

Section 745.6

Prepared by the Canadian Resource Centre for Victims of Crime

History

In 1976 the Parliament abolished capital punishment and replaced it with mandatory life sentences for high treason, and first and second-degree murder. At the same time, ineligibility periods for parole were established. For high treason and first-degree murder, parole ineligibility period was set at twenty-five years.

In addition, the Liberal Government introduced the fifteen-year Judicial Review, known as the Faint Hope Clause. Warren Allmand, who was the Solicitor General of Canada at the time, introduced the new provision with the following comment: "to keep them in for 25 years in my view is a waste of resources, a waste of a person's life."

Section 745.6 (1) allows people who are convicted of murder or high treason and have served fifteen years of their sentence to have their parole ineligibility period reviewed and possibly shortened.

This process is heavily weighted in favor of the offender. The emphasis is on rehabilitation rather than the crime itself, the victim, or the impact of the crime on the family.

Criminal Code

Section 745.6 (1) Application for Judicial Review - Subject to subsection (2), a person may apply, in writing, to the appropriate Chief Justice in the province in which their conviction took place for a reduction in the number of years of imprisonment without eligibility for parole if the person

- a. has been convicted of murder or high treason;
- b. has been sentenced to imprisonment for life without eligibility for parole until more than fifteen years of their sentence has been served; and
- c. has served at least fifteen years of their sentence.

2) Exception – multiple murderers

A person who has been convicted of more than one murder, after January 9th 1997, may not make an application under subsection (1), whether or not proceedings were commenced in respect of any of the murders before another murder was committed.

Section 745 Hearings

Before the application is heard in court, section 745.6 requires that the Chief Justice of the province where the offence took place screen an application for Judicial Review. If the Chief Justice decides that the application may proceed, there will be a hearing. At the hearing, evidence is first presented by the applicant. Witnesses for the applicant usually include the applicant's family and friends, psychologists or psychiatrists, guards employed at the facility where the applicant is imprisoned, and teachers (if the applicant has taken any courses).

Representatives of the National Parole Board have also been called to testify that even if this application is successful, the Board does not always grant parole to these applicants. The

Crown prosecutor may then present evidence regarding such things as the applicant's conduct and behavior while incarcerated.

The Role of the Jury

Before the application is heard in court, section 745.6 requires that the Chief Justice screen an application for Judicial Review. If the Chief Justice decides that the application may proceed, the jury will hear the case. The jury must come to a decision after considering the following:

1. the character of the offender after having served fifteen years,
2. the conduct and behavior of the offender while in prison,
3. the nature of the offence, based on the 'agreed upon' facts of the case,
4. information provided by the victim, and
5. specific matters the judge deems relevant to the application.

After hearing the application the jury can make the following possible decisions:

1. the offender can immediately apply for parole,
2. reduce the parole eligibility period by a specified amount of time, or
3. the offender must serve the entire twenty-five years before parole eligibility.

**The decision to reduce the parole eligibility period of an offender must be unanimous.*

Even if the jury reduces the parole ineligibility period, the National Parole Board must still establish, at a parole hearing, whether an offender should receive parole. Not all applications to the Board lead to an offender's release. In making its decision, the Board must consider whether an offender's release will present an undue risk to society.

Questions for the Jury:

PART 1

A. Do you unanimously agree that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced, having regard to the character of the applicant, his conduct while serving his sentence, the nature of the murder for which he was convicted and the victim impact statements?

Yes _____ No _____

If Yes, go to question B

If No, go directly to question under Part II

B. Are no less than two-thirds of you satisfied that the applicant should be eligible for parole immediately, having regard to the character of the applicant, his conduct while serving his sentence, the nature of the murder for which he was convicted and the victim impact statements?

Yes _____ No _____

If Yes, end of deliberations

If No, go to question C

C. Having decided that the applicant's number of years of imprisonment without eligibility for parole ought to be reduced from 25 years, what lesser number of years do at least two-thirds of you order substituted for the 25 year period?

Number of years _____

PART II

A. Do at least two-thirds of you agree that the applicant should not be permitted to make another application under section 745.6 of the Criminal Code?

If Yes, end of deliberations

If No, go to question B

B. Having decided that the applicant should not be prohibited from re-applying under section 745.6 (1), what date two or more years after today's date do at least two-thirds of you agree should be set after which the applicant may re-apply under section 745.6 (1)?

Write in the date: _____

Victim Participation in the Section 745 Hearing

Before 1997, it was left to the judge's discretion whether the jury would be able to consider information provided by the victims during the judicial review process. Section 745.6 now allows for the victims' families to provide information, concerning the impact the crime had on them, during the application hearing. Under Section 745.63 the victim's family may provide information "either orally or in writing, at the discretion of the victim, or in any other manner that the judge considers appropriate."

Recent Amendments

On January 9th 1997, Bill C-45 came into force. This included the following amendments to section 745 of the Criminal Code:

1. Offenders convicted of multiple murders after January 9, 1997 will never be permitted to apply for judicial review under section 745;
2. Offenders, including those now serving time for murder, no longer have an automatic right to a section 745 jury hearing. All applicants will now be subject to a tight screening mechanism by a Superior Court judge, and will only proceed to a hearing if the judge is persuaded that there is a reasonable chance of having their parole ineligibility reduced.
3. A section 745 jury, composed of members of the community, will from now on be required to reach unanimous decision before an offender's parole eligibility period is shortened. Previously, only two-thirds majority was required.

Pursuit to Repeal Section 745

Although Bill C-45 brought some much-needed changes to legislation regarding the availability of early parole, it is not enough. Various members of Parliament, joined by police and victims' groups, have tried unsuccessfully to repeal section 745.6. One attempt was through private member's Bill C-234 (previously C-226) which was introduced by John

Nunziata. During the hearing of evidence of the Senate Standing Committee on Justice and Legal Affairs, Mr. Nunziata expressed his view of section 745: "I think the penalty [for the worst crime in the Criminal Code – premeditated murder] should remain what is in the code now, which is life imprisonment."

Burden on the Victims

Victims who choose to attend section 745 hearings are forced to relive the events and emotions surrounding the homicide as they may be asked to update their victim impact statements for the court. It is also particularly difficult and offensive for victims to sit in court and listen to the offender describe his accomplishments and aspirations.

Victims are often unaware if the offender has or will make an application for early release, and may not be notified if an application has been made. Another burden is that once the application has been made, it may be over a year before the lengthy hearing commences.

Another major problem with section 745 is that the application has to be made in the province that the person was convicted in. This sometimes makes it very difficult for families to attend the proceedings. The Ontario government, followed by the Federal Government, has made an effort to alleviate, at least financially, the burden of these hearings.

Funding For Victims

In March 2000, the government of Canada allotted \$25 million over five years to the Department of Justice's Policy Centre for Victim Issues for victim-related initiatives. The Department of Justice Canada will use part of this fund to provide financial support for victims' families who attend Section 745.6 hearings.

The fund will offer direct, limited, emergency financial assistance to survivors of victims of homicide who incur expenses to attend early parole eligibility hearings. Financial assistance may include travel, accommodation, and meal allowances, up to \$5000 for the first family member and \$2500 for additional family members.

Statistics (Source: Correctional Service of Canada)

In the past, most Judicial Reviews have resulted in a reduction in parole ineligibility. However, most offenders do not even apply for early release under section 745.6.

- As of January 13, 2002, there were 571 inmates who were eligible to apply, as they had been incarcerated for at least 15 years past their arrest dates.
- A decision has been rendered in 118 cases and 94 inmates have been granted a reduction in the period of parole ineligibility.
- Currently there are 66 offenders on day or full parole and two offenders have been deported.

Court Decisions By Province

Province of Judicial Review	Deny	Grant	Total
ALBERTA	4	8	12
British Columbia	3	7	10
Manitoba	1	4	5
New Brunswick	0	1	1
Nova Scotia	0	1	1
Ontario	9	15	24
Quebec	4	54	58
Saskatchewan	3	4	7
Total	24	94	118

Court Decisions - Reduction in Parole Eligibility

All reductions have been granted to offenders with either a 20-year or a 25-year restriction.

Outcome	Alberta	British Columbia	Manitoba	New Brunswick	Nova Scotia	Ontario	Quebec	Saskatchewan	Total
20 reduced to 15	0	0	0	0	0	0	6	0	6
20 reduced to 16	0	1	1	0	0	0	2	0	4
20 reduced to 17	0	0	1	0	0	0	1	0	2
20 reduced to 18	0	0	0	0	1	0	0	0	1
25 reduced to 15	1	0	1	0	0	2	16	1	21
25 reduced to 16	1	1	0	0	0	1	7	1	11
25 reduced to 17	1	0	0	0	0	1	5	0	7
25 reduced to 18	0	0	1	0	0	3	2	0	6
25 reduced to 19	0	3	0	0	0	4	7	0	14
25 reduced to 20	4	2	0	1	0	1	6	0	14
25 reduced to 21	0	0	0	0	0	2	1	1	4
25 reduced to 22	0	0	0	0	0	0	1	0	1
25 reduced to 23	0	0	0	0	0	0	0	1	1
25 reduced to 24	1	0	0	0	0	1	0	0	2
Total	8	7	4	1	1	15	54	4	94

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*This pamphlet was prepared by the Canadian Resource Centre for Victims of Crime with the help of Lisa Sattler. Lisa is a third year Criminology student at Carleton University.