



Consider This

At one time, the most severe sentence given in Canada for murder was the death penalty. It was eliminated from the *Criminal Code* in 1976. Some people think capital punishment should be reinstated. What do you think and why?

sentence: punishment imposed on a person convicted of committing a crime

Try to recall a movie or television show in which a guilty person was sentenced by a judge. Think about the courtroom drama. Perhaps the lawyers argued about the seriousness of the offence, the offender's behaviour, or how long the sentence should be. Then the Judge shouted at the criminal, "I sentence you to ten years for armed robbery!" The spectators gasped, someone wept or shouted, and the offender was whisked away in handcuffs to serve the prison sentence.

If these are the kinds of images you have when you think of sentencing criminals, you will be in for a surprise. In reality, the sentencing process involves many people and careful consideration of a variety of factors. This chapter will help you understand the goals, processes, people, and institutions involved in sentencing offenders.

GOALS OF SENTENCING

Once a person has been found guilty of committing a crime, the Judge imposes a **sentence**, or punishment. Sentencing has many goals: protection of the public, retribution, deterrence, rehabilitation, restitution, and denunciation. The reasons for sentencing have been established over many years by court decisions. These reasons are now summarized in s. 718 of the *Criminal Code*. All of Part XXIII of the *Criminal Code* is devoted to sentencing matters.

Protection of the Public

The main goal of sentencing is to protect the public. This includes protection of their person, their property, and their individual rights and freedoms. When a person commits an offence, that individual harms not only the victim but everyone in society. People feel threatened until the offender is apprehended and public protection is restored.

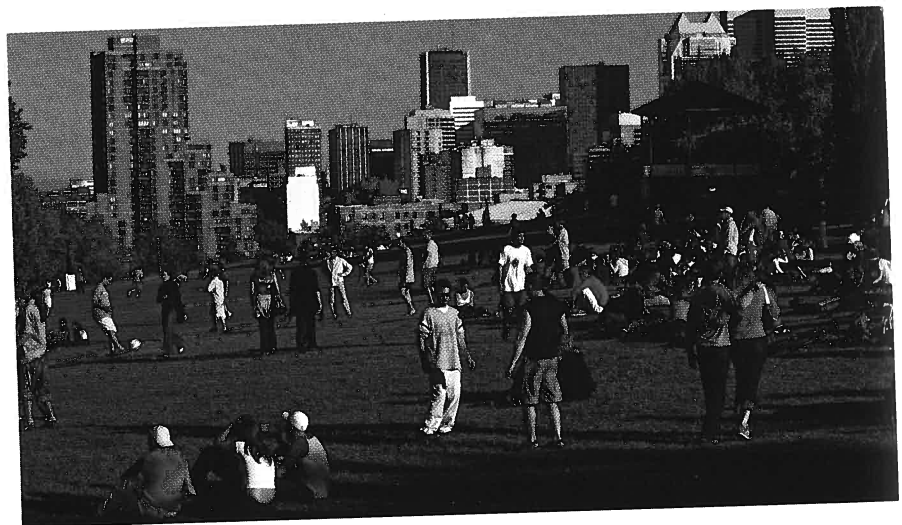


Figure 11.1 Every citizen has the responsibility to obey the laws of the land. Failure to do so carries consequences. What would happen if there were no consequences for criminal behaviour?

Retribution

When one person harms another, society often wants that person to “pay” for the offence. **Retribution** is punishing an offender to avenge a crime or to satisfy the public that the offender has paid for the crime. Historically, retribution stems from the idea of taking “an eye for an eye,” a concept you may recall reading about in Chapter 1.

retribution: punishment to avenge a crime, ensuring that offenders suffer the consequences of their actions

Deterrence

Many people believe that punishing offenders sends a message that anyone caught breaking the law will be punished accordingly. They believe that imposing a penalty will deter, or discourage, people from committing crimes. The term **specific deterrence** refers to punishment as a way of discouraging criminals from reoffending. **General deterrence** refers to punishment as a way of discouraging other members of society from committing similar crimes.

specific deterrence: punishment to discourage criminals from reoffending

general deterrence: punishment to discourage people in general from offending

Rehabilitation

Another important goal of sentencing is to help offenders become law-abiding citizens. **Rehabilitation** involves treating problems that interfere with an offender’s ability to function in society. Services and programs, such as psychiatric and medical treatment for drug and alcohol dependency, help bring about changes in behaviour. Educational programs are also designed to teach offenders skills that will prepare them for reintegration into the community. For instance, suppose Christopher turns to theft because he has no employment skills and cannot find a job. It would be foolish to think that two years in jail without treatment would change anything; Christopher will be just as unemployable when he leaves jail as when he entered. If, however, during that two-year period he enrolled in a prison employment program, he may have a better chance of finding a job when he leaves jail. This job may also decrease the likelihood that Christopher will reoffend.

rehabilitation: punishment combined with treatment and training to help offenders function in society

The root causes of crime and violence aren’t resolved by putting people in jail.

— Former Chief Justice
Patrick LeSage,
Ontario Superior Court

What do you think Justice LeSage means?

Recidivism occurs when an offender returns to crime after being released from prison. Programs that match the treatment to the offender’s needs have been shown, on average, to reduce recidivism rates by 50 percent; in other words, those offenders are 50 percent less likely to commit new crimes or break any of the conditions attached to their release.

recidivism: returning to crime after release from prison

Restitution

Another objective of sentencing is **restitution**, which requires offenders to pay society back for the injury, loss, and suffering they caused. For example, when sentenced to perform community service, an offender returns some good to the community to compensate for the harm done. Actual payment for damages is a more obvious form of restitution.

restitution: punishment that requires the offender to pay the victim or society back for the harm or loss suffered

SENTENCING PROCEDURES

After a defendant is convicted in a criminal trial, the sentencing process begins. For summary or minor offences, sentencing usually takes place immediately. For indictable or more serious offences, sentencing is more complex and is often delayed to allow time for the Judge to make an informed decision.

Perspectives to Consider

Three perspectives must be considered in the sentencing process: those of the offender, the victim, and society.

CONSIDERING THE OFFENDER

A judge may order a **pre-sentence report** for the purpose of gathering information about the offender. This report, prepared by a probation officer, includes information about the offender's background, family, education, employment history, physical and mental health, social activities, potential ability, motivation, and friends. The report must be objective in order to provide "a picture of the accused as a person in society."

A **psychiatric assessment** may also be ordered. This report, prepared by a qualified psychiatrist, describes the mental history of the offender and may include results from psychiatric tests. The psychiatric assessment is often an important factor in helping the Judge determine an appropriate sentence.

CONSIDERING THE VICTIM

To assist the Judge in determining the sentence, s. 722 of the *Criminal Code* requires the Court to consider any statement prepared by the victim of an offence. This **victim impact statement** describes the harm or loss experienced by the victim or the victim's family. It may be read before the offender or presented in any other manner the Court considers appropriate. Being allowed to confront the offender can be particularly significant for victims who have suffered physical and emotional damage.

CONSIDERING SOCIETY

The Crown, representing society, presents evidence at trial to support the criminal charges—evidence that is meant to convince the Judge or jury of the defendant's guilt beyond a reasonable doubt. If the accused is found guilty, the Crown has the right to recommend an appropriate sentence. The Crown may, for instance, introduce the offender's previous criminal record in arguing for a substantial prison term. It is the Crown's role to ensure that society's interests are protected when the offender is sentenced.

pre-sentence report: background information about the convicted offender, prepared for the Judge prior to sentencing

psychiatric assessment: a report describing the mental history of the offender

victim impact statement: a statement prepared by a crime victim or the victim's family describing the harm done or the loss suffered as a result of the offence

Legal Link

You will find a victim impact statement on our Web site. How do you think this statement would have influenced the sentencing?

On the nights of April 28 and 29, Jerod Hovind and two of his friends broke into several buildings on two Saskatchewan farms. They stole numerous power tools and vandalized the fuel tanks. At one farm they drove a truck, a tractor, and another vehicle around the farm, damaging a tree and the vehicles. They were subsequently charged and convicted of two counts of theft and break and enter.

After reading the statements contained in the pre-sentence reports of the two co-offenders, the Judge had this to say about Hovind:

Having read these reports...I think I want to send your client [Hovind] to jail. Because of him, there are two other people here who have a criminal record who would not have otherwise had a criminal record. They were with him. They were in his car. He was driving. He took them there. It was his idea. He was leading and if anybody here should go to jail so that this kind of thing stops happening, it should be him.

The Judge passed sentence, relying on the statements contained in the co-offenders' pre-sentence reports.

The Sentencing Hearing

At a **sentencing hearing** the Judge considers all the facts about the crime, the offender, and the victim in order to determine the appropriate sentence. Both defence counsel and the Crown present their recommendations to the Judge. The Judge must examine the following factors:

- criminal record of the accused
- pre-sentence report findings
- nature and severity of the crime
- offender's background
- circumstances leading to and surrounding the offence
- offender's family and employment situation
- offender's attitude toward his/her own conduct

Judges must impose sentences within certain guidelines. Their sentencing decisions are restricted by the maximum and minimum limits specified in statute laws. They must also consider precedents for similar crimes as well as aggravating and mitigating factors. **Aggravating factors** increase the severity of the sentence because they suggest that rehabilitation is unlikely or that a strong deterrent is necessary. An example of an aggravating factor would be an

1. Discuss why the Judge wanted to give Hovind a jail sentence.
2. Should the pre-sentence reports of the co-offenders be used as the basis for sentencing Hovind, or not? Explain.

sentencing hearing: the Judge's opportunity to listen to recommendations and to consider all the facts before passing sentence

We don't always sentence according to public opinion. Sometimes we have to go against the grain.

— David Cole,
Ontario Court of Justice

Identify a case that you've read in this unit, to which this quotation might apply.

aggravating factors: circumstances that may increase the severity of the sentence

mitigating factors: circumstances that may decrease the severity of the sentence

ongoing pattern of assault against the same person. **Mitigating factors** tend to *decrease* the severity of the sentence, suggesting that an offender can be rehabilitated, does not pose a threat to society, or does not need strong deterrent measures. A first-time offence and evidence of remorse are examples of mitigating factors. Suppose a young woman charged with impaired driving shows remorse for her behaviour and voluntarily enters a treatment program for alcoholism. In considering her sentence, the Judge might regard the offender's remorse and her desire to overcome her drinking problem as mitigating factors.

Case

R. v. Bates (2000), 146 C.C.C. (3d) 321 (Ont. C.A.)

1. What did the Crown mean by suggesting that "the decision did not reflect the principles of denunciation and general and specific deterrence"?
2. Compare the trial Judge's sentence with the sentence imposed by the Ontario Court of Appeal.
3. What effect do you think the victim impact statement had in the sentencing decision of the Court of Appeal? Explain.

In September 1998, during an intense argument, Dwayne Bates slapped Kristen Emmett across the face, knocking her to the floor. He then threw her against a cupboard where she struck her head and suffered visible bruising to her body. After this incident, Emmett ended the relationship, but Bates repeatedly harassed her, eventually forcing her to request police protection.

A number of subsequent incidents occurred, and Bates was charged with 11 offences, including one count of criminal harassment, one count of uttering a death threat, three counts of assault, and six counts of failing to comply with the terms of various judicial orders. Bates pleaded guilty to all but the death threat, for which he was found guilty. Taking into account the seven months that Bates had served in pretrial custody, the trial Judge imposed a suspended sentence and three years' probation, with the provision that he not associate with Emmett and some of her friends.

The Crown appealed the sentence, submitting that it did not reflect the principles of denunciation and general and specific deterrence, nor did it consider the seriousness of the crimes. The victim had suffered continuous and unpredictable abuse and had experienced perpetual fear of the offender. This was made clear in Emmett's victim impact statement, in which she said that she lived in such fear of Bates that she had, at one point, taken a drug overdose. She also expressed ongoing fear for her future safety:

I'm trying to get on with my life, but I can't help but feel leery about every corner I go around and sets of eyes that stare back a little longer than usual.... I will never let my guard down again, whether or not Dwayne is behind closed doors. It is so easy for people to say, "Get over it" and "Get on," but I will always be cautious.

The Ontario Court of Appeal agreed that the trial Judge should have imposed a penitentiary sentence. The Court increased the sentence to 16 months, which credited the pretrial custody, followed by the three years' probation with the conditions ordered by the trial Judge. Bates was also required to undertake counselling in anger management.

Concerning the Offender

Aggravating Factors

- premeditation
- previous criminal record
- large profits from the offence
- involving others in the offence
- ring leader of the group
- continuing offence over time

Mitigating Factors

- impulsive act
- young or first-time offender
- guilty plea
- cooperating with police
- mental or physical disability
- short life expectancy

Concerning the Offence

Aggravating Factors

- violent offence
- number of victims
- need for deterrent

Mitigating Factors

- minor offence
- time spent in custody
- delay in trial

Figure 11.3
Factors Influencing
Sentencing Decisions

Building Your Understanding

1. Discuss the people a judge must consider when deciding on a sentence.
2. How might a pre-sentence report help in determining a fair sentence?
3. Do you think Dwayne Bates' sentence should have been more severe than that imposed on appeal? Explain.
4. Distinguish between aggravating and mitigating factors and provide three examples of each.
5. Collect two newspaper articles about criminals sentenced for offences committed in Canada. Analyze the information in each article to determine which factors might have influenced the Judge's sentencing decision. Organize your findings in a chart.

TYPES OF TRADITIONAL SENTENCES

When sentencing offenders, a judge must keep in mind the goals of sentencing. Is this offender a candidate for rehabilitation? Is he or she a threat to society? Should this offender be compelled to make restitution? To accomplish these goals, a judge has a variety of sentencing options.

Discharges

The most lenient sentence is a discharge, or release. A discharge may be granted for a minor or first-time offence that does not carry a minimum sentence and for which the penalty is less than 14 years. There are two types of discharges—absolute and conditional. An **absolute discharge** means that even though the accused is found guilty, the Judge sets that person free. After one year, the offender's criminal record is destroyed.

Society fails when it can see no further than the prison gates.

— Doug McNally,
Retired Chief of Police,
City of Edmonton

Explain in your own words what Chief McNally means.

absolute discharge: releasing a convicted offender and erasing the criminal record after one year

conditional discharge:

releasing a convicted offender under certain terms, and erasing the criminal record after three years if the terms are met

probation: a sentence that allows a person to live in the community under the supervision of a parole officer

**Law in Your Life**

If you acquire a criminal record, you may be

- unable to travel outside Canada
- deported if you are a landed immigrant
- denied employment in certain industries
- prevented from obtaining a professional licence
- refused a firearms acquisition certificate

Fast Fact

In 2005–2006, 44.4 percent of convicted offenders received a term of probation, 4.6 percent received conditional sentences, 34.5 percent received fines or restitution, and 33.8 percent were incarcerated.

suspended sentence: a judgment that is not carried out, provided certain requirements are met

For minor offences, a judge may also grant a **conditional discharge**—a release with terms attached, such as avoiding contact with certain people and observing a set curfew. If these terms are obeyed, after a specified period the discharge will become absolute. With this type of discharge, the criminal record is kept for three years from the date of the conviction and then destroyed. If the terms of the discharge are violated, the discharge is revoked and a more severe sentence is imposed.

Probation

The word *probation* comes from the Latin word *probatio*, which means “proof.” **Probation** is a sentence that allows a convicted offender to prove that he or she is able to live in the community without committing another offence. Any offender on probation is under close supervision and subject to certain restrictions. Note that a probation order may be given either in addition to or in place of a prison term.

A parole officer supervises an offender on probation and is responsible for monitoring the offender’s behaviour. During probation, the offender must comply with a specific set of conditions in order to prove to the court that he or she will not reoffend. Failure to comply with these conditions can lead to facing additional terms. Or, the probation order may be revoked, and the offender will be sentenced on the original conviction. Sentencing could mean imprisonment, fines, or both. The offender can also be charged with breach of probation.

Every probation order has three compulsory conditions. The offender must keep the peace and demonstrate good behaviour; appear in court when required; and notify the Court or probation officer of any change of name, address, or employment. A probation order may also include optional conditions, such as

- reporting regularly to a probation officer;
- not associating with known criminals;
- staying away from particular locations;
- attending counselling sessions;
- paying for damages resulting from the offence; and
- refraining from alcohol and illegal drug use.

Suspended Sentence

A **suspended sentence** is a judgment that is passed but not carried out as long as the offender meets certain conditions set out by the Judge. Suspended sentences can only be imposed for offences that have no minimum punishment required by the *Criminal Code*. They are usually given for first-time or

intermittent sentence: a sentence served on weekends and at night

conditional sentence: a prison sentence that can be served in the community, with strict terms attached

electronic monitoring: allowing an offender to serve a sentence at home under electronic supervision from a remote location

Fast Fact

Electronic monitoring began in Canada as a pilot program in Vancouver in 1987.

Figure 11.5 This monitoring device being attached to a parolee uses a Global Positioning System (GPS) to track the person's movements. What other advances in technology might be useful to monitor parolees?

Intermittent Sentence

An **intermittent sentence** is a prison sentence of less than 90 days that can be served on weekends and at night, so the offender can serve the time in intervals instead of all at once. Intermittent sentences are usually given to offenders who are not violent, have steady jobs, and whose families depend on their income. The Court always indicates when the offender must report to jail. When not in jail, the offender is subject to a probation order.

Conditional Sentence

A **conditional sentence** is a prison term of less than two years that may be served in the community rather than in prison. A judge can impose a conditional sentence if the offence does not carry a minimum sentence. The terms for a conditional sentence are stricter than they are for probation or a suspended sentence. Such terms might include performing community service or seeking treatment for drug addiction.

Electronic Monitoring

Electronic monitoring (EM) began as a way to track and supervise offenders on probation. As prison populations and costs increased in the 1980s and 1990s, authorities saw electronic monitoring as an alternative to incarceration. Electronic monitoring is now used to supervise offenders in the community as long as they stay in their homes. Exceptions are allowed for some offenders who have jobs outside the home or who wish to attend devotional services.

The offender wears an electronic bracelet that emits a signal to a computer at a remote location. This signal indicates the offender's whereabouts. Should the offender leave the home base, an alarm sounds to alert the authorities. Other EM systems include random telephone dialing by computer to the offender's home to confirm that the offender is on the premises, a video camera near the telephone to verify the offender's presence, and breath testing from a remote location for detecting violations of alcohol restrictions.



finer: specific amounts of money paid as penalties for offences

suspension of privilege: a sentence that withholds a privilege for a specified period or a lifetime

was the case for a 35-year-old Winnipeg man who was sentenced in August 2008 to eight years in prison for failing to tell two women that he was infected with HIV before having unprotected sex with them. He will be deported to his native Zambia after he has served his sentence.

Fines are specific amounts of money that offenders are required to pay the court as punishment. For summary conviction offences, a maximum fine of \$2000 can be imposed. Fines are optional for indictable offences that have a minimum sentence of imprisonment and a maximum prison term of less than five years. Before imposing a fine, the Judge considers the offender's ability to pay. An offender who fails to pay a fine may face a prison term.

Suspension of Privileges

Some offences are best dealt with through a **suspension of privilege**, such as withholding a driver's licence or a licence to own a firearm. Usually a suspension is in effect for a specified period, but under certain circumstances it can last a lifetime. For example, as shown in Figure 11.6, impaired driving carries the possibility of a lifetime suspension.

	Penalties under the <i>Highway Traffic Act</i> (Ontario)	Minimum penalty under the <i>Criminal Code</i> (Federal)
First Offence	1-year suspension* Remedial measures requirement Minimum 1-year ignition interlock condition upon reinstatement**	1-year driving prohibition \$600 fine
Second Offence	3-year suspension* Remedial measures requirement Minimum 3-year ignition interlock condition upon reinstatement**	2-year driving prohibition 14-day jail sentence
Third Offence	Lifetime licence suspension* (reducible to 10 years if certain conditions met) Ignition interlock condition for life is reduced**	3-year driving prohibition 90-day jail sentence
Fourth/Subsequent Offence	Lifetime licence suspension*	Same as third offence

Figure 11.6 Penalties for Impaired Driving Offences

*Drivers who are caught driving while their licence is suspended for a *Criminal Code* conviction will have the vehicle they are driving impounded for a minimum of 45 days and will face fines from \$5000 to \$25 000 for the first conviction and \$10 000 to \$50 000 for subsequent convictions.

**As of December 23, 2001, any driver who commits and is convicted of a drinking and driving offence will, upon reinstatement, have a mandatory ignition interlock condition placed on his or her licence. If this person wishes to drive, it must be in a vehicle that is equipped with an approved ignition interlock device. SOURCE: Ontario Ministry of Transportation

An Impaired Driver Plea Bargains

1. Which two charges did the Crown drop? Why?
2. List the mitigating factors in this case.
3. In your opinion, what were the Judge's sentencing goals?
4. How do you think the general public would react to the outcome of this plea bargain? Explain.

When police cruisers finally stopped the motorist after a high-speed chase, he had torn through three red lights at speeds twice the limit. He was also so drunk he could barely get out of the car; when tested, his blood-alcohol level was nearly three times the legal limit. This was the 26-year-old's first offence.

In a plea bargain, he pleaded guilty to impaired driving. Two charges were dropped: high blood-alcohol levels and fleeing the police. Jointly, the prosecutor and the defence recommended a \$600 fine and a one-year suspension.

The Judge regarded this sentence as a gift. However, there were mitigating factors involved. It was the offender's first offence, and no one had been injured. The offender had apologized, and he had a steady job. The Judge suspended the offender's licence for a year and gave him a sentence of 30 days, which he was allowed to serve at home under the terms of a conditional sentence.

incarceration: imprisonment for a specified period

Fast Fact

In 2004–2005, women represented 10 percent of admissions to provincial/territorial sentenced custody and 5 percent of admissions to federal custody.

For a guy who never saw jail before, 30 days could be enough to teach him a lesson.

— Paul Culver,
Chief Crown Counsel

Do you agree or disagree with this opinion? Why?

Incarceration

In Canada, authorities cannot just lock someone up and throw away the key, which is why **incarceration** is defined as imprisonment for a *specified length of time*. Each criminal offence has a maximum sentence. For example, the maximum for robbery or manslaughter is imprisonment for life; the maximum for aggravated sexual assault is 25 years. Such maximum sentences are rarely imposed because of their severity. In fact, some legal experts maintain that certain maximums may be outdated or too broad to be useful. Instead, judges use a range of punishments in determining appropriate sentences. For instance, if the maximum penalty for a first non-violent offence is less than five years in prison, the Judge is not bound to give any prison sentence at all and may opt for an alternative form of punishment.

Some serious offences carry a mandatory minimum sentence. For example, according to s. 745 (c) of the *Criminal Code*, second-degree murder carries a ten-year minimum term of imprisonment.

745 (c) in respect of a person who has been convicted of second-degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence.

Building Your Understanding

1. What is the main difference between the provincial and federal correctional systems?
2. Describe the three levels of custody in provincial correctional facilities.
3. Describe the differences among maximum-, medium-, and minimum-security facilities.
4. Investigate one of the correctional programs identified in this section. Prepare a brief report, explaining the program's objectives, length, content, and effectiveness.

PAROLES AND PARDONS

Parole is the inmate's conditional release into the community before the full sentence is served. Except for persons convicted of first-degree murder, prisoners must be reviewed for parole after one-third of the full sentence has been served, or after seven years, whichever is less. This review, which is governed by the *Corrections and Conditional Release Act*, does not always result in parole. Inmates must meet certain conditions to qualify for parole, which may provide an incentive for prisoners to demonstrate good behaviour while serving their sentences. Parole also lessens the negative effects of incarceration and gives the parolee the opportunity to return to society with help and supervision.

parole: release of an inmate, on a promise of good behaviour, into the community before the full sentence is served

Fast Fact

Offenders who are paroled while serving a life sentence remain on parole for life, unless parole is revoked.

Parole Decisions

The National Parole Board (NPB), which has regional offices across the country, decides who can be paroled. The protection of society is the most important factor in any decision to release an offender. The parole board will grant parole only if the members believe that the offender will not pose a risk to society and will return to the community as a law-abiding citizen.

The board members review the following information about the offender to make an assessment of the risks involved in granting parole:

- the offence
- criminal history
- social problems, such as drug use or family violence
- mental status, especially if it affects the likelihood of future crime
- performance on earlier releases, if any
- relationships and employment opportunities
- psychological or psychiatric reports
- opinions from professionals, such as police officers and social workers
- the victim impact statement



"Bad news. The mailman is going to attend the parole-board hearing."

Figure 11.16

Conditional Release

A **conditional release** does not shorten the sentence; it simply allows part of the sentence to be served in the community under supervision. The eligibility for each type of conditional release is shown in Figure 11.17.

Unescorted temporary absence, a brief release from custody, is granted for personal reasons such as medical or administrative issues, community

conditional release: serving part of the sentence in the community under supervision

unescorted temporary absence: brief release from custody for community service or personal reasons

Eligibility for					
	Unescorted Temporary Absence	Day Parole	Full Parole	Statutory Release	End of Sentence
Low-risk offenders	Whichever is shorter: 1/6 of sentence or 3 years (NPB or CSC decision)	Accelerated Review Process, after 1/6 of sentence (NPB decision)	After 1/3 to 1/2 of sentence has been served (NPB decision)	Automatic after 2/3 of sentence has been served	When entire sentence has been served
Other offenders	Whichever is shorter: 1/6 of sentence or 3 years (NPB or CSC decision)	6 months before 1/3 of sentence has been served (NPB decision)	After 1/3 to 1/2 of sentence has been served (NPB decision)	Automatic after 2/3 of sentence has been served	When entire sentence has been served
Life sentence for second-degree murder	3 years before full parole eligibility (NPB decision)	3 years before full parole eligibility (NPB decision)	After 10–25 years (NPB decision)	Automatic after 2/3 of sentence has been served	When entire sentence has been served
Life sentence for first-degree murder	3 years before full parole eligibility (NPB decision)	3 years before full parole eligibility (NPB decision)	After 25 years (NPB decision)	Automatic after 2/3 of sentence has been served	When entire sentence has been served
Dangerous offenders	No automatic eligibility	No automatic eligibility	No automatic eligibility	No automatic eligibility	When entire sentence has been served

NPB = National Parole Board **CSC** = Correctional Services of Canada

Figure 11.17 Eligibility for different types of conditional release or parole

Pardons

Once a **pardon** is granted, a person's record of conviction is set aside. Any federal agency that has records of convictions must keep those records separate. The information may not be disclosed without permission from the Solicitor General of Canada. A pardon can be very important to people who want the opportunities and privileges that other Canadians enjoy. However, some foreign governments may not recognize a pardon; nor will a pardon guarantee entry or visa privileges to another country. A pardon does not erase the fact that a person was convicted of an offence.

An offender convicted of a summary offence can apply for a pardon three years after completing the sentence. A person convicted of an indictable offence can apply five years after serving the sentence. The offender must demonstrate that he or she is now a law-abiding citizen. Between 1970 and 2007, more than 350 000 Canadians have received pardons. About 97 percent of these are still in force.

A pardon is automatically revoked if a person is later convicted of an indictable offence. The National Parole Board can also rescind a pardon for any of the following reasons:

- a conviction for a summary offence
- unacceptable conduct
- false information at the time of application

In special cases, on the advice of her ministers, the Queen can extend a **Royal Prerogative of Mercy** under the authority of an Act of Parliament to a person who is sentenced to imprisonment. Mercy usually takes the form of clemency (release) or having the sentence commuted (reduced). For example, in *R. v. Latimer*, [2001] 1 S.C.R. 3, the Supreme Court of Canada indicated that the Royal Prerogative of Mercy is the only potential remedy for persons who have exhausted their rights of appeal and are unable to show that their sentences conflict with the *Charter*.

pardon: the setting aside of a person's record of conviction



Legal Link

For answers to frequently asked questions about pardons, visit our Web site. Which FAQ did you find most interesting? Why?

Royal Prerogative of Mercy: a release or sentence reduction granted by the Queen under the authority of an Act of Parliament

Building Your Understanding

1. What information must the parole board consider before making its decision?
2. Why is parole called a conditional release?
3. Explain the difference between full parole and statutory release.
4. List four conditions the parolee must agree to.
5. Briefly describe the difference between probation and parole.
6. What benefits does a person receive when given a pardon? What restrictions are still in place?