

# Notes and Comments

## — Commentaires

### A SUMMARY DISCUSSION OF THE OUIMET REPORT

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Last summer, the Government of Canada received the report of the Canadian Committee on Corrections, the result of almost four years study under the chairmanship of Mr. Justice Roger Ouimet and G. Arthur Martin Q.C., of Toronto as Vice-Chairman.

The other members of the Committee were J. R. Lemieux, Deputy Commissioner of the R.C.M.P., and Mrs. Dorothy McArton, Executive Director of the Family Bureau of Greater Winnipeg, and Mr. William T. McGrath, Executive Secretary of the Canadian Corrections Association.

The Committee sub-titled its report "*Toward Unity, Criminal Justice and Corrections.*" From the Report, it is evident the study examines and includes every stage in the penal process from the offender's first contact with the police to his final discharge.

The Report made one hundred and eighteen recommendations that range from the powers of police arrest and bail, the accused's appearance in court, the sentencing process, reception for rehabilitation either through probation, prisons or parole, also topical data and observations and recommendations having to do with citizen participation, the adult, the young adult offender, the woman offender, criminal records, element of personnel and the development of research, planning advisory committees.

The Committee travelled from one coast of Canada to the other, visiting institutions, police and receiving many hundreds of representations. The Committee also travelled throughout various parts of the world viewing correctional facilities and programs together with research programs and considered a mass of reference bibliography.

The result is that the Report constitutes probably the most comprehensive survey of corrections ever made in Canada and certainly would be an excellent basis for the study of corrections in the academic field.

When one considers the personnel of the Committee, it would appear that there probably was considerable initial conflict. This was one of the first committees to consider this subject that had members other than legally trained personnel or police. One must note the fact that there were two members of the Committee trained in the Social Sciences. One has the feeling that the result of the Committee's findings are the resolution of probably extreme differences but not a sublimation of the ideals. The result is a fine inter-disciplinary approach to the whole problem of correc-

tions and rehabilitation of the offender, a resulting progressive new approach to the problem of combatting crime in Canada.

Although it talks in terms of corrections and rehabilitation, the Committee is very careful to point out and the emphasis is not lost throughout the Report, that the prime responsibility of all the processes of corrections are to protect society from the effects of crime, not however, forgetting the offender.

The impact of the Commission has been very marked and no doubt has had, and will continue to have a major influence on Canada's approach to crime, and more so than the previous Commissions, the Archambault and the Fauteux Commissions, that found little of their recommendations implemented by the Governments of the day.

Upon the commission's Report being received and even previous to the final report, on the basis of certain preliminary recommendations, the Government has made amendments to the Criminal Code, and from the statements made by the Minister of Justice and the Prime Minister, there is little doubt but that many of the recommendations in the Ouimet Commission hold high priority in the business of this Government.

I would again stress that the over-riding principle that emerges is the emphasis of unity of purpose in all the various areas of corrections and the strong inter-disciplinary approach that calls upon all the contributions that can be made to corrections from medicine, law, sociology, psychology, social work, and all other areas of the Criminology aspect.

A careful study of the Commission report refutes the attitude of some people that the correctional process is one of the molly-coddling the accused. This is clearly unfounded and not based on fact. The emphasis is on complete treatment and unity of purpose in the area of corrections together with the aim of finding the appropriate treatment of the offender. Hopefully the offender will be returned to society as a useful citizen, and thereby remove his possible criminal activity. In this way, society is protected.

The Committee, had its terms of reference, but it was first necessary for the Committee to establish the basic principles, the purposes of criminal justice, so that it could consider the problem. In the opinion of the members of the Commission, this probably was the most difficult task and the greatest accomplishment of the Committee in arriving at settlement and agreement on these principles. It is interesting to note that the English Committee set up to study Corrections some years ago, broke up because it was unable to arrive at unity of approach to these principles.

When one considers these principles, the reader is struck both by the simplicity and obviousness of them, but on consideration one can see the

problems of arriving at the unity of understanding because of the diversity of the backgrounds represented by the Committee and the various disciplines, the various publics, and their different attitudes as reflected by the members.

Because of the importance of these principles, I will mention them without discussion. I would ask the reader to dwell thoughtfully upon them to appreciate their importance.

The Committee unanimously accepted these propositions, as "indicating the proper scope and function of the criminal and correctional processes" as follows:

1. The basic purpose of criminal justice is to protect all members of society including the offender himself, from seriously harmful and dangerous conduct.
2. The basic purposes of the criminal law should be carried out with no more interference with the freedom of individuals is necessary.
3. Recognition of the innocent must be assured by proper protection in all stages of the criminal process.
4. No conduct should be defined as criminal unless it represents a serious threat to society and unless the act cannot be dealt with through other social and legal means.
5. The criminal justice process can operate to protect society only by way of
  - a) the deterrent effect both general and particular of criminal process, prohibitions, and sanctions.
  - b) correctional measures designed to achieve the social rehabilitation in the individual
  - c) control of the offender in varying degrees including the segregation of the dangerous offender until such time when he can safely be released or when safe release is impossible, for life.
6. The law enforcement, judicial and correctional processes should form an inter-related sequence.
7. Discussion in the application of the criminal law should be allowed at each step in the process arrest, prosecutions, conviction, sentence, and correction.
8. The criminal process including the correctional process must be such as to command the respect and support of the public. According to prevailing concepts of fairness and justice, the process should also as far as possible be such as to command the respect of the offender.

I would briefly refer to the fourth precept because there is presently a great deal of discussion involving this approach during the consideration of the revision of the Criminal Code. Many of the persons involved in this debate and other people involved in criminology in Canada are advancing a new philosophical approach to the problem of crime in Canada which lays emphasis upon the dangerousness of the offender rather than the relative dangerousness of offences. In other words, in line with the consideration of the Commission, a crime should not be serious unless actually or potentially substantially damaging to society. Also no crime should be

created where it can be controlled by social forces such as public opinion, in the area of mental health, or social and economic programs. Further consideration should be given to the removal of any law and prevention of the enactment of any law that causes greater social or personal damage than that which it was designed to protect.

It is argued that crime should be better defined with levels of seriousness based on the dangerous behaviour of the offender. Thus, the possibility that the dangerous drivers who kill on the highway are a much more serious threat to society than the murderer is, a relevant consideration.

Therefore the committee recommended the establishment of a Commission to study and examine the substantive criminal law in Canada bearing in mind the above philosophical considerations and "the classifications of crimes with a view to developing a system of classification that would distinguish between illegal acts on a more realistic basis."

Once the committee had established these principles, it examined the incidence of crime in Canada and came to the conclusion that Canada is not experiencing a marked increase in serious crime. Relatively, the male conviction rates for indictable offences have increased slightly while the female rate doubled. There is a greater incidence of non-violent property offences in relation to violent offences which affect persons.

The commission was cognizant of the fact that there had been certain transient developments in the area of crime in Canada in the past years and made a careful analysis of them. It found that there was a great deal of public interest and in many instances, public participation in the field of corrections in Canada and there had been a marked increase. However, the public was not fully aware of the issues that were involved. As the committee examined the various agencies that were giving leadership and planning, it was noted that there was a certain amount of interdiscipline co-operation but it fell far short of that which would be necessary to bring about a complete correctional system. Unfortunately due to poor court systems and government, statistics were lacking and that correctional legislation had been a minimal.

If space devoted in the Report is any criterion, the committee thought very seriously about Police for it spent a great deal of time in considering investigation of offences and police powers. This chapter is a very significant one, and is entitled to careful study.

The police are an arm of society and should not operate in isolation. Their function is to operate with delegated powers from society to enforce the rules created by society. Unfortunately much of the public do not appreciate this and are not aware of the role of the police not to mention the fact that many students of the law and the police themselves are unaware of these principles.

To quote the committee "the apparent functions of the police are (a) to prevent crime (b) to detect crime and apprehend offenders (c) to maintain order in the community according to the rule of law (d) control of highway traffic has also become an important police function in modern times". The commission found that within these roles are many areas that meant that the police could not spend as much time on crime detection and apprehension as one would wish but were overburdened with other aspects of their work such as clerical work, peace-keeping activities, and community service functions. All these aspects of police work must be performed by the police as agents of the community within the framework of delegated powers and with the realization that police activities are accountable to courts of law. The system is based on a delicate balance that gives the police sufficient power to enforce the law and yet they must avoid abuse of the rights of citizens.

Although the police are the arm of society, there is an attitude based on the "we-they" principle that continues to impair the support and confidence that the public should have in the police. The committee was aware of the fact that there seems to be a degeneration between society and its own agency. In fact, there are instances of antagonism particularly with young people and motorists. The commission, however, found that there seemed to be a basis of confidence in the police generally in Canada.

The police are defensive of their position and on reflection, there is no doubt that it is warranted but their reaction is somewhat overstated. Probably the primary reason for the attitude the public have towards the police is because of the many unpopular laws that they have to enforce of a regulatory nature. To name a few:

- 1) the Liquor Acts
- 2) the Highway Traffic Acts
- 3) some offences in the Criminal Code and such other trivial matters under Provincial jurisdiction.

There are many more laws being passed of a regulatory nature that bring the police in ever-increasing contact with the citizen and those police who do not have a personality that allows good relations with the public become more and more evident, to foster more citizen hostility.

The committee called for special public relation programs directed toward increasing public understanding and not merely a public promotion of the police department. This, of course, would necessitate the police accepting informed criticism that should be received as such and not considered an attack. To appreciate this type of relationship requires broadened police training programs and the removal of the police departments from isolation and the inclusion of training in many other areas other than pure police sciences.

From the correctional point of view, the relationship of the police to

the offender is, of course, of great importance. The action of the police is the first step in the continuing process of corrections and the unnecessary use of force or other unfortunate relationships with the accused may and often does cause the offender to acquire an attitude that materially may affect the possibilities of corrections and rehabilitation. Co-operation of the offender is essential and the police have to avoid action that would not allow for successful rehabilitation as part of the process. The police must develop an ability to use discretion, whether or not to prosecute for many reasons, such as marginal offences, youthful offenders, and many other circumstances. Cautions and warnings go a long way to the prevention of crime.

As stated previously, the primary function of the police is the prevention of crime and the assistance of the public is required. The police, therefore, should have comprehensive programs to educate the public to take action that will prevent crime such as precautions with regard to large sums of money, improved auditing procedures, care of buildings and property, control of firearms and other matters.

The committee was aware of the fact that the powers of the police are broad but point out that the use of their powers was not effective to a police department unless developed for the purposes of ensuring that criminals were detected and apprehended. The use of their powers can sometimes infringe civil liberties, and the resulting clash can contribute to misunderstanding and confusion as to the extent of the police powers. There must be a balance between security and the protection of individual rights.

There is some confusion as to the rights of police to obtain evidence and to question the accused for the purposes of obtaining incriminating statements. The latter is probably the most important.

The basis for the use of such questioning is voluntariness of the statement obtained. All citizens are protected from violence or threat of violence or other illegal or unlawful acts. The committee found that the rules for obtaining incriminating statements were generally followed in Canada, but that the protection afforded the offender depended ultimately on the quality and integrity of the police force.

With regard to the power to detain on suspicion or interrogation, the committee rejected this, wishing to maintain the civil rights of all persons.

The committee suggested the establishment of a separate agency for the purpose of collecting and maintaining fingerprints, but that it should be carefully controlled.

The committee was concerned with Section 25 of the Criminal Code with regard to the use of firearms in flight and was of the opinion that the use of firearms "to prevent the escape of a person who has taken flight to

avoid arrest after having committed a minor offence or a serious offence *which does not represent a threat to personal safety* is not warranted." Amendments to the Code were suggested to limit the use of firearms and chase, if involving violent serious offences, if the offender may seriously endanger the public, and if other reasonable means can not be used to prevent the escape.

To consider the matter of the right to "stop and search", the committee recommended codification of the powers of the police to give uniformity of procedure throughout the country. This, too, also covers search of premises and any other extra-ordinary powers of search such as under the Narcotic Control Act.

The committee considered the matter of evidence obtained by illegal means and came to the conclusion that enactment of proper legislation should give a discretionary power to the court to reject illegally obtained evidence, and when exercising such discretion the court should take into consideration whether or not violation of any right was wilful or not, whether there was a necessity of preventing destruction or loss of evidence and whether or not the admission of the evidence would be prejudicial to the accused. This discretion should not affect the present discretion of the court to disallow evidence that would act unfairly against the accused. Comment was made that the use of informers and under-cover agents was only permissible if the action did not create or encourage crime and that the principle of entrapment should not be tolerated in the actions of agents provocateur and that legislation to that effect should be passed. The use of wire tapping and electronic surveillance should be controlled by legislation, the possession of same for criminal purposes to be an offence and that such possession would prima facie be evidence of criminal purpose.

## ARREST

The committee reviewed the usual reasons for arrest as being in the public interest to establish the identity of a suspect, to prevent the crime, to avoid the destruction of evidence, for the protection of the accused and the improbability of the accused appearing in answer to his summons. Upon consideration, thereof, it was recommended that Section 435 of the Criminal Code be amended to require not only reasonable grounds to believe that the indictable offence has been committed or is about to be committed but also the reasonable belief that the arrest is necessary in public interests and arrest in the case of summary conviction offences if it is necessary to the public interest.

This consideration brought the committee to the recommendation that Section 440 of the Code should be amended to provide that summons should be used rather than warrants of arrest unless it appears in the public

interest that such action should be taken. They further recommended that this discretion, that summons be issued, should be given to the police officer in the case of summary conviction offences or indictable offences in Section 467 of the Code, and that such discretion should not only be exercisable in the first instance but even following arrest.

The committee then considered in depth the matter of bail; the principles to be considered are based on the consideration that detention should not be invoked unless there is doubt of the appearance of the accused at his trial, and the necessity to protect the public pending his trial. This includes the prevention of further criminal acts by the accused such as destruction of evidence or interference with witnesses or such other acts that may pervert the course of justice.

The committee was aware of the fact that, while the principles of bail were enunciated through the law, there was considerable disparity in the application of them throughout Canada, and the committee was of the opinion that to correct the abuses and misconceptions, legislation should be passed.

Generally the legislation recommended involved the following principles:

- 1) bail should be granted unless there are reasonable grounds to believe that the accused will not attend or that there are reasonable grounds for believing that the protection of the public requires him to remain in custody.
- 2) that on application, there should be no publicity concerning the bail hearing
- 3) that on application although the criminal record of the accused is heard, there shall be no inference from that that the accused should not be released on bail
- 4) that evidence on the issue of bail may be presented
- 5) that upon the decision to grant bail the accused shall be released on his own recognizance unless the judge has reasonable grounds to believe that the accused will not attend his trial in which case there shall be sureties or deposit.

The committee went further to recommend that the police be empowered to release the person on bail with respect to summary conviction offences and indictable offences in Section 467.

The committee recommended legislation to permit all reasonable conditions for the bond and was unanimous in recommending the prohibition of professional bondsmen. As the law presently operates and is interpreted by the police and justices, many accused persons are unnecessarily arrested even though the use of a summons might be sufficient. As a result of such arrest, many people are held in prisons and lockups awaiting trial with all the resulting problems to the accused.

As a direct result of the recommendations, the Minister of Justice on



June 8, 1970 introduced the Bail Reform Bill for the consideration of Parliament and the public of Canada. In accepting the principles of the Ouimet Report, the minister advised that the underlying aim of the Bill will be that "arrest will not be justified if the arresting officer has reasonable and probable grounds to believe that a method other than arrest is adequate." This imposes new and important responsibilities upon the police administration. The objectives are a) to avoid unnecessary pre-trial arrest and detention, b) to ensure that upon arrest the accused is not unnecessarily held in custody pending trial c) to ensure early trial d) to provide statutory guidelines for bail granting. The highlights of the Bill are:

- a) to discourage arrest by placing the onus upon the peace officer
- b) to give the peace officer a third alternative to issue at once an "appearance notice" to cover minor offences such as those in Section 467 of the Criminal Code, offences in which Crown has the option, and offences punishable on summary conviction
- c) to ensure early appearance before a justice
- d) to expand the powers of the police to release arrested persons and to impose a duty to release as soon as practicable, including a power of release to officer in charge of the lock-up who has a wide range of methods of release such as, 1) summons 2) appearance notice 3) undertaking by accused to appear or 4) release resident on own bond up to \$500. or non resident may require cash or surety up to \$500. i.e. the failure to appear shall be an offence.

The proposals that establish guides for bail are firstly, the general rule that the accused should be released upon his written undertaking to attend court, secondly, the Crown must establish the need for a more binding form of release than the undertaking, thirdly, detention of accused is justified only if necessary to ensure attendance or if released, the accused will commit an offence involving serious harm, interfere with justice, or if necessary in public interest or safety. All may be subject to reasonable conditions. Also bail continues up to trial there are no necessary applications as now such as upon committal. All bail is subject to review by courts upon request by accused and bail must be considered if the trial is not to be held within 90 days for indictable offences and 30 days if a summary conviction offence. If upon hearing detention is not justified, he must be released.

Further guides are set regarding bail pending appeals. In the case of indictable offences the tests are — is the appeal frivolous, will the accused appear, is his detention necessary in the public interest? If the appeal is against sentence only the accused must establish undue hardship. In the case of appeal to the Supreme Court of Canada, once the accused has filed his appeal and satisfied the tests for bail on appeal to the Court of Appeal he is entitled to liberty.

As regards summary conviction offences on appeal; once the appeal is filed, the accused is released upon the same considerations as upon his first appearance.

Other amendments of interest include a) failure to comply with summons will be an offence b) failure to comply with an undertaking to appear will be subject to 2 years imprisonment c) a summons may be issued to require an appearance for fingerprinting on indictable offences — failure to attend may result in the issuance of warrant to compel attendance d) justice may order non-publication of proceedings concerning bail applications e) professional bondsmen are prohibited, and f) upon sentence the court may take into account time accused has spent in custody awaiting trial.

The committee was well aware of the problem of legal representation at trial and was concerned with the fact that competent legal representation was not always available to the accused. Inadequate representation creates the feeling of injustice and impairs the basis of correctional processes. It was evident that a very high percentage of persons charged with criminal offences could not afford to employ a lawyer and that there was a great discrepancy throughout Canada as to the rights of persons to obtain legal representation especially for those who could not afford it. The committee was strongly in favour of the recommendation that any person who lacks the means to employ counsel shall be provided with counsel and that unless so provided, the trial would be invalid.

Reviewing the rights of the accused person to counsel before the trial while in police custody, the committee indicated that there was a great deal of discrepancy in this area also and the committee found that it was necessary to recommend the enactment of legislation to provide that a reasonable opportunity be given to the accused person to communicate with a lawyer and to consult in private, and that reasonable means be taken to inform the accused person of his right to counsel. Having said this, the committee further recommended that the refusal to the accused person of counsel and the right to consult in private would render inadmissible any incriminating statements subsequently obtained and that if an incriminating statement is obtained as a result of police questioning, it should be inadmissible unless reasonable means had been taken to inform the accused of his prior right to communicate with counsel. To provide adequate representation for the accused would require a great extension of legal aid. The committee considers that the present status of legal aid in Canada should be improved and that all levels of government must be involved in the development of adequate legal aid systems; the public defender system of the United States of America was recommended.

The commission reviewed the constitution and status of the Criminal Court in Canada and made observations, some of which were self-evident with particular reference to the personnel, facilities, services required.

Of course, a judge in all criminal cases should be legally qualified and because of the criticism that is made of some of the criminal courts

in Canada with regard to the competency of the judges, the observations are singularly relevant particularly when one is aware of the political connotation associated with the appointment of judges.

That a judge should be secure from the risk of pressure and should be able to operate independently is, of course, self-evident, although there have been instances in our courts where politicians have endeavoured to exert pressures on the judiciary even to the point of withholding salary.

The position of the court and the judge should be one of complete independence within the correctional process as a whole and not part of the police procedure. As part of the training of a judge, there should not only be adequate knowledge of the sentencing procedures which are discussed later, but also the consequences of sentencing.

The committee put considerable emphasis on the physical structure of the court and particular emphasis on the fact that it should not be contiguous to or in any way confused with the police such as in the City of Winnipeg where the courts are hidden in the police station and where there is little or no attempt to segregate the court function from police.

That the courtrooms should be functionally constructed with dignified appearance, of course, is essential. In Canada there has been a traditional type of courtroom design which has been challenged by many architects in the United States of America and very interesting designs have been developed. The emphasis in the new design is upon the involvement of the accused in the whole criminal process and not as some oddity on display as he is in most Canadian court docks. The physical set up of courts tends to strengthen and prolong the "social play" aspect of the courts. Since in this day and age very few spectators attend the courts, there is little public impact. Therefore the court should be designed with a view to developing an atmosphere of the seeking of the truth, and the dispensing of justice. Having the aspects of good planning and avoiding confusion is very conducive to quiet consideration. Facilities for the accused, witnesses, and persons forming part of the court process should be adequate.

Because of the large dockets, every effort must be made to avoid delays for effective administration of justice. Administration of the courts is very important and should be geared primarily for the benefit of the public and not for the employees. The arrangement of dockets, adequate sittings and co-operation on the part of the police, the arrangement of witnesses, etc., are very important.

For the court to function properly there should be appropriate services from the point of view of probation, mental health and other services.

Above all, there should be some method set up whereby the functioning of the courts can be adequately assessed from time to time to ascertain whether or not its part in the prevention of crime is adequate.

The committee was at all times aware of the necessity of obtaining a balance between the civil liberties of the citizens, the rights of the offender and the necessity of protecting the public. Apparently many representations were made to the committee with regard to the matter of confidential relationship between various parties engaged in supplying services and evidence to the courts including counselling, treatment, doctors, clergymen, social workers, psychologists, psychiatrists, and others. All of these disciplines indicated to the committee that the relationship between the offender and themselves are based on the fact of confidentiality and that, if there was abuse of the knowledge obtained, this essential relationship might break down. The committee was urged that the right of privilege should be extended to those involved in correctional processes.

Committee members were certainly aware of the fact that it is a citizen's duty both socially and morally to assist law enforcement agencies in the courts in the prevention of crime, and the apprehension and conviction of criminals. This is not a legal duty and the conscience of the person involved is the deciding factor.

There are instances where witnesses are excused from answering on the basis of "privilege". The committee considered this from the point of view of the privilege between solicitor and client but pointed out that it seemed to be limited to that except in certain limited cases with regard to spiritual advisors. Of course, the state has the privilege to discuss certain facts with regard to pre-sentence reports. There is no doubt that while a confidential atmosphere is desirable that no legal basis of confidentiality exists. Therefore, the reports must be prepared in honesty and in fairness because of the fact that they may be subject to question by the court or counsel.

If the accused is on probation or parole, there is no confidential relationship between the accused and his officer for the relationship still remains between the officer and the court and there must be complete disclosure to the court is requested.

The committee hearing all of the matters recommended that the law of evidence be amended to allow an objection to answer by any witness on the grounds of that it would be contrary to public interest to compel him to answer and the presiding judge or magistrate would have the discretion to excuse the witness from answering the question if it appears to be contrary to public interest to compel the answer.

### SENTENCING

Presently in Canada and elsewhere in the world there is some confusion with regard to public attitudes concerning sentencing.

As a result of newspaper reporting there seems to be considerable

lack of uniformity and disparity between sentences for similar offences. The reason for this stems from the fact that the media reports contain little reference to the background, antecedents and criminal record of the accused, and other aspects which form the basis of the principles of sentencing.

Sentencing is a very complex matter; as a result the committee placed a great deal of emphasis on this problem and their consideration of this subject was fairly detailed. The committee considered the historical background, the committee's own approach to problems of sentencing itself, considerations of various types of sentencing, the various sentences that could be given, reasons for sentencing, and other matters. The emphasis given by the committee to sentencing is warranted because it is at that point that the court starts the accused on the correctional process.

The matter of sentencing was considered mainly by the committee with a view to its establishment of a category known as the dangerous offender which is discussed later on. Of this offender, the main principle of concern to the court would be, who is dangerous to the public and to afford him treatment that would be necessary. There is no doubt that there are many persons who require segregation from the rest of the community.

## PROBATION

In the recent years, the advantages of probation have become more clearly known to the public and to the courts and as a result, its utilization and success have increased greatly. The committee recommended that probation be further extended and that the restrictions in the Code be removed.

The committee found that probation in some cases was not being properly considered by the courts.

In view of the fact that many probationees did not understand the nature and consequences of the order, the committee commented by way of recommendation that the probation order before being issued should be explained clearly to the offender, that a copy of it should be given to the offender and that the offender should sign the same indicating that he does understand the terms and conditions and that he agrees to abide by them. The committee upon recommending that a probation order should be substituted for suspended sentence, discussed the matter of conditions that could be attached thereto.

Many of these recommendations have been accepted by the Government of Canada and the following legislation has been passed under the Criminal Law Amendment Act 1968-1969. The law now provides for such a probation order with or without supervision and in addition, if

desirable, to the imposition of a fine or imprisonment. Certain specific conditions are detailed with the discretion to the court to impose such others as may be reasonable. The order shall be read to the accused, who shall receive a copy. The term of such probataion is limited to no more than three years. Provision is made for modification of the order and termination. A probationee convicted of a subsequent offence may be sentenced or the probation period extended. Transfer provisions are extended so that courts of competent jurisdiction may deal with the order in the same manner as the original court was empowered. Failure to comply with a probation order is an offence punishable on summary conviction.

The committee being fully aware of the problems of probation such as financing, staffing, otherwise, however further recommended that there should be expansion in certain areas such as provision of (a) probation hostels that allow for more intensive work and therapy with offenders, (b) more use of volunteers for the purposes of supplementing the work of the probation officer (this is particularly important with regard to young offenders) (c) the development of attendance centres where probationees could spend their free time, and (d) the greater use of group work methods.

However, the committee cautioned that any extension of probation services should be done only in the way that would allow it to be effective. Staff requirements are probably the highest priority. Well-trained highly skilled staff are hard to obtain and there should be extensive encouragement to this kind of training. While there should not be a national probation service, the federal government should take the lead in developing and designing the promotion of high standards of service throughout Canada.

## PRISONS

When considering the prison system in Canada, the committee came to the conclusion again that there was considerable conflict and confusion as between the provincial and federal authorities. This is governed by the Federal Prisons and Reformatory Act which defines in detail the areas and functions of the various prisons. The committee was of the opinion that provinces should be left to use greater discretion in the operation of their prisons and recommended that the Prisons and Reformatory Act be repealed, re-enacted after discussion with the provinces to remove all the necessary detail and controls imposed by the federal government and to leave the provinces with the responsibility to operate their own prison systems.

It was earlier stated that the excessive use of prisons in Canada was very evident from the fact that Canada had one of the highest prison rates in the world. The committee was satisfied that by appropriate action, this could be reduced and recommended that careful consideration be given to

the report itself and every effort be made to reduce the prison population in Canada through the implementation of the measures suggested in the report.

To properly operate a system which emphasizes the correctional aspect rather than the custodial process, classification should be more carefully looked at. It was recommended that the importance of classification in the prison system, as a basis for (a) grouping inmates for treatment and (b) planning and adopting a program for the individual inmate, be recognized and that the provision of adequate classification facilities be given top priority in all prisons in Canada.

Again the question of the dangerousness of the offender was of prime consideration and the committee recommended that research be immediately initiated, to establish some kind of criteria for determining the classification of prison inmates so that they could be arranged in the classifications of super security, maximum security, medium and minimum security, to rate the various prisons in Canada and to determine under what classifications they would fall once established, to develop measuring techniques, and to rate the requirements of newly committed inmates vis-a-vis the various types of custodial facilities provided. Because this is not being done, it must be established and integrated into a comprehensive program based on good classification with the collection of comprehensive data as the basis for continuing research. The provision of adequate treatment facilities must be given priority in all Canadian prison systems.

That prisoners now can find little to do of a constructive nature; prison labour and prison pay should be considered. As a result, the Canadian Corrections Association has just completed a study for the federal government to look into the matter of prison industries. The recommendations, which are very full and follow very closely the recommendations of the Ouimet Committee's report, recommend that prison pay be introduced so that inmates could be involved within the scope of their ability. Whatever plan is evolved, it should provide a series of steps in a remuneration scale to serve as an incentive to the inmate and there should be a substantial relationship between the prison pay received and the current going rate — the minimum wage in the community.

Here again, the success of the operation of a prison varies with regard to its correctional function. A great deal depends on the status of the staff and its trained abilities.

Prisoners should not operate in isolation and there should be a close relationship between the prison and the community. More attention should be paid to the location, design, and size of prisons. Design has been of a traditional nature, location has usually been decided on a political basis and size has been determined on the basis of past record of numbers in

confinement or percentage to population bearing in mind the other correctional aspects of the system.

The Criminal Law Amendment Act 1968-1969, made some amendments to the Prisons and Reformatory Act but did not deal with the fundamental issues raised by the committee. The amendments dealt with the automatic remission of one-quarter of the accused's sentence, basis/or forfeiture, and changes to earned remission. The Act, however, did include the authorization for temporary absence from the Provincial prisons for medical, humanitarian reasons or to assist in the rehabilitation of the prisoner.

### PAROLE

One need only read the recent annual reports of the parole service of the Dominion of Canada to be satisfied of the fact that the parole service is functioning very greatly to the benefit of Canada. The money saved by the employment of parolees and the fact that they are not incarcerated is of great importance and of economical advantage to Canada. However, the committee after reviewing the general process and mechanics made several recommendations bearing on the administration of the parole service and its operation.

The committee while recommending the fact that the structure of the Parole Board should be enlarged, also suggested that there should be wider representation of different disciplines appropriate to the correctional function.

A further recommendation of the committee that is now in effect is that the Parole Board hold sittings within the institution the parolee is imprisoned and that the parolee appear before the Board and make representations in person. A further accepted recommendation that the Parole Board act expeditiously and deliver its report as quickly as possible verbally to the applicant together with an explanation is now being followed. Bearing all of this in mind, of course, the committee recommends that the procedure followed should be reviewed so that there should be greater flexibility to allow earlier parole for those convicted of non-capital murder and to deal on the basis of individuality with each particular case. The committee made further recommendations with regard to the suspension, forfeiture and revocation of parole and suggested that the magistrate be involved in such action and that the Parole Board be empowered to exempt a parolee from the operation of forfeiture where extraordinary circumstances justify such exemption.

The committee also recommended that there be provision for the termination of parole, the power for such termination being granted to the judge or magistrate sentencing in the first instance.



The committee further recommended that on forfeiture or revocation the parolee be credited with the time he served in the community but that he not be credited with a period of time equivalent to the statutory remission or the earned remission that he might have had before he was paroled. There should further be a system called the statutory conditional release to make a period of statutory release longer than 60 days subject to the same rules and conditions of parole.

The success and effectiveness of the parole service depends mainly on the personnel. The committee acknowledged that good parole supervision is based on the experience and quality of the regional supervisor upon whom falls the task of administering the service.

### GRADUAL RELEASE AND AFTER CARE

Once the offender is involved in the correctional process and is proceeding through the system, it is necessary at some time to assess his qualification and the desirability for release and what will be done after he has left the institution. The place of after-care is very important because of the necessity to adjust the inmate to the community after his prison confinement and this is very crucial. Up to now, this has been primarily done by volunteer agencies all of whom have done good work but in the main, it is disjointed and not consistent all across Canada. The committee therefore recommended that after-care agencies be recognized as an essential part of the present system and that treatment within the prison and the treatment on after-care be recognized as aspects of a continuing process.

To better prepare the inmate to be involved in the community after he has left, various programs have been suggested and their progressive nature should be considered by every prison, such as visits by the inmate to the community, representation by the community into the institution, home visits and hostel facilities to be occupied by inmates shortly before release. One of these is now open in the City of Winnipeg on Osborne Street. Research is being conducted at the present time as to the effectiveness of such service. Discussion with the staff seemed to indicate that there are gaps in the process but that a great step has been made forward in assisting inmates to become involved in the community.

### CITIZENSHIP AND VOLUNTEER AGENCIES

The committee was well aware of the place of citizenship participation for two reasons: 1) first because the inmate is involved with the citizen and 2) the community is involved with correctional process which allows more understanding of the offender and a greater understanding of the correctional process. Therefore the committee recommended that it must be a matter of government policy to encourage citizen participation in the

field of corrections. Volunteer agencies should be encouraged at all levels and there are many presently now in Canada who not only work in the institutions but in the whole area of criminology. Most of the agencies are now involved in public education but such action should be extended to include direct involvement. Volunteers and the public should be part of the social action requiring the correction of any defects that exist in the correctional system.

Volunteers can deliver direct service at the court hence to assist the offender in overcoming problems that he might have not only with the proceedings but also with other social and personal problems. There are a myriad of prison services that can be provided such as entertainment groups, discussion groups. Further they can be of great assistance in parole supervision, voluntary after-care, and working with the accused's family and providing living accommodation. The basis that requires to be recognized is that the whole correctional process is really one of a partnership between volunteer agencies and government agencies. It was therefore recommended that the government must recognize a need for a partnership with volunteer agencies, that this partnership include direct service function on the part of all agencies to work in government correctional services, and that there should be continuing consultation between government and voluntary agencies with a view to the formulation of a policy regarding how this direct service function is to be performed. An outgrowth of such a partnership is the necessity of guidance and the committee recommended very strongly that an advisory body including members of the voluntary agencies and lay people be established to advise government concerning the function of the volunteer agencies, to request financial support, and to review and advise concerning the volunteer service to be delivered.

#### YOUNG ADULT OFFENDERS AND FEMALE OFFENDERS

The committee made specific study of the young adult offender and the female offender. Bearing in mind the discussion in Canada at the present time with regard to what should be the appropriate level for the age of the juvenile. The committee recommended that the young adult be defined as one who has attained the age of 18 but who has not yet reached the age of 21.

The committee considered the advisability of setting up a youthful offender's court but came to the conclusion that it could see no particular advantage and recommended that the adult court have jurisdiction over the young adult group. However, the committee recommended that a presentence report should be mandatory in cases involving young adults and further that the legislation should state that the court shall not send a young adult to prison unless all other courses have been considered and rejected for specific reasons, with the reasons being given and reported in

the court records. The committee also recommended that the police and courts whenever possible should avoid holding a young offender in gaol pending his trial, remand or appeal, or that if it is necessary, he must be kept separate from older offenders.

With regard to the female offender, it was found that there are certain differences in the criminality of women as compared with men which have implications in correctional planning. Statistics are interesting and they indicate that there is a closer ratio between male and female offenders than was believed. Over recent years there has been a marked increase in the number of women convicted for indictable offences. A major difference is that the offences committed by women tend to concentrate in fewer categories than those committed by men. Crimes involving violence are rare and they are mostly involved in crimes that consist of theft, fraud, vagrancy, liquor offences, and offences relating to the sexual and maternal roles of women. Also, there is definite attitude of society towards the female offender that women are less likely to be charged and brought to trial, and that women usually receive lower sentences. Women are certainly involved in fewer instances of crime involving violence. The result of this has implications for treatment. They are becoming more and more involved in the problem of instances concerning fraud, and false pretences, and particularly offences having to do with vagrancy, drugs and alcohol, attempted suicide, that is, offences without a direct victim. These are offences that primarily have to do with social problems that have found their way into the Criminal Code for treatment. What is more necessary is to develop social resources for women and proper support of health and welfare rather than correctional processes. The committee therefore recommended that early discussions between the federal government and the provinces should give attention to developing a cross-Canada service which could be used as alternative to criminal proceedings in dealing with offences without a direct victim. A further marked difference is the fact that women in most instances require specialized care of psychiatric and medical nature. All in all the problem concerning the female offender was one of a particular nature. The committee therefore recommended that arrangement for the purchase of prison services for women be made between the government of Canada and the various provinces so that a unified service can be provided in each area, and that the government of Canada while purchasing services from the larger provinces should provide regional service that can not be provided by the smaller provinces. The parole of the female offenders should be treated the same as all offenders and should be the responsibility of the government concerned with the offence in the first instance.

To make sure that the female offender received the proper attention and specific interest, the committee recommended that the Government of Canada appoint a suitably-qualified woman to a position of senior responsibility and leadership in the correctional treatment program of the

female offenders in Canada. This is of great import because of the fact that not only is the problem of the female offender acute, but it is complicated by social and ethnic problems such as that of the Indian and Metis female offender.

## MISCELLANEOUS

To conclude the commission's report, several auxiliary matters having to do with corrections generally were considered. The committee was aware of the significance of criminal records but, recognizing the worth of rehabilitation, felt that some system should be set up whereby records would be nullified.

Generally speaking the committee was of the opinion that official court records should not be made available to the court when it is considering sentence or made public when they may affect the offender's life such as in the matter of employment. The committee therefore recommended that a conviction once it has been annulled, by some process should be deemed never to have taken place at all and particularly with regard to matters over which the Government of Canada has jurisdiction, such as criminal proceedings, cross examination of a witness, and provision by which a person who has been convicted is disqualified from holding office, or for the purpose of ascertaining qualification for employment in any branch of the public service of Canada.

The committee felt that there should be some differences between records arising out of summary conviction offences and indictable offences and accordingly recommended that in the case of summary conviction offences that they be annulled automatically after a crime-free period of two years and that such annulment be permanent. With regard to indictable offences, the committee recommended that the criminal records in this case would be annulled upon recommendation of the National Parole Board and a crime-free period of five years.

The problem most often affected by criminal records is employment; the committee felt that there should be some special steps taken to avoid this impediment, since most applications for employment ask whether or not the applicant had ever been convicted of a criminal offence. To enable an offender to overcome this disability, the committee recommended that a person who has completed five crime-free years and has been on good behaviour be granted a certificate of good behaviour and that on this basis the National Parole Board could recommend to the Executive that this person receive a pardon which would completely vacate the offence.

As has no doubt been evident throughout this discussion, constant reference is made to the requirements of good trained staff and personnel at all levels. In one of the latter chapters, the committee looks in detail

at the development of human resources in the whole field of corrections as it pertains to the police the creation of a high standard career, good training, better working conditions. Also requiring attention was the competency of lawyers, properly trained correctional personnel and correctional administrative staff. The committee called for the setting up of training facilities in all fields that would strengthen the personnel of corrections of all levels. The committee, therefore, recommended that the Government of Canada in conjunction with all the provinces prepare necessary material to inform high school and university students of the current potentials in the field of corrections and to encourage the expansion of teaching facilities in the correctional field together with expanded financial assistance in grants for the development of training facilities and bursaries.

Similarly, there has been a recurrent observation throughout the report that there is a greater need for organized planning and research particularly Canadian research and it is hoped that the governments who have a particular stake in sponsoring proper correctional facilities will take the leadership in assuming its responsibility for such research and organizational planning. The committee recommended that the Department of the Solicitor-General and the Department of Justice maintain research units, which recommendation has been accepted by the departments and projects have now been embarked upon.

Of course, the basis of the research requires aggressive financing by all levels of government, the development of good research staff and the setting up of appropriate central statistics under the control of the Dominion Bureau of Statistics available for proper research programs. Again the committee suggested the setting up of advisory committees to the federal government for the purposes of planning criminal justice programs on a wide basis at the government level, at departmental level both federal and within the provinces.

## CONCLUSION

The above has been a very cursory review of the findings and recommendations of the Canadian Committee on Corrections. To do more than that of such a wide report would be impossible without a detailed examination of each important facet of the findings that were accumulated by the committee over the period of its operation. Suffice it to say that the report is one based on the integrity of its members who have placed before the people of Canada an informed and comprehensive analysis and plan for corrections in this country.

The fact that the government has seen fit to deal with many of the recommendations expeditiously indicates the merit of the recommendations. No doubt further action will be taken in the future. However, such action

depends upon the support of the public of Canada who must be aroused to the problem and be ready to meet the advancement of crime with appropriate steps to deal efficiently with the problem of the protection of society.

MAGISTRATE IAN V. DUBIENSKI, Q.C.\*

## QUO WARRANTO AND THE LEGISLATOR, STUBBS AND STEINKOPF RE-VISITED

The case of *Regina ex rel Stubbs vs. Steinkopf*<sup>1</sup> raises, but does not answer the question of whether legislators and cabinet ministers be susceptible to proceedings of *quo warranto*. The reasoning of the learned Judge of first instance<sup>2</sup> demonstrates the possible danger of Canadian courts being overawed by the fact that Canadian institutions being patterned to some extent after those of the United Kingdom. The clear similarity surely exists: the specific realities may differ greatly. In the five years since the Manitoba Court of Appeal allowed the relator's appeal in the Stubbs and Steinkopf case no similar proceedings in Canada appear to have been reported, and the effluxion of time may now permit a dispassionate look at the circumstances of the *Stubbs and Steinkopf* case.

The respondent was purportedly elected as a Member of the Legislative Assembly of Manitoba in the general election of December, 1962. The relator was a duly qualified elector for the electoral division in which the respondent was purportedly nominated and elected. The respondent was appointed a member of the Cabinet, but prior to his purported election the respondent was a government contractor or agent by virtue of his involvement in certain financial and realty transactions concerning the acquisition by the Government of Manitoba of lands in the City of Winnipeg. In May, 1964, during a television program in which the respondent was personally present the Premier of Manitoba asserted in the respondent's presence:

"I discovered, it was brought to my attention in the dying days of the last session, that in spite of the fact that the transaction was completed, some of the actual paper work involved in this still continued after Mr. Steinkopf was elected and it threw doubt on his eligibility to be elected. This, I think is a technicality, but it is a technicality which cannot be

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\* Of the Winnipeg Magistrates Court.

1. (1965) 50 W.W.R. 643, 48 D.L.R. (2d) 671 (C.A.)

2. (1964) 49 W.W.R. 759, 45 D.L.R. (2d) 105 (Q.B.)