



Re: Parole Board of Canada Proposal
Pardon User Fee Increase

**BRIEF TO THE
STANDING SENATE COMMITTEE ON LEGAL and CONSTITUTIONAL AFFAIRS**

**HOUSE OF COMMONS
41st Parliament, 1st Session**

**Presented by
St. Leonard's Society of Canada
Ottawa, Ontario**

October 4, 2011

St. Leonard's Society of Canada (SLSC) is pleased to have the opportunity to present this brief to the Standing Senate Committee on Legal and Constitutional Affairs after having given consideration to the Parole Board of Canada's proposal for an increase to the pardon user fees.

Background of St. Leonard's Society of Canada:

SLSC is a membership-based, charitable organization dedicated to community safety since 1967.¹ The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safe communities. We endorse evidence-based approaches to criminal and social justice, conduct research and develop policy, support our member affiliates, and advance collaborative relationships and communication among individuals and organizations dedicated to social justice. Our membership of twelve direct service agencies across Canada provides residential and day programs to more than 15,000 youth and adults annually.

Current Proposal to Increase the Pardon User Fees:

SLSC does not support the proposal of the PBC to increase the pardon user fee in its current form. While the PBC's proposal is attempting to ensure the effectiveness of the pardons program, the effectiveness and integrity of the pardons program for those who need it relies on the ability of the individual to actually obtain this service. The prohibitive cost of the proposed service would effectively remove a pardon as an option for, to the best of our knowledge, the majority of individuals who are eligible under the current system. In speaking with our own affiliate agencies who directly serve over 10,000 people in this client group across Canada, of their clients who do hold jobs (most often low-paying, entry level positions), it was estimated that 15-20% of those clients could afford to pay \$631 for a pardon. This figure does not include clients who are not working and receive provincial disability support payments or social assistance which pays, at best, an estimated \$900 per month to cover rent, food, and bills in most municipalities across Canada. It is well known that such clients simply do not have the disposable income to afford the proposed fee.

SLSC strongly believes in the value of a pardon for people who have remained crime free under the current standards. There is value in the motivation a pardon provides to our client group that is a significant component to positive goal setting. Additionally, there is substantial evidence that having a criminal record results in stigmatization, and it has been well documented that the longer one remains in a community with a criminal record, the more the security and safety of both the individual and the community are undermined.

SLSC has serious concerns with how the proposed increase was put forward in February 2011. For a more detailed account, please see Appendix 1.1 and 1.2. One of our main concerns consisted of the PBC's sufficiency in meeting the consultation requirements (Appendix 1.2, p.3; Appendix 1.1, p.1). Additionally, to the best of our knowledge, direct contact with those who are most affected by these changes were not consulted including: inmate committees, brotherhood groups, chaplaincy programs, or social development officers within the institutions.

¹ Incorporation #12894 06600 RR0001. Online: www.stleonards.ca. SLSC is not a religious organization.

Of further concern upon reviewing the brief to the Standing Senate Committee on Legal and Constitutional Affairs by the PBC, was the apparent lack of inclusion and minimal response to the report submitted by the Independent Advisory Panel (IAP) that reviewed the PBC's proposal (Appendix 2.1). SLSC is in support of the recommendations of the IAP Report, and as such have summarized them as follows:

- In an attempt to recognize the importance of rehabilitation in the criminal justice system, the PBC should receive adequate government funding so it may continue administering the program at the current fee of \$150.
- The government should review the Act to include a mechanism for waiving the fees for disadvantaged/ low-income applicants, while ensuring that the PBC receives adequate funding.
- A non-refundable \$50 fee should be charged for preliminary review of each application, to ensure the application is complete/eligible for processing, minimizing the current 50% rejection rate for incomplete or ineligible applications.
- It was recommended that the government not base its practices on the principle of cost recovery.
- Any impact assessment on the fee increase should be made available to the public.
- The government should provide temporary funding, allowing the PBC to postpone the increase by at least one year. Applications under the new criteria could then be reassessed to identify whether they generate higher costs.
- Finally, it was recommended that the public consultation be reopened so that it can be completed properly.

SLSC supports the position of the IAP Report, and urges the Standing Senate Committee as well as the PBC to not focus on the economic aspect of cost-recovery in this process. The integrity of the client and the needs of the community must be valued as a top priority. As was noted by the PBC, *"[the increase] will create a barrier to securing jobs, enrolling in educational programs, travelling, and will subsequently increase their reliance on social programs"*, based on this, making pardons even less accessible does not appear to be a sound solution to the issues faced by the PBC. Trapping individuals in an endless cycle of stigmatization based on their criminal record by deterring them from applying for a pardon will increase the cost to Canadians through their increased dependence on social services. SLSC finds the PBC's request for a near 100% cost recovery to be discriminatory to this population since no other government service requires close to this percentage of recovery. With users dealing with a recent 200% increase late last year, the additional increase seems not only exorbitant, but untimely.

SLSC urges the Standing Senate Committee to consider seriously the fiscal and social ramifications of imposing this drastic increase to this fee structure. The recommendations of the IAP are thoughtfully constructed and contribute to a far more constructive approach for the needs of the PBC. Should you have any questions or concerns about the content of this brief, please do not hesitate to contact SLSC's Research & Policy Advisor, Anita Desai, at research@on.aibn.com or at 613-233-5170.

Elizabeth White
Executive Director
St. Leonard's Society of Canada

Appendices

Appendix 1.1:

SLSC's Response to the Pardon User Fee
February 24, 2011

Appendix 1.2:

SLSC's Formal Complaint to Parole Board of Canada:
Referral of Pardon User Fee Complaint to Independent Advisory Panel
April 13, 2011

Appendix 2.1:

Report and Recommendations of the Independent Advisory Panel on the
Proposal to Increase Pardon User Fees
June 2011

Appendix 1.1: SLSC's Response to the Pardon User Fee

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February 24, 2011

Introduction

St. Leonard's Society of Canada (SLSC) would like to express our concern over the proposed increase to the pardon application fee. SLSC understands the challenges faced by the federal government to cost effectively manage its programs. As an agency that directly serves clients affected by these changes, we are aware of the burden that this change will create. SLSC operates through an informed and evidence-based approach to criminal justice issues, and has provided effective crime prevention and rehabilitation programs for more than 40 years. Over these years we have recognized the importance and value in the pardon system, and its objective of contributing to the long term protection of public safety. SLSC has taken this opportunity to look at the relationship between the proposed changes and the current legislation on pardon user fees.

Pardon User Fees Legislation, User Fee Act (2004 c.6):

CONSULTATION REQUIREMENTS

Preconditions

4. (1) Before a regulating authority fixes, increases, expands the application of or increases the duration of a user fee, **it must**

(a) take reasonable measures to notify clients, and other regulating authorities with a similar clientele of the user fee proposed to be fixed, increased, expanded in application or increased in duration.

- An increase of 200% (\$50 to \$150) occurred 29 December 2010. The proposed changes for February 2011 for a second increase to the amount of \$631 (an additional 300% increase), and a deadline of February 27, 2011, is not a reasonable or sufficient amount of time for notification and consultation given the broad nature of the changes and the dramatic increase in cost.

(d) explain to clients clearly how the user fee is determined and identify the cost and revenue elements of the user fee

- The amendment simply states that "significant additional time" will be required to process applications. Concrete numbers for hours required or estimates of how much longer the proposed process will take compared to the current process have not been provided. This does not comply with the User Fee Act requirement of clearly explaining how the fee has been determined.

- *Increased workload and processing costs* – Bill C-23A increased the time of ineligibility for pardons for offences, resulting in longer wait times to apply for pardons. This, combined with the increased cost of \$631 assumes a decrease in the number of applications from 37,000 to an estimated 25,000 annually as reported by the Parole Board of Canada. SLSC finds the increased fee contradictory based on the information provided. The PBC had not adequately identified the parameters for an increased workload, which contributes to the lack of a clear explanation for how the user fee has been determined.

(c) conduct an impact assessment to identify relevant factors, and take into account its findings in a decision to fix or change the user fee

- The Parole Board of Canada has not provided an impact assessment that identifies relevant factors, or which takes into account its findings in a decision to change the user fee. The legislation clearly states that an impact assessment must be conducted. If such a report is available, to the best of our knowledge, it was not provided to SLSC or other organizations who serve this clientele.
- A pardon is a formal attempt to remove the stigma of a criminal record, and the proposed changes to the user fee will deter or, worse, prevent individuals from applying. It is accepted by experts in this field that the more a person remains stigmatized on the grounds of having a criminal record, the more likely they are to become trapped in a cycle of poverty and vulnerability that increases the risk factors for this clientele. This can be potentially more costly based on the increasing demands placed upon social services.
- Many of the citizens who will be affected by this change do not have the means to pay the increased cost and thus they are unfairly denied the opportunity to try and successfully reintegrate through the pardons process.
- User fees for any other government services (SIN card replacement, passport etc.) are significantly less than the 87% recoverable cost. To create an 87% recoverable user fee specifically for pardon applicants, is discriminatory in practice and intentionally deters individuals from applying.

(f) establish standards which are comparable to those established by other countries with which a comparison is relevant and against which the performance of the regulating authority can be measured.

- Australia is a comparable country that has an automatic system where after a certain period of crime-free behavior, pardons are automatically granted. As a commonwealth nation with similar economic structure and values, this approach differs greatly from that of the proposed changes.

Summary

The proposed changes by the Parole Board of Canada contradict the goals of rehabilitation and public safety. With the passing of Bill C-23A and the increase in user fees for pardon applicants, the PBC is also effectively increasing the stigmatization and vulnerability of citizens, and increasing the strain on existing social services. The St. Leonard's Society of Canada strongly opposes the proposed changes in their current form, and does not find adequate support for these changes in the documentation provided thus far by the PBC to warrant such drastic measures. In addition to this, the proposed changes do not comply with the current legislation under Section 4. (1) of the User Fees Act (2004 c.6).

Appendix 1.2: SLSC's Formal Complaint to Parole Board of Canada: Referral of Pardon User Fee Complaint to Independent Advisory Panel

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Parole Board of Canada
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Re: Referral of Pardon User Fee Complaint to Independent Advisory Panel

April 13, 2011

With regard to the response that the Parole Board of Canada has sent to the St. Leonard's Society of Canada (SLSC) dated March 25, 2011, we would like to request that our objection to the proposed user fee increase be referred to an Independent Advisory Panel. This request is being made on the basis that the Parole Board of Canada has not adequately complied with the User Fee Act (2004, c.6), specifically section 4, regarding the consultation requirements. As an agency that directly serves clients affected by the proposed changes, we are strongly opposed to the burden that the increased fees will create. SLSC operates through an informed and evidence-based approach to criminal justice issues and has provided effective crime prevention and rehabilitation programs for more than 40 years. Over these years, we have recognized the importance and value in the pardon system and its objective of contributing to the long term protection of public safety. SLSC has taken this opportunity to look at the relationship between the proposed changes and the current legislation on pardon user fees. We have broken down our responses based on the reply given to our initial submission on Feb. 24, 2011. The PBC's reply has been italicized, followed by SLSC's response.

Pardon User Fees Legislation, User Fee Act (2004, c.6):

CONSULTATION REQUIREMENTS

In terms of the consultation around the user fee, the PBC has followed a process that it feels is consistent with the requirements of the UFA. The Board received many submissions from the public as part of its online consultation on the proposed user fee increase. A consultation session was also held with member organizations of the National Associations Active in Criminal Justice (NAACJ) on February 18, 2011, to explain the costing behind the proposed user fee, and give participants an opportunity to ask questions. Also, the public must be notified of an increase in the user fee, if implemented.

The PBC states that it followed the requirement to consult with “clients, and other regulating authorities with similar clientele” by holding a consultation session with the National Associations Active in Criminal Justice. SLSC, however, would like to note that holding a consultation with NAACJ is insufficient because it is not representative of a collective voice for all its individual member organizations. As such, they cannot be the sole consultee in this process. SLSC was fortunate enough to receive information regarding the upcoming consultation from NAACJ, however the PBC overlooked NAACJ’s role and this oversight is evident through the PBC solely informing the NAACJ and not the other regulating authority with similar clientele of the open consultation.

Further to the requirement to consult with clients and other regulating authorities with similar clientele, the *User Fee Act (2004, c.6)*, requires the regulating authority to “take reasonable measures to notify.” SLSC argues that the timeframe given was not reasonable. SLSC received notification of the intent to increase user fees on February 8th via email from NAACJ (**not** PBC). The consultation was scheduled originally one week later for the 15th and was subsequently delayed until the 18th with a deadline for submissions set at the 27th of February. This was a total of 14 business days for organizations to formulate responses. It must be acknowledged that this is insufficient time for the client service organizations within the voluntary and not-for-profit sectors that often have limited resources, staff and office time and thus it becomes difficult to consult with one another to formulate a valid response. This is certainly true for SLSC who has a limited number of employees and who are already strained within their roles to support the mission and initiatives of our organization.

With regards to the amount of the increase, the PBC recognizes that the proposed increase to the pardon user fee is significant. The amount of the proposed increase is based on an extensive costing exercise undertaken by the PBC, and represents the cost of processing a pardon under the Criminal Records Act (CRA), which was modified by the Government in 2010 as a result of Bill C-23A. The increase to the fee will pay for the various steps involved with processing a pardon application under the new Act, including screening of applications, inquiries with justice system participants, preparation of case files for Board members, decision-making, notifications, and more. The main increases in costs are for additional resources for Board member decision-making because Board members are now required to make decisions for all pardon applications. Previously, summary pardons were issued without a Board member decision. In addition, there is now significantly more time required for investigations by pardons officers (e.g., to examine whether the granting of the pardon would bring the administration of justice into disrepute).

The PBC makes several references to an “extensive costing exercise” which represents the new cost of processing a pardon; however this exercise has not been made available for consideration by organizations or the public to verify why this increase is necessary. If the PBC’s response refers to the material provided which is comprised of not more than two tables, this is not sufficient information as the chart is unclear in how those numbers were obtained. Furthermore, there is no indication of person-hours required for each step in completing these applications where the workload has increased. It is necessary to make these numbers available to the public and to organizations as part of the consultation process given the interest of full disclosure and an informed decision.

The PBC has also indicated that: *In terms of service standards, the new fee, if implemented, would also include new service standards for pardon application processing, as described in the consultation material that was shared.*

SLSC recognizes that with the implementation of Bill C-23, there is a requirement for new service standards. However, the PBC has not provided sufficient information regarding the increased number of actual hours allocated to these new standards. To make an accurate analysis and compare it to pre Bill-C23 standards, it is essential to publicize more specifically the time, in hours, that staff will require to implement these changes. From the table provided, SLSC does not find enough information has been provided by the PBC to make an informed decision.

As no other country has a pardons system comparable to that of Canada's, a comparison of service standards with those of other countries was not applicable.

SLSC realizes that no other country has the same service standards that Canada presently uses. However, SLSC is of the opinion that it is worthwhile to make comparisons based on countries with similar values, standards of living and similar crime rates. This method of comparison is more worthwhile because Canada should take into consideration, first, evidence based approaches to providing pardons that have been proven as effective practices, or at the very least consider examples of countries that have a similar population composition, and similar crime rates, rather than basing our system on the subjectivity of "service standards" that are unfounded in their success.

The PBC recognizes that pardons assist individuals to secure jobs, enrol in educational programs, travel, reduce their reliance on social programs, and encourage them to lead law-abiding lives. The increase will ensure the effectiveness and long-term sustainability of the pardons program so that applicants can continue to benefit from the opportunities a pardon provides. Without additional funding, the program is currently unsustainable.

The PBC has stated that the increase in pardon user fees will ensure the effectiveness of the program. However, the effectiveness and integrity of the pardons program and those involved relies on the ability of the individual to obtain this service. The PBC very clearly acknowledges the importance of the pardons process in making ex-offenders contributing members of society. By the prohibitive cost increase, the PBC appears to be focusing more on an economic aspect, rather than the integrity of the client and the needs of the community. This action ultimately compromises the safety of the community to which they will eventually become a part of, since as noted by the PBC, "[the increase] will create a barrier to securing jobs, enrolling in educational programs, travelling and will subsequently increase their reliance on social programs." Based on this statement, it is unclear to SLSC why the PBC would expressly make prohibitive changes that would put this population in a position where they will be an increased risk to their community as a result of these factors. It is important to stress that the number of ex-offenders transitioning into Canadian communities will not decrease as a result of this process, and that the proposed changes will only continue to decrease their ability to successfully reintegrate. There is substantial evidence that having a criminal record results in stigmatization, and it has been well documented that the longer one remains in a community with a criminal record, the more the security and safety of both the individual and the community will be undermined. No other government service requires even close to a 100% recoverable fee, and to make the cost of a pardon 87% recoverable after a recent 200% increase, is discriminatory of this vulnerable population. The increase intentionally deters individuals from applying, which is in turn counter-productive to Canadian communities.

In speaking with our own affiliates who directly serve over 10,000 people in this client group across Canada, it was revealed that of their clients who do hold jobs, they are often in low-paying, entry level positions and as such it was determined that approximately 15-20% of those clients could afford to pay \$631 for this service. This does not include those clients who are not working and are receiving Ontario

Disability Support Program (ODSP) payments or social assistance (respective of their province) which pays, at best, \$1100 per month and barely covers rent, food and bills in most municipalities. It is well known that those who are on ODSP and social assistance do not have the disposable income to afford this fee. To trap these clients in an endless cycle of stigmatization based on their criminal record by deterring them from applying for pardons will increase the cost to Canadians through their increased dependence on social services.

In closing, the proposed changes by the Parole Board of Canada contradict the goals of rehabilitation and public safety. With the passing of Bill C-23A and the increase in user fees for pardon applicants, the PBC is also effectively increasing the stigmatization and vulnerability of citizens, and increasing the strain on existing social services. The St. Leonard's Society of Canada strongly opposes the proposed changes in their current form, and does not find adequate support for these changes in the documentation provided thus far by the PBC to warrant such drastic measures. In addition to this, the proposed changes do not comply with the current legislation under Section 4. (1) of the User Fees Act (2004 c.6).

Appendix 2.1: Report and Recommendations of the Independent Advisory Panel on the Proposal to Increase Pardon User Fees, June 2011

Please note that SLSC was unable to find an electronic copy of this report on the Parole Board of Canada's website (though we suggest that the PBC take into consideration filing it on their homepage and/or their 'Resources' page under the Reports & Publications section). Therefore, we have scanned and attached the hard copy of this report with our email submission to the Standing Senate Committee. We have also attached the French version for your convenience.