BRIEF TO THE

Standing Committee on Legal and Constitutional Affairs

Senate

41st Parliament, Second Session

C 479
An Act to amend the Correctional and Conditional Release Act (Fairness to Victims)

December, 2014

Background of Canadian Criminal Justice Association

The Canadian Criminal Justice Association (CCJA) welcomes the opportunity to present this brief to the Standing Committee regarding Bill C-479, an act to amend the Corrections and Conditional Release Act. The members of the Association have some concerns with the approach of this Bill, and therefore ask the members to seriously consider whether this bill should be tabled or voted down. We detail our concerns here and look forward to your questions and comments.

The CCJA is one of the longest serving non-governmental organizations of professionals and individuals interested in criminal justice issues in Canada, having begun its work in 1919 and having testified before this committee on numerous occasions. Our association consists of nearly 700 members and publishes the Canadian Journal of Criminology and Criminal Justice, and *the Justice Report.* We also organize and host the "Canadian Congress on Criminal Justice" every two years.

Legislative history of Corrections and Conditional Release Act (CCRA)

This is part of a series of amendments to the CCRA, which was first enacted in 1992 to replace and expand upon the Penitentiary Act. In the past, CCJA has argued that piecemeal efforts at reform ought to be delegated to a Commission that would look at the Act as a whole and make changes to both the CCRA and the Criminal Code of Canada. This would facilitate the proper balancing of public protection and reintegration, and particularly address the growing cost of penitentiary confinement in Canada.

This proposed Bill emphasizes one particular approach to corrections that is strictly punitive. The approach to corrections that is missing is known as restorative justice, which involves a very different perspective on prisons, sentencing, and parole.

Particulars of Bill C-479

This Private Member's Bill essentially addresses two policy areas of the CCRA. The first concerns parole eligibility dates for inmates and parolees whose conditional release has been revoked or terminated. The second general area addresses the rights of victims to attend parole hearings and be informed of decisions regarding conditional release (ETAs, UTAs, day parole and full parole).

Section 2 of the Bill changes the existing two-year hearing requirement following a denial of one's first application for parole for any inmate, to a five-year review for any Schedule I offender. Schedule I is outlined in the CCRA and relates mainly to violent offenses, including those leading to life sentences.

This same principle also applies to any parolee serving a Schedule I offense whose conditional release is terminated or revoked. Their next parole hearing will be four (4) years after the date of revocation; and a full five (5) years on subsequent reviews of their case by the Parole Board of Canada.

If an inmate refuses or waives an upcoming parole hearing without a "reasonable explanation" (not defined in the Bill), the Board may cancel the next review hearing.

The same is generally true of detention hearings under Section 131 of the CCRA. In Section 3, the Bill proposes that detention hearings would have a two-year setoff from the initial hearing instead of a one-year setoff. The initial purpose of the one-year hearings was to provide some impetus for the offender to complete more programming and fashion a more acceptable release plan to the Board. This approach rejects this analysis and opts for a more punitive approach.

The second area of this Bill relates to victim involvement in parole hearings, victim's rights to receive information pertaining to an inmate's correctional plan, and the specifics of his or her conditional release. As an Association, we are unclear why victims need to know about the specifics of an offender's Correctional Plan, and what particular expertise victims have to evaluate an offender's institutional or community progress. It is already in policy that the Parole Board of Canada must consider victim statements during a hearing; and it is already law that the Board must consider a request by victims to attend a parole hearing. This expanded involvement of victims fits neatly into a retributive paradigm, not one which emphasizes offender reintegration.

Section 6 of the Bill gives victims the right to additional information about an inmate or parolee's correctional plan and progress in meeting that plan. At least fourteen (14) days before any type of release, victims will be entitled to make a request for information about a conditional release, including dates, conditions, destination, and whether the offender will be traveling to any destination "in the vicinity of the victim." Again, there is no language in this Bill about healing, victim-offender mediation, or restorative approaches to corrections in Canada.

Finally, the Bill puts forth new language clarifying when and under what conditions a victim or the victim's family may attend parole hearings. Here, the new language requires the Board to make "every effort to fully understand the need of the victim" to attend the hearing. And if the Board decides that the social chemistry of such attendance is disruptive, it shall provide teleconference or one-way closed circuit video feed at the victim's request.

The Bill requires that victims' opinions as to release shall be considered, including the submission of any audio or video recording in addition to live testimony or a written statement. CCJA is concerned that these requirements essentially replay the dynamics of the original sentencing hearing.

Finally, the Bill provides information to victims about the date of an inmate's temporary absence, any conditions attached thereto, and the destination of the offender. Previously, this information was subject to the discretion of the Chairperson of the Parole Board based on consideration of the privacy of the inmate. No evidence has been put forward that there has been widespread abuse of this discretion.

Problems and Prospects

Bills such as these must be examined for their anticipated costs to imprisonment in Canada. According to Statistics Canada, the average adult inmate cost, per annum, in Canada now approaches about $357/day or about $130,000/year (Statistics Canada, 2012). Without a clear list of benefits we must be concerned with furthering the costs of our correctional system.

The second issue that must be addressed is reintegration policy. This Bill, because of its punitive features, runs counter to efforts to reintegrate offenders back into Canadian society – especially aboriginal inmates who now make up 20% of the federal penitentiary population (Statistics Canada, 2012). In order words, the language of this Bill will have an adverse impact on Aboriginal inmates. It will further undermine efforts to reintegrate all offenders into the community by severely penalizing inmates who are initially rejected for parole or whose conditional release is revoked or terminated.

Many offenders who are returned to prison have had their conditional release revoked or terminated due to technical violations of their release, such as drinking alcohol, or failing to obey the directive of their parole officer. Indeed, the data indicate that 75% of violations of conditional release are for technical violations (2054/2730) [see Department of Public Safety, 2012]. Even among revocations involving a new criminal offense, approximately 82.5% of these are for non-violent crimes (558/676). The consequence of the violation – a four- year and then followed by a five-year hearing setoff – means that the punishment meted out for a technical violation of parole will far surpass the severity of what offenders would normally encounter in the community had they not been on Federal parole, but instead faced a regular court hearing or were on probation supervision. Meting out

4-year sentences for this behavior is very much part of the punitive approach encompassed in this Bill.

There is a good deal of literature regarding restorative approaches to corrections which emphasizes healing, community compensation (service), and victim-offender mediation (Elliott, 2012; Ross, 1992, 1996; Royal Commission on Aboriginal Peoples, 1996; Makin, 2012; Pfeferle, 2008; Rudin, 2009). None of this literature is reflected in this Private Member's Bill. Rather, this Bill is largely punitive and incorporates further de facto, mandatory sentences. No evidence has been put forward that these proposed measures will reduce crime, hinder recidivism or significantly benefit victims and communities.

Conclusion

The Canadian Criminal Justice Association cannot support C-479 due to its various flaws, questions about its impact, unanswered questions about its potential costs, and a general concern about its focus – retribution to the exclusion of healing and restorative approaches. Finally, there is the adverse racial impact of this Bill which is not considered.

Under the auspices of Parliament, our Association would be most willing to undertake a comprehensive examination of the *Corrections and Conditional Release Act*, with a view toward balancing both public safety and restorative approaches to corrections.

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