



DISCUSSION PAPER

PEACE OFFICER STATUS FOR PROBATION OFFICERS

Probation Officers Association of Ontario

2002

INTRODUCTION

Given the changing environment of Community Corrections, the Association undertook a survey of the membership regarding the reinstatement of Peace Officer Status for Probation Officers¹. Recognizing that only 10 per cent of the membership returned surveys on this topic, the Association is providing this paper to evoke further discussion from the membership.

PURPOSE

The purpose of this paper is to determine the desire of the membership to have Peace Officer status reinstated for Probation Officers. A secondary purpose is to canvas the POAO membership regarding how they believe that the reinstatement of Peace Officer status would affect the Probation Officer's role.

Brief History

Historically, Probation & Parole Officers were designated as Peace Officers in the Criminal Code of Canada and The Statutes of Ontario until the repeal of the Probation Act in 1978.

Prior to 1978, Probation and Aftercare Officers (PACO Officers) were responsible for transporting their clients (juvenile delinquents) from Court to the custodial "homes" to which they were sentenced. If the juvenile delinquents acted up or breached their release conditions in these homes, the PACO officer would pick them up and take them to the police, to court or to jail.

The Present Situation

Probation and Parole Officers currently employed by the Ministry of Correctional Services do not have Peace Officer status.

The relevant section of the Criminal Code of Canada defines "Peace Officer" under section 2 as follows:

(a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace,

¹ Anywhere the term "Probation and Parole Officer" is used should be taken to apply to both those Probation Officers employed by MCSS, and MCS, except in those instances where the two are clearly identified by Ministry.

- (b) a member of the Correctional Service of Canada who is designated as a Peace Officer pursuant to the Penitentiary Act, and a warden, deputy warden, instructor, keeper, jailer, guard and other officer or permanent employee of a prison other than a penitentiary as defined in the Penitentiary Act,
- (c) a police officer, police constable, bailiff, constable or other person employed for the preservation of the public peace or for the service or execution of civil process.

The Minister of Correctional Services does have the option of designating Probation Officers as Peace Officers under sec 11(1) (a) and (b) while performing their duties and functions:

(a) a person who is an employee of the Ministry or is employed at a place of open custody, secure custody or temporary detention, to be a Peace Officer while performing the person's duties and functions;

Or

(b) a class or classes of persons from among the persons described in clause (a) to be Peace Officers while performing their duties and functions and may set out in the designation any conditions or limitations to which it is subject.

This is especially relevant since the enactment of Bill C-41, which makes Probation Officers wardens of those under house arrest via Conditional Sentence.

A Probation Officer currently employed by the Ministry of Community and Social Services does not have Peace Officer status. However:

“ For the purposes of MCSS Young Offender Services, staff and service providers are not identified as Peace Officers. Probation Officers have while performing their duties, the *powers of a peace officer*, (sec 90 (3) CFSA). The extent of Probation Officer powers as Peace Officers is indicated below...”

CFSA sec 90. (1) The Minister may appoint any person as, (b) a Probation Officer, to perform any or all of the duties and functions, (3) while performing their duties and functions, a Probation Officer appointed under clause (1) (b) has the powers of a Peace Officer.

Probation Officers in the Ministry of Community and Social Services have some of the powers of a Peace Officer when performing certain functions and duties, while their counterparts in the Ministry of Correctional Services do not. As noted above, the Criminal Code certainly makes an argument that persons employed in keeping the public peace are designated or can be designated Peace Officers. Under the MCS Act the Minister **may** designate Probation Officers as Peace Officers.

POAO last reviewed the issue of Peace Officer status nine years ago, based on the job

specifications of that day. At the time, the Association was not supportive of reinstating Peace Officer status for Probation Officers.

During the last POAO review of this issue, the duties of a Probation and Parole Officer included:

- Preparation of Court reports
- Preparation of Pre-Parole reports
- Supervision of Probationers and Parolees
- Enforcement of Probation Orders, Youth Court Dispositions, and Parole Certificates
- Attendance at Court when requested
- Liaison with community agencies, community contracts and the public
- Development and implementation of community programs

Probation and Parole Officers performed their role as defined in regulations under the MCS Act, the Criminal Code of Canada and the Young Offenders Act.

Probation Officers employed by MCSS performed similar roles in accordance with regulations under the Young Offenders Act and the Child and Family Services Act.

Presently, Probation and Parole Officers employed by the Ministry of Correctional Services perform the duties as outlined above. PPOs also supervise offenders bound by Conditional Sentence Orders, some of which have house arrest conditions. In addition, the Probation and Parole Service Delivery Model includes Intensive Supervision, which requires a very high level of intervention and supervision. There is a greater expectation of home, employment and community visits in this supervision stream.

During the past nine years, the nature of the MCS clientele has changed dramatically. Today's offenders present with far more serious and multifaceted problems. The issue of staff safety is of much greater concern than was even anticipated nine years ago. Probation and Parole Officers are overburdened with change and facing professional burnout at an unprecedented rate. While Peace Officer Status alone will not ensure the safety of staff, it does raise the ante for clientele who assault Probation and Parole Officers. Peace Officer status would also help to give Probation and Parole Officers an increased measure of respect and standing within the Justice System.

Similarly to police officers, Probation and Parole Officers work with an identified population of offenders, some of whom are violent and dangerous. Unlike police officers, Probation and Parole Officers work with these offenders in an environment where immediate assistance or support is unlikely. Given this environment, Probation and Parole Officers should be afforded a status that recognizes their unique situation.

Clearly over the years, the job of a Probation and Parole Officer has changed along with the types of offenders who are supervised. Most Probation and Parole Officers who wish to see Peace Officer Status reinstated, desire this change of status for personal safety reasons. Some Probation and Parole Officers wish to have additional protection, in the form of legislation, which comes under the Criminal Code of Canada (Assault Peace Officer, Obstruct Peace Officer, [if offender lies to Probation Officer]). Other Probation and Parole Officers are of the view that they would like tangible training and protection, i.e. capsicum spray (pepper spray) or a taser.

Powers of a Peace Officer

There are many duties and responsibilities associated with being a Peace Officer. Part of the POAO survey on Peace Officer status examined which duties were of assistance to Probation and Parole Officers, and which duties were not viewed as necessary or desirable.

Some of the powers of a Peace Officer identified by respondents as desirable were the following:

- Powers to serve summons and warrants
- Powers of arrest
- Additional enforcement power and the ability to uphold the law
- Search and Seizure
- Access to CPIC
- Enhanced ability to perform home visits in order to supervise Conditional Sentence clients or Intensive Supervision clients
- The option of carrying protective devices such as pepper spray or batons

Some respondents did not wish to have powers of arrest, or the ability to serve summons or warrants. These same respondents were opposed to being involved in search and seizure and were not supportive of having the option of carrying protective devices.

The positions regarding the above Peace Officer powers were equally represented by respondents.

ADVANTAGES AND DISADVANTAGES

Pros

- Greater perception of authority by offenders

- Making threats to PO's becomes a much more serious Criminal Code offence
- Adds legitimacy to what we already do
- Raises Probation and Parole Officers' profile within the Criminal Justice System
- Provides more enforcement power
- Swearing and service of Court documents, streamlines process and allows Probation and Parole Officers to keep on top of charges as they move through the Court system
- Expedites certain roles and duties
- Status of Peace Officer puts Probation and Parole Officers in the "brotherhood" of law enforcement officers and correctional officers
- Powers of arrest
- Offenders lying to Probation and Parole Officers could be charged with the offence of Obstruct Justice.
- Elevation of status in the community
- Enhance the perception that Ontario **is** getting tough on crime
- Job security; similar status to other law enforcement and correctional agents
- Limited career i.e. 20 years and out with full pension

Cons

- Will require more training on already overburdened Probation and Parole Officers
- Added responsibility
- Currently not trained in proper arrest procedures
- Probation clientele are carrying weapons more often. Probation Officers are becoming - more concerned with their own safety so they actually do not want powers of arrest
- More work, no more pay
- Confrontational
- Dangerous
- Possible erosion of the counseling relationship as the role becomes more enforcement oriented.
- Possible lessening of education standards if Probation Officers become just enforcers without any counseling and rehabilitation work.
- Executing warrants and summons would require backup, as well as a lot of extra training.
- Liability as a result of Common Law and Statutory Duties of Peace Officer, such as Police Officer
- Police may end up giving us all charges related to Probation.

CONCLUSION

Of the 10 percent of the POAO membership who responded to this survey, the majority wished to see the reinstatement of the Peace Officer status for Probation Officers. Only three respondents were opposed to the reinstatement, and two favored maintaining the status quo. A

number of Probation Officers employed by MCSS indicated that as Phase I PO's they were already Peace Officers.

There were various reasons as outlined above, not surprisingly many centered on safety, morale and financial issues. Also not surprisingly they centered on how this change would assist Probation Officers in performing their duties, ensuring public safety and enhancing the rehabilitation of the clients.

Some respondents felt that more information was required, such as exactly how having Peace Officer status would impact Probation Officers in how they perform their duties. Fears that Probation Officers would become merely enforcement officers, with no focus on counseling or rehabilitative work were indicated. Concerns related to reduced educational qualifications, lower wages and a reduction in the quality of applicants sought to fill vacancies were expressed. There was also awareness that more intensive training would have to be undertaken should powers of arrest, search and seizure and other duties be granted.

How the reinstatement of Peace Officer status would affect Probation Officers should be the subject of a study, with the POAO, the Ministry, and the bargaining agent for Probation Officers working together to examine the possible ramifications as well as the pros and cons of this enhanced status.

In the past, the membership of the Association has not been supportive of the reinstatement of Peace Officer status. It is clearly a sign of the times that Probation Officers' views on this matter have changed. It is time that Probation Officers were given the tools that they require to work in this vital profession.

Several sources were accessed for the preparation of this paper. These were as follows:

The Young Offender Service Manual; Ministry of Community and Social Services.

Ontario's *Child and Family Services Act*

The *Criminal Code of Canada*

Corrections and Conditional Release Act

Paper: The Impact of Delegating Probation and Parole Officers as Peace Officers by the Ministry of Correctional Services Youth and Community Corrections Branch

Perspectives on Peace Officer Status, by PPO Glenn Jones

Presentation by OPSEU members G. Longhi & D. Kerr to the Assistant Deputy Minister of Correctional Services

POAO Survey - Questionnaires received from Probation Officers and Probation and Parole Officers

