



REPORT

OF A COMMITTEE APPOINTED TO INQUIRE INTO
THE PRINCIPLES AND PROCEDURES FOLLOWED
IN THE REMISSION SERVICE OF
THE DEPARTMENT OF JUSTICE OF CANADA

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TABLE OF CONTENTS

		PAGE
	INTRODUCTORY.....	1
Chapter	I THE PROBLEM OF CORRECTIONAL REFORM IN CANADA.....	5
Chapter	II THE REMISSION SERVICE.....	8
Chapter	III THE ACCUSED BEFORE THE COURT.....	11
	Types of Punishment.....	12
	Suspended Sentence.....	12
	Adult Probation.....	13
	Probation Without Conviction.....	14
	Fines.....	15
	The Sentence of Imprisonment.....	17
	Disposition of Charges in Another Province.....	17
	Trial of Accomplices.....	18
	Severity of Sentences of Imprisonment.....	18
	Outstanding Warrants.....	18
	Preventive Detention: Habitual Criminals.....	19
	Preventive Detention: Criminal Sexual Psychopaths.....	21
	Corporal Punishment.....	22
	Forfeiture.....	22
	Indeterminate Sentences.....	22
	Pre-Sentence Reports.....	25
	Types of Offender.....	26
	First Offenders.....	26
	Young Offenders.....	27
Chapter	IV THE PREROGATIVE OF MERCY.....	28
	Commutation of Sentences of Death to Imprisonment.....	29
	Remission of Corporal Punishment.....	31
	Granting of Free Pardons.....	32
	Granting of Ordinary Pardons.....	34
	Granting of Conditional Pardons.....	35
	Remission of Sentences of Imprisonment.....	35
	Remission of Fines, Forfeitures, etc.....	37
	Suspension of Orders Prohibiting Driving.....	38
Chapter	V THE PRISONER IN THE INSTITUTION.....	39
	Federal Institutions.....	39
	Provincial Institutions.....	41
	Reception Centres.....	44
	Classification of Prisoners.....	44
	Treatment.....	46
	Special Types of Inmates.....	47
	Pre-Release Program.....	49
	Legislation.....	49
Chapter	VI THE NATURE AND FUNCTION OF PAROLE.....	51
	Justification for Parole.....	51
	Principles Applicable to the Parole System.....	52

	PAGE
Chapter VII	THE TICKET OF LEAVE ACT AND RELATED STATUTES..... 55
	The Prisons and Reformatories Act..... 59
	Juvenile Delinquents Act..... 60
	Statutory Remission..... 60
Chapter VIII	PRACTICE AND PROCEDURE IN THE REMISSION SERVICE..... 62
	Rules of Practice..... 62
	Six-Months Rule..... 65
	Inmates Under Preventive Detention..... 65
	Procedure in the Remission Service..... 66
	Proposed Procedure..... 68
Chapter IX	THE FUNCTION OF AFTER-CARE IN A PAROLE SYSTEM..... 70
	Family and Social Relationships..... 70
	Immediate Financial Needs..... 70
	Employment Problems..... 70
	The Role of the Parole Supervisor..... 71
Chapter X	THE HISTORY OF AFTER-CARE IN CANADA..... 74
	The Remission Service and After-Care Agencies..... 75
Chapter XI	PROPOSAL FOR A NATIONAL PAROLE BOARD..... 80
	Composition of the Board..... 80
	Qualifications of Board Members..... 81
	Powers and Duties of the Parole Board..... 81
	Method of Operation..... 82
	Administration..... 82
Chapter XII	ADMINISTRATION OF FEDERAL CORRECTIONAL SERVICES..... 84
Chapter XIII	PROFESSIONAL TRAINING IN THE CORRECTIONAL FIELD..... 85
Chapter XIV	SUMMARY OF RECOMMENDATIONS..... 87
Chapter XV	APPENDICES..... 91
	<i>Appendix A</i> — Statistical Tables..... 91
Table	I — Persons on Ticket of Leave as of March 31, in each year 1946-1955..... 91
Table	II — New Cases Opened, 1946-1955..... 91
Table	III — Tickets of Leave Granted, 1928-1955..... 92
Table	IV — Tickets of Leave, Unconditional Releases, etc., All Institutions, 1954-1955..... 92
Table	V — Method of Release From Penitentiaries, 1950-1955..... 95
Table	VI — Method of Release From Penitentiaries, By Time Served, 1950-1955..... 96
Table	VII — Incidence of Exception to Half-Time Rule, 1952-1953..... 98
Table	VIII — Tickets of Leave Granted by Province of Destination on Release, 1950-1955..... 99
Table	IX — Incidence of Recidivism of Persons Released on Ticket of Leave, 1950-1955..... 100
Table	X — Data on Release and Supervision, 1949, 1953, 1954, 1955..... 101
Table	XI — Pardons Granted Under Sec. 1076 of Former Criminal Code, 1941-1955..... 102
Table	XII — New Trials Ordered..... 102

	PAGE
Table XIII — Remission of Corporal Punishment, 1934-1955.....	102
Table XIV — Preventive Detention, Number Detained.....	104
Table XV — Preventive Detention, By Place of Conviction.....	104
Table XVI — Releases Forthwith, 1941-1955.....	105
Table XVII — Number of Paroles Granted by Ontario Board of Parole, 1950-1956.....	106
Table XVIII — Number of Paroles Granted by B.C. Board of Parole, 1955-56.....	106
<i>Appendix B</i> — Sections 638 and 639 of Criminal Code.....	106
<i>Appendix C</i> — Sections 7 and 12 of United Kingdom Criminal Justice Act, 1948.....	107
<i>Appendix D</i> — Section 7 of Ontario Probation Act.....	108
<i>Appendix E</i> — Part XXI (Preventive Detention) of Criminal Code.....	109
<i>Appendix F</i> — Sections 43 and 46 of Prisons and Reformatories Act.....	111
<i>Appendix G</i> — Sections 151 and 152 of the Prisons and Reformatories Act.....	112
<i>Appendix H</i> — Conditions of Parole Granted by B.C. Parole Board and Ontario Parole Board.....	112
<i>Appendix I</i> — Remission of Fines and Pecuniary Penalties.....	115
<i>Appendix J</i> — Reports on Penal Institutions in United Kingdom.....	115
<i>Appendix K</i> — Classification Policy—Penitentiaries.....	124
<i>Appendix L</i> — Justification for Parole.....	126
<i>Appendix M</i> — Ticket of Leave Act.....	130
<i>Appendix N</i> — Investigation Forms, Remission Service.....	135
<i>Appendix O</i> — Institutional Visits by Remission Service Regional Representatives.....	138
<i>Appendix P</i> — Survey of After-Care Agencies Facilities and Requirements.....	142
<i>Appendix Q</i> — Suggested Organization of Parole Service.....	153
<i>Appendix R</i> — Bibliography.....	154

**Report of a Committee Appointed to Inquire Into the Principles
and Procedures Followed in the Remission Service of
the Department of Justice of Canada.**

THE HONOURABLE STUART S. GARSON, Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

As an advisory committee appointed by you to investigate and report upon the principles and procedures followed in the Remission Service of the Department of Justice in connection with the exercise of clemency and to recommend what changes, if any, should be made in those principles and procedures, we have the honour to submit the attached report of our findings and recommendations.

Terms of Reference

Your letter of December 11, 1953, to each member of the committee set out our terms of reference. It read as follows:

"This will confirm the arrangement under which you have been good enough to undertake to act as a member of an informal committee established to investigate and report upon the principles and procedures followed in the Remission Service of the Department of Justice in connection with the exercise of clemency and to recommend what changes, if any, should be made in those principles and procedures.

As I think you know, I do not propose to place restrictions of any kind upon your field of inquiry. Rather, it is my hope that members of the committee would find it possible to examine the entire field of remission and parole and, after a full inquiry, report to me their findings and recommendations.

I may say that the officials and facilities of the Department of Justice will be available for the assistance of members of the committee in connection with the inquiry. Arrangements will, of course, be made for the payment of your transportation and living expenses while you are engaged in this work away from your ordinary place of residence.

In conclusion I wish to thank you again for undertaking to perform this public service."

Our report has been delayed beyond the time when it would have been available if we had been able to devote, for any extensive period, all of our attention to the inquiry. This has been a matter of regret to each of us, but it has been unavoidable. You will recall, however, that in undertaking to serve on the committee, each of us did so on the understanding that the performance of our ordinary duties should be interfered with as little as possible.

We realized very early that it would not be possible for us to inquire fully into, report upon and make effective recommendations concerning the principles and procedures followed in the Remission Service without examining the field of criminal law in a great many other aspects. Accordingly, we welcomed the opportunity to give to the terms of reference their broadest application. It is for this reason that our report covers a great deal more than the subject of the exercise of clemency. When first you discussed the nature of the inquiry with us, you pointed out that the re-organization that had taken place in the Penitentiaries Service since 1947, and similar developments in some of the provinces, had brought about substantial changes in

methods of training and treatment of inmates of penal institutions. You felt that these developments had proceeded to a point where the related problems, specifically, of parole and clemency required examination.

The penal system of Canada has, in the past, been the subject of inquiry and report by royal commissions and committees at both federal and provincial levels.

Some of the important inquiries have been the following:

- (1) Report of the Royal Commission Concerning Jails — Province of Nova Scotia — 1933.
- * (2) Report of the Royal Commission to Investigate the Penal System of Canada (Archambault Report), 1938.
- (3) Report of the Saskatchewan Penal Commission, 1946.
- (4) Report of Major-General R. B. Gibson, a Commissioner appointed under the Inquiries Act to inquire into and report upon the penitentiary system of Canada, 1947.
- (5) Report of the Commission Appointed by the Attorney General to Inquire into the State and Management of the Goals of British Columbia, 1950.
- (6) Report of Commission on Goal System of New Brunswick, 1951.
- (7) Report of the Select Committee Appointed by the Legislative Assembly of the Province of Ontario, to Study and Report Upon Problems of Delinquent Individuals and Custodial Questions, and the Place of Reform Institutions Therein, 1954.

All of these inquiries appear to have been concerned, primarily, with questions involving the management of penal institutions. Each of the inquiries involved, to a greater or lesser extent, some consideration of the matters that have been the subject of our inquiry. However, so far as we can ascertain, no previous inquiry in Canada has been directed specifically at the subject matter that falls within our terms of reference.

Since our inquiry started, other inquiries have commenced in fields which touch, to some extent at least, upon matters that fall within our terms of reference. A joint committee of both Houses of Parliament has been appointed during each of the last three sessions of Parliament to inquire into and report upon the questions whether the criminal law of Canada relating to capital punishment, corporal punishment and lotteries should be amended in any respect and, if so, in what manner and to what extent. Royal commissions have been established to inquire into and report upon the questions whether the law of insanity as a defence in criminal causes and the law relating to criminal sexual psychopaths should be amended in any respect and, if so, to what extent. We have, as far as possible, refrained from making recommendations concerning matters that relate more properly to these inquiries than to our own.

At our first meeting we elected the Honourable Mr. Justice Gerald Fauteux as our chairman. The manner in which our inquiries had to be conducted did not justify the appointment of counsel or a permanent secretary.

We have examined the statutes, both federal and provincial, that are related to our inquiry. We have also examined the procedures and policies that have been followed in the past in the Remission Service and those that are now followed. The Director of the Service and the two Assistant Directors have met with us frequently. They have provided us with all the information and material that we required for a study of the day to day operations of the Service.

Our status as a committee did not give us the power that a royal commission usually has to summon witnesses. We do not feel that this was in any way a handicap to our inquiry. While we did not hold public hearings, nevertheless those persons who

were most interested in the subject matter of our inquiry and who were in a position to assist the committee were asked to present briefs and, in most cases, we were able to meet in private with them. An examination of the briefs shows a remarkable uniformity of informed opinion throughout the country.

Our committee, or representatives of it, visited each of the eight federal penitentiaries, and the Prison for Women at Kingston, Ontario. We also visited the larger provincial penal institutions and most of the provincial institutions that provide something more than mere custody of inmates. At each institution we invited the officers to express freely their views on the subject matter of our inquiry. We inspected the offices occupied by the Remission Service in the Department of Justice. We also inspected the regional offices of the Service which are located at Montreal and Vancouver.

Representatives of the committee had personal interviews with the Premiers of Prince Edward Island and Newfoundland, the Solicitor-General of the Province of Quebec, the Attorney-General of the Province of Newfoundland, and the Deputy Attorneys-General of all the Provinces. A member of the committee also interviewed the Deputy Minister of Health and Welfare in the Province of Saskatchewan and the Deputy Minister of Reform Institutions in the Province of Ontario.

We consulted with members of the judiciary and representatives of police forces. We met with representatives of the after-care agencies at a conference in the Penitentiary Staff College in Kingston in February, 1955. Fifteen after-care agencies from Newfoundland to Vancouver Island were represented at this meeting. We also visited the offices of a number of after-care agencies.

We have obtained information concerning the existing facilities for the study of criminology and the training of correctional workers in Canada. The heads of several schools of social work replied in some detail to our inquiries on this important subject. Professor E. K. Nelson, Chair of Criminology, Department of Sociology, University of British Columbia, met with the Committee to examine the need for expanded facilities. The subject was also discussed with Professor Stuart K. Jaffary of the School of Social Work, University of Toronto, and members of the staff of Laval University.

We had useful interviews with Commissioner Gibson of the Penitentiaries Branch of the Department of Justice and Commissioner Nicholson of the Royal Canadian Mounted Police.

In the late Summer of 1954 all members of the Committee visited England, France and Belgium. The purpose of this visit was, of course, to see in operation the many types of institutions that have been established in those countries for the treatment and training of different types of offenders. We also wished to discuss the subject matter of our terms of reference with senior officials in the field of corrections in those countries.

In England, through the courtesy of Sir Frank Newsam, Permanent Under-Secretary of State for Home Affairs, and the Prison Commissioners, we were able to visit twelve penal institutions of varying types. We also conferred with senior officers in the Home Office, the Probation Service, the Prison Commission, Scotland Yard and the Central After-Care Association. We attended a sitting of the County of London Quarter Sessions where we observed the probation system in operation. We also met with the presiding Judge of the Court. In addition, we attended a sitting of the Advisory Board on Preventive Detention at Parkhurst Prison.

We were received most courteously in France and Belgium where we also visited institutions and conferred with senior officials. We also had the privilege of discussions with Professor Max Grunhut, Reader in Criminology, Oxford University, and Professor DeGreef, Louvain University, Brussels.

Two of our members were familiar with the various penal systems that operate in the United States of America and had previously visited a number of institutions

in that country. These members have held offices in certain American correctional associations. We were supplied with a wealth of material covering methods of institutional treatment and parole in the United States. The Director and three other members of the Remission Service staff have had opportunities to confer with senior officials in the field of parole in the United States and they have reported to us. On several occasions some of our members met with senior officers of the National Probation and Parole Association of the United States. This large organization carries on an extensive program of research and provides a research service that is frequently used by state governments. We were interested to learn that the Association has, for several years, sponsored an association of federal and state judges which has been very active in bringing about improvements in the penal system.

In 1955 the Association published a revision of an earlier Standard Probation and Parole Act. This model Act is the product of the work of twenty-eight senior officials in the field of probation and parole. We are impressed with the principles set out in this model Act and commend it for study whenever parole legislation in Canada is under review.

We are conscious of the responsibility that we have undertaken in accepting appointment as members of this Committee. Our task has been made easier because of the previous experience that each of us has had in one or more parts of our field of inquiry. Our Chairman contributed judicial experience. Mr. Common has had long experience in the enforcement of the criminal law. Mr. McCulley has had first-hand experience in the operation of the penitentiary system. Mr. Edmison has long been prominent in after-care work.

You will observe that in our Report we refer to many aspects of the correctional field with which you are already very familiar and frequently the language that we employ appears to be for the benefit of the layman rather than for a person having your professional training and experience. We have done this in the expectation that our Report will, perhaps, have a wide circulation among the public. We considered that, in order to make the Report intelligible to persons without professional training or experience, it was preferable to draft it, wherever possible, in non-technical language.

We cannot hope to list here the names of all those persons in Canada and elsewhere who contributed time and effort to assist us in our inquiry. We do wish to record, however, our wholehearted appreciation for the valuable assistance that each one has rendered.

Respectfully submitted,

GERALD FAUTEUX

WILLIAM B. COMMON

J. ALEX. EDMISON

JOS. McCULLEY.

Ottawa, Canada.

April 30, 1956.

CHAPTER I

THE PROBLEM OF CORRECTIONAL REFORM IN CANADA

We feel that we should state at the outset that the need for reform in the field of corrections in Canada is great.

"Corrections" is a term that has come into use in recent years to describe the total process by which society attempts to *correct* the anti-social attitudes or behaviour of the individual. Within the correctional field fall such matters as punishment, treatment, reformation and rehabilitation of the offender and the various means by which these objectives are attempted to be obtained.

Our investigations have convinced us that what is required is not merely attention to some matters of minor detail in the correctional field, but rather concentrated attention to many matters of fundamental principle. Improvements in correctional facilities in Canada have lagged far behind those in the other social sciences. It appears to us that the factor chiefly responsible for this state of affairs has been a continuing lack of public interest in the subject which, at times since Confederation, has amounted almost to apathy. Since 1867 almost all governments, whether federal, provincial or municipal, have, from time to time, made small efforts to improve the situation in certain branches of the entire field. At no time, however, does there appear to have been any real understanding by the public at large of the manifold problems involved or any widespread demand, by the public, for the logical and orderly development of a system of corrections compatible with the national character of Canadians.

The problem has been accentuated by the fact that Canada is a federal state, consisting of one central government and ten provincial governments, each of which has jurisdiction over some part of the field, but none of which have jurisdiction over all of the field.

A well ordered system of corrections is the product of the work of the legislature, the police and prosecuting authorities, the courts, penal institutions, parole authority and the State, by which the prerogative of mercy is exercised. Each of these parts of the correctional system has an important, and sometimes vital, role to play. Each should play its part in the light of the fundamental purpose of corrections, namely, *correction* of the individual. Each will fulfil its function better if it acts in co-operation with and with an understanding of the others. Integration of activity is essential.

In a country where full legislative authority over the subject matter of corrections is vested in a single legislature, this integration is easily achieved. The United Kingdom is a good example. There the exclusive authority over corrections, in all its aspects, is vested in the Parliament of the United Kingdom. All power and authority in relation to it flows from a single legislative source. All that is good in the law and all that is not good in it is, ultimately, attributable to a single body of legislators.

In Canada an entirely different situation prevails. Legislative authority over all of the subject matter is divided between the federal legislature and ten provincial legislatures. Administrative authority over it is divided between the federal government and ten provincial governments.

It is desirable to point out, immediately, some of the difficult and anomalous results that flow from this situation.

Section 91 of the British North America Act provides that the exclusive legislative authority of the Parliament of Canada extends, among other things, to "the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters". This is the constitutional authority, under which the

- Parliament of Canada declares, for example, that certain conduct is an offence and provides the maximum punishment that may be imposed by a court upon a person who commits that offence. Under this authority, also, Parliament enacts laws to establish the procedure to be followed in the courts for the purpose of determining the guilt or innocence of the accused. On the other hand, the provincial legislatures are, by section 92, given exclusive authority to make laws in relation to "the administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts".

The policeman is usually the private citizen's first contact with the criminal law. In this sphere there is no uniformity in Canada. Parliament has authorized the establishment and maintenance of the Royal Canadian Mounted Police, an organization which it describes as a "police force duly constituted for Canada", to be employed in such parts of Canada as the Governor in Council may prescribe. At one time each of the provinces of Canada had its own provincial police force. Now, however, only the provinces of Ontario and Quebec maintain their own police forces and the remaining eight provinces have entered into agreements with the Government of Canada for members of the R.C.M. Police to carry out provincial police duties. Many municipalities in Canada maintain their own municipal police forces. Again, however, over one hundred municipalities in Canada have entered into agreements with the Government of Canada for the R.C.M. Police to perform municipal police services.

In criminal proceedings it is the responsibility of the Crown Attorney to present to the court the case for the Crown and thereby assist the court to determine the guilt or innocence of the accused. In some provinces of Canada the Crown Attorney is appointed and paid a salary by the provincial government and receives his instructions from the provincial Department of the Attorney General. In others he is appointed and paid by the municipality and receives his instructions from municipal officers, with intervention by the Department of the Attorney General only in serious cases. Again, he may be appointed by the provincial government and, while permitted to practise his profession of law, receives fees for those cases in which he acts as the Crown Attorney. The Government of Canada frequently appoints legal agents to act for it in the prosecution of criminal cases arising under statutes of the Parliament of Canada other than the Criminal Code. Finally, in many criminal cases, usually of a less serious nature, the case for the Crown is presented to the court by peace officers.

The provincial legislatures have exclusive jurisdiction to legislate for the constitution, maintenance and organization of provincial courts of civil and of criminal jurisdiction. Accordingly, each of the provinces has enacted legislation to establish superior courts, county or district courts and magistrates' courts, among others. The effect of the British North America Act is that although the superior and county or district courts are constituted under provincial law, the judges of those courts are appointed by the Government of Canada. However, magistrates and, in the Province of Quebec, judges of the Sessions of the Peace are appointed by the governments of the provinces.

The question of the criminal jurisdiction of these courts is perhaps relevant here. Only a superior court judge, sitting with a jury, can try an accused for serious offences such as murder, manslaughter, rape, treason, sedition and causing death by criminal negligence. These by no means exhaust the full list. An accused is entitled to be tried by a superior court judge and a jury for any criminal offence with which he is charged, with the exception of a few relatively minor offences that are within the absolute jurisdiction of the magistrate. The offences over which a magistrate has "absolute" jurisdiction include, among others, theft or obtaining money or property by false pretences, where its value does not exceed fifty dollars, attempted theft, gaming, betting, certain assaults and book-making and pool-selling. Except where the offence is one that must be tried by a jury or is one over which a magistrate has absolute jurisdiction, the accused may, if he so elects, be tried without a jury by a county or district court judge or, in the Province of Quebec, by a judge of the Sessions of the

Peace. The fact that magistrates and judges of the Sessions of the Peace are appointed by provincial governments is of some significance, perhaps, when it is recalled that in Canada only two per cent of criminal cases are tried by jury, six per cent by county or district court judges, and ninety-two per cent are tried by magistrates and judges of the Sessions of the Peace.

An equally divided jurisdiction is to be found where penal institutions are concerned. The British North America Act gives to Parliament exclusive legislative jurisdiction over the establishment, maintenance and management of penitentiaries. To the provincial legislature it gives exclusive legislative authority for the establishment, maintenance and management of public and reformatory prisons in and for the province. Parliament has provided, by means of its legislation, that a sentence of imprisonment for two years or more shall be served in a federal penitentiary and that a sentence of less than two years shall be served in a provincial prison or reformatory. The average daily population of the federal penitentiaries is between five and six thousand inmates, while that of all provincial prisons and reformatories is between ten thousand and eleven thousand inmates. The inmates of provincial penal institutions are, of course, confined in institutions in ten separate provinces under the management of ten separate provincial governments.

Finally, there is the field of probation and parole. As will be explained more fully later in this Report, probation is a system that is designed to keep convicted persons out of prison in the first instance, while parole is a system designed to assist the inmate in making a transition from close confinement in the institution to absolute freedom in society. Both systems have a great deal in common. Under our law, however, the subject matter of probation falls within the exclusive legislative jurisdiction of the provincial legislature, because probation officers are officers of the court. The subject matter of parole, on the other hand, falls within the jurisdiction of Parliament in the field of criminal law.

Fair and equal treatment of offenders is a fundamental necessity in a sound correctional system. This brief review of the general problem of divided jurisdiction points up the difficulty of providing fair and equal treatment for offenders in Canada. The purpose of this review is not to criticize, in any way, the division of legislative authority under the British North America Act, but rather to indicate the difficulties that result from that division of powers. The difficulties, however, are not insurmountable. It is not true to say that, because there is divided jurisdiction, it is not possible for this country to have a good system of corrections. What is required is an understanding of the problem by the members of the legislatures concerned and the will to remedy it. It also requires a full measure of understanding and co-operation between the federal government and the respective provincial governments and the same degree of understanding and co-operation between the provincial governments themselves.

Ultimately, however, the kind of correctional system that Canada gets will depend upon what kind of system the people of Canada want.

CHAPTER II

THE REMISSION SERVICE

We do not feel that any very useful purpose would be served by a comprehensive review of the history of the Remission Service. However, a brief sketch of the manner in which the Service developed may be of interest.

The exercise of the royal prerogative of mercy and the administration of the Ticket of Leave Act are described in Chapters IV and VII, respectively, of this Report. After the coming into force of the Ticket of Leave Act, the administration of it and the royal prerogative of mercy was, apparently, entrusted to officers of the Department of Justice as part of their ordinary duties. Ultimately a section of the Department was designated as the Remissions Branch and, in 1913, Mr. Pierre Cote was appointed Chief of the Branch. He was succeeded by J. D. Clarke, who was followed in 1924 by M. F. Gallagher, Q.C. Mr. Gallagher held the office of Chief of the Remissions Branch until his retirement in October, 1952, when he was succeeded by A. A. Moffat, Q.C. In June, 1953, Mr. Moffat retired from the Public Service and A. J. MacLeod, Q.C., the present Director, was appointed in an acting capacity. Mr. MacLeod was appointed Director of the Remission Service and Director of the Criminal Law Section of the Department of Justice in June, 1954.

• The functions of the Service still relate exclusively to the subject matters of the royal prerogative of mercy and parole under the Ticket of Leave Act, with the latter, by far, forming the greater part of the work of the Service.

From the beginning the Prison Gate Section of the Salvation Army undertook to provide supervision for inmates released from penal institutions on Ticket of Leave. Brigadier Archibald of the Salvation Army joined the staff of the Department of Justice in 1903 as the first Dominion Parole Officer. He served in this capacity until his death in 1922. His successor was Robert Creighton, a former Warden of Kingston Penitentiary, who retired in 1927. Mr. Creighton was succeeded by R. F. Harris, who was acting Dominion Parole Officer until that position was abolished in the Spring of 1931.

The work of the Dominion Parole Officer was similar to that now done by officers of the Remission Service. His duties involved visits to penal institutions, interviews with inmates and generally some investigation of the case of every inmate who applied for Ticket of Leave. In some instances he obtained reports from the police and checked on character references and offers of employment. After his investigation was concluded he submitted a report on the case to the Chief of the Remission Service. Simultaneously, it appears, the Remission Service carried on an investigation which included police reports, previous criminal history of the inmate and a report from the trial judge or magistrate.

We gathered from the files that some criticism was directed at the Remission Service concerning the large number of Tickets of Leave that had been granted prior to 1924 and that a reorganization of the Service and formulation of rules of practice took place at about this time.

Until 1949 the officers of the Remission Service were all stationed at Ottawa. Prior to that time the practice was for a Remission officer to visit each penitentiary and the large provincial prisons once each year for the purpose of interviewing inmates who had applied for Ticket of Leave. In 1949 a regional office of the Service was established in Vancouver and another at Montreal. The duties of the officers who were placed in charge of these offices were defined by the Civil Service Commission as follows:

"Under direction of headquarters at Ottawa, to exercise general supervision over all local aspects of the work arising from applications for clemency on behalf of prisoners in all penal or reformatory institutions within a specified area; to visit such institutions and interview the applicants for clemency; to appraise their determination to reform in the light of their family history, of their conduct and industry, and their chances of rehabilitation; to make comprehensive and accurate reports on all such matters to the Department of Justice; to address public meetings and arouse the interest of employers in paroled prisoners; to maintain co-operation with semi-official and welfare organizations interested in the reformation of prisoners; and to perform other related work as required."

Doctor J. D. Hobden, who was Executive Director of the John Howard Society of British Columbia, was appointed to take charge of the Vancouver office and Georges Tremblay, who was on the staff of the Service in Ottawa, was transferred to the new Montreal office. These officers immediately instituted a system of regular visits to the large penal institutions in their respective areas for the purpose of interviewing inmates. Moreover, they began increasingly to act as supervisors of inmates released on Ticket of Leave. In certain cases, also, they conducted investigations into the social history of inmates who were being considered for release. Mr. Tremblay continues to be in charge of the Montreal office and he has, for assistance in home investigation, Mrs. I. Constantineau. Two secretaries and a filing clerk constitute the remainder of the staff in that office.

Doctor Hobden left the public service in the Spring of 1954 upon reaching retirement age. He has resumed his duties as Executive Director of the John Howard Society of British Columbia. He was succeeded by F. Ward Cook who, until he received this appointment, was a Classification Officer at the British Columbia Penitentiary. Mr. Cook has no assistant. He does, however, have a secretary and a filing clerk.

Mr. Cook and Mr. Tremblay are constantly in touch with the officers of the large federal and provincial prisons in their immediate areas. Mr. Tremblay also visits, twice in each year, most of the other provincial prisons in the Province of Quebec. Mr. Cook makes two visits annually to the penitentiaries and provincial prisons in the Prairie Provinces. C. A. M. Edwards, who is a member of the Remission Service stationed in Ottawa, makes two visits in each year to Kingston Penitentiary and Collin's Bay Penitentiary and the larger provincial prisons in Ontario, as well as Dorchester Penitentiary and the larger provincial prisons in the Maritime Provinces and Newfoundland.

Seven Remissions officers, with headquarters in Ottawa, carry on the work of investigating and reporting upon applications for clemency and applications for parole which is described in more detail elsewhere in our Report. In this work they are under the direct supervision of two Assistant Directors, Mr. F. P. Miller, formerly the senior Classification Officer at Kingston Penitentiary, and Mr. Benoit Godbout, a barrister.

In this Report we deal in detail with the duties and functions of the Remission Service. At this stage, however, it is appropriate for us to state that the many and close contacts that we have had throughout our inquiry with the Director and senior officers of the Service have fully satisfied us of the high degree of intellectual and moral rectitude, of the understanding and close co-operation and team work that they bring in the discharge of each and all of the duties and functions entrusted to them. In their work, whether they are dealing with an application for the exercise of the prerogative of mercy or the release of an inmate under the Ticket of Leave Act, they appreciate fully that it is not their function to re-try the case. They are well aware that the primary responsibility for determining what sentences are appropriate is the duty of the courts of law, and that it is not their function to recommend a modification of the court's judgment as to conviction or sentence on the ground that their views in the case would have been different. They understand that strong and more specific

grounds than these must exist to justify the granting of the relief sought. These principles are clear to them and are reflected in the preparation of the cases and the formulation of their submissions to the Minister.

This Report will disclose that a heavy task, consistent with a larger and more practical concept of corrections, lies ahead. However, it must be said that the present accomplishments of the Service manifest a notable improvement over its former policies and augurs well for the future. This will be especially so if and when constitutional and other difficulties that paralyze the adequate implementation of the new philosophy of corrections are eliminated, in whole or in part.

CHAPTER III

THE ACCUSED BEFORE THE COURT

The primary role of the courts in a correctional system is to determine the issue of guilt or innocence. Their second and almost equally important function is to impose punishment.

The chief purpose of punishment is the protection of the public. This purpose is achieved in two ways: First, by the reform of the offender, that is, by ensuring as far as possible, through appropriate punishment, that he will not subsequently commit similar or other breaches of the law; and secondly, by deterring persons other than the offender from committing breaches of the law.

Punishment may operate in two ways to reform the offender. In the first place, it may cause a change of outlook on the part of the offender so that he becomes aware of his responsibilities as a citizen and is prepared to live up to them. Secondly, the punishment inflicted upon him may arouse in him such a fear of further punishment that he is prepared to abandon the anti-social conduct that resulted in the imposition of punishment upon him in the first place.

Punishment, in the first of these senses, involves something more than mere custody of the offender apart from society for a given period of time. It necessarily involves training, treatment and re-education. Punishment that involves nothing more than custody away from society can serve very little useful purpose, in the true correctional sense. Fear of further punishment may, for a time, operate to deter the previous offender from the commission of further offences. However, fears tend to dissipate with the passage of time and as the fear dissipates, greater will be the possibility of a reversion, on the part of the former inmate, to criminal conduct.

While, therefore, we speak of "punishing" the offender, it is clear that in a modern correctional system there is no place for punishment which is based on nothing more than retribution. Punishment is the necessary evidence of the denunciation by society of the conduct of its offending member. The denunciation should never, however, be such that revenge, or even the appearance of revenge, has a part in the exercise of the court's discretion in passing sentence.

Parliament has provided punishments ranging in severity from the death penalty to the merely social restraints of probation. It is for the court to determine in each case which of the degrees of punishment will best satisfy the correctional purpose of punishment. Undoubtedly some form of punishment is essential in every case where the criminal law is broken. Where unlawful conduct goes unpunished, the result is that crime is encouraged and is not deterred.

In some cases, undoubtedly, the mere fact of conviction is, in itself, sufficient punishment, and no useful purpose is served by the imposition of unnecessarily harsh sanctions which, in the circumstances, may well embitter the convicted person and contribute adversely to the quality of his subsequent behaviour. It is perhaps trite, nevertheless true, to say that in the modern philosophy of corrections the old cliché "the punishment must fit the crime" has been replaced by "the punishment must fit the offender". It may very well be true that the real punishment for some offenders has commenced when they have returned from imprisonment to a society that will not accept them on even terms, even though they consider that they have paid their debt to it and are prepared to make a determined attempt to lead law-abiding lives. It seems to us, therefore, that the courts should ask themselves some extremely fundamental questions before proceeding to impose punishment for violations of the criminal law.

First, is the punishment of a nature and degree sufficient, but no more than is sufficient, to deter other members of the public from similar forms of anti-social conduct? Secondly, is the punishment of a kind and degree that is necessary, but no more than is necessary, to enable reform of the individual to be effected? The purpose of punishment may be defeated as much by a punishment that is excessive as by one that is insufficient.

Types of Punishment

The punishments, other than the death penalty, which the criminal law of Canada authorizes to be imposed upon conviction of an offender are as follows:

- (a) the passing of sentence may be suspended with or without terms or conditions, i.e., probation,
- (b) the offender may be fined,
- (c) the offender may be sentenced to imprisonment,
- (d) the offender may be sentenced to preventive detention in a federal penitentiary if he is found to be an habitual criminal or a criminal sexual psychopath,
- (e) the offender may be sentenced to corporal punishment, in addition to imprisonment, or
- (f) an order of forfeiture may be made.

Suspended Sentence

Sections 638 and 639 of the Criminal Code are set out in Appendix B.

These sections provide the statutory authority that enables a judge or magistrate to suspend the imposition of sentence and to release the offender on probation, with or without specific conditions, and eventually to deal with him if the terms of the probation are violated. Under section 638, where an accused is convicted of an offence and no previous conviction is proved, and if no minimum punishment is prescribed by law, the court, instead of sentencing him to imprisonment, may suspend the passing of sentence and release the accused upon his undertaking to comply with conditions imposed by the court.

Prior to April 1, 1955, the Criminal Code authorized the suspending of sentence only in the case of a first offender convicted of an offence punishable with not more than two years' imprisonment. Where the offence was punishable with more than two years' imprisonment, suspended sentence was authorized only if Crown Counsel concurred. The unfettered discretion in granting probation that is given to the courts under the new Code places upon them a heavier responsibility than heretofore in this important aspect of the administration of criminal justice.

It is to be noted that by subsection (5) of section 638, no power to suspend a sentence exists where the offender has been convicted of an offence related in character within five years prior to the date of the commission of the offence of which he is convicted. We take the view that these provisions as to previous convictions unduly restrict the courts in many cases, with the result that imprisonment is imposed where it is not justified. There are many instances where the previous convictions, either for indictable or summary conviction offences, have been of a trivial character. As the law now stands, the court has no discretion but to impose a term of imprisonment which, from a reformatory point of view, may be quite illogical and which may well result in making the task of reformation more difficult.

• We are of the opinion that in the interests of sound correctional practice, section 638 should be amended by deleting the restrictions above referred to, leaving it to an informed judiciary to exercise its discretion in proper cases.

In England, the relative counterpart, generally speaking, of section 638 of the Criminal Code, is to be found in sections 7 and 12 of the Criminal Justice Act, 1948, which appear in Appendix C. In our opinion, these provisions, which deal with the conditional and absolute discharge of the offender, and the relief from disqualification or disability, as a result of the conviction, have considerable merit. Accordingly, we further recommend that if section 638 of the Criminal Code is amended as suggested, these features of the English legislation should be included.

Adult Probation

It is our opinion that adult probation is the area of corrections in Canada where the most significant advance is required to be made.

Probation is an alternative to imprisonment. It is a system that is designed to be used in conjunction with the power of the court to suspend sentence. It is, however, different from mere suspension of sentence. It involves compliance by the offender with specific conditions and his acceptance of correctional treatment under supervision. Suspension of sentence by itself involves compliance only with general conditions, if any are imposed at all. Probation is not leniency or mercy. It is a form of correctional treatment deliberately chosen by the court because there is reason to believe that this method will protect the interests of society while meeting, at the same time, the needs of the offender. Probation permits the offender to lead a normal life in the community and enables him to avoid the inevitably disturbing effects of imprisonment. It makes it possible for him to continue his normal associations and activities while he receives the constructive assistance of supervision and guidance by a trained probation officer.

As we have pointed out previously, a probation officer is an officer of the court. Under the British North America Act, the exclusive authority to make laws in relation to the constitution, maintenance and organization of provincial courts, including those of criminal jurisdiction, lies with the provincial legislatures. It follows, therefore, that the administrative responsibility for increasing probation services in Canada rests with the provincial governments.

In British Columbia the probation service is under the Department of the Attorney General. There are, in all, eighteen probation officers in this province, five of whom are stationed in Vancouver.

In Alberta the probation service also comes under the Department of the Attorney General. There are seven probation officers in the province, two of whom are stationed in Edmonton, two in Calgary, one at Lethbridge and one at High Prairie.

In Saskatchewan probation services are under the jurisdiction of the Department of Social Welfare and Rehabilitation. Adult probation services are supplied by the general field staff of the Department of Social Welfare. This means, of course, that in most cases the probation officer does not devote his full time to his duties as such. On the contrary, his probation duties must take their place beside the many other duties that he has in the field of social welfare in the province.

There appears to be no official probation service in Manitoba. However, it should be noted that a recent press report indicated that a probation service would be established in the province in the near future.

In Ontario the probation service is under the Department of the Attorney General. In addition to the Director and Assistant Director of the service in Toronto, there are fourteen probation officers in Toronto, nine in York County, nine in Wentworth County, four in Carleton County and three in Essex County. There are forty-one probation officers in various other parts of the province, making a total of such officers for the province of eighty.

There is no official probation service in Quebec. It would appear, however, that the services of after-care agencies and other social agencies are used somewhat extensively in providing supervision for persons placed on probation.

There is no official probation service in New Brunswick.

In Nova Scotia the probation service comes under the Department of Public Welfare. There are five probation officers in the province.

There is no official probation service in Prince Edward Island or in Newfoundland.

The foregoing review of probation services in Canada is based on information obtained in January, 1956. //

There are no statistics available to show, as between provinces, how successfully suspended sentence is operating in Canada. We are satisfied, however, that in those provinces where probation facilities have been established, suspended sentence with probation is working very successfully. The great need, as we see it, is for a continued expansion of probation facilities in all provinces.

We recognize that the present provisions of the Code give the widest powers to the court to impose conditions of probation. Nevertheless, we consider that the Code might well contain provisions designed to give a degree of guidance to the court in this respect. Accordingly, we recommend that the Criminal Code be amended to provide that, in suspending sentence, the court may include any conditions of probation that it considers necessary or desirable and, without restricting this generality, may include the following: That the probationer shall

- (a) avoid injurious or vicious habits;
- (b) avoid persons or places of disreputable or harmful character;
- (c) report to the probation officer as directed;
- (d) permit the probation officer to visit him at his home or elsewhere;
- (e) work faithfully at suitable employment as far as possible;
- (f) remain within a specified area;
- (g) pay a fine or costs, applicable to the offence, in one or several sums as directed by the court;
- (h) make reparation or restitution to the aggrieved party for the damage or loss caused by his offence in an amount to be determined by the court;
- (i) support his dependants.

We do not feel that there is any necessity for us to attempt to justify adult probation as a valuable correctional aid. Its value has been fully established in all jurisdictions where it has been employed. Rehabilitation of an offender should, wherever possible, be effected without placing upon him the stigma of imprisonment. This is what probation is designed to do. In addition, it goes without saying that, from a financial point of view, a great saving of public moneys can be achieved by the use, in proper cases, of probation rather than imprisonment as a means of rehabilitation. As we have stated elsewhere in this Report, the cost of maintaining an inmate in a penal institution varies from \$1,500 to \$2,500 a year. It is impossible to estimate accurately the cost of providing probation supervision for a similar period. One estimate that has been made, however, is that it does not exceed \$50 a year for each probationer.

Probation without Conviction

A system of probation without conviction has been tried in some countries and in our opinion merits study in Canada. It is a novel departure from the generally accepted concept of criminal procedure. Under it, a person who is charged with an offence appears in the ordinary way before the court. The case is heard in the usual way, but it may be that, due to the special and exceptional circumstances disclosed by the evidence, it is quite apparent that if the offender were convicted, extreme hardship

would result. The circumstances may, however, indicate that some supervision for a period is desirable. In the result the offender is not convicted, but is released upon probation involving specified restrictions as to conduct. Probation without conviction is a judicial remedy that was available for many years in England, by virtue of The Probation of Offenders Act. There, it operated only in the Courts of Summary Jurisdiction. This provision appears, however, to have been repealed by the Criminal Justice Act, 1948. It is also to be found in a few States of the United States of America.

Section 7 of the Ontario Probation Act (See Appendix D) affords an example of Provincial experiment in this respect.

We feel that probation without conviction has considerable merit within certain well-defined limits. It not infrequently happens that the offender's first experience with the law, and his subsequent appearance in court, can be his last. In many cases involving minor offences, the circumstances demonstrate that the offender is a person who is reasonably responsible, is supporting his wife and family by a gainful and legitimate occupation, and that extenuating circumstances such as intoxication or provocation were involved in the commission of the offence. Under these circumstances, the conviction itself may constitute a punishment in terms of social stigma that is greater than is necessary in the particular case.

We recommend that consideration be given to appropriate amendments to the law designed to authorize probation without conviction in proper cases.

Fines

Sections 622 and 625 of the Criminal Code respecting indictable offences, and section 694 respecting summary conviction offences, are as follows:

"622. (1) An accused who is convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized, but an accused shall not be fined in lieu of imprisonment where the offence of which he is convicted is punishable by a minimum term of imprisonment.

(2) An accused who is convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorized.

(3) Where a fine is imposed under this section, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) two years, where the term of imprisonment that may be imposed for the offence is less than five years, or

(b) five years, where the term of imprisonment that may be imposed for the offence is five years or more.

625.(1) Where a term of imprisonment is imposed in default of payment of a penalty, the term shall, upon payment of a part of the penalty, be reduced by the number of days that bears the same proportion to the number of days in the term as the part paid bears to the total penalty.

(2) No amount offered in part payment of a penalty shall be accepted unless it is sufficient to secure reduction of sentence of one day, or some multiple thereof, and where a warrant of committal has been issued, no part payment shall be accepted until any fee that is payable in respect of the warrant or its execution has been paid.

(3) Payment may be made under this section to the person who has lawful custody of the prisoner or to such other person as the Attorney General directs.

(4) A payment under this section shall, unless the order imposing the penalty otherwise provides, be applied to the payment in full of costs and charges, and thereafter to payment in full of compensation or damages that are included in the penalty, and finally to payment in full of any part of the penalty that remains unpaid.

(5) In this section, "penalty" means all the sums of money, including fines, in default of payment of which a term of imprisonment is imposed and includes the costs and charges of committing the defaulter and of conveying him to prison.

694.(1) Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

(2) Where the imposition of a fine or the making of an order for the payment of money is authorized by law, but the law does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than six months.

(3) A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or, if the accused is unable to pay forthwith, at such time and on such terms as the summary conviction court may fix."

It has long been traditional for courts in Canada, where they impose fines as punishment, to order imprisonment in default of payment of the fine. Prior to April 1, 1955, when the new Code came into force, payment of a fine could be enforced by distress, i.e., seizure of the goods and chattels of the offender.

In the new Code some amelioration has been made with regard to part-payment of fines and the furnishing of time within which they must be paid. It is to be noted, however, that a fine imposed in summary conviction proceedings may be paid by instalments over a stipulated period but, in the case of a fine imposed for an indictable offence, no such provision is made. In the latter case, only imprisonment may be imposed in default of payment.

We consider that imprisonment of the offender by reason of his inability to pay a fine imposed for a breach of the criminal law is basically unsound. It is, in effect, imprisonment for debt. A different situation arises where the default in payment of the fine is attributable to the refusal of the offender to pay when he is able to do so. In that case, the refusal is, in effect, a contempt of court and imprisonment of the offender in such circumstances would appear to be justified.

The general question of imprisonment in default of payment of fines was the subject of an investigation in England in 1934. As a result of the Report of the Departmental Committee on Imprisonment in Default of Payment of Fines in that year, the United Kingdom Parliament passed the Money Payments (Justice Procedure) Act, 1935. This legislation prohibits a magistrate from imposing a fine and simultaneously imposing a sentence of imprisonment in default of payment of the fine. Under this law, if the fine is not paid, no committal may take place without due inquiry in the presence of the offender as to his ability to pay the full amount of the fine forthwith, or by instalments. The court must consider the economic position of the offender and his family. Where the offender is under 21 years of age, he is placed under supervision until the fine is paid. As a natural consequence, imprisonment in default of payment of fines in England has been drastically reduced.

We recommend the adoption in Canada of legislation similar to that now in effect in England.

It is our firm opinion that the Canadian legislation authorizing the imposition of imprisonment in default of payment of a fine by an offender who is unable to pay it should be repealed in the interests of correctional progress. The principle that underlies the legislation is repugnant to modern correctional thinking. It is in no way desirable that our penal institutions should contain inmates who are serving terms of imprisonment by reason of their poverty. Institutional programs for the reformation or rehabilitation of individuals are indeed cold comfort to a prisoner who, perhaps as a first offender, is serving a term of imprisonment because of his inability to pay a monetary penalty to the same society that now bears the expense of his imprisonment.

We have quoted section 625 of the Code above. It provides for the proportionate reduction of imprisonment upon part-payment of the fine. If our recommendation above concerning cases where offenders are unable to pay is adopted, the necessity for this section will be largely removed. It should continue to apply, however, in the case of persons who are imprisoned as a result of their refusal to pay the fines imposed upon them.

The Sentence of Imprisonment

The sentence imposed by the court upon an offender is the sanction authorized by the State for the breach of its criminal law. The principle that sentences should not be discriminatory in character is accepted by all. Nevertheless, absolute uniformity of sentences is impossible and the injustices to the accused and to society, which may flow from such a condition, are obvious. What is thought to be a heavy sentence in one locality may, in another, be regarded as comparatively light. It must be readily conceded that lack of uniformity exists in the length of sentences imposed in our courts. Human strength and frailty, and the divergence of judicial opinions as to the appropriateness of sentences, are frequently reflected in the nature of quantum of the sentence imposed.

To remedy this inequality, various proposals have been made. One suggestion is that a Sentence Review Board should be established, with power to fix and re-fix sentences. A Board of this kind has been established by the California Department of Corrections.

To take away from the criminal courts of this country the heavy responsibility which, for years, has been in the hands of an independent judiciary, is so repugnant to established Canadian concepts of law and its proper administration, that we feel that no such innovation should be considered for Canada.

In the attempt to attain some relative uniformity of sentences, the courts should rely to a greater extent than they now do upon pre-sentence reports, which are discussed later. They should have a clear appreciation of the type of institutions that are available in the event of the imprisonment of the offender. As far as we can see, the only practical solution to this vexatious problem lies in the establishment in each province of classified institutions for the treatment of various types of offenders.

In our visits to various penal institutions throughout Canada we were surprised to learn that judges and magistrates rarely, if at all, visit, as they are entitled by law to do, the penal institutions within the provinces in which they exercise their jurisdiction. It goes without saying that judicial officers should be familiar with the types of institutions to which they sentence offenders, and the facilities available in them for the treatment and training of inmates. If necessary, funds should be made available by the appropriate governments to enable such visits to be made from time to time.

Disposition of Charges in Another Province

Under section 421 (3) of the Criminal Code, where an inmate is in custody under sentence in one province and there are outstanding charges against him in another province he may, with the consent of the Attorney-General of the latter province,

plead guilty to those charges and be sentenced accordingly. It is designed to make it possible for an inmate, in a proper case, to be spared the necessity of being taken from one province, in which he has just been released from prison, to another province where he may be imprisoned again. It is, of course, designed as a rehabilitative measure. We consider it to be a useful one. It is another example of circumstances in which the law enforcement authorities of the respective provinces can, by co-operating with each other, do much to advance the cause of corrections in Canada.

Trial of Accomplices

Where accomplices are tried separately, at different times and before different judicial officers, the sentences imposed should, as far as possible, bear some reasonable relation to each other. The judicial officers should, at the appropriate time, confer with each other concerning sentence, where the circumstances permit this to be done. Where one accomplice, for no apparently good reason, receives a heavier punishment than his companion, his mental state will probably not be conducive to early reformation.

Severity of Sentences of Imprisonment

We are particularly struck by the fact that the length of sentences imposed in Canada, when compared with those imposed in England for comparable offences, are generally much greater. For some years prior to, and particularly since the passing of, the Criminal Justice Act, 1948, in England, the courts of that country appear to have adopted a more lenient attitude regarding sentences imposed for breaches of the criminal law. This attitude may have developed, to some extent, as the result of the agitation that existed for penal reform for many years prior to 1948, when the Criminal Justice Act was enacted.

The trend in England in the administration of criminal justice appears to be "imprisonment as a last resort". This new approach to the concept of punishment has probably resulted from the success of probation and parole, and has not, so far as we can ascertain, resulted in any general increase in crime in that country.

Whether, and to what extent, this trend towards shorter sentences should be followed here, if and when such advanced correctional and after-care facilities as exist in England are available in Canada, must remain the responsibility of the judiciary.

On the question of severity of sentences we should, perhaps, point out here that the records of the Service indicate that in Canadian penitentiaries 165 inmates are serving sentences of life imprisonment and 214 are serving definite terms of imprisonment ranging from 15 years to 85 years. This means that out of a total penitentiary population of approximately 5,500, 379 or almost seven per cent are serving terms of imprisonment longer than fifteen years.

It is, of course, impossible for us to say whether the trial courts had in mind possible reformation or rehabilitation in these cases. The length of the sentences would seem to indicate that deterrence to other members of the public may have been the primary consideration.

The question which must be asked — but which we are unable to answer — is whether, in our Canadian corrections system, the imposition of extremely long sentences is serving the intended purpose.

Outstanding Warrants

It has come to our attention that some law enforcement authorities follow the practice of holding warrants of arrest for inmates of penal institutions, the acknowledged intention being that, after these inmates have served their current sentences,

they will be re-arrested and required to face the charges contained in the warrants. The authorities at the institutions are advised that these warrants are outstanding and are requested to advise the law enforcement authorities when the release of the inmate is imminent in order that the warrant may be executed conveniently. The warrants are, of course, for offences allegedly committed prior to the conviction for which the inmate is undergoing imprisonment.

We cannot condemn this practice too emphatically. Where the authorities hold a warrant for the arrest of an inmate serving a sentence of imprisonment for another offence they should direct that appropriate proceedings be taken forthwith to have all known outstanding charges against the prisoner disposed of immediately, either locally or under the provisions of section 421 (3) above mentioned.

Section 421 (3) of the Code is, as we have said, designed to assist in the reformation and rehabilitation of the offender. Its existence and its purpose should not be ignored by those whose responsibility it is to enforce the criminal law. We find it difficult to conceive a more frustrating and hopeless situation for an inmate than one where, after serving a term of imprisonment for one offence, he should be re-arrested, tried, convicted and sentenced to further imprisonment for a previous offence.

The practice is difficult to justify. It has all the appearances of vindictiveness. It is usually unwarranted and unfair. It is bound to foster bitterness and despair in the inmate concerned. In many cases the possibility of reformation and rehabilitation may be seriously retarded, if not completely nullified by the practice.

We appreciate that special circumstances may require special remedies and that in some cases such as escapees, parole violators, persons subject to deportation orders and others of a like nature, the practice may be justified. These are not the cases, however, against which our criticism is directed.

In England, a person convicted of an offence has, at that time, the right to have taken into consideration, for the purposes of sentence, all outstanding charges to which he is prepared to plead guilty. We recommend that the necessary steps be taken to implement in full such a policy in Canada.

We do not overlook the fact that, under any philosophy of corrections, the due administration of criminal justice must not be allowed to suffer. In cases involving organized crime, severity of sentence in Canada is undoubtedly justified. Persistent anti-social offenders, including those who commit crimes of violence, cannot be made the subject of unwarranted indulgence and sentimentality. The criminal law must be fearlessly enforced and offenders must be strictly but fairly dealt with. Where justice is weak, crime tends to become rampant. We do say, however, that many offenders do not fall within this class and that it is not in the best interests of Canada that they should be treated with the same severity.

Preventive Detention: Habitual Criminals • •

We are of the opinion that the principles of preventive detention, which relate to habitual criminals, should not be changed.

By section 660 (2) of the Criminal Code, an accused person is an habitual criminal if he has previously, since attaining the age of eighteen years, on at least three separate and independent occasions, been convicted of an indictable offence, for which he was liable to imprisonment for 5 years or more, and who is leading persistently a criminal life, or if he has been previously sentenced to an indeterminate period of imprisonment in a penitentiary.

When the Crown intends to take proceedings to declare a person an habitual criminal, certain procedural requirements are necessary. First, the offender must be charged with an indictable offence but before an application can be heard to have the offender declared to be an habitual criminal the consent of the Attorney-General of the

Province in which the accused is to be tried must be obtained. Upon receiving the consent of the Attorney-General the prosecutor must then serve the offender, giving him seven clear days' notice, with a notice that it is intended to proceed to have him declared to be an habitual criminal. The notice must specify the previous convictions and the other circumstances upon which it is intended to found the application. A copy of the notice must be filed with the Clerk of the Court or the magistrate presiding at the proceedings. An application to have a person declared an habitual criminal must be heard by a judge without a jury or by a magistrate.

The substantive indictable offence is tried first and if the offender is convicted, the court then proceeds to hear the habitual criminal application. If the offender is found "not guilty" of the substantive indictable offence the acquittal terminates the proceedings, and the court cannot proceed further. If the accused is found guilty of the substantive offence the court may find the offender to be an habitual criminal if the evidence establishes that he is. The court must then, and not before, sentence the offender to a term of imprisonment of not less than two years in a penitentiary, on the substantive offence, and the court *may — not shall*, then sentence the offender to preventive detention in the penitentiary. The sentence of preventive detention commences after the offender has served the term of imprisonment for the substantive offence.

A sentence of preventive detention is indeterminate, i.e., for life, subject to the offender being released at an earlier stage on parole. Under section 666, the Minister of Justice is required, at least once in every three years, to review all the circumstances for the purpose of determining whether a person serving a sentence of preventive detention should be granted his liberty on parole. A prisoner sentenced to preventive detention must serve his sentence in a penitentiary or part of a penitentiary set aside for that purpose.

Preventive detention for habitual criminals is provided for by Part XXI of the Criminal Code, and appears as Appendix E of this Report.

We are of the opinion that the provisions of the Criminal Code relating to habitual criminals are not sufficiently or uniformly resorted to, at least to the extent that individual cases would seem to warrant. This may be due, to some extent, to the practical difficulties in the matter of proof demanded by the legislation. The difficulties may explain the fact that out of a total penitentiary population in Canada as of December 31st, 1955, amounting to 5,387, only 46 prisoners were serving preventive detention as habitual criminals.

We have concluded that there are at least two reasons why habitual criminal proceedings are not more uniformly or frequently employed. One is the reluctance of some courts to sentence an offender to what may amount to life imprisonment. The second is that the uncertainty of the result may cause the authorities to hesitate, in some cases, to authorize the spending of public funds where great expense is involved in bringing witnesses from remote jurisdictions to prove the case for the Crown.

The rigidity of the law concerning proof of previous convictions and as to identity does nothing to encourage the more frequent use of the procedure.

In England, where the procedure is similar to that existing in Canada, preventive detention for habitual criminals may be for any period of not less than five nor more than fourteen years, subject to conditional release by the Prison Commissioners. In Canada, the sentence of preventive detention involves no stated maximum term. It is for an indeterminate period.

Forty-six prisoners in Canada who, as of 1955, were serving preventive detention, are to be compared with 1375 persons who, up to the end of 1954 in England, had been imprisoned under effective sentences of preventive detention under the Criminal Justice Act, 1948. See Tables XIV and XV of Appendix A.

These figures are of particular interest when the comparable situation in Canada is contrasted in the light of the highly concentrated population and absence of geographical problems in England. Many instances were cited to us where geographical problems and unavoidable procedural difficulties made it impractical or impossible to initiate proceedings.

It is to be noted that by the very nature of the law which provides for preventive detention, the question of the length of sentence necessary for reformation and rehabilitation does not arise in the court's mind when imposing a sentence of preventive detention. It must impose an indeterminate sentence.

Preventive Detention: Criminal Sexual Psychopaths

Under section 661 of the Criminal Code, where a person is convicted of rape, sexual intercourse with a female under 14 or under 16 years of age, indecent assault on a female, buggery, bestiality, indecent assault on a male or gross indecency, or is convicted of an attempt to commit any of these offences, the court may, before passing sentence for the offence, hear evidence as to whether the offender is a criminal sexual psychopath.

Section 659 (b) of the Criminal Code defines a criminal sexual psychopath as meaning,

"a person who by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, pain or other evil on any person."

On the hearing of the application the court may hear any admissible evidence, but must hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney-General of the Province in which the proceedings are tried.

Seven clear days' notice of the application to have the offender found to be a criminal sexual psychopath must be given to the offender by notice served personally upon him, and a copy of the notice must be filed with the Clerk of the Court or magistrate presiding at the proceedings. The application must be heard by a judge without a jury or by a magistrate.

Where the court finds that the evidence supports the conclusion that the offender is a criminal sexual psychopath, the offender *shall, not may*, be sentenced to a term of imprisonment in a penitentiary of not less than two years for the substantive offence and the court is required also to impose a sentence of preventive detention in the penitentiary, which sentence commences after the offender has served the term of imprisonment for the substantive offence. Preventive detention is imprisonment in a penitentiary for an indeterminate period, i.e., for life, subject to the offender being released at an earlier stage, on parole.

It is to be noted that if the court finds the offender to be a criminal sexual psychopath, the sentence of preventive detention is mandatory and not discretionary as it is in the case of habitual criminals. A person serving a sentence of preventive detention as a criminal sexual psychopath must serve his sentence in a penitentiary or part of a penitentiary set aside for that purpose.

Under section 666 the Minister of Justice is required, at least once in every three years, to review all the circumstances for the purpose of determining whether the person serving a sentence of preventive detention should be granted parole.

Preventive detention for criminal sexual psychopaths is provided for by Part XXI of the Criminal Code and appears as Appendix E of this Report.

Because this legislation is at present the subject of an inquiry by a Royal Commission we express no opinion on the principles involved in the legislation.

Corporal Punishment

The Criminal Code provides for the imposition of corporal punishment as part of the sentence of the court for ten offences, namely: rape, attempted rape, indecent assault on a female, indecent assault on a male, incest, sexual intercourse with a female under 14 years of age, armed robbery, choking or drugging a person in order to commit an indictable offence, and armed burglary.

Where a person is sentenced to corporal punishment the court may sentence him to be whipped on one, two or three occasions within the limits of the prison in which he is confined. The sentence of whipping must specify the number of strokes to be administered on each occasion. Corporal punishment must be administered under the supervision of the prison doctor or some other qualified medical practitioner. The instrument used is a cat-o'-nine-tails, unless the strap or some other type of instrument is specified in the sentence.

The time at which a sentence of whipping is to take place is fixed by the warden of the prison in question, but it must take place not less than ten days before the expiration of the term of imprisonment.

• A female cannot be sentenced to corporal punishment.

We have considered corporal punishment from the point of view of judicial sentence. However, in view of the inquiry that is at present being conducted by a Joint Committee of the Senate and the House of Commons into this question, we refrain from any comment, and accordingly make no recommendations.

Forfeiture

Forfeiture is a judicial punishment whereby a chattel, by means of which an offence has been committed, is taken from the offender, and becomes the property of the State. It results in a pecuniary loss to the offender in the same way as does the imposition of a fine. There is no provision in the law that authorizes imprisonment in default of delivery to the State of the forfeited chattel.

Remission of forfeitures is dealt with elsewhere in this Report. We see no reason why forfeiture should not continue to be a judicial punishment in Canada.

Indeterminate Sentences

We feel that very little purpose would be served in analyzing the philosophy of the indeterminate sentence in its various forms. A complete treatise on this philosophy is to be found in the report on the Study of Indeterminate Sentences (United Nations Publications, November, 1953, ST/SOA/SD/2).

Since the beginning of the twentieth century, much has been written on the subject. In Canada, the question is quite controversial. Many text writers have differentiated between the concept of conditional release in relation to a fixed sentence and parole in relation to the indeterminate sentence, but it would appear that regardless of the principles and nomenclature involved, and whatever theoretical and academic distinctions exist, the goal is unquestionably the same, i.e., conditional liberation of the prisoner during the term of imprisonment to which he has been sentenced, upon conditions which, it is hoped, will result in his rehabilitation.

• The main objection to the indeterminate sentence is that the exact period of imprisonment imposed upon the offender is not judicially determined at the time he is sentenced. On the other hand, the prisoner who is sentenced to a fixed term of imprisonment knows the approximate time when he will be released, subject to any conditional pre-release processes provided by law.

Determinate plus indeterminate sentences are authorized to be imposed in the provinces of Ontario and British Columbia. Sections 43 and 46 of the Prisons and

Reformatories Act, authorizing this type of sentence in Ontario, are to be found in Appendix F. Sections 151 and 152 of the Prisons and Reformatories Act, affecting British Columbia, are to be found in Appendix G. These sections also provide for the establishment of provincial Parole Boards.

It will be noted that in only these two of the ten Provinces of Canada are the courts authorized to impose determinate plus indeterminate sentences. The Provincial Parole Boards, authorized under the above-quoted sections, are empowered to release the inmate during any portion of the indeterminate sentence, upon conditions imposed by the Parole Boards and approved by the Minister of Justice. The form of release and the conditions of parole in Ontario and British Columbia are to be found in Appendix H.

One may well ask what happens in the remaining eight provinces and why preferential treatment is apparently given to Ontario and British Columbia and why the other provinces are discriminated against. The fact is, of course, that no preferential treatment or discrimination exists, and it must be presumed that the other provinces could request and obtain similar legislative authority. If they did, one may then visualize the establishment of ten separate provincial parole boards, functioning independently and granting paroles to offenders convicted under the criminal law. A more confusing state of affairs could scarcely be imagined.

In Ontario and British Columbia, a prisoner serving a sentence of six months determinate and eighteen months indeterminate (in effect a two-year sentence), may be considered for parole by the respective provincial parole boards at any time after the sentence of six months determinate has been served.

In the remaining eight provinces, another offender, for the same type of offence, who is sentenced to a jail term of two years less one day (also, in effect, a two-year sentence) is in a different position. Any action on his application for parole is, at present, within the jurisdiction of the Remission Service, acting under the authority of the Ticket of Leave Act. Under the present Remission Service practice, such an inmate would ordinarily not become eligible for parole consideration until he had served one-half of his sentence, i.e., twelve months.

This dual jurisdiction, resulting in seeming inconsistencies, tends to promote dissatisfaction among inmates and is not in the interests of proper correctional development. Uncertain termination of custody creates tension and, if parole is denied, ultimate frustration.

We are of the opinion that the weakness of the determinate plus the indeterminate sentence lies not so much in its principle, but in its application, due chiefly to an apparent lack of knowledge on the part of the court as to the types of sentences that may be imposed, and a lack of understanding as to the functions that the various types of sentences are designed to fulfil.

The common error concerning indeterminate sentences is that parole is only available in this type of sentence. Parole does not in any way depend upon the existence of indeterminate sentences. It exists in every sentence, determinate or indeterminate, where the statute law provides for parole. Eligibility exists after the service of a portion of the sentence, depending upon the policy or statutory provision applicable.

In practice, whatever may have been the original theoretical purpose of the indeterminate sentence, among which was, undoubtedly, flexibility in release procedures, the results seem to contradict this purpose. There would appear to be less flexibility under the indeterminate sentence than under the fixed sentence. Nor does the indeterminate form of sentence contribute towards equality in sentencing. In this respect, also, the definite sentence is more desirable.

We have no hesitation in expressing our opinion that the present system of determinate and indeterminate sentences, as authorized by the Prisons and Reforma-

tories Act, enables the courts, in effect, largely to control the question of parole and very often to restrict or deny it. Courts frequently fix the minimum term out of all relationship to the maximum term, as, for example, fifteen months determinate plus one month indeterminate. This provides a Parole Board with very little discretion in granting parole to an inmate or, at best, permits only a brief period during which the prisoner may be permitted parole.

The definite term of sentence permits a precise, uniform plan for parole. The determinate and indeterminate sentence is neither conducive to uniformity of sentences nor uniformity of sentencing.

Consecutive determinate and indeterminate sentences present substantial difficulties. A person may receive a sentence of six months plus six months indeterminate in one court, and a similar consecutive sentence in the same or another court. In practice, these are added together, the result being that the total sentence is one year determinate plus one year indeterminate. This is the only way in which, from a practical point of view, the total sentence can be properly determined. While, therefore, the inmate would be entitled to apply for parole at the end of the first determinate portion of six months, he would not be granted parole because he would be required to return at some stage to commence serving the consecutive determinate sentence.

One point in favour of indeterminate sentences is that they provide, in some cases, periods of restraint during which, in those institutions so qualified, inmates may learn trades. In some cases this has worked out very satisfactorily. In others, however, the length of the indeterminate sentence is far too short to enable the inmate to complete a course in vocational training. This is frequently overlooked by the court when imposing a determinate plus an indeterminate sentence. It is useless to permit an inmate to embark on a course of training which he cannot complete.

Another factor that has added to the confusion of the inmates of provincial institutions in Ontario and British Columbia has been the policy of the Remission Service not to interfere, except in unusual circumstances, in any case involving a determinate plus indeterminate sentence. The matter of parole is left to be dealt with by the provincial parole boards.

◆ Indeterminate sentences have been authorized in Ontario since 1913. The Ontario Parole Board came into existence in 1916. There are eight institutions in Ontario where determinate plus indeterminate sentences may be served.

In British Columbia, determinate plus indeterminate sentences and the creation of the Provincial Parole Board were authorized by an amendment to the Prisons and Reformatory Act in 1950 and 1951. It is to be noted that there is a lack of uniformity in respect to the age of prisoners who may be sentenced to a determinate plus an indeterminate sentence in Ontario and British Columbia. In Ontario, there is no restriction as to age but, in British Columbia, only offenders between the ages of 16 and 23 may be sentenced to determinate plus indeterminate terms. As far as Ontario is concerned, we are of the opinion that the observations contained in the Archambault Report, in respect to indeterminate sentences in Ontario, in 1938, are applicable to the situation as it exists in Canada today:

"The provision in regard to indeterminate sentences has been in force in Ontario since 1913, and the provision in regard to the establishment of the Board of Parole has been in force since 1916. These provisions have not been extended to any other Province of Canada. Your Commissioners have been unable to find evidence that after over twenty years' trial the operation of indeterminate sentences has been satisfactory. Much criticism has been levelled against the Boards of Parole, but your Commissioners do not believe that it is necessary for them to consider the merits of these Boards. They are convinced, however, that the most serious difficulty is not so much a matter of the duties to be performed by the Boards of Parole as the education of judicial authorities throughout the Provinces in the proper application of indeterminate sentences."

Under sections 57 and 58 of the Prisons and Reformatory Act, female prisoners may be sentenced in Ontario for a wholly indeterminate term, generally speaking, up to two years less one day in the Andrew Mercer Reformatory at Toronto, and may be released at any time during that period by the Ontario Parole Board. It would seem that a female prisoner could, under such an indeterminate sentence of two years less one day, be released on the day following her admission to the Institution. This is the only type of indeterminate sentence for adult females provided for in the Prisons and Reformatory Act, and relates solely to the Province of Ontario.

In British Columbia the indeterminate sentence appears to have produced more desirable results than in Ontario. We believe that this degree of success has been achieved because the system in British Columbia contains some of the good features found in the British Borstal system. The indeterminate sentence in British Columbia is limited by statute to a special class of offenders, namely, youths between the ages of sixteen and twenty-three. The courts do, in the main, obtain pre-sentence reports before imposing indeterminate sentences and because, apparently, of a close liaison with institutional and parole officials, they impose sentences of a suitable length to allow for both institutional treatment and parole. All the youths so sentenced are placed in the New Haven Borstal or the Young Offenders Unit at Oakalla, both of which are especially designed to deal with this particular class of offender.

We have read with interest the Brief presented by the British Columbia Board of Parole and have noted that the Board, despite the success achieved to date, is not completely satisfied with the situation. They are concerned with the confusion caused by the indeterminate sentence and the over-lapping of jurisdictions between the Remission Service and Provincial Parole Board.

In England, Parliament has steadfastly rejected the long indeterminate sentence, as well as the type found in the Prisons and Reformatory Act. At the present time, the principle of the indeterminate sentence is recognized in England only in the sentence of preventive detention, and the Borstal sentence. These sentences apply to special classes of offenders and there are concomitant regulations which ensure the elimination of most of the objectionable features of the indeterminate sentence found elsewhere.

The members of the Board of Parole in both Ontario and British Columbia, discharge their duties on a part-time basis only. No statutory qualifications are required for their appointment.

We have studied the various forms of indeterminate sentences that are found in the United States and other countries. Conflicting views on the matter exist in these jurisdictions. We, however, have concluded that there is little to recommend the adoption into the Canadian corrections system of any new form of indeterminate sentence or the continuance of the present form of determinate plus indeterminate sentences. An entirely new approach to the question of parole is indicated by the present confused and unsatisfactory law relating to this matter.

We are of the opinion that in the interests of uniformity in the administration of criminal justice, and also in the interests of reformation and rehabilitation of offenders, the Prisons and Reformatory Act should be amended by repealing all those sections that provide for indeterminate sentences for adult females, determinate plus indeterminate sentences for adults, and the establishment and maintenance of provincial parole boards.

Pre-Sentence Reports

The pre-sentence report is a document containing a short biographical history of the person charged with an offence. It deals, generally, with his social and domestic background. It is not automatically furnished in every case, but is prepared and produced where facilities are available for its compilation. A well documented pre-

sentence report enables the court to know more about the person it has to deal with, and its contents should assist the court to determine the proper disposition of the case, i.e., in the event of a conviction, whether sentence should be suspended or punishment imposed.

Pre-sentence reports are usually prepared and furnished by a probation officer. The success of any system of pre-sentence reports depends upon the ability of the probation officers who prepare the reports.

The value of pre-sentence reports for the purpose of probation and parole cannot be over-emphasized. In England, the United States of America and in a few of the provinces of Canada where facilities are available, they are used extensively.

A decision, whether relating to probation or parole, must be based, at least in part, upon factual information concerning the inmate for some time prior to his arrest. Of all the duties confronting a judge or magistrate, presiding in criminal cases, perhaps the most difficult task is the proper disposition of the offender after his conviction. It is the content of a pre-sentence report which, when properly assessed, influences the decision of the court in determining whether the offender is to receive a suspended sentence and a release upon probation, or whether he shall be sentenced to fine or imprisonment or both. By the judicious use of pre-sentence reports, speculation can, to a large extent, be eliminated in the court's determination of suitable punishment.

Our investigations and a careful study and analysis of some of the files of inmates serving sentences in various penal institutions indicates, beyond doubt, that no effort was made by the courts to secure pre-sentence reports or to use them, if they were obtained. A court that imposes a sentence without any knowledge of the background or motivation of the offender may well impede his progress towards reform.

We recommend that, as soon as adequate probation facilities have been established throughout Canada, the Criminal Code should be amended to provide that no offender who is between the ages of 16 and 21, or who is charged with an offence punishable with imprisonment for two years or more, shall be sentenced to any term of imprisonment without the consideration, by the court, of a pre-sentence report to be furnished by qualified probation officers or social agencies and, failing these sources, the appropriate police authorities. We appreciate that in remote or unorganized jurisdictions it is virtually impossible to obtain pre-sentence reports. In such cases, power should be given to the court to dispense with them.

We further recommend that so long as corporal punishment forms part of the criminal law of Canada, no sentence involving corporal punishment shall be imposed upon any offender until a pre-sentence report from a competent authority, dealing with the physical and mental condition of the offender, is received and considered by the court.

Types of Offender

While it would appear to be no part of our functions, within the terms of reference, to deal exhaustively with the various types of offenders, we feel that something more than passing reference should be made to the problems presented by first offenders and young offenders.

First Offenders

As previously mentioned, one of the most difficult tasks that falls upon the court is the disposition of the case against an offender after his conviction. This is particularly true in the case of a first offender.

A great number of first offenders do not require reformation or rehabilitation. No standard practice can be adopted, because rarely are two cases alike. The question to

be determined at this stage is whether in the opinion of the court, punishment by fine or imprisonment or both is indicated, or whether sentence should be suspended and the accused placed on probation. If, through lack of understanding on the part of the court, or the lack of proper probation facilities, the first offender is sent to prison, the result may be to promote even greater anti-social conduct. A suspended sentence and release upon probation might well satisfy society and, at the same time, give reasonable assurance that the offender will not again violate the criminal law.

Young Offenders

It is an astonishing fact that under the present law in Canada, it is possible for a child under the age of sixteen to be convicted of a criminal offence in an adult court and be sentenced to a lengthy term of imprisonment in a penitentiary. This can happen in any of the many areas where the Juvenile Delinquents Act is not in force. Some provincial authorities have been authorized by the Prisons and Reformatories Act to make limited efforts to deal with this class of offender but the situation in Canada is, however, far from satisfactory.

The report of the Commissioner of Penitentiaries for the fiscal year ending March 31, 1955, discloses that during that year 14 persons under the age of sixteen years were admitted to Canadian penitentiaries. Such a situation is permitted by the penal system of Canada. In our opinion legislative changes are needed immediately to provide that no person under the age of sixteen years shall be committed to penal institutions where adult prisoners are confined, and we recommend accordingly.

CHAPTER IV

THE PREROGATIVE OF MERCY

The prerogative powers consist of all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown, which have not been taken away by statute. One of the important prerogatives that remains vested in Her Majesty in right of Canada is the royal prerogative of mercy. Under it a pardon may be granted to any person convicted of a criminal offence or the punishment imposed by the court in respect of the offence may be commuted or remitted.

In Canada the power is exercised by the Governor General on behalf of the Queen. The Letters Patent that constitute the office of Governor General of Canada direct, in effect, that the Governor General shall not exercise the royal prerogative of mercy without first receiving the advice of the Privy Council for Canada in capital cases, and at least one of his Ministers in other cases.

In addition to this all-embracing prerogative power, there are several Acts of Parliament that authorize the granting of similar relief to offenders. The most important of these are the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act. The Ticket of Leave Act, which is dealt with in Chapter VII, is designed for a different purpose.

The wider power conferred upon the Governor General by the Letters Patent is not affected by the narrower statutory powers. In the result, this combination of prerogative and statutory powers provides a useful flexibility which assures that, ultimately at least, relief can be granted in all deserving cases. Such a combination of sources of relief existing under the British system of government is also to be found in other countries. In Belgium, for example, the methods of procedure related to clemency are, in a similar manner, effectively adapted to all types of cases.

In Canada the Minister of Justice or the Solicitor General has the responsibility of advising the Governor General in Council regarding commutation of death sentences, and of advising the Governor General or the Governor General in Council, as the case may be, concerning the granting of relief in other cases. The officers of the Remission Service have the responsibility of gathering the material and presenting the case to the appropriate Minister for his consideration. In all cases the officers of the Service act in an advisory capacity only.

The matters dealt with in the Service, where the exercise of the royal prerogative of mercy is involved, are as follows:

- (i) Commutation of sentences of death to imprisonment.
- (ii) Remission of corporal punishment.
- (iii) Granting of free pardons.
- (iv) Granting of conditional pardons.
- (v) Remission of sentences of imprisonment.
- (vi) Remission in whole or in part of fines, pecuniary penalties, forfeitures and costs.
- (vii) Suspension of orders prohibiting driving.

It is convenient to deal here with these enumerated functions of the Service.

(i) *Commutation of Sentences of Death to Imprisonment*

In every case where a person is sentenced to death in Canada, and all legal remedies have been exhausted or abandoned, the case is investigated by the Remission Service for the purpose of enabling the responsible Minister of the Crown to discuss the question of commutation with his colleagues in Cabinet. No application for the mercy of the Crown is required. Every capital case is considered by Cabinet whether or not an application for mercy has been made.

The material that is gathered, routinely, by officers of the Remission Service for this purpose is described in the evidence given by the Minister of Justice to the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries on May 11, 1954. At page 477 of the Minutes of the Proceedings the Minister of Justice is reported as follows:

"The material that is available, in every case, for the consideration of the responsible minister and the cabinet is as follows:

Transcript of evidence. This is the written record of the proceedings at trial and includes every word spoken by witnesses, the judge, counsel, jurors and the accused. It includes anything that the accused may say when he is asked whether he has anything to say before sentence is passed upon him.

Ordinarily it does not include the counsel's addresses, the judge's address, but not counsel's.

Exhibits. When the time for an appeal has expired without an appeal being taken or, if an appeal has been taken, when judgment has been rendered thereon, all the documentary exhibits in the case are sent to the Department of Justice in order that they may be examined in connection with the reading of the transcript of the evidence. It is usually found not to be necessary to require the production of exhibits other than documents and photographs but where they are required, they are requested from and are provided by the registrar of the court in whose custody they are at the time.

Judge's Report. This is the report referred to in section 1063 of the Criminal Code. It is a detailed summary of the important features of the case. It reviews the evidence adduced for the prosecution and the defence and comments upon any questions of law that may have arisen. Where there is conflicting evidence the judge is frequently invited to express his opinion with respect to the weight to be given to the evidence, if he does not do so in the first instance.

That is, if we get a report from him and we are not quite content with his comments upon the conflicting evidence, we write back to him and say: 'Well, what about this particular matter? We would like you to offer some further comment.'

Police Report. The investigating police force submits a detailed report of the investigation that it conducted in connection with the case. This will frequently contain information that may be relevant but which, for one reason or another, has not been adduced as evidence at the trial or is not mentioned in the judge's report.

It, for example, may not be admissible under the rules of evidence at the trial, but it may nevertheless have a bearing upon commutation.

Fingerprint Section Report. In every case there is procured from the fingerprint section of the R.C.M. Police a report showing the fingerprints of the convicted person, his photograph and his record of previous convictions, if any.

Sheriff's Report. During the period in which the condemned person is in custody awaiting the day for execution of the sentence of death imposed upon him,

a report is obtained from the sheriff or the keeper of the prison in which he is confined. This report includes a statement by the prison physician with respect to the mental and physical condition of the condemned person. Of course, if the condemned person is in custody for any substantial period of time, reports will be obtained periodically.

Representations of Defence Counsel. As the committee has previously been informed, it is not necessary for a condemned person to submit, either by himself or through his counsel, agent or friends, any application for clemency. Each case received the same careful and painstaking perusal and consideration before the minister goes to the Governor in Council with his recommendation. It is customary, however, for the counsel who defended the condemned person at his trial or who acted for him on his appeal, to write to the Minister of Justice setting out his reasons in support of an exercise of clemency by the Crown.

He may call long distance or he may get on the train and come to Ottawa and make his presentation in person. He is not restricted in any way. He is allowed all the time he wishes. He could bring the prisoner's friends or relatives. We hear them all. There are also put on file all the letters that have been written by the family and friends of the accused, any petitions that may have been signed on his behalf or letters which have been written by any person who is interested in the matter. They all go on the file and are considered.

Material Relating to Appeals. Where a convicted person takes an appeal to the court of appeal from his conviction and the appeal is dismissed, the department obtains copies of the reasons for judgment of the judges as soon as judgment is rendered. Copies of the notes of argument filed on behalf of the convicted person and the Crown are also obtained. The same applies with respect to appeals to the Supreme Court of Canada. If there is no appeal as of right to the Supreme Court of Canada but application is made for leave to appeal to that court, and is refused, the reasons for judgment of the judge who dismisses the application are obtained immediately as well as any notes of argument that may have been filed on behalf of the convicted person or the Crown.

The material that I have just referred to is the minimum available for consideration by the minister and the Governor in Council in every capital case."

In his evidence before the Parliamentary Committee, the Minister of Justice indicated some of the broad, general principles that are kept in mind in respect of every capital case that comes before the Cabinet for decision. They are principles similar to those that are applied in capital cases in England by the Home Secretary. Sir Frank Newsam, permanent Under-Secretary of State for the Home Office in England, with whom we were privileged to have a long meeting, refers in his book, "The Home Office", to these principles. He says, in part, at page 114:

"When the Home Secretary reviews a capital case he has before him all the material which was before the Courts, a transcript of the proceedings at the trial, police reports, all the information which can be obtained about the prisoner's antecedents, and reports on his physical and mental condition. He may think it necessary to make additional enquiries, for instance of the police, and where there is reason to believe that the prisoner is insane or mentally abnormal he orders a medical inquiry.

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The Home Secretary is always anxious to give full weight to any extenuating factors; but he must also have regard to his responsibility for the maintenance of public order and the need for avoiding capricious administration. The principles on which he decides what advice should be given to the Queen cannot be precisely defined. In some cases the decision is reasonably straightforward. The murderer may have committed a heinous and premeditated murder, and public opinion

would be shocked by his reprieve; or on the other hand the prisoner may be the survivor of a genuine suicide pact, or may be a devoted mother who killed her imbecile child to save it from a life of misery, and public opinion would be equally shocked if the law were allowed to take its course. Occasionally the Home Secretary feels that some slight doubt remains as to the prisoner's guilt, and although the doubt is not strong enough to warrant a reversal of the conviction, it is enough to warrant a decision not to carry out the irrevocable sentence of death. But there are a good many cases in which the decision can be reached only after the most careful review of the circumstances of the particular case, and even what appear to be comparatively straightforward cases are meticulously examined. The explanation which Mr. Herbert Gladstone gave in the House of Commons on 11th April, 1907, is still valid: 'Numerous considerations — the motive, the degree of premeditation or deliberation, the amount of provocation, the state of mind of the prisoner, his physical condition, his character and antecedents, the recommendation or absence of recommendation from the jury, and many others — have to be taken into account in every case; and the decision depends on a full review of a complex combination of circumstances and often on the careful balancing of conflicting considerations.' "

A close examination of the capital case files in the Remission Service satisfies us that, in the preparation of such cases and the submission of them to higher authorities, the senior officers of the Service follow conscientiously the principles and procedure above described.

Where a sentence of death is commuted in Canada, it may be commuted to imprisonment for life or a fixed term. In every case of commutation during the past thirty years the death sentence has been commuted to one of life imprisonment. Persons who are serving such sentences are eligible to be considered for parole in accordance with the principles described later in this Report.

(ii) *Remission of corporal punishment*

The Criminal Code authorizes whipping to be imposed as part of a sentence upon male offenders who are convicted of certain offences. Whether or not such a form of punishment should continue to be authorized by law is a question now under consideration by the same parliamentary committee that is considering the question of capital punishment. There are no accurate statistics to indicate, for any number of years, those cases in which this form of punishment has been ordered by the courts. We know, however, that in 1952 corporal punishment was ordered, as part of the sentence, in 47 cases. The officers of the Service have informed us that from 1934 to 1955 there were 24 cases where remission of corporal punishment was granted, including four of partial remission only.

The circumstances in which persons sentenced to corporal punishment have been granted relief from the punishment disclose the practice of the Service in this respect. These circumstances are:

- (a) Where there was indication that, owing to the physical or mental condition of the offender, the imposition of corporal punishment should not be carried out. In such cases the opinion of a qualified medical practitioner was obtained.
- (b) Where the legality of the sentence was in question.
- (c) Where the commission of the offence involved mitigating circumstances.
- (d) Where the offender was a psychopath.
- (e) Where exceptionally compassionate reasons existed.

In (b), (c), (d) and (e), relief from the punishment was granted after the cases had been brought to the attention of the trial judge or magistrate who, in each case, recommended the remission of the corporal punishment.

The general rule of the Service is to refuse to recommend remission of a sentence of corporal punishment unless circumstances similar to those mentioned above are present. Of course, it is only when an application for remission is made that the Service ordinarily learns that this form of punishment has been ordered in a particular case. The Service considers that the principles governing the remission of corporal punishment differ from those that apply where release of an inmate from a penal institution is concerned. The Service assumes that, where a court imposes a sentence of imprisonment, it does so with the knowledge that parole may be granted to the prisoner, as a rehabilitative measure, at some stage of his imprisonment. The granting of parole is not designed to be mere mitigation of punishment. The Service feels, however, that similar considerations do not apply where a sentence of corporal punishment is involved. It is considered in that case that the court does not order corporal punishment in the expectation that the punishment may, in the absence of unusual circumstances, be remitted.

With these views we are not in disagreement. However, the execution of corporal punishment is as irrevocable as the execution of a death sentence. It appears to us, therefore, that an application for remission of corporal punishment should be dealt with by the Service in accordance with principles similar to those that apply in the case of a death sentence. The bare fact that there have been cases where relief has had to be granted because of the illegality of the sentence is a sufficient ground upon which to recommend that corporal punishment, when imposed as a judicial sentence, should not be administered until, after inquiry by the Service, it appears that there is no doubt that none of the circumstances mentioned in paragraphs (a) to (e) above are present. In brief, our recommendation is that, just as in the case of death sentences, no sentence of corporal punishment should be executed until full inquiry has been made by the Service and the responsible authority has ordered that there will be no interference with it.

(iii) *Granting of free pardons*

Reference has already been made to the provisions in the Letters Patent which authorize and empower the Governor General, with the advice of the Privy Council for Canada in capital cases, and with the advice of at least one of his ministers, in all other cases, to grant a conditional or unconditional pardon for any criminal offence.

In addition to this prerogative source of pardon, section 655 of the Criminal Code authorizes the Governor General in Council to grant a free or conditional pardon to an offender, in which event he shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted. This statutory power does not, as is indicated by the provisions of section 658 of the Code, in any manner limit or affect the powers given under the Letters Patent.

These provisions of the new Criminal Code are substantially different from those that existed under section 1076 of the former Code in that the power, under the latter, was not required to be exercised by the Governor General in Council but by the Governor General alone. This may explain why pardons granted when the former Code was in force were granted under the Letters Patent. It is still possible for similar relief to be granted either under the Letters Patent or section 655 of the Code. However, it would appear that, to give effect to the will of Parliament, the better practice would be to resort to the statutory power, except in special circumstances. Special circumstances may exist, for instance, where the time factor is important. In such cases, resort to the powers under the Letters Patent might be more effective or appropriate.

Pardons thus granted are distinguished, in the Service, as being free pardons, if granted on the ground of innocence established and admitted by the Crown, or ordinary pardon, if granted on special considerations of an unusual character.

Both kinds of pardon proceed from the same source as an act of grace, but the first is an act of grace to which the recipient is morally entitled, while the second is a pure act of grace.

The examination of files where pardon was granted on the basis of innocence supports the information given to us by senior officers of the Service concerning the policies and procedure followed in such cases. While the offender is before the court he has the benefit, until convicted, of the presumption of innocence. When, however, his application for pardon on the basis of innocence is considered by the Service, the presumption is reversed by reason of the doctrine of *res judicata*. To justify a free pardon, the existence of material facts which were not before the court that convicted the offender must be found and must afford convincing reasons leading to the positive conclusion that, had the court been aware of them, the accused would have been acquitted. When the probability of the existence of such facts is established, every inquiry that is indicated in the case under consideration is made, and is made as exhaustively as possible. The trial judge, the Attorney General and the police force concerned are informed of the circumstances disclosed by the inquiry and are requested to express their views.

There may be cases where the consideration of the material facts revealed by the inquiry may fall short of what is required to justify a free pardon. Nevertheless, a serious doubt as to the guilt of the applicant for such relief may be revealed by the investigation. In that event, the Service may recommend that the Minister of Justice direct a new trial under section 596 of the Criminal Code or grant other relief such as ordinary pardon or remission of the sentence. In most of these cases, it is found that remission of the sentence is generally more appropriate to achieve the ends of justice than is the ordering of a new trial.

A statistical table of all free pardons granted from 1941 to 1955 appears in Table XI of Appendix A.

The instrument that is issued to the beneficiary of a free pardon reads as follows:

(Free Pardon)

BY HIS EXCELLENCY, ETC., ETC., ETC.,

To all to whom these presents shall come, or whom the same may in any wise concern,

GREETING:

WHEREAS, at sitting of the Court held at....., in the Province of....., in Canada, on the.....day of....., 195....., before His Honour Judge....., JOHN DOE was convicted on a charge of.....and, in consequence thereof, was sentenced to.....years' imprisonment.

AND WHEREAS, I have since been implored on behalf of the said John Doe to extend a pardon to him in respect to the said conviction so recorded against him as aforesaid;

AND WHEREAS, the Honourable the Solicitor General has submitted a report to me upon this case;

NOW THEREFORE KNOW YE that We considering that you, the said John Doe, being innocent of the said alleged offence of which you were convicted as aforesaid, should no longer remain subject to the operation or stigma of the aforesaid conviction and sentence, Have pardoned and Released you, and We Do hereby Grant unto you a Free Pardon and Remission in respect thereof, and of and from all and every the penalties to which you the said John Doe were, or are, or, but for this our Free Pardon, might be liable by reason of the aforesaid conviction, the offence therein described and the aforesaid sentence.

(Given, etc.)

To bear date of approval by His Excellency
Approved

Granting of Ordinary Pardons

In the case of ordinary pardon, the question of the guilt of the applicant for relief is not in issue. The possibility of a doubt as to guilt may, however, as a result of the inquiry, be found to exist. The special considerations upon which the Service recommends an ordinary pardon are of various types. In one case a pardon was granted, more than ten years after the conviction, to a person found guilty of contributing to juvenile delinquency. The record, in this case, discloses that the offence took place when the offender was eighteen years of age; that four days afterwards, he married the woman involved in the offence, and that two children were born of this marriage; and that since the conviction, he had led a quiet and respectable life. The offender was a business man and, on some occasions, when tendering for contracts, had to answer questionnaires and was forced to admit this single conviction. At the time of the application for pardon, the trial magistrate was deceased. The report of the Deputy Attorney-General for the province concerned was favourable. An ordinary pardon was granted. In another case similar relief was granted to a clergyman twenty-two years after the date of a conviction for assault, in view of his reinstatement in the clergy.

Table XI of Appendix A contains a statistical table of ordinary pardons granted between 1941 and 1955.

The instrument that is issued to the beneficiary of an ordinary pardon reads as follows:

(Pardon)

BY HIS EXCELLENCY, ETC., ETC., ETC.,

To all to whom these presents shall come, or whom the same may in any wise concern,

GREETING:

WHEREAS, at Sitting of the Court held at, in the Province of, before District Magistrate, John Doe was convicted of, on, 19, and, in consequence thereof, was given a twenty-month sentence;

AND WHEREAS, I have since been implored on behalf of the said John Doe to extend a pardon to him in respect to the said conviction so recorded against him as aforesaid;

AND WHEREAS, the Honourable the Solicitor General has submitted a report to me upon this case;

NOW THEREFORE KNOW YE that having taken the premises into consideration, and for divers good causes me thereunto moving, being willing to extend the Royal Clemency unto him, the said John Doe, I have pardoned, remitted and released him, the said JOHN DOE, of and from the said conviction and of and from all and every the penalties to which the said John Doe was and is liable in pursuance thereof.

(Given, etc.)

To bear date of approval by His Excellency.

Approved.

The greatest number of applications received by the Service for ordinary pardons is from persons who are prohibited from entering, remaining in or re-entering other countries because of past convictions. The conviction may have been of long standing and the applicant may have led, since the conviction, a consistently law-abiding and respectable life. The occasion upon which such relief is sought has not under present practice, and cannot have, under any circumstances, any bearing upon the question whether the application should be granted.

Other circumstances must be found to exist and only after judicious consideration is the ordinary pardon recommended in even the most deserving case.

In our opinion consideration should be given to the establishment of a procedure for the grant of pardons, with or without condition, on a much more liberal scale than is now the case. Important factors should be, of course, the relatively trivial character of the offence, the nature and very limited number of past convictions, the continuity for a substantial number of years of admittedly law-abiding conduct and respectable life in the community, and the undoubted assurance of its continuation. Such a procedure would offer to a past offender a further and powerful incentive, consistent with the promotion of preventive justice, to maintain the highest standard of respectability in the community.

(iv) *Granting of conditional pardons*

Under the Letters Patent, when any crime or offence against the laws of Canada has been committed, for which the offender may be tried thereunder, the Governor General, on the advice of at least one of his ministers, is empowered (a) to grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one; or (b) to grant to any offender convicted of any such crime or offence, in any court or before any judge, justice or magistrate administering the laws of Canada, a pardon subject to lawful conditions. Under subsection (2) of section 655 of the Criminal Code, the Governor in Council is empowered to grant a conditional pardon to any person who has been convicted of an offence under an Act of Parliament.

Commutation of a sentence of death in one sense amounts to a conditional pardon for it is always granted on the condition that imprisonment is substituted for the death penalty. This matter has been dealt with previously. Pardons granted on the condition of information leading to conviction of others are, in practice, of very rare occurrence.

As Parliament, in the new Code, has provided for conditional pardons to be granted by the Governor General in Council, we consider that resort should be had to the Criminal Code provisions, unless circumstances exist that make it more appropriate to exercise the powers under the prerogative.

(v) *Remission of sentences of imprisonment*

This relief, which is not to be confused with the benefits of parole under the Ticket of Leave Act or commutation of sentence, with which we deal hereunder, reduces the amount of time required to be served by an inmate under a sentence of imprisonment. Many factors may move the Service to recommend the release, as a pure act of grace, of an inmate before the normal expiration of his sentence. Similar relief is available in England and is granted on similar grounds. Thus an inmate who comes to the assistance of a prison officer attacked by other inmates may be rewarded by being released a short time before the ordinary termination of his sentence. Again, a prisoner who is nearing the end of his sentence may, on compassionate grounds, be released a short time before his sentence expires. In such cases the remission is not announced to the inmate until the time of release.

The number of cases in which such releases were granted between 1945 and 1954 is as follows:

1945.....	288
1946.....	286
1947.....	287
1948.....	304
1949.....	300
1950.....	280
1951.....	180
1952.....	171
1953.....	184
1954.....	235
<u>TOTAL.....</u>	<u>2,515</u>

These releases are usually granted in cases where less than one month of the sentence remains to be served.

The grounds upon which such releases are granted fall into four main categories. The first two groups mentioned below form by far the majority of the cases. The other two types are rare.

(a) COMPASSIONATE GROUNDS

Example: An inmate has a few days of his sentence remaining to serve when verified information is received that his mother has died and that the funeral is to take place the next day.

(b) INSUFFICIENT TIME FOR TICKET OF LEAVE TO HAVE FULL EFFECT.

Example: Investigation in the case of an inmate serving a short sentence, despite all efforts, is not completed until he has but a few days left to be served on his sentence, but he appears to be deserving of some clemency.

(c) REWARD FOR OUTSTANDING SERVICE

Example: An inmate, who may not be suitable for release on Ticket of Leave, at the risk of injury to himself goes to the rescue of a prison officer attacked by another inmate.

(d) ILLEGALITY OF SENTENCE

Example: The Deputy Attorney General reports to the Remission Service that in a particular case a sentence of ten months was passed when the Code provided for a maximum punishment of six months. With the concurrence of the presiding judicial officer the inmate is released when he has served six months of the sentence, i.e., the maximum sentence that the court had jurisdiction to impose.

We have no criticism to offer concerning the use of the royal prerogative of mercy in this manner in these circumstances.

Under the royal prerogative of mercy the Crown may also commute a sentence of imprisonment to a term shorter in duration than the term imposed by the court. Thus, under this prerogative, the Crown may substitute its judgment for that of the court. Apparently in the early days of the Remission Service it was customary for the Service to make recommendations for the commutation of sentences of imprisonment. However, the practice was abandoned in 1925 and has not been resorted to since that time.

We think that this is wise. The question of the amount of punishment to be imposed upon a convicted offender is one exclusively for the courts. If the offender considers that the sentence imposed upon him is excessive, he has his remedy by way of appeal. We consider that very serious results would ensue if the Executive branch of government adopted a practice of substituting its order for the judicial order of the court. The question whether a person who is serving such a sentence should be released on parole and, if so, at what stage of his imprisonment, is an altogether different matter and is dealt with elsewhere in this Report.

We are of opinion, however, that some means should be devised by which unjustified inequalities in length of sentence can be remedied. Co-offenders engaged in an equal measure in the commission of a crime may appear and be sentenced by different judges. In such cases, the judges should confer to ensure that the sentence given by each will result in uniformity of punishment for the offenders. This, however, they may fail to do or be prevented by circumstances from doing. In our examination of the departmental files we found variations in lengths of sentences that were extreme and could not be accounted for. We cannot anticipate that lack of uniformity in length of sentences will not continue to be a problem in the future. The co-offender who receives a longer sentence than his accomplice inevitably feels that he has been dis-

criminated against. Such a state of mind is not conducive to reformation or rehabilitation.

In our opinion the Service should examine, with special care, the cases of co-offenders. Where the sentences appear, without good reason, not to be uniform, the Service should bring the cases to the attention of the Attorney-General of the province in which the convictions occurred. The Attorney-General should then look into the matter and take appropriate steps to have the disproportionate sentence corrected by the courts, such as, for example, informing the inmate of his right to apply for an extension of time for leave to appeal in writing. We assume that, in these circumstances, the Attorney-General would not oppose the application.

(vi) *Remission in whole or in part of fines, pecuniary penalties, forfeitures and costs*

Under section 657 of the Criminal Code the Governor General in Council may order remission in whole or in part of a fine, pecuniary penalty or forfeiture, imposed under an Act of the Parliament of Canada, whoever the person may be to whom it is payable or however it may be recoverable, including remission of costs, except those to which a private prosecutor is entitled. Remission of this kind may also be granted under the Letters Patent, by the Governor General, on the advice of one of his ministers.

There are no statistics available for any year prior to 1955 showing, in respect of this kind of remission, the number granted, the grounds upon which they were granted or the nature of the conduct that resulted in imposition of the sentence. We obtained, however, from the Service, such data for the year 1955. It is reproduced in Appendix I. We are told that this fairly represents the situation for the average year.

Numerous as the applications for this type of remission may be, the table for the year 1955 clearly indicates the very exceptional and limited degree to which the relief is granted. In the main, the reasons upon which it is granted are compassionate, i.e., undue hardship to the offender or his family. The only other ground for such remission is the innocence of the person affected.

A case in point with respect to relief being granted on the latter basis, may be referred to. A district office of the Department of National Revenue, Taxation Division, erroneously forwarded a demand to X for information in connection with his income tax return. The demand should have been directed to his brother, who resided at the same address. X was charged with ignoring the demand. He pleaded guilty although unaware of the reason for the demand. These facts were subsequently established by the Department of National Revenue which, on behalf of X, applied for remission of the fine that had been imposed. The trial judge, upon being consulted, reported that "this was a proper case for the remission of the fine". Remission was granted and the material part of the instrument, in this respect, reads as follows:

"The undersigned therefore has the honour to advise that the \$200.00 fine and costs imposed by the Court be refunded to X who is now considered not to have been guilty of the offence of which he was convicted, and further that any Court and Police records of this conviction be expunged."

Notification of the remission was then forwarded to proper officials. While this determination of the case was entirely justified by the facts, we think that the basis upon which it rested, i.e., admitted innocence, entitled X to nothing less than a free pardon.

Pardon is an act of grace but, as we have said previously, we consider that in the case of acknowledged innocence it is an act of grace to which the recipient is morally entitled. The recipient of such a pardon is entitled to possession of the instrument as evidence for any subsequent purposes. In the disposal of the above case, no such instrument was given to X. He is not, therefore, in as good a position as he would be if a free pardon had been granted to him. In all cases where innocence is established a free pardon should be granted, whether or not a free pardon is sought.

(vii) *Suspension of orders prohibiting driving*

Section 225 (1) of the Criminal Code provides that where a person is convicted of certain offences as a result of the operation of a motor vehicle, the court may, in addition to any other punishment that may be imposed for the offence, make an order prohibiting him from driving a motor vehicle on the highway in Canada during a period to be fixed by court. A person who fails to comply with the order is guilty of an offence.

The Service receives a substantial number of requests for the suspension of such orders. The general rule is not to grant the relief that is sought. There are, of course, exceptions to this rule. Exceptions are made most frequently where the order operates to deprive the offender of his means of livelihood, that is, where, in order for the offender to earn his livelihood, it is essential that he be in a position to operate a motor vehicle. We see no justification for any change in this policy.

CHAPTER V

THE PRISONER IN THE INSTITUTION

As early as 1843 the Legislature of the Province of Canada (which was a combination of the provinces of Upper Canada and Lower Canada) provided by legislation that a sentence of imprisonment of two years or more should be served in the provincial penitentiary at Kingston, while sentences of imprisonment for two years or less should be served in other penal institutions in the province.

When the British North America Act was passed it gave to the Parliament of Canada legislative jurisdiction over penitentiaries and to the provinces legislative jurisdiction over other institutions. It made no provision as to the terms of imprisonment that should be served in one institution or the other.

Parliament in 1869 provided, by section 96 of chapter 29 of 32-33 Vict., that "each of the Penitentiaries in Canada shall be maintained as a Prison for the confinement and reformation of persons, male and female, lawfully convicted of crime before the Courts of Criminal Jurisdiction of that Province for which it is appointed to be the Penitentiary, and sentenced to confinement for life or for a term not less than two years; and whenever any offender is punishable by imprisonment, such imprisonment, if it be for life or for two years or any longer term, shall be in the Penitentiary".

This is, therefore, the basis for the distinction under Canadian law between sentences of two years or more, which are served in federal penitentiaries, and sentences of less than two years, which are served in provincial institutions. There is no basis in logic.

It is convenient, at this stage, to review briefly the number and types of institutions that are operated by the Government of Canada and those that are operated by provincial governments.

Federal Institutions

These institutions, which are operated by the Department of Justice of Canada, are:

British Columbia Penitentiary—New Westminster, B.C.
Dorchester Penitentiary—Dorchester, N.B.
Kingston Penitentiary—Kingston, Ont.
Manitoba Penitentiary—Stony Mountain, Man.
St. Vincent de Paul Penitentiary—St. Vincent de Paul, Que.
Saskatchewan Penitentiary—Prince Albert, Sask.
Collin's Bay Penitentiary—near Kingston, Ont.
Federal Training Centre—St. Vincent de Paul, Que.

The penitentiary for women is under the administration of the Warden of Kingston Penitentiary and the immediate direction of a supervising matron.

Prisoners who are sentenced to penitentiary terms are sentenced to the penitentiary designated by the Penitentiary Act to serve the area in which the conviction takes place. The Commissioner of Penitentiaries has authority to transfer prisoners from one penitentiary to another. This permits the occasional transfers of inmates to relieve overcrowding, which has been for a number of years an ever-present problem, especially at Kingston and at St. Vincent de Paul Penitentiaries. The authority to transfer may also be invoked on other occasions for more or less compassionate reasons, as, for example, to allow a youthful prisoner to be transferred to an institution in his own home area with a view to improving his opportunities for rehabilitation.

Construction of Collin's Bay Penitentiary was commenced in 1930 partly to relieve the population pressure on Kingston but also to provide an institution in which greater emphasis might be laid on educational and vocational training for inmates of Kingston Penitentiary who were considered suitable for such special treatment. Generally speaking, no prisoner serving an extremely long sentence or sentenced as a result of a crime of violence or as a result of a serious sex offence, is transferred to Collin's Bay. No age limit has been established for this institution although it is obviously designed to serve young prisoners and first offenders with relatively short sentences.

The Federal Training Centre at St. Vincent de Paul was opened in 1952. It is designed primarily to serve young offenders in the age group of 16 to 25. The reason for the establishment of this institution was the seriously overcrowded condition of St. Vincent de Paul Penitentiary. It was felt desirable, at the same time, to create an institution for youthful offenders in which considerable emphasis might be placed on educational and vocational training.

It is to be noted that courts are not empowered to commit persons directly either to Collin's Bay Penitentiary or to the Federal Training Centre. Transfer to these institutions from Kingston and St. Vincent de Paul Penitentiaries, respectively, is made on the recommendation of the Classification staffs after consultation between the officers of the two institutions concerned in the transfer.

All of the federal prisons are walled institutions and, with the exception of the Federal Training Centre, were established under what is now an outmoded concept of proper prison treatment. Each prison has a farm and industrial shops. Prisoners are assigned to work on the farm, in the shops or at various maintenance work in the institution. As pointed out above, Collin's Bay and the Federal Training Centre also include extensive vocational training facilities. Since 1947 substantial efforts have been made to add similar vocational training services in the older institutions. A vocational training block has been built at Dorchester Penitentiary. Similarly, a number of vocational training courses have been instituted at Saskatchewan Penitentiary. We commend the progress that has been made but we wish to point out that such facilities should be very greatly extended. In none of the other penitentiaries are the training facilities as satisfactory as they are at Collin's Bay and the Federal Training Centre. We recommend that further thought be given to the provision of such facilities, preferably in new institutions, but in any case of such a nature as to provide more adequate opportunities for the training of first offenders, young offenders and reformable types.

Briefs received from a variety of sources, including the Wardens of the penitentiaries, point out that the available capacity in the federal institutions is very rapidly approaching the saturation point. Indeed it has passed that point at Kingston and St. Vincent de Paul Penitentiaries, where overcrowding has been a constant problem for a number of years.

The following table shows the penitentiary population in each of the last three years:

	<i>Mar. 31/54</i>	<i>Mar. 31/55</i>	<i>Feb. 29/56</i>
Kingston.....	836 94 (females)	954 94 (females)	959 82 (females)
St. V. de Paul.....	1196	1264	1287
Manitoba.....	441	446	417
Sask.....	566	652	652
Collin's Bay.....	396	393	435
F. T. C.....	329	349	327
Dorchester.....	597	645	630
B.C.....	638	678	671
Total.....	<u>5093</u>	<u>5475</u>	<u>5460</u>

While population pressure can be relieved by transfers of inmates to other less crowded institutions, the relief is only temporary. In the meantime it becomes difficult and in some cases quite impossible to effect the type of treatment desired by the Commissioner and his staff. Overcrowding inevitably limits the facilities available for segregation. The authorities do keep this problem constantly in mind in the administration of the institutions. It must be said, however, that, generally speaking, facilities for segregation of the present population into groups suitable for varied treatment, even within the maximum security institutions, are far from adequate. Too much time and attention of the institutional staff is required to be given to that small fraction of the population of each institution which needs maximum custodial supervision. By the same token, this means that the total regimen of the prison suffers and a desirable program of a rehabilitative nature is, in most instances, almost impossible.

The present overcrowding in the federal system, particularly at Kingston and St. Vincent de Paul Penitentiaries, is, therefore, a matter of grave concern. We have noted that there may on certain occasions be adequate administrative reasons for the transfer of prisoners from one institution to another. The transfer, however, of prisoners from one institution to another presents very serious problems. The prisoner is removed from his own area and relationships with family, friends and after-care agencies become more difficult. Although we recognize that the Commissioner of Penitentiaries makes such transfers on the most careful basis possible in the existing circumstances, it appears to us that he and his staff are badly handicapped by the present situation.

We emphasize the acute situation that exists at the present time and the necessity, therefore, of more institutions and institutions of a more varied character.

We suggest that in extending the federal penitentiary system careful consideration should be given to the desirability of establishing, on a medium security basis, such further institutions as may be required in order to provide a much more adequate opportunity for classification, segregation and treatment. We understand that the Department of Justice is at present considering proposals of this nature. We feel that there is an urgent necessity to implement them.

Representations have been made that the responsibility for the care and treatment of all female prisoners should be assumed by the provincial legislatures. It is a fact that the number of women sentenced to imprisonment for two years or more is, proportionately, extremely small. There is only one federal institution for women. It is the Women's Prison at Kingston. To this institution are committed females from all of the provinces, with the exception of Newfoundland. The normal capacity of the Women's Prison is 100. The average population, except in special circumstances, is generally somewhat less. It has been strongly represented that it is unfortunate that females from provinces in the far east and the far west of Canada have to be brought such great distances to serve their terms, because all of the normal ties with their families and friends in their own communities are thereby broken. Furthermore, it has been represented that it is difficult, if not impossible, with the small group that is at any time ordinarily confined in the Women's Prison in Kingston, to provide a suitable variety of medical, educational and vocational treatment. It appears to us, however, that this institution, with a relatively small and comparatively static population, is precisely the kind of institution where the various forms of treatment mentioned above could most readily be carried on. This, we think, is the most important consideration. It could not be done, however, except under the co-ordinating agency of an effective classification service. We therefore recommend that in the new Women's prison, which we understand is now under consideration, the federal government plan for a more intensified treatment program.

Provincial Institutions

We do not propose to set out a detailed description of all adult penal institutions operated by provincial governments for the custody of persons sentenced to imprison-

ment for less than two years. Some of the more important ones, not including county or district jails, are, by provinces, the following:

ALBERTA:

- | | |
|---------------------------------------|---|
| Provincial Goal,
Lethbridge | for males over 16 years of age |
| Provincial Goal,
Fort Saskatchewan | for males and females over 16 years of age. |
| Bowden Institution,
Innisfail | for males over 16 years of age with special attention to first offenders and reformables. (This institution also houses juvenile offenders from 12 to 16 years of age, segregated from the young adults). |

BRITISH COLUMBIA:

- | | |
|---|---|
| Oakalla Prison Farm,
South Burnaby | for males and females over 16 years of age with a population varying from 800 to 900. |
| Oakalla Prison Farm
(Young Offenders'
Unit),
South Burnaby | to accommodate approximately 75 selected young male offenders from the population of Oakalla Prison Farm; special program of vocational training, case work and group work services. |
| New Haven Borstal
Institution,
South Burnaby | a Borstal-type institution to accommodate approximately 40 young offenders within the age limits of 16 to 23; special rehabilitation program with vocational training, case work and follow-up and after-care. Sentences are definite plus indeterminate -- release being conditional at the discretion of the Provincial Parole Board. |

There are also smaller provincial jails located at Kamloops, Nelson and Prince George.

MANITOBA:

- | | |
|---|---|
| Provincial Gaol,
Headingley | to accommodate approximately 350 males over the age of 18, plus incorrigible juveniles over 16. |
| Provincial Gaol,
Brandon | to accommodate approximately 45 males. |
| Provincial Gaol
for Women,
Portage la Prairie | to accommodate approximately 60 females over 18, plus juvenile incorrigibles over 16. |

There is also a small provincial jail at Dauphin, Manitoba.

NEWFOUNDLAND:

Prisoners serving sentences of over two years who are the responsibility of the federal government are cared for in the provincial penitentiary by virtue of a federal-provincial agreement. The province also operates an excellent open-type institution at Salmonier.

NEW BRUNSWICK:

There is no provincial jail or reformatory. There is a Boys' Industrial Home at East Saint John, with a normal capacity for 55 boys under 16 years of age and an Interprovincial Home at Coverdale operated by a Board of Governors under the Protestant Churches for females over 16 years of age -- capacity of approximately 25. Construction of a Central Prison Farm has commenced.

NOVA SCOTIA:

There are no provincial jails or reformatories for either men or women. There is a school for boys 8 to 16 at Shelburne and a home for juvenile girls at Truro.

ONTARIO:

Ontario Reformatory, Guelph population approximately 850—for males over 16 years of age. •

Ontario Reformatory, Mimico for approximately 500 males over 21 years of age.

Industrial Farm, Burwash to accommodate approximately 700 males over 21 years of age, generally recidivists.

There are also Industrial Farms at Burtch, near Brantford (Western Ontario) and at Burritt's Rapids (Eastern Ontario) and at Monteith (Northern Ontario)—the first with a capacity of approximately 200, the second, approximately 150, and the third, approximately 175, all of them males over 16 years of age serving maximum sentences of 12 months.

Ontario Reformatory, Brampton normal capacity 200 males between ages of 16 and 25 with special attention to first offenders and provision for educational, vocational and case work services.

Andrew Mercer Reformatory, Toronto for approximately 150 females over the age of 16 years.

Although this Report does not endeavour to cover the problem of juvenile delinquents, mention should be made of the Ontario Training School for boys up to 16 at Bowmanville, with a normal capacity of 200; the Ontario Training School for Boys up to 14 years of age at Cobourg, with a normal population of approximately 150 and the Ontario Training School for Girls at Galt, with a capacity for 120 girls up to the age of 16; the St. John's Training School, Toronto, with a normal capacity of 170 and the St. Joseph's Training School at Alfred, with a normal capacity of 160 make provision for male juvenile delinquents up to 16 years of age. The St. Mary's Training School for Girls at Downsview accommodates approximately 120 females up to the age of 16. These last three institutions are operated under Brothers and Sisters of the Roman Catholic Church.

PRINCE EDWARD ISLAND:

There are no provincial jails or reformatories in Prince Edward Island.

QUEBEC:

The major provincial institutions are the Bordeaux Jail in the City of Montreal, with a population of approximately 1,000, and the Quebec Jail at Quebec, P.Q. There are thirty small penal institutions. Inmates serving sentences of more than one year are generally transferred to one of the two large institutions. There are three training schools for boys and three for girls. These are privately operated under the supervision of the Youth and Social Welfare Department.

SASKATCHEWAN:

Provincial Gaol, Prince Albert normal capacity 175 males over the age of 25 years.

Provincial Gaol, Regina normal capacity 175 males between the ages of 16 and 25, with special attention to first offenders and reformable types.

Provincial Gaol for Women, Prince Albert normal capacity 35 females over 16 years of age.

It will be obvious from a perusal of the foregoing list that the Province of Ontario leads all of the provinces in providing a number of classified institutions that provide different kinds of treatment for various types of offenders. The Ontario list of institutions should be further extended by mention of the Alex. G. Brown Clinic for alcoholics ..

at Mimico and the recently opened clinic for drug addicts. Such steps as these are a recognition of the need for specialized treatment and are indeed commendable. Similarly, the New Haven School in British Columbia and the Young Offenders' Unit at Oakalla are efforts to meet the special problems of the older adolescent and to provide special training and treatment for them with a view to reformation and rehabilitation. The Province of Saskatchewan makes similar efforts to provide rehabilitative treatment for older adolescents and young adults in the Regina Gaol. The Bowden Institution in Alberta also provides special training for a similar group. Manitoba and Quebec lack institutions of a reformatory type in which emphasis is placed on rehabilitative training and services. In the Maritime Provinces there are no provincial reformatory institutions, although New Brunswick is at the present time building an Industrial Farm. In Newfoundland an open institution, which shows great promise, has been established at Salmonier.

To indicate the extent to which Canada is deficient in the development of specialized institutions we can do no better than to point to some of the United Kingdom and Belgian institutions, the unusual features of which are indicated in Appendix J.

Reception Centres

It would be of great assistance to the administration of federal penitentiaries and large provincial institutions if more reception centres were established to which inmates might be initially committed for an appropriate period. During this period suitable case histories would be prepared by the staff of the Centre, including all necessary physical, psychological, educational and social history data. On the basis of the recommendations of the staff of the Centre the prisoner would then be transferred to the most appropriate institution for his individual case. This proposal would be most feasible in the populated areas of Ontario and Quebec where the normal intake of prisoners is sufficiently high to justify the operation of reception centres. It would be more difficult to justify in areas of smaller population such as the Prairie Provinces or the Maritimes. In these cases, however, it is strongly recommended that in each of the prisons concerned there should be established a reception wing, removed as far as possible from the normal operation and administration of the prison itself. To us it seems most undesirable that all prisoners coming from the courts in heavily populated areas, including first offenders, youthful offenders, short-term offenders, long-term offenders, recidivists, psychotics and psychopaths, should immediately be placed in a general purpose prison. It is impossible for any prison administrator to carry on an adequate rehabilitation program under such conditions. At the same time, incalculable damage may be done to young and impressionable first offenders, or alternatively, the problems created by emotionally disturbed prisoners or serious custodial risks may interfere with the normal routine of the prison administration.

Classification of Prisoners

Classification and segregation form the fundamental basis of all reformatory treatment. We have already observed that at present the large prisons in Canada contain almost every type of offender. A sound and wise system of classification makes it much easier to deal with the individual problems of prisoners. The Archambault Commission divided offenders into three main types: accidental or occasional, reformable, and habitual. Increasing knowledge of the behaviour sciences, however, has established that classification on such a basis is not altogether adequate to serve prisoners' individual needs. The work of classification is a highly skilled task which requires the services of competent personnel. Classification includes a complete examination of all prisoners, as follows:

- (a) previous criminal record
- (b) social habits and training, including family background
- (c) physical condition

- (d) educational attainments
- (e) possible capacity for training for future employment.

To effect such a study of all prisoners is a time-consuming task. A pre-sentence report should accompany the prisoner to the institution and should be studied by the classification staff. In the prison itself, however, these initial reports must be considerably extended. Recommendations regarding ideal policies with respect to classification appear in Appendix K, "Proposed Classification Policy" developed at a conference of Classification Officers held in Kingston in 1954. These are now the policies followed, as far as circumstances permit, in all federal penitentiaries.

A survey of the situation in Canadian prisons, both federal and provincial, indicates that the size of classification staffs is completely inadequate to the task involved. We desire specifically to draw attention to the situation in the penitentiaries. If a sound national policy is adopted in the federal prison system, provincial systems may adapt, adjust and modify such practices to suit their own specific needs and ultimately correctional practices across the country will reach uniformly higher standards. We are impressed with the work already done in this respect in some of the provinces of Canada. In many cases these systems are based on principles and follow patterns which might well be adopted in the other provinces.

In every prison there should be one senior Classification Officer with one assistant for every 150 inmates. The Chief Classification Officer should be a person with thorough professional qualifications, including a knowledge of psychology and social work. In all cases the Chief Classification Officer should be a mature person who, if possible, has had previous experience in the field of parole, probation or after-care work. Assistants, who may be described as counsellors, need not necessarily have had as much formal or professional training, but they, also, should be persons of maturity. We consider that persons with psychological, psychiatric or social work training and experience should be included among the counsellors.

As far as the penitentiaries are concerned, the total Classification staff should be more than doubled in order to fulfil the minimum requirements of the present penitentiary population. There should also be adequate secretarial assistance, possibly on the basis of one clerk for each Classification Officer.

It has been repeatedly reported to us that difficulty is encountered in obtaining suitable qualified staff for classification purposes. Salary is one great factor. Salaries paid to professional workers in prisons should be equal to — and perhaps, considering the nature of the work — greater than those offered in other areas of social work.

When a prisoner is received into the institution he enters a new world. It is a limited world. It is a regimented world. The prisoner, especially the first offender, having come through the process of arrest, trial and conviction, often suffers from some measure of shock. At this moment he has very special needs. He requires an adequate assessment of these needs, a diagnosis of his case, and a carefully planned program of treatment. Every institution has its own method for the reception of prisoners. Prison authorities should begin at this moment to think in terms of the potential rehabilitation of the prisoner. The attitudes of prison officers and employees are the first demonstration to the prisoner of the atmosphere of the institution.

As soon as possible after his reception into the prison the process of classification and treatment should begin. This is the primary function of the Classification Officer. Among other functions it is his responsibility to prepare a case history of each inmate, including the inmate's family background, his educational training and status, his vocational aptitudes, skills and experience, his intellectual ability and his emotional stability. In a well organized correctional program a certain amount of this information will accompany the prisoner in the form of pre-sentence reports and other documents. The prison Classification Officer, however, must be prepared to go beyond immediately available material. It is on the basis of his report that the appropriate treat-

ment will be recommended. The success or failure of any program of treatment, no matter of what nature, is partly dependent on this first step.

The Classification Officer himself does not decide the nature of the treatment. He makes his recommendations to the Classification Board of the institution. This Board includes the Warden (or the Deputy Warden in charge of treatment), the Chaplain, the School-teacher, the Chief Industrial Officer, the Vocational Instructor, the Classification Officer and such other officers as may, in any institution, be concerned with treatment, for example, the psychiatrist, psychologist or social worker. The prisoner will already have had interviews with each of these officers but the final decision regarding treatment is based on the report of the Classification Officer and the discussion by the members of the Board of all details of the case. The Board decides where the inmate will work, what educational program he will follow and what medical or psychiatric treatment he should receive. The progress of the inmate should be reviewed by the Classification Board from time to time during his sentence so that necessary changes or amendments may be made in the initial plan. It is imperative that all institutions, whether federal or provincial, should have sufficient staff with the necessary training to perform duties of classification.

To use a medical analogy, it could be said that the Classification Board is a board of clinical review. As suggested above, it assesses, from time to time, the progress being made in the treatment of each inmate. It also, from time to time, reports through the Warden to the parole authority concerning the progress of the inmate.

Treatment

Throughout this Report great importance is attached to the concept of reformation and rehabilitation. We emphasize that adequate facilities for classification and segregation of prisoners is fundamental to successful treatment.

We do not consider that we should attempt to outline in detail programs for all of the varied types of institutions which have been suggested as components of a modern correctional system. It stands to reason, however, that based on suitable classification there must be opportunities for many and varied types of training. The importance of the Chaplain's work in the prison cannot be emphasized too strongly. The importance of basic education should similarly be a matter of primary concern. The necessity of employment for the inmate after his release indicates the need for vocational training in the institution. The development of work habits and skills is also an important factor. Idleness is one of the major curses of prison life. Work in itself is an effective form of therapy. At the same time, every inmate has need of opportunities for individual self-expression. In this connection, hobbies and recreation of all kinds become a matter of concern.

In a modern correctional system "the first principle is to keep as many offenders as possible out of prison" (Herbert Morrison, Home Secretary, United Kingdom, 1944). When all of the alternatives to imprisonment have been exhausted, there will remain certain classes of offenders who must be sent to prison. Initially, imprisonment was based on a philosophy of punishment or sentence. This type of thinking is still to be found in some measure in the public mind. Increasingly, however, society appears to recognize that if it is to be protected to the greatest possible extent, an increasing number of offenders must receive such treatment in the institutions as will promote their reformation and rehabilitation. Such a process assists the offender to resume a normal, self-directed, law-abiding life in free society.

When the prisoner is received at the prison he enters a world of regimentation and constant surveillance, a world where normal human contacts are very considerably reduced and the responsibility for personal decisions is left largely in the hands of other persons. Prison life is an unnatural form of life. If it is going to aid in the reformation and rehabilitation of the prisoner, every effort should be made to provide surroundings and experience that, as far as possible, will contribute to these ultimate aims in a natural and positive way.

The length of time served in the institution is, of course, an important factor. In Canada there has been a tendency towards the imposition of sentences which may be unnecessarily long, when observed from the rehabilitative point of view. If an individual is required to remain in an institution indefinitely or even for extended periods of 8, 10 or 15 years, he tends to become completely institutionalized, dependent, and incapable of initiating positive action on his own behalf. Undoubtedly there are some types of prisoners — psychotic, psychopathic or incorrigible — who must, for the protection of society, be kept in permanent confinement. For any prisoner there should always be the expectation that, in the foreseeable future, confinement will end. There must always be a hope, no matter what the age of the prisoner may be, that he will once again have the opportunity to resume his place in society.

If a prison term is to be effectively reformatory, it should be long enough to provide for a period of treatment. Many sentences imposed for minor offences are much too short to permit the institution to invoke any effective treatment. Where treatment is required little or no purpose is served by sentences under six months.

We have had the privilege of extensive discussions with members of the Home Office and the Prison Commission of the United Kingdom. Every aspect of the correctional system was examined. Of particular interest to us were our visits to institutions ranging from Borstal schools for young offenders to the Parkhurst Prison for habitual criminals.

The need of varied types of treatment for different classes of offenders has been fully recognized in Great Britain. It is also recognized there that individualized treatment is a fundamental principle in any modern prison system and that institutions should therefore be limited in size and population. We cannot condemn too strongly the apparent tendency of many institutions to increase in size indefinitely. It is our opinion that no penal institution, of whatever type, should contain more than six hundred inmates.

Some laudable attempts are being made in Canada to provide specialized prisons. Generally speaking, however, Canada is inadequately provided with varied types of minimum, medium and maximum security institutions and specialized institutions to serve special needs. This deficiency cannot be remedied overnight. Authorities who have responsibility for the custody and treatment of offenders should, however, in expanding their facilities, devote special attention to the necessity of providing specialized prisons of the types referred to above.

Prison work is a form of educational work. Attention must be given to the physical needs of the prisoner, his education and his vocational or trade potential. The modern prison, therefore, must be more than a mere place of human storage. It should, as far as possible, be a place of worthwhile and creative activity. But education, in the merely narrow or formal sense, is not enough. The prison program must involve an attempt to change the basic behaviour attitudes and patterns of the inmate. This depends not only upon the professional services of specialized personnel but on the atmosphere of the institution. It is only by sustained and determined efforts in these directions that imprisonment can be made to serve a reformatory or rehabilitative purpose.

Special Types of Inmates

We have already indicated that if rehabilitative treatment is to be made available for any considerable number of inmates, special facilities must be provided for the treatment of special cases. In many cases the excessive use of alcohol is a contributing factor to criminal behaviour. Progress has been made in the development of branches of Alcoholics Anonymous in all of the penitentiaries and some provincial institutions. Much credit must be given for the rehabilitative work performed by this and similar organizations, but it should be supplemented by further therapeutic treatment which, at the present time, is not available in most institutions.

Many prisoners who are drug addicts have become involved in more serious crime because of the necessity of obtaining money to purchase drugs. Treatment for the drug addict is still in an exploratory stage and authorities on this matter have advised us of the many difficulties involved. In many cases the drug addict is a highly intelligent, sensitive individual who is not otherwise criminally inclined. If any effective treatment is to be discovered for drug addicts they must be removed from the general stream of the prison population. It is our view that they should be confined in special institutions.

The problem of the sex offender is equally difficult — but it is primarily a medical problem. There has recently been great public concern in various parts of Canada on this subject because of publicity given to sex offences. When such a crime occurs many proposals, some of them hysterical, are advanced for the solution of the problem. Medical science is still uncertain as to the kind of treatment that may be effective, but it is obvious that effective treatment can only be discovered if such persons are made the subjects of special study. We feel that sex offenders should be removed from the normal prison population and that intensified research on the problem should be carried out.

The problem of the psychotic similarly requires special consideration. At the present time psychiatric treatment, in some degree, is available at most federal and some provincial institutions. We recognize that a serious shortage of practising psychiatrists exists, but we must nevertheless record our view that no modern prison system can operate effectively without psychiatric service on a much more extensive basis than now exists. Failing the availability of qualified psychiatrists employed on a full time basis, the services of well trained clinical psychologists should be sought. This, again, is a problem of a medical nature, requiring facilities, staff and research.

Considering these four major groups, therefore, the Committee recommends the establishment of appropriate prison-medical centres, functionally designed and staffed for the purposes indicated. Such institutions must provide suitable security and custodial arrangements. But they should have, as far as possible, the atmosphere of hospitals. If effective treatment is to be provided in such cases it must be in an institution in which the ordinary prison routines will be considerably relaxed in order that individual treatment may be given without in any way undermining security requirements.

Another problem of a related nature is that of the psychopath. At the present time such prisoners form part of the general prison population. Many of them are serious custodial risks and their presence in the general prison population necessitates the imposition of special custodial arrangements which greatly handicap a normal program of rehabilitation and correction. The Archambault Report recommended the establishment of a special institution for "incurables". Such inmates do not form a high percentage of the total prison population.

To establish special institutions in remote locations, as has been suggested, presents serious problems. The phrase "a Canadian Alcatraz" has been used to describe such a proposed institution. It should be pointed out, however, that the present director of the American Federal Bureau of Prisons has for years recommended the abolition of the Alcatraz prison in California—an institution which is operated only at great expense and which, in the judgment of the director, serves no purpose that is not achieved by the facilities available in other maximum security prisons. We have serious doubts concerning the advisability of setting up a Canadian counterpart. We cannot, however, recommend too strongly that special facilities for the segregation of such persons should be made available—perhaps in one institution, where all the other facilities of the institution could be made available for the treatment of this special group. Where inmates are serving long sentences, the length of the sentences alone suggest that more adequate provision should be made for work, treatment and recreational programs than is made for inmates serving sentences of shorter duration. At no time should any prisoner have reason to feel that he is a forgotten man. We

were impressed by the fact that under the present legislation in England prisoners serving terms of preventive detention are not sentenced to imprisonment for an indefinite period but for a maximum of fourteen years. Prisoners should have some hope that imprisonment will end and thereby have some incentive for reformation and rehabilitation.

We have considered the question of the treatment of insane prisoners. The Archambault Commission discussed in considerable detail the difficulties between the Government of Canada and various provincial governments regarding cases of prisoners who became insane while serving sentences in penitentiaries. The general conclusion of the Archambault Commissioners was as follows:

"Having regard to all the circumstances . . . your Commissioners are of the opinion that the most efficient method of caring for insane prisoners in the penitentiaries is by continuing and expanding the present friendly arrangements that are in effect between the federal and provincial authorities in respect to transferring insane prisoners from the penitentiaries to the provincial hospitals under Section 56 of the Penitentiary Act — also that similar arrangements should be made in respect of prisoners who are dealt with under the provision of Section 53 of the Penitentiary Act."

The Commissioners also said that "transfers of insane prisoners ought to be effected promptly". It is still the case that for various reasons there are serious delays in the transfer of insane prisoners from penitentiaries to provincial mental hospitals. It is our opinion that the present arrangements between the Government of Canada and the provincial governments should be examined with a view to improving the procedure to enable speedy transfer of insane prisoners to institutions having suitable facilities for their care and treatment. The continuing presence of insane prisoners in hospitals or special wards of the penitentiaries is most undesirable.

Pre-release Program

The ultimate aim of the whole program of treatment, both within the institution and during the immediate post-release period, should be to enable the inmate to assume the direction of his own affairs. We believe that such a process could be greatly facilitated by the establishment of a pre-release program which would operate for a suitable period prior to discharge. Such pre-release centres might be small establishments separate from the prison. On the other hand, if this is not possible, a pre-release unit could be established within the prison. In these units prisoners would eat together and not alone in their cells. They would have access to newspapers, radio and television so that they might once more become familiar with the normal conditions of life outside the institution. There should be arrangements for visiting under appropriate and pleasant conditions by family members, social workers, clergymen, employment officers and potential employers. The prison uniform should be discarded and the prisoner given an opportunity once more to feel at ease in normal civilian clothing. Such pre-release centres should enable the prisoner to develop the self-assurance that he will need when finally he leaves the institution.

Legislation

There are in Canada three statutes of major importance that govern correctional institutions. They are: the Penitentiary Act, the Prisons and Reformatory Act, and the Juvenile Delinquents Act. In addition to these federal Acts there is also provincial legislation dealing with such matters as the establishment and operation of Industrial Farms, Industrial Schools, Reformatory and similar institutions. These Acts vary widely in their provisions, having been enacted and amended at various times to suit various special circumstances and conditions. There would seem to be justification for a careful examination of all federal and provincial legislation relating to penal and correctional institutions in order to invoke some measure of uniformity of objective and method of treatment.

Our general conclusion concerning the legislative authority for the operation of Canadian penal institutions is that there is much confusion, if not actual contradiction, in the law. We consider that much could be done by means of suitably co-ordinated legislation to achieve greater unity of purpose and treatment in the various provinces.

We therefore recommend a careful examination by the responsible authorities of the whole legislative framework of the Canadian correctional system for the purpose of providing a well co-ordinated statutory basis for the Canadian system of corrections.

It has already been noted that the establishment, maintenance and management of prisons in Canada is a divided responsibility. The federal authorities are responsible for the custody and treatment of every inmate sentenced to a term of imprisonment of not less than two years, while an inmate serving a sentence of less than two years serves it in an institution under the direct or indirect control of the provincial government.

At first glance it would thus appear that all persons in provincial prisons are serving sentences of less than two years. There is here, however, an interesting anomaly. If the convicted person is given a series of consecutive sentences of two years less a day, he may thus serve in a provincial institution a total term well in excess of what was apparently the intended maximum for any inmate of that institution. We consider that any person sentenced to a term of two years or more, by whatever method this period may be arrived at, should be confined in a penitentiary.

Representations have been made that there would be much advantage to be gained in Canadian prison administration if the maximum term for detention in a provincial institution were considerably reduced. One view is that the provincial government should be responsible only for the care and treatment of persons confined for a maximum term of six months, and that the responsibility for all persons sentenced to periods longer than six months should be the responsibility of the federal government. Such a change, if effected, would result in greater uniformity of treatment of offenders throughout Canada and should ultimately result in the establishment of a greater number of types of institutions for prisoners who are sentenced to terms in excess of six months. We recommend accordingly.

CHAPTER VI

THE NATURE AND FUNCTION OF PAROLE

There has been in Canada a tendency to confuse two completely different ideas in the field of corrections. One is parole. The other is clemency.

Parole is a well recognized procedure which is designed to be a logical step in the reformation and rehabilitation of a person who has been convicted of an offence and, as a result, is undergoing imprisonment. It is a procedure whereby an inmate of an institution may be released, before the expiration of his sentence, so that he may serve the balance of his sentence at large in society, but under appropriate social restraints designed to ensure, as far as possible, that he will live a law-abiding life in society. It is a transitional step between close confinement in an institution and absolute freedom in society. The sanction that is imposed for failure to live up to the conditions that govern the release is the return of the inmate to the institution.

Clemency, on the other hand, has very little, if anything, to do with reformation or rehabilitation. It is nothing more than an exercise of mercy by the Crown, usually upon purely humanitarian grounds. The exercise of clemency by the Crown is not limited to cases where individuals are undergoing imprisonment. It may operate, as we have seen, to commute a sentence of death to one of imprisonment, to effect a remission of a fine or forfeiture imposed by the court, or to lift a prohibition imposed by the court, such as, for example, a prohibition against the operation of a motor vehicle by a convicted person. Where it is applied in relation to imprisonment, it operates to shorten the sentence of imprisonment imposed by the court. It is, therefore, in effect, an interference with the judgment of the court.

No particular principles are applicable in respect of the exercise of clemency. It is purely a question of determining, in each case, whether the circumstances are sufficient to justify a mitigation of the punishment imposed upon the offender. Clemency is an extraordinary remedy and, therefore, in a well designed system of corrections there should be few occasions for its use.

Justification for Parole

We have placed in Appendix L an extract from a United Nations publication entitled "Parole and After-Care" (1954), which sets out somewhat extensively the reasons that justify the operation of a parole system. They may be briefly summarized here.

Parole offers an opportunity for the practical application of rehabilitation programs prior to the expiration of sentence. It encourages the inmate to maintain maximum contact with relatives, friends, and prisoners' aid and after-care societies, thus keeping him keenly aware of the existence of a free society of which he continues to be a member despite his imprisonment. The prospect of parole stimulates the inmate to derive maximum benefit from the facilities provided by the prison as preparation for parole, i.e. the educational, vocational, religious, recreational and other services furnished by the institution. It offers assistance to the individual upon release. The possibility of parole revocation operates as a deterrent to anti-social conduct. The possibility of parole may be an incentive to good conduct in the institution. Parole provides a means whereby, in proper cases, the term of imprisonment may be shortened. It allows the timing of release to be related to the completion of vocational and other training programs. It offers an opportunity for the prison administration to evaluate the influences of the penal system. It is a socially just procedure because it enables society to play an auxiliary role in the readjustment of the individual who may have

become a criminal partly through shortcomings in society itself. It may serve as a proper means of mitigating excessively severe punishments imposed under the influence of aroused public emotions. It offers a means of protection to society from further criminal activity on the part of released offenders. Finally, it offers an opportunity to re-evaluate the role of institutional treatment and the relative merits of alternative, less punitive techniques.

To this list we would add another consideration that, to us, seems important in Canada. Parole is a cheaper form of treatment than institutional care. It therefore represents a saving of public funds. How large this saving is, it is difficult to assess. The annual report of the Commissioner of Penitentiaries for the fiscal year 1953-54 states that \$4.42 was the average daily cost of keeping an inmate in a federal penitentiary. The cost of keeping an inmate in an Ontario reformatory has been calculated at \$1,760 a year. The cost of parole depends on many factors, including the salary paid to the after-care staff and the number of persons under supervision. A figure of fifty cases has been suggested as a reasonable caseload. If we accept this figure, it means that one parole officer can supervise a number of men who, if they are held in prison, will cost the public over \$200 a day to maintain. The cost of parole probably is on a par with the cost of probation, which, as we have said, has been estimated as not exceeding \$50 a year, on the average, for each probationer.

Obviously the cost of prison care far exceeds the cost of parole. However, the situation is even more complicated than these figures make it appear. Reducing the prison population by small numbers means very little in terms of the over-all prison cost, and it is only when substantial numbers are involved that real savings are made. When all factors are considered, it is apparent to us that an expanded parole system in Canada will ultimately result in a great saving of public moneys. A further consideration is, of course, that a married man who is on parole is able to support his family, which otherwise may have to be cared for at public expense.

Principles Applicable to the Parole System

A system of parole, to be effective, must be founded upon proper principles. We set out here the more important principles upon which we consider that the Canadian parole system should be built.

Parole is designed to ensure, as far as possible, the safety of the community as well as the welfare of the individual prisoner. These two considerations are inseparably linked, because the safety of the community depends on the reformation of the offender. If the offender is not reformed and proceeds to commit further offences upon his release, the community is endangered. For this reason the community has a direct interest and responsibility in the future of the discharged inmate. If parole can assist him to make a more successful adjustment to life in the community, then parole contributes to the welfare of all.

The procedures for determining the fitness of the prisoner for release on parole should be based on sound sociological and psychological considerations. Experienced institutional officers have frequently observed: "This inmate has had enough. If released in the near future he will probably go straight. If confined much longer, he'll be no use to himself or to society." A former prisoner, released after serving ten years of a twenty-year sentence, expressed his feelings as follows:

"One of the most difficult and I might even add painful phases in prison life is at that period when the prisoner comes to the self shocking knowledge that the things he has been doing all his life have been stupid and his feelings about going straight at this time are very sincere. And very definitely if Society gave him a chance at this psychological moment he would make good. But since Canada does not have a parole system that can catch men at such times, especially second and third timers, then he goes on from day to day living in a hopeless hope until bitterness sets in and he becomes lost. I often wonder how many real criminals

are made and violent type crimes thought of, planned and committed through just such bitterness in the heart formed in and by such a mental situation."

A memorandum submitted by the staff of one of Canada's federal penitentiaries gives this view of the same subject:

"This group desire to record their opinion that a time arrives during the period of incarceration of almost every inmate which is the most appropriate time for his release. Continued imprisonment after this time usually results in discouragement, bitterness, cynicism and an anti-social attitude. Penitentiary staff members, through their daily contact with each inmate, are in a position to draw to the attention of the Remission Service the fact that an inmate is ripe for release."

Parole should be an integral part of the whole correctional process. Indeed, the entire system of prison treatment should, from the beginning, be directed toward the probability that parole will constitute the last phase of the sentence of imprisonment. It should not, therefore, be interpreted to the prisoner or to the public as clemency, leniency, or mercy. Rather it should be interpreted as the natural and, indeed, the inevitable result of a careful and considered appraisal of such elements as the following: the inmate's institutional progress, including his participation in trade training or academic studies; his change of attitude as a result of his institutional experience; his opportunities for readjustment in home, job and community; and his willingness to plan for release and accept supervisory assistance as part of an after-care plan.

In Canada the practice, and therefore the principle, appears to have been, at least until recent years, to deny parole to inmates solely because of their lengthy records. The present practice is outlined elsewhere in this Report. We agree that a lengthy record is not, of itself, a sufficient reason to refuse parole. There are three reasons for this view. Inmates with all hope denied make for bad institutional morale, because they create an atmosphere which makes reformatory treatment more difficult for all inmates. Further, an inmate released at expiration of sentence is thereafter under no restraint or supervision and supervised parole to such persons might help to decrease the problem of recidivism. Finally, the experience of after-care agencies has been that many of their outstanding success cases have been individuals with long records.

Pre-release preparation, which is dealt with in Chapter V of this Report, is essential to any efficient parole system. To notify an inmate at the last minute that he is being paroled is unfair to him, to his family, and to the agency or individual responsible for his supervision. We consider that, except in special circumstances, an appropriate period should intervene between the time when the inmate is notified of his parole and the time when he is released.

It is essential, in order to work effectively with the parolee after release, that there should be available a fund of information concerning him and his fears, hopes, problems and expectations. This information should be obtained during the pre-release period. The representative of the agency which is to exercise supervision should interview the prospective parolee in the institution as should, if possible, the trained case worker who will supervise him. A plan involving preparation for home and community life should be developed with the approval of the parolee. It should, in essence, be his plan. There should be clarification with him of what is involved for him in post-release supervision. He must have a clear understanding of what is expected of him. Until this has been done he should not be released. The warden or superintendent has, under the present law, the right and, indeed, the responsibility to hold the parolee for a period of thirty days beyond the stated release date so that he may be satisfied that all necessary arrangements for after-care have been made. This power should, if possible, be exercised with the consent of the inmate but should, in any event, be exercised in his interests, even without his consent. It is

important that no promises should be made to the inmate that cannot be implemented after release.

Finally, it is clear to us that education of the public is essential in order that proper parole principles and procedure may become better understood. Unfortunately, one parolee, who violates the conditions of his parole, often receives such widespread publicity that the whole system appears to be defective. Usually overlooked, of course, at that time, are a substantial number of parole successes in the same community. The decision to grant parole involves the taking of calculated risks and this should be more widely appreciated. Like probation, the success of parole requires public understanding and support.

CHAPTER VII

THE TICKET OF LEAVE ACT AND RELATED STATUTES

The Ticket of Leave Act, entitled — "An Act to Provide for the Conditional Liberation of Convicts" — as has been mentioned, was passed by Parliament in 1899. In introducing the Bill in the House of Commons, the Prime Minister of the day made the following statement:—

"The PRIME MINISTER. The object of this Bill is to introduce the ticket-of-leave system for convicts. The Bill follows, I believe, word for word, the English Act. That Act has been in operation in England for some twenty years and more, perhaps, and I understand, has worked satisfactorily. The Bill provides generally that the Governor-in-Council may allow a convict to be set at large on condition of good behaviour. The convict so set at large is not free; he can be re-arrested at any time; but he is allowed to be at large, to some extent under the surveillance of the police. Here is a convict, a young man of good character, who may have committed a crime in a moment of passion, or, perhaps, have fallen a victim to bad example or the influence of unworthy friends. There is a good report of him while in confinement, and it is supposed that if he were given another chance, he would be a good citizen. Under the Bill, power is given to the Governor General to order his liberation — of course, under certain rules to be established in the framing of which we shall be guided by the precedents of England. The matter is experimental, so far as we are concerned, but we are guided by the experience in Great Britain."

There have been no substantial amendments since it was originally passed by Parliament.

That this legislation was never designed to meet the complex problems of modern corrections, is quite apparent from the difficulties that are encountered in its administration under present-day conditions. We are astonished that such satisfactory results have been obtained in recent years by the Service under this antiquated legislation, and much credit must be given to those who are charged with the administration of it.

The Act itself is reproduced in Appendix M. The general structure of the Act is as follows:

The Governor General, acting on the advice of the appropriate Minister of the Crown (now the Solicitor General of Canada), may grant to any person under sentence of imprisonment in a penal institution for an offence against the criminal law of Canada, a licence to be at large in Canada during such portion of his term of imprisonment and upon such conditions as may be indicated in the licence. The licence may, from time to time, be revoked or altered. The sentence of imprisonment is deemed to continue in operation even though the licensee is at large. That is to say, the licensee serves the balance of his term of imprisonment by satisfying the conditions of the licence. The licence may contain any conditions that the Governor General, on the advice of the appropriate Minister, sees fit to apply to the licensee. If the licensee is convicted of any indictable offence, the licence is forthwith forfeited by operation of law and the licensee must return to the institution to serve the balance of his sentence that remained unexpired when the licence was granted. If the licensee is convicted of a summary conviction offence or in any way fails to abide by the conditions under which the licence was issued, it may be revoked by the Governor General, again on the advice of the appropriate Minister, and thereupon the licensee is to be returned to the institution to serve the balance of his sentence that remained unexpired when the licence was granted. The licensee is required to notify the local police authorities of his place of residence and of any intentions that he may have of changing his place

of residence. Male licence holders are required to report to the police authorities once each month. Female licencees are not required to report. A licencee is required to carry his licence with him and to produce it when required to do so by a judicial officer or a peace officer. Any peace officer is entitled to arrest, without a warrant, any licencee whom he reasonably suspects of having committed any offence or who, it appears, is getting his livelihood by dishonest means.

The archaic character of the Act is indicated, to some extent, by the language of some of the statutory conditions which are attached to each licence. They are as follows:

1. The holder shall preserve his licence and produce it when called upon to do so by a magistrate or a peace officer.
2. He shall abstain from any violation of the law.
3. He shall not habitually associate with notoriously bad characters such as reputed thieves and prostitutes.
4. He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

It is our opinion that, in the light of present day conditions, amendments should be made forthwith to the Act to enable the Service to give effect more efficiently to the principles of parole. We say this in the event that it is not possible, immediately, to implement all of the recommendations in this Report designed to institute an improved system of corrections for Canada. However, if it is possible to implement these recommendations, or most of them, within the next two or three years, we think that the Act, in its present form, will be adequate for the interim period if its administration is carried on in the way in which it is now being done. Failing that, however, we have the following recommendations to make:

Section 5 of the Act provides that if different or additional conditions to those referred to above are annexed to any licence, a copy of the different or additional conditions shall be laid before both Houses of Parliament within twenty-one days after they have been made, if Parliament is then in session or, if not, within fourteen days after the commencement of the next session of Parliament. In practice, it is often necessary to vary the statutory conditions, usually by addition, in order to meet the particular requirements of the individual case. The most usual additions are to require the licencee to accept supervision and guidance of a parole supervisor and to abstain from the use of intoxicants. We can find nothing to indicate that copies of additional conditions, in individual cases, have ever been laid before Parliament. This is probably because, since 1899, the section has been taken to refer to conditions, of a general nature, that are set out in licences, in addition to or in substitution for those referred to in the Act. No such general conditions have ever been incorporated in licences issued under the Act. In any event, whatever the section may mean, we can see no reason for a requirement that special conditions imposed in particular cases should be tabled in Parliament. Such a requirement would, indeed, be in conflict with the ordinary rule that Parliament does not discuss the merits of individual cases.

Section 6 provides for the forfeiture of a licence where the licencee is convicted of any indictable offence.

There are a number of relatively minor offences in the Criminal Code which may be tried on indictment, or by summary conviction procedure at the election of the prosecution. One example is the offence of common assault which, upon conviction, might result in the imposition of a very small fine. If the holder of a licence were convicted of a minor common assault which, at the whim of the prosecutor was tried as an indictable offence, his licence would be automatically forfeited and he would then be required to return to prison to serve, in addition to any punishment for the common assault, the unexpired portion of the term of imprisonment being served at the time he was released on licence. It is to be noted that this section is silent as to whether "any indictable offence" refers to one committed prior to or subsequent to

the release of the licensee. It is our opinion that this section in its present form is too harsh and should be repealed, and re-enacted, somewhat as follows:

"If any holder of a licence under this Act is convicted of any indictable offence, committed after his release upon a licence, and for which he is liable to imprisonment for two years or more, his licence shall be forfeited forthwith."

In the case of convictions for other indictable offences for which the punishment by imprisonment is less than two years, forfeiture of the licence should be discretionary as provided in section 7.

Section 7 provides for the discretionary revocation of a licence if the holder is convicted of a summary conviction offence. It is to be noted again, that this section is silent as to whether "an offence punishable on summary conviction" refers to one committed prior to or subsequent to release of the holder of the licence. If an amendment is made to this section, this aspect should be clarified.

We were originally of the opinion that this section might be repealed because of the great increase in the number of summary conviction offences created since the Act was passed. However, in view of the fact that the information given to the Service under this section is invaluable as indicating a lack of progress on the part of the holder of the licence, we feel that, subject to the suggested amendments, it should not be disturbed.

Section 8 sets out the procedure to be followed upon revocation or forfeiture of a licence. The holder of a licence that has been revoked or forfeited is re-committed to the appropriate prison and is required to serve the unexpired portion of the sentence he was serving at the time the licence was granted. The Act is silent, however, in such cases, as to whether the prisoner forfeits all previous good conduct remission earned at the date of his release on licence.

Statutory remission for good conduct and industry is, for penitentiary prisoners, 72 days for the first year and 120 days for each year thereafter. For inmates of provincial institutions that have been declared by the Governor in Council to be "improved prisons", under section 17 of the Prisons and Reformatories Act, it is 5 days for each month served. Subsection (4) of section 69 of the Penitentiary Act provides that a penitentiary inmate, whose licence is forfeited, shall forfeit the whole of the good conduct remission earned at the date of release on licence. The Department of Justice has, apparently since 1926, interpreted "forfeiture" in this subsection as including "revocation".

There is no similar provision for cancelling good conduct remission in the Prisons and Reformatories Act, except in section 20 where cancellation is obscurely dealt with. It provides that every prisoner in a provincial prison who commits a "breach of the laws" is "liable to forfeit" the whole or any part of any remission which he has earned.

The policy of automatic cancellation, upon forfeiture or revocation of a licence, of remission earned for good conduct has been the subject of much criticism for some time. A strong argument against the policy is that the principles involved in granting good conduct remission are in no way related to the subsequent conduct of the licensee that results in forfeiture or revocation of his licence. On the other hand, however, it must not be overlooked that there is an important factor of deterrence or preventive justice involved in the continuance of the present policy.

We are of opinion, after careful consideration, that upon forfeiture or revocation of a licence there should be no automatic forfeiture of remission earned for good conduct. We consider that, upon re-commitment, the question of forfeiture of good conduct remission, in whole or in part, should be determined by the parole authority.

We recommend, therefore, that the law be amended accordingly.

Section 9 (1) of the Ticket of Leave Act provides that when a licence is forfeited or revoked, the holder must, in addition to any other punishment imposed for the offence, undergo a term of imprisonment equal to the portion of the term to which he was originally sentenced and which remained unexpired at the time his licence was granted. Subsection (2) provides for the case where the holder of the licence, upon his release from penitentiary, is subsequently sentenced to a provincial prison term for an offence committed after his release. He is required to serve the prison term first and then be returned to the penitentiary to serve the unexpired term. Treatment and ultimate reformation thus may be delayed or hampered. We consider that this subsection should be amended to provide that in cases of this kind the provincial prison term and the unexpired penitentiary term are both to be served in the penitentiary. Such an amendment would be in harmony with similar provisions in the Criminal Code, notably section 634(4). A similar amendment to subsection (3) of section 8 of the Ticket of Leave Act is also indicated.

We are also of opinion that provision should be made whereby the time served in a provincial prison pending *transfer* to a penitentiary under sections 8 and 9 of the Ticket of Leave Act should count on the portion of the sentence remaining to be served.

Section 10 imposes upon the holder of a licence a duty to report to the police authorities or to the sheriff during the time the holder is at large under the licence. Subsection (1) requires the licensee to notify the police authorities or the sheriff as to his place of residence or any change of address. This subsection should be amended to make it clear that the obligation on the part of the licensee to notify the authorities in this respect refers only to a bona fide change of address and not to journeys incidental to the trade or occupation of the holder of a licence.

Subsection (2) requires male holders of a licence to report once a month to the police authorities or to the sheriff. If males are required so to report, there seems to be no valid reason why female licensees should not report similarly.

There are no provisions in this subsection imposing any duty upon the local police or the sheriff, to whom the licensee must report, to advise any higher authority as to his failure to do so. We are satisfied that the local police, in some cases, either do not report on the licensee or do so imperfectly. Thus, in those cases, no record is immediately available in the Service as to compliance or otherwise by the licensee with his obligation to report to the local police. The Ticket of Leave section of the R. C. M. Police is maintained to co-ordinate the reporting to the local police by the holder of the licence as required by this provision. Incorrect, casual or delayed reports by the local police to the R. C. M. Police prejudices the effective administration of the Ticket of Leave Act by the Service. Complete and accurate data in this respect is essential. The records of the Ticket of Leave Section of the R. C. M. Police can only be as accurate and informative as are the reports of the local police.

In any event, there appears to be considerable criticism of the obligation of the holder of a licence to report to the police at all. We are of the opinion that, except in special cases, the obligation of the licensee to report should be restricted to parole officers, probation officers, after-care agencies, social welfare agencies or others having the aptitude to give supervision and guidance, where these facilities are available. In cases where reporting to the local police is not a condition of release, the licensee should be required to advise the local police only as to his address or any change thereof. The co-operation and assistance of the police is essential to the operation of any proper parole system, but they should not be saddled with duties that occupy their time unnecessarily and are not calculated to assist the licensee.

Section 11 makes it an offence for the licensee to fail to report to the police as required by section 10. The onus is on the licensee to prove to the satisfaction of the court that certain exculpatory circumstances existed that excuse his failure and entitle him to be acquitted.

Under subsection (2) the justice (who may be only a justice of the peace) has the discretion, upon finding the accused guilty, of either revoking his licence or imposing a term of imprisonment not exceeding one year. It is to be noted that under this subsection Parliament has given to a justice of the peace the power to revoke a licence, even for the most trivial offence. The power to revoke is otherwise in the exclusive jurisdiction of the Governor General under section 3 (2) of the Act. This extraordinary power in the hands, usually, of the least experienced of judicial officers, is not in keeping with the spirit or intent of the Act. This section should, in our opinion, be repealed or re-enacted to provide, inter alia, that if the justice, after a judicial hearing, reaches the conclusion that the circumstances justify it, he may recommend to the parole authority that consideration be given to revocation of the licence. We may note, in passing, that there are very few prosecutions under this subsection.

Section 12 makes it an offence if the holder of a licence fails to produce it to the proper authorities when requested to do so, or breaks any of the conditions of the licence. This section, in our opinion, serves no useful purpose and should be repealed. The power of revocation for a breach of the conditions of the licence lies with the Governor General, on the advice of the appropriate Minister, and additional criminal proceedings for a breach of a condition, not in itself a criminal offence, is superfluous and illogical. We have not been able to find any record of prosecutions under this section.

The Prisons and Reformatories Act

We have considered this Act, in certain respects, elsewhere in this Report. We have commented on the parole jurisdiction that it gives to local parole boards in Ontario and British Columbia. The Act deals with many other matters that are, at best, only remotely related to parole or preventive justice in the broad sense. Originally, the Act seems to have been a collection of similar statutes, consolidated for the first time in the Revised Statutes of Canada, 1886. Subsequently, many other provisions were added, apparently at the request of various provinces for enabling legislation to suit, for the time being, their individual requirements. This Act requires a thorough review in the light of modern conditions. It may be that it should be repealed and the subject matter dealt with in other relevant statutes. There are a number of reasons to suggest such a review. The Act is not comprehensive. It is not uniform in its parts. It contains many provisions that apply to juveniles and which are possibly at variance with the principles and provisions of the Juvenile Delinquents Act. It provides for a variety of sentences to be imposed upon juveniles as well as adults, thereby adding to the confusion of sentencing practices. It deals, as we have said, with parole and release procedures, thereby adding an additional parole procedure to that already provided for by the Ticket of Leave Act. In the result, doubts are raised unnecessarily concerning parole jurisdiction and procedure.

It is an undoubted principle that administrative responsibility should accompany legislative competency. The duality of administrative functions under the Ticket of Leave Act and the Prisons and Reformatories Act has led to the establishment of a confused, unbalanced and complex scheme of correction that is not conducive to a well integrated and co-ordinated progressive national policy.

Having regard to the growth of this country, and without ignoring local requirements, we recommend an abandonment of the principles upon which the Prisons and Reformatories Act is based. An Act dealing with correction, in all its aspects, implementing the recommendations herein, accompanied by the repeal of the Ticket of Leave Act, the Prisons and Reformatories Act, and certain portions of the Penitentiary Act, would be more comprehensive and would assist in the development of uniformity in the establishment of proper correctional principles and their application. In many ways, such an Act would fulfil a function similar to that of the Criminal Justice Act in England. The adoption of the suggested legislation would, of course, involve federal-provincial consultations. Constitutional difficulties could be ultimately

resolved by leaving it to each province, having facilities for its proper operation, to adopt the whole scheme.

While it might have been desirable, in order to give a complete picture of the operation of the Prisons and Reformatories Act, for us to deal with the methods and manner in which its provisions are implemented in the provinces, an inquiry to this end would have been an involved task, and unnecessary, we think, in order to give effect to our terms of reference.

Juvenile Delinquents Act

The Juvenile Delinquents Act, which we have mentioned in various places in this Report, does not fall within the administrative function of the Service and accordingly we have not considered that it comes within our terms of reference.

Statutory Remission

We have already mentioned in this chapter that the Penitentiary Act and the Prisons and Reformatories Act provide for some remission of sentence for good conduct and industry. In the penitentiary an inmate earns such remission at the rate of six days each month, until he has earned a total of seventy-two days. Thereafter he earns it at the rate of ten days each month. Thus, if he earns all possible statutory remission for good conduct his sentence expires when he has served slightly more than three-quarters of the term imposed. It is generally thought that the penitentiary inmate gets one-third of his sentence off for good behaviour whereas, in fact, he gets only approximately one-quarter off.

The Prisons and Reformatories Act authorizes statutory remission on the basis of good conduct and industry for inmates of provincial institutions designated as "improved" prisons. The rate of remission varies from province to province, but section 19 of the Act directs that it shall not exceed five days for every month of the sentence. Methods of computation also vary from province to province. Except in the Province of Quebec, county and district jails are not designated as "improved" prisons and inmates of such institutions therefore do not earn statutory remission.

The device of awarding statutory remission for good conduct and industry on the part of prison inmates is used in most countries. It is undoubtedly considered by prison administrators to be a valuable means of maintaining discipline. However, in Canada, the application of the device results in anomalies and inequities, a number of which we think we should mention.

For example, a prisoner sentenced to imprisonment for two years less one day in a provincial institution actually earns less remission and will be discharged at a later date than another prisoner sentenced at the same time to two years in the penitentiary. Again, in the Province of Ontario, a prisoner sentenced to imprisonment for three months may, for administrative reasons, be kept in a county jail where he earns no remission, while his accomplice, sentenced to the same term, may be transferred to an industrial farm where he does earn statutory remission.

A person who is sentenced to penitentiary does not begin to earn statutory remission until he arrives at the institution. Cases frequently occur where such persons are detained in the county jail so that they will be available as witnesses, or for some other reason, who will not earn remission while so detained.

The double standard of statutory remission that operates in the penitentiaries has the effect of penalizing the inmate who, by reason of poor conduct or industry, loses remission during the first year, because not only does he lose a number of days' remission by reason of his conduct, but he also loses additional days by reason of his delay in reaching a total of seventy-two days' remission and thereby qualifying to earn remission at the rate of ten days each month.

The system of computing statutory remission is cumbersome and difficult to explain. Undoubtedly it was intended that at the end of each month an inmate would be credited with a number of days' remission, depending upon the quality of his conduct and industry. Presumably the grant was intended to range from nothing to the maximum authorized by law, depending upon the circumstances of each case. In practice, however, it is rarely possible to grant remission on this basis. The usual practice is to grant the maximum amount authorized, and no remission is lost unless the inmate is charged with a breach of discipline and an order of forfeiture of remission is made by the warden.

In the United Kingdom statutory remission for good conduct and industry is granted at the outset of the sentence and is one-third of the term. Breaches of discipline by an inmate can result in a reduction in the amount granted.

We do not consider it necessary for the purposes of our inquiry to discuss the merits of statutory remission. However, we do feel that the entire question should be carefully reviewed. The goal should be to put into effect a more uniform and practical system of statutory remission that would eliminate anomalies and inequities of the kind that we have mentioned.

We suggest, further, that when parole field services are well developed in Canada, consideration might be given to the implementation of a system whereby time earned by way of statutory remission would be a statutory parole period for the inmate. Such a system of statutory or mandatory parole now exists in some States of the United States and in relation to certain types of sentences to be found in the United Kingdom, such as the sentence for corrective training and preventive detention.

Statutory parole of this kind has the beneficial result of providing a degree of supervision and control for all persons released from penal institutions at expiration of sentence. Such persons are usually those who have given insufficient evidence of reform to qualify for parole under the parole authority.

CHAPTER VIII

PRACTICE AND PROCEDURE IN THE REMISSION SERVICE

The purpose of the Ticket of Leave Act having been stated in Chapter VII, it is appropriate now to consider the policies followed in the Service for its implementation.

These policies are best manifested by a number of rules formulated through the years for the guidance of the officers entrusted with the duty of investigating and making submissions to the Minister as to each application for the benefit of Ticket of Leave.

Rules of Practice

Subject to certain modifications made to them, in order to give effect to a number of the recommendations of the Archambault Commission in 1938, these rules are in many respects the same as they were at that time and may conveniently be dealt with *seriatim* as set forth in the report of the Royal Commission, as follows:

As to sentence:

- (a) No interference in drug cases;
- (b) No interference until approximately one-half a sentence has been served.

• As to prisoner:

- (a) No interference if a prisoner is a confirmed recidivist or an instinctive criminal;
- (b) No interference if a prisoner has been previously convicted of one major crime, or two intermediate, or several minor offences;
- (c) No interference if a prisoner was previously granted clemency;
- (d) No interference if a prisoner is under treatment for syphilis;
- (e) No interference unless reform is indicated.

Rule (a) as to sentence: No interference in drug cases.

This rule is still followed. Subject to what may be said about habitual criminals, which calls for other considerations in view of the indeterminate character of the sentence, we are in agreement with it. The reason underlying it may be briefly stated. In the case of an addict, the granting of parole would be inconsistent with the principle that parole is not intended to be given in cases where there is no reasonable expectancy of reform. If and when such treatment as it is now proposed to give drug addicts, particularly in the provinces of British Columbia and Ontario, proves successful, the reason for the rule will cease, and the rule itself should no longer be absolute in so far as addicts are concerned. With respect to drug pedlars, the reason for the rule is twofold. First of all, experience has shown that any expectancy of reform which may be indicated during imprisonment generally vanishes upon liberation. Secondly, the rule is consistent with and necessary for the adequate implementation of the policies laid down by the various bodies responsible, at either national or international level, for the control of the drug traffic.

Rule (b) as to sentence: No interference until approximately one-half a sentence has been served.

This rule is still followed to a substantial extent. The justification for the rule is really its usefulness, which is manifold. Existing for many years, it is generally known to the courts and presumably is considered by them when they determine the length

of sentence to be ordered. On the basis of this rule, it becomes possible for the officers entrusted with correction and treatment in the penal institutions to devise proper plans for correctional training based on the anticipated length of time available for that purpose. For the prisoner, it removes from his mind an element of uncertainty that would otherwise lead to the creation of false hopes and prevent him from accepting his situation and co-operating in the treatment. Finally, for the Service, it reduces a very large number of applications for parole which are bound to be turned down as being premature. In many respects, the rule is based on administrative considerations, but it is not inconsistent with the purpose intended by the court when imposing the sentence. By no means is the rule any longer a rigid one but its necessary purpose would be defeated if exceptions to it were to be unduly multiplied. Table VII of Appendix A sets out the incidence of exception to the rule during 1952 and 1953. The rule has no application where the sentence imposed is of very long duration, i.e., those of twenty years or more or, in the case of first offenders, of more than ten years. Such inmates are released when, after a reasonable period of imprisonment, having regard to the circumstances of the offence, the inmate has shown evidence of reform sufficient to justify the granting of parole to him.

Rule (a) as to prisoner: No interference if a prisoner is a confirmed recidivist or an instinctive criminal.

Prisoners of this type rarely give true indications of reform. Under the present Service practice this cannot be said to be a "rule", but is, rather, the statement of a result that is obtained by the application of other rules, most particularly the rule, to be referred to later, which provides for no interference unless reform is indicated.

Rule (b) as to prisoner: No interference if a prisoner has been previously convicted of one major crime, or two intermediate, or several minor offences.

This rule is not now applied arbitrarily by the Service but is taken as being simply indicative of the necessity for greater prudence in the evaluation of each case before a conclusion can be made as to indication of reform. Previous convictions do not, of necessity, point to the offender as being unreformable and undeserving of the correctional benefit afforded by parole if, with supervision and guidance, there is reason to believe that he could lead a law-abiding life. It may very well be that to deny parole would make him a career criminal. We agree with the present Remission Service view that such cases cannot judiciously be dealt with unless consideration is given to all the relevant factors involved in the individual case.

Rule (c) as to prisoner: No interference if a prisoner was previously granted clemency.

This rule is not applied arbitrarily, and we agree, for the same reasons as above, that it should not be absolute. We are not unaware that these views were not shared twenty years ago by the Commissioners who investigated the penal system of Canada. Since 1938, however, the situation with respect to supervision of parolees has changed for the better. Facilities and qualities of after-care services have improved, in many parts of the country, in a measure greater than has the correctional program in the penal institutions of the same area. The length of the interval that has elapsed from the time when parole was first granted to the time when an offence was again committed, as well as the nature of the subsequent offence, is considered. We agree with this policy.

Rule (d) as to prisoner: No interference if a prisoner is under treatment for syphilis.

This is no longer a correct statement of the present rule. The new rule is that if the inmate is under medical treatment for any physical or mental condition he is not granted parole until it is clear that, upon release, he will receive treatment for his condition that is as good or better than he is receiving in the institution. In such cases parole, if otherwise indicated, is recommended to the Minister if the prisoner accepts, as a further condition to his licence, to submit to appropriate treatment outside the penal institution. The reason for this new rule is that parole should not be denied to a suitable prisoner solely for reasons such as ill-health, which are foreign to the real

issues involved. The health of a prisoner is an important factor in the process of reformation, whether he is inside or outside a penal institution. While undergoing a sentence of imprisonment, medical treatment is provided. This benefit, given as of right to prisoners, ceases as such when parole is granted. With this new rule, we are in agreement.

There is one function of the Service with which we feel we should deal here, even though it does not relate directly to the question of parole.

Federal and provincial penal institutions are not equipped to provide many types of medical and surgical treatment that are available outside the institutions. When an inmate requires treatment that is not available or cannot properly be given in the institution, the Service is so informed by an application from the Warden to authorize the transfer of the prisoner to an appropriate hospital or place of treatment. Under the present practice the Service recommends to the Minister the issuance of a temporary release under the prerogative power or, a temporary Ticket of Leave, under the Ticket of Leave Act. In the case of a temporary release, the prisoner is accompanied by a guard during the entire period of his absence from the prison. In the case of a temporary Ticket of Leave, he has no guard. This practice obtains with respect to prisoners convicted of federal offences, whether detained in federal or provincial institutions.

We can see no reason for the allocation of such a duty and responsibility to the Remission Service. Custodial authorities are exclusively responsible for the prisoner's health, as well as for his custody. Indeed, they are the only ones who possess the necessary information required to advise concerning the need for medical or surgical treatment outside the institution, and concerning the security risk involved in the transfer. On the one hand, if the Service is, as a matter of course, to act upon the advice of the custodian, which is implicit in the latter's application for transfer, then its role would appear to be superfluous. If, on the other hand, the Service refuses the application, it is in the anomalous position of saying that the proposed treatment is unnecessary or that the inmate presents too great a security risk to be transferred to a hospital.

It is clear that the Service is in no position to justify a substitution of its opinion for that of the custodian concerning either the necessity for treatment or the necessity of providing a guard. Indeed, because this does not in any manner involve the question of clemency or parole, the Service does not attempt to do so.

We therefore recommend that the duty and the responsibility for such transfers be left to the Commissioner of Penitentiaries in the case of federal penitentiaries and to the responsible deputy head in the case of provincial institutions. Indeed, certain provinces have already assumed this duty and this responsibility. However, in all cases of transfer from federal penitentiaries and in the case of provincial penal institutions where the unexpired portion of the sentence exceeds six months, the Service should be notified upon the departure of the prisoner from and upon his return to the penal institution.

Rule (e) as to prisoner: No interference unless reform is indicated.

This fundamental rule is still followed. It must, of course, be absolute and can never be too rigidly enforced. We are in complete agreement with the following views expressed in this respect in the Archambault Report:—

“In order to determine which are the proper cases, the predominant consideration must be, has the prisoner formed a fixed determination to forsake his former habits and associates and to live as a law-abiding citizen and will he be assisted in that determination by being allowed to serve the balance of his sentence under supervision and at large?”

The Six-Months Rule

Since the Archambault Report, the following rule has been added to the rule as to sentence: "No interference in the case of short sentences, i.e., sentences of six months or less." Experience demonstrates that parole is of little benefit unless the period of supervision and guidance, which parole is intended to provide, is of at least six months. A certain part of the sentence must, of course, be served in the institution and, in addition, before the Service is in a position to make a determination as to the merits of an application for the relief, six weeks or two months are required to obtain the necessary reports for the consideration of the case. Therefore, under the present practice, the grant of parole in cases of short sentences has little purpose.

There is no doubt, however, that offenders sentenced to six months or less could also benefit from similar control, supervision and guidance for a period of at least six months. We suggest that consideration should be given to amendment of the criminal law to authorize the court as an addition to any sentence of one year or less, to impose a six months' period under control, supervision and guidance. Proper sanctions could be provided for the failure of the offender to comply with conditions of his release. Such additional restraints after the sentence has been served in the institution should prove beneficial, particularly in the case of first offenders.

Inmates Under Preventive Detention

As we have noted in Chapter III, section 666 of the Criminal Code requires that the case of every person under preventive detention as an habitual criminal or a criminal sexual psychopath be reviewed by the Minister of Justice at least once in every three years for the purpose of determining whether he should be permitted to be at large on licence and, if so, on what conditions. Although the sentence of preventive detention does not commence until the termination of the definite sentence imposed for the substantive offence, the practice of the Service is to prepare the case for review by the Minister at least once in every three years during the term for the substantive offence as well as during the period of preventive detention. While the case of each such inmate is considered at least once in every three years during his entire period of imprisonment, these cases are, in practice, reviewed even more frequently. This is especially so where the circumstances of an individual case appear to justify bringing it to the attention of the Minister, even though, in all the circumstances, it may not be possible to make a recommendation favourable to release at that time.

The purpose of preventive detention is, obviously, to protect society from the anti-social activities of persons who are likely to commit criminal offences. On the other hand, the purpose of the periodic review required by the statute is obviously to ensure that no person shall be held in preventive detention for any longer period than is necessary for the protection of society. It follows, therefore, that there is involved, in each review of the case of a person held in preventive detention, the possibility of releasing him on licence. We emphasize this point for the reason that it may be thought that the purpose of preventive detention is to remove habitual criminals and criminal sexual psychopaths from society for the remainder of their natural lives.

Because it is impossible to determine, in advance, at what time a person who is under preventive detention will be ready for release, no arbitrary minimum period that is required to be served is set by the statute nor has any such arbitrary minimum period been established by a departmental rule of practice. However, the general rule that the Service follows is to require, unless there are exceptional features, the inmate to satisfy the definite term imposed for the substantive offence before he becomes eligible for favourable consideration.

The principles that the Service applies in considering cases of persons under preventive detention are, first of all, that parole should not be granted unless there is sufficiently clear evidence of reform to lead reasonably to the conclusion that,

upon release, the inmate will not be a danger to society. Where this condition is satisfied, the Service does not recommend release until such time as a comprehensive parole plan has been prepared that will, as far as possible, ensure law-abiding conduct on the part of the parolee.

- As we have noted elsewhere in this Report, none of the persons under preventive detention as criminal sexual psychopaths have been released on parole and only one person so-detained as an habitual criminal has been released on parole.
- We have no criticism to offer concerning the manner in which the cases of this type of inmate are dealt with by the Service.

Procedure in the Remission Service

For a long time the policy in the Remission Service has been to recommend parole not on compassionate grounds, but upon ascertaining that inmates are apparently reformed, likely to behave in future and may safely be paroled. The investigation procedure of the Service, however, in the main still reflects the traditional view that a Ticket of Leave is in the nature of an exercise of clemency and has to be applied for.

We are satisfied that, in the absence of a revised mandate and adequate staff facilities, a system of automatic examination and periodic review of all cases cannot, under present conditions, be initiated by the Service and sustained by the other bodies and agencies it will affect. Present practice is to await an application before dealing with a particular case. However, in recent years, as this outline will reveal, in anticipation of future applications, different methods have been devised in the Service to establish better control over certain types of cases, shorten the delays and experiment in automatic examination processes.

Most applications come from inmates themselves, relatives or friends, solicitors, or civil and religious authorities in the community. Some are from voluntary welfare agencies. In a few cases and for various reasons, the representations are made by the Custodian or the trial judge himself.

A penitentiary inmate, upon admission, is required to answer a questionnaire and a copy of this form is sent at once to the Service. The inmate's previous criminal record and his photograph are obtained from the Fingerprint Section of the R.C.M. Police.

The case of an inmate of a provincial prison comes to the attention of the Service by way of an application from him or by some person on his behalf or, in a limited number of cases, as a result of a visit to the institution by one of the three Regional Representatives of the Service. Quite often the application is received when a substantial portion of the sentence has already been served and, out of necessity, the Ticket of Leave is for a short duration. In such cases it is, as we have said, of little value. We believe that, at least in the case of provincial prison sentences of twelve months or more, arrangements similar to those existing with the penitentiaries should be discussed with the competent provincial authorities whereby basic information would be supplied to the Service when the inmate is admitted to the institution.

The recent practice in the Remission Service, in the case of an inmate serving a life sentence or a sentence of preventive detention is, upon receipt of the penitentiary questionnaire and previous criminal record, to create a file at once, obtain reports of the police and the trial judge concerning the circumstances of the offence and the trial, and set a date for re-examination of the case. The Service recently commenced to extend this practice to the cases of all inmates serving sentences of fifteen years or more. The practice had, on an experimental basis, previously found a limited application in the case of all inmates of St. Vincent de Paul Penitentiary and the Federal Training Centre. The penitentiary questionnaires and previous criminal records were examined upon receipt and, in promising cases, reports from the police and trial

Where the reports from the institution, the police and the trial judge or magistrate indicate that the inmate appears to merit favourable consideration for parole, information concerning the inmate's home life is often required. Except in Montreal, where the Service has its own representatives, such investigations are entrusted to the

The file is ordinarily sent to the trial judge or magistrate as soon as reports from the police and the institution have been received. Our information is that the majority of judges and magistrates, especially in large communities, report that they have nothing useful to add to the file. Later in this chapter we shall have some observations to make on what we consider to be the proper function of the trial judge or magistrate in the administration of a parole system.

We have already pointed out in Chapter II that all regional penal institutions in Canada are visited regularly by Regional Representatives of the Service. They interview inmates and officials and report their findings to the Service. Several voluntary after-care agencies perform a similar function in other institutions. Appendix O shows the number of visits that were made by the Regional Representatives during recent years. Such visits have increased materially in numbers since the time of the Archambault Report. We are also satisfied that today much more time is devoted to each inmate who is interviewed than was formerly the case.

All institutions are asked to provide the Service with up-to-date information relating to the inmate's physical and mental condition, his conduct and industry in the institution, his trade and educational qualifications, the progress that he has made in the institution and the views of the senior prison officers concerning the inmate's prospects for rehabilitation. Appendix N sets out the forms that are sent to the institutions to be returned with the information that is required. As will be seen, classification officers, chaplains, vocational training officers, instructors, psychologists and psychiatrists are requested to provide relevant information which they believe may be helpful in considering the application.

to him if he is released on parole.

- (c) to obtain from responsible persons or social agencies in the community information concerning the inmate's home environment, the amount of assistance he may expect to receive, his chances of securing suitable employment and the quantity and quality of supervision that will be available
- (b) to obtain from the officers of the institution in which the inmate is confined an assessment of his conduct, industry, apparent degree of reform and prospects for successful rehabilitation; and
- (a) to obtain from the police and the trial judge information concerning the circumstances of the offence, the inmate's reputation in the community and other relevant factual material;

The purposes of the inquiries carried on by the Service in any given case are:

In the case of applications from or concerning inmates of provincial prisons, the fact that the application is premature is discovered only when the report of the officer of the institution concerning the inmate is sent to the Service after the Service has requested it to do so.

Where an application is found to be premature, having regard to the length of the term of imprisonment imposed and the portion served, the applicant is notified accordingly. The policy of the Service for the past few years has, however, been increasing to obtain immediately as much information as possible at an early stage of the sentence and set a date for re-examination of the case.

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The purposes of the inquiries carried on by the Service in any given case are:

- (a) to obtain from the police and the trial judge information concerning the circumstances of the offence, the inmate's reputation in the community prior to the commission of the offence, circumstances concerning the trial and other relevant factual material;
- (b) to obtain from the officers of the institution in which the inmate is confined an assessment of his conduct, industry, apparent degree of reform and prospects for successful rehabilitation; and
- (c) to obtain from responsible persons or social agencies in the community information concerning the inmate's home environment, the amount of assistance he may expect to receive, his chances of securing suitable employment and the quantity and quality of supervision that will be available to him if he is released on parole.

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R. C. M. Police, probation officers or to one of the after-care agencies. If none of these facilities are available the Service must rely on whatever information can be secured from responsible citizens.

The Service attempts, in most cases, to arrange for shelter, employment or financial assistance, and supervision for the licensee upon release. Assurance of employment and supervision is not always considered to be an essential condition. The necessity for it depends upon all the circumstances of the case. Inquiries and arrangements concerning employment and supervision are usually made by the Regional Representatives or the voluntary after-care agencies.

When the investigation has been completed and all the relevant material and information secured, the Remission officer who is charged with the case considers it and reaches an opinion on the question whether the inmate should be recommended for release on parole and, if so, under what conditions. In any case, whether his recommendation is favourable to parole or not, he prepares a submission to the Solicitor General. The submission sets out the essential facts of the case and the factors that favour and those that are opposed to the granting of parole. He then signs this document and passes it, with the file, to one of the two Assistant Directors. The Assistant Director reviews the file and, if there are points of difficulty in the case, he discusses it with the Remission officer who prepared the submission. If he agrees with the submission, he signs it and passes it, together with the file, to the Director. The Director considers the submission and examines the file. If he does not agree with the submission or finds points of difficulty in it, he discusses the case with the two officers who have already signed the submission. After the submission has been signed by the Director it goes to the Solicitor General who, after considering the case and directing such changes as he thinks desirable to be made, signs it and, if it recommends release, sends it to the Governor General as his recommendation for the disposition of the case. After the document has been signed by the Governor General a licence under the Ticket of Leave Act is issued to the inmate. In all cases the inmate is informed of the decision that has been made on his application.

Proposed procedure

We are firmly of the opinion that one of the most important steps in the development of parole as part of the correctional system of Canada is the abolition of the practice which requires that parole must be applied for by the inmate or by some person on his behalf. Where a sentence of imprisonment has been imposed upon a convicted person, consideration of the possibility of releasing him on parole at some time during the term of imprisonment should occur as naturally and be just as much an integral part of his sentence as was the execution of the warrant of committal under which he was delivered into the custody of the prison officials. The Service should, therefore, continue to expand the system of automatic parole review which it has already instituted in relation to life prisoners, inmates serving sentences of preventive detention and, to a lesser extent, prisoners serving definite terms of fifteen years or more. We recognize that, with its present staff and facilities, the Service cannot hope to institute a system of automatic review on an over-all scale. However, we consider that such a procedure is vital to the development of an adequate parole system for Canada and, more particularly, the successful operation of a parole authority as suggested in Chapter XI of this Report.

In order to carry out its duties successfully the parole authority must have access to as much information as possible concerning the individuals who are being considered for parole. At best, the information should relate to the behaviour of the inmate from his earliest days until the time when he is being considered for parole. Rarely will this optimum goal be achieved but, nevertheless, it should be sought after.

It is our opinion that a great deal of the information that is necessary to determine the course of treatment in the institution as well as to determine, ultimately, the

question whether or not parole should be granted, should accompany the inmate to the institution or be available shortly after his arrival there. The pre-sentence report which the trial judge or magistrate considered before imposing sentence should be available at this time, as should the report of the investigating police force concerning the circumstances that surrounded the commission of the offence. Similarly, the previous criminal record of the inmate should be available at this time, as should a report from the trial judge or magistrate setting out the circumstances of the trial and, if possible, the reasons that prompted him to impose the sentence that he did. Finally, the so-called "newcomer's sheet", which sets out certain identifying information concerning the inmate, and the initial report of the classification officer should be immediately available at this stage. From this information it should be possible to make an assessment of the inmate's motivation, his attitudes, and to draw at least tentative conclusions from any changes in his mode of living that followed previous difficulties.

The first function of the parole authority at this stage should be to consider whether the sentence that has been imposed is legal. If the sentence appears to have been one that was beyond the jurisdiction of the judge or magistrate to impose, the matter should be brought to the attention of the Attorney-General of the province concerned so that, if he is so disposed, he can assist in having the case taken to the Court of Appeal of the province for determination.

If there appears to be no doubt that the sentence is a legal sentence, the parole authority should then examine all the material that is available and, having regard to the length of sentence, set a date for re-examination. The date that is thus set should be a date that is a sufficient length of time before the half-time period to permit an appropriate interval for pre-release treatment and planning.

During the period between the first examination of the case and the date set for re-examination there should be a steady flow of reports, at regular intervals, from the institution to the parole authority. These progress reports should include evaluations, from time to time, of the inmate's adjustment and progress in the institution. Any significant responses to the treatment program should be particularly noted, as well as any specific recommendations by the treatment staff. During this period, too, special medical, psychological and psychiatric reports may be indicated. Investigation into the home conditions of the inmate and the possible reaction of the community to his release should, if possible, be obtained from the Regional Representatives of the parole authority or one of the after-care agencies.

We have given considerable thought to what should be the role of the trial judge or magistrate in the determination of the question whether parole, in any given case, should or should not be granted. It seems to us that, after the trial judge or magistrate has imposed the sentence that, in the circumstances of the case, is indicated, he has performed his primary function in the correctional process. Thereafter, even if he has access to the departmental file, he is not in as good a position to assess the desirability of parole as are the members of the parole authority. He has not the benefit of the experience of those members with similar cases across the country. He has not the advantage of discussion of the case with persons having broad experience in parole selection. His personal contact with the inmate is usually limited to the relatively short period during which the inmate was in court prior to conviction. In the result, therefore, we are of opinion that the trial judge or magistrate should not, as a matter of routine, be asked to express his opinion on the question whether or not parole should be granted but rather that he should be consulted only in special cases where it appears that he may have special knowledge that may assist the parole authority in reaching the decision that, under the law, it is the sole responsibility of the parole authority to make.

CHAPTER IX

THE FUNCTION OF AFTER-CARE IN A PAROLE SYSTEM

An inmate who serves his term in full in a Canadian penal institution undergoes, on discharge, a transition from imprisonment to freedom that is just as sharp, sudden and extreme in degree as was his transition from freedom to imprisonment when his sentence commenced.

As we have suggested previously, one of the purposes of parole is to make the transition from close confinement to complete freedom less extreme. For the restraint of walls there is substituted the restraint of parole conditions. For the enforced discipline of the institution officers there is substituted the less stringent, but nonetheless real, supervision and guidance of the parole supervisor.

The most urgent problems of inmates upon release from prison may be summarized as follows:

- (a) *Family and social relationships.* These present difficulties which often require much skill in social work to solve. — "Will my wife or family have me back?" — "Should I move to another locality on release?" — "Will I always have my prison experience thrown at me?" — "If I fall in love with a girl should I tell her I'm an ex-con?" — "Do you think I can ever move again in my old circles at club, lodge, or church?" — "What attitude can I expect from our local police force?" — The answer to every one of these questions is important to a dischargee. A combination of these questions may be devastating indeed. Many a man has drifted back to crime because he has lacked guidance and support in tense situations. It is most desirable that after-care supervision and guidance be available to all parolees at times of personal crisis.
- (b) *Immediate Financial Needs.* A dischargee comes out of a federal penitentiary with a minimum of \$10 in his pocket and a one-way railway ticket to the place where he was convicted or to any place equally distant. An average estimate is that he usually emerges with \$7.50 for every year of his imprisonment. He is furnished with a suit of clothes, an overcoat, hat, shirt, tie, sox, handkerchief, shoes and underwear. On discharge from some provincial institutions he may be given a small quantity of money and clothing, but from many institutions, such as county jails, he would receive neither clothing nor funds. If the dischargee has a home to return to some of his basic requirements will be met there. If he is homeless, as so many dischargees are, he has an immediate problem of survival. These are vital problems which must be solved in the case of most dischargees.
- (c) *Employment Problems.* Once prison doors have opened for an individual other doors in the world outside may appear to remain closed for him. — "The army, the navy or the air force, will they have me in spite of my record?" — "Can ex-inmates obtain jobs with the government?" — "Many firms require bonding these days and a man just out of prison hasn't a chance." — "This firm says it has no objection to ex-inmates but fears their other employees might be hostile, or that their customers might disapprove." — "Should I tell the personnel manager that I've done time?" . . . These are practical problems which must be faced, and most dischargees require help in meeting them. No parole should be granted until the inmate concerned has some employment prospects. Here government employment services and the after-care agencies have important roles. Wherever his job comes from, the ex-inmate will probably need counselling in the early days

of his employment. After-care agencies have outlined to us some of his fears, and psychological difficulties, especially if he has been imprisoned for a long period. Some of these are: inability to "sell" himself or his skills; general feelings of insecurity arising from fear of fellow employees or of the police visiting his place of employment; returning bouts of depression at being unable to make progress as first planned; frustration when faced with pre-conviction debts and threats of seizure of his wages; suspicions that his foreman is "picking" on him because of his prison record. We feel that prospective employers and the general public should have more understanding of these special employment difficulties which endanger the rehabilitation of the dischargee. The after-care agencies can do a great deal in the way of public education in this respect.

The Role of the Parole Supervisor

We summarize hereunder and endorse, some observations and recommendations made in one of the briefs submitted to us that dealt with the relationship between the parolee and his supervisor.

In general terms it may be said that persons who violate the criminal law are persons who have been "damaged" in the life process of growing up. Most persons, however, even those whose families are seriously disorganized or whose lives have been bitter and hostile, do not resort to crime. Neither do the majority of those whose economic circumstances may have reduced them to the verge of hunger or want. There are appropriate social and welfare agencies to which most of such distressed persons can turn. To deal with people in such straits is a difficult enough task; but it is much more difficult to deal with those who have crossed the bounds of behaviour within the law and experienced the process of law enforcement and imprisonment. In most cases these become "doubly damaged" persons. Something additional happens to them in the penal institutions that scars them emotionally and leaves upon them, ultimately, the stigma of "ex-convict". No prison discharge case can be labelled as "easy".

This work then is highly specialized and demands the utmost of skill on the part of professional staff and those exceptional volunteer workers who by personality and experience are suited for the task. This is "social work" as practised in one of the most difficult of settings and not every willing volunteer or professional is suitable to practise. Qualities of patience and forbearance are required.

The personal interview is the basic technique of social casework. In this face to face relationship there may be brought about release of emotion, revelation of need, the planning of practical steps in rehabilitation, and support of faltering purposes and flagging determinations. The caseworker must be able to accept bitter frustration and open hostility, misrepresentation and direct deceit, demanding and threatening requests for assistance, or at the other extreme, helpless and ineffectual dependency.

Material assistance should then be used only as part of a total plan of rehabilitation in which worker and ex-inmate participate. The way in which material assistance in small amounts is used by the ex-inmate is often the most valuable index of the extent of his co-operation and the prospect of his eventual success. To give "handouts" unrelated to the broader casework approach may often do more harm than good. The public must understand why there is a greater budgetary requirement for salaries in after-care agencies than for direct financial relief.

Many ex-inmates have lived highly transient lives and wish to break off all relationship with the penal past at the earliest opportunity. Many who have made pre-release plans involving stipulated residence or employment suddenly want to vary their circumstances by the widest and wildest ideas. Distant hills are never greener than to some of these. Hence the caseworker must have authority vested in him by the agency and the parole authority to control, when necessary, the impulsive

behaviour of the parolee within reasonable and constructive limits under the release plan which had been set up and approved by the parole authority.

One interview at least every two weeks at the start of the parole period is suggested as the basic minimum for the exercise of acceptable supervision. In actual fact there will usually be many more interviews than this and as many should be arranged as are necessary in each case. It is essential to ensure that supervision of the parolee has no slipshod aspects. He should be required to make his first visit to the supervisor within three days of reaching his destination. This first interview should be thorough and unhurried.

As the relationship progresses and the parolee finds increasing integration in home, job and community it is wise and desirable gradually to lessen the number of compulsory interviews and limit them to what is necessary to maintain essential contact between parolee and the supervisor.

One case supervisor who has had much experience with ex-inmates sounded a warning note in a talk addressed to other after-care workers. He said, in part:

"Let us consider further the role of the supervisor. Though he should be warm and accepting he must remember that the relationship has to remain objective and impersonal. He cannot make a friend of his parolee nor should he permit the parolee to attempt to capture him. The supervisor is only inviting trouble if he becomes entangled emotionally with his client! This can blind him to many small warning signals and can make it very difficult for him to move forcefully in a crisis situation. Friendship can help the parolee in many ways but these are different from the ways in which an experienced supervisor can help. It can also damage the supervisor's own position in relation to his agency by putting him on the side of the client against the agency and can result in his saying that 'I am O.K. and for you, but the big bad agency and the Remissions Service will get you if you're not careful.' At best this can only give the supervisor a temporary advantage with the parolee but it also can put him on a powder keg."

Provision should be made for the official termination at an appropriate time of long-term paroles or those in special cases where the adjustment of the ex-inmate is obviously excellent and it is unlikely that he may resort to crime.

Reports should flow routinely from the supervisor to the parole authority so that throughout the parole period an official record is available regarding the progress of the parolee. These may be terse and abbreviated statements of fact. The initial report should be forwarded within two to four weeks of the start of supervision, while the facts are freshly in mind. With short paroles a terminal report should complete the parole period. With long paroles quarterly reports should be forwarded till the parole period is terminated by expiration or official action.

Pre-release reports based on community study initiated by the after-care agency at the request of the parole authority should be objective in nature. They should be confined to an evaluation of the circumstances relating to home, job, associations, and possibility of success under supervision. Most persons are sympathetic to the inmate and would like to aid him in securing a parole. But the granting of a parole is an official matter and not the function of the after-care agencies. This should be appreciated by staff and inmates alike so that there will be no misunderstanding.

We also feel that, while parole conditions should be related, as far as possible, to the individual needs of the parolee, there are certain fundamental conditions that should apply to all parolees. They should serve to bring home to the parolee the meaning and significance of parole, and they would also serve to emphasize the responsibilities of the parole supervisor. The parolee should be required to:

- (a) Obtain permission before changing job and residence.
- (b) Obtain permission before leaving the jurisdiction.

- (c) Obtain advice before marrying.
- (d) Obtain permission before assuming substantial indebtedness.
- (e) Endeavour to maintain steady employment.
- (f) Support his dependants to best of his ability.
- (g) Report accurately his earnings and debts.
- (h) Obtain permission to possess firearms.
- (i) Avoid use of intoxicants to excess.
- (j) Avoid disreputable places and associates.
- (k) Keep reasonable hours as defined by the parole supervisor.
- (l) Obtain permission before buying or operating an automobile.
- (m) Submit written reports and keep appointments for interviews as instructed by his parole supervisor.
- (n) Comply with all reasonable instructions of his parole supervisor.

Elsewhere in this Report we have referred to the need in Canada for institutions where specialized treatment can be given to special types of offenders, such as drug addicts, alcoholics, sexual offenders and psychopaths. Where parole is indicated in such cases, the need for specialized after-care is as great as was the need for specialized treatment while they were in the institution. The cost of such after-care will, of course, be much greater than it otherwise would be, for it requires the services of more highly trained professional personnel. Some means should, however, be found to bear the cost.

CHAPTER X

THE HISTORY OF AFTER-CARE IN CANADA

In the early history of Canada there was little public concern for the fate of those who were discharged from penal institutions. This was not inconsistent with the strict theory of custodial penology so long dominant in this country. Kingston Penitentiary was opened in 1835 for the reception of convicts from Upper and Lower Canada. A year later, the Rules and Regulations of this, Canada's first penitentiary, were established. The shortest section had to do with "Discharge of Convicts", and read as follows:

"... a discharged convict shall be clad in a decent suit of clothes, selected from the clothing taken from new convicts... He shall then be supplied with money, according to the distance of the District where he was tried and sentenced, but not exceeding the sum specified in the law (one pound). As the time when the convict is about to be discharged is favourable for eliciting truth, with a view to obtain facts which may be useful, the Chaplain will endeavour to obtain from him a short history of his life, his parentage, education, temptations, and the various steps by which he was led into a course of vice and crime, and commit the same to writing, for the information of the Inspectors; after which, the convict shall be discharged with a suitable admonition and advice."

After-care agencies, official and voluntary, now play such an important part in the Canadian parole picture that some historical background should be given. The first Canadian recognition of the need for aid to released prisoners would appear to be contained in the Report of the Commission to "investigate into the Conduct, Discipline and Management of the Provincial Penitentiary at Kingston". The Report was issued in 1849 and includes the following:

"It must be confessed that the success of any system of prison discipline will be strongly affected by the treatment which the Convict receives on his discharge from confinement. A Convict may leave his cell penitent and determined to reform, but if he is met with harshness and refused employment, and his good resolutions treated with scorn, despair will soon overtake him, poverty and the force of circumstances will too often drive him back to the haunts of crime. Governments can do little to avert this snare from the path of the reformed Criminal; the force of public opinion will alone effectually remove the evil. Much has been done in the United States by prison societies, who receive the penitent transgressor on his discharge, and aid him and strengthen him in his struggle with the frowns of the world; the tide of public sympathy has been, by their labours, turned towards the helpless outcast, and great good has undoubtedly been effected. A more noble work could not engage the efforts of the Christian or Philanthropist. We trust that such a society will, ere long, exist in our own country, and that through the press and the lecture-room, the subject of prison discipline may engage more attention from the public than it has heretofore done."

Despite this strong observation the challenge was not immediately taken up. The pioneer group in the after-care field in Canada was the Prisoners' Aid Association of Toronto, established in 1874 by those who, seven years earlier, had formed a Sunday School in the local jail. "These workers discovered", says John Kidman in his book *The Canadian Prison*, "what all such workers do, that it is useless to preach to men and women in prison unless their material needs on release are also given attention." In point of fact, this after-care organization soon faced the difficulties and frustrations of many others that were formed in Canada from time to time. There was official apathy and often official opposition. Lack of finances was an ever-present problem.

Enthusiasts would die leaving no successors in the work. Groups would become incorporated provincially or nationally and in turn expire.

In the nineteen twenties, after-care societies were organized in Vancouver, Montreal and Toronto. Because they had good local sponsorship they managed to survive the depression and war years. The Prison Gate services of the Salvation Army, and the three modern pioneer organizations referred to, have carried the after-care burden for the longest period. They were joined in the nineteen thirties by others, such as those in Winnipeg and Victoria, and entered a new era of strength after the implementation of some recommendations of the Archambault Report, in 1946.

We think it desirable to outline the present organization of prison after-care agencies in Canada. There has been a sharp increase in numbers since 1946. John Howard Societies, named after the great prison reformer of the 18th century, with salaried, full-time workers, are now in operation in Vancouver, Victoria, Edmonton, Calgary, Ottawa, London, Kingston, Halifax, St. John's, Montreal, Hamilton and Toronto. Other John Howard Societies, with voluntary or part-time personnel, are functioning in Lethbridge, Peace River, Regina, Saskatoon, Prince Albert, Thunder Bay (Port Arthur and Fort William), St. Catharines, Saint John, Sydney, Windsor, Sarnia and Moncton. Elizabeth Fry Societies, named after the Quaker prison welfare pioneer, for work among female ex-prisoners are established in Vancouver, Kingston, Ottawa and Toronto. At Winnipeg, there is the Manitoba Welfare Association, with full-time employees. In Montreal, also on a full-time employee basis, are the Société d'Orientation et de Réhabilitation Sociale and the Catholic Rehabilitation Service. In Quebec City, Le Service de Réadaptation Sociale, Inc., is in the same well-established category.

Although all of these agencies are members of the Canadian Corrections Association, each is autonomous. Their financial arrangements vary widely. Some obtain all their finances from the local Community Chest. Others rely solely on funds from local service clubs and citizens. Still others, in addition to receiving funds from interested citizens and business firms, are assisted by grants from provincial or municipal governments. Those adjacent to federal penitentiaries are given grants by the Penitentiaries Branch of the Department of Justice. The Remission Service grants are based solely upon parole services rendered in the field of after-care.

In addition to these essentially secular organizations there are, of course, the well-known Prison Gate services of the Salvation Army and of the Church Army of the Anglican Church in Canada. Other religious groups in Canada, such as the Society of Friends, some Roman Catholic agencies, and the Unitarians, are engaged in useful work, although on a somewhat limited scale.

In Ontario, rehabilitation work has been carried on since 1947 by the Department of Reform Institutions among dischargees from the penal institutions under the jurisdiction of that province. It should be added that ex-inmates of Ontario institutions are also served by the Salvation Army and the John Howard Society of Ontario and its affiliated branch members. Similarly, the Elizabeth Fry Societies assist dischargees from Ontario institutions for female prisoners.

The after-care movement in Canada is today in a stronger position than it has ever been. This is due to the co-operation and financial contributions of the federal and some provincial governments, some municipal corporations and interested citizens. The increasing number of these agencies that are included in Community Chest campaigns across Canada is significant. They are accepted and supported by the public as they have never been before in Canada. Appendix P is a survey of facilities and requirements of after-care agencies in Canada.

The Remission Service and After-Care Agencies

The Remission Service has in recent years invited the co-operation of after-care agencies in the field of parole administration. A request by the Service for a home and

community study of the prospective parolee usually initiates the relationship with the after-care agency. The Service has a limited supervisory staff and so the major portion of inquiries and of supervision have been performed by these agencies under the continuing direction of the Service. Probation or parole officers of those provinces which have such systems are used in a voluntary capacity, as are the services of clergy, social workers and reputable citizens. The relatively recent appointment of regional representatives in two cities by the Service makes possible the further development of community resources throughout the country. Through the use of after-care agencies the Service has been able to enlist the services of well-trained social workers having specialized knowledge and skill in this area of social work. The financial grants in aid of the work of these agencies by governments has given official recognition to this relationship. This, we believe, constitutes one of Canada's most unique and valuable contributions to the science of corrections. It is fundamental that these grants should be increased to enable more effective work to be done by the after-care agencies. The grants should be for general administrative purposes, including the salaries of professional workers. Consideration should be given to establishing, in addition, a system of charging back by the after-care agencies the costs incurred in providing material assistance for parolees as part of their re-establishment plan.

The first days after release of the inmate are of critical importance. Food, shelter and clothing are essential and must be forthcoming unless the parolee is to be left in circumstances conducive to his return to crime. The relationship between the after-care agencies and the Penitentiaries Branch in regard to men released at expiration of sentence is very similar. These agencies now assume responsibility for most of the federal prisoners released on parole or at expiration of sentence and similarly for many prisoners released from provincial institutions. The extent of this relationship depends upon the extent to which the respective provinces have established probation and parole services. The after-care agencies have experience and skill in dealing with the problems of ex-inmates. Their Boards of Directors demonstrate citizen interest and a useful participation with government departments in an attempt to solve this social problem. It is true that legal restrictions are imposed on persons who are under parole supervision; but the maintenance of these restrictions within the case work relationship does not present undue difficulty to well-trained workers in the voluntary agencies.

We are impressed with the development of after-care in Canada. It is clear that a great deal of thoughtful experimentation has been going on. One project, for instance, which interests the Committee is the Rehabilitation Centre operated by the Salvation Army in Montreal.

We are of the opinion that as after-care agencies become stronger parole results will be more successful. This is especially true if more trained workers can be made available to these agencies. The Committee endorses the following extract from "A Manual of Correctional Standards", 1954, of the American Correctional Association:

"The prisoners' aid worker is not the Law, but it can help the law and the prisoner and ex-prisoner at the same time. It is bound by no hard and fast rules of institution, or department. It has no authority to punish. It should be — and usually is — the prisoner's real friend interested only in seeing him make good for his own sake and society's. In such a capacity, the prisoners' aid society can become the able and effective left hand of the law. It can interpret the prisoner's problems to society. Inside or outside the institution it can help the authorities to see that he gets a square deal and a fair chance to redeem himself."

Of great importance also is the working liaison between these agency case workers and the field staff of the Remission Service. If the federal government makes use of either provincial probation services or private after-care agencies, care must be exercised that the standard of service available is such that good supervision will be ensured. Representatives of the Remission Service should be in touch with all phases of the program and be in a position to assess the quality of service.

Agencies themselves, like their employees, should be subject to standards and to evaluation. The Penitentiaries Branch has now had ten years' experience in dealing with them. The Remission Service likewise has established active liaison. It is recommended that the Department of Justice confer with the agencies to ascertain whether a workable system of agency certification can be established.

Where voluntary agencies do not exist it is both efficient and economical for the federal government by arrangement to make use of existing provincial services. The provincial service that would normally be involved is the probation service. Two difficulties suggest themselves in relation to the use of this service for parole. One is the fact that, as probation officers, the staff usually do not have contact with the institutions. Some arrangement that would make it possible for the supervising officer to become familiar with the prospective parolees while still in the institution might be worked out. The other problem in combining the federal parole service with the provincial probation service is to ensure that sufficient attention is given to the parole service. The probation officer is usually under pressure from the courts to prepare pre-sentence reports, and to discharge his probation responsibilities in a manner acceptable to the court. This is his primary responsibility. In these circumstances there may be a risk that parole will be given second place in the probation officer's time-table. He may also feel that more can be accomplished by working with probationers, who are, for the most part, young first offenders. Hence he may consider parolees as a less promising group. These difficulties should not be minimized.

We have been impressed by the high calibre of social worker to be found in the correctional field. A standard has been set by most after-care agencies requiring a university degree in Arts and either a Bachelor's or Master's degree in Social Work. Many caseworkers in the correctional field meet these ideal requirements. In addition to these academic qualifications some workers have had custodial experience. We stress the importance of maintaining these high standards.

Since 1954 an annual conference called the Joint Conference of After-Care Agencies and Government Services has been arranged by the Remission Service. It has been singularly successful. It is a working conference held at the Penitentiary Staff College in Kingston. The agenda for the 1956 Conference was in part as follows:

- (a) To discuss problems relative to the care and after-care of prisoners with a view to developing and expanding methods of procedure.
- (b) To continue to promote a better understanding between the agencies on the one hand and the Government Services on the other.
- (c) To develop minimum standards for supervision of persons on Ticket of Leave.
- (d) To consider methods of pre-release procedure employed by agencies and institutions across the country.
- (e) To discuss other mutual problems.

To these conferences at Kingston come, largely at government expense, key after-care executives from all over Canada to meet with the appropriate federal government officials. We endorse this conference and its objectives. It is apparent that these meetings have done, and will do, much to provide uniformity in after-care services in Canada. They should also raise standards of efficiency, and are a means of assessing the problems of after-care.

The Archambault Report contained eighty-eight recommendations, of which four dealt specifically with after-care.

Recommendation 84 stated that "the efforts of the prisoners' aid societies should be co-ordinated in accordance with the principles applied in England and Wales under the authority of the Prison Commission and with a measure of financial assistance from the state".

In the past ten years, since the appointment of Major-General Ralph B. Gibson as Commissioner of Penitentiaries, decided progress has been made in implementing these recommendations as far as federal penal institutions are concerned. A measure of co-ordination has been attained through the Canadian Penal Association, which in 1948 for the first time was given a federal grant of two thousand dollars. As a result, this previously impoverished organization was able to organize new prisoner-aid societies in several parts of Canada and to formulate policies on agency standards and personnel qualifications. On the general policy governing penitentiary dischargees generally, the Department of Justice deals directly with the Canadian Corrections Association (successor to the Canadian Penal Association), which in turn consults its autonomous member-groups throughout the country. The Canadian Penal Association in 1948 also negotiated with the Penitentiaries Branch of the Department of Justice for financial assistance for the prisoner-aid societies that serve federal institutions. Since that time a grant has been made to them annually. In 1955 the grant was approximately \$40,000. It is distributed in proportion to the penitentiary population of the area in which each agency is located. In addition, the Remission Service granted \$20,000 to these organizations in 1955. Most provincial governments also make financial grants to the agencies.

Recommendation 85 was as follows:

"A definite effort should be made to enlist the co-operation of the public in assisting discharged prisoners to find employment and become re-established."

It should be stated also that, in furtherance of this recommendation, the National Employment Service of the federal Department of Labour is co-operating efficiently in finding employment for penal dischargees through its Special Placement Branch.

Recommendation 86 was to the effect that "associations similar to the Borstal Association in England should be organized to assist in the rehabilitation of youthful offenders". This recommendation has not been implemented, presumably because the Borstal plan for Canada, as set forth in the Report, has not been inaugurated except in the case of the Brampton institution in Ontario and the New Haven institution in British Columbia. Indeed, it is difficult, if not impossible, to implement fully several of the specific recommendations in the Archambault Report because its primary recommendation, for a unified prison system in Canada, has not been carried out.

Recommendation 87 was:

"Certain experiments should be undertaken in selected Canadian institutions, patterned after the English system of voluntary visitors and under strict supervision."

Although this system has yet to be tried extensively in Canadian penal institutions, an encouraging start has been made with the formation of the Elizabeth Fry Society in Kingston. That organization renders similar services to the inmates of the nearby Prison for Women.

It should be mentioned that the Canadian Penal Association, with generous grants from the Governments of Canada and Ontario, was host to the American Congress of Correction in Toronto in 1953. The Canadian Penal Association has now united with the Delinquency and Crime Division of the Canadian Welfare Council to form the Canadian Corrections Association, with permanent headquarters at 55 Parkdale Avenue, Ottawa. It should be able to render valuable service in the future in the Canadian correctional field.

A final word is indicated in connection with the reception that is now accorded a prison dischargee in the world outside the walls. Those who have spent a lifetime in prisoner rehabilitation work have informed us that public opinion has never been more understanding than it is at present. The people of Canada are beginning to realize that the penal reforms of the past decade in this country have been worthwhile.

The press and radio, given access to penal institutions as never before, have played a valuable role in public education. The same can be said for the documentary film. Employers are becoming more co-operative and the churches are increasingly responding to the challenge. "Prisoners are people" is ceasing to be a mere slogan. We are aware that in some of the provinces much improvement is still necessary. We consider that the voluntary after-care agencies, working in the field of parole, can assist materially in the development of a sound correctional system for Canada.

CHAPTER XI

PROPOSAL FOR A NATIONAL PAROLE BOARD

We consider that a number of fundamental principles should be kept in mind in determining what method of parole administration will be best for Canada. The system should take into account, among other things, the large size of Canada, in a geographical sense, and its relatively small size, in terms of population. It should also take into account the division of legislative power and administrative responsibility between one federal and ten provincial governments.

With these matters in mind, then, we suggest that Canada's parole system should be developed in accordance with the following principles:

- (a) it should provide for continued uniformity of parole administration, but at the same time avoid undue rigidity of practice and procedure;
- (b) it should take into account local conditions which may vary in different parts of the country;
- (c) it should be designed to assist in the development, as far as possible, of probation services, specialized penal institutions and after-care agencies;
- (d) it should, as far as possible, be a simple but efficient system; and
- (e) it should be built up from the present system during an appropriate transitional period and not instituted by any sudden, wholesale abandonment of the present system.

We are firmly of the opinion that the parole authority for Canada should be a quasi judicial body rather than, as is presently the case, a Minister of the Crown acting in an exclusively administrative capacity. The parole authority, we believe, should not be one that is liable to be subjected to the external and internal pressures which are, inevitably, brought to bear on Ministers of the Crown. We have no reason to believe that such pressures exert any influence in connection with the granting of Tickets of Leave at the present time. However, we do believe that it is in the best interests of Canada that the parole authority should, at all times, be in a position to say that its judgments can only be based on the merits of the particular case and that it is not open, in any way, to influence by extraneous considerations.

We recommend, therefore, the establishment of a national parole board, with headquarters in Ottawa, to have the jurisdiction indicated hereunder. It has been suggested to us that regional parole boards would be a satisfactory alternative. We reject this suggestion, because we consider that only a national board, having over-all jurisdiction, will be able to develop and maintain a national parole policy and practice, and provide the uniformity of administration that we consider to be so essential in this aspect of the Canadian correctional field.

Composition of the Board

We recommend a Board composed of five members. We consider that the volume of parole reviews that will result from a system of automatic examination of files will be more than adequate to keep five members fully occupied. It is essential, of course, that the Board have as many members as are required to enable it to fulfil its functions in an effective and efficient manner.

Members should be appointed on a full-time basis. Experience in other jurisdictions has demonstrated that parole boards consisting of ex-officio or part-time members do not function with maximum efficiency because such members do not have sufficient time in which to discharge properly their parole duties.

Qualifications of Board Members

Generally speaking, it is important that members of the Board should have personal attributes in addition to qualifications by way of education and experience. A member should be of such integrity, intelligence and good judgment as to command the confidence of the public. Having regard to his quasi-judicial functions, he should possess the equivalent personal qualifications of a high judicial officer. He should possess qualities of forthrightness and independence. It goes without saying that he should be appointed without regard to creed, colour or political affiliation.

The ideal educational background is, of course, one that is broad enough to provide the Board member with a knowledge of those provisions of the law closely related to parole administration. The specific areas of academic training that would qualify a person for membership on the Board would be professional experience in such fields as the law, psychiatry, social work, and applied criminology.

The background of experience from which the Board member could make the most effective contribution to the work of the Board would be experience that has furnished him with an intimate knowledge of situations and problems with which the offender is most often confronted. The fields in which this experience is most readily obtained are the judiciary, criminal law practice, probation or parole experience, social case work experience, experience in institutional administration and experience in law enforcement.

The manner in which Canada's first parole Board is constituted will be of the utmost significance in the development of Canada's parole system. Because its members will not have had previous experience as parole board members, it is of special importance that the initial appointments should be of persons who have had high level experience in different aspects of the correctional field. We do not hesitate to suggest, therefore, that initially the membership of the Board should consist of persons chosen for their special knowledge and experience, as well as for their personal suitability, as follows:

- (a) a person chosen from the senior ranks of the judiciary who would bring to the Board the dignity and impartiality of the Bench, and who could be given leave of absence from his judicial duties to be the first chairman of the Board;
- (b) a senior member of the present staff of the Remission Service, who would bring to the board his experience in the present parole system and thereby preserve continuity of administration;
- (c) a person having senior administrative experience in penal institutions for adult males;
- (d) a person having senior administrative experience in police work; and
- (e) a person having wide experience in non-institutional correctional work such as, for example, a voluntary after-care agency or a provincial probation service.

Powers and Duties of the Parole Board

The Board should have exclusive jurisdiction over parole in relation to all persons who are serving sentences of imprisonment imposed under the criminal law of Canada and, in particular, it should have the exclusive authority

- (a) to select inmates for parole consideration;
- (b) to determine at what time the inmate has derived the maximum benefit from imprisonment and the element of risk to society is the least, and to grant parole accordingly;
- (c) to determine the conditions of parole;
- (d) to provide for the guidance and supervision of paroled persons;

- (e) to revoke parole and authorize the return to imprisonment of persons whose paroles are revoked, and
- (f) to discharge parolees from parole where, in the opinion of the board, supervision and guidance is no longer required.

The Board should also have exclusive power to revoke or suspend orders made under the Criminal Code to prohibit persons from operating motor vehicles. It should also have authority to authorize temporary releases from penal institutions of inmates for compassionate reasons. It should also, where requested, advise the appropriate Minister of the Crown on all applications for the exercise of the royal prerogative of mercy by way of pardon, remission of corporal punishment, remission of fines and other pecuniary penalties, remission of sentences of imprisonment and remission of sentence for deportation. Again, it should be the duty of the Board to draw to the attention of the Deputy Attorneys-General of the provinces all cases in which the Board is of the opinion that the sentence imposed is illegal or excessive, where no appeal against sentence has been taken.

Method of Operation

The Board should not be required to grant to inmates an opportunity for a personal interview with Board members. While it is the practice of members of some parole boards in other jurisdictions to have personal interviews with inmates before determining whether parole will be granted, we are satisfied that interviews between Board members and inmates do not serve a sufficiently useful function in the parole process to justify the expenditure of time and money that would be necessary to enable, in a country as large as Canada, members of the Board to travel to all institutions for parole interviews with inmates. Such interviews should be conducted by the regional representatives of the Board. Similarly, the Board should not be required to hear oral argument by counsel or other persons on behalf of inmates but should be at liberty, in proper cases, to grant such hearings. All representations to the Board should be required to be made in writing.

The decisions of the Board should be final and conclusive and not subject to appeal. It should have exclusive authority to determine its own procedure and, as is the case under the present system, it should not, in any way, in so far as matters within its jurisdiction are concerned, be subject to the jurisdiction possessed by courts of law to interfere with the conduct of judicial or administrative bodies. The Board should not be required to make public, at any time, the reasons for any decision that it may have made in a particular case, but it should be authorized, at its discretion, to disclose the reasons to the inmate concerned and to publish, from time to time, general statistical information disclosing the reasons that have moved it to decide against the granting of paroles.

Administration

The chairman of the Board should be the chief administrative officer for the purposes of all the operations of the Board. The day-to-day administration of the parole service should be the responsibility of an Executive Director who should be responsible to the chairman of the Board. It would be the responsibility of the Executive Director to see to the proper investigation of cases and the preparation of material in relation to them for consideration by the Board and also the supervision of parolees. He should be assisted by two Assistant Directors, one in charge of investigation and case preparation and one in charge of field services and supervision. At Ottawa there should be such administrative officers, clerks and stenographers as may be necessary to handle the volume of work that will arise.

The Board should establish district or regional offices across the country, preferably close to the large federal and provincial institutions, in order to provide close

liaison between the officers of those institutions and the Board and also to provide for effective arrangements for the supervision of persons on parole. Generally, the local representative of the Board would be responsible for parole interviews and hearings in the institution, local investigations, arrangements for supervision of parolees, enforcement of supervision and the general administration of parole services in his area. We consider that there is a great need for the immediate expansion of the regional services of the Remission Service and, concomitantly, the headquarters staff of the Service. In our opinion the expansion should commence forthwith so that the necessary facilities will be available to enable the parole system of Canada to be carried on effectively.

We set out, in Appendix Q, a chart showing the suggested organization of the parole service.

The day-to-day supervision and guidance of parolees should, we consider, be provided wherever possible by a recognized voluntary after-care agency or a provincial probation service. In either case the supervisor would be under the direction of the regional or district representative of the Board. We consider that it would be economically unsound at the present time in Canada to attempt to provide a sufficient number of parole officers, employed by the Government of Canada, to provide direct supervision of parolees. We consider that adequate service can be provided by the established after-care agencies and the provincial probation services. Such organizations should, of course, receive adequate remuneration for their services. The Board should, furthermore, encourage and assist the establishment and maintenance of after-care agencies with qualified personnel in those areas where such services are needed.

We consider that the Board should establish and maintain a research section in conjunction with other branches of the Department of Justice and the Dominion Bureau of Statistics in order that the parole service may develop in accordance with changing conditions in the country.

The Board should also adopt rules and regulations governing parole policy, practice and procedure and establish a body of parole precedents. Members of the Board should make periodic inspection trips to the district or regional offices, penal institutions and the headquarters of after-care agencies throughout the country. •

CHAPTER XII

ADMINISTRATION OF FEDERAL CORRECTIONAL SERVICES

We have had occasion throughout this Report to refer to the desirability and, indeed, the necessity that, so far as possible, the operations of all parts of the total correctional organization in Canada be completely integrated. We realize that, having regard to the distribution of legislative and administrative powers between the Parliament and Government of Canada, on the one hand, and the Provincial Legislatures and Governments, on the other hand, complete integration is impossible. However, we do feel that on the federal level, a much greater integration of the organizations and agencies concerned is possible than is now the case.

There is, at the present time, in the Department of Justice a Criminal Law Section. The Director of that Section is directly responsible to the Deputy Minister of Justice. The Section is charged with the preparation of criminal legislation for introduction in Parliament, the instruction of agents of the Minister of Justice in connection with criminal prosecutions under Acts of the Parliament of Canada other than the Criminal Code, and the preparation of legal opinions for other Departments of the Government of Canada on matters involving the criminal law. In the Department of Justice there is also, as we have seen, the Remission Service, the Director of which is responsible to the Solicitor General.

The R.C.M. Police is the federal police force. The Commissioner of the R.C.M. Police, who has the status of a deputy head, is directly responsible to the Minister of Justice for the administration of that Force.

The Commissioner of Penitentiaries, who also has the status of a deputy head, is directly responsible to the Minister of Justice for the administration of the federal penitentiary system.

It is our opinion that the Department of Justice should be organized in such a way that one senior officer of the Department should be responsible directly to the Minister for the operation of the Criminal Law Section and should also be responsible for the liaison of the work of this Section with the proposed parole board, the R.C.M. Police and the Penitentiaries Branch. It is not our suggestion that this officer should be responsible, in any way, for the day-to-day administration of the Board, the Force or the Penitentiary system. That should continue to be the responsibility of the chairman of the Board and the respective Commissioners. What is desirable, however, we think, is that, under the Minister, the operations of the Force, the Penitentiaries Branch, the Parole Board and the Criminal Law Section of the Department should be integrated and that there should be one officer of the Department, who is thoroughly familiar with the operations of all these groups, to advise the Minister with respect to criminal matters generally.

CHAPTER XIII

PROFESSIONAL TRAINING IN THE CORRECTIONAL FIELD

We believe that university education for career work in the correctional field has not been satisfactorily developed, despite recommendations for such courses of study in the Archambault Commission Report of 1938. There would also seem to be a need for professional training in the techniques of law enforcement and police administration. It is recognized that needs in both of these areas are partially met by the in-service training programs of the Penitentiaries Branch, the R.C.M. Police and various provincial and municipal agencies, but such efforts are not adequate substitutes for the pre-service training at a university level which is essential to the professionalization of any field of activity.

Apparently two major types of university education are involved in the development which is required. The first of these includes the professional specialties which are coming more and more to serve prisons, probation departments and after-care agencies. Perhaps the most important of these professions, at least in terms of the numbers of workers involved, is social work. Here the major need would seem to be for the inclusion in social work curricula of course material orienting students to correctional programs, and familiarizing them with the skills, methods and problems which distinguish such operations from other social welfare activities. A similar principle might be applied, though with less emphasis, to such disciplines as psychology and psychiatry (and perhaps even law) in the sense that certain students concentrating respectively in these fields, who propose to work in correctional capacities, should be helped to become familiar with the phenomena of crime and with the character of the programs which treat and control the criminal, either through the addition of courses on these subjects within the fields named or, perhaps preferably, through the enrolment of such students in selected courses in criminology.

The second major type of university training which is in need of development is the area of criminology itself, which we define as the study of crime and its treatment. As far as we are aware only one Canadian university (The University of British Columbia) has undertaken intensive training in this field at both the graduate and the undergraduate levels. The size and the urgency of the crime problem in Canada underscores the need for professional training which focuses directly upon crime and its treatment, rather than presenting these subjects merely as aspects of other welfare problems. We do not suggest that criminal behaviour is clearly distinguishable from other human problems, but we do believe that the study of the nature, cause and treatment of crime is an area which deserves special attention within a separate academic curriculum. We further believe that a serious effort should be made to integrate the contributions of criminology with those of law, social work, psychology and other disciplines which are concerned with the treatment of offenders.

The following recommendations are intended to implement the conclusions outlined above:

1. We recommend that the Department of Justice organize and sponsor a national conference to be attended by representatives of Canadian universities which are interested in the development of education in the fields of correction and law enforcement. The purpose of such a conference would be to formulate university programs for the training of workers in the two major areas outlined, i.e. the inclusion of courses on corrections and law enforcement within existing professional fields (particularly social work), and development of additional academic programs in criminology. We suggest, tentatively, that specialized criminology instruction might be developed at one or possibly two Canadian universities, in addition to the University of British Columbia, and that there might be some

division of labour between these programs, e.g. one concentrating on penology, another on police administration, and possibly a third on the functions of probation and parole. While these specific suggestions are intended largely to stimulate consideration of alternatives by the universities involved, we are definitely of the opinion that the university programs in the instruction of criminology should also sponsor scholarly research in the causation of crime and the efficacy of efforts to treat offenders and perhaps also should encourage and participate in institutes and conferences for correctional and law-enforcement personnel, as well as furnishing consultative services on request to public and private agencies which deal with offenders.

2. We further recommend, as a first step toward the organizing of such a conference, that a "steering committee" consisting of appropriate faculty members from various Canadian universities be named by the Minister of Justice and be assigned the task of planning the meetings, determining their agenda, and selecting the participants. We consider that the conference should determine specifically the ways and means of implementing the general objectives set forth above.
3. Finally, we believe that the development of adequate university education along the lines recommended will require special financial support from both the federal and provincial governments involved, and we strongly recommend that, following the conference of educators, special funds be made available to aid the development of university education in criminology and related fields, such designated subsidies to continue until these programs are firmly established. It would seem appropriate that the granting of such funds should be made contingent upon the universities meeting reasonable standards relative to the quality of teaching and research conducted by them.

A similar but separate form of financial assistance to pre-service training programs in these fields would be scholarship and tuition assistance plans designed to encourage persons with superior qualifications to prepare for careers in corrections and law-enforcement, and we approve the principle of governmental assistance in financing student-aid of this kind.

We have mentioned in Chapter XI the desirability of establishing a research section in the Department of Justice. This section could organize the development of university and other assistance relative to research and training in the correctional field. It is noted that there is a precedent for the creation of such an administration unit in the Department of National Health and Welfare of Canada. We wish to place the greatest possible emphasis on the urgent need for professional education and research on crime and on the programs which seek to control crime, because without development in these fields, Canadian efforts will lack professional understanding and direction. The Federal Government, through the Department of Justice, should take the lead in developing these areas by financial assistance and other means, since the problems and functions involved have national as well as regional significance.

CHAPTER XIV

SUMMARY OF RECOMMENDATIONS

Our inquiries have led us to conclude that a number of goals must be achieved before it can be said that Canada has an adequate system of corrections. We have observed that these goals have been achieved, to a substantial extent, by other countries whose systems we have studied. In those countries it is undoubtedly the case that many good features are indigenous to the local custom and national character and would not be suitable for Canada. There are other features which, however, impressed us as being based on sound principles that are applicable to any country, including Canada. Some of these features are:

- (a) a high degree of integration between all parts of the correctional system;
- (b) a well developed and extensive system of adult probation;
- (c) a concentration of effort on treatment by way of training, rather than the mere imposition of punishment; this is especially so in the case of special classes of offenders, particularly youthful offenders and persistent offenders;
- (d) specialization of institutions and specialization of methods of treatment, with a concentration of professional staff in the areas where it is most needed;
- (e) the development of small, open, minimum security institutions;
- (f) a planned policy of recruitment and training of professional staff; and
- (g) a willingness to make full-scale experiments in all phases of the correctional system.

These, then, are the primary goals. We summarize hereunder some of the main recommendations that we make in our Report as the best means to achieve them. We emphasize that our recommendations, as set out below, are nothing more than brief summaries inserted here for the purpose of convenience. They can best be appreciated when they are read in the context in which they are found in the body of our Report. They are as follows:

1. A serious effort should be made by all governments concerned, whether federal, provincial or municipal, to acquaint the public with the purpose of a sound system of corrections and the benefits to be derived from it.
2. Some means should be found whereby the courts, at all levels, may be made more conscious that the true purpose of punishment is the *correction* of the offender and not mere retribution by society.
3. Each of the provinces should establish full-scale systems of adult probation.
4. The Parliament of Canada should give serious consideration to
 - (a) the abolition of a number of the restrictions on the power of courts to suspend the passing of sentence; and
 - (b) the enactment of legislation to authorize probation without conviction.
5. The provisions of the criminal law that authorize imprisonment in default of payment of fines by persons who are unable to pay them should be repealed.
6. No distinction should be made in the law, as far as time for payment of fines is concerned, between indictable offences and summary conviction offences.
7. In passing sentences the courts should rely, to a much greater extent than they now do, upon pre-sentence reports.

8. Appropriate arrangements should be made for visits by judges and magistrates to the penal institutions to which they sentence offenders who appear before them.
9. The respective Attorneys-General of the provinces should co-operate with each other to the full in implementing the provisions of section 421 (3) of the Criminal Code, whereby an inmate who is in custody under sentence in one province may plead guilty, in that province, to charges that are outstanding against him in another province.
10. The law should be amended to provide that a person who is convicted of an offence has, at that time, the right to have taken into consideration, for the purpose of sentence, all outstanding charges against him to which he is prepared to plead guilty. The practice of holding warrants until an inmate has been discharged from a penal institution should, as far as possible, be avoided.
11. Appropriate arrangements should be made between the Attorneys-General of the respective provinces for the uniform enforcement, in all provinces, of the provisions of the Criminal Code relating to habitual criminals and criminal sexual psychopaths.
12. The provisions of the Prisons and Reformatories Act that authorize the imposition of determinate plus indeterminate sentences should be repealed and the parole boards of Ontario and British Columbia should be abolished.
13. In any case where a convicted person is between the ages of 16 and 21 or where a maximum term of imprisonment of two years or more may be imposed, no offender should be sentenced to any term of imprisonment without consideration, by the court, of a pre-sentence report.
14. No sentence involving corporal punishment should be imposed upon any offender without prior consideration of a pre-sentence report concerning the physical and mental condition of the offender.
15. No sentence of corporal punishment should be executed until full inquiry has been made by the Remission Service and the responsible authority has ordered that there will be no interference with it.
16. Appropriate legislative amendments should be made immediately to provide that no person under the age of sixteen years shall be committed to penal institutions where adult prisoners are confined.
17. Consideration should be given to the establishment of a procedure for the granting of pardons, with or without condition, on a much more liberal scale than is now the case. In the granting of pardons, resort should be had to the Criminal Code provisions that authorize the Governor General in Council to grant them rather than to grant them under the royal prerogative of mercy.
18. Some means should be devised by which unjustified inequalities in the length of sentences of imprisonment, especially in the cases of co-offenders, can be remedied.
19. In all cases where the innocence of a convicted person is established, a free pardon should be granted, whether or not a free pardon is sought.
20. The federal and the provincial governments should give serious consideration, in expanding their systems of penal institutions, to the establishment, on a medium security basis, of such additional institutions as may be required.
21. In the Women's Prison at Kingston, Ontario, a more intensified system of varied forms of treatment should be instituted.

22. The federal and provincial governments should proceed, as quickly as possible, with the establishment and maintenance of more specialized types of institutions for the treatment of various types of offenders.
23. In relation to the operation of all penal institutions in Canada, more reception centres should be established to which inmates may be initially committed for classification and ultimate committal to the particular institution that provides the most useful form of treatment in their particular cases.
24. Classification staffs should be provided for all penal institutions in Canada and, where they already exist, they should be increased to an appropriate size.
25. No penal institution in Canada, of whatever type, should contain more than 600 inmates.
26. Special types of institutions, with specialized treatment, should be provided for alcoholics, drug addicts, sex offenders and psychopaths.
27. The present arrangements between the Government of Canada and the provincial governments should be reviewed in order to enable speedy transfer of insane prisoners from federal penitentiaries to provincial institutions that have suitable facilities for their care and treatment.
28. Every penal institution in Canada should institute an appropriate pre-release program for the benefit of inmates.
29. The responsible authorities should examine the entire legislative framework of the Canadian correctional system for the purpose of providing a well co-ordinated statutory basis for the Canadian system of corrections.
30. Until recommendation 31, can be implemented, any person who is sentenced to imprisonment for a total term of two years or more, by whatever combination of sentences this total is arrived at, should be confined in a penitentiary and not in a provincial institution.
31. The provincial governments should be responsible for the care and treatment in penal institutions of persons sentenced to imprisonment for maximum terms of six months or less, and persons sentenced to imprisonment for periods longer than six months should be confined in penal institutions operated by the federal government.
32. If it is not possible to implement these recommendations, or most of them, within the next two or three years, amendments should be made immediately to the Ticket of Leave Act as suggested in Chapter VII of this Report.
33. The Ticket of Leave Act, the Prisons and Reformatories Act and certain portions of the Penitentiary Act should be repealed and be replaced by one statute that deals in a comprehensive manner with all the matters now dealt with in those Acts and incorporates the recommendations in this Report.
34. The duty and responsibility of arranging for the transfers of inmates from penal institutions to hospitals for the purpose of medical attention should be removed from the Remission Service and left to the Commissioner of Penitentiaries in the case of federal penal institutions and to the responsible deputy head in the case of provincial institutions.
35. As soon as possible, a system of automatic parole review should be instituted for Canada, thereby dispensing with the present system which requires an application for parole.
36. The practice of seeking the views of the trial judge or magistrate, in the case of parole, should be abandoned, except in special cases.

37. Provision should be made for the official termination, at an appropriate time, of long-term paroles and those in special cases where the adjustment of the former inmate is obviously excellent and it is unlikely that he will resort again to crime.
38. Some means should be found to provide specialized after-care for particular types of parolees, such as sex offenders, drug addicts, alcoholics and psychopaths.
39. The federal and provincial governments should increase their financial grants to voluntary after-care agencies in order to enable them to work more effectively in the correctional field.
40. Voluntary after-care agencies should be subject to minimum standards and to evaluation and some workable system of agency certification should be established.
41. The annual conference of after-care agencies and government services should be continued in the future.
42. A national parole board should be established as recommended in Chapter XI of the Report.
43. The administration of federal correctional services should be organized as suggested in Chapter XII of the Report.
44. The Department of Justice should organize and sponsor a national conference of representatives of Canadian universities to formulate university programs for the training of workers in the correctional field.

Conclusion

We have considered the manner in which an offender may be dealt with (i) by the courts, (ii) in the penal institutions, (iii) by the Remission Service and (iv) in the early stages of his return to the community. From the inception to the end of our inquiry, we never ceased to be conscious that diligent enforcement of criminal law is of the essence in the defence of the community and its members against criminals. Our recommendations and their implementation remain subject to this primary consideration. Sentences, in their many forms, are the measures designed to achieve the purpose of criminal law. In that sense and as criminal law itself, they are conducive to preventive justice. However, this they only and truly are if, in the ultimate result, the offender has become a better, and not a worse, citizen than he was when first brought to the court. Otherwise they are temporary and illusory in character, if not detrimental to the very purpose they were meant to achieve. Without a judicious and individualized consideration in each case, be it for purposes of sentence, treatment, remission or parole, the achievement of a successful result is abandoned to hazard. No matter what may be the diversity and the quality of preventive measures designed and adopted in this branch of operation of criminal justice, there will undoubtedly continue to be criminals and recidivists. These are truths as permanent as human nature. The necessity and the duty remain nonetheless to meet the problem. The failure of a relatively few offenders to respond to the hopes of the courts, the penal institutions, the Remission Service and after-care agencies affords no justification for a failure by society to attempt to salvage, reform and rehabilitate the majority of those who have offended the laws of the country. In the achievement of such a purpose we think that our recommendations, if implemented, will be of assistance.