relevant information rather than just making a decision regarding parole.[192] Other members tended to rely on the information and evaluations generated by case preparation.

These different approaches help to explain the feeling we encountered among Parole Service officers that some Board members lack confidence in their work and ask needless investigative kinds of questions during the hearing. Obviously, Board members were less able to carry out investigations and gathering information than Parole Service and classification officers. However, some of the case preparation work we saw clearly needed analysis, criticism and supplementing before it could be relied on as a basis for a parole decision.

It seems appropriate to mention here that any benefits flowing from the multidisciplinary backgrounds of Board members were limited by the fact that decisions in the majority of cases were determined by two regional Board members. The multidisciplinary perspectives considered useful by the authors of the Ouimet Report were more likely to affect those cases requiring three or more votes.[193] These perspectives may of course have had some effect on the Board's policy decisions and in consultations between members on all matters, including particular cases. Unfortunately, we were unable to assess the extent of such consultation. We noted, however, that the Board members presiding over hearings for inmates in our sample occasionally indicated they had discussed certain inmates with their colleagues in Ottawa and elsewhere.

2. *Parole Service and Classification Officers*

As we indicated earlier, these officers were responsible for important parts of case preparation.[194] Their evaluations and recommendations regarding parole had a substantial influence on Board members and the eventual parole decision.

In most hearings we witnessed, the Parole Service and classification officers attending spoke mainly during the pre-hearing conference before the inmate arrived. They were silent throughout the hearing proper except when responding to the specific questions of Board members.

In some hearings, the officers agreed before the inmate's arrival to limit their participation and not attempt to argue for their own recommendations. However, in several hearings, the proceedings were distinctly adversarial. In one hearing, a Board member requested the Parole Service and classification officers present to let the inmate speak for himself. Their attempts to convince the Board members of the merits of their recommendations for parole had to that point dominated the

proceedings. At the hearings in one Quebec institution, the exchanges between these officers provided Board members with a detailed and professional exposé of the case, with arguments for the various decisions possible raised and assessed.

The overall tendency, however, was for Parole Service and classification officers to act as sources of information and opinions for Board members. Variations in this pattern reflected the preferences and personalities first of Board members, then of these officers, and finally of the inmates. These variations meant that some inmates probably benefited from increased participation by their Parole Service or classification officer, while others did not, whatever the thrust of this participation. Guidelines on the participation of these officers in parole hearings might help to ensure more balanced and thus fairer proceedings.

3. *The Inmate*

The hearing was one of the few opportunities for the inmate to participate in the parole process.[195] In some of the hearings we attended, the inmate's participation served as an important check on the information before the Board. In one case, for example, the inmate described a release plan which was totally unrealistic. Not only were the Board members surprised, but so too was the Parole Service officer who had previously worked out a fairly sensible release plan with the inmate for consideration by the Board. The case understandably was deferred.[196]

In a few hearings, inmates actually challenged information in their files that was mentioned during the hearing. Most challenges involved institutional offences alleged to have been committed by the inmate. Several inmates described these offences as false or misleading.[197] In most cases, Board members stated that they were forced to accept the institutional staff's version of the event over that of the inmate. However, an inmate's challenge occasionally raised some doubt in Board members' mind about the reliability of the information in question.[198]

Inmates were, of course, at a disadvantage in challenging information discussed during a hearing since they had no access to their Parole or Penitentiary Service files. Their opportunity to contribute to the parole decision by criticizing relevant information in their files was as a result haphazard and very limited.

We noted that the inmate was given a fair opportunity to speak in all hearings we attended. Further, in almost every case, a Board member asked if the inmate wished to make any other comments at the end of the hearing proper. However, the capacity and skill of inmates to respond to questions or speak and present argument for their parole varied tremen-

dously. Not knowing for certain in advance what information was before the Board members meant that many inmates lacked an opportunity to prepare for their hearings. After observing 180 hearings, we have concluded that inmates need some kind of assistance if their presence in the parole hearing is to be meaningful to the Board and to them.

The value of assistance before the hearing was demonstrated by the availability in one case of a submission prepared by a lawyer with the help of the inmate that documented details of the inmate's life while unlawfully at large for five years.[199] The submission went on to argue that the inmate's behaviour during the period proved his rehabilitation. Board members reading the submission were clearly impressed and aided by it. Since inmates may not be represented by other persons in parole hearings, we had no opportunity to assess the effects of representation. But the need for representation was obvious in some cases, a need that other participants at times attempted to meet.

Inmates were not limited to spoken participation. Although not all inmates were aware that they could bring written submissions or other material to the parole hearing, some twelve inmates did so.[200] The material introduced was as follows:

- a letter about employment possibilities when paroled;
- a letter from the Warden of the institution strongly supporting parole of the inmate;
- a letter regarding the Alcoholics Anonymous program in the area to which inmate wished to be paroled;
- letters concerning the educational level and progress of the inmate and indicating acceptance for supervision by the John Howard Society;
- a copy of a school diploma indicating the educational level reached by the inmate while incarcerated;
- a letter from the Department of Manpower and Immigration concerning employment opportunities in the particular community to which inmate wished to be paroled;
- a letter indicating possible acceptance into a half-way house program;
- letters from a priest and a social worker in support of parole for the inmate and photographs showing inmate's artistic skills;
- letters about job opportunities if paroled and indicating support for parole by the John Howard Society;
- a memorandum from a Manpower Centre confirming the inmate had registered for a training course;
- paintings, as a demonstration of the viability of two of the inmates' release plans.

In at least two hearings, Board members were very definitely influenced by the materials introduced by the inmate.[201] In one case, Board members had expressed concern over the inmate's drinking problem. The inmate then produced a supportive letter he had recently received from the local Alcoholics Anonymous group in the area where he wished to be paroled. The Board decided to grant parole, with abstinence as a condition.

In another hearing, the inmate introduced letters, news clippings and other information to the Board about para-medical training programs for male nurses. One letter concerned the inmate's possible acceptance into such a program. Visibly impressed by the interest, enthusiasm and initiative of the inmate, the Board members deferred their decision indicating they would consider a plan for day parole the coming summer that would give the inmate the opportunity tó make arrangements for training upon his release. This decision was significant in that the inmate's parole eligibility date was a year away and his sentence was fifteen years for armed robbery.

4. *Other Persons*

Inmates have no right to call witnesses during a parole hearing to support their application for parole. We learned that occasionally other persons who know an inmate, such as his wife or a friend, will speak with Board members before the inmate's parole hearing. But we discovered no Parole Board policy concerning the request by an inmate for a person to attend his hearing and act as a witness on his behalf, either before or during the hearing proper.

It appeared that inmates were not generally aware that Board members would hear other people supporting their parole application. In two of the 80 hearings monitored in Ontario, this happened during the preliminary conference. In one case, the warden of the institution supported the inmate's parole, in another the chaplain of the institution supported parole and provided general information about the inmate.[202]

Seven of the one hundred hearings we attended in Quebec involved the participation of what could be called witnesses, for the most part to clarify information on the inmate's file. Appearing were a living unit officer, a Canada Manpower representative, a chaplain and a psychologist (in four hearings).[203]

Our research indicates that some policy concerning witnesses is needed. Without one, most inmates will not know that Board members are willing to receive information and representations from other people. Furthermore, how members deal with these people will vary.

(v) *Duration of the Hearing*

Tables XXV and XXVI indicate how long hearings and the various stages in these hearings lasted. Most of the 80 hearings we attended in Ontario had preliminary conferences lasting between five and ten minutes, a hearing proper of fifteen to forty minutes, and a post decision conference of under five minutes. The average hearing lasted just over thirty-five minutes.

Out of the 100 parole hearings monitored in Quebec, fifty-one lasted ten to twenty minutes. Pre-decision conferences were held in 84 cases. Post-decision conferences in 44 cases lasted on the average just under five minutes. Only 22 hearings ran longer than thirty minutes.

Case discussion before the arrival of the inmate could not be measured in the Quebec sample. Too many activities not directly concerning the case took place during this stage for it to be considered as part of the parole hearing.

The Board members presiding over hearings we attended seemed to have considerable control over the amount of time devoted to each case. A limiting factor, however, was the practice of scheduling as many as fifteen and an average of ten hearings for each day Board members were at an institution. The complexity of the case was the only other factor we could identify that affected the duration of the hearing.

b) The Parole Decision

At the end of the hearing proper, the inmate was asked to leave for a few minutes while his case was discussed, and a decision reached. That decision in about ten per cent of the hearings we attended was to reserve decision until certain gaps in preparation were filled. There were nineteen reserve decisions in the sample, nine because of general insufficiency of file information, eight to await psychological or psychiatric reports, and two for late community assessments. Occasionally, missing information was provided by the classification or Parole Service officer present at the hearing. This was usually not possible, as we have already mentioned, if these officers had not been involved in the preparation of the particular case.[204]

If the Board members presiding at a hearing determined that there was enough information to support some sort of decision concerning parole, they then proceeded to indicate the decision they preferred. Normally, these two members tried to reach unanimous agreement, knowing that if they could not, Board procedures would bring in other Board members to vote in the case.

Table XXV
Minimum and Maximum Times for Stages in Parole Hearings

Stage in Hearing	Minimum Duration (In minutes)	Maximum Duration (In minutes)
Preliminary Conference*	2	38
Hearing Proper	2	45
Pre-decision Conference*	0	25
Decision*	¼	5
Post-decision Conference	0	5

* For 80 hearings in Ontario only.

Table XXVI
Total Duration Of Parole Hearings In Ontario Sample

Number of Hearings	TOTAL DURATION (In minutes)
7	Less than 20
19	20 — 30
24	30 — 40
13	40 — 50
12	50 — 60
5	More than 60
80	

(i) *Voting Procedure*

As Tables IX and X indicated, regional Board members reached final decisions on two-thirds of the parole applications they considered. The remaining cases were finally determined by the addition of votes from Ottawa Board members. Voting is governed by rather complex procedures that give individual members considerable discretion in affecting the eventual outcome of a particular case.

The Board's voting procedures were established pursuant to its authority under the Parole Act to make rules for "the conduct of its proceedings and the performance of its duties".[205] The basis of the procedures is that the parole applications of inmates convicted of certain categories of offences must be decided by a prescribed number of votes. Each Board member has one vote.

Cases requiring two votes can be decided by the two regional Board members hearing the case. However, if they disagree, the vote of an Ottawa Board member will resolve the impasse. Cases requiring more than two votes are voted on by two regional Board members and the necessary additional number of Ottawa Board members. Every Board member has the absolute discretion to request additional votes on any case coming before him for decision.[206] Two negative votes will deny parole, even when the total number of votes required is five or seven.

What emerged from this part of our research as most significant was the manner in which Board members exercised their discretion to request additional votes. It was our impression that members requested additional votes when uncertain of their own decision, or when they wished to have the responsibility for the eventual decision more widely shared.[207] Regional members requested additional votes in two cases in our sample,[208] Ottawa members in three.[209] The first two cases merit description as examples of how the voting procedures operated.

In one case the inmate, a dangerous sex offender serving a sentence of preventive detention, was on temporary day parole for three days a month.[210] The Regional Board members decided to continue this type of parole but to increase it to seven days a month. Such a decision required only two votes, but one of the members asked for an additional vote. The Ottawa member casting the additional vote after reviewing the inmate's file upheld continuing the type of parole but not the increase. This member, however, then requested two more votes. Ottawa members casting these votes agreed with the third member's decision and so it stood.

In the other case, an inmate serving a sentence of six years and nine months for attempted extortion had applied for parole in order to be

deported.[211] Although voting procedures for this kind of offence called for two votes, one of the regional members believed more votes were required since the inmate's offence had involved a bomb threat to an airline company and received considerable publicity. The member categorized the case, as Board procedures allow, as a "cause célèbre", a category requiring five votes that includes the offences of terrorism, kidnapping and embezzlement. The additional votes, however, agreed in this case with the two regional members' votes, all supporting a conditional parole for deportation.

In several cases, information from an outside source appeared to motivate the application of the "cause célèbre" voting procedure. The report from immigration officials in one case, and a communication from a committee of police officers in another, caused Board members to rely on five votes rather than the number required by normal voting procedures.[212] During another hearing involving an inmate who was also an important witness before a public inquiry, a telephone call led to the case requiring five votes, rather than two with gradual.[213] Nevertheless, the regional members' decision to grant parole was unanimously upheld.

Requiring additional votes to these "cause célèbre" types of cases clearly were decisions quite separate from any assessment of the actual risk to the community in granting parole. Allowing different and more onerous treatment for reasons unrelated to an inmate's assessed capacity for a successful parole creates the impression that the voting procedures were designed to protect the Parole Board rather than to help the inmate.

Our experience demonstrated, to us, at least, that Board members differed in their assessment of the need to call for additional votes. And this differing approach can mean, as verified in discussions with Board members, that one member can increase the probability of a denial by requesting more votes. A procedure of this nature, in our view, not only creates inconsistencies in the Board's treatment of similar cases, but also helps perpetuate a belief among inmates that parole decisions are arbitrarily and unfairly made.

(ii) *The Effect of Publicity*

Related to voting procedure is the publicity a case may receive. Considerable publicity on a case, or the possibility of it, may result in its classification, given the offence involved, as a "cause célèbre" and the requirement of additional votes. Publicity and greater visibility by the public can, of course, often serve as valuable modes of control over a decision-making body.[214] However, these influences may affect the fair treatment of a case as well. We observed three types of publicity surrounding a case that may lead to it being handled in a different fashion from similar cases not subject to such publicity.

There were those cases, first of all, that attracted much press coverage and community interest at the time of conviction of the offender. The sample contained a few of these cases.[215] This type of publicity may affect the evaluation in a community assessment since the community may still harbour feelings of fear and resentment of the inmate. In this sense, it may be a factor considered by the Board in its decision.

There are also cases that attract attention at the parole eligibility date of the inmate because of press reports refreshing the mind of the public of the nature of the offence and potential danger of the inmate. These are usually cases which attracted publicity at the time of conviction as well. They may, however, be cases which have been before the Federal Court or the Supreme Court, and have been publicized for that reason.[216] They may also be cases which have never been publicized before but which, because of the general public feeling at a particular time, do attract such attention.[217]

Finally, there are those cases that received publicity neither at the time of conviction nor at the parole eligibility date but about which the Board anticipates adverse publicity if parole is broken. Anticipated publicity we learned, may be a strong factor in deciding to deny parole.

We would argue that statistical fluctuations in the number of paroles granted is related to the effect of public opinion and publicity on the Board's decision-making. The greater the adverse publicity, the stricter Board members tend to be and the more likely they will ask for additional votes or vote against parole.[218]

Indeed, as one member pointed out, perhaps facetiously, releasing as many inmates on parole as public opinion can stand may be the Board's only policy. Adverse publicity, or fear of it, thus looms large, perhaps even larger when anticipated, than experienced. It may influence Board members more than the actual results of a larger number of decisions granting parole, or the intuitive responses acquired in making these decisions.[219]

This seems wrong. It prevents the Board from assessing its success in granting parole using its ordinary criteria for decisions because it perverts the normal approaches of Board members. It also results in substantial unfairness for some inmates who have the misfortune to be newsworthy.

(iii) *Informing the Inmates of the Parole Decision*

In all the hearings we witnessed, except one, the inmate was called back into the hearing room and informed by the regional Board members of their decision as soon as they had reached it. If additional votes were

required, the inmate was told of this as well as how the individual Board members had decided. In one case, however, confusion over the Board's policy in this regard caused the members presiding not to tell the inmate of their decisions.[220]

Board members also attempted to give reasons for their decisions to inmates in all cases. Quebec Board members were briefer and more general in their giving of reasons than their Ontario colleagues. And this may have been a factor in the lack of understanding of decisions and reasons shown by many inmates. After hearing Board members' rather general statements relating their decisions, misinterpretations by inmates ranged from confusing a temporary day parole with a denial, to interpreting a reserved decision as no decision for two months.[221]

We learned that the giving of oral reasons for decision at the end of every hearing was an explicit Parole Board policy.[222] An objective of that policy was "to help modify the inmate's behaviour; so that... he can gain parole at a later date or... otherwise prepare himself for his rehabilitation". Nevertheless, Board members and Parole Service and classification officers too, may decide not to give reasons for adverse decisions unless it was "likely to lead to a modification of behaviour in a positive fashion". We observed no cases where this approach was adopted. However, in a number of cases in which Board members gave few or limited reasons, they asked the Parole Service of classification officers present to provide further explanation to the inmate. Board policy, in fact, encourages officers working closely with the inmate to discuss parole decisions and reasons for decisions with him.

Although reasons for decisions and related comments were in most cases recorded by Board members on the decision sheet on the inmate's file, the inmate never received a copy of this record. His knowledge of the decision and the reasoning behind it was limited to what he was told by Board members and other people.

(iv) *Informing the Inmate's Relatives, Close Friends and Other Interested Parties of the Parole Decision*

Board members in some cases informed an inmate's family or friends of their decision and the reasons underlying it. We learned that the Board's policy was to provide general reasons to interested parties (including legislators or police officers) if it would encourage those concerned "to take constructive action". This tailoring of reasons was considered justified to meet certain policy objectives:

— to give comfort to family and close friends;
— to point out areas in which change in behaviour needs to be made;
— to justify the Board's decision.[223]

(v) *Recorded Reasons for Decision*

After giving the inmate their decision and indicating reasons underlying it, Board members then recorded the decision, sometimes with supporting or explanatory comments on a decision sheet that would eventually be added to the inmate's file. If the Board members had accepted the recommendation of the Parole Service officer, their reasons were presumed to incorporate the officer's Part IV report.[224] However, in our experience, Board members even in this event usually added comments or additional justification concerning the particular decision. In fact, we noted an increased tendency to provide written comments by comparing February, 1975, decision sheets with the older decision sheets in our sample's files. But the comments we saw in many cases did not spell out the Board members' reasons for this decision.

The recorded comments of Board members were often no more than notes on certain points in the particular case. And as such, they were usually incomprehensible without a fair knowledge of the case and further reference to the file. For example, in one case in the sample,[225] a Board member wrote:

> Day Parole (Temp) for TA type visits DR discretion to establish work and CCC type arrangement for day parole plan hopefully to be presented for Board approval within 6 months.

Other recorded comments provided more detail about the inmate, but no real statement of why the particular decision was made. For example:

> Appeared before Panel this date. Came through extremely well. Fully admitted her part in the "murder" — going further than at any time before. Admits beating him badly — but X used the knife and was out of control. Has been doing extremely well on Day Parole — plans to stay at job near Kingston and get an apartment. A great change since early days in prison — no drinking now. Decision parole granted.[226]

And yet another example:

> Mr. X. was seen today. He had done nothing to earn a parole, depending heavily on his performance during the two months in Vancouver prior to his arrest as justification for parole now. He has tried to get a transfer to B.C. but has made no effort to be more open with the Y family through correspondence. We indicated that there were no grounds for parole, but that a Day Parole plan could be considered either locally or following transfer. He was very argumentative on learning the decision. Parole denied.[227]

In many cases then, Board members did not provide what could reasonably be considered as written reasons for decision. Reasons at a minimum should give some indication of the criteria relied on, and the facts considered as crucial and relevant. Some Board members obvious-

ly did not consider their comments to be reasons for their decisions. They looked upon them as no more than reminders to themselves and to Parole Service and classification officers of the action taken and called for at a hearing. In any event, the usefulness of what was clearly intended was greatly reduced by the absence in many cases of accurate and complete records of why particular parole decisions were made.

c) Practical Constraints on Board Members

Regional Board members that we observed during February of 1975 had demanding workloads. Reading files and preparing for hearings, conducting hearings and making decisions, attending conferences and meetings were some of their most visible activities. Travel between Parole Board offices and penal institutions took considerable time, even with regionalization.

The typical day of parole hearings involved as many as six cases in the morning and after a half-hour lunchbreak, another eight or nine cases in the afternoon. We monitored twelve days of hearings in Ontario and thirteen in Quebec and frankly found it exhausting. Board members go through a similar cycle of hearings each month. They also devote at least one day a month to deciding on day parole applications. Sitting with responsible Parole Service and classification officers, we observed two Board members deal with thirty-five such applications in one day in the Kingston district and thirteen in one day in the Peterborough district.

Other days of the Parole Board member's typical month (if February 1975 was an ordinary month), were no less demanding. With a monthly caseload of approximately 100 parole and 50 day parole applications, they must assess and assimilate a great deal of information in a short period of time. The heavy reliance that Board members sometimes placed on the Parole Service officer's case face sheet summary becomes understandable, given these conditions. We found that we took at least an uninterruped hour to read a Parole Service file we had not seen before and to make a few notations about its contents. To review some one hundred and fifty files a month is obviously a heavy task, even though Board members will probably have seen some of these files before. Yet in almost all the hearings we observed, Board members demonstrated a fair grasp of the situation and particularly problems of the inmate before them. We could only presume that all regional Board members spend a fair number of evenings every month in preparing for hearings and decisions. And as we have already mentioned, inadequate or late filing of required documents can make preparation by Board members difficult to plan and sometimes impossible to carry out.

In addition to the pressure of workload, Board members also experienced the pressures that were perhaps inevitable in the nature of the decisions they were making — decisions that determined whether an inmate gained his liberty or faced continued confinement, decisions that could help inmates become responsible individuals, or cause harm to other people. A comment by one Board member indicated how he dealt with this kind of pressure:

> To be a good Board member you have to separate your humanitarian feelings from your decision-making duties since these feelings destroy your impartiality and detachment. A good humanitarian makes a poor Board member.[228]

Conversations with Board members supported our observations that their heavy workload probably has some effect on the quality of parole decision-making. Because of the many cases they must consider, Board members rarely have the opportunity to reflect on their decisions.

Two Ottawa Board members have, however, over a number of years kept records of the decisions they have made and the success or failure of inmates they have paroled. But the practice was not general. In our experiences, there was little enough time at the regional level for decision-making itself, let alone an evaluation of decisions by Board members.

A reduced caseload could provide more time for evaluation. It could also allow for more extensive preparation that in turn would save time at hearings. Board members could focus more quickly on the areas or problems they had previously decided were critical.

Board members with more time would be able to consult more often with their colleagues in other regions, compare experiences and possibly achieve as a result a greater degree of consistency in parole decisions across the country.

Although our research was limited to Ontario and Quebec, we did learn that the Board members in these parole regions have much heavier caseloads than Board members in the three other regions. Ottawa Board members, we discovered, help to equalize the caseloads of regional members by sitting on a number of Quebec and Ontario hearings every month. This practice, however, would seem to frustrate many of the objectives of regionalization. The number of Board members assigned to any region should reflect the region's caseload and the optimal caseload for individual Board members in all regions.

d) What Is the Inmate's Role?

A striking feature of the parole hearings we attended was the passive stance usually adopted by the inmate. One reason for this, we believe,

was the lack of access by the inmate to information about parole, and about himself, information that would serve eventually as a partial basis for the parole decision, and information the accuracy or reliability of which could well be tested by this inmate.

Not knowing what was relevant could explain why inmates had difficulty in using to their best advantage the opportunity they had to speak during the parole hearing. Board members, as noted earlier, almost always asked inmates for their comments. Of course, the ability of inmates to express themselves in this setting differed greatly. So too did their capacity for effective preparation, a capacity which would obviously depend not only on the inmate's general abilities and initiative, but also on the information at the inmate's disposal.

Ironically, inmates were aware that a positive parole decision depended to a great extent on themselves, their initiatives, attitudes and responsibility as assessed by officials in the parole process. This was frequently pointed out by Board members and Parole Service officers. Board members often commented on the performance of inmates at hearings. But without information, assistance, or the basic skills to assess their positions, inmates could rarely perform well or indeed be motivated to accept some responsibility for the fate of their parole application. Few inmates, consequently, participated effectively in the parole hearing or in the process leading to it.

Some inmates, perhaps as a result, saw themselves as pawns in the process. Their passivity existed, we would argue, because they lacked the means to be active — information, knowledge and the skills of analysis and expression.

A parole process that does little to encourage the participation of the inmate discourages, in our view, the development of the traits of initiative and responsibility that are considered by parole professionals as attributes of good candidates for parole. Furthermore, an inmate tends to view processes for making decisions affecting him in which he has little involvement as arbitrary, and motivated by concerns other than the probability of his success on parole. As one commentator put it in describing the need for inmate participation:

> (M)en in prison will perceive power as fairly exercised when they have participated in the exercise of that power... (Participation) gives men a sense of dignity and a sense of responsibility for their own lives, both values which the prison traditionally has deadened.[229]

But there is another reason for encouraging participation by inmates. Parole decisions based on information untested or passively accepted by parole applicants may not be the best decisions either for the

inmate or society at large because they neglect the possibly vital contributions of the best source of all about an individual's parolability — that individual.

Our experience demonstrated to us that there is a crucial need for effective participation by the inmate in the parole process. The inmate's role in the parole hearing should be expanded so that he can supplement, as well as contribute, to the testing of information on which Board members base their decision. But to achieve this, inmates need first of all information, and then, help in learning or knowing how to deal with it.

(i) *The Inmate's Access to Information*

As we have already noted, inmates at the parole hearings we attended arrived with varying degrees of awareness of what the proceedings were about and what was expected of them. This was understandable given their previous exposure to information about parole.

For the inmates in our sample, the Parole Service briefing sessions given in regional reception centres to offenders beginning a term of imprisonment generally lasted about forty minutes.

In Ontario, there were also briefing sessions given by the John Howard Society that involved discussion of parole. Given the length of these sessions, and the complexity of the parole process, it was obvious that they could only impart at best a rough outline of what the process is about, and *no* information about its specific application to a particular inmate.[230]

Some inmates received personal briefings from penitentiary officials as part of a pre-parole interview. The nature of this briefing varied greatly, and appeared to depend on how the official in question viewed his parole.[231]

Some inmates may have acquired information of a general nature from the Board's booklet, ***Handbook on Parole.***[232] However, we found this source to be dated, too brief and superficial. Something of this sort is needed, but in our view it should be fairly comprehensive and accurate even though this would mean that some inmates would need help in reading and interpreting it.

Most observers of parole processes have concluded that the information available to inmates is inadequate.[233] We would add that some inmates have a better opportunity to learn about parole than others because of the differing emphases placed by prison and parole officials providing information about parole.[234] A lack of understanding by inmates of rather basic distinctions demonstrated to us that many inmates arrive at their parole hearings poorly prepared for the hearing, and for

parole. In one case, for example, Board members had to spend some time explaining the practical differences between temporary absence and parole.[235] How can inmates be expected to have achieved an understanding of what parole is and what goals they must reach to be paroled with only a minimal amount of information and assistance?

1. *General Information*

Achieving this requires, at a minimum, access to general information about the parole process, the complexity of which is attributable to both legislators and administrators. Information of this kind includes:

- the role and functions of Parole Board members, penitentiary staff, Parole Service officers, etc.;
- the relevance of penitentiary regulations;
- existing rehabilitation, drug and alcohol programs whether within the penitentiary or without;
- how to calculate the inmate's parole eligibility date;
- the meaning and calculation of statutory and earned remission;
- the availability and purpose of temporary absences, and the various kinds of parole;
- the role and significance of the parole hearing and procedures followed in such hearings;
- how the Parole Board's voting procedures work;
- the actual criteria used by Parole Board members in granting or denying parole and how those criteria could be met where inmate initiative is involved;
- the importance of the parole application and the practical operation of automatic parole review;
- the files and information kept on inmates, how they are prepared and used by Board members;
- the practical differences to the inmate between parole and mandatory supervision;
- how to prepare for parole and plan for parole supervision, etc.

Information of this type, expressed in clear and simple language and made easily available to inmates would help, we believe, to demystify the parole process and reduce inmate anxiety. It would also contribute to the inmate's preparation for parole and meaningful participation in the parole decision. If, for example, an inmate knew that Board members place emphasis on academic upgrading, then he might be more likely to begin studying as soon as he was incarcerated.

2. *Specific Information*

Inmates also need to have access to information that has been gathered on themselves for possible use in the parole process. This raises

the thorny question of whether the best interests of society and the parole process would be served by allowing the inmate to see the contents of his institutional and Parole Service files. Present policies do not give such access[236] and challenges of them in the Courts have not been successful.[237]

Given the concerns expressed in recent reports on parole, particularly in the Hugessen Report,[238] we carefully read some 120 Parole Service files for inmates in our sample to determine if they contained information that, if disclosed to the inmate would cause harm to or threaten the security of the inmate, other persons, the state or the Parole Board.[239] Not one did, even by stretching our imaginations, with the possible exception of a number of psychiatric reports. Our analysis, admittedly impressionistic, was based on the less-than-a-full picture of reality painted by these files. But our conclusions, nevertheless, cast doubts on the arguments used by those who consider that non-disclosure is essential to the parole process.[240] One of these arguments raises the possibility of legal action by inmates against file contributors and Parole Board members for making or relying on demonstrably false assertions.[241] Rather than risk the possibility that a parole decision rests on inaccurate information, it would seem wiser to allow access by the inmate, and establish statutory immunity for those who must make contributions to the inmate's file.[242]

Another argument predicts that suppliers of information for inmate files will dry up if the inmate can see his files.[243] These persons, it is argued, would not speak as frankly or openly. Without giving the inmate access, however, an exceptionally good method of testing the accuracy of such file contributions is lost. Furthermore, what of the inmate's perception of a process that could be shaped by anonymous (to him, at least) sources? Surely, we can afford a parole process that is itself frank and open in its reliance on particular information and decision-making criteria. After all, it is difficult to demonstrate that the existing policies of non-disclosure have resulted in better parole decisions.

Just how disclosure could take place requires the designing of procedures that would give the inmate ample notice of what kind of information was being withheld, and why, as well as the time to have this decision reviewed by the Courts.[244] Furthermore, even with full disclosure, inmates by themselves would no doubt have difficulty assessing their files adequately and rapidly. We noted that the size and complexity of files presented problems for some officials and Board members and that brief summaries of file information were prepared for their assistance. Longer and more comprehensive summaries could well be an aid to all participants in the parole process, and particularly to inmates.

Officials preparing such a summary, however, would require a more explicit stating of the criteria used by Board members in making parole decisions. So too would inmates if they are to understand the relevance of information in their files.

3. *Having Reasons for Decisions*

Comprehension of the parole process is not aided by the Board's practice of not requiring full written reasons for decision. Inmates, as a result, at times fail to understand why particular decisions were reached. They understandably then tend to view the process as arbitrary. In addition, the reasons for one decision serve as guidelines or non-binding precedents for similar cases for inmates, as well as officials and Board members.

There are also policy reasons for requiring written reasons. How else can criteria for decisions be tested? How can persons supervising parole be adequately knowledgeable about the reasoning of Board members and the weight they attached to possibly conflicting information in the inmate's file?

The significance of the parole decision for the inmate, other inmate officials in the process including Board members, and for society generally make the recording and accessibility of reasons for decision an essential practice in any decision-making process that affects the individual's liberty.

4. *Notice of the Parole Hearing*

To our surprise, we discovered that some inmates in our sample had been uncertain of the exact date of their parole hearings and the identity of the presiding Board members.[245] One inmate learned that he would be seen by Board members a mere ten minutes before the hearing. As can be imagined, this made even the limited participation of the inmate desired by Board members difficult to achieve. For some inmates, a lack of adequate notice caused emotional stress. Many inmates, we discovered, believed they needed time to rehearse their hearing performances.[246] The Parole Board with a minimum effort could reduce possible anxiety and tension for inmates by ensuring that they be notified of the date and time of their hearings, and the names of presiding Board members as soon as scheduling permits.[247] Existing procedures cast this responsibility on institutional staff. We noticed that these officers did not always act swiftly or effectively in informing inmates of parole matters.[248]

(ii) *The Inmate's Access to Assistance*

As mentioned earlier, effective participation in the parole process by most inmates requires not only access to relevant information, but also

the availability of assistance in dealing with this information and the parole hearing. We observed that differences among inmates' abilities to organize their thoughts, perceive what was relevant and what was not, and express themselves clearly, might result in less favourable parole decisions for those with lesser abilities, whatever the likelihood of success on parole. Furthermore, all inmates suffer the disadvantages placed on them by imprisonment — a very limited capacity to carry out those parts of the preparation for the parole that may require gathering views, or information, or making arrangements outside the penitentiary.[249]

Several observers have recognized the inmate's need for assistance by recommending that inmates be given the right to representation at the parole hearing by a lay person, to the extent that this not prevent Board members from "entering into a direct dialogue with the inmate himself".[250] Our observations of 180 parole hearings support these recommendations but we query whether they go far enough, not having dealt with the inmate's basic problem of finding someone to help him prepare and participate in the parole process. Perhaps the Parole Board should bear the responsibility of ensuring that all inmates have access to independent assistance and representations.

While existing Board policy prevented inmates from having any sort of representation or assistance in the hearings we attended, some inmates had assistance (for example, from legal counsel) during the case preparation phase.

We observed that assistance before the parole hearing had a substantial influence on the parole decision. A carefully prepared description by a lawyer of an inmate's activities for five years while unlawfully at large could not help but impress Board members of the inmate's potential.[251] Other cases indicated the beneficial contribution that could be made by an independent person "on the outside" acting on behalf of the inmate in gathering information or otherwise preparing the way for an acceptable release plan. Some inmates have the knowledge, the relationships, the resources that allow them to obtain outside assistance. Others by themselves do not, a situation of inequality that the Parole Board would not doubt wish to remedy.

An obvious source of assistance is a lawyer. Indeed, Parole Board policies encouraged officers to be "cooperative and respectful toward lawyers representing people or parolees who have business with the National Parole Board".[252]

Parole Service policies, however, allowed assistance by lawyers during parole, to be limited, stating that officers have the "authority to prevent the attendance and/or participation of lawyers who wish to attend the interview of a parole for any matter".[253]

Legal counsel might well be useful to inmates in all phases of the parole process. Yet our experience of 180 parole hearings demonstrated to us that the introduction of adversarial procedures in this context would reduce the effectiveness of Board members in assessing the readiness of inmates for parole. An informal, "clinical" atmosphere appeared to be desirable given the facts and issues considered by Board members and the decisions they must make. Introducing a right for inmates to full representation by lawyers would, in our view, tend to destroy this beneficial atmosphere because of the preference of many lawyers for more formal court-like procedures. While these may well be suited for determining the existence of particular facts, the parole hearing has broader objectives. It is, in essence, an aid to a prediction by Board members of the probability of the occurrence of certain events, based on an assessment of a person's capacities to control his own behaviour within a chosen, but still unpredictable, environment.[254] As a result, assistance to inmates during the parole hearings could perhaps be best provided by psychologists or social workers who are knowledgeable of the legal and administrative aspects of the parole process. We would stress that this assistance should not diminish the inmate's direct participation in the hearing.

There were, of course, issues of contested fact that arose during a number of the hearings we witnessed, that could best have been dealt with by lawyers. Many of these issues arose from events that had led to institutional proceedings and sanctions. At the present time, these can apparently be instituted and imposed without an adequate determination of what actually happened. Improvements in how alleged institutional offences are handled are beyond the scope of this paper, but will in all likelihood occur soon. This will eventually remove many issues of contested fact from the parole hearing and thus aid its operation. Given, as well, the inmate's access to both information and assistance, parole decision-making and success would, we believe, greatly improve.

Increasing access would also counter several aspects of potential inequality that we observed -- the fact that not all inmates were aware of or used the opportunity to present written or documented information or representatives to board members or to call witnesses to testify on their behalf. Written representations appeared to play a decision role in several of the twelve cases in which they occurred. The use of the witness in eleven out of the 180 cases we observed could well have influenced decisions for those inmates affected. All inmates should have the same opportunities to participation in the parole process.

e) Conclusions

Our suggestions for expanded participation by the inmate in the parole process call for inmate access to information and assistance and parole procedures that recognize and implement these needs. Increased understanding and involvement by inmates could, in our view, result in better parole decisions and more successful paroles. It would also increase the financial cost of parole administration in one way, perhaps if only for an initial period, by lengthening the period of time that Board members allocate to considering whether an inmate should be paroled. Inevitably, our proposals will be assessed to determine whether the perceived benefits are worth added costs. It must be remembered that while the added costs can be assessed in terms of dollars and cents, the benefits flowing from these costs cannot. It boils down to society asking itself what kind of parole process it wants, and whether it can support it.

Patching up the present process could well be more costly and difficult than designing a new process for ending imprisonment that is integrated into a comprehensive sentencing process.

Our suggestion will undoubtedly be seen by some as another attempt to "judicialize" the parole process. And indeed, the temptation is great to meddle with a process that appears to be so arbitrary in design and operation. Law reformers are suspected of automatically suggesting the fettering of decision-makers granted broad discretion with fair (and therefore, court-like) procedures and requirements.[255] Our emphasis, however, is not on restricting this legislatively conferred discretion that the Board's parole professionals exercise in many instances with skill and understanding. It is, rather, on attempting to improve the context in which the parole decision is made, for example, by promoting the inmate's participation.

Some of the procedural changes we suggest are similar to those sought by inmates who have challenged, for the most part unsuccessfully, Parole Board decisions in the courts.[256] Judicial decisions have for many years upheld the Board's existing procedures as being proper exercises of administrative power.[257] In fact, the Parole Board Act has been designed by its draftsmen, given existing law, to prevent judicial interference with the Board's functioning. But judicial attitudes change, as do the criteria judges apply to determine whether or not they should intervene and order a public authority to exercise its discretionary power in a fairer manner. Recent judicial decisions involving the Board's procedures have contained strong dissents by Justices of the Supreme Court of Canada who would require the Board to adopt minimal procedures giving the inmates greater access to information and involvement in the parole decision-

making.[258] Paralleling this are recommendations made in the Hugessen Report that every inmate have "the right to an open and informal parole hearing where he is given the fullest possible opportunity to participate in a decision which directly affects his personal liberty".[259] Given the Board's power to initiate "rules for the conduct of its proceedings",[260] it would be wise for it to introduce procedural changes before the courts or Parliament inpose requirements that are less sensitive to the functioning of the parole process.

Several other matters that were touched on earlier in this chapter merit comment. The participation and attendance of responsible Parole Service and classification officers at the parole hearings we witnessed varied greatly. Sometimes, too frequently in our view, the officers who prepared the case were not present. No parole hearing should be held without the attendance of the inmate and all officers involved in case preparation.

We also noticed variations between regions in the number of people attending parole hearings but were unable to detect any consequent effects on parole decisions. A suitable policy should be clearly stated and uniformly applied.

Finally, the Board's voting procedures give too great an opportunity to individual Board members to influence the outcome of a particular decision and to dilute their own responsibility for that decision. In addition, to allow publicity to be a factor in the determination of the number of votes a particular case requires is to introduce inequality and indeterminable elements into the final decision that will hamper any future assessment of its accuracy or effectiveness. Our consideration of voting procedures at the Ottawa level continues in Chapter VII.

CHAPTER VII

Phase III: Parole Decision-Making by Ottawa Board Members

Ottawa members of the National Board must cast votes and make decisions in cases requiring more than two votes. This chapter describes and analyses this aspect of the parole decision-making process.

a) Description

Parole Board practice and procedure requires that certain federal parole cases, having been initially considered by regional Board members are routed to Ottawa members for further votes.[261] In general, additional votes become necessary because of the serious nature of the offences involved or because a regional member has asked for additional votes on a particular case. The Board's voting procedures, we learned, change from time to time.[262] Table XXVII attempts to describe them as they were in November of 1974.

This voting procedure applies to decisions on ordinary parole and day parole. An interesting feature of the procedure is that two votes can deny anything. Even though seven votes may be required, once two negative votes are registered, the application for parole is denied. If the original members initiating the consideration of an application both cast negative votes, that ends the matter. If they cast opposing votes, or both support parole, then the case goes to Ottawa for consideration and voting by the required number of additional members.

Cases sent to Ottawa for additional votes are routed to the requisite number of Ottawa members. These members examine the file and the comments of the regional members in it. They may add additional comments. But all they usually see before deciding and recording their decision on the decision sheet is the inmate's file.

A further, and sometimes crucial aspect of the voting procedure is the power of every Board member, regional or in Ottawa, to ask for additional votes on a particular case. Such a request normally is made as

Table XXVII
Parole Board Voting Procedure

Number of Votes	Situation Justifying Particular Number of Votes
7	Dangerous sexual offenders Lifers Habitual criminals
5	Organized crime involvement "Causes célèbres" (including terrorists, kidnapping, hijacking) Parole reduced for lifers
3	Armed robbery (irrespective of type of weapon used) White collar crime ($40,000 and over) Re-parole (where a crime of violence is involved) Drug trafficking (sentence of 2 years or more) Drug importing Possession of drug for purpose of trafficking (sentence 2 years or more) Rape Manslaughter Parole by exception (of more than 3 months)
1	Day parole forfeited (without recommendation toward parole) Day parole (temporary) forfeited (without recommendation towards parole) Reserved Mandatory supervision forfeited Parole application deferred Parole application denied
2	All other situations. If negative, can deny parole no matter how many votes required.

part of the member's written comments. And most requests in our experience were made by Ottawa members. Since the consideration of a case continues until the required number of votes have been cast, the power to demand additional votes is a power that when exercised decreases the likelihood that parole will be granted.

Some idea of how the voting procedures operate is given by looking at our sample. Of 204 cases in the sample in Ontario and Quebec, we assessed that 107 would require additional votes by Ottawa members.

In fact, only forty-one cases were sent to Ottawa for additional votes. Regional members disposed of some sixty-six of the cases by both voting to deny or defer parole, or one member voting to reserve decision. Not one of these forty-one decisions required additional votes by Ottawa members because of disagreement between regional members. Table XXVIII attempts to illustrate how the voting procedures applied both in theory and in practice.

Three of the cases requiring three votes under the Board's normal voting procedures, went on to five votes because of the request of the Ottawa member casting the third vote for two additional votes.[263] Two of the cases where five votes were eventually cast originally only required two votes.[264] One of these cases went on to five votes because a regional member requested an additional vote and the Ottawa member casting this vote requested another two votes.[265] The other case received five votes because an Ottawa member reclassified the offence involved as a "cause célèbre" that under the voting procedures requires five votes.[266]

Although some Board members had a special interest or expertise in certain types of cases, this did not appear to be a determining factor in the routing of cases requiring extra votes to Ottawa members. However, consultation between Ottawa members probably allows such expertise to influence decision-making.

Table XXIX describes those cases where the normal voting requirement was altered by regional members, as well as those cases which were altered or overturned by Ottawa members. Interestingly, all but five of the forty-one regional decisions sent to Ottawa members for further votes were "upheld". One decision was only altered slightly, while the remaining four decisions were "reversed".

b) Analysis

The routing of cases to Ottawa members for additional votes appeared, from what we saw, to function fairly smoothly. However, three features of the Board's voting procedures and practices caused us some concern.

Table XXVIII
Cases in Sample Requiring
Additional Votes

	Number	Total Votes Required
IN THEORY...		
	107	3 - 7
	of which	
	84	3
	4	5
	19	7
AS DISPOSED OF...		
	41	3 - 7
	of which	
	29	3
	6 (of which 3 in theory required 3 votes only and 2 in theory required 2 votes only)	5
	6	7

Table XXIX
Cases where Regional Members Requested Additional Votes
or where Ottawa Members Altered the Regional Decision

REGION	MAIN OFFENCE	NORMAL VOTING	ACTUAL VOTING	REGIONAL MEMBERS' DECISION	FINAL DECISION
Ont.	Attempted extortion	2	5	parole for deportation in principle	same
Ont.	Dangerous sexual offender	2	5	day parole (temp.) cont'd and extended	day parole (temp.) cont'd
Ont.	Dangerous sexual offender	7	7	day parole (temp.) in principle	reserved
Ont.	Habitual criminal	7	7	ordinary parole	deferred
Que.	Trafficking in narcotics	3	5	day parole	day parole denied
Que.	Attempted murder	3	5	parole in principle with gradual	deferred
Que.	Trafficking in narcotics	3	5	parole in principle with gradual	same

First, the decision-making of Ottawa members on cases requiring extra votes is based solely in virtually all cases on the contents of the inmate's file and the memorandum comments in it by the two regional members who initiated consideration of the case. Ottawa members do not see the inmate or the officials responsible for the most important documentation in the inmate's file. In a sense, the Ottawa members have less information than do the regional members, yet their vote has equal weight. In addition to such a practice creating a certain element of inconsistency in the performance of various Board members here, it may also be an infringement of the rules of natural justice. Professor de Smith has referred to this type of problem in the following terms:

> Must he who decides also hear? In general the answer is in the affirmative. It is a breach of natural justice for a member of a judicial tribunal or an arbitrator to participate in a decision if he has not heard all the oral evidence and the submissions.[267]

The possibility of needless inconsistencies, of undisclosed bias or ignorance of crucial information, has led our courts to require that the members of some tribunals and administrative bodies deciding a particular case must all participate in the hearing and consideration of the case.[268] And there is a strong element of common sense in this requirement. For some members involved in a collegial decision to decide in isolation, and for others to decide in the face of the person affected, obviously means there are differing bases for decision amongst the two groups of decision-makers. The impact that this has on the quality of the parole decision is as difficult to assess, for observers such as us, as for members of the Parole Board concerned with making the best decision for the inmate and society at large.

The Parole Board should consider techniques that would ensure equal participation by voting members in the consideration of an application for parole. Such techniques should allow every member involved in a decision to see and speak to the inmate concerned.

The second matter of concern was the practice we noted by some Ottawa members of commenting on a case without deciding. For example, regional members had requested one additional vote in a case involving the continuation and extension of temporary day parole.[269] An Ottawa member commented in the case file without voting:

> I am requesting that this file be routed to another member — in my opinion he should not have been released on Day Parole (Temp.) in the first place. I also question seriously the value of this programme since I can see little, if any, possibility of his being released on parole in the near future, if ever.

The case then went to another Ottawa member who voted, but requested two further votes.

While consultations on particular cases between Board members are no doubt useful, and practically speaking, unavoidable, it seems to us that comments introduced into an inmate's file by a member without the responsibility of decision could be both superficial and influential. The Board's approach should be "no vote — no comment".

The third practice calling for comment is the recirculating by Ottawa members of their comments and decisions to other Board members who have already voted in a particular case in order to achieve a more consistent voting pattern. We noted that this had happened in at least three of the cases we reviewed.[270]

Occasionally, recirculation occurred after an Ottawa member had examined a case file but before he had voted. New Board procedures formulated to accommodate the recent reorganization of the Board and Parole Service have anticipated this type of "recirculation problem" by requiring that:

> Board Members are asked to observe the following procedures:... (c) to refrain from the previous practice of recirculating their comments to all other Members concerned prior to coming to a decision.[271]

We believe that no recirculating should occur at all. If Board members are to bring an independent mind, and a variety of expertises and experiences to their making of parole decisions, then any attempt to seek a unanimous decision perverts the decision-making process. It also defeats the underlying premises of requiring more votes for certain kinds of cases — the presumption that more people deciding produces a better decision, as well as diffusing responsibility in the event a parole proves disastrous.

Finally, some explanation appears necessary for the low level of change by Ottawa members of regional decisions (five out of forty-one cases). An Ottawa member was in fact sitting as a regional member in seventeen of these cases. This was necessary at the time because of the heavy workload of the regional members in Quebec and Ontario. It also, of course served a training function for new regional members. Over our sample as a whole, of 200 parole hearings for the Quebec and Ontario regions in the month of February, 1975, 106 involved an Ottawa member sitting as a regional member. If this practice changes, as is likely, so too may the apparent degree of regional autonomy.

CHAPTER VIII

Criteria in Parole Decision-Making

a) Introduction

As must now be obvious, our research could not reveal what the criteria to be used by Parole Board members *should* be. We have attempted to identify some of the most prominent criteria used in the cases in our sample. Rarely were all operative criteria easily ascertained.

Board members did not as a general practice record and rank the criteria they used in reaching decisions, or the factors they considered to be decisive. Clues about what these criteria and factors might have been and the weight Board members attached to them occurred in the written and oral recommendations of Parole Service and classification officers, in the statements and questions during parole hearings, in conversations we witnessed as Board members deliberated and reached decisions, in their indication, explanation and discussion of decisions to inmates and officials, and in their written comments attached to the forms recording decisions. We did not interview Board members and in a rigorous fashion ask them to attempt to state and weigh the positive and negative factors involved in their decisions. To do so when the facts of a particular case were fresh in Board members' minds could, in our view, have influenced the process of decision-making we were observing, characterized as it is by both objective study and subjective impression. What has emerged from our observations of this process is an identification of the criterion that appeared to dominate the consideration of cases we monitored. These we describe later in the chapter as prominent criteria. Their selection by us does not indicate that other factors were not operative, but rather our early discovery that in any case, out of the mass of information available to Board members, a relatively small number of factors seemed to tip the scales one way or another.

For some of our readers, what follows in this chapter may say more about *our* impressions than the behaviour of the Board members we observed. However, this part of the study represents an initial attempt to make explicit a process which up to now has remained implicit — a process which is the very heart of this administrative body.

Previous chapters pointed out many of the problems caused by not having specific, clear, consistent and widely known criteria. One need only read several inmates' files and observe their parole hearings to realize that while such criteria are needed, they can never completely substitute for the discretion that parole decision-makers must inevitably have in order to cope with the infinite variety of human situations and the ever-changing nature of society. Effective criteria cannot be chiseled in stone, but evolve openly and clearly in a way that allows assessment of past experience to shape and improve future decisions.

The few formal statements of Board criteria which do exist are general and brief and can do no more than provide very general guidance to participants in the parole process.[272]

b) Identifiable Criteria

Section 10 of the Parole Act sets out three main criteria to be considered by the Board in deciding whether to grant parole. These are first, that

> ... the inmate has derived the maximum benefit from imprisonment; second, that the reform and rehabilitation of the inmate will be aided by the grant of parole; and third, that parole would not constitute an undue risk to society.[273]

The Parole Board's Procedures Manual approaches the description of criteria for parole in the following manner:

> In order to arrive at a decision the Board first considers all possible information about the offender that will help measure his readiness for release, and the readiness of the community for his return. This requires a study of all pertinent information relating to the offender's social and behavioural background and development, the motivation underlying his criminal behaviour, his adjustment and significant changes in insight and attitudes towards improving his knowledge and skills while in the institution, and a satisfactory parole plan for his return to the community where the potential for living and employment are favourable.[274]

Another approach is found in an early Handbook on Parole that until recently was provided to inmates as a way of helping them understand what parole was all about.

> Here are a few other things the Board looks for:
>
> — What was your offence, was it the first one, and was it a serious one?
> — Do you have a better understanding of the situation that brought you to prison?
> — What kind of person were you, have you changed, in what way?
> — Have you tried to improve yourself, — how?
> — Is your relationship with your family and your friends a good one?
> — Have any difficulties been fixed up?

— Are there people outside who can, and who will help you?
— The Board also wants to know if you have a job or are able to get one, if you have a place to live, and if you have a realistic plan so you can avoid the problems of the past.

Yet another statement of parole criteria was provided by the Board for judges, magistrates and police officers:

> These are some of the factors that help the Board decide:
> (a) the nature and gravity of the offence, and whether he is a repeater;
> (b) past and present behaviour;
> (c) the personality of the inmate;
> (d) the possibility that on release the parolee would return to crime and the possible effect on society if he did so;
> (e) the efforts made by the inmate during his imprisonment to improve himself through education and vocational training and how well they demonstrate his desire to become a good citizen;
> (f) whether there is anyone in the community who can — and would — help the inmate on parole;
> (g) the inmate's plans and whether they are realistic enough to aid in his ultimate rehabilitation;
> (h) what employment the inmate has arranged, or may be able to arrange; steady employment must be maintained if at all possible as one of the most important factors in his rehabilitation;
> (i) how well the inmate understands his problem; whether he is aware of what got him into trouble initially and how he can overcome his defect, and, how well he understands his strengths and weaknesses.
>
> The final test in any parole case is whether there is a change in attitude towards crime — whether he has genuinely attempted to change for the better.[275]

c) Recent Board Efforts at Specifying Parole Criteria

Within the last two years, as part of a general movement in this direction, Board members have made some effort to clarify criteria. In October, 1974, a regional member initiated a survey of the criteria used by Parole Service officers in recommending parole. Officers were asked to list and rank the ten criteria they most frequently used. Responses received from 107 Parole Service officers noted fifty-three different criteria.[276] The ten most frequently used criteria, in order of importance, were as follows:

(1) established pattern of criminal behaviour;
(2) threat to society of violence;
(3) stable family in community;
(4) stable behaviour patterns in individual;
(5) level of inmate motivation;
(6) work available in community;
(7) level of self-insight;
(8) degree of involvement in release plans;

(9) support of friends in community;
(10) work training in institution.

Another effort to clarify the Board's criteria took the form of a list of eight major criteria circulated to the district offices of the Ontario region in the fall of 1974.[277] The criteria listed were:

(1) the risk of recidivism based on the individual's criminal record;
(2) the potential harm to the public in the event of recidivism;
(3) the effort made by the inmate at self-improvement while in prison;
(4) present attitude and motivation;
(5) the extent of support which he can expect to receive in the community from family, friends and the community in general;
(6) the prospects for employment;
(7) available facilities for continuing education, vocational training, medical or psychiatric treatment or other required services; and
(8) extent to which the deterrent effect of incarceration has been maximized.

Early in 1975, and partly in response to the initiative of the regional member described above in October, 1974, four Ottawa members produced a list of fifteen parole criteria, ranked according to the importance attached by each member in their decision-making.

It is noteworthy that two of these Ottawa members sat as Ontario regional members in some 60 per cent of the parole hearings scheduled for the month of February (and therefore had a significant influence on our sample). All four of these members sat as part of the various panels in those February cases from the Ontario region requiring additional votes. Table XXX shows how these members ranked the criteria they selected.

Several other Board members indicated to us that they used certain criteria and indices that were in some respects similar to the criteria we have already described.

These various attempts indicate that the Board is searching for agreement on parole criteria that could be used across the country. The attempts also show that some inconsistencies exist in the criteria applied by Parole Board members and Parole Service officers. None of these lists indicate what would be a sufficient application of particular criteria for a grant or denial of parole. Table XXX does show, however, agreement on two criteria (seriousness of offence, criminal record showing pattern of violence) as the two most important criteria for four Ottawa Board members, as well as significant similarities in the overall ranking of most other criteria.

Table XXX
Ranking* of Parole Criteria
by Four Ottawa Members of the NPB

PAROLE CRITERIA	Ranking			
	Member A	B	C	D
Seriousness of offence(s)	1	2	1	1
Criminal record (pattern, violence)	2	1	2	2
Institutional performance	8	8	7	9
Previous parole performance	9	5	4	3
Prediction table rating (Glaser)	10	3	15	15
Marital status	11	12	6	10
Age	4	13	8	12
Employment (history and availability on release)	3	6	9	5
Time left to be served	5	11	10	11
Drug dependency (alcohol, drugs)	6	9	3	6
Education	12	7	11	7
Emotional (psychiatric stability)	7	4	5	4
Social background	13	14	12	8
Debts	15	16	13	14
Use of leisure time	14	15	14	13
Community impact**	—	10	—	—

*Most important – 1, least important – 15
**One member felt it necessary to add this additional criteria.

None of these lists directly recognizes the Board's sensitivity to adverse public opinion and its impact on decision-making. Even though some Board members may consider public reaction as an important criterion, as we indicated above in Chapter VII while discussing Board voting procedure, it was an underlying criterion (if present at all) that we did not notice in the decisions we monitored.

d) Parole Criteria Used in Cases We Observed

We have attempted to extract the criterion in each decision that appeared to have been most prominent. The sources we used were described at the beginning of this chapter and did not include our direct questioning of Board members about criteria or factors that may have been operative but were not mentioned by them, by contributors to inmate files or participants in the parole hearing. We tended to attach more weight to criteria that Board members considered important enough to record in memoranda attached to their decisions.

Our findings, summarized in Tables XXXI and XXXII, do no more than illustrate the criteria that appeared to us to be most influential or important for parole decision-makers in the cases we witnessed. Since we selected only one prominent criterion and did not uniformly relate it to other factors in each case (such as the seriousness of the offence, or the number of previous convictions), our findings do not indicate that this criterion by itself was decisive in determining the parole decision. Our selection of prominent criteria, as a result, may be of limited utility to those wanting to know what criteria were applied or were decisive in particular kinds of cases. On the other hand, these prominent criteria were the most visible considerations present in the cases in our sample. Consequently, they are what many participants in the parole process, particularly inmates, must rely on in understanding parole decisions, because of the absence of specific, clear, consistent and widely-known statements of the criteria Board members attempt to use.

Since we observed cases and hearings in Ontario and Quebec separately, our findings for these regions are presented independently. The criteria used in each region varied, differences existing even in the definition given to criteria with similar tags. We have illustrated the use of criteria with selected quotations from the written comments of Board members attached to their decisions.

(i) *Criteria in the Ontario Region*

From the seventy-three cases and hearings that were fully monitored for prominent criteria in the Ontario region, some seven general types of criteria emerged.[228]

Table XXXI
Prominent Criteria in Ontario Portion of Sample
(Identification and Frequency)

Criterion	Number of Cases
Release plans	23
Personality problem	16
Maturity	9
Personal resources	9
Established delinquency	9
Danger to society	4
Institutional performance	3
	73

(A similar Table for the Quebec region appears on page 132)

1. *Release Plans*

This criterion predominated in twenty-three cases. Involved were inmates with good, community-supported release plans, inmates without any reasonable release plans, and inmates who required special frameworks or strict supervision to implement their release plans. To illustrate, the following are excerpts from the written comments of Board members attached to their recorded decisions:

O-45 All institutional reports were positive. However, because of the nature of the offence and the publicity it attracted at the time of the inmate's conviction (he had killed his bride 13 hours after the wedding) the Board was very concerned with the community attitudes toward the inmate. The community situation was found to be very supportive with family, relatives, friends and even the police favourably disposed to the release of the inmate back into their community.

O-73 Granted day parole (temporary) for the purpose of earning sufficient funds to pay off his debts and to travel out west. In addition, the Board wished to provide the inmate with an opportunity to test himself out in terms of his alcohol problem. Their central concern however was with providing the inmate with the first stepping-stone for reaching his release plan goals.

O-18 This case involved a 50-year old inmate serving a sentence of four years for breaking and entering, escape and a remanet for mandatory supervision forfeiture. Central concern however was with the fact that he lacked any form of release plan. The Board wanted the inmate to do more thinking about this release and commented to the inmate that he should reapply for parole when he decides upon a viable release plan.

2. *Personality Problems*

Occurring in sixteen cases, the use of this criterion was activated by inmates who appeared to exhibit emotional instability, or what was seen to be an inability to cope with everyday problems and personal relationships. For example, consider Board members' reactions in the following cases:

O-27 This inmate had made no effort to involve himself in any of the programs or counselling offered by the institution and verbalized his need to get out of the institution since he felt he required no help. Though this inmate had no previous criminal record, he had been a heroin addict for the five years preceding his arrest on the present offence. His emotional problems clearly prevented him both from developing any sort of insight into his difficulties and from making any effort towards reaching out to others for help.

O-17 A 27-year-old inmate serving a two-year sentence in a maximum security institution for indecent assault. This inmate had a serious alcohol problem in which he loses control of his sexual and aggressive drives when under the influence of alcohol. He tended to minimize the seriousness of his offence and has shown little interest in seeking psychological or psychiatric help in the institution.

A use of the "personality problem" criterion in some cases merged with the "danger to society" criterion, as the following case indicates:

O-1 This inmate has refused any type of psychiatric help offered in the institution, demonstrated a very poor attitude to women in general, lacked any sort of close contact with family or friends and showed no interest in parole since he was to be released soon... The general feeling of the Board members was that the inmate was a 'very dangerous man' and that he would have to be committed to a mental institution on his release from the penitentiary.

3. *Maturity*

This criterion seemed to dominate consideration of some nine inmates, who were either attempting to analyze and understand their own problems, or unable to accept responsibilities. For example:

O-13 The inmate clearly had a tendency to rationalize and excuse his behaviour both in terms of the offence itself and his institutional offences. He showed little insight into his pattern of irresponsible behaviour which included his fathering three children by three different women.

O-43 This inmate had no prior record and was a highly intelligent university student who had been trying to accumulate sufficient funds to attend a university in England. Though the inmate was not prepared to state that marijuana was dangerous or destructive, the Board managed to have him admit that he had broken the law and that he would not engage in such activities again.

4. *Personal Resources*

We have used the term, "personal resources" to describe the recognition by Board members of an inmate's alcohol or drug dependency, a factor that in their view could affect the inmate's success on parole. The criterion arose in nine cases where inmates who had drug or drinking problems showed an inability to do something about it, although they recognized the consequences for their families and themselves. To illustrate:

O-88 All factors appeared positive here: a good institutional work record, good community support, positive employment situation, and favourable police parole reports. However, the inmate has a serious alcohol problem which was at the root of a recent institutional offence. The Board focused on the fact that alcohol was at the base of most of this inmate's problems and that it was in fact ruining his life.

5. *Established Delinquency*

This criterion prevailed in nine cases in which inmates demonstrated a well-established pattern of delinquency. Paralleling its use was consideration of the inmate's involvement in the offence and his reasons for committing it. As examples:

O-51 The inmate has a personal history of involvement in the criminal world and association with members of this world. He is seen as a potential source of advice and facts for criminals.

O-46 30-year old female serving a sentence of 15 years 338 days for armed robbery and manslaughter. This inmate had been very successful on day parole and her release plan was well prepared and strongly supported by both the parole service officer and the classification officer. The Board's questions during the hearing centered almost exclusively upon the inmate's version of the offences in order to establish her degree of involvement therein (since there was an accomplice to both the offences). The Board established to their satisfaction that this inmate had not been the instigator or leader in the offences. Parole was granted in this case.

6. *Danger to Society*

Although one might have presumed that this would be a "threshold" criterion for serious consideration of parole, we noted a number of cases where parole was either not granted, or granted reluctantly, even though there was no evidence that the inmates in question would pose any danger to society in the sense of having a potential for physical violence.

The criterion, however, was decisive in four cases, usually when the inmates concerned were recognized as dangerous because of severe psychiatric problems. Not one of these inmates was held in a maximum security institution. We must point out that we did not attend six hearings held at the Kingston regional medical centre and were unable to obtain information about these. One illustration of the use of this criterion suffices:

O-44 A 27-year old inmate serving a sentence of six years in a medium security institution for armed robbery and theft over $200. Though this inmate's institutional academic work had been positive, he had a background of parole violation, violent behaviour and generally no insight. Seen as "dangerous and unpredictable person".

7. *Institutional Performance*

Board members gave special consideration to the inmate's behaviour and initiatives in penitentiary in only three cases. As an example:

O-78 The Board spent much time questioning him as to his constant need for money. They then turned their focus upon his recent institutional offence of bringing contraband into the institution since they felt that such behaviour was indicative of his general attitude.

(ii) *Criteria in the Quebec Region*

We extracted six general types of decisive criteria from the 97 cases we observed in the Quebec part of our sample.[279]

1. *Release Plans*

An *adequate* release plan was a determining factor in ten cases, adequacy being assessed by the presence of certain guarantees of viability and expected results. For example:

Q-100 This inmate is serving a four-year sentence for rape. Family reaction to his return in the community is favourable. The psychiatric report is favourable. He plans to return home where his wife has maintained the family household during his absence.

Inadequate release plans were negative factors in five cases, when the plan proposed did not complement the inmate's personality and probable outside environment. To illustrate:

Q-5 This inmate has good personal resources but does not use them. He is serving three years for robbery, attempted robbery and possession of drugs. He wants to work at a parking lot in Montreal.

Q-9 This inmate is serving 20 years. He has a good release plan which is presently unrealisable due to regional economic conditions. He was instructed to reapply as soon as such a plan becomes viable.

Incomplete release plans seem to motivate the Board member's decisions in ten cases. As examples:

Q-56 This inmate refuses to recognize that he has a drug problem. He has strong guilt feelings regarding something that happened in his early teens. We are looking for a release plan that would help an individual with such a problem.

Q-99 This inmate was heard last September. The introverted type, he has worked at correcting this problem. He plans to return to his former employer, but still has to register at a halfway house.

A release plan that had provided for a *framework* for parole and operated in *stages* of gradually reduced supervision was the focus of the Board member's concern in 14 cases. For example:

Q-102 This inmate is serving a 3-year sentence for robbery with violence. He is determined not to associate with his old friends. He is medically unable to drink anymore. He is an inveterate gambler and has many debts. He promises not to attend horse races again.

Q-65 This inmate is a small time thief, shallow but frank. He functions well within a definite framework and intends to pursue his education at the CEGEP level. He needs to work before undertaking his studies. A stay in a halfway house is desirable.

2. *Established Delinquency*

This was a prominent criterion in 19 cases. Involved were inmates with an identifiable delinquency pattern. Here Board members required evidence of the inmate's ability to meet control and supervision

Table XXXII
Prominent Criteria in Quebec Portion of Sample
(Type and Frequency)

Criterion	Frequency
Release plans	39
adequacy	10
inadequacy	5
incomplete	10
framework and stages	14
Established delinquency	19
Personality problems	14
Danger to society	12
Personal resources	8
Maturity	5
	97

requirements or additional proof of his intention to behave. As illustrations:

Q-45 This inmate was involved in drug traffic valued at half a million dollars. He once refused a day parole. His son was released and lives on welfare despite his personal income.

Q-37 This inmate is serving his seventh prison term and has poor personal and community resources. He was successful in two previous paroles. Good cooperation.

Q-81 This inmate is serving a 10-year sentence for armed robbery. He does not discuss his offence very much. His accomplice is very dangerous. We wonder whether he will be able to resist an easy hit. He does not consider himself a professional criminal.

3. *Personality Problem*

This criterion applied in 14 cases, involved inmates identified by institutional staff as "psychiatric cases", inmates with lesser "personality problems" who had or were undergoing treatment, and inmates who had demonstrated erratic behaviour in their relationships with others, either in penitentiary or outside. For example:

Q-14 Deferred two years earlier, he has since participated in mystic groups but has left them dissatisfied. He lives in a fantasy world, feels rejected and has taken steps to be transferred to a maximum security institution. He feels strongly that he is different from other human beings.

Q-55 Young inmate with a violent record. His personality has been damaged by intensive drug use. He trusts only the psychologist of the institution. He would like creative work to help people like himself.

Q-19 This inmate is serving three years for indecent assault. He is an illegitimate child who was abandoned in institutions. He has few resources but is able to earn a living. He has met with the psychologist of the institution on a few occasions and should continue these meetings.

4. *Danger to Society*

Occasionally a secondary criterion, this predominated in some 12 decisions. It seemed to assume importance either because of the nature of the inmate's offence, or in contrast to cases in Ontario, because the inmate was being held in a maximum security institution.

Q-82 This inmate is serving a sentence of 7 years and 935 days for conspiracy to rob and armed robbery. He is very influenceable and is working at this problem in the institution. A transfer application has been prepared in the event of a negative decision.

Q-91 This inmate is verbally aggressive. He is serving a 20-year sentence for kidnapping. He denies certain facts contained in the police report and blames the Board for not having intervened in a previous sentence. He premeditated his offence for three days.

Q-98 This inmate is a dangerous sexual offender. His institutional behaviour has greatly improved during the past two years. A neurotic conflict causes him to "act out". He has normal sexual fantasies but has never dated regularly.

5. *Personal Resources*

The criterion arose in eight cases involving inmates who recognized their problems but lacked motivation, and in particular, those with an alcohol dependency who felt they could not change. As examples:

Q-59 This inmate did not take advantage of a previous parole. He committed minor offences at an early age. He will probably recidivate and has no intention of changing or making any effort.

Q-16 This inmate reduces his drinking problem: he does not consider himself an alcoholic. He wants to return to his wife who has the same problem. The offence is related to his drinking problem.

6. *Maturity*

Lack of insight into themselves, or lack of willingness to participate in any social project were the problem concerning Board members in five cases. We categorized these concerns as a "maturity" criterion. Some inmates affected by the application of this criterion seemed unable to perceive their own responsibility for the offence that resulted in imprisonment. Others appeared to make no contribution or preparation towards their eventual releases. To illustrate:

Q-68 Unsatisfactory performance in the institution. The community assessment indicates his lack of realism towards his family situation (wife and five children) and responsibilities.

Q-95 This inmate realizes that she was not truly happy at home. She committed the offence "out of love" to save her happiness. She relies on her artistic talent and does creative work.

(iii) *Prominent Criteria and Decisions Compared*

All parole decisions can be classified into five categories:

— release

— release within a framework

— defer or reserve decision

— not to release

The following Tables compare these decisional categories with the frequency of use of the prominent criteria isolated in the decisions we monitored. The total picture presented by the consolidated Table XXXIII is, of course, affected by the somewhat different meanings attached to similar criteria in Quebec and Ontario.

Table XXXIII
Prominent Criteria and Decisions Compared
(consolidation)

Prominent Criteria	Decisions				
	Release	Release in Framework	Defer/ Reserve	Not to Release	Totals
Release plan	19	22	14	7	62
Personality problem		4	15	10	29
Established delinquency	10	3	7	8	28
Personal resources	2	3	7	5	17
Danger to society	1	6	8	1	16
Maturity	4	2	3	5	14
Institutional program	1		2		3
	37	40	56	36	169

Table XXXIV
Prominent Criteria and Decisions Compared
(Ontario)

Prominent Criteria	Decisions				
	Release	Release in Framework	Defer/ Reserve	Not to Release	Totals
Release plans	8	7	3/1	4	23
Personality problem		1	4/4	6	15
Maturity	3	1	3/—	2	9
Personal resources	2	2	3/1	1	9
Established delinquency	6	1	2/—	—	9
Danger to society*	—	1	1/2	—	4
Institutional performance	1	—	1/1	—	3
	20	13	17/9	13	72**

* Total is low, probably because we did not attend hearings held at the Kingston regional medical centre.
** One case omitted in which a prominent criterion was not evident.

Table XXXV
Prominent Criteria and Decisions Compared
(Quebec)

Prominent Criteria	Decisions				
	Release	Release in Framework	Defer/ Reserve	Not to Release	Totals
Release plans	11	15	1/9	3	39
adequate	6	4			10
inadequate	—	—	—/2	3	5
framework and stages	4	10	—/2	—	14
incomplete	1	1	1/7	—	10
Established delinquency	4	2	3/2	8	19
Personality problem	—	3	5/2	4	14
Danger to society	1	5	2/3	1	12
Personal resources	—	1	2/1	4	8
Maturity	1	1	—/—	3	5
	17	27	13/17	23	97

(iv) *General Observations on Criteria*

Although we attempted to identify prominent criteria, some obviously predominated in particular cases more than others. The "release plans" criterion was occasionally used by itself. Maturity, on the other hand, was used widely in combination with other factors. Obviously, even if criteria were spelled out and ranked in detail, parole decision-makers would still have to choose the criteria appropriate to each case. However, if all participants in the parole process were aware of the nature and range of, let us say, the fifteen criteria that the Board considered to be appropriate for most cases, then the information contributed to the inmate's file could be selected and structured in ways that would allow easier application of appropriate criteria.

We did observe that the Board members deciding on cases in our sample did not attempt to apply a given number of criteria, in any particular order, with any predetermined emphasis. Rather, they attempted to trace the circumstances of each case, and form a mental picture of it with the large amounts of information available to them that they had been able to review, given large workloads and little time. Indeed, we observed that Board members appeared to rely on relatively few factors,[280] a tendency that should encourage them to attempt to record the bases of their decisions.

Members seemed to have individual parole philosophies to guide their deliberations with the result for us that in many cases their decisions appeared to be made almost intuitively. Given their expertise, and presuming expertise is acquired by deciding many cases, their intuition may well have been an adequate, perhaps even admirable guide. But unless each Board member keeps an individual "score card" recording the criteria used, and subsequent history for every case they consider, and these "score cards" are studied by all Board members, the benefits of experience may be rather limited. Without keeping score, in other words, these benefits can only be sensed, or guessed at.

Since experience seems to be the main way of knowing the Parole Board's criteria for decision, one understands why these criteria are only known to a few people. We, as privileged observers, gained this experience to some extent. But it can never be acquired by many contributors to the bank of information in inmate's files that forms the basis for the parole decision, nor by inmates themselves. Their contribution and participation, consequently, can only be of limited effectiveness as long as they remain unaware of the Board's criteria for decision.

e) Why Clear, Consistent Parole Criteria Are Needed

We have already set out, in previous chapters, the reasons why a clear, consistent and explicit set of parole decision-making criteria are needed. Criteria, of course, will evolve but this should not prevent the Board from stating what they are. This would be only a first step — how explicit criteria would be ranked and used can only be discovered from experience and further research. Nevertheless, a number of immediate benefits would flow from the Board stating the criteria it will attempt to use as guides in parole decision-making.

For the inmate, explicit criteria are essential to meaningful participation in the parole process. Knowledge of the criteria used in his case reassures the inmate that Board members treated him fairly. A belief that he has been treated fairly by the Board enhances the legitimacy of parole in the mind of the inmate. And this may help him to meet the strictures of supervision and the standards and conditions imposed on him during the parole period.

For the Parole Service officer, explicit criteria would make case preparation an easier and more purposeful task. It would allow the officer to focus his efforts upon more relevant details, observations and comments. And this would result in a more efficient use of preparation time. Knowledge of the criteria employed by the Board would also serve to decrease the present anxiety of many of these officers and their tendency to anticipate the probable concerns of particular Board members.[281]

Specificity of Board criteria will also assist other contributors to the parole file such as classification officers, family or friends of the inmate, potential employers, and so on. Familiarity with these criteria will allow the contributions of these individuals to have greater relevance to the issues before the Board and consequently greater weight and impact on the Board's decision. Presently, each contribution to the parole file of some individual in support of parole for the inmate becomes a "hit or miss" effort, as many contributors are well aware. Consider the following excerpt from a letter by an inmate's lawyer to the Board:

> We are solicitors for Mr. X who, we understand, has recently made application for day parole.
>
> We wish to support this man's application at this time and would respectfully ask that the persons reviewing the application take into consideration the submissions contained in our letter to the National Parole Service dated January 17, 1974, in support of Mr. X's application for parole.
>
> In that letter, *we attempted to set out as accurately and as completely as possible information which we felt was relevant to the matter under consideration by the Board* at that time. We further feel that the same submissions are relevant to Mr. X's application at this time.[282]

The general public would also be assisted by knowing what the Board's criteria are. Information of this nature helps to demystify the parole process. Providing such information would demonstrate the Board's willingness to account for its decisions to that public. A better understanding between the public and the Board should evolve as the public become more aware of the Board's functions and the difficulties confronting parolees. Increased public understanding should help to facilitate the parole supervision efforts of the Parole Service and other after-care agencies.

Finally, the Board itself can gain substantially by a clear statement of its decision-making criteria. Because case preparation for the hearing and the argumentation at the hearing will be focused upon these criteria, the hearing itself should become a more effective case review. As well, the decisions of Board members would be less open to criticism as arbitrary or as motivated by extraneous factors or irrelevant considerations. Their decisions would be seen as flowing from their application of stated parole criteria rather than intuition or the "predilections of particular Board members".[283]

Reliance by the Board on explicit criteria should introduce greater consistency into parole decision-making. The Board's decisions would reflect its criteria and serve as guides in the consideration of similar cases. Furthermore, the Board would better be able to assess the effectiveness of its decisions in terms of the inmate's success on parole and the factors considered important by the Board.

Initial attempts by Board members to arrive at and agree upon a list of clear and consistent criteria or guidelines for decision, will obviously be difficult and frustating (although members should be encouraged by the agreement between the four Ottawa members shown on Table XXX). So too will initial attempts by Board members to rank and apply these to particular cases and record their application. But without such attempts, the Board will never be able to assess which criteria are indeed most appropriate and effective for different kinds of cases. Experience will gradually modify the list, which should never be thought of as static, or indeed comprehensive. And every modification will require the publication of a new list and explanations for changes made. This may seem excessively formal, but given the extreme importance of criteria for all participants in the process and the public's understanding of parole, we consider it vital for the Parole Board to continue its efforts at establishing its first set of clear, consistent and explicit criteria for parole decision-making.

f) Other Influences on the Parole Decision

In previous chapters we have described various elements, procedures, practices, and so on, that structure the context within which Board members decide. To the extent that these elements affect the parole decision, they could be considered as influences, or passive criteria. Our purpose in mentioning these passive criteria again is to remind the reader of the effect, sometimes determinative that they may have on the parole decision. The following are noteworthy.

(i) *Voting Procedure*

As already indicated,[284] different sorts of offences and situations call for decision-making and voting by differing numbers of Board members. The Board's voting procedure directly affects the ease with which an inmate may obtain parole. It is, for example, more difficult to obtain the majority approval of five Board members than of two. The voting procedure, therefore, acts in some instances to make it more difficult for an inmate to obtain parole and to emphasize the seriousness with which the Board views the offence or situation in question.

(ii) *Pre-decision Contacts*

We have already considered the effect of these contacts, that we defined as contributions to a parole file that take the form of a recommendation, evaluation or summary regarding the readiness for parole of an inmate.[285] We demonstrated that these pre-decision contacts greatly influence the consideration of a case by Board members. The recommendations of the Parole Service officer were seen as the most significant influence of this kind.

(iii) *Case Preparation Delays*

The sample indicated that delays in case preparation can be a determining factor in the Board's decision. Twelve case files received reserve decisions by the Board due specifically to inadequacy of preparation.[286] Though the Board was found not to reserve in all cases lacking significant documentation, the fact that it did so in these twelve cases means that delay in preparation is an important influence on the parole decision.

(iv) *Role of the Parole Service and Classification Officers in the Hearing*

It was noted in an earlier chapter that there is inconsistency in the nature and manner of participation of parole service and classification officers during the course of the hearing.[287] Some of these officers played a

major (and sometimes decisive) role in the Board's decision — either during the pre-inmate conference or the hearing proper. This was especially true of those cases where the Board needed just one additional positive or negative factor regarding the inmate in order to feel secure in granting or denying parole. The views of the Parole Service or classification officer at that crucial moment of indecision often provided the required impetus to bring the Board to a decision. Of course, the absence of the responsible officers could have a strong effect on the outcome, and such absences were not infrequent.

(v) *The Role of the Hearing*

It has already been pointed out in the discussion that the inmates in this sample were provided with ample opportunity to speak at the parole hearings.[288] In addition, it was mentioned that effective participation of the inmate at this stage of the parole process is important, for example, as a means of checking the accuracy of the information before the Board as well as ensuring that the inmate perceive the process as a fair one. Mention was also made of the important role of written representations submitted by certain inmates at the hearing.[289]

But aside from all these benefits of the participation of the inmate, did the inmate have any real impact on the Board's decision? That is, did the hearing stage in fact play a significant part in the actual decision of the Board?

It is significant that of 179 parole hearings we attended, a decision was tentatively taken by the Board *prior to* admitting the inmate into the hearing room in at least 50 of these cases. That is, in these 50 cases the researchers managed to gain from the pre-inmate conference's discussion a feeling for what the Board's decision would be. Such a "sense" or "feeling" of the decision came from remarks by Board members, Parole Service or classification officers. Remarks like:

"this one is a poor risk";

"this fellow is a very poor parole prospect";

"we'll consider this interview more of a progress report than as consideration for parole";

"this is a very violent guy and is pretty hopeless in view of his psychiatric progress to date"; and

"there are no negative factors here";

gave us a fairly accurate picture of the Board's final position.

Apart from recording these and similar remarks, we did not measure the effect of members' predisposition on decisions for all cases in the sample. Obviously, members who have prepared for a hearing by review-

ing the contents of the inmate's file may have formed some opinion on a number of the issues that will be raised. So too do judges who have read the arguments submitted by lawyers for plaintiff and defendant before the trial. If a degree of consensus on a case was achieved by Parole Service and classification officers, then, a Board member's predisposition may be determinative of his decision, and observably was in a number of cases we witnessed. All of this should not be taken as indicating that the hearing is not a significant event for parole decisions. In several cases, the hearing was crucial.

Perhaps the only observation that can be fairly made is that there was an element of inconsistency in the weight accorded the hearing proper by Board members. This inconsistency is further complicated by differences among inmates in their capacity to perform well in this setting.

(vi) *Previous Board Decision*

These are sometimes an influence on a subsequent consideration by Board members of the same case. For example, day paroles are viewed as preparation for full parole.

(vii) *Conclusion*

These contextual influences, though not normally viewed as criteria for parole, cannot be ignored in gaining an understanding of how parole decisions are made. Parole professionals — Board members and other officials — must obviously be aware of such influences and include them in their approaches to particular cases.

CHAPTER IX

Policy-Making by the Parole Board

Earlier we described the Board's involvement in formulating and disseminating policies. The number and variety of policy documents that the Board uses demonstrates not only its involvement in policy-making but also its need for simpler and better coordinated policy dissemination practices.

Policies can be found in rules, regulations, memoranda, directives, minutes of Board meetings, the Parole Service Procedures Manual, the Board's Procedures Manual, the Board's annual reports, its members' public statements, its own press releases as well as those issued by the Ministry of the Solicitor General. Apart from problems in amassing all Board policies, we had difficulty in understanding why some policies appeared in one of these sorts of documents, while others of a similar or related nature did not.

We discovered that the Board had no index for its policy memoranda and directives. It did, however, maintain an index to minutes of Board meetings at which, presumably, its policies are adopted. But not all policies are disseminated by Board memoranda or directive. And in fact, it might be difficult for the Board to know for certain all of the ways in which a particular policy was disseminated.

Many of the Board's policy memoranda and directives contain information that is crucial to an accurate understanding of the parole process. Yet these are not considered to be public documents, and are not usually made available to either inmates or the general public. For example, the Board's voting procedure is the subject of one memorandum. So too is the Board's policy on the nature, function and purpose of day parole.

Our own difficulties in finding and assembling up-to-date Board policies may be some indication of the experiences of new Board members and staff as they try to put together the Board's rules, procedures, practices, and policies that will guide them in their work. Surely, a simpler system could be designed that would simplify policy dissemination, perhaps by the Board using only one method of circulation, indexed and tied to earlier, related policy statements.

Whatever system is used, we believe the Board's general policies, like its rules and regulations, should be public information. To the inmate applying for parole, there is little between the application of a policy rather than a rule. For society, its understanding of the parole process is not enhanced by the Board using policies in a manner that hides them from continuing public scrutiny.

During our research, we observed that the Board was aware of a number of problems concerning policy-making and dissemination. The creation of positions of responsibility for policy gathering, coordinating and evaluating is a step in the right direction. Yet it is only one step. For inmates to understand and respect the parole process, they must have the opportunity to know how the process functions. An open system of policy dissemination would help meet this need.

Endnotes

[1] See, for example, L. James, *Prisoners' Perceptions of Parole* (Toronto: Centre of Criminology, Univ. of Toronto, 1971); S. Binnie, *Parole and Ontario Reform Institution Inmates* (Centre of Criminology, Univ. of Toronto, 1974); *Report of the Task Force on Release of Inmates* (Ottawa: Information Canada, 1973) (Hugessen Committee); Canada; *Report of the Standing Senate Committee on Legal and Constitutional Affairs on Parole in Canada* (Ottawa: Information Canada, 1974); Canadian Criminology and Corrections Association, *The Parole System in Canada* (Ottawa: Canadian Criminology and Corrections Association, 1973); K. Jobson, *Fair Procedure in Parole*, (1972) 22 U. of T. L.J. 267; I. Waller, *Men Released from Prison: The Impact of Prison and Parole* (Toronto: Univ. of Toronto Press, 1974); R. Price, *Bringing the Rule of Law to Corrections*, (1974) 16 (No. 3), Can. J. of Criminology and Corrections 209.

[2] See Parole Act, R.S.C. 1970, c. P-2, s.6.

[3] As K. C. Davis, author of *Discretionary Justice* (Chicago: University of Illinois Press, 1973), has said (at 25):

> "Discretion is a tool, indispensable for individualization of justice. Rules alone, untempered by discretion, cannot cope with the complexities of modern government and of modern justice. Discretion is our principal source of creativeness in government and in law.
>
> "Yet every truth extolling discretion may be matched by a truth about its dangers: Discretion is a tool only when properly used..."

[4] The inmate sample is discussed in Chapter II.

[5] The National Parole Board consists of an Ottawa Board and five regional Boards — Maritimes, Quebec, Ontario, Western Provinces and British Columbia. Each of the regions handles about 50 federal parole applications per month except for Quebec and Ontario, which handles some 100 applications each per month.

[6] Remission time is granted by the Penitentiary Service essentially for good conduct by the inmate in the institution. See Penitentiary Act, R.S.C. 1970, c. P-6, ss. 22, 24.

[7] Parole Act, s.15(1) which provides:

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

[8] *Id.*, s.15(2).

[9] *Id.*, ss. 16(1), 16(4) and 17(1), respectively, for definitions of the terms: suspension, revocation and forfeiture.

[10] *Id.*, s.13(2).

[11] And including "two or more terms of less than two years each that are to be served consecutively and that, in the aggregate amount to two years or more".

[12] Parole Act, s. 10(1)(*a*).

[13] Penitentiary Act, s. 13.

[14] National Parole Service Procedures Manual (hereinafter cited as NPS Manual), 2.00:

> "In Parole Regulations 3(1) (a), the expression 'after the inmate has been admitted to a prison' is to be interpreted to mean 'after the inmate has commenced to serve his sentence' whatever be the place of detention."

[15] Parole Regulations, SOR/60-216, reg. 3(1)(a).

[16] NPS Manual, 2.12.

[17] Parole Act, s. 8(1); see also NPS Manual, 1.18.

[18] NPS Manual, 2.07. See also National Parole Rules, SOR/71-151, s.6.

[19] For example, no Parole Service Office would request what is known as a Community Assessment if no application had been received. This is one of the reports considered by Board members in making parole decisions.

[20] Under s.21(1) of the Parole Act.

[21] Parole Regulations, SOR/60-216, am. SOR/64-475 and SOR/73-298, reg. 2(1) (a).

[22] *Id.*

[23] Parole Act, s. 21(1).

[24] Parole Regulations, reg. 2(1) (a) (ii).

[25] *Id.*, SOR/60-216, am. SOR/64-475, SOR/69-306 and SOR/74-97, 2(1) (b), 2.1(1) and 2.1(2) and the Criminal Code, s. 218(6).

[26] *Id.*, s.694.

[27] See *National Parole Board Memorandum re Day Parole and Day Parole (temporary)*, No. 6317, April 2, 1974, Ottawa. Four months is ordinarily the maximum amount of time permitted a day parole plan. Departures from these day parole eligibility rules must have Board approval. See also NPS Manual, 2.08-2.09.

[28] Parole Regulations, regulations 2(2) and 3(3).

[29] We discuss voting procedures in greater detail at Chapters VI and VII.

[30] Parole Regulations, SOR/60-216, am. SOR/64-475 and SOR/74-97, reg. 3(1) (c).

[31] *Parole Act*, s. 15.

[32] *Id.*, s.3(1). Members with a ten-year term are not normally subject to re-appointment but an exception exists in the case of one member who was appointed for ten years, effective October 1, 1960, re-appointed October 1, 1970, to terminate November 27, 1974, when the member reached the age of 65. On November 18, 1974, the member was re-appointed by Order-in-Council for a further period of one year.

[33] *Id.*, s.3(3).

[34] By the Governor-in-Council, s.3(2).

[35] *Id.*, s.4.1.

[36] *Id.*, s.5(1).

[37] For a statement of what their tasks are, see the *National Parole Board Procedures Manual* (August, 1974), hereinafter cited as NPB Manual.

[38] See P. B. Hoffman & L. K. DeGostin, *Parole Decision-Making: Structuring Discretion*, (1974) 38 (No. 4), Federal Probation, 7:

> Parole Board members actually make two types of decisions: individual case decisions and paroling policy decisions. The latter set the framework within which the former are made. In most jurisdictions, however, paroling policy decisions are informal, unarticulated, and generally not well developed. This situation has resulted in criticisms of unfettered discretion, decision inconsistency and disparity.

[39] Parole Act, s.6.

[40] R.S.C. 1970, c. J-3.

[41] Parole Act, s.7(1).

[42] When provincial parole boards exist; see Prisons and Reformatories Act, R.S.C. 1970, c. P-21; ss. 44 and 150.

[43] Parole Act, s.10(2).

[44] Parole Board Rules, rule 3(1).

[45] Parole Act, s.3(6).

[46] See NPB Manual, at 1-2.

[47] *Id.*

[48] Parole Act, R.S.C. 1970 c.P-2 (am. S.C. 1972, c.13, S.74), s.22(1).

[49] Some Parole Service Officers specialize in "case preparation", others in "Parole supervision". This, in Ontario stems from the accidental clustering of penal institutions in the Kingston and Peterborough areas. Heavily populated areas are usually the places where parolees seek employment, and live. As a result, the parole officers there are primarily involved in "parole supervision" as opposed to "case preparation".

[50] Normally, federal institutions, except for Beaver Creek Correctional Camp, Pinel Institute and Maison Tanguay.

[51] For an explanation of voting procedures, see Chapters VI and VII.

[52] Samples of these forms are filed in the Ottawa office of the Law Reform Commission of Canada.

[53] Not being allowed to photocopy any material in Parole Service files meant we could not collect what is known as the Cumulative Summary Part IV for each inmate. See National Parole Service Procedures Manual, 2.20. This contains an appraisal and recommendation regarding parole by a Parole Service Officer and usually neatly summarizes the relevant information in a file. The Cumulative Summary also serves as "reasons for decision" in those cases where the Board accepts a Parole Service Officer's recommendation without comment. See National Parole Service Procedures Manual, 1.25. The Board did permit xerox copies to be made of their Memoranda of Reasons for those cases in which they either disagreed with the recommendation of the parole service officer or in which they made additional comments or reasons. These copies, however, had to be returned to the Board after the research was completed.

[54] The Ontario regional Board members requested that all inmates on the February hearing schedule have the opportunity to approve or reject our attendance at their hearings, in advance of the hearing date. Time forced us to rely on the National Penitentiary Service to notify the inmates of our research and poll their reaction. The Classification Heads in each institution were asked to brief the classification officers who in turn were to speak to the inmates in their charge. The Board members understandably did not want to see inmates pressured into accepting our presence just as the hearing began. Delays in some institutions meant twelve inmates were not informed. Along with the four refused, this meant the Ontario sample was reduced from 99 to 83 monitored hearings.

[55] This figure includes inmates whose parole eligibility date was past but who had been deferred or reserved to March, 1975.

[56] Jurisdiction for imprisonment of offenders depends on the length of sentence. Penitentiaries are the responsibility of the Federal Goevernment, prisons and reformatories a provincial responsibility. Section 659(1) of the Criminal Code provides:

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

[57] All residents at Portsmouth Centre.

[58] The sample does not include day parole applications for which no hearing was conducted in which the inmate was present.

[59] Case numbers were assigned arbitrarily to inmates in the sample to maintain their anonymity. Case 0-14.

[60] Case 0-38.

[61] NPS Manual, 1.09.

[62] *Id.*, 3.02. A temporary Parole certificate normally valid for up to three months covers the "gradual" portion.

[63] Although a day parole might restrict a parolee's opportunities to prepare for a full parole in communities lacking custodial facilities.

[64] R.S.C. 1970, c.P-2, s.2. See also National Parole Board Memorandum *re* Day Parole and Day Parole (Temp.) from Maximum, Medium and Minimum Security Institutions, file 6317, April 2, 1974, Ottawa, which provides the following rules for a day parolee's return to the institution:
End of day — The end of day covers Monday to Friday and becomes effective after the individual's project or program has been in effect for one month. It will range from 10 p.m. to 12.30 a.m. for a maximum of one evening pass per week in maximum and medium institutions and a maximum of two evenings per week in minimum security institutions. 11 p.m. will be considered the normal limit for return to the institution but the District Representative may authorize an extension to 12:30 a.m. providing the resident's request is in accord with his plan.
Weekend — The District Representative will determine the leave privileges accorded to any one inmate within the context of his program of plan and in relation to his general progress. As a maximum, one weekend may be granted after the individual's project or program has been in effect for one month and as a maximum one weekend may be granted each month thereafter.

[65] R.S.C. 1970, c.P-2, s.13.

[66] See Memorandum, *supra* note 64.

[67] See Chapter VI, in particular.

[68] Memorandum, *supra* note 64.

[69] *Id.*, that indicates another difference between Day Parole and Day Parole (temp.) the curfew for return of the parolee to the institution: No curfew is required as inmates on Day Parole (temp.) status are normally expected to return to the institution at the end of the normal day's activity.

[70] *Id.* Penitentiary Regulations and Directives forbid temporary absences by inmates categorized as dangerous sexual offenders. See Directive C.D. 228.

[71] But see discussion in Chapter VIII.

[72] Parole Regulations, SOR/60-216, am. SOR/64-475, reg. 2(2) provides that where in the opinion of the Board special circumstances exist, the Board may grant parole to an inmate before he has served the portion of his sentence of imprisonment required to have been served before a parole may be granted.

[73] *Id.*, SOR/60-216, Regulation 3(3) provides that Board may review the case of an inmate at any time during his term of imprisonment.

[74] *Id.*, SOR/60-216, am. SOR/64-475 and SOR/73-298, Regulations 2(2) and 2(1) (a) (i).

[75] National Parole Board Memorandum *re* Exception from Regular Time Rules Ordinarily Governing Parole Eligibility, file 62298, Aug. 11, 1970, Ottawa. Note also that day parole applications prior to the Parole Eligibility Date are not considered as exceptions under this directive.

[76] *Id.*

[77] Case Q-94.

[78] NPS Manual, 1.09.

[79] Case 0-48.

[80] NPS Manual, 3.05.

[81] *Id.*, 3.01, 3.02.

[82] Case 0-16.

[83] Case 0-28.

[84] Cases 0-65, 0-67, 0-73.

[85] Case 0-47. Note that in theory a decision of "parole continued" is one in which the Board orders the continuance of a parole which had been suspended, thereby cancelling the suspension. It was not given such meaning in this particular case. (See NPS Manual, 1.11.)

[86] Parole Regulations, SOR/60-216, am. SOR/64-475 and SOR/74-97, reg. 3(1) (c).

[87] *Parole Act*, s.15.

[88] NPS Manual at 1.11.

[89] *Id.* at 1.10, 2.10.

[90] Case 0.49.

[91] Case 0-47.

[92] This is less than the total number of inmates in our sample because of difficulties in obtaining access to files that were in the hands of officers engaged in case preparation. Late inclusion of information in an inmate's file may preclude its careful examination and consideration not only by researchers like ourselves but also by Board members before the hearing.

[93] There is also a fourth abbreviated statistical file kept for each inmate in Ottawa. It contains a limited amount of specialized data of little practical importance to this study. NPS-NPB Re-Organization *Study Report No. 5* (Ottawa: Ministry of Solicitor-General, Feb. 1974), 13-14.

[94] The parole file for an inmate in a provincial institution is opened only upon receipt by the Board of an application for parole.

[95] NPS Manual, at 2.00:
In Parole Regulation 3(1) (a), the expression "after the inmate has been admitted to a prison" is to be interpreted to mean "after the inmate has commenced to serve his sentence" whatever be the place of detention. And also at 2:00: Parole Eligibility Date is the date on which the inmate would normally be eligible to be released on parole. See also, 2.07 and 2.12.

[96] *Id.* at 2.00: Case Preparation refers to the steps to be taken to prepare a case for review by the Board and includes collection of fact information, assessment of circumstances which have a bearing on the case, reports of interviews, analysis of all pertinent data

available and a summary and recommendation. See also, 2:07 and 2.13.

[97] *Id.* at 2.01. Applications are requested five months before the parole eligibility date for hearing in the month prior to the month in which the parole eligibility date falls.

[98] Such material is "dead" to the extent that it is deemed to have no bearing on the current sentence or current parole application. Board members, however, occasionally indicated their awareness of "dead file" information.

[99] A copy of this form is on file with Ottawa office of the Law Reform Commission of Canada.

[100] *Id.*

[101] Section 662(1) of the Criminal Code: Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing sentence or in determining whether the accused should be discharged pursuant to section 662.1.

[102] The importance of this type of information was stressed as far back as 1956 in the Fauteux Report. Our research did not identify post-sentence reports. These are apparently prepared by Parole Service officers (at least in Ontario) between sentence and arrival at a penitentiary, usually where a pre-sentence report is lacking.

[103] Section 16(1) of the Parole Act, R.S.C. 1970, c. P-2: A member of the Board or any person designated by the Board may, by a warrant in writing signed by him, suspend any parole, other than a parole that has been discharged, and authorize the apprehension of a parole inmate whenever he is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term of condition of the parole or for the rehabilitation of the inmate or the protection of society.

[104] *Id.*, s. 16(4); see also NPS 4.10.

[105] *Id.*, 16(2): A parole inmate apprehended under a warrant issued under this section shall be brought as soon as conveniently may be before a magistrate, and the magistrate shall remand the inmate in custody until the suspension of his parole is cancelled or his parole is revoked or forfeited.

[106] NPB Manual (August, 1974), at 7-2.

[107] NPS Manual, at 4.05.

[108] A copy is filed in the Ottawa Office of the Law Reform Commission of Canada.

[109] See P. Macnaughton-Smith, *Permission to be Slightly Free* (Law Reform Commission, Ottawa), at 40: Generally, the offences recorded will include all indictable Criminal Code offences. (Taking a motor vehicle is a non-indictable offence which is often included) all known highway traffic offences, drug offences, and Liquor Control Act offences, and some juvenile delinquency offences. A large part of this list is not part of what one would normally consider a "criminal record"... The list is more a catalogue of charges and convictions for fingerprintable offences than a "criminal record"...

[110] A copy is filed in the Ottawa office of the Law Reform Commission of Canada.

[111] Usually in the Cumulative Summary Part I or IIA, prepared by Penitentiary Service officers, discussed *infra*.

[112] A copy is filed in the Ottawa office of The Law Reform Commission of Canada.

[113] See NPS Manual, 2.14.

[114] A copy is on file in the Ottawa office of the Law Reform Commission of Canada.

[115] See NPS Manual, at 2.07: An application on behalf of a penitentiary inmate is not a substitute for the inmate's own application. The Classification Officer of the institution is requested to interview the inmate who may be under that impression and have him file his own application if he is interested in parole.

[116] *Id.* at 2.09-01 explains how late applications are to be handled.

[117] *Id.* at 2.07: Where parole eligibility date is reached without an inmate application having been received in a penitentiary case, parole is normally denied or deferred. The case is reactivated upon receipt of an inmate application and must be presented to the Board for decision within four months.

[118] Case 0-2. The inmate's PED was March 14, 1975; he applied on November 7, 1974; and the application reached the Board on December 18, 1974. The Board's letter to the inmate was dated January 9, 1975.

[119] A copy of this letter is on file in the Ottawa office of The Law Reform Commission of Canada.

[120] See NPS Manual, 2.09.

[121] It is the general policy of the National Parole Board and the National Parole Service to acknowledge by letter any correspondence received regarding parole. See also the policy of the Board of giving reasons for a decision in a varied and general manner to certain members of the public, NPS Manual at 1.26-1.28.

[122] Examples are filed with the Ottawa office of The Law Reform Commission of Canada.

[123] This is in direct contrast to the findings of MacNaughton-Smith, *supra* note 109 at 45, where he states regarding Board replies to correspondence: "All alike received similar formal, meaningless, insultingly remote replies."

[124] A copy is filed in the Ottawa office of The Law Reform Commission of Canada.

[125] *Id.*

[126] *Id.*

[127] See NPS Manual, at 2.17-2.17.02. A copy of the Part III form is filed in the Ottawa office of The Law Reform Commission of Canada.

[128] The granting of temporary absences was at the time of our research the sole responsibility of the Canadian Penitentiary Service. See Penitentiary Act, R.S.C. 1970, c. P-6, s.26.

[129] The Part IV form (a copy filed with the Law Reform Commission in Ottawa) also provides for the inclusion of a statement on the status of each accomplice and a statement concerning the applicability of minimum parole. See NPS Manual at 2.30-2.31, 1.15, 1.17, 2.26-2.29.

[130] *Id.*, at 2.26.

[131] There are, in fact two decision sheet forms. Decision sheet "one" (green in colour) is used for Board decisions to grant or deny parole whereas Decision sheet "two" (blue in colour) is used for Board decisions on forfeitures, suspensions and revocations.

[132] "(It) also serves as a source document for preparing the certificate of parole and statistical records." See the NPS Manual, at 2.50.

[133] NPB Manual, 3/9.

[134] A copy is on file in the Ottawa office of The Law Reform Commission of Canada.

[135] The case face sheet was formerly prepared by the Parole Service.

[136] As Case 0-4 demonstrated.

[137] Case 0-38. Previous quotations were experiences found on several occasions in different files.

[138] Cases 0-38 and 0-41 respectively.

[139] Case 0.4.

[140] Case 0.25.

[141] During one of the parole hearings attended in Ontario, a Board member remarked on this sort of confused terminology in a Part IV form.

[142] Case 0.20.

[143] Case 0.9.

[144] Case 0.92.

[145] Case 0-4.

[146] Case 0-3.

[147] Case 0-9.

[148] See Parole Act, ss. 6 and 10(1) (*a*). See also *R v Wilmott*, (1967) 1 C.C.C. 171 at 177-79 (Ont. C.A.).

[149] Case 0-44.

[150] Case 0-29.

[151] Case 0-11.

[152] Case 0-41.

[153] Case 0-46.

[154] Case 0-4.

[155] Copies of these forms are on file in the Ottawa office of The Law Reform Commission of Canada.

[156] *Id.*

[157] *Id.*

[158] That he would recommend that the Board not grant parole.

[159] NPS Manual at 1.02.

[160] *Id.*, at 1.05.

[161] "Whenever we try to treat marks on paper as measures or estimates of underlying facts, we face problems of precision, validity, reliability and missing data. When the marks on paper arise as a result of a routine process, not carried out for a specific scientific purpose, nor by a specific scientific technique, these problems of precision, validity, reliability and missing data may become overwhelming." See MacNaughton-Smith, *supra* note 109 at 37.

[162] *See National Parole Service — National Parole Board Reorganization Study Report No. 5, Ministry of Solicitor-General* (February 1974) at 39-40.

[163] Professor Keith Jobson has commented on the relationship between cost and quality of preparation:

> Fact-finding based in the reports (Cumulative Summary Parts) carried its risk of error. The reports have been described by witnesses before the Senate Committee as incomplete and based on second-hand information... Necessarily, hearsay must be relied on. Cost prohibits a personal visit to the home and community of each inmate. In these cases a local person may be asked to assist, but the quality of the resulting report may be less than professional. Even the transcript of the trial will often not be available to the parole officer in preparing his report, again because of cost. Hence relevant facts may not come to the attention of the men who prepare the reports upon which the application is decided.

K. Jobson, *Fair Procedure in Parole* (1974), 22 Univ. of Toronto L.J. 267 at 290.

[164] However, the form letter to the police has a number of suggestions in its reverse side entitled "Suggested Context of the Police Report". A copy is on file in the Ottawa office of The Law Reform Commission of Canada.

[165] This contribution, of course, was one of the Parole Service officers' two main functions. The other was case supervision. See NPS Manual, at 1.04-1.05.

[166] *Id.*, at 1.25.

[167] As the NPS Manual directs, at 2.21.

[168] Our observation was that once officers were familiar with the criteria used, if obvious, by a particular Board member, they tended to shape their case preparation and file contribution accordingly. Personal interviews with a number of Parole Service officials confirmed this observation.

[169] Case 0-27.

[170] Particularly classification officers we met at Joyceville, Warkwarth and Pittsburgh Institutions.

[171] Penitentiary Act, s.26.

[172] This conflict is mentioned and criticized in the recent Senate Report, *Parole in Canada*, a report of the Standing Committee on Legal and Constitutional Affairs (Ottawa: Information Canada, 1974) at 90-93.

[173] Case 0-89.

[174] The length of hearings we monitored is described in Chapter VI.

[175] Administrative control could prevent this happening because of an officer taking holidays. Illness, however, that prevented classification officers from attending a number of hearings we monitored, is another matter.

[176] Parole Act, s.11. See also the very permissive Rule 7(a) of the National Parole Board Rules (SOR/71-151) that leaves to the discretion of Board members the appearance of an inmate whose case is to be reviewed. The recent Senate Report (*supra* note 172 at 80) recommends that legislation guarantee the right to a hearing of applicants for parole. So too did the Hugessen Report in 1972 (*supra* note 1, at 53).

[177] We have concluded that holding the parole hearings in the institutions is a positive element in the process. Board members are not totally isolated from the realities of imprisonment. The physical lay-out and highly regimented schedule of the institutions serve as a constant reminder of the significance of their decisions.

[178] Section 10 of National Parole Board Rules, SOR/71-151 provides that hearings held by divisions of the Board "shall not be open to the public".

[179] Parole Act, s.11.

[180] National Parole Board Rules, section 6.

[181] Board practice is that the Part IV constitutes reasons for the decision when the Board is in agreement with the Parole Service Officer's recommendation and provides no comments of its own.

[182] The *Senate Report, supra,* note 172 (at 83-84) recommends that rules of procedure governing parole proceedings should be published.

[183] See Chapter VIII.

[184] This observation was also based on brief conversations with a random number of inmates in the sample both before and after their parole hearings. See too L. James, *Prisoners' Perceptions of Parole: A Survey of the National Parole System Conducted in the Penitentiaries of Ontario, Canada* (Toronto: University of Toronto, Centre of Criminology, 1971), at pp. 178-195); Comment, *Curbing Abuse in the Decision to Grant or Deny Parole* (1973), 8 Harvard Civil Rights-Civil Liberties Law Rev. 419 at p. 421; R. Price, *Bringing the Rule of Law to Corrections* (1974), 16, No. 3, Can. J. of Criminology and Corrections 209 at p. 217.

[185] According to a number of classification officers in institutions we visited.

[186] The Senate Report, *supra* note 176, recommended that seven days notice of a parole hearing be given to everyone concerned.

[187] See Chapter II.

[188] Discussion with Parole Service officials in Kingston, Ontario.

[189] No applicants for early day parole received hearings in the Ontario part of our sample.

[190] The Board decided 35 day parole applications in one day in the Kingston District Parole Service Office. Until recently, there has been little or no reading of such case files by Board members. The Parole Service and classification officers are present to brief the Board regarding the case files before them. The reasons for these impressions were gained in conversations with Parole Service officers in Kingston, Ontario.

[191] And did so in only two cases — 0-17, and 0-47.

[192] Nothing in the Board's legal mandate or policies prevents such an approach.

[193] As the Report said: "Until January 1969 the Parole Board membership was exclusively made up of people drawn from the judiciary and the legal profession. The Committee is of the opinion that the enlarged Parole Board envisaged by this Committee should contain representatives from various disciplines such as the judiciary, the police, the correctional services, psychiatry, psychology and social work." See the Report of the Canadian Committee on Correction, *Toward Unity: Criminal Justice and Correction* (Ottawa, Queen's Printer, 1969) at 339.

[194] See Chapters IV and V.

[195] Other possible areas of inmate participation are category 31 on the Part II A form, the application for parole, and general correspondence.

[196] Case 0-10.

[197] Cases 0-47, 0-78 and 0-88.

[198] For example, in Case 0-78.

[199] Case 0-49.

[200] The submission or material were introduced at varying points during the hearing.

[201] Cases 0-5 and 0-79.

[202] Cases 0-48 and 0-17.

[203] Cases Q-54, Q-2, Q-14 and Q-13 - Q-16.

[204] *Supra,* and observation concerning non-attendance at hearing of officials responsible for case preparation.

[205] Parole Act, s.3(6).

[206] This is a general Board practice that we could not locate in written form.

[207] Motivation for a wider sharing of responsibility is not hard to imagine, as an editorial in the Montreal Star on September 13, 1974, indicated: "Anyone who has spent a few days in a courtroom knows that judges can be arbitrary, inconsistent, even whimsical in their sentencing policies. The difference is that the failures of parole are obvious. Every violation of parole is marked down in the books as a failure. The failures of the judges are hidden, locked away behind bars."

[208] Cases 0-47 and 0-48.

[209] Cases Q-39, Q-41 and Q-44.

[210] Case 0-47.

[211] Case 0-48.

[212] Cases Q-92 and Q-78.

[213] Case Q-106.

[214] See Schwartz and Wade, *Legal Control of Government* (London: Oxford U. Press 1972) at 77.

[215] For example, cases 0-19 and 0-45.

[216] Cases 0-54, 0-62 and 0-51.

[217] Because, for example, of the recent killing of a police officer.

[218] Said a Board Member in a personal interview: "I am quite prepared to sacrifice an inmate if there is any doubt to save the face of the system if it is a case which might get lots of publicity."

[219] Anticipated adverse publicity loomed large in the treatment of cases Q-92, Q-72 and Q-106.

[220] When an Ottawa member disagreed with a regional member about the Board's policy.

[221] For example, in Cases Q-89, and Q-51.

[222] NPS Manual at 1.25. This overrides National Parole Board Rules (SOR/72-151) section 8, that directs the giving of reasons only for denials and even then, only within a reasonable time and in general terms.

[223] NPS Manual, at 1.27 - 1.28.

[224] *Id.*, at 1.25.

[225] Case 0-69.

[226] Case 0-46.

[227] Case 0-68.

[228] In a personal interview — March, 1975 in Ottawa.

[229] M. Jackson, *Justice Behind the Walls — A study of the Disciplinary Process in a Canadian Penitentiary* (1974) 12 Osgoode Hall L. J. 1 at 102.

[230] Based on observation of several briefing sessions. The provision of information of a general nature to the inmate and his family ought to be one of the Board's priorities. We understand that work has begun in Quebec to improve the methods currently used to provide information about parole to inmates. Objectives should be clearly defined for an adequately funded program that would allow information to flow through a more individualized process over the full period of an offender's imprisonment.

[231] As discussions with Parole Service officials revealed, particularly in Peterborough, Ontario.

[232] Handbook on Parole (Ottawa: National Parole Board, undated).

[233] See, in particular, The Senate Report, *supra* note 172 at 74.

[234] This conclusion stems from observations and various discussions and interviews with inmates and parole service officers throughout the duration of the study. See also L. James, *Prisoners' Perceptions of Parole: A Survey of the National Parole System Conducted in the Penitentiaries of Ontario* (Toronto: Centre of Criminology, Univ. of Toronto, 1971) at 192.

[235] Case 0-79. It is noteworthy that there were a number of inmates in the sample who applied for any type of parole at any time during their imprisonment. They had little conception of the meaning of these various types of parole, of the Parole Eligibility Date, and so on. Many neither understood nor attached any significance to the reasons or comments given by Board members at the conclusion of the hearing. A freer availability of parole information of a *general nature* would help them understand the parole process and increase the likelihood of successful parole.

[236] NPS Manual, at 1.24.02.

[237] *Rossi v. R.* (1974) 1 F.C. 531.

[238] *Supra* note 1, at 35.

[239] Criteria suggested by the Senate Report, supra note 172, at 81.

[240] *Id.*, described these arguments.

[241] A possibility that to our knowledge has never arisen, although Board members have discussed it.

[242] Although this would seem an excessive protection if it was seen as an encouragement not to verify information, leaving the full task of checking to the inmate.

[243] As discussed by Parole Board members at a meeting in October, 1974. See also The Ouimet Report *supra* note 193 at 180; Albert S. Abel, *Administrative Secrecy*, (1962) 11 Can. Pub. Admin. 440 at 446.

[244] As recommended by the Senate Report, at 81. The mechanics of allowing inmates effective access to information in their files will require thoughtful planning. An easily accessible copy or condensation for some information would suffice. For reports by professionals — psychologists, psychiatrists, social workers — it may be necessary to do more than just provide the inmate with a copy. A personal explanation to the inmate by the author of the report would be preferable. This would help inmates like the man in Case Q-19 whose parole decision was deferred for six months in order to complete therapy already begun by a psychologist. If the psychologist had explained his approach and schedule to theinmate, then the inmate would have known that a report favoring parole was imminent, at the time of the hearing. As it was, the inmate was unable to say anything about the success of the therapy, the parole decision was deferred and the psychologist's report was completed several days later. For documents of a confidential nature (for example, that might affect state security although we saw nothing of this nature in our sample's files) that would not be revealed to inmates, notice should be provided to an inmate of the nature and general thrust of such a document as well as its influence on the parole decision. Legal advice and representation could well be required by inmates who question the appropriateness of a confidential classification, or the extent of information provided about a confidential document.

[245] Interviews with six inmates a day before their hearings in Kingston, Ontario. Also Case Q-13.

[246] As related by several classification officers.

[247] The Senate Report, at 81, recommended that seven days' notice would suffice.

[248] Our experience confirmed the existence of communication problems. Regional Board members required all inmates in the Ontario part of the sample to be asked by classification staff whether they objected to the attendance at their hearing of a Law Reform Commission researcher. Some institutions managed to act on this request within hours while others had not managed to do so even though they had ten days to complete this task. The result, of course, was that some cases in the sample had to be eliminated.

[249] Senate Report, at 82-83; Hugessen Report, at 33-34.

[250] In particular, the Senate Report, at 83.

[251] Case 0-49.

[252] NPB Memorandum *re* The Right of Parolees to be Represented by Legal Counsel ((file 662) March 23, 1973, Ottawa), at 3.

[253] *Id.*

[254] Our views of the hearing and the role of persons representing inmate in hearings was shared by Board members in the legal and judicial backgrounds.

[255] See Comment, *Curbing Abuse in the Decision to Grant or Deny Parole*, *supra* note 184, note 12 at 419-420.

[256] See *Howarth v. NPB* (1974) 18 C.C.C. (2d) 385 (S.C.C.), (1976) 1 S.C.R. 453.

[257] But the strong dissents of Chief Justice Laskin and Justices Dickson and Spence in *Howarth* indicate changing judicial attitudes.

[258] *Id.*

[259] At 35-36.

[260] Parole Act, s.3(6).

[261] NPB Manual, 2-1.

[262] Changes in voting procedures are made by Board decision as stated in minutes or in memorandum, such as NPB memorandum *re* Voting Procedure, October 22, 1974, Ottawa.

[263] Cases Q-39, Q-41 and Q-94.

[264] Under existing voting procedures.

[265] Case 0-47.

[266] Case 0-48.

[267] *Judicial Review of Administrative Action* (3rd ed. 1973) at 192.

[268] *Id.*, and Report of the Royal Commission of Inquiry into Civil Rights, (Toronto, 1968) Vol. I at 220.

[269] Case 0-47.

[270] Cases 0-51, Q-35, Q-94.

[271] NPB Manual, at 3-3.

[272] The Hugessen Report also concluded that criteria are difficult to discover: "... the criteria on which the National Parole Board bases its decision to grant or refuse parole are unclear. Neither inmates nor members of the Board are able to articulate with any certainty or precision what positive or negative factors enter into the parole decision." *Report of the Task Force on Release of Inmates* (Ottawa, 1973) at 32.

[273] *Parole Act*, s.10(1)(*a*).

[274] In fact, the NPS Manual, at 1.02.

[275] *An Outline of Canada's Parole System for Judges, Magistrates and the Police* (Ottawa, NPB, undated) at 6-7.

[276] Further details of this survey are on file in the Ottawa office of the Law Reform Commission of Canada.

[277] A copy of the list is on file, *id.* This list did not appear to have been accompanied by a dated formal memorandum from the Headquarters of the Board but several Parole Service officers did indicate that it was issued from Ottawa in October or November of 1974.

[278] These were condensed from a longer original list of criteria.

[279] *Id.*

[280] As studies by Wilkinson in the United States have shown, the way in which parole decision-makers reach their decision would support such an observation.

[281] As discussed *supra*.

[282] Case 0-49, emphasis added.

[283] Price, *Bringing the Rule of Law to Corrections*, *supra* note 1 at 218.

[284] See Chapters VI and VII.

[285] See Chapters IV and V.

[286] *Id.*

[287] See Chapter VI, in particular.

[288] See Chapter VI.

[289] *Id.*