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CHAPTER VIII

THE JUVENILE COURT

221. In this Chapter we are concerned with the operation of the juvenile court. The matters that we examine include the qualifications and appointment of juvenile court judges, the role of the juvenile court committee, procedure and practice in the juvenile court, rules of court and the right of appeal.

The Juvenile Court Judge

222. At the present time three different types of judges preside over juvenile courts in Canada: specialized juvenile court judges (provincial appointees), magistrates (provincial appointees) and county court judges (federal appointees). In almost all cases, however, judges of the juvenile courts are selected to serve on those courts by provincial authorities. No professional conditions of qualification are by law required of persons appointed as magistrates or specialized juvenile court judges. Persons selected in the past have had experience in the business world as well as in fields such as social work, law, divinity, education, psychology and police work. The juvenile court is financed in the same way as are other provincial courts, except that in many cases the financial responsibility is left with the municipality. In practice this means that the juvenile court judge often has the burden of obtaining funds for his court from various governmental bodies. The objection that has been made to a local system of financing is that it makes the successful operation of the court dependent upon the co-operation of local authorities, who sometimes are more concerned about the tax rate than they are about ensuring a proper solution of the community's social problems. In some communities, of course, economic conditions may be such that adequate finances are totally lacking. One consequence of this system of financing is evident in any event: that the level of performance of the juvenile court varies considerably, not only from province to province, but even from municipality to municipality within the same province.

223. In many areas of Canada the local magistrate or county court judge performs juvenile court duties on a part-time basis. It has been represented to us that the judge of the juvenile court should devote his full time to that work, and that the use of magistrates and county court judges for juvenile court purposes is ill-advised. In support of this view it is said some magistrates and county court judges find it difficult to adjust their approach to the specialized philosophy of the juvenile court in the afternoon when, on the morning of the same day, they were involved in the trial of a hardened criminal. It is said also that where the two functions are combined there is a tendency to neglect juvenile cases, since these often require a great deal of time. On the other hand there may not be a sufficient number of juvenile cases to justify the appointment of a full-time juvenile court judge. The use of the local magistrate or county court judge in these circumstances would seem to be sensible in the absence of a better system. However, a better system is available.

In several of the American states a state-administered and state-financed juvenile court scheme has been in operation for some time. In Utah, for example, the work of twenty-six ex-officio juvenile court judges was taken over by four full-time judges and one part-time judge. (1). One Canadian province recently adopted a circuit juvenile court system. (2). We recommend that these systems be studied with a view to introducing some such approach in every province in Canada.

224. The questions that we now have to resolve are: (a) what qualifications should be required of juvenile court judges? (b) what methods can be devised to ensure that the person who is appointed a juvenile court judge does possess those qualifications? The answer to the first question depends largely upon the powers it is thought proper to give to the judge. If he is to be responsible for both the fact-finding and disposition functions, as he is under the present Act, presumably he will require qualifications different from those necessary for a judge who is responsible for fact-finding alone. We think that the judge should retain his present powers. The suggestion that the disposition process should be vested in an expert administrative board - presumably composed of psychiatrists, psychologists and social workers - is based, in our opinion, upon a somewhat overly simplified view of the purposes of the criminal law. Those who advance this suggestion tend to assume that the sole function of the sentencing authority is to impose a sentence that is likely to rehabilitate the offender. This is a paramount function, but certainly not an exclusive one. The purposes to be achieved in a sentence are many and often conflicting - and this remains true, if to a lesser extent, even in a juvenile court proceeding. Not only must the court attempt to rehabilitate the offender, it must also be concerned with protecting the public against future offenders and with protecting the offender himself from excessive or inhumane detention or treatment methods. It is important to recognize also that we know little about the effect that any particular disposition of a case will have upon a particular offender. In this situation, where the liberty of the subject is at stake, it seems to us to be the better part of wisdom to leave the power of disposition with the judiciary.

225. The conclusion to be drawn, we suppose, is that ideally a judge of the juvenile court should possess the legal knowledge of a justice of the superior court and the knowledge of personality dynamics and social resources of a psychiatrist or of a social worker. Obviously such knowledge is rarely combined in one individual. For this very reason it is the practice in a number of European countries to appoint a joint bench in juvenile court cases. (3). Usually a professional jurist presides, assisted by one or more experts or laymen who are present either in the capacity of assessor - that is, as a member of the court itself - or that of official adviser to the court. The American practice is to require a legal background in persons appointed to the juvenile court. While we think that this qualification is perhaps desirable, we doubt that it is essential. The fact-finding process in which legal training is useful is only one aspect of the court's work. It is important to bear in mind also that more than

ninety per cent of accused children admit the charges against them. (4). We recognize that the court must be alert to avoid those violations of civil liberties that have occurred in the juvenile courts of Canada as well as those of the United States. Here also legal training would be helpful. (5). However, we think that if persons of adequate intellectual powers and human experience are appointed, the amount of legal knowledge that would be required to enable them properly to perform their functions could be learned under a training program. We have already considered elsewhere the way in which the provisions of the Act relating to waiver of jurisdiction might be altered to assist the juvenile court judge in dealing with cases that involve difficult questions of law or fact. (6).

226. The juvenile court judge must know enough law to be able to conduct a hearing in accordance with legal principles. On the other hand, to make a proper disposition of a case after an offence is proven the judge needs only a general understanding of youth, a familiarity with the resources available to the court, and sufficient knowledge of the social sciences to weigh the advice that is given to him by experts in these fields. For this reason we do not think that a professional background in psychiatry, psychology or social work is essential for a juvenile court judge. It is those responsible for the carrying out of treatment that require special qualifications of this kind, rather than the person responsible for the decision as to the form of treatment that is to be given by those competent to give it. However, we do think that a new appointee, whether lawyer, psychologist or social worker, should ordinarily receive a specialized program of training, covering such matters as the principles of child psychology and personality development, the prevention and treatment of delinquent behaviour, juvenile court law and the rules of evidence, and the organization and administration of a juvenile court. So far as possible, such training should be given before a judge assumes his duties. In recent years, specialized courses and institutes for juvenile court judges have been developed in the United States. (7). We recommend that steps be taken to make this kind of training available to Canadian judges. Implementation of this recommendation would, in our view, constitute a valuable first step in the direction of establishing professional qualifications for judges of the juvenile and family courts of this country.

227. It is no reflection on the vast majority of judges to say that on occasion one of their colleagues was appointed for reasons apparently unrelated to his judicial abilities. It seems to us, however, that lack of competence in a juvenile court judge is less to be tolerated than it is in the case of an adult court judge. This is so because the juvenile court judge has a greater unsupervised discretion, and also because those who appear before the juvenile court are more likely to suffer personality damage by reason of mistakes that might be made by the court. We have mentioned that a juvenile court judge is provincially appointed. His salary would seem to be inadequate to attract, in most provinces, the calibre of persons required. Although the federal government has the constitutional power to appoint its own judges, and on

rare occasions has done so, we think that juvenile court judges should continue to be appointed by the appropriate provincial authorities. However, we would lend our support to the proposal made by a number of groups that judges should be selected only from names recommended by an advisory group consisting of representatives of such fields as education, law, medicine, psychology, religion and social work. Moreover, we would suggest that in any province where this procedure is followed the federal government should consider making available to the province a sum sufficient to increase the salary of the juvenile court judge to that of a county court judge. Public knowledge that highly qualified persons are appointed to the juvenile court bench should serve to enhance the status of both judge and court.

228. In furtherance of this same objective, we recommend that the distinction drawn in the present Act between judge and a deputy judge be abolished. (8). We also take note of a suggestion made by a committee of the Association of Juvenile and Family Court Judges of Ontario that consideration should be given to the appointment of a Chief Juvenile and Family Court Judge who could, in the words of that committee's report, "visit the Courts of the Province able to advise generally, to direct further uniformity in practice, and perhaps relieve Judges in the event they desired to have his assistance in complicated cases, one who could institute measures to ensure further uniformity in matters of financing, in staff arrangements, provision of witness fees and other matters." (9). While we make no specific recommendation in regard to this suggestion, we do commend it to the attention of the various provincial authorities concerned with the constitution of the juvenile courts.

The Juvenile Court Committee

229. The Act (section 27) directs that there "shall be in connection with the Juvenile Court a committee of citizens, serving without remuneration, to be known as the 'Juvenile Court Committee'." Section 27 also makes provision for the composition of the juvenile court committee. It provides that in any city or town where there is a children's aid society, "the committee of such society or a sub-committee thereof shall be the Juvenile Court Committee" - and further, that where there is no children's aid society "the court may, and, upon a petition signed by fifty residents of the municipality...shall appoint three or more persons to be the Juvenile Court Committee as regards Protestant children, and three or more persons to be the Juvenile Court Committee as regards Roman Catholic children....". It seems to be the intent of the Act that a juvenile court committee is mandatory, although the wording of section 27 itself is not altogether consistent on this point. In any event, only a few juvenile courts in Canada have the assistance of such committees. (10).

230. The duties and powers of the committee are set out in section 28:

> " (1) It is the duty of the Juvenile Court Committee to meet as often as may be necessary

and consult with the probation officers with regard to juvenile delinquents, to offer .... advice to the court as to the best mode of dealing with such delinquents, and, generally, to facilitate by every means in its power the reformation of juvenile delinquents.

(2) Representatives of the Juvenile Court Committee who are members of that Committee, may be present at any session of the Juvenile Court.

(3) No deputy judge shall hear and determine any case that a Juvenile Court Committee desires should be reserved for hearing and determination by the judge of the Juvenile Court."

231. The principal questions we have to resolve are: (a) should the provision for a committee remain mandatory or be made permissive? (b) what should be the composition of such a committee? (c) what should be the function of the committee? Because we feel that an answer to this last question will assist in resolving the others we examine it now. Under the present Act the committee's functions are extremely vague. In some ways it seems designed to serve as an adjunct to the probation services; on the other hand it seems that the committee is also intended to act as public watchdog to prevent the juvenile court process from degenerating into Star Chamber proceedings; again, the powers vested in the committee by section 28(3) are intended to ensure that important cases will be heard by the judge of the court rather than by the presumably less qualified deputy judge. Whatever may have been the need for these responsibilities and powers in 1929, many are no longer relevant today. The screening function provided by section 28(3) is unecessary. The judges of other courts are by law deemed competent to handle all cases within the jurisdiction of their courts and we see no reason for distinguishing, in this respect, between juvenile courts and the ordinary courts. In any event, we recommend elsewhere the abolition of the office of deputy judge.(11). In the early years, the primary role envisaged for the juvenile court committee was probably that of a citizen advisory group in regard to matters of treatment, with perhaps additional service as unpaid probation officers. (12). One submission made to us points out that "the committee's original function as a 'case committee' advising the judge is outmoded now due to the availability of psychiatric and social work resources....". (13). It seems, in fact, to have been the experience in both Canada and the United States that juvenile court committees have seldom attempted to perform a "case committee" function on any regular basis and that, where such attempts have been made, friction between the judge and the committee has frequently been the most notable result.

232. The "public watchdog" or "sentinel" role seems to us to be the proper function for the juvenile court committee to perform. In our system many

organizations, may be interested in the operation of the ordinary courts. It is the organized bar, however, that has been in the forefront in such matters as judges' salaries and pensions and the protection of judicial independence. The juvenile court does not have this type of support from any organization or profession. A juvenile court committee can help to provide such support. There are still other features of the "public watchdog" role. Some of these are suggested in a report prepared by a committee of the Probation Officers' Association - Ontario:

> " .....Firstly, since the juvenile court will remain largely a 'private court' with the public having only limited access to it, the committee must serve as the eyes and ears of the citizenry; it must keep abreast of all aspects of the court's operations, interpreting the court to the community on the public platform, and ensuring that the court is functioning in keeping with the legislation governing it, and in accordance with correct judicial processes. The committee can also be of considerable help to the Judge in several specific areas, such as advising and assisting in the operation of any detention or observation home connected with the court, assisting in the obtaining of necessary financial grants for the court's maintenance, and performing a liaison function with municipal or other governments which may be contributing financially to the court. The committee would have the added duty of working for the correction of any conditions tending to foster delinquency in the local community and of working for the establishment of such health and/or welfare services as would tend to reduce delinquency. The central and basic responsibility however would be one of surveillance of the overall operation of the court to ensure that it continues to provide proper and adequate services to its local community." (14).

233. We see the juvenile court committee, then, as a liaison body between the juvenile court and the community. One of its major functions should be that of continuous public education in the community to interpret the purpose and philosophy of the juvenile court and to stimulate the support necessary to enable the court to carry out its objectives. Another should be that of general "watchdog" supervision of the court and the services upon which the court relies. It is our recommendation that in any revision of the law the duties of the juvenile court committee should be redefined in accordance with the role of the committee as we have outlined it.

234. We have received submissions suggesting that the committee should be a permissive one, designed to aid those judges who wish to have its assistance. Other briefs have taken the position that the establishment of a committee should be mandatory. The fact that few juvenile court committees exist in Canada may well be an indication that it is not entirely realistic to make a committee mandatory in all cases. Nevertheless, we think that, so far as practicable, the objective should be to have a committee working with every juvenile court. The functions of the juvenile court committee, as we envisage them, are too important for its existence to depend in every case upon the whim of the judge. The committee's role is not only to assist him, but is also to assure the public that the juvenile court process is operating in a satisfactory manner. In our view, therefore,it would be desirable if steps were taken to promote the establishment of juvenile court committees throughout Canada. It is perhaps worth adding that in no case should the jurisdiction of the court be affected by the existence or non-existence of a committee.

235. In making these suggestions, however, we think it important to note that the establishment, composition and duties of the juvenile court committee are matters that relate more directly to the constitution and administration of the juvenile courts than to any aspect of criminal law or criminal procedure. The constitution, maintenance and organization of the juvenile courts are, as we have pointed out, primarily the responsibility of the provincial authorities. We are of the opinion that the power of decision in regard to these various questions that pertain to the juvenile court committee should rest with the provincial authorities. Indeed, we find it difficult to see how the federal government can take effective action on matters so closely connected with the actual operation of the juvenile courts. It is our conclusion, therefore, that detailed provisions concerning the juvenile court committee - except as they relate to matters of procedure, such as the right of members of the committee to be present at juvenile court hearings - should be removed from the federal Act and that it should be left to the provinces to enact whatever legislation they think desirable.

236. A number of recommendations have been made to us concerning the composition of the juvenile court committee. It has been suggested, for example, that the judge should have the authority to choose the members of the committee, perhaps from a list of persons recommended by civic groups and by various professions such as law, medicine and social work. There have been suggestions also that the Attorney General should have a voice on the question of membership. Again these are matters for decision by the appropriate provincial authorities. While we make no specific recommendation in regard to the composition of the committee, we would make one observation. There would seem to be no reason why a committee performing the functions that we propose should, as the present Act contemplates, be fragmented on religious lines or have it membership drawn only from children's aid societies.

237. Before leaving this discussion of the juvenile court committee, we

think that it may be useful to note a recommendation made by the Governor's Special Study Commission on Juvenile Justice in California, which reported in 1960. The Commission proposed that existing juvenile court committees be merged into a system of regional juvenile justice commissions having wide powers to investigate, study and issue annual reports and recommendations on "the administration of juvenile justice in its broader sense including law enforcement, the courts and probation departments....". (15). The Commission also contemplated that such juvenile justice commissions would have powers of subpoena, as well as the right to visit local institutions and treatment facilities. Even with juvenile court committees as they are now conceived, it may well be desirable, having regard to the practical difficulties in establishing committees in certain areas, to have some committees constituted on a regional basis. This might require, for example, that a committee operate in conjunction with more than one juvenile court. The California plan is apparently intended to go somewhat further than this. For the purpose of this Report, we do no more than suggest that the California proposals would seem to merit study by provincial authorities concerned with providing for the establishment of juvenile court committees or with finding some viable alternative to the present system.

Procedure and Practices in the Juvenile Court

General

238. The importance of the sections which govern procedure in the juvenile court dictates that we should set them out:

> " 5. (1) Except as hereinafter provided prosecutions and trials under this Act shall be summary and shall mutatis mutandis be governed by the provisions of the Criminal Code relating to summary convictions in so far as such provisions are applicable ....
>
> " 10. (1) Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child .... and any person so served has the right to be present at the hearing.
>
> " 12. (1) The trials of children shall take place without publicity and separately and apart from the trials of other accused persons....
>
> (3) No report of a delinquency committed, or said to have been committed, by a child, or of .... (any proceeding or action under the Act involving a child) .... in which the identity of

the child is .... (in any way) .... indicated, shall without the special leave of the Court, be published in any newspaper or other publication.

" 17. (1) Proceedings under this Act with respect to a child, including the trial and disposition of the case, may be as informal as the circumstances will permit, consistently with a due regard for a proper administration of justice.

(2) No adjudication or other action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of a case was in the best interests of the child."

239. In the following paragraphs we examine: (a) the question of publicity in relation to juvenile offenders and the matter of private hearing in the juvenile court; (b) the role of counsel (crown and defence); (c) the question of notice; (d) the conduct of proceedings in juvenile court; and (e) the significance of informality. Before doing so we wish to note our agreement with the essential philosophy expressed in section 17 - that is, that proceedings should be as informal as the circumstances will permit, consistent with a due regard for the proper administration of justice.

Publicity and Private Hearings

240. From time to time suggestions are made that the trials of juveniles should take place in public or that publicity should be given to the names of juvenile offenders and details of their offences. Such proposals are advanced for two quite different reasons. Some persons argue that the fear engendered by public notoriety will serve as a deterrent to the juvenile offender or will make parents more anxious to exert control over their delinquency-prone youngsters. Other persons are concerned about the traditional right to an open and public trial as a guarantee that fair procedures are being followed. We recognize the importances of guarding against abuses in juvenile court proceedings and make a number of suggestions in our Report for dealing with this problem. We affirm, however, the basic philosophy expressed in section 12 of the Act that publicity in regard to the juvenile offender is to be avoided. In support of this position we can do no better than quote the following observations made by Professor Mannheim:

"The fullest publicity for every criminal trial has been one of the basic safeguards of enlightened criminal justice .... On the other hand, it has been recognized ever since the establishment of Juvenile

> Courts that this great principle is not equally suitable for the trial of juveniles. In the first place, the danger of political and social bias which publicity of the trial is intended to guard against does not to the same extent exist in cases of juveniles. Secondly, ... it is obvious that the benefits of publicity, great as they may be, would here be bought at too great a price. If the stigma .... which is the almost inevitable consequence of a public trial is often an undeservedly severe penalty even for the adult offender, in the case of the juvenile delinquent it would mean the most flagrant negation of all those ideals the Juvenile Court stands for. Moreover, the force of imitation being particularly strong in the immature mind, more juveniles are likely to be encouraged than might be deterred by publicizing their own criminal exploits or those of their contemporaries. Juvenile Court Acts everywhere have, therefore, in one way or another restricted the publicity of the trial of juveniles....". (16).

241. Under the Act the ban on identification of the child is addressed to "newspapers and other publications". Doubt has been expressed as to whether this prohibition extends to radio and television. These doubts should be removed and the legislation should indicate clearly that identification of the child through any media whatsoever is prohibited without special leave of the court. We think that the prohibition against identification of a child should extend to any criminal proceedings involving a child where the proceedings arise out of an offence against, or conduct contrary to, decency or morality. This prohibition should apply whether the proceedings are before the juvenile court or an adult court. The young girl ten years of age who is sexually assaulted should not be subjected to the indignity of gross publicity. We would expect that in any such case the mass media would take care not to identify the child. We recommend, however, that they be prohibited from doing so if they be so inclined.

242. Closely related to the question of publicity is the matter of private hearings. One of the purposes of private hearings is, of course, to guard against publicity. It is important to bear in mind, however, that publicity and private hearings raise issues that are by no means identical. Private hearings also serve the independent purpose of ensuring an appropriate atmosphere in the juvenile court. Similarly, the goal of avoiding undesirable publicity may not necessarily require completely private hearings. The question that we have to consider, then, is the extent to which juvenile court hearings should be conducted in private - and, in particular, whether the press should be allowed access to proceedings in the juvenile court.

243. The approach adopted in most American states has been to insist upon a complete exclusion from juvenile court hearings of members of the public other than those having a direct interest in the case, with, at most, a discretion left to the judge to permit the attendance of other persons, including representatives of the press, who have an interest in the work of the court. (17). In recent years this restrictive approach has been relaxed or abandoned in a number of states. On the other hand, in England the position has been that, while the general public are excluded from the juvenile court, bona fide representatives of a newspaper or news agency are entitled to be present. (18). The statute makes it an offence, however, for any newspaper or other news media to "reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person" involved in a proceeding. (19). The law further provides that the judge or the Secretary of State may allow publication of such information "if satisfied that it is in the interests of justice to do so". (20). While the Canadian Act is not explicit, generally speaking it is the American practice that is followed in Canadian juvenile courts. (21).

244. In our view, the English approach is the preferable one. We agree with Wigmore that "no court of justice can habitually afford to conduct its proceedings strictly in private". (22). The traditional function of the press has been to alert the public to improper or undesirable practices. While we have suggested a "public watchdog" role for the juvenile court committee, we doubt that this is a sufficient safeguard. We recommend, therefore, that representatives of the news media should be permitted to attend juvenile court hearings as of right and that, except where expressly prohibited by the judge, they should be permitted to report the evidence adduced at the hearing. We would emphasize that the prohibition against identifying any child before the court, or any child said to have committed an offence, should be retained. This prohibition should be reinforced by an adequate penalty provision in the Act. Moreover, we would also suggest that the number of media representatives should probably be limited to three. Presumably these representatives would be selected by the media themselves, with a final decision left to the judge in the event of disagreement.

245. A further question is whether members of the public should be permitted to attend the proceedings. We think that generally they should not, but that the judge should be authorized to permit any member of the public to attend where he is satisfied that such a person has a bona fide reason to be present. In view of doubts that have been expressed concerning the power of a judge to exclude the general public under existing law, (23), we recommend that the Act be amended to provide specifically that no person shall be present at any hearing of a charge against a child or young person in the juvenile court except: members of the court and necessary court personnel; parties to the case, their counsel and other persons having a direct interest in the proceeding; a maximum of three representatives of the press or other news media; and such other persons having an interest in the work of the court as the court specially

authorizes to be present.

Counsel

246. There is no requirement by law that juvenile court judges be legally trained and, in fact, many do not have this kind of training. Thus the need for every form of assistance to ensure fair procedure and adequate fact-finding should be apparent. While magistrates who try adult offences are similarly not required to have legal training, most do. In any event the magistrate in adult court is ordinarily assisted by a legally trained crown attorney except in cases of a minor nature. In the juvenile court the usual practice is for a police officer, or in some courts a probation officer, to present the case against the child. If there is need for a crown attorney in a magistrate's court there is even more need for a crown attorney, or similar officer, in the juvenile court. Cases that are heard in the juvenile court are, in our view, as important as those heard in the ordinary courts. A finding of delinquency, with all the powers of disposition incidental thereto, is surely as significant, from the point of view of both the child and society, as is, for example, the trial and disposition of a speeding case against an adult. One argument that has been advanced in favour of retaining the present practice of police officers assuming the role of crown attorney is that police officers, at least when they have been specially selected for youth work, are less imbued with the spirit of winning. If the assumption of fact upon which this argument is based is true - although by this time one would have expected the maxim, "The Crown never wins, the Crown never loses", to have been accepted by all crown attorneys - it merely emphasizes the need for strong juvenile court judges who can impress the philosophy of the Act on all persons involved in its operation.

247. Our system of criminal justice assumes an ability on each side - that of the defence as well as of the Crown - to present its case as fully and as forcefully as possible. We have examined the need for a crown attorney in the juvenile court in the preceding paragraph. Our concern now is with the adequacy of the case presented for the child. The Act is generally silent on this matter. In the one place where it does speak it is in serious error. Section 31 provides: "It is the duty of a probation officer to be present in court to represent the interests of the child when the case is heard....". Experience has shown that one person should not be expected to perform inconsistent functions. The probation officer's primary responsibility is to the court, not to the child. In any event, the probation officer is, as we shall show, now so overburdened with work connected with his major responsibility that it is unlikely that he could properly represent the interests of the child. (24). Nor can we expect the juvenile court judge, as a matter of routine, to represent the child's interests. (25). As a general rule we do not expect judges of superior courts to perform this function. It is basic to our system of law that, in any proceeding where a person's liberty or property may be affected, the person is entitled to counsel. The great majority of children who appear in juvenile court are not represented by counsel. It is not clear whether this is because

parents are unaware of the right of the child to have counsel, or cannot afford to retain counsel, or feel that they do not need or want legal assistance.

248. We think it important to take note of the fact that there has long been a feeling among many persons involved in juvenile court work that lawyers are unnecessary in the juvenile court, and perhaps even undesirable. As one writer has explained, "since at the heart of the juvenile court movement was the vision of the court as a benevolent parent dealing with his erring child, the view was widely held that legal counsel could serve little function .... other than to obstruct and delay the providing of necessary diagnosis and treatment by pettifoggery and technical obstructionism." (26). This attitude has led a number of juvenile courts in the United States actively to discourage the presence of counsel. Parents have sometimes been told that hiring a lawyer is a needless expense and will make no difference in the ultimate outcome of the case. The Governor's Special Study Commission on Juvenile Justice in California concluded that "the adverse views held by some judges regarding the role of an attorney in juvenile court proceedings makes it difficult for counsel to adequately represent their clients." (27). Lawyers, on their part, have often found juvenile court practice confusing and frustrating. Because of the tendency for the traditional adversary techniques of the lawyer to come into apparent conflict with the social objectives of the juvenile court process, suggestions have been made that practice in the juvenile court requires a new concept of proper legal representation. Italian law provides, for example, that the defence of a juvenile can only be undertaken by counsel selected from a panel of lawyers chosen on the basis of their special training and experience in social welfare work. (28). This point will be the subject of further comment below. It is perhaps worth adding here, however, that attitudes towards the lawyer in juvenile court may well be changing. An article reporting on the 1962 revision of family court legislation in New York State contains the following observation: "A significant....recent development has been the repudiation of the thinking that had discouraged the participation of lawyers in the 'social' courts and the mounting demand for legal representation of children in these courts. Of particular interest is the fact that this demand has not originated with the bar but with various social agencies, which have concluded that juvenile and family courts can fulfill their expectations only if a proper balance of legal and social objectives is maintained." (29).

249. To what extent the attitude discussed above exists in Canada is difficult to assess. Certainly it was expressed to the Committee on a number of occasions. It does appear, in any event, that the procedure followed in many juvenile courts often has the effect of persuading parents to waive their right to counsel. The usual practice is for the judge to advise parents of this right when they appear in court. They are informed, however, that if they wish to have counsel it will be necessary to adjourn the hearing. Rather than risk added inconvenience or the loss of another day's work the parents declare to the court that the assistance of counsel is not required. We think that this result is unfortunate and that it can be avoided. We suggest that the notice to the

parent informing him of his child's appearance in court should contain a statement that the child is entitled to be represented by counsel.

250. The problem of the indigent defendant is one that has not been solved in our legal system. The proposition that every person, regardless of his means, has the right to assistance of counsel is not borne out in practice. We share the opinion of those who say that failure to provide counsel to indigent defendants is a violation of basic human rights. In Canada there has been just such a failure. Legal aid schemes - not even adequate in relation to adult offenders - do not ordinarily extend to proceedings in juvenile court. We note that in a number of European countries free legal aid is available in juvenile court. (30). Indeed, in three countries - France, Italy and the Netherlands - a juvenile must be represented by counsel. (31). An impressive recent development is the establishment of a system of "law guardians" in the State of New York pursuant to its new Family Court Act. The Act makes it the duty of the court to advise a juvenile of his right to retain counsel and of his right to have a law guardian provided at public expense if he is unable to obtain a lawyer "by reason of inability to pay or other circumstances." (32). We recommend that the New York system be studied with a view to its introduction into Canada.

251. The "law guardian" system may well be instructive in still another respect. It has often been emphasized in the literature of the juvenile court movement that proper and effective representation in the court requires, at the very least, that a lawyer understand the objectives of the juvenile court process and be familiar with the social techniques employed in dealing with children and young persons. The Family Court Act makes no attempt to define the role of the law guardian. The consensus of commentators seems to be, however, that the use of the term "law guardian" and the methods of appointment outlined in the Act indicate an intention on the part of the legislature to encourage the development of a distinctive approach to the matter of legal representation in the juvenile courts. (33). One legal writer, for example, has made the following suggestions concerning the role of the law guardian:

> " The lawyer in the Family Court, no less than in any other court, must stand as the ardent defender of his client's .... legal rights. He should bring to this task the usual tools of the advocate - familiarity with the applicable law, the ability to make a thorough investigation and logical presentation of the pertinent facts and the faculty for forceful and persuasive exposition of his client's position .... The fact that the Family Court is a court, however, should not obscure the fact that it is a court with social objectives and social techniques .... Conscientious counsel will have to exercise intelligent discrimination

in the use of tactics learned in other courts.

> Proper implementation of the law guardian concept would give substance to the oft-repeated .... description of the lawyer as an 'officer of the court' .... As an officer of the court a lawyer in the Family Court must assume the duty of interpreting the court and its objectives to both child and parent, of preventing misrepresentation and perjury in the presentation of facts, of disclosing to the court all facts in his possession which bear upon a proper disposition of the matter, subject only to the restrictions imposed by the confidentiality of the lawyer-client relationship, of working in close cooperation with the probation service of the court to reach a proper disposition and, where necessary, to help in getting a child or family to accept such disposition.
>
> In large measure the picture of the court which will be retained by the child will be conditioned by his counsel's attitude toward the court. If counsel condones the 'beat the rap' approach and substitutes deception for honest but firm concern for the protection of his client's rights, he will .... be doing .... a disservice."(34).

252. Because of the importance of the role of counsel in the juvenile court - and also because this is a matter that has been to some extent controversial - we have seen fit to quote extensively from periodical literature. In doing so our purpose has been to call attention to the problem. We make no specific suggestions concerning what is desirable in the way of an adequate concept of proper legal representation in Canadian juvenile courts. It does appear to us, however, that the question merits the study of the legal profession. We recommend, therefore, that any examination of the law guardian system in New York State be conducted with this further aspect of the problem of legal representation in mind.

Notice: Duty to Attend Proceedings

253. The present Act requires that "due notice of the hearing of any charge shall be served on the parent or parents or the guardian of the child..". The matter of notice raises several problems. Should there be an obligation to notify the parent when the child is taken into detention? Or when waiver to the adult court is contemplated? Upon whom should the obligation rest? What is "due notice"? We see no reason why there should not be an obligation to inform parents that their child is being detained. Our understanding is that

the workers in detention facilities ordinarily do notify the parent. We suggest that they should be legally required to do so. We go further: we recommend that the parents be notified of every step in the proceedings that may affect the child's liberty. This means that if the court is contemplating waiver of the case to adult court it should notify the parent even though the parent has already disregarded other notices. (35). The duty to give notice should be impressed upon all officials whose powers are given to them by the Act. Thus in the case of a child held in detention, the person responsible for the operation of the detention facilities should be under a duty to notify the parents that their child is detained. In other situations in which notice is relevant the obligation of ensuring that notice is given should rest on the judge.

254. The type of notice that is required has been the source of some uncertainty in juvenile court practice. Juvenile courts in some places, it seems, have been content with giving oral notice, although there are decisions in which the courts have held that the word "served" used in section 10 indicates that written notice is required. (36). The point is an important one because failure to give proper notice deprives a court of jurisdiction to proceed with the hearing of any charge against a child. (37). A further problem is that the Act makes no provision for substituted service, or for dispensing with service in appropriate cases. It not infrequently happens, for example, that a parent lives in a remote part of the province or in another jurisdiction altogether. In the circumstances, another relative or friend may be quite capable of protecting the interests of the child. Nevertheless, section 10 appears to state in unqualified terms that, if the residence of the parent is known, the court may not proceed with a hearing until notice is served on the parent. Obviously there will sometimes be difficulties in confirming that the notice has been received. In some cases, we are told, children have been held in detention for a period of weeks pending a hearing solely because of delays in effecting service. We agree, therefore, with those who have recommended that the procedure for giving notice to parents or guardians should be clarified. We think that the Act should make it clear that when the notice relates to an actual hearing in the juvenile court, whether for the purpose of dealing with a charge or for considering waiver of jurisdiction, the notice should be in writing. There have been suggestions that standard forms should be provided in the Act as a guide to judges. We think this would be desirable, and that a standard form of notice should be included among such forms. We suggest also that a judge should be authorized under the Act to permit substituted service of notice where necessary, or to order in certain specified situations that notice be served on some other suitable adult relative or adviser who would be entitled to appear at the hearing on the child's behalf.

255. In the present state of the law there is no duty on parents to be present at proceedings involving their child. As the Ingleby Committee observed: "It is important that parents should appreciate their responsibilities towards their children and one way to bring that home is to require their

attendance at court when their child's case is being heard." (38). We have been told of juvenile court judges whose strong feelings on this point have led them to subpoena parents to ensure their presence. Despite the worthy motive that has inspired such action, it seems to us that this is a misuse of the court's process. We do think, however, that parents should ordinarily be required to attend a juvenile court hearing. Moreover, we agree with the observation of one noted author that "special efforts should be made to facilitate the attendance of the father of the juvenile who at present too often remains an unknown figure....".(39).

256. The only objections that can be raised against such a requirement are that it violates the parent's civil liberties and that it may cause hardship by requiring the parent to be absent from work. The civil liberties objections are not overriding considerations in this context. It may be true that the alleged delinquency in the particular case is not related to any parental fault and that to require attendance in the absence of fault, unless one is otherwise a compellable witness, is a dangerous practice. Nevertheless, a parent owes a duty of care to his child. This duty of care in common conscience would require that parents attend court. On balance, we think that the greater good will be served by buttressing the requirements of conscience with the sanctions of law. To avoid the harshness that could result if both parents were invariably required to attend, the court should be given the power to dispense with the attendance of one or both parents in special circumstances.

Conduct of Proceedings

257. The manner in which proceedings against children and young persons should be conducted has long been a problem for juvenile courts both in this country and elsewhere. In England the juvenile court judge has the assistance of The Summary Jurisdiction (Children and Young Persons) Rules, 1933, which set out in some detail the procedure that is to be followed in juvenile court hearings. (40). No similar form of guidance is given to judges in Canada. The Act itself leaves a number of questions unanswered. While Canadian practice has been clarified to some extent by the decisions of appellate courts, it was evident to the Committee that uncertainty in regard to matters of procedure has by no means been dispelled.

258. As we have noted, the Act provides that prosecutions and trials in the juvenile court "shall ..... be governed by the provisions of the Criminal Code relating to summary convictions in so far as such provisions are applicable....". Proceedings are thus commenced by laying an information. In the past there has existed some uncertainty among juvenile court judges concerning the form and contents of an information employed in juvenile court proceedings. Lack of uniformity in practice was the result. We have indicated previously our support for the proposal that a standard set of forms be adopted for use in connection with the Act. We recommend that a standard form of information be included among the forms provided.

259. A problem that was brought to the Committee's attention by a number of judges concerns the matter of arraignment and plea. A juvenile court judge is required, so far as practicable, to follow the procedure set out in section 708 of the Criminal Code. Section 708 directs: "Where the defendant appears the substance of the information shall be stated to him, and he shall be asked .... whether he pleads guilty or not guilty ....". It is incumbent upon any court to ensure that an accused has a full understanding of the offence with which he is charged before being asked to plead. The special obligation of the juvenile court judge is indicated by the English rules, which state that the court "shall explain to the child or young person the substance of the charge in simple language suitable to his age and understanding". (41). There is reason to believe that not all juvenile court judges have been sufficiently conscious of this obligation. More difficult questions arise, however, in connection with the matter of a plea. A plea is a technical concept. (42). For one thing, it involves not simply an admission that a particular act has been committed, but an admission of every essential element of the offence. Moreover, in proceedings involving adults a plea of guilty is sufficient of itself to sustain a conviction without the introduction of evidence, although a court may permit a plea of guilty to be withdrawn at any time before sentence if it appears that the plea has been entered in error. In the case of a juvenile, particularly a young child, it will not always be appropriate to take a formal plea. (43). Doubt has been expressed, for example, as to whether a judge should be permitted to make a finding upon the admission of a juvenile alone. Moreover, in order that younger children will understand what is being asked of them, the court is often forced to use language other than that specified in section 708. Practice in this regard is not uniform, but usually the court will ask "Do you admit the charge?" or "Did you do this?". An affirmative response to such a question, while being an admission of specific conduct, may not necessarily represent an admission of all the elements of the offence charged. Perhaps even more important, the form of question tends to constitute an invitation to the child to make a statement concerning the occurrence itself. Thus the child is sometimes being asked, in effect, to incriminate himself. (44).

260. The question of self-incrimination takes on added importance by reason of the controversy that has surrounded the issue in discussions of juvenile court procedures. An accused may not, of course, be required to give evidence against himself. Many persons associated with the juvenile court movement, however, take the view that a child should not be informed of his privlege not to testify because to do so would tend to detract from the effectiveness of the hearing as part of the treatment process. This attitude is well illustrated by the following comments of a noted American juvenile court judge: "To help the child change his attitude, a confession is a primary prerequisite. Without it the court is aiding the child to build his future on a foundation of falsehood and deceit, instead of on the rock of truth and honesty.... Consequently anything ... that may tend to discourage a child from making a clean breast of it .... must retard, and possibly defeat, the court's efforts to correct the child." (45).

261. In many Canadian juvenile courts the ambiguities in the present procedure for taking a plea tends to disguise the fact that a self-incrimination issue is involved. We recommend that the law be clarified in regard to both the plea procedure and the privilege against self-incrimination. In the following Chapter we suggest changes in the disposition provisions of the Act designed to provide that a finding that the facts alleged against a juvenile have been proved will not lead automatically to a formal adjudication that he is a child or young offender. (46). We think that these changes, which are advanced with several objectives in mind, should introduce more flexibility into this aspect of juvenile court procedure. In regard to the matter of the plea itself, we make no specific recommendation other than to note certain suggestions made by Professor Mannheim as perhaps representing a workable approach. He observes: "As provided in the English .... Rules .... 'the Court shall explain to the child or young person the substance of the charge in simple language suitable to his age and understanding', and then ask him 'whether he admits the charge', 'charge' meaning, however, only the facts, not their legal implications. This .... should, at the same time, be an encouragement to the juvenile 'to tell his story', though it should be made clear to him that he is not obliged to say anything. The juvenile's admission should serve not as the legal basis for the subsequent proceedings but only as a guide as to how the further course of the trial might be best arranged. The hearing on further evidence should not be regarded as unnecessary merely because of an 'admission of the charge' ....". (47).

262. Still other procedural problems arise by reason of the special nature of a hearing in the juvenile court. One problem, for example, concerns the traditional right of confrontation. It has been considered a basic principle of Anglo-American criminal procedure that the entire trial should take place in the presence of the accused. Should the juvenile court have the power, as some have suggested, to exclude a child from a hearing when evidence is being received that, in the view of the court, is not fit for the child to hear or may damage the child's confidence in his parents? (48). And again, there are difficulties connected with a system of cross-examination in proceedings where children are involved. This point is dealt with specifically in the English rules which state: "If in any case where the child or young person, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child or young person and may for this purpose question the child or young person in order to bring out or clear up any point arising out of any such assertions." (49). To cite yet another example, the goal of informality in the juvenile court has led some courts to question witnesses without administering an oath. Our purpose in raising these various questions is to indicate the need, as we see it, to provide more adequate guidance to juvenile court judges on matters of procedure than they now receive. We recommend that appropriate steps be taken to this end.

263. Another problem that has caused some difficulty in juvenile court practice concerns the manner in which the age of a juvenile before the court is established. In order to acquire jurisdiction, the judge must, in clear terms, make a finding that a young person is "apparently or actually" under the juvenile age. From time to time a finding of delinquency is set aside because the evidence accepted in proof of age was insufficient. (50). It may be useful to record here the two principal suggestions for amendment that have been advanced. One proposal is that the Act should be amended to permit a judge to determine, in his discretion, the age of the child by his own observation alone, unless it is shown by evidence that the child is in fact over that age. Another proposal is that the production of an official birth certificate purporting to be in the name of the juvenile should be received as prima facie evidence of the age of the child or young person before the court, thus dispensing with the need for evidence to show that the juvenile is the one mentioned in the birth certificate. We content ourselves here with recommending that any revision of the Act make adequate provision for a clear and simple method of proving the age of a child or young person before the court.

264. One other matter relating to the conduct of proceedings in the juvenile court might be mentioned. We have indicated the importance to the court of having the assistance of crown attorneys and defence counsel. There is one other form of assistance available in the superior courts that is not available in the juvenile court. It is trial by jury. Because the juvenile court was conceived as exercising the "parens patriae" jurisdiction of the chancery court the use of a jury was not considered. Most jurisdictions that have made a searching examination of their juvenile court legislation have seen no need for change in this respect. As we have noted earlier, the English legislation provides for trial by jury for young persons fourteen years of age and older charged with an indictable offence and certain summary offences. However, to exercise this right the young person must submit to the adult court. We have stated that it is our feeling that a young person should be entitled to the benefit of a jury trial and that he should not have to submit to the full rigours of the criminal law to obtain it. Jury trials would certainly be inconvenient in juvenile courts and for that reason we have recommended certain procedures in the "waiver" portion of this Report whereby a young person would be entitled to a jury trial in adult court while remaining subject to the disposition provisions of the juvenile court law. (51).

Informality and Informal Treatment

265. Informality of procedure in the juvenile court is undoubtedly desirable. However, it should not be equated with the absence of the traditional kinds of protection that the rules of criminal procedure are designed to provide. (52). A court is not justified, for example, in basing its judgment on uncorroborated admissions, hearsay evidence or contested assertions in social investigation reports. We have been told of courts that will sometimes arrange for a psychiatric examination of a child charged with an act of delinquency, or

direct that a probation officer conduct an investigation into the child's background, and all of this prior to a determination that the child is, in fact, delinquent. Such practices have no sanction in law. They are, in fact, a clear violation of a child's fundamental civil rights. Until the child is found to have committed the act complained of, the state should have no right to infringe the child's interests in preserving his privacy except in the most urgent cases. (53). A child considered so mentally ill or feeble-minded as to be unable to instruct counsel must be examined by scientific experts. Again, a child held in detention will have to be given a physical examination to ensure that he is not a carrier of contagious diseases. A judge who is contemplating waiver of a case to the adult court is justified in ordering a social investigation of the child, provided that he is satisfied at a hearing that there is a reasonably strong case against the child. However, these are the only situations we can visualize where there is a sound reason to invade the child's right of privacy.

266. The matter of privacy is very much an issue in procedures adopted by some juvenile courts for the informal adjustment of cases. It is not uncommon for juvenile courts to arrange for the preliminary screening of cases through an intake procedure. (54). This intake function is ordinarily the responsibility of a probation officer, acting in accordance with general directions received from the juvenile court judge. Upon referral of a case to the court, the intake officer makes inquiries concerning the nature of the offence and previous official experience with the child or family as a basis for deciding whether court action seems to be required and, if so, whether pursuant to delinquency legislation or legislation relating to children in need of care or protection. In the process of reviewing these cases, many courts undertake to provide what is called a "non-judicial service" of informal adjustment. (55). The object of the service is to make measures of "preventive treatment" available in appropriate cases without the necessity of a formal court hearing. Practice varies from court to court in regard to the action that may be taken. Some courts do no more than attempt to arrange a counselling session, on a completely voluntary basis, with the child and his parents. An advantage of such consultation, for example, is that an experienced probation officer can sometimes identify situations where referral to a social agency would be beneficial. Other courts undertake, with the parents' consent, to provide unofficial supervision of the child by a probation officer. In past years it was not unusual for juvenile courts, more particularly in the United States, to impose measures of compulsory supervision through non-judicial procedures, the threat - actual or implied - of formal court proceedings being used to enlist the co-operation of the child and his parents. While most authorities now agree that informal adjustment is justified only if it is accepted voluntarily by the family and child concerned, it seems apparent that some juvenile courts still bring heavy pressures to bear in an effort to secure acceptance of the service offered.

267. As the publication Standards for Specialized Courts Dealing with Children points out, the "handling of cases in an unofficial manner, ... including the use of 'unofficial' probation is a practice about which considerable

difference of opinion exists, even among judges and other court personnel." (56). This difference of opinion was evident to our Committee. It is clear that serious abuses have occurred through the use of non-judicial procedures. In some American courts children have been kept under supervision for periods up to three years without any judicial determination that an act of delinquency was committed. Courts have used the threat of possible court proceedings to insist upon making a full social investigation prior to a hearing, sometimes even in the face of a denial of the charge by the child. There is little information available concerning non-judicial practices of court personnel in Canada. We have been told of abuses. Such procedures lend themselves to abuse. Whether or not the co-operation of parents is truly voluntary, for example, may often require a very subtle determination indeed, having regard to the suggestion of coercion that may seem to be implied in any communication received from a court official.

268. The arguments in favour of permitting some kind of informal adjustment of cases are several. Some offences brought to the attention of the court are too trivial to warrant any action other than a warning not to engage in further misconduct. There are situations, it is said, that merely require advice or direction rather than the disciplinary intervention of the court, and others in which favourable home conditions and responsible parents augur well for favourable results without the formality of a court hearing and adjudication of delinquency. Still another argument that has been advanced is stated in one submission as follows: "When all complaints - even very minor ones - must be dealt with by formal written complaint and formal court hearing, there is a tendency for a large proportion of such minor complaints to be handled very summarily .... by the authorities at the very point where preventive treatment is possible and can be most effective." (57). Added to these arguments is the suggestion that informal adjustment serves to conserve the time of the court, thus enabling the court to give more attention to serious cases than would be possible if it were required to deal with a large number of very minor offences.

269. We think that, on balance, the advantage lies with permitting informal adjustment to a limited degree, but subject to precise legal controls. As the Probation Officers' Association of Ontario has observed, "a substantial proportion of all juvenile complaints - at least in certain areas - are now dealt with informally in this manner, but completely without statutory authorization or direction." (58). It is evident, therefore, that such non-judicial practices should not be ignored. It seems to us to be the wise plan to regularize non-judicial practices - stipulating, in the process, that they must meet certain defined standards of performance - rather than to attempt to terminate informal adjustment by express legislative prohibition. We note that this is the solution that has been adopted in the new Family Court Act of New York which, as one author states, "is unique in the fact that not only does it make provision in a general way for preliminary procedure or intake but it describes in considerable detail the procedural requirements that must be

observed." (59). Specifically, the New York statute provides that rules of court may authorize the probation service to undertake preliminary procedures, subject to the safeguard that "the probation service may not prevent any person who wishes to file a petition .... from having access to the court for that purpose." (60). The statute also indicates that the probation service may not compel any person to appear at a conference, produce any papers or visit any place. It seems to us that an approach along these lines represents an acceptable solution to the problems presented by informal adjustment. We suggest that the law should provide that informal adjustment is permitted only where the police investigation indicates clearly that an offence has been committed, where the substance of the complaint is admitted by the child, and where the express consent of the parents is obtained. We also recommend that efforts to effect informal adjustment should be limited by law to a period of not more than two months.

Rules of Court

270. We have made reference earlier in our Report to the matter of rules of court. (61). Specifically, we suggested: that a judge should be authorized to make special arrangements, through rules of court, for dealing with cases of a routine nature; and that procedures for dealing with very minor infractions of the law outside of the court should be subject to judicial superintendence and control in the same manner.

271. There are a number of areas of activity that require control and direction from the juvenile court judge. It may be necessary to issue policy directives concerning the intake procedures that are to be followed in the court and the criteria that are to govern case selection or screening through intake. Similarly, policies in regard to detention, informal adjustment, court procedure, after-care supervision and the like may require definition by the judge. In a few courts the judge is also the administrator of extensive clinical or other social services. (62). It may often be desirable to set out the various policy decisions of the court in writing in order to ensure continuity in court practices. In this way decisions on procedure and policy are available to court personnel, new appointees, and also other persons who work with the court, such as police officers and representatives of child welfare agencies. For this reason many juvenile court statutes make provision for the issuance of rules of court. The Juvenile Court Act of the District of Columbia, for example, provides: "The court shall have the power .... to frame and publish rules and regulate the procedure for cases arising within the provisions .... (relating to juvenile delinquency) .... and for the conduct of its officers and employees.. ..". (63).

272. We recommend, therefore, that the Act be amended to include a provision authorizing the issuance of rules of court in respect of matters that fall within the ambit of federal jurisdiction - that is, matters relating essentially to the procedures that may be followed in dealing with a juvenile

apprehended or charged in connection with an offence. We would further suggest that any rules so issued should be subject to the approval of the Attorney General or other appropriate provincial officer. This should help to guard against undesirable practices by juvenile courts, and also to encourage uniformity of practice throughout the province. Rules of court relating to other matters of concern to the juvenile court could be authorized only pursuant to provincial legislation.

Appeals

273. Representations have been made to us that the present appeal procedure established by the Act is unduly restrictive. We agree. Section 37 declares:

> " 37 (1) A Supreme Court judge may, in his discretion, on special grounds, grant special leave to appeal from any decision of the Juvenile Court or a magistrate; in any case where such leave is granted .... the provisions of the Criminal Code relating to appeals from conviction on indictment mutatis mutandis apply to such appeal, save that the appeal shall be to a Supreme Court judge instead of to the Court of Appeal, with a further right of appeal to the Court of Appeal by special leave of that Court.
>
> (2) No leave to appeal shall be granted .... unless the judge or court granting such leave considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that such leave be granted."

274. A number of authorities have argued that appeals from the juvenile court should be as few as possible. (64). The reasoning is that, in the case of juvenile offenders, any measures of a corrective nature ordered by the court should be commenced almost immediately because, as experts on child psychology have emphasized, such measures will tend to lose their effect if there is delay in carrying them out. In addition, it is thought to be generally undesirable for court proceedings involving children to be unduly protracted. The present appeal provisions of the Act reflect an intention to keep appeals to a minimum. Nevertheless, the restrictive character of the existing provisions has caused much concern, having regard in particular, as one submission notes, to "the vast powers held by the presiding officers of such courts and the fact that these courts are closed to the public." (65). We note also that section 37 has been interpreted to mean that if the judge of the Supreme Court refuses

leave to appeal from a decision of the juvenile court there is no jurisdiction in the Court of Appeal even to consider an application for leave to appeal from the finding of the judge of the Supreme Court, whereas if the Supreme Court judge grants leave to appeal and then dismisses the appeal on its merits the Court of Appeal does have jurisdiction to entertain an application for leave to appeal. (66). This result we regard as unfortunate. It constitutes, in our view, a further reason for altering the appeal provisions.

275. We recommend that both the Crown and the accused be given a direct right of appeal to the Court of Appeal on any ground of appeal that involves a question of law alone. There should also be a right to appeal with leave of the Court of Appeal on any other ground that appears to that Court to be sufficient. We would hope that the Court of Appeal would arrange to hear appeals from juvenile court decisions as quickly as possible. Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the province. It would help to ensure that the juvenile court performs its proper role: the administration of a system of individualized justice according to law.

Footnotes

1. Bloch and Flynn, The Juvenile Offender in America Today (1956), p.328.

2. Province of Nova Scotia.

3. International Review of Criminal Policy (No.5, 1954), p.24. For a useful discussion of the composition of the juvenile court, including the approach that has been adopted in some Continental countries, see Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p.22, at pp.44-47. See also Nunberg, "Problems in the Structure of the Juvenile Court," (1958) 49 Journal of Criminal Law, Criminology and Police Science 500, at pp. 503-505 and 509-511. While a review of the references cited will suggest entirely different approaches to the problem of securing a suitable combination of background and qualities on the juvenile court bench, we doubt that in the Canadian context any such substantial change in the way in which the juvenile court is constituted would present a practical alternative to the existing system. Accordingly, we have placed the principal emphasis upon proposals designed to improve the present system.

4. So far as we are aware there is no actual statistical data on this point. However, it is well known that most children

admit the charges against them. In Scotland, it has been estimated "that in almost 95 per cent of the cases there is no dispute as to the facts alleged...". Kilbrandon Committee, para. 73, p.37. One American commentator reports: "In one court a count of three thousand consecutive cases revealed that only five children had wholly denied involvement in the named offences." Alexander, "Constitutional Rights in Juvenile Court," in Justice for the Child (Rosenheim ed., 1962), p.82, at p.87. Some question has been raised, however, as to whether children and young persons charged actually agree with the allegations against them in such a large percentage of cases. See Handler, "The Juvenile Court and the Adversary System: Problems of Function and Form," (1965) Wisconsin Law Review 7, at pp. 26-28.

5. From time to time appellate courts have called attention to the dangers inherent in leaving the conduct of juvenile court proceedings to juvenile court judges untrained in the law. See for example, Rex v. H., (1931) 2 W.W.R. 917; Rex v. Tillitson, (1947) 2 W.W.R. 232, 89 C.C.C. 389; Regina v. Hankins, (1955) 14 W.W.R. (N.S.) 478, 111 C.C.C. 387. American experience would seem to suggest, however, that the appointment of persons with a legal background to the juvenile court bench is not of itself a complete answer to the problem of ensuring procedural regularity in juvenile court proceedings. Moreover, the Committee has been impressed by the obvious competence of some of the juvenile court judges in Canada who are not lawyers. For these reasons, we doubt that formal legal training need be considered a prerequisite to an appointment as juvenile court judge. We think that the path of reform lies in the direction of improved methods of selecting and training juvenile court judges generally, and in providing adequate assistance to the individual juvenile court judge in the discharge of his duties.

6. See supra paras. 168-170.

7. See, for example, Bums, "A Training Course for Juvenile Court Judges," (1962) 8 Crime and Delinquency 182.

8. Juvenile Delinquents Act, ss. 7 and 28 (3).

9. Report of the Standing Committee on Probation, Association of Juvenile and Family Court Judges of Ontario (Sept., 1962, as revised March, 1962), p.13.

10. Writing in 1941, the draftsman of the original Juvenile Delinquents

Act observed: "It was thought by those who originally framed the Act that a Juvenile Court Committee would prove extremely useful, if not indeed actually necessary to the proper functioning of the court. Nor was this opinion based solely on theory. At that time such committees were said to be in successful operation in many places in the United States, and a very active one, established in 1906, was actually functioning most successfully in connection with the Ottawa Children's Court. This latter committee continued to do useful work for several years after the passing of the Act, but was later discontinued. Unfortunately, the idea of a Juvenile Court committee did not eventually prove popular and few of them are now existing in Canada. This result appears to have been chiefly due to a tendency to friction between the judge and the committee." Scott, The Juvenile Court in Law (3rd ed., 1941), p. 26.

11. See supra para. 228.

12. See Scott, op. cit. supra note 10, at p. 25; Report of the Governor's Special Study Commission on Juvenile Justice, (California, Part 11, 1960), p.52.

13. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.5.

14. Id., at pp. 5-6.

15. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1, 1960), p.50.

16. Mannheim, "The Procedure of the Juvenile Court," in Lawless Youth, op. cit. supra note 3, p.51, at pp. 66-67.

17. See generally Geis, "Publicity and Juvenile Court Proceedings," (1958) 30 Rocky Mountain Law Review 1.

18. Children and Young Persons Act, 1933, 23 Geo. 5, c.12, s. 47. A comment on the English law appears in Cavenagh, The Child and The Court (1959), pp. 62-64.

19. Children and Young Persons Act, 1933, s. 49.

20. Children and Young Persons Act, 1933, s. 49.

21. The provisions of the Act were considered in Rex v. H. and H., (1947) 1 W.W.R. 49, at pp. 54-56, 88 C.C.C. 8, at pp.13-16.

22. 6 Wigmore, Evidence (3rd ed., 1940), p. 340.

23. See Regina v. Gerald X, (1958) 25 W.W.R. (N.S.) 97, per Adamson, C.J.M., at pp. 112-113, 23 C.R. 100, at p. 112.

24. See infra paras. 302 - 304.

25. In a study conducted into the operation of the Children's Courts in New York City, the need for more adequate representation of children than was being provided by the judge or by probation officers appointed by the court to act was pointed out in very strong terms. See Schinitsky, "The Role of the Lawyer in Children's Court," (1962) 17 The Record of the Association of the Bar of the City of New York 10, at pp. 17-23. The establishment of a system of "law guardians" in New York, was, in part, a response to this study. One commentator has given the following reasons for insisting upon the essential elements of an adversary procedure in juvenile court hearings. "The nonadversary, solicitous procedure seriously underestimates the extraordinary task placed upon the fact-finder adjudicator .... What is needed .... for the accurate determination of delinquent behavior is a clear separation of fact-finding roles. A clear separation is needed because as a realistic matter the drive of the single fact-finder would be to try to label the case, to try to fit it into a familiar pattern in an effort to order the mass of facts around a tentative theory ....'What starts as a preliminary diagnosis designed to direct inquiry tends, quickly and imperceptibly, to become a fixed conclusion, as all that confirms the diagnosis makes a strong imprint on the mind, while all that runs counter to it is received with diverted attention'. The existence and force of this drive tends to cast the facts as the single fact-finder would have it, which could differ from what the facts are. .... It makes little difference whether effective decision-making has shifted from the judge to the probation staff or the police. The judge, of course, has less opportunity to perform the required fact-finding function, but the inherent vice of the nonadversary system does not lie in the lack of opportunity. It lies in the fact that psychologically the single person attempting three roles will be less inclined to take the opportunity ....". Handler, supra note 4, at pp. 29-31.

26. Isaacs, "The Role of the Lawyer in Representing Minors in the New Family Court," (1963) 12 Buffalo Law Review 501, at p. 503.

27. Report of the Governor's Special Study Commission on Juvenile Justice, Part II, at p. 13.

28. International Review of Criminal Policy (No. 5, 1954), p. 26.

29. Isaacs, supra note 26, at pp. 504-505.

30. International Review of Criminal Policy (No. 5, 1954), p. 26.

31. Ibid.

32. New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended, art. 249.

33. See, for example, Isaacs, supra note 26; Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New York Family Court," (1963) 48 Cornell Law Quatterly 499; Donahue, "New York Family Court Act: Article 7 - Its Philosophy and Aim," (1964) 15 Syracuse Law Review 679, at p. 685. See also Handler, supra note 4, at pp. 36-39.

34. Isaacs, supra note 26, at pp. 506-507.

35. The Act requires only that "due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child ....". Juvenile Delinquents Act, s. 10(1). There is no formal requirement that notice be served on parents in connection with a hearing on an application for waiver of jurisdiction. See Regina v. Pacquin and De Tonnacourt, (1955) 15 W.W.R. (N.S.) 224, at p. 227.

36. See, for example, Re Wasson, (1940) 14 M.P.R. 405, at p. 408, 73 C.C.C. 227, at p. 229 (N.S. Sup. Ct. in banco).

37. Smith v. The Queen (1959) S.C.R. 638.

38. Ingleby Committee, para 200, p. 65.

39. Mannheim, supra note 16, at p. 71.

40. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, are set out in Clarke Hall and Morrison, Law Relating to Children and Young Persons (4th ed., 1951), p. 208 et. seq.

41. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 6.

42. See generally 10 Halsbury, Laws of England (3rd ed., 1955), pp. 407-408; Orfield, Criminal Procedure from Arrest to Appeal (1947), c. VI.

43. Rex v. H. and H., (1947) 1 W.W.R. 49, at pp. 57-58, 88 C.C.C.8, at pp. 17-18.

44. This, for example, appears to have been the construction that members of the Supreme Court of Canada placed on the juvenile court judge's question to the accused child in Smith v. The Queen, (1959) S.C.R. 638, at pp. 649 and 650-651.

45. Alexander, supra note 4, at p. 88.

46. See infra paras. 286-292.

47. Mannheim, supra note 16, at pp. 71-72.

48. See U.S. Dept. of Health, Education and Welfare, Children's Bureau, Standards for Specialized Courts Dealing with Children (1954), pp. 57-58; Mannheim, supra note 16, at pp. 73-74. Whether or not there is a right of confrontation in juvenile court proceedings is a question that has been much debated in the United States. See generally Antieau, "Constitutional Rights in Juvenile Courts," (1961) 46 Cornell Law Quarterly 387, at pp. 401-403. The issue also arises in connection with the reception by the court of presentence reports and other information relevant to disposition. This latter question is discussed in Chapter IX.

49. The Summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 9.

50. See, for example, Rex v. Crossley, (1950) 2 W.W.R. 768, 98 C.C.C. 160; Regina v. Harford, (1964) 48 W.W.R. (N.S.) 445, 43 C.R. 415. The problem of adequate proof of age also arises in cases where a child is the victim of the offence and it is necessary to establish the age of the child in proceedings against an adult. See Rex v. Ivall, (1949) 4 D.L.R. 144, 94 CCC. 388 (Ont. C.A.); Rex v. Denton, (1950) 2 W.W.R. 315, 98 C.C.C. 391.

51. See supra paras. 168 - 171.

52. This, in fact, is the view that the courts have taken in response to arguments based upon the provision in section 17 of the Act to the effect that "No adjudication or other

action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of the case was in the best interests of the child." See Smith v. The Queen, (1959) S.C.R. 638, at p. 650; Rex v. Crossley, (1950) 2 W.W.R. 768, at p. 769, 98 C.C.C. 160, at p. 161; Re Wasson, (1940) 14 M.P.R. 405, at p. 409, 73 C.C.C. 227, at p. 230 (N.S. Sup. Ct. in banco).

53. The importance of guarding a child and his family against unnecessary invasions of privacy through the juvenile court process has gained increasing recognition in the United States, where the question has received a great deal of attention. See, for example, Tappan, "Treatment Without Trial," (1946) 24 Social Forces 306; Sheridan, "Double Jeopardy and Waiver in Juvenile Delinquency Proceedings," (1959) 23 Federal Probation 43, at p. 46 and nn. 22 and 23. On the matter of pre-trial enquiries, see also Mannheim, supra note 16, at pp. 61-62.

54. See generally, Standards for Specialized Courts Dealing with Children, op. cit. supra note 48, pp. 36-45; National Probation and Parole Association, Advisory Council of Judges, Guides for Juvenile Court Judges (1957), c. VI; Wallace and Brennan, "Intake and the Family Court," (1963) 12 Buffalo Law Review 442. A description that has been given of the intake procedure in the Vancouver Juvenile Court is set out as Appendix "E" to this Report.

55. Wallace and Brennan, supra note 54, at p. 446.

56. Standards for Specialized Courts Dealing with Children, op. cit. supra note 48, at p. 43. Some of the objections to these non-judicial procedures are discussed in Tappan, "Unofficial Delinquency," (1950) 29 Nebraska Law Review 547.

57. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p. 6.

58. Ibid.

59. Wallace and Brennan, supra note 54, at pp. 446-447.

60. New York Family Court Act, art. 333(b).

61. See supra paras. 154 and 156.

62. For a discussion of this aspect of the juvenile court judge's

function, see Keve, "Administration of Juvenile Court Services," in Justice for the Child, op. cit. supra note 4, p. 172.

63. District of Columbia Code, 1951, art. 11-930.

64. See, for example, Mannheim, supra note 16, at p. 77; Pound, "The Juvenile Court in the Service State," Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p. 21, at p. 38. There have also been suggestions for special procedures for appeals in juvenile cases. One such suggestion, for example, is for the establishment of a Court of Juvenile Appeals, consisting of a Board of Juvenile Court Judges sitting en banc. See Nunberg, supra note 3, at p. 511 and n. 64. In the context of the Canadian juvenile court system, however, we think it desirable that appeal procedures should parallel those that are established for review in criminal cases.

65. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p. 7.

66. Regina v. Moroz, (1964) 45 W.W.R. (N.S.) 385, 2 C.C.C. 138 (Man. C.A.).

CHAPTER IX

TREATMENT SUBSEQUENT TO JUDICIAL DETERMINATION OF DELINQUENCY

Introduction

276. In beginning this Chapter we think it important to emphasize again the implications of the juvenile court concept. What is a juvenile court? Of the many answers that have been given to this question we need quote but one. A leading criminologist in England has defined a juvenile court in the following manner:

> " Leaving aside all particular forms of organization and modes of procedure, we may characterize a Juvenile Court by three essentials: First, it is a court set up to deal with juveniles within certain age limits, deliberately excluded from the legal machinery provided for adults. Secondly, it has at its disposal a flexible system of educational and preventive measures intended primarily to be applied with a view to the juvenile's rehabilitation. And thirdly, provisions have been made to render accessible to the Court expert advice and experience in order to enable the judge to give his decision with a view to the juvenile's personal needs and social background." (1).

277. We are concerned in this Chapter with the following matters: (a) the powers of disposition to be given to the juvenile court; and (b) the resources and techniques that are available to the juvenile court in making a proper disposition of the case. It will be evident from the definition of a juvenile court set out above that, in considering the question of resources, we are dealing with a matter essential to the very implementation of the juvenile court idea itself. Our general conclusions cannot be stated in more appropriate language than that of a judge of the New York State Family Court who has observed:

> " The disposition of children in the Juvenile Term has been described as involving not only self-deception by the judge, but also .... community self-deception, an attitude that tolerates the lack of appropriate services and facilities .... The lack of appropriate services and facilities for delinquent children....has contributed more than any other single factor to negating the purpose of the court. The value of diagnostic

studies and recommendations is too often reduced to a paper recommendation. In shopping for placement, probation officers are forced to lower their sights from what they know a child needs to what they can secure. Their sense of professional responsibility is steadily eroded. The judge, in turn, becomes the ceremonial official who in many cases approves a disposition which he knows is only a dead end for the child. " (2)

Diagnosis and Treatment Plan

278. Under the Act the judge's real difficulty arises when he finds the child before him to be delinquent. The judge's problem then is to determine which of the possible choices of disposition will best meet the circumstances of the case before him. In most cases the facts disclosed in the proceedings to this stage will be an insufficient basis upon which to make a sound decision concerning the way to deal with the child. The court can obtain the necessary additional knowledge of the child by various means. It can order a pre-sentence report or a psychological or psychiatric investigation and, if necessary, have the child held in detention pending investigation.

Pre-sentence Reports

279. The preparation of adequate pre-sentence reports takes time. It is clearly not the proper function of the judge to prepare them. The only person mentioned in the Act as having anything like this responsibility is the probation officer. In another section of our Report we examine the role and structure of probation services. At this point we merely note that probation staffs generally are carrying caseloads so high that often the pre-sentence reports presented to the court are no more than cursory in nature. In some areas no probation officer is available to assist the court. In such circumstances it is difficult to make a fair appraisal of the suggestion, made by many, that a pre-sentence report should be mandatory in every case. Nevertheless we recommend that, at the very least, no judge should be authorized to commit a child to an institution or to authorize his removal from the home in any way without first having considered a pre-sentence report in respect of that child. (3).

Psychological and Psychiatric Investigation

280. In some cases the investigations incidental to the pre-sentence report will disclose factors indicating the need for an intensive appraisal of the child's intelligence and personality. Occasionally the act committed by the child - arson or sexual assault, for example - may show the same need even without a pre-sentence report. Although the need for this intensive psychological and psychiatric appraisal of the child may be evident, (4), the problem is that in Canada we lack the personnel and facilities to provide the service. Very few

courts have readily available the necessary psychologists and psychiatrists. Only a few have diagnostic clinics attached to them. Others must rely on services provided by agencies such as mental health clinics. Unfortunately these clinics are already overburdened. The waiting lists are extremely long, although it should be noted that the clinics generally attempt to give priority to juvenile court cases. The problem here is not solely one of financing. Canada just does not have enough psychologists and psychiatrists, nor is there any indication that it will have a sufficient number in the reasonably near future. Most psychiatrists are in private practice and, accordingly, are not usually available to serve the needs of the juvenile court. We have no solution to the problem, which is urgent even in the metropolitan areas of our country. In sparsely populated regions the problem may well be insoluble, except for temporary or occasional assistance of psychiatrists from the nearest community mental health clinic or mental hospital.

Confidentiality

281. The problem of the confidentiality of "background" information has troubled us, as it has troubled every group that has studied the problem. (5). The dilemma is this: if the background information - the child's history, attitude, family relationships, and the like - is not made available to the child, then the court, in disposing of the case, may be acting on false or incomplete reports. There is the danger that the court will then make a disposition that is felt to be unjust by the child or his parents, or indeed, by the public. On the other hand, probation officers, social service agencies, psychologists and psychiatrists insist that confidentiality is essential if they are to be able to obtain confidential information from school teachers, neighbours and other sources. Moreover, disclosure of some kinds of information may have harmful effects on the child as, for example, when he discovers that he is illegitimate or that his mother is a prostitute.

282. The New York Family Court Act solves the problem by empowering the court "in its discretion (to) withhold from or disclose in whole or in part to the law guardian, counsel, party in interest, or other appropriate person" this type of information. (6). The procedure in the English juvenile court is quite different The child must "be told the substance of any part of the report bearing on his character or conduct which the court considers material....".(7). The parent must also be told the substance of any material part of the report relating to him.

283. Under both procedures the ultimate protection of the child's interests is the responsibility of the court. The English procedure places heavy demands on the court's time; the New York procedure on the court's skills. We recommend that all reports received by the court should be disclosed to the child's counsel. It will then be counsel's responsibility to decide how much of the information disclosed therein should be revealed to the child or his parents. (8). In exercising his responsibility he will have the great advantage that the child and his parents repose their confidence in him. Where the child is defended by a person

other than legal counsel that person, even if the parent, should be permitted to peruse the reports if he so requests. We think that, ordinarily, the court should direct, in such a case, that the contents of the report are not to be disclosed to the child without express permission of the court. We doubt that adoption of our recommendation will deter the presentation of frank and full reports to the courts.

Detention Facilities and Practices

284. We examined earlier the nature of detention facilities available to the court and detention practices in relation to the problem of ensuring that the child will appear for the hearing. At that point we recommended, in effect, that detention should be used basically only to ensure that the child would appear for the hearing, or to prevent a child who was likely to engage in serious anti-social conduct from so doing. Should detention also be allowed solely for the purpose of assisting the court, after the hearing, to decide on a proper disposition of the case before it? Two considerations are relevant. On the one hand, detention offers an opportunity to observe a child in a setting uncontaminated by the surroundings that may have contributed to the delinquent behaviour. On the other hand it should be noted that some children have been held in detention for as long as three months awaiting a clinical assessment. We do not think that the advantages to the court in learning more, and still more, about the child justify the use of detention for that purpose. Psychological and psychiatric examinations can often be carried out without holding a child in an institution. If it is decided that detention for examination is to be permitted, there should be a limit on the length of time that a child can be held. Our information is that three weeks is ordinarily sufficient for a thorough assessment. If more time is required an application should be made to the court for authority to detain the child for an additional period, not exceeding two weeks. To hold children for longer periods without a final disposition would seem likely to add to the problems already faced by the child.

Powers of Disposition

285. In paragraph 180 we set out the powers of disposition given to the juvenile court pursuant to section 20 of the Act. The various disposition alternatives listed in section 20 are available only after a child is adjudged to be delinquent. Relevant also to an understanding of the juvenile court's powers of disposition is section 16 of the Act, which provides that the court "may postpone or adjourn the hearing of a charge of delinquency for such period or periods as the court may deem advisable, or may postpone or adjourn the hearing sine die." In the paragraphs that follow we examine these disposition alternatives in more detail. Specifically, we are concerned with the following matters: (a) the judicial screen; (b) adjournment sine die; (c) absolute discharge; (d) treatment prior to final disposition; (e) disposal of outstanding charges; (f) the fine; (g) restitution; (h) probation; (i) foster home placement; (j) committal

to a children's aid society; and (k) committal to a training school.

The Judicial Screen

286. Earlier in our Report we analyzed the concepts of delinquency and neglect. (9). We pointed out that the distinction between delinquency and neglect is in some ways an artificial one. Viewed descriptively - that is, in terms of his behavioural problem - the delinquent child is often one who has suffered deprivation not unlike that which characterizes the child who is considered to be neglected. Many children charged with having committed a delinquency could, in fact, have been dealt with as being in "moral danger" or in a state of "neglect", as these terms are defined under the broad provisions of provincial child welfare legislation. It is perhaps worth noting in this connection that the child welfare statutes of most provinces include within the definition of "neglect" circumstances that may not depend at all upon a demonstration of parental fault in the usual sense. The result is, as again we pointed out, that it is frequently a matter of accident whether a child is charged with an offence, and found to be "delinquent", or brought before the court under child welfare legislation and given the label of "neglected child". Our conclusion was, however, that the fact that delinquency and neglect do not, as a descriptive matter, always identify different children is not a justification for abandoning the distinction between these two concepts for legal purposes. What is required, we have suggested, is a means of ensuring that the decision as to how any case proceeds is reached on a rational basis. We indicated that this could be achieved, in part, through the intake procedures of the juvenile court. (10). We further suggested that another way of accomplishing the desired result is to make available to the judge disposition powers sufficiently flexible to enable him, at any stage of a proceeding under the federal Act, to suspend further action and make an order under - and to the extent permitted by - provincial legislation relating to neglect or to the class of children that we have chosen to designate as being "in need of supervision". (11). The term "in need of supervision" applies to the group variously described as incorrigible, unmanageable, or beyond control of a parent or guardian.

287. What would be desirable, in our view, is a legislative scheme along the lines again suggested by the new Family Court Act of New York State. This would involve, not only a separation between the adjudication and disposition stages of a proceeding, but also, in effect, a refinement of the adjudication process as well. (12). The offence and disposition provisions in the Act would be structured in such a way as to provide that a finding that the facts alleged have been proved does not lead automatically to an adjudication that a person is a child or young offender, or even that he has committed a "violation". It forms instead the basis for an investigation by the juvenile court into the circumstances of the case and the background of the offender, and following this, for some further order by the court. This order may be a finding that the person is a child or young offender, or that he has committed

a "violation". Alternatively, where the court deems it expedient not to impose any specific measures against the child, the court would have the power to discharge the offender without entering a formal judgment against him. We deal further with this point later. (13). As still another alternative, it would be open to the court to direct, to the extent and in the manner authorized by provincial statute, that proceedings should be instituted under the appropriate provincial legislation in order that the child may be dealt with as being neglected or "in need of supervision". In the result, the court would be in a position to perform a screening function, even at a late stage in the proceeding, and to decide that the matter is one that should preferably be dealt with as a welfare rather than as a delinquency matter. To what has been said above we would add the observation of Dr. Glanville Williams, that "it is most undesirable that a child should be subjected to two different court proceedings in respect of the same conduct, and .... there is .... need for legislation permitting a court which acquits of crime to make a 'care or protection' order if the facts show that the legal foundation for such an order exists." (14). The need to which Dr. Williams refers is met under the New York statute by a procedure whereby the judge may, on his own motion, substitute for a delinquency petition either a neglect petition or a petition to determine whether the child is one "in need of supervision". (15). We would hope that some similar procedure - one consistent with the rights of all parties affected by the proceedings - could be developed as part of Canadian law.

288. There are certain other advantages to this suggested procedure that are worth noting. We have emphasized that it is improper for a court to arrange a psychiatric examination of a child or to direct that a social investigation be prepared prior to establishing that the offence alleged has been committed, except in certain limited situations that we have mentioned. One reason why the court may wish to conduct inquiries of this kind is to establish whether or not some form of welfare proceeding might be preferable to proceedings under the federal Act. Under the procedure that we propose the court could have the advantage of such investigations before making a final disposition of a case. In the same way, this flexible disposition procedure would serve, as we see it, to remove any remaining need that still exists for the doli incapax rule. The object of the doli incapax rule - we have discussed the rule in paragraphs 117 to 119 - is to ensure that a child is not convicted of an offence where he has not sufficient moral discretion and understanding to appreciate the wrongfulness of his conduct. One of the difficulties with the rule is that it is not clear how the court is to secure the necessary background information upon which to base its judgment without considering matters that are not properly before it until a finding of delinquency has been made. The proposed new procedure would leave it open to the court in any appropriate case, including the kind of situation to which the doli incapax rule is addressed, to make a disposition that does not involve entering an actual judgment against the child.

Adjournment "Sine Die"

289. In 1961 juvenile court judges in Canada adjourned sine die some 1,003 of the 15,024 cases coming before them. Adjournment sine die has two limitations as a disposition device. First of all, it makes no allowance for the case where the court may wish to discharge the offender, even though the case against him is made out. While it was clear to the Committee that some juvenile court judges do discharge offenders in these circumstances, the Act itself does not seem to sanction this practice. A number of judges expressed the opinion that adjournment sine die tends to keep an incident alive in a child's mind and said that for this reason they would actually prefer in many cases to enter an order of dismissal. Secondly, the adjournment sine die device does not, strictly speaking, permit the court to order any kind of treatment. We have been told that it is not uncommon for juvenile court judges to indicate that they are prepared to adjourn a matter sine die, without proceeding to an actual finding of "delinquency", provided that the child and his parents agree to follow a specified course of action, which may include making restitution or accepting the supervision of a probation officer. But again, there is no authority for action of this kind - and, indeed, the dangers of such ad hoc improvisations are apparent. There is, of course, a basic objection to permitting any substantial interference in the life of a child in the absence of a formal adjudication that the child is an offender. Nevertheless, we think that there are cases where treatment or supervision involving interference of a minor character only could usefully be ordered without an actual finding of "delinquency", if it is established that the alleged offence has been committed - and if the court's power is strictly limited by statute. Having regard to these deficiencies of adjournment sine die as a method of disposition, we suggest that new disposition alternatives should be made available to juvenile court judges to permit them to accomplish, with proper legal sanction, the purposes for which the adjournment sine die procedure is, in fact, often being employed at the present time.

Absolute Discharge

290. In many cases the fact of a court appearance itself may be all that is necessary to ensure that a child does not engage in further anti-social conduct. The shock of apprehension and of a formal court proceeding make it clear to the child that society has set limits that must be observed. Where the court is satisfied that the child has learned this lesson, it may wish, in order to minimize the stigma that attaches to proceedings in respect of an offence, to discharge the child without making a specific finding of delinquency. As we have indicated, many courts attempt to accomplish this result at present by means of adjournment sine die. We think that the power to order the discharge of an offender should be granted expressly by the Act and we recommend an amendment to this effect.

291. It is to be observed that the New York Family Court Act carries the principle of "absolute discharge" one step further. The Act provides that before the court may adjudicate a child to be delinquent it must find, in a separate dispositional hearing, that the child "requires supervision, treatment or con-

finement". In the absence of such a finding the petition must be dismissed.(16). The possible implications of this procedure can be seen in the suggestion of one author that the danger of stigma "imposes on the court the responsibility of weighing the advantages of immediate help (under the actual limitations of staff, time and facilities) against the possibilities of ultimate harm in school and the labour market. The court is not free to consider whether the child needs help now but must also consider whether the need is sufficiently pressing to justify the risks of an adjudication." (17). We have considered the problem of stigma previously in this Report and deal with it again in connection with the matter of juvenile court records. (18). It is sufficient to say here that we doubt that the decision on the question of discharging a child should depend upon a weighing of "the advantages of immediate help .... against .... the risks of an adjudication". A child who needs treatment should receive it; the detrimental incidents of a court finding of delinquency should be attacked in a more direct manner. In any event, we think that there are many cases in which it is appropriate for the court to make a finding that a juvenile is a child offender or young offender with a view to the effect that such a finding may have on the juvenile, even if the court decides to suspend final disposition or to order the payment of a fine. We see no advantage in requiring the court to justify this kind of disposition by giving to the word "treatment" a meaning that it should not be called upon to bear. The device adopted in the New York statute represents a new departure in juvenile court procedure and for this reason we have seen fit to call attention to it here. We are not persuaded, however, that it should be introduced into the Canadian Act. Our Act directs that the court shall have reference primarily to the needs of the child. This, in our view, is a sufficient protection of the child's interests.

Treatment Prior to Final Disposition

292. We have suggested that there are circumstances in which treatment or supervision could usefully be ordered without the necessity of a formal adjudication that a child is an offender, provided that such measures constitute no more than a limited interference in the life of the child. Through the years several techniques have been suggested for providing control or supervision over an accused against whom an offence has been proved, while avoiding, at the same time, the stigma of a conviction or finding of delinquency. We note, for example, that the two devices of conditional discharge and probation without conviction were endorsed by the Fauteux Committee in 1956. (19). It seems to us that measures of this kind can be of particular value in dealing with the juvenile offender. In this same connection, it has been brought to our attention that there is a need for some provision in the Act that will permit counselling to be given to a child or young person within a legal framework that is not entirely destructive of the co-operative element that must be present if counselling is to be effective. (20). The legislative technique that commends itself to us is one that has been adopted in the new Minnesota Juvenile Court Code of 1959. Specifically, the Minnesota statute authorizes the court to order an adjournment for a period of ninety days "when it is in the best interests of the

child to do so and when the child has admitted the allegations ...., but before a finding of delinquency has been entered." (21). The statute goes on to provide that the court may enter an order directing that during the period of adjournment "the child or his parents, guardian or custodian" receive counselling, or that the child be placed under the supervision of a probation officer or other suitable person in his own home under conditions governing his conduct and that of his parents, guardian or custodian. (22). If the period of adjournment is concluded without further complications, the case can then be dismissed without a formal adjudication of delinquency being made. Presumably any order of the kind authorized under this procedure would be discussed with the child and his parents and would be accepted by them as a less objectionable alternative to having a formal determination of delinquency entered immediately. We think that a procedure along the lines of that authorized under the Minnesota statute should be introduced into the Canadian legislation and recommend accordingly.

Disposal of Outstanding Charges

293. Section 421 of the Criminal Code establishes a procedure whereby an accused who is in custody in one province and who has charges outstanding against him in another province may, with the consent of the Attorney General of the latter province, plead guilty to these charges before a court in the province in which he is in custody. The purpose of this procedure is to avoid a situation in which an offender who serves a sentence in one province is, upon his release from an institution, immediately taken to another province where he may be imprisoned again. As the Fauteux Committee observed, this procedure is "designed as a rehabilitative measure". (23). The same considerations that inspired its adoption are applicable to proceedings involving juvenile offenders. We recommend, therefore, that it should be made clear in any revision of the law that the procedure set out in section 421 of the Criminal Code applies to offences committed by juveniles.

The Fine

294. Under the Act the court may impose a fine on a child "not exceeding twenty-five dollars, which may be paid in periodic amounts ....". (24). In 1961 a fine or restitution was ordered in some 2,011 of 15,024 court appearances. Most American statutes do not authorize the imposition of a fine, the reason being that a fine is regarded as a punitive measure inconsistent with the protective philosophy of the juvenile court. (25). In our opinion, however, the fine can serve a useful purpose. In certain types of cases, a mere finding of delinquency may not sufficiently impress an offender with the serious nature of his misconduct. Yet the circumstances may be such that the other forms of disposition provided in the Act would not prove to be appropriate. A fine may then be the wisest way of handling the child, even though ultimately it may be paid for him by his parents.

295. The almost unanimous opinion expressed in briefs submitted to us was that the maximum amount of the fine should be increased to one hundred dollars. We agree that the maximum amount should be increased. What may have been sensible in 1929 is not realistic now. Young persons today are often able to earn good wages and, accordingly, will be able to pay where a fine is regarded as the appropriate disposition. However, we think that the present limit of twenty-five dollars should be retained for an offender who is under fourteen years of age because younger children usually do not have an equivalent earning capacity. We think also that fines imposed under the Act should continue to be payable, at the order of the court, by instalments.

296. It has been brought to our attention that some juvenile courts follow the practice of imposing court costs on young persons found delinquent. We consider this practice to be inconsistent with the objectives of the juvenile court process. We recommend, therefore, that there should be no power under the Act to order payment of court costs by a child or young person.

Restitution

297. The Act is not at all clear as to the power of the juvenile court to make an order of restitution against a child. In one recent decision an order of restitution by the juvenile court judge was set aside on appeal. (26). Section 20 contains no direct reference to restitution. It does provide, however, that the court may "take either one or more of the several courses of action hereinafter .... set out", which include imposing "upon the delinquent such further or other conditions as may be deemed advisable....". Moreover, section 22 of the Act refers to "restitution" in a manner that seems to assume that restitution orders fall within the powers conferred by section 20. (27). It is apparent, in any event, that some judges do compel restitution by children found delinquent. In a recent reported case, for example, we find a juvenile appealing from an order of a juvenile court judge that he make restitution in the amount of one thousand dollars. (28). Thus the absence of any specific provision relating to restitution may well have had the effect in some cases of allowing orders of restitution to be made in amounts that are inconsistent with the purposes of the juvenile court process.

298. Whether or not restitution has any positive treatment value is a matter that has been much debated. We do find persuasive one particular objection to restitution. This is the fact that there may well be a tendency to bring children before the juvenile court with a view to obtaining restitution, even though some informal kind of disposition might be preferable from the point of view of the welfare of the child. On the other hand,failure to include a provision defining expressly the powers of the court in regard to restitution orders leads to the danger that orders exceeding reasonable limits will be made on the basis of the court's power to "impose .... such further or other conditions as may be deemed advisable....".

299. On balance, we think that the juvenile court should be authorized, in lieu of or in addition to any other disposition, to make an order of restitution against a juvenile offender, but only in a limited amount. It will be the responsibility of the judge to ensure that the objective of a juvenile court proceeding does not become distorted by the relief that is in this way available to injured parties. We suggest that restitution should be limited to an amount not exceeding one hundred dollars. We further recommend that the court should not have jurisdiction to make a restitution order against a child who is under fourteen years of age.

Probation

300. The duties of a probation officer, as set out in the Act, are: " .... to make such investigations as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish to the court such information and assistance as may be required; and to take such charge of any child, before or after trial, as may be directed by the court." (29). We have already touched upon the probation officer's investigatory function. We are now concerned with such matters as the availability of probation services, the appointment and qualification of probation officers and the conditions necessary for the adequate performance of their duties.

301. At the outset, it is necessary to consider what probation is. From a legal standpoint, probation is a form of disposition under which an offender who has been found to have committed an offence may be released by the court, subject to the supervision of a probation officer and to certain conditions imposed by the court. In order to understand properly the implications of probation for the juvenile court system, however, it is important that probation be viewed, not only as a sentence or disposition of the court, but also as a correctional process. Professor Tappan explains: "In the former sense, it combines the suspension of a punitive sanction against convicted offenders .... with orders for treatment under conditional liberty in the community. In the latter sense it includes .... the personal supervision and guidance of selected offenders in accordance with the conditions that the court establishes." (30). As a correctional technique probation has developed from a relatively simple process whereby probation officers, in the words of the English Probation of Offenders Act, 1907, "advise, assist and befriend probationers", to a skilled operation in which extensive theoretical knowledge and case-work skills are brought to bear with a view to effecting a basic change in the attitudes and values of an offender. In appraising the calibre of probation services in Canada, therefore, the following matters must be kept in mind: (a) probation is a sentence of the law; (b) it is a preventive method of treatment; and (c) it depends for its success on the selection of the offender and on the care and supervision he receives. The implications of this brief analysis are clear. If probation is to make its intended contribution to the juvenile court process, there must be available to the juvenile courts qualified probation officers in numbers sufficient to allow adequate "contact time" with probationers under supervision. (31).

302. It was evident to the Committee that most juvenile courts in Canada are not provided with the kind of probation assistance that implementation of the juvenile court concept requires. In some provinces there are no probation services. Children placed on probation are ordered to report periodically to the police department in their own area, to their clergyman or, on occasion, to the juvenile court judge, the director of child welfare or even their own parents. In other provinces probation services have been established only since 1957. In no province are the services adequate. It is not necessary for us to identify individual provinces to make the point. Our data is based upon the situation as it existed in 1962:

(1) Province "A" has seven probation officers who on occasion do juvenile and adult work. Their caseloads average from forty to fifty cases. Their salaries range from $3,550 to $5,880. These university-trained men receive no in-service training.

(2) Province "B" has six probation officers in the field who do both juvenile and adult work. This province has no in-service training program. Salaries start at $3,500 and advance to $4,500.

(3) Province "C" has sixteen probation officers whose caseloads range from seventy to ninety cases. Only a few of the officers have university training. There is no in-service training. A person with a Bachelor of Arts degree receives $3,180 a year, and a person with a Master of Social Work degree receives $4,380 a year.

(4) Province "D" has thirty officers who do both juvenile and adult work. In one of this province's cities each probation officer has a caseload of ninety juveniles and fifteen adults and prepares approximately ten pre-sentence reports a month.

303. We do not see how the administration of juvenile justice can function satisfactorily without the provision of adequate probation services. That the present situation can exist in one of the world's wealthiest countries is not something of which Canadians can be proud. There is no need to repeat our suggestion concerning the financing of services. At this point we recommend the following steps to alleviate the problem:

(1) Each juvenile court should have available to it the services of

at least one probation officer. The desirable goal is to have as many as the burden of work requires.

(2) The probation officer should devote his full time to work involving juveniles, although there may be circumstances where, with the approval of the judge of the juvenile court, he might engage in other correctional activities. Although it may be desirable to broaden the probation officer's viewpoint by affording him experience with adult probationers, we do not see how he can perform effectively all the functions that are expected of him if he is to be responsible for adult as well as juvenile probationers. In sparsely populated area of the country it may not be feasible to appoint a probation officer whose services would be devoted exclusively to children. For this reason, the judge of the juvenile court should have authority to permit the officer to work with adults in the same geographical area.

(3) The probation officer should be responsible for pre-sentence investigation and for such personal supervision of a child or young person as may be directed by the court, whether by way of immediate disposition or as after-care following release from institutional commitment. At the present time, in many parts of the country, probation officers perform a number of other functions It is quite common, for example, for probation officers to undertake family counselling in the community. They may have to assume the responsibility for locating foster homes and supervising foster home placements, for securing placements for psychotic, severely disturbed or mentally deficient children, for the collection of fines and restitution payments. Often they have responsibilities under provincial statutes, notably the enforcement of maintenance orders. Duties of this kind are time-consuming. They leave that much less time available for actual probationary supervision. If such duties are necessary - and frequently they are - then the probation staff should be increased. The assignment of collateral duties should not be permitted to interfere with the proper performance of the probation officer's primary function, which is to provide effective supervision and treatment for those children who can benefit from the probation encounter.

(4) A person having qualifications and capabilities necessary to perform the duties we envisage would be intelligent and well trained. He should be adequately paid. At the very least the probation officer should have a university education. In special cases equivalent experience in correctional or yout work may suffice. Representations were made to us that only qualified social workers should be permitted to engage in probation work. We do not think that social work qualifications are essential, however desirable they may be. The directors of some of the most advanced probation services in North America have indicated that there is no necessary correlation between social work training and success in probation work. In any case, the need for more officers to staff the services, both existing and needed, would preclude for many years to come an exclusive reliance upon the limited number of graduates of schools of social work In-service training and orientation programs are, in any event, necessary. Our comments relating to the financing of services are relevant in this context.

(5) Research should be undertaken to determine (a) suitable caseloa for officers, and (b) proper criteria for the selection of offenders for probation.

These two matters are closely related. If juvenile offenders who do not need supervision are placed on probation, the caseload of the officer is thereby increased without any advantage to the community. In other words, we need to know what types of offender are likely to succeed without probation; and what types will probably fail, with even the best services, and why. The caseloads of most probation officers in this country are much too heavy. Unduly heavy caseloads result in insufficient supervision for the child and lowered morale for the officer. Although some agencies in the United States have formulated caseload standards we have not been able to find out whether these have been verified by experience or whether the same standards would be applicable in this country.

304. A proper study of the effectiveness of probation supervision would require an analysis, not only of probation caseloads, but also of the frequency of contacts between probation officers and probationers, the time spent in actual counselling, the duration of probation orders and the percentage of cases receiving intensive supervision. It would also require some assessment of the intangibles of probation supervision. Probation, it has been said, "like medicine, is midway between an art and a science. Neither diagnosis nor treatment can be entirely divorced from the personality of its practitioner." (32). Obviously it has not been possible for us to conduct a study of this kind. As an indication of some of the questions that must be asked, however, we have included as Appendix "F" a time study conducted in 1962 of the supervision of juvenile probationers in Ontario. This study was included in a brief submitted to us by the Probation Officers' Association of Ontario.

305. There have been suggestions made to us for amendments to the Act. A number of persons have called attention to the fact that the Act should make provision for the transfer of probation orders from one court to another. It is not uncommon for a juvenile who is subject to the supervision of the court to wish to move to a new place of residence outside of the court's jurisdiction. It should be possible, therefore, for a court in the area to which the child moves to take over supervision of a probation order. Another suggestion is that the provision that empowers the court to "commit the child to the care or custody of a probation officer or of any other suitable person" should be replaced by a provision empowering the court to "place the child under the supervision of a probation officer, or any other suitable person". As one submission explains, the existing provision "is not clear since it does not specify the import of the term 'custody' in relation to its duration, the effect upon parental rights of such an order, or the responsibilities (financial and legal) of the person to whom custody is awarded." (33). We endorse both of these recommendations.

Foster Home Placement

306. Almost indispensable elements of an environment in which the child will develop adequate social values are suitable parents or parent substitutes.

Inadequate or defective parents provide a social background that is linked in many instances with delinquency. A proper pre-sentence investigation generally will disclose whether the juvenile offender's conduct is likely to be improved by taking him out of an unfavourable home situation. It should also disclose whether the juvenile can safely be left in the community or should be confined in an institution for his and the community's safety.

307. Foster home placement is considered by many to be a "good thing" for the child who must be removed from his own home environment. Police agencies, for example, have argued that more use should be made of foster homes than of institutions. Several problems should be honestly and realistically faced: (a) who is responsible for finding a suitable foster home? (b) should the foster parents be paid for their work and by whom? (c) what is the legal relationship between the parents and the foster parents, and between the parents and the juvenile court? The Act is silent on all of these questions. For example, it merely empowers the court to order foster home placement; it does not indicate the agency or person responsible for finding the home. What happens in many juvenile courts is this: the judge may know of a married couple who are able and willing to act as foster parents. A child who is considered to be in need of foster home placement will be sent directly to this couple. In many cases, however, the judge may want to know more about the prospective foster parents before making the placement. He will then call in a children's aid society to investigate. If the judge does not have any foster homes available, various private child-caring agencies will be invited to take on the job. We emphasize one important fact. There is a serious shortage of foster homes, at least in the urban areas of Canada. It is no reflection on the private agencies when it is said that they have used their "right" of selective intake to concentrate increasingly not only on younger children but on those whom they feel will benefit most by their services. In practice this has meant acceptance of children whose families give promise of co-operation.

308. Under the Act the only method of financing foster home placement is the court's power "to make an order upon the parent .... of the child or upon the municipality to which it belongs to contribute to its support such sum as the court may determine....".(34). There are no provisions in the Act for payment to private agencies for capital costs expended in establishing special types of facilities. Some of the provincial statutes do provide capital cost allowances, but none to the extent of allowing 100 per cent of the cost.

309. Placing a child in a foster home does not terminate the guardian rights of his natural parents. Some private child-care agencies have refused to accept placements from juvenile courts for this reason. We do not understand why they should take this position. The same agencies undertake to care for other children over whom they do not have rights of guardianship, that is, children who are neglected or dependent. We recognize, however, that there may be ambiguities in the matter of the relationship between foster parent, court and natural parent. Such ambiguities should be eliminated in any new legislation.

310. Who then should be responsible for finding foster homes for those offenders who need them? In keeping with our basic aim of making one agency responsible for all matters affecting the delinquent, we suggest that it should be the court. However, the court needs the assistance of all responsible child-care agencies in this work. Some of the obtacles to full co-operation have been mentioned. Others arise from differing viewpoints. The child-care agencies argue that if the child's home situation cannot be remedied within a reasonable time the child should be made a permanent ward of the children's aid societies, because foster home placement implies a home situation that can be remedied without undue delay. If this is so, continuing case-work to the natural parents is essential so that the problem of the child and his family can be resolved. Under the Act the court cannot require any agency to undertake foster home placement. This should be changed and some means should be found whereby child-care agencies that receive assistance from government funds may be required by the court to assist it in its efforts to find foster homes. The agencies tend to complain, however, that they are not consulted at the stage in the procedure when their views are most important. As we understand the complaint, it is that the agencies are skeptical of the ability of the probation officer to determine that the child's home is unsuitable, and of the court's wisdom in choosing foster home placement as the best disposition of the case. One of the attributes of a private agency is its right to formulate its own criteria for accepting clients and to determine whether an applicant for its services meets these criteria. We appreciate the value in our society of having private agencies to undertake bold new approaches to social problems that are not open to the public agencies. Nevertheless, in practice, what is needed by the court are services that are available when required. In this context, the apt comparison is with commitment to training or industrial schools. Those institutions must accept all offenders sent to them. They do not formulate intake criteria, nor do they duplicate the work of probation officers and of the court in deciding whether the court has made a proper choice.

Committal to a Children's Aid Society

311. Many of the problems examined in connection with foster home placement have arisen in relation to the power of the court to commit a delinquent child to the charge of a children's aid society. These societies are private organizations whose work is usually supervised by the provincial government and paid for by the municipality and the province. Local branches have substantial automomy. It has been a complaint of the societies that they are not consulted nor is their advice taken before the court commits a child to their care. They object that an order is frequently made even though they do not have the facilities necessary to fulfil their responsibilities under the order. We think that in the interests of maintaining good relations the court should consult the agency before making an order that affects it. However, the court's responsibility, both to society and to the child, is to dispose of the case in the way that it considers best. It is possible to argue, indeed, that whether or not a society wishes an order to be made is irrelevant, for the same reasons that it is

irrelevant where a training school is concerned. We recognize that many societies lack adequate financial resources. In the wealthy provinces the remedy may well be a complete revision of methods of financing. In the poorer areas of our country it may be necessary for the federal government to provide grants.

Training School Committal

312. The Act empowers the court to commit a child adjudged delinquent to an industrial school. The term "industrial school" is not appropriate. Such institutions are now called "training schools" in most provincial statutes. The Act should be amended to conform with this usage.

313. The power of the court to commit a child to a training school is subject to one limitation under the Act. "It is not lawful to commit a .... delinquent apparently under the age of twelve years to any .... school unless and until an attempt has been made to reform such a child in its own home or in a foster home or in the charge of a children's aid society .... and unless the court finds that the best interests of the child and the welfare of the community require such commitment." (35). We agree with the philosophy that institutional commitment should be a last resort. It is a philosophy practised by most juvenile courts. It is a philosophy that should be extended to all juvenile offenders. We think that the Act should be strengthened in order to give more adequate expression to this approach to the treatment of the juvenile offender. (36). Institutionalization is regarded by the child and his parents as punishment, and this gives rise to all the impediments to treatment that punishment entails. Equally important, unless facilities are adequate, institutionalization has a detrimental effect on the rehabilitation of the offender. In the following paragraphs we examine problems of staffing, classification and facilities.

314. In some provinces training schools fall within the jurisdiction of departments exclusively concerned with the operation of penal institutions. In others they are the responsibility of the Department of the Attorney-General. In a number of provinces they are administered by departments of social or public welfare. There is no uniformity across Canada in terms of types or sizes of institutions, the number and qualifications of staff or the policies to be administered in the operation of training schools. An even greater problem is the fact that within individual provinces there is rarely to be found one governmental department that has an over-all responsibility for services for children. Indeed, in one province, no less than five departments are involved in providing such services, and co-ordination between them is apparently difficult to achieve. In varying degrees this situation exists in every province. The result is that it is rarely, indeed, that the best possible program is followed in the interests of the child. We limit ourselves to the statement that great improvements in the quantity and quality of services might be expected if, within each province, greater unification or co-ordination of effort could be achieved.

315. Canadian training schools, as a general rule, have inadequate facilities. Many accommodate numbers of children far in excess of their officially rated capacity. This means that in many instances there is very great overcrowding. Children are forced to sleep in double bunks in rooms that were not designed as sleeping areas. Gymnasiums are outdated and inadequate for the number of children to be handled. Office space is lacking - indeed in one institution the social worker was forced to vacate her office when the psychiatrist was in attendance. Many of the schools are old and decrepit. On the whole we can do no better than to quote from a report concerning children's institutions that serve one metropolitan area: "In a majority of the institutions, the drabness of the buildings is accentuated by the paucity of functional and attractive interior furnishings. With some exceptions, the buildings were so poorly furnished that there was no sense of attractiveness or anything which could interest children in their physical surroundings or development of any pride in the appearance of their dwellings." (37). We are satisfied that these observations would apply to a good many institutions throughout Canada.

316. Many training schools are located a substantial distance from large metropolitan centres. There are both cynical and idealistic explanations for this situation. The cynics maintain that training schools are conceived as public works to be used in areas of unemployment or as political gestures of one kind or another. The idealists suggest that in rural areas land can be acquired at lower cost, that in surroundings completely different from the slums whence the children come rehabilitation may more readily take place. Whatever may be the correct interpretation, the location of training schools in rural areas at a distance from large cities has important implications for staffing which we shall consider later. The majority of the children in these institutions come from the large cities. If they are located away from the cities it is more difficult to provide essential services and equally difficult for parents to visit and maintain contact. Such an impediment should not, unnecessarily, be placed in the way of fostering the family relationship.

317. It is not inaccurate to say that all provinces lack adequate reception facilities and the professional staff necessary to prepare an adequate assessment of the child who is committed to training school. In any case, even if there were staff and space for a proper classification program, the work would be of little real value because a sufficient variety of institutions is not available. In some provinces one training school receives all children under a given age, regardless of the reason for the child's committal to the school. This results in the committal to one institution of seriously delinquent children, dependent or neglected children who were beyond the control of the children's aid society, the very young offenders and even mentally defective children. Such institutions are usually not equipped with the special facilities needed to deal with these different types. One consequence of intermingling different types of children is the difficulty created for the staff. Some of the time a staff member spends with children must be devoted to exercising control. However, the more time the staff member spends in keeping control over children, the less time he will have to perform his primary task of rehabilitation.

318. Buildings are important in the rehabilitation process; staff is crucial. However, in no province is there sufficient staff either in quantity or quality to provide, effectively, the kind of treatment that the training schools are presumably established to provide. We use the term "staff" to refer to professionals - psychiatrists, psychologists and social workers - as well as to non-professionals. The co-operation of both groups is needed if the goal of rehabilitation is to be achieved. There is not one full-time psychiatrist on the staff of any training school in Canada. Only a few schools have a full-time psychologist and a few more have the services of social workers. It is not hard to find reasons for this unfortunate shortage of professional treatment staff. One is the fact that in many cases training schools are located at too great a distance from large cities to make commuting practicable. One does not reasonably expect a bright young professional to live and work in a small community that lacks most of the cultural and educational amenities that he and his family seek. The salaries offered by governments are usually equal to those paid by non-governmental agencies, but they do not begin to match the income that can be earned by a psychiatrist or psychologist in private practice. The necessary comment is sad but true: the well-to-do neurotic receives treatment from a private psychiatrist on a one-to-one basis; the one in a public institution, who probably has a more severe personality disorder, receives little if any psychiatric treatment. Those persons who are so dedicated to the welfare of children that salary is relatively insignificant can find ample scope for their talents in the cities.

319. The professional treatment staff is really on the fringe of the child's life in most institutions. The non-professional staff is in the centre. The latter are usually referred to as "custodial officers", a title that is, unfortunately, only too descriptive of their function. The minimum educational requirement is rarely more than grade ten, and is sometimes less. The non-professional staff (whom we shall call rehabilitation officers in keeping with a proper conception of their function) are not, in most cases, given any training before coming to the institution. Moreover, in many provinces the need for in-service training has not been recognized. (38).

320. Notwithstanding the shortage of professional treatment staff, as well as rehabilitation officers, there are some respects in which rehabilitation programs in some training schools are adequate. Such schools provide elementary and high school classes where the curriculum is equivalent to that of ordinary schools. They offer vocational training - carpentry, machine shop, sheet metal and auto mechanics for boys, and household economics and beauty culture for girls. However, in most cases even these programs suffer from overcrowding. They also lack specialized staff. In some provinces teachers in training schools receive lower salaries than teachers employed in ordinary schools. Children in training schools are difficult to teach. Many have learning problems. If the learning process is to be effective, highly qualified teachers are required. Salary scales that fail to take into account this obvious need cannot help but weaken the educational aspect of the training school's efforts at rehabilitation.

321. Although a training school can, theoretically, hold a child until his eighteenth or twenty-first birthday, depending upon the province concerned, in fact the average length of stay in the institution is from one to two years. This, also, is partly the result of overcrowding. The consequence is that many children are returned to their homes prematurely in order to make way for new children committed to the institution. It is true that by permitting a child to leave before the maximum permitted period of detention has expired, some training schools (which have wardship) are able to exercise supervision over him, However, here as elsewhere, between the appearance and the reality there is often a great gap. In fact, in very many cases, little supervision is provided.

322. One matter of some importance concerns the size of institutions. It is generally recognized that the prospects for successful treatment of many children are greatest in a relatively small facility where a "therapeutic atmosphere" is easier to achieve. (39). From this point of view, a good number of children in Canada are being placed in institutions that are too large. Nevertheless, there are difficulties that should be recognized. Smaller institutions are often more expensive to operate. In most cases they are unable to provide the variety of activities and services ordinarily regarded as desirable. As a practical matter, therefore, some compromise arrangement may be unavoidable in some areas if the essential objective of sound treatment planning is to be accomplished. The United States Children's Bureau, for example, have taken the position that the capacity of a training school be limited to 150 children, but continue: "To meet this standard some .... (jurisdictions) .... may find it necessary to break down their large institutions into administrative units of 150, with corresponding expansion of staff in order to maintain the integrity of an individualized program, at the same time working toward the establishment of diversified institutions for delinquent children which would permit a flexibility of treatment. " (40).

323. Our comments on the subject of training schools lead to the conclusion that there is room for improvement in some provinces, and room for great improvement in others. It seems to us that the provincial and federal governments have substantial interests in seeing to it that training schools operate effectively. If they are not effective, it is to be expected that many - and perhaps the majority - of their graduates will sooner or later find themselves in provincial prisons or federal penitentiaries, and in many cases solidly embarked upon a life of crime. In the light of this joint interest it is reasonable to expect that the provincial and federal governments would wish to discuss the development, staffing and operation of training schools, and the financial implications that would necessarily be involved.

Transfer to an Adult Institution

324. Section 26 of the Act directs: "No .... delinquent shall, under any circumstances, ... be sentenced to or incarcerated in any penitentiary, or county or other goal .... or any other place in which adults are or may be imprisoned." We have been told that the prohibition contained in section 26

creates difficulties in the case of certain older offenders. There are some juveniles who must be detained in a training school for a period longer than the ordinary offender and who are, consequently, often considerably older than most other young persons in the school. The presence of these older offenders is said to be detrimental to younger inmates. Moreover, the training school may not be an entirely satisfactory environment from the point of view of these older offenders themselves. They could, for example, receive vocational training at a level more suited to their age group in an adult institution. The suggestion is, therefore, that it should be open to the training school authorities to transfer certain older offenders from the training school to a correctional institution for adults.

325. There are basic objections to any such change in the law. Transfers of the kind proposed have received some attention recently in the United States, where the question has come before the courts in a number of cases. We can state the objections to such transfers no more concisely than by quoting from a leading American authority on juvenile court legislation: "This practice is unsound both legally and socially. Not only does it deny the transferred youngster, who thus becomes a 'prisoner', the protection of .... (regular) .... criminal proceedings .... but it also undermines the philosophy of the whole juvenile court movement, which was established primarily to protect the child from contacts with adult criminals and from being stigmatized as a convict .. ..".(41). It is noteworthy that the 1959 revision of the Standard Juvenile Court Act in the United States provides expressly that an institution to which a child is committed may not transfer custody of the child to an institution for correction of adult offenders. The comment appended to the provision in the Standard Juvenile Court Act explains: "A child so seriously disruptive of the institution's program that transfer is essential will, in so behaving, almost always have violated some law over which the criminal court has jurisdiction. A new proceeding should be commenced on that basis....". (42).

326. In our view, the power to transfer an offender from a training school to a correctional institution for adults should not rest with the training school authorities. If the juvenile court does not have the power to commit a child to an adult institution we fail to see how an institution receiving legal custody from the court can be justified in doing so. Should it be decided that some power of transfer is necessary, we recommend that the training school or other correctional authorities be required to make application for a transfer to the juvenile court judge, who would be authorized to make the appropriate order.

327. The foregoing is not intended to suggest that an amendment to section 21 (3) of the Penitentiary Act is either necessary or desirable. (43). That subsection authorizes the transfer to young offenders' institutions operated by the federal government of persons under the age of sixteen years who are confined in provincial institutions, where the officer in charge of that institution is of the opinion that any such person is unsuitable for training in the provincial institution. The new young offenders' institutions that will be operated by the

federal Penitentiary Service will be for the custody and training of persons between the ages of sixteen and twenty-three years, that is, a group only slightly older than those to whom the Act relating to juvenile offenders will apply.

Other Facilities

328. We noted at the beginning of this Chapter that a proper implementation of the juvenile court concept requires that there be available to the court a flexible system of preventive and rehabilitative treatment measures. There are still other facilities that are necessary for an effective program of rehabilitation - facilities that are practically non-existent in Canada at the present time.

329. In many cases children who should be sent to hospitals with in-patient facilities for treatment of the mentally ill or to other specialized residential treatment centres are sent instead to training schools. The reason for this unhappy practice seems to be that hospitals and other treatment institutions control intake. The treatment programs of most hospitals are not designed to meet the special needs of psychotic or severely disturbed children, who in most cases cannot be accommodated in the same facilities as adults without serious disruption of the total treatment program. There is, in any event, a shortage of hospital beds. If in the opinion of the hospital authorities a bed cannot be provided, the child is not admitted. We are told that there is considerable reluctance on the part of the hospitals to accept children requiring psychiatric care on an in-patient basis. On the other hand, superintendents of training schools have no control over intake. A child who is committed to such a school must be admitted even if there is no bed available for him. Only a few of the large metropolitan areas have residential centres for emotionally disturbed children and these, it would appear, also have very restrictive intake policies. (44).

330. This situation is an unfortunate one. It has harmful consequences, not only for the children concerned, but also for other children committed to the care of the training schools. The Canadian National Conference of Training School Superintendents has stated in a submission to the Committee: "The administrators of training schools can say with sincerity that 95% of their time is spent on 5% of their population. Within this 5% are those for whom it would seem appropriate care either does not exist or is at a premium - the psychotics, the mental defectives, the epileptics, the diabetics, the brain damaged, the pregnant girls, the severely maladjusted. The range of maladies and malfunctions found in the majority of training schools not only occupya grossly disproportionate amount of staff time, they severely reduce the effectiveness of the school's total programme." (45). The dearth of treatment facilities for children suffering from these various disabilities is a matter that has been brought to the Committee's attention time and time again in its meetings across Canada. We recommend that every effort be made to develop a network of services for the care of

children who are psychotic, severely disturbed or mentally defective. Provision of such services would in our view, contribute immeasurably to the improved operation of the juvenile court process.

331. Many children must be taken out of their homes and yet do not need the close control of a training school. Ordinary foster home placement is not satisfactory because these children lack the personality strength to enjoy the close relationships of family life. Again, many children released from training schools do not have families to whom they can safely return. Often such children could derive a great deal of benefit from a period of living in a small group in homelike surroundings under firm discipline, in some cases on terms of probation. A system of group foster homes, therefore, would be a valuable treatment resource for the juvenile court. By "group foster home" we mean a foster home in which approximately five to nine children of about the same age live under the supervision of full-time house parents. Similarly, there would appear to be a place for youth hostels, providing accommodation and supervision for a slightly larger group of appropriately selected young persons. Few such homes or hostels exist in Canada. We recommend that steps be taken to provide this "half-way" type of facility between ordinary probation and foster home placement on the one hand, and training school committal on the other. (46).

332. We think also that every effort should be made to experiment with new approaches to the treatment of the juvenile offender, and in particular with measures that are community-based. In England, for example, offenders between the ages of twelve and twenty-one who have been found guilty of an offence for which an adult could be sent to prison or who have failed to comply with the terms of a probation order, and who have not previously been the subject of a more severe sentence, may be ordered to attend at an attendance centre for up to twelve hours, in periods of not less than one hour and not more than three hours on any one occasion. (47). The Ingleby Committee has explained: "The aim of the treatment at attendance centres is to vindicate the law by imposing loss of leisure, a punishment that is generally understood by children: to bring the offender for a period under discipline and, by teaching him something of the constructive use of leisure, to guide him on leaving the centre to continue organized recreational activity by joining youth clubs or other organizations."(48). A somewhat similar program has been in operation in Boston for many years. (49). While it seems clear that this kind of program is unsuited to the needs of the older or more sophisticated offender, nevertheless there is evidence that an attendance centre order has proven quite effective with many younger or less experienced offenders. (50). Similarly, attempts have been made, apparently with some degree of success, to devise programs that bring to the treatment of the juvenile offender principles derived from sociological theory concerning the group nature of much delinquent behaviour, the object being to apply what is known about the processes of group interaction as a rehabilitative technique. (51). Programs of the kind outlined above merit careful and sympathetic study. They may well have an important contribution to make to overall planning in the field of delinquency prevention and control.

After-Care

333. The importance of adequate provision for after-care has been more and more recognized by students of corrections. After-care is an integral part of the total process of rehabilitation. In effect, it is the last stage of treatment. Any society that is truly concerned with rehabilitating offenders, therefore, will regard a system of after-care as a necessary part of its legal and correctional arrangements for dealing with offenders. In the case of the juvenile offender, the first few weeks following release from an institution are a particularly crucial time in terms of readjustment. The young person may encounter considerable hostility in his neighbourhood. He may have to be integrated into the local school system and perhaps face rejection resulting from the knowledge that he has been an inmate of a training school. During this initial period of adjustment he requires guidance and emotional support. If this is not provided there need be little surprise if he turns to delinquent activity as a means of expressing his frustration or anxiety. It is for this reason that we have suggested that a compulsory period of after-care should follow as a normal consequence of release from a training school. (52).

334. The way in which an after-care service for juveniles is conceived in Canada varies from province to province. In some provinces after-care is the responsibility of the probation or welfare officer who makes the initial contact with the case. Under this system the officer visits the young person in the institution, works with the family in an effort to prepare the home environment for the young person's return, and attempts to work out with the institution and the family a plan for the young person's return to the community. Upon release the officer is available to provide supervision and guidance. One significant advantage of this system is that it gives continuity to the entire correctional experience. In other provinces after-care is the responsibility of a worker attached to the training school itself. The advantage claimed for this system is that the institutional worker will have a better knowledge of the young person than is possible for a probation officer, whose contact with the young person is, at best, intermittent. These two basic approaches represent idealized conceptions of the way in which after-care should be administered. In all but a few areas the service actually provided falls far short of the standard necessary to implement properly either of these approaches. There are still other provinces, we would add, in which little in the way of after-care planning seems to be undertaken at all.

335. We think that after-care should be compulsory and that it should be subject to the direction and control of the juvenile court. Supervision of children in the community pursuant to the direction of the court is pre-eminently the function of the probation officer, who is the court's agent for precisely this purpose. It would seem to us, therefore, that our proposals in regard to after-care supervision can most effectively be implemented if the responsibility for after-care is assigned to the probation officer, rather than to a representative of the institution. We see definite advantages in approaching the problem of after-care in this way. It is important, in our view, that after-care supervision

be provided by someone who is present in the community and who can thus be available to give assistance at the time when it is needed. We are impressed also with the desirability of ensuring an integrated and consistent approach in dealing with any offender. Preparation for release should properly begin almost from the moment of apprehension of the young person, and this objective can best be accomplished, as we see it, by an arrangement that concentrates upon relationships that are established and developed with the offender and his family, rather than upon an artificial segregation of correctional workers into categories of probation, institutional and after-care personnel. All of these considerations point, we think, to assigning after-care as a function of probation service. If more probation officers are necessary to implement such a scheme, it follows that every effort should be made to provide them.

336. We recognize, of course, that after-care is a matter that is primarily the responsibility of the provincial authorities, who administer both the training schools and probation services. Ultimately, therefore, each province must decide what after-care arrangements are appropriate to its own particular needs. For this reason we have limited our proposals for legislative change to the suggestion that, following release from an institution, every young person should be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person. We would, however, make one additional recommendation. We suggest that consideration be given to making federal assistance available to any province that wishes to increase the staff of its probation service in order to implement a more adequate program of after-care.

Orders for Support

337. Section 20 of the Act provides that where a child has been adjudged delinquent and a disposition ordered by the court, "it is within the power of the court to make an order upon the parent or parents of the child, or upon the municipality to which it belongs, to contribute to its support such sum as the court may determine, and where such order is made upon the municipality, the municipality may .... recover from the parent or parents any sum or sums paid by it pursuant to such order." It has been represented to us that in at least one province unnecessary difficulties have been created for municipalities against whom orders for support have been entered, particularly in the case of foster home placements.

338. Section 20 is said to be inadequate in several respects. First of all, where a foster home placement is ordered in proceedings under the child welfare legislation of the province and an order for support is made against the municipality, the rates payable by the municipality are established by law and are based upon actual costs of maintenance. Orders made under section 20 of the federal Act are not subject to the same controls. Secondly, while both the

federal Act and the provincial child welfare statute contemplate that the municipality may recover from parents amounts that the municipality has paid, more adequate provision is made in the child welfare statute to facilitate recovery by the municipality. Thirdly, the child welfare statute contains a provision defining with some particularity the place of residence of a child as a basis for determining which municipality should assume maintenance costs. The municipality to which the child belongs is in some cases a contentious question and the absence of a provision in the federal Act defining place of residence sometimes leads to embarrassing results. Finally, the provincial child welfare statute makes provision for reimbursing a municipality for part of the maintenance costs that the municipality is required to pay pursuant to orders of the juvenile court in proceedings brought under provincial legislation. It does not appear that this reimbursement is available to the municipality where payment is made by order of the court under the federal Act.

339. Because of these problems relating to support, some municipalities have urged that proceedings should be brought under child welfare legislation in any case where foster home placement is the appropriate disposition for the court to order. There are, however, objections to any such approach. The object of a proceeding for "neglect" under child welfare legislation in a large percentage of cases is to remove the child from the home. Accordingly, the desirability of a foster home placement will ordinarily be an important consideration in deciding whether or not proceedings should be instituted in the first place. In proceedings under the Juvenile Delinquents Act, on the other hand, it would often be very difficult to know in advance of the hearing what specific disposition the juvenile court will ultimately regard as being in the best interests of the child. Moreover, for reasons that we considered in discussing the distinction between "delinquency" and "neglect", it may be preferable in some cases to bring proceedings under the federal Act rather than under the child welfare statute, even where there exists a strong possibility that the court will decide to direct that the child be placed in a foster home. And again, not all cases in which removal to a foster home is indicated are cases of parental neglect. Many are cases in which tension between parent and child, unrelated to any failure to provide adequate physical care, has precipitated the child's conflict with the law. It seems to us that a juvenile court judge should have as many disposition alternatives as possible open to him in dealing with cases under the federal Act. Any amendment to the Act to limit the judge's power to order a foster home placement or his power to ensure proper financial support is, we think, undesirable in principle, (53). Nevertheless, we agree that the existing situation is an unsatisfactory one. In our view a more acceptable solution to the problem is to be found in some arrangement whereby the relevant provisions of provincial legislation relating to the financial liability of parents and municipalities would come into effect whenever an order for support is made by the court pursuant to the federal Act. We recommend, therefore, that appropriate amendments along these lines be considered in connection with any general revision of the law.

The Juvenile Court Record

340. A troublesome question concerns the control of the record of a finding of delinquency. For example, in Canada the armed forces question prospective recruits on their involvement with juvenile as well as adult courts. It seems to be extremely difficult for such persons to enter the services. Similarly, private employers usually question job-seekers in regard to their juvenile court records. On some application forms the applicant is asked whether he has been "arrested" or "apprehended" or "taken or held in protective custody". We know that a child who has been found delinquent may face harassment in school. If the child, now an adult, comes before the court for sentencing as a result of a criminal offence, his juvenile court record may be considered by the judge.

341. It has been suggested that the juvenile court record of a person should be expunged if that child has led a blameless life for several years after the finding of delinquency. Such a proposal was rejected by the Ingleby Committee in the following terms:

> " Any handicap does not arise from entries in police or other records, but from the facts. The records .... are not made available to employers, who must seek for such information as they want by asking the applicant himself and his referees. An employer naturally frames the question in the way he thinks most suitable, and disclosure of earlier court proceedings depends on the wording of the questions that are asked as well as the truthfulness of the replies. Any substantial alteration in nomenclature may lead to a change in the formulation of questions." (54).

342. If it were thought to be desirable not to prejudice a person's employment opportunities because of his juvenile court record the remedy would appear to be this: an employer should be prohibited from questioning an applicant or his referees on that matter. The law already has the example of fair employment practices legislation which prohibits questions relating to race or religion. However, it is debatable whether such a prohibition by Parliament in the Act could constitutionally apply to employers other than those subject to Parliament in respect of employment practices. We recommend, in any event, that such federal legislation be introduced for enactment by Parliament. We should say that we do not think that the problem can ever be entirely solved by legislation. So far as possible attempts should be made to educate or persuade employers not to be prejudiced against a prospective employee solely because he has been found delinquent during his childhood.

343. The further question is whether official information relating to a person's juvenile court record should be barred, not only to prospective

employers, but also to adult courts. We suggest that different considerations apply to these two situations. The ordinary employer is concerned with making profits. He is not performing any public function nor does he represent the community. On the other hand, for the judge properly to fulfil his responsibilities as the community's representative in the sentencing function, he must have available all the relevant facts. One example should suffice to illustrate the distinction: A boy aged thirteen years is sent to a training school for sexual assault of a young child. He is released on his fifteenth birthday and from then until he seeks employment in his eighteenth year he has no further involvment with the law. Unless he is to become a charge on public welfare he must find employment somewhere and in such circumstances it is reasonable to prohibit questions by prospective employers concerning this juvenile offence. Suppose, however, that this same person, now an adult of twenty-five years, is again convicted for sexual assault of a young child. How can the court protect the interests both of the person being sentenced and of the community without knowledge of his juvenile misconduct? It follows, in our view that juvenile court records should be available for use in disposing of cases against the individual who is subsequently convicted in adult court.

Footnotes

1. Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p. 22, at p. 23.

2. Polier, A View from the Bench (1964), p. 35.

3. As one submission points out, "the presentence investigation has developed as one of the most important features of juvenile court procedure but it is not mentioned anywhere in the Act." Report on Juvenile Delinquency of the 1962 Legislation Committee of the Probation Officers Association - Ontario (1962), p. 8. It should be emphasized that the pre-sentence report serves several functions in addition to assisting the court in reaching a proper decision on the matter of disposition. These include: establishing the basis for treatment under probation supervision if the court so directs; providing information to assist the training school authorities in the event that committal to a training school is ordered. Elsewhere we draw attention to the importance of encouraging an integrated and consistent approach to the offender at all stages of the correctional process. See infra para. 335. The pre-sentence report contributes to this objective by facilitating the flow of information about the offender from one treatment agency to another. In addition, there have been suggestions that the legal status of the pre-sentence report and of the probation officer in the presentation of pre-sentence information to the court are by no means as clear as they might be.

For these reasons, there would seem to be merit in the view that as a minimum requirement the pre-sentence report should be the subject of a specific reference in the Act. Of interest in this connection is the Standard Juvenile Court Act, which provides: "Except where the requirement is waived by the judge, no decree other than discharge shall be entered until a written report of the social investigation by an officer of the court has been presented to and considered by the judge .... The investigation shall cover the circumstances of the offense or complaint, the social history and present condition of the child and family, and plans for the child's immediate care, as related to the decree ...."; and further, that "Whenever the court vests legal custody of a child in an institution or agency, it shall transmit with the order copies of the clinical reports, social study, and the information pertinent to the care and treatment of the child ....". Standard Juvenile Court Act, ss. 23 and 24, and comment at pp. 53-54.

4. There seems to be some question among a number of persons associated with the juvenile courts as to whether the court has, in fact, the power to order a psychiatric or other examination of a child, particularly in cases where the parents of the child object to the examination taking place. In actual practice, the courts appear to have experienced little difficulty in having such examinations carried out. Examination of the child by a psychiatrist, psychologist or physician will obviously be necessary in certain cases. The authority of the court to order the appropriate examinations, including tests for venereal disease, should be stated expressly in the Act. At the same time, the Act should make it clear that the court has no power to order any such examination, other than possibly a routine medical examination, prior to establishing that the child has committed the offence alleged against him.

5. See generally Regina v. Benson and Stevenson (1951) 3 W.W.R. (N.S.) 29, 100 C.C.C. 247 (B.C.C.A.); Ingleby Committee, paras. 207-217, pp. 67-69; Mannheim, "The Procedure of the Juvenile Court," in Lawless Youth, op. cit. supra note 1, p. 51, at pp. 72-74; Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New Family Court," (1963) 48 Cornell Law Quarterly 499, at pp. 514-521; Note, "Employment of Social Investigation Reports in Criminal and Juvenile Proceedings," (1958) 58 Columbia Law Review 702; Comment, (1964) 42 Canadian Bar Review 621.

6. New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended, art. 746. A useful discussion of the New York provision, including a review of the legislative history, appears in Dembtiz, supra note 4, at pp. 514-521.

7. The summary Jurisdiction (Children and Young Persons) Rules, 1933, Rule 11.

8. The exercise of discretion in regard to the evaluation and disclosure of the contents of social investigation reports is one respect in which the "law guardian" concept may prove to be of particular value. We comment briefly on the "law guardian" concept at paras. 250-251 supra.

9. See supra paras. 96 and 108-109.

10. See supra paras. 266-269.

11. See supra para. 161.

12. See Lauer, "New Directions for Court Treatment of Youth," (1963) 12 Buffalo Law Review 452, at pp. 465-466; Paulsen, "The New York Family Court Act," (1963)12 Buffalo Law Review 420, at pp. 435-437.

13. See infra para. 290.

14. Williams, Criminal Law: The General Part (2nd. ed., 1961), pp. 820-821.

15. New York Family Court Act, art. 716.

16. New York Family Court Act, arts. 731 and 751.

17. Lauer, supra note 12, at p. 466.

18. See infra paras. 102-103 and 340-343.

19. Fauteux Committee, pp. 13-15.

20. We think it useful in this connection to record a recommendation of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada "that if section 20 of the Juvenile Delinquents Act is found to be inadequate to permit all the services of a counselling and advisory character that are desirable, it should be amended accordingly." Proceedings of the 43rd. Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada (1961), p. 32. See also The Courts of Justice Act, Revised Statutes of Quebec 1941, c. 15, s. 266g, as amended by Statutes of Quebec 1950, c. 10, s. 1.

21. Minnesota Juvenile Court Code, Minnesota Laws 1959, c. 685, art. 28.

22. Minnesota Juvenile Court Code, art. 28.

23. Fauteux Committee, p. 17.

24. Juvenile Delinquents Act, s.20(1) (c).

25. See Fradkin, "Disposition Dilemmas of American Juvenile Courts," in Justice for the Child (Rosenheim ed., 1962), p. 118, at pp. 119-120; Lou, Juvenile Courts in the United States (1927), pp. 146-147.

26. Regina v. Lee, (1964) 46 W.W.R. (N.S.) 700, 43 C.R. 142.

27. 'Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution ....". Juvenile Delinquents Act, s.22(1).

28. Regina v. Lee, (1964) 46 W.W.R. (N.S.) 700, 43 C.R. 142.

29. Juvenile Delinquents Act, s. 31.

30. Tappan, Crime, Justice and Correction (1960), p. 539.

31. The importance of probation to the successful implementation of the juvenile court concept has been well stated in a report on State action in the field of delinquency prevention and control in the United States: "Weakness in probation services, probably more than in any other aspect of the correctional machinery, undermines the effectiveness of the juvenile court concept .... The most frequent disposition of cases is placement on probation. Yet too many children are still being sent to institutions or to the wrong types of institutions, because the judge was given inadequate information to make a decision based on the particular child's need for a particular kind of treatment, and because no other alternative was open to the judge. Enlarged caseloads also have made it impossible for most probation officers to do a good job of case supervision .... There is little opportunity for planned treatment, consultation, conferences with school guidance people, and other activities necessary for proper supervision .... When staff shortages thus make it impossible to do more than a perfunctory job, the rehabilitative process becomes a hollow shell, and failure with individual children on probation affords an excuse for attack on the whole concept of probation." Juvenile Delinquency: A Report on State Action and Responsibilities (Prepared for the Governor's Conference Committee on Juvenile Delinquency by The Council of State Governments, The President's Committee on Juvenile Delinquency and Youth Crime, and The National Council on Crime and Delinquency, 1962), p. 20.

32. Fry, "The Scope for the Use of Probation," in European Seminar on Probation (United Nations, ST/TAA/Ser. C./11, 1954), p. 66.

33. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association -- Ontario (1962), p. 9.

34. Juvenile Delinquents Act, s. 20(2).

35. Juvenile Delinquents Act, s. 25.

36. Several possible approaches might be noted. The California statute provides, for example, that in no case shall a ward of the court "be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts: (a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the ward. (b) That the ward has been tried on probation in such custody and has failed to reform. (c) That the welfare of the ward requires that his custody be taken fron his parent or guardian." California Welfare and Institutions Code, 1962, art. 726. Support for this approach has been expressed in Advisory Council of Judges to the National Council on Crime and Delinquency, Procedure and Evidence in the Juvenile Court (1962), p. 72. Another approach would be to require written reasons by the court in any case where a child is removed from the custody of its parents or placed in a training school. In this connection, see supra para. 175. Still another approach would be to state this governing objective in the interpretation section (the present section 38) of the Act. It is our impression that juvenile court judges pay a great deal of attention to the wording of section 38. This approach is adopted in the new Minnesota statute, which states: "The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties wherever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents." Minnesota Juvenile Court Code, Minnesota Laws 1959, c. 685, s.1.

37. Sinclair, "Training Schools in Canada," in Crime and its Treatment in Canada (McGrath ed., in press).

38. We have not found it practicable to consider in any specific way the question of training requirements for persons employed in various aspects of delinquency prevention and control. We have, however, included as Appendix "G" a useful section on "Training of Personnel for Services to Juvenile Delinquency" that was contained in the Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto.

39. "It is extremely difficult to operate a good treatment program in a large institution. Attention to the needs of the individual child is difficult in an oversized institution. Procedures for the administration of the institution are likely to be complex and cumbersome and to absorb an undue share of staff time. When separated from children by various levels of staff, the leadership and direction of the administration must filter through many persons. .... The larger the institution the greater the tendency for communications to break down, particularly in situations that are handled most effectively in a person to person relationship. .... In smaller institutions it is much easier to bring about teamwork, greater warmth, understanding and acceptance in terms of human relationships." U.S. Dept. of Health, Education and Welfare, Institutions Serving Delinquent Children: Guides and Goals (Children's Bureau, 1957), pp. 32-33.

40. Id., at p. 33.

41. Sheridan, "Gaps in State Programs for Juvenile Offenders," in Children (Nov. - Dec., 1962), p. 211, at pp. 213-214. See also Note, (1961) 47 Virginia Law Review 518.

42. See Standard Juvenile Court Act, s. 24 and comment, pp. 56-58, at p. 57.

43. Penitentiary Act, Statutes of Canada 1960-61, c. 53.

44. See Dept. of National Health and Welfare, Mental Health Division, Residential Treatment Services in Canada for Emotionally Disturbed Children (Report Series: Memorandum No. 5, April, 1962).

45. Brief submitted by the Canadian National Conference of Training School Superintendents (1962), p. 7.

46. See Tunley, Kids, Crime and Chaos (1962), c. 15. There is still another way in which the "half-way" type of facility can fill a valuable need. As one study has pointed out, "If the family of the child is broken and cannot be pieced together, the saving grace of the substitute home is that it can keep the child in a community with which he is familiar and a school where he is

known." Gorby, A Report and Recommendations on Co-ordination of Youth Services in Greater Vancouver and Greater Victoria (1964), p. 12. The possible implications of this for the juvenile court process as a whole are suggested in the following comment that one author has made on disposition practices in the juvenile court: "Whether a juvenile goes to some manner of prison or is put on some manner of probation .... depends first, on a traditional rule-of-thumb assessment of the total risk of danger .... evident in the juvenile's current offense and prior record of offenses; this initial reckoning is then importantly qualified by an assessment of the potentialities of 'out-patient supervision' and the guarantee .... inherent in the willingness and ability of parents or surrogates to sponsor the child. .... The cumulative reckoning of offense and prior record being equal, those with adequate sponsorship will be rendered unto probation, and those inadequately sponsored to prison. .... This may all seem reasonable to the reader and in a way it is. But do not expect it to seem either reasonable or just to a neglected or otherwise inadequately sponsored recipient of this sort of wisdom." Matza, Delinquency and Drift (1964), pp. 125-126.

47. Criminal Justice Act, 1948, 11 & 12 Geo. 6, c. 58, ss. 6, 19 and 48. Section 19 provides: "The times at which an offender is required to attend at an attendance centre .... shall be such as to avoid interference, so far as practicable, with his school hours or working hours ....".

48. Ingleby Committee, para. 288, p. 90.

49. See Maglio, "The Citizenship Training Program of the Boston Juvenile Court," in The Problem of Delinquency (Glueck ed., 1959), p. 634.

50. See McClintock, Attendance Centres (Cambridge Studies in Criminology, 1961), pp. 97-99.

51. See, for example, Empey and Rabow, "The Provo Experiment in Delinquency Rehabilitation," (1961) 26 American Sociological Review 679.

52. See supra para. 186.

53. A special problem may arise in a certain number of cases in which children require treatment, usually quite expensive, in a specialized residential treatment centre. This situation does not appear to have been contemplated in the drafting of the Act. We would expect that ordinarily in any such case the child would not be adjudged to be a child or young offender, but would be

dealt with under appropriate provincial legislation. In any event, the question of financial responsibility in this kind of case can be a matter of some importance. It is by no means clear that the imposition of financial responsibility of such an exceptional nature should be authorized by the federal Act. We make no recommendation on this point, other than to indicate the necessity of recognizing the problem in any review of the Act. The matter is one that should, we think, be the subject of discussion with provincial authorities.

54. Ingleby Committee, para. 235, pp. 74-75.

PART IV CRIMINAL LIABILITY OF PARENTS AND OTHER ADULTS

CHAPTER X

Introduction

344. The Juvenile Delinquents Act contains extensive provisions imposing liability upon the parent or guardian of a child brought before the juvenile court and, more generally, upon any person who can be shown to have contributed to the delinquency of a juvenile. In this Chapter we consider the issues of policy presented by these provisions. Specifically, we examine the following matters: (a) "punish the parent" laws; (b) restitution by parents; (c) contributing to delinquency; and (d) the jurisdiction of the juvenile court in relation to criminal offences committed by adults. A related question - the protection of the child witness - has been dealt with earlier in our Report.

345. There are two sections of the Act that are of principal concern. These sections are lengthy and detailed. However, because it will be necessary to refer to both at various stages of the discussion, we think that it may be helpful to set out immediately the relevant parts of these sections.

346. Section 22 of the Act relates to the liability of a parent or guardian who has conduced to the commission of an offence by a child. Its most important subsection reads:

> " Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution or any other action, the court may, if satisfied that the parent has conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise, order that the fine, damages or costs be paid by the parent or guardian of the child, instead of by the child." (1).

347. Section 33 of the Act creates the offence of contributing to delinquency. Criminal liability is imposed under two different subsections. In each case proceedings may be brought either in the juvenile court or in the ordinary criminal courts. It is important to note that liability extends to parents as well as other persons. The relevant subsections provide as follows:

> " (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,

(a) aids, causes, abets or connives at the commission by a child of a delinquency, or

(b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,

is liable on summary conviction before a Juvenile Court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment.

(2) Any person who, being the parent or guardian of the child and being able to do so, knowingly neglects to do that which would directly tend to prevent said child being or becoming a juvenile delinquent or to remove the conditions that render or are likely to render the child a juvenile delinquent is liable on summary conviction before a Juvenile Court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment."

348. In addition to these two sections of the Act there is one section of the Criminal Code that should be noted. Section 157 of the Code provides for the offence of corrupting children. It reads, in part, as follows:

" Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years." (2).

"Punish the Parent" Laws

349. The Committee received a number of suggestions that the Act should be reviewed with a view to placing greater responsibility upon the parent or guardian of a child who engages in delinquent behaviour. Some persons have been concerned about the problem of restitution. There have been recommendations that the Act should be amended to provide specifically that the juvenile court judge may order that a parent or guardian make restitution for

damage or destruction caused by a child found to be delinquent. We deal separately with the question of restitution later in this Chapter. Others have drawn attention to the fact that, under section 22, it is sometimes difficult to establish as a matter of evidence that "a parent or guardian has conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise....". In order to remedy this alleged defect, some have recommended that section 22 should be amended to conform with a provision that appears in the Children and Young Persons Act in England, and also in similar legislation enacted for Scotland. The United Kingdom law provides that, where the offender is under the age of fourteen, any fine, damages or costs imposed by the court must be paid by the parent or guardian "unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence....". (3). In other words, in many cases the onus is placed on the parents to establish that there was no failure on their part to exercise due care of their child.

350. Before considering these proposals, we think it important to emphasize that the "punish the parent" approach has been repudiated by almost everyone who has made a careful study of the matter. For example, two important draft statutes prepared by committees of experts in the United States - the Standard Juvenile Court Act and the Model Penal Code - contain no provisions of the kind that are still part of Canadian law. In each case the omission was deliberate. (4). Professor Tappan speaks of "punish the parent" laws as a "singularly futile expression" of the "recognition of the family's vital relationship to delinquency", and notes that "it has been fairly generally agreed that this approach has succeeded no more than could have been expected." (5). Indicative of the controversy that this question has caused are the emphatic comments of still another noted authority on juvenile court legislation: "Wherever the concept takes hold that parents who fail should be punished, it should be exposed as a delusion....". (6).

351. The objections in principle to provisions of this kind are perhaps nowhere better stated than in the recent Report of the Kilbrandon Committee in Scotland. Because of the importance of the issue involved we quote at length. The Kilbrandon Committee noted that there had been proposals "for (a) the greater use of fines .... against parents for the misdemeanours of their children, (b) requiring parents to make financial restitution for damage caused as a result of their children's delinquent behaviour, and (c) the placing of parents directly under compulsory measures of supervision in consequence of their children's misdemeanours." (7). While recognizing that such proposals were "aimed at bringing home to parents their responsibilities", and, in this way, "strengthening and furthering those natural instincts for the good of the child which are common to parents", the Kilbrandon Committee rejected any such approach on the following grounds:

> " We have found great difficulty in reconciling such proposals with their declared aims. .... We

recognize that there may be a variety of situations falling short of the stringent standard of criminal neglect in the legal sense, in which children may be the sufferers and in which there may equally be present many of the factors of incipient delinquency (in some cases leading to the actual commission of acts of juvenile delinquency). Such situations are, however, scarcely capable of being stated in a form which would ever be appropriate to the criminal law. With hindsight one can say that such and such a parental failure contributed to this child's delinquency; it is an entirely different matter, with different children all with different needs, to attempt to state parental duties in such a form that criminal sanctions might be applied. In a free society, we do not consider that proposals for so sweeping an extension of coercive powers against adult persons - on the basis of facts and circumstances falling far short of any existing standard of criminal neglect or criminal misconduct - could ever be tolerated as a result of proceedings instituted in a juvenile court ostensibly concerned with the child's delinquency, or, in some cases, incipient delinquent tendencies.

.....

The principle underlying the present range of treatment measures is .... primarily an educational one, in the sense that it is intended, wherever possible, not to supersede the natural beneficial influences of the home and the family, but wherever practicable to strengthen, support and supplement them in situations in which for whatever reason they have been weakened or have failed in their effect. Proposals for a more sweeping extension of coercive powers in relation to parents of juvenile delinquents are in our view not only unacceptable on general grounds .... but are ultimately incompatible with the nature of educational process itself, more particularly in the context of the parent-child relationship. Such a process of education in a social context .... essentially involves the application of social and family case-work. In practice, this can work only on a persuasive and co-operative basis, through which the individual parent and

> child can be assisted towards a fuller insight and understanding of their situation and problems, and the means of solution which lie to their hands .... We consider that the alternative already discussed, based as it is on the view that in matters so closely concerning their children the co-operation of parents as adults persons can be enlisted by compulsive sanctions, is fundamentally misconceived and unlikely to lead to any practical and beneficial result." (8).

352. So far as we have been able to judge from the limited accounts available, wherever the "punish the parent" approach has been attempted the results have been at best inconclusive, and more probably negative. (9). Indeed, an objection that has been made to provisions of this kind is that they themselves contribute to delinquency, in that their use often creates a number of conditions that promote delinquency. Generally, it seems, the effect is to aggravate still further an already disturbed family relationship. The parent tends to respond to punishment by increasing his hostility to, and rejection of, the child. The child in turn reacts to the parent's anger by getting into further trouble. Moreover, such a law places a tremendous weapon in the hands of an angry child. Cases have been recorded of children causing substantial monetary damage as a way of getting even with parents, who they expect will be fined or required to make restitution. The writers of one article have commented in this connection: "Parents, whether good or bad, cannot easily be turned into deputy sheriffs. Nor, in a democracy, do we take happily to the idea that one person may be held a hostage for the good behavior of another." (10).

353. In assessing the value of provisions of this kind, we think it important also to take into account the way in which an appearance in juvenile court is ordinarily experienced by a parent. It seems evident from recent studies that, quite apart from the prospect of a specific order being made against them, parents tend to feel that, in a sense, they themselves are on trial when they appear with their child in juvenile court. (11). Many report extreme nervousness. Even the fact that they are given notice to attend causes embarrassment to many parents. Where the father must attend, he incurs the risk of additional embarrassment at his place of employment, and also the possibility of a loss of wages. Thus the juvenile court appearance itself has about it a punitive aspect from the point of view of the parents. Equally important, particularly in the light of the Kilbrandon Committee's observations, is the fact that there is reason to believe that the juvenile court experience sometimes has the effect of undermining the capacity of a parent to cope with the child. As one writer with long experience in juvenile court work has reported: "Along with their feelings of bitterness and failure .... parents often experience a severe regression in their ability to act as adequately as they did prior to the hearing. Increased inadequacy, unnecessary dependency, a flagrant refusal to perform

normal parental duties, and a hostile use of the court against the child are possible behavioral results ....". (12). Relevant also is his conclusion - that "the child's perception of his parent's worth may be seriously damaged by court action unless steps are taken to recognize and support the parent's continuing function ....". (13).

354. For reasons suggested by the preceding discussion, we are unable to accept the view that section 22 of the Act should be extended to impose greater liability upon a parent in respect of the unlawful behaviour of his child, or to shift the burden of proving that a parent has exercised due care of his child. Indeed, there is one respect in which some restriction on the present scope of section 22 seems clearly to be desirable on "due process" grounds. This concerns the status of a parent before the juvenile court. A parent is present in juvenile court, if at all, only because he has received notice pursuant to section 10 of the Act, which provides that " notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child....". Section 10, in other words, advises him only that there is an allegation of delinquency against his child; it does not advise him that the proceedings may involve an inquiry into his own responsibility and that he may himself be subject to a penalty. Consequently, a parent may attend and find that, in the course of the hearing, the nature of the proceeding has changed and that, without any notice to him, he is, in effect, on trial. Moreover, should the parent not attend, an order may still be entered against him, the notice served pursuant to section 10 being taken, by reason of another clause in section 22, to be a sufficient guarantee of his rights. (14). It should be noted also that section 22 further provides that the fine that can be assessed against a parent is determined, not by the limits otherwise provided in the Juvenile Delinquents Act, but by reference to "the amount fixed for a similar offence under any provision of the Criminal Code." (15). This entire procedure seems, to say the least, highly irregular, if not an outright departure from recognized standards of justice. Quite apart from the other policy reasons that we have considered, therefore, we think it evident that some revision of section 22 is necessary.

355. The Standard Juvenile Court Act adopts an entirely different approach to the problem of dealing with parents than that represented by section 22 of the Canadian Act. It provides that, in support of any order made in respect of a child, "the court may require the parents or other persons having the custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this Act, and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child." (16). The section then continues: "If such persons fail to comply with the requirement, the court may proceed against them for contempt of court." (17). In the result, liability is restricted to cases where parents or other designated persons have a clear indication of their responsibility, because this has been defined for them

by court order. Possibly more important, the effect of such a provision is that penalties will be imposed, not for the sake of punishment itself, but rather for failure to co-operate with the court in removing conditions that are causing difficulties for the child.

356. In our view the procedure as outlined in the preceding paragraph is preferable to that provided for under section 22 of the Juvenile Delinquents Act. We recognize that there are probably times when a juvenile court judge is justified in imposing a sanction upon a parent forthwith, as section 22 now contemplates. Nor do we discount the possibility that such action might, on occasion, have a beneficial effect. Nevertheless, we think that it should be the policy of Canadian law to discourage the use of penal sanctions against parents except in circumstances where there is an obvious failure of parents to co-operate with the court. We recommend, therefore, that section 22 of the present Act be replaced by a new provision along the lines suggested by that contained in the Standard Juvenile Court Act. We have already set out elsewhere a complementary recommendation, namely, that the juvenile court should have the power to compel the attendance of parents at a juvenile court hearing. (18).

357. We are persuaded, for the same reasons, that there should be a substantial narrowing of parental liability in respect of the offences of contributing to delinquency and corrupting children. These matters are considered later in this Chapter and we leave further comment on them until the appropriate point in that discussion.

Restitution by Parents

358. The civil liability of a parent for damage caused by his child is a very limited one - although less so, we might add, under the Civil Code of the Province of Quebec than at common law. (19). Generally speaking, a parent is liable at common law only: where the child has acted with the knowledge, consent or participation of the parent; where the child can be said to have committed the act in the course of his employment as a servant of the parent; where the parent in controlling the child's activities, fails to take reasonable care so to exercise that control as to avoid conduct on the part of the child exposing the person or property of others to unreasonable danger; or where the parent, by reason of previous experience with the child, is considered to have knowledge of the child's mischievous propensities. (20). The damage caused by children is sometimes quite substantial. Apparently municipalities and other injured parties often experience considerable difficulty in obtaining the agreement of parents to make compensation for damage caused by children. Dissatisfaction with this situation, supported by a not uncommon sentiment that parents should be forced to accept greater responsibility for the conduct of their children, has led to suggestions that the juvenile court should be given a broad power to order restitution against parents of children brought before the court pursuant to the Juvenile Delinquents Act.

359. We have serious doubts as to the advisability of permitting the Act to be used as an instrument for securing this kind of legal redress. The reasons that we have given for opposing generally the "punish the parent" approach apply, in our opinion, with equal force to the matter of restitution orders against parents. Moreover, we are not at all satisfied that federal legislation relating to an aspect of criminal law should be concerned with altering, in effect, the common law or Civil Code basis of civil recovery. If it is considered that the existing liability of parents is not sufficiently extensive, it seems to us that the better course is to remedy the situation by appropriate provincial legislation. There is, in addition, the further objection that we have already noted in the previous Chapter in discussing the question of restitution from the point of view of the young offender himself, namely, the fact that the desire to obtain restitution can easily become an end in itself, to the detriment of the welfare of some children and of the real purpose of the juvenile court process.

360. As we have indicated, it is our proposal that section 22 of the Act should be abandoned and that it should be replaced by a new procedure similar to that established under the Standard Juvenile Court Act. The result would be to relinquish altogether any suggestion of imposing in the context of a criminal proceeding what amounts to a vicarious liability on parents and guardians for acts committed by children under their charge. This is not to say that parents would thereby be entirely free from moral or indirect pressures to make restitution. As a practical matter, it seems inevitable that some informal pressures will be brought to bear. Indeed, the Kilbrandon Committee, while opposing any provision requiring restitution by parents, observed: "Restitution on a voluntary basis, arrived at with the agreement of the parents, seems to us .... to be highly desirable, and the present practice in some areas of inviting the co-operation of parents in this way is to be commended and encouraged." (21). Many parents now assume the responsibility for paying fines and fulfilling restitution orders imposed on their children by the court, and doubtless this practice will continue. By placing strict limits on the amount of restitution that can be ordered and by restricting the application of this measure to young persons over the age of fouteen - matters discussed in the previous Chapter (22) - it is our hope that any tendency on the part of courts to attempt to reach parents indirectly through their children can be kept at least within reasonable bounds.

Contributing to Delinquency

361. Difficult and important questions of policy are presented by the offence of contributing to delinquency under the Juvenile Delinquents Act and its companion Criminal Code offence of corrupting children. Perhaps the most concise statement of some of the basic objections to these offences is to be found in an explanatory note appended to one of the draft sections of the American Law Institute's Model Penal Code. The note states, in part, as follows:

"Authorities concerned with the welfare of children have disavowed the loosely drawn statutes against contributing to delinquency. Experience has shown that such statutes are almost always invoked in situations specifically dealt with by other Sections of the Code, especially those concerned with sexual offenses. To the extent of the overlap, there is no need for the contributing statute. More important, the existence of this overlapping catch-all has been .... a means of avoiding legislative judgments, made in other sections dealing with specific offenses, on such matters as mens rea, punishability of consensual intercourse, proper grading of offenses, corroboration of complaining witnesses, and adequacy of proof generally. Finally, the contributing legislation embraces such a vast range of behavior as to make it completely meaningless as a criminologic category, treating as one class, for example, a rapist, a dealer who buys stolen junk from a fifteen-year-old boy, a narcotics peddler who lures high school children into drug addiction, and a parent who keeps his child out of schools where flag saluting is required.

The basic error that appears to account for the prevalence of the legislation here disapproved is the assumption that the comprehensive terms in which jurisdiction is commonly conferred upon juvenile courts over 'delinquent, dependent or neglected' children are also appropriate to define a criminal offense. It is one thing to give broad scope to an authority to promote the welfare of children, but quite another thing to give a criminal court equivalent latitude in defining crimes for which adults shall be punished ....". (23).

362. It was the State of Colorado in 1903 that first introduced an offence of contributing to delinquency into juvenile court law. (24). The Colorado idea was quickly adopted by most American States, and also served as the original model for what is now section 33 of the Canadian Act. Two principal considerations seem to account for the popularity of the contributing provisions. First of all, the offence of contributing to delinquency provided a means for bringing proceedings against adults into the juvenile court. In this way, it became possible to extend the protective atmosphere of a juvenile court hearing,

not only to child offenders, but also to children compelled to give evidence in respect of offences committed against them by adults. Secondly, the view has been widely held that criminal sanctions should be employed, as a preventive measure, to protect children against a wide variety of unwholesome environmental influences that might be expected to have harmful consequences for a child's moral development. It was this view that found expression in the offence of contributing to delinquency. Having regard to the apparent difficulty in defining in advance the variety of situations that might call for action on the part of the community, it was thought necessary to define the liability of adults in very broad terms lest the preventive objective of the law be thwarted. This rationale of the contributing provisions gained wide acceptance, both in Canada and the United States (25) - notwithstanding the obvious objection that such provisions fail to meet the standards of definiteness ordinarily required in a criminal statute. Illustrative of this attitude are the following observations of a New Mexico court: "The ways and means by which the venal mind may corrupt and debauch the youth of our land .... are so multitudinous that to compel a complete enumeration in any statute designed for the protection of the young before giving it validity would be to confess the inability of modern society to cope with juvenile delinquency." (26).

363. Despite the fact that the offence of contributing to delinquency has been part of the criminal law in North America for over half a century, surprisingly little is known about the circumstances in which the contributing provisions are actually invoked. So far as we have been able to discover, the matter has never been the subject of a systematic study anywhere in Canada. One thing that does seem apparent, however, is that offence provisions of this kind can be used for a number of purposes, not all of them related to the welfare of children. By charging an accused with contributing to delinquency in circumstances where he could have been charged with an offence under the Criminal Code, a prosecutor is, in effect, in a position to deprive an accused of the opportunity that he would otherwise have of electing trial by a jury or by a higher judicial tribunal. (27). We have been told, moreover, that a charge of contributing to delinquency is often laid because: (a) it is easier to get a conviction against an adult in the juvenile court than in the ordinary criminal courts; and (b) the juvenile court tends to impose heavier sentences upon conviction. In our view there is a very real danger of prejudice to an accused charged with contributing to delinquency - a danger that arises, in part, from the laxity that characterizes the conduct of proceedings in some juvenile courts, and, perhaps more important, from the tendency for the court's attitude toward an accused adult to be influenced by its protective feeling toward the child. This danger of prejudice is increased in some cases by denying to an accused charged with contributing, defences that would have been available to him had he been charged in respect of the same conduct under the relevant provision of the Criminal Code. For example, it is a defence to a charge under section 138 of the Criminal Code of having sexual intercourse with a female person between the ages of fourteen and sixteen "that the evidence does not show that, as between the accused and the female person, the accused is more to blame than

the female person." Similarly, it is a defence to a charge of seduction of a female person between the ages of sixteen and eighteen under section 143 of the Code that the female person was not "of previously chaste character". Out of concern for the protection of girls, the courts have held that any such defence is not available to an accused charged with contributing to delinquency (28). It seems to us that by failing to distinguish between cases where a teen-age girl is exploited and cases where the girl is a wanton - particularly where, as frequently happens, the male charged is not much older than the girl (29) - the law runs the risk of losing sight both of conventional mores and of its ultimate purpose. It becomes but an instrument for registering moral disapproval on the part of the community without serving in any way to deter similar conduct in others or to help the girl in question.

364. There is still another source of potential prejudice to an accused charged with contributing to delinquency. This arises from the inherent difficulty of the concept of contributing to delinquency as an offence category. For what, in fact, does contributing to delinquency mean? And what limits should be observed in receiving evidence in support of a charge? Is it desirable, for example, that a court should take into consideration "the moral character of the accused" or "the whole atmosphere and conditions under which a juvenile lives", both of which members of the Manitoba Court of Appeal have said are relevant and admissible evidence on a charge of contributing to delinquency? (30). While it is beyond the scope of this Report to trace the development of Canadian case law on the contributing provisions, we should say frankly that in our judgment the courts have yet to articulate a clear test for distinguishing between permissible and prohibited conduct. In many cases, therefore, liability to a criminal sanction will depend almost entirely upon the subjective, and sometimes highly speculative, assessment of the judge as to whether particular conduct is or is not such as to contribute to the delinquency of a child. It is true that the statute provides that it is not a defence to a charge of contributing "that the child is of too tender years to understand or appreciate the nature or effect of the conduct of the accused, or that .... the child did not in fact become a juvenile delinquent." (31). In interpreting this provision the courts have said that it was "the evident intention of Parliament .... to relieve the Court of the necessity of speculating as to whether or not the child's morals were in fact undermined ....". (32). Nevertheless, the judge is often forced by reason of the indefinite character of the concept of contributing to delinquency to make precisely this kind of assessment. (33). As one judge has observed, the contributing provisions "place an obligation of self-imposed judicial self-restraint upon the courts."(34). Cases of failure to exercise this self-restraint are not difficult to find in the reported decisions. (35).

365. From a review of reported cases, there seems to be every reason to believe that in a large percentage of prosecutions under the contributing provisions a charge could have been laid under some appropriate section of the Criminal Code. (36). If it is considered desirable to have such cases heard in the juvenile court it would be quite possible, of course, to confer the necessary

jurisdiction upon the juvenile court without establishing a separate classification of offence to accomplish this result. (37). We deal further with the matter of juvenile court jurisdiction over adults later in this Chapter. In so far as the contributing provisions are concerned, it seems to us that the only essential question in issue is this: Is it necessary to have a vague offence category such as contributing to delinquency simply because there is difficulty in defining specifically the kinds of situations to which criminal liability should attach? We think not. (38). It is our recommendation, therefore, that the offence of contributing to delinquency should be abolished. (39). To the extent that this change in the law leaves situations for which penal sanctions are thought to be required, we suggest that Parliament should make provision in the Criminal Code for one or more new offences. Any such offence should be defined with a degree of precision consistent with accepted principles of criminal jurisprudence.

366. Section 157 of the Criminal Code is coextensive in part - although not entirely - with section 33 of the Juvenile Delinquents Act. As we have noted earlier, section 157 provides that anyone is guilty of an indictable offence and liable to imprisonment for two years "who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in....". In our view, section 157 is unduly wide in its present form. We are fortified in this conclusion by our reading of the few reported cases in which section 157 has been invoked. (40). Moreover, we think that the maximum penalty provided in section 157 is unnecessarily heavy, having regard to the kind of conduct to which the section is addressed. While the section directs that proceedings shall not be commenced "without the consent of the Attorney General, unless they are instituted by .... a recognized society for the protection of children or by an officer of a juvenile court", (41) we do not regard this as a sufficient guarantee against abuse. We recommend, therefore, that section 157 of the Criminal Code be amended with a view to limiting both its scope and the penalty that can be imposed.

Juvenile Court Jurisdiction Over Criminal Offences Committed by Adults

367. The Committee has received a number of recommendations to the effect that the juvenile court should be given jurisdiction over certain designated Criminal Code offences committed by adults in circumstances where (a) the offence is one in which a child is the victim, and (b) the offence is committed by one adult member of a family against another and a child is affected because he is a member of the family. Some suggest that the juvenile court should be given exclusive original jurisdiction over such cases. Others say that jurisdiction should be concurrent with that of the ordinary criminal courts, with a discretion left to the crown attorney as to the method of proceeding. Specifically, the following sections of the Criminal Code have been mentioned: section 155 (parent or guardian procuring defilement of a

female child); section 156 (householder permitting defilement); section 157 (corrupting children); section 186 (failure to provide necessaries where there is a child in the family); and section 231 (common assault), where the assault is by one member of a family on another and there is a child in the family. In supporting such an extension of the jurisdiction of the juvenile court, the Canadian Corrections Association submission states: 'The aim .... is to make it possible in those instances where it seems possible to rebuild the family to have the case heard in the more hopeful atmosphere of the children's court. .... Those provinces that have family courts will no doubt provide that some of these charges be laid there." (42).

368. This question was the subject of some comment by the Ingleby Committee. It had been suggested that juvenile courts in England should be given jurisdiction to try adults charged with cruelty to, neglect of, or some sexual offences against children, with the juvenile court having the power to commit to a higher court for trial in more serious cases and the accused himself having the right to elect trial in a higher court. As the Committee explained: "The object .... would be to ensure that proceedings in which the welfare of a child might depend on the court's decision should take place before a court accustomed to dealing with children. A secondary consideration would be that in many of these cases a child has to give evidence." (43). The Ingleby Committee rejected the proposal on the following grounds:

> " If these were sufficient reasons for the change they would justify bringing a great many other categories of case before the juvenile court .... It would not be practicable to carry this suggestion to its logical conclusion, and those who make it seem to have forgotten or mistaken the object of juvenile courts. It is to enable children to be dealt with separately from adults in courts where -
>
> (a) the magistrates are 'specially qualified for dealing with juvenile cases';
>
> (b) the procedure is specially modified to suit children coming before the court;
>
> (c) there are restrictions on the time and place at which the court may be held and the persons who may be present at a sitting; and
>
> (d) there are restrictions on newspaper reports of the proceedings.
>
> In general it would, we think, be retrograde to have

adults and juveniles being dealt with again by the same courts." (44).

369. In notable contrast to the point of view expressed by the Ingleby Committee is the position taken in the American publication Standards for Specialized Courts Dealing with Children - a position which is essentially that adopted in the 1959 edition of the Standard Juvenile Court Act. Provision for an offence of contributing to delinquency , the means whereby juvenile courts in the United States have traditionally secured jurisdiction over offences committed by adults, is expressly rejected in both of these American reviews of juvenile court legislation. (45). However, a basis for juvenile court jurisdiction over adults is developed in the Standards by reference to the following considerations:

> " It would seem wise to allow the court jurisdiction over adults charged with actions against children where there is a continuing relationship between the adult so charged and the child before the court. If jurisdiction over both adult and child is not placed in the same court, the specialized court may decide that the child should continue to live in his own home on probation, or that protective supervision in the home is necessary, only to find that the other court has removed the parent from the home, or disposition in the child's case may have to wait on a long drawn-out procedure in the other court. There are other situations where an adult having a continuing relationship with a child may be charged with a criminal offense against the child yet no petition is filed to bring the child within the jurisdiction of the court; for example, where a father has molested his child .... These situations involve intense personal relations of parent and child and are better handled in a court equipped to understand and take into account factors in such a relationship.
>
> Such reasons do not hold in the case of an offense against a child by an unrelated adult, or an adult who does not have a continuing relationship with the child. Many courts have obtained jurisdiction in such cases under the theory that greater protection can be afforded the child if the case is heard in the specialized

court. This theory does not seem sufficient justification to bring all such cases into the specialized court...." (46).

370. Still another approach to the matter of juvenile or family court jurisdiction over offences committed by adults is the scheme developed under the Family Court Act of New York State. (47). The New York statute gives jurisdiction to the family court over "any proceeding concerning acts which would constitute disorderly conduct or an assault between spouses or between parent and child or between members of the same family or household." (48). Any criminal complaint involving disorderly conduct or assault between such persons must be transferred by the originating criminal court to the family court, unless it is withdrawn within three days. (49). A serious case may be transferred at once if the local judge believes that it will be returned to him and he wishes to initiate the proper criminal procedures as soon as possible. The family court may, in its discretion and where family court procedures seem inappropriate, transfer a case to the criminal court. Where a case is considered appropriate for the family court approach, the matter is not dealt with as a criminal offence at all. Instead, a proceeding is instituted by the filing of a petition alleging the acts constituting the offence and praying for an order of protection or conciliation. As one commentator explains: "It is the intention of the Legislature to remove from the problems of family relationships the stigma of criminal charges, handling and disposition. It was considered unrealistic to burden a defendant with a criminal record of arrest and conviction of misdemeanors, even felonies, when the intention of all parties was mainly to secure proper support, or restore peace to a family." (50).

371. Under the New York plan, a petition to commence proceedings in the family court may be brought by the aggrieved person, by any other member of the household, by a duly authorized agency, by a peace officer, or on the court's own motion. Where proceedings are brought initially in the family court, the prayer may be for transfer of the case to the criminal courts. In the family court, the matter may be dealt with by the probation service and intake department in an attempt to solve the problem by adjustment, or it may be made subject to a formal hearing. Any petitioner may, however, insist upon access directly to the court. If a court proceeding ensues the court may dismiss the petition if it concludes that the court's aid is not required. Alternatively, the court may suspend judgment for not more than six months, or place the respondent on probation for not more than one year, or make an order of protection. Such orders of protection may include the following: (a) that the respondent shall stay away from the home, the other spouse or the child; (b) that he or she shall abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded; (c) that he or she shall give proper attention to the care of the home; and (d) that he or she shall refrain from acts of commission or omission that tend to make the home not a proper place for the child.

372. It would seem that the New York statute and the Standard Juvenile

Court Act differ in the emphasis that they place upon two competing considerations. The New York Act accepts the principle that criminal proceedings should, for the most part, be excluded from the family court, and since the legislature is obviously not prepared to discontinue the institution of criminal proceedings against adults in such cases, New York law allows a wide range of proceedings to be brought against adults, including parents, in the ordinary criminal courts. Moreover, the offence of contributing to delinquency is retained in the law and continues to apply to adult family members who have committed acts that may have contributed to the delinquency of a child in the family. The family offence provisions do not apply to charges of contributing to delinquency. In contrast, the Standard Juvenile Court Act lays greater emphasis upon the need for bringing together in one court all matters involving a continuing relationship within the family. With this objective in mind, it follows that is is regarded as acceptable to have some criminal proceedings against adults heard in the juvenile or family court. Consequently, "exclusive original jurisdiction" would be conferred by the Standard Act upon the juvenile court over, inter alia, "any offense committed against a child by his parent or guardian or by any other adult having his legal or physical custody." (51). This is subject to the right of the juvenile court and the accused to have the matter transferred to the ordinary courts.

373. In our view means should be available for bringing before a juvenile or family court, on one basis or another, certain less serious offences committed by adults involving family relationships. We would emphasize that any such extension of the jurisdiction of the juvenile and family courts makes it all the more important that highly qualified judges be appointed. Specifically, we make the following suggestions for changes in federal legislation relating to juvenile and family court jurisdiction over offences committed by adults:

(1) The juvenile or family court should have jurisdiction over certain designated offences committed in circumstances where (a) a child is the victim of an offence and there is a continuing relationship between the child and the adult charged, or (b) the offence has been committed by one member of a family or household against another and a child is substantially affected by the proceedings. The jurisdiction of the juvenile or family court should be determined, not by any such formula itself - as it is, for example, under the Standard Juvenile Court Act - but by a statutory listing of the offences and circumstances that are contemplated. It is not our intention, in other words, to suggest that more serious

offences, such as incest, should be brought within the jurisdiction of these courts because of the continuing relationship with the child that is involved.

(2) The juvenile or family court should, so far as practicable, have exclusive original jurisdiction in the situations designated. We think that this is preferable to giving concurrent original jurisdiction to the ordinary criminal courts. Many cases are disposed of on pleas of guilty. For this reason, and also in the interest of consistency in the administration of the law, we think it best that in every such case the matter should go first to the juvenile or family court.

(3) For reasons that we have suggested in discussing the offence of contributing to delinquency, we think that the accused should be entitled to an election as to whether he wishes to be tried by the juvenile or family court or to have the matter transferred to the ordinary criminal courts. Similarly, the juvenile or family court should itself have the power to transfer any case to the ordinary criminal courts.

(4) The Criminal Code should be reviewed to determine what offences might, in the circumstances we have suggested, appropriately be dealt with in the juvenile or family court. In addition to the offences listed in paragraph 363, these courts might be given jurisdiction, for example, in certain cases of abduction under sections 235 and 236 of the Criminal Code. We have in mind situations such as youthful elopments and abduction by a parent who has lost the legal right to custody. Moreover, with the increasing tendency in Canada to establish family courts, it may be desirable to assign certain offences to these courts quite apart from any child being involved at all. An example would be proceedings by a spouse under the Criminal Code to have the other spouse bound over to keep the peace. (52).

(5) The juvenile or family court should have the

> power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender. Whatever may be said of the absolute or conditional discharge as part of a general system of sentencing, we think that such methods of disposition are particularly suitable in dealing with many offences committed by one member of a family or household against another. We would also suggest that, in connection with any amendment to the law authorizing the conditional discharge of offenders, consideration should be given to incorporating specific statutory conditions along the lines that we have previously noted. (53).

374. In addition to the proposals outlined above, we recommend that the system adopted in the State of New York be studied with a view to assessing its suitability for introduction into Canada. We recognize that a legislative scheme of this kind cannot be implemented by federal legislation alone. Presumably it would be necessary for the Attorney General of Canada to take up with the appropriate provincial authorities the question as to whether the Criminal Code should be amended so as to permit any province that chooses to do so to adopt a procedure designed to keep problems of family relationships out of the criminal courts. A province may, for example, wish to require a period of delay before criminal proceedings can be instituted by one member of a family against another in order that there can be sufficient time for informal adjustment or procedures of a civil nature to have their effect. Having regard to the constitutional difficulties that are involved and to the fact that little is known as yet concerning the effectiveness of the New York system, we have contented ourselves with recommending that this matter receive study as part of the development of criminal law policy in Canada.

Footnotes

1. Juvenile Delinquents Act, s.22(1).

2. Criminal Code, s.157(1).

3. Children and Young Persons Act, 1933, 23 & 24 Geo.5, c.12, s.55(1); Children and Young Persons (Scotland) Act, 1937, 1 Edw.8 and 1 Geo. 6, c.37, s.59.

4. See National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.11 and comment, pp.28-29; American Law Institute, Model Penal Code (Tent. Draft No.9, 1959), art.207. 13 and comment, pp.182-187, and (Proposed Official Draft, 1962),

s.230.4, p.192.

5. Tappan, Juvenile Delinquency (1949), p.497.

6. Rubin, Crime and Juvenile Delinquency (1958), p.42.

7. Kilbrandon Committee, para. 18, p.14.

8. Ibid., paras. 19 and 35, pp. 14 and 20. The Kilbrandon Committee also observed: "Under the guise of promoting the welfare of children, such proposals appear to be in risk of ending in the application of coercive measures against the parents on the basis of a somewhat vaguely-defined aim of improving the quality of family life; and of assuming a prescriptive right not merely to prevent juvenile delinquency but to improve, by direct coercive measures, adult people - on the footing that there is a duty in the State to promote universal happiness among its citizens." Ibid., para.20, p.15. That such provisions have a tendency toward this result would seem to be borne out by a number of reported cases on section 33 of the Juvenile Delinquents Act (contributing to delinquency) and section 157 of the Criminal Code (corrupting children). See, e.g., In re Strom (1930) 1 W.W.R. 878, 53 C.C.C. 224; Rex v. Vahey, (1932) 3 D.L.R. 95, 57 C.C.C.378; Rex v. Eastman (1932) O.R.407, 58 C.C.C.218; Dionne v. Pepin, (1934), 72 C.S.393; Regina v. Bloomstrand, (1952) 6 W.W.R. (N.S.) 680, 15 C.R.249; Regina v. Poirier, (1953) C.S.406.

9. See, for example, Alexander, "What's This about Punishing Parents?," (1948) 12 Federal Probation 23; Glueck, The Problem of Delinquency (1959), c.30; Robbins and Robbins, "Should We Punish Parents of Delinquent Children?," Redbook (May, 1956), p.2; Rubin, op. cit. supra note 6, at pp. 33-42; Tappan, op. cit. supra note 5, at pp. 497-498.

10. Robbins and Robbins, supra note 9, at p.7.

11. See, for example, Voelcker, "Juvenile Courts: The Parents' Point of View," (1960-61) 1 British Journal of Criminology 154.

12. Studt, "The Client's Image of the Juvenile Court," in Justice for the Child (Rosenheim ed., 1962), at p.211.

13. Ibid., at p. 213.

14. "No order shall be made under this section without giving the parent or guardian an opportunity to be heard, but a parent or guardian who has been duly served with notice of the hearing pursuant to section 10 shall be deemed to have had such opportunity,

notwithstanding the fact that he has failed to attend the hearing." Juvenile Delinquents Act, s. 22(4). But see Lysenko v. Cooper, (1938) 1 W.W.R. 366.

15. Juvenile Delinquents Act, s. 22(2).

16. Standard Juvenile Court Act, s.23, p. 56.

17. Ibid.

18. See supra paras. 255-256.

19. See Civil Code of the Province of Quebec, art. 1054.

20. See Fleming, The Law of Torts (1957), pp. 167-168 and 703-704.

21. Kilbrandon Committee, para. 33, p. 19.

22. See supra paras. 297-299.

23. American Law Institute, Model Penal Code (Tent. Draft No.9, 1959), pp. 182-183.

24. See Lou, Juvenile Courts in the United States (1927), p.22; Chute, "Fifty Years of the Juvenile Court," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949) p. 1,at p.5.

25. See generally Scott, The Juvenile Court in Law (3rd ed., 1941), pp.27-33; Geis, "Contributing to Delinquency, (1963)8 St. Louis University Law Journal 59.

26. State v. McKinley, (1949) 35 N. Mex.106, 202 P. 2d. 964.

27. See Criminal Code, ss.450 and 468.

28. See Rex v. Christakos, (1946) 1 W.W.R. 166 per McPherson, C.J.M., at p. 168, 87 C.C.C. 40, at p.41; Rex v. Miller, (1944) 1 W.W.R. 415, 81 C.C.C. 110. See also Rex v. Linda, (1924) 2 W.W.R. 835, 42 C.C.C. 110.

29. See, for example, Regina v. Cortner, (1961) 35 W.W.R. (N.S.) 187, 130 C.C.C. 292. An anomalous situation exists in Alberta, where the juvenile age is eighteen for girls and sixteen for boys. It sometimes happens, we are told, that a charge of contributing to delinquency is brought against a youth because of his relationship with a girl of about the same age as himself, or possibly even older.

Such charges are often laid at the insistence of the parents of the girl, even against the advice of the police. Of interest in this connection is the position adopted in the Model Penal Code, which restricts the definition of less serious kinds of sexual assault and exploitation to cases where "the other person .... (i.e., the victim) .... is less than (16) years old and the actor is at least (4) years older than the other person." American Law Institute, Model Penal Code (Proposed Official Draft, 1962), ss.213.3 and 213.4.

30. Rex v. Christakos, (1946) 1 W.W.R. 166, at pp.167 and 171; 87 C.C.C. 40, at pp.41 and 45.

31. Juvenile Delinquents Act, s.33(4).

32. Rex v. Hamlin, (1939) 1 W.W.R. 702 per Manson, J., at p.704, 72 C.C.C. 142, at p.144. See also Rex v. Marr, (1944) 1 W.W.R. 345, 81 C.C.C. 238; Rex v. Van Balkem, (1944) 1 W.W.R. 347.

33. See, for example, Regina v. Cortner, (1961) 35 W.W.R. (N.S.) 187, 130 C.C.C. 292; Rex v. MacDonald, (1936) 3 D.L.R. 446, 66 C.C.C. 230. See also Regina v. Cairns, (1960) 128 C.C.C. 188.

34. State v. Crary (1959) 10 Ohio Op. 36, per Alexander, J., at p.38, 155 N.E. 2d. 262, at p.264.

35. See, for example, Regina v. Poirier, (1953) C.S. 406. While the reported cases indicate that charges of this kind are regularly dismissed, it is notable that this is usually on appeal from conviction by a juvenile court judge or magistrate. We have no way of knowing how frequently such charges are brought and how often pleas of guilty are entered and accepted. Rather more information concerning the use that is made of the contributing provisions is available in the United States, although here too the matter appears to have received surprisingly little study. See generally, Geis, supra note 25; Foster and Freed, "Offenses Against the Family," in Symposium - American Papers for the Congress of the International Association of Penal Law (1964), in (1964) 32 Kansas City Law Review 1, at pp.78-85.

36. This conclusion is confirmed by data compiled in New York City. See Ploscowe, Sex and the Law (1962), pp.207-208.

37. Indeed, the Juvenile Delinquents Act already contains a provision conferring jurisdiction upon the juvenile court over Criminal Code offences committed by adults in certain cases, Section 35 provides, in part: "Prosecutions against adults for offences against any provisions of the Criminal Code in respect of a child may be brought

in the Juvenile Court .....". It has been held that, by reason of this provision, a juvenile court judge has jurisdiction to try an adult charged with an offence against what is now section 157 of the Criminal Code. Rex v. Ducker, (1919) 45 O.L.R. 466, 31 C.C.C. 357. It is perhaps worth noting, however, that much uncertainty has been expressed concerning the precise effect of section 35. Section 35 goes on to provide that prosecution may be brought in the juvenile court "without the necessity of a preliminary hearing before a justice, and may be summarily disposed of where the offence is triable summarily, or otherwise dealt with as in the case of a preliminary hearing before a justice." Failing some more elaborate revision of the law, there would appear to be merit in the suggestion that section 35 should be re-written so as to clarify its meaning.

38. We think it useful in this connection to quote the following comments of the Counsel for the National Council on Crime and Delinquency in the United States: "The use of the statutes defining the crime of contributing to delinquency is spotty. Whether it is used or not depends on the policy of a particular place at a particular time. Either these statutes make good sense and ought to be used, or they ought to be taken out of the laws to avoid their abuse .... But are there not some exceptional cases where the statute might be used? Perhaps. One answer to such a defense of the law is that it is a peculiar kind of penal law that is used only when it is convenient. We think of crimes as acts that should be suppressed and punished consistently and equally .... Probably one reason why the laws are not on their way out is that they are enforced only sporadically. If they were persistently enforced their unjustified harshness would convince many that the laws should be repealed." Rubin, op. cit. supra note 6, at pp. 39-41.

39. In view of our recommendation that the offence of contributing to delinquency be abolished, we find it unnecessary to comment in any detail on suggestions that have been made for amendments to section 33. It may be useful, however, to take note of the more important of these suggestions. One proposal is that section 33 be amended to provide that it shall not be a defence to a charge of contributing to delinquency that an accused did not know that the child was under the juvenile age. This proposal follows a decision of the Supreme Court of Canada disapproving a number of earlier lower court decisions and holding that such a defence is open to an accused. Regina v. Rees; Regina v. Angiers, (1956) S.C.R. 640. We could not concur in the change proposed. Cf., American Law Institute, Model Penal Code (Proposed Official Draft, 1962) s. 213; Sexual Offences Act, 1956, 4 and 5 Eliz. 2, c. 69, s. 6(3). We take a more favourable view of two other proposals:

(a) that the offence of contributing to delinquency be transferred to the Criminal Code; and (b) that liability to conviction for contributing to delinquency be confined to adults only, or at least to cases where there is a substantial age difference between the accused and the child affected. As we have indicated, however, we think it preferable that the offence of contributing to delinquency be abolished altogether.

40. Rex v. Vahey, (1932) 3 D.L.R. 95, 57 C.C.C. 378; Rex v. Eastman, (1932) O.R. 407, 58 C.C.C. 218; Regina v. Turgeon, (1957) Que. Q.B. 796.

41. Criminal Code, s. 157(4).

42. Canadian Corrections Association, The Child Offender and the Law (1962) p. 16.

43. Ingleby Committee, para. 178, p. 60.

44. Ibid., para. 179, p. 60.

45. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Standards for Specialized Courts Dealing with Children (1954), pp. 33-35; Standard Juvenile Court Act, s. 11 and comment, pp. 28-29.

46. Standards for Specialized Courts Dealing with Children, pp. 33-34.

47. See Oughterson, "Family Court Jurisdiction," (1963) 12 Buffalo Law Review 467, at pp. 491-494; Paulsen, "The New York Family Court Act," (1963) 12 Buffalo Law Review 420, pp. 430-431.

48. New York Family Court Act, N.Y. Sess. Laws 1962, c. 686 as amended, art. 812.

49. Presumably this does not include more serious cases where the offence amounts to a felony. The powers that the Legislature may confer upon the Family Court are restricted by the New York Constitution. The constitutional provision authorizes Family Court jurisdiction over "crimes and offenses, except felonies, by or against children or between spouses or between parent and child or between members of the same family or household." New York Constitution, art. VI, s. 13(b).

50. Oughterson, supra note 47, at p. 487.

51. Standard Juvenile Court Act, s. 11.

52. Criminal Code, s. 717.

53. See supra para. 371.

PART V PREVENTION

CHAPTER XI

Introduction

375. Throughout this Report we have been concerned primarily with the "control" features of a juvenile delinquency program - that is, with the legal and correctional framework and with the various ways in which the juvenile court process can come to bear upon the juvenile offender. Equally important, however, are measures aimed at the "prevention" of delinquency. Too seldom is sufficient attention given to both "control" and "prevention" as complementary components of an integrated approach to the problem of delinquency. It is necessary, of course, that the community concern itself with remedial or control measures after the fact. Citizens must be protected by adequate law enforcement and correctional treatment programs against repeated violations of the law by children and young persons. Moreover, measures that induce a young person to become law-abiding are themselves a form of prevention in that they reduce the likelihood of subsequent misbehaviour. At the same time, it is important to recognize that efforts limited solely to the control and rehabilitation of persons found delinquent do not reach the basic sources of the problem. There must be a parallel emphasis upon what are commonly called "primary" and "secondary", as apposed to "tertiary", measures of prevention. (1). There must, in other words, be a substantial investment of our knowledge and resources - and, indeed, of our imagination - as part of a broad attack on those aspects of family and community life that tend to have as their eventual outcome adolescent rebellion or drift.

376. At the outset we wish to make one point clear. It is impossible to eliminate delinquency, just as it is impossible to eliminate crime. Delinquency and crime, like other expressions of social pathology, often reflect current and even accepted patterns of community life. In essence they are a by-product, avoidable only in part, of our social structure itself. Moreover, there will always be those who will engage in prohibited activities for the very reason that such activities are not permitted. Society can, of course, define and respond to anti-social behaviour in different ways. It may, through the formal agencies of control, permit a wide or a narrow range of anti-social behaviour. The realistic goal is to attempt to reduce the incidence of delinquency in a manner consistent with the other values for which mankind is joined in organized society.

377. In this Chapter we are concerned with the "prevention" component of any organized attack on the problem of juvenile delinquency. As will perhaps already be evident, the term "prevention" has been given a number of different meanings when applied to programs designed to combat delinquency.

The most frequently quoted statement of the difficulty in isolating the meaning of "prevention" appears in a publication prepared for the United States Children's Bureau by Witmer and Tufts, entitled The Effectiveness of Delinquency Prevention Programs. (2). The authors observe:

> " Despite the attractiveness of the idea, delinquency prevention is an elusive concept ....
>
> .....
>
> To some, delinquency prevention is practically synonymous with the promotion of the healthy personality development of all children. Since delinquency, say these people, is attributable to poor parent-child relations, inadequate social values and inadequate training in social values, prejudice and discrimination against minority groups, adverse economic conditions, inadequacies in staff and equipment for schooling, recreation, medical care, religious training, and so on, marked reduction in delinquency can be expected only if great changes are made along all these lines. ....Proponents of this viewpoint would seek to prevent or reduce delinquency by improving all aspects of .... life that bear closely upon the personality development of children and all services that are provided in children's behalf ....
>
> .....
>
> To other students and planners of programs, delinquency prevention means reaching potential delinquents before they get into trouble. To them the global approach just described, or even segments of it, would seem too roundabout. .... The children who are likely to become delinquent may be identified by predictive tests, say some proponents of this viewpoint. Alternatively, it is proposed that children be selected by, say, their teachers on the basis of peculiar or obstreperous conduct that is believed to foreshadow delinquency, or perhaps on the basis of markedly adverse home conditions. This approach to delinquency prevention is distinguished from the one just described not only by its limited clientele but also by the character of the activities undertaken. The emphasis here is on

> direct services to children and (sometimes) their parents instead of on measures aimed at improving environmental conditions ....
>
> .....
>
> A third conception of prevention stresses reducing recidivism and lessening the likelihood of serious offenses rather than reaching children who have not yet offended against the law. What is chiefly to be prevented, in this view of the problem, is the aggravation of delinquent behavior, its continuance rather than its onset. Programs operated on this basis accordingly deal largely with youngsters who engage in behavior that is illegal and that may already have led to court action.
>
> .....
>
> The kinds of programs that have been established to reduce delinquency among children who already clearly show delinquent tendencies vary widely. Some provide psychiatric or social treatment. Some concentrate their attention on delinquent gangs and seek to redirect their interests and activities. In some the parents are the focus of service; in some only the delinquent receives attention." (3).

378. Although there has been much talk about prevention, there has been little objective research into the effectiveness of various types of preventive programs. In the words of a recent American review of current knowledge in the field, "our theoretic understanding remains speculative, empirically unsubstantiated, and composed of an aggregate of contradicting, unrelated, and disputing segments." (4). Clearly it is beyond the scope of this Report to undertake a study in depth of the many-sided problem of prevention. We content ourselves with making a very limited survey of the relevant areas of inquiry and with suggesting what seem to us to be the most promising directions for future action. In doing so, we rely heavily on the experience of others more knowledgeable in these matters than ourselves. It is our hope that a more detailed examination will follow as part of a systematic and studied attempt to devise programs in Canada designed to meet the need for more intensive and organized concentration on measures of primary and secondary prevention. Programs of the kind that might be expected to have a significant impact on the problems of delinquency will almost certainly require both changes in existing practices at the community level and substantial expenditures of

money. Governmental support will doubtless be necessary if such programs are to be developed. It is obvious, of course, that the matter of legislative action by the federal government in the field of prevention raises constitutional issues of major importance - issues that extend well beyond the interpretation of the criminal law power assigned to the federal authority under the Canadian constitutional system. We make no attempt to define or resolve these issues here. While we do make certain specific suggestions concerning possible federal action, we leave to those responsible for the formulation of policy the task of assessing the proper limits of federal activity in the field of delinquency prevention. We would only add that, having regard to the nature of the problems involved and to the need to develop a tested body of knowledge and experience that can be made available to communities throughout Canada, it is our opinion that the case for some form of federal participation in this area is a very strong one.

The Home

379 If there was a common theme running through the submissions presented to the Committee, it was the emphasis placed upon the importance of family life in the prevention of delinquency. In the development of a healthy personality the child needs parents who are willing to love him, parents who can set both realistic goals and limitations for the child and offer support and encouragement to the child in meeting these expectations. Given this proper family environment, the child is more readily able to achieve a sense of self-worth and emotional security. Failing this kind of support, the anxiety and alienation that he experiences may be such as to contribute substantially to later emotional disturbance or anti-social behaviour. Some theoretical approaches go further. Thus it is said by some authorities on child psychology, for example, that the pattern of the emotional interrelations with those close to the young, which is formed in the earliest period of life, continues throughout adult life, not merely in a general way but very specifically and precisely in its major features and often even in detail. Whatever position one takes among the many theories of personality development that can be found in the literature (5) - and the literature is both enormous and complex - one fact is apparent. Not all children in our society are fortunate enough to have parents with the characteristics and abilities that are basic to establishing a suitable family environment. The parents may be mentally ill, or alcoholic, or ignorant of good child-rearing practices. One or both of the parents may die while the child is very young. Economic pressures may force the mother to work and leave her child with inadequate parental care. While many children overcome such disadvantages, situations of this kind place children "at risk".

380. Society cannot bring the dead back to life, but it can do much to ensure that the detrimental effect of the lack of adequate parental care is minimized. Where the parental inadequacy is related to ignorance the solution is educational measures. Principles of good mental health should be presented to prospective parents as well as to persons who already have children. (6).

For some time well-baby clinics have been in operation. It is hoped that in these clinics it is realized that a concern for the mental health of the child is as much a concern of public health as is the concern for the child's physical health. A knowledge of mental health principles and a willingness to apply them is insufficient by itself. The parents must be free from the kind of apathy or anxiety produced by chronic unemployment and long-term poverty. Measures that enhance the economic security of the family, even though not introduced primarily for their mental health effects, can nevertheless have this further beneficial result.

381. Society's general attitude toward inadequate parents tends to be critical and punishing. There is no deeply rooted and broadly held conviction that inadequate parents should be helped. The prevailing choice of action is to punish the parents and to remove the children. Undoubtedly in many instances such removal is necessary, But too often it is the easy solution readily masked as "doing something for the children". What would be preferable in a large number of cases is community effort to sustain inadequate parents until they become self-sufficient. A complete range of co-ordinated welfare services, adequately staffed and financed, is needed, not only to achieve the foregoing, but also to provide for children whose parents' inadequacy cannot be remedied.

382. A particular source of concern to students of social welfare has been the so-called "multi-problem family". One submission explains: "Social research during the past decade has established the fact that within our North American society there is a hard-core of families - approximately 6% of all urban families - who are suffering from such a compounding of serious problems that they are absorbing over 50% of the combined services of the community's dependence, health and adjustment agencies. In many of these families, where destructive forces move continuously to reinforce each other, the pathology has existed for two or more generations." (7). Such chronically dependent family groups contribute substantially to the crime and delinquency statistics of every large-sized community. In recent years a number of communities in North America, Europe and Australia have attempted to develop integrated programs designed to cope with the problem presented by these hard-to-reach, disorganized families. Some persons concerned with delinquency prevention have regarded the "multi-problem family" approach as a major step forward in the search for a means of attacking the very roots of crime; others have expressed doubts as to whether programs organized around the provision of services and based upon existing agency structures really address themselves to the fundamental causes of anti-social behaviour. While our own inclination is to accept the latter view, we make no attempt to arbitrate in any conclusive way between these conflicting assessments. It seems to us that progress in the field of delinquency prevention is most likely to occur where experimentation is encouraged along a number of promising lines. We do not know whether there is a need in Canada for a demonstration project in the area of "multi-problem family" research. Some work along these lines has already been undertaken. (8). We d

suggest, however, that the desirability of some such project, incorporating carefully defined techniques for the evaluation of results, should be considered in connection with any program that is developed for examining alternative approaches to delinquency prevention.

383. We should not leave this discussion of the role of the family in delinquency prevention without recording the fact that this past generation has witnessed profound changes in the nature and quality of family life. In a relatively short period of time, North American society has passed from a predominantly rural stage of its development to an essentially urban way of life. Social and cultural change has proceeded with unprecedented rapidity, affecting almost every aspect of social experience. We need but note the pervasive influence of the media of mass communication, the development of a highly mobile population aided by modern means of transportation, and disintegration of many of the traditional patterns of community living. Like every other social institution - and probably more than most - the family has felt the impact of these changes. As one submission observes: "Two world wars and a revolution in mores and codes of behavior have left many adults and growing children uncertain as to what now constitute specific guides to conduct. It stands to reason that families in which successful relationships have failed to develop, where stability is lacking, and guide-lines of behavior not established, will produce children ill-equipped indeed to withstand the impact and seduction of adverse influences in the world at large." (9). It seems evident, then, that the problems of contemporary family living are a legitimate and important object for serious study. Indeed, the author of the 1950 Hamlyn Lectures has suggested: "The task before us - it is really part of our defence of western civilization - is to rebuild the family on new and firmer foundations." (10). Efforts to promote the study of the family should, in the Committee's view, receive every possible support.

The Church

384. Professor Tappan has observed: "The actual role of contemporary religion in delinquency prevention is not easy to evaluate. Its potential role is tremendous, but the fulfilment of that potential depends on the vitality of a religion in the lives of its professants. .... Excepting in so far as doctrinal norms are fused into the general culture, religion can play no great role in man's life unless it is vitally conditioned in his intellectual and emotional processes. This requires more, obviously, than membership in a church or even than attendance - sporadic or faithful - at its services." (11).

385. The specific contribution that the Church can make to delinquency prevention has been well stated by the authors of one publication in the following terms:

> " The Church can reinforce the family's role in helping a child achieve personal and social

integrity. It can guide youth in arriving at a scale of values in keeping with democratic living - values that emphasize the dignity and worth of the individual and the equality and brotherhood of all people. It can transmit to youth the enduring ideals of civilization.

Adolescence is a time when children begin to tussle with problems about themselves and their place in the universe. The Church can give them spiritual faith and confidence in a rational order and an appreciation of the ultimate truths that transcend the immediate confusion. It can help youth understand the issues now at stake and can imbue them with a sense of responsibility as citizens of the world.

To give spiritual guidance--this is the primary role of the church. As one of the community forces influencing children, the church can also contribute concretely to the prevention of delinquency. To do so its leaders must take an active interest in community life. They must be aware of conditions in their neighbourhood that make for delinquency and take steps to eliminate them. They can arouse public concern for community problems and spur church members into doing something about them. They can co-operate with other agencies and neighbourhood groups to make the community a better place to live in.

Church buildings can serve as community centres with recreational programs so varied and attractive that children will be eager to come. These programs might include discussion groups in which older boys and girls could thrash out their ideas, doubts, and beliefs. Ideals are moulded by the personalities we admire. Group leaders in church activities, therefore, should be the kind of men and women who understand young people and arouse their respect and admiration." (12).

386. The Committee has been impressed by the contribution that Church leaders have made in a number of communities to efforts at delinquency prevention. We are told that this contribution can be made still more effective if the

work of the Church in this field is co-ordinated to a greater extent with other aspects of community planning. In the words of one submission, "mutual interaction between casework, group work, and pastoral counseling will enhance mutual understanding and respect, and lead to most effective collaboration toward prevention." (13).

The School

387. We can perhaps best introduce our comments on the role of the school in delinquency prevention by setting out the text of a statement presented to a committee of the United States Senate by Dr. William C. Kvaraceus, Director of the Juvenile Delinquency Project of the National Education Association. In a most useful summary of the position and responsibility of the school system in relation to juvenile delinquency, Dr. Kvaraceus states:

> " In mobilizing community forces for prevention and control of juvenile delinquency, the social planner intuitively looks to the school as a major - if not central - resource. For the schools have all the children of all the people; they receive the child early and maintain a close and intimate relationship; they have trained personnel to deal with children and youth; they aim to develop integrated and socially effective citizens; and they are found in every community.
>
> The temptation is ever present to make of the school an omnibus agency in order to serve any community endeavor. The school, as one agency, cannot hope to be everything unto every child. The school is not a hospital ; it is not a clinic ; it is not a community convenience for disturbed or disturbing children and youth ; nor is it an adolescent ghetto. The unique and special role of the school is to be found in its teaching-learning function. Without deflecting from this unique and special function and recognizing the fact that most of the delinquents' difficulties stem from forces and antecedents outside the school, just what can be expected of the school staff in community programs aimed at curbing delinquency?
>
> The 'good school' will make its optimum contribution only by becoming a 'better school'. The following practices will identify the better school with particular reference to those adaptations

which can relate directly or indirectly to the prevention and control of norm violations. There is some evidence that poor schools - schools who do not show these adaptations - may aggravate, if not cause, delinquent behavior.

1. There must always be visible a positive and diagnostic attitude toward the misbehaving child. However, many schools show a hostile, if not punitive-retaliatory mood. Many schools caught in the press of the educational critics demanding more and better mathematicians, scientists, and linguists appear more than willing to sell any reluctant or recalcitrant learner down the river to preserve the academic reputation of the school. Instead of a helping hand the school too often shows the back of its hand.

2. There must be greater differentiation of instruction. School objectives must be stated and evaluation of the school's program should be made in terms of development of new and desirable behaviors or the modification of old and undesirable behaviors. If schools can modify the behavior of large masses of children thereby changing the culture (the way of life), they may ultimately live up to their potential function as change agents. In differentiating the curriculum, attention must be given to the current monolithic structure of the upper-middle-class curriculum. Attention needs to be given to the development of a meaningful curriculum for the lower-class youngster for whom middle-class goals do not represent reasonable and realistic goals. The core of this revision should center around the communication skills, leisure-time use, and occupational competencies.

3. Attention must be directed to improving the sublimal or covert curriculum as found in the culture and subculture of the school. This is the way of life that sets up norms telling the youngster how to act and how not to act. Like the lower part of the iceberg, this hidden curriculum often provides more

effective learning experiences than are forthcoming from the visible curriculum.

4. The surrogate role of the teacher must be maximized. Who wants to be like the teacher? Many teachers do, and more should, serve as imitative examples through the development of strong interpersonal relationships. With the threat of oversized classrooms, teaching machines, and listless mentors, anonymity, impersonality, and boredom can combine to emit a school dropout if not a delinquent.

5. The school must procure and maintain certain special and essential services. The teacher's time and competencies are limited. She needs the help of the school nurse, school doctor, counselor, psychologist, caseworker. To the usual array of services we need to add those of a social analyst.

6. Early identification of pupils vulnerable or exposed to the development of delinquent behavior can be carried on in the school agency. Nothing predicts behavior like behavior. The pupil in his day-to-day behavior will give much evidence of the direction of his growth patterns. Early detection and referral of youngsters who give evidence of the need of help can result in prevention.

7. The school must improve its partnership role within the total community complex of health and welfare agencies. The school cannot remain an isolated agency. It must coordinate its efforts with those of other youth and family welfare and recreation agencies." (14).

388. The school has been called the second line of social defence in the prevention of delinquency, the first being the home. One submission received by the Committee observes that "the recent trend in our culture today for community agencies to assume more and more of what had been the responsibilities of the home, suggests that the school will continue to play an increasingly important role in the development of habits, attitudes and values of our young people." (15). On the other hand, the school must guard against assuming responsibility beyond its proper function and competence. Professor Tappan argues that "the community and often educators themselves are sometimes addicted to quite unrealistic extension and elaboration of the teacher's functions

in loading upon the school burden after burden that some other social institution is attempting to avoid." (16). The essential task of the school system has been described in terms of two "dimensions of responsibility". (17). One dimension is that of building into the lives of all of its pupils the knowledge, skills and attitudes that make for mature citizenship in a free society. The other dimension is that of early identification of, and special attention to, those children who for one reason or another are unable to make satisfactory progress in acquiring the knowledge, skills and attitudes that are required. The role of the school as an instrument for the prevention of delinquency can perhaps best be defined by reference to these recognized dimensions of concern.

389. Individuals differ from each other in a variety of ways and these differences are reflected in the manner in which different children respond to school situations. Some children suffer intense and unrelieved frustration in school because they lack the skills and ability necessary to compete effectively in an undifferentiated program designed for the average child. As studies of the delinquent and the so-called "pre-delinquent" child have repeatedly shown, truancy and low marks are highly correlated with delinquency, and the correlation is higher in areas where the delinquency rates are highest. (18). The National Education Association study points out: "Pouring all students into a single academic mold causes many predelinquents to suffer frustration, failure, and conflict, which, in turn, beget aggression that frequently eventuates in norm-violating behavior. Early school drop-out - a frequent forerunner of delinquency - is also closely related to the failure of the undifferentiated curriculum to stimulate or hold the student whose interests and capacities are not academic.' (10). Thus one of the most basic contributions that the school system can make to delinquency prevention is in the provision of a flexible and balanced curriculum suitable to the varying needs of the different kinds of students whose education is the school's clear responsibility. This may require special programs and services of several kinds, having regard to the many reasons why children encounter difficulty in school. The school, for example, may undertake remedial work to assist children with speech defects and those commonly called "underachievers". It may establish opportunity classes, classes for the physically handicapped, home teaching and hospital classes, and the like. In some communities work experience programs have been developed as a way of giving young persons with low academic potential actual job experience within the context of the school system itself. (20). To quote from a report prepared for the Committee by the Edmonton Public School Board, "research now has demonstrated that the best learning situation is also the best environment for wholesome personality growth." (21). In the fullest sense, therefore, programs such as these serve to advance the goal of equal educational opportunity for all children, regardless of their different interests and capacities.

390. The second major contribution that the school can make to delinquency prevention relates to the detection of potential problem children. A United States Children's Bureau publication observes: "The most important single factor in helping children with behavior problems is to start early, before the problem

has become acute. A great deal can be done for a child in the first stages of his difficulty that is no longer possible by the time his misbehavior has brought him to the attention of the law enforcement agencies." (22). The classroom teacher, who sees the child for an extended period of time and who comes to know him intimately, is in a particularly advantageous position to identify those children who need emotional or psychological support. The sentiment expressed by many persons who met with the Committee can be summed up in the words of one submission which states: "It is felt the alert and knowledgeable school teacher can do a great deal to prevent juvenile delinquency. Surveys have shown that 50 - 70% of juvenile delinquents can be recognized in school before they ever become delinquents." (23).

391. It is sometimes suggested that a thoroughgoing effort at prognostication and prevention should be instituted in the public schools, utilizing in support of such a program certain tests that purport to identify potential delinquents. The most celebrated of these tests is the Glueck Social Prediction Scale. It is clearly beyond the scope of this Report to comment on the merits of particular predictive tests, a matter that has been much debated in the criminological literature in recent years. We do think it important to point out, however, that problems may result from any attempt to predict future delinquency in a public school population in which the great majority of children are not delinquent and are not likely to become offenders. One problem concerns the social utility of applying clinical-preventive facilities to a large part of the school population with a view to identifying a small part of that group that are thought to be potentially delinquent. Another problem relates to "labelling" or "position assignment", a matter that we have considered in another context in examining the use of the term "juvenile delinquent". The argument here is that children who are designated as "predelinquent" will tend to become delinquent. What is said, in other words, is that delinquency prediction may become a self-fulfilling prophecy because it has an influence on the child involved and upon the attitude of the authorities who look for the predicted result in the individual child. We find persuasive the view expressed by Professor Tappan:

> " The entire gamut of juvenile problems appears in the delinquent population, yet the occurrence of any particular problem or combination of problems does not imply that an individual will become delinquent. Children who display serious maladjustments, whether or not they are headed toward delinquency, require help that is appropriate to their manifest difficulties rather than to their future state. Treatment, then, should be given as a child welfare measure generally, not as a preventive of delinquency." (24).

392. Nevertheless, the teacher does have an important role to play in the prevention of delinquency through the identification of problem children.

As the National Education Association study observes, "through early referral of the delinquency-prone youngster to the appropriate agency, followed by special help and treatment, the school can achieve preventive action in the literal sense of the word." (25). The study goes on to note: "In order to recognize the potential norm violator, the teacher will need to be aware of the tell-tale signs, the indicators, or the hints of the appearance of an adjustment that involves norm-violating behavior." (26). Teachers vary, of course, in the degree of skill and insight which they can bring to bear upon an evaluation of the significance of pupil behaviour. It is perhaps unrealistic to expect most teachers to attain a high degree of proficiency in the performance of such a specialized task. Indeed, the low salaries paid to public school teachers in many parts of Canada make it problematical whether teachers will feel any great incentive to undertake the added burden of concentrating upon the maladjusted child. We think, however, that this aspect of the school's function should receive more attention than it has thus far and that greater emphasis should be placed in teacher training upon pupil evaluation techniques. A visiting teacher program provides another means of making teachers aware of the "telltale signs" of maladjustment.

393. Although teachers may be assigned some primary responsibility for identifying problem children, it is clear that teachers need assistance in this process. Child welfare and attendance officers, school social workers, school psychologists and guidance personnel all have a contribution to make. (27). As a report prepared for the Governor's Special Study Commission on Juvenile Justice in California explains:

> " If the schools are to be most effective in the early identification of delinquents, teachers need in-school auxiliary resources to which they can refer those students whom they suspect as being potentially maladjusted, for more specialized study and evaluation by personnel with psychological skills beyond those practised by the usual teacher.
>
> This referral serves two immediate purposes: (1) a degree of assistance to the teacher in validating her own judgments and (2) the possibility of assistance to her in her day-to-day relationships with the pupil.
>
> A third purpose is also evident: if the individual pupil under study appears to require service beyond the scope of the school program, the resulting case study provides the basis for referral to an appropriate agency outside the school. In usual cases, the referral would not be to the outside agency, but would be in the form of a recommendation to the parents concerned, in a private interview session with them." (28).

394. Still another aspect of effective delinquency prevention in the school is the provision of personnel and facilities for intensive work with problem cases. Very few school systems have either guidance clinics or guidance officers with the qualifications necessary for intensive work with more difficult children. There is merit in the suggestion made to the Committee that teachers specialized in psychology or social work should be available in all areas, probably in the ratio of approximately one specialized teacher to every 5,000 pupils. To indicate what may be involved in dealing with problem cases, we quote again from the California report:

> " Pupils identified by teachers as being potential problem cases need careful study for the purposes (1) of identifying the causes of the difficulties, and (2) of planning ways in which the school can provide special assistance. Customarily such a study would be made by a health or guidance specialist in cooperation with the teacher and others, such as the school nurse, principal, and parents. Consultation with the parents would be an early step. The study would result, usually, in a case conference involving appropriate staff members at which time decisions would be reached as to the possible ameliorative steps to be tried by the school. ....
>
> As the school works intensively with individual problem cases, the procedures followed must be within the framework of the educational role of the school. The school should not assume a role which is more properly assigned to a therapeutic treatment agency. Certainly there is a fine line of distinction between re-education and therapy, but therapy and treatment per se are beyond the scope of the school's role. .... Perhaps it is sufficient to state that the school's role is best described as more diagnostic than therapeutic, more educational than clinical. ....
>
> Special services and facilities should be developed and maintained to assist the classroom teacher as she works intensively with individual problem cases within the prescribed role of the school. Even in favored communities wherein clinical treatment agencies do exist .... there is need, if the child is to remain in school, for specialized assistance to teachers so that the maximum benefit may accrue to the child during his school attendance. This assistance should be of two kinds. One relates

> to the assessment or appraisal of the individual student in terms of his ability to profit from the school situation. .... The other kind of assistance is related to the specific kinds of activities through which the teacher will try to help the pupil. To be most effective, teachers need the assistance of school psychologists who are also trained in instructional methods and content, who cannot only assess the youngster's educational potential but can also use that insight to help his teacher design an effective program of activities specifically tailored to his needs, as well as to evaluate the progress the child is making. .... The availability of this kind of assistance especially in the lower grades may well be the most critical factor in the success of the school's efforts in delinquency prevention and control." (29).

395. The nature of delinquency is such that no single institution or service in the community can hope to solve the problem through its own efforts alone. Many children who display behavioural problems in school require the services of other agencies, both public and private. The school, although primarily concerned with the education of the child, has a responsibility to work with these agencies. As many submissions have emphasized, a basic objective of community planning should be to develop to the highest degree possible a co-ordination of activity among agencies providing services for youth. Some of the ways in which the school can participate in a co-ordinated community program are suggested in the National Education Association Study, which states among its "guidelines for action" the following: (1) the school cooperates in collecting, interpreting, and using data relating to delinquency for purposes of prevention and programming; (2) the school helps to develop programs that will aid youth in finding a place in the economic and industrial life of the community and will make a special effort to aid the "hard-to-place" youth; (3) the school participates in planning and carrying out programs of recreation; (4) the school encourages and cooperates with community groups in initiating programs designed to improve parental understanding of normal child growth and development as well as of factors that tend to lead to delinquent behaviour; (5) the school cooperates in evaluating community effort in the prevention and control of delinquency and participates in community committees concerned with the problems of young people. (30). Coordination of services is, of course, not solely directed at delinquency prevention. In the words of one submission received by the Committee: "Co-ordinated programs both within and in cooperation with schools should aim not only at early case spotting and the already developing condition, but at a broad goal of enhanced mental health for all school children, thus enabling them to achieve greater realization of their potential and talents." (31).

396. The Committee was particularly impressed by the contribution to

delinquency prevention that is being made in several Canadian communities by the visiting teacher program. To quote again from Professor Tappan, "the visiting teacher movement holds .... promise of a constructive relation between school and home, for it is based upon the key role of individuals who are specifically trained and responsible for liaison, whose acquaintance with both problems of education and of personality should facilitate more accurate diagnosis of problems and better informed efforts at treatment than can reasonably be expected of the ordinary teacher." (32). Visiting teachers are usually selected from among persons having a number of years of teaching experience and on the basis of personal suitability for the work. Specialized courses designed, in part, for the training of visiting teachers are offered by some universities and a leave of absence is arranged by the school to permit the person selected to secure the additional qualifications that the job requires. One way in which the visiting teacher assists in the early detection of problem children is by making parents and other teachers aware of the kinds of "telltale signs" of maladjustment that they should be looking for. This is done through staff visits, through talks to Home and School Associations, and even in some cases through a voluntary in-service training program for teachers. The more general functions of the visiting teacher are described by one author as follows:

> " The visiting teacher coordinates for the principal the findings of other school personnel within the school: health factors as evaluated by the nurse and health education teacher; intellectual factors as evaluated by the psychologist; classroom progress and behavior as evaluated by the teacher. The visiting teacher obtains an understanding of the child as a whole in his school, home, and community setting, and a knowledge of the factors which have made him as he is. On the basis of her study of the whole child, the visiting teacher plans with the principal and other school personnel to meet this child's growth needs in such a way that the behavior which has occasioned his referral to her may become unnecessary to him, and his healthy personality development be ensured.
>
> Adjustments within the school are effected, such as change of grade placement or modification of program. An interpretation of factors contributing to a maladjustment is made to the teacher in order that she may work out ways of meeting the problem in the classroom. Adjustments within the home are effected through the visiting teacher's conferences with parents. .... The visiting teacher works closely with resources within the community, calling on health and

psychiatric agencies, recreation groups, child-placement and family-welfare organizations in the interest of the individual child. .... She is in a position to interpret the school to the home and to the community, and to interpret home and community to the school. In addition to effecting the most favorable possible environment for growth in the ways noted above, the visiting teacher attempts through interviews with the child to help him understand and take responsibility for himself." (33).

397. The ways in which the school can help combat delinquency, then, are several. In the Committee's view, every effort should be made to assist the schools in the discharge of those aspects of their work that have a bearing upon delinquency prevention. In particular, we are conscious of the need in many parts of Canada to strengthen pupil personnel services in the schools (i.e., individualized services rendered to pupils, teachers and parents by qualified personnel, such as counsellors, attendance officers, psychologists, visiting teachers and school social workers) and to make more readily available to the schools the services provided by child guidance or mental health clinics. We recommend that the federal government explore with the provincial authorities the extent to which federal assistance might properly be made available in relation to one or more of these strategically important points of attack on the problem of delinquency.

Delinquency and Employment Opportunities

398. The interrelationship between school drop-out, unemployment and juvenile delinquency has long been recognized, although this very complex question seems to have received little in the way of systematic or comprehensive study in Canada. One survey conducted in 1962 by the Greater Hamilton Y.M.C.A. found, for example, that among some seventy-five eighteen-year-olds enrolled in the National Survival Course, none of whom were regularly employed, a disproportionately large percentage had been in trouble with the law, both as juveniles and thereafter. (34). While the number of school drop-outs is a matter of legitimate concern from the point of view of delinquency prevention, the problem of the drop-out is really only one part of an issue of much larger proportions, namely, the provision of employment opportunities for a large, disadvantaged segment of our school population. Some of the difficulties involved, as seen from an American perspective, are outlined in the prospectus for the Mobilization for Youth Project in New York City, entitled "A Proposal for the Prevention and Control of Delinquency by Expanding Opportunities":

> " The importance of the world of work is self-evident. Gainful employment is the accepted means of attaining monetary rewards in our money-oriented culture: indeed, occupation is the chief determinant

of social status and the principal road to upward mobility. It is through the work role that men feel a connection to their society, from which they derive a sense of well-being. ....

Lower-class youngsters contribute disproportionately to the ranks of the unemployed because they tend to be undereducated and consequently to fall into the lower-status, more vulnerable occupational categories. The percentage of unemployment among unskilled workers is twice as high as among all other job categories; and the percentage among persons with less than a high-school education is nearly double that among high-school graduates, and triple that among persons with some college education. Thus, lower-class youth are members of the 'last to be hired, first to be fired' category. In view of current trends in the employment market -- i.e., increasing automation, heightened training requirements -- this situation can be expected to worsen.

.....

The scarcity of jobs for young people in general, and particularly for lower-class adolescents, suggests a need for radical intervention. Although sensitive vocational counseling and aggressive placement are important means of meeting this condition, they are futile without job opportunities about which to counsel youth and vacancies in which to place them. Given the enormity of the task, job-finding programs in private industry cannot be expected to fill the gap. Although some employers will risk hiring additional young people in response to public appeal, the number of such placements is insignificant in comparison to the need. In view of the persistent marginality of many lower-income youngsters, their lack of marketable skills, their undeveloped academic abilities, and their social immaturity, it is not surprising that this is so. Nor is it feasible or desirable to attempt to place young people in jobs now held by older, more experienced workers. Men with families obviously have priority in the competition for scarce jobs, and the gap between the requirements of the labor force and the number of laborers is growing steadily wider. New jobs therefore must be created for young people, jobs which do not now exist. These new employment opportunities must be

> designed to fill some of the many social needs that are now unsatisfied. The increase in leisure time, for example, creates a need for workers in such consumption fields as recreation.
>
> .....
>
> Building bridges to adult careers, making these bridges apparent to youngsters, and clarifying for them where the bridges lead and what is required for the journey require programs whose objective is to increase contact between adults and community institutions, youngsters and adults, and even between various age groups, so that older boys may serve as models for younger ones. Large-scale adult-education programs need to be launched, so that parents may more adequately interpret the environment to their children and may increase their competency to serve as models for youngsters. Lower-class children need particularly to be exposed to people 'one-rung up the ladder', so that routes are visible and perceived as accessible. In addition, the fact that the employment of youth is literally no one's affair needs to be remedied; a single over-all body solely devoted to this area of development is sorely required. Further, school programs closely integrated with the tasks and training requisites of the world of work are crucial." (35).

399, Out-of-school youth often present a particular difficulty in regard to both training and employability because of attitudes that they have acquired as part of their experience in the home, the school and the community. A study conducted by St. Christopher House, a settlement house in Toronto, provides a useful insight into this aspect of the school drop-out problem:

> " The two most common reasons for youngsters leaving school were lack of application on the part of the student, and reaching a limit of ability to progress. .... The record of failure and retardation for many drop-outs goes back to Grade 1; lack of interest in the subjects, or, more likely, the way in which they are presented; indifference to homework assignments or could it be lack of a suitable quiet place to do it; discouragement about the whole school business, leading to truancy, lack of respect for discipline and bad teacher-pupil relationships; then - and why not - the fateful decision to quit school.

What is the cause behind these reasons? Are the failures really due to the pupil's lack of ability and is he solely responsible for his lack of interest? .... 'Industry' - a Canadian Manufacturers' Association publication - discussing the drop-out problem under the heading 'Wasted Assets' quotes from a U.S. Labor Department Report "School and Early Employment Experience of Youth":

> 'Much more common (reasons for leaving school) were dissatisfaction or boredom with school or teacher or both. This may be taken by some as indicating a low IQ but while this was indeed often the case, the record shows that many of the early leavers had IQ's that were just as high as those who remained to continue their education.'

.....

Approximately one-third of our young drop-outs frankly admitted their inability to co-operate with the school authorities in such matters as attendance, discipline and pupil-teacher relationships. .... Non co-operation follows logically, almost inevitably, upon the two other reasons - lack of interest and lack of ability to progress. It is the first symptom of trouble ahead, but, unfortunately it is not recognized it would seem, or if it is, nothing constructive is done about it in most cases, in Toronto, or elsewhere. ....

.....

We were appalled to find that the attitude of casualness and indifference in school had carried over from school to employment. .... Twenty-two, almost half of the group, had either not given the question of employment any thought or had done so only in terms of unskilled labour. .... They were resigned it would appear at this critical point in their lives to poor wages and poor advancement opportunities. Only ten youngsters out of the fifty involved had given any thought to their future by expressing their desire to secure an apprenticeship or further training. ....

.....

> Of course the school drop-outs face job seeking with many adjustment problems. They are likely to have poor school records and no credentials to testify to their skill. They badly need guidance and support in their first ventures in job seeking. .... We found, for example, that those who came to us for help in seeking their first job just couldn't seem to keep appointments and in several instances a staff member had to accompany them to the prospective employer. They seemed to face an interview with dread and were resigned to not getting the job even though the job they were seeking was an unskilled one and the possibility of an intensive interview was slight. "(36).

400. During the past decade the segment of the Canadian population between the ages of fourteen and nineteen has been increasing at a rate considerably in excess of that for the Canadian population as a whole. It is noteworthy that from 1945 to 1954 Canada's birth rate was significantly higher than that of most industrial countries in the western world, being some 27.4 births per 1,000 of population in comparison with a rate of 24.0 for the United States, 19.9 for France, 19.8 for Italy and 17.1 for the United Kingdom. The Economic Council of Canada has forecast that in the coming decade the Canadian labour force will grow at a rate faster than that of any other industrially advanced country in the west. During the 1954 to 1964 period, the rate of unemployment among the age group from fourteen to nineteen increased steadily, reaching a peak of 13.2 per cent in 1961. While this percentage has decreased somewhat since 1961 - it stood at 10.3 per cent in 1964 - the rate of unemployment among persons in this vulnerable age range is still twice the rate for all other age groups combined and about three times the rate for persons between the ages of thirty-five and fifty-four.

401. It is common knowledge that rapid changes are taking place in the Canadian economy, the product of such factors as increased mechanization, the accelerated application of new scientific knowledge to industry, greater use of modern industrial management techniques and the increasing sophistication of the economy generally. In consequence of these changes, an ever-increasing part of the labour force will need to be highly trained. Proportionately fewer semi-skilled and unskilled jobs will be available, a situation that represents an almost complete reversal of the state of affairs that has prevailed throughout most of the history of our country. A recent survey indicates, for example, that approximately 69 per cent of all jobs are now in professional, technical and other skilled categories. The impact of these changes is already being felt by new entrants into the labour market, and in particular by the school drop-out. In one study it was shown that the rate of unemployment was over six times greater among those who did not complete primary school than among those who completed secondary school. Some 35 per cent of the Canadian school population leave school at or before reaching the grade eight level, and about 70 per cent leave before

completing junior matriculation. When viewed in terms of population projections, the dimensions of the problem are apparent. So dramatic are its implications that the words "social dynamite" have come to be used in discussions concerning unemployed out-of-school youth. (37).

402. The United States has responded to the challenge of jobless youth by establishing at the federal level a program for the employment and training of large numbers of young persons between the ages of sixteen and twenty-one in conservation and public service work. The Youth Employment Opportunities Act of 1963 provides for the establishment of two programs. One is a Youth Conservation Corps, a concept inspired by the success of the Civilian Conservation Corps during the depression years. The object of this program is to provide healthful outdoor work of a highly constructive nature for out-of-school and unemployed youth. Enrollees receive a salary, together with board and lodging. Training and other basic educational opportunities are offered after work periods through arrangements made with local school authorities. The second program involves the application of federal funds to the payment on a 50-50 matching basis of the wages of young persons employed by local public or private non-profit agencies in connection with certain kinds of work that are not being performed by regular employees. The kinds of employment authorized include service in hospitals, schools, libraries, settlement houses, children's homes and welfare agencies, as well as work in relation to park improvement, recreation and the like. A National Advisory Council on Public Employment of Youth acts as a clearing-house for public service employment grants. The aim of this second program is to provide young persons with work that will increase both their employability and their awareness of career opportunities, that will not result in the displacement of regular employees, and that will contribute services that would not otherwise be available.

403. It is too early to evaluate the success of these programs. Nor is it by any means clear that the nature of the problem of youthful unemployment in Canada is such as to call for a similar kind of official response. However, we do think that these programs are of sufficient interest and importance to justify a reference to them in this Report, having regard to their implications for delinquency prevention. Indeed, it seems to us that such programs have a value over and above delinquency prevention and employment opportunity in that they can serve as a unique form of recognition of the contribution that youth can make to the development of our country. Thus in both a symbolic and a practical way they can emphasize that adolescence need not be, in words quoted previously, a "psychosocial no man's land". (38). We suggest, therefore, that these American experiments be studied with a view to considering the adoption of similar programs in Canada.

404. The Committee has been impressed by efforts that special services officers of the National Employment Service are making in many communities to cope with the ever-growing problem of school drop-out and youthful unemployment. On the invitation of local school authorities, these officers visit the schools

in an attempt to stimulate student interest in job planning and to assist students in developing a better appreciation of their abilities, interests and ambitions as these are related to employment opportunities. An employment counselling and testing service is provided. Special services officers also work in close conjunction with school guidance staff with a view to discouraging young persons from leaving school in cases where additional schooling would appear to be beneficial. We have been told in several communities that this co-operative effort has been responsible for sending a considerable number of intended drop-outs back to school. There have been recommendations that the services offered to youth by the National Employment Service should be expanded. We endorse these recommendations.

405. Still more is required. As the Special Committee of the Senate on Manpower and Employment has observed: "We must prepare people for a world of work that is continually in evolution." (39). Many students require education and training of a kind that is more closely related to the types of work that are going to be available to them. There would appear to be a need for expansion of work experience programs within the schools - programs that impart knowledge and skills appropriate to the employment market in the immediate community and at the same time aim at achieving, in the words of the Senate Committee, "a sound balance....between specialization and adaptability." (40). The schools should consider also the extent to which they have a responsibility to co-operate with other agencies in the community in developing job upgrading programs for unemployed out-of-school youth. In addition, many groups have called attention to the inadequacy of existing counselling and guidance services in most Canadian schools. There may well be a need, in fact, for a review of the very function of guidance both in the school and in the community at large. Persuasive are the views expressed by a leading American educator, who has made an extensive study of the modern high school. Dr. James B. Conant has commented:

> " There are those who would say that what goes on in the schools should not have any direct connection with the community or the employment situation. I completely reject this idea. The school, the community, and the employment picture are and should be closely tied together. .... Full-time schooling for certain youths through grade 12 may be good or bad depending upon the employment picture. What goes on in the school ought to be conditioned in large measure by the nature of the families being served, the vocational plans and aspera-tions of the students, and employment opportunities. .... I submit that in a heavily urbanized and industrially free society the educational experience of youths should fit their subsequent employment. This should be so whether a boy drops out of school in grade 10, after graduation from high school, or after graduation from college or university. In any case, there should be a smooth

transition from full-time schooling to a full-time job.

.....

The obligations of the school should not end when the student either drops out of school or graduates. At that point the cumulative record folder concerning a student's educational career is usually brought to an end. It should not be. To my mind, guidance officers, especially in the large cities, ought to be given the responsibility for following the post-high school careers of youth from the time they leave school until they are 21 years of age. .... This expansion of the school's function will cost money and will mean additional staff -- at least a doubling of the guidance staff in most of the large cities; but the expense is necessary, for vocational and educational guidance must be a continuing process to help assure a smooth transition from school to the world of work. What I have in mind suggests, of course, a much closer relationship than now exists between school, employers, and labor unions, as well as social agencies and employment offices." (41).

406. The Committee has noted with interest the effort that is being made in New Brunswick to cope with the school drop-out problem at a provincial government level through a new program administered by the Youth Division of the Department of Youth and Welfare. We commend the New Brunswick plan to other provinces for their consideration. Elsewhere we recommend that the federal government make funds available to permit demonstration projects of a carefully selected nature to be undertaken in relation to several aspects of delinquency prevention and control. We conclude this discussion of the problem of employment opportunities with the suggestion that the Department of Labour be consulted in connection with this proposed program with a view to examining the possibility of introducing an employment component into any project concerned with delinquency prevention at a community level.

Community Programs

407. Early in this Chapter we indicated that the term "prevention" as applied to programs designed to combat delinquency has proved to be a somewhat elusive concept. Nevertheless, two essential approaches to delinquency prevention are discernible in the various programs that have been developed. One approach seeks to improve the environment in which children grow up. The other is concerned with improving the quality of services available to children

and their parents, whether provided on an individual or a group basis. A useful introduction to experience in the field of delinquency prevention appears in a Children's Bureau publication referred to previously, entitled The Effectiveness of Delinquency Prevention Programs:

> " Like other social movements, programs for delinquency prevention have developed through slow social experimentation. To a certain extent, the discoveries of one project have been picked up by those who are planning new programs, and new approaches to the problem have been tried out when old attempts have seemed unsuccessful. ....
>
> .....
>
> Delinquency prevention through services to children began under the mental hygiene movement, in the child guidance clinics. Starting with juvenile delinquents, these clinics pushed back to try to reach children before they became delinquent. In the course of this, the character of their services began to change from social manipulations to direct psychiatric treatment, and their intake policies were altered accordingly. Gradually the clinics came to serve, for the most part, not the children who were likely to come to the attention of the court but those from middle class homes whose parents could ask for and participate in treatment.
>
> These developments led to complaints that the clinics - and the social agencies that came to pattern their work along much the same lines - were not reaching all the children who needed help and that they were not providing all the needed kinds of services. In consequence, delinquency prevention experiments were undertaken along two new lines. One line was that of trying to reach the delinquent and predelinquent children who were not being served by the clinics and other community agencies. The other was directed toward discovering new ways of helping children.
>
> Among the new ways of reaching delinquency prone children hitherto regarded as untreatable are some that make use of ideas developed under the environmental mode of approach to delinquency prevention. They draw upon sociological conceptions

of delinquency causation and upon sociologists' knowledge of slum areas and gang life, and they add to this the techniques of social group work.

In the meantime those who were hoping to prevent delinquency through improving schools, recreational facilities, and the like were learning something from the others (sociologists, psychiatrists, and social workers) about what kinds of improvements are needed. In consequence, current attempts, for instance, to improve recreational facilities go beyond the early idea of merely increasing the supply. They concentrate, in addition, on the character of the recreational program, the quality of the leaders, and the attention given to individual children's interests and emotional needs.

In these ways, then, the movement toward delinquency prevention is beginning to evidence unified development. Even so, the most general observation to be made about delinquency prevention is that as a body of scientific knowledge and practice it is just emerging from its infancy. .... Fortunately, however, delinquency prevention shows signs of growing into childhood at least. What is most needed now, it seems, is better communication among experts and better assessment of accomplishments." (42).

408. There are four components necessary to any organized community program of delinquency prevention based on the provision of services - components which must be incorporated also into more broadly oriented programs aimed at environmental improvement. The four are: early discovery; sound diagnosis; adequate treatment; and co-ordination of services. What these involve is suggested in a submission prepared for the Committee by the Victoria Day Nursery in Toronto:

"1. Early discovery of families in need of help.

It may appear to be remarking the obvious to state that the sooner families which are showing signs of failure are spotted, the more likely it is that they will welcome and use community help, because discouragement is not so profound. We believe the comment bears repetition.

.....

Those in a front-row position to detect families in trouble require continued education, so they may learn to recognize symptoms when they see them, and know them as that, and also how to initiate appropriate action. Teachers, doctors, the clergy, public health nurses, welfare workers, all have opportunities for first hand contact with such families, and can be influential in directing them to agencies or in interesting agencies in proferring help.

2. Investigation and diagnosis of the nature of the problem and the help required.

Diagnosis of the nature and origin of the problems facing disorganized families is a separate function from early detection. .... Unless proper study can be given to a situation, it is all too tempting to jump to conclusions as to its real components, and to recommend action which is only superficial. .... At present no centrally organized program exists which ensures adequate assessment, and thus fosters maximum use of available services. Assessment and diagnosis can range from perceiving and understanding a simple situation requiring simple direct service to the work involved in considering in depth the intricate pathology of individuals or related members of a family, and the environmental circumstances in which they live. Such elasticity and breadth of knowledge requires proper training and skill; its value .... ought not to be underrated.

3. Treatment and supportive services available to meet the identified needs.

Active work at this point has a dual goal; correction of existing conditions and prevention of further deterioration of the person and the problem. 'Giving help' may imply a variety of services - food and clothing, shelter, assistance with medical problems, care of children, or specialized casework services aimed at complicated personality distortions. Here, time may be the significant factor. Correction and rehabilitation work is slow and delicate. Change does not come quickly or remain constant once initiated. The helping person must be given the time in which to do the job properly. ....

4. A plan of co-ordination of services in a community so structured as to facilitate the above.

> Inter-agency co-operation and co-ordination must become more effective if the potential which exists in a community for self-improvement is to be realized. .... The best pattern of service in any community is one geared at creating and maintaining an atmosphere for healthy individual and family development. Family-directed programs, genuinely subscribing to this position, will consider individual client needs rather than functional limitations....". (43).

409. It will be evident that a preventive program organized along these lines requires for its effective implementation a full range of health and welfare services in every community in order that children and their families can have access to those facilities and services necessary for normal growth and for various kinds of special needs. We have already had occasion to call attention to the fact that facilities for in-patient treatment of mentally ill and seriously disturbed children are almost totally lacking in most parts of Canada. We have noted as well that in most areas facilities for intensive psychological and psychiatric appraisal of children identified in the course of the "early discovery" process are far from adequate. We cannot emphasize strongly enough the importance of filling these serious gaps in mental health and welfare services. Similarly, every effort must be made to find ways of remedying the chronic shortage of social workers, psychologists and psychiatrists that has long hampered development in Canada in the fields of welfare and corrections alike. In particular, we recommend that the federal program for providing financial assistance for the training of professionals in the mental health and welfare fields be reviewed to determine whether it is adequate to attract qualified persons to the types of work where they are most needed and in the numbers that are required.

410. Over the past ten or fifteen years a basic re-examination of traditional concepts of delinquency prevention has been taking place in a number of quarters. Experts in various social science disciplines have questioned the adequacy of the approaches that have thus far been tried to reach the fundamental sources of the problem in the community. This change in emphasis is apparent, for example, in the Report on Juvenile Delinquency submitted to the United States Congress in 1960 by the Children's Bureau and the National Institute of Mental Health:

> " What are some of the problems in establishing a treatment and prevention program in a community? In recent years, there has been a shift away from the attempt to deal with juvenile delinquency by isolated

efforts of training schools, probation officers, or guidance clinics. As has been emphasized, there are individual offenders who become delinquent because of intrapsychic conflicts, but it is also true that there are many social factors that cannot possibly be manipulated and controlled by clinical effort alone. Most of these efforts are too new as yet to have developed any reliable statistics as to their effectiveness. Such knowledge as is available suggests that a promising plan for community programs using both the clinical and non-clinical approaches can be constructed around the following three aspects:

(1) An integration of the community clinical and treatment facilities -- ranging all the way from remedial reading clinics, for example, to residential treatment installations.

(2) The stimulation of interested concern on the part of the nontreatment agencies in the community, including the school system, the churches, recreational facilities, employment agencies, etc.

(3) An organized 'arm for reaching out' into the socially most desolate and disorganized wastelands of society where the delinquency rates are highest and where the general social spirit is one of alienation, apathy, and bitterness regarding their own conditions and the opportunities for betterment. It is here that the use of detached workers, and aggressive case-work with multi-problem, 'hard-core' families is most important. Seasoned professionals in the social work area have developed techniques by which such families may be identified and involved in treatment." (44).

411. Various kinds of delinquency prevention programs have been developed over the years. We make no attempt in this Report to discuss any of these in detail. It may be useful, however, to note some of the basic approaches that have been tried. (45). One approach that has been employed since the 1930's is the area project, which seeks to reduce delinquency in deteriorated neighbourhoods by assisting residents of these areas to take constructive action on their own through effective neighbourhood organization. Delinquency is

viewed essentially as a product of social learning and, on the assumption that young persons are responsive to the expectations of their families, friends and neighbours, an effort is made to influence delinquent and "pre-delinquent' youth through the utilization of neighbourhood groups in which local residents are active participants. Another "environmental" approach has been organized around the provision of large-scale recreational facilities in depressed communities, often through the auspices of Y.M.C.A.'s or Boys' Clubs and frequently with the object of providing a group work service as well. Other approaches include work-camp programs, the establishment of all-day neighbourhood schools, school program revision and the extension of Boys' Club activities. Programs of an educational or therapeutic nature have been of several kinds. Reference has already been made to the work of child guidance clinics and to projects concerned with the "multi-problem family". The Cambridge-Somerville project in Boston placed its principal emphasis on intensive counselling of young persons selected for "treatment", although educational assistance and recreational opportunities formed part of the program as well. Other efforts have included "aggressive casework" and programs aimed at revitalizing parent-child relationships. Much of this kind of work is undertaken by settlement houses, which have made a valuable contribution to delinquency prevention. In recent years, special emphasis has been placed upon programs of group work with delinquent or near-delinquent gangs, and upon various casework and psychiatric programs that are designed to seek out maladjusted youngsters in need of help. Of particular interest is the "detached worker" concept, which represents an attempt to reach delinquency-prone youth through a program adapted to the methods and activities of such youth themselves. The detached worker seeks to make contact with "hard to reach" young people on the streets and in restaurants and pool-halls, to gain acceptance by the group and then to redirect the activities of these young persons into more conventional channels. Detached worker projects have been undertaken in several of the larger metropolitan areas of Canada, (46), although as yet only on a very limited scale.

412. Evaluating the effectiveness of delinquency prevention programs has long been a troublesome problem. Indeed, the matter is one that has been quite controversial. One of the basic difficulties is that most efforts at delinquency prevention fail to take into account the need for a thorough and objective evaluation of results as part of the program design itself. Writing in 1954, Witmer and Tufts observed: "Not many programs have been evaluated. .... Most of the evaluation studies that have been conducted do not meet the criteria of good evaluation. They do not make clear exactly what the preventive measures and processes under consideration are, toward what manner of youth they are directed, how well they have been carried out, and with whom or in what measure they succeed or fail." (47). After a careful review of existing knowledge concerning delinquency prevention, the authors came to the following conclusions:

> " First, as was expected from what is known about the causes of delinquency, no panacea for preventing

or reducing delinquency has been discovered.

Second, certain measures, in and of themselves,have been found to be insufficient to reduce delinquency. Counseling and other services of the Cambridge-Somerville type, although liked by many 'difficult' boys and their families, do not keep the youngsters from committing delinquent acts. Much the same seems to be true of the usual sort of recreational services. Psychiatric treatment is inadequate to overcome the influence of grossly unfavorable social conditions and is often unacceptable to families who live in the slums. The usual group work services of a conventional character also appear not to have much effect upon delinquency.

Third, a start toward identifying the kinds of measures that are likely to lessen the delinquent acts of particular types of children has been made. For instance, child guidance, of the usual urban variety, has been found to be helpful to youngsters who suffer from mild personality disorders and to those whose problem behavior stems primarily from distortions in the parent-child relationship. Associations of neighbors in slum areas seem to be able to restore certain delinquent youths to good social functioning. On the negative side, none of the programs has been successful with youths who are psychopathic or otherwise seriously emotionally disturbed.

Fourth, new measures have recently been devised to reach some kinds of children who did not respond to the old. The work with gangs, for instance, picks up where the usual recreational programs failed. The 'reaching-out' kind of casework goes after youngsters and families from disorganized homes in slum areas who have been found to be inaccessible to child guidance ....

All this, taken together, suggests that we are on our way toward learning what does and what does not prevent delinquency, but we still have far to go. Progress toward that objective will call for close cooperation between practice and research. .... We shall be most likely to discover how to prevent delinquency if research is undertaken coordinately with

the deveopment of new measures and the refinement of old ones, if research and practice are conceived as inseparable parts of a single process." (48).

413. A great deal of work has been done in the field of delinquency prevention since 1954. Nevertheless, there is good reason to believe that the conclusions reached by Witmer and Tufts continue to be applicable in a general way to the current state of knowledge about preventive techniques. In the first volume of the publication Current Projects in the Prevention, Control and Treatment of Crime and Delinquency, issued in 1962 by the National Council on Crime and Delinquency, the author of an introductory article on "The Research Needs of Practice" felt confident in stating: "It is generally acknowledged among the spokesmen of agencies administering programs directed toward the treatment, control and prevention of delinquency that 'scientific' evidence about the effectiveness of their efforts is sadly lacking. .... Not a single delinquency prevention program has dared to claim scientific justification for its reported success. .... We know of some measures that seem to work - but even here we are by no means confident of the reason as to why it works, or on whom it works, or under what circumstances it will continue to work." (49).

414. Perhaps the most ambitious attempt to design a province-wide program of delinquency prevention in Canada has been in the Province of British Columbia. Legislation was passed in 1958 providing for the appointment of a Juvenile Delinquency Inquiry Board. In its Report, the Board took the view that juvenile delinquency is a problem that must be attacked at a community level and emphasized the importance of steps to encourage co-ordinated action by individual communities. The Board observed: "Many resources exist, many programmes are in operation, and many organizations, agencies, and individuals are taking positive and progressive steps to do something about juvenile delinquency. However, a lack of co-ordination of the services, programmes, and resources exists." (50). The Board proposed that within selected communities and on a regional basis there be formed Community Councils for the Prevention of Juvenile Delinquency, the membership to reflect a cross-section of the community. The purpose of these Councils would be to co-ordinate existing facilities and resources, thereby making them available on an integrated basis, and to take the responsibility for positive and constructive planning of local programs of delinquency prevention. The Board further proposed that a joint Provincial Council be formed, consisting of representatives of all departments which provide services that bear upon the problem of juvenile delinquency. The Provincial Council would serve as a co-ordinating body for provincial programs and would also have as its responsibility the assistance and encouragement of local communities in the establishment of Community Councils. Still another recommendation of the Board was that each Community Council employ a special counsellor who, in the words of the Report, "would function as a link between the Council and all the organizations and resources of the community and the potential delinquent", thus ensuring "that constant attention can be given to the development of integrated resources and the rehabilitation of delinquent youths." (51).

415. In consequence of the Board's Report, the office of Co-ordinator of Juvenile Delinquency Prevention Services was established. The Juvenile Delinquency Co-ordinator was directed to conduct a study of the operation of existing committees in communities throughout the province. His Interim Report, submitted in 1963, proposed the establishment of a Community Youth Services Programme based on a system of local Community Youth Services Boards. (52). The plan is of considerable interest, notwithstanding the fact that it has apparently not yet been possible to implement it to its fullest extent. The Interim Report states the overall objective to be: "By co-ordinated planning to assist local communities in promoting effective programmes in education, health, recreation, and welfare for the maximum development of all youth .... and for the control of influences detrimental to youth." (53). The plan calls first for the formation of an inter-departmental committee consisting of representatives of the Departments of the Attorney-General, Education, Health and Social Welfare. One of the responsibilities of this interdepartmental committee would be to draft unilateral field policy directives to representatives of these Departments at a community level, instructing them to meet together as a Youth Services Sub-committee. Each local Sub-committee, while having certain specific functions of its own, would serve in addition as a nucleus around which would be formed a more broadly based Community Youth Services Board with representation from the municipality and various interested organizations and agencies in the community. It would be the responsibility of the Board to consider and make recommendations to the appropriate authorities concerning such matters as school drop-outs, youth employment, the operation of the juvenile and family courts and community resources generally. The province would aid local communities in a number of ways, including: (a) assisting localities in making surveys of needs and available resources and in appraising the achievement of local programs; (b) rendering assistance in setting up programs for co-ordinating the total community effort, including the improvement of law enforcement; (c) assisting schools in extending their particular contribution in locating and helping children vulnerable to delinquency and in improving their services to all youth; (d) assisting communities in setting up recreational commissions and in extending and broadening recreational programs so as to reach all children; (e) assisting in extending local child-care programs so as to reach all homes needing such help; (f) assisting in recruiting and training voluntary leaders for youth-serving organizations; and (g) assisting localities in securing needed specialized services such as medical, psychiatric, psychological and social-work services. Much of the province's contribution would be of a consultative nature, including acting as a clearing-house for information, developing materials, arranging conferences and helping generally to develop and maintain an enlightened public opinion in support of programs aimed at the control of juvenile delinquency.

416. An important new development in the concept of delinquency prevention programming came as the result of the appointment in 1961 of the President's Committee on Juvenile Delinquency and Youth Crime in the United States. The Report submitted by the President's Committee is a document of some importance and, for this reason, we quote from it at considerable length: (54).

" Frequently, the persistence of delinquency is attributed to insufficient funds. If only more money were available, it is argued, for proper facilities, expansion of existing programs, and enlargement of youth service staff with better qualified personnel, the problem could be overcome. Undoubtedly, effective solutions to delinquency will require additional financial investments from both public and private sources. It is equally clear, however, that more money alone is not the answer....

It is the opinion of the President's Committee that additional funds in this field can only return their full value when local communities have carefully planned the redevelopment of their youth services. Throughout the Nation we must speed the development of our planning, program and training instruments to implement successful prevention programs. The Committee further believes that Federal assistance to local communities is essential at this time to accomplish this objective.

The President's Committee has evolved a set of policies for this purpose. It calls for development of a coherent pattern of technical assistance and demonstration grants by the Federal agencies concerned with various types of youth problems or communal activities which affect youth opportunities. It requires close coordination of these activities with the planning, program and training efforts of local communities whenever they are ready to mobilize a comprehensive redevelopment of youth services. It commits the Federal Government to a partnership role with these communities in financing new demonstration programs and in collectint and disseminating information about these delinquency prevention activities to other communities as well. In the long run, it looks toward the development of a tested body of knowledge about the scope of existing youth services, the gaps in these services, the new programs that are needed, the sources of financial aid, and the types of new legislative or administrative enactments which will create the necessary resources.

.....

Clearly we face a task that deserves our greatest

efforts. But we also face a challenge to the depth of our understanding and the strength of our determination to see clearly what is needed and to act vigorously to achieve it. What then are the crucial points from which a successful new attack can be launched? To obtain an answer we must study our current social service programs which address the problems of youth. The Committee's analysis revealed several key areas where more vigorous action would enhance our prevention and control efforts.

The Basic Areas for Action

An effective organization of youth services within a local community should reflect adequate planning, programming, and training. Unless we invest sufficiently in each one of those areas we will inevitably face rising rates of youthful misconduct.

Planning

A review of various planning operations for organizing programs to prevent and control delinquency revealed four essential components which must be reinforced for a renewed attack: (1) coverage of multiple causes, (2) sufficient authority for change, (3) full utilization of resources, and (4) integration of research, evaluation, and action.

(1) Coverage of Multiple Causes: A common approach in many planning efforts is to regard delinquent behavior as an individual problem, rooted in the delinquent's emotional disturbance, family inadequacy, bad companions, reading deficiency, etc. The source of trouble is attributed to a personal deficiency of the individual delinquent. This view ignores the converging pressures and effects of the social conditions under which he lives, such as inadequate opportunities, discrimination, etc. Furthermore, there is often a tendency to search out a single, common cause and to neglect other equally important sources of delinquency. If such limitations are not overcome, the

prevention program will attack only part of the total problem. By focusing only on individual offenders, they will neglect the underlying social conditions which would continue to generate new acts of deviance. The solution would be only partial, serving to mitigate but not to prevent delinquency.

(2) Sufficient Authority for Change: Closely related to this danger of oversimplifying the problem is the necessity for mobilizing sufficient authority for organizational change behind the planning process. Depriving social conditions within the local community generate many pressures toward delinquency. Planning an effective prevention program may require pervasive changes -- changes which reorganize existing youth services and create new ones. Inevitably many organizational or personal investments in the community will be affected. These interests need to be represented and to participate for the planning process to succeed. They must lend authority and support to the changes contemplated by the planning operation. No planning organization can hope for success if it lacks sufficient authority or excludes sources of community influence whose support is mandatory if the necessary social changes are to be achieved.

(3) Full Utilization of Resources: Inadequate exploitation of community resources and talent can materially hamper the planning operation. We must not risk a serious gap between our understanding of social problems and the use of this knowledge in planning. This advanced knowledge tends to accumulate in institutions of higher learning or organizations for specialized study and research. There are relatively few communities without some access to such resources. It is essential that planning groups in delinquency prevention develop effective communication and working relationships with them. The most fruitful enterprises are bound to be those in which the practical skill and understanding of the youth service practitioners are integrated with the theoretical and research

competence of the academic professions. To weld these resources into a unified planning team is to promote better solutions to delinquency.

(4) Integration of Research, Evaluation, and Action: Every new program for youth services should plan for adequate evaluation of the results. Many promising delinquency prevention measures throughout the country have been tried and then forgotten. Their potential usefulness has been lost for lack of adequate means to evaluate and communicate their impact. Usually this happens because of the great pressure to undertake new services immediately. The need of young people for these services is generally so painfully obvious that no time is left to develop a proper evaluation research plan to report the strong or weak points of the new action program. Instead reliance must be placed upon the subjective judgments of the practitioners administering the action program. Consequently, evaluations tend to be sketchy, biased and superficial. It is sometimes clear that the program has helped to control or reform in outstanding cases, but its impact in ameliorating significantly the problem in the community is seldom ascertainable. Clearly, the immediate goal of an effective action program for many new communities requires a close integration of program and research activities.

Furthermore, unless we build evaluative research into our action programs, we may also suffer serious long-run costs. We must accumulate a tested body of knowledge about the programs that work best to prevent delinquency and related youth problems. Otherwise, we may waste financial resources that might have been invested more prudently and effectively. If no solid factual ground is laid for determining future program priorities, the allocation of new welfare service funds is likely to be haphazard.

Programming

Adequate planning is the foundation on which a successful prevention program is built. The sources of delinquent

conduct, especially in our large urban centers, are exceedingly complex. We require more advanced planning today than may have been necessary in a simpler society. We face heavy competitive demands from a wide variety of services for our welfare dollars and our training personnel. We need firmly established priorities to guide the investment of these scarce resources. We must have a well integrated set of prevention programs to mount a successful attack against the diverse sources of delinquency. In the Committee's judgment, there are two primary conditions which we must establish if a broad new attack on youth problems is to succeed.

(1) Integration of Programs: In surveying prevention programs throughout the country, the Committee has been favorably impressed with the number of useful and promising projects now in operation. Some attack problems in the home situation. Others deal with the education, employment, recreation, and emotional problems of young people. These programs, however, are widely scattered. The challenge is to bring all of them together to form a comprehensive attack on youth problems in a single community. We cannot charge each specialized program with solving the total problem of delinquency by itself. Their full preventive impact requires supportive programs in related problem areas which need solution at the same time. We must avoid a situation in which useful programs are picked up one after the other as total panaceas and just as quickly dropped, because they failed to provide the complete solution. Such fragmentation of services would not build the accumulating body of knowledge about successful prevention which we sorely need and would sacrifice many promising ideas.

(2) Coordination of Program: Useful programs dealing with youth problems in the school, home, job, recreation or correctional services must not be allowed to function in

comparative isolation from one another. Under such conditions, conflicts in method and orientation remain unresolved and the effective impact of each program is sharply reduced. To deal with each part of the total delinquency prevention problem in a separate agency with relatively little intercommunication obviously is wasteful and self-defeating. Such a complex problem cannot be solved by any single treatment agent alone. It requires the application of many different skills and bodies of specialized knowledge working in close concert.

Training

Effective planning and program activities depend on an adequate supply of well-trained professional and volunteer persons to do the job. One of our greatest challenges is to furnish this trained body of workers as rapidly as possible.

(1) Adequate Supply of Staff: The rapid increase in the size of the delinquency problem and the number of proposed prevention and control programs makes the acute shortage of trained staff progressively more serious. Strong competition is emerging for a limited number of professionally trained practitioners to service a broad range of welfare functions. We must not permit limitations of budget, nor inadequate investment in training, to make it necessary for us to staff new youth service programs with persons not adequately qualified for the task.

(2) More Specialized Training: Even professional staff personnel usually require special training for understanding or coping with the complex problem of delinquency. To facilitate this, more knowledge about the sources and patterns of delinquency must be developed into specialized training courses. We need more instruction in techniques for identifying and attacking these sources in the conditions of community life as well as in individual cases. To make our attack

> successful, we must be prepared to support more intensive and specific training in this field for both professional and volunteer personnel."

417. The views of the President's Committee found expression in two federal programs for which a substantial appropriation was authorized under The Juvenile Delinquency and Youth Offenses Control Act of 1961. The two programs are complementary and together represent a new departure in programming in the field of delinquency prevention. The more ambitious of the two is the Demonstration and Planning Project Program. Its primary objective is to stimulate the development of comprehensive, co-ordinated community approaches to delinquency prevention by means of financial grants to support demonstration projects in a number of selected communities that are prepared to mobilize all of their relevant resources for a total attack on the problem. Communities throughout the United States were invited to make application for a planning grant, submitting in support of the application a program design for consideration by a Technical Review Committee. It was intended that the design would cover in some detail such matters as the following: (a) a theoretical framework relating to the causes of delinquency and to the reasons for inadequate opportunities for youth; (b) "baseline" information relating to the size of the problem, available resources and the nature of the community involved; (c) a theory of action addressed to the causes identified and expressed in terms of the needs and resources of the community; (d) a specific program designed to implement the theory; and (e) a model for the evaluation of results. From among applications received a number of communities were awarded planning grants to enable each recipient to develop in considerably greater detail the program design submitted to the Technical Review Committee. In this way a number of comprehensive plans would be prepared and, on the basis of these, several communities could be selected to receive much larger grants for the conduct of demonstration projects designed to test out the most promising plans in action.

418. An essential objective of the Demonstration and Planning Project Program is to provide an opportunity for experimenting actively with the best ideas available in a way that makes it possible for the country as a whole to benefit from the fresh thinking and creative efforts of individuals and communities working on the problem of delinquency prevention. One official publication describes the role of the federal authority as follows: "The Federal Government can stimulate .... action and provide guidance as well as a collected body of national experience, but the actual job has to be done by the local community where the conditions exist." (55). While we make no attempt in this Report to discuss in detail the operation of this large-scale American experiment in delinquency prevention, there are several features about it that are especially worthy of note. One is the recognition of the fact that the evaluation process is an essential component of any experimental program. A second is the emphasis that is placed upon comprehensive planning. It is expected, for example, that each project plan will take something in excess of a year to prepare. The planning

extends to the organized structure of the planning body, which must have representation from the municipality, the school system and the principal youth-serving agencies, and must also have skilled research assistance. Consultants attached to the President's Committee work with the local project staff in helping to define the nature of the planning required. A third point is that the Program seeks to encourage a community-wide approach to delinquency prevention. It is, in fact, concerned as much with youth opportunities and under-privileged youth as it is with juvenile delinquency, accepting as a basic premise the view that little can be done about juvenile delinquency without an organized attack on the basic conditions in the community that give rise to it. This is evident from the criteria established by the Technical Review Committee for the award of grants. These criteria include: (a) a scheme must be comprehensive, showing evidence of concern with the development of a strategy of integrated programs and services directed toward the major sources of youth problems that have a bearing upon delinquency; (b) there must be wide involvement and active co-operation of public and private agencies in the community; (c) the community must itself make a financial commitment to the program; (d) the idea must appear to be one that could be transferred and applied to other communities; and (e) the program must incorporate plans for the systematic assessment of its effects.

419. The second program is concerned with personnel training in the various fields of activity that are relevant to delinquency prevention and control. Under the training program, funds are made available for projects of three kinds:

> (1) Provision is made first of all for the establishment of a number of training centres at selected academic institutions throughout the United States. Institutions were chosen from among applicants submitting a systematic plan for training that met the following requirements: (a) teaching competence; (b) a range of relevant disciplines and the ability to co-ordinate them; (c) willingness to share costs; (d) adequate physical facilities to house a centre; and (e) access to target populations. The following explanation of the function of the training centre appears in the Report of the President's Committee: "These centres will mobilize and foster training competence in youth services. They will train persons who may function in turn as training staff in their own communities. The course of instruction will offer an interdisciplinary orientation to youth problems, together with specific training in specialized areas of practice, such as law enforcement, correctional treatment, youth education, youth employment, family and child welfare, and recreational services. These centres may also become focal points for the collection and dissemination of new information on the extent

of delinquency and related youth problems and appropriate methods of coping with them. Furthermore, related research projects will be encouraged at the centres to feed new knowledge into the training experiences." (56).

(2) A second kind of project relates to curriculum development. Here the object is to develop new training materials of two basic types. The first is "core knowledge" relating to youth problems generally - that is, knowledge that will be useful in the training of all persons who work with youth, regardless of their particular speciality. Included are new materials on such subjects as the family, theories of causation, the social psychology of youth, the culture of poverty, and the like. The second type is material designed to meet the needs of various kinds of specialists in youth work. It is intended, for example, that specialized materials will be developed for the training of persons working with youths in training schools and other kinds of treatment centres, as law enforcement of probation officers, in the school system, and in connection with recreational and other community programs. Among the other objectives of the curriculum development aspect of the Training Program are the development of: (a) an interdisciplinary approach to problems of delinquency prevention and control, through the integration of subject-matter; (b) new ways of communicating knowledge; and (c) new methods of evaluating the effectiveness of programs.

(3) There is an allocation of funds also to enable short-term workshops, institutes and seminars to be held in a number of communities. This part of the Program is directed at line or field personnel and is designed to meet more immediate needs for educational upgrading of persons currently involved in youth work. What are contemplated are courses and programs for juvenile court judges, police, probation and after-care staff, teachers, agency and welfare workers, and vocational counsellors and the employment personnel. A further objective is to locate training activity as much as possible within various communities themselves, having regard to the fact that juvenile delinquency must ultimately be attacked at the community level. Thus it is considered important to make the overall Program visible to individual communities as part of a large-scale attempt to mobilize community interest and support by whatever means seem promising.

420. It will be evident from the discussion in this Chapter that if programs of delinquency prevention are to be developed that offer any realistic hope of positive results, considerably more study, effort and financial support will be required than has thus far been devoted to a problem that should be one of major social concern. It is obvious also, of course, that the constitutional division of power in Canada places important limits on the power of the federal authority to act. Nevertheless, we do think that the Government of Canada ha a contribution to make. In saying this, we state again our view that "co-operative federalism" of a high level will be needed if that contribution is to be an effective one. Some possible lines of approach to federal participation are set out in the Conclusion of this Report.

Footnotes

1. See Rapoport, "The Concept of Prevention in Social Work," 6 Social Work No. 1 (January, 1961). A recent submission to the Ontario Select Committee on Youth analyzes "primary" and "secondary" prevention in the following terms: "Preventive measures can be defined as those activities which tend to reduce the incidence or development of social problems, or which tend to limit their duration or the degree of disability which they produce. At the primary level it is obviously possible to reduce such damagingly stressful situations as unemployment, social segregation and isolation, and malnutrition, and at the same time to strengthen the individual's ability to handle major life crises. At the secondary level there is little doubt that the prevalence of maladjustment could be reduced by early diagnosis which in turn could be facilitated by training key workers in the community, e.g. teachers, clergy, public health nurses, to identify those who are in need of skilled help. Again, it is essential to provide adequate facilities to care for those children who cannot be given the care they need .... and who are 'at risk'....". Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth (1964), p.22.

2. Witmer and Tufts, The Effectiveness of Delinquency Prevention Programs (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1954).

3. Id., at pp. 1-14.

4. Frankel, "The Research Needs of Practice," in Current Projects in the Prevention, Control and Treatment of Crime and Delinquency (National Council on Crime and Delinquency, vol. 1, 1962) p.45,

at p.51.

5. See, for example, Bovet, Psychiatric Aspects of Juvenile Delinquency (1951), c.2; Friedlander, Psycho-Analytical Approach to Juvenile Delinquency (1947); Jenkins and Hewitt, "Types of Personality Structure Encountered in Child Guidance Clinics," (1944) 14 American Journal of Orthopsychiatry 84; Hall and Lindzey, Theories of Personality (1957); Trasler, The Explanation of Delinquency (1962).

6. We think it useful in this connection to quote again from the Brief of the Ontario Division of the Canadian Mental Health Association to the Ontario Select Committee on Youth: ".... It is essential that all possible measures be taken that will reduce those situations which lead to family breakdown. It is contended that adequate parent and family life education is the key to the solution of many of the problems which beset young people today .... An extensive review of the literature and research in the area of delinquency reveals that it has its beginnings in the home and that one or more of three common factors are nearly always found to be in the delinquent: a lack of security, a lack of self control and a lack of a worthwhile set of values. Discipline, Security, Values: these are the qualities which the home must provide and yet it is evident that many homes are not providing them. Equally it is evident that there are relatively few parents who wilfully neglect or damage their children and one is forced to the conclusion that much harm is done simply because some parents are not aware of their duties and responsibilities or are unable to express their love and concern or have not learned or acquired the techniques which successful parenthood involves. Extensive programming in the area of family education is sorely needed, and a great drive is necessary to promote education in child care, in homemaking, in home economics, and to provide better marital and pre-marital counselling services. It is our contention that the preservation of harmony in the family is the first requisite for the mental health of its members and if the mounting incidence of social maladjustment and emotional disorder is ever to be halted parent education is absolutely vital." Brief to the Ontario Legislative Assembly Select Committee on Youth, supra note 1, at pp.4 and 23.

7. Brief submitted by the Calgary Family Service Bureau and Catholic Family Service (1962), p.7.

8. See, for example, Community Chest and Councils of the Greater Vancouver Area, Proposal for an Area Demonstration Project (1962).

9. Brief submitted by the Victoria Day Nursery, Toronto (1962), p.4.

10. O'Sullivan, The Inheritance of the Common Law (1950), p.59.

11. Tappan, Juvenile Delinquency (1949), pp.514-516.

12. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Understanding Juvenile Delinquency (1949).

13. Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto (1962), p.19.

14. Hearings before Subcommittee of the Senate Committee of the Judiciary, 87th Congress, 1st Sess. (1961), pp. 1590-1592.

15. Report prepared by the Special Services Division and interested parties of the Edmonton Public School Board (1962), p.1.

16. Tappan, op. cit. supra note 11, at p.500.

17. State of California, Department of Education, "The Role of the School in the Prevention and Control of Juvenile Delinquency," in Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1, 1960), p.100, at pp. 101-102.

18. "The performance of delinquents still in school clearly sets them apart .... Truanting tends to begin early; 25 per cent of all delinquents are chronic truants, and almost every delinquent has some degree of truanting in his background. Studies have shown an average of three years' retardation in grade level, and a likelihood of testing even lower than the actual (retarded) grade placement on achievement tests....". Cook and Rubenfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960) c. 111, p. 15. Similar results have been found in studies conducted in the Cities of Halifax and Hamilton. In both cases the correlation between truancy and areas of high rates of delinquency is apparent. See Report on the Problem of Delinquency prepared by the Corrections Division of the Welfare Council of Halifax (1962), p.3; Brief submitted by the Juvenile Delinquency Study Committee of the Social Planning Council of Hamilton and District (1962), pp.25-26 and Appendix "A", pp. 12-13. Some of the research findings on the relationship between truancy and delinquency are reviewed in Wootton, Social Science and Social Pathology (1959), pp. 116-118.

19. Kvaraceus and Ulrich, Delinquent Behavior: Principles and

Practices (National Education Association Juvenile Delinquency Project, vol.11, 1959), p.86.

20. Ibid., c.4. One community brought to our attention in this connection is the City of Trail, B.C., which appears to have been most successful in developing a work experience program as part of its school curriculum.

21. Edmonton Public School Board, supra note 15, at p.1.

22. U.S. Dept. of Health, Education and Welfare, Children's Bureau, Helping Children in Trouble (1947), p.1.

23. Submission of the Canadian Mental Health Association, New Brunswick Division (1962), p.1.

24. Tappan, Crime, Justice and Correction (1960), p.489.

25. Kvaraceus and Ulrich, op. cit. supra note 19, at p.32.

26. Id., at p.33.

27. "There are two staff members in many schools who are strategically placed .... (These are).... the guidance counsellor and the attendance officer .... It is unfortunate that the role of guidance counsellor is often confined to giving assistance in the area of vocational guidance but this situation may well have arisen because presently those so employed have been trained to do little more than this; though many are anxious to broaden their scope, they feel inadequately equipped to do so .... It is patently clear that the personal qualities of those concerned must be such as will make the establishment of rapport with children relatively easy and their specific training must be so developed that they are equipped for personal counselling. Similarly, the role of the attendance officer is a crucial one, since no member of the school system is in a better position to obtain a picture of the child within its home or of the home influences which are so often the cause of emotional disturbance and maladjustment. The role is one which is being increasingly recognized, as it should be, but the success which many attendance officers achieve would be likely to be increased if they were provided with adequate and special training in the causes behind the phenomena of truancy and school phobia, in counselling skills and in the methods of seeking

co-operation from other community resources." Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth, pp.7-8.

28. "The Role of the School in the Prevention and Control of Juvenile Delinquency," supra note 17, at p.107.

29. Id., at pp. 107-108.

30. Kvaraceus and Ulrich, op. cit. supra note 19, at pp. 288-289.

31. Report of the Committee on Juvenile Delinquency of the Social Planning Council of Metropolitan Toronto (1962), p.18.

32. Tappan, op. cit. supra note 11, at p. 502.

33. Weston, "The Role of the School in Crime Prevention," in Trends in Crime Treatment (National Probation Association Yearbook, 1939), pp. 38-39.

34. Greater Hamilton Y.M.C.A., Out of School Youth - Will They Work This Year? (1962), p.13.

35. Mobilization for Youth, Inc., A Proposal for the Prevention and Control of Delinquency by Expanding Opportunities (1961), pp. 236-240.

36. St. Christopher House (Toronto), School Drop-Outs - Our Disinherited Youth (1962), pp. 6-12.

37. Data for paras. 400 and 401 was supplied by the Special Services Branch of the Department of Labour, Ottawa.

38. See supra para. 127.

39. Report of the Special Committee of the Senate on Manpower and Employment (24th Parl., 4th Sess., 1960-61), p.8.

40. Id., at p.8.

41. Conant, "Social Dynamite in Our Large Cities," in Report

of the Conference on Unemployed, Out-of-School Youth in Urban Areas (National Committee for Children and Youth, 1961), p.26, at pp.38-40.

42. Witmer and Tufts, op. cit. supra note 2, at pp.7-8.

43. Brief submitted by the Victoria Day Nursery, Toronto (1962), pp.5-8.

44. U.S. Dept. of Health, Education and Welfare, Report to the Congress on Juvenile Delinquency (1960), p.11.

45. See generally, Witmer and Tufts, op. cit. supra note 2; Witmer (ed.), "Prevention of Juvenile Delinquency," 322 The Annals of the American Academy of Political and Social Science (March, 1959); Glueck, The Problem of Delinquency (1959), c.33.

46. Examples are the detached worker projects undertaken by the Youth Services Bureau of the Ottawa Welfare Council and by the University Settlement in Toronto.

47. Witmer and Tufts, op. cit. supra note 2, at p.47.

48. Id., at p.50.

49. Frankel, supra note 4, at pp.61-62

50. Report of the Juvenile Delinquency Inquiry Board (Victoria, 1960), p.14.

51. Id., at p.17.

52. See Gorby, An Interim Report and Recommendations on Co-ordination of Government and Community Resources in the Treatment of Juvenile Delinquency for Rural British Columbia (Victoria, 1963), pp.14-17.

53. Id., at pp. 16-17.

54. Report of the President's Committee on Juvenile Delinquency and Youth Crime (1962), pp. 1-11.

55. U.S. Depts. of Justice, Labor and Health, Education and Welfare, The Federal Delinquency Program: Objectives and Operation Under the President's Committee on Juvenile Delinquency and Youth Crime and the Juvenile Delinquency and Youth Offenses Control Act of 1961 (1961), p. 4.

56. Report of the President's Committee on Juvenile Delinquency and Youth Crime (1962), pp. 14-15.