

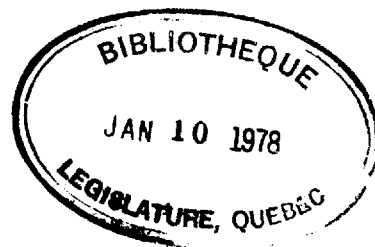
SECOND SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 95

An Act to promote the parole of inmates

First reading



M. MARC-ANDRÉ BÉDARD

Ministre de la Justice

EXPLANATORY NOTES

The object of this bill is to enable a person imprisoned in a house of detention in Québec for a prison term of over six months to be granted parole by the Commission québécoise des libérations conditionnelles.

Chapter I establishes certain definitions.

Chapter II provides the rules regarding the establishment of the commission.

Chapter III defines, in Division 1, the functions of the commission in respect of the granting of parole: it may grant parole if the qualification rules are respected (subdivision 1); it may revoke parole (subdivision 2); certain rules of procedure before the commission are provided (subdivision 3). The decision refusing parole and the decision revoking parole may be reviewed by a board (subdivision 4). The commission may also change the conditions of parole during an inmate's release on parole (subdivision 5).

Division II of Chapter III enables the commission to rule on the appeal from a decision rendered on a matter of temporary absence by the Directeur général de la probation et des établissements de détention.

Chapter IV establishes certain general rules and amends the Probation and Houses of Detention Act to grant, in particular, to a person imprisoned for a term of under six months the permission to be temporarily absent from the house of detention in view of his social rehabilitation.

Bill 95

An Act to promote the parole of inmates

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

CHAPTER I

DEFINITIONS

1. In this act, unless the context indicates a different meaning,

(a) “commission” means the Commission québécoise des libérations conditionnelles established under section 2;

(b) “inmate” means a person imprisoned in a house of detention for a term of imprisonment of six months or more following conviction under any law or regulation in force in Québec;

(c) “house of detention” means any establishment established under the Probation and Houses of Detention Act (1969, chapter 21);

(d) “parole” or “conditional liberation” means the release of an inmate during a term of imprisonment;

(e) “remission” means a remission of the term of imprisonment granted under the Probation and Houses of Detention Act, the Prisons and Reformatories Act (Statutes of Canada) or the Penitentiary Act (Statutes of Canada).

CHAPTER II

ESTABLISHMENT OF THE COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES

2. A body is established under the name of “Commission québécoise des libérations conditionnelles”.

3. The commission is composed of five full-time members including a chairman and a vice-chairman and at least one part-time member per region determined by regulation; they are appointed by the Government.

4. The full-time members are appointed for terms not to exceed five years and the other members for terms not to exceed two years.

5. The secretary and the other members of the staff of the commission are appointed and remunerated in accordance with the Civil Service Act (1965, 1st session, chapter 14).

6. The Government fixes the salary and the allowances of the full-time members and the fees and allowances of the other members of the commission.

7. Every member of the commission remains in office at the expiry of his term until he is reappointed or replaced.

8. The office of full-time member of the commission is incompatible with any other function.

9. If a member of the commission is temporarily absent or unable to act, the Government may appoint a person to replace him for as long as he is absent or unable to act.

10. A member of the commission must recuse himself for any of the grounds provided for in article 234 of the Code of Civil Procedure to the extent that they are applicable.

11. Two members, one of whom is a full-time member, are a quorum of the commission. In case of a tie-vote, the chairman or, if he is absent, the full-time member designated by him, has a casting vote.

12. The commission has its head office at the place determined by the Government; notice of the location or of any change of location of the head office shall be published in the *Gazette officielle du Québec*.

13. The commission may hold its sittings at any place determined by it.

It may sit in several places simultaneously.

14. Minutes of the sittings approved by the commission and certified true by the chairman or the secretary are authentic. The same rule applies to documents or copies emanating from the

commission or forming part of its records when they are signed by the chairman or the secretary of the commission.

15. The members of the commission shall not be prosecuted by reason of official acts done in good faith in the carrying out of their duties.

16. The commission shall adopt rules of practice for its internal management.

17. The commission shall have exclusive jurisdiction to decide the parole of an inmate.

18. No extraordinary recourse provided by articles 834 to 850 of the Code of Civil Procedure may be exercised and no injunction granted against the commission or its members acting in their official capacity.

A judge of the Court of Appeal may, on a motion, summarily annul any writ and any order or injunction issued in contravention to the first paragraph.

CHAPTER III

FUNCTIONS OF THE COMMISSION

DIVISION I

CONDITIONAL LIBERATION

§ 1.— *Granting of parole*

19. An inmate qualifies for parole if he has served one-third of the sentence of imprisonment imposed by the court or of the total of the sentences contemplated in section 25.

20. From the time an inmate is committed to a house of detention, the commission is seized of right of his record unless he renounces thereto in writing.

21. The commission may, on such conditions as it may determine, release an inmate on parole to facilitate his social rehabilitation unless there is serious risk that he will not comply with the conditions of his release or that serious prejudice to society will result therefrom.

22. Before rendering its decision, the commission shall take the advice of the warden of the house of detention where the inmate is imprisoned. It may also take the advice of any other person.

23. In making its decision, the commission shall take into account, in particular, the inmate's personality and behaviour, his ability to meet obligations, his plans, his family and social relations, his former employments, his aptitudes for work, his judicial record and his conduct during a period of temporary absence granted under the Probation and Houses of Detention Act, a period of imprisonment or a period of conditional liberation.

24. The term of parole shall consist of the time remaining to be served by the inmate at the time parole is granted, to which the remission time then credited to him must be added.

25. Any term of imprisonment imposed on a paroled inmate following conviction under any act or regulation must be consecutive to any other sentence.

§ 2.— *Suspension and revocation of parole*

26. A member of the commission or a person designated by him in writing, if he has reasonable ground to believe that the inmate has contravened any condition of parole or that it is necessary to intervene to prevent such contravention, may suspend any parole, authorize, by warrant, the apprehension of the inmate and order that he be committed to a house of detention of the region where he was apprehended or to that wherefrom he was paroled.

Such decision must be rendered and substantiated in writing.

27. The warden of the house of detention must, with the least possible delay, give the inmate a copy of the decision.

28. The commission must examine the decision contemplated in section 26 with the least possible delay and it may revoke the inmate's parole or order his commitment, or release him on such conditions as it may determine.

29. The inmate whose parole is revoked must serve the portion of his term of imprisonment that remained unexpired at the time he was granted parole to which any remission time then to his credit is added, less

(a) any time spent on parole;

(b) any time spent in custody by reason of the suspension of his parole; and

(c) any remission time for the period spent in custody by reason of such suspension.

30. Notwithstanding section 29, the commission may re-credit an inmate whose parole is revoked with all or part of the remission time at his credit at the time he was granted parole.

§ 3. — *Procedure before the commission*

31. This subdivision applies to the procedure before the commission pursuant to subdivisions 1 and 2 of this chapter.

32. An inmate is entitled to be present and to be heard before the commission unless he renounces thereto in writing.

He is also entitled to be represented before the commission by any person of his choice other than another inmate imprisoned in another house of detention or to be assisted by such person.

33. The commission shall, as soon as possible, render a written and substantiated decision.

The decision forms part of the records of the commission and it is without appeal.

Copy of the decision must be remitted to the inmate without delay.

§ 4. — *Review*

34. Any inmate may forward to the secretary of the commission an application for the review of the decision to refuse or to revoke parole.

35. The secretary of the commission shall transmit the application for review to a review board composed of three persons chosen by the chairman from among the members of the commission who have not participated in the decision.

36. The chairman, or the vice-chairman if he did not participate in the decision, must be a member of the review board.

37. The review board may confirm or quash the decision of the commission and, in the latter case, render the decision that should have been rendered.

§ 5. — *Change of conditions*

38. A full-time member of the commission or any person designated in writing by the commission may change or suppress the conditions during the parole.

39. Copy of the decision which must be rendered in writing and substantiated shall be transmitted with the least possible delay to the inmate and to the secretary of the commission.

DIVISION II

APPEALS IN THE MATTER OF TEMPORARY ABSENCE

40. By a written notice addressed to the secretary of the commission, any inmate may appeal to a full-time member of the commission from any decision of the Director General in the matter of temporary absence rendered under section 22*b* of the Probation and Houses of Detention Act.

41. The secretary shall transmit, with the least possible delay, a copy of the notice contemplated in section 40 to the Director General, who shall then remit the record to the commission.

42. The notice of appeal shall set out the grounds for appeal and every other new fact, if any.

43. The member of the commission who hears the appeal may, after he has examined the record and the new facts, if any, confirm or quash the decision of the Director General, and, in the latter case, render the decision that should have been rendered.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

44. Except where otherwise provided by this act, Chapter III shall have effect notwithstanding sections 23 and 34 of the Charter of human rights and freedoms (1975, chapter 6).

45. Any decision rendered under this act shall not have the effect of limiting the power of the Government to grant a pardon or to commute a sentence.

46. A warrant of arrest or a warrant of committal shall be carried out by a peace officer.

47. Not later than 30 June each year, the commission shall make to the Ministre de la justice a report of its activities for the preceding fiscal year.

The Minister shall table the report of the commission before the Assemblée nationale within thirty days of his receiving it. If he receives it while the Assemblée nationale is not sitting, he shall table it within thirty days of the opening of the next session or, as the case may be, of resumption.

48. The Minister may, in accordance with the Intergovernmental Affairs Department Act (1974, chapter 15), enter into agreement with another government of Canada for the transfer to a house of detention of a person confined in a prison as defined by the Prisons and Reformatories Act or in a penitentiary as defined in the Penitentiary Act.

49. The Government may make regulations to

(a) determine regions for the purpose of the application of this act;

(b) determine the contents of the information that the commission must furnish to an inmate who qualifies for parole;

(c) enact the rules of procedure necessary for the application of Chapter III.

Such regulations shall come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date fixed therein.

[[**50.** The sums necessary for the application of this act shall be taken, for the fiscal years 1978/1979 and 1979/1980, out of the consolidated revenue fund and, for subsequent fiscal years, out of the sums appropriated annually for that purpose by the Legislature.]]

51. Section 12 of the Probation and Houses of Detention Act is amended by adding, at the end, the following paragraph:

“(e) supervise a person released on parole under the Act to promote the parole of inmates (1977, chapter *insert here chapter number of Bill 95*), ensure that he respects the conditions imposed upon him and, if necessary, report to the Commission québécoise des libérations conditionnelles.”

52. Section 16 of the said act is amended by replacing the second paragraph by the following paragraphs:

"The warden of every house of detention shall admit thereto any person who, under the law, must be detained in such establishment; he shall inform him of the provisions of the Act to promote the parole of inmates.

He shall be responsible for the custody of such person until such person has been released or transferred to another establishment."

53. Section 18 of the said act is replaced by the following:

"18. Any person imprisoned in a house of detention following conviction for an infringement of a law or a regulation shall be entitled to a remission of punishment equal to one-third of his term of imprisonment; such remission of punishment shall be computed on the basis of one day out of two days of imprisonment during which he complies with the regulations and directives.

A first remission of punishment shall be granted not later than at the end of the month following the month during which such person was admitted to the establishment; subsequently, remission of punishment shall be granted not later than every three months.

If such person does not comply with the regulations and directives, the warden may cancel all or part of the remission of punishment standing to his credit.

54. Section 20 of the said act is repealed.

55. The said act is amended by inserting, after section 22, the following:

"DIVISION Va

"TEMPORARY ABSENCE

"22a. For the application of this division, an inmate is a person confined to a house of detention for a sentence of imprisonment of less than six months following conviction under a law or a regulation in force in Québec.

"22b. The Director General may, to facilitate the social rehabilitation of an inmate, on such conditions as he may determine, allow him to be absent temporarily from the house of detention.

"22c. An inmate qualifies for temporary absence when he has served one-third of the sentence of imprisonment imposed by the court or of the total of the sentences contemplated in section 22p.

“22d. Notwithstanding section 22a, the Director General may, for humanitarian reasons, on such conditions as he may determine, authorize an inmate to be absent temporarily, whatever the term of his imprisonment and even if the condition of section 22c is not complied with.

“22e. No temporary absence contemplated in section 22b or 22d shall exceed fifteen days.

“22f. In the cases provided for in section 22b or 22d, the Director General shall render his decision on the recommendation of a committee on temporary absence which must be established in every house of detention.

Such committee shall be composed of three persons designated by the warden of the house of detention, in accordance with the regulations.

“22g. The committee, in its recommendation, and the Director General, in his decision, shall take into account, in particular, the inmate's personality and behaviour, his ability to meet obligations, his plans, his family and social relations, his former employments, his aptitudes for work, his judicial record and his conduct during a period of temporary absence granted under the Probation and Houses of Detention Act, a period of imprisonment or a period of conditional liberation.

“22h. The inmate must address his application to the committee in writing.

“22i. The inmate is entitled, if he applies therefor, to be heard and to be represented before the committee by the person of his choice or to be assisted by such person except by another inmate imprisoned in another house of detention.

“22j. With the least possible delay following receipt of the application, the committee shall examine it, make the necessary consultations and transmit to the Director General its recommendation and the record the contents of which are determined by regulations.

“22k. The Director General shall render his decision in writing giving the reasons therefor and notify the inmate in writing with the least possible delay following receipt of the committee's recommendation.

He shall not be bound by the recommendation of the committee.

“22l. In the case contemplated in section 22*b*, the inmate may appeal from the decision rendered by the Director General, in accordance with the Act to promote the parole of inmates.

“22m. Notwithstanding section 22*a*, the Director General may, for medical reasons, on such conditions as he may determine, authorize an inmate to be absent temporarily, whatever the term of his imprisonment and even if the condition of section 22*c* is not complied with.

“22n. The violation of a condition of temporary absence imposes the immediate return of the inmate to the house of detention or the application of measures required to return him to such establishment.

As soon as the warden of a house of detention is informed thereof, he must notify the Director General who shall indicate to him the sanctions to be taken against the inmate.

“22o. The powers of the Director General under this division may be exercised by a person designated by him in writing.

“22p. Any term of imprisonment imposed following conviction under a law or a regulation during a period of temporary absence must be consecutive to any other sentence.

“22q. This division also applies where the Director General is exercising the power contemplated in section 19.”

56. Section 23 of the said act is amended by adding, after paragraph *m*, the following paragraphs:

“(n) determine the form and contents of an application for temporary absence;

“(o) determine the catégories of persons who may be members of a committee on temporary absence;

“(p) determine the contents of the record to be transmitted by a committee on temporary absence to the Director General or by the Director General to the Commission québécoise des libérations conditionnelles.”

57. The Ministre de la justice is responsible for the application of this act.

58. This act shall come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by such proclamation which shall come into force on any later date to be fixed by proclamation of the Government.