# Ontario Parole Board

## Practice Guidelines

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# Ontario Parole Board: Practice Guidelines

[Effective July 22, 2019]

The Ontario Parole Board (the "Board") has established guidelines that govern its proceedings. These guidelines outline the Board's expectations of participants in its processes, and in turn, what participants in Board proceedings can expect from the Board.

## PART I: Applications for Parole

### A. The Board's parole jurisdiction

1. The Board has jurisdiction to consider for parole most individuals who are serving sentences of less than two years in Ontario's provincial correctional institutions.

2. The Board's jurisdiction is delegated under the federal *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA).

3. The law that creates the Board and gives it its powers is the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 (MCSA) and Ontario Regulation 778 (Reg 778).

4. The federal Parole Board of Canada has jurisdiction to grant parole to individuals who are serving sentences of two years or more at federal institutions located in Ontario.

### B. Eligibility for parole

1. An applicant is a person who committed an offence and for whom parole is being considered. In other settings, applicants may be referred to as "offenders" or "inmates".

2. An applicant is eligible for parole after completing one-third of their sentence. That date is called the applicant's parole eligibility date, or PED. [CCRA, s. 120(1); Reg 778, s. 41(1)]

3. The Board has the authority to grant parole before an applicant's PED if there are compelling or exceptional circumstances. [CCRA, s. 121; Reg 778, s. 41(2)]

4. The Board is required to consider everyone who is serving a sentence of 181 days or more (i.e. 6 months or more) for parole before their PED. [Reg 778, s. 43(1)]

5. Applicants serving sentences of less than 181 days must apply if they want to be considered for parole, and must complete the required application form. The Board refers to these as short sentence applications. Prior to submitting a short

sentence application, an applicant may wish to speak to Ministry of the Solicitor General (SOLGEN) staff, a legal representative or a support person (e.g. family member or friend).

6. The Board is not required to hold a hearing for short sentence applications. However, the Board may hold a hearing if it considers it appropriate and has sufficient time to schedule a hearing before the discharge possible date, or DPD. The discharge possible date is the earliest date upon which a person may be released from custody as a result of their earned remission. It is typically when the person has served two-thirds of their sentence. [Reg 778, s. 42(2)]

## C. Submitting an application for parole

1. For anyone serving a sentence of 181 days or more, the Board automatically considers the applicant's right for a parole hearing. SOLGEN staff provide applicants with information (e.g. a checklist to help prepare a parole plan or the Board's "Parole Guide") to help them decide if they want to apply. If an applicant wants to be released on parole, they can prepare a parole plan with help from a legal representative, SOLGEN staff or a support person. If an applicant does not agree with the decision, they have the right to request a review (see PART III: Reviews of Decisions).

2. Applicants may waive their right to hearing. The Board will then consider the applicant for parole based on the information in their file. This is called a Non-Hearing Parole Consideration (NHPC) (see PART I Section D: Waiver Option 1 - Non-hearing parole consideration). [Reg 778, s. 43.1(2)]

3. Applicants may waive their right to parole consideration. The Board will not hold a hearing and will not consider the applicant for parole (see PART I Section E: Waiver Option 2 - Waiver of Parole Consideration). [Reg 778, s. 43(2)]

4. If an applicant does not waive their right to a hearing or parole consideration, the Board will schedule a hearing before the applicant's Parole Eligibility Date (PED).

## D. Waiver Option 1 - Non-hearing parole consideration

1. An applicant may waive their right to a hearing by completing and signing Option 1 on the Hearing and Parole Consideration Waiver Form. [Reg 778, s. 43.1]

2. The Board will review the applicant's file and will issue a written decision before the applicant's PED. The Board refers to these as Non-Hearing Parole Considerations. [Reg 778, s. 43.1]
3. An applicant who has waived their right to a hearing may change their mind at

any time before the Board makes a decision, by notifying the Board in writing. [Reg 778, s. 43.1]. The Board will proceed to schedule a hearing.

4. An applicant who waived their right to a hearing and disagrees with a decision to deny them parole may request a review of the decision by completing a Request for a Review of Parole Decision Form. (see PART III Section A: Requesting a review of a decision).

5. If an applicant refuses to attend their hearing, the Board's next steps will depend on the length of the applicant's sentence. If the applicant is serving a sentence of 181 days or more and the applicant will not sign a Hearing and Parole Consideration Waiver Form, non-attendance at a parole hearing does not automatically constitute a waiver of parole consideration. If it determines no valid waiver was given, the Board will consider the applicant for parole. The Board members will consider the applicant's file and make a decision about whether to grant parole. If the applicant is serving a sentence of less than 181 days, the Board will consider the matter closed and will not make a decision about whether parole should be granted.

## E. Waiver Option 2 – Waiver of Parole Consideration

1. An applicant may waive their right to parole consideration by completing and signing Option 2 on the Hearing and Parole Consideration Waiver Form. [Reg 778, s. 43]

2. The Board will consider the matter closed and will not make a decision about whether parole should be granted.

3. An applicant who has waived their right to parole consideration may change their mind at any time by notifying the Board in writing. [Reg 778, s. 43] The Board will proceed on a reasonable timeline to consider the applicant for parole.

## F. Information considered by the Board for parole considerations

1. The Board carefully reviews all available relevant information when considering an applicant for parole. [CCRA, s. 101(a)]

2. The Board may obtain and consider any information that is useful and relevant to an applicant's suitability for parole. This can include information about the character, abilities and prospects of the applicant, and in particular, the Board may obtain and consider:

    a. Details of the applicant's trial, conviction and sentence
    b. Details of the applicant's criminal record

c. Information about the applicant's background and living conditions before their incarceration
d. Assessments from SOLGEN staff about the applicant's progress towards rehabilitation since being incarcerated, and
e. Reports from health care professionals about the applicant's physical and mental health. [Reg 778, s. 44(1)]

Information provided to the Board before a consideration

3. Prior to considering an applicant for parole, the Board receives relevant information from SOLGEN, the applicant or their assistant, and victims to help support the Board's decision-making. The Board might also receive information from other agencies and organizations such as police, the Ministry of Transportation (related to *Highway Traffic Act* charges) or a representative from an Indigenous organization with which the Board has entered into a Memorandum of Understanding (MOU).

4. Applicants who waive their right to a parole hearing may make submissions to the Board by including those submissions in the Hearing and Parole Consideration Waiver Form.

Information provided to the Board during a hearing

5. During a parole hearing, the Board hears submissions from the applicant. The Board may also hear from the applicant's assistant (if an assistant is present) and from victims, if they have chosen to attend the hearing and to make a submission. During the hearing, the Board members may question the applicant to obtain information that is relevant to parole consideration.

6. As an inquisitorial tribunal, the Board has a general obligation to ensure that *all* of the information it uses to make a decision is reliable and persuasive. It satisfies this obligation through the process of receiving, considering and ultimately weighing the relevant information the Board is required by law to consider. This means that the Board reviews all information and decides what information it considers to be trustworthy and convincing. Board members may ask questions during the parole hearing about the information being presented.

## G. Conduct of a parole hearing

1. Because the Board is an inquisitorial tribunal, its hearings are conducted differently than courts and many other tribunals. For instance, the Board does not follow the traditional rules of evidence. Applicants and their assistants, including legal representatives, are not permitted to call witnesses at hearings, or to cross-examine a victim after they have given their statement. Instead, applicants or their assistants are typically permitted to submit documents to the Board for use in the hearing, and also to make submissions to the Board before the hearing is over.

2. A parole hearing is conducted by a minimum of two Board members. The following people might also attend the hearing:

    - The applicant
    - The applicant's assistant(s)
    - Victims
    - Victims' assistant(s)
    - An interpreter
    - An observer
    - An Elder, if the hearing is a Circle Hearing, and
    - A representative from an Indigenous organization with which the Board has entered into an MOU, if applicable.

3. In the case of an in-person hearing, anyone approved to attend the parole hearing may be denied access to the institution if they pose a security risk. Attendance at parole hearings held in Ontario's provincial institutions is subject to review by SOLGEN staff.

4. Parole hearings will be audio recorded.

5. The Board relies on SOLGEN staff to help facilitate the hearing, including the applicant's procedural rights. At the beginning of every hearing, the Board takes steps to determine whether these procedural rights have been met. The Board will ask the applicant the following:

    a. Whether the applicant has received 48-hours' notice of the hearing
    b. Whether the applicant has been advised of their right to request that an assistant be present (i.e. a legal representative, family member or friend)
    c. Whether the applicant has been advised of their right to a hearing in the French language or a bilingual hearing
    d. Whether the applicant has been advised of their right to request culturally-appropriate services (i.e. a Circle Hearing) if they are Indigenous (First Nation, Inuit or Métis)
    e. Whether the applicant has been advised of their right to request interpretation services for languages other than English and French
    f. Whether the applicant has been advised of their right to request accommodation for *Human Rights Code*-related needs (e.g. hearing loss, dyslexia, anxiety) in the hearing process. [Reg 778, s. 44(2)]

6. If the applicant indicates that they have not received notice of any of these rights, the Board will determine how to proceed, after considering:

    - Whether the applicant is correct that they did not receive notice of one or more of the rights listed in point 5
    - The applicant's views on whether the hearing should proceed as scheduled

- The impact to the applicant, if any, of proceeding with the hearing as scheduled or adjourning (rescheduling) the hearing to a different date
- Whether an adjournment would result in the applicant being considered for parole beyond their PED
- What would be fair and reasonable in the circumstances
- Whether a victim or any other persons in attendance would be required to re-attend if the hearing is adjourned, and
- Any other relevant considerations.

7. As a matter of policy, the Board will usually invite victims to speak first if this is their preference. The Board may allow a victim's assistant to read the victim's statement on their behalf if the victim identifies as a person with a mental or physical disability that prevents them from communicating clearly. If a victim has chosen to attend but does not want to make a submission, the Board might read their submission aloud.

8. The Board will invite the applicant to tell the Board why they are seeking parole. The applicant may wish to tell the Board about: their personal history; the offence(s) for which they have been sentenced; what they have been doing with their time since they have been incarcerated; and their plans if they were to be released on parole.

9. The Board will also invite submissions from the applicant's assistant. An assistant can be the applicant's legal representative, family member(s), friend(s), social or community worker or other support person. Assistants must be approved in advance by the Board, and they can only attend at the applicant's request (see *PART XVI: Assistants*). [Reg 778, s. 44(2)(c)]

10. The Board may also receive information from a representative from an Indigenous organization with which the Board has entered into an MOU. The representative may present information that will allow the OPB to consider and apply *Gladue* principles, information about the applicant's release plan or both (see *PART XI: Indigenous Services*).

11. The Board may ask the applicant questions to clarify issues relevant to parole consideration. These questions may focus on:

    a. Risk factors presented by parole release
    b. Strategies for managing risk
    c. Rehabilitation needs, and/or
    d. Plans for reintegration.

12. If the Board is of the opinion that the orderly conduct of the hearing is being disrupted, the Board may:
    a. Request that any person, other than the applicant, be excluded from the hearing for a portion of or the remainder of the hearing, or
    b. Adjourn the hearing to another day and order any person not to attend. [Reg 778, s. 44.4]

13. A hearing cannot be held without the applicant. However, if an applicant is disrupting the hearing, the Board members may warn the applicant that the hearing may end if their disruptive behavior continues. If the disruptive behavior continues, the Board may end the hearing and consider the applicant for parole based on the applicant's submissions and the information in the file. The Board may ask the applicant if they have any final submissions before ending the hearing.

14. The Board may adjourn (reschedule) a parole hearing in limited circumstances. When deciding whether to adjourn a hearing, the Board may consider:

    - The applicant's views on whether the hearing should proceed as scheduled
    - The impact to the applicant, if any, of proceeding with the hearing as scheduled or adjourning the hearing to a different date
    - Whether an adjournment would result in the applicant being considered for parole beyond their PED
    - What would be fair and reasonable in the circumstances
    - Whether a victim or any other persons in attendance would be required to re-attend if the hearing is adjourned, and
    - Any other relevant considerations.

15. The Board may order a short break during a hearing if it considers it appropriate to do so.

16. Prior to making its decision, the Board will give the applicant an opportunity to address any issues that have come up during the hearing. Once the questioning and submissions are complete, the Board may leave the hearing to discuss whether to grant parole.

17. The Board will carefully consider all of the information before it to assess the applicant's suitability for parole.

18. The Board will provide reasons for its decision and, if parole is granted, determine the conditions that the applicant must follow while on parole.

19. The Board may return to the hearing to read the decision and conditions. It also may decide to take more time to consider the case and release its decision at a later date. This will typically take five business days, but in any event no later than the applicant's PED.

20. The applicant (and the applicant's legal representative, if the applicant is represented) will be given a copy of the decision and the reasons for the decision in writing. The Board will also distribute the decision to SOLGEN staff so that it may be added to the applicant's file.

21. Victims may request a copy of the Board's decision by submitting a written request. The Board will review the decision and may redact certain sensitive and personal information.

22. Any person other than an applicant, an applicant's legal representative or a victim wishing to receive a copy of the Board's decision must submit a request to the Board (see *PART XVIII: Requests for Decisions).*

## H. Statutory criteria for granting parole

1. The *Corrections and Conditional Release Act* sets out the criteria for granting parole. In order to grant parole, the Board must be satisfied that:

    a. The applicant will not, by reoffending, present an undue risk to society before the expiration of their sentence, and
    b. The applicant's release will contribute to the protection of society by facilitating the applicant's reintegration into society as a law-abiding citizen. [CCRA, s. 102]

2. The protection of society is the Board's paramount consideration when determining whether to grant parole. [CCRA, s. 100.1]

## I. *Gladue* considerations

1. Where an applicant is an Indigenous person (First Nation, Inuit or Métis), the Board is obligated to undertake an additional analysis, sometimes referred to as a "*Gladue* analysis".

2. The Board considers the systemic and background factors in the lives of Indigenous persons. These factors may help to:

    a. Explain an Indigenous applicant's involvement in the criminal justice system, and
    b. Inform the kind of release planning that will facilitate the applicant's rehabilitation and reintegration.

3. The Board offers culturally-appropriate services to Indigenous (First Nation, Inuit or Métis) applicants (see *PART XI: Indigenous Services*).

## J. After parole is granted

1. The Board will typically issue its decision immediately after the hearing. If the Board does not issue a decision immediately, it will typically take five business days, but in any event no later than the applicant's PED. An applicant's release

date will usually be set for ten business days after the date of decision. During this time, the Board and SOLGEN staff will prepare the paperwork necessary for the applicant's release.

2. The Board will prepare the applicant's *Parole Certificate*. The *Parole Certificate* is an important document. It contains the list of conditions that the applicant must follow on parole. **A parolee is required to carry this document with them at all times while on parole.** A parolee must be prepared to produce their *Parole Certificate* if a police officer or Probation and Parole Officer (PPO) requests it. [Reg 778, ss. 47, 48]

3. After parole is granted and before an applicant is released, SOLGEN staff will meet with the applicant to discuss their release from the institution. They will review the *Parole Certificate* with the applicant. This is an opportunity for the applicant to discuss any questions or concerns they have about their parole conditions. An applicant typically must sign their *Parole Certificate* before they leave the institution. By signing the certificate, the applicant indicates that they understand their conditions and agree to follow them. An applicant may only begin parole without having their *Parole Certificate* completed and signed if the Board is of the view that compelling or exceptional circumstances exist. [Reg 778, s. 47]

4. If, after parole is granted but before the applicant has been released, an applicant decides that they do not wish to be paroled, they can ask the Board to revoke parole by completing and signing a *Request for Parole Revocation Prior to Release Form*. The Board will consider the reasons for the revocation request and will decide whether to revoke the applicant's parole.

5. SOLGEN is responsible for the supervision of parolees on parole. The Board has no responsibility for the supervision of parolees.

## K. Conditions of parole release

1. If the Board grants parole, it will impose conditions that it considers appropriate. The conditions will relate to managing the parolee's risk of reoffending while on parole or relate to facilitating the parolee's reintegration into society as a law-abiding citizen. [MCSA, s. 35; Reg 778, s. 44.5]

2. A parolee must follow all of the conditions that the Board imposes while on parole. The parole period starts on the date of the applicant's release from the institution and continues to the end of the applicant's final warrant expiry date, or FWED. This is the date upon which the applicant's custodial sentence expires.

3. There are two categories of conditions: standard conditions and special conditions.

4. Standard conditions of parole release are mandated by the *Ministry of*

*Correctional Services Act* and apply to all parolees with some exceptions. These conditions require a parolee to:

a. Remain within jurisdiction of the Board
b. Keep the peace and be of good behaviour
c. Obtain the consent of the Board or the PPO for any change of residence or employment
d. Report as required to the parole supervisor and the local police force
e. Refrain from associating with anyone who is engaged in criminal activity or anyone who has a criminal record, unless approved by the PPO
f. Carry their parole certificate at all times and present it to any police officer or PPO upon request. [Reg 778, s. 48]

5. The Board will impose these standard conditions unless there is a reason to modify or remove them. If the Board changes or removes a standard condition, it will give reasons for doing so. [Reg 778, s. 48]

6. The Board will typically impose a condition requiring the parolee to report to their PPO and the local police force immediately upon release, and afterwards as the police and PPO require.

7. The Board may also impose special conditions of parole that the Board considers appropriate. Special conditions are tailored to the individual applicant, and commonly include:

   a. Conditions to help mitigate (or manage) certain risk factors (e.g. a requirement to abstain from alcohol or illegal drugs, or a requirement to observe a curfew)
   b. Conditions to help promote the applicant's rehabilitation (e.g. treatment, assessment or counselling)
   c. Conditions to help facilitate the applicant's reintegration into society as a law-abiding citizen (e.g. a requirement to pursue or maintain employment or education)
   d. Conditions to help the applicant follow their parole conditions (e.g. a requirement to report regularly to a PPO or electronic supervision), and
   e. Conditions to facilitate the applicant's reintegration and rehabilitation by helping with the applicant's transition from parole to probation. For example, if the applicant has a period of probation after parole during which they must follow probation conditions, the Board may impose the same or similar conditions to ensure a smooth transition from parole to probation. [MCSA, s. 35; Reg 778, s. 44.5]

8. The Board carefully considers which conditions to impose. Conditions are connected to the criteria for granting parole, and should be the least restrictive means of achieving their purpose, which is to promote the protection of society and to promote the applicant's rehabilitation and reintegration into society. [CCRA, s. 101(c)]

9. SOLGEN staff will often recommend conditions that they think the Board should impose. Although the Board will carefully consider these recommendations, it is not required to impose them. If the Board declines to impose conditions recommended by SOLGEN staff, it will typically explain why in its decision.

### L. Varying parole conditions

1. If a parolee is having difficulty following their conditions while on parole, or if they think that they might breach a condition, they can request that one or more of their parole conditions be changed or removed by speaking to their PPO.

2. The PPO has the authority to change some conditions if the condition allows for it. For instance, if the Board imposes the standard condition that the parolee must "obtain the consent of the Board or the PPO for any change of residence or employment", the PPO may approve that change without the Board's approval.

3. If the Board's consent is required to vary a condition, the PPO will prepare a *Special Parole Report to the Board*. The Board will consider the request and issue a decision.

## PART II: Parole Suspension, Post-Suspension and Revocation

### A. Revoking parole prior to release

1. After an applicant has been granted parole, but before they have been released from the institution, the Board may revoke parole if:

    a. It obtains new information that is relevant to its decision to grant parole, or
    b. The applicant requests that parole be revoked. [MCSA, s. 36(1)]

2. If new information relevant to parole is obtained, the new information will, where possible, be provided to the original panel that granted parole. If one or more of those members becomes unable, for any reason, to consider the matter, it may be presented to one or more different Board members.

3. After reviewing the original decision to grant parole and the new information, the Board members will decide whether to revoke parole. [MCSA, s. 36(1)]

4. If parole is revoked based upon new information, the Board will hold a new hearing to determine whether parole should be granted or not. The assigned members may be the Board members who originally decided to grant parole or the Board members who decided to revoke parole, unless the Board is satisfied that fairness requires an entirely different panel. [MCSA, s. 36(2)]

5. The applicant may waive their right to a hearing, in which case the Board will take no further action and the parole revocation will remain in effect. [MCSA, s. 36(2)]

6. Following a hearing, the Board may:

    a. Grant parole, and impose conditions, or
    b. Deny parole. [MCSA, s. 36(3)]

7. If the applicant requests that their parole be revoked prior to their release, the Board will consider the reasons for the request and decide whether parole should be revoked. Where possible, the original members who granted parole will make this decision. If one of those members becomes unable, for any reason, to consider the matter, it may be presented to one or more different Board members. [MCSA, s. 36(1)(b)]

8. If parole is revoked based upon the applicant's request, the Board will not hold a hearing and will take no further action. [MCSA, s. 36(2)]

## B. Suspending parole after release

1. After an applicant has been released on parole, the Board has the authority, under certain circumstances, to suspend the applicant's parole and order their return to custody. The Board will then usually hold a post-suspension hearing to decide whether the parolee should be permitted to continue parole, or whether parole should be revoked. [MCSA, s. 39; Reg 778, s. 45]

2. The Board may suspend parole:

    - At the parolee's request
    - If the Board is satisfied that:
        - The parolee has breached a parole condition
        - It is necessary and reasonable to prevent a breach of parole, or
        - It is necessary and reasonable to protect a person from danger or property from damage. [MCSA, s. 39(2)]

3. If a parolee does not want to continue with parole for any reason, they can inform their PPO and ask that their parole be revoked. The PPO will prepare a *Special Parole Report to the Board* for the Board to consider.

4. If a PPO believes that:

    a) A parolee has breached a parole condition, or
    b) Parole suspension is necessary and reasonable to prevent a condition breach or to protect a person from danger or property from damage, the PPO will prepare a *Special Parole Report to the Board*. The Board will

then consider whether to suspend parole.

5. A member of the Board or a person designated by the Board will consider any information that has been provided to it and, if satisfied that a breach of conditions has occurred or is about to occur, they will suspend the parolee's parole and may authorize a Canada-wide warrant to be issued for the parolee's arrest and return to custody. [MCSA, s. 39]

## C. Post-suspension hearings

### What is a post-suspension hearing?

1. Once an applicant has been brought back into custody, the Board will schedule a hearing as soon as possible. The Board refers to these hearings as post-suspension hearings. [MCSA, s. 39(3); Reg 778, s. 45(1)]

2. An applicant is entitled to a post-suspension hearing unless they waive that right by filling out a *Waiver of Appearance at Post-Suspension Hearing Form*. Even if the applicant waives their right to a post-suspension hearing, the Board will still consider whether parole should be continued or revoked, without holding a hearing. The Board will review the applicant's file and make a decision. An applicant who has waived their right to a post-suspension hearing may change their mind at any time before the Board makes its decision by completing and signing a *Waiver Rescind Form*. [Reg 778, s. 45(1)]

3. If an applicant does not fill out a *Waiver of Appearance at Post-Suspension Hearing Form*, a hearing will be held. An applicant is entitled to the same procedural rights for a post-suspension hearing as they are for a regular parole hearing, with some necessary modifications (see *PART I Section F: Conduct of a parole hearing*). [Reg 778, s. 45(3)]
4. The post-suspension hearing is not usually conducted by the same panel that granted parole.

### The purpose of a post-suspension hearing

5. The purpose of a post-suspension hearing is for the Board to consider:

    - The reasons for granting parole
    - The reasons for suspending parole, and
    - Whether the applicant should be permitted to continue with parole. [MCSA, ss. 39(3),(4); Reg 778, ss. 45(2),(4)]

6. At the post-suspension hearing, the applicant will have an opportunity to tell the Board about the circumstances surrounding the parole suspension and why

they should be permitted to continue with parole. If it was the applicant who requested the parole revocation, the applicant may tell the Board why they want their parole to be revoked. [Reg 778, s. 45(3)]

What information does the Board consider at a post-suspension hearing?

7. When deciding whether parole should be continued or revoked, the Board will consider:

    - Any information that was put before the Board when it initially granted parole
    - The reasons given by the Board when it granted parole
    - Information about the applicant's conduct while on parole, including a Post-Suspension Report
    - If the alleged breach related to curfew, the Board expects to receive a report from the Ontario Monitoring Centre
    - The circumstances giving rise to the suspension
    - Submissions made by the applicant or their assistant, if any, and
    - Any other information relevant to the issue of whether the applicant's parole should be revoked. [MCSA, ss. 39(3),(4); Reg 778, ss. 45(2),(4)]

8. The Board will decide whether the applicant committed the conduct that led to the suspension, and if so, whether that conduct provided justification for suspending parole. In other words, the Board will decide whether the parole suspension was warranted. The Board will also consider whether the applicant is still a suitable candidate for parole. [MCSA, s. 39(4); Reg 778, ss. 45(2), (4)]

9. Parole will typically be continued if the Board determines that:

    - There were insufficient grounds for suspending parole
    - Although there was a parole condition breach or reason to believe that there would be a condition breach, it does not warrant parole revocation, or
    - The criteria for parole, particularly with respect to the protection of society, can still be met.

10. In making any decision, the Board's paramount consideration is the protection of society. Even if the Board determines that the applicant did not engage in the activities that led to parole suspension or that the grounds for the suspension were weak, the Board may still revoke parole if it cannot be satisfied, after considering the entire file, that the applicant would not constitute an undue risk to society if their parole were to be continued. [CCRA, s. 100.1]

11. If the Board determines that the applicant breached a parole condition, the Board may continue parole if it considers it appropriate in the circumstances, and the

criteria for parole are satisfied.

12. At the end of a post-suspension hearing, the Board will either:

    a. Revoke parole, or
    b. Continue parole. [MCSA, s. 39(4); Reg 778, s. 45(4)]

13. The Board will provide a copy of the decision and the reasons for the decision in writing.

14. If the Board decides to continue parole, the Board may release the applicant under the same conditions that were originally imposed. The Board may also vary, impose or remove conditions. [MCSA, s. 39(4)(a)]

15. If the Board decides to revoke parole, the applicant will remain in the institution.

16. An applicant who disagrees with the outcome of a post-suspension hearing may request a review of their decision by completing a *Request for a Review of Parole Decision Form* (see *PART III: Reviews of Decisions*).

## D. Remission

1. If the Board decides to revoke parole, the legislation provides that the applicant will lose any remission that they earned prior to parole being granted. Remission is a credit that can be earned for good behaviour during an applicant's sentence. Revocation means that the applicant would be required to serve the remainder of their term of incarceration, including any remission they had earned prior to parole, less:

    - The period of time spent on parole
    - The period of time spent in custody during the parole suspension period, and
    - Any remission credited to the applicant after their return to custody following the parole suspension. [MCSA, s. 39(5); PRA, s. 6(4.1)]

2. However, the Board may order that an applicant be recredited with all or part of the remission that they would have been eligible to earn if parole had not been granted. The order would only apply to any remission that the applicant could have earned up until the time that parole was suspended and the applicant was in custody. The Board can only make this order if it determines that the parole revocation was "through no fault" of the applicant. If the Board makes that order, the applicant may still be eligible for release on their discharge possible date. [MCSA, ss. 39(6); PRA, s. 6(9)]
3. The Board can only recredit remission that would have been lost as a result of the parole revocation. The Board cannot recredit any remission that was lost

for any reason other than the parole revocation, including, for example, remission that was lost due to the applicant's misconduct within the institution.

4. SOLGEN staff calculates how much earned remission to credit to an applicant.

# PART III: Reviews of Decisions

## A. Requesting a review of a decision

1. An applicant who has received an unfavorable decision made by the Board may request a review of the decision by completing and signing a *Request for Review of Parole Decision Form*. [Reg 778, s. 46(1)]. An applicant's legal representative may also submit a request for review on their behalf.

2. Decisions that may be reviewed include, but are not limited to:

    - A parole denial
    - A parole grant
    - A decision not to grant a short sentence hearing
    - A parole revocation
    - A decision not to recredit an applicant with earned remission following a post-suspension hearing

3. The Chair of the Board or their delegate will review the challenged decision and the applicant's reasons for the review. They may also review other information, such as the audio recording of any hearing and/or the applicant's file. After the review, the Chair will either order a new hearing or uphold the original decision. [Reg 778, s. 46(2)]

4. The Board will notify the applicant in writing of the result of the review and the reasons for the decision without delay. If the Board decides to order a new hearing, the decision will indicate the date of the hearing. [Reg 778, s. 46(2)]

5. For reviews of a temporary absence decision, see *PART V Section I: Reviews of temporary absence decisions.*

## B. Grounds for review

1. The Board may grant a review hearing if:

    a. The hearing was unfair
    b. The Board made an error in its decision
    c. The applicant has new information relevant to their suitability for parole, or
    d. The Board is satisfied that a new hearing is appropriate for any other valid

reason.

### C. Review hearings

1. Review hearings will be conducted by two Board members unless the law allows for the review to be conducted by one member. The purpose of the review hearing is not to determine the merits of the original decision that was challenged, but to have the matter reconsidered. [MCSA, s. 33(2)]

2. A review hearing may be conducted by the same Board members who made the original decision unless it may result in unfairness to the applicant. For instance, if the applicant is granted a new hearing on the basis of a reasonable apprehension of bias, the new hearing will be conducted by two different Board members. On the other hand, the same Board members could rehear an application if the rehearing was granted on the basis that they misinterpreted the information.

3. The Board members who conduct the review hearing will have access to the earlier decisions denying parole and granting the review unless it would compromise the fairness of the review hearing.

## PART IV: Short Sentence Applications for Parole

1. Applicants serving sentences less than 181 days (i.e. less than 6 months) are not automatically considered for parole. However, they are entitled to be considered for parole if they make a written application to the Board. The Board refers to these applications as short sentence applications. [Reg 778, s. 42]

2. Short sentence applicants who no longer wish to be considered for parole should notify the Board in writing.

3. If an applicant has already had a short sentence hearing and wants another one, they must request a review of their original decision (see *PART III: Reviews of Decisions*).

4. When the Board receives a short sentence application, it will determine whether there is enough time to hold a hearing. It generally takes four to six weeks for SOLGEN to investigate and report on an applicant's release plan. The Board will decline to hold a hearing if it determines there is insufficient time to meaningfully consider and decide the application. [Reg 778, s. 42]

5. If there is sufficient time to hold a hearing, the Board may grant the applicant a hearing and notify them of the hearing date in writing. The Board may also decide to consider the applicant for parole without holding a hearing.

# PART V: Applications for Temporary Absence

## A. Jurisdiction of the Board to grant or deny temporary absence

1. The Board can consider applications for temporary absence from a provincial correctional institution in cases where the absence would be for a period of 72 hours or more. Temporary absence requests for 72 hours or less are decided by the Superintendent of the institution where the applicant is confined. [Reg 778, s. 38(1)]

2. The Board's temporary absence jurisdiction comes from the federal *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20 and the provincial *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22 and Ontario Regulation 778.

3. The maximum length of a non-medical temporary absence is 60 days. There is no maximum length for a medical temporary absence. Upon the expiry of a temporary absence permit, an applicant must return to the correctional institution. [PRA, s. 7.4]

4. For absences longer than 60 days, an applicant may seek an extension of their temporary absence. The permit gives the date and time of the extension hearing. [PRA, s. 7.4]

5. An applicant cannot be released on two types of conditional release (parole and temporary absence) at the same time. An applicant who is granted temporary absence must participate in a hearing, except in exceptional circumstances.

## B. Eligibility for temporary absence

1. Any adult serving a sentence in a provincial correctional facility is eligible to apply for a temporary absence.

2. If an individual who is not serving a sentence applies to the Board for a temporary absence, the Board will determine whether it has the authority to grant the temporary absence.

## C. Submitting an application for temporary absence

1. An applicant may apply for temporary absence during their incarceration by submitting a written application to the Superintendent of the institution. If the application is for 72 hours or more, the Superintendent must forward it to the Board. [Reg 778, s. 36(1)]

2. An application for temporary absence must be in writing and must detail the

reasons for the request. [Reg 778, s. 37(1)]

3. The Board will review the request as soon as possible and no more than 30 calendar days from when the Board receives it. [Reg 778, s. 38(2)]

4. An applicant is entitled to a temporary absence hearing. The Board will try to schedule temporary absence hearings for applicants who are serving sentences of 181 days or less, however the Board will decline to hold a hearing if it determines there is insufficient time to meaningfully adjudicate the application. [Reg 778, s. 38(3)]

## D. Information considered by the Board for temporary absence

1. The Board considers all available relevant information when considering an application for temporary absence. [PRA, s. 7.1(b)]

2. The Board will consider many of the same documents that are considered for parole applications (see *PART I Section E: Information considered by the Board for parole considerations*). In addition, the Board will typically consider:

    a. *Temporary Absence Application*: Outlines the reason for the temporary absence request; program particulars; proposed residence; and transportation details
    b. *Monitoring Plan*: Details of the applicant's reporting arrangements while on temporary absence

## E. Conduct of temporary absence hearings

1. Temporary absence hearings may be conducted by one or two Board members. [Reg 778, s. 38(4)]

2. At the hearing, the applicant may make oral submissions to the Board in support of their request. [Reg 778, s. 38(3)]

3. The Board may authorize any person to attend the hearing to help the applicant, including an interpreter. [Reg 778, s. 38(3)]

4. The Board relies on SOLGEN staff to help facilitate the hearing, including the applicant's procedural rights. At the beginning of every hearing, the Board takes steps to determine whether these procedural rights have been met. The Board will ask the applicant the following:

    a. Whether the applicant has received 48-hours' notice of the hearing
    b. Whether the applicant has been advised of their right to request that an assistant be present (i.e. a legal representative, family member or friend)

c. Whether the applicant has been advised of their right to a hearing in the French language or a bilingual hearing
d. Whether the applicant has been advised of their right to request culturally-appropriate services (e.g. a Circle Hearing) if they are Indigenous (First Nation, Inuit or Métis)
e. Whether the applicant has been advised of their right to request interpretation services for languages other than English and French
f. Whether the applicant has been advised of their right to request accommodation for *Human Rights Code*-related needs (e.g. hearing loss, dyslexia, anxiety) in the hearing process. [Reg 778, s. 44(2)]

5. If the applicant indicates that they have not received notice of any of these rights, the Board will determine how to proceed, after considering:

- Whether the applicant is correct that they did not receive the notice of one or more of the rights listed in point 4
- The applicant's views on whether the hearing should proceed as scheduled
- The impact to the applicant, if any, of proceeding with the hearing as scheduled or adjourning the hearing to a different date
- What would be fair and reasonable in the circumstances, and
- Any other relevant considerations.

6. After the hearing is complete, the Board will promptly send the applicant the decision and the reasons for the decision in writing. [Reg 778, s. 38(5)]

## F. Statutory criteria for granting temporary absence permits

1. The Board may grant temporary absence any time during the applicant's term of incarceration, where it is of the opinion that it is necessary or desirable that an applicant be temporarily absent from a correctional institution for:

a. Medical reasons
b. Humanitarian reasons, or
c. Rehabilitative reasons. [PRA, s. 7.3(1); MCSA, s. 27(1)]

2. Temporary absence permits are a privilege and for a specific purpose. [Reg 778, s. 36(2)]

3. The protection of society is the Board's paramount consideration when determining whether to grant temporary absence. [PRA, s. 7.1(a); CCRA, s. 100.1]

## G. Temporary absence conditions

1. The Board may authorize a temporary absence with or without conditions. Where a temporary absence is authorized, the Board may order any terms and conditions it considers appropriate. [Reg 778, ss. 38(4), 39]

2. Any conditions imposed by the Board should be the least restrictive means of protecting society and achieving the purpose of the temporary absence (e.g. medical, humanitarian or rehabilitative). [PRA, s. 7.1(a)]

## H. *Gladue* considerations

1. Where an applicant is an Indigenous person (First Nation, Inuit or Métis), the Board is required to undertake an additional analysis, sometimes referred to as a "*Gladue* analysis".

2. The Board considers systemic and background factors in the lives of Indigenous persons. These factors may help to:

    a. Explain an Indigenous applicant's involvement in the criminal justice system, and
    b. Inform the release planning that will facilitate the applicant's rehabilitation and reintegration.

3. The Board offers culturally-appropriate services to Indigenous (First Nation, Inuit or Métis) applicants (see *PART XI: Indigenous Services*).

## I. Reviews of temporary absence decisions

1. An applicant whose temporary absence application is denied by the Board can request a review. [Reg 778, s. 38(6)]

2. The Chair of the Board or their delegate will review the decision, and shall:

    a. Order the Board or Board member to reconsider the application, or
    b. Uphold the original decision. [Reg 778, s. 38(7)]

3. After making the review decision, the Chair of the Board or their delegate will promptly send the applicant the written decision, with reasons. [Reg 778, s. 38(7)]

4. If the review request is granted, the Board may hold a hearing as part of the reconsideration process. The Board may also reconsider the matter without holding a hearing.

# PART VI: Temporary Absence Cancellation and Post-Cancellation

## A. Cancelling a temporary absence permit

1. The Board may cancel a temporary absence permit if:

    a. The applicant has breached or attempted to breach a condition
    b. The Board considers it necessary and justified in order to prevent a breach of a condition
    c. The grounds for granting the temporary absence have changed or no longer exist, or
    d. The request has been reassessed, based on new information that could not reasonably have been provided when the temporary absence permit was granted. [Reg 778, s. 39.1(1)]

2. The decision to cancel a temporary absence permit will be made, where possible, by the member or members who granted the permit. If one or more of those members becomes unable, for any reason, to consider the matter in a timely manner, it may be presented to different Board members.

## B. Post-cancellation

1. If a temporary absence permit is cancelled, the Board:

    a. Shall order the applicant to return immediately to the correctional institution, with reasons for the cancellation, and
    b. May have a notice of cancellation issued for the applicant's apprehension and return to custody. [Reg 778, s. 39.1(2)]

2. An applicant can request in writing that the Chair of the Board review the decision to cancel their permit. [Reg 778, s. 39.1(3)]

3. Upon receiving a request for a review of a decision to cancel a temporary absence, the Chair or their delegate will review the decision and any submissions made by the applicant, and will:

    a. Reauthorize the applicant's temporary absence, or
    b. Uphold the cancellation of the temporary absence permit.

    The Board will promptly send the applicant a written decision, with reasons. [Reg 778, s. 39.1(4)]

# PART VII: Parole and Persons Subject to Immigration Orders

1. The Board considers all eligible applicants for parole, regardless of immigration status. An applicant's immigration status may be relevant when the Board considers whether the applicant would be a risk to society and whether parole would facilitate the applicant's reintegration.

2. Not all parole applicants are Canadian citizens. Some applicants are foreign nationals who have been convicted and sentenced to serve in Canadian correctional institutions. Some of these applicants may be subject to removal orders under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) or a warrant for arrest and detention under IRPA (Detention Order). Some applicants may also be involved in an extradition process under the *Extradition Act*, S.C. 1999, c. 18.

3. The Board requires information about an applicant's immigration status, along with other types of information that it needs to make a properly informed decision.

4. If an applicant who is subject to a removal order or extradition order applies for parole, the Board will determine whether it has jurisdiction to grant parole.

# PART VIII: Interprovincial Transfers of Parole Jurisdiction

## A. Background

1. The Board is a signatory to the *Transfer of Parole Jurisdiction Agreement* (the Agreement). The Agreement exists between the federal and provincial (Canada, Ontario and Quebec) ministries in charge of establishing a system of parole and supervising parolees. It provides for the transfer of parole jurisdiction between boards when an applicant is released on parole into a different province or territory than the province where parole was granted. [CCRA, s. 114]

2. This section provides an overview of how parole jurisdiction transfer requests are made, investigated and considered.

3. The purpose of transferring parole jurisdiction is to help an applicant reintegrate into society and to assist in the administration of justice.

4. The Agreement also states that where a parolee is found in another province/territory in breach of any of their parole conditions, the parolee is automatically transferred to the jurisdiction where they are located.

## B. Application by an applicant for transfer of parole jurisdiction

1. If an applicant serving a sentence in a correctional institution in Ontario wishes to apply for parole transfer to another province or territory, they must complete an *Application for Out of Province Transfer Form*. SOLGEN staff will help the applicant complete the form. If an applicant serving a sentence in another province or territory wishes to apply for parole in Ontario, they must complete a similar form. A staff member from the province or territory may be available to help the applicant complete the form.

2. The correctional services and parole boards in both the releasing and receiving jurisdictions will share information during the parole transfer application process. Both the releasing parole board and receiving parole board must approve of any parole transfer.

## C. Automatic transfer of parole jurisdiction

1. If a parolee breaches a condition of parole and is found or arrested in the province or territory of another parole board, parole jurisdiction is automatically transferred to the jurisdiction where the parolee is found. An approval of the transfer is not required.

2. The releasing service and releasing board will forward the parolee's file and information about the parole violation to the receiving service and receiving board.

## D. Exclusions

1. Certain people are excluded from the Agreement, including:

   - A parolee who is subject to a probation order following sentence completion, unless the probation transfer requirements of the *Criminal Code* are satisfied
   - A parolee who is serving a sentence of life imprisonment or an indeterminate sentence in a provincial institution, and
   - A parolee who is also subject to a disposition under the *Youth Criminal Justice Act*, unless the conditions of transfer of dispositions under that Act are satisfied.

# PART IX: Applicants Serving Youth Sentences in Adult Facilities

## A. Jurisdiction of the Board to consider youth offenders in Ontario adult provincial correctional facilities

1. Applicants who are under 18 and serving an adult sentence in a provincial correctional institution in Ontario are eligible for parole consideration by the Board.

2. Applicants who receive a youth sentence under the *Youth Criminal Justice Act* are generally not eligible for parole and are dealt with under the provisions of the that Act.

3. However, persons who have received a youth sentence but who have been placed in or transferred to an adult provincial correctional facility are generally eligible for parole consideration by the Board.

4. Any Board decision involving a young person or an adult serving a youth sentence will contain a warning that the decision may contain sensitive information that may not be disclosed and that may be subject to a publication ban.

### B. The role of assistants (i.e. parents/guardians)

1. Parents and guardians of applicants serving youth sentences and who are incarcerated in a provincial adult institution are entitled to attend Board hearings to assist applicants.

## PART X: Disclosure

### A. Statutory obligation to provide disclosure

1. Ontario Regulation 778 requires the Board to inform an applicant of any information that may affect the Board's decision before a parole hearing. The Board has broad discretion about what it provides and how it is provided. The Board provides disclosure upon request. [Reg 778, s. 44(2)(d)]

2. Neither the MCSA nor Regulation 778 require the Board to provide disclosure to an applicant for a temporary absence hearing. The Board will consider requests for disclosure and may provide disclosure if it is appropriate in the circumstances.

3. The Board is not required to disclose information that is irrelevant to parole consideration or that is already in the applicant's possession (e.g. letters of support provided to the Board by the applicant). The Board may also withhold information where it has reasonable grounds to believe that:

    a. Disclosing it to the applicant is not in the public interest, or

b. Disclosing the information would jeopardize
    i. The safety of a person
    ii. The security of a correctional institution, or
    iii. The conduct of any lawful investigation. [Reg 778, s. 44(2)(d); CCRA, s. 141(4)]

4. The Board may also refuse to disclose information that is subject to a publication ban or other statutory disclosure restriction.

### B. Interim process for requesting disclosure

1. An applicant or an applicant's legal representative may request disclosure by writing to the registrar of the Board at 416-327-6500 or OPBregistrar@ontario.ca at any time prior to a parole hearing.

## PART XI: Indigenous Services

### A. Commitment to provide culturally-appropriate services

1. The Board is committed to providing culturally-appropriate services to Indigenous (First Nation, Inuit or Métis) applicants.

2. In line with this commitment, the Board offers hearings that are respectful of Indigenous protocol to Indigenous (First Nation, Inuit or Métis) applicants on request. These are also called Circle Hearings.

3. Circle Hearings help the Board meet its legal requirement to consider the systemic and background factors that may have impacted an Indigenous (First Nation, Inuit or Métis) applicant (sometimes referred to as a "*Gladue* analysis").

### B. Conduct of Indigenous Circle Hearings

1. Circle Hearings are facilitated by an Elder, and they are conducted according to Indigenous protocols. Circle Hearings are guided by the same principles as standard parole hearings. The test for parole remains the same and the Board's paramount consideration remains the protection of society.

2. Before the Circle Hearing, the Elder will offer to meet privately with the applicant to prepare the applicant for the hearing.

## C. How to request an Indigenous Circle Hearing

1. An Indigenous (First Nation, Inuit or Métis) applicant can request a Circle Hearing for any Board hearing.

2. To request a Circle Hearing, an applicant or an applicant's legal representative should submit a *Request for Circle Hearing Form*. This form may be obtained from SOLGEN staff or by contacting OPBregistrar@ontario.ca.

3. The Board arranges for an Elder to attend and facilitate the Circle Hearing.

4. Applicants who require language interpretation services to participate fully in the Circle Hearing process can request these services from the Board (see *PART XIII: Interpreters*)

# PART XII: French Language Services

## A. Commitment to provide French language services

1. The Board is committed to an active offer of French language services. The Board strives to ensure that French language services are clearly visible, readily available, easily accessible, publicized and of equivalent quality to services offered in English.

## B. How the Board actively offers French language services

1. An applicant who wishes to receive French language services for their parole hearing may request them in the application form. An applicant or an applicant's legal representative can also request French language services from the Board by notice to the OPB Registrar, the Board members or SOLGEN staff.

2. The Board will actively offer French services to applicants who appear before the Board.

3. An applicant who has requested conditional release consideration in French will receive their written decision in French.

4. Decisions will be translated from English into French and from French into English on request.

## C. Feedback and complaints about French language services

1. Feedback and complaints about the quality of French language services can be sent to TO-TDO@ontario.ca. Complaints will be processed under the Tribunals Ontario Public Complaints Policy and the French Language Services Policy.

2. Complaints can also be sent to Ontario's Office of the Ombudsman by phone at 1-866-246-5262 or by email at sf-fls@ombudsman.on.ca.

# PART XIII: Interpreters

1. The Board is committed to providing language interpretation services for applicants whose preferred language is a language other than English or French.

2. If an applicant speaks a language other than English or French, the applicant or their legal representative may request interpretation services by contacting the Board by phone at 416-327-6500 or emailing OPBregistrar@ontario.ca. Applicants may also call SOLGEN staff at 416-326-5000 or toll-free at 1-866-517-0571. Staff will relay this request to the Board and an interpreter will be scheduled to attend the applicant's hearing.

# PART XIV: Accessibility and Accommodation

1. The Board wants to ensure that everyone is able to participate in its proceedings on an equal basis and will provide accommodation (alternate arrangements) for people who have needs related to any of the grounds in Part I of the *Human Rights Code.*

2. To request accommodation of a *Code*-related need, such as a disability, contact the Board by calling at 416-327-6500 or emailing OPBregistrar@ontario.ca. Applicants or an applicant's legal representative may also contact SOLGEN staff at 416-326-5000 or toll-free at 1-866-517-0571. SOLGEN staff will relay accommodation requests to the Board.

3. The Board and SOLGEN will work together to try and accommodate *Code*-related needs. In some cases, the Board may ask for more information to better understand the person's needs and determine how it can make the process accessible.

4. For further details, please refer to the Multi-Year Accessibility Plan.

# PART XV: Victims

## A. Victim participation rights

1. The Board considers input from victims to be critical to the parole process.

2. The *Ministry of Correctional Services Act* and other laws grant victims certain rights of participation in parole proceedings. Victims have the option to:

    a. Not participate in conditional release proceedings
    b. Submit a written *Victim Submission Form* to the Board
    c. Attend the applicant's parole hearing and make an oral submission, or
    d. Attend the applicant's parole hearing as an observer (see *PART XVII: Observers*).

3. A victim is a person who suffers physical, financial or emotional harm as a result of an offence. If a victim is under 16 years of age, a parent or guardian can be considered the victim. If a victim is unable to present a statement at a parole hearing, (e.g. if they are deceased or sick) the following people may represent a victim:

    a. Spouse or common-law partner of the victim
    b. Family member of the victim
    c. Parent or guardian of the victim, or
    d. A dependent of the victim. [MCSA, s. 36.1; Reg 778, ss. 40.1, 44.3(3)]

## B. Information for victims

1. The Board has published a *Guide for Victims and their Families*. This guide answers many commonly asked questions about the role of victims in parole proceedings before the Board. To request a copy of the Guide, contact the Board by calling 416-326-1356 or emailing OPBregistrar@ontario.ca.

2. Victims can register for the Victim Notification System (VNS) to receive automated voicemail messages whenever there is a change in an applicant's status, including notification of parole hearings and release from custody. To register with the VNS, victims may contact the Ministry of the Attorney General's Ontario Victim Support Line (1-888-579-2888).

3. Once a parole hearing has been scheduled, victims can contact the Board by phone 416-327-6500 or email OPBregistrar@ontario.ca to speak with the case management officer who is handling the file. Case management officers are responsible for file management and scheduling parole hearings, and can

answer questions victims may have about the parole process.

4. The Board does not initiate contact with victims.

## C. Attendance and participation in hearings

1. A victim may choose to attend a parole hearing to make submissions before the Board. A victim submission is the victim's opportunity to tell the Board about the physical, financial and emotional impacts the offence has had on them, their family and their community, both at the time of the offence and on a continuing basis. [Reg 778, s. 44.3(1)]

2. Victim submissions can also make recommendations to the Board about whether parole should be granted, and if parole is granted, what conditions the Board should consider imposing on the applicant to protect the victim and the community. [Reg 778, s. 44.3(1)]

3. Victims are encouraged to prepare a statement in advance and read it to the Board at the hearing, but are not required to do so.

4. Applicants and their assistants are not permitted to question victims. However, the Board members may ask the victim questions for clarification.

5. A victim may choose to attend the parole hearing as an observer. Observers do not participate in the hearing in any way.

6. Victims who choose not to attend a parole hearing may still make written submissions to the Board by completing a *Victim Submission Form*. They may also ask the case management officer to write down their statement for them. [Reg 778, s. 44.1]

7. Victims may invite a support person to attend a parole hearing. A support person's role in the hearing is limited to translating on behalf of the victim or, with the Board's permission, speaking on behalf of a victim if the victim identifies as a person with a disability. The victim's support person is not permitted to participate in any other way (e.g. questioning the applicant). [Reg 778, s. 44.3(3)]

8. In the case of an in-person hearing, victims may be entitled to access financial assistance to attend the parole hearings. More information about financial assistance is available by contacting the Board at 416-327-6500 or emailing OPBregistrar@ontario.ca.

## D. The Board may share victim submissions with the applicant

1. It is important for victims to know that the Board has an obligation to share information that may be relevant to an applicant's parole consideration with the applicant. Victim submissions become part of the Board's case file and may be shared with the applicant. The Board may also refer to the submission in its decision. [Reg 778, s. 44(2)(d)]

2. The Board may withhold information from the applicant if it has reasonable grounds to believe that releasing that information would jeopardize:

    a. The safety of any person
    b. The security of a correctional institution, or
    c. The conduct of any lawful investigation. [Reg 778, s. 44(2)(d); CCRA, s. 141(4)]

3. The Board may also withhold information from an applicant if it has reasonable grounds to believe that providing it would be contrary to the public interest. [Reg 778, s. 44(2)(d); CCRA, s. 141(4)]

4. The Board will not provide the victim's address, telephone number or email to the applicant.

## E. Requests for decisions

1. If a victim attends a parole hearing, they will know whether parole is granted or denied at the end of the hearing if the Board makes a decision that day.

2. If the Board takes more time to reach a decision, or if the victim does not attend the hearing, a case management officer may contact the victim to provide them with the outcome of the decision, as soon as the applicant has been notified. The Board will only contact the victim if the victim has previously made contact with the Board and indicated that they wish to know the hearing result. This will typically take between one and five business days, but in any event no later than the applicant's PED.

3. To request a copy of the decision, victims should contact the case management officer. Information in a Board decision may be withheld from victims if its release would be inconsistent with the purpose of conditional release or if the Board decides releasing the information would not be appropriate in the circumstances.

# PART XVI: Assistants

## A. Right to request the attendance of assistants

1. The *Ministry of Correctional Services Act* allows the Board to authorize applicants to have an assistant (support person) present during a hearing before the Board. [Reg 778, ss. 38(3), 44(2)(c), 45(3)]

2. An assistant can be any one or more of the following:

    - Legal representative
    - Family member(s)
    - Friend(s)
    - Social or community worker, or
    - Other support person.

## B. How to request the attendance of an assistant

1. An applicant or an applicant's legal representative may request that an assistant attend their hearing by completing a *Request for Assistant Form* and submitting it to the Board by email at OPBregistrar@ontario.ca. Applicants can also speak to SOLGEN staff who will relay this request to the Board.

2. The Board may approve an applicant's request for an assistant prior to the hearing or on the day of a hearing. In the case of an in-person hearing, the request may be approved if the correctional institution does not have security concerns. The Board will ask the applicant to confirm that they want the assistant to attend.

3. The Board does not assist with obtaining assistants' security clearance.

## C. Participation of assistants in hearings

1. The extent of an assistant's participation during a hearing is at the discretion of the presiding Board members. Assistants typically participate in a hearing by making oral submissions related to the applicant's conditional release (see *PART I Section F: Conduct of a parole hearing*).

2. The Board may ask assistants questions about their submissions.

# PART XVII: Observers

## A. Confidentiality of Board hearings

1. The *Ministry of Correctional Services Act* emphasizes the need to preserve the confidentiality of information that is presented at Board hearings, as well as the sources of that information. [MCSA, s. 10(1); Reg 778, s. 44.3.1(2)(b)]

## B. How to request approval to attend a hearing as an observer

1. To request permission to observe a hearing, a *Request to Observe a Parole Hearing Form* must be submitted to the registrar of the Board. A detailed rationale must be provided.

2. Proposed observers are encouraged to submit their applications as soon as possible and at least 15 business days before the hearing. The Board may deny permission to observe a parole hearing if there is insufficient time to process and consider the application.

## C. Consideration by the Board of observer requests

1. When deciding whether to approve an observer application for an in-person hearing, the Board may consider the following factors:

    a. Information provided by the Superintendent of the institution at which the hearing is to be held about safety and security issues, and also whether there is sufficient time to arrange a suitable hearing room
    b. Victims' views, if a victim is attending
    c. The need to preserve the confidentiality of information provided at the hearing and the sources of that information:
        i. Is the matter subject to a publication ban?
        ii. Does the matter involve a victim, witness or offender who is a minor?
        iii. Was the offence of a sensitive nature?
        iv. Does the file involve a confidential informant?
    d. The parole applicant's views
    e. The Elder's views, if the parole applicant has requested a Circle Hearing
    f. Whether the proposed observer's presence might disrupt the hearing, and
    g. The reason for the request to observe. [Reg 778, s. 44.3.1]

2. If the Board denies an observer application, it will provide written reasons for doing so. The Board's decision is final, and there is no review or appeal to the Board. [Reg 778, s. 44.3.1(5),(6)]

3. Approval to attend a hearing is specific to the hearing, and any subsequent requests to attend a hearing must also be approved.

4. Approval to observe a parole hearing may be revoked at any time and for any reason, including if the Board receives new information that may have affected its decision to grant the observer application.

5. Observers are responsible for providing the OPB with documentation of security clearance (criminal record check).

### D. Participation

1. Observers are not permitted to participate in the parole hearing in any way, and cannot bring a camera or recording device of any kind to the hearing. [Reg 778, ss. 44.3.2, 44.3.3]

2. Observers may be asked to leave the hearing if sensitive information is being discussed, or if the observer is disrupting the orderly conduct of the hearing. [Reg 778, s. 44.4]

### E. Observing a Circle Hearing

1. Observers participating in Circle Hearings are expected to respect the protocols set out by the facilitating Elder.

## PART XVIII: Requests for Decisions

### A. Confidentiality of Board decisions

1. The *Ministry of Correctional Services Act* emphasizes the need to preserve the confidentiality of information in Board decisions, as well as the sources of that information. Any disclosure of the Board's records or information must be in compliance with its legal obligations (from statutes, regulations, common law and court/tribunal orders). [MCSA, s. 10(1); Reg 778, s. 44.3.1(2)(b)]

2. The Board considers requests for information on a case-by-case basis.

### B. How to request a copy of a Board decision

People (other than victims or applicants) who want a copy of a Board decision should complete the *Tribunals Ontario Request for Records Form* or send a letter to Tribunals

Ontario by email or mail to:

TO-TDO@ontario.ca

**Tribunals Ontario**
**Access and Privacy Office**
**655 Bay Street, 14th Floor**
**Toronto, Ontario M7A 2A3**