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crime justice and society

volume 1

fundamental principles of a new social action programme

commission of enquiry into the administration of justice on criminal and penal matters in québec

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Commission of enquiry into the administration of justice
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COMMISSION OF ENQUIRY INTO THE ADMINISTRATION OF JUSTICE ON CRIMINAL AND PENAL MATTERS IN QUEBEC

THE COMMISSION

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GOVERNMENT OF QUEBEC

COMMISSION OF ENQUIRY INTO THE ADMINISTRATION OF JUSTICE ON CRIMINAL AND PENAL MATTERS IN QUEBEC

To his Excellency

THE LIEUTENANT-GOVERNOR IN COUNCIL

May it please your excellency

We, the Commissioners, appointed a Commission of Enquiry by virtue of Order-in-Council 125, dated January 24, 1967, as amended by Orders-in-Council, 1486 dated June 2, 1967, 1395 dated May 15, 1968, and 1868 dated June 28, 1968, under authority of the Act Respecting Commissions of Enquiry, to study the problems relating to the application of the criminal and penal laws in this Province, to make enquiries for this purpose, to report its views and opinions, and to make recommendations for measures to be taken to assure a greater protection for citizens and their property, as well as a greater efficiency in the fight against crime with all due respect to the fundamental rights of the individual,

HAVE THE HONOR TO PRESENT TO YOUR EXCELLENCY THE FIRST PART OF OUR REPORT WHICH UNDER THE TITLE « CRIME, JUSTICE AND SOCIETY » OUTLINES THE FUNDAMENTAL PRINCIPLES OF A NEW SOCIAL ACTION PROGRAMME.

CRIME, JUSTICE AND SOCIETY

FUNDAMENTAL PRINCIPLES OF A NEW SOCIAL ACTION PROGRAMME

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INTRODUCTION

ABSENCE OF A GLOBAL CONCEPT (1-2)

1. In this first part of its report, the Commission sets forth the fundamental principles which should guide the legislator and the administrator in the reform of the administration of justice on criminal and penal matters in the Province of Quebec. In other sections of the report, the Commission will endeavour to indicate the specific solutions and remedies ; this introduction is limited to an overall examination of the problems. A detailed study of our system of justice has convinced this Commission of the need to formulate a general policy which, woven into the entire system, would guide the various services with a uniform philosophy.

In developing this policy the Commission is motivated by one basic thought: the respect of the fundamental rights of the individual, without losing sight of the need to intensify the fight against crime.

Thus, the Commission has worked within the mandate given by the Lieutenant-Governor-in-Couicil, which seeks « recommendations for measures to be taken to assure a greater protection for citizens and their property as well as a greater efficiency in the fight against crime, with all due respect to the fundamental rights of human beings ».

2. Reference should be made here to « The Report on Prison Escapes » completed by the Commission September 5, 1968 and published October 25, 1968. The enquiry was carried out at the request of the Minister of Justice following the spectacular escapes, which took place during April and May of that year. That report which should be considered as an annex to the final report of the Commission dealt with a specific problem, and the recommendations made, were related entirely to the security measures and procedures to be observed in the transfer of dangerous criminals. The Commission also pointed out the need to reorganize certain sections of the Department of Justice to minimize the possibility of dangerous criminals escaping in the future. This special report should not be considered as a study of our entire prison policy.

From now on the Commission is not dealing with special or exceptional cases requiring individual treatment; the effort will be concentrated on the global problem of the Province of Quebec administration of criminal and penal justice.

In the course of its work, the Commission has frequently noted that in the Province of Quebec the administration of criminal and penal justice is marking time in its fight against crime, and meanwhile, the need to respect individual and social rights is frequently overlooked.

Various elements concerned with the administration of justice function and act as though there were no reason for any of them to consider themselves as part of a unified and coordinated system.

These are some of the factors which call for an overall basic philosophy.

1 — DISPARITIES OF INTENTION (3)

3. In the absence of a general policy, many of those who form part of our system of justice arbitrarily assume the authority to determine the objectives and the procedures to be followed ; e.g., the Crown prosecutor who believes that it is his duty to win cases ; the policeman who is not satisfied unless the judge hands down lengthy prison sentences ; 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. It is not surprising that there is such a lack coordination in the administration of justice ; without a conscious orientation adapted to the needs of our society, different attitudes and interpretations exist within the same framework; and changing perspectives can succeed each other according to expediency or the pressures of the moment.

It is understandable, that a system can be modified following a serious evaluation, and that the changes made, reflect the wishes of society. For one philosophy to replace another, as a result of a true assessment of the needs of individuals and society, makes sense. But if an administration allows itself to be permeated by internal conflicts, and instinctive and uncoordinated thinking, therein lies serious danger.

The establishment of a sound correctional policy does not require all the sectors of the administration of justice to play the same role. It is essentially a matter of having the various elements, thinking and acting in a coordinated manner, with definite basic purposes in mind, to achieve a coherent system.

4. Through its system of administering justice a society endeavours to find the point of balance between, respect of individual rights, and the protection of the public. In the absence of an overall philosophy, the possibility of balancing the two are diminished because each of the various sectors has a different understanding of, and attitude to, the relationship between the individual and society. Differences of this kind are only one step removed from antagonisms.

A judicial system must show itself to be quick, efficient, humane and without bias or prejudice. Above all, it must give the citizen full enjoyment of his liberty, and the certainty of obtaining justice without regard to language, colour, creed or fortune.

Unfortunately, our system has a deep-rooted bias towards repression, rather than rehabilitation ; favouring preventive arrest rather than the freedom of the citizen ; emphasizing procedure rather than rights. In our country, very few, other than the defence lawyers, some judges, and organizations devoted to the protection of civil rights in the domain of prevention, support and rehabilitation have taken the trouble to question the traditional image of the criminal ; and to realize that a guilty person is also a citizen, who sooner or later must be remotivated or rehabilitated.

Not only are there clashes between individuals, but antagonisms between professional groups have been noticed. Lawyers for the defence, and Crown prosecutors frequently deal with a case as though personal triumph is of greater importance than the acquittal of the innocent, or the rehabilitation of the guilty person. Similarly, the police have come to consider the propagandists of civil rights, as more dangerous than criminals. At the level of judges, certain of them appear to believe that prison sentences are the best deterrents, while others have confidence in probationary measures.

Such antagonisms are explained to some extent by the differences in the temperament and training of the individuals. On the other hand, justice is poorly served if the public notices inexplicable disparities, in the penalties imposed, and in the reasons for arrest, imprisonment and release.

3 — INSTINCTIVE DECISIONS (5-8)

5. All too often the police, Crown prosecutors and judges make decisions which are irrational and purely emotional, and unrelated to a human evaluation of the delinquent ; often ready to justify them by specious arguments, weighing the interest of the individual against the security of society.

Other societies taking the opposite view have, for some time, endeavoured to evaluate in a rational manner, the effectiveness of decisions made

by the police, the courts and prison authorities. They have ceased to believe implicitly in the value of punishment, in the deterrent effect of long sentences, and in rehabilitation through intimidation. They have compared the cost and effect of arrests, imprisonment, probation and parole ; and their studies and evaluations have resulted in the development of a different judicial policy and a new correctional system. Fortunately, the science of evaluation has justified humanitarian solutions and invalidated purely repressive techniques.

In brief, most modern societies, faced with criminal behaviour, now ask themselves where they have gone wrong, and resolutely set themselves the task of offering delinquents better opportunities, and more substantial hope, for reintegration into society.

6. In the absence of a defined philosophy, instinct and emotional reactions are dominant. The lack of an overall concept results in thousands of employees in the system of justice often finding themselves without guidelines or directives ; with resulting insecurity and on occasion, even panic. Under such conditions it is evident that the most conservative decisions are taken, and the trend is to a continuation of repressive, rather than humanitarian, treatment.

The essential therefore, is not only to recommend formulæ and remedies, but to give the system of criminal and penal justice a new concept. Judicial procedures can be speeded up, and this would be a considerable improvement, but it is more important to instill in the citizens the feeling that everything is operating with the purpose of giving each person the consideration to which he is entitled. Each of the elements participating in the system should act in accordance with an overall policy in such a manner that antagonisms and hostilities will cease, and that impulsive decisions no longer will be the rule of the day.

It is not a simple matter to establish a general policy with regard to justice. However, visits to other countries, and many interviews with specialists, have convinced the Commission that it is possible to establish a number of fundamental objectives which each of the various elements should endeavour to attain.

7. If Quebec, which strives for international recognition wants to play the part of a developed nation, at least in the realm of justice, it must put an end to the antagonisms between the Crown prosecutor and the defence lawyer ; between the police forces and the organizations devoted to the defence of civil rights ; between the judges who believe in exemplary sentences, and those who place the emphasis on the rehabilitation of the accused. These antagonisms cannot be eliminated by merely issuing and order to do so, but rather by fully evaluating our present system, and by comparing it with other

systems, so as to establish our administration of justice on the basis of reason, and of effective social action.

8. Disparities of purpose, artificial antagonisms and compulsive or emotional decisions show quite clearly that Quebec does not have a general policy in the matter of justice. If the Province ever had one, it has become so confused, vague and inadequate, that each person can interpret it in his own manner and determine for himself, in an individual and unpredictable manner, his role in the administration of justice.

By way of clarification : the establishment of a general correctional policy does not mean that any one element of the administration of justice will play a role similar to that of another; nor that all delinquents will receive the same treatment.

It is not a question of substituting for the present disparity of sentences and treatment, a standardization of such a nature, that two different delinquents will be treated in exactly the same manner.

The Commission's hope is that the entire judicial and correctional system will be permeated with the same ideals and purpose, and that all will work towards the same goal, ready to modify their attitudes for exceptional cases. It is not inconsistent for a policeman, Crown prosecutor or a judge to make decisions adapted to the individuals concerned, but it is inadmissible that any official should constantly make decisions which are unduly severe, while a confrere, charged with similar functions, shows himself to be consistently tolerant. In short, eliminate the emotional reaction without substituting a mechanical procedure.

I — THE CONSEQUENCES

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9. This absence of a general policy creates many difficulties. Certain of these are immediately noticeable, while others emerge following a detailed analysis. Altogether these different attitudes result in a somewhat pessimistic « balance sheet » of the Quebec admisistration of criminal justice and make it all the more urgent to have a reoriented philosophy.

It should not be concluded, however, that all is bad and undesirable in, the decisions reached, the methods used, and the procedures in effect, at present. On the contrary, a number of the methods and practices now in use should be retained, provided that an amended framework of law will ensure coherence in the system, and will orient each area towards fundamental objectives.

A — IMMEDIATELY NOTICEABLE (10-12)

10. If even a superficial evaluation of the present Quebec system of justice is made, certain consequences stemming from the haphazard and piecemeal development are immediately evident :

1. A number of police decisions appear to be extremely arbitrary.
2. A schizm exists, and is growing, between the law and the habits of citizens.
3. The punitive aspects of the law take precedence over the possibility of rehabilitation and reintegration into society.
4. There is continuing danger of corruption and emotionalism.

11. The lack of a critical examination of the system of administering justice, is both the cause and the corollary to, our improvisations, and fumbling ; attitudes are maintained, and decisions taken, without knowing the consequences.

Quebec's prisons are filled with repeaters, yet by and large, the community believes in the effectiveness of incarceration. Notwithstanding the failure of imprisonment to achieve its purpose, a hundred times more is spent for

incarceration than for probation, and the use of long sentences of imprisonment continues. The police and the Crown prosecutors hold fast to the theory that jailing a guilty person is generally the most efficient method of treatment.

Thus, the administration of justice forms part of those government services which spend millions of dollars of public funds without devoting even one half of one percent to evaluation and research for the purpose of measuring the effectiveness of the present methods.

In three years, even though the budget of the Minister of Justice has gone from $32,000,000 to $67,000,000 nobody knows yet whether society is adequately protected nor whether criminals who might be rehabilitated are on the way to becoming better citizens.

In the absence of a true correctional policy, and in the absence of any scientific evaluation, Quebec has a structure with no guarantee of its effectiveness or constancy. An erratic justice, unpredictable and often arbitrary, is only a poor imitation of justice. « Justice delayed is justice denied » is a statement found in the Katzenbach Report. A justice without evaluation and without a scale of values is also equivalent to injustice.

12. The absence of a correctional philosophy leads, moreover, to disadvantages which are as serious as delays, arbitrary attitudes or irregularities. In the absence of fundamental principles, the instincts of the individual and groups very easily assume the upper hand. An examination of the Quebec situation reveals certain constants, which contribute to placing the Province of Quebec amongst those countries which believe that punitive methods are the most effective when dealing with those who commit what are considered to be offenses against society.

First of all, the Quebec system considers, as offences and crimes, many actions which elsewhere are considered to be merely individual differences.

Quebec also is one of the areas in which arrests are made very freely, and, consequently, the occasions for friction between the police and the public are increased.

Moreover, if Quebec is compared with European countries it is evident that Quebec's system makes too great a use of long prison sentences. Holland, with a population of 12 million people detains less than 2,000 persons in prisons every day, while in Quebec, the prisons and penitentiaries house a daily total of approximately 5,000 persons for a population of not quite 6 million people. In Sweden, with a population of 8 million, the daily prison roster approximates 5,000. (42% of the Swedish prison population, incidentally, are drunken drivers)

These figures are even more impressive when one considers that quite often in European countries, different categories, such as the mentally ill, are placed under the jurisdiction of the Minister of Justice, and are included in

the prison population. In Quebec, quite a large proportion of these individuals, being considered as psychopaths, are not required to stand trial, notwithstanding that the offence of which they are accused may be of a criminal nature. They are not necessarily considered to be under the jurisdiction of the Minister of Justice ; nor are they always included in the statistics of the prison population. The Province of Quebec also stresses with more vigour than most of the European countries, the punitive and exemplary aspects of sentences. As opposed to this, the Council of Europe is working actively to eliminate from the legislation of seventeen member countries, any reference to retribution and punishment.

In brief, in the area of criminal and penal justice, the Province of Quebec presents a number of negative elements stemming from certain basic attitudes already listed in par. 10 :

- The Canadian Criminal Code still considers as crimes, many acts to which most other societies close their eyes.
- The Province of Quebec deprives the accused of their liberty more often, and for longer periods, than most other societies.
- The Province of Quebec imprisons guilty persons more freely, and keeps them in prison longer and more regularly.
- Quebec's places of detention very definitely are more concerned with security rather than treatment, re-education and rehabilitation, of inmates.
- The Province of Quebec is far behind many other jurisdictions with regard to the use of probation, the suspended sentence, and, the establishment of semi-detention institutions.

1 — ARBITRARY NATURE OF SOME POLICE DECISIONS (13-14)

13. As already indicated, because of the absence of guiding principles in Quebec's judicial structure, improvisation and instinct play the dominant role. Undoubtedly there are a number of exceptions, but repressive and irrational attitudes, are by far, the more frequent.

For example, arrests and preventive detention, the latter being interpreted by the police in a sense entirely different from that which is stipulated in the Penal Code, frequently results in individuals being unnecessarily deprived of their liberty. In a society which pretends to recognize the innocence of the accused until they are found guilty, it is an anomaly to use measures which deprive people of their liberty in such a systematic, and, in many instances, pointless manner.

In the area of mass demonstrations, the police today, sometimes against their better judgment, are obliged to play a role which is somewhat ambiguous. Quite often, the police have the responsibility of permitting, or forbidding, a

parade or a procession, when it would be much better not to require them to assume the responsibility of making a decision. Any such regulation would require careful drafting, as the police must retain the responsibility of maintaining « public order ».

The statement will probably be made that the present procedure is moving in this direction, and that the police do not believe themselves authorized to refuse the right to demonstrate, to any group, no matter its nature. However, as no administrative or political authority intervenes to definitely ensure a group the right to demonstrate, it is difficult to know whether the police force is satisfied to merely negotiate the manner in which the demonstration will be carried out, or whether in practice it makes it impossible to hold the demonstration. Some Municipal Councils relieve themselves of the unpleasant task of refusing permits, by placing the responsibility on the police forces.

It is also important to realize that the police forces, particularly in matters of morality, have, in the course of recent years, played an even more ambiguous role. There has been for exemple, intervention by the police of some municipalities with regard to the distribution of certain issues of the Playboy magazine, and the performance of the African Ballet, while in other Quebec areas, the police have not intervened in these matters at all. The public may well ask, who is the official interpreter of the law — the government, the Crown prosecutor, the police, or the judges who issue the summonses and warrants ?

14. Not only the police, but also Crown prosecutors, are sometimes arbitrary in their attitudes, showing a tendency to repression. There is no doubt that jurisprudence states explicitly that the Crown prosecutor does not have a case to gain or lose, but that his function is limited to making known the truth. In practice, however, some Crown prosecutors often conduct themselves as though they were relentless enemies of the accused, and endeavour to obtain the heaviest sentence possible.

By way of comparison it should be noted that a number of European countries require the representative of the State to communicate to the defence lawyer, all the proof gathered against the accused. The Scandinavian countries and Holland go even futher in respect to this principle, in that the defence lawyer and the Crown prosecutor cannot, at the time of the trial, have recourse to surprise witnesses who have not been made know in advance to the other lawyer, or to the court. Summary of the testimony of each witness to be heard is often furnished to the court before the trial.

Quebec's system, while affirming the impartiality and objectivity of the Crown prosecutor, permits the latter, to surprise the defence, and, to demand all too regularly, exemplary sentences against the accused.

2 — PRIORITY TO THE PUNITIVE ASPECTS OF THE LAW (15)

15. Police and Crown prosecutors are not alone in giving priority to the punitive aspects of the law; similar punitive attitudes are found frequently at the sentence level. Many judges, however, who would like to direct the guilty person along the road to probation and rehabilitation, are unable to do so in the absence of a sufficient choice of probationary measures and institutions of semi-detention.

In fact, up to December 1967, Quebec did not have a probationary service for adults. Only the Social Welfare Court had used probation officers to make it possible for young people to avoid serving their sentences in detention. Before criticizing a judge for systematic recourse to prison sentences, it should be realized, that the faults in the correctional system are largely responsible for such apparently punitive tendencies.

It must also be recognized, however, that the courts have not always shown sufficient understanding, or imagination, in the formulation of correctional measures.

For example, our system of requiring bail, has become unjust in most cases. It has perpetuated itself by a certain conditioning, and by a lack of thought, on the part of the courts. No magistrate will admit openly that there is one justice for the rich, and another for the poor, yet, Quebec's courts consistently use money (bail) as a yardstick to measure whether or not an individual should be given his temporary liberty. Here again it must be admitted that our society has, to some extent, lost sight of the fundamental objective of a system for administering justice. Instead of assuring the equality of citizens before the law, our society, requires accused persons to give monetary guarantees that they will appear in court, without sufficient attention being given to their financial resources.

Similarly, individuals frequently have to face a prison sentence, merely because they are unable to pay a fine. Different files examined by the Commission have shown that persons found guilty of minor offences have had to serve sentences of 10, 15 or 30 days in prison if not more, because of their inability to pay a small fine. Some judges have taken the trouble to offer the guilty person the opportunity of paying his fine in installments ; other judges have not done this.

3 — DIVERGENCE BETWEEN THE LAW AND SOCIETY (16)

16. The absence of an overall philosophy creates a certain laxity in our system of justice and also a strong tendency towards the arbitrary. This in itself

is sufficient reason to re-evaluate our system and to propose new objectives ; the problem, however, goes much further than that.

It is impossible, for us, notwithstanding the inherent limits of a Province of Quebec mandate, to ignore the legislative texts. In other words, it is hardly possible to evaluate a system of administering justice on criminal and penal matters, without taking into consideration the wording of the Penal Code itself. If Quebec has allowed dust to gather on its administrative system, Ottawa has allowed the text of the law to become out-of-date. Quebec has no authority to change the law, but it most certainly can point out that some laws are difficult to apply.

On this point, countries of the Latin temperament appear to tend, more than others, to widen the gap between the written legislation and the tolerated practice. The classic example of this, however, is found in the United States during the time of the American prohibition law of the 30's. The law forbade the selling of alcoholic liquors, notwithstanding the wishes of the great majority of the population. The average American quite easily arrived at the point where he did not consider it a crime to buy liquor, notwithstanding the fact that the law defined this as a crime. Everyone secured his liquor in the black market and the enforcement agencies found themselves with the painful obligation of taking action against people who, in short, were behaving in the same manner as the majority of citizens.

Changing a philosophy of justice, can pose many problems. It is possible, that a newly written text can be against the will of the majority, by trying to protect the rights of certain minorities. On the other hand, it is possible that changes in the written text merely ratify the public behaviour already in existence for quite a while. If the waiting period before adjustment is too long, there is confusion, and injustice becomes the rule. In such instances in Canada, it is the provincial authority, as the administrator of the law, which bears the brunt of the dissatisfaction of society.

This Commission believes, that with regard to, gambling, drinking of alcohol, and offences of a sexual nature, the Quebec population has adopted attitudes clearly different to the stipulations of the written law, and police attitudes. The law calls for punishment of everflourishing prostitution ; it persists in wishing to punish attempts at suicide ; notwithstanding the recent easing of the regulations, there is a constant police control on shows and plays, even though restricted to adults. The practice of the public generally, however, is to ignore these laws, and it is becoming more difficult, if not impossible, to apply laws, which the public no longer accepts.

There does not seem to be an awareness in government circles of the risk which a society runs when the legislative texts, and the social practice, contradict each other so definitely. In formulating an overall philosophy in

the administration of justice, the endeavour must be in this Commission's opinion, to reduce the margin separating the law from the attitude of the public. Unless the legislator or the police officer is to be considered always as a proselyte, the law, in a democratic society, must adapt itself to the wishes of the people. This does not mean that the lawmaker should not have a definite goal, but it must be one that can be achieved.

4 — THE RISKS OF CORRUPTION AND EMOTIONALISM (17-18)

17. In this Commission's opinion it is necessary to accelerate and improve communication between the public and the government. If not, here as elsewhere, the gap between the attitude of the public, and the compulsive nature of the laws, increases the risks of « social schizophrenia » and corruption.

In Belgium, for example, the law forbids the sale of alcoholic beverages, other than beer, wine or champagne in public places. However, in that country it is possible to obtain, openly, all alcoholic liquors in almost any restaurant. This results in a situation in which any dishonest police officer can blackmail any restaurateur by threatening him with action before the courts.

In Belgium, the law is circumvented by the formation of private clubs, which only require a simple signature for an individual to become a member, and consequently persons can immediately join a number of such clubs, which sell alcoholic liquor without restriction to all their members.

In Quebec, a similar situation developed. In face of the law forbidding the sale of alcoholic liquors on Sunday without offering a full meal, restaurants served what might be termed a « mini meal » consisting of tomato juice, a « rubber » sandwich, biscuits and coffee. In this way lip service was paid to the law but, more important, the restaurants came much closer to respecting the wishes of the public, which would not accept the fact that purchasing a glass of liquor on the seventh day of the week, would be breaking the law any more than on another day. While this situation has been somewhat improved, there are other areas which lead the public to show disrespect for laws difficult to apply, and which, insofar as officers of the law are concerned, may result in disinterest, discouragement and the danger of corruption.

18. The Scandinavian countries appear to take a realistic attitude on such matters, and are prepared to change a law when public opinion indicates clearly that the law is in danger of being disregarded.

It is thus that prostitution and gambling are no longer the objects of any penal sanctions, with the apparent result that the demand for such services has shown a very definite regression.

Another example — the Danish editors of pornographic literature are complaining that the recent legislation liberalizing the sale of all printed matter, has resulted in a definite decrease in their volume of sales.

B — MORE PROFOUND (19-26)

19. The foregoing outlines some of the immediately noticeable effects stemming from the absence of evaluation, and an overall philosophy in Quebec's system of justice. In addition to these consequences, in themselves serious, this Commission's study has uncovered others, which are even more important.

Because there is no general policy defining specific roles, there is at present, confusion and misunderstanding with regard to the functions carried out by the police, the Crown and the courts ; each succumbing, all too regularly, to the temptation of playing someone else's role.

Also, with the passage of time, certain laws are being interpreted in an entirely different sense from that intended by the legislator. One of the results of this is that a law, originally intended to protect the fundamental rights of the individual, is now being used against him.

Another consequence is the superficial and sometimes artificial conflicts created between the fundamental rights of the person, and the protection of society.

1 — CONFUSION OF FUNCTIONS (20-21)

20. One of the symptoms adding to the confusion caused by a lack of definition of the roles of the different elements of the system of justice is the autonomous manner in which each one acts.

The police assume the right to adopt the role of the court, and they even behave on occasion as official interpreters of the text of the law. The Crown prosecutor succumbs to the same temptation and carries on as though he were the indomitable adversary of the accused and of the defence, and endeavours to impress on the judge and the legislator his belief in a system as punitive as possible. For their part, the judges, who are constantly faced with the problem of recidivism, blame the inefficiency of the police, the moderation or lack of interest of the Crown, and the laxity of the parole board.

21. As already stated, and it bears repetition, Quebec's system functions without the individual roles being clearly defined, and above all without periodic evaluation, to cope with the changing social needs to which the various elements must respond.

In cities such as Montreal and Quebec, it is now possible for the municipal police to choose the court before which an accused person will be required to appear: in fact up to a certain point, the Court of Sessions of the Peace, and the Municipal Courts have overlapping jurisdictions, which permit the police forces to make a choice. And as we have already pointed out the police often have the responsibility of authorizing or prohibiting public parades or demonstrations. In this Commission's opinion, in both of these instances, the decisions should not be made by the police.

In certain important cases, it has been noted that Crown prosecutors have a tendency to act as special investigators. This could lead to the Crown being in a precarious position in terms of partiality or persecution. The Crown prosecutor should be unemotional and objective, and the temptation to personally endeavour to strenghen the police evidence, should be controlled.

Nor are the courts entirely free of criticism, as there appears to be a marked tendency to give exemplary sentences. Can increasing a sentence to deter a third party really be considered as a judicial attribute ? It becomes almost a negation to pretend to individualize sentences while, in fact, an individual is called upon to atone for the sins of unpunished wrongdoers. Certainly there are crime waves which demand a strong intervention, but it is questionable whether the judicial power remains within its mandate when it speaks as a sociologist or a legislator.

This Commission, at this point, is not endeavouring to place the blame on any one, but simply wishes to emphasize that in the absence of a definite policy the different components of Quebec's system of justice tend to duplicate, contradict and sometimes oppose, each other.

2 — DISTORTION OF THE LAW : DISAPPEARING PROTECTIONS (22-23)

22. It is never possible to surround an individual with everlasting protection. Time deforms, daily wear and tear warps and nullifies the best of intentions, and the repressive instinct is reborn. With the passing of the years, it also sometimes happens that a law written to protect the individual may be used against him.

In illustration of the foregoing: with the intention of respecting individual liberty, the written text requires that every person detained must be brought before the court in the twenty-four hours which follow his arrest. Because we have lost sight of the spirit of the law, this appearance before the court has become a mere formality, and the period of detention, before proceeding to trial, has often been extended to many months.

Because the legislator wished to avoid having judicial hearings constanly behind closed doors, there was written into the law the obligation to open the court to the public and the press. Again, having lost sight of the purpose of this measure, i.e. to protect the accused, today this procedure is abused,

sometimes to the extent of « yellow » journalism. Publicity of such a nature is given to the committal for trial and the trial itself, to the point that it is practically impossible to rehabilitate the guilty.

23. These are some of the reasons such emphasis is placed on the need to examine and evaluate overall policies regularly, and to be prepared to make changes before expediencies of the past, inconsistencies, and mistakes become established in custom and procedure.

During the pioneering and violent society of the past, when men far outnumbered women, adultery was a serious crime and was punished severely, to maintain a semblance of order, and to prevent the multiplication of bloody crimes. Today, adultery does not lead to the same consequences and is of much less concern to penal justice. The necessity to maintain order remains, but the precautions spelt out in the law, and police intervention must take into consideration new social conditions and new attitudes.

In planning a new basic philosophy for Quebec's judicial system one must, therefore, guard against the different forms of obsolescence. On the one hand, the law as it is at present has good intentions (publicity, quick appearances in court, possibility of postponement, etc.) which no longer protect an accused person as originally intended. On the other hand, the law retains, in its list of offences, actions which, are no longer considered as criminal or dangerous acts. Finally, the law continues to give priority to punishment, and retribution, rather than to treatment, rehabilitation, and remotivation.

Just as it is necessary to formulate clearly an overall policy for Quebec's system of justice, it also is important to make certain, that the interpretations and practices arising from the written text, correspond to the intentions of the legislator, and that the legislator himself keeps closely in touch with the fast evolving and ever-changing way of life.

3 — NEGLECT OF FUNDAMENTAL RIGHTS (24-26)

24. The Commission has endeavoured to show that because there is no global policy, Quebec's system of justice is too frequently lacking in respect for the fundamental rights of the individual. All too often a preference or a priority is shown in terms of respect for procedure rather than respect for liberty and true justice.

It is because of this that some individuals have been obliged to remain months and even years in prison before their case in heard. This should be considered inadmissible and supremely outrageous in a society which pretends to believe in the presumption of innocence. Neither the Minister of

Justice, nor the Crown prosecutors, are assuming their full reponsibilities when they tolerate accused persons remaining in detention up to two years before their file is brought to the attention of the court. Such cases in Quebec have recently been brought to the attention of the Minister, and have been given such widespread publicity, that they have even been the subject of discussion by international organizations interested in the rights of man.

25. The Commission has examined the file of a man who has been waiting three and a half years to have his appeal heard because the stenographic notes of his first trial have not yet been transcribed. A civilized society cannot tolerate the fundamental rights of liberty being flouted in this manner. If the stenographic notes are really needed, then the official stenographer should be subpœnæd as quickly as possible, and she should be made aware of the fact that her negligence has deprived an individual of his liberty or, at least, of full justice. If, on the other hand, there is no hope of having the notes transcribed, then there should be a new trial, as soon as possible, so that the accused finally may obtain justice.

Examples such as these, of neglect, delay and indifference, merely serve to show that Quebec's system of justice is not as vigilant as it should be in the area of fundamental principles. Reference has been made to extreme cases but many more could be given in which the interests of an individual have been sacrificed, without good reason, by specious arguments about the need to protect society. In fact, many such acts and decisions which hurt the individual, also hurt, rather than protect, society.

Certain police forces practice a form of « garde à vue » or of preventive detention which does not at all conform to the requirements of the law. Increasing number of delays and postponements in the hearing of cases are being tolerated without anyone being sufficiently concerned to do anything about it. It is accepted that Crown prosecutors regularly adopt punitive and repressive attitudes while their function is to endeavour to establish the truth objectively and without emotion. The public also appears to condone such behaviour to the extent that the communication media, both written and spoken, have not yet felt the need to call for a greater respect of the rights of the individual.

26. Here again, Quebec must accept comparison with other societies. Sweden, for example, presents the image of a society far more respectful of individual rights. No one would dare say, however, that the Swedish society accepts, any more than here in Canada, censure, trials behind closed doors, or the hiding of facts. On the contrary, the Swedish procedure permits the public and journalists to be present at the trial of any young delinquent, a procedure which is not permitted at all in Canada.

However, the Swedish newspapers have themselves established a code of ethics according to which, they will never identify a young delinquent, in public. Even more, without exception, no article or photograph will make known the identity of an accused, before the court has established his guilt. Subsequently, if the individual receives a suspended sentence, or is placed on probation, the newspapers will continue to respect his anonymity. In Denmark, Switzerland and Holland, the normal procedure of the public information media is to mention only the initials of the condemned person.

In Quebec, and elsewhere in Canada, the communications media have been content to respect the law which prevents them from identifying young delinquents, but they have not, as yet, gone any further with regard to voluntarily formulating a professional code of ethics with respect to the fundamental rights of all individuals. It is not difficult to realize how much easier it would be to reintegrate a guilty person into society, if there were no publicity on certain matters. The sociologists in this country tell us that an individual, whose criminal activities and whose punishment have been made public, finds almost insurmountable difficulties in securing employment, and in his subsequent endeavours to live a normal life. They also agree that an individual wrongly accused, and found innocent by the court, will have almost as great difficulties because of publicity. This Commission believes that the liberty of the press would not be restricted in any way by refraining from unnecessarily shaming an individual, and bringing disgrace to his family.

II — THE FUNDAMENTAL OBJECTIVES

II — THE FUNDAMENTAL OBJECTIVES

27. Faced with the extremely serious consequences which result from the absence of a general plan in the administration of justice on criminal and penal matters, it becomes vital to set forth, in modern and precise terms, the fundamental requirements of a correctional philosophy.

What are the yardsticks for measuring the quality of a system of justice ? First, it is necessary to emphasize that justice must be available to all citizens without regard to class or financial status. Second, it is important that the law, and the system of justice needed, really represent the sincere wishes of the people, with the means to reflect rapidly the evolution of society. Finally, the system must proclaim in its principles, and show in its procedures and actions. deep respect for the individual without ignoring, however, the rights of a society to peace and order.

In defining the fundamental objectives, the Commission has borrowed from philosophies and systems in existence in other countries, those ideas and practices which it is believed can be applied in Quebec. In doing this the Commission has been conscious of two dangers. First it is not only impossible, but also undesirable to impose on Quebec a concept, which has developed in an entirely different context. Second, the fact that an idea or a practice which forms part of a plan in another country, is recommended, does not imply full acceptance of everything done elsewhere.

A — EQUAL JUSTICE FOR ALL (28-34)

28. Before a system of justice can be modernized or humanized, it is important to have all citizens on an equal footing before the law. At the risk of repetition, this Commission believes that justice is essentially an effort to correct wrongs and affirm rights. It therefore follows that if certain individuals obtain a lesser measure of justice by reason of their financial situation, true justice does not exist. If one thinks about it at all, it will be realized that to defend some, and not to defend others, is simply a parody of justice.

1 — FINES (29)

29. In the treatment of accused persons and those under detention, the Province of Quebec presents the image of a rather vindictive state. Certain categories of accused persons and prisoners are subject to much greater tensions, pressures and heavier sentences than those faced by the majority of citizens, by reason of the fact that the Quebec judicial system does very little to counterbalance the disparities of financial resources.

As an example of this, consider the injustice with regard to the manner in which fines are imposed. The situation is improving but one still finds in Quebec prisons, a large number of individuals who are serving a prison sentence, simply because they are not able to pay the fine that has been fixed. The Code is primarly responsible for this distortion of justice because, it adds to the instances, in which the judge pronounces sentence in terms of options : $25 fine or 8 days in prison ; $50 fine or 15 days in prison, etc. Sentences of this kind do not conform to standards of what can be termed good justice. In effect, in these cases, the citizen who has the ability to pay, avoids incarceration by paying the amount demanded, while the indigent finds himself behind bars, not because he is more guilty, but because he cannot pay a debt of $25 or $50. This system will be analyzed in greater detail in the framework of the chapter to be devoted to correctional measures.

2 — DETENTION DUE TO POVERTY (30-32)

30. All too frequently, those who are condemned are obliged to choose between a fine and a prison sentence. However, that is not the only problem which is raised by disparities in economic resources. While a certain number of individuals, who are condemned, must face sentences of imprisonment because of their insolvency, it is also true that, many individuals must resign themselves to incarceration before their trial by reason of their poverty. This requires explanation.

According to the information gathered by the Commission, the term « bail » has different meanings from one country to another, and even from one American State to another. In the Canadian system the person placed on bail must guarantee his presence in court by depositing, with the permanent officers of the court, an amount fixed by the court, or he must give other financial guarantees. In this context it is quite obvious that the economic disparities are very much in favour of the individual who is well-off financially. The paradox is, however, that the inveterate criminal can easily obtain the necessary sum, even if it amounts to many thousands of dollars, and he is

freed shortly after his arrest. For the poor person, arrested for even minor offences such as, drunken driving, vagrancy or non-support, the situation is entirely different as he frequently is deprived of all liberty because of insolvency.

31. To fully understand the harmful effects of so unfair a system, it is important to determine to what extent the freedom of an individual before his trial, influences the sentence.

All the studies made up to the present, which include statistics coming from the Vera Foundation of New York, as well as analyses made in France, and in Holland, on the consequences of preliminary incarcerations, show clearly that the individual kept in detention before his trial, is much more likely to receive a sentence of imprisonment, than the person who has been able to retain his liberty up to the moment of the trial. The figures would be perverted if it were assumed that the accused, kept in detention, are more severely punished because they have committed more serious crimes.

So, in Canada's system, poverty is often the direct cause of detention before the trial, and the indirect cause of a heavier sentence. Many judges in Canada, and elsewhere, have admitted freely that they are more sympathetic to the accused who appears before them without having been subject to detention. For all practical purposes, liberty before trial constitutes, a sort of test, or a kind of probation, which the judges cannot help but take into consideration. The person who, during the months between the arrest and trial, has behaved in a normal and praiseworthy manner, has proved in fact, that he can behave satisfactorily if he is freed, and that he may be rehabilitated by means of a fine or probation. On the other hand, when the Crown prosecutor and the judge at the first appearance, have both decided that the individual is unsuited to be given his liberty before the trial, the trial judge finds himself conditioned by the decision, and he will be more reluctant to make use of the fine or a suspended sentence. Unfortunately, the inability to furnish bail often has the same result, as the accused is not even given the opportunity to show good intentions for the future.

32. The Commission does not wish to see the release of all accused persons. Dangerous individuals must remain under detention, before their trial. Even if bail were eliminated by substituting a simple promise to appear in court at a time fixed by the judge, it would still be necessary to refuse dangerous criminals their freedom before trial. We are concerned only with those who are deprived of their liberty merely because they have not the means to furnish bail. This is an injustice on two counts, first, the presumption of innocence should apply equally to everyone, and second it is undeniable that imprisonment before the trial increases the possibility of a prison sentence. No system

of justice can be considered to be truly satisfactory if it is unable to eliminate such consequences of poverty.

It also has been noted that some judges, when agreeing to postponements, have not paid sufficient attention to the fact that certain accused persons have been awaiting their trial in prison. Here again, it is not suggested that all accused persons can, without harming society, be given their freedom while they are waiting for their trial. However, the Commission believes that in a civilized society, conscious of the rights of the individual, the police, the Crown prosecutors and the judges must make a definite effort to grant an absolute priority to hearing the cases of individuals who have been deprived of their liberty while waiting for justice to be rendered. In this matter, the courts have a responsibility, and it is a reflection on them if an accused has to wait, for months and years in the boredom and inaction of a maximum security cell, for the moment of his trial.

3 — POVERTY AND LEGAL ASSISTANCE (33)

33. For justice to be equal for all, it is also necessary that citizens may without regard to financial resources, have free access to the services of a lawyer. As stated repeatedly in this report, Quebec's system of administering justice is, generally speaking, of a punitive nature, and this is evident to an even greater degree when the accused appears without legal counsel. The scales are certainly not equally balanced between the Minister of Justice, always represented by a prosecutor, and a citizen left to himself. If incarceration before the trial leads generally to a heavier sentence, one of the reasons is that the indigent, unable to furnish bail, is also unable to pay for the services of a lawyer. These two factors are so closely related that, in practice, the presence of a lawyer beside the accused, has often resulted in a suspended sentence for the accused. Provisional liberty permits a lawyer to have more satisfactory contacts with the accused, than if the latter were to remain in prison. Experience also has shown that the presence of a lawyer for the defence often has resulted in a less serious charge against the individual. If the intention is to respect the fundamental rights of the individual in an integral manner, and to offer equal justice to all who are accused — every aspect of the problem of legal security should be studied.

4 — THE CONCEPT OF LEGAL SECURITY (34)

34. The term « legal security » is being used deliberately throughout this report instead of the term « legal aid ». The Commission believes that the

equality of all citizens before the system of justice is a fundamental right of the individual, and not merely a favour accorded by a paternalistic state to the deprived citizen. As the presence of a lawyer gives the citizen who is well provided, advantages, refused, or meagerly accorded, to the indigent citizen, it is incumbent on the modern state to adjust the balance, by making lawyers available to all citizens without regard to their monetary resources. The state must not consider the defence of indigents as a form of social assistance. This is the reason for rejecting the currently used expression « legal aid ».

A legal security service should include information, as well as a defence, without cost to all indigents. It is appreciated that the creation of such a service will not resolve all the problems resulting from, the absence of an overall philosophy, and the priority given to punitive interpretations of the law. However, the Commission believes that an administration of justice whether or not it is liberal and geared towards rehabilitation and resocialization, must treat all citizens well provided for, or indigent, in the same manner.

The subsequent section of this report will deal with the structure of a Quebec service of legal security.

B — A MODERN LAW (35-41)

35. In the absence of an overall orientation, Quebec's administration of justice is in danger in two major ways. On the one hand, the various elements of the system are in conflict with each other, and frequently adopt contradictory attitudes. On the other hand, because of the lack of guidance, — improvisation and repressive instincts are given free rein.

It has also been observed that all citizens are not on an equal footing in the eyes of the law. Before continuing with recommendations indicating in which direction the system of administration of justice on criminal and penal matters should be oriented, it should be remembered that the administration of justice can be no better than the Penal Code which it applies, nor the personnel applying it.

36. The development of, a criminal code, and, a correctional philosophy is not an abstract problem. A society which believes in the effectiveness of harsh and stringent treatment creates structures conforming to this idea, and encourages its police, judges and all those serving such a system to think and to act accordingly. By contrast, a society which professes to respect the liberty of individuals, encourages its institutions, and those who serve them, to have more humane motivations: and for such attitudes to exist, the code must be rewritten accordingly.

Generally speaking at the level of principles, every effort should be made to have a law which corresponds to the true wishes of the public, respectful of individual liberty, oriented towards rehabilitation, and adapted to a true democracy.

37. No legislation can survive the disrespect of the citizens. A law which is inapplicable becomes a public danger. Such a concept in no way minimizes the importance of the rules of law. For written legislation to have real significance, the impulse of a moment, or a caprice, or other personal attitudes, must not be substituted for the statutes and laws.

By putting the public on guard against laws which are inapplicable, the Commission is endeavouring to show the dangers and absurdities to which the laws would be exposed, if the nation as a whole refused to apply and respect them.

1 — INAPPLICABLE LAWS (38)

38. According to studies made at the request of the Katzenbach Commission, 91.5% of the American citizens questioned in the course of a national poll, admitted to a tendency to crime. So, the large majority of citizens admitted having at sometime committed an offence, which would have led to a prison sentence, if an arrest had followed. Certain sophists might deduce from such finding that it is useless to have any laws, at all, if the majority of the population refuse to accept honest standards and are not concerned with the respect of others. On the contrary, this Commission believes that notwithstanding individual weaknesses, the greater part of the population wishes for the exposure of crime and criminals, and that correctional steps result.

A law which is applicable is not necessarily a law always respected by every citizen. It is, however, a law which the majority recognize as being sound, and which the mass of citizens respect.

2 — LEGISLATION AND MORALS (39)

39. The following illustrates this thinking. Before Expo 1967, the City of Montreal adopted a by-law (3416), forbidding the female personnel of cabarets and night clubs of the City, to be seated at the same tables as the clientele. It was hoped that this would eliminate or at least minimize prostitution, and exploitation of the customers. In practice, this by-law has brought about a result diametrically opposed to that which was intended.

Actually the prostitutes have not disappeared ; today they establish contacts with the male employees of the establishments, (doormen, waiters, etc), and the latter, as agents, are now collecting a percentage of the money received by the prostitutes. Thus, instead of ridding the city of individual prostitutes, rings of prostitution have been formed, and white slavery is flourishing. From a minor problem concerning only individuals, a social danger had been created with risks of corruption and blackmail.

The Commission wishes to underline by this example, that it is dangerous and absurd to pass laws which will not be respected. Legal and police interventions into the lives of citizens must be kept to an absolute minimum. Unless the majority interest is affected, it is most important to avoid imposing on certain groups, behaviour which is not in conformity with their personal beliefs. This, however, does not relieve society of the necessity to protect its youth.

Assuredly, a modern and pluralistic society must take into consideration that increasing levels of population wish for a liberalization of legislation on sexual matters. If efforts are made to impose on the entire population, as was the case in Montreal, behaviour dictated by certain moral or religious beliefs, the community is exposed to a serious distortion of the law. If the law prohibits what the public wishes, or punishes what the public is prepared to tolerate, one result is that the freedom of conscience of many citizens is disturbed, or at least, the citizens see the State, and the police forces, imposing moral habits on them, which today, more than in earlier years, are a matter of individual conscience. Above all, society becomes accustomed to non-observance of the law.

The State blunts the edge of the law, and of the rules of law, when it endeavours to impose a behaviour on society, in the name of moral and religious principles that no longer reflect the conscience of society, and calls for artificial behaviour. « Un idéal ne se mesure pas seulement à sa valeur abstraite, mais aussi à sa capacité d'incarnation » said Thibon. (« An ideal is not measured merely by its abstract value, but also by its capacity to endure »). In basic crimes such as theft and violence it is evident that society must intervene to maintain order, even though a large number of citizens, on occasion, transgress the law. In other areas, such as that of individual morality, the state must show prudence.

3 — RESPECT OF THE CITIZEN (40-41)

40. In determining the objectives of a modern an integrated correctional legislation, Quebec should take into consideration two sets of factors.

On the one hand, the citizens of Quebec are far more progressive than the politicians realize, and on the other hand, an osmosis develops inevitably between the government administration, and popular psychology. For example, the popularity of the new procedures with regard to divorce, shows clearly, that the government has only followed, rather tardily, what has been a popular desire. Similarly, before the religious authorities and the civil powers adopt new attitudes with regard to contraception, large sections of the population have already put them into practice.

The government, therefore, has the duty and the power, to open new perspectives of tolerance to the public. Furthermore, the emergence of new desires in the population should be an invitation to government to change the written legislation and the reaction of the police. In recent years, numerous examples have been seen in Canada and Quebec of this interdependence of government and the public. Such exchanges permit society, notwithstanding the strength of acquired habits, to hope that changes will be made quickly in our penal and correctional legislation. This calls for courageous action on the part of our political leaders.

It would be a strange paradox if Canada were to adopt correctional measures much more humane with regard to guilty persons, without showing at the same time an increasing respect for the opinion and wishes of the citizens as a whole.

Thus we arrive at the most positive aspects of a modern legislation. While it is harmful to pass and impose laws which the public does not want, it is essential to propose laws and adopt attitudes which show an increasing confidence in the citizens. The liberalization of legislation does not necessarily have the result of lowering the level of morality. Six of the countries visited by the Commission. — Sweden, Denmark, Holland, Belgium, France and England — have all suppressed from the written legislation, or at least tolerate in practice, a number of sexual acts which in Canada, still call for police action with the possibility of imprisonment. In every one of the six countries, the police forces themselves, realize, that problems, such as prostitution, have created much less difficulty since the liberalization of the law. As already pointed out, in Denmark, where they have suppressed all forms of censure or restriction on printed matter, a marked decrease has been noticed in the sale of pornographic publications.

41. In resumé, a modern law, therefore, must not endeavour to be repressive when it is impossible to enforce such a law. The use of law must be restricted to fundamental areas such as respect for others, for order, and for honesty. Above all, it should show a growing confidence in the ability of citizens to make sensible use of liberties granted to them.

C — RESPECT OF THE INDIVIDUAL (42-49)

42. From one country to another, the administration of justice is being constantly changed with regard to both content and perspective. However, the 20th century requires all countries in the world to be more conscious of the responsibilities of society in criminal matters. It has also awakened everyone to the possibility of substituting treatment, remotivation and rehabilitation for the traditional formula of punishment. No correctional philosophy could be considered acceptable today, unless it professes openly, its respect for the individual, and places definite hope in the capacity of the errant human being to be restored to society.

Canada and Quebec, have remained somewhat apart from this evolution. Twenty years have passed since the Declaration of the Rights of Man, but laws and courts, both in Quebec and elsewhere in Canada, still treat this document on fundamentals as a pious affirmation of abstract principles.

Quebec has taken little or no practical advantage of this Declaration. Although Ontario has had its own parole service for years, following negotiations with the central government, Quebec has not yet moved in this direction. Although a number of other Canadian provinces have well-developed probation services, Quebec only started its own probation service in December 1967, and, at the moment, it includes only six probation officers. Likewise, legal aid in Quebec is still in a primitive state, while our neighbouring Province has undertaken to spend millions of dollars for the defence of its impecunious citizens.

Quebec has endeavoured for a number of years to play an international role and enter into agreements with different foreign countries. However, this trend desirable as it may be, also calls for Quebec accepting as have the majority of countries throughout the world, more modern views on many matters, including those on criminality and the treatment of transgressors.

1 — THE INEFFECTIVENESS OF SENTENCES (43-45)

43. Quebec is still obsessed with the deep-rooted conviction that severe and harsh punishment is the most effective method of compelling a guilty person to repent of his sins.

At any point in time, one finds that the majority of prisoners are recidivists, which in effect means that the prisons create their own clientele, and the correctional system condemns itself, in the sense that it repeatedly gives prison sentences to individuals who, for all practical purposes, appear to be impervious to this form of treatment. Faced with a former prisoner, guilty of another crime, the courts resort to repeatedly longer prison sentences

without drawing the conclusion that imprisonment may not have been the kind of sentence called for in the first place.

Although the constant recourse to imprisonment has never given the hoped for results, it is only rarely that confidence in this form of treatment appears to have been shaken. On the contrary, faced with the failure of purely repressive methods, the public aroused by the blatant sensationalism of certain newspapers, demands even more severe punishments ; faced with what is said to be an increase in criminality, there are those who urge the police, the prosecutors and the judges to more punitive actions ; exemplary sentences are loudly demanded when there is a crime wave of a particular kind.

When we reflect on the poor results achieved by the repressive methods in use, it becomes evident that the wrong road is being followed. Almost 5,000 individuals are maintained in Quebec's prisons at an annual cost of millions of dollars, while we penny-pinch on the developement of probation and parole services. By way of comparison, in England, 3,000 probation officers supervise almost 140,000 probationers of all categories (probation, suspended sentence, parole). On the other hand England requires 10,000 prison guards to watch over 30,000 prisoners in the incarceral regime, which costs the state 30 million pounds sterling (about $75,000.00). Moreover, the figures do not take into consideration the cost to the state for the support of the families whose principal breadwinners are in prison. It is the Commission's hope that Quebec will realize the significance of these facts, and will develop its probation service to the maximum possibility. Fortunately the Canadian Parole Board has begun to evaluate what the state gains and saves (in taxes of all kinds) by parole ; but, with the exception of the work being done by its Social Welfare Court, probation services in the Province of Quebec have barely begun.

44. It must be stressed again that, too often, the police and the judges lead the public to believe that measures depriving an offender of his liberty are the most effective in fighting crime. The Commission, on several occasions, has heard police directors claim that the methods of probation, parole and even rehabilitation have a demoralizing effect on police personnel. It has been indicated that the policeman, who has worked on a case over weeks and months, has in some way the right to see « his arrest » put away for a long period of detention.

Similarly, certain judges have complained publicly that the Parole Board has interfered with their sentences, claiming that dangerous repeaters have been freed. In fact, certain spectacular cases, such as that of Leopold Dion, have appeared to justify the statements that measures of clemency expose society to increased dangers. Another conclusion would be more logical: it is not a matter of eliminating measures of clemency because of

mistakes in diagnosis, but rather, to make available to probation and parole boards, the necessary manpower and the technical resources which would permit a much better prediction of the consequences of their decisions.

45. Such attitudes and public statements on the part of professionals are most disturbing, as they encourage the public to believe that repressive and punitive methods are the only effective ones.

At the end of almost two years of work, during which time the Commission has become aware of many of the American and European experiences, it has become evident that the cost is much greater to punish, than to supervise, and rehabilitate. The Commission also knows that, no one is in a position to indicate how effective « punishment », as such, has been. Long sentences, have not done more to reduce recidivism, than have short sentences, or even probationary measures.

Even the security measures within the walls of prisons do not seem to have given results which were hoped for, theoretically. Actually, correctional systems as advanced as those of Sweden, Denmark, Holland, Belgium and England, include integrated programmes of gradual freedom, of working outside the prison walls, and of family visits. Moreover the percentage of escapes has not always increased in proportion to the ease with which such escapes could be made, by reason of the lessening of security measures. Most important — the escapes from « open prisons » have been up to the present, of little danger to society.

2 — THE CONSEQUENCES OF IMPRISONMENT (46)

46. Although science, up to the present time, has been able to determine very little about the effectiveness of punishment, it is possible to surmise some of the consequences of a punitive sentence, especially that of imprisonment, on the individual and his family. The logical implications of these two facts, are not fully realized.

Many in this country still believe in the exemplary value, and the deterrent effect, of « capital » punishment. However, with rare exceptions, European countries, for generations and even centuries, have abandoned the capital sentence, without any fresh outbreaks of criminality after the abolition of this measure.

In Holland, only 7/10ths of 1% of those found guilty receive a sentence of detention of more than 3 years. 55% of all the prisoners in Holland remain under detention less than one month. Moreover, Holland has fewer repeaters, than American and other European countries.

Thus, we see the nature of the paradox: without being certain, or

having precise ideas of the effectiveness of punishment, we have continued over the years, to imprison individuals by the hundreds.

This paradox has another side to it. Although well aware of the economic and social consequences of imprisonment, we continue to abuse it. It is quite evident that imprisonment even for a few days generally results in the loss of employment, and considerable difficulties with regard to reintegration into normal society. There are also harsh social results to the families of prisoners.

Financially, the policy of systematic imprisonment cannot be justified. It is estimated that it costs Quebec between $4,000 and $7,000 a year, dependent upon the institution, to maintain an accused or a guilty person in prison; in addition about $2,500 a year is required to support a family during the period the principal breadwinner of the family is incarcerated. To these losses, also add the loss of revenues of the imprisoned person, and the difficulty he has to earn a living with a prison record.

In addition, to these economic considerations, imprisonment, today, is considered to be a serious degradation of the individual. Even if it were possible for the accused and the guilty to work in the prison workshops, and to receive a revenue comparable to those who work in freedom, imprisonment should be considered as the last resort. A correctional system is debasing when it imposes imprisonment for insufficient reasons, and without society having been in any danger.

Not only does Quebec's system impose a sentence calling for atonement, but it adds as a sequel, a second sentence; that of an almost indelible social stigma.

3 — RIGHT TO LIBERTY BEFORE THE VERDICT OR THE ESTABLISHING OF GUILT (47-48)

47. As imprisonment of any form is an extremely harsh sentence, a civilized society should avoid by all means, the imprisonment of a person who is presumed to be innocent. Preliminary detention remains however, so universal a problem, that almost all countries have practically negated the presumption of innocense in an excessive number of cases. Thus, in Quebec, the accused persons who have not yet been tried, represent almost one third of the prison population. In France, out of 34,000 incarcerated in state prisons, 13,000 are awaiting their trial. Holland, strongly opposed to prison sentences, has in the neighbourhood of 1,700 accused persons in prison institutions, every day.

Let there be no misunderstanding: in a number of cases, detention before trial is necessary, to avoid intimidation of witnesses, disappearance of the accused, or the perpetration of other crimes. However, such incidents

arising from provisional release before trial, are not as frequent as one is led to believe by the constant recourse to preventive detention.

48. Especially uncalled for within this perspective, is imprisonment due to the poverty of the accused. England has, as here, a bail system, but they interpret it in a more humane manner. In England, liberty on bail, consists of a simple undertaking to pay the amount fixed by the court in case of absence at the moment of trial. The accused is not required to deposit any money before the trial, and is called upon to pay, only if he fails to present himself in court on the date set.

In the United States, and particularly in New York and California, the majority of the accused who have been arrested await their trial in freedom without having to deposit or guarantee any money. They merely undertake to appear at the time fixed for the trial. At the present time, the system in these American cities shows a much higher percentage of persons presenting themselves at the appointed time, than the system under which the accused puts up bail or has it guaranteed by a bondsman.

Such formulae assure the respect of the individual, and give a greater significance to the presumption of innocence than is the case in the Quebec system.

4 — RIGHT TO ADEQUATE TREATMENT (49)

49. To fully respect the rights of citizens, the system of justice must also recognize its responsibilities to those who are found guilty.

In the 19th Century, a prisoner was generally considered as a person deprived of all his rights and, as a result of this, opportunity was taken to add another series of punitive measures. For example, certain prison systems believed themselves to be justified in imposing (and this continued almost up to the present time,) solitary confinement on those condemned to prison. In some countries, as in ours, deprivation of liberty also carries with it censure at all times, above all with regard to written communications, or personal interviews. This Commission actually learned, at first hand, that certain governors of Quebec prisons, assume the authority to destroy letters written by prisoners, including those addressed to the Minister of Justice.

Quebec's prison system has commited the error up to the present, of being satisfied to fully neutralize its prisoners; as long as security was assured, nothing else had to be done. It is because of this attitude that Quebec's prison institutions have never developed workshops of any real value, and have almost deliberately neglected to offer to the prisoners, programmes of a cultural or intellectual nature.

Such a prison system is as much an injustice as it is an anachronism. Moreover, this attitude has led Quebec's administration of justice to neglect,

over the years, any training of personnel required in the various institutions. Contacts between prisoners, and the outside world, which includes families, social workers, or lawyers have been made difficult. This mentality also has led the Department of Justice to construct or to retain the immense and outmoded institutions which make treatment and re-education almost impossible.

The prisons of Montreal and Quebec, in particular, are serious liabilities. Notwithstanding the important changes made during the construction of the new prison at Charlesbourg, Quebec is still acting in a rather questionable manner by again erecting an institution to shelter many hundreds of prisoners both accused and guilty. By the way of comparison, the Swedish system houses about 5,000 prisoners in 80 institutions, all highly specialized and well-equipped with technical personnel.

III — THE STRATEGY OF REFORM

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50. Up to this point this report has presented a rather pessimistic picture of the Quebec situation. Several of the fundamental objectives towards which a modern and humane system of justice must direct itself have been indicated: equal justice for all ; a law adapted to the wishes of the public ; increased respect of the rights of the individual. Emphasis has been placed on the considerable margin which still separates Quebec from these objectives. Before defining the strategy of reform, at least in its broad lines, we should once again examine acquired habits, and measure the extent of the resistance to reform. Only by having a realistic understanding of the situation will it be possible to indicate the path to reform, and to choose the means to achieve it.

A — THE FEDERATIVE SYSTEM (51-54)

51. The strategy of reform in matters pertaining to criminal and penal justice must take into consideration the fact that our Canadian federative regime creates particular difficulties. Different levels of government act in an autonomous manner, and often without sufficient coordination.

Justice, as many other matters, is a domain of mixed jurisdictions. The two levels of government may have entirely different viewpoints on the same question.

To limit the area of discussion: in the domain cf justice, the Federal Government is in full control of the text of the law, while the administration itself belongs in totality to the Provinces.

Even for the theorist, this separation complicates the division of responsibilities and powers. It is impossible for the average citizen to have anything other than vague and indefinite ideas. He is hardly aware of who makes the arrest, he does not know who judges him, he does not know who imprisons him, or who will endeavour to rehabilitate him. In fact the Quebec

citizen can be arrested by any one of 400 [1] police forces ; he can be called upon to appear before the Municipal Court, before the Provincial Court, before the Court of Sessions of the Peace, or before the Superior Court.

In the area of treatment of prisoners, it is not generally known that the Provinces take charge of the prisoners who receive sentences of less than two years, while the Federal Government places in its penitentiaries those who are condemned to longer sentences. Not only may the different levels of government develop different philosophies and behaviours with regard to the judicial organization and the correctional system, but here again the public is without the slightest idea of whom to commend or to blame for decisions taken or errors committed. Not only may the sentences and the treatment vary from one court to the other, and even from one judge to the other, without sufficient reason, which is in itself a weakness, but here again the public does not know who is responsible for the excesses and the mistakes.

52. The Canadian federative system is therefore, at least in part, responsible for the slowness in establishing a single philosophy throughout the entire correctional system.

While, the federative system is not entirely responsible for the hit or miss methods which prevail, nor for the improvisation which takes place in the different areas related to the system of administration of the justice, the present division of powers does create permanent and almost insurmountable difficulties.

Undoubtedly, a number of uncertainties and irresolutions would disappear if Quebec and Canada defined clearly what each desired from the police forces, from the prison institutions, from the courts, and those organizations looking after the social reintegration of transgressors. Certain difficulties, however would be perpetuated by reason of the dual jurisdictions, even though the two governments clearly indicated their own perspectives.

The Canadian Constitution of 1867 made the first error, by not confining the correctional measures to a single authority. Furthermore, the Constitution erred by making an arbitrary and nebulous division of responsibilities. For example, it declares that the prisons and reformatories are under the authority of the Provinces, while the penitentiaries depend upon the Federal authority. Nothing in the Constitution defines what is meant by the term « prison », « reformatory » or « penitentiary ».

To clarify the 1867 Act, penitentiaries were subsequently, defined as those institutions which take charge of individuals condemned to two years

[1] This figure of 400 is a conservative estimate. At the time of writing, out of 250 cities and towns in Quebec, only 32 have no municipal police forces. However, a large number of municipalities, not included in this figure (and there are about a thousand of them) also have municipal police forces. The new police Commission will shortly have a more exact figure.

of detention or more, and, prisons and reformatories, as places to which the guilty are condemned for less than two years imprisonment. This division of the correctional responsibilities is so arbitrary, that, one of the governments can just as easily decide tomorrow morning to define as penitentiaries, institutions which receive guilty persons sentenced to more than three months, six months or one year of imprisonment. This has actually been suggested in recommendation 31 of the Fauteux Report, when it advised the Federal Government to assume responsibility for all persons condemned to more than six months of imprisonment.

53. And so, although certain problems would be resolved if each of the jurisdictions (Quebec and Ottawa) would formulate in clear terms, the policy which it intended to follow in the administration of justice in criminal and penal matters, other problems would remain as long as the two jurisdictions continued to share this domain.

In an integrated correctional system, the sentence of a judge would place the prisoner in contact, for a more or less prolonged period, with a single system of correctional measures. Within the actual Canadian context, even if each of the jurisdictions defined precisely its intentions and its objectives, the judges would continue not only to decide the period of imprisonment, but also to take into consideration the differences between the Canadian penitentiary system and the Quebec prison system.

This means, as already happens, that a judge may condemn an individual to a sentence of at least two years, instead of giving him a prison sentence of 18 months ; not so much by reason of the record of the accused, or the seriousness of the offence, but rather by reason of the better conditions which the Canadian penitentiary system could offer as compared to those of the Quebec prison system. (It is the belief of a number of judges that the Canadian penitentiaries offer the prisoners much better use of their time and therefore more opportunity of rehabilitation than the Quebec prisons. It is to be hoped that, by reason of the progress made recently in the Province of Quebec this will shortly cease to be true.)

Here, we see an example of intervention through the sentence, of an element completely extraneous to the nature of the offence, and the record of the accused. The exemplary sentence is frequently criticized on the grounds, that it brings an element into the punishment, for which the accused should not be held responsible. Yet we tolerate the duality of jurisdictions influencing the sentence, without regard to the degree of guilt.

54. The Commission believes that this duality of jurisdiction must be resolved as quickly as possible. It will result in a greater respect for the rights of the individual, and a better administration of justice.

The Commission believes, moreover, that the Provinces are in a better position, by reason of their mandate on educational matters, to assume full responsibility for the correction, treatment, re-education and rehabilitation of offenders. By the constitution, the Provinces have been given the task of the administration of justice, and the Federal Government encroaches to some extent on these frontiers, by invading the field of correction. To the extent that the correctional philosophy becomes less punitive, and interests itself more in rehabilitation and social re-integration, it is evident that the coherence between the administration of correctional justice, and the provincial responsibility in matters of education will be that much greater.

Switzerland, a country which has also adopted the federative system, has defined the division of responsibilities between the cantons and the federal government, in a manner comparable to that of the Canadian constitution. However, they have interpreted these responsibilities in an entirely different manner. The Swiss Federal Government has always been content to define the criteria for imprisonment and correction, and to consider the cantons, which are responsible for the administration of justice, as the logical authorities to establish and direct the correctional institutions.

None of the Swiss cantons was in a position to construct the many kinds of institutions which the Federal Code considered to be necessary, and this has resulted in agreements amongst the cantons, who, on the basis of voluntary cooperation, have agreed to erect the different institutions on a joint basis.

Today, the correctional institutions of Switzerland are divided into three regions ; one of the French language and two of the German language. The Swiss government, as such, does not construct *any institutions* but leaves this responsibility to the cantons. This Commission believes that the Canadian Constitution should be interpreted in a similar manner.

B — THE CHANGES (55-61)

55. While waiting for a new interpretation of responsibilities which will eliminate some of the problems in Canada's federative system, this Commission believes that Quebec can make radical changes in its own correctional methods.

However, before developing a realistic strategy we should establish and evaluate the areas of resistance, some of which will have resulted from acquired habits. There is no intention at this point to blame anyone, but rather to endeavour to foresee what is in store for the reformer. It must also be kept in mind, that no concept or system of another country, regardless of how good it may be, can be adopted by Canada, or Quebec, without first translating it, so that it fits into our own philosophy and way of life.

This Commission visualizes the situation from two different aspects : on the one hand, the perspectives of the professionals in matters of justice (lawyers, police, Crown prosecutors, judges) ; and on the other, the demands of public opinion, whether they are made through the medium of journalists or by the citizens themselves.

1 — THE PROFESSIONALS (56-60)

56. No satisfactory reform of our system of administering justice could be made without the support of the police force, lawyers and judges. In positive terms, an administration of justice based on respect for the fundamental rights of the individual, requires, that all the professionals have the same faith in the objectives, and agree to coordinate their efforts.

It is necessary, however, to take into consideration acquired rights, and habits developed with the passage of time. The courts, for example, up to the present, have been deprived of, the technical services, indispensible in the preparation of pre-sentence reports, and staff for adequate surveillance of individuals who receive probationary or suspended sentences. To the extent that these services are created and developed, it will be necessary for judges to be more versatile, and utilize to an increasing extent the resources of human sciences, when pronouncing sentence.

This Commission believes that the judges of Quebec should not be alone in determining the sentence. It has never been, and never will be easy to forecast the behaviour of an individual, years in advance. Moreover, with the development of human sciences, society has come to have a better understanding of the need to adapt the treatment to the individual. The courts have become aware of this evolution, and are more and more reluctant to hand down sentences on the basis of the meager information still being given to them. In face of the multiform and unpredictable nature of man, a dynamic administration of justice must use all the means available to minimize the danger of irreparable errors. It is this Commission's belief that the sentence itself, as opposed to the verdict, should not be left to the judge alone. It is not reasonable to expect the judges to have a professional competence in psychology, sociology or in medicine, in addition to their juridical knowledge. It would be much wiser to take advantage of the contribution of specialists in human sciences, and, above all, to make radical changes in the methods of treating persons under detention. The role of the judges, in future, should be, to assume increasing responsibilities for the protection of the fundamental rights of the individual.

As examples : The court should make certain that negotiations, which take place at the present time between the lawyer for the defence and the Crown prosecutor, are not against the interests of the accused. The court

should endeavour to reduce to the minimum the periods of detention before the trial. The judges should participate to some extent, in the decisions taken with regard to the parole of a prisoner.

57. The role of lawyers should also undergo certain changes. We should distinguish between the functions of the Crown prosecutor, and those which are fulfilled traditionally by the lawyer for the defence.

In conformity with Canadian jurisprudence, the Crown prosecutor should always conduct himself in an objective and unemotional manner. Such an attitude would be reflected in different ways. It would require the prosecutor to make available to the defence, all the proof gathered against the accused, including the list of witnesses whom he intends to call before the court. Moreover, he would conscientiously endeavour to present all evidence which might help the accused, as well as evidence supporting the accusation.

Neither justice, nor the individual, benefits from the antagonisms which exist ; both the Crown prosecutor and the defence lawyer endeavour to win a case, even though the former as representative of the Minister, should limit himself to seeking the truth, and to recommending the best method of dealing with the accused. The initiative for a changing attitude should come from the Crown prosecutors, who should be chosen, not only for their professional competence, but also with the full understanding that they must avoid aggressiveness, and have as their chief concern, determining the truth, and the rehabilitation of those found guilty.

58. Quebec's administration of justice suffers, at the present time, from a multiplicity of delays, for which lawyers are in great part responsible. Certainly, other factors contribute to slow down the administration of justice (including lack of official stenographers, the reluctance of judges to undertake certain cases, delays in serving subpoenaes, etc.) but the lawyers are chiefly responsible for postponements.

In the future, it will be necessary for lawyers, both for the defence, and for the Crown, to help eliminate the delays, which seem to happen all too easily. Moreover, the Crown and the defence must agree that clandestine negotiations which influence the guilty plea put forward, should henceforth be carried on with the full knowledge of the Court. A freer exchange of information is also needed, so that instead of introducing surprise evidence and witnesses as at present, trials will be more expeditious, and more oriented towards the protection of both the individual and society.

The State should assume responsibilities in matters of legal security. The Bar will continue to be responsible for the observance of the code of ethics, and for exercising all disciplinary measures affecting their members. The Bar should help the State in making available the necessary defendants of indigents.

59. Other professionals of the administration of justice system, such as the police, should also radically change their attitudes. Within the framework of the chapter to be devoted to the police forces, the police functions in a modern state will be defined in greater detail. As of now, this Commission recommends, that the police forces increase the cooperation and coordination amongst themselves, to carry on a more effective battle against crime.

It appears to this Commission, absolutely abnormal and disturbing, that a population of six million people should have more than four hundred different and autonomous police forces. If the risk of a police state ever existed in the Province of Quebec, it is most likely to happen within the context of this piecemeal operation, and the resulting improvisation which is often of an arbitrary nature.

Criminals do not recognize geographical boundaries, whether they be of countries or provinces, and much less, of municipalities. It is high time we realized the necessity of combining and coordinating our police forces. The first step without any doubt would be to establish an adequate Province of Quebec structure.

This Commission believes that it is necessary to suspend the requirement that each city and town have its own police force, and insist rather, on the urgency of forming through agreements and joint plans, large, regional police forces.

60. At this point, attention must be drawn to the behaviour of the police forces confronted with group demonstrations which are now assuming unexpected proportions. Our law enforcement bodies, in the face of public demonstrations, should not adopt as a hard and fast rule, the need to respond to violence with violence. This Commission is particularly disturbed to have found that some police forces have already invested considerable sums of money in heavy equipment, and are basing their action programme to a large extent on the assumption that all demonstrators are professional agitators, or are under their control.

The Commission has also been deeply disturbed when police directors have issued public statements setting themselves up as critics of the courts, or as moralists.

In another aspect of police work, the Commission has found that some of the accusations made by the public against the police were well-founded. Police rudeness, intimidation and even brutality have not entirely disappeared. Although considerable progress has been made, the situation is still disturbing particularly when it is found that policemen give vague and even false testimony when one of their own members is involved in a complaint. Moreover, senior police officers are often reluctant to take disciplinary measures against their men who have committed abuses. It is realized that certain emotional reactions, such as false loyalties and pride, are part of

the individual can be freed without cost, against his promise to appear on the day fixed for his appearance in court. One of the paradoxes is that the percentage of disappearances is lower with this system of a simple promise, than with the traditional system of putting up bail.

The respect for the freedom of citizens, and of accused persons, will also require the Minister of Justice to automatically grant priority to trials of those individuals who have been kept in detention before their trial. The Minister of Justice should scrutinize carefully all postponements recorded in the file of such an accused person. Everyone involved, the judge, the Minister of Justice, and the Bar, should only permit the most serious motives to justify a delay or postponement in hearing these cases.

2 — PRIORITY TO TREATMENT (64)

64. In establishing a policy for guilty persons, the Minister of Justice should take into consideration that it costs much more to punish and imprison, than to supervise and rehabilitate ; and that, in the face of the ineffectiveness of repression and punishment, a policy of treatment would appear to be more humane and offer more hope. Such a policy would permit the judge and the professionnals in the human sciences, to decide with clear conscience, the sentence to be imposed. At the present time, the judges could not place a guilty person on probation, even if they had full confidence in the efficiency of probation, because such provincial services are almost entirely lacking, notwithstanding the extremely worthwhile efforts of private organizations.

At the same time, the Minister of Justice, through the medium of his prison service, should establish a training programme for prison personnel, to orient them towards the concept of treament and rehabilitation. Up to now, security measures in prisons have been given so absolute a priority, that prison personnel consider they have done their work well and thoroughly, if they have prevented escapes. It will also be necessary to increase the number of specialists serving the prisons. From the economic point of view as well as for the reasons already mentioned, the Minister would be justified in giving priority to a programme of treatment in prisons.

3 — DEFINITION OF ROLES (65-66)

65. A number of examples have already been given showing how the various elements of the administration of justice on criminal and penal matters tend to overlap to the point, where each endeavours to assume the responsibilities of his neighbour. Thus, the police who still have the exclusive responsibility to maintain order, to make the necessary arrest, and to gather

evidence, make pronouncements in place of judges on the measures which, they believe, should be taken against the condemned.

Similarly, certain judges have a tendency to substitute themselves for the lawmakers, by increasing the sentences under the pretext of exemplarity. This commission believes that the legislative power is the only one which should react to public opinion, to the point of requesting heavier sentences for certain offences. Magistrates, of their own accord, should never have recourse to the maximum sentences prescribed by law, for any reason other than consideration of the character and the guilt, of the individuals brought before them.

66. A clear definition of functions is of fundamental importance within the Quebec context. Society is actually undergoing an extremely rapid evolution and there is need for revised and clear guidelines.

The evolution of Quebec criminality adds to the requirement of a wise definition of the various roles.

Police, Crown prosecutors, judges and correctional authorities are asking themselves today about the meaning of this evolution. Not one of these groups, however, has the right to place the responsibility on another for what appears to be a serious increase in criminality. The problem is far too complex to consider any one sector of the administration of justice as a scapegoat. The essential is that the public should believe, with justification, that the entire administration of justice is working as a team to assure the security of society. It is therefore most regrettable and unpleasant that antagonisms come to light, and that the various sectors of the system seem, on occasion, to be more preoccupied with disclaming responsibility, rather than, making certain of the fight against crime, the rehabilitation of the guilty, and the security of society.

IV — THE PLAN OF REFORM

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67. Having defined the fundamental objectives as well as the strategy of reform, the concrete forms that the reform of the criminal and penal justice system should take, can now be pinpointed.

It should be understood that in this introduction to the Commission's report it is not intended to elaborate on the details of the changes proposed with regard to the Quebec administration of justice, nor to present all the elements of the supporting argument. However, this Commission believes that the professionals of our system of administering justice and the public, should become aware as quickly as possible, of the principles underlying a system of justice, oriented towards the objectives established, and adopting the priorities recommended by the Commission. A listing of specific suggestions should permit the legislative powers, executive and judiciary, to study as of now, the orientation of the Commission's Report, and to undertake the modernization of our administration of justice on criminal and penal matters without delay.

The first definite step in the way of reform would be a definition of the different categories of rights: the rights of citizens, the rights of those accused, the rights of those detained, the rights of those condemned. Once these rights are defined, it becomes possible to detail the terms of the proposed new social action, as an ideal to be attained. This plan of social action will have the participation of the judiciary, the members of the Bar, the professionals in the fights against crime, and even the public itself.

A — THE RESPECT OF RIGHTS (68-72)

68. In Canada and Quebec, the Declaration of the Rights of Man still appears to be a pious affirmation of principles from which no practical conclusions have been drawn. Only in the field of labour has there been any action, and today there is an affirmation of the illegality of segregation in a very definite manner. (R.S.Q. 1964 Ch. 142)

Citizens unjustly arrested, find it difficult to have any recourse in the civil courts. Similarly, no court will intervene in favour of an accused, who could have retained his liberty up to the moment of his trial without any risk to society. Within the prisons, there is no recourse possible to prisoners, who because of administrative decisions by the penitentiary authorities, are placed in solitary confinement, or who are transferred to institutions of maximum security, or who undergo undue waiting periods before they are informed of a decision of the Parole Board.

1 — THE RIGHTS OF CITIZENS (69)

69. As is the case in education and health, justice also should be considered one of the fundamental rights of the citizen. Therefore, it should not be a matter of state intervention, or that the state ask for the intervention of the Bar, when an individual appears as an accused person, before the court.

What is needed is the establishment of a government service of legal security which will enable a citizen to have free access to legal information, and to be assured that, in case of need, he will always obtain the help of a legal advisor. In the past, the state offered free hospitalization to the needy, but until the advent of hospitalization, the majority of the citizens lived in uncertainty, as nobody knew what the economic impact of a sudden illness would be. The system of scholarships helped to reduce disparities in the economic situation of students, but only by adopting the principle of free schools, has it been possible to progressively reduce the feeling of insecurity amongst young people, as to their future in the matter of schooling.

A formula of some kind of legal assistance is therefore not an adequate answer, nor would it show sufficient respect for the rights of citizens, to justice. A legal security service which would provide both legal advice and defence before the courts, is the only logical answer. The creation of such a service of legal security constitutes in this Commission's opinion, a necessary step towards reform of our administration of justice. Concurrent with the creation of a legal security service, the Minister of Justice of the Province of Quebec, should develop, a true and workable Declaration of the Rights of Man. In doing so, he should realize the need to set the judicial system in motion in all instances in which rights are disrespected. Such a Declaration should also grant the Quebec Ombudsman more extensive powers of surveillance, and increased authority to correct wrongs. In a subsequent chapter, reference will be made to the extensive powers of the Danish Ombudsman who is considered to have an even broader jurisdiction than his counterpart in Sweden, the first country to introduce such a function.

2 — THE RIGHTS OF THE ACCUSED (70)

70. Any reform in the area of the rights of those entitled to justice, leads directly to the rights of those who are under arrest. Careful consideration should be given to the practical consequences of the theoretical presumption of innocence, professed by our judicial system.

Imprisonment of an arrested person before his trial is actually a negation of the presumption of innocence, and it should be evident that such imprisonment is only justified in extremely serious cases. The freeing of an accused person should be, or should be reaffirmed, as the rule, while imprisonment before the trial, should be the exception, subject to many controls.

In England, as is the situation here, the accused person kept in detention, is not supposed to spend more than eight days behind bars without intervention by the court. Consequently every eight days, the English police authorities are called upon to prove to the court that it is not possible to proceed immediately with the hearing of the case, and, that it would be extremely undesirable to give the accused provisional liberty. In Quebec this provision of the law exists but should be revived.

3 — THE RIGHTS OF ACCUSED UNDER DETENTION (71)

71. It is not sufficient that the imprisonment of an accused person remains the exception. It is also necessary for those who are accused, and are kept in prison, to have special rights, one of which is the priority to their trial.

The prison routine of the accused kept in detention should differ, to a marked degree, from the routine of those serving sentences. The prison establishments used for detaining accused persons should have different perspectives ; personnel should be specially trained ; more opportunity and better facilities should be afforded to have contacts with families and lawyers ; thought must be given to avoid interruption of employment, if at all possible.

High standards should be established respecting the rights of the accused under detention, to privacy, correspondence, leisure, etc.

The prison services should establish a training institution which will fill a similar role for their personnel, as that which is being undertaken by the Institute of Police for police officers.

4 — THE RIGHTS OF PRISONERS (72)

72. Quebec's administration of justice is the victim of a strange paradox in the manner of treating prisoners. While the courts indicate their faith in

the individualization of a sentence, the prison system varies little in its treatment, from one individual to the other.

The individualization of the sentence at the present time merely reflects the duration of imprisonment. To be fully individualized, the sentence must consider placing prisoners in different institutions according to how dangerous they are, and also according to the treatment required.

A declaration of rights should give priority to treatment, rather than to that of repression and punishment. It should also be explicit, so that prison and penitentiary authorities understand that they are obliged to individualize the treatment of the prisoners.

As the use of the pre-sentence report increases in Quebec, the prison and penitentiary authorities will be better informed on the history and record of an individual. They should also use the services of specialists to provide a more precise evaluation of each of the prisoners, enabling them to vary the treatment accordingly. Benefitting from the competencies of specialists, will not only help to determine the treatment necessary in each case, but authorities of the prison will also be in a position to participate more intelligently in the decisions of the Parole Board.

B — THE NEW SOCIAL ACTION PROGRAMME (73-86)

73. When the rights of the individual have been carefully defined, the Quebec administration of justice could then proceed to elaborate a new social action programme in the fight against crime, and the treatment of criminals. It would lead to an immediate revision, and constant evaluation of the structures and procedures of our system of administering justice.

A definition of the rights of the individual will result in many changes in the Quebec system of administration on criminal and penal matters. An integrated social action programme will also envisage the creation of new organisms, the rapid development of new services, and the discarding of out-of-date formulae.

By basing the new social action programme on respect for individual rights, it is not intended to minimize the fight against crime. This Commission believes that the fight against crime can be carried on without the representatives of public order encroaching in any way on the fundamental rights of the individual. To cite a number of examples.

1 — SUMMONS AND WARRANT OF ARREST (74)

74. The Quebec prisons (not including penitentiaries) have a daily population of approximately 1,900 individuals. Of this number, almost one third

are accused persons awaiting trial. Two years ago the average population of Quebec prisons reached a daily total of 2,100 individuals. This decrease of 10% was brought about by a decision of the Minister of Justice to proceed by way of summonses rather than by warrants of arrest, for certain offences. Notwithstanding the insufficiency of statistics on this matter, it is possible to say that recourse to summonses has not resulted in any major problems to the courts. Individuals are presenting themselves on the date set, and the use of this method has not yet been given as a cause of delays or postponements. This decision of the Minister of Justice has actually reduced by almost 25% the number of persons detained before their trial. The reduction of 200 in the number of individuals incarcerated has taken place at the level of those accused of offences, and not of those already in in prison. This action by the Minister of Justice is one of the most important in the history of the Quebec system of administering justice, and this Commission believes that this experiment should be extended to include other categories of offences.

One of the immediate results, would be a much greater respect for the rights of everyone to his liberty. From an economic point of view, it would undoubtedly bring about substantial savings in the administration of Quebec prisons. Results such as this show, that the Province of Quebec can have an administration of justice, much less impulsive, and, which places greater emphasis on individual rights.

2 — ELIMINATION OF BAIL (75)

75. A new social action system should bring about the early disappearance of those archaic and unjust practices, which like the bail system, stress the economic differences between citizens.

This Commission believes that the courts should refuse bail when the interest of society appears to require the incarceration of the accused. In all other cases every effort should be made to release the accused provisionally, against a simple promise to appear at the time set for the trial.

If it is considered that the complete abolition of bail is too drastic a measure, the bail system, at least, should be modified in such a way that it will no longer require the deposit of a sum of money but rather a simple undertaking to pay the amount fixed by the court in case of nonappearance. This is the system which prevails at the present time in England where justice is handed down expeditiously, without anyone having to « buy » his freedom.

3 — LIBERTY ON PERSONAL RECOGNIZANCE (76)

76. The Commission should not be considered as idealists for proposing that the majority of the accused, be given provisional liberty before the trial, in exchange for a simple promise to appear.

Experience elsewhere, analogous to the experiment referred to in paragraph 74, all tend to prove the soundness of such a recommendation. However within the framework of reform of the Quebec system, it is recommended that such a bail system be developed gradually rather than the immediate extensive recourse to provisional liberty merely on a promise.

4 — DEVELOPMENT OF PROBATIONARY MEASURES (77)

77. In December 1967, the Minister of Justice of the Province of Quebec entrusted to the Director of Prisons, the responsibility of the newly created probation service. At the time of writing, this new service is barely in effective operation, as it includes only six probation supervisors.

A probation service should assume a double role: that of preparing the pre-sentence report required by judges, and that of assuring the surveillance of individuals who, at the time of their trial, may be entitled to probationary measures. There are drawbacks to such a formula, as the probation officer may not be able to decide the priority of these two functions.

The judges would be justified in demanding pre-sentence reports as quickly as possible, but the Minister of Justice and the public also require, and quite rightly, that individuals who have avoided going to prison by reason of an adequate surveillance, should have close and regular contacts with probationary officers.

It should be pointed out that Quebec already has a probation service for juvenile delinquents under the authority of the Minister of Family and Social Welfare. This service functions in a satisfactory manner, although the salaries paid are not adequate. This Commission recommends that this juvenile probationary service be placed under the jurisdiction of the Minister of Justice. To make such a transfer worthwhile, the Minister would be called upon to develop the probation services intensively. It is quite likely, the Minister would not wish to have this service continue indefinitely as a section of the prison service, notwithstanding the outstanding ability of the actual Director of the Prison Services. It is desirable to separate these two services, although they should both be under the one general direction.

For the Quebec probation service to attain reasonable proportions, and to make extensive use of professionals, would require enormous expenditures. An idea of the magnitude of the task may be had by considering the County of Los Angeles which, for a population of 7.1 million people,

has a personnel of 3,800 in its probation services. It would be utopian to hope that Quebec could make such a financial effort at the present time. This, however, should not dissuade the Minister of Justice from putting into effect an adequate service. Further in its report the Commission will indicate, in the light of Scandinavian and Netherland experiences, how we might adapt methods which already exist in the formative stage. One thing is certain, a probationer costs the state much less than a prisoner.

5 — FLEXIBILITY OF FINES (78)

78. In the Commission's opinion it is inconsistent for Quebec's administration of justice system to spend hundreds of dollars for the imprisonment and maintenance of an individual who cannot pay a fine of a few dollars. Even though such cases occur less frequently than in the past, it is nevertheless true, that such absurdities are a distortion of respect for the fundamental rights of the individual.

The Commission believes that it is possible to eliminate such abuses by making some changes in the present method of imposing fines. First of all, fines should reflect the ability of the individual to pay, more fully than they do today. On this point, consideration might be given to the Swedish formula, which deals with fines on the basis of working day earnings, and has the effect of reducing, to some extent, the economic differences between accused persons.

Second, the courts should develop a formula for imposing fines in instalments, so that the clerks of courts will be able to establish the procedures to provide the necessary services. At the time of imposing a sentence in monetary terms, the judge should question the accused regarding his ability to pay, and establish with him a programme of payment suited to his economic resources.

Third, Quebec's system should be developed so as to make it possible for an individual to pay his fine by working a number of hours, or evenings, or weekends for the State. In certain cases of drunken driving, it would be more effective and beneficial if in addition to imposing a fine, and possibly cancelling the driving permit for a period, the delinquent were sentenced to several hours of service in an emergency clinic or in an ambulance.

By every means possible, imprisonment. which today is the sequel to non-payment of a fine, should be reduced to the minimum, and even eliminated entirely.

6 — ADVANTAGES OF SEPARATING VERDICT AND SENTENCE (79-82)

79. In updating the correctional philosophy, many elements have been borrowed by the Commission from « The New Social Defence » formulated

by Judge Marc Ancel of the Supreme Court of Paris. Particular attention is drawn to the advantages of separating the *verdict* and the *sentence.*

Many of the reforms attempted in different countries during the last decennium have been in the direction of changing the « sentence ». Most prison systems provide for an automatic reduction of sentence for good conduct. Parole should be added to this, which, according to the country, permits the release of a prisoner at certain points in his prison sentence.

In contrast to the sentence, the verdict itself, up to the present has not been given much consideration by reformers. There are a number of reasons for this.

Most of the judiciary systems permit one or more appeals from the decision of the court of first instance. Furthermore, it is relatively easy to establish, beyond doubt, that an individual has actually committed the actions attributed to him, while it is extremely difficult to decide on the treatment necessary to rehabilitate the offender, and to predict the psychological evolution of an individual.

In short, the verdict, frequently, is a simple acknowledgment of a fact, while the choice of sentence implies a kind of forecast of what the behaviour of a guilty person will be in several years time.

80. The Commission has endeavoured to deal with this problem in many ways. Different ways of altering the sentence, before it expires, have been indicated. It has been recommended that more information be made available to judges with regard to the personality and character of the guilty party, so as to permit a better prediction for the future, and a better individualization of the sentence. These are not enough, and it is important to ask, as Judge Ancel has done, whether the time has not come for a separation between the verdict and the sentence. In this context, the judge, fully aware of the law of evidence, and with full knowledge of the rules of law, would be responsible for revealing the facts, and establishing guilt. The sentence, however, would be decided by a team of professionals covering a number of the social sciences. In other words, the verdict would still be the responsibility of the judge, while the sentence would be handed down with other authorities.

81. The acceptance of this division exposes the reformer to the difficulties of the « indeterminate sentence ». This Commission has very little sympathy for such a formula.

In effect, notwithstanding the results achieved in the State of California, where the judges give an indeterminate sentence, and leave the responsibility for fixing the length of the sentence to the correctional authorities, this

Commission believes that an indeterminate sentence keeps the person under detention, in a state of great insecurity, which is far from helping his rehabilitation. The court is not always able, by reason of the lack of information, to decide the future of the guilty person. However, it is fundamentally unjust and contrary to the individual's rights, to imprison him without informing him *within a reasonable delay,* of the period of his imprisonment.

If the indeterminate sentence is understood to mean maintaining the guilty person indefinitely in a state of complete uncertainty regarding the length of his imprisonment, such a formula is probably worse than the arbitrary method actually in use. This Commission believes that it is possible to ask the courts to establish the guilt, and to decide on a maximum legal sentence. Following this, the correctional authorities must, within a period of a few weeks, complete their evaluation of the individual, and make known the programme they have determined for him.

82. Many advantages are to be found in the formula of division of verdict and sentence, provided we avoid the danger of prisoners being unaware of the duration of their sentences, for extended periods.

The « division » would leave, in the hands of the judges and magistrates, one responsibility, namely the verdict, which they have traditionally dealt with in a satisfactory manner. It would transfer the actual decision regarding the sentence, to a multi-disciplined team, which is in accordance with modern trends. Actually this would place more emphasis on the human sciences in the endeavour to assess the future behaviour of an individual.

There are disadvantages in this formula. These are clearly illustrated by the paradox from which the present prison system in Holland is suffering. In that country, the judges object strongly to prison sentences ; so much so, that with a population of 12 million people there are fewer than 2,000 persons in detention, daily. However, although Holland does not believe in long prison sentences, there are approximately 1,700 accused persons whose guilt has not been established, under detention every day, in prisons or diagnostic centres.

This can be explained (and that is the paradox) by the extent to which Holland utilizes specialists in the social sciences. To be precise, Holland makes so much of an effort to know the individual better before deciding on the sentence, that a large number of individuals are detained for four, six or even eight months to give the specialists the time to complete their analysis, and to give their diagnosis.

These experiences help to bring the problem into focus. If the sentences are left to the jurists, the risk is that the personality of the guilty person will not be given sufficient consideration. On the other hand, by using a

team of persons experienced in social sciences, there is danger of extremely long delays before the sentence is handed down, with the individual being exposed to the possibility of a period of analysis even longer than would be the prison sentence.

In the Commission's opinion, this in no way nullifies the advantage of the « division ». The system in Holland errs greatly by permitting these long enquiries and the extensive probing, into the private life of an individual who has not been found guilty. No analysis of the person should be permitted to intervene *before* the court has established the facts and decided the guilt of the individual.

Even after the verdict has been given by the court, it would still be essential to place time limitations on the specialists in social sciences. The specialists should never be permitted to take more than a small portion of the duration of the maximum sentence, to establish their final diagnosis, and a programme of treatment. For example, if a court finds an individual guilty of an offence which carries with it a maximum sentence of one year, the maximum period of delay for specialists should be limited to a few weeks, before making the sentence known.

What can be hoped for, is the systematic use of the human sciences, limited by the legal establishment of the facts, and the guilt, and without allowing the psychologist or the psychiatrist, to devote indefinite periods of time to study a particular record. Which leads this Commission to agree with the multi-disciplined aspect of the Californian sentences, to which should be added definite restrictions with regard to the time taken to establish a programme of treatment.

7 — IMPRISONMENT AS EXCEPTIONAL MEASURE (83)

83. Notwithstanding the objections being made to the use of prison sentences, there can be no doubt that a number of individuals must be put behind bars by reason of the right of society to full security. Nevertheless a modern philosophy of social action requires that imprisonment should not be the same for every category of those condemned.

Quebec's prison system must offer sufficient options to those responsible for deciding on the sentence, so that the treatment can be as individualized, as the sentence itself.

In the choice and training of personnel required to guard prisoners, the Minister of Justice should, as of now, take into consideration, not only the ability of the candidates to maintain and respect the requirements of security, but also their ability to establish and develop humane relations with the prisoners.

Actually, it will be necessary to distinguish very clearly, between the personnel required for security purposes, and the personnel on whom

will rest the responsibility for treatment. However, the Commission recommends that for the prison guards, who are able to take advantage of it, *a plan should be developed whereby it would be possible for them to make a remunerative transition to duties related directly to treatment and rehabilitation.*

8 — PART-TIME DETENTION (84)

84. Not only is it necessary to diversify the manner of imprisonment so that the treatment can be as individualized as the sentence, but it also is necessary to create correctional measures which are part-way between full release and total imprisonment.

In many cases, it can be shown that neither the security of society, nor the well being of the individual requires the guilty person to be completely cut off from the milieu in which he has lived. Futhermore, short sentences just as much as long sentences, mark with an indelible stigma, not only the delinquent, but also his family. It may happen that after only one or two weeks of detention, the individual will find himself without employment, and incapable of looking after the needs of his family.

In almost all these cases, part-time detention could be utilized. It could take different forms. For example, the individual condemned to ten days in prison could be allowed to serve his sentence on consecutive weekends. The advantages of this method are many. The family of the guilty person would not be the responsibility of society ; the presence of a number of individuals returning of their own accord to prisons would help to improve the atmosphere of the prisons ; the attitude of the prison personnel would change rapidly ; and the barriers between society and the prison milieu would be reduced considerably.

The United States and most of the European countries now have similar formulæ. The American Huber Plan permits hundreds of condemned persons to carry on work in the outside world. Belgium has changed many sentences of less than fourteen days to part-time detention. Research, however, would indicate that it is not desirable to impose on a condemned person the sacrifice of more than six consecutive weekends. Strangely enough if this limit is passed, it is the wife who considers herself to be unfairly charged with new family responsibilities.

9 — TRANSITIONAL MEASURES (85-86)

85. A new social action system will require, as it should, the absolute necessity of reintegrating a condemned person into normal society under

the best possible conditions. Up to now, society has taken the easy course of assuming little responsibility. Quite the contrary: the transgressors are considered to be those who have almost an unending debt to pay to society. Prevention and rehabilitation are also matters of general indifference.

With such attitudes the reaction of society to crime can be summarized in two words — arrest and punishment. At the end of the period of imprisonment, the prison doors are opened and the individual has little alternative, other than to depend upon himself, to begin a new life. There are, however, private organizations such as the John Howard Society and the Society of Orientation and Social Rehabilitation which do excellent work in trying to help a former prisoner to return to society, and not become a recidivist. Unfortunately, their efforts are of a limited nature. While society provides some supervision of probationers and parolees, it neglects almost entirely those who do not benefit from any reduction of sentence. The statistics of most countries indicate that relapses into crime take place, most frequently, within the first few weeks following the release of a prisoner. Almost any kind of supervision or support, to make the transition from prison to release less oppressive and discouraging, would help the individual, and would undoubtedly reduce the rate of recidivism.

It is this Commission's recommendation, however, that the Minister of Justice attack this problem one step earlier. Actually it is during the period of detention itself, that it is possible to help prisoners prepare themselves for their release. For example, the majority of prisoners could profit, without any danger to society, by a programme of visits to their families. Here again this is not a utopian measure, as most of the European prison systems, and particularly those of the Scandinavian countries, Belgium, and Holland, have adopted and practiced such a policy for many years, with excellent results. The Quebec prison system could also include a number of « open prisons » similar to those in existence in different forms, in some of the American States and in the majority of European countries.

Just as part-time detention is both desirable and possible, in a like manner, part-time freedom can be introduced very easily to enable the prisoner to gradually achieve full freedom. Many institutions were visited by the Commission, in which prisoners leave their place of detention in the morning, to work at their trades or professions, or to follow courses in educational institutions, and return to the prison in the evening. The results were most impressive.

86. The Commission is fully conscious that suggestions such as these are out of keeping with a system such as Quebec's, where social action against

the criminal, up to the present time, has been confined to repressive measures.

The Commission has become overwhelmingly aware of the fact that Quebec's traditional methods of punishment, have provided unsatisfactory, and even deplorable, results. Individuals have been unnecessarily and systematically marked for life by short sentences of imprisonment, without any real need for such action. Society has almost entirely neglected helping guilty persons to reintegrate themselves into a normal milieu. At the level of expenditures, probationary measures and rehabilitation services have never merited more than token sums of money.

As opposed to these attitudes, the Commission has noted that most of the European countries, today, emphasize the re-education of the prisoner, devoting an increasing part of their human and economic resources to probationary measures, and reducing drastically the number and duration of the sentences of imprisonment. All in all, they are convinced that most offenders can be remotivated to a normal way of life, and they are able to achieve a higher rate of rehabilitation at less cost. In the United States, the work of the Vera Foundation has begun a similar evolution.

C — THE FIGHT AGAINST CRIME (87-99)

87. Quebec's social action would not be complete if it were limited to treating guilty people in a more humane manner. Crime exists, and is growing, and it is not possible to envisage treatment of the guilty, unless first of all, the police are able to arrest them. Just as it is hoped that Quebec's correctional services will emphasize treatment rather than punishment, so the Commission hopes that the police forces will improve the rate of detection of crimes. It is wrong to consider the police as being opposed to those engaged in rehabilitation, that the detection of crime is opposed to the treatment of the criminal. The psychologist cannot develop worthwhile hypotheses unless he is studying a sufficient number of criminals. He could not think of giving the reasons for shoplifting until the police have cleared up a sufficient number of such petty thefts. The treatment depends, therefore, from many points of view, on the rate of detection. This one fact alone is sufficient to establish a bridge between the police, and those responsible for treatment, and to include the two groups in the same social action programme.

88. However, Quebec's police forces must have confidence in the value of the treatment given to the criminal. The greater part of modern research emphasizes, that the true force of deterrence is more likely to be found in the fear of a quick and certain arrest, than in severe punishment. In other

words, the fight against crime, calls for a higher rate of detection and apprehension, rather than a considerable number of long-term prison sentences. The police should not feel frustrated when the courts and the specialists in social sciences endeavour to give the criminal more humane treatment.

The police are not really in a position to judge the effectiveness of probationary measures, as they see only the failures, without ever hearing of those who have succeeded. Even if nine-tenths of those on parole conduct themselves honestly, the police, by reason of the part they have to play, will always be in contact with the ten percent who break the conditions of their release.

The work of a policeman, today, calls for extraordinary maturity and a rare equilibrium. The fight against *crime* calls for rapid intervention; also patient treatment of the *criminal.* This Commission wishes to see our police endowed with this kind of understanding.

1 — INTERPRETATION OF THE LAW (89)

89. The fight against crime involves the police forces in a very direct manner. It is also of direct concern to the executive authorities. The extent and nature of police work can vary considerably according to whether legislation is interpreted in an archaic or modern manner, as inquisitorial or tolerant. In the case of Quebec, the Commission urges the police to be more tolerant in their interpretation of the law.

2 — POLICE COORDINATION (90-95)

90. This Commission believes that one of the urgent priorities for government action is the problem of police coordination. The level of tolerance, with regard to the fragmentation of the police forces into small localized units, completely lacking in manpower, equipment, and techniques to fight crime, has long since been passed.

One always faces the expressed fear that the coordination and centralization of police forces in the Province of Quebec will result in a police state. A much greater risk of having arbitrary and dictatorial police forces exists today with more than four hundred absolutely independant police forces, for a population of 6,000,000. The Island of Montreal, with thirty different forces, is a tragic example of the danger of municipal boundaries in the fight against crime. This piecemeal operation deprives the public of adequate protection and profits only the criminal.

91. The amalgamation of police forces is more likely to result in social progress with a better guarantee of respect for the rights of citizens, than in a danger to society.

A country, as free as Sweden, has a Police Commission with much greater powers than those given to the recently formed Police Commission in Quebec. In Denmark, all the police today are under a single authority. England with a population of almost 60,000,000 has recently reduced the number of its police forces from 120 to 50, all subject to supervision by the Home Office. There are numerous examples of similar consolidations in different American States such as Tennessee, and in other European countries, such as France and Holland.

92. The Quebec situation, with its fragmentation of polices forces is so absurd, that it appears inconceivable that it be permitted to continue. It is the Commission's intention to deal with this problem in detail in a subsequent report. The Quebec Government, however, can institute preliminary steps which would eventually lead to a fully coordinated police set-up. First, all cities and towns with fewer than 10,000 population should not be permitted to have their own police forces. The police forces already in existence in these municipalities, should temporarily be subject to the authority of the Provincial Police, who, as quickly as possible, would institute a uniform training programme. This would be *the first step* in the formation of a professional police force required in a new social action programme. For those who would raise the threat of a police state, it should be noted that England some time ago, passed a law forbidding any area with less than 200,000 inhabitants to have its own police force.

93. In recommending a temporary take-over of the smaller municipal police forces by the Provincial Police, the Commission is not proposing the formation of a single police force for the Province.

The municipal authorities should undertake, as soon as possible, the setting up of regional police administrations which would exercise the necessary control over the police forces in each region. The Commission recommends about ten regional police forces for the Province, each responsible for its own region, with considerable autonomy, but adopting uniform methods of training, and under the general control of the Police Commission.

The Provincial Police would act as a coordinator for the setting up of the regional administrations and would provide the necessary training programme for each regional authority.

To encourage municipalities to act, the Quebec Government would defray part of the cost of the police services in any area which collaborates towards amalgamation. This is the method which has been used in Eng-

land with considerable success by the Home Office. In a realtively short time, the recently formed Police Commission should be in a position to assume responsibiliy for the training, refresher courses, and improvement, of all the police in the Province of Quebec. The only reason for not recommending that the entire problem be turned over to the Police Commission now, is, that its formation has been so recent, that it has not yet been able to fully develop its programme.

94. Our recommandations visualize different steps in the coordination of police forces. The first would be for the Minister of Justice to eliminate, as quickly as possible, the smaller police forces, as they are, incapable of professionalism, operate in an arbitrary manner on the basis of improvisation, and finally because they are subject, in a rather undue and abnormal manner, to the influence of local politics.

The second step, also calling for action by the Minister of Justice, would be to require all policeman, and those aspiring to be policeman, to be subject to uniform training and regulations. This is now in process of being done, thanks to the Police Commission, and to the Institute now being formed.

The third step would be to organize about ten large regional police forces, under the authority of the Quebec Police Commission, from a professional point of view ; and from an administrative point of view, subject to the authority of the regional administrations, supported financially by the Quebec Government.

95. This programme of action would give the Province of Quebec police force a specific role to play. There is need for a police force with powers extending beyond the regional borders, on which the various police forces of Quebec can depend, during, and after, the period of coordination.

Once again attention is drawn to the formula adopted in England. Contrary to the popular concept, Scotland Yard is above all a municipal police force, with the direct responsibility of looking after Metropolitan London. By force of circumstances, Scotland Yard has developed a super structure, and a series of specialized services, which are today being used by the fifty other police forces of the United Kingdom. The New Scotland Yard is both a metropolitan police force, and for certain services a state police.

The Commission believes that this formula has many advantages. By deeply rooting the national police force in a given area, specialists are in contact with the daily realities, and thus the dangers of a hiatus between the national police, and the police forces of the different regions is minimized. No antagonism between the New Scotland Yard, considered for many services as the national police, and the regional police, is in evidence. The regions, rather seem to consider New Scotland Yard as a « primus inter pares » (first among equals), involved in the same problems as the other regions, but endowed with more efficient and advanced technical services.

In Quebec, the Provincial Police force could very quickly arrive at analogous results, by taking charge of the entire police activities of a region, and concurrently developing technical services which would be offered to the different police regions in Quebec.

The different regional administrations for their part, would gradually absorb the municipal police forces, thereby establishing regional police forces of much higher calibre, and would enter into the necessary agreements with the Province of Quebec Police force for the technical services which the latter make available.

3 — MASS DEMONSTRATIONS (96-99)

96. Throughout the world, mass demonstrations are one of the principal headaches of police forces. What adds to the impact of these demonstrations is that they run like a powder train, from one country, and even from one continent, to the other. A race riot in Chicago or Washington, has repercussions in European Countries. In the same way, the demonstrations of Parisian students in May and June 1968, were echoed in the Province of Quebec.

This is definitely a universal phenomenon, and it is therefore important to compare the different methods used to deal with these mass demonstrations, and to measure, as much as possible, the effectiveness of these methods. Up to the present, the major police forces of the Province of Quebec, and particularly that of the City of Montreal, have adopted the American policy, and are prepared to respond to force with force. However, it is evident to any analyst, that the recourse by the police to tear-gas, to water hoses and to heavy equipment, has resulted in a series of spiralling reactions.

Countries on this side of the Atlantic, are today on the road to increased turbulence, between the group demonstrators, and police forces.

97. With the exception of a few examples of brutal repression in France and Italy, it can be said that the European countries show a much greater tolerance toward public or student demonstrations, than does Canada. Even within the context of tolerance, it is worthwhile paying particular attention to the behaviour of the British police.

At the end of October 1968, thousands of demonstrators descended on London without causing the London police to lose their traditional sang

froid. The British police are not usually armed, nor were they in this critical situation. They did not resort to water hoses, horses nor to their batons.

On the night of October 27, at the end of a long day of manifestations and scuffles, the results were quite definitely of a positive nature: several dozen arrests were made of individuals who themselves were carrying offensive weapons ; several black eyes for the policemen ; universal congratulations on the part of the demonstrators themselves and the public, with regard to the manner in which the London police had handled themselves.

98. It is appreciated that England and Quebec do not live in identical contexts, but it would be wrong to simplify matters in reverse, and to conclude that the British public and police forces form part of a world without any relationship to Quebec. It cannot even be concluded, after examining the facts, that the London police were favoured by luck. On the contrary, New Scotland Yard had foreseen even the most insignificant incidents of the day, many weeks in advance. The police had infiltrated into the groups of protesters to such an extent, that some of the members of the London police force were part of the organizing committee. On the eve of the demonstrations, hundred of police kept close watch on, airports and the railway and bus stations in the London area. They arrested those who arrived in the Capital openly armed with offensive weapons.

The police had been oriented towards prevention from the very beginning. At the time of the demonstration a large number of the offensive weapons, which belonged to the demonstrators, were already in the hands of the police. Futhermore, the police knew, thanks to the infiltration, exactly what the plans of the demonstrators were.

All this, however, was not enough to ensure avoiding an escalation. The senior police officers completed their programme, by forbidding their men to have recourse to force.

The English results notwithstanding the differences between our two countries should encourage Quebec's police forces to re-evaluate their methods of handling such demonstrations.

99. In the light of the British experience, and following conversations with the police officers responsible for their strategy, the Commission believes it to be necessary and urgent to ask Quebec's police, and the general public, to react in a more unemotional manner to public demonstrations.

For example, the police directors in the Province should not ask the political authorities, publicly, to forbid certain demonstrations. New Scotland Yard believes that the role of the policeman in public demonstrations should be that of protecting the right of a citizen to demonstrate, rather

than to persecute him. The directors of London police, moreover, believe that there is considerable danger of needless provocation on the part of the police, by threatening the demonstrators with brutal repression.

The British strategy is in accord with the conclusions reached by the American Commission of Enquiry dealing with racial incidents. That Commission in its report presented in the spring of 1968, severly blamed (although in a somewhat different context) the police forces which had procured heavy equipment, to be in a position as they stated publicly, to reply to force with force.

The Commission intends to make a specific report which will indicate how police work should be integrated with a new social action programme.

D — THE ROLE OF LAWYERS (100)

100. In America, the trial has become by force of circumstances a spectacle in which two practitioners of law engage too often in a battle fraught with surprise witnesses, and last minute evidence. It frequently results in delays in the administration of justice, and a denial of justice to the accused. If it were possible to initiate and develop an enlightened cooperation between the Crown and the defence, it would be relatively easy to establish the charges against the accused, and to determine the necessary treatment.

The Minister of Justice has the immediate responsibility of requiring the permanent Crown prosecutors to make available to the defence lawyers, all the proof against the accused which they have been able to gather, and the list of witnesses they intend to call. This collaboration of the Crown should go so far as to make available to all the defence lawyers, the facts established by the police. The lawyer for the defence should also be able to have the police make any supplementary investigations which he thinks necessary on behalf of the accused.

In Denmark, defence lawyers have informed the Commission members that they are completely satisfied with the cooperation of the police and the representatives of the State. This cooperation of the police is of such a nature that defence lawyers have even renounced engaging their own investigators, certain they can always count on the police for further enquiries. We are undoubtedly far from such an ideal, but we believe that specific instructions from the Minister of Justice to his permanent prosecutors could mark the first major step in developing better relations between the Crown and the defence.

One of the worst evils from which Quebec's judicial system suffers, is the number of delays and postponements which frequently, unduly prolong the period of imprisonment, of an accused person.

Looking at the problem objectively, the Commission does not think that the Bar has up to the present time, used all the initiative and imagination necessary to persuade lawyers, of the need to protect the rights of citizens, by keeping postponements to the minimum.

It would certainly be utopian to hope that postponements in the course of a trial could disappear entirely. However, it is in the interest of the public and of those citizens who find themselves involved, that the Bar demand and even take the necessary measures to have lawyers speed up the administration of justice.

In the absence of a tariff of rates for the professional work done by the criminal lawyer, it is also important that the Bar encourage its members, who up to the present have generously supported the legal aid system, to always respect the criteria of common sense.

E — THE ROLE OF THE MAGISTRATURE (101-104)

101. In recommending improvements in the administration of justice on criminal and penal matters the Commission has endeavoured to keep in mind, the need to fully preserve the freedom and independence of the magistrature.

The Commission rejects the practice adopted by a number of the American States, to submit judges to an election by popular vote.

The idea that judges should remain on the bench for a limited period has also been rejected. The Commission believes that a society could not draw on the best elements of the legal profession for its judges, unless it could guarantee a truly judicial career.

1 — PROTECTION OF INDIVIDUAL RIGHTS (102)

102. Although the independence of the judicial power has been stressed, the Commission has recommended a division between the verdict and the sentence.

In other words, it is hoped that the judicial sentence will not be the decision, sometimes improvised, of a judge alone, but rather a decision in which members of the human sciences will participate.

Further in this report it is also intended to deal with the need to have the public participate more directly in the administration of justice, and even in the rendering of verdicts.

Decisions taken by the penal administration should have the careful scrutiny of the courts ; and paroles should not be removed entirely from the judicial decision. For example, it should not be possible to revoke a parole, without permitting the individual the right of appeal to a court.

It is hoped that the judicial power will examine more closely, the negotiations which take place between the prosecution and the defence regarding the charge to which an accused person pleads guilty. It should be the responsibility of the court to make certain that the accused knows exactly what he is admitting when he pleads guilty. It is also important that the courts examine the actions of police forces, to make certain that an accused person benefits, without any delay, from a legal security service.

In short, at the level of the sentence and treatment, even though the social sciences should carry increased responsibilities, the court should always be available to the accused, and to the condemned, to review the decisions of administrative authorities, and to assure full respect for the rights of individuals.

2 — TRAINING AND NOMINATION (103)

103. It is an understatement to say that there is ambiguity in Quebec's practices and customs with regard to the training and nomination of judges. The university training is deficient on matters pertaining to the administration of justice on criminal and penal matters, and the number of criminal lawyers are so few that it is often necessary to appoint lawyers who have experience only in civil matters, to courts of criminal jurisdiction. Finally, the method of selecting judges does not offer sufficient guarantees of ability and competency.

The spectacular increase in the number of criminal case precludes any hope of rapid improvement in the situation. It is difficult, and will become even more so, to recruit a sufficient number of competent judges. For these and other reasons, this Commission believes that it is necessary to limit recourse to juridicial skills to the highest echelons of the judicial system.

Human resources are used poorly when highly skilled judges are required to hear routine cases, particularly those relating to traffic infractions, which any layman of good judgment could handle. By this misuse, not only does the community deprive itself of the professional juridical skills which are indispensible at the level of appeals, but bottlenecks and delays, so detrimental to the administration of justice, are created.

By limiting the use of competent professional judges to the higher courts, provision could be made very easily to provide for more adequate training and a better selection. As the number of positions reserved to jurists would be fewer, the public could be more demanding with respect to the method of nomination, and it would be possible to be more generous with regard to the levels of remuneration.

It is the Commission's intention to propose a new method for the selection of judges in a subsequent report.

3 — INTEGRATION OF THE JUDICIAL SYSTEM (104)

104. Quebec's judicial system includes such a variety of levels and jurisdictions that it results in many disadvantages and drawbacks.

By reason of the overlapping of certain jurisdictions, such as the Municipal Court and the Court of Sessions of the Peace, it is possible, today, for a police force or the Crown to chose the court before which cases will be heard. There is also a deep void between the Social Welfare Court, and other courts which are called upon to make decisions involving the family.

Instead of suggesting the creation of new autonomous jurisdictions, the Commission is recommending the integration of the judicial system into a more unified and coherent ensemble. Undoubtedly, certain factors require special attention, but a judicial system is required which would merge all the different sections under one guidance, rather than maintain or increase the present fragmentation.

F — PARTICIPATION OF THE PUBLIC (105-107)

105. Up to the present, the Quebec public has remained somewhat indifferent to the administration of justice. If one excepts the foster homes which have traditionally filled an important role in the work of the Social Welfare Courts, and if the helpful role played by certain private organizations such as the John Howard Society and the Society of the Orientation and Social Rehabilitation are also excluded, we realize that the Quebec public has never been directly involved in the administration of justice or the rehabilitation of the guilty. In the Commission's opinion, this non-participation is one of the factors keeping Quebec out of the process of evolution taking place in most of the modern European countries.

1 — PROBATION (106)

106. Sweden, Denmark and Holland profit tremendously by the participation of the public in all probationary measures. For example, the Swedish correctional system has fewer than 200 professional probation officers, as against almost 9,000 voluntary workers who only receive a nominal remuneration. For all practical purposes, each voluntary worker is only involved on a part-time basis, and looks after two or three probationers, at most; which means that the public is responsible for nearly 22,000 individuals who

are not serving their sentence in prison. Each of the 200 professionals, who are fulltime probation officers, supervises the work of approximately 50 citizens involved in the application of probationary measures. Denmark and Holland have almost the same system. Quebec, with the need to develop probationary measures more rapidly, and also by reason of the insufficiency of economic resources available for such services, should orient itself in this direction, at least temporarily.

The implications, of such a policy or plan of social action, are many. It is desirable to give a probationer, a supervisor from his own milieu, and able to speak his own language. The state would be called upon to make available much smaller sums of money, than if professionals were used extensively. Finally, the European systems which have utilized volunteer supervisors in a systematic manner, have found it much less difficult than Quebec to reintegrate transgressors, into a normal society. Actually, when thousands of citizens have participated in the supervision and the rehabilitation of condemned persons, there is a greater understanding on the part of the public, making it easier for the individual who is rehabilitated to find employment.

This system is even better suited to Quebec, as there are a variety of intermediate organizations ready to undertake this work. Most of Quebec's welfare federations actually have a diocesan social service, deeply rooted in the different regions. If they were to be given this responsibility, a worthwhile probation service, over the entire Province, could be developed rapidly.

2 — MAGISTRATES (107)

107. For the same reasons as for probation, the judicial system should in the Commission's opinion, have greater participation by citizens. There are tremendous advantages in the English system, which confides to 17,000 lay magistrates the hearing of 98% of the criminal and penal cases. In 1967, the lay magistrates in Britain dealt with 1,250,000 cases with only 6,000 appeals. Of these appeals, only 18 resulted in a reversal of the first decision.

The advantages are many. First, the delays in the judicial system are reduced considerably, because it is relatively easy to recruit more volunteers during the peak periods. Second, as in the case of probation, a greater understanding and tolerance can be developed on the part of the public, and thus the difficulties encountered by the criminal are reduced when he is on the road to rehabilitation. And finally, the financial burden is reduced, while, at the same time the juridical competency of the courts of appeal, composed of full-time judges, is improved.

The English lower courts adopt the collegial principle, each court having three lay magistrates. In addition, each of these courts has the

full-time service of a Secretary-Clerk, who is legally qualified. This legal secretary acts as advisor to the court, and records all the proceedings.

Within the framework of the report which the Commission intends devoting to the judicial system, details will be provided as to how Quebec can borrow, with profit, from the English system. As of now, it is suggested that the Social Welfare Court take advantage of the services of citizens, by utilizing assistant lay magistrates.

CONCLUSION

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108. During the succeeding months, the Commission will publish a series of reports which will be closely related to this general philosophy. All of them will emphasize the respect of the fundamental rights of the individual and will propose specific programmes of action for the different areas related to the administration of justice on criminal and penal matters.

Drawing from the general orientation as recommended in this introduction, the reports will deal with crime, the principal aspects of crime, organized crime, juvenile delinquency, the police forces, the judicial power, the lawyer, legal security, effective application of the laws, preventive and correctional measures, post penal treatment, research, and the responsibilities of the citizen and society.

Montreal, December 20, 1968.

President

Commissioner

Secretary

Commissioner

END