JUSTICE IN ALBERTA:

A CITIZENS' LOOK AT THE LAW.

Report of the
Citizens' Commission on Corrections.
Edmonton Social Planning Council

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PREFACE

The scope of "justice" in Canada is very broad. This report is an attempt to isolate those aspects which we, as citizens, consider to be working in an undesirable way. It is our belief that justice does not simply happen, but that it is created by the efforts of the people as a whole; not only those who design and enact the laws which define the process of justice, or those who work in the courts or in the jails, but also the rest of us, who by our attitudes, define the image of justice which the courts and the police seek to implement.

The purpose of this report is three-fold:

1) To provide information on those aspects of the judicial process which figure prominently in the mass media, but which seem to be distorted by the treatment they receive there.

2) To study the judicial process in order to identify those areas in which justice is not, in fact, being delivered.

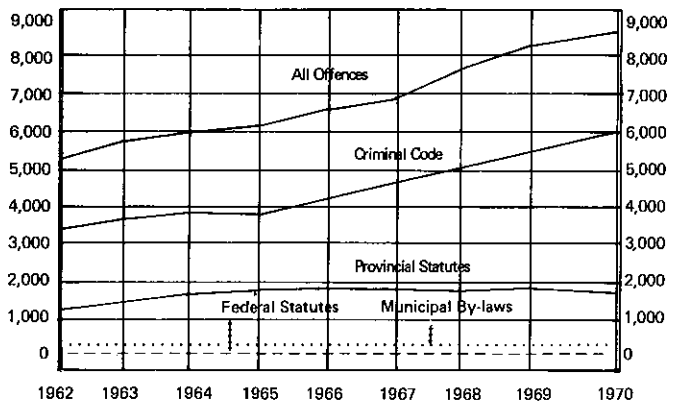
3) To search for ways in which citizens can be actively involved in the judicial process. We do this because we believe that the concept of justice will be most effective when the public is actively involved in the process of determining and implementing justice.

INTRODUCTION

Crime, it seems, is more than simply another problem for today's citizen. In its diverse forms, it touches just about every aspect of life in our society. In the street, in the market place, behind closed boardroom doors, or in public office – the common theme running through our daily news media scenarios is, with just a little exageration, one form or another of criminal behaviour.

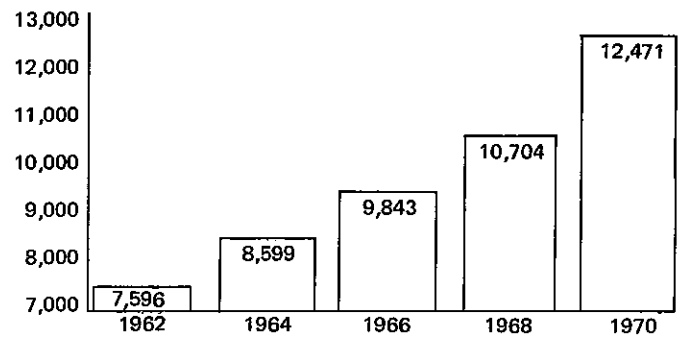
We are well conditioned to believe that crime is increasing at an "alarming" rate. The overall offence rates provided by Statistics Canada for Canada as a whole and the Province of Alberta, over the past decade, (see Tables below) indeed indicate an increase in the number of reported offences per 1,000 head of population.

TABLE 1: Offence Rate(*), by Offence Group – Canada 1962-1970[1]



(*)Annual Rate per 100,000 of population seven years and older.

TABLE 2: Offence Rate Alberta Rate per 100,000 of population 7 years and older



Perhaps the statistics seem a little pale beside the daily media spectacle of our criminal society in action, because crime is not only a major problem requiring public scrutiny and action but also our major source of entertainment. The ramifications of increasing crime rates go beyond the damage of the actual offences. Crimes are not simply the acts of dangerous or irresponsible individuals. They are also a reflection of the inability of our society to govern itself in a humane and reasonable manner.

The way our society responds to criminal behaviour tends to set up a vicious circle. When crimes are committed, those who know about them tend to feel resentful unless something is done by someone. They may not necessarily want someone to catch and punish the criminal, but, at the minimum, they want steps to be taken which will reduce the likelihood of the crime being repeated. In most Western countries, there has been a marked tendency, over the last one hundred years, for the tasks of catching criminals and preventing crime to be delegated to a specialized body of individuals; – the police. When, despite the efforts of the police, crime increases, the general public tends to become critical of the police, and, at the same time, hostile to those who do not conform to accepted modes of behaviour, even if no criminal behaviour is involved. All these tendencies have the unfortunate consequence of contributing to circumstances in which individuals who, for any reason, feel hostile to society, will take to crime. In other words, the initial response we tend to make, collectively, to crime, tends to worsen the situation and thus make crime more common, rather than less so.

When the problem of crime is publicly discussed by professionals or laymen, two competing and presumably irreconcilable viewpoints usually emerge. The "eye for an eye" school of opinion sees the natural "solution" to crime as punishment. If crime is increasing then we need more and harsher punishments. Society's swift retribution is seen as its guarantee of future protection from the depredations of the "criminal element".

The problem with such a procedure is that, although it may satisfy a temporary surge of emotion in those who carry it out, it is not effective at preventing crime. If it was, there would have been no crime before the middle of the last century. It is, after all, only since the beginning of the 19th century that any attempt has been made to do anything with convicted criminals other than punish them.

The competing "professional" approach stresses the complexity of the problem of criminal behaviour and is therefore more in tune with the structural complexity of our contemporary urban society. On the basis of daily practice it recognizes that a simple and effective panacea for crime which is compatible with basic civil liberties is not at hand. Nor as a "professional" attitude, is it prone to seeing crime, as the public does, in largely moralistic terms. Only in recent years has the professional approach been the dominant one.

However, the professionalization of crime and justice has proven not much more successful than the antiquated retributional approach at preventing crime, but for different reasons. Professionalization has rendered much of our legal-judicial system incomprehensible to the people it was meant to serve. It has resulted in the abrogation, by the community, of responsibility for its self regulation. And, often where questions of right and wrong are clearly involved, there exists a morass of legal technicalities that mystify the law, and exacerbate the problem of obtaining equlity of treatment for those without the financial means to obtain legal counsel indepently.

The professionalization of the treatment of offenders often means that the wrong-doer has never to confront the human suffering he may have caused the victim. His crime is

depersonalized, as he himself is, by the system that removes him from the everyday world and transforms him into a "patient", a 'client', an "inmate" – a "soul on ice". Through the excessive professionalization of our judicial/correctional system we not only set aside certain social responsibilities, but we throw away a potent socializing force that operates when individuals perceive themselves as belonging in a community of other people, and not as drones or as workers (smarties or suckers) in some marvelously complex but rather sticky beehive.

Having recognized the need for citizens to understand and become involved in the system of justice, one is confronted with the awesome problem of where to begin. It seems best to begin, not with the philosophers, criminologists or jurisprudence experts, and some abstract definition of justice, but simply with a list of those attributes and functions which we feel any humane system of justice, worthy of the name, should have and perform. A system of justice should:

1. *Assure each citizen full enjoyment of her/his liberty.* If a society restricts anti-social behaviour, the logical basis of this restriction must be to ensure enjoyment of liberty for all citizens. A just law "should instill in citizens the feeling that everything is operating with the purpose of giving each person the consideration to which he is entitled".[3]

2. *Specify behaviour which is deemed detrimental to that society, by that society.* The writing of the Magna Carta was a step in codifying laws by which individuals could determine whether or not their actions were social or anti-social. It attempted to remove the arbitrariness of laws which were based on personal objections. "Just laws" need to be codified in order to remove this arbitrariness. It is also important that those who prepare the legal codes which are to be enforced should represent society as a whole, not some privileged minority, (nor even a privileged majority).

3. *Assure each citizen of equlaity.* If a "just law" is to be applied to a society, then application needs to be applied equally to all persons, without consideration being given to race, sex, economic situation, religion or nationality, in order to assure justice and respect for that law.

4. *Make decisions regarding the most efficient method of protecting society from future anti-social behaviour, while also determining the method by which offenders are prevented from committing future anti-social acts.* The protection of society has long been held as a primary function of a legal system. This is an important aspect but is effective only if it prevents the offender from enacting future anti-social behaviour. For a jucidial system to be efficient in protecting society, it must effectively create a means of altering the behaviour of those who commit anti-social acts.

To determine whether these functions are in fact being adequately carried out in Canada and Alberta today it is necessary to look at the specific structures of the judicial/correctional system and see how they operate. It is because we believe that crime tends to flourish only in societies which are so structured as to promote its occurrence that we devote most of this report to the procedures by which justice is administered rather than directly to either crime or criminals.

Police are the "front-line" component of the judicial-correctional system. Their role in the investigation, apprehension, and prevention of crime is of critical importance. This report therefore examines the question of community-police relationships in contemporary urban society, and how they influence the effectiveness of police work and the measure of protection the community obtains, without undue infringement on the rights of individuals, and without sacrificing the basic presumption that no one is to be considered guilty until proven so by due process of law. Police and pre-sentencing procedures constitute the first major section of our report.

"Justice" is centrally concerned with the problem of determining a fair, appropriate, and effective, societal response to an anit-social action committed against it, or certain of its members. This process is known legally as "sentencing". To evaluate the quality of justice in Canada in general and Alberta in particular, one must be aware of the powers of judges, the sentencing dispositions available to them, and how they exercise these powers. It is necessary also to understand the impact of different sentencing dispositions on offenders – to ask, for example, whether jail is, as has often been suggested, merely a "school for crime", and if so, what viable options to incarceration exist or could be implemented. These problems constitute the second major section of our report.

The third section is devoted chiefly to a consideration of the problems which those who have served a term in prison face when the time comes for them to re-enter society. Experience has shown that, in a large number of cases, these problems are not being solved effectively at the present time. As the most promising solution involves the use of small "half-way houses", space is also devoted in this section to a consideration of some alternative forms of incarceration which make use of what are called "community residential centres" which resemble half-way houses in several respects.

The book concludes with chapters on two problems which emerged during the course of research, and which, though they called for discussion, could not be fitted into the framework outlined above.

FOOTNOTES: INTRODUCTION

1. Canada, *Perspective Canada.* Catalogue 11-507 (Statistics Canada, Ottawa, 1974), Chart 14:2.

2. ibid. Chart 14:3

3. Quebec, Commission of Enquiry into the Administration of Justice on Criminal and Penal Matters in Quebec: *Crime, Justice and Society Vol. 1* (Quebec Government, 1968), p. 18.

SECTION I: THE PRE-SENTENCING STAGE

We take "pre-sentincing" to encompass not only those procedures and practices that govern the apprehension and pre-trial treatment of suspected offenders, but also the major facets of police work. The legal-judicial system can be thought of as the immune system of the "body politic". From the social system standpoint, it is a highly complex organization whose job is the detection and elimination of "the enemy within". We do not wish to over-extend the analogy, but it does broadly fit with popular conceptions. The "criminal element" can be pictured as a minority of aberrant cells scattered through the body of "normal" individuals. If allowed to grow unchecked, such aberrations can develop into cancers that threaten the life and integrity of the whole body. The police are the antibodies whose specific task to to recognize potentially dangerous "foreign" bodies. They "earmark" certain individuals for treatment by the court and the correctional system. But at this point the analogy breaks down. Criminality is not apprehended and dealt with by some mechanical recognition procedures. We do not destroy, like the body, all individuals who fail to meet the test of being "one of us" (the criterion of normality). We distinguish degrees of "aberration" and moderate our institutionalized response accordingly.

However, the above analogy is useful if it stimulates us to question just how far it is a model of the criminal-justice system. In this section we are concerned with the apprehension of criminality and the treatment of "tagged" (arrested) individuals who have not yet been proven guilty. Our fundamental principles of law imply that the body-immune system analogy should fail in some crucial respects. The arrested individual is innocent and therefore unpunishable until proven guilty. But if pre-trail procedures (of which bail is the central important topic) fail to protect the rights of some individuals, or if some are unable to obtain adequate legal counsel (legal aid), then to a degree at least, we do not have a humane system of justice, but merely a mechanism of social control, along the lines of the immunology model.

Another shortcoming of the "model" is that the police are not exclusively preoccupied with criminal investigation, apprehension and "public protection". In fact, non-criminal matters more adequately described as "emergency social services", take up the greater portion of a policeman's average working day.

The real role of the police force in a society will be largely apparent from the kind of working relationships that exist between the police and the community at the local level. For this reason alone, police-community democratic self government entails a basic responsibility on the part of the community for self regulation and helping individuals in distress. To a great extent this responsibility is delegated and forgotten about in modern urban society, probably with serious consequences for the quality of life in our cities as reflected in crime rates and other indices of social well-being or malaise. With these preconceptions in mind, in the following chapter we take a look at the police in contemporary Canadian (and specifically Albertan) society -- who they are, what they do, and where we see specific needs for change. Successive chapters in this section deal with Bail and Legal Aid. Together these two topics cover the most important aspects of the post-arrest pre-sentencing process.

CHAPTER 1. POLICE

Modern Democracy... rests on the assumption that men have or may acquire the sufficient intelligence and integrity to govern themselves better than anyone or any few can do it for them. Democracy in Canada has been based upon "representative democracy" meaning that the public elects its representatives and delegates to them the responsibility of decision making. Thus, Canadians have been relying upon others to govern them. As society changes, so does the definition of democracy. There is a growing need for "participatory democracy", meaning greater citizen involvement.

Within the field of corrections, the police are the most visible symbols of the force by which our governments implement laws, protect society and maintain order. Although the responsibility for implementing justice is shared by the courts, laws and correctional institutions, it is the police whom the average citizen sees or most often comes into contact with.

Although this contact exists, there are various images of what the police actually do. When a white suburbanite is asked "Who are the police and what do they do?", the response usually is either the local image of the traffic patrolman or the T.V. image of the homicide squad tracking down three killers. On the other hand, some Native person on the Indian Reserve or poorer area of a city may think of the police as intruders into their personal lives or the ones against whom the community must be defended.

This psychological distance is a main concern of this Chapter on the Police because it is our belief that as long as a chasm exists between those who "protect society" and those who are "society", then our crime rate will continue to increase, police will feel less and less support from the community and the community itself will assume no responsibility for its policing.

By examining the police/community relationship, it is hoped that ways can be articulated in which the community and police can work together. But in order to examine police/community relationship, we first need to look at who are the police and what are their responsibilities.

Who Are the Police?

The Canadian Police can be broken down into four major subdivisions:

The Royal Canadian Mounted Police (R.C.M.P.) are responsible for the enforcement of all federal statutes, and by arrangements between the federal and provincial governments (with the exception of Ontario and Quebec which have their own provincial police), the enforcement of provincial statutes and the Federal Criminal Code of Canada. Federal statutes principally cover matters relating to national security, income tax, the sale and manufacture of food and drugs, and narcotics control. Enforcement of Provincial statutes is mainly concerned with the Highway Traffic Act and the Liquor Control Act. The Criminal Code covers a variety of offences against persons, property and socially accepted norms of behavior. It incorporates what we traditionally think of as criminal acts - anti-social forms of behavior that in most cases have been recognized for centuries.

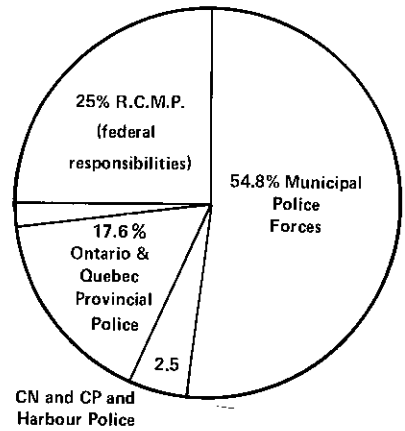
As well as its broad fields of jurisdiction under Federal Statutes, the Federal Criminal Code, and Provincial Statutes; the R.C.M.P. through special arrangements with 148 municipalities scattered across rural Canada, fulfills the role of a local police force, where in addition to the areas mentioned above, it has the responsibility of enforcing Municipal By-laws. Thus the powers and responsibilities of the R.C.M.P. are very extensive; The R.C.M.P. also have very broad investigative powers, stronger than those of police forces in other "western" countries, and powers which in our opinion constitute an unjustified threat to individual liberty. (See Chapter II.)

The Municipal Police are responsible for maintaining law and order in their home communities. In smaller cities of Alberta, as well as having jurisdiction over their respective Municipal By-laws, they share with the R.C.M.P. the responsibility for enforcing Provincial Statutes and the Criminal Code.

A fourth subdivision of the Police in Canada is made up of Government Special Police responsible for protecting and maintaining law on federal government property, such as trains and harbours.

Excluding civilian and part-time employees, the Canadian Police Force numbered 43,762 in 1972[1]. A breakdown shows that 25% were part of the policing body for the Canadian National Railway, the Canadian Pacific Railway, and the National Harbour Board Police. The Provincial Police of Ontario and Quebec, combined, constituted 17.6% of the total police force. The Royal Canadian Mounted Police (employed in the federal duties of the R.C.M.P.) constituted 25% of the total police, and the municipal police constitute 54.8% of the total police force. (including the R.C.M.P. with municipal police force responsibilities).

TABLE 4: Distribution of Police by Force for 1972 – Canada



Thus we find that the municipal police constitute the largest sector of Canadian Police, and are mainly responsible for the implementation of justice at the community level (particularly in large urban centres). Since the municipal police form the largest force, and because they are most visible to the average citizen (excepting provincial police in Quebec and Ontario), the discussion in this chapter will focus mainly on municipal police, although it applies in varying degrees, to the other police forces.

What Constitutes Police Work

Studies have been made which indicate that the average policeman's daily work is comprised of two basic components:[2]

- The deterrence of anti-social behaviour by their physical presence, the investigation of crime, and the apprehension of those who violate the law. This aspect of crime fighting is well known to the public.
- The provision of community services essentially of an emergency nature. This latter aspect is not so clearly recognized by the public as part of police work. The public assumes that more time is devoted to the former.

If we examine the amount of time spent on these two components, we find a considerable discrepancy between what the police actually do and what the public assumes they do. Studies indicate that police spend more time providing community services than crime fighting. (Some examples are:)

> *"A police officer assigned to patrol duties in a large city is typically confronted with, at most, a few serious crimes in the course of a single day of duty . . . but it is apparent that he spends considerably more time keeping order, settling disputes, finding missing children and helping drunks, than he does in responding to criminal conduct which is serious enough to call for arrest, prosecution and conviction."*[3] – United States.
>
> *"They (the police) have by long tradition a duty to befriend anyone who needs their help, and they may at any time be called upon to cope with minor or major emergencies."*[4] – *Britain.*

This discrepancy, between the public image of the police officer's role and the actual nature of most police work, makes a working community/police relationship difficult. There is also evidence that the police themselves - at least in the United States - tend to share the public's confusion about the nature of police work. "The President's Commission on Law

Enforcement and the Administration of Justice" (1967) found that police tended to view activities "if there is some degree of danger as constituting *real* police work". Thus role expectations on the part of police as well as citizens can tend to denigrate the importance of the social service component of police work.

It is easy and tempting to hold the news and media responsible for the misrepresentative image of the police, but the underlying causes probably lie with basic values and preoccupations of our society. Whatever its ultimate source, the effects of this misrepresentation are unfortunate because meeting emergency social service needs is not irrelevant to law enforcement. If the social service needs are well met by the police, and *seem* to be met by people in the community, then the task of law enforcement will hopefully be facilitated through greater public support and co-operation.

Also, how the police approach the task of law enforcement will be affected by the kinds of community relationships that have developed in their local district of operation. It would be simplistic to presume that "the law is the law" and the job of the police is simply to enforce it. James Wilson, in a study entitled *Varieties of Police Behavior,* addressed himself to the various ways in which police forces may approach law enforcement - particularly with respect to highly frequent crimes of a less serious nature.[5] He found substantial variations between different police forces, even though the written legislation was basically the same for all communities.

Three styles of law enforcement were discerned in the selected cities of the United States that were studied:

i) The Watchman Style
ii) The Legalistic Style
iii) The Service Style.

The police force with the "watchman style" had less of a concern for law enforcement than for maintaining order. Certain law violations were tolerated and the police had a great deal of discretion as to when police action should be taken, depending on the persons, place and circumstances, i.e. a traffic violation would be judged by who committed the offence, doctor or negro, and who in the populace would want such an offence dealt with.

The "legalistic style" permitted less discretion by the police officers. The police were expected to enforce the law without regard to persons, place and circumstances. Police were not encouraged to make distinctions as to seriousness of the offence, as compared to others, nor consider the consequences of the enforcement of the law, e.g. all traffic violators would be dealt with by going to court.

In the police departments characterized as "service style", the police respond to all law violations, but were more apt to handle the situation informally rather than legalistically, i.e. warning traffic violators rather than taking them to court, providing of course the offence was not serious.

What this study shows is that although there can be a basic written law, the way of implementing that law can vary. It is the right and responsibility of the community to determine the style of law enforcement that it receives from its police force. If the community opts out of this responsibility, or for some reason does not have an effective voice in the operation of law enforcement, then *some* style of police operation will prevail, and one that is not necessarily in the collective best interests of the community.

Establishing Police/Community Relationships

Physical contact with the community is a prerequisite for establishing good working relationships with the people living in a given area. The use of the radio equipped patrol car, now universal in North America, has obvious advantages in terms of mobility and internal communications but severely constrains possible contact with the person on the street. It is now widely recognized, and has been dramatically demonstrated by incidents in the United States, that a psychological distance between the police and the neighbourhood that they serve is not a worthwhile price to pay in the interests of internal efficiency. There has been some serious reconsideration of the virtues of the old practice of foot patrol. Sweden, in 1965, reintroduced the idea of the "Kvartel"[6] which assigned a large number of police to foot patrol on a neighbourhood basis. Paris, France, followed in 1968 and had as many as 50% of its police on foot patrol, as did Germany in the same year. Britain has also revived the extensive use of foot patrol.[7]

However, our North American cities have grown to accommodate cars, not pedestrians, and foot patrol is simply not an economically viable option in many residential areas. Nor is it just a matter of low population density and wasteful land use. The physical characteristics of many modern high density residential areas discourage the growth of community identity and intra-community relations just as effectively as suburban sprawl. It seems inevitable that future residential city planning must take much greater cognizance of efficient land and energy use, but at the same time, greater thought must be given to establishing living environments that will foster rather than preclude a sense of local community. If this is done, then the possiblity will exist for the growth of better working police/community relationships. But at the present time we might as well face the fact that the "human ecology" of North American cities imposes restrictions that do not exist in many of the old European residential areas.

In 1972, the Edmonton Municipal Police Force adopted a "zonal policing" concept that "assigns members of the Patrol Division to specific geographical areas within the City on a prolonged basis". For this purpose, Edmonton's 142 square mile area is divided into 42 districts on the basis of population density, property value and land use. Only a small number of inner city districts were afforded the "luxury" of foot patrol. In addition to central city headquarters, there are only three other precincts or police stations to serve the greater Edmonton district. In developing areas such as Mill Woods (in Edmonton) there is inevitably very little police visibility – let alone mutual recognition between police officer and local residents. How then can basic community controls be adequately maintained and elementary policing problems such as vandalism be dealt with? The police department is constrained by budgetary considerations from setting up extensive facilities to deal with these matters. Nor we would argue, is it desirable on social grounds for a community to be supplied by some outside service, with a professionalized law enforcement agency to deal with certain elementary community controls and emergency social services which the community ought to be able to provide from its own human resources. Specifically, we see the need for encouraging community councils to become active in this area, perhaps through the development of auxiliary police – a topic that is considered more fully below. But before discussing direct citizen participation in police work, more needs to be said about police-initiated community actions.

The Police Go to the Community - Creative Contact

The municipal police forces in Alberta's major cities have a long history of involvement in community organizations such as boys' clubs, police expositions, etc. While these activities provide community services and possibly serve as preventive crime work, this type of community involvement needs to be extended into more creative contact with the community. A pilot study in North Shore, Vancouver, headed by Inspector R.M. Heywood of the North Vancouver Police, showed some significant changes that can occur with creative use of community contact.[8] The police started "hanging around" schools where there was a high delinquency rate for that area. The purpose of this was not to find out who was committing what crimes, or, even to pose as a model for the youth, but it was to make contact with the youth in order to find out *their* problems. In one year, the rates of vandalism and rowdyism had dropped by 30% to 40%. Cases of breaking and entering had fallen off by 20%. Another approach was for the police to become involved in a high density apartment area, with a long history of theft. The police acted by calling together the Tenants' Association, managers of the apartment blocks, and residents to deal with the problem. The result was the neighbourhood as a group fighting crime, and they had a significant drop in thefts in that area. It showed an attempt to have citizens participate in protecting themselves by governing themselves, rather than waiting for the crime to be committed and then calling for the police. The North Vancouver Police found that basically it is still the citizens who must assist themselves, the community, and the police, in preventing crime. This is contrary to what presently exists. We now live with the situation in which citizens expect the police to prevent crimes.

Community Relations Units

Alberta police departments are establishing "community relations units" (Edmonton, 1971, Calgary 1973) in an attempt to make contact with the community.

> *"It will be the objective of the Community Relations Division to reach out into the community and enlist the aid and active participation of the citizens at large in matters relating to the policing of the community. This division will work toward the development of favorable attitudes towards the police and will work together with organizations and citizen groups to ease potential problem areas in the various districts of the City."*
>
> *'Community Relations"*
> *Distributed by the Calgary Police Department*

In some cases, however, the "community relations unit" has become the "public relations unit".[9] The difference between the two is that "public relations" present information to the public as to what the police are doing while the purpose of "community relations" is to establish contact with the community in an attempt to solve (jointly) the problems of anti-social behaviour in the area. If a police department has only a public relations department, then there is no dialogue with the community, but just a one-way information flow. The Edmonton Police Department is becoming involved in citizens groups (e.g. Block Parent Program and Rape Crisis Centre) but citizen involvement through the work of the community relations unit has only a minimal impact on police activity at the present time. This is due, in part, to the concept of who enforces the law and why.

Auxiliary Police

One mechanism of community involvement which has a long history of citizen-based policing activities is through the use of auxiliary police. They have been used for the following reasons:

1) Extending contact with the public by allowing the public to be involved with enforcing the laws,
2) Democratizing the judicial process by providing a way for more people to be involved in self-governing, and
3) Extending the services of the police department so that more can be accomplished than the limited budget would allow.

Examples of the use of auxiliary police can be found in several western countries.

In 1966, the British Auxiliary Police Force numbered 43,500 or one-third of the regular police force. The auxiliary police applicants are initially given physical, educational and psychological tests to measure their ability to perform the role. They receive twelve two-hour instruction periods, uniforms and expense money. Their functions are to be responsible for civic functions, local elections, sports events and the occasional accompanying of a regular police force member on patrol.

In Germany, the auxiliary police may constitute as much as fifty percent of the regular force. There is an initial training period of 92 hours and then on a regular basis, monthly six-hour classes are taken. The auxiliary police are paid a token of 50 cents per hour. Duties are similar to British Auxiliary Police, but only after a period of additional training are fire-arms provided. Patrol work is emphasized on a district basis and attempts are made to have the auxiliary police work in the area in which they live. All persons who apply to become auxiliary police are subjected to physical and psychological examinations in order to assure high quality personnel.

In the United States, the use of auxiliary police has been decreasing. This has mainly been attributed to the poor level of training and the expectation that auxiliary police function similarly to those in the regular police force. Often, psychological and physical testing for interested persons are not provided, thus removing the means of ensuring the community of high quality personnel for this police role.

Auxiliary police have never been used in Alberta. If Alberta were to introduce the use of auxiliary police forces, the following would have to be considered: 1) Psychological and physical tests should be given as a prerequisite to ensure high quality personnel. 2) The police force would also have to provide training for the applicants, in order to assure the public that the persons involved would be knowledgeable both in the law and in social interaction methods. 3) The work of the auxiliary police should be determined by the needs of the community. This could involve directing traffic in a high density traffic area or patrolling areas for the purpose of finding out the needs of a community.

By implementing an auxiliary police force, the services of the police would be extended. There would also be a financial saving by using volunteer workers (after the initial training period). However, the priority of purpose should be the extension of citizen involvement in the self-governing processes. The auxiliary police could serve as the link between the police and the community. While lessening the expanding demands upon the police department, it could encourage

citizens to become responsible for crime or cries for help in their area on a volunteer basis.

Summary

With the growth of the modern urban environment, basic law enforcement has increasingly become the responsibility of a professionalized police force. This change has created a gap between those who implement law enforcement and the community that they serve. This alienation discourages the offender from perceiving his/her responsibilities as a member of the community and the community from recognizing its responsibility for dealing with anti-social behaviour within its locale. If we are to change this alienation, then citizens will have to find meaningful productive ways to participate in our law enforcement. Several methods have been discussed which can facilitate this participation. Now is the time for citizen involvement with the police in law-enforcement. Now is the time to assume responsibility for anti-social behaviour spawned in our communities.

FOOTNOTES: CHAPTER 1

1. Canada, "Police Administration Statistics" (Statistics Canada, Ottawa, 1972) p. 15.

2. Adams, T.F. *Law Enforcement: An Introduction to the Police Role in the Criminal Justice System (Prentice-Hall, Englewood Cliffs, New Jersey, 1973)*

   Brandstatter, A.F. and Radelet, L.A., *Police and Community Relations: A Source Book* (Glencoe Press, 1968)

   Patrick, C.H., editor, *The Police, Crime and Society* (Springfield, Illinois, 1972)

3. United States, *President's Commission on Law Enforcement and Administration of Justice* (Government Printing Office, Washington, 1967) p. 13.

4. Great Britain, *Royal Commission on Police in England* (Her Majesty's Stationary Office, 1962)

5. Wilson, J.Q., *Varieties of Police Behaviour: The Management of Law and Order in Eight Communities* (Harvard Press, 1968)

6. Berkley George E., *The Democratic Policeman* (Beacon Press, Boston, 1969)

7. Ciale, J., "Crime Prevention through Community Control" (Centre for Criminology, Ottawa, 1973)

8. Norris, Donald, *Police Community Relations — A program that failed* (U.S.A. 1973)

9. Berkley, George. ibid

CHAPTER 2.
INDIVIDUAL LIBERTIES AND POLICE POWERS OF INVESTIGATION

There is a definite need to increase citizen participation in police activity if we are to attempt to reverse rising crime rates and restore the meaning of self-government to modern urban communities. But increased citizen involvement must be matched with an acute awareness of the rights of the individual if we are to avoid the pitfall of instituting vigilante style "justice" in response to social and legal problems.

For example, in cases of "minor" but troublesome anti-social behavior, such as vandalism, we see a definite merit in providing some mechanism whereby the apprehended culprit can be brought face to face with the victim and some mutually satisfactory form of restitution worked out. In this way the offender is made aware of the human impact of his actions and the victim obtains a greater measure of satisfaction. A communtiy-based auxiliary police facility could promote these kinds of informal regulatory activities. But there would need to be guarantees that civil liberties were not violated or that due process of law was not flouted. Otherwise communities could use auxiliary police facilities to persecute those who for one reason or another they happen to dislike.

But there is a much more immediate threat to individual liberty than the possible one outlined above, and it concerns the investigative powers of the R.C.M.P. It constitutes a standing threat to the right to privacy and this involves what is known as the "writ of assistance".

Writs of Assistance

Writs of assistance are features of the law-enforcement process which play a much larger part in the Canadian scene than they do in such countries as the United Kingdom or the United States, despite the fact that our laws are generally thought to resemble theirs closely, at least in terms of basic principles. As will be seen when the characteristics of writs of assistance are listed, the writs confer great power on the police to carry out searches of private residences; so much so that while a man's home may still be a castle in England, that is certainly not the case here.

The characteristics of writs of assistance can be summarized as follows:

1) The writ is "to all intents and purposes, a blanket warrant. It authorizes the holder to search for particular things (e.g. controlled drugs or smuggled goods) anywhere and at any time."(1)

2) "Four federal statutes authorize or require the issuance of writs of assistance: the Customs Act, the Excise Act, the Narcotic Control Act, and the Food and Drugs Act".(2)

3) Although a writ of assistance is issued only by a judge of the Exchequer Court of Canada, the judge has, except to a limited degree under the Customs Act, no discretion in the matter of granting the request. The other acts all state that he shall grant it when asked to do so.

4) The request for a writ is made either by the Attorney-General of Canada, or the Federal Minister of Attorney-General of Canada, or the Federal Minister of Health and Welfare. This would seem to indicate that the requests would always be reasonable, but this safeguard is undermined by the next characteristic.

5) Writs of assistance are issued for the life of the holder, or until he retires from service.

6) The holder of a writ of assistance is entitled to the help of assistants in the carrying out of his searches. These assistants need not themselves hold writs.

In the words of John Faulkner, a lawyer who has studied this question:

> *"Local and provincial police forces are not issued writs of assistance, but this handicap is got around by more or less permanently attaching R.C.M.P. officers, who hold writs, to the local police. The Mountie is then taken along on all raids so that his writ may be employed. I was told that this is why drug raids are often described in the press as 'joint raids' by local police and the R.C.M.P.*
>
> *I was able to talk with an R.C.M.P. officer who 'spends all his time at the City Police Station', he was quite frank about his function, describing himself as a 'walking search warrant'. His view of the writ of assistance was that it was a matter of convenience – the police were able to avoid the 'bother of applying for a search warrant'."*(3)

7) There is almost no restriction on the methods the police may use in carrying out their searches. For example, under Section 10(1) of the Narcotic Control Act,

A peace officer may at any time:

(a) without a warrant, enter and search any place other than a dwelling house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this act has been committed;

(b) search any person found in such place; and

(c) seize and take away any narcotic found in such place, anything in such place in which he reasonably suspects a narcotic is contained or any other thing by means or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.

Section 10(4) elaborates on the powers of search:

> For the purpose of exercising his authority under this section, a peace officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container, or any other thing.

Safeguards Against the Abuse of Writs of Assistance

At the present time the only safeguard against the abuse of writs of assistance (allowing that any use of them is not an abuse of the principles upon which the government of Canada and the rights of Canadian citizens are supposed to rest) is what might be called the consensus as to the limits of the power of the police which prevail in Canada as a whole. Such procedural safeguards as there are, are limited almost wholly to those that the R.C.M.P. have provided. Again using the words of John Faulkner,

> *"the R.C.M.P. have established procedures for ensuring that the writs are not misused. Officers are required to have reasonable and probable grounds for making a search. Where no evidence is produced the officer is required to swear out an affidavit stating his reasonable and probable grounds. The R.C.M.P. also state that the Affidavit is never sworn to by another member of the force and that in this way they 'strive to apply a control outside the force, identical to the control requirements in the Criminal Code'. (emphasis added by Faulkner). They also state that no disciplinary action had ever had to be taken against any officer for failure to establish the reasonable and probable grounds."*(4)

The dangers inherent in the present situation are obvious in the very fact that whether or not the last statement provides any reassurance depends upon one's view of the likelihood of the R.C.M.P. being willing to reprimand one of their own members for what might easily be seen as nothing more than the over zealous pursuit of a laudable purpose. Because we feel that the present situation is dangerous we recommend three steps which should be taken:

1) Until writs are abolished, their use should be subject to review by boards entirely independent of the R.C.M.P. The members of such boards should consist of judges, lawyers, and members of the general public.
2) Instead of being granted for indefinite periods of time, writs of assistance should be granted for only limited periods - for example, six months.
3) Writs should not be granted simply at the request of the applicant. The judge to whom the application is made should have the responsibility of making a decision as to whether the application is reasonable. Furthermore, guidelines should be laid down to aid the judge in deciding whether or not to grant the application. For example, it might be held to be reasonable to grant a writ of assistance when the police are about to start a special campaign against the traffic in hard drugs in a particular city of the province, it being understood that the campaign will have an end as well as a beginning

Citizen involvement in law enforcement must be done with an awareness of the rights of the individual in mind. To lose this awareness would only serve to institute vigilante style justice, rather than work towards a "just" law. Writs of Assistance are one area in which the rights of the individual are not protected by legislation. We as citizens need to examine and work towards changing legislation, such as this, in addition to working towards citizen participation in community law-enforcement.

FOOTNOTES: CHAPTER 2.

1. John E. Faulkner, "Writs of Assistance in Canada", *Alberta Law Review*, Vol. 9, 1971, p. 386.
2. Ibid.
3. Ibid., pp. 392-393.
4. Ibid., p. 393.

CHAPTER 3
BAIL IN CANADA

> *"The prosecution in a murder case must at once demand bail from a defendant and the latter shall provide three substantial sureties as approved by the court of judges in such case who guarantees to produce him at trial."*(1)

This quote is not a recent article of law pertaining to a bail system, but Plato describing the legal procedures for murder trials in ancient Greece. Thus we see that a concept of bail is a relatively old part of legal procedure. Bail has always been a mechanism for encouraging a defendant to attend trial, without being held captive until trial commencement. In earlier times, this came about out of necessity. The irregularity of trials, and the lack of funds directed towards food and shelter for accused persons, often produced the situation that the accused died of malnutrition or disease before the trial. To avert this tragedy, different types of bail were used to encourage the accused's attendance at trial, while remaining free in the community until that time.

Types of bail varied.(2) It was a German custom to take a hostage at the time of arrest. If the accused did not appear for trial, then the person designated as "hostage" would be judged in his/her place. In early Anglosaxon law, rather than the taking of a hostage, a well-known citizen was needed to back the accused in order for bail to be granted. If the accused then did not appear for trial, the citizen would stand in his/her place. Later in England, the sheriff was the person held responsible for the attendance of the accused at his/her trial. Failure to appear caused the sheriff to be fined a large amount of money.

The first codified legislation setting out the conditions of bail appeared in the British Statute of Westminister in 1271. This statute stated which offences were allowed bail, and which were not. It also stated the basis for determining why a person should be held captive, or released until his/her trial date. The Westminister Statute stated that the seriousness of offence, the likelihood of the accused's guilt, and the status of the accused were to be the primary considerations in establishing bail.

It is important to note that in this early legislation the bailiff was involved in the predetermination of the person's guilt. The status of the accused in society was also considered, with legal discrimination shown against the low status person.

The guidelines of Westminister remained in effect for four and a half centuries. Recognizing the disparity in the previous guidelines, in 1869 the change was made which "provided that justices may at their discretion, admit to bail or refuse to admit to bail any person accused of a felony or misdemeanor . . . The onus of persuading the court to admit to bail lay on the accused".(3) This onus and discretion was transmitted to Canada in 1869, and remained as the basic consideration until 1947.

After 1947, the considerations as to the granting of bail included:

1. The nature of the accusation (seriousness of offence).
2. The nature of the evidence in support of the charge (indicative of the accused's guilt), but also
3. The severity of the punishment which would follow upon conviction (likelihood of the accused not appearing at trial).
4. Whether or not the sureties were independent or indemnified by the accused (were the sureties likely to cause the accused to appear for trial), and
5. The public interest test (if the accused is released, is there a likelihood that another offence against the public will occur).(4)

Hence, we see that over the years, the concern with bail has moved away from guaranteeing "some" form of representation of the accused at trial and away from the concept of predetermining the guilt of the person, to considering the public interest, and the likelihood of the attendance of the accused at trial. These considerations remained in effect until the Bail Reform Act came into being in 1972.

The Bail Reform Act implements changes in three important areas of the pre-trial treatment of the accused. Firstly, it legislates the presumption of innocence with reference to bail. Secondly, the monetary retainer as a surety that the accused will appear for trial has been largely removed. Thirdly, the Bail Reform Act has introduced alternative arrest procedures.

The Bail Reform Act provides a means of enacting the presumption of innocence principally as laid down in the Bill of Rights which states as follows:

> *". . . no law of Canada shall be construed or applied as to . . . deprive a person charged with a criminal offence of the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause."*
>
> *Canadian Bill of Rights*(5)
> *Pt. 1, Sec. 2-f*

The Bail Reform Act recognizes that if a person is kept in jail, pending proof of guilt or innocence at his/her trial, then a form of punishment could occur. A person could lose his/her job. Family relationships could be damaged or the family could suffer financial loss.(6). Difficulties are also created in obtaining legal counsel. It has been shown that those in jail at the time of trial have received harsher sentences then those released on bail and that they are more likely to be committed to jail.(7). All of these effects are less likely to occur if a person is presumed innocent until proven otherwise.

The new Bail Reform Act does not, however, automatically assure that persons who are accused of an offence are to be set free in the community until trial. There are other constraining considerations namely:

1) The nature and seriousness of the charge

2) the evidence

3) the character and co-operation of the accused, and

4) the likelihood of delay in prosecution.

Removal of Cash Bail

The second aspect of the Bail Reform Act which is as important as the "presumption of innocence" is the removal of the economic requirements for obtaining bail. Prior to the Bail Reform Act, the accused made application for bail. The judge then chose to either:

1. release the accused on his/her own recognizance after agreement to pay an amount of money, if the person failed to appear in court,
2. release the accused after the deposit of an amount of money with the Justice, or
3. release without sureties or monies, on recognizance.

These alternatives posed severe problems for the person lacking wealth. If a rich person and a poor person committed a similar offence which qualified for bail, and had similar likelihood of court appearances, the rich person would be set free in the community prior to court appearances, if he/she supplied the required monies. On the other hand, the poor person would be detained. This type of economic disparity obviously penalized the poor. With the introduction of the Bail Reform Act, "the deposit of money or valuable security by the accused may be required only if the accused is not ordinarily a resident in the province or does not reside within 100 miles from the place in which he is or was in custody in connection with the offence"(8)

While there still is economic disparity between rich and poor non-residents, the Act has significantly altered the "cash bail" requirements to remove obvious economic disparities.

Police Arrest Procedures

Lastly, the Bail Reform Act has changed police arresting procedures. In the past the police have had the discretion of deciding whether or not to arrest. With the Bail Reform Act, this discretion is present in an altered form. The following specifications are enacted with regards to arrest procedures. A policeman *may* arrest without warrant:

a) a person who has committed an indictable offence. (For the list of "Indictable Offences", see Appendix 1.)

b) a person, who on reasonable and probable grounds, the police officer believes has committed, or is about to commit, an indictable offence.

c) a person whom the police officer finds committing a criminal offence,* or

d) a person whom the police officer has reason to believe that a warrant has already been issued for.

A peace officer *may not* arrest without a warrant:

a) a person who has committed an indictable offence listed in Section 483 of the Criminal Code. (For a list of these offences see Appendix 2.)

b) an offence for which the crown has an option to proceed. (See Appendix 3.)

c) an offence punishable on summary conviction. (See Appendix 4 for list of summary convictions.)

Unless the following points have not been satisfied:

1) the identification of the person

2) the need to gain or preserve evidence [of/or] relating to the offence, and

3) the need to prevent the commission of another offence.

A police officer may arrest anyone, if he/she has a warrant. The warrant must state the reason for the arrest. (9)

If a police officer has questions as to the basic consideration (i.e., a person's identity, evidence, or willingness to stand trial), then he/she may arrest the person. This decision to arrest, however, must be reviewed by the duty officer of the police force. If the original questions pertaining to the basic considerations have been answered, then either the police officer or the duty officer must release the accused. This is new because prior to the Bail Reform Act, this decision had to be made by a justice of the peace or a magistrate. Thus we see that powers have been granted to the police, which amounts to the powers to grant bail.

If the police are satisfied that the person will appear in court, and will not be a threat to the public, then they must issue either an Appearance Notice or a Summons. The duty officer in charge may issue an "underwriting" which is a more formalized "appearance notice", or a recognizance with sureties. (This means that it is an undertaking by the accused that he/she will be obligated to pay an amount of money (not to exceed $500.00) upon failure to appear at trial), or a recognizance without sureties (no sum involved); or,

> *If the alleged offender does not reside in the province or more than 100 miles away, he may be released on his own recognizance in a maximum amount of $500. This is the only case in which "cash bail" may be required as a condition of pre-trial release."*(10)

Failure to appear at one's trial, after being issued an appearance notice, constitutes a summary offence in itself. Failure to appear has a maximum penalty of six months in jail on the first offence. This occurs whether or not the person is convicted of the original accused offence. Conditions such as an identification appearance to the police stations every eight days can be added to the appearance notice. These conditions, however, are requested by the prosecutor of the case and added by the judge. Failure to meet these conditions are cause for a warrant of arrest to be issued.

Thus, we can see that the Bail Reform Act has specified what conditions need to be met, and for which offences a person may be arrested in order to obtain bail (pre-trial release). Under the new law, a responsibility has been placed upon the police officer not to arrest without a warrant for minor offences where he/she has reason to believe that the public interest may be secured by proceeding in a fashion other than arrest. The responsibility of the police duty officer has been extended also in that he/she has to review all arresting decisions as to their validity.

Detention of the accused in custody, prior to trial, is justified only when either of the following is proven:

1) detention is necessary to ensure his/her attendance in court.

2) detention is necessary in the public interest, i.e. the accused will, if released commit a criminal offence involving serious harm or an interference with the administration of justice.

The onus of showing that an accused should not be released into the community has changed. It has been placed upon the police, the justice (in serious offences) and the prosecutor to

* Pertaining to the Criminal Code, Provincial or Municipal Statute.

prove that the alleged offender will likely not appear in court, or will commit further anti-social behaviour, thus harming the community. These changes are significant because they implement the long-held, theoretical value, (as stated in the Candian Bill of Rights), that a person shall be presumed innocent until proven guilty at a hearing. In the past, persons have been detained, hence punished, prior to being found guilty. Often this detention was unnecessary since the person would probably attend their trial and would not likely commit another offence; thus they would not pose a danger to the public's safety.

As equally important has been the removal of the economic bias in the granting of bail. Freedom to be in the community prior to court proceedings is no longer based on one's financial position. By the creation of an offence which makes it illegal not to appear in court for sentencing, a means has been established of implementing justice independent from one's financial ability.

Before, when a pre-trial release could be obtained by putting up a set amount or money, a wealthy person could obtain that sum, hence release, while a poor person could not. This is no longer the case, except for those who live outside of the province or outside of a 100 mile radius from the place in which the offence occurred.

Although the complaint is often made that police officers now have to spend more time searching for accused persons who have failed to make court appearance, the Bail Reform Act has introduced some needed changes in pre-trial procedures and brought us a step closer to the goal of equality of treatment before the law. An economic bias in the administration of justice has been removed and pre-trial punishment has been minimized for those not yet proven guilty. These benefits can only be purchased at some cost of administrative efficiency and limitation on the power to detain suspects and, on balance, the expenditure seems well justified.

FOOTNOTES: CHAPTER 3

1. Law Society of Upper Canada, 1a, *The Bail Reform Act Reviewed* (Seminar Fall, 1973)

2. Salhany, Roger, *Canadian Criminal Procedure* (Canada Law Book Co. Ltd., Toronto 1968)

3. Scollin, John A., *The Bail Reform Act: An Analysis of Amendments to the Criminal Code Related to Bail and Arrest* (Carswell Co., Toronto, 1972)

4. Scollin, Ibid.

5. Canada, Canadian Bill of Rights RSC 1970, *Statutes of Canada* (Queen's Printer, Ottawa, 1970)

6. Friedland, Martin, *Detention Before Trial* (Toronto University Press, Toronto, 1966)

7. Rankin, A., "The Effect of Pre-trial Detention" *(New York University Law Review, Vol. 39, 1964*
   Wald, Patricia, "Pre-trial Detention and Ultimate Freedom: A statistical Study" (New York University Law Review, Vol. 39, June 1964

8. Scollin, ibid. p. 152.

9. Martin, J.C. and Mewett, A.W., *Martin's Annual Criminal Code* (Canada Law Book Ltd., Ontario, 1973) p. 371.

10. Scollin, ibid.

CHAPTER 4.
LEGAL AID IN ALBERTA

The principle of allowing everyone, rich and poor equal treatment before the law, and equal access to the protection, rights and privileges granted to them by law, has been a part of Western ideology for so long it has become a cliche. But how close have we come to realizing this ideal? Since Roman times different societies have provided varying forms of legal aid for people too poor to afford lawyers. In Ancient Rome a poor man could obtain legal assistance from a rich and powerful man, or patronus, provided he gave his patronus political support in return. In the Middle Ages, the administration of justice came under the control of the Church and legal aid became a charitable endeavour, a part of the pious work of Christian men.

The "hit and miss" nature of these forms of legal aid is obvious. There was no guarantee that all persons charged with a crime would be provided with counsel. Undoubtedly, the prisons were full of people too poor and too ignorant to obtain legal assistance.

Has the situation really changed that much today? Personnel administering the Alberta Legal Aid Plan(1) report that at least 75% of the people in our jails are Native and/or under twenty-five and it would take an extremely naive person to assume that this is because only these people are breaking the law. Recently the *Edmonton Journal* (2) uncovered a case in which a young man had spent several weeks in jail because he had pleaded guilty, at the advice of police, to a charge of Breaking and Entry. It was later discovered that charges had been pressed by his former employer's wife who had been suprised by his return to his old place of employment to pick up a pair of skis.

Instances such as this cannot help but raise the spectre of doubt about the kind of legal protection a person charged with a crime in Alberta receives, particularly in cases where a person lacks the money and/or the know-how to obtain legal help.

In the United States, significant progress has been made in this regard. The United States Supreme Court case, Gideon vs. Wainwright, established "the right of an indigent defendant in a criminal trial to have the assistance of counsel (as) a fundamental right essential to a fair trial, and a petitioner's trial and counsel without the assistance of counsel violated the Fourteenth Amendment" (3)

The Fourteenth Amendment of the United States Bill of Rights guarantees that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . "(4).

"Due process", then, is the key constitutional guarantee which prevents poor people in the United States from being processed through the courts without the assistance of a lawyer. "Due process" is by no means a new idea. It dates back to the Magna Carta which held that:

> *"No freeman shall be taken and imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers and of the law of the land".*(5)

This provision was to protect a person regardless "of what estate or condition that he be".(6)

"Due process", then, is not a new-fangled by-product of our liberal age, but a time-honored part of Western judicial tradition. It means nothing more than that the right of the individual to life, liberty, security of the person and enjoyment of property may only be withdrawn according to existing law.

The "due process" clause of the Canadian Bill of Rights states that "no law of Canada shall be construed or applied so as to . . . deprive a person who has been arrested or detained . . . of the right to retain and instruct counsel without delay."(7).

But what kind of real protection does this clause offer people too poor or too ill-informed to obtain counsel to protect themselves in Canadian courts? According to Walter Tarnopolsky, an authority on civil liberties legislation, the due process clause in the Canadian Bill of Rights is unlikely to be a significant safeguard in Canadian court. In his opinion, the kind of free hand that the due process clause receives in the United States is contrary to Canadian judicial tradition which "is against such extensive restriction of the will of Parliament".(8) .

In other words, in order to make the retention of counsel an absolute necessity for a trial in Canadian Courts to be considered "fair" it is going to be necessary to change the law through Parliament rather than through the courts.

A test case in the Manitoba Court of Appeal this year after the Gideon vs. Wainwright decision in the United States, bears out this conclusion. The lawyer conducting the appeal for a young man who had been convicted of escaping from lawful custody based his defense on the fact that since the accused was not advised of his right to retain counsel and that he might receive legal aid from the Manitoba Law Society, his rights under the Canadian Bill of Rights were infringed.

However, the Court was not convinced by this argument, and in the words of the Judge presiding over the case, "that what counsel argues before us is not matter for decision by this tribunal but matter for legislation."(9)

It appears, then, that the American experience in regard to due process will not apply in Canada. Despite the guarantees for the right to retain counsel in the Canadian Bill of Rights, this clause effectively protects only those people who can afford to pay for lawyers.

However, even if this were not the case, all the law courts in the land will not protect the unfortunate individual who has just been arrested and put in jail. A report published in 1971 by the Canadian Civil Liberties Trust entitled "Due process Safeguards and Canadian Criminal Justice" revealed appalling abuses of civil liberties of Canadian citizens, not through a lack of legal safeguards, but through "corrosive indifference" by our system's custodians.(10).

In a cross-country survey of individuals who had been arrested, 79.7% had to wait longer than twelve hours to see a lawyer, 68.8% had to wait longer than twenty-four hours, and 42.4% had to wait longer than three days. Less than 9% were able to get in touch with a lawyer within four hours of custody.

As the study points out, the result of delay in obtaining counsel is that "bewildered accused people prejudice

themselves wrongly, severely and irreparably."(11). This is certainly borne out in their inquiry into statements made by accused persons after police interrogation. Of ninety-eight statements made to the police (a cross-county sample), eighty of them were self-incriminatory.(12).

This survey also provided conclusive proof (as if there were ever any doubt) that having a lawyer is, to put it mildly, an obvious advantage in the jaws of Canadian justice. Of the arrested persons surveyed, 20% of those who had lawyers had their charges dropped. Only 9.24% of those without counsel were allowed to go free.(13).

Of those people represented by counsel, 56.06% of them pleaded guilty and 12.2% of them exercised the option for trial in a higher court and trial by jury. These figures are to be contrasted with those of the unrepresented accused, 81.93% of whom pleaded guilty and only 1.5% of whom took advantage of the option for trial in a higher court.(14).

The evidence obtained from this study offers ample proof that not only must the law be changed to prevent trials without the benefit of counsel, but whatever legal aid service that is provided for the public must act as an effective watchdog on the police stations and the courts to ensure that apathy and neglect and the resulting abuses of the accused's right to a lawyer, do not occur.

Up to this point, the discussion has been confined to criminal actions. What about civil actions? What happens to a woman who is in an intolerable marriage in which her husband abuses her and the children, and at the same time prevents her from leaving him and obtaining alternative means of support, such as welfare. What is to become of a family faced with the threat of eviction from their landlord because they will not pay an illegal rent increase? Such all-too-common cases constitute real emergencies and require urgent legal assistance.

It is difficult to overstate the case for legal aid. The need is quite apparent. Since legal proceedings are so complicated that even the educated person would be hard pressed to defend himself or herself in a legal dispute, everyone must have access to competent legal assistance. Anything less than that renders the principle of equality before the law meaningless and the legal process a farce.

From this standpoint, then an attempt will be made to investigate the Alberta Legal Aid Plan, as it is presently constituted, to detemine how close it comes to providing its citizens with equal treatment before the law.

The History of Legal Aid in Alberta.

A government funded legal aid program is a recent phenomenon in Alberta. The present plan has only been in operation since 1970. Prior to that, lawyers would take on civil and criminal legal aid cases voluntarily, as a charitable contribution. A set of rules called "Needy Litigant Rules", contained in the rules of court, directed the handling of legal aid cases, and lawyers were generally not paid to do this work. This system was becoming a financial burden on the law profession, and therefore pressure was brought to bear on the provincial government to recompense the lawyers for their efforts.

In 1969 a pilot project in Edmonton, which was to provide aid in civil and criminal cases and *pay* the lawyer for his/her services, was established at the advice of a committee of Law Society members (a formal organization of lawyers in Alberta) and representatives of the Department of the Attorney-General of Alberta. This project was quite successful and provided the impetus for the formation of the present Alberta Legal Aid Plan in July of 1970.

This plan was established by agreement between the Attorney-General and the Law Society. The committee (of Law Society members and Attorney-General's department representatives) that recommended this plan considered it better to establish the plan by agreement rather than by statute because it would be easier to make changes. The disadvantage of this arrangement is that the regional legal aid committees administering the plan get wide discretionary powers, which are not held accountable to the Courts.

On January 31, 1973, the Federal Government made an agreement with the Government of Alberta to assist the financing of the Alberta Legal Aid plan. This agreement allowed for increased coverage of criminal offences. For example, the plan was expanded to include indictable offences under the absolute jurisdiction of a provincial judge, such as theft under $200.00 and illegal possession of alcohol. The additional federal money also allowed for an extension of civil legal aid.

Concepts of Legal Aid

The Alberta Legal Aid Plan offers a "judicare" type of legal aid program, which means that legal services for the poor are provided by lawyers in private practice. As with Medicare, private practitioners take on the cases and are reimbursed by the State, England established the first judicare plan in 1949, and Ontario legal aid is closely modelled on the British plan. The Alberta legal Aid Plan is a less extensive version of the Ontario scheme.

Alberta operates two panels of lawyers to handle the legal work. One panel consists of most of the lawyers in the province and they handle all but the most serious cases. The second panel is composed of the lawyers who are more experienced in criminal law and they take on those criminal cases with grave consequences such as life imprisonment. The panels operate on a roster basis. People charged with serious crimes get a limited choice of counsel, but for the most part the lawyer is selected for the applicant. This is not the case in Ontario, where a lawyer is selected for a client only as a last resort. The Alberta arrangement is justified according to the Alberta Criminal Legal Aid handbook, because it helps "to spread the burden equally among the members of the profession."(15)

The basic guiding principle of the Alberta Legal Aid Plan is that "every person is entitled to receive such legal representation and assistance as a man of modest means could provide for himself."(16) It is further emphasized that "legal aid applicants should not be placed in a position superior to those of the average man."(17) The interpretation of the concept "man of modest means" is left to the discretion of the regional legal aid committee.

An important distinguishing feature of the Alberta Legal Aid Plan is that it is "not a make work scheme for lawyers" and "the legal aid fees are not intended to supply or provide an adequate living for lawyers."(18) These stipulations are made to prevent, for example, the lawyers from being tempted to carry cases to higher courts than they ought to go, in order to collect the fee.

It is also important to note that legal aid in Alberta is not "free'. Arrangements are made, where possible, for people to pay back the lawyer's fees, on a monthly basis. If a client has adequate personal funds in his/her possession at the time of arrest, a deposit is required. In divorce cases, the woman is often required to part with some of the money she acquired in the settlement. The lawyers are also urged to report to the local Area Committee, any client whom they suspect of being able to pay for his/her own lawyer.

Judicare is not the only possible type of legal aid program. Quebec has employed a "public defender" type of program in which a number of lawyers are hired by the goverment to deal exclusively with legal aid cases. The chief disadvantage of this method is that it is government controlled, which can detract from the objectivity of the litigation, particularly in instances where thegovernment itself is the litigant.

A third type of legal aid, which has been experimented with in the United States (Los Angeles, California and Shreveport, Louisiana) is now being examined by a number of provincial governments in Canada (British Columbia, Manitoba, Ontario, Alberta). This program is called "legal care" and is comparable to the Health Care Insurance schemes which provide prepaid medical care. Legal care is a prepaid legal insurance program, for which a person would pay certain monthly premiums, just like Medicare.

The fourth, and probably the most significant, legal aid concept is the Neighborhood Law Office, a notion which originated in the United States through the sponsorship of the Office of Economic Opportunity as an adjunct to the "war on poverty" declared by President Johnson in 1964.

The overall purpose of the Neighborhood Law Office (N.L.O.) is not simply to provide legal services to those who ask for them. It is intended to work with poor people in poor communities by providing them with the services of professional lawyers and at the same time providing the opportunity and the training to stimulate leadership among the residents of the community. The intention is to encourage the community residents to develop the wherewithal to handle their own legal problems, whether they be concerned with divorce, eviction, welfare frauds, coerced confessions, arrest, police brutality, narcotics convictions, instalment buying, or whatever. The legal problems of poor people are viewed as being an integral part of the whole of the slum community. In other words, the advocates of the N.L.O. (Neighborhood Law Office) do not simply want to help the poor with their legal difficulties, but they want to help destroy poverty.

The N.L.O. is conceived of as providing at least four different types of legal assistance. In the the first place, easily accessible lawyers working in the poor communities can help establish or assert clearly defined rights, particularly in the areas of landlord and tenant relations, instalment purchase contracts, and domestic relations. Legal representation of poor individauls suffering from abuses of their rights whether by welfare officials, credit companies, or landlords, can often bring subtle pressure to bear on these officials, to deal with their clients more fairly. In the long run, it can also encourage innovation in the way institutions such as welfare operate. In addition, part of the function of defining and asserting the rights of the residents in establishing extensive and imaginative education programs in the community to teach the people their rights in the areas of landlord/tenant law, consumer education, welfare, and so on.

A second way in which a N.L.O. can improve the legal position of the community residents is by allying itself with the academic community in the area, and using that expertise to research and examine the laws affecting poor people in cities (urban law). That way, research can be done and changes that will do the most good in the long run can be worked towards.

A third and very necessary task of the N.L.O. lawyers is to challenge those laws which are contrary to the interests of the poor community. An example of such a rule is the one in which a family is denied welfare benefits if an adult male capable of supporting the family is present. Legal representation can help to delay the enforcement of, or call into question the validity of, such a rule.

A fourth way that lawyers in poor communities can benefit the residents is through taking legal action in so-called "non legal" situations. A lawyer can assist in taking civil action in cases where, for example, a student is unfairly disciplined by school authorities. By representing the interests and articulating the grievances of a community, a lawyer can assure that these complaints get a fair hearing and that, in time, officials and private individuals will be more responsive to the requirements of the community's members.

Thus, the N.L.O. goes beyond a mere dispensation of legal services, by attempting to strike at the root of the problem of the majority of people who require legal aid — poverty. The advantages of the N.L.O. over the other types of legal aid will be looked at within the context of an examination of the Alberta Legal Aid Plan. However, a word should be said about the structure of an N.L.O.

The most important feature of an N.L.O. should be an affiliation with a law school. This allows for the necessary research to be done in the area of urban law and also provides the manpower to perform the function of interviewing, screening and referring applicants, and to act as assistants to the lawyers who would, of course, come from a range of specialties and trial experience. The law office should also be closely connected with experts in other fields such as psychiatry, social work, and accountancy.

It is important that the "target community" have several small informal law offices rather than one great monolithic neighborhood law firm that will merely duplicate, in microcosm, the impersonal, indifferent, society that is the cause of the community's problems in the first place. It is also important that citizens benefiting from the N.L.O. be a key part of the administration of the whole operation.

It should be emphasized that the four types of legal aid just mentioned: judicare, the public defender system, legal care, and the neighborhood law office, are not mutually exclusive. Indeed, Alberta and Newfoundland are probably the only provinces in Canada that are still employing the judicare scheme (that is, using lawyers in private practice and reimbursing them by the state) exclusively. A number of provinces such as Ontario, British Columbia and Saskatchewan, are phasing in Neighborhood Law Office Programs to augment the service provided through their judicare plans.

The task now is to closely examine the Alberta plan to get a clear picture of how it is administered, the kind of service it offers, and whether or not changes should be made to better assist Albertans with legal problems.

The Alberta Legal Aid Plan In Practice

As has been mentioned earlier, the financing of the Alberta Legal Aid Plan is taken care of by the provincial government, the federal government, pays 50 cents per capita of the population of Alberta, or 90% of the lawyers' fees, whatever amount is smallest. The province takes care of other costs involved in administering the Plan, such as office expenses and salaries. In the fiscal year ending March 31, 1974, the federal government had contributed $510,245; the province had contributed $890,000; and $110,107 had been recovered from clients.(19).

The Alberta Legal Aid Plan is limited to a budget, which can mean that any person who may have been granted legal aid

earlier in the year could be denied it later that year if the Plan has used up its money. England's legal aid plan allows for unlimited funds designed to meet the need as it arises, which is probably the best way to handle a program as unpredictable as providing legal assistance. The Law Society is responsible for administering the Plan, in conjunction with the Province of Alberta. Supervisory functions have been delegated to a "Joint Committee on Legal Aid", which in turn oversees regional legal aid committees, centered in each of the ten judicial districts in the province. These regional committees are dominated by lawyers, with only minimal representation of the community at large. There are no community representatives on the Joint Committee.

The day-to-day running of the Plan is handled by a legally trained Director, who is responsible to the Joint Committee, and under him is an Assistant Director and interviewers. They deal directly with persons wishing to use the service. For example, they visit the jail cells weekday mornings to handle legal aid applications.

The Alberta Legal Aid Plan is available to all persons requiring legal assistance in Alberta, irrespective of nationality or domicile, if they fulfill the needed requirements. Financial need is determined by the regional legal aid committees and there are no strict financial guidelines as to income and capital. The basic rule of thumb is to prevent undue financial hardship on the individual seeking aid.

All civil cases are covered by the Plan, but criminal offences punishable by way of summary conviction are usually excluded unless a sentence of imprisonment or a loss of livelihood is involved. (Offences punishable by sumary conviction are those generally considered least serious, for example, illegal possession of liquor, drunken driving, and common assault). Criminal offences by way of indictment are automatically covered, as are appeals in the above matter.

Procedures Involved in Obtaining Legal Aid

A person seeking legal aid must first of all fill out an application form (available at social welfare offices, from lawyers, or at the local office of the Alberta Legal Aid Plan), disclosing all financial resources, assets, debts and the spouse's or parents' incomes where applicable. He or she must also indicate whether or not friends can help. There is no formal check on this information because of a lack of money, although sometimes Credit Bureau facilities are used in suspected cases. It will be remembered that lawyers are required to report to the committee any information which may disqualify a client from obtaining legal aid. The legal aid applicant has to sign a waiver freeing the lawyer from the traditional solicitor-client confidentiality, for the purposes of informing the Director or the regional committee "that a client or his family or friends are prepared to pay."(20)

After the applicant has applied to the plan, a referral letter is sent to a lawyer, to whom the client pays a $5.00 "nuisance fee" for civil cases. The lawyer then interviews the applicant and gives the director or regional committee an assessment as to the likelihood of the case succeeding, the length and complexity of the proceedings, and whether or not he or she will act on behalf of the client.

In *Civil matters* the case is then passed to the regional committee who decides whether or not to grant a *legal aid certificate*. In *criminal matters*, the decision is based on the interview with the lawyer, with the director or local secretary making the final judgement. If the certificate is granted, the client can use that lawyer, who is paid according to a set tariff of fees. If the certificate is not granted, the applicant can appeal the decision to the Joint Committee. In the period from April 1, 1973 to March 31, 1974 approximately 54% of the applications for civil legal aid were accepted. In the same period approximately 75% of the criminal legal aid applications were accepted. (21)

Weaknesses of the Alberta Legal Aid Plan

Undoubtedly legal aid in Alberta has come a long way in the last decade. The question now is where does the Alberta Legal Aid Plan fall short? Does it need to be changed to better coincide with the ideal for equality before the law? To answer this question four aspects of the Alberta Legal Aid Plan will be looked at: the administration of the Alberta Legal Aid Plan, availability of legal aid under the Alberta Legal Aid Plan, the extent of coverage and the quality of the service rendered.

A. The Administation of the Alberta Legal Aid Plan

As was described in the previous section dealing with the administration of the Alberta Legal Aid Plan, both the Joint Committee of Law Society members and Attorney-General's department officials at the head of the Plan, and the regional committees are composed largely of lawyers. The chief danger in this situation is that, regardless of the goodwill of the committee members, there is a very strong likelihood that the committees will become and remain isolated from the very people whom the Alberta Legal Aid Plan is supposed to be serving. The legal problems of the poor are different from those of professional people; it is essential that poor people be on the committees administering the Alberta Legal Aid Plan to ensure that legal aid in Alberta moves in a direction that will reflect their interests.

A second major administrative shortcoming of the Alberta Legal Aid Plan is that it is uneconomical. Spreading the legal aid "burden" throughout the entire bar means that several different lawyers are paid on a case by case basis, which can run into a lot of money. A number of provinces in Canada - British Columbia and Saskatchewan, for example, have adopted a Neighborhood Legal Services type of legal aid in which a number of lawyers are hired to deal with the legal problems affecting poor people specifically, and they are situated in the communities where the poor people live. This type of plan is desirable for many other reasons which will be gone into later, but from an administrative viewpoint, it saves money. If the Alberta Legal Aid Plan does ten divorces in a given month, it costs $250.00 per divorce, or $2,500.00. If one lawyer were hired to handle poor people's divorces it would probably only cost $1,000.00 or $1,500, during the same monthly period. At the present time the Alberta Legal Aid Plan only accepts about 50% of its divorce applications, (the remaining cases are given to Student Legal Services). The applicant has to demonstrate a real "need" for a divorce – i.e. physical cruelty or a necessity for maintenance money for the children. More people would be served in divorce cases as well as other civil actions if staff lawyers handled them, rather than the entire bar.

B The Extent of Coverage Under the Alberta Legal Aid Plan

At the present time the Alberta Legal Aid Plan excludes certain types of summary offences from coverage. These include such crimes as shoplifting, common assault and drunken driving. Obviously people charged with these crimes are no better prepared to defend themselves in a court of law than persons charged with murder or arson. Therefore the plan should be expanded to include all criminal offences.

As was shown in the previous section, if a Neighborhood Legal Services program were adopted, more civil actions could be covered than are at present. The introduction of a Neighborhood Legal Services program would also mean that expanding the plan to include the presently excluded summary convictions would not necessarily incur a great deal more expense.

C. Availability of Legal Aid Under the Alberta Legal Aid Plan

The Alberta Legal Aid Plan is not as accessible as it should be. When a person is arrested, quite often several days can pass before he/she is put in touch with a lawyer. This can lead to unwise "guilty" pleas as well as unnecessary time spent in jail. In Ontario "duty counsel" are employed to assist persons in the interim period from the moment of their arrest until they get in touch with the lawyer who will handle their case. This would help to prevent the inexcusable indignities of spending time in jail before getting an opportunity to prove their guilt or innocence.

If a person is not in custody he/she is obliged to seek out the Alberta Legal Aid Plan if he/she desires legal assistance. This presumes that the person knows that his/her problem is a legal problem and that he/she has the confidence to walk the corridors of the downtown office without being intimidated. This seems like a great deal to expect from people constantly frustrated by bureaucracies and officials that "men of modest means" do not have to deal with. Setting up a Neighborhood Legal Services program would help relieve this situation, by placing storefront law offices in poor communities.

The Alberta Legal Aid Plan uses the "man of modest means" as a yardstick to determine whether or not a person should receive legal aid. This concept is simply not adequate because it ignores the legal needs of poor people. They are not in the same social position as men of modest means; their legal problems certainly amount to more than engaging a solicitor to help them prepare a will. Also "the man of modest means" is never defined. This leaves the Plan open to all kinds of inconsistencies which would be extremely difficult to avoid. A serious attempt has to be made to properly study the legal needs of poor people. One cannot isolate their legal needs from their socio-economic position and assume that they are the same as those of middle class people who can afford lawyers. A Neighborhood Legal Services program would enable lawyers to learn about the laws affecting poor people – for example, welfare laws, landlord/tenant laws, labour laws – and take some steps toward meeting the legal needs of poor people in a coherent and effective manner.

D. Quality of the Service Rendered by the Alberta Legal Aid Plan

It has been pointed out that the legal needs of poor people are unique. Spreading the legal aid "burden" throughout the entire bar does not necessarily operate to the advantage of the legal aid applicant because the whole bar does not have the expertise in laws affecting the poor. A Neighborhood Legal Services program, (in conjunction with a Judicare program) with groups of lawyers devoting their full attention to poor people's legal requirements would be much more desirable.

One aspect of the Alberta Legal Aid Plan that can lead to second-rate service is the low fees paid to lawyers. The reason for the low fees is that they are not intended to provide an adequate living for lawyers, which means that legal aid is supposed to be a burden on the legal profession. This is openly stated in the legal aid handbook. This view of legal aid seems likely to encourage shoddy service as there is no motivation beyond a lawyer's innate altruism, to do a good job. All too frequently law firms have their articling students or junior members handle legal aid cases[22], which they may not have the experience to handle properly. Adopting a Neighborhood Legal Services program would put the poor people in touch with lawyers who have been hired to deal specifically with their legal problems; they would not be a burden in the same way as they are now. Also, increasing the lawyers fees for cases not handled by a Neighborhood Legal Services office would at least place legal aid cases on a par with the regular caseload, and thereby increase the lawyer's incentive to do a good job. A more progressive step yet would be to adopt a "legal care" scheme in which all people in Alberta would pay monthly premiums for a legal service that would be administered much like the Alberta Health Care Insurance Plan.

Summary

The criticisms of the Alberta Legal Aid Plan that have been made here largely have to do with the fact that legal aid in Alberta is still very much bound up in the notion of legal aid as charity. As has been stated already, this concept does not adequately take into account the fact that the legal problems of poor people are not the same as those of people who can afford lawyers. Therefore it is recommended that:

1. More extensive provision be made for poor people to be represented on the joint committee and regional committees administering the plan.
2. The Alberta Legal Aid Plan, in addition to its present judicare scheme, should phase in a Neighbourhoood Legal Services program to work in poor communities and concentrate on the legal situation of poor people. This combined Neighbourhood Legal Services-Judicare Plan would allow for a more thorough coverage of civil cases, while the Judicare lawyers could continue to handle criminal cases.
3. That the Alberta Legal Aid Plan be expanded to include all summary convictions. Poor people charged with these crimes need as much legal protection as anyone else.
4. That duty counsel be hired to take care of people after they are arrested until they get a lawyer to take their case.
5. That there be an increase in the fees of lawyers operating under the Judicare program. This would provide more encouragement for those lawyers to do the best possible job with legal aid cases, and
6. That the Alberta Legal Aid Plan strongly consider adopting some form of prepaid legal insurance scheme. This would eliminate the discrepancy between fees received from rich people and poor people.

The principle of allowing everyone, rich and poor, equal treatment before the law and equal access to the protection, rights and privileges granted to them by the law, has long been a part of western values. Aspects of the Alberta Legal Aid Plan have to be changed in order to implement this traditional value. For as long as there is discrepancy in treatment by the law, between the rich and poor, respect for the law of Canada will be seriously undermined.

FOOTNOTES: CHAPTER 4

1. Information obtained from interview with Alberta Legal Aid Plan employee, May 16, 1974.
2. The Edmonton Journal, May 8, 1974.
3. *United States Report,* 1963, p. 335.
4. *The Bill of Rights Reader,* p.3.
5. Tarnopolsky, Walter S., *Canadian Bill of Rights*, p. 150
6. Ibid., p. 150.
7. Ibid., p. 230.
8. Ibid., p. 154.
9. Regina vs. Piper, 51 D.L.R. (2nd).
10. Due Process Safeguards and Canadian Criminal Law, p. 48.
11. Ibid., p. 27.
12. Ibid., p. 29.
13. Ibid, p. 36.
14. Ibid, p. 37.
15. The Legal Aid Society of Alberta, Criminal Legal Aid Handbook.
16. Ibid.
17. The Legal Aid Society of Alberta, *Supra.*, n. 2.
18. The Legal Aid Society of Alberta, *Supra.*, n. 2.
19. Information obtained from interview with Pat Sommerville, Director of the Alberta Legal Aid Plan, May 22, 1974.
20. The Legal Aid Society of Alberta, *Supra.*, n. 2.
21. The Legal Aid Society of Alberta, *Annual Report*, 1973.
22. Information obtained from interview with lawyer, June 4, 1974.

SECTION II: SENTENCING

Sentencing is crucial because it will restrict an individual's rights in someway; depending upon the philosophy underlying the sentence (whether the sentence is intended as punishment, as a deterrant, or as a part of the process of rehabilitation). It will also set the tone for the future handling of that individual.

> *"Fines" are a monetary disposition, used for minor offences. While the use of fines can represent a positive form of repremand, at present they penalize the poor. Suspended sentences (with and without probation) are a rapidly expanding form of disposition. They offer a mode of supervision without the difficulties which accompany incarceration. Incarceration which affects the smallest number of offenders, but is the most restricting, presents a method of censorship which gives birth to future anti-social behaviour. It is this area where changes are most neeeded.*

Whatever the purpose of sentencing, fluctuations are occurring in types of dispositions used.

TABLE 5: Sentences for Indictable Offences* – Canada

	1951	1956	1961	1966	1971(1)
Suspended sentence without probation	6.3	11.4	11.6	12.5	7.0
Suspended sentence with probation	13.5	12.7	16.9	18.7	12.6
Fine	30.3	29.4	22.0	28.0	32.7
Institution(2)	49.9	46.5	49.5	40.8	35.7
TOTAL	100.0	100.0	100.0	100.0	100.0

* Statistics not available for summary offences.
(1) Excludes Quebec and Alberta
(2) Includes jails, reformatories, industrial farms, training schools and penitentiaries.

In this section we will discuss the present dispositions that are available to the judges, both in terms of describing what is, and changes that need to occur within those dispositions. After examining the present forms of dispositions, it becomes obvious that there is a problem in which dispositions are applied to offenders. This problem, called disparity in sentencing, causes disrespect for the law and inequal treatment of offenders. A stated purpose of sentencing, guidelines for sentencing, and broader sentencing boards would help to alleviate this problem.

Sentencing is the judicial procedure by which society can respond to anti-social behaviour. Unless this procedure can be implemented without unduly violating the citizens rights, or encouraging further anti-social behaviour on the part of the offender, the process itself would fail.

CHAPTER 5
FINES

If a person has committed an offence, goes before the court, and is given a fine rather than placed on probation or in jail, usually there is a sigh of relief. The fine will affect his/her pocket, but not his/her person. Since we hold our personal freedom in higher regard than our pocketbook, fines are often seen as "light sentences". Although fines are regarded as a comparatively "light" sentence, they are not necessarily so, and are often the cause of incarceration, for those who simply cannot afford to pay.

As early as 1215, the awareness that one ought to be fined according to one's ability to pay, can be found in the Magna Carta:

> *"For a trivial offence, a freeman shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood."*
>
> *Clause 20.*(1).

More recently, and of more relavance is the Canadian Bill of Rights which states that:

> *"1. It is hereby recognized and declared that in Canada, there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely . . .*
>
> *b) the right of the individual to equality before the law . . . "*(2).

In Canada, with respect to fines, there is nothing which implements this right within the Criminal Code. Neither is there a mechanism by which a judge can determine whether or not a fine is excessive. Canada, in 1959, took a step towards creating this mechanism by introducing the concept of allowing the accused "time to pay".

"(5) where a court imposes a fine, the court shall not, at the time the sentence is imposed direct that the fine be paid forthwith unless

a) the court is satisfied that the convicted person is possessed of sufficient means to enable him to pay the fine forthwith,

b) upon being asked by the court whether he desires time for payment, the convicted person does not request such time, or

c) for any other special reason, the court deems it expedient that no time should be allowed."

(Criminal Code, Section 646). (3).

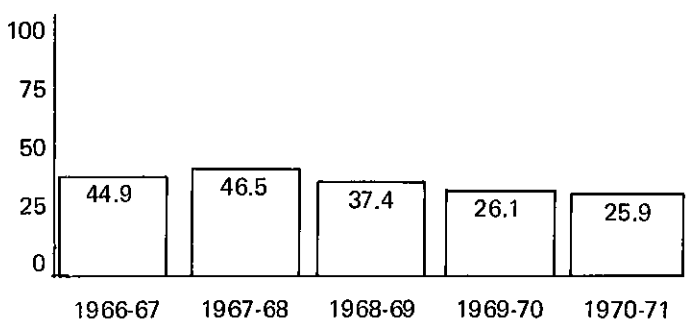
While this can provide a greater period of time in which to collect the needed amount, it still does not deal with the problem of determining what is an excessive fine, nor how to determine a person's ability to pay.

> *"Equality before the law demands not only equal treatment before the law, such as a fair and impartial hearing, but that no individual be treated more harshly or preferentially before the law. . . . (The) present system of assessing fines negates this fundamental right."*(4)

This clause also raises several unanswered questions: "upon what basis is the court satisfied that the convicted person is possessed of sufficient means to pay?", "is the court obligated to provide time to pay if the convicted person states the need?", and "upon what basis does the court deem it expedient?". Expedient for the convicted person or for the court?

The results of this lack of clarity are significant. Failure to pay fines normally results in imprisonment. Incarceration due to failure for payment of fines constitutes a significant percentage of those in Alberta's provincial jails.

TABLE 6: Percentage of Persons Committed to Alberta Correctional Institutions in Default of Payment of Fines[5]



Source: Annual Report of the Correction Institutions Superintendent, 1966-71.

Imprisonment for failure to pay fines has two obvious faults:

1. "Fines are selected as a mode of disposition where for one reason or another imprisonment or treatment programs under probation orders are not necessary." (6) Imprisonment of persons for failure to pay fines makes a mockery of the initial judgement.
2. Payment of fines depends on one's ability to pay (with obvious exception of those who can pay, but refuse to). Imprisonment for failure to pay penalizes the poor more than those who can afford to pay. Thus there are two systems of punishment for a particular offence. One for the rich and one for the poor.

The judicial body seems to assume that non-payment of fines is an act of contempt for court. If by its actions this were so, then, imprisonment might be the "just" sentence. What is painfully missing, however, is the recognition of "inability to pay".

The Institute of Judicial Administration in North America, in order to somewhat alleviate this problem, stated that:

> *"Incarceration should not automatically follow the non-payment of a fine. Incarceration should be employed only after the court has examined the reasons for non-payment."*

They also recommended that:

> *"In determining whether to impose a fine and its amount, the court should consider:*
>
> *i) the financial resources of the defendant and the burden that payment of a fine will impose, with due regard to his other obligations;*
>
> *ii) the ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court;*
>
> *iii) the extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and*
>
> *iv) whether there are particular reasons which make a fine appropriate as a deterrent to the offence involved or appropriate as a corrective measure for the defendant."*(7)

While the recommendations of the Institute of Judicial Administration could well be applicable to the Canadian situation, we have found that the procedures used in Sweden and West Germany would most effectively remove the economic discrimination inherent in our present fine system. Sweden and West Germany use the concept of "day fines". Fines are expressed units. The monetary value of the unit is determined by consideration of the wealth of the accused, his income, obligations and other economic circumstances.(8) If two persons have committed similar offences, and each deserving the greatest number of units, then their units would be converted into a fine based on their ability to pay. These countries have also made as a requirement for fining that an enquiry be made into the accused's ability to pay. This enquiry alleviates the problem of leaving the setting of the amount to the discretion of the judge. Programs such as these from Sweden and West Germany propose concrete legislation for calculating the amount the convicted person should pay.

If a person fails to pay their fine by the "day unit" approach, we see a persistency on the part of the court to prove that the offender did not pay because of the inability to pay. In Great Britain, as well as Sweden and West Germany, it is a requirement that if the convicted person has not paid their fine, then an enquiry be held. This enquiry is held with the convicted person in order to determine whether or not he or she, for reasonable grounds, needs an extension of time, or a

newly converted fine. It is only after this enquiry proves unwillingness to pay that the person goes to jail. This places the onus upon the courts to make sure that they are imprisoning someone because they willfully refuse to pay, rather than because they cannot pay.

Fines that are levied without consideration as to the convicted persons ability to pay create differing levels of punishment. A $100.00 fine to a person making $800.00 per month is certainly less punitive than it would be to someone making $450.00 per month. This present lack of a mandatory investigation into a person's ability to pay prevents the courts from ascertaining why an individual has not paid their fine. The present practice discriminates against those who are poor. If the Canadian law is to ensure its citizenry that it is not a vehicle of oppression of the poor, then mandatory enquiries need to be held in order to determine a person's ability to pay. Income/offence scales need to be developed in order to determine an equitable fine system, similar to the "day unit" system. The law itself needs to assume the onus of proving that the person's fine is set according to his ability to pay, and that imprisonment caused by default of payment is awarded *only* to those who have the means to pay the fine, but refuse to do so.

FOOTNOTES: CHAPTER 5

1. Jennings, Sir Ivor, *Magna Carta and Its Influence on the World Today* (London, H.M.S.O., 1965) Appendix

2. Canadian Bill of Rights RSC 1970, *Statutes of Canada* (Queen's Printer, Ottawa 1970)

3. Martin, J.C. and Mewett, H.W., *Martin's Annual Criminal Code* (Canada Law Book Ltd., Ontario, 1973)

4. Wilson, C.,. *Submission of the Canadian Bar Association, Alberta Branch, Civil Liberties Subsection, to the Alberta Board of Review of the Administration of Justice in the Provincial Courts of Alberta,* P. 2.

5. Wilson, ibid. Appendix A:1.

6. Jobson, K.B. "Fines" *(McGill Law Journal,* Vol. 16, 1970), p. 633.

7. American Bar Association, *Project on Minimum Standards for Criminal Justice: Standards Relating to Sentencing Alternatives and Procedures* (Institution of Judicial Administation, New York, 1967)

8. Jobson, ibid. p. 637

CHAPTER 6

SUSPENDED SENTENCES AND PROBATION

The Suspended Sentence is another form of disposition available to the courts in response to anti-social behaviour. Suspended sentences refer to:

> *"the power of the court to suspend the passing of sentence on an accused where it is of the opinon that, having regard to his(her) age, character, and antecedents, the nature and character of the offence and any extenuating circumstances surrounding the commission of the offence, the accused should be released . . . "*(1)

When an accused is given a suspended sentence, it means that the court has not actually sentenced the person, but the passing of sentence has been post-poned and will not occur if the accused abides by conditions of the suspended sentence specified by the court.

Such conditions may include the accused entering into a recognizance to keep the peace, or be on good behaviour; maintaining employment and/or support of spouse and dependents. The most significant condition which can be applied is that of being under the supervision of a probation officer.

Suspended sentences with probation are not available for those offences which prescribe a minimum penalty. The maximum length of time that a person can be placed upon probation cannot exceed three years.

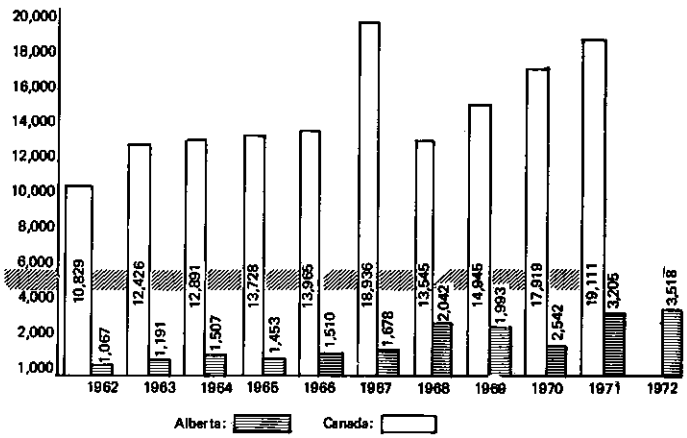
The origins of probation may be traced to the 17th Century, New England, where offenders were occasionally placed under the supervision of certain members of the community in order that these members could instruct the offenders as to their proper behaviour. In 1878, we observe probation being incorporated into the legal statutes for the first time in the State of Massachusetts. England followed in 1879, France in 1891, Germany in 1895, Italy in 1900, Denmark in 1905, Sweden in 1906, and Canada in 1908.

While probation in Canada appeared in 1908 as an acceptable mode of suspended sentence, it was not until 1921 that the Criminal Code, Section 638, designated probabtion as a disposition available to the courts.(2) In Alberta, probation was used from 1940 onward, but it was only in 1954 that legislation legally formed the Alberta Adult Probation Branch.

The accelerating rate at which probation has been used in recent years (see following tables) may be attributed to three factors: 1) growing belief that whenever rehabilitation of the offender is feasible, it is more likely to occur in the community rather than in an institution, 2) the fact that probation is a less costly procedure than incarceration (at present the cost of probation is $1.00 per day as compared to $13.31–$30.03 it costs to maintain an offender in an institution in Alberta(3) and 3) the belief that certain crimes warrant less supervision than others.

The following tables show the increasing use of probation for the years 1962 to 1971.

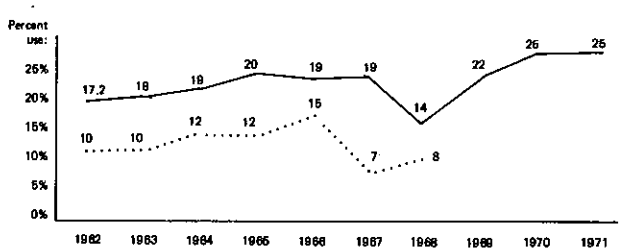
TABLE 7: Adults Placed on Probation in Alberta — Canada 1962-72(4)



Accompanying this increase in the number of adult probationers, there has been a corresponding increase in probationary services in Alberta. In 1954, there were two probation offices: by 1973, this had increased to nineteen offices. The number of probation officers in 1954 was two, whereas in 1972 there were 132 probation officers employed.

The increased use of probation has been shown in Table 7. Table 8 indicates the increase in percentage of use of probation as a disposition by the courts.

TABLE 8: Percentage of Use of Probation As a Disposition by the Courts in Canada and Alberta* 1962-1971(5)



Canada:_____ Alberta: . . . . . .

*indictable offences.

Who Is On Probation in Alberta?

A five year study (1967-1971) of probation in Alberta (conducted by the Attorney General's Department of Alberta) provides a profile of those who were placed on probation in Alberta during that time. The following Tables provide this information.

TABLE 9: Sex of Probationers[6]
Jan. 1, 1967-Dec. 31, 1971

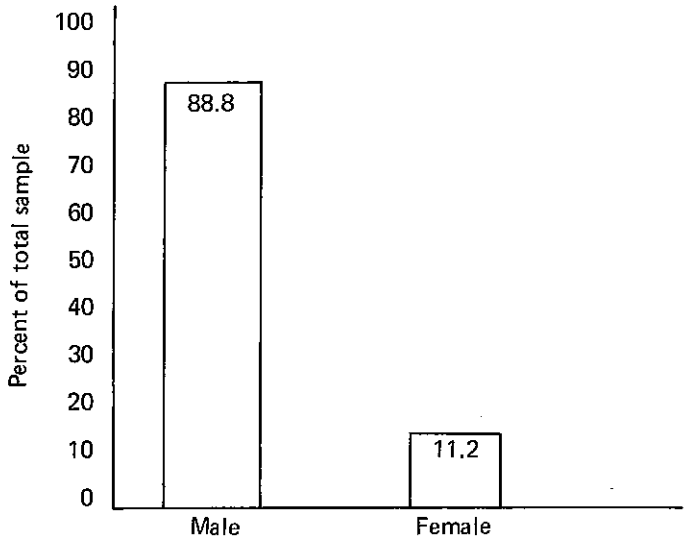


TABLE 10: Racial Origins of Probationers[7]

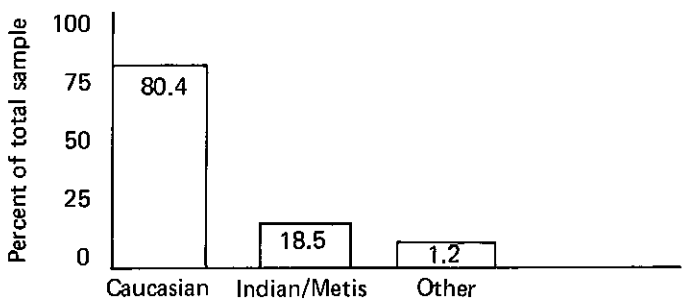


TABLE 11: Age of Probationers[8]

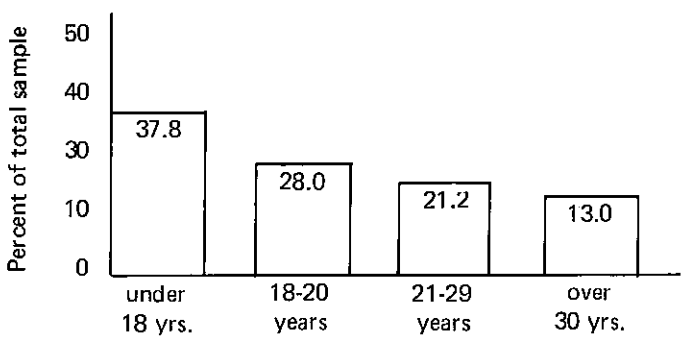


TABLE 12: Marital Status of Probationers[9]

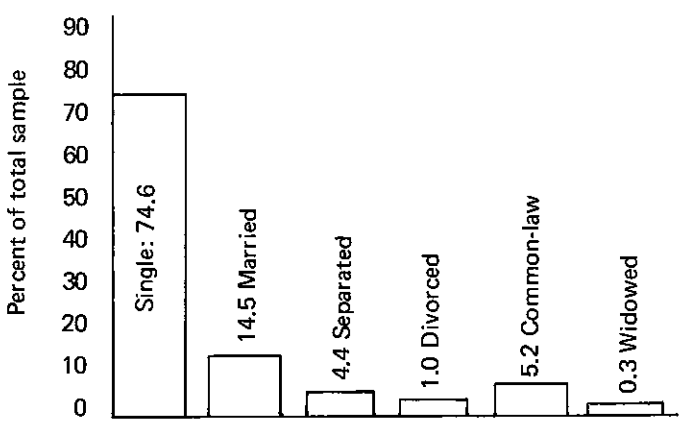


TABLE 13: Number of Children of Probationers[10]

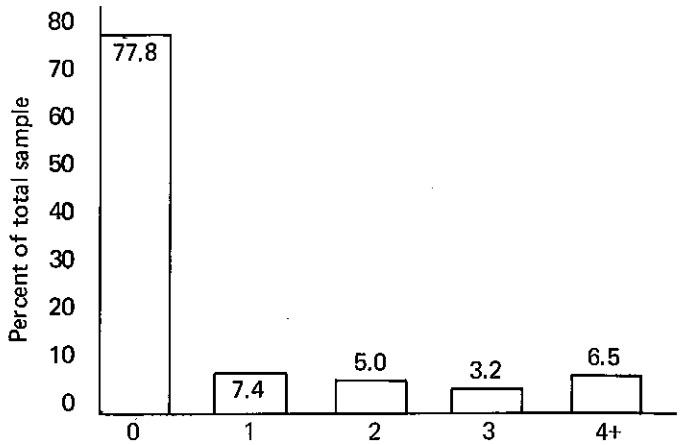


TABLE 14: Residence of Probationers[11]

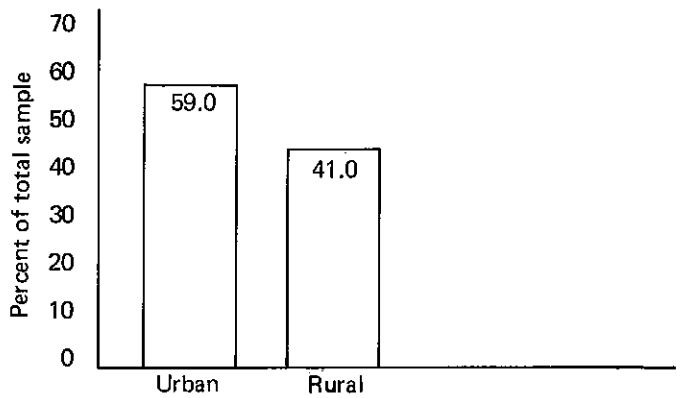


TABLE 15: Educational Level of Probationers[12]

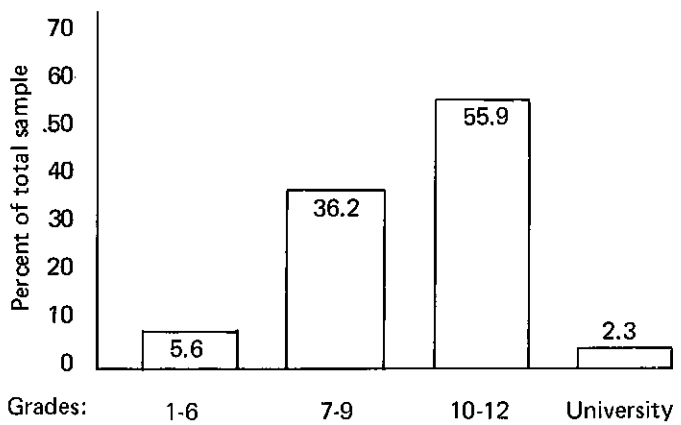


TABLE 16: Employed, Unemployed or Student[13] Status of Probationers

TABLE 17: Type of Employment When Employed[14]

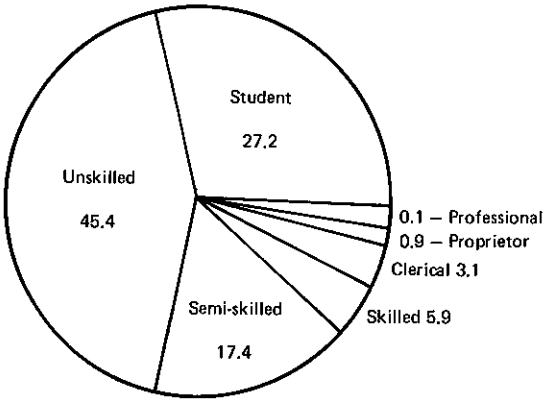
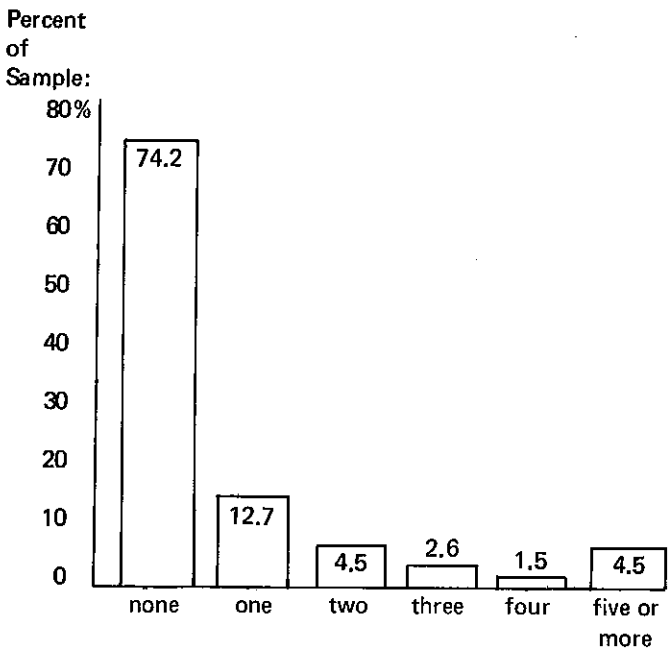


TABLE 18: Percentage of Probationers Having Had Previous Convictions[15]



In summary, we see that the person on probation is likely to be a male (88.8%), caucasian (80.4%), under 20 years old (65.8%), single (74.6%), with no children (77.8%), and having lived in an urban environment (59.0%). He has likely completed Grade 10-12 (55.9%) and would be characterized as unskilled (45.4%). At the time of having committed the offence(s), he could have been employed (35.3%), unemployed (37.1%) or a student (27.6%), and probably had not committed a previous offence (74.2%).

"What crimes warrant probation?" is often the question asked when the public is concerned about the "hardened criminals" who are allowed to go "free" in society. Probation itself can only be applied to those offences where minimum punishment is prescribed by law.

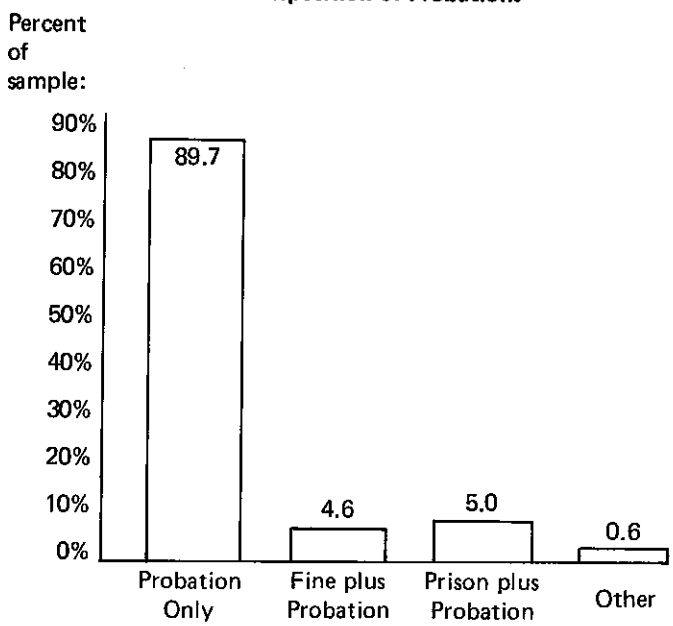
This restriction places a limitation on the more "serious" criminals being granted probation. A breakdown of the offences for which Albertans are placed on probation is as follows:

TABLE 19: Offences For Which Probation Is The Disposition[16]

Theft	37.1
Break and Entry	18.9
Possession of Stolen Property	7.9
Fraud	7.2
Drugs	6.7
Assaults	6.7
Sexual Offences	2.4
Weapons	2.2
Other (e.g. disorderly conduct, robberies, vagrancy and vice	11.8
	99.0

The disposition of the court for these offences were:

TABLE 20: Disposition of Probations[17]



with the following division among length of sentence of those on probation:

TABLE 21: Length of Probation Terms in Months for Probationers[18]

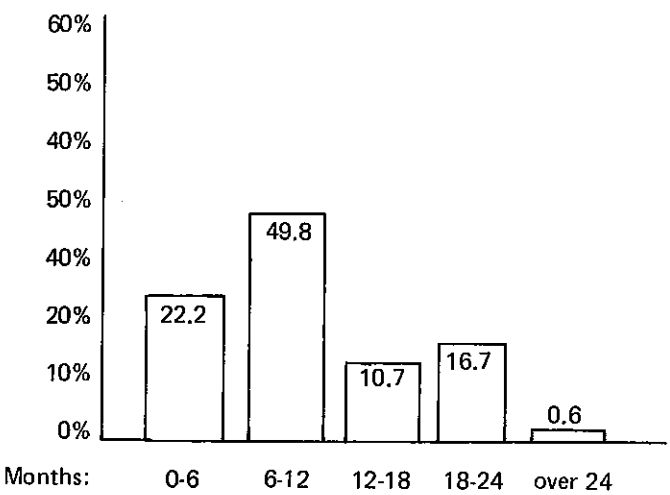
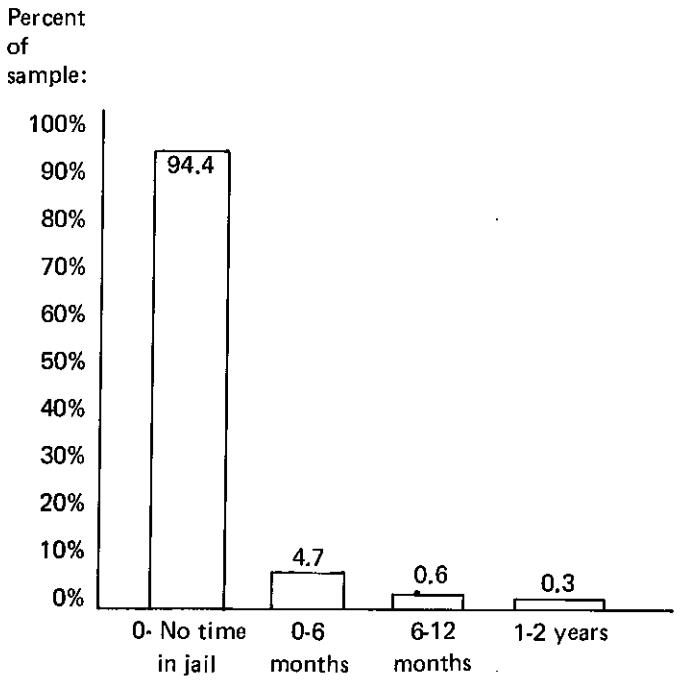


TABLE 22: Length of Incarceration for Those Placed on Probation[19]



Of those who were placed on probation, the offences which they committed did not warrant a minimum sentence by the Canadian Criminal Code. This implies that probation is utilized for the "less serious" offender. This is substantiated by the courts decision that 89.7% of the offences warranted only probation, and that most of these were for less than a year's duration (72.0%). Also, of those who are sentenced to jail in addition to probation, a large percentage were sentenced for a short period of time (1-6 months). If the length of incarceration correlates with the seriousness of the offence, then it becomes apparent that those on probation have not commited serious offences. The courts, by deciding to use probation, have determined that a form of censorship needs to be placed on the offender, but only a minimal form of censorship.

The Effectiveness of Probation

As with other correctional programs, the effectiveness of probation is difficult to assess. A study of Ontario magistrates shows that attitudes vary towards probation. The study showed that 48% of the magistrates felt that probation is *effective as a treatment program*, while 52% of the magistrates did not. 45% of magistrates thought that probation was *effective as a control mechanism* for offenders, while 55% did not.[20] The study showed that those magistrates who believed in the effectiveness of probation also tended to place emphasis on reformation of the offender.(*) The magistrates who believed in the effectiveness of probation also had relatively low belief in the concept of "general deterrence"(**) or "individual deterrence"(***) or "low punishment"(****). Upon the basis of the Ontario study, we see that the belief in the effectiveness of probation is: 1) not held by the majority of magistrates and 2) that those who do believe probation to be effective are those that are reform oriented in their attitude towards the offender.

Studies pertaining to the effectiveness of probation have drawn various conclusions: the Cambridge Department of Criminal Science (Britain) in 1958 estimated a 79% success rate during probation, and a 74% success rate after the completion of probation.[21] (*) The Landis, Mercer and Wolff Study[22] (American) of 1969 had a success rate of 52% during probation. The Ontario Probation Officer's Association Study[23] found a success rate of 68.3% both during probation and a three year follow-up after probation. Thus we see success rates differ widely, and while on the whole, the evidence is encouraging for future use of probation, it is not conclusive.[24]

Summary

The use of probation has increased substantially over the past 10 years. There has been a recognition that persons who have committed minor offences may be released into the community on a tentative basis with or without supervision. By providing an alternative to incarceration, it has become possible to reprimand the young, first offender, whose crime is not of a "serious nature", without the undue penalty of incarceration which could have long term negative effects.

The method of probation itself delineates the degrees of crime. It separates, by qualifications, the serious and less-serious offenders. This delineation protects society (to some degree) from the serious offenders, while saving the taxpayer the cost of incarceration for the less-serious offender.

The effectiveness of probation has been studied in the recent years producing varied results. There is disagreement within the judicial body as to the effectiveness of probation either as a treatment program or as a control mechanism. While this disagreement exists within the judicial body, we see studies which show 52%-74% success rates for probationers. These rates may appear low ("after all if they were in jail, there would be 100% success") but three aspects must be considered:

1) violations of probation do not necessarily mean the commitment of further offences, but may refer also to violations of the conditions of probation (e.g. failing to report to a probation officer, drinking, becoming unemployed, etc.). Hence, society is not necessarily in danger.
2) The economic saving to the community is significant due to the lower cost involved in probation as compared to incarceration (probation $1.00 per day v.s. incarceration $13.41-$30.03 day) 25; and
3) most importantly, the first offender remains within the community performing socially useful tasks and not undergoing the long-range negative effects of incarceration.

*The attempt to change the offender through treatment or corrective measures, so that when given the chance he will refrain from committing crime.

**The attempt to impose a penalty on the offender before the court sufficiently severe that potential offenders among the general public will refrain from committing crime through the fear of punishment.

***The attempt to impose a penalty on the offender before the court, sufficiently severe that he will refrain from committing further crime through fear of punishment.

****The attempt to impose a just punishment on the offender, in the sense of being in proportion to the severity of the crime and his culpability, whether or not such a penalty is likely to prevent further crime in him, or others.

(*) For purposes of this study, success during probation means the offender did not commit either a new offence, nor violate the terms of probation. Success after probation means not having committed a new offence.

These are strong considerations in favour of the use of probation. The increasing use of probation by Albertan courts seems to indicate that its value as a viable sentencing disposition is being recognized.

ABSOLUTE AND CONDITIONAL DISCHARGES

In 1972, the Parliament of Canada passed legislation which made a new form of disposition available to the courts: that being absolute and conditional discharges. This new form of disposition came about after much discussion about a group of offenders, whom most people did not think should really suffer the consequences of having a criminal record.

An example of this type of offender can be taken from a case decided upon by the British Columbia Court of Appeal in 1972. The accused was a corporal in the Canadian Armed Services, aged 26, married and with no previous record. While working on an additional part-time job, he had his co-workers pick up left-over pieces of carpet, (while delivering refrigerators to an apartment building.) The police officer who investigated the case said that when he went to the accused's residence, the accused turned over the scraps of carpet and stated that he thought they were scraps. The accused pleaded guilty. The police officer testified that the accused rather than being a thief was more simply a foolish individual getting involved in something slightly more serious than a foolish prank but not really a thief of nature.

Previously this would be treated as a case of possession of stolen property. The person would be fined, placed on probation or incarcerated. As a consequence of this, he would have a criminal record. Now the case is that after the court has decided that it is in the best interest of the accused and not contrary to public policy, he can be given an absolute or conditional discharge.

Discharges are available to the courts for those offences which are not punishable by 1) a minimum term of imprisonment, 2) a term of 14 years or life imprisonment or 3) the death peanlty. "If an accused is discharged whether aboslutely or upon conditions, he is deemed not to have been convicted of the offence. An accused who has been discharged upon conditions may have his discharge revoked if he is convicted of a subsequent offence including the offence of wilfully failing or refusing to comply with a probation order. If the discharge is revoked, the court will convict the accused of the offence to which the discharge relates and may impose any sentence that could have been imposed for the offence at the time of the discharge . . . "[26]

The change in the Criminal Code which allows for absolute and conditional discharges and the extension of the use of suspended sentences indicates a willingness on the part of the law makers to recognize the different types of offenders. It also indicates an awareness of the need to avoid unjustly punishing offenders, where it will not serve a positive function. These changes in the sentencing procedures are encouraging as we move away from the traditional molded response of incarceration.

FOOTNOTES: CHAPTER 6

1. Salhany, Roger, *Canadian Criminal Procedures* (Canadian Law Book Co. Ltd., Toronto, 1968), p. 163.

2. Canada, Report of the Canadian Committee on Corrections, *Towards Unity: Criminal Justice and Corrections* (Queen's Printer, Ottawa, 1969), p. 293.

3. Alberta, *Adult Probation Research Study* (Queen's Printer, Edmonton, 1973).

4. Canada, Report of the Canadian Committee on Corrections, *Towards Unity: Criminal Justice and Corrections* (Queen's Printer, Ottawa, 1969),
   for Alberta 1962-66
   for Canada 1962-66
   Alberta, *Adult Probation Annual Reports* (Queen's Printer, Edmonton) for Alberta 1967-72.
   Canada "Statistics of Criminal and Other Offences" (Statistics Canada, Ottawa),
   for Canada 1967-1971

5. Canada, "Statistics of Criminal and Other Offences" (Statistics Canada, Ottawa)
   Matthews, V., *Socio-Legal Statistics in Alberta: A Review of Their* Availability *and Significance* (Human Resources Research Council 1972)
   for Alberta 1962-1968.

6. Alberta, *Adult Probation Research Study* (Queen's Printer, Edmonton, 197), p. 16.

7. Ibid., p. 16.

8. Ibid., p. 16.

9. Ibid., p. 17.

10. Ibid., p. 17.

11. Ibid., p. 18.

12. Ibid., p. 18.

13. Ibid., p. 20.

14. Ibid., p. 19.

15. Ibid., p. 23.

16. Ibid., p. 21.

17. Ibid., p. 22.

18. Ibid., p. 22.

19. Ibid., p. 20.

20. Hogarth, J., *Sentencing As A Human Process* (Toronto University Press, Toronto, 1971).

21. Radzinowicz, L. editor, *The Results of Probation* (MacMillan and Co. Ltd., London, 1958) p. 2-35.

22. Landis, R.J., Mercer, J.D. and Wolff, C.E., "Success and Failure of Adult Probations in California" (*Journal of Research in Crime and Delinquency*, Vol. 6, No. 1, 1968).

23. Vasoli, Robert, "An Examination of the Results of Adult Probation" (*Canadian Journal of Correction*, Vol. 9, 1967) p. 80-86.

24. Radizinowicz, L., ibid., p. 2-35.

25. Alberta, *Adult Probation Research Study*, ibid.

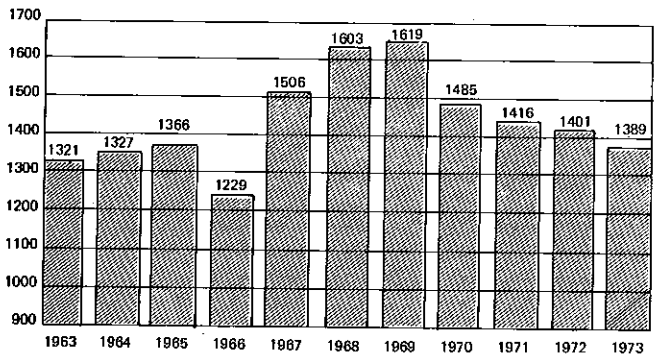
26. Salhany, R., ibid., p. 224.

CHAPTER 7
INCARCERATION

The most serious sentence for an offender is that of incarceration. It deprives the person of liberty and isolates him/her from society at large. It also is the form of disposition most commonly utilized for serious offences (indictable). Once a judge has passed a sentence of incarceration, the length of stay determines whether or not the term will be served within a provincial institution or a federal penitentiary. If the sentence is longer than two years, then the offender must be sent to a federal penitentiary (with the exception of Newfoundland). If the sentence is less than two years, then the offender must be sent to a provincial institution.

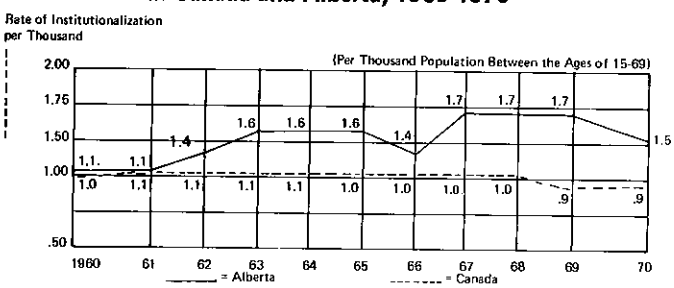
Alberta has four provincial institutions located in Lethbridge, Calgary, Fort Saskatchewan, and Peace River. In the past ten years, the average number of persons in jail, on a daily base, ranged from 1,321 (1963) to 1,619 (1973).

TABLE 21: Population in Alberta Correctional Institutions, March 31, 1963 to March 31, 1973[1]



Although these numbers may not seem large at first glance, they become quite significant when compared with the rest of Canada and to the countries of the Western World. In comparing Alberta to Canada as a whole, we find that Alberta is more likely to imprison offenders than the rest of Canada.

TABLE 22: Persons in Custody in Adult Institutions in Canada and Alberta, 1960-1970[2]



But, not only is Alberta more likely to incarcerate than the rest of Canada, the Canadian Judicial system is more likely to imprison offenders than other Western Countries.

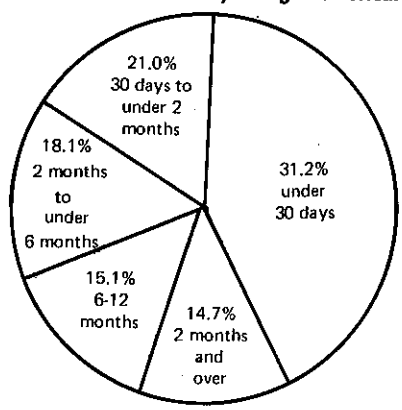
TABLE 23: Comparative Imprisonment Rates Per 100,000 Per Year[3]

Norway	44
United Kingdom	59
Sweden	63
Denmark	75
Finland	153
United States	200
Canada	240

Hence we see that Canada, and particularly Alberta utilize the sentencing procedure of incarceration, more than other western countries do. Prior to examining whether or not this high rate of incarceration is effective or warranted, it is helpful to obtain an understanding of who is in Alberta's provincial jails and for what reasons.

An analysis of who is in the provincial institutions produces a very different picture from what one would expect. Although the maximum length of time that one can spend in a provincial jail is two years, 89% of the offenders in the provincial jails are there for less than twelve months.

TABLE 24: Percentage of Offenders By Length of Incarceration[4]



Under 30 days	31.2
30 days – 2 months	21.0
2 months to under 6 months	18.1
6 months to under 12 months	15.1
12 months and over	14.7
	100.1

In view of the short length of most sentences in provincial gaols, two points appear to be worth making: (1) If the seriousness of an offence can be validly inferred from the length of the sentence that it receives, then more than half of those in provincial jails would appear to be there for relatively minor offences. Certainly, the following table indicates that the majority of inmates are in provincial gaols, for crimes that did not threaten the physical safety of other people.
The following shows a breakdown of the population admitted to Alberta's gaols (1972-1073) by the nature of their offence.

TABLE 27: Population of Alberta's Gaols by Offence – 1973[5]

Crimes Against Property		
Right of Property	5,303	
Fraudulent Transaction	127	
Certain Property	269	
	5,699	41%
Crimes Without Victims		
Narcotic Control Act	401	
Food and Drug Act	185	
Disorderly House	9	
Gross Indecency	14	
	609	4.3%
Crimes Against Prison System		
Law: Justice	406	
Punishment and Fines	16	
Summary Convictions	1	
	423	3.0%

Continued next page

Table 27: Continued

Crimes Against the Person		
Person and Reputation	2,022	
Sexual Offenders	280	
	2,302	16.6
Provincial Liquor		
----------	2,418	17.4%
Traffic Vehicles		
----------	1,705	12.3%
Other		
Public Order	141	
Currency	7	
Attempts and Conspiracy	30	
Federal Statutes	242	
Provincial Statutes	170	
City-By-laws	98	
Other	21	
	709	5.1%
TOTAL	13,872	98.7%

The shortness of terms of sentence in provincial gaols means that there is a high rate of turnover in prison population. This is not conducive to the development of effective rehabilitation programs in view of the fact that studies indicate that rehabilitation, if it takes place at all, is a lengthy process.

The level of education does not form the single factor in regard to employability, but it is an important component. If the jail population is less educated than the general populace, then they will have a greater difficulty in obtaining a job when compared to the general populace. This point plays an important part when an ex-offender is faced with the task of finding employment upon release. Levels of education could be said to be an index of one's social skills. Lack of experience in social skills (when compared to the general populace) also indicates potential difficulties that the offender may face upon release, in addition to the stigma of having been incarcerated.

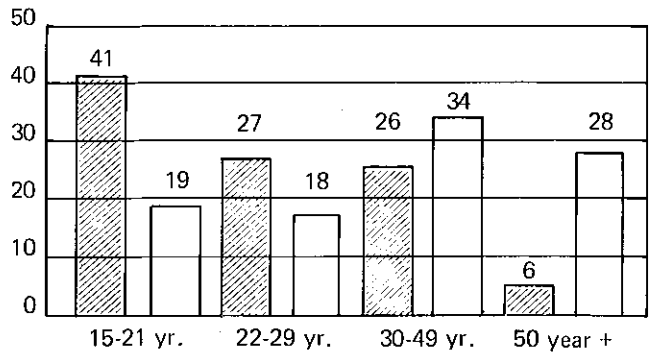
Of those in provincial jails, 60% are there for the second or third time. This means that over one-half of the inmates in provincial jails have a history of anti-social behaviour, and that their previous periods in jail have not caused significant changes within them. This large percentage may be taken as a comment on the effectiveness of provincial jails in preventing anti-social behavior.

Another important characteristic of provincial inmates is that males constitute 95% of those incarcerated in Alberta, while females represent only 4.6%. The percentage of Native persons admitted to provincial gaols in 1972-73 was 41%, while the Native persons only represent 2.7% of the Albertan population. In regards to family ties, we find that 68% of offenders in institutions are single. If we include the separated, widowed and divorced, we find that the percentage of offenders without immediate family ties is 80%.

In a further examination of those incarcerated within our provincial jails, we find a surprisingly large percentage of young people; 40% are under the age of 21 years, when admitted to the provincial jails.

This age group in the general populace only constitutes 20% Hence we see that in the provincial jails the percentage of people in jail in the 15-21 yrs. age group, is twice that of the general population.

TABLE 28: Offenders By Age In Alberta Provincial Gaols – 1971[6]

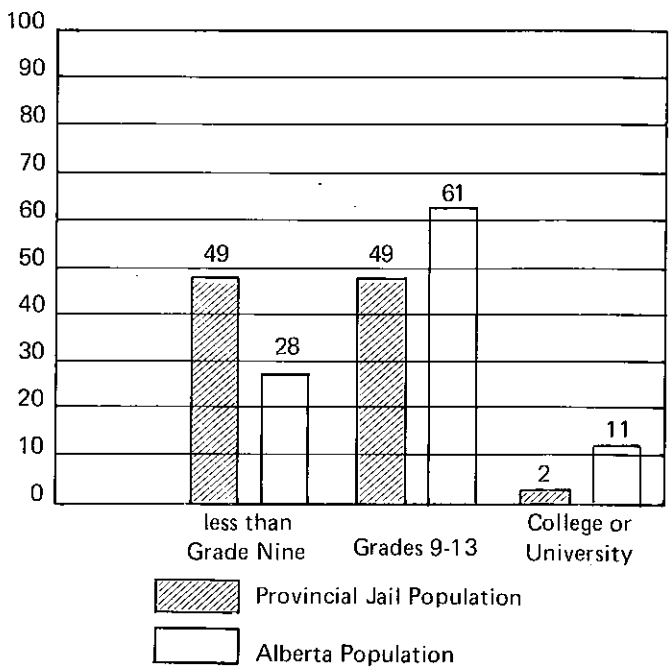


Provincial Jail Age Groups By Percentage

41% – 15-21 yrs. of age
27% – 22-29 yrs. of age
26% – 30-49 yrs. of age
6% – 50 yrs and over

The level of education among offenders in Alberta's provincial jails is lower than that of the general population.

TABLE 29: Offenders By Grade Of Education in Alberta's Provincial Gaols – 1971[7]



In summary we find that in the provincial jail population we have a large number of persons incarcerated for a short period of time (52.2% under two months). There is also twice the number of young (15-21 years) persons in the jails as found in the general population. Most of these persons lack immediate family ties (80%).

In light of this, what services are provided by the provincial institutions, which will protect society and at the same time, encourage the offender to not produce future anti-social behaviour? Or more specifically, what is the effectiveness of incarceration in our provincial jails?

Effectiveness of Incarceration

If we measure effectiveness by the classic purpose of sentencing, that being penitence or punishment, we obtain little satisfaction. The hostility expressed by inmates towards the institutions indicates a basic lack of acknowledgement that the practices of the institutions are a form of justified punishment in return for their offence.

"If a con is sitting in his cell when the cells are open and everybody else is participating like crazy in some magical corrections program like TV-gazing, the Correctional Living Unit Officer is supposed to check out this con to make sure his problems have not driven him to despair, depression, and withdrawal. He's supposed to get the con to place trust in him, talk over his problems, and solve them in a mature and open way . . .".

(Inmate – 1973)

If punishment is meant for the satisfaction of society, as a whole, then it is an expensive satisfaction; nine million dollars or $23.00 per-day-per-inmate was spent by the Alberta Government on corrections in the 1972-73 fiscal year. If this money effectively deterred the inmate from committing further offences, the expenditure would be well justified; but 60% of those sentenced to provincial gaols are "repeaters".

From the viewpoint of individual deterrence, the rate of recidivism shows that our provincial institutions are ineffective. The rising crime rate suggests that they are ineffective also from the viewpoint of general deterrence.

The protection of society is often stated as a valid reason for incarcerating offenders. But if incarceration is for such a short time, then separation for protection is not really occuring. This is not to say that offenders should be incarcerated for longer periods of time, but is stating that the protection of society is not occurring.

This leads us by process of elimination, to consider rehabilitation as a justification for our provincial jail. It may be possible with a highly intensive program, to provide a significant rehabilitative experience for the offender within the short period of most provincial jail sentences. But in view of the comparatively low educational attainment and poor employment prospects of most inmates, it is obvious that any short term rehabilitation would need to be combined with a longer term of educational training program.*

Factors which influence one's behaviour are income level, level of education, employability and family relations. The offenders in Alberta's provincial jails are characterized by low levels of education and employability, low income, and few family ties. Vocational training within the institution are limited. Barbering, body work, and kitchen work, constituted training in 1973. In 1972-73, only 71 inmates out of 6,560 were involved in vocational training programs.

Labour training opportunities that were available to offenders within the institution were as follows (1973):

Janitorial	Shop
Library	Paint
Cannery	Carpentry
Gardens	Sewing
Laundry	Mechanical Shop
Kitchen	Butchering
License Plate Shop	Baking

At first glance this would seem like a wide range of available apprenticeship training courses; but two aspects must be pointed out:

1) It is difficult to ascertain whether or not these labour training opportunities are in fact attempts to provide training for post-release employment or opportunities to decrease institutional operating costs. Although attempts to defray operating cost should not be overlooked, it is important to know whether or not labour training opportunities are really available.
2) There is a lack of recognition for employment in such institutions. If an ex-offender is applying for a job; due to the probable embarassment of past activities and society's hesitancy in "forgiving" ex-offenders, the person is not likely to admit his/her experience. Also, because of the lack of unionization within the provincial institutions for inmates, there is no continuity in pursuit of employment or recognition of learned skills.

   In summary, it seems that the incarceration period in the provincial jails does not meet the needs of vocational training nor does it increase one's employability for the majority of offenders incarcerated.

In the area of education, we find a similar picture. Although over 50% of provincial inmates have not completed more than nine years of education, only 163 inmates became involved in the educational opportunities available. Every provincial jail employs a full-time teacher, yet due to the transient nature of the inmates, and the attitudes of the inmates, only a small number (2.3%) of inmates up-grade their education.

In the area of personality change or development, the provincial institutions offer very little. Social workers, psychiatrists and psychologists are available to the inmate in some degree, but their primary function within the institution is classifying inmates for transfers, parole, temporary passes, etc. Little is available by the way of one-to-one contact, or group therapy.

The Alcohol and Drug Abuse Commission and Alcoholics Anonymous provide a service for a particular "social-need" group. For other types of problems, there is a vacuum of problem-solving methods. What becomes apparent upon studying the programs offered is that there are very few programs which can stimulate personal development within the jails.

The Alberta Alcohol and Drug Abuse Commission and the Alberta Alcoholic Anonymous Society provide the most extensive service within the provincial institutions. Native Court Workers, Native Counselling and Outreach are in the stage of developing programs which enter into every institution. Other agencies infrequently involved are Canada Manpower, John Howard Society, National Parole Board and various churches.

After evaluating the provincial institutions in regard to the correctional process, one receives a rather dismal picture. Presently the jails are believed to be a way in which (1) society can be protected, and (2) the offender is encouraged not to produce future anti-social behaviour. Examination of the services offered do not support this belief.

The United States Institute of Judicial Administration, in its recognition of the problems with incarceration, have recommended that:

"(a) Attention should be directed to the development of a range of sentencing alternatives which provide an intermediate sanction between supervised probation on the one hand and committment to a total custody institution on the other and which permit the development of individualized treatment program for each offender. Examples of the types of dispositions which might be authorized are: (i) confinement

*To see a description of the services offered within the provincial jails, see Appendix I.

for selected periods to a local facility designed to provide educational or other rehabilitative services; (ii) committment to a local facility which permits the offender to hold a regular job while subject to supervision or confinement on nights and weekends; . . . "(8)

Incarceration, a form of censure for anti-social behaviour, is at best inefficient. Our provincial jails are populated by and large by young people who have less education and employment opportunities than the general populace. Much needed vocational training courses, up-grading in educational programs, and opportunities for personal development can not function effectively within our provincial jails.

Those in the jails have committed minor offences and are there for short periods of time. Incarceration can only serve as a school for techniques in further anti-social behaviour, and a source of encouragement for disrespect for the law.

If we seriously want to protect society in the long run, and change the offenders anti-social behaviour, then recognition that incarceration fails to reform, has to be acknowledged by the public and the correctional agencies. Various alternative methods need to be developed which will deal effectively with anti-social behaviour.

To continue the extensive use of incarceration (more than the rest of Canada and the Western World), wastes the tax payers' money, fails to protect society, and worse still, does nothing to counteract growing trends towards anti-social behaviour in our society.

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7. Alberta, *Annual Report*, ibid. 1971.

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CHAPTER 8
DISPARITY IN SENTENCING

An accused person, as we have seen, can be sentenced either by fine, suspended sentence (with or without supervision), or incarceration. Initially one would assume that the severity of sentences would be applied somewhat evenly to those with similar criminal histories and those who have committed similar offences. That is, if Ken, Shelagh, Julia and George, with similar histories, committed offences "A", but in Vancouver, Edmonton, Camrose, and Calgary, that they would receive similar sentences. What would initially seem obvious, however, is not the case. Unwarranted disparity in sentencing poses a significant problem within the Canadian judicial process. This is a significant problem because it has the effect of creating "a profound disrespect for the law in the very person whom the prison is charged with inculcating a greater measure of respect."(1)

Whereas persons fined or given a suspended sentence may never be in a position to compare notes on judicial decisions, for those incarcerated, it is a common topic of discussion. If we can assume that those incarcerated are the most serious offenders, then it is this group whose attitudes towards the judicial process are the most important. If there is unwarranted disparity in sentencing, then the entire judicial process becomes a game, dependent upon which judge you get, rather than what offence was committed. When this occurs, it becomes increasingly difficult for offenders to recognize the detrimental effects of their anti-social behaviour, hence there is less of a willingness to reform.

Numerous studies have documented the extent of disparity in sentencing within the judicial system.(2) A recent Canadian study conducted by John Hogarth examines the problem of disparity in sentencing within the Canadian framework, but with specific reference to the Ontario situation.

In light of this study(3) it would be a mistake to assume that a province which utilizes incarceration 53.5% of the time as a form of sentence, has more serious offences committed or more unique situations within its boundaries than a province which utilizes incarceration only 32.5% of the time. Variations do exist between provinces as to the types of offences committed, but not to the extent indicated by the various sentencing patterns.

Table 1 indicates the range of disparity in sentencing patterns between Canadian provinces. Some provinces, because of beliefs or preferences, utilize certain forms of sentencing over others.

TABLE 30: Range of Sentencing Practice By Province – 1964[4]

Type of Sentence	Highest %	Lowest %	Average %
Suspended Sentence with probation	28.7	11.9	18.9
Suspended Sentence without probation	20.5	7.6	11.6
Fine	31.1	20.5	24.1
Institution	53.5	32.5	45.7

Table 31 indicates that even within a single province, although the judicial system is administered by one Attorney General's Department, there is a wide range in the use of sentences indicating the range of beliefs or preferences within a judicial district, for one form of sentencing over another.

TABLE 31: Range in Sentencing Practice in Ontario Judicial Districts(5)

Type of Sentence	Highest %	Lowest %	Average %
Suspended Sentence with probation	43.0	.0	24.0
Suspended Sentence without probation	34.0	.0	7.0
Fine	39.0	2.0	24.0
Institutional Goal (Provincial)	60.0	4.0	24.0
Reformatory (where in existence)	37.0	1.0	12.0
Penitentiary (Federal)	23.0	.0	6.0

> *"In the absence of a general policy or rational many of those who form part of our system of justice arbitrarily assume the authority to determine the objectives and the procedures of justice: e.g., the Crown prosecutor who believes that it is his duty to win the case: the policeman who is not satisfied unless the judge hands down a lengthy prison sentence: the judge who believes it necessary to give exemplary sentences. Similarly, one Minister of Justice may encourage punitive measures by budgeting large sums for the construction of maximum security institutions, while negligible amounts are made available for the development of other institutions and of probation services, and a succeeding minister may decide to follow an entirely different policy."*(6)

Historically, this problem has been less complex. Prior to the late 1600's, punishment was the sole rationale for sentencing; no consideration was given as to whether or not the offender would likely commit another offence. In the 18th Century a new rationale for sentencing was slowly evolving; that being deterrence. This was based upon the idea that a person could learn from his/her own actions, or the actions of others. Reason played an important part, in that a person would avoid an action if he/she knew that pain (punishment) would result. This type of reasoning was considered as a general deterrent for the public (learning through another's experience) and a specific deterrence for the individual (meaning the individual offender would not commit another offence). With the development of statistics, psychology and sociology in the 19th Century, attention was drawn to the physical, psychological, sociological and economic factors which were supposedly characteristic of offenders. This knowledge introduced the concept that sentencing had to take into account the causative factors in criminal behaviour, in particular, the nature of the offender's social environment. This concept encouraged the orientation towards rehabilitation, as we now see it.(7)

Thus we see that in the history of sentencing, there have been different rationales: punishment, deterrence, and rehabilitation. Varying degrees of these rationales compose the unwritten philosophy of sentencing in Canada today. *The rationale which is best understood as a priority, is not articulated by our Criminal Code. The lack of such a rationale encourages the present problem of unwarranted disparity in sentencing.

Another example taken from Hogarth's study showed that "nearly all magistrates (65 out of 71) believed that it is their role to prevent crime through sentencing, they differed widely, however, in the way in which they aim to achieve this purpose".(8)

TABLE 32: Penal Philosophy Among Magistrates
Importance Given to the Classical Purposes in Sentencing(9)

	Very Important	Quite Important	Some Importance	Little Importance	No Importance
Reformation	39	7	16	6	–
General Deterrence	26	4	10	27	1
Individual Deterrence	16	8	11	22	3
Incapacitation (removal of person from community)	9	8	21	28	2
Punishment	7	3	8	36	14

A stated purpose or rationale for sentencing in Canada is needed. It would provide a basic orientation for judges as they face the difficult task of sentencing whereas there are none today. Another benefit would be the clarification to the public and the offender as to the purpose and reasoning behind judicial decisions.

Some western countries are in the process of stating a rationale for sentencing.

In the United States the Council of Judges in the Proposed "Model Sentencing Act"(10) suggested:

> *"The purpose of penal codes and sentencing is public protection. Sentences should not be based upon revenge and retribution. The policy of this act is that dangerous offenders shall be identified, segregated and correctively treated in custody for long terms as needed and that other offenders shall be dealt with by probation, suspended sentence or fine wherever it appears that such disposition does not pose a danger of serious harm to the public's safety."*

The American Law Institute in their proposed "Model Penal Code" recommended:

> *"(1) The Court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstance of the crime and history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public because:*
>
> *(a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or*
>
> *(b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or*
>
> *(c) a lesser sentence will depreciate the seriousness of the defendant's crime."*(11)

And in Canada, the 1969 Report of the Canadian Committee on Corrections recommended that:

> *"To assist the courts in deciding whether a custodial or a non-custodial sentence is proper, a sentencing guide should contain a statement of priorities and criteria to be considered in reaching such a decision."*12

Thus we see that the idea of having a stated rationale/purpose for sentencing is not new, nor impossible, and is being considered as a way in which unwarranted disparity in sentencing can be reduced.

Another change which needs to be implemented, accompanying the stated purpose in sentencing, are specific guidelines which recommend a particular range of sentences for particular offences. Whereas a purpose for sentencing would provide the rationale for sentencing, guidelines would indicate to the judges how this policy would be enacted. At present in the Canadian Criminal Code, it is only indictable offences which have specified minimum incarceration periods, while summary offences, for the most part, do not carry any guidelines. (The two exceptions to this are offences related to drunken driving and breath analyzer testing.) When one examines the responsibilities of judges today, the need for guidelines in sentencing becomes apparent.

Judges within the provincial courts deal with offences punishable under summary conviction. "This category includes all provincial and municipal offences, as well as summary offences under federal legislation, and amounts to some 98% of all cases dealt with in the criminal courts. The indictable offences over which magistrates (Provincial Judges) have absolute jurisdiction amount to 54% of the indictable cases dealt with by all the courts in Canada. With the consent of the accused, the magistrate may deal with most of the remaining indictable offences . . . Another 50% of indictable cases come into magistrate's courts in this way. The total intake of these courts includes all summary offences and 94% of indictable offences".(13)

In view of the complexity of our Canadian law, and the scope of its jurisdiction, one comes to understand the difficult situation in which provincial judges are placed. Provincial judges have "a broader jurisdiction than that given to any lower court of criminal jurisdiction in Europe, the Commonwealth or the United States".(14) This jurisdiction is too great to be justly implemented or to be adequately served. The judges' jurisdiction is at present so broad that the quality of judicial decisions is bound to be adversely affected, and hence, the quality of justice dispersed in our courts inevitably suffers. Also, present sentencing procedures effectively eliminate all but a few individuals from a crucial decision-making aspect of the judicial process.

In order to change these effects, attempts are being made to restructure the judge's discretionary power in sentencing so that offenders receive "just" sentences and, at the same time, the judicial decision-making body is extended. In England the magistrates court consists of three magistrates, aided by a legally trained clerk.(15) In the United States, various states are implementing "sentence boards". The functions of these boards vary. In the State of Washington, the board re-examines cases and can alter the term of sentence originally determined by the Judge. In California, the board has similar powers but

with the added jurisdiction of establishing minimum terms.(16) In Ontario and New Brunswick, "sentencing councils" are being established. They consist of weekly meetings between judges, for the purpose of study and discussion of particular cases before them. In British Columbia, "sentencing institutes" have been established which consist of annual conferences in which information is "brought to the judges respecting the availability or effectiveness of various sentencing options".(17) These are attempts to alleviate the solitude within which judges make their sentencing decisions. By information exchanges, the basis for decision-making is somewhat extended. The extension of judicial decision-making to those outside the judicial body has not yet occurred. To facilitate this, the Canadian Criminology and Corrections Association recommended that the sentencing body include lay-persons.

> *"It is recommended that in* cases above some set limit of seriousness *the judge or magistrate be assisted by two qualified lay assessors; that in cases where there is no jury, these lay assessors have equal authority with the judge or magistrate in determining both verdict and sentence; that, in cases where there is a jury, the lay assessor's only function to be the exercise of equal authority with the judge in determining sentence; and that when there is disagreement among the judge and two lay assessors a simple majority decide the issue."*
>
> *(Towards a New Criminal Law for Canada)*(18)

Although fears have been expressed that havoc may result from such citizen involvement, the Canadian Law Reform Commission found that:

> *"The risk of prejudice, irrascibility or unreasonable disparities is probably not greater with individual citizens than with judges. Studies of sentencing by juries as compared with judges do not support fears of undue bias or prejudice among lay members. Moreover, abuses in discretion can be guarded against, as suggested, by a statement of purposes, criteria and standards in a Sentencing Guide and through provisions for review of sentences on appeal".*(19)

FOOTNOTES: CHAPTER 8

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SECTION 111 AFTER-CARE FOR THE OFFENDER

Once a fine is paid, probation served, or the period of incarceration is over, the average citizen thinks that the offender has paid his/her "debt to society" and is ready to start life anew. Expectations are that the offender should be able to return to society and resume the social attitudes, work habits, and family patterns of the average citizen. While this approach might seem logical, in reality, it is not feasible for a large number of offenders.

This study has concluded that effective correctional processes need to take place within the community, and not in a gaol isolated from the community that the offender will eventually return to. However, we also recognize that incarceration will be used as a disposition by the courts for at least the immediate future. Since this will be the case, it is important to consider the programs available to the offender after release.

One program which attempts to place a "stepping stone" between incarceration and living in the community is that of parole. The establishment of a parole system indicates a recognition of the problems that accompany incarceration and of the transitional problems which offenders face upon release. This study will examine how this "stepping stone" is currently provided, and discuss changes which need to occur in the future.

Community-Based-Residential Centers are beginning to play an important role in the correctional process in Canada. As well as providing an environment for the "stepping stone" approach, Community-Based-Residential Centers also introduce a means of integrating a correction program with the life of the community.

CHAPTER 9 PAROLE

History and Goals

Almost every offender who is sentenced to a period of incarceration will, at some point, be released from custody and allowed to re-enter the "community" from which he was legally separated. This is because in Canada the vast majority of offenders are sentenced to a definite sentence — to a sentence of a definite number of months or years after which he/she must be released as a free person.

Throughout the history of corrections in Canada, there have existed ways through which an inmate could be released before serving the entire sentence.

Before 1889, the Governor General of Canada had the authority to authorize early releases from custody under what was known as the Royal Prerogative of Mercy. As the name implies, the exercise of clemency was generally for humanitarian reasons.

Then from 1889-1958 under a federal statute known as the Ticket of Leave Act, parliament gave the authority to the Governor General to grant early releases on the basis of a recommendation from the Cabinet. While initially criteria for release continued to be primarily clemency, through the efforts of aftercare agencies such as the Salvation Army Prison Gates Services, the direction started to change such that rehabilitation also became a criterion for consideration when release was contemplated.

Starting with one parole officer in 1905 (a member of the Salvation Army), an organization which brought deserving cases to the attention of Cabinet began to develop. This Remission Service grew rapidly as the needs for rehabilitation and aftercare were recognized. In 1956 the Fauteux Report recommended that a National Parole Board should be created. This recommendation was acted upon in 1958 with the coming into force of the National Parole Act which provides the basis of our present federal parole system.(1)

The first Parole Board consisted of five members. This was increased to nine members in 1969, and this year (1974) was increased to nineteen members composed of a central board of nine members in Ottawa as well as five Regional Boards, each made up of two members.

The Parole Board's responsibility can be summarized in the Quimet Committee's definition of parole.

> *Parole is a procedure whereby an inmate of a prison who is considered suitable may be released, at a time considered appropriate by a parole board, before the expiration of his sentence so he may serve the balance of his sentence at large in society but subject to stated conditions, under supervision, and subject to return to prison if he fails to comply with the conditions governing his release.*(2)

The Board has established the dual purpose of parole:

1. The rehabilitation of the offender.
2. The protection of society.

While on the surface, the early release of inmates from custody on parole may appear inconsistent with the Board's goal of protection of society, the released parolee would have, in most cases, been released eventually, and this release would have been without any of the constraints and supervision which a parolee is subject to. Furthermore, the Board's goal is to select only those inmates whose presence in the community will not pose an undue risk. Essentially, then, the Parole Board is attempting to help an offender, where possible, to rehabilitate himself through allowing him the opportunity of serving his sentence in the community under supervision.

Parole Procedures

A. Case Preparation

Any inmate in any correctional institution who is serving a sentence under the Criminal Code of Canada may apply for parole, or may have someone apply on his behalf.

Eligibility for parole takes it as a basic rule that at least one-third of the sentence must be served. For inmates serving a sentence of definite term in a federal institution, the eligibility date is set at not less than nine months and not more than seven years. Eligibility for inmates serving life sentences varies from seven to twenty years depending on the category and the action of the judge.

For inmates serving sentences in federal institutions, the Board establishes and informs the inmate of his parole review date within the first six months of his sentence. The inmate's case is then subject to automatic parole review at time of eligibility, regardless of whether he has applied. (He is, however, not released on parole without having applied.)

Inmates serving sentences in provincial correctional institutions are not subject to automatic parole review. Rather an eligibility date is established and the parole processes are effected only after receipt of the application.

When an inmate applies for parole, investigations are begun by the Parole Board Staff. The inmate is interviewed by a Parole Officer whose responsibility it is to obtain information related to the inmate's personal history, his offence, his plans for release, etc. Additionally, reports from the police, from the Institutional authorities, from psychiatrists and psychologists (where necessary) are obtained. The inmate's plans for release are explored – his family is visited, employment possibilities are assessed and/or located, etc. This information is collected and presented to the Board together with the Parole Officer's assessment.

In federal cases, this process is followed by members of the Regional Board personally interviewing the inmate and making a decision at the time of interview. In provincial cases, the Board makes their decision in Ottawa.

Some of the factors which are considered by the Board in making a decision are the following:

a) The nature and gravity of the offence, and whether he is a repeater
b) Past and present behaviour
c) The personality of the inmate
d) The possibility that on release the parolee would return to crime and the possible effect on society if he did so
e) The efforts made by the inmate during his imprisonment to improve himself through education and vocational training and how well they demonstrate his/her desire to become a good citizen
f) Whether there is anyone in the community who can – and would – help the inmate on parole
g) The inmate's plans and whether they are realistic enough to aid in his ultimate rehabilitation
h) What employment the inmate has arranged, or may be able to arrange; steady employment must be maintained if at all possible as one of the important factors in his rehabilitation
i) How well the inmate understands his problem, whether he is aware of what got him into trouble initially and how he can overcome his defect, and, how well he understands his strengths and weaknesses.(3)

B. Types of Parole Decisions

1. **Parole Granted** – as the name implies, this decision simply indicates that the Board has seen fit to order the release of the inmate from custody.
2. **Parole Denied** – the decision in this case indicates that the Board has decided not to grant parole, and the inmate's case will not receive further review without a a further parole application.
3. **Parole in Principle** – in certain cases the Board decides that an inmate should be released from custody on full parole, but that this should be obtained only following the satisfactory arrangement of certain details such as housing, employment, schooling, etc.
4. **Parole Deferred** – in cases where the Board wishes to review the case again at some future date to re-assess the inmate's situation, they may defer their decision as to whether parole should be denied or granted.
5. **Day Parole** – is a decision whereby the Board authorizes an inmate to leave the institutional custody to re-enter the community with the requirement that he returns to the correctional institution from time to time. Generally, this would involve returning to the institution every night with release being for purposes of employment or education. The advantage of the decision is that parole release is highly structured and controlled, and as such is often used as a first phase in a return to the free community. Eligibility for day parole, while flexible, is generally available one year prior to full parole eligibility.
6. **Parole in Principle With Gradual Release** – this decision is in fact, a combination of a day parole granted decision, and a parole in principle decision. The inmate is released on day parole, and if he performs well, is later released on full parole.

Parole Supervision

Of equal importance to the decision-making process of releasing inmates on parole is the supervision which follows this release. Parole supervision is the supervision of a paroled inmate to ensure he keeps the conditions of his parole and does not return to crime. It is also the means to assist the inmate in his efforts to become a law abiding citizen.

While the conditions of parole and the general expectations which are placed on the parolee are fairly straight-forward, the actual supervision of parolees is often difficult to describe and conceptualize. Parole supervisors must use different approaches for every parolee, and often vary their approach with a specific parolee over time. Various roles which a supervisor may take are those of a "father" or a "brother", a counsellor, a disciplinarian, and referral source, etc.

Initially, upon release from an institution, a parolee is requried to report to his supervisor. Contacts with a supervisor following the initial interview will vary with the particular parolee's needs. The parolee may see the supervisor as often as five times weekly initially. After the parolee has been on parole for a number of months, these contacts may be reduced to monthly contacts. After five years of parole supervision the Board can make a decision to reduce parole supervision which in effect means that the conditions of parole are withdrawn. After six years, a parolee (with the exception of mandatory life sentences) can have his parole discharged by the Board.

The basic conditions of parole are as follows:

1) The parolee must report to the police once a month (unless directed otherwise by the District Representative.)
2) To remain in the immediate designated area of destination indicated on the parole certificate, and not to leave without the parole supervisor's permission.
3) To endeavor to maintain steady employment and to report at once to the supervisor any change or termination of employment.
4) To obtain permission of the Representative of the Parole Board through the supervisor before:
   a) purchasing a motor vehicle
   b) incurring debts
   c) assuming additional responsibilities such as marrying
   d) owning or carrying firearms or other weapons
5) To communicate to the supervisor if arrested or questioned by police regarding any offence.

Besides these general conditions, additional conditions known as Special Conditions can be imposed by the Parole Board. These might include abstaining from intoxicants, obtaining psychiatric treatment, refraining from associations with specific (named) persons, etc. The supervisor can impose additional specific conditions as they are deemed necessary.

When a parolee fails to meet the conditions of parole, his parole may be suspended. A Warrant of Apprehension is issued by persons designated by the Board. After his apprehension, the parolee is interviewed. If circumstances merit returning him to the community, suspension can be cancelled. Alternately, the Parole Board may decide to revoke parole in which case the parolee must re-serve his entire parole period (minus remission) in custody. Because this course of action returns the parolee into custody, a decision to suspend is made carefully and then only for serious breaches of parole conditions.

When a parolee is convicted of an indictable offence punishable by two years or more, he automatically forfeits his parole. The effect of Parole Forfeiture is the same as that of Revocation in that the parolee is recommitted to serve his parole period in custody as well as any new sentence which may have resulted from the conviction. Eligibility dates in the case of the inmate who has forfeited his parole are calculated at half of the new sentence or seven years, whichever is less.

The case preparation (referred to previously) and much of the parole supervision is provided by Parole Service officers. Nationally, the Parole Service provides 56% of the supervision (1970). In Alberta, in 1970, the Parole Service provided 45.3% of the supervision. Across the nation provincial public agencies such as the Probation Services and Department of Health and Welfare provided 12.7% of the parole supervision in 1970. In Alberta, they provided 32.4% of the supervision. Private after-care agencies are also extensively involved in parole supervision in Canada. In 1970, they provided 27.7% of the supervision nationally, and 20.8% in Alberta. Private agencies providing supervision in Alberta include the Native Counselling Service of Alberta, the John Howard Society, and the Salvation Army. (Appendix I illustrates the personal characteristics of those placed under parole supervision.)

Mandatory Supervision

Mandatory Supervision is a new provision in the Parole Act whereby anyone sentenced or transferred to a federal penitentiary after August 1, 1970 will be, on his release, subject to supervision under the authority of the Parole Board. More specifically the Act reads:

> *Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall, notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.*(4)

Mandatory Supervision applies only to persons who have 60 or more days remission to their credit and does not apply to provincial institutional inmates.

To understand the distinction between parole and mandatory supervision, it is necessary to understand the meaning of remission. Under the Prisons and Reformitories Act and the Penitentiary Act, remission or what is often called "good time" is granted to inmates serving sentences. There are two forms of remission: statutory which reduces a sentence by a quarter of its total length (unless an inmate loses remission for misbehaviour), and earned remission which further reduces the sentence by 3 days a month (unless an inmate does not apply himself industriously). Together, then, an inmate's total sentence is reduced by approximately one-third. Before August 1, 1970, inmates were simply released free men after having been incarcerated for approximately two-thirds of their sentences imposed by the court (assuming they had not received parole.) However, after August 1, 1970, these inmates were placed on Mandatory Supervision to serve their period of remission under the supervision of the Board supervisors, and under conditions essentially identical to those of parole.

It would seem that the rationale for the adoption of Mandatory Supervision is the awareness of the Board that as only the best candidates for rehabilitation were released on parole, and as a consequence were supervised, then inmates who most need supervision were being released without it. Mandatory Supervision was a means of filling this vacuum. (Appendix II illustrates the personal characteristics of those placed on Mandatory Supervision.)

Other Responsibilities of the Board

1. The Board can revoke or suspend any order under the Criminal Code of Canada, which prohibits a person from operating a motor vehicle.
2. The Board can make recommendations to the Solicitor General in cases of requests for clemency.
3. The Board can make recommendations to the Solicitor General in reference to applications for the granting of a pardon under the Criminal Records Act.

Parole is not available to all prison inmates. One third of the population in Alberta's provincial institutions in 1973, did not qualify for parole because their offence had been a violation of provincial statutes or municipal by-laws. If it is recognized that a gradual transition is beneficial to inmates, then this gradual transition should be available for all offenders. Those who violate "less" serious crimes should not be penalized by having to serve their total sentence and not have accessibility to supervision after release, if needed. A system of parole should be made available to inmates in provincial gaols who have committed violations of provincial or municipal by-laws, and should not be limited to violations of federal law.

Although finances should not be the primary determinant in establishing programs, the fact that parole services cost less to the taxpayer than institutionalization is a positive

consideration when considering the establishment of a provincial parole service. The cost of incarcerating an inmate provincially in 1973 was $8,491.95 per year or $23.27 per day. The cost of maintaining a person on parole in 1973 was $1410.00, or $3.86 per day.

Parole Attacked From Within

The use of parole as a correctional program has suffered many set-backs but has enjoyed many successes as well. Unfortunately, the set-backs have been emphasized by the provincial judges and the public media, while the successes have been ignored.

In attempting to educate those involved in the correction process, the National Parole Board published a booklet titled *"An Outline of Canada's Parole System for Judges, Magistrates and the Police"*. Even though this booklet clearly outlines the purpose and methods of parole, there is still some confusion about the purpose of parole in the correctional process. An example of this confusion is seen in certain statements by provincial judges; such as "The public is entitled to more protection" (5) "interfering on a massive scale within the judiciary"(6) "The citizens of Canada eventually are going to do something about persons being allowed to go free when they should be in jail",(7). And summarizing it all, Senator E. Hastings told the Canadian Criminology and Corrections Conference, June 21, 1973, that: "Disunity and infighting among correctional workers have caused much of the public fear and confusion about the parole system".

John Hogarth showed that the sentencing practices of Ontario provincial magistrates are influenced by their knowledge and opinions of the parole system. Although the Ontario Court of Appeal stated that it is improper for magistrates to consider the possibility of parole in determining the appropriate length of institutional sentence to impose, "two out of three judges admitted that they sometimes increased the length of sentence imposed . . . in light of the possibility of parole being granted."(8) Reasons given for this, although contrary to the Appeal Court Decisions, and to the methodology of the National Parole Board, were: 1) "they did so in order to give the institutional personnel ample opportunity to work with the offender . . . " 2) "they often considered parole, either when imposing a long sentence directed to the deterrence of potential offenders, or when forced to do so by reasons of aroused public opinion. They would immediately write to the Parole Board requesting that the offender be considered for parole. In this way they felt that they would appear to be punitive without serious consequences to the offender", or 3) "to ensure that the offender would not be 'back on the streets' in a relatively short time."(9)

Thus we see that, in Ontario the majority of judges admit that they deliberately evade the directions of both the Ontario Court of Appeal and the National Parole Board in this matter of parole. With this type of situation, it becomes apparent that parole services are neither clearly understood nor properly agreed upon within the correctional body itself. This undermines the parole service. The media's coverage of parole violations and judges' criticisms encourage distrust on the part of the public. (e.g., Edmonton Journal article titled "31 Slayers Given Passes", referring to temporary absence passes, or "Escape Artist Does It Again – Legally", referring to a man's eligibility for parole.) Again, the judicial process is made into a game. For the inmate, his rehabilitation depends on chance – who made the sentence and what the media has most recently said to arouse public opinion. What is needed is a communication system involving both judges and the media, which will present a picture of parole as a whole, rather than just its violations.

Community Involvement

The degree of community involvement, by the National Parole Services, has been quite extensive when compared to other correctional departments. The involvement of ex-offender groups such as the Fortune Society, have been beneficial to both the individuals who comprise these groups and the parolees. This involvement has amounted to providing assistance in finding jobs and housing, signing contracts for short-term supervision, etc. There also has been a concentrated effort to encourage native self-help groups. This has principally been directed towards preventing recidivism among native people. The National Parole Board has also been involved in assisting inmates' wives and families to form groups where they can work towards solving their particular problems.

Community involvement by the Parole Board, if extended, will help to change the image of parole services and parolees in the minds of its citizens. Only when this has occurred will there be a greater chance of acceptance of inmates and parole services in the community. It will serve to involve citizens in the correctional process, and will also provide for the ex-offender a broader spectrum of social contact when he or she re-enters society.

FOOTNOTES CHAPTER 9

1. Canada, Report of the Canadian Committee on Corrections, *Towards Unity: Criminal Justice and Corrections* (Queen's Printer, Ottawa, 1969), p. 332-333.

2. Canada, Report of the Canadian Committee on Corrections, ibid., p. 329.

3. Canada, *An Outline of Canada's Parole System for Judges, Magistrates and the Police* (National Parole Board, Ottawa), p. 6-7.

4. Canada, Parole Act, *Statutes of Canada*.

5. *Edmonton Journal*, September, 1971.

6. *Edmonton Journal*, January 29, 1973.

7. *Edmonton Journal*, March 20, 1974.

8. Hogarth, John, *Sentencing As A Human Process* (University of Toronto Press, Toronto, 1971), p. 176.

9. Hogarth, John, ibid., p. 176.

CHAPTER 10

COMMUNITY-BASED-RESIDENTIAL CENTRES

There comes a day when nearly every incarcerated offender is released from a federal or provincial correctional institution. This could occur either after one month or twenty-five years. Eventual release is the way in which the citizen says "an offender deserves another chance". Although this aspect is often underplayed when the public says "they (offenders) should be put away", this time of release is a very crucial point in the judicial process. Although there is the need for alternative types of correctional processes, it is important for us to examine the mechanisms (or lack thereof) which assist the inmate to adjust to the outside world upon release.

Newly released ex-offenders face numerous problems in adjusting to the "outside" world. The regimented prison life style, by definition, removes the inmate from the tasks the average person has to face daily; from obtaining food to deciding how to utilize recreation time. Prison life requires little self-control in that it removes the opportunity for responsible decision making. The ex-offender in his/her newly-found freedom upon release, has to deal with a world which probably changed while he/she was in jail. The ex-offender's peer group are offenders like himself, different from the "average citizen". Upon release, there is a pull towards the ex-offender's peer group in the community, and an almost automatic withdrawal from the unfamiliar "average citizen". The newly-found freedom also provides the setting which will test the ex-offender as to whether or not he/she has really solved the old probelms. While in jail, the emotional, psychological or alcoholic problems were controlled by the correctional environment. Released into society, the ex-offender has to deal with those past problems alone. Not surprisingly, many of those released from prison, fail to adjust to this "freedom".

Inadequate support systems provided by the government and the community during this critical transition period may be largely responsible for the high rate of recidivism in Alberta (reported figures range 60 to 80%).

Research has shown "that while an inmate's motivation to stay away from crime was greatest at the time of release, recidivism rates were disproportionately high during the immediate post-release period".(1)

Day, full and mandatory parole programs are partially directed towards easing the transition from prison to society; but they also serve the purpose of protecting society through supervision of the ex-offender. The parole officer has the dual, and often contradictory, role of counselling and surveillance. It should not be surprising if, in the eyes of the parolee, already alienated from society, the counselling role is no more than a sheep's coat over the surveillance function. Recognition of the problems associated with parole as the sole mechanism for the re-entry of ex-offenders into society was one of the factors which led to the exploration of the concept of community-based-residential centres.

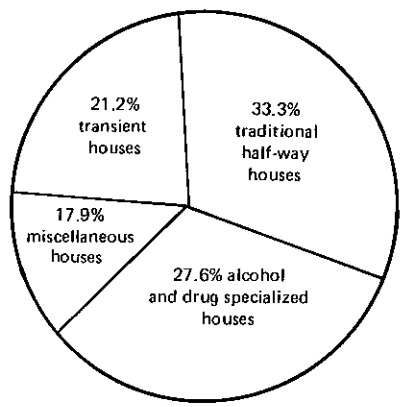
The term "community-residential centre", (CRC), presently covers a wide variety of facilities established to serve different problem groups: transients, alcoholics, drug addicts, as well as ex-offenders. Community-residential centres, (CRC's), range from specialized treatment centres based on formalized programs, to overnight or short-term sleeping accommodation lacking specific programs or target treatment groups.

Although European countries have placed much time and money into CRC's, in Canada they are a relatively new phenomenon. In 1972, the Solicitor General of Canda released its *Task Force Report on Community Based Residential Centres*.(2) This was the first comprehensive study of CRC's in Canada. Their findings, on the whole, present a confused and disturbing picture. Reading the Report, one is lead to the conclusion that existing facilities constitute an unco-ordinated, unevaluated and generally poorly supported jumble of attempts to deal with the problems of the ex-offenders' re-entry to society.

The Task Force Findings

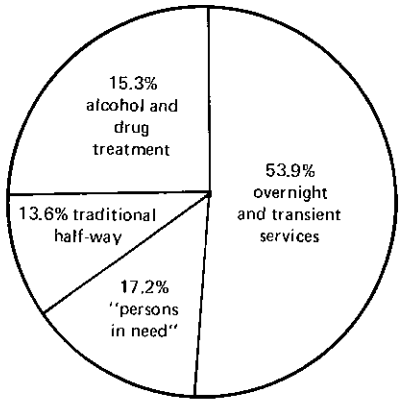
The Task Force was able to "identify 156 community residential centres in Canada which accepted adult ex-offenders, either because they are ex-offenders or because their program offers some specialized service from which certain ex-offenders can benefit."(3) Centres could be broken down into the following categories.

TABLE 33: Community-Residential Centres By Purpose – Canada(4)



The *traditional half-way houses* are primarily for those who have been convicted of criminal offences and are used as either pre-release or post-release centres. The *alcohol and drug specialized houses* are for persons who have specific alcohol or drug related problems. *Transient houses* primarily provide over-night or short-term accommodation houses for transients. The group called "miscellaneous houses", as the title indicates, represents a wide range of programs. When one looks at the types of centres available, one can get the impression that most needs are taken care of. This, however, is not the case. The actual number of "bed spaces" available in these houses provides a clearer picture of what really is available.

TABLE 34: Community Residential Centre and Bed Space[5]



Total bed spaces: 5,699

Thus, for the newly released inmate, there are few options open to him or her. More than half of the spaces available offer only short-term accommodation or over-night shelter. Another third of the spaces available are for alcohol and drug related problems. (In these centres, attention directed to the ex-offenders is a secondary priority.) This leaves only 13.6% of the total number of community-based residential centres specifically directed towards ex-offenders. There is very little available to the ex-offender as he/she re-enters society or re-adjusts to non-institutionalized living. There is also very little community involvement in that person's welfare.

The Location of Community-Based Residential Centres in Canada

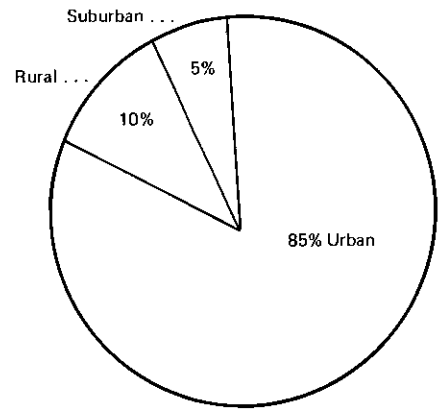
The distribution of community based residential centres varies from province to province. One unifying factor, however, is the location of centres in urban environments, regardless of the province.

TABLE 35: Number of Centres and Beds By Province, August, 1972[6]

Province	No. of Centres	Beds
British Columbia	33	1219
Alberta	15	446
Saskatchewan	7	120
Manitoba	10	279
Ontario	63	2775
Quebec	17*	579*
New Brunswick	2	19
Nova Scotia	5	174
Prince Edward Island	4	88
Newfoundland	0	0

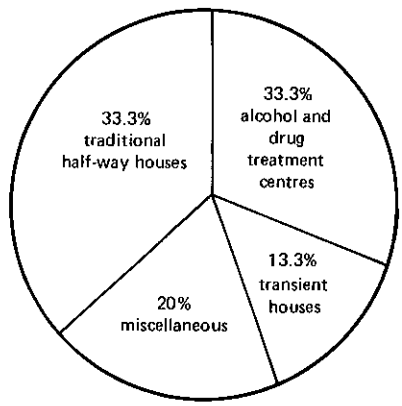
* Figures may be conservative because of inadequacy in the translation of questionnaire. The definition of a CRC was equivocal.

TABLE 36: Location of Centre By Urban/Rural Environment[7]



In Alberta, the use of community based residential centres is similar to other parts of Canada, with the exception that a larger percentage are alcohol and drug treatment centres. (See Appendix I for listing of centres.) Of Alberta's fifteen community residential centres, five are alcohol and drug treatment centres operated by the Provincial Government. Two are primarily for transients, five are traditional half-way houses and three fall in the miscellaneous category.

TABLE 37: Centres By Purpose — Alberta[8]



Since this study is primarily concerned with released offenders, we will primarily discuss the "traditional" centres, rather than those that offer other primary services.

Within the category of "traditional" community-based residential centres, there are two distinct types:

PRE-RELEASE CENTRES

The Task Force identified 10 "pre-release centres" operating in Canada. Most of the pre-release centres were operated either by the federal or provincial governments.

The purposes of pre-release centres are varied across Canada. Some roles that they fulfill are:

1) "housing for inmates prior to expiration of sentence"
2) housing for suspended parolees as an alternative to re-incarceration
3) housing for inmates on temporary absence and day parole
4) preparation of inmates for full parole
5) accommodation for inmates undergoing psychiatric testing, and
6) housing in order to provide a period of assessment for parole candidates.

SECTION IV SPECIAL GROUPS OF OFFENDERS

"Crime", "judges", "inmates", and "laws" are all words which create in the minds of citizens, the judicial system in our society. Although the degree to which the understanding of these terms vary, they definitely refer to the judicial process. During this study, the authors discovered two groups of offenders who, although within the judicial framework, are not as well understood as the other terms, by the average citizen. These special groups also have particular problems associated with them, as a group.

One would think that within the judicial process, the treatment of male and female offenders would be the same; an action is illegal regardless of the sex of the person who commits that action. Our findings however, indicate that this approach ignores some basic problems. Women are understood by our society to be the ones utlimately responsible for child-rearing. This aspect alone creates special problems when compared to the male offender. It is for this reason a chapter has been written, addressing itself to that particular problem which accompany mostly female offenders.

Another group which surfaced in the study was that of the "corporate offender.' This group is unique because offenders are usually considered to be individuals which are responsible for their actions. Corporations do not fit into this commonly accepted image of the offender.

Because this group contributes to anti-social behaviour in our society, a chapter has been written to discuss their role in the total judicial process.

There are other unique groups which could have been considered, but attention has been focused on those which are most frequently ignored.

CHAPTER 11

THE WOMAN OFFENDER IN ALBERTA

The number of women sentenced to jail in Alberta as compared to men is small. This situation is reflected in Canada as a whole.(1) However, it was felt that because women are still the mainstay of the family unit in Canadian society an examination should be made of the present situation in Alberta with regard to the woman offender and of the rehabilitation possibilities that exist for her once she has been incarcerated.

At present the Fort Saskatchewan Correctional Institute (F.S.C.I.), located 20 miles northeast of the City of Edmonton, is the only jail in Alberta for women. A report from that institution in June of 1974(*) indicates the capacity of the women's wing to be 98 and the average daily population to be about 41. The Annual Report, Corrections Branch, 1973, reports an increase in the number of females admitted to the Fort Saskatchewan Correctional Institute over the previous year, although there was a substantial reduction in the number of males admitted to the institution and in the Province as a whole.(2)

In July of 1974, under the agreements of the Federal-Provincial Conference on Corrections held in December 1973, thirteen women were transferred from Kingston Penitentiary for Women to the women's wing, F.S.C.I. The transfer of women brought the population of the women's wing to 60 in July. This increase in the population of the women's wing will likely remain constant, pending transfers from Kingston.

As of June 1974, the proportion of Native women (62%) in F.S.C.I. was higher than the native population in other correctional institutions in Alberta (41%) (3)

Further information contained in the June 1974 Report from the women's wing, F.S.C.I., indicates that 74% of the women were incarcerated for a period of time under three months, 21% under one year, and 5% between one and two years. A sample study(4) done from February 1972-1974, shows that the majority of women (61%) were incarcerated for non-payment of a fine. Thus, these 61% retain a jail record simply because of their inability to pay a fine.

Appendix I is a chart showing the offences for women for 1973. It can be seen from an examination of the chart that most offences are of the non-violent type – the majority being "crimes without a victim" such as alcohol related offences, soliciting, creating a disturbance, petty theft, etc.

Many of the women sentenced to the F.S.C.I. in Alberta come from far-reaching parts of the Province, and to serve their sentence they must be removed from their home community. This often results in a break in the family unit. Statistics on common-law relationships for women at the Fort Saskatchewan Correctional Institute are not available, nor are statistics available for the number of women caring for children as single parents. It is known however that many of these women have family ties by way of common-law relationships and that a number of them are single parents. Removal from their home community to jail means a break in family ties and often in the family itself. It is much less likely for the family unit to remain intact after the mother, rather than the father, is sent to jail. Removal from their home community to jail for women often means that children are made wards of the government or are cared for by friends or relatives (if they exist). Often the common-law husband disappears. When the woman is released from jail she not only has the problem of facing the community as an "ex-con" and deserter of her family but she has lost her only meaningful close ties. With these devastating problems to face after release from jail, the woman will often remain in the Edmonton com-

(*) Referring to the Descriptive Pamphlet on Provincial Correctional Institutions. This pamphlet is included in Appendix 9:1.

munity with some of her contacts from jail, rather than return to her home community and attempt to "pick up the pieces." She may try to escape her predicament by further involvement in the "drug scene", with alcohol, or otherwise, and will eventually find herself in jail a second, third, or fourth time. Thus, a revolving door syndrome is established – jail to street to jail to street, and so forth.

Within the institution, the difficulty in designing meaningful programs for women (given that 74% are there for three months or less) is apparent. Correctional staff, including social workers and administrators, no matter how progressive or innovative, are hampered in initiating successful programs under the present circumstances. The Edmonton Remand Centre (now in the planning stages) once completed, should alleviate some security problems which presently tend to make programming a difficult task.

Given the small number of women sentenced to jail in Alberta, the short duration of incarceration and the fact that the majority of offences committed by women are of a non-violent nature, the greatest possiblity for imaginative and experimental correctional programs is conceivable.

Rather than the large new institution for women which is presently on the drawing board, it is this study's findings that a series of small institutions of a maximum capacity of 15-20 are needed to be established at various points in the Province. With the concern in the rising number of those incarcerated for various offences involving drugs,(5), a comprehensive drug treatment program within these institutions is essential. Programs including family counselling, general life skills, training and upgrading should also be included. Custodial staff should include native people.

With the establishment of a number of smaller institutions, there would be less isolation from the home community and a better chance for women offenders to live meaningfully once they are released. Small institutions existing within a community would have available community resources for programming. Follow-up and support to a woman once released into the community (private after-care agencies) become a much less formidable task.

FOOTNOTES: CHAPTER 11

1. Canada, *Report on the Royal Commission on the Status of Women in Canada* (Information Canada, 1970), p. 366.
2. Alberta, Annual Report, 1973, *Corrections Branch,* Index, p.2.
3. Ibid.
4. Community Corrections For The Female offender, (Edmonton, Alberta).
5. Alberta, Annual Report, 1973, p. 5.

CHAPTER 12.

THE CRIMINAL NON-CRIMINAL — CORPORATE CRIME

Thus far, we have discussed federal crimes and provincial statutes and also the mechanisms that deal with the offender related to these. These categories are what the average person considers as "the law". Although there is a difference between crimes and offences, as to degree of seriousness, the public's attitude towards crimes and offences are similar. Parking offences are considered far less serious than robbery; but most persons would acknowledge that neither should be done. Crimes and offences go through the same procedure: arrest or summons given by the police, a court hearing, and a sentence, if the charge is maintained. Fines, supsended sentences (with or without probation) or incarceration are the alternatives for sentences. Most offences and crimes carry with them a social stigma.

By contrast, there is a group of offences, defined as such, which are historically relatively recent. These offences usually involve companies and corporations. These offences fall within the realm of federal and provincial acts: e.g., Combines Investigation Act, Weights and Measures Act, Food and Drug Acts, Pollution Protection Act, Unfair Labour Practices Act, etc. Although these offences are outside the Criminal Code and Provincial Statutes, they include such serious acts as misleading and false advertising, violations of standards, polluting the environment, short-weighting goods, creating monopolies, and violations of labour laws.

Although anti-social behaviour on the part of corporations and individuals usually falls under different legislation, there are interesting similarities and differences between the corporate offender and the individual:

1. There is a high rate of recidivism for both the individual offender and the corporate offender. (e.g.: Simpsons-Sears Limited has been found guilty of violating the Combines Investigation Act four times within a five year period of 1969-1973.[1] These violations included such activities as misleading price representation, and false advertising. Another example is G. Tamblyn Ltd. which has been found guilty of violating the Combines Investigation Act twice within a five year period.[2] Their violations included misleading advertising and false advertising.

2. The extent of anti-social behaviour is more extensive than the specific charges laid, both for the individual offender and the corporate offender. If an individual is charged for shop-lifting, it can usually be assumed that this incident was not the first time the person had committed the offence. Similarly, when a company is charged with false or misleading advertising, it can usually be assumed that this is not the first occurence.

3. The peer groups, of both the individual offender and the corporate offender, support, to a certain degree, the anti-social behaviour of the offender. This means that the offenders do not lose social status within their peer groups, and this factor tends to inhibit rehabilitation.

4. The attitudes towards legislated anti-social behaviour are similar amongst individual offenders and corporate offenders, in that their behaviour is designated anti-social by an outside group. While that outside group might be the police for the individual offender, it is the politicians and the public for the corporate offenders.

While there are strong similarities between the individual offender and corporate offenders, there are significant differences also. Most of these differences lie in the "average person's" attitudes to "the law", and their image of what consitutes criminality, or anti-social behaviour.

Individuals become victims of corporate offences daily, yet these offences are viewed as normal rather than as criminal. Several reasons account for this:

"Persons who violate laws regarding restraint of trade, advertising, pure food and drugs, are not arrested by uniformed policemen, are not often tried in criminal court, and are not committed to prison; their illegal behaviour generally receives the attention of administrative commissions and of courts operating under civil or equity jurisdiction."[3] Visually they do not enter into the normal "criminal" proceedings and are seldom viewed as criminals.

Since corporate offenders rarely go through the procedure of arrest by police, bail, sentence, etc., they do not see themselves as violators of "the law"; nor as criminals. The individaul offender, on the other hand, sees himself as a socially defined "criminal" from the time of arrest. This difference in self-image sets the stage for an entirely different judicial procedure for the individual offender and the corporate offender, and an entirely different psychological reaction to this procedure on behalf of the offender, and the public.

There is relatively little organized resentment on the part of the public to corporate offences. Such offences are seldom seen as violations of social behaviour because the offences are complex in nature and their effects are diffuse. Robbing or assaulting another individual is a simple and direct attack; whereas misleading advertising has less obvious effects and involves a larger group of persons. The issues of "corporate crime" are more complex, and the communication agencies (T.V., radio and newsprint) have greater difficulty in presenting the information (in articles or half-hour T.V. shows) in the similar dramatic fashion as they do with murders or bank hold-ups. This diffuseness and complicity makes it difficult for the general public to feel comfortable defining corporate offences as real "crimes".

Finally, the range of dispositions available to the courts for corporate offenders are severely limited. If an individual is found guilty of an offence, then he is faced with either imprisonment, probation, a fine or a suspended sentence. Punishment affects his personal life. Corporations when found

guilty, however, are faced with a minimal fine and possibly an order of prohibition of continuation or repetition of offence. The individuals guilty are not punished.

Following is a chart of the average fines charged per corporation for violations of the Combines Investigation Act, for the five year period of 1969-1973.

TABLE 38: Average Fines for Violation of Combines Investigation Act[4] 1969-1973

Year	Combines Investigation Act
1969	$226.00
1970	$247.00*
1971	$541.00
1972	$300.00
1973	$599.00*

*Average does not include two major cases which involved over ten companies.

These average fines for corporate offenders are not large, especially when one compares an individual's yearly income with that of a corporation. Individual offenders are fined without consideration given as to their ability to pay. Yet corporations average fines are small, thereby frequently making it profitable to risk a fine or even repeat a fineable offense.

Thus, we see that the overwhelming use of fines to penalize corporations protects the corporations from the severity of sentencing which the individual offender must face.

The position of corporations within Canadian society influences the preferential treatment afforded to corporate offenders. The position of corporations in our society is historically similar to that of the clergy in medieval times. The clery was the most powerful group at that time. It secured immunity from punishment by the concept of "benefit of clergy". Now our most powerful group, corporations, secures relative immunity by "benefit of business" or more generally by "high social status".(5) This status adds to the difficulty of implementing justice where corporations are involved.

> *"The methods used in the enforcement of any law are an adaption to the characteristics of the prospective violaters of that law, as appraised by the legislators and the judicial and administrative personnel . . . Those who are responsible for the system of criminal justice are afraid to antagonize businessmen; among other consequences such antagonism may result in a reduction in contributions to the campaign funds needed to win the next election (or a change in location of that business). Probably more important than fear, however, is the cultural homogenity of legislators, judges and administrators with businessmen. These factors make it difficult ot classify the activities of business as 'criminal'."*[6]

This distinction in treatment of anti-social behaviour misrepresents the harm committed. A study as early is 1941 conducted by *Readers Digest* showed that the public are the victims of corporate crime.

> *"Investigators for the Readers Digest in 1941 drove their car into many garages with a defect artificially produced for their experiment. A proper charge for attaching the wire which had been loosened might be 25 cents. But 75% of the garages misrepresented the defect and the work which was done; the average charge was $4.00 and some garages charged as much as $25.00. Similar frauds were found in the watch repair, radio repair and typewriter repair business."*

Recent examples:

TABLE 39: Commonly Used Products Which Harm Consumers[8]

PRODUCT	VIOLATION	PENALTY
Chewing Gum	Sale of food containing harmful substance	100.00
Alphamettes	Illegal advertisement of certain drugs	90.00
Milk for Manufacture	Excessive bacteria	35.00
Coca Cola and Fanta Orange	Manufactured under unsanitary conditions	150.00
Peanut Butter	Sale of food containing harmful substance	1,500.00
Toothpaste	Misleading advertising	50.00
Diet Plan	False advertising	800.00

The financial cost of corporate crime to the public is probably several times as great as the financial cost of all crimes which are customarily regarded as 'the crime problem'. This cost however, is less important than the damage to social relations. Corporate crimes violate trust and therefore create distrust. This distrust breaks down the social morale of society and produces social disorganization.

The judicial discussion on the question of whether or not regulatory offences are sufficiently serious enough to be classified as "real crimes" has not clarified the problem for the public. Some have argued that an act is criminal only if the criminal courts have determined that the person accused of the act has actually committed the crime. This complexity is due to corporations lacking one mind. Others have defined crimes as those within the Criminal Code. These questions are for those interested in administrative questions and not concerned with preventing anti-social behaviour. The essential characteristic of anti-social behaviour is that it is behaviour prohibited by government because it is injurious to that society. The offences involved under "regulatory offences" are injurious to society; especially when the scope is compared to the offences listed in the Criminal Code or Provincial Statutes.

Punishment of violations of regulatory offences is presently limited to fines. The amount of fines charged indicate that this behaviour is not considered seriously harmful to the public.

This becomes especially obvious when one considers the amount of the fines paid by the corporations relative to their profits. A fine of $200.00 or even $1,000.00 is essentially nothing when compared to the total income.

To advocate stiffer fines as punishments for regulatory violations would be inappropriate since the fines would be injurious to the stockholders and eventually to the purchasers of the products of the charged corporations. Instead of pecuniary punishments the Institute of Justices in their *Model Sentencing Act* suggest the following:

Section 6.04. Penalties Against Corporations and Unincorporated Associations; Forfeiture of Corporate Charter or Revocation of Certificate Authorizing Foreign Corporation to Do Business in the State.

(1) The Court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offence or may sentence it to pay a fine authorized by Section 6.03.

(2) (a) The (prosecuting attorney) is authorized to institute civil proceedings in the appropriate court of general jurisdiction to forfeit the charter of a corporation organized under the laws of this State or to revoke the certificate authorizing a foreign corporation to conduct business in this State. The Court may order the charter forfeited or the certificate revoked upon finding (i) that the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, purposely engaged in a persistent course of criminal conduct and (ii) that for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

(b) When a corporation is convicted of a crime, a high managerial agent of a corporation, as defined in Section 2.07, is convicted of a crime committed in the conduct of the affairs of the corporation, the Court, in sentencing the corporation or the agent, may direct the prosecuting attorney) to institute proceedings authorized by paragraph (a) of this Sub-section.

(c) The proceedings authorized by paragraph (a) of this Subsection shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of a corporation or the revocation of the certificate authorizing a foreign corporation to conduct business in this State. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.[9]

Another equally important aspect of prosecution is the degree of access by the citizen to make a charge. If a citizen witnesses a violation of the Provincial Statutes of Criminal Code, they can call a policemen who will come and investigate, thus, initiating criminal procedures. The present mode of making a charge against a corporation is much more complex. Ways need to be created so that citizens can have access to initiating criminal procedures against corporations. The maze that presently exists only seems to frustrate the citizen and encourage lack of respect for the law.

FOOTNOTES CHAPTER 12

1. Canada, Department of Consumer and Corporate Affairs, *Report of the Director of Investigation and Research: Combines Investigation Act* (Information Canada, Ottawa, 1969-1973).

2. Ibid.

3. Sutherland, Edwain, *White Collar Crime* (Holt, Reinhart, and Wilson, New York, 1949), p. 8.

4. Canada, ibid.

5. Sutherland, ibid., p. 47.

6. Ibid., p. 47-48.

7. Wris, R.W. and Patrick, J., *The Repairman Will Get You If You Don't Look Out* (Garden City, 1942).

8. Canada, ibid.

9. Advisory Council of Judges, "Model Sentencing Act: Text and Commentary" (*Crime and Deliquency*, Vol. 9, 1963), p. 339-369.

APPENDICES

CHAPTER 3 BAIL

APPENDIX IV

Offences Under Criminal Code Which May Be Prosecuted Only By Way of Summary Conviction*

Section	*Subject*
54	Assisting deserter
56	Resisting execution of search warrant in searching for a deserter
57	Offences relating to R.C.M. Police
67	Member of unlawful assembly
81	Engaging in prize fight
84	Possession of weapon while attending public meeting
87	Delivering firearm to person under 16 who does not possess a permit
88(1)	Delivering firearm to person prohibited from having it
88(2)	Delivering firearm to person of unsound mind or against whom there is an order not to possess a firearm
119	Impersonating a police officer
131	Advertising reward with immunity
133	Failure to attend court as required by summons or police process or to comply with release conditions (if not previously convicted under s. 133).
169	Indecent act in public
170	Nudity when exposed to public view
171	Causing disturbance
172(2)	Wilfully disturbing a religious or other meeting
172(3)	Disturbing order or solemnity of religious or other meeting
173	Trespassing at night
174	Throwing, etc., offensive volatile substance
175	Vagrancy
184	Obstructing execution of warrant during search of disorderly house
185(2)	Being found in gaming or betting house
189(4)	Buying, etc., a lottery ticket
190(4)	Receiving lottery ticket in a province other than an authorized province
191(3)	Failure to put up notice of section against gambling in public conveyance
193(2)	Being an inmate, found in, lessor, etc., of a common bawdy house
194	transporting person to common bawdy house
225	Attempt to commit suicide
235(2)	Failure or refusal to provide breath sample
236	Driving with more than .08% alcohol in the blood
239	Motor vehicle equipped with smoke screen
240(2)	Boat towing water skiers without a second responsible person keeping watch
240(3)	Boat towing water skiers one hour after sunset to sunrise
240(4)	Operating vessel while impaired
240(9)	Operating vessel while prohibited from doing so
253(1)	Communicating venereal disease
295	Taking motor vehicle without consent
311	Failure of vendor of automobile master keys to keep record
322	Fradulently obtaining food and lodging
323	Pretending to practise witchcraft
330(2)	Making an indecent telephone call
330(3)	Making harassing telephone calls
351(3)	Fraudulently obtaining transportation
356	Falsifying employment record — including time clock
359(1)	Obtaining carriage of anything between jurisdictions where importation or transportation of that thing is unlawful
362	Impersonation at examination
371	Falsely claiming goods are made for a government department
377	Unlawful use of military uniforms
381	Intimidating — watching and besetting — following
382	Employer refusing to employ member of a trade union
384	Issuing or giving trading stamps
388	Damaging property — destruction not exceeding $50.00
393	False fire alarm
394(2)	Impeding the saving of a wrecked vessel
395(1)	Anchoring to a buoy or other sea mark
398	Interfering with boundary lines
401	Killing or injuring animals
402(2)	Causing unnecessary suffering to animals
402(6)	Having custody or control of animals or birds when prohibited from doing so
403(1)	Keeping a cock-pit
404(10)	Offences relating to the transportation of cattle
405(2)	Refusing to allow peace officer on vehicle or vessel where animals are being transported
412	Fraudulent use of slugs
414	Defacing currency
415(1)	Printing or designing facsimile of money or security
415(2)	Printing part of bank note or security
422(b)	Counselling another to commit a summary conviction offence

*In respect of these offences a peace officer may issue an appearance notice under s. 451 where he does not arrest the accused, or under s. 452 where he releases the accused from custody following arrest and an officer in charge may release an accused under s. 453 or, if so authorized, under s. 453.1.

CHAPTER 7

INCARCERATION

APPENDIX I

June, 1974

A DESCRIPTIVE PAMPHLET ON THE PROVINCIAL CORRECTIONAL INSTITUTIONS IN ALBERTA

BY:

The Edmonton Social Planning Council's
"Citizens' Commission on Corrections"
10006 - 107 Street
Edmonton, Alberta

INTRODUCTION

The information in this pamphlet is an attempt to draw together, in a concise form, a description of the Provincial correctional institutions in Alberta.

This description attempts to describe the physical setting, the age of the offenders and the length of their incarceration and most importantly, the services offered. This information is based on the *1972 Annual Report: Corrections Branch* of the Alberta Attorney General's Department as well as surveyed information from the Provincial Wardens.

It is the hope of the Citizens' Commission that this pamphlet will provide valuable information both to those employed in the judicial area and to the citizens of the Alberta community.

(The paragraph numbers correspond to the heading numbers for each institution.)

1. *Type of institution:* general classification of institutions; although most institutions have a certain degree of space allocated for maximum, medium and minimum security.

8. *Length of incarceration:* except in the case of remands, the length of incarceration means length of sentence imposed by the court. Remands include all those committed to stand trial.

10. *Correctional staff*: correctional staff refers to the total number of those within the institution that are in some way part of the correctional process.

11. *Accommodation set-up:* is the physical design of the institution as to living units.

16 *Social service agencies*: include only those actually in use — not those only available or employed on a spontaneous basis.

17. *Alcoholic treatment agencies:* those treatment agencies which are a supplement to the alcoholic counselling given by the staff social workers.

18. *Vocational facilities*: courses offered in which inmates may receive credit for their hours requirement under a journeyman.

20. *Labour opportunities*: opportunities open for inmates which offer pay. Opportunities, both within the institution and without.

21. *Pre-release assistance and classfication*: the number of inmates who have experienced day-parole, parole, and temporary absences, during the year.

22. *Legal aid*: the number of inmates assisted with legal aid during the year and by whom.

23. *Recreational*: those activities available to inmates during leisure hours.

*n/ap: refers to not applicable
n/a: refers to not available

1. TYPE OF INSTITUTION: medium security
2. WARDEN: L.J. Fisher
3. ADDRESS: P.O. Box 490, Lethbridge, Alberta
4. CAPACITY: 150 inmates
5. AVERAGE DAILY POPULATION: 123
6. % INDIAN (TREATY AND METIS): 61%
7. AGE CATEGORIES:

16-21	28%
22-29	25%
30 plus	47%

8. LENGTH OF INCARCERATION:

remands	348
up to 60 days	81%
60 days-1 year	15%
1-2 years	3%
Immigration detentions	1%

9. DATE INSTITUTION BUILT: 1911
10. CORRECTIONAL STAFF: 96

Administration	7
Officers	63
Clerical	9
Maintenance	13
Medical	1
Education	1
Social Services	2
	96

11. ACCOMMODATION SET-UP: 102 single cells
48 in open dorms
12. PSYCHIATRISTS: visiting: 1
residential: none
visits per week/month: weekly
number of inmates visited over year:
statistics not kept
13. PSYCHOLOGISTS: residential: none
visits per week: n/a
number of inmates visited over year: n/a
14. FULL-TIME SOCIAL WORKERS: 1
15. PART-TIME SOCIAL WORKERS: none
16. SOCIAL SERVICE AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Salvation Army	1	274 this year	512
Canada Manpower		as required	statistics not kept
John Howard Society	3	1 weekly/2 twice monthly	statistics not kept
Dept. of Indian Affairs		as required	statistics not kept
Native Court Workers	1	n/a	statistics not kept
Provincial Guidance Clinic	1	monthly	statistics not kept

17. ALCOHOLIC TREAMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/monthly/year)	No. of Inmates Involved
Alcoholics Anonymous	2	weekly	17-18 inmates
Alcoholism and Drug Abuse Commission	1	twice weekly	approx. 30 inmates

18. VOCATIONAL FACILITIES:

	No. of Participants
Barbering and hair styling (course terminated May 4, 1973)	3
Kitchen employment (baking, meat cutting and general cooking)	16

19. EDUCATIONAL FACILITIES: Classroom staffed by one teacher

	No. of Participants
Alberta Correspondence School (55 courses)	40
Nova Scotia Correspondence Study Service (2 courses)	1
Private study	2
Lethbridge Community College (day parole)	2
Lethbridge Playgoers Society Workshop (10 sessions)	1

20. LABOUR OPPORTUNITIES:

Day parole – granted to 34 inmates for employment purposes.

Forestry camp – 9 to 16 inmates; total of 85 inmates involved during year; camp wages, $7.00/week.

Incentive pay (4 levels) paid to inmates working in the following areas: grounds, Alberta Public Works shops, kitchen, greenhouse, laundry, gardens, cannery, clothing room, library and janitorial services.

21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:

a) Number of classification officers: 1
b) Parole: 2 inmates released
c) Day parole: 36 inmates
d) 821 temporary absence permits issued (810 were of 3 days or less).

22. LEGAL AID: 82 inmates on remand were assisted with legal aid applications.

23. RECREATIONAL: Staff includes one full-time Recreation Therapist, two full-time Correctional Officer assistants and one part-time assistant. Activities include inside and outside sports, music, entertainment, visits to outside hockey and wrestling matches, library and a variety of hobby activities (leathercraft, artex paint embroidery, bead work, painting, wood carving, copper work, fly tying, etc.).

24. WARDEN'S COMMENTS:

(1) Due to the number of short-term offenders, full paroles are not feasible and in lieu of this day parole for employment purposes has been found to be a practical alternative.
(2) Vocational training discontinued due to lack of suitable inmates, e.g. sentence, education, motivation.
(3) Population now about half that of five years ago. Indications are for further decline in 1974/75.
(4) Information given is based on 1973/74 fiscal year.

1. TYPE OF INSTITUTION: medium security
2. WARDEN: Acting Warden W.C.J. Lake
3. ADDRESS: Fort Saskatchewan, Alberta
4. CAPACITY: 400
5. AVERAGE DAILY POPULATION: 352.7
6. % INDIAN (TREATY AND METIS): 25%
7. AGE CATEGORIES:

16-21	44%
22-29	25%
30 plus	31%

8. LENGTH OF INCARCERATION:

remands	not available
up to 60 days	52%
60 days-1 year	35%
1-2 years	13%

9. DATE INSTITUTION BUILT: 1912
10. CORRECTIONAL STAFF: 201

Administration	7
Officers	134
Clerical	24
Maintenance	20
Medical	1
Education	3
Social Services	7
Classification	2
Native Counsellor	1
Alcohol Counsellor	1
Psychologist	1
	201

11. ACCOMMODATION SET-UP:

2 cell blocks – "A" Block – for those on remand and awaiting penitentiary transfer
"B" Block – for relatively high security risks among sentenced prisoners
2 large dormitory areas

12. PSYCHIATRISTS: visiting: 1 – one afternoon per week
residential: n/a
visits per week/month: n/a
number of inmates visited per year: n/a
13. PSYCHOLOGISTS: residential: one
visits per week: n/a
number of inmates visited overyear: n/a
14. FULL-TIME SOCIAL WORKERS: 4
15. PART-TIME SOCIAL WORKERS: Grant MacEwan College student placements only
16 SOCIAL SERVICE AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Native Counselling	1	Full time at F.S.C.I.	n/a
Adult Probation Branch	1		
Community Corrections for Women	1	½ day/week	n/a
National Parole Service	n/a	n/a	n/a
John Howard Society	3		n/a
Canada Manpower	1	1 day/week	n/a
Outreach (Native Employment)	1	1 day/week	n/a
Family Life Education Council	n/a	n/a	n/a
Department of Health and Social Development	n/a	n/a	n/a

17. ALCOHOLIC TREATMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Alcoholics Anonymous	n/a	n/a	n/a
Alberta Alcohol and Drug Abuse Commission	2	1 residential and one ½ day/week	8/session

18. VOCATIONAL FACILITIES:

	No. of Participants
Autobody Program	20/year
Barber training	4-6/year
Cooking: credit for hours toward apprenticeship only	n/a

19. EDUCATIONAL FACILITIES

	No. of Participants
Academic upgrading 1 full-time teacher Classroom can accomodate maximum of 40	n/a
Philosophy Group – Plato – 1 per week for 10 weeks	4-5

20. LABOUR OPPORTUNITIES:

	No. of Participants
licence plate shop	40
vegetable preparation and storage	12
greenhouse	8
garden and grounds	24
carpenter shop	3
paint shop	3
auto body shop	10
stationary engineers	3
cooks, bakers, butchers	28
housekeeping and janitorial services	60
community projects	24
forestry camps	75
labour force	90
barber training	2

21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:

a) No. of classification officers: 2.
b) Parole: – inmates released – not available due to high rate of institutional transfers.
c) Day parole: n/a inmates.
d) 650 temporary absence permits issued (600 were of 3 days or less).

22. LEGAL AID: inmates on remand assisted with legal aid applications: n/a

23. RECREATIONAL:

Full-time recreation director.
Correctional Officers assigned to programs area on rotational basis.

24. WARDEN'S COMMENTS:

1. TYPE OF INSTITUTION: medium security
2. WARDEN: W.C.J. Lake – Acting Warden; I. Thomas – Superintendent
3. ADDRESS: Fort Saskatchewan, Alberta
4. CAPACITY: 98
5. AVERAGE DAILY POPULATION: 41.49
6. % INDIAN (TREATY AND METIS): 62%
7. AGE CATEGORIES:

16-21	35%
22-29	32%
30 plus	33%

8. LENGTH OF INCARCERATION:

remands	not available
up to 60 days	74%
60 days-1 year	21%
1-2 years	5%

9. DATE INSTITUTION BUILT: 1914
10. CORRECTIONAL STAFF: 40

Administration	1
Officers	28
Clerical	1
Maintenance	7
Medical	1
Education	1 (part-time)
Social Services	1 (part-time)
Native Counsellor	1 (part-time)
A.A. Counsellor	1 (part-time)
	40

11. ACCOMMODATION SET-UP:

    1 – Cell block for new admissions and remands
    2 – Cell blocks for sentenced inmates

12. PSYCHIATRISTS: visiting: 1 – one afternoon a week
    residential: none
    visits per week/month: n/a
    number of inmates visited over year: 40
13. PSYCHOLOGISTS: residential: 1 – on request
    visits per week: n/a
    number of inmates visited over year: n/a
14. FULL-TIME SOCIAL WORKERS: 0
15. PART-TIME SOCIAL WORKERS: 1 part-time social worker
    2 Grant MacEwan College student placements
16. SOCIAL SERVICE AGENCIES INVOLVED:

Agency	Times Visited (week/month/year)	No. of Inmates Involved
Native Counselling Services	n/a	n/a
Hilltop and McDougall Halfway Houses	½ day/week	n/a
Adult Probation Branch	n/a	n/a
National Parole Service	½ day/week	n/a
Canada Manpower	½ day/week	n/a
John Howard Society	½ day/week	n/a

17. ALCOHOLIC TREATMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Alcoholics Anonymous	2-4	3 hours/week	n/a

18. VOCATIONAL FACILITIES:

	No. of Participants
Beauty Parlor – credit for hours at an approved school of hairdressing	11 students

19. EDUCATIONAL FACILITIES:

No. of Participants
47

Academic Upgrading
1 part-time teacher

20. LABOUR OPPORTUNITIES: cooking, sewing, laundry

21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:

a) No. of classification officers: 2.
b) Parole: 16 inmates released
c) Day parole: 13 inmates.
d) 88 temporary absence permits issued (75 were of 3 days or less).

22. LEGAL AID:
Inmates on remand assisted with legal aid applications: n/a.

23. RECREATIONAL:
Full-time recreation director
Correctional Officers assigned to programs area on regular basis.

24. WARDEN'S COMMENTS:

1. TYPE OF INSTITUTION: minimum security
2. WARDEN: D.S. Hyatt
3. ADDRESS: Bag 1400, Rocky Mountain House, Alberta, T0M 1T0
4. CAPACITY: 100
5. AVERAGE DAILY POPULATION: 45
6. % INDIAN (TREATY AND METIS): 60%
7. AGE CATEGORIES:

16-21	42%
22-29	34%
30 plus	24%

8. LENGTH OF INCARCERATION:

remands	0
up to 60 days	6%
60 days-1 year	85%
1-2 years	9%

9. DATE INSTITUTION BUILT: 1963
10. CORRECTIONAL STAFF: 32

Administration	2
Officers	30
32	32

11. ACCOMMODATION SET-UP:
Main camp at Nordegg and two mobile units.
12. PSYCHIATRISTS: Visiting: Non-applicable – inmates return to parent institution if treatment required.
13. PSYCHOLOGISTS: n/ap
14. FULL-TIME SOCIAL WORKERS: n/ap
15. PART-TIME SOCIAL WORKERS: Supplied by parent institutions as required.
16. SOCIAL SERVICE AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Chaplain Service	2	(1)	15
National Parole Service Probation Branch	2	(1) as required or requested	10

17. ALCHOLIC TREATMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved

Alcoholics Anonymous – regular visits from Rocky Mountain House Branch

18. VOCATIONAL FACILITIES: — No. of participants
n/ap
19. EDUCATIONAL FACILITIES: — No. of Participants
Correspondence courses pursued — limited and irregular
20. LABOUR OPPORTUNITIES:
Potential candidates in this area usually sent to parent institutions when day paroles are considered.
Local opportunities now under study.
21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:
a) No. of classification officers:
b) Parole: 4 inmates released.
c) Day parole: 3 inmates.
d) 10 temporary absence permits issued (4 were of 3 days or less).
22. LEGAL AID:
Inmates on remand assisted with legal aid applications: n/ap.

23. RECREATIONAL:
Although isolated our inmates have the following facilities available to them: one film per week, skating rink, curling rink, pool table, swimming pool, ball field, hikes and several inside floor games.

24. WARDEN'S COMMENTS:
Nordegg is presently under adjustment due to our parent institution at Bowden being turned over to the Federal Penitentiary Service.

1. TYPE OF INSTITUTION: medium security
2. WARDEN: Acting Warden A.C. Stanton
3. ADDRESS: Box 3250, Stn. B., Calgary, Alberta, T2M 4L9
4. CAPACITY: 430
5. AVERAGE DAILY POPULATION: 405
6. % INDIAN (TREATY AND METIS): 12.7%
7. AGE CATEGORIES:

16-21	42.1%
22-29	27.5%
30 plus	30.4%

8. LENGTH OF INCARCERATION:

remands	1,219
up to 60 days	51.3%
60 days-1 year	35.0%
1-2 years	13.7%

9. DATE INSTITUTION BUILT: 1958 – extended 1960 and 1966.

10. CORRECTIONAL STAFF: 174

	Administration	7
	Officers	124
	Clerical	17
	Maintenance	14
Medical	Medical	1
	Education	3
	Social Services	8
		174

11. ACCOMMODATION SET-UP: 128 single cells
    1 wing 76
    1 wing 96
    6 dorms – 16 in 5, 8 in 1
    2 wings – 22 in each wing
12. PSYCHIATRISTS: visiting: 1
    residential: nil
    visits per week/month: bi-monthly
    number of inmates visited over year: 196
13. PSYCHOLOGISTS: residential: 1
    visits per week: 20
    number of inmates visited over year: 1000
14. FULL-TIME SOCIAL WORKERS: 2
15. PART-TIME SOCIAL WORKERS: nil
16. SOCIAL SERVICE AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
John Howard Society	2	once/week	260/year
Native Court Workers	2	varies	100 approx.

17. ALCOHOLIC TREATMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week./month/year)	No. of Inmates Involved
Alberta Alcohol and Drug Abuse Commission	3	40 hours/week	220/month
Alcoholics Anonymous	varies	6 hours/week	average attendance = 20

18. VOCATIONAL FACILITIES

	No. of Participants
S.A.I.T. (Southern Alberta Institute of Technology)	2 in 1973
Hair Styling	average - 6

19. EDUCATIONAL FACILITIES:

	No. of Participants
1 classroom – 1 teacher	
correspondence course sessions	average atten. – 16
carpenter shop re: tables for forestry	6
forestry camps	60
miscellaneous	10
stores	13

20. LABOUR OPPORTUNITIES

Place	Average No. of Inmates
Shoe shop	6
Medical	1
Garden and grounds	35
Horticulture	15
Laundry	18
Food preparation	35
Mechanical shop	4
Janitorial	30

21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:
   a) No. of classification officers: 1 presently – provision for 2.
   b) Parole: 48 inmates released.
   c) Day parole: 71 inmates.
   d) 753 temporary absence permits issued (578 were 3 days or less).

22. LEGAL AID:
Average 56/month inmates on remand were assisted with legal aid applications.

23. RECREATIONAL:
Gymnasium activities, fastball, swimming, skating, weekly feature length films, bingo games, concerts, hobbies, library, television.

24. WARDEN'S COMMENTS:
The percentage of age categories 16-21 is very disturbing. With the opening of the new Remand Centre in Calgary, it is proposed to programme this institution towards this particular age group as to segregation and counselling. The treatment and counselling of this age group should commence within society prior to reaching the point of incarceration, in other words, a prevention programme within society.

1. TYPE OF INSTITUTION: medium security
2. WARDEN: Mr. T. Downie
3. ADDRESS: Box 800, Peace River, Alberta
4. CAPACITY: 164 (could hold 200)
5. AVERAGE DAILY POPULATION: 118.23
6. % INDIAN (TREATY AND METIS): 54%
7. AGE CATEGORIES:

16-21	51%
22-29	24%
30 plus	25%

8. LENGTH OF INCARCERATION:

remands	214
up to 60 days	40%
60 days-1 year	43%
1-2 years	17%

9. DATE INSTITUTION BUILT: 1968
10. CORRECTIONAL STAFF: 111

Administration	7
Officers	80
Clerical	10
Maintenance	8
Medical	1
Education	2
Social Services	3
	111

11. ACCOMMODATION SET-UP:
    1 cell block of 48
    1 open dorm of 48
    1 cubicle dorm of 48
    1 open dorm of 20
12. PSYCHIATRISTS:
    visiting: 1
    residential: nil
    visits per week/ month: 2/month
    number of inmates visited over year: approximately 50
13. PSYCHOLOGISTS:
    residential: nil
    visits per week: 1/week
    number of inmates visited over year: approximately 150
14. FULL-TIME SOCIAL WORKERS: 1
15. PART-TIME SOCIAL WORKERS: none
16. SOCIAL SERVICE AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No of Inmates Involved
Probation Branch	1	1/week	approx. 50
National Parole	1	1/month	approx. 200
Manpower	1	1/month	numerous
Native Counselling	2	2/month	numerous
Native Outreach	2	1/month	numerous

17. ALCOHOLIC TREATMENT AGENCIES INVOLVED:

Agency	No. of Workers	Times Visited (week/month/year)	No. of Inmates Involved
Alcoholic Annonymous	1	1/week	20 per meeting
Alcohol Counsellor Proposed			

18. VOCATIONAL FACILITIES:

	No. of Participants
Barbering	8
Cooks	4
Bakers	4
Butchers	4
Automotive	6

19. EDUCATIONAL FACILITIES:

	No. of Participants
1 teacher	
Institution Education Programme (Correspondence)	20 per month
Grouard Upgrading (AVC – Alberta Vocational Centre)	20 per month
Life Skills (AVC – Alberta Vocational Centre)	15 per month

20. LABOUR OPPORTUNITIES:

Gardening, grounds keeper, nursery (seedling) worker, equipment operator, forestry camps re: forestation, cleaners, cooks, waiters, laundry workers, mechanics, and some relation with tradesmen.

21. PRE-RELEASE ASSISTANCE AND CLASSIFICATION:

a) No. of classification officers: 1 (vacant).
b) Parole: 13 inmates released.
c) Day parole: 41 inmates.
d) 52 temporary absence permits issued (unknown number were of 3 days or less).

22. LEGAL AID:

Inmates on remand assisted with legal aid applications: n/a.

23. RECREATIONAL:

Full gym programme with baseball, hockey, soccer, broomball, volleyball and football played outside in season.

24. WARDEN'S COMMENTS:

The Commission of Alcoholism and Drug Abuse is now in the process of providing counselling service to this Institution. Megavitamin and hypoglycaemic treatment programme for schizophrenia and allied disorders has recently been instituted.

CHAPTER 9- PAROLE

APPENDIX I

PAROLE RELEASE BY TYPE OF OFFENCE

Type of Offence	Canada Percentage	Alberta Percentage
Property Offence	55.5	16.4
Person Offence	25.0	57.5
Parole Violation of Forfeiture	3.0	0.0
Other	9.4	8.1
Narcotic Control Act	6.4	17.9

PAROLE BY AGE – 1970

Age:	18 yrs. & under	19 yrs.	20-24 years	25-29 years	30-34 years	35-39 years	40-44 years	45-49 years	50-59 years	60-69 years	Not Stated
Male: (%)	6.3	6.0	35.2	21.0	11.9	7.5	4.7	3.0	3.0	.7	.4
Female: (%)	2.6	4.4	27.2	28.9	16.7	7.9	6.1	2.6	2.6	.0	.8

PAROLE RELEASES BY LENGTH OF TIME SERVED – 1970

% of time served	less than 35%	35-49%	50-69%	70% and over	Indefinite and life	Not Stated
% of parole releases	27.6	34.2	34.5	1.3	1.4	1.0

PREVIOUS CONVICTIONS AND DISPOSITIONS 1970

Previous Convictions	77.7
Previous Penitentiary	21.0
Previous Gaols or Reformatory	59.0
Previous Probation	18.8
Previous Parole	22.6

CHAPTER 9- PAROLE

APPENDIX II

MANDATORY SUPERVISION RELEASES BY AGE – 1971

Age:	18 yrs. & under	19 yrs.	20-24 years	25-29 years	30-34 years	35-39 years	40-44 years	45-49 years	50-54 years
%	1.0	4.2	26.0	28.1	18.8	7.3	4.2	6.3	4.2
= 100.1%									

MANDATORY SUPERVISION RELEASES BY TYPE OF OFFENCE

Property offences (break, entry, theft)	23.9
Person offences (robbery, assault)	5.2
Parole revocation or parole forfeiture	54.2
Prison breach	11.5
Other	5.2
	100%

(Source: National Parole Board Study)

MANDATORY SUPERVISION RELEASES BY PERCENTAGE OF TIME SERVED

% of time served	Less than 35%	35-49%	50-69%	70% over
%	1.0	1.0	63.5	34.4 - 99.9%

MANDATORY SUPERVISION RELEASES BY PREVIOUS CONVICTION RECORDS – 1971

Previously has been in penitentiary	79.2
Previous had been in gaol or reformatory	89.2
Previously had probation experience	18.8
Previously had parole experience	68.8
Previously had violated parole	63.5

CHAPTER 10: COMMUNITY-BASED-RESIDENTIAL CENTRES APPENDIX I

CENTRE	LOCATION	TYPE	NO. OF BED SPACES
1. Belmont Rehabilitation Center		traditional	(?)
2. Con-cern Society		traditional	5 men and 2 families
3. Gunn Welfare Centre	Gunn	Transient	118
4. Halfway House	Edmonton	alcoholic	14
5. Hilltop House	Edmonton	traditional	18
6. John Howard House	Calgary	traditional	10
7. Howard Manor	Edmonton	traditional	12
8. Jellnick House	Edmonton	alcoholic	16
9. McDougall House	Edmonton	miscellaneous	20
10. Oasis House	Calgary	miscellaneous	25
11. Project A.D.A.P.P.	Edmonton	drug	24
12. Riverside Villa	Calgary	alcoholic	8
13. Single Mens Hostel	Edmonton	transients	240
14. Social Orientation Services	Calgary	alcoholic	12
15. Strike IV		miscellaneous	12

TRADITIONAL	DRUG AND ALCOHOL	TRANSIENT	MISCELLANEOUS
Howard Manor	Social Orientation	Single Mens	Strike IV
John Howard House	Riverside	Gunn	Oasis
Con-cern	Projet A.D.A.P.P.		McDougall
Belmont	Jellnick		
Hilltop House	Half-way House		

CHAPTER II:

THE WOMAN OFFENDER IN ALBERTA

APPENDIX I

OFFENCES

Fort Saskatchewan Correctional Institute (Female) from the Annual Report, Corrections Branch, 1973

Criminal Code, Part II **Public Order**		
Carrying an off. weapon	3	
Unregistered fire-arm	2	**Total 5**
Criminal Code, Part III **Law and Justice**		
Obstructing a pol. officer	1	
Public mischief	1	
Breach of recognizance	1	
Failing to comply with probation order	3	
Failing to appear	4	
False declaration	2	
Mischief of pub. property	2	**Total 14**
Criminal Code, Part IV **Sexual Offences, Public Morals, Disorderly Conduct**		
Creating a disturbance	11	
Vagrancy	3	
Soliciting	11	**Total 25**
Criminal Code, Part V **Disorderly House-Gaming**		
Keeping a bawdy house	1	**Total 1**
Criminal Code, Part VI **Against the Person and Reputation**		
Manslaughter	1	
Criminal Negligence	1	
Attempt to wound	1	
Assault causing bodily harm	11	
Assault – Common	5	
Assaulting a pol. officer	1	
Bigamy	1	
Driving while impaired	9	
Driving while disqualified	3	
Dangerous driving	1	
Driving while blood alcohol over .08/224	7	
Failing to take breathalyzer test	1	**Total 42**
Criminal Code, Part VII **The Right of Property**		
Theft under $50.00	21	
Theft over $50.00	11	
Theft under $200.00	38	
Theft over $200.00 (incl. auto theft)	11	
Taking a motor vehicle without consent of owner	1	
Robbery with violence	8	
Break, enter and theft	2	
Poss. of housebreaking instruments	1	
Poss. of stolen property	22	
Forgery	11	
Uttering Forged Documents	1	
Theft of telecommunications	1	
False pretences	81	**Total 200**
Criminal Code, Part VIII **Fraudulent Transactions**		
Fraud	5	
Obtaining transportation by fraud	1	**Total 6**
Criminal Code, Part IX **Wilful and Forbidden Acts in respect of Certain Property**		
Damage to property	5	
False fire alarm	1	**Total 6**
Criminal Code, Part X **Offences Relating to Currency**		
Criminal Code, Part XI **Attempts & Conspiracies**		
Conspiracy	1	**Total 1**
Criminal Code, Part XX **Punishments & Fines, etc.**		
Criminal Code, Part XXIV **Summary Convictions**		
FEDERAL STATUTES		
Narcotic Control Act	30	
Food and Drug Act	12	
Public Health Act	6	**Total 48**
PROVINCIAL STATUTES		
Alberta Liquor Act	45	
Alberta Liquor (Intoxication, Sec. 83)	102	
Alberta Liquor Act (Disturbance)	6	
Vehicle and Highway Traffic Act	28	
Child Welfare Act	9	**Total 190**
TOWN AND CITY BY-LAWS		
Grand Total of offences for the year		**Total 538**

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