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1974

Report on

The Administration of Justice in Manitoba
Part 1 - The control of post-arrest / pre-trial detention

40634

MANITOBA
LAW REFORM COMMISSION

MANITOBA

LAW REFORM COMMISSION

COMMISSION DE RÉFORME DU DROIT

REPORT

ON

THE ADMINISTRATION OF JUSTICE IN MANITOBA

PART I

THE CONTROL OF POST-ARREST/PRE-TRIAL DETENTION

NCJRS

APR 22 1977

ACQUISITIONS

Report #15 February 26, 1974

The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

The Commissioners are:

Francis C. Muldoon, Q.C. *Chairman*

R. Dale Gibson

C. Myrna Bowman

Robert G. Smethurst, Q.C.

Val Werier

Sybil Shack

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Professor Paul Thomas is Chief Research Officer to the Commission. The Secretary of the Commission is Miss Suzanne Pelletier.

The Commission offices are located at 331 Law Courts Building, Winnipeg, Manitoba.

The subject of this Report is post-arrest, pre-trial detention in Manitoba. In most instances such confinement is carried out by the police force by whom the prisoner was arrested. In most cases, the accusers then have complete dominion over the accused.

This is one aspect of the administration of justice in which the rights of the individual can appear to be quite divorced from the spirit of the law. This is so because the confinement of an accused person upon and after arrest is often the crucial pivot-point in the scales of our criminal justice system. It can certainly be crucial to the investigation of alleged breaches of the law, in terms of what the person accused of such breaches chooses to say to the investigators who are holding that person in captivity. It is invariably crucial to the accused captive, in terms of his or her lawful right to be silent despite close interrogation, and to retain legal counsel while in captivity. This aspect of the administration of justice provides a significant test of our basic ideas of human dignity and even-handed justice on the part of a self-governing people. It is closely related to the enforcement of the criminal law and to the police powers of the state, both federal and provincial.

THE CONSTITUTIONAL BACKGROUND

In a generic sense, the 'criminal' law to which every person in Canada is subject, is enacted both by the Parliament of Canada and the Legislature of each province.[1] Canada's main constitutional document, *The British North America Act*, makes provision in this field of criminal and so-called 'quasi-criminal' law for a rudimentary system of checks and balances as between the central government and the provinces.

Section 91 of *The B.N.A. Act* describes the legislative authority of Parliament, and Head 27 of that section reserves to Parliament exclusive jurisdiction over:

> 27. The Criminal Law, except the Constitution of the Court of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

It is under this authority that Parliament has enacted the *Criminal Code* (including such matters as capital punishment, bail reform, and the recent 'wire-tapping' provisions), the *Narcotic Control Act*, and the *Juvenile Delinquents Act* among others.

Section 92 of *The B.N.A. Act* describes the subjects of provincial legislation, and Heads 14 and 15 of that section reserve to the provincial Legislature exclusive jurisdiction over:

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1 The Council of each municipality (i.e. city, town, etc.) all of which are creatures of the provincial Legislature, may enact by-laws which bear penal sanctions and are enforced in the same manner as criminal law proper.

14. The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

It is under the authority of the latter provision that the Legislature enacts that offences against *"The Highway Traffic Act"* and *"The Liquor Control Act"*, for example, be punishable by fine or imprisonment.

Thus it is that whilst the main body of important criminal law is enacted by Parliament, some 'criminal' law is also enacted by the provincial Legislature and its creatures, the municipalities. On the other hand, the main body of criminal law enacted by Parliament, for example under the *Criminal Code* and the *Juvenile Delinquents Act*, is actually enforced by the Province through the various local police forces (including the R.C.M.P. on a contract basis) and through the provincial Department of the Attorney-General. Virtually every local police force maintains a headquarters or detachment premises and in most there are holding cells or a 'lockup'. We have described this basic constitutional background to show the interrelation of federal and provincial authority; and to illustrate that in the matter of our concern — pre-trial confinement or detention — the Province has authority to make changes and to effect reforms.

THE SPIRIT OF THE LAW AND INDIVIDUAL RIGHTS

The basic principle of the criminal law of a dignified, self-governing people is an ancient one, born in Latin: *nemo tenetur seipsum accusare.* No one shall be compelled to accuse himself. It is a mandate for all seasons — for wartime and peacetime; hard times and good times; autocratic regimes and democratic regimes; police states and frontier communities. It is the very root of law and order because it helps to ensure that those enforcing the law will not do violence to persons whom they suspect of breaking the law, for the purpose of extorting a confession and ensuring a successful prosecution.

It appears to be self-evident, and wholly justifiable, that police investigators must be utterly free to pose questions to any person in the furtherance of their investigations of criminal wrong-doing. Evidently, this freedom to ask answers should extend to posing questions to anyone believed to have relevant information: passers-by, clerks and others who deal with the public, suspects and even the person who is accused of the crime under investigation. The law is clear that police investigators do not have the authority to detain anyone merely for questioning unless that person be *formally* arrested. Also, placing a person under arrest is not to be done on a whim, because the law is also clear that the arrested person has a right to sue the arresting constable and his or her municipal or other employer for

damages to compensate for the indignity of false arrest, where the arrest was effected without reasonable grounds for believing that the person committed the crime. It must also be noted that a person to whom questions are posed by the investigator has (with few exceptions) the right to remain silent or to decline to answer any particular questions. Not all persons know their rights; not all persons have the presence to withstand persistent questioning. It appears that very few persons are willing or able to go to the trouble, time and expense to sue for compensation for infringement of their legal rights.

Frequently, if the questioned person has not actually broken the law, and has no other good reason for insisting on the privacy of his conduct, there is no point in declining to answer. Often, however, it may be that some other good reason makes it perfectly justifiable for an actually innocent person to demand the advice of counsel before making any answers.

In relation to crimes charged under statutes of Parliament, *The Canadian Bill of Rights* reaffirms and accords to the accused person "the right to retain and instruct counsel without delay". This right, if invoked successfully, guarantees that an arrested person can be advised by counsel of the further right to decline to answer some or all questions. That this right is a real one, was recently demonstrated by the Manitoba Court of Appeal in the case of *Regina v. Penner* [1973] 6 W.W.R. 94.

It is precisely because a confession, the self-accusation of an accused person, can be reasonably regarded as the best evidence of guilt, that the basic premise rules out compulsion. To be admissible evidence of guilt a confession must be voluntary. That is to say, to be voluntary a statement cannot have been extorted by fear of reprisal, nor wheedled by promise of advantage. Needless to say, a confession made just to gain respite from a brutal beating or other physical or mental torture is in no sense voluntary. It should be noted however that a confession confided to an apparently sympathetic fellow prisoner who is in reality 'planted' to inform, though obtained by trickery, is not on that ground alone inadmissible as evidence of guilt. Finally, of course, even a legally inadmissible statement or confession, may lead the investigator to discover other admissible evidence.

Over the years, the judges as much as the legislators have articulated the rights of accused persons. The study paper on Evidence, entitled Compellability of the Accused and the Admissibility of his Statements, prepared by the Evidence Project researchers of the Law Reform Commission of Canada[2] makes the point as follows:

> The leading modern case on confessions *Ibrahim's Case,*[3] still relied on by Canadian courts, repeated the rule of exclusion for involuntary statements, but also expressed the view that judges, in

[2] January, 1973, #5 at page 5.

[3] Endnote 23, [1914] A.C. 599 (P.C.)

their discretion, may exclude statements to prevent improper questioning of prisoners.[4] Numerous Canadian decisions during the first half of the twentieth century recognized this discretion in the trial judge to reject a confession even though it was voluntary in the accepted sense.[5] It appears from these English and Canadian decisions that the privilege against self-incrimination, which had gradually been extended to protect the accused from questioning at trial and then from questioning by the examining justice, was continuing to grow and to be seen as a protection against improper questioning and the use of unfair tactics by the police.[6] Although the necessity and morality of police questioning appeared to be assumed by the courts at this time, they attempted to ensure that the police used fair methods in obtaining statements.

THE POLICE

What follows is nothing more than a bare sketch of the place and function of the police in the social order.

It is evident that there is a necessary place in any civilized community for a police force. Within recent years it has been amply demonstrated in Canada that when that necessary place is vacated chaos rapidly follows. This is because the police perform essential functions.

During the past decade it was the chic conventional wisdom of many a sage cynic to assert that police functions are no doubt essential to every and

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4 (Endnote 24) Ibid., at 614. See also R. v. Voisin (1918), 13 Cr. App. Rep. 89: "... the mere fact that a statement is made in answer to a question put by a police-constable is not in itself sufficient to make the statement inadmissible in law. It may be, and often is, a ground for the judge in his discretion excluding the evidence; but he should do so only if he thinks the statement was not a voluntary one in the sense above mentioned *or* was an unguarded answer made under circumstances that rendered it unreliable, *or unfair, for some reason, to be allowed in evidence against the prisoner.*" (Emphasis added.)

5 (Endnote 25) For example, see R. v. Fitton [1956] S.C.R. 958 per Nolan, J., who in denying that questioning a prisoner automatically renders his statements inadmissible, quoted with approval the above remarks in Voisin; and see R. v. Kooten (1926), 46 C.C.C. 159 at 163 per Curran, J., adopting that statement as his own. See also R. v. Price, [1931] 3 D.L.R. 155 (N.B.C.A.); R. v. Anderson, [1942] 3 D.L.R. 179 (B.C.C.A.); R. v. Gillis, [1966] 2 C.C.C. 219 (B.C.C.A.); and R. v. Starr (1960), 33 C.R. 277 (Man. Co. Ct.). Note also the apparent approval of this attitude in the leading Canadian decision of Boudreau v. The King, [1949] S.C.R. 262, esp. at 271 and 275.

6 Although the histories of the two rules were distinct, a dual function of the confession rule, to promote trustworthiness and to protect the person's privilege against self-incrimination, was recognized recently in England in R. v. Harz, [1967] A.C. 760 at 820 (H.L.) and in the United States in Miranda v. Arizona (1966) 384 U.S. 436. See express Canadian recognition in DeClercq v. The Queen, [1966] 1 O.R. 674 (C.A.) per Laskin, J.A., dissenting, and R. v. Wray (1970), 11 D.L.R. (3d) 673 (S.C.C.) per Cartwright, C.J., dissenting.

any self-respecting tyranny. That is doubtlessly true of tyrannies. But the function of the police is even more essential in a parliamentary democracy where the laws are made by, and the government is responsible to, the democratically elected representatives of the people.

What is this essential function in society? Basically it is, as implied in the motto of the Royal Canadian Mounted Police, to enforce the law. It is not necessarily to keep the peace: many reasonable people will not concede that to be a police function because of the imprecision and latitude of the concept. The maintaining, upholding or enforcing of the law relates directly to those social regulations which are enacted by and with the advice and consent of the people's representatives.

The function and duty of the whole range of constabulary, including not only uniformed police and detectives but sheriffs and bailiffs, too, is to enforce the law. It is apparent, therefore, that in a parliamentary democracy such as ours, law enforcement officers must never purport to be a law unto themselves. Law enforcement functions are as distinct from legislative functions and judicial functions as the latter two are from each other.

Indeed, such distinctions were enunciated late in 1964 by the then Attorney-General, the Hon. Stewart E. McLean when, in announcing that a separate magistrates' court building for Winnipeg would be constructed in addition to new police headquarters, he said:

> The provision of this separate court accommodation will, I trust, emphasize what to me is an important concept, namely, the complete separation of the policing functions and the judicial functions. I think it is most important to emphasize this separation and I believe that it is important, not only that they are understood to be separated but that they appear to all concerned to be completely separate and independent one of the other.
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> . . .
>
> In making this announcement I would like to reiterate something I said some months ago that in my opinion the time had come to stop using the terms "police courts" and "police magistrates". I much prefer the use of the terms "magistrates court" and "magistrate". While I would not, at the present time, suggest what is being done in at least one other province of calling the magistrate "judge", I certainly think the proper terminology to be applied is that of "magistrate". The use of this terminology would assist greatly in making abundantly clear the respective responsibilities and functions of the police forces and the judicial officers.[7]

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[7] (1965) 35 Man. Bar News, 284.

As suggested by Dale and Lee Gibson, authors of *Substantial Justice*, [8]

> Financial exigencies seem to have frustrated Mr. McLean's good intentions, however. The separate magistrates' courthouse was never built, and when the Public Safety Building was completed it contained permanent courtrooms.[9]

It should be noted that it contained permanent jailers' quarters, too, in which members of the City of Winnipeg Police Department had, and have, pre-trial custody of persons arrested on suspicion of crime. It should also be noted that investigating officers of the same Department of which the jailers are members, have easy access to prisoners for interrogation in private interview rooms in these very quarters. This is not an acceptable arrangement.

THE VICE OF THE ARRANGEMENT

In view of the law regarding statements or confessions of the accused, and in view of the generally persistent efforts of judges to prevent improper questioning of prisoners and to ensure that the police use fair methods in obtaining statements, the lodging of prisoners in the custody of the same police force as is investigating the suspected lawbreaking of the prisoner is not a wholesome practice. The police forces of Manitoba are, after all, para-military organizations of armed men (and women) which exercise complete discipline and authority over the internal activities of their own 'fortresses', be they a formidable Public Safety Building or a rural detachment office. How likely is it that jailers would remonstrate, or remind investigating officers of the same force, about the legal requirement of not engaging in improper questioning or intimidation of the prisoner when he or she is taken into the interrogation room behind a windowless closed door? How likely is it that these mere jailers would dare to intervene in such an interrogation? We suggest that it is highly unlikely, if not unthinkable, in both instances. Where the jailers are not subordinate members of the investigating force, but are themselves the investigators, the conclusions are even stronger! Police activities, in our kind of society, should always be above reproach or even suspicion of wrongdoing. To the knowledge, and in the experience of many of us, it is evident that where police have the pre-trial custody of accused prisoners, suspicion of intimidation and battery sporadically envelops police premises.

Let us make it clear that we appreciate the frequent danger and frustration of police work. We are also aware that police officers, like others, have differing thresholds of tolerance to frustration and to the lamentable atrocity of some kinds of criminal behaviour.

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[8] 1972 Peguis Publishers.

[9] *Ibid.*, p. 307.

We have only high praise for those police officers who carry out their trying duties with integrity and within the law. Indeed, the Commission confidently assumes that the vast majority of police officers do just that, day in and day out. In truth it is difficult to find adequate expressions of tribute to the great good sense and high order of professionalism displayed by the majority of police officers in a myriad of circumstances which we can observe. They enforce laws enacted by at least three types of legislative body: Parliament, the provincial Legislature and the municipal council. They not infrequently have to suffer the complaints and abusive language which would more logically be directed to the various legislators. They sometimes have to defend themselves from physical violence in order to carry out their duties. Despite its dangerous aspects, we consider that most police officers habitually do their job with legal and professional integrity. The Commission respectfully salutes these courageous public servants.

Over the years, some police officers have enjoyed an excellent reputation for effective police work without any serious suggestion of improper treatment of prisoners; others bear less enviable reputations. It has been thoughtfully said that the quality of a civilization can be measured by the manner in which it deals with its hostages or prisoners. Therefore, unless and until those who make and those who interpret the laws of our community give legal licence to intimidate, extort or beat 'confessions' from accused prisoners, the community should move with despatch to eradicate all shred of suspicion that police officers could, might or do employ such methods. Needless to say, no such licence is accorded under present laws. Extinguish the fire, and the smoke of suspicion will clear away.

It must be apparent that this Report is not intended to be an indictment with charges levied against anyone in particular. Such is not the route we choose to pursue in making our recommendations for reform. In truth, the Commission here represents the community, including those lawyers who practice in the criminal courts. We desire that crime be detected and reduced in our community. We expect that the speedy detection, arrest, conviction and detention of undoubted criminals will deter from crime others who might be similarly tempted. Like most of our fellow Manitobans we respect the social need for 'law and order', and we do not employ that expression as a kind of shorthand code for any behaviour which is unlawful or disorderly, as it is understood to be in other places.

We desire an upgrading of police credibility in Manitoba. The conditions which generate suspicion of police misbehaviour, corroborated by an unfortunate incident here or an undeniable allegation there, should be terminated. They are corrosive. But how can the public be credibly assured that police misbehaviour does *not* occur in the closed confines of a public safety fortress? Who is there to investigate the investigators? Local police commissions give the impression of being notoriously reluctant and defensive in responding to complaints.

One further attitude to this subject ought to be examined. Is it valid, practical and desirable to assert that, for all our concern, ordinary, decent

folk have nothing to fear in any event? Is it a justifiable answer to believe that, even if there be occasional substance to the aura of suspicion, it is only after all the guilty, the social scum and the rounders who get their just desserts in this business? Is it valid to assert that such people almost never ask or demand to call legal counsel upon arrest? We think that these considerations are utterly invalid, impractical and undesirable.

Firstly, although none of us has ever personally investigated such complaints (nor would we, as private citizens, be permitted to do so) some of us have, over the years, heard ordinary decent folk relate that once the cruiser car or patrol wagon in which they were conveyed entered into the police building — and was thereupon lost to public view — mistreatment commenced. Not infrequently, such ordinary, decent folk were already vociferously complaining about being arrested in the first place.

Secondly, history teaches that if law enforcement methods do not respect the rights and dignity of the so-called scum of society, they ultimately respect the rights and dignity of nobody. Frequently, the scum is in the eye of the beholder.

Thirdly, if the stated attitude were to prevail no social or legal reforms would ever take place. Over the years, criminal law and penal reforms have obviously not been effected to relieve the suffering of the rich, the powerful, the influential or even the ordinary people who in large numbers are ordinarily not molested or arrested by law enforcement agencies.

Finally, the Commission considers that the quality of parliamentary democracy and civilization itself is downgraded by the persistent suspicion that, because of the unwholesome arrangement of custodial facilities, police forces can behave as if they were a law unto themselves. Furthermore, there is something almost incestuous about high ranking officers being consulted by local police commissions as to the investigation of complaints against their own forces. It is apparent that in most cases if the investigation of a complaint be delayed, or utterly ignored, the complaint will ultimately just evaporate, because there exists no practical independent means of pursuing it. But the potential for abuse of power does not evaporate.

ATTITUDES OF OTHERS

The Commission corresponded with, and offered the opportunity to attend at one of our meetings to, various Chief Constables in Manitoba. In formulating our invitations to correspond or to attend, or both, we stated the subject of our deliberations in a letter as illustrated in Appendix "A". A considerable correspondence developed from this invitation. Although none of our correspondents requested that we keep their responses confidential, we think it desirable not to quote specifically, or by name, from them.

Some Chief Constables agreed that there should be a separation of investigative forces from custodial forces. One reported that the premises from which his urban police force operates have no custodial facilities; and he accordingly had no quarrel with the proposal of taking the onus of

responsibility from the police by eliminating police supervised station lock-ups and holding cells. Another urban community Chief Constable asserted quite frankly that the question of the custody of arrested persons has been a subject which, over the years, has created a great deal of bad publicity for the police, although in most cases, he thought unjustly so. This particular Chief Constable expressed the view that a separation of custodial from investigative forces would generate many benefits, the foremost of which would be the releasing of police officers to the general policing duties for which they are hired.

Most of the police chiefs who corresponded with the Commission did not favour the separation of control over post-arrest custodial facilities. The basis of their disfavour was founded on the assumption that prisoners would have to be transported to an off-premises custodial facility, thus incurring a significant loss of time; and that access to prisoners would be diminished, thus impeding efficient investigation. That assumption is not necessarily apposite to the conversion of all custodial facilities into "neutral" ground. By "neutral", we mean being under the control and supervision of neither the accusers nor, of course, the accused. If such conversion or separation were to occur, the administrative techniques, and staffing practices would vary with the local circumstances, until both funds and facilities could be found to provide reasonable uniformity throughout the province. It might, however, be supposed that where more or less elaborate, self-contained custodial facilities are now operated by police forces, they could be rendered "neutral ground" by being placed in the control of a strictly neutral custodial force. In such instances, access to prisoners for the purpose of lawful investigation would not be impeded in any practical sense.

It is probably sufficient to observe briefly that intoxicated persons who are detained by police are not held in custody either as accused persons or as material witnesses.

The prospect of fingerprinting being performed by anyone but police personnel was almost universally disapproved by police chiefs who corresponded with this Commission. One Chief Constable did acknowledge that in some places this task is probably being performed by other than police officers at the present time, but they are, he stated, working within the framework of the police department. In most responses the underlying assumption and the overt assertion were that compliance with the *Identification of Criminals Act* can be properly performed only by police officers or police employees. We do not agree. Indeed, that federal statute itself contains no such requirement. From the Commission's point of view, the identification requirements should be performed by competent, but neutral personnel on neutral ground, and for the purpose of diminishing the time and occasions during which the accused would be held as a prisoner of the accusers. In the short run, it might effect administrative benefits in some

instances to transfer the competent technical personnel from police employ to provincial employ, with no loss of income, pension rights or other beneficial incidents of employment. In the long run, such personnel could aptly be directly engaged by the custodial force.

The Commission is grateful to those Chief Constables who took the time to correspond so candidly and thoughtfully with us. That we disagree with some of them on some points does not in any sense compromise our high regard for their competence, public spirit or public service.

The Commission's desire to see custodial functions separated from police functions and, as well, to see the public image of our police forces shine nobly finds consonance in the attitudes of the Winnipeg Police Enquiry Committee. That body of citizens reported to the Executive Policy Committee of the City of Winnipeg, in February 1973, on the organization of the police force in the City of Winnipeg. In its report the Police Enquiry Committee made the following observations, comments or recommendations:

At page 25:

"The practice of having detention facilities (other than holding rooms or custody rooms) in Police Stations is highly questionable. This makes the Police appear to be both Police and gaoler which is very undesirable."

At page 32:

"4.3 Standards: Council Objectives and Priorities

a) The highest duties of Government, and therefore of the Police, are to safeguard freedom, to preserve life and property, to protect the constitutional rights of citizens and to maintain respect for the rule of law by proper enforcement thereof, and to preserve democractic government."

At page 34:

"To ensure that the Police are able to carry out their responsibilities Council must:

. . .

b) insulate the Police Force from pressures to deal with matters in an unlawful or unconstitutional manner. . .".

At page 67:

" e) The Committee has indicated at an earlier point that it is entirely inappropriate for a Police Force to act as

gaoler. Therefore, as the matter of Provincial Government operated lock-up facilities is now under active consideration by the Attorney-General's Department, the Committee recommends that the City Council immediately support this action by the Province so that the new unified Police Force will not be required to provide any lock-up facilities or to provide personnel to operate these facilities."

This Commission respectfully agrees with those attitudes expressed by the Police Enquiry Committee of the City of Winnipeg. It is to be hoped that their proposals can be put into practice without delay in the City of Winnipeg and that the same practice can be ultimately invoked throughout Manitoba. As has been noted, all of the constitutional jurisdiction to do so is within the legislative and executive competence of the province.

RECOMMENDATIONS

Our recommendations for reform are simple and obvious. We note that if they were to be accepted and put into effect throughout Manitoba they would involve a considerable expense which we are not equipped to quantify. Appendix "B" to this Report reveals the authority in charge of custodial facilities in several communities in Manitoba. The distinct separation of custodial personnel from police personnel, from the outset of the arrest of an accused person, is the principle we support. Appendix "C" to this Report is an extract from our comments on Evidence Paper #5 (previously mentioned at page 5) of the Law Reform Commission of Canada. Our comments were forwarded to that Commission in September 1973. They are much elaborated in this Report.

Our recommendations are:

1. In all urban centres, and ultimately throughout Manitoba there should be a distint separation of custodial personnel and functions from the police personnel and functions;

2. Subject to the actual implementation of recommendation 1 in any locality or district, every person who is arrested whether as an accused or a material witness, should be conveyed as soon as immediately possible[10] *to a place of detention operated and maintained by the Corrections Branch of the Province of Manitoba, there to be lodged and held in safe custody, according to law;*

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10 After, of course, according the arrested person any necessary medical or surgical treatment in a hospital or clinical setting.

3. Provincial detention jails should be equipped with the materials necessary for compliance with the Identification of Criminals Act, *Chap. I—1, R.S.C. 1970, and the signaletic cards and other results of records referred to in that Act should be forthwith provided to the investigating and arresting police forces for use and distribution according to their usual norms*;

4. Investigating police officers in numbers not greater than two at a time, and at reasonable times should be permitted to attend upon the prisoner while in custody for the purpose of asking questions, provided:

(a) that the interview room be equipped with a large window through which correctional officers may watch, and be seen by those in the interview room;

(b) that if the prisoner requests that the interview be terminated, he should be permitted to return to his place of detention without being further questioned by the investigating officers for a period of not less than two hours, and in any event without being further questioned between the hours of 10 p.m. of one day and 7:30 a.m. of the following day;

(c) that in the case of an asserted emergency the prisoner may be interviewed and questioned by investigating police officers between the stated times for a short duration of time in the discretion and in the physical presence of a provincial corrections officer or medical personnel who shall remain with the prisoner and in the same room at all times;

(d) that provincial correctional officers be authorized and instructed to intervene in, and suppress, improper questioning or violence directed against the prisoner and to expel, and/or lay charges against, any investigating officer who assaults or batters a prisoner, and to testify at the trial of such charges;

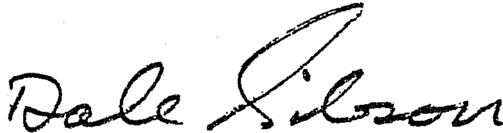
(e) that the prisoner's legal counsel, if such there be, should whenever possible be informed of, and entitled to attend, each and every questioning of the prisoner.

The foregoing are our recommendations concerning the stated aspect of the administration of justice in Manitoba. The Commission considers that this important subject area ought to engage our attention in further and other aspects in the future. We expect to submit further Reports on the administration of justice from time to time.

This is a Report made purusant to Section 5(2) of "*The Law Reform Commission Act*" of Manitoba.

Dated this 26th day of February, 1974.

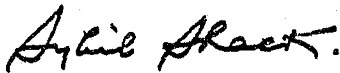
F.C. Muldoon, Chairman



R. Dale Gibson, Commissioner

R.G. Smethurst, Commissioner

Val Werier, Commissioner



Sybil Shack, Commissioner

Kenneth R. Hanly, Commissioner

C. Myrna Bowman, Commissioner

APPENDIX "A"

Francis C. Muldoon, Q.C.
Chairman/Président

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LAW REFORM COMMISSION
COMMISSION DE RÉFORME DU DROIT

January 30, 1974

Dear Sir:

Re: Post-arrest detention and custodial facilities

My colleagues and I are considering the desirability and practicability of placing all places of detention for the custody of arrested persons, whether as accuseds or material witnesses, beyond the authority and operation of police forces in Manitoba. We refer specifically to police station lock-ups, holding cells or jailors' quarters, by whatever name they are designated. We consider that, if such a change were effected, compliance with the provisions of the *Identification of Criminals Act* would not necessarily be performed by police officers, as at present it is. We think, however, that access to prisoners, for questioning, under the supervision of custodial officials other than members of the investigating police force should be permitted for reasonable periods of time, at all reasonable times so that investigation of crime, actual and alleged, would not be thereby impeded.

The Commission would be most interested in receiving your comments and opinions about this subject, preferably in writing, but if you should wish to attend our next meeting to express the same, it will take place on Tuesday, February 12th next after 3:30 p.m. An appointment could be arranged. Commission proceedings are recorded and transcribed, but can be declared confidential and not for publication.

We would be pleased to learn your response to the foregoing at your earliest convenience.

Yours truly,

Francis C. Muldoon,
Chairman.

APPENDIX "B"

Part 1

SELECTED LOCK-UPS IN MANITOBA
NOT UNDER R.C.M.P. JURISDICTION

Community	Location	Custodian
Brandon	Court House — (juveniles)	**P.C.S.
	*P.C.I. — (City police)	P.C.S.
	City Police Station — no cells but interview room	City Police
	Brandon Detachment — no cells but interview room	R.C.M.P.
East Kildonan	Vaughan St. Detention Facility	P.C.S.
Fort Garry	Vaughan St. Detention Facility	P.C.S.
St. Boniface	Police Station	Community Police
St. James-Assiniboia	Police Station (overnight) Vaughan St. (longer detention)	Community Police P.C.S.
St. Vital	Police Station (overnight) Vaughan St. (longer detention)	Community Police P.C.S.
Steinbach	Vaughan St. Detention	P.C.S.
The Pas	Court House and P.C.I. (The Pas Detachment — R.C.M.P. see Part 2)	P.C.S.
Winnipeg (Inner-City)	Public Safety Bldg.	Community Police

* P.C.I. = Provincial Correctional Institute

** P.C.S. = Provincial Correctional Service

APPENDIX "B"

Part 2

LOCATION OF LOCK-UPS UNDER R.C.M.P. JURISDICTION

WINNIPEG SUB/DIVISION

Arborg
Ashern
Beausejour
Berens River
Carman
Emerson
Falcon Beach
Fisher Branch
Gimli
Lac du Bonnet
Lundar
Morris
Oakbank
Pinawa
Powerview
Portage la Prairie
St. Pierre
Selkirk
Sprague
Steinbach
Stonewall
Teulon
Whitemouth
Winnipeg Beach

BRANDON SUB/DIVISION

Amaranth
Birtle
Boissevain
Carberry
Crystal City
Deloraine
Elphinstone
Gladstone
Hamiota
Killarney
Manitou
Melita
Neepawa
Reston
Rossburn
Russell
Shoal Lake
Souris
Treherne
Virden
Wasagaming

DAUPHIN SUB/DIVISION

Brochet
Churchill
Cranberry Portage
Cross Lake
Dauphin
Ethelbert
Flin Flon
Gillam
God's Lake
Grand Rapids
Ilford
Island Lake
Jenpeg
Leaf Rapids
Lynn Lake
Moose Lake
Nelson House
Norway House
Oxford House
Poplar River
Pukatawagan
Roblin
Ste. Rose du Lac
Sherridon
Snow Lake
South Indian Lake
Split Lake
Swan River
The Pas
Thompson
Wabowden
Winnipegosis

It is anticipated that patrol cabins, with lock-up facilities, will be established at Shamattawa and Little Grand Rapids during 1974.

APPENDIX "C"

EXTRACT FROM

COMMENTS OF MANITOBA LAW REFORM COMMISSION

SUBMITTED IN SEPTEMBER, 1973, ON

EVIDENCE PAPER #5 OF THE

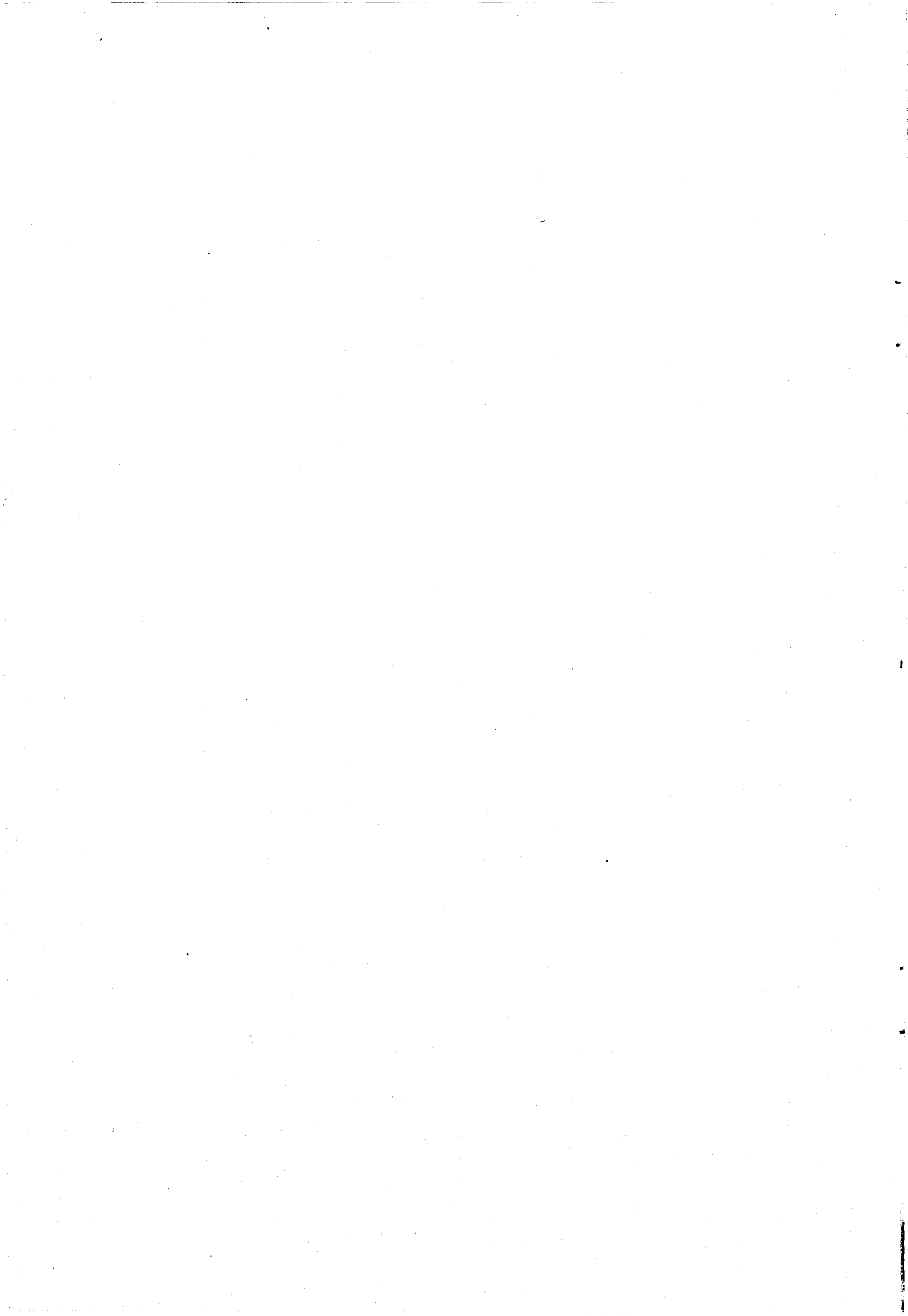
LAW REFORM COMMISSION OF CANADA

AN ADMINISTRATIVE REFORM OF IMPORTANCE

We think, to return to the specific topic of the Study Paper, that one of the most efficacious reforms has not yet been mentioned by the Evidence Project. It is: that an accused in custody ought never to be in the custody of the investigating force. We have a fine example by way of contrast in the City of Winnipeg. Accused persons arrested by the Winnipeg Inner-City Police are detained in custody in the Public Safety Building (police station) where the jailers are subordinate members of the Inner-City Police. Accused persons arrested by the police in suburban and outlying districts are lodged at the Provincial Detention Jail (called "Vaughan Street") where the jailers are members of the Provincial Custodial Service under the Department of Health and Social Development. One rarely, if ever, hears complaints of alleged police brutality, threats of force or extorted confessions emanating from Vaughan Street, despite its aged, depressing appearance. The investigating officers may interview prisoners at Vaughan Street on virtually the same footing as defence counsel. For a detention jail, it is a most civilized place. The provincial custodial officers know their job is to keep prisoners in safe custody, and they have no interest in conviction or acquittal, and are not answerable to the investigating officers. If police interrogation has a bad reputation, this example from Manitoba may provide both the solution and a model for reform.

We regard this administrative technique to embody a real reform of great importance. Such conditions in which the custodial force is distinct from and independent of the investigating force may exist elsewhere throughout Canada. We commend to the Law Reform Commission of Canada, through some research staff, if not the Evidence Project, an examination and analysis of this custodial technique so that an assessment may be performed of how far it goes toward eliminating the mischief described in this paper.

The foregoing are our comments. In summation, we assert that apart from its practicality, the proposal, with the proviso about silence importing an inference of guilt is positively dangerous to a free people, potentially oppressive and, some of us regard it as downright detestable.



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END