

## SPECIAL CASES

The *Criminal Code* contains special provisions covering certain categories of offenders. These include individuals under preventive detention (dangerous sexual offenders and habitual criminals) and those convicted of murder. We find the existing provisions in Part XXI of the *Code* governing dangerous sexual offenders and habitual criminals to be inadequate and we recommend dangerous offender legislation as an integral part of the parole system which we propose. Determining which offenders are dangerous should not be the sole responsibility of parole authorities.

## Dangerous Offenders

Offenders considered to be dangerous without being dangerous sexual offenders are presently incarcerated for a period of preventive detention. Section 688 of the *Criminal Code* provides that an accused is an habitual criminal if, since the age of eighteen, he has on three separate occasions been convicted of an indictable offence punishable by five years and is leading a persistently criminal life, therefore requiring preventive detention for the protection of the public.

The Ouimet Committee, after examining life records of eighty individuals who, on February 26, 1968, were serving sentences of preventive detention, concluded that the legislation has been applied in large part to offences against property. It pointed out:

1. that almost 40 per cent of those sentenced to preventive detention would appear not to have represented a threat to the personal safety of the public.
2. That perhaps a third of the persons confined as habitual offenders would appear to have represented a serious threat to personal safety.
3. That there is a substantial number within the 80 persons with respect to whom there is not enough evidence to warrant a conclusion that they represented a serious threat to personal safety.<sup>1</sup>

The legislation thus appears to be too broad in that application has resulted in the incarceration of a number of offenders who, although persistently criminal, may not be dangerous.<sup>2</sup> At the same time, it is not broad enough because, as suggested in the Ouimet Report, it does not provide for indefinite incarceration of those who may be dangerous:

...many seriously dangerous offenders are beyond its reach because of the requirement of three previous convictions for an indictable offence for which the offender could have been sentenced to imprisonment for five years or more. The present legislation does not protect society against the offenders from whom society requires maximum protection.<sup>3</sup>

The Committee accepts the opinion of the Ouimet Committee that persistent offenders can be dealt with by appropriate sentences provided by the *Criminal Code*. This means that preventive detention should be used exclusively for those considered to be serious threats to public safety.