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LEGISLATIVE SUMMARY

Bill C-59:

An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to other Acts

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Legislative Summary of Bill C-59

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-59: AN ACT TO AMEND THE CORRECTIONS AND CONDITIONAL RELEASE ACT (ACCELERATED PAROLE REVIEW) AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

1.1 PURPOSE OF THE BILL

Bill C-59: An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to other Acts (short title: Abolition of Early Parole Act) was introduced in the House of Commons by the Minister of Public Safety, the Honourable Vic Toews, on 9 February 2011. It is essentially the same as the former Bill C-53[1] except that, unlike Bill C-53 which provided for the elimination of accelerated parole review for all offenders *sentenced after the coming into force of the bill*, Bill C-59 provides for the elimination of accelerated parole review for all those who *had not received that review upon the coming into force of the bill*. This means that offenders sentenced before the coming into force of Bill C-59 (such as Earl Jones[2]) and who have not served one sixth of their sentence upon its coming into force will not be entitled to accelerated parole review.

The objective of Bill C-59 is to tighten the rules governing eligibility dates[3] for parole (that is, day parole and full parole) in the case of offenders serving their first sentence of imprisonment in a penitentiary and who have not been convicted of a violent offence or a serious drug-related offence where a court order has been made concerning parole eligibility.[4] More specifically, the bill provides that these offenders may not be granted:

- day parole after serving one sixth of the sentence; or
- parole where the Parole Board of Canada (PBC) (also known as the National Parole Board) believes that they will commit a non-violent offence before the legal expiration of their sentence (at present, if the PBC is satisfied that there are no reasonable grounds to believe that they will commit an offence involving violence,[5] it has no choice but to grant parole).

1.2 ACCELERATED PAROLE REVIEWS[6]

The accelerated parole review procedure was incorporated into the conditional release scheme in 1992, with the enactment of the *Corrections and Conditional Release Act*[7] (CCRA). One effect of the accelerated parole review (APR) procedure is to accelerate processing of parole applications by offenders serving their first sentence of imprisonment in a penitentiary who have not been convicted of an offence involving violence or a serious drug-related offence for which the court has made an order delaying the parole eligibility date.

APR guarantees that the offender's case will be reviewed in advance by the PBC so that the offender may be granted parole as soon as possible, that is, on the eligibility date, without the PBC having to hold a parole hearing. An offender who is entitled to APR also benefits from a presumption in favour of parole: the PBC may not refuse parole unless it is of the opinion that there are reasonable grounds to believe that the offender will commit an offence involving violence before the expiration of the sentence.

To benefit from APR, offenders must meet a number of conditions:

- they must be serving their first sentence in a penitentiary;
- they must not have been convicted of murder or of being an accomplice to murder;
- they must not have been sentenced to imprisonment for life;
- they must not have committed an offence related to terrorism or organized crime;
- they must not have been sentenced for an offence set out in Schedule I to the CCRA;[8]
- they must not have been convicted of an offence set out in Schedule II to the CCRA in respect of which the court has ordered that the offender not be eligible for parole before serving at least half of the sentence; and
- they must not have had been the subject of a decision revoking day parole.

From 1992 to 1997, APR applied solely to full parole, that is, after the offender had served one third or seven years of the sentence, whichever was shorter. The CCRA was amended in 1997[9] to extend APR to day parole[10] and shorten eligibility time for offenders who met APR conditions before qualifying for it. Instead of being eligible six months before the full parole eligibility date, like a majority of offenders incarcerated in the federal correctional system, since 1997, offenders entitled to APR have been eligible for day parole after serving one sixth of their sentence or six months, whichever is longer.

The amendment to the CCRA, the effect of which was to accelerate parole for offenders entitled to APR, was probably a result of the fact that the Correctional Service of Canada (CSC) had realized that these offenders were less inclined to apply for day parole than others.[11] They therefore remained in custody longer than some offenders who were not eligible for APR.

APR was designed to allow non-violent offenders at low risk of reoffending[12] to be released as early as possible to serve the rest of their sentences under supervision in the community. By accelerating release of those offenders, APR was intended to enable the CSC and the PBC to focus their efforts and correctional resources on offenders sentenced for offences involving violence or serious drug-related offences and considered to be at high risk of reoffending.[13]

Application of this measure was supposed to produce significant savings for the correctional system, since the cost of incarceration is much higher than the cost of supervising offenders in the community. In 2006–2007, an offender on conditional release cost the CSC an average of $23,076 per year, as compared to an average of $93,030 for an incarcerated offender.[14]

The economic aspect was not insignificant when APR was introduced, since other legislative amendments had had the effect of lengthening incarceration periods for violent and dangerous offenders,[15] and thus significantly increasing the funds allocated each year to incarceration of offenders in the federal correctional system.

1.3 Accelerated Parole Review and the Normal Procedure

APR involves three elements that distinguish it from the normal parole procedure that may result in day parole or full parole.

1.3.1 Referral of Cases

The cases of offenders entitled to APR are automatically referred to the PBC for review regarding parole and the PBC makes its decision without holding a hearing.

Unlike the situation for offenders not entitled to APR, offenders who are entitled to APR are not required to apply to the PBC for day parole. The CCRA requires the CSC to refer the cases of offenders entitled to APR to the PBC before their day parole eligibility date so they may be released under supervision in the community as soon as possible.

Although offenders who are not entitled to APR may also be granted day parole, the PBC reviews only the cases of offenders who have informed the PBC that they wish to be granted day parole, generally six months before their full parole eligibility date. Some offenders do not request that review, and prefer to wait until the PBC considers their case for full parole (in the case of full parole, the PBC must review all cases of eligible offenders, unless an offender informs the board in writing that he or she does not wish to be granted full parole).

The PBC is also not required to hold a parole hearing to assess whether offenders entitled to APR may be granted day parole and full parole.[16] However, applications for parole by other offenders must be reviewed at a hearing at which they must, for example, persuade the PBC that they are ready to live in society as law-abiding citizens and that they will comply with the conditions imposed on them for release.

1.3.2 Reoffending Criterion

The reoffending criterion used by the PBC for granting or refusing parole is less stringent in the case of offenders entitled to APR.

Unlike the case for the usual procedure, the PBC must grant parole (whether day parole or full parole) to an offender who is entitled to APR unless it determines that the offender is likely to commit an offence *involving violence* before the expiration of the sentence. For all other offenders, the PBC instead uses a general reoffending criterion to grant or refuse release. In those cases, the PBC will grant parole only if it considers that the offender does not present an unacceptable risk of committing an offence before the legal expiration of the sentence, *whether or not the offence is violent*. The criterion used is therefore more stringent for offenders who are not entitled to APR.[17]

1.3.3 Eligibility Period

APR is also different from the usual procedure because of the shorter period to be served by the offender before eligibility for day parole. While offenders who are not entitled to APR are generally eligible for day parole six months before their full parole eligibility date (that is, at one third of the sentence, or a maximum of seven years), offenders who are entitled to APR are eligible for day parole after serving one sixth of the sentence. In both cases, however, the CCRA provides for a minimum of six months' imprisonment before eligibility for day parole, since the longer of the times referred to is used.

This means that an offender who is sentenced to imprisonment for two to three years who does not meet the APR criteria may also be granted day parole after serving only six months of the sentence. An example is the case of an offender sentenced to serve 30 months in penitentiary for whom the court did not impose a period of ineligibility for parole.[18] As noted earlier, what distinguishes the treatment of the two groups of offenders in that case is the more stringent criterion in relation to reoffending that the PBC must apply in the case of offenders who are not entitled to APR.

Application of the one-sixth-of-sentence rule has a greater impact on offenders who are sentenced to imprisonment for longer terms. For example, an offender sentenced to imprisonment for nine years who is entitled to APR could be granted day parole after serving a year and a half of the sentence, while an offender given the same sentence who does not meet the APR criteria could be granted day parole only after serving two and a half years of the sentence.

2 DESCRIPTION AND ANALYSIS

2.1 Abolition of the Accelerated Review Procedure (Clauses 2 to 9 and 11 to 13)

The crucial element of the bill is the elimination of APR by removing all references to the procedure from the CCRA, which is the foundation of the federal correctional system (clauses 2 to 9 of the bill), and from related statutes (clauses 11 to 13 of the bill), including the *Criminal Code*, the *Anti-terrorism Act* and the *Criminal Records Act*.

If the bill is passed, offenders incarcerated in the federal correctional system will no longer be eligible for day parole after serving one sixth of their sentence. At the earliest, they will be eligible six months before their full parole eligibility date, or after serving six months of their sentence, whichever is longer.

Another result of abolishing APR is that the PBC will no longer be able to grant an offender parole if it considers that there is a risk the offender will commit an offence, even one not involving violence, before the sentence expires. At present, the PBC has no choice but to grant parole to offenders who are entitled to APR if it considers that there are no reasonable grounds to believe they will commit an offence involving violence before the sentence ends.

Finally, in order to be granted parole, whether day parole or full parole, all offenders will now have to satisfy the PBC, at a hearing, that they are able to live in society as law-abiding citizens and that they will comply with the conditions imposed.

2.2 Transitional Provision (Clause 10)

The abolition of APR will affect offenders who are sentenced or transferred to a penitentiary for the first time after the bill comes into force and those who, upon coming into force of the bill, have not yet served one sixth of their prison sentence. The bill will not apply to offenders who have already been released upon coming into force.

2.3 Coordinating Amendments (Clause 14)

Clause 14 of the bill proposes amendments to the CCRA in the event that bills C-59 and C-39, An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts, which were introduced in the House of Commons during the 3rd session of the 40th Parliament, are enacted by Parliament. Those amendments are needed because Bill C-39 also eliminates APR (and includes additional provisions to tighten eligibility for parole, improve public safety and enhance victims' rights). If Bill C-59 were passed before Bill C-39, the provisions of Bill C-59 eliminating APR would come into force, repealing those provisions in Bill C-39.[19]

3 COMMENTARY

The creation of APR in 1992, like the introduction in 1986 of a provision to allow violent offenders to be kept in custody after their statutory release date, is part of a trend in the federal corrections system, which began in the late 1970s, toward treating conditional release differently for two categories of offenders: violent offenders and others.[20] The objective is to release offenders who present a low risk to society as soon as possible, while delaying the release of offenders who are considered to represent a high risk. A CSC document states:

> The intent of Accelerated parole review is to provide for formal recognition in law that non-violent and violent offenders should not be subject to the same conditional release process.[21]

That document also states that "the main focus of APR was to address public safety and reintegration" by enabling the CSC and the PBC to focus their resources on dangerous offenders who presented a high risk of reoffending and recognizing that faster reintegration of low-risk offenders is likely to meet the needs of offenders and the community better. Studies have shown that "there is a tendency for lower-risk offenders to be negatively affected by the prison experience."[22]

According to Michael Jackson,[23] professor at the University of British Columbia's Faculty of Law, and Graham Stewart, former Executive Director of the John Howard Society of Canada, APR was also intended to solve a problem reported by a number of actors in the system: that federal offenders sentenced to short terms of

imprisonment were at a disadvantage in relation to parole as compared to offenders sentenced to longer terms:

> Ironically, those who are least likely to be released on parole are those who are serving short federal sentences simply because there is insufficient time to be assessed, placed in an appropriate institution and complete the required programs prior to their parole eligibility date.[24]

Since APR was created in 1992, however, it has been criticized on several fronts. Some people have questioned the appropriateness of selecting only offenders serving their first sentence in a penitentiary, pointing out that most offenders sentenced for the first time to a sentence of two years or more already have a lengthy criminal record.[25] Others have observed that eligibility for day parole at one sixth of sentence distorts the sentence initially imposed by the court, primarily in cases involving offenders sentenced to lengthy terms, who are nonetheless released after serving only a few months in prison. In response to the publicity last fall surrounding the sentencing of certain white-collar fraudsters, all political parties agreed to examine this provision, which permits the speedy release of certain offenders.

Since the changes made to the CCRA in 1997, there have been parliamentary committee recommendations and attempts by individual parliamentarians to change the APR rules. In its report tabled in the House of Commons in May 2000, the Subcommittee on the Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights made two recommendations in this regard.[26] Although the subcommittee considered it "important to retain accelerated parole review, so first time federal offenders considered non-violent need not be subjected to the negative influence of some repeat offenders," it nonetheless concluded that two amendments to APR were essential:

- that offenders incarcerated because they had committed an offence set out in Schedule II to the CCRA for which the court did not impose an additional parole eligibility period not be eligible for APR; and
- that the PBC be required to assess offenders' cases for parole based on a general recidivism criterion, rather than on a violent recidivism criterion.

On 14 September 2009, Member of Parliament Serge Ménard introduced a bill to end APR for granting day parole (Bill C-434: An Act to amend the Corrections and Conditional Release Act [day parole – six months or one sixth of the sentence rule]). Enactment of that bill would have meant that an offender entitled to APR could have had access to it only for full parole review, as was the case from 1992 to 1997.

Bill C-59 is a response to a recommendation by the Correctional Service of Canada Review Panel, which was tasked by the government in April 2007 with reviewing the CSC's activities.[27] In its report, the panel justified abolishing APR by citing the fact that offenders granted parole under that procedure generally had a higher recidivism rate than other offenders.

In 2007–2008, six of the 831 offenders who were granted full parole under APR had their parole revoked for committing a violent offence, as compared to six of the

527 offenders released under the regular procedure. In the same year, 72 of the 831 offenders granted parole under APR had their full parole revoked for committing a non-violent offence, as compared to 22 of the 527 offenders released under the regular procedure.[28]

The Correctional Service of Canada Review Panel also considered it necessary to abolish APR in order to emphasize that parole is not a right, and must be earned. It argued that offenders must demonstrate that they deserve parole by actively participating in their correctional plan.[29] On the other hand, there are those who fear that adopting this approach will mean that offenders sentenced to short terms of imprisonment will have to serve longer portions of their sentences in custody before being granted parole, as compared to other offenders.[30] It has also been argued that the abolition of APR could result in significant increases in workload and costs at the PBC, as the board will be required to hold hearings in every case.[31]

NOTES

1. Bill C-53 died on the *Order Paper* when Parliament was prorogued on 30 December 2009.
2. Earl Jones, a former Montreal investment adviser, received a sentence of 11 years for fraud in February 2010.
3. Parole eligibility date must not be confused with the actual parole date. The decision as to whether to grant parole (whether day parole or full parole) is made by the Parole Board of Canada (PBC). Even in cases where the offender's case is considered a few days before the parole eligibility date, a decision to release the offender does not necessarily follow.
4. The order must be made under s. 743.6 of the *Criminal Code*.
5. Offences involving violence include murder and the offences set out in Schedule I to the CCRA, such as assault, sexual offences and robbery. A copy of Schedule I is set out in Appendix B to this legislative summary.
6. For brevity, only the general rules of parole eligibility are considered in this document. Appendix A of this document sets out a table showing the sentences to be served before offenders are eligible for the various forms of parole: escorted and unescorted temporary absence, work release, day parole, full parole and statutory release.
7. The *Corrections and Conditional Release Act* (S.C. 1992, c. 20), proclaimed on 1 November 1992, replaced the *Penitentiaries Act* and the *Parole Act*. Since the CCRA was proclaimed it has been amended several times, in particular to add offences to the schedules to the Act.
8. A copy of Schedules I and II of the CCRA is provided in Appendix B of this document.
9. S.C. 1997, c. 17.
10. Day parole is a more limited form of parole than full parole, because unless an inmate on day parole obtains special permission from the PBC, he or she must return to a correctional institution or halfway house every night.
11. Brian A. Grant, *Accelerated Parole Review: Were the Objectives Met?*, Research Branch, Correctional Service of Canada, February 1998, p. iv.

12. Assessing the risk of reoffending means predicting whether the person presents a risk of committing another criminal offence. This type of assessment takes into consideration the offender's current and past behaviour, the premise being that the criminal risk is closely associated with certain social shortcomings and that treatment of those shortcomings can reduce the risk. The risk assessment is used to identify dangerous offenders, assess their needs and offer programs and treatment that may facilitate social reintegration as law-abiding citizens.

13. Grant (1998).

14. Public Safety Canada, *Corrections and Conditional Release Statistical Overview 2008*, December 2009, p. 29.

15. Specifically, in 1986 a provision was introduced to allow certain offenders to be kept in custody after their statutory release date, and other amendments increased the period that different categories of offenders had to serve before being eligible for parole.

16. When parole is not ordered after a case is reviewed, the case is considered at a hearing with the PBC. If an offender is refused release at the end of the hearing, the offender is still entitled to a reconsideration of the case, under the usual procedure set out in the CCRA (s. 126).

17. From 1992 to 1996, 82% of offenders eligible for APR were released on their full parole eligibility date (one third of sentence). This means that the PBC refused to release 18% of offenders to whom the APR procedure applied (Grant [1998]).

18. Subsection 119(1) of the CCRA.

19. See Tanya Dupuis and Lyne Casavant, *Bill C-39: An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts*, Publication No. 40-3-C39E, Parliamentary Information and Research, Library of Parliament, Ottawa, 23 June 2010.

20. Dominique Robert, "Transformations récentes de la législation fédérale sur la mise en liberté sous condition au Canada. Une lecture à la lumière des écrits sur la notion de risqué," *Érudit*, 2001.

21. Grant (1998), p. 3.

22. *Incarceration in Canada*, National Crime Prevention Centre fact sheet, Public Safety Canada, 2000.

23. Professor Jackson has been involved in the teaching and advocacy of human rights for over 30 years. On 1 September 2009, he received the Ed McIsaac Human Rights in Corrections Award from the Office of the Correctional Investigator Canada in recognition of his lifelong commitment to improving corrections and protecting the human rights of inmates.

24. Michael Jackson and Graham Stewart, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*, September 2009, p. 116.

25. Ibid., p. 6.

26. House of Commons, Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights, *A Work in Progress: The* Corrections and Conditional Release Act, Ottawa, May 2000.

27. CSC Review Panel, *A Roadmap to Strengthening Public Safety – Report of the Correctional Service of Canada Review Panel*, October 2007. See also CSC Review Panel, "Executive Summary: A Roadmap to Strengthening Public Safety."

28. Public Safety Canada (2009), p. 94.

29. Ibid.

30. Jackson and Stewart (2009).

31. Parole Board of Canada, “Government Initiatives,” *Vision 2020 – Public Safety, Public Service*, February 2009.

APPENDIX A – ELIGIBILITY FOR VARIOUS FORMS OF CONDITIONAL RELEASE

Table A1 – Eligibility for Various Forms of Conditional Release[a]

	Unescorted Temporary Absence[b] (CCRA, s. 115; Code, s. 746.1)	Day Parole (CCRA, 119; Code, s. 746.1)	Full Parole (CCRA, s. 120)	Statutory Release (CCRA, s. 127)
1st degree murder	22 years	22 years	25 years (Code, s. 745)[c]	N/A
2nd degree murder	7 to 22 years	7 to 22 years	10 to 25 years (Code, s. 745)[c]	N/A
Other life sentence	4 years	Full parole – 6 months	7 years[d]	N/A
Dangerous offenders	4 years[e]	4 years	7 years (Code, s. 61)	N/A
Sentence of 2 years or more	1/6 of sentence (max.: 3.5 years) (min.: 6 months)	Full parole – 6 months (min.: 6 months) OR Accelerated parole review: 1/6 of sentence (min.: 6 months) (CCRA, s. 119.1)	1/3 of sentence (max.: 7 years)	2/3 of sentence
Exceptions (e.g., illness)	(CCRA, s. 115(2))	(CCRA, s. 121)	(CCRA, s. 121)	Detention: (CCRA, s. 129 *et seq*.)
Delayed parole[f]			1/2 of sentence (max.: 10 years) (Code, s. 743.6)	

Notes:

a. In this table, CCRA means *Corrections and Conditional Release Act*, and Code means *Criminal Code*.

b. Eligibility for work release is identical (CCRA, subsection 18(2)).

c. Application for reduction of parole eligibility after 15 years served (Code, section 745.6).

d. Less time in pre-trial detention (between arrest and conviction).

e. "Maximum security" offenders are not eligible for unescorted temporary absences (CCRA, subsection 115(3)).

f. This procedure covers offences set out in Schedule I (offences involving violence) and Schedule II (serious drug-related offences) of the CCRA and organized crime offences (Code, section 743.6).

APPENDIX B – SCHEDULES I AND II TO THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

SCHEDULE I (SUBSECTIONS 107(1), 125(1) AND 126(7) AND SECTIONS 129 AND 130)

1. An offence under any of the following provisions of the *Criminal Code*, that was prosecuted by way of indictment:

   (*a*) section 75 (piratical acts);

   (*a.1*) section 76 (hijacking);

   (*a.2*) section 77 (endangering safety of aircraft or airport);

   (*a.3*) section 78.1 (seizing control of ship or fixed platform);

   (*a.4*) paragraph 81(1)(a), (b) or (d) (use of explosives);

   (*a.5*) paragraph 81(2)(a) (causing injury with intent);

   (*b*) subsection 85(1) (using firearm in commission of offence);

   (*b.1*) subsection 85(2) (using imitation firearm in commission of offence);

   (*c*) subsection 86(1) (pointing a firearm);

   (*d*) section 144 (prison breach);

   (*e*) section 151 (sexual interference);

   (*f*) section 152 (invitation to sexual touching);

   (*g*) section 153 (sexual exploitation);

   (*h*) section 155 (incest);

   (*i*) section 159 (anal intercourse);

   (*j*) section 160 (bestiality, compelling, in presence of or by child);

   (*k*) section 170 (parent or guardian procuring sexual activity by child);

   (*l*) section 171 (householder permitting sexual activity by or in presence of child);

   (*m*) section 172 (corrupting children);

   (*n*) subsection 212(2) (living off the avails of prostitution by a child);

   (*o*) subsection 212(4) (obtaining sexual services of a child);

   (*o.1*) section 220 (causing death by criminal negligence);

   (*o.2*) section 221 (causing bodily harm by criminal negligence);

   (*p*) section 236 (manslaughter);

   (*q*) section 239 (attempt to commit murder);

   (*r*) section 244 (discharging firearm with intent);

   (*s*) section 246 (overcoming resistance to commission of offence);

   (*s.1*) subsections 249(3) and (4) (dangerous operation causing bodily harm and dangerous operation causing death);

(*s.2*) subsections 255(2) and (3) (impaired driving causing bodily harm and impaired driving causing death);

(*s.3*) section 264 (criminal harassment);

(*t*) section 266 (assault);

(*u*) section 267 (assault with a weapon or causing bodily harm);

(*v*) section 268 (aggravated assault);

(*w*) section 269 (unlawfully causing bodily harm);

(*x*) section 270 (assaulting a peace officer);

(*y*) section 271 (sexual assault);

(*z*) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(*z.1*) section 273 (aggravated sexual assault);

(*z.2*) section 279 (kidnapping);

(*z.21*) section 279.1 (hostage taking);

(*z.3*) section 344 (robbery);

(*z.31*) subsection 430(2) (mischief that causes actual danger to life);

(*z.32*) section 431 (attack on premises, residence or transport of internationally protected person);

(*z.33*) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel);

(*z.34*) subsection 431.2(2) (explosive or other lethal device);

(*z.4*) section 433 (arson – disregard for human life);

(*z.5*) section 434.1 (arson – own property);

(*z.6*) section 436 (arson by negligence); and

(*z.7*) paragraph 465(1)(*a*) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990, that was prosecuted by way of indictment:

   (*a*) section 433 (arson);

   (*b*) section 434 (setting fire to other substance); and

   (*c*) section 436 (setting fire by negligence).

3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983, that was prosecuted by way of indictment:

   (*a*) section 144 (rape);

   (*b*) section 145 (attempt to commit rape);

   (*c*) section 149 (indecent assault on female);

   (*d*) section 156 (indecent assault on male);

   (*e*) section 245 (common assault); and

   (*f*) section 246 (assault with intent).

4. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 1, 1988, that was prosecuted by way of indictment:

   (*a*) section 146 (sexual intercourse with a female under 14);

   (*b*) section 151 (seduction of a female between 16 and 18);

   (*c*) section 153 (sexual intercourse with step-daughter);

   (*d*) section 155 (buggery or bestiality);

   (*e*) section 157 (gross indecency);

   (*f*) section 166 (parent or guardian procuring defilement); and

   (*g*) section 167 (householder permitting defilement).

5. The offence of breaking and entering a place and committing an indictable offence therein, as provided for by paragraph 348(1)(b) of the *Criminal Code*, where the indictable offence is an offence set out in sections 1 to 4 of this Schedule and its commission

   (*a*) is specified in the warrant of committal;

   (*b*) is specified in the Summons, Information or Indictment on which the conviction has been registered;

   (*c*) is found in the reasons for judgment of the trial judge; or

   (*d*) is found in a statement of facts admitted into evidence pursuant to section 655 of the *Criminal Code*.

6. An offence under any of the following provisions of the *Crimes Against Humanity and War Crimes Act*:

   (*a*) section 4 (genocide, etc., committed in Canada);

   (*b*) section 5 (breach of responsibility committed in Canada by military commanders or other superiors);

   (*c*) section 6 (genocide, etc., committed outside Canada); and

   (*d*) section 7 (breach of responsibility committed outside Canada by military commanders or other superiors).

SCHEDULE II (SUBSECTIONS 107(1) AND 125(1) AND SECTIONS 129, 130 AND 132)

1. An offence under any of the following provisions of the *Narcotic Control Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

   (*a*) section 4 (trafficking);

   (*b*) section 5 (importing and exporting);

   (*c*) section 6 (cultivation);

   (*d*) section 19.1 (possession of property obtained by certain offences); and

   (*e*) section 19.2 (laundering proceeds of certain offences).

2. An offence under any of the following provisions of the *Food and Drugs Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

   (*a*) section 39 (trafficking in controlled drugs);

   (*b*) section 44.2 (possession of property obtained by trafficking in controlled drugs);

   (*c*) section 44.3 (laundering proceeds of trafficking in controlled drugs);

   (*d*) section 48 (trafficking in restricted drugs);

   (*e*) section 50.2 (possession of property obtained by trafficking in restricted drugs); and

   (*f*) section 50.3 (laundering proceeds of trafficking in restricted drugs).

3. An offence under any of the following provisions of the *Controlled Drugs and Substances Act* that was prosecuted by way of indictment:

   (*a*) section 5 (trafficking);

   (*b*) section 6 (importing and exporting);

   (*c*) section 7 (production).

   (*d*) and (*e*) [Repealed, 2001, c. 32, s. 57]

4. The offence of conspiring, as provided by paragraph 465(1)(*c*) of the *Criminal Code*, to commit any of the offences referred to in items 1 to 3 of this schedule.