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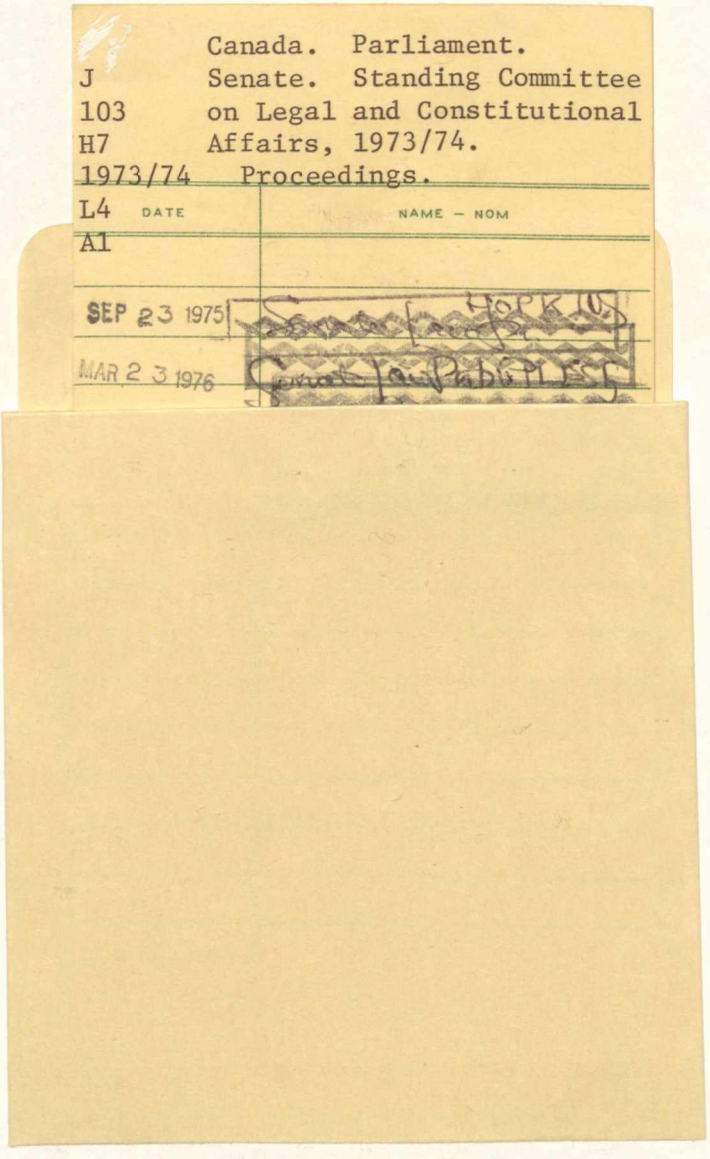
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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 1

TUESDAY, MARCH 6, 1973

Fifteenth Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendices—See Minutes of Proceedings)

25874—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams

*Ex Officio Members
(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

25874—1½

Minutes of Proceedings

March 6, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:05 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Hastings, Lapointe, McGrath, McIlraith, Prowse and Quart. (7)

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada; Mr. Patrick Doherty, Special Research Assistant.

The Committee resumed its examination of the parole system in Canada.

The following witnesses were heard by the Committee:

Mr. S.F. Sommerfeld,
Director, Criminal Law Section,
Department of Justice;

Mr. D.R. Watson,
Senior Prosecutor,
Department of Justice;

Mr. J.W. Braithwaite,
Deputy Commissioner of Penitentiaries,
Department of the Solicitor General.

At 12:30 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed its examination of the parole system in Canada.

Present: The Honourable Senators Goldenberg (*Chairman*), Hastings, Lapointe, McGrand, McIlraith, Prowse, Quart and Williams. (8)

Present but not of the Committee: The Honourable Senators Denis and Thompson.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada; Mr. Patrick Doherty, Special Research Assistant.

Mr. Therrien, Vice-Chairman of the National Parole Board, was heard by the Committee.

On Motion of the Honourable Senator Prowse it was *Resolved* to print in this day's proceedings the Statements submitted by the Department of Justice, the Canadian Penitentiary Service and the National Parole Board. They are printed as Appendices "A", "B" and "C", respectively.

On Motion of the Honourable Senator Hastings it was *Resolved* that unless and until otherwise ordered by the Committee, 1,100 copies in English and 400 copies in French of its day-to-day proceedings relating to the Examination of the parole system in Canada be printed.

At 5:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 6, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the hearings of the committee were, of course, interrupted by the adjournement of the last Parliament and its subsequent dissolution. We are now resuming with a view to considering some of the remaining briefs.

As you will see from the memorandum prepared by the Executive Director, the purpose of this morning's hearing is to clarify certain matters. There is obviously a good deal of confusion in the public mind with respect to the various forms of release before termination of sentence.

In view of this, we have with us representatives of the Department of Justice and of the Solicitor General to explain the various forms of release. I believe a memorandum has been prepared by each of the three witnesses. With the agreement of the committee, in order to save time I suggest that each memorandum be made part of the record of today's proceedings. May we have such a motion?

Senator Prowse: I so move.

Hon. Senators: Agreed.

For text of memoranda, see Appendices A, B and C.

The Chairman: The first witness this morning will be Mr. Sommerfeld, of the Department of Justice, who has with him Mr. Watson. Mr. Sommerfeld's statement has been distributed to members, and I will ask him to proceed. In view of the fact that the statement will be made part of the record, it may not be necessary for Mr. Sommerfeld to read it in its entirety. I will ask him to proceed as he wishes, after which we shall see how we get along in the light of questions. Mr. Sommerfeld.

Mr. S. F. Sommerfeld, Director, Criminal Law section, Department of Justice: Thank you, Mr. Chairman.

Ladies and gentlemen, as I understand it, the interest of the committee relates to situations in which persons who have been involved in some way in the criminal process are released and permitted to be at large, as distinct from situations to which such processes as parole apply.

The directions, on which I based the paper which has been distributed to you, set out a number of instances which have been broadly designated in Mr. Jubinville's memorandum as instances of conditional release. This is not strictly true in all cases, and perhaps I might preface my remarks by saying that a number of them are also related one to the other. For example, the first two headings, on bail and remand, are closely related, because a remand takes place in the course of the pre-trial and pre-appeal procedure; and the conditions upon which a person is permitted to go free during the period of a remand involve really the same considerations that apply to him if released in the pre-trial or pre-appeal procedure. Similarly, a suspended sentence, probation, conditional discharge, and intermittent sentences all involve the use of a probation order which have certain consequences for a person bound by one. These four headings are also closely related because of the fact that a probation order applies in all of them and there are certain consequences that follow a breach of a probation order.

Finally I might mention that the question of pardons, while part of the Criminal Code, is really something that is administered by the Solicitor General's Department. I have not really attempted to deal with this in the paper that I have prepared, except to identity it as being in the Criminal Code and as being something that is within that department's jurisdiction.

If I could turn now to the memorandum itself, ladies and gentlemen, the first heading is dealt with in a fairly general way. There is an appendix to the first heading which deals with these matters in considerably more detail. I am not certain to what extent the committee wishes to get into that. In any event, to begin with the first heading:

When a person is accused of committing an offence, he may be compelled to appear in court either by summons, police process or warrant of arrest. The peace officer may also arrest without warrant a person whom he has reasonable and probable grounds to believe has committed an indictable offence.

When the accused is required to appear in court by means of a summons, he is not taken into custody and remains free until the completion of his trial. A person who is arrested and detained before his trial has the right to pre-trial release in certain circumstances. The onus of showing that an accused person should continue in custody until completion of his trial is on the prosecutor. The justice or judge may order the detention of the accused on two grounds only. These are as follows: (a) on the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to law; and (b) on the secondary ground that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the

accused will, if he is released from custody, commit a criminal offence involving serious harm or an interference with the administration of justice. The secondary ground applies only after it has been determined that his detention is not justified on the first.

If the prosecutor does not show cause why the detention of the accused in custody is justified or why conditions and sureties should be given in addition to a recognizance, the justice may release the accused on his simple undertaking to appear for his trial unless it is an offence of murder or one punishable by death.

Now, as I mentioned, attached to this paper is Appendix "A", which sets out in greater detail the provisions in the Code, with a discretion that can be exercised, who exercises it, and so forth. The statement I have read simply points out the general circumstances under which a person may be released before his trial, and how the onus is on the prosecutor to justify his retention.

If he is going to be retained, if he is not going to be released, perhaps the committee may be interested in the conditions of release which appear on page 2 of the appendix at the back of the statement. These are the conditions that may be applied where the release may be granted by the officer in charge of the lock-up on a person's simple promise to appear, or on his own recognizance, with up to $500 without sureties or without conditions, and that cash deposit of $500 may be called for if he is not a resident of the province or does not reside within 100 miles of the place where he is being held.

Senator Prowse: That is a maximum?

Mr. D. R. Watson, Senior Prosecutor, Department of Justice: That is right.

Senator McIlraith: Mr. Chairman, may I ask a question or two here? There seems to be some uncertainty and some difficulty, not with the grounds for detention, but with regard to the time at which they must be applied. A great many of the prisoners to be charged with crimes are arrested in the night, and the required time, to check up on their identity and certain other related matters relevant to a responsible determination as to whether or not they should be detained awaiting trial, needs clarifying. Could you develop the point regarding the time at which that decision must be made, the decision as to whether or not they will be retained, bearing in mind complaints about their being released before there is an opportunity to check more fully on their crime, bearing in mind that a new shift on most forces comes on in the morning at 8 o'clock? There is a new crew on, and the sources of information are not open until 8 or 10 o'clock in the morning.

Senator Prowse: Mr. Chairman, I wonder if Senator McIlraith would agree to my putting it this way? Let us suppose that Mr. X is picked up by the police at 1 a.m. The police grab him at a certain place. They suspect that he has raided the till of a service station. It has been found that the doors have been forced open, and the man has some change in his pocket which they think is not his.

Mr. Sommerfeld: Mr. Chairman, may I defer that question to my expert on that subject, Mr. Watson?

The Chairman: Feel free to call on Mr. Watson to answer any question.

Mr. Watson: It depends on the seriousness of the offence and the circumstances applying where the police officer makes the arrest. The law requires a police officer, if it is a fairly minor offence—an offence that is a summary conviction offence, or one that the Crown may proceed with by way of indictment or summary conviction, or one that falls within the absolute jurisdiction of the magistrate, which are by and large relatively . . .

Senator Prowse: Let us not become confused. Put it in a simple way.

Mr. Watson: If it is a minor offence, the police have an obligation to release that person as soon as possible, provided there is no reason to suspect that the accused will not show up for his trial when required, or that there is not something in the public interest that requires that he be detained, and it would be in the public interest to continue his investigation, to identify the accused adequately, to prevent him from hiding the evidence, from disposing of the evidence, or from getting to other potential Crown witnesses. So there is an obligation on the policeman. The policeman has to decide whether he is going to release him or not under this police process. If he decides to release him, or the person is released subject to this recognizance, or to an undertaking, or if he decides that he is not going to release him, the law requires . . .

Senator Prowse: Mr. Chairman, we are overdoing this, with all due respect. Let us take a very simple case. Let us say that a policeman comes along and goes past a service station at 1 o'clock in the morning. He finds the door open and, inside, the cash drawer open and no money in it, and a fellow holding $20.93 in his hand. What does the policeman do with this man? What does he do with the fellow now?

Mr. Watson: We are in the realm of speculation. I suppose the police officer would arrest him and bring him down to the police station then he would have to have him identified. If the accused co-operates and helps to identify himself, then his release is speeded up. The moment they can identify him, make sure he has roots in the community, that he will show up for his trial, that there is no possibility of his destroying evidence . . .

Senator Prowse: They have the $20.93 by this time.

Mr. Watson: That is right. The moment they have his identity checked through the RCMP identification system and find out who this person is—he may be one of the ten most wanted men in Canada or just a local chap who is out of work and needs ready cash—then there is an obligation on the peace officer to bring him before the justice as soon as possible. If the arrest is made at two o'clock in the morning, then that would be at, say, nine or ten o'clock in the morning. At the moment he is brought before the justice the Crown must say whether or not it wishes to show cause why the accused should not be released on a simple undertaking. If the Crown does not indicate that it wishes to show cause as to why he should not be released on a simple undertaking, then the justice must release him on a simple undertaking. If the Crown does wish to show cause, then, of course, it opens up a whole range to the justice, from a simple undertaking right down to detention.

Senator McIlraith: My point is a little different. If the arrest is made at one or two o'clock in the morning, and it

is not apparent that there is a serious charge against him, because that policeman goes off duty at eight o'clock, or whatever it is, depending on the force, there is no way he can get the relevant information, nor, indeed, is there any way in which he can lay a charge at the hour he brings him in, other than, perhaps, a very minor one. But an offence may be revealed when daylight comes and it is discovered that the store next door has been broken into, and that type of thing. That kind of information only comes to light as the businesses come to life sometime in the morning hours. There is no way to check the information as to identify until the morning hours, and in some instances it takes more than a day to do so. The legislation has shifted the onus on to the operator in the arresting act—the man who is out alone on the beat or the pair who are out on the beat—and there is no readily apparent way that he can produce the relevant information because that man on a night arrest has to sleep some time in the day.

What I am trying to find out in more precise terms in relation to that person who is going to be the accussed—although the charge may not be laid until eight or nine o'clock in the morning—is how long he can be held without this process becoming applicable. I am not questioning the grounds at all.

Mr. Watson: He can be held until he is brought before the justice who must dispose of the case.

Senator McIlraith: Yes, but when must he be brought before the justice?

Mr. Watson: The law requires it bo be as soon as possible. In a city like Toronto there are justices available at all times. However, in some of the small towns in northern Ontario, say, the justices are not as readily available.

Senator McIlraith: Well, he is available through the phone fairly easily.

Mr. Watson: The peace officer must bring him before a justice as soon as there is one available. That varies from place to place. It would be virtually impossible to have a Justice of the Peace available on a 24-hour basis.

Senator McIlraith: Is there a statutory limitation of time?

Mr. Watson: Yes. Section 454 states:

> where a justice is available within a period of twenty-four hours after the person has been arrested . . .

So it is within 24 hours, where he is available.

> where a justice is not available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice as soon as possible.

Senator McIlraith: As far as the cities are concerned, then, for all practical purposes, that means he must go before a justice not later than ten o'clock?

Mr. Watson: That is right.

Senator McIlraith: So there is no way, then, of having the relevant information to make a proper determination. There are cases where the policeman may suspect there is something very wrong—something more than the charge on which the person has been arrested—yet he cannot assemble or cannot check out the information which has to be checked out in order to make this determination.

Mr. Watson: It depends on the individual police officer. The law does not require the police officer to arrest every person. The law is framed that a police officer "may" arrest. If he arrests a person and then releases him, that is up to the individual police officer. As long as that individual policeman feels that he is satisfied that he can identify him, et cetera, then he can release him. The person may have furnished identity which turns out to be false, or there may be a break-in next door which does not come to light until the next morning, then to re-arrest that person we have to get . . .

Senator McIlraith: This is my point. They have to release that criminal who has a long record and who will not be able to meet the criteria set out here. They have to release him, and then try to find him again the next day.

Mr. Watson: They do not have to release him until they are satisfied who the individual is. There is no obligation on the police to release that individual until they are satisfied as to his identity.

Senator McIlraith: Yes, there is. The arresting policeman cannot hold a man simply on his own fancy. The onus is on the Crown to show cause why this person should be detained.

Mr. Watson: Not on the individual policeman, with all due respect, senator. The law says that the individual peace officer may detain a person for reasons of public interest, which include establishing the identity of the person. The person arrested may give his name and address, but the peace officer does not necessarily have to accept that. He may want to bring him in and have him finger-printed.

Senator McIlraith: But he cannot have him finger-printed under the Identification of Criminals Act unless it is an indictable offence.

Mr. Watson: That is quite right.

Senator McIlraith: So he cannot have him finger-printed and, consequently, there is no way to check the man out at all.

Mr. Watson: In the case of a summary conviction offence, you are quite right.

Senator McIlraith: In so many of these cases, in actual practice, when they are first picked up by the policy officer, they are not picked up on a major offence at all. That may take a clear working day to come to light and for the police to relate the person picked up to the more serious charge. They may have arrested him on a minor charge, but the major charge does not come to light right away. It seems to me, from what has been said here, that there is a gap in this legislation and it leaves the police officer in a position of not being able to do his work, or is a handicap to him in the conduct of his work.

I am talking now only about the cities. I do not think the problem arises in the smaller centres, because the kind of criminals who are hard to identify do not usually get into those smaller centres.

Mr. Watson: From the point of view of an experienced police officer in Toronto, there is probably no more difficulty in the present law than there was under the old law. Under the present law the peace officer is fully

justified to bring the accused into the police station, and if that individual police officer is not satisfied that he should be released, then he hands him over to the desk sergeant and the desk sergeant then goes into an inquiry.

Senator McIlraith: If you go into these police courts at two or three o'clock in the morning, when they bring an individual in, and stay there until it becomes light and see the whole process, there is no way the man on the beat who brings him in can do any investigative process with respect to that man until at least nine o'clock that morning.

Mr. Watson: That is quite right.

Senator McIlraith: And then he has to leave at some time. If he is on the overnight shift he cannot wait until ten o'clock; he has to sleep at some time.

Mr. Watson: He brings him in and he hands him over to the officer in charge.

Senator McIlraith: The desk sergeant.

Mr. Watson: Yes, and the desk sergeant must dispose of that individual. He cannot go off duty until he has disposed of that individual.

Senator McIlraith: That is my point. In Toronto at three o'clock in the morning there is just no real application of the judicial determination contemplated by the act, because the practicalities of the situation do not permit it to be exercised. That is my point.

Mr. Watson: Well, the law does give a discretion, and obviously if you give a discretion to someone he may not exercise it properly.

Senator McIlraith: It only gives him if I may, a discretion with the onus on the prosecutor to show the negative—that he must not be released. The man is in custody for some reason. He is not brought in for no reason at all. There is no way that a prosecutor can satisfy that onus right away, so the man has to be released. These officers do not act just on a whim.

Mr. Watson: You are quite right, senator, but the problem of onus and the prosecutor showing cause does not take place until the accused is brought before the justice at the bail hearing.

Senator McIlraith: That is my point, which is at three o'clock in the morning.

Mr. Watson: There is no onus on the police officer at the stage of arrest, other than that he have a good reason to detain the individual.

Senator McIlraith: Yes, but the section says that he must be brought before a justice within 24 hours, so that means ten o'clock in the morning, although you could argue that it does not need to be ten . . .

Senator Prowse: But then we get into the remands.

Senator McIlraith: At that point, the prosecution must show cause, and there is no way he can show cause at that hour. He cannot keep his men available to show cause at that hour. There is no way you can work that man day after day—the policeman involved and those who come into it—without sleep. You can do it once a week, but you cannot do it day after day.

Mr. Watson: But there is no obligation to show cause the next morning. If the police do not have the evidence available or the witness available, the prosecutor can ask for an adjournment. He is entitled, under the law, to ask for an adjournment so that he can properly show cause to the justice and present his case in a proper fashion. If he tries to go ahead and show cause before he is ready to do so, the law requires the justice to release the accused. So the prosecutor should not proceed with the "show cause" hearing until he is ready to do so. I dare say that any experienced prosecutor will not tell the justice that he is ready to proceed until he is ready to proceed.

Senator McIlraith: This is the whole nub of the complaints of the system, as I understand them. Prosecutors have no basis for asking the Justice of the Peace to hold the person another day; they cannot say they will have evidence to show cause, because they do not know.

Mr. Watson: You have to look at it from the two points of view. From the point of view of the accused, if he is brought before a justice and the prosecutor stands before the justice and says, "I have no evidence to show why this person should be held. I have a strong suspicion that maybe tomorrow I might have it, but I do not have anything more than that now," the law gives the benefit to the accused and he has to be let out, otherwise that person would be unnecessarily detained.

Senator McIlraith: Let us take an actual case that arose a few years ago, with which I am familiar. When the King and Queen were here on Parliament Hill there were some professional pickpockets in from Chicago working over the crowd, as it were, and that day they were picked up during the course of their operations. There was no possible way in which by the next morning at 10 o'clock, under this law, anyone could have produced just cause, and those thugs would all have had to be released and sent back to Chicago. It was suspected that they were not Canadians, and it had to be checked out in another country. It took until the second day after they were picked up to get that information, and under the existing law they would have been out and away.

Mr. Watson: I do not agree, because I think the law does cover that. Where a peace officer has reasonable and probable grounds to believe that a person is about to commit an indictable offence he may arrest the man. The section of the law allows the police to hold that person until they are satisfied that his continued detention in custody is no longer necessary in order to prevent the commission by him of an indictable offence.

There is more authority now to deal with that sort of person than there was under the old law, because if there are reasonable and probable grounds to believe he is about to commit an indictable offence he may be arrested and detained. In the case of a visit by some dignitary, if the police suspect somebody is going to attempt to assault . . .

Senator McIlraith: These were not violent persons.

Mr. Watson: He could in that instance be arrested and detained, and when the visiting VIP left town he could be

released. He has never committed an offence; it is a preventive arrest, which is what the law provides now.

Senator Prowse: And still provides it.

Mr. Watson: It still provides it, and gives authority to continue his arrest. Obviously, here you get on to a touchy point. Who is to decide when the custody is no longer necessary in order to prevent the person from committing a crime?

Senator McIlraith: I was not talking about prevention; I was talking about actual crimes—they were pickpocketing in a professional manner.

Mr. Watson: In that case it would be a matter for the proper exercise of discretion by the police, the justice, and the prosecutor. It is a combination of the three. The police arrest a person and say to the prosecutor, "We don't want this guy released, and this is the reason we don't want him released . . ." The prosecutor then assesses that reason for not releasing him, and may be convinced that it is a valid reason.

Senator McIlraith: There is no way that could have been produced by 10 o'clock the following morning.

Mr. Watson: Then the prosecutor is entitled under the law to ask for a remand of up to three clear days—which means, not counting the first day, that if a person is arrested on Monday the prosecutor is entitled to a remand that allows him to come on again the following Friday. I would say that if between Monday and Friday they cannot get information together to show why the person should be detained before trial, before he has been convicted . . .

Senator Prowse: And while he is presumed innocent.

Mr. Watson: And while he is presumed innocent . . .

Senator McIlraith: It is the onus that has to be satisfied here by the prosecutor at too early a point.

Mr. Watson: I should like to draw the honourable senator's attention to section 457.1:

> A justice may, before or at any time during the course of any proceedings under section 457, upon application by the prosecutor or the accused, adjourn the proceedings and remand the accused to custody in prison by warrant in Form 14, but no such adjournment shall be for more than three clear days except with the consent of the accused.

If the police are not ready to proceed with the bail hearing, they ask for an adjournment.

Senator McIlraith: That is quite clear. They do not have any evidence to produce at that point at all. They have a suspicion in their own minds. but nothing more; they do not have "reasonable and probable cause". They are pros at their job, just as the criminals are pros. They may suspect that there is something wrong in the case, but there is nothing at that point, they still have to show cause.

Mr. Watson: The justice could release him, and when he finds out at 3 o'clock the next afternoon he is wrong he issues a warrant for the person's arrest and hauls that man back before him.

Senator McIlraith: Are any statistics kept under the present statistical set-up of persons taken into custody by a policeman and brought into the station and released, who immediately before that had committed an offence, or immediately go out and commit another before being brought up for trial?

Mr. Watson: Statistics Canada are doing a study at the moment. They have a pilot project under way. They have picked various cities across Canada and are engaged on this project.

Senator McIlraith: They are trying to find a formula.

Mr. Watson: They will be keeping statistics. It is much too early at this stage to decide how the present law is working compared with the previous law, because there has been too short a period of time to get sufficient figures.

Senator McIlraith: I understand that.

Mr. Watson: From the reaction we get from provincial attorneys general, from police forces in general, from prosecutors and lawyers, it would seem that the law is working very well.

Senator McIlraith: I am not so sure of that.

Mr. Watson: It is just the odd police officer who may . . .

Senator McIlraith: It is not such an odd police officer; it is the fellows out in the cars.

Mr. Watson: Experienced police officers I have talked to, with due respect, have found that it is easier now to detain somebody than it was under the old law. The prosecutors I have spoken to have also said it is easier now to detain a person who should be detained.

Senator McIlraith: The prosecutor never hears about the cases I am talking about, because they don't come to him until after they are into the next working day; the cases have been disposed of before they get to the prosecutor, so he is not in the picture under the new system, whereas he was in the picture under the old system.

Mr. Watson: I feel that a peace officer who is experienced—not someone who is still trying to learn the ropes—now finds that the law is easier to operate under than the old law. Under the old law he was also called upon to make decisions. Under the law as it existed before, the peace officer had a discretion to arrest or not to arrest. If he arrested when he should not have arrested, there was always the possibility of a suit for false arrest. The law now protects him vis-à-vis his own superiors. If he does not have a good reason for detaining the person once he arrests him, the police officer must release him, so he is off the hook; whereas if he has a reason for detaining him, he may do so. The police officer alone can know whether he has a good reason for detaining the person. If he does not have a good reason for detaining me, say, I would rather he did not detain me than detain me at his discretion, as he could under the old law.

Senator McIlraith: Under the old law it came into the hands of the crown attorney, and he dealt with it. At that point the determination was made as part of the regular judicial process as we had built it up. It is now made by a set-up in the police establishment in the wee, small hours

of the morning before any crown attorney is on the job, and this is why the policemen are simply not trying to detain these people, because they are protected if they do not, as you just pointed out. The men out on the beat are the ones who are confronted with this situation, and who, in the first instance, have the responsibility of protecting society at that first operation.

Mr. Watson: As I recall, under the old law I do not think it was very easy to get hold of a crown prosecutor at 3 o'clock in the morning to discuss it.

Senator McIlraith: They never did, because the man was locked up and came up out of the pen in the morning at 10 o'clock, and then it was dealt with.

Mr. Watson: The only change that has occurred between then and now is that in a worthy case the police can release the man, whereas under the old system they kept him until the next morning.

Senator Prowse: They could not release him under the old system.

Mr. Watson: That is right, and now they can.

Senator McIlraith: That is right.

Mr. Watson: If a person were picked up . . .

Senator McIlraith: I am really dealing with the other thing, where now they are released at 3 or 4 o'clock in the morning in Toronto before the police know the first thing about them, so the men are not bothering to bring them in. It is the same thing that you have in Washington, where you meet them coming out with their bail, and the police system simply does not work.

Mr. Watson: The bulk of offences that are committed are very minor offences. You get the person who is picked up at 3 o'clock in the morning for impaired driving. Under the old system they kept that person, picked up for impaired driving, until the next morning. Now there is an obligation on the police to release a suspect at 3 in the morning, after they have given him the breathalyzer test. They can then call his wife and she can come and pick him up, or he is sent home in a taxi. Now there is authority to release him, whereas under the old system they probably kept him until the next morning. He might have been the mayor of the community or a person well known to the police officer who would say, "I would like to let you go, but there is no way I can do it." Now the law provides that if he can identify him, if all the proceedings of the investigation are completed, he has an obligation to release that person.

Senator Prowse: Under the old system, the police, the magistrate or the justice of the peace who was validly on duty in this city had a list which was provided by the attorney general, showing that for X dollars—say, $250 for impaired driving, $500 for something else, or $800 for something else—he could be released on bail. If he could produce that cash he went free, and if he could not produce it he stayed in the hoosegow.

Mr. Watson: He had to stay in, that was so.

Senator Prowse: That is right.

Senator McIlraith: I am not dealing with the merit of the law, the old and the new; that is not the question to which I addressed myself. I addressed myself to what appears to be a weak spot in the new law. I am not for a moment suggesting that the old system was perfect or better, or anything like that. I am suggesting that there is a point in the new system where there may be a weakness—and note I say "may"—and I would like to get evidence on that particular narrow point, to see whether it might conceivably be relevant. I may or may not wish to say something about it in terms of its improvement.

I am not one who accepts the philosophy that any law, merely because it is new, is necessarily perfect. It may be a big improvement over the old law, but it may also, itself, be capable of improvement. That is true of any law, as it is drafted.

In this law, it seems to me that there is a point of possible weakness—note I do not say "point of weakness," I say "possible weakness"—and it lies in that, having shifted the responsibility to show cause to different parts of the process, of letting them out on their own recognizance. We corrected one evil, if you like, but we may have created another in the correction process.

It is on that very narrow point that I was seeking assistance. I think the answer may well be that it relates to the point that perhaps the procedures and practice used by the various forces concerned in the judicial process are not a matter for substantive legislation at all.

Mr. Watson: The problem is that many of the attorneys general throughout Canada said that the bill, in its format, did not change anything, but merely codified what already existed in practice in their own provinces.

Senator McIlraith: I know there are no kicks coming from the very provinces where they have applied that principle. There are no kicks at all coming from there, but there are from the others.

Mr. Watson: That is right. It is difficult to find a proper solution. You get down eventually to the individual policeman on the beat having enough discretion. You can leave that discretion with him, or you can take it away. If you take the discretion away, you have to give him good guidelines that are so strict that he simply just brings the person into the police station; he brings everybody in.

Senator McIlraith: What I was trying to clarify is this. Without intending to do so, I think we have in fact taken the discretion away from him at that point.

Mr. Watson: They may have interpreted it in that way.

Senator McIlraith: That is the point I was getting at.

Mr. Watson: It was meant to make it easier for them, and they may have interpreted so that they say, "I am either off the hook and I am letting him go, or I am just dragging him in."

Senator McIlraith: On the intention of the new legislation, as far as I am concerned, I am not certain that we have drafted it to achieve its objectives at all. We may have caused or brought about a new evil in the process. That is really the point.

Mr. Watson: I agree with you, senator, that there are police officers who have interpreted it not in the way the legislation was intended; I might say, not in the way the majority of police officers have interpreted it. There has

been no trouble, for instance, with the RCMP or with most of the provincial police forces. It is the municipal police forces—and perhaps it is a matter of education, of getting that individual police officer to apply it in the right spirit.

Senator McIlraith: It is a little bigger than that. A number of police officers were in on the drafting body and they knew exactly what was intended there. I think they are applying what was intended there. Some of the other forces are confronted with the statute and do not have that thought.

Senator Prowse: It may be that they do not want to make it work.

Senator McIlraith: No, I am not so sure that that is the point at all. I do not think it is a question of lack of good faith.

The Chairman: I think that Senator McIlraith has made his point very clearly and this leads us on to the next item, remand. Would you be good enough to cover that, Mr. Sommerfeld?

Mr. Sommerfeld: Yes, Mr. Chairman.

As I mentioned in my opening remarks, the question of remand is really tied up with the question of pre-trial release, because it occurs within the context of the process that goes on once the person gets involved with the criminal law.

To remand an accused means to order some type of temporary postponement of the proceedings against him. For example, on his first appearance, an accused may be remanded to a particular date to plead to the offence, he may be remanded to another date to fix a date for his trial and then remanded again to the date fixed for his trial. He may be remanded in or out of custody, depending upon whether or not in the pre-trial release procedure described above—which my friend Mr. Watson has been dealing with—he has been permitted to be at large.

Senator Prowse: Or this may be reviewed at that point.

Mr. Sommerfeld: Or it can be reviewed, yes. So, when a person is remanded in the course of proceedings that are going on, the question of his being at large or being in custody is governed by much the same considerations that go on prior to the time the trial actually gets under way.

In the case of remand for a mental examination, it is really a special sort of remand that occurs in the course of the proceedings. It is a remand in custody, he is not released when he is remanded for a mental examination, so there is no question of his release under those circumstances. He may be remanded for mental examination for a period not exceeding 30 days . . . There is supposed to be supporting evidence from a medical practitioner. If there is not, but if there are special circumstances he may, nonetheless, be remanded for a period of 30 days, or he may be remanded for up to 60 days if there is supporting evidence from a qualified medical practitioner.

Senator Hastings: You used the phrase "he may be remanded in custody". Where does this examination take place?

Mr. Sommerfeld: It might be in the Provincial Hospital or wherever there are custodial facilities of this nature, where a mental examination can take place. It would usually be a Provincial Hospital. Is that not so, Mr. Watson?

Mr. Watson: That is pretty well so, I think. Here in Ottawa it would be the Royal Ottawa Hospital.

Senator Hastings: Does the examination take place in custody in the institution or jail, or does the mental examination take place in custody in a mental home or mental hospital?

Mr. Watson: That would vary, of course, in the case of the judge concerned and the facilities available to him; and if he is in a state where he needs to be tranquilized, or if he is a person who simply appears to be in need of a mental examination for ancillary purposes rather than to decide whether the person is fit to plead or not in his trial. There is such a variety of possibilities that it would depend on which facility is best capable of dealing with that mental examination for that particular accused.

Senator Hastings: Who would make that decision?

Mr. Watson: It would be the judge, on the recommendation of the defence counsel and the prosecutor.

Senator Lapointe: Sometimes is he kept only in jail, or in a hospital? Can he be kept in jail?

Mr. Watson: He would be held in custody. That, in certain cases, might be a jail.

Senator McIlraith: It could be, but it is not likely to be, unless it is just for the want of a chance to bring the doctor or the psychiatrist in.

Mr. Watson: In other words, he is not free to go, so he has to be held, and he has to be held somewhere.

Senator Prowse: I am not sure it lays down what he has to do, but the normal procedure would be that he is remanded to X institution for Y number of days for mental examination. For example, in Edmonton he would be remanded to the Provincial Mental Hospital in Oliver for mental examination. He would go there and would be held in that ward. I presume that is the general picture. I cannot imagine that he would be remanded to the jail itself for a mental examination. I think they always send them to a mental institution. I am not sure that the place is marked down here, though.

Mr. Watson: No, there is nothing that requires it; it is a matter of local practice.

Senator Prowse: Maybe there should be, though.

Mr. Watson: Well, I do not think there are in fact any problems in relation to that, at least not what we are aware of. No one has complained that he is being unjustly detained in circumstances that do not allow for proper mental examination. So, in practice, it works very well.

Senator Prowse: You do get complaints.

The Chairman: Mr. Sommerfeld.

Mr. Sommerfeld: Thank you, Mr. Chairman. Dealing with the degree of discretion, in the case of remands other than for a mental examination there is a wide degree of discretion, except that generally speaking a remand may not be for more than eight days unless the accused is not in

custody and he and the prosecutor consent to the proposed adjournment.

Senator Prowse: Would I be correct in saying that ordinarily the term "remand" is used where the person is kept in custody, and the term "adjournment" is used where the person is free and you merely set another date when he shall appear—or am I making a distinction that does not really exist here?

Mr. Sommerfeld: I have always thought of the terms as more or less interchangeable, but perhaps you are right. The word "remand" does have a connotation of custody, but they do speak of remands out of custody as well.

Senator Prowse: I do know that when a person is in custody and is unable to raise bail they always talk of a remand for eight days. If you want it longer, there has to be an agreement. On the other hand, if the person is not in custody, then they talk of an adjournment and you may very get often an adjournment of a month or more. It depends on what is convenient for everybody. But the terms "adjournment" and "remand" would apparently be interchangeable so far as the law is concerned, then?

Mr. Sommerfeld: I have always regarded them as fairly interchangeable.

Mr. Watson: There are some who feel that a remand is for the person in custody, and that an adjournment is for the person who is not in custody, and it probably works out to be that way in 99 per cent of the cases. But just to go back to the principle of the bail, once bail is set at the very beginning, or once the pre-trial release or detention is set, that status of the accused goes on until the end of his trial.

Senator Prowse: Unless it is changed.

Mr. Watson: Unless it is changed, yes. If a person has opted for a trial by judge and jury and has been freed on some form of process, or else they have proceeded by way of summons, when the person is committed for trial by judge and jury there is no question of deciding his pre-trial detention or release, at that stage. That has been set. At the preliminary hearing the committal for trial is no longer a factor in deciding custody. He is committed for trial; but he is not put in custody if he is out.

Senator Prowse: But once he is committed for trial, the question of bail then must be determined at the same time again.

Mr. Watson: That has been eliminated now, the question of setting bail.

Senator Prowse: Once it has been set, it is set?

Mr. Watson: Once it has been set, it is set for good, unless it is changed by the . .

Senator Prowse: By the prosecutor appealing.

Mr. Watson: By the prosecutor appealing, yes. So he continues in his state. So, if you are talking about a person who is not in custody, whether you would refer to that as a remand or an adjournment would not matter.

Senator Prowse: It would not matter.

Mr. Watson: No, it would be equivalent. Whereas, if you had a person in custody, whether you called it an adjournment or a remand would not matter either, because he would still remain in custody and it would still be no more than eight days. So it is difficult to say whether or not there is, in practice, a difference.

Mr. Sommerfeld: The next heading in the paper we prepared, Mr. Chairman, is "Supsended Sentence." This means that the court may suspend the passing of sentence for a specified period of time during which the person convicted is free subject to an order of probation. If, during that period of time, he commits an offence or breaches the order of probation, in addition to any punishment that may be imposed for that act—that is, for the offence or the breach of the probation order—he may also be required to appear before the court again to be sentenced for the original offence for which the sentence was suspended for a period of one year, or whatever the case may have been.

Senator Hastings: You used the words "he may". Is it not a requisite that he appear?

Senator Prowse: That is a good question.

The Chairman: You mean, to answer to the original offence?

Senator Hastings: Yes. You say, "he may be required to appear." Is it not mandatory?

The Chairman: I thought it was "shall," but I am not sure.

Mr. Watson: The question of bringing him back has to be made on the application of the prosecutor. If the prosecutor does not apply to have him brought back for sentence, then he is not.

Senator Hastings: On the breach of probation?

Mr. Watson: Yes. I think the section is 664, paragraph 3:

> Where a court has made a probation order, the court may at any time, upon application by the accused or the prosecutor, require the accused to appear before it . . .

And, after hearing the accused and the prosecutor, the court may make any changes or, in fact, impose the sentence that was not imposed in the first place.

Senator Prowse: In other words, they could impose the sentence that could have been imposed at that time.

Mr. Watson: That is right.

Senator Prowse: Really, it works out in fact that the passing of sentence is postponed or adjourned until a particular time, and if nothing happens to bring the accused to the attention of the prosecutor in the meantime, and that time is passed, then the thing is finished.

Mr. Sommerfeld: It is at an end, yes.

Mr. Watson: Really it comes down to this, that the accused can be charged with breach of probation. If he breaches his probation, then there is a separate offence for the breach of probation and he can be charged for that. In addition to being charged with breach of probation and being punished for that, if it is a suspended

sentence with probation, he can be brought back and sentenced for the original offence. But, the way the law is written, that can only be done upon application by the prosecutor.

Senator Prowse: The person does not automatically come back. If a person is sentenced on July 1 this year and is given a suspended sentence for a year to keep the peace, he does not automatically come back on July 1 next year.

Mr. Watson: No. Some judges, as a part of their order of probation, make it a requirement that the accused be brought back one week before the termination of his probation. Such judges then review the probation with the accused.

Senator Prowse: And that would be a condition of the probation?

Mr. Watson: That would be a condition of the probation, yes.

Senator Lapointe: But don't you think that the accused, while he is on probation, can be committing many offences without being caught?

Senator Hastings: It is done every day.

Senator Prowse: Undoubtedly they do it.

Mr. Watson: That is true, but we can only talk about persons who are caught committing offences. If it happens that a person commits an offence while he is on probation and is caught, three things could happen to him: he is charged with that offence; he is charged with breach of probation; and he can be brought back before the judge, on application of the prosecutor, for sentencing on the original offence. So that means that he could accumulate three new sentences.

Senator Lapointe: Yes, I know, but if they are really cleaver they are not caught.

Mr. Watson: Well, of course, that applies to all criminals, but I think people on probation tend to be more cautious than persons not on probation.

Senator Hastings: Well, if I can just give a simple example, if I am given two years' suspended sentence and a year later I am caught breaking and entering and I am given a three-year sentence on that, do I serve five years or do I serve three?

Mr. Watson: You would just serve the three, unless you were charged with a breach of probation, in which case the judge would take into consideration whether the sentence should be in addition to the three years for breaking and entering. If the prosecutor were to apply to have the accused brought back before the judge for sentencing on the original charge, then that sentence would be whatever sentence the judge decided to impose. A two-year suspended sentence is not simply a sentence of two years that is suspended. It simply means that the judge does not pass sentence for two years, which means that there is a sword hanging over the accused for a period of two years during which he can be brought back and sentenced on that charge. At that time he could be sentenced to whatever sentence the judge might decide on—it could be five years, it could be two years, or it could even be six months.

Senator Prowse: But from a practical point of view what actually happens is this, the judge says, "I sentence you to two years less a day, but I will suspend sentence."

Mr. Watson: Yes, but that is an illegal punishment and in a case like that the prosecutor should appeal it.

Senator Prowse: That is the type of case you are worried about, but it is the type of thing that magistrates do.

Mr. Watson: What is happening in that case is that the magistrate or the judge is substituting himself for the Parole Board. If the person is sent to jail for two years, then the National Parole Board can in effect parole him or suspend the effects of incarceration. But the judge himself has no power under existing law to impose a sentence of, say, two years and suspend its effects. What in fact he does is simply to adjourn the passing of sentence.

Senator Prowse: In other words, he adjourns the sentencing for one or two years from the date of the hearing.

Mr. Watson: And if the accused stays out of trouble for that period, then there is no power to sentence him for the original offence which lapses, and it then becomes, in effect, a final sentence.

Senator Hastings: Could a judge sentence a man and then suspend the sentence on condition that he behaves himself and that he pays to his victim—and let us suppose there is a victim—a sum of, say, X dollars?

Mr. Watson: In a case of assault, or something of that nature, it can be a term or condition of probation, but if it should happen that this term or condition were excessive, then the accused could appeal that sentence. Let us suppose that a judge says to an accused, "You will have to compensate the person you injured to the extent of $50,-000," and this was for something of comparatively minor importance, then the accused could appeal that and have the court of appeal substitute its decision. It might well say, "Well, that is not a valid condition of his probation order." But if it is a reasonable one, then it would form part of his probation, and if he did not compensate the victim, then he would be in breach of his probation and he could be brought back.

Senator Prowse: But under the Code, in certain cases can they not give a judgment for X dollars which is then registerable as a civil judgment?

Mr. Watson: Yes, but that is something that is quite different. That could be where there is an order made for restitution or compensation at the time of the passing of sentence; but that would not apply where he gave a suspended sentence and put him on probation.

Senator Prowse: No. This is where it is given as part of the sentence.

Mr. Watson: The magistrate or the judge might sentence the accused to a fine of, say, $100 plus make an order at the time of the passing of sentence that the accused should make restitution to compensate the victim.

Senator Prowse: Let us take the case of a bad cheque. I remember this type of thing happening regularly, where stores have cashed cheques and consequently an individual was brought up on a bad cheque charge. He would be

charged with fraud, and the injured party would get a judgment against him from the magistrate's court for the $25, or whatever the sum might be, which would be a registerable judgment and was collectible, as any other judgment would be.

Senator Hastings: But I am talking now about sentencing. There is always this concern for the victim, but is it ever used?

Mr. Watson: Yes, in appropriate cases where it is a matter of restitution or compensation for hospitalization or doctor's bills.

Senator Lapointe: Don't you think that the third condition specified in your probation order is somewhat unrealistic—that he shall abstain from the consumption of alcohol?

Mr. Watson: Well, that depends. A person may be an alcoholic and his problem may be caused by drinking. And that is why the judge, in not putting him in jail, is recognizing that this is the problem, and he gives him the opportunity to remain free provided he abstains from alcohol. Because if he does not abstain from alcohol, then he is likely to be back before him on some other offence, in addition to that of breach of probation plus whatever other offences he might happen to commit. Now, I agree that it may not be a reasonable condition to impose automatically on everybody, and I would hope that if I were in that position they would not impose such an order on me, but if it was the case of somebody who was an alcoholic or whose offence was related in some way to drinking, then I think it might very well be appropriate. If the accused did not think it was appropriate, then he could simply appeal the sentence, and the court of appeal might or might not agree with the judge's original order.

Senator Lapointe: But who would control that?

Mr. Watson: The probation officer. When a probation order is made, it is normally part of that order that the accused shall report at certain intervals to a probation officer who supervises him. By that I do not mean to imply that he follows him around for 24 hours a day. But if the probation officer becomes aware by one means or another—let us say the accused person's wife telephones the probation officer to say that he is drinking again—then, of course, he has to follow it up, and take the appropriate steps.

Senator McIlraith: This also preserves in the court the power to give a substantive sentence on the original charge, if the man repeats the same offence. By that I mean that when he is charged the second time they can still sentence him on the first offence as well, and there may be no supervision or probation involved at all. It is really a case of giving a man a chance, but if he does come back again he can be sentenced at that time on the first charge. Some people have the habit of committing the same type of offence when they get drinking, and this is the type of case where it is used. They let him go on the first charge, provided he does not drink, because they know very well that if he does get drinking he is likely to be back again.

Mr. Watson: This is no more difficult to supervise than in the case of a person who is on parole under certain conditions. They do not follow the person around 24 hours a day; they trust him, but if he does breach it and if they become aware of it, then they can take the appropriate steps. But I imagine there are many, many persons who breach not only their parole but also their probation orders, and if they are not caught, then that is their own good fortune.

The Chairman: We can now go on to probation following imprisonment.

Mr. Sommerfeld: The type of probation we have been considering is one that arises on a suspended sentence. It may also be imposed following a sentence of imprisonment, and under section 663(1)(b) of the Code there is a provision that in addition to fining the accused or sentencing him to imprisonment, whether in default of payment of the fine or otherwise, for a term not exceeding two years, the court may direct that the accused comply with the conditions prescribed in the probation order. As in the case of breach of probation order on a suspended sentence, such breach amounts to an offence under section 666 of the Criminal Code. However, where the probation order follows upon a sentence of imprisonment and the accused is convicted of an offence, including an offence under section 666, he may also be required to appear before the court, which may then alter the conditions of the probation order or extend its operation for a period not exceeding one year. There would be no question of bringing him back to sentence him on the original offence, as in the case of a suspended sentence, because he has already been sentenced to a term of imprisonment for that, and has completed it.

Senator Hastings: But that order only applies to any sentence less than two years.

Mr. Sommerfeld: Yes.

Mr. Watson: I think the text is "not exceeding two years."

Senator Hastings: That is provincial term.

Mr. Watson: Not exactly because if you were imprisoned for two years you would be in the penitentiary.

Mr. Sommerfeld: Yes, two years would be a penitentiary sentence.

I turn now to the section dealing with absolute and conditional discharge. Absolute and conditional discharge may be applied to accused persons other than corporations and only for offences other than those for which a minimum punishment is prescribed by law, or punishable by imprisonment for 14 years, or for life, or by death. If the accused is discharged absolutely it means he is free to go without any conditions being attached to his release. If he is given a conditional discharge he is placed under an order of probation, but in neither case is he convicted of the offence for which he has been charged or tried. If he breaches the probation order this amounts to an offence in itself, as it does in the case of any breach of probation order. He may also have his conditional discharge revoked and be convicted of and sentenced for the offence with which he was originally charged and given a conditional discharge. Generally speaking, the consequences of breach of a probation order in the case of a conditional discharge are the same as those in the case of any other breach of probation order.

I have referred to the sections of the statute involved in the Criminal Code, and of course, the deciding authority is the court having jurisdiction in the case. As far as discretion is concerned, the court may order an absolute or conditional discharge where the accused pleads guilty or has been found guilty if it considers it to be in the best interests of the accused and not contrary to the public interest. This consideration appears in section 662.1.

Senator Hastings: I notice some criticism by the bench with respect to this section. Can you explain their criticism? What is bothering them?

Mr. Sommerfeld: We can tell you what the criticism is. I am not entirely sure we understand it.

Senator Hastings: Neither do I.

Mr. Sommerfeld: Certainly, there is a reluctance on the part of some judges to apply it at all. Part of this, I think, stems from the fact that it is very difficult to appreciate what is really meant by a discharge, either absolute or conditional. It is a separate animal which Parliament has created. Prior to this a person could be convicted or acquitted. Now he can be acquitted, convicted, or he may be given an absolute or conditional discharge. The only thing you can say about this is that a discharge is simply something different from a conviction, notwithstanding the fact that it has to follow a plea of guilty, or a finding of guilt; and instead of registering a conviction there is a discharge. The consequence is that the person has not been convicted of an offence.

I think judges do have difficulty with this concept, and I quite understand this because it is a new concept, and it is complicated too by the fact that even though it is a separate and different status, oddly enough it has some of the same incidents which go with a conviction. For example, you have certain appeal procedures which make it sound as though he has been convicted.

Perhaps Mr. Watson has something to add to this as well.

Mr. Watson: I think you hit the nail on the head. It is a new concept that is not taught at law school and the law professors have not yet caught up with it.

Senator Prowse: Neither has anyone else.

Mr. Watson: The lawyers and judges are endeavouring to fit these concepts into their pre-existing concepts dealing with conviction and acquittal, guilty and not guilty. I may point out to the senator from Quebec that the French wording has not helped because the term for parole is "libération conditionnelle"; and the term for absolute discharge is "libération inconditionnelle"; and the term for conditional discharge is "libération sous-condition". So you can imagine that when they began to talk about "libération inconditionnelle" and "libération sous-condition" in the Province of Quebec, this is just a half step away from "libération conditionnelle" which is the term for parole.

Many judges from Quebec have asked me whether this is like parole because the term sounded so similar. Quebec judges have a more difficult task because of the wording. They have to sit down and study this and make a distinction in their own mind between terms which sound an awful lot alike, such as "libération inconditionnelle" and "libération sous-condition."

In a recent newspaper report a lady from Montreal was given an absolute discharge and the Montreal *Gazette* reported it as though she was freed unconditionally; they translated it "freed unconditionally." That was in the case of Carmen Geoffroy who received an absolute discharge. The newspaper did not report it as an absolute discharge; they reported it as if she was freed unconditionally. That was very confusing. Was she placed on parole or what was her sentence?

The Chairman: Would you explain to another Quebec senator what the difference is? I must admit I am confused.

Mr. Watson: If you stick to the English version your confusion should be relieved.

Senator Prowse: We were told that the beautiful part of having the laws in both languages would be that if you could not get a clear concept in one language you could get one in the other, that the two ere interchangeable.

Mr. Watson: That is why I suggest to the senators from Quebec that they use the English version.

Senator McIlraith: As a matter of fact, this section deals with a new concept and I am not certain that the term "unconditional discharge" is a happy choice of language to describe this new concept which we have enacted, because the word "discharge" has certain significance and connotations in the application of criminal law, so does the term "unconditional discharge." This new concept is not quite related to the usage of those words in the administration of criminal law.

Mr. Watson: I think you are quite right.

Senator McIlraith: It may be that we have not found a happy expression for this new concept. I think the concept is very much welcomed, particularly dealing with young offenders.

Mr. Watson: I think the term "unconditional discharge" is probably a more accurate way of describing it because it comes from the French wording, and yet the English term is "absolute" discharge, which sounds very final.

Senator McIlraith: Yes, it is not really an absolute discharge.

Mr. Watson: No, it means there is no record of conviction.

Senator McIlraith: Yes, no record of conviction.

Mr. Watson: Yet a record is kept of a finding of guilt or a plea of guilty.

Senator Prowse: It was an old Welsh jury that brought in the verdict: "We finds the defendant not guilty, but we advises him not to do it again." Or the Scottish concept of "not proven".

Mr. Watson: I suppose it is very close to that concept.

Senator Denis: The wording in French or in English means the same thing.

Mr. Watson: Oh, yes. Once you bring yourself to exercise an act of faith in this new concept, and actually believe there are people who are neither convicted or acquitted but who are in this middle group of "dischargees", a person who is given a conditional discharge, once his period of probation is up, his discharge becomes, in effect, absolute. The passage of time turns a conditional discharge into an absolute discharge.

Senator Prowse: Am I correct in assuming that if in the case of a conditional or absolute discharge a situation arises in which a person is technically guilty of a breach of law but it is not sufficiently serious that the court wishes to convict him but orders him to pay $50, which would be the conditional discharge, the whole thing is forgotten?

Mr. Watson: That is correct, with no condition.

Senator Prowse: The other point is when the court says it cannot find him guilty. You know, theft is an awfully tough term to define, because you move something which belongs to someone else and technically you have stolen it. In another case the accused may be given an absolute discharge, the court saying it cannot dismiss the case against him because technically he has broken the law but the court should really not have been bothered in the frist place. Is this not what it really amounts to?

Mr. Watson: Not so much not being bothered, because if the person commits that offence again, even though it is fairly minor, there is a record of the previous time, so that the judge on the second occasion is not likely to use the discharge procedure, certainly not the absolute. He might grant a conditional discharge the next time, but the judge would be made aware of the fact that the person did receive an absolute discharge for the same offence previously. If he repeated the offence, which might have been very minor when committed once, it would become a nuisance and very serious.

Senator Prowse: It seem to me that in 1935 the old Code contained a provision whereby a person could plead guilty and make restitution. He would be convicted, but the magistrate would have the right, if the accused had no previous record, to discharge him from the conviction. Do you remember that sentence?

Mr. Sommerfeld: I do not recall it.

Mr. Watson: Neither do I.

Senator Prowse: I remember it very well. Under the old Code, prior to the change in 1952, this particular situation arose in 1935. I have reason to recall it, not because I was the principal. I was a newspaper reporter at the time, but I remember reading it in my father's library when I was quite young. Two university students were convicted of stealing such items as a bottle of ketchup and a door opener. I remember going to the magistrate because I knew these students and saw them in jail next morning, where they had been overnight. I was able to refer the magistrate to this section of the Code. There was complete restitution and they paid for all damage, and the magistrate then discharged them from the conviction and there was no record kept.

Mr. Watson: A practice existed prior to this legislation whereby judges in such cases would award the accused a suspended sentence; in other words, he would not be punished.

Senator Prowse: But this was better. There was an interregnum period when that power did not exist and a conviction had to be registered, but under the old section the magistrate had the power to hand down a conviction and, provided there was no damage involved, he could erase it. I particularly remember a case in which this was done.

Senator Lapointe: Is the word "acquittement" not used in French?

M. Watson: Non, ce n'est pas un acquittement. C'est après qu'une personne a été trouvée coupable ou a plaidé coupable.

The "acquittement" is the most for which the accused could hope. He is found not guilty by the jury or the judge and is therefore acquitted. This, however occurs after the person pleads guilty or is found guilty, either by the jury or by the judge, so it is not an acquittal or an "acquittement." On the other hand, it is not a conviction.

Senator Prowse: So it is relatively unimportant?

Mr. Watson: It is something in between acquittal and conviction.

Senator Lapointe: So a word should be found in French other than "libération."

Mr. Watson: I do not know; perhaps we will become used to employing that term and it will become second nature to us, in the same way as "acquittement."

The Chairman: Mr. Sommerfeld, would you proceed please?

Mr. Sommerfeld: Thank you Mr. Chairman. I have nothing further to say with respect to absolute and conditional discharges.

The next item in the paper is: "Fines (In Default of Payment—Imprisonment)."

Particular statutes may provide for imprisonment in default of payment of fine. In addition there is a general provision in the Criminal Code that where a fine is imposed and no provision is made for imprisonment in default that the court may order in default of payment that the defendant be imprisoned for a period of not more than six months. The court may also direct that the fine be paid forthwith or within such time and on such terms and conditions as the court may fix. The court may not direct that the fine be paid forthwith unless it is satisfied that the convicted person has sufficient means to enable him to pay the fine at once, upon being asked whether he desires time to make payment the convicted person does not request such time, or for any other special reasons the court deems it expedient that no time be allowed. The minimum time to be allowed is 14 days. If the time allowed expires and payment has not been made the court may issue a warrant for the committal of the accused unless the person has appeared and applied for an extension of time. Where there has been part payment of the fine the term of imprisonment is reduced proportionately.

There are really no conditions attached to the release of a person under these circumstances, other than that his

fine be paid forthwith, if that is the order, or within whatever time is allowed by the order.

If there are no further questions on that section, I will proceed to the section respecting intermittent sentences.

Where the court imposes a sentence of 90 days or less it may order that the sentence be served intermittently at such times as are specified in the order and direct that the accused at all times when he is not in confinement comply with the conditions prescribed in a Probation Order. The convicted person is, therefore, subject to all the consequences of being under a Probation Order that apply in the case of anyone else.

This applies in such situations as those in which it may be ordered that a person serve a sentence, for example, of 30 days on weekends. When he is out he is subject to an order of probation and if he breaches it or commits another offence he is in the same position as anyone else under a probation order.

Senator Prowse: Would the order be for six successive weekends, from 5 o'clock on Friday to midnight on Sunday, for instance, at which time he shall report to such-and-such a jail and remain in its custody at that time?

Mr. Sommerfeld: Yes, so that he would really be serving 12 days intermittently.

Senator Prowse: My point is, does the 90 days cover the total period, or would it be 90 days accumulated three days at a time?

Mr. Sommerfeld: My understanding is that the 90 days is the period that would be divided up throughout the weekends, or whatever the case would be, rather than requiring 90 days to be served continuously. He is told he can serve it at certain times so that he can continue to work or whatever the case may be.

The Chairman: It is entirely within the discretion of the court.

Mr. Sommerfeld: Yes.

Senator Lapointe: What are the main reasons for this type of sentencing?

Mr. Sommerfeld: I imagine the main reason would be to enable a person to continue in his employment and not lose his job as a result of having to go to jail for 30 days, or whatever the case may be.

Senator McIlraith: There may be a large family which needs the security of a permanent job, plus some help in the home in looking after the children, and his record in that respect might be relatively good. It is for that type of problem.

Mr. Sommerfeld: The next item has to do with pardon and amnesty. As I mentioned at the beginning of the paper, although it is covered by the Criminal Code, this is really under the jurisdiction of the Department of the Solicitor General. The matter of free and conditional pardon is governed by section 683 of the Criminal Code. I do not propose to say anything more than that about it. I will defer that to my friends from the Department of the Solicitor General.

As far as any other releases are concerned, the only other situation that I can think of arises very rarely. Under section 617 of the Criminal Code there is a provision that the Minister of Justice may order a new trial or a hearing before the court of appeal in the case of a person who has been convicted under certain circumstances; and where such an order is made the person who is in custody and serving a sentence can apply for release pending the determination of his new trial and the appeal, and the usual considerations as to whether or not he should be released would apply in that case. That is really a sort of situation involving bail as well. I do not think I have anything further to add.

Senator Hastings: All of these instances which you have covered this morning, pertaining to the release of an accused by police, by the courts, have no connection whatsoever with the National Parole Service or the National Parole Board?

Mr. Sommerfeld: None whatsoever.

Senator Hastings: None of these accused will ever be under the supervision of the National Parole Service.

Senator Prowse: Under the circumstances which we have been discussing.

Senator Hastings: Yes. Under the circumstances which we have been discussing this morning, none of these would have anything whatsoever to do with the board or the service?

Mr. Watson: There is one slight possibility that sometimes a person may, for a short period of time, because of the operation of the two different acts, be subject to both parole and supervision by a probation officer. That is an administrative problem at the moment.

Senator Prowse: That is a provincial officer.

Mr. Watson: The probation officer who is a provincial officer supervises him because he is on probation. Let us say he has been sentenced and is paroled. He is then subject to mandatory supervision, or the parole officer; at the same time, because of the sentence imposed, he is also subject to a probation order. It is usually for a short period of time and it is worked administratively between the two bodies, the provincial authorities and the parole officer.

Senator Hastings: There seems to be a great deal of confusion in the minds of the public and the press that every time an inmate or an accused is at large it is the Parole Board that is letting these men out. I think we have an obligation to clarify this. Police officers, judges—in fact, a great many people—are releasing men from custody. The Parole Board are not necessarily the only people.

The Chairman: And that person on probation is not subject to supervision by the Parole Service.

Senator Quart: How does the Parole Board come into the picture? Mr. Watson has said there is one condition. Are they requested by the judge to come in, to take over?

Mr. Watson: Perhaps I can explain this. Where a person receives probation in addition to a prison sentence, he may not serve his full prison sentence; he may be paroled

before the end of his prison sentence. The probation order takes effect after the determination of his sentence, so that he is both out on parole and subject to probation for a certain period of time.

Senator Quart: It works automatically. I was wondering if the Parole Board would be requested by somebody to take over in respect of these cases which have been mentioned all morning. Do they come in automatically, or are they requested by someone?

Mr. Watson: Where a person is subject to both a probation order and parole, one service would ask the other to do it on its behalf. Surely, they would not duplicate the work. The probation officer may ask the parole officer to look after a person during this period, or vice versa. It is very rarely that a person could be both on parole and subject to probation at the same time.

Senator Quart: That was the clarification I wanted.

Mr. Watson: It is not automatic.

Senator Quart: But I still want to know how the Parole Board gets into the picture.

Senator McIlraith: Only cases where there have been both a prison sentence and a probation period have been dealt with this morning.

Mr. Watson: It is only where there could be possible overlapping.

Senator McIlraith: I am wondering whether you have made it sufficiently clear that in nearly all the cases we have been talking about this morning only a judge can order a probation officer to come into the picture. A judge or magistrate is the only one who can do that. The Parole Board cannot be brought into the operation directly. The parole officer has nothing to do with it. The situation applies to all the cases we have been talking about this morning, except for that one very narrow group, which does not occur very often.

The Chairman: It is very exceptional.

Mr. Watson: It is one that is an administrative headache.

Senator McIlraith: It is only in that particular case. Its useage has been disappearing more and more over the years.

Senator Prowse: Am I understanding Senator McIlraith correctly? The situation he is referring to would apply only in Ontario and British Columbia—about one in ten.

Senator McIlraith: I think that is right, but I would like one of the officers to answer that.

Mr. Watson: When the officers of the Solicitor General's Department are giving their paper, you might want to clarify that point, as they are more familiar with parole.

Senator Prowse: Nothing we have been talking about this morning, as far as you know, concerns parole.

The Chairman: This last question can be put to the representative of the Solicitor General's Department.

Senator Hastings: Mr. Chairman, I have one question pertaining to the release of inmates, which is pertinent to the Department of Justice. It pertains to the old section 684(3) of the Criminal Code which ended December 25, which stated that prisoners serving time for murder could be released only on the authority of the Governor in Council. Yet under the Canadian Penitentiary Act the director of an institution has authority to release inmates in the interests of rehabilitation. Why is there that conflict? I notice that you have placed it also in the new, Bill C-2.

The Chairman: We have the Deputy Commissioner of Penitentiaries here as our next witness.

Senator Prowse: This is a legal matter.

Mr. Watson: I do not think that . . .

Mr. Sommerfeld: It may depend to some extent on a legal opinion which has been asked by the Solicitor General of the Department of Justice.

Senator Prowse: At the moment you are not prepared to give one?

Mr. Sommerfeld: I would prefer not to, senator.

Senator Prowse: Fair enough.

Senator McIlraith: It is really a conflict between section 684(3) of the Criminal Code and section 26 of the Penitentiary Act, there is a difference between the words "release" and granting "temporary absence".

Mr. Watson: It is probably not the kind of release we have been talking about. It may be something that the officers from the Solicitor General's Department may want to get involved in, as it is the Penitentiary Service that is interpreting it.

Senator McIlraith: There appears to be conflict in the wording. The Penitentiary Act gives the officer in the Penitentiary Service power to grant temporary absence permits—it is called temporary absence there—to assist in the rehabilitation of the inmate. The Criminal Code states that a convicted person shall not be released without the prior approval of the Governor-in-Council. So you have an apparent conflict there. There it is; I do not know the answer.

The Chairman: I think we should leave it at that.

Senator Prowse: We will leave it for now.

Senator Hastings: I think the word "permanent" should be inserted.

The Chairman: Thank you very much, gentlemen.

Senator Prowse: I should like to move, Mr. Chairman, on behalf of those of us here, a vote of thanks to both Mr. Sommerfeld and Mr. Watson for their appearance before us this morning and for their co-operation and assistance in helping us to find our way through these rather difficult mazes.

The Chairman: You mean that we should discharge them unconditionally!

Senator McIlraith: With the power to bring them back.

The Chairman: Thank you much, gentlemen.

Our next witness, Mr. Braithwaite, the Deputy Commissioner of Penitentiaries, will deal with temporary absence and remission of sentence.

Mr. J. W. Braithwaite, Deputy Commissioner of Penitentiaries: Mr. Chairman, honourable senators, I will try in the remaining time to deal succinctly but, I hope, satisfactorily with the matter of temporary absence and remission of sentence, both earned and statutory.

Mr. Braithwaite: If I might be permitted to start with statutory remission: The legal basis of this is the Penitentiary Act, sections 22 and 23. The most pertinent subsection is Section 22(1) which states:

> Every person who is sentenced or committed to penitentiary for a fixed term shall, upon being received into a penitentiary, be credited with statutory remission amounting to one-quarter of the period for which he has been sentenced or committed as time off subject to good conduct.

And it goes on to deal with the matter of the authority to take this statutory remission away from the inmate should he violate the disciplinary code of the institution in which he is serving his sentence.

If any portion of that statutory remission is taken away, there is also provision made under section 23 for the possible subsequent return of the remission taken away. That section reads, in part:

> The Commissioner or an officer of the Service designated by him may, where he is satisfied that it is in the interest of the rehabilitation of an inmate, remit any forfeiture of statutory remission but shall not remit more than ninety days of forfeited statutory remission without the approval of the Minister.

The authority, of course, is the Penitentiary Act. There is no discretion allowed by law with reference to the crediting of statutory remission, but there is discretion permitted by law in relation to the forfeiture of statutory remission and also for the return of forfeited remission time.

As for the conditions of release, a record is maintained in the case of each inmate in relation to any credits or debits in regard to statutory remission, and the date of release is based on the number of days of statutory remission remaining to his credit and deducted from the total term of the sentence.

There is also provision made for the forfeiture of statutory remission, in whole or in part, if an inmate is convicted by the institution disciplinary board of a disciplinary offence. The statutory remission may also be forfeited if an inmate is convicted of escape, attempt to escape or being unlawfully at large.

Senator Hastings: Would you repeat that, please? How much is forfeited?

Mr. Braithwaite: It can be forfeited in whole or in part.

Senator Hastings: Thank you.

Mr. Braithwaite: May I proceed to "earned remission"?

The Chairman: Are there any questions on statutory remission?

Senator Hastings: I wonder if you could explain the difference between escape and walk-away?

Mr. Braithwaite: That is not necessarily a legally defined term. This is a term that came into use with the advent of minimum security institutions—forestry camps, farm annexes, community correctional centres, and so forth—and the term came into use in order to distinguish within our own service and in relation to discussing an individual's case with other interested parties such as the police, the courts, and so forth, the difference between an escape from behind a fenced or walled institution, which may or may not have involved violence, and the situation where someone is in a minimum security setting and merely absents himself by walking or even running away, I suppose.

Senator McIlraith: Such as the parklike atmosphere up at Landry Crossing?

Senator Prowse: Between breaking out of an institution and leaving the area?

Mr. Braithwaite: Basically, yes.

Senator Hastings: Would he be an escapee, or would he come under your section dealing with walking-away?

Mr. Braithwaite: Legally, he would be looked upon as an escapee.

Senator Hastings: Unlawfully at large.

Mr. Braithwaite: Yes.

Senator Lapointe: May we consider this statutory remission as a discount for good conduct?

Mr. Braithwaite: Not strictly speaking, as I understand it, senator. My understanding is that it is given to the man upon being received into the penitentiary . . .

The Chairman: It is in anticipation of good conduct.

Senator McIlraith: Only to be lost if there is bad conduct. Otherwise, it is given to him. It puts the onus on the other side.

Mr. Braithwaite: It was looked upon, I believe, as an additional means of control in relation to the inmates. In other words, he had something to lose from the moment he entered the institution.

Senator Prowse: The present is on the tree but he does not get to the tree unless he is a good boy until Christmas.

Mr. Braithwaite: Basically, yes.

Senator Hastings: With the institution of mandatory supervision, have you lost the additional means of control that the earned remission gave you?

Mr. Braithwaite: I do not really think so, no. That is an opinion, and it is only my opinion. I think people still appreciate serving their sentences in the community rather than being in an institution.

Senator Prowse: But it changes it, does it not? Before mandatory supervision, if I was serving four years I would get a quarter of that off for earned remission. I would serve three years, and then I would be out and free.

Mr. Braithwaite: Basically.

Senator Prowse: Now I would have to serve a year, and 15 months on parole.

Mr. Braithwaite: Yes.

Senator Prowse: So whereas I was free at the end of three years under the old system, I am now liable to be picked up at any point during the 15 month probation period and returned to the institution to serve the rest of my time.

Mr. Braithwaite: That is my understanding. On the other hand, that has to be considered in the light of additional protection to the public and the additional resources available to the individual upon his discharge from the institution. Under the old system we more or less said to the fellow, "Well, goodbye and good luck! We will keep your cell available for you," or something of this nature.

Senator Prowse: But under the old system you did not say you would keep the cell available. You just said, "Goodbye and good luck!" Now you say, "We will keep your cell available for you." This worries a good many of them, by the way.

Mr. Braithwaite: I have heard that some people do say that. However, I harken back to what one of the previous witnesses said—I do not know whether it was Mr. Sommerfeld or Mr. Watson—and that was that people on probation tend to be somewhat more circumspect in their behaviour than if they were not on probation. Perhaps there is a similar effect in relation to a man on mandatory supervision. However, I am going beyond my area of competence.

The Chairman: Mandatory supervision will be dealt with by the next witness.

Senator Prowse: Thank you, Mr. Chairman.

The Chairman: Would you go on to "earned remission," Mr. Braithwaite.

Mr. Braithwaite: Earned remission is covered under section 24 of the Penitentiary Act, which states:

> Every inmate may be credited with three days remission of his sentence in respect of each calendar month during which he has applied himself industriously, as determined in accordance with any rules made by the Commissioner in that behalf, to the program of the penitentiary in which he is imprisoned.

Senator Prowse: This is a positive incentive and not something that is given and can then be taken away.

Mr. Braithwaite: That is correct. The deciding authority in relation to this is the Commissioner of Penitentiaries, through delegation of his authority to an institutional board. There is discretion, of course, permitted by the statute as to the amount of time that any given inmate may be credited with in relation to any specific month.

The earned remission credits are recorded in the case of each inmate and added to his statutory remission credits to be counted towards his date of release. Earned remission, unlike statutory remission, cannot be forfeited after it has been earned and credited, and earned remission is recorded in the case of all inmates.

Senator Hastings: I have one question on your phrase "cannot be forfeited." If I were released today with three months statutory remission and one month earned remission under mandatory supervision, and two weeks from today I am brought back in, am I not called upon to serve a remission?

Mr. Braithwaite: That is not my understanding.

Senator Prowse: Your understanding is that once you have earned it you have got it?

Mr. Braithwaite: Once you have earned the remission it is yours.

Senator Hastings: Perhaps this will arise under mandatory supervision when we discuss it. I think you are called upon to serve your earned remission.

The Chairman: I do not believe that is correct.

Mr. Braithwaite: That is not my understanding.

The Chairman: We will cover that when we deal with mandatory supervision.

Mr. Braithwaite: Temporary absence is covered under section 26 of the Penitentiary Act, which states:

> Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time . . .
>
> (a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or
>
> (b) by the officer in charge, . . .

That is a director of an institution.

> . . . for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate.

As you can see, the deciding authorities are the Commissioner of Penitentiaries and the officers of the service who are in charge of individual units within the service. Discretion is permitted by the statute to the deciding authorities in determining the necessity or desirability for an inmate to be absent, with or without escort, and it also allows discretion as to the frequency of such temporary absences.

Senator Lapointe: What do you mean by rehabilitative reasons for three days?

Senator McIlraith: Getting a job.

Senator Lapointe: Is it just to boost morale?

Mr. Braithwaite: No, it is more than that. You are asking specifically about rehabilitative reasons?

Senator Lapointe: Yes.

Mr. Braithwaite: The directive under which the officers of the service use the authority in section 26 cites as examples of rehabilitative reasons: the visiting of members of the family to help preserve the family unit; to have prearranged interviews with prospective employers; to attend lectures, seminars in connection with special stu-

dies or interests. I do not know whether I should be facetious at this point, but I recall a visit of a number of fellows from Drumheller to this committee. We felt that that, for example, in relation to them was a rehabilitative reason.

Senator Prowse: Good for us, too.

Mr. Braithwaite: I would not want to express an opinion on that.

Senator Quart: It was at our request.

Mr. Braithwaite: Other examples are: to visit within the immediate community to ease the transition from confinement to freedom, and to seek employment immediately prior to release date. Those are some examples of rehabilitative reasons that are given in the divisional instructions.

The Chairman: Senator Lapointe was particularly interested in the three days that you mentioned. I understand that those three days can be extended by the commissioner. Is that right?

Mr. Braithwaite: The Commissioner of Penitentiaries can grant up to 15 days for humanitarian and rehabilitative reasons, and an unlimited period for medical reasons.

The Chairman: But could he grant several 15-day periods for rehabilitation?

Senator Denis: And several three-day periods?

The Chairman: And a number of three-day periods?

Senator Hastings: This has reference to my question in the Senate. You indicated that there are 354 men absent on a regular basis from penitentiaries for employment, education and other purposes.

Mr. Braithwaite: This was in relation to the question you raised. There were 373, as I recall, absent on a fairly regular basis as of November 30, 1972, for pre-release employment, regular employment, educational purposes, or other reasons. There were very few in the "other reasons" category, except those on medical grounds. Since you raised that question we have been moving towards a more co-ordinated program, in co-operation with the National Parole Service and the board, so the incidence of regular temporary absences under section 26 is diminishing somewhat.

Senator Prowse: That has been taken over by day parole.

Senator McIlraith: I should like to follow that up. This section says that temporary absence may be granted for three or 15 days, as the case may be, "from time to time". The answer to the question troubled me greatly, because I think you used the word "regular". I do not see how in law "from time to time" can be construed as "regular". In other words, you cannot use "from time to time" merely to extend the time fixed by statute. It is somewhat analagous to "on another occasion" for another purpose, rather than mere extension of the statutory limitation of three or 15 days.

Rehabilitation on a long term basis is clearly rehabilitation through absence from the institution. That aspect of rehabilitation by that method was not given by statute to those in charge of the institution; it was given to another body under other legislation. Have you had or requested any legal opinions on what "from time to time" in section 26 means? Does it authorize the penitentiary authorities to let the person out for more than the three or 15 days, as the case may be? That is, for a longer period, virtually continuously. I do not mean on another occasion a year later.

Mr. Braithwaite: I would like to answer your question and also explain my use of the word "regular." When I used the word "regular" I did not necessarily mean that it was synonymous with continuous. I should like to make that distinction. The word "regular" might mean someone who, for example, was taking a course at a university or who requires medical treatment on a regular basis.

Senator McIlraith: Leaving out the medical ones, because there you have absolute discretion.

Mr. Braithwaite: For instance, someone may be taking a course at a university and under normal circumstances may be required to attend on Monday, Wednesday and Friday for one hour on each of those days. He would be included in this category I referred to. In the broad sense, they are regular, as distinct from continuous.

Senator McIlraith: I am just dealing with the case of a person who is being released in order to take a university course throughout the year. Have you ever had an opinion as to whether or not clause 26 authorized that man's release on two days regularly other than the interview to go and get registered so as to make his arrangements for the course? Have you ever had the point where specifically you would put him under a system where you grant him this at the first of the year that will enable him to take his classes throughout the whole year?

Mr. Braithwaite: The department has asked the Department of Justice for an opinion in relation to the use of temporary absences on a rehabilitative basis. We are looking at re drafting some of the divisional instructions in relation to this, in order to get a further clarification of this.

Senator McIlraith: Mr. Chairman, could we ask the witness about that legal opinion?

Mr. Braithwaite: The final opinion has not been given yet.

Senator McIlraith: Mr. Chairman, could we pursue that subject, as to what the law is on that particular point? I am not certain whether it should be pursued with this witness or with the Department of Justice?

The Chairman: It cannot be pursued with Mr. Braithwaite, who is not a lawyer. I suggest we defer that at this moment.

Senator Prowse: Whenever the final decision comes, it could be raised.

Senator Hastings: Mr. Braithwaite, I am disturbed to hear you say that you are going to reduce the number. I think a year ago it was 160, and you have raised it to 374 in a year, which impressed me. I know the work that you are doing there is really good. I think it is necessary for you to explain candidly to us what is actually being done with these men who are regularly being released, and why you are regularly releasing them and not the Parole Board.

Mr. Braithwaite: I would like to start by clarifying what I said. I do not believe I said we were reducing the number of people involved, but that we were moving towards a use of temporary absence and day parole that is more co-ordinated in practice than it has been in the past.

Senator Hastings: Why was it not co-ordinated in the past?

Mr. Braithwaite: It is difficult for me to say with authority, because I became involved in this, in the consideration of temporary absence and day parole, prior to assuming my present position with the Penitentiary Service. Both the practice of day parole and temporary absence were in operation prior to my coming to the Penitentiary Service. One of the things that was done at the time when I occupied the position which was known as Director of Correctional Planning was to work with the then Executive Director of the National Parole Service and the Penitentiary Service, to develop a more co-ordinated approach to these two programs. The approach that we agreed upon and that we were trying to implement was basically this, that in relation to rehabilitative reasons, section 26 of the Penitentiary Act would be used on a relatively short-term basis and primarily to take advantage of a resource that existed in a communtiy, such as a job opportunity, to grab hold of that resource; and then this would be converted to day parole for the purpose of the continuing program. That is basically the approach that we are trying to implement.

Senator Hastings: And proceeding by day parole takes six to nine months to get decisions.

Mr. Braithwaite: Well, . . .

Senator Hastings: It takes time; I will not say "six to nine months:"

Mr. Braithwaite: In fairness, I would not want to set out a specific time as to how long it takes, but I would have to admit this, that it takes longer than if you just say to the director of an institution, "You make the decision."

Senator Hastings: Agreed.

Mr. Braithwaite: I think we recognize this, that there is a need for an initial decision to be made to capture some resource; but I think we also take cognizance of the fact that we have an obligation to the total community, that there is a need for careful investigation and some supervision. That is why we would hope to convert that individual's program to day parole. So we are trying to meet our two-fold objective, the protection of society and the rehabilitation of the individual.

The Chairman: You said that temporary absence could be with or without escort. Is it without escort in most cases?

Senator Denis: How do you decide to have it, with or without escort?

Mr. Braithwaite: There are two basic means of deciding. One is in relation to the security risk that the individual may present. If I could use a very simple example, a man who requires hospitalization outside the institution, if he is a security risk then, of course, he goes with an escort, with an officer of the service, to the hospital. If he is a man in a minimum security camp, for example, he might be taken to the hospital with escort, but we would not have someone standing over his bed 24 hours a day, because he is not a security risk. That is one consideration, senator.

The other one would depend on the type of activity. For example, if it is a group activity, it would be different. It may be for entertainment purposes. Just last Thursday the Red Deer and District John Howard Society had their annual dinner, and they asked the orchestra from Drumheller institution to come and entertain. Those men went down there with two staff members as their escort. Another example would be the men at our camp at Landry Crossing. If they go out as a group to do work for the Department of Lands and Forests, they do so with a supervising officer. So, in part, it depends on the activity. On the other hand, if you send a man home for rehabilitative purposes, to maintain ties with his wife and family, it is not likely we would send him home with an officer as escort.

The Chairman: Mr. Braithwaite, the Montreal press reported the other day that two individuals released under temporary absence, one to attend the funeral of his mother, the other to attend the funeral of his father, both disappeared. Were they under escort?

Mr. Braithwaite: Frankly, I am sorry, I am not trying to be evasive but I am not familiar with this particular incident.

The Chairman: Those were both announced last week.

Mr. Braithwaite: I am sorry.

Senator Quart: One was Cowansville and the other was Leclerc.

Mr. Braithwaite: I would be happy to get the details from you and give you a report on both incidents, but at the moment I do not know.

Senator Prowse: You had some bad experiences with people on temporary absences. Could you tell us offhand—maybe you can and maybe you cannot—how many of those involved the only absence or a single absence, and how many of them concerned people who were involved in these continual absences? In other words, have you had the difficulty with the people on continual absences, or has it been generally with the people you are experimenting with?

Mr. Braithwaite: I am unable to give you an answer in precise terms. I am not able to tell you that it was X number in this category and Y in the other. However, it is my impression that where we have had problems the majority of the problems have been in relation to those who are not on regular temporary absence.

Senator Denis: They are those on their first time out?

Mr. Braithwaite: That is right. I would also have to say that the majority of temporary absences fall into that category. So how good an observation it is, I do not know.

Senator Prowse: Would it be possible for you to get that without too much difficulty? It might be useful for us to have that information. Would you take a look at it?

Mr. Braithwaite: I will. I will provide you with whatever I can.

Senator Prowse: Fine.

Mr. Braithwaite: Say, for the year 1972. Would that be satisfactory?

Senator Prowse: Yes. (*Note: The data referred to above will be made available to the Committee at a later date.*)

Senator Hastings: Mr Braithwaite, there seems to be some impression that you open the gates every Friday afternoon and let them all out. I think it is imperative for you to go through the procedure you use generally in the granting of a temporary absence, with special emphasis on the safeguards that you are using to protect society and the interest you have in protecting society.

Mr. Braithwaite: Well, as I said at the outset, we have two basic responsibilities: one is the protection of society; the other is to use every reasonable effort to rehabilitate the individual offender.

Senator Denis: Which is more important in your opinion, the first responsibility, protecting society, or the second, protecting the inmate?

Mr. Braithwaite: Well, our first concern is the protection of society. Then we are concerned with the rehabilitation of the offender. I may only confuse you further if I say that, philosophically, we still look on the inmate as part of society.

Senator Prowse: And the rehabilitation is part of the protection.

Mr. Braithwaite: Yes.

Senator Hastings: It is the protection.

Mr. Braithwaite: So the two are interwoven. Now, you are asking for the safeguards and the procedure.

Senator Hastings: As I say, the impression is that you let everybody out on Friday afternoon and get them back in on Monday morning.

Senator Prowse: How do you decide to let them go?

Mr. Braithwaite: No inmate upon entering a penitentiary is considered for a temporary absence until he has served six months within the institution. So there is a period of six months within which the institutional staff have the opportunity to get to know the individual who may be under consideration.

Senator Hastings: Would that be the case if I were serving 15 years?

Mr. Braithwaite: Yes. All I am saying is that no one will be considered prior to that.

Senator Prowse: Except on humanitarian grounds.

Mr. Braithwaite: Or medical, right. But I think we were talking primarily about rehabilitative reasons. Then an application for temporary absence may originate from the inmate, a member of his family or the classification officer or some other authorized person within the institution.

The Inmate Training Board will then consider that request and they will ask the National Parole Service to provide them with a community assessment. If the man, for example, makes a request that he wishes to go home to visit his wife and children, part of the request for a community assessment would be to ascertain if he has a wife and children, if indeed they are in that community, and if indeed they want to have him for a visit. As part of that community assessment the Parole Service, or an appropriate after-care agency such as the John Howard Society, would contact the local police and obtain their opinion.

Senator Hastings: In addition to the Parole Service?

Mr. Braithwaite: No, I said the National Parole Service or an appropriate after-care agency, for example—

Senator Prowse: Somebody would get to speak to the local police.

Mr. Braithwaite: Just to clarify this, what we do is we ask the district representative of the Parole Service to do it. It is my understanding that if he has the staff readily available they will do the community assessment. If not, they will ask an authorized organization such as the John Howard Society to do it on their behalf.

Senator Hastings: You said the police, didn't you?

Mr. Braithwaite: Yes, as part of the community assessment the National Parole Service or the John Howard Society, for example, will confer and consult with the police.

Senator McIlraith: Is it "may" consult or "will" consult?

Mr. Braithwaite: The community assessments are paid for by the Department of the Solicitor General through a contractual fee for service arrangements, and the contract says in it that in relation to community assessments the police will be consulted. It is part of the guidelines for the community assessment.

Senator Quart: The investigation conducted by the association or group responsible for the investigation of the "children" in the Geoffroy case, was certainly very unsatisfactory.

Mr. Braithwaite: I am sorry. Was that a question?

The Chairman: I think it was a comment.

Senator Quart: Well, to rephrase it, would you consider that it was satisfactory?

Senator Prowse: That is not a fair question.

Senator Quart: The temptation was too great, nonetheless.

Senator McIlraith: Well, it may very well be relevant to know whether that was done before the contracts of which you speak were in operation and these grants were provided. I am not clear whether that was done before the contracts or not, and that is a point that might well be cleared up.

Mr. Braithwaite: I would ask Mr. Therrien to correct me, if I am wrong, but it is my recollection that that assessment was done after the contracts.

Senator McIlraith: Is it a fair question to ask you if the terms of the contract were complied with in that case?

Mr. Braithwaite: I am not a lawyer.

The Chairman: I don't think you should boast.

Senator Prowse: Mr. Chairman, what we are asking for here is an opinion on a matter that the witness may or may not be competent to speak to.

Senator McIlraith: That is all very well, but these reports are in the Penitentiary Service and someone has custody of them.

Senator Prowse: Yes, he should be able to get them.

Senator McIlraith: It is very relevant to know whether or not the police were consulted about those children.

Senator Quart: Yes.

Senator McIlraith: And where they were, and whether or not the safeguard put under this contract on the use of the taxpayers' money for this purpose was being observed. It is a relevant point. The money is not just voted to be handed out, you know. The contract represented a lot of work and thought.

Senator Quart: If I may further pursue the point that I raised about these children, I believe that it was the testimony of this so-called Mrs. Geoffroy as regards where the children were and how she was going to be good to them, it was her testimony that was taken and accepted, if I remember correctly. But the point is some group was requested to do it, did it and was paid for doing it.

Senator McIlraith: Yes, they were paid.

Senator Quart: And they questioned the so-called wife of Geoffroy. She was not his wife then.

Mr. Braithwaite: My hesitancy to speak with authority on this point, Senator McIlraith, relates to the fact that the agency involved did comply, I believe, with the specific terms of the contract in the sense that, yes, they did interview the lady in question, and they did make inquiries regarding the children. Whether they did do it to the degree that we in retrospect might have liked them to do it is the question that is in my mind now.

Senator McIlraith: Or whether they did, in fact, meet the clause in the contract dealing with the requirement for them to go to the police. That would be important, would it not, because the money was provided under that contract? I am not interested in the case as such, but I am very much interested to know that our funds are being used in accordance with the safeguards that were carefully worked out, or whether it is being used carelessly by agencies in rather a slipshod way, for whatever purpose.

Mr. Braithwaite: I should be happy, if it would be helpful to you in your deliberations, to review the guidelines of community assessment, especially in relation to consultation with the police, and subsequently to report to you through Mr. Jubinville.

Senator McIlraith: I would be very glad of that, and I would have been very glad if the point in the particular case, the Geoffroy case, which got some considerable publicity, had been clarified for us.

Senator Hastings: Mr. Chairman, the commissioner has issued the directive with respect to procedure. Can we have that as part of the minutes of this meeting?

The Chairman: Do you have any objection, Mr. Braithwaite?

Mr. Braithwaite: I do not have any objection.

Senator Hastings: I think it would be very useful to the committee.

My second question is this: Is it not true that this directive was issued as a result of the Geoffroy affair, which considerably tightened your regulations?

Mr. Braithwaite: The directive is actually a divisional instruction. It was revised following that situation.

The Chairman: Is it agreed that it be made part of the record?

Hon. Senators: Agreed.

Senator McIlraith: That may take care of the points I was raising with respect to the Geoffroy affair. It may be that they are not relevant now under the new instructions.

Mr. Braithwaite: Actually, this is something that would be obtained from the Parole Service—guidelines for community assessments—and if Mr. Therrien has no objection, I think these could be made available to you, because I think it has to be read in conjunction with the instructions issued by the Commissioner of Penitentiaries.

The Chairman: What you are saying is that the commissioner uses the same guidelines as the National Parole Board for community assessment.

Mr. Braithwaite: That is right.

The Chairman: But the Parole Board is not in any way responsible for the final decision on the question of whether temporary absence should be granted.

Mr. Braithwaite: That is correct. But the Parole Service provides us with the information relative to the man's situation and his family situation in the community.

Senator McIlraith: The Parole Service provides that information to you without direct compensation. But the agency who provided the service, let us say in a city where there is a John Howard Society, do you make the provision for compensation to them for that service, or is it done also by the Parole Service, or are they compensated by the department, as such? Who does the actual contracting and payment to agencies?

Mr. Braithwaite: I think the funds are available through the Parole Service.

The Chairman: I think we can put that as a question to Mr. Therrien this afternoon.

Senator Prowse: Perhaps it could be answered after lunch, and perhaps we could be told how much was paid.

Mr. Braithwaite: For community assessment, at the present time I believe it is $41.

Senator McIlraith: Well, perhaps we could be told about it this afternoon, whatever jurisdiction it is in.

Senator Hastings: I wonder if I could go on to deal with the question of procedure. It is considered by the Inmate Training Board in the light of the community assessment . . .

Mr. Braithwaite: And the criteria they have, and this is all covered, by the way, in the divisional instruction which you will receive.

Senator Hastings: One further question. If I go on a temporary absence this month . . .

The Chairman: You are always thinking of yourself, senator!

Senator Hastings: Well, I am simply putting it in the first person. Do you use the same procedure for each temporary absence, or does the performance on the first one cover subsequent ones?

Mr. Braithwaite: When considering subsequent temporary absences, the performance on the preceding one or ones would be taken into account, and if some considerable time had elapsed, we would ask for an updating of the community assessment. It is not the practice to say, "Well, he had a successful temporary absence a year ago; therefore, there is no problem and we will turn him loose again."

Senator Prowse: Whereas if it was last week, it would be different.

Senator Hastings: Would it be permitted to discuss Mr. Head's temporary absence from B.C.P., or is this considered *sub judice*?

Senator McIlraith: The crime might be so considered but not the absence.

Mr. Braithwaite: Mr. Chairman, if I may say so, the understanding was that I was to give what I understood to be the legal basis for these matters—temporary absence, earned remission and statutory remission; and I am in no way prepared this morning to discuss any particular case. I would have to say that I would be prepared to come back at some other time, or something of that nature, because I do not have this information at the present time. There has been a great deal of speculation in regard to that case, and I certainly would not want to add to it.

The Chairman: It was not the purpose of this session to discuss particular cases; the purpose was to clarify the various release methods and procedures, and I think we should adhere to that.

Senator Prowse: Do you have any other ways of letting people out?

Mr. Braithwaite: There are other ways that people get out, but there are no other ways that we let them out.

The Chairman: You have told us of escapes and walking away.

Senator Hastings: Well, Mr. Chairman, I think it is essential that Mr. Braithwaite should be given the opportunity to explain to this committee with respect to Kulley, Head and Anderson. There is so much misunderstanding in the press and so forth that I think you have a duty to put it before us, even if it is *in camera*.

Senator Prowse: Perhaps, Mr. Chairman, Senator Hastings might make a formal request. Perhaps arrangements could be made to have somebody come and discuss with us these cases in complete detail, to show us what steps were taken leading up to the release and to show how the person happened to be released under the circumstances.

The Chairman: I suggest that we submit this to the steering committee for decision.

Senator Hastings: It could be given to us *in camera* if necessary, Mr. Chairman.

The Chairman: We were going to meet *in camera* this afternoon, but since we have not been able to receive the evidence of the three witnesses this morning, and since Mr. Therrien is here as vice-chairman of the National Parole Board, I am going to ask that we adjourn and continue in open session after lunch.

Mr. Braithwaite: Mr. Chairman, there is just one other aspect of my responsibility that I have not discharged as outlined in Mr. Jubinville's letter. That deals with provincial authority or any relevance to provincial jurisdiction.

I would just point out that in regard to temporary absence the same provisions that are available within the Penitentiary Service are available to provincial correctional services under section 36 of the Prisons and Reformatories Act.

The Chairman: Thank you.

We will adjourn now until two o'clock when we will hear Mr. Therrien. On behalf of the committee, I want to thank Mr. Braithwaite for appearing before us.

The hearing resumed at 2 p.m.

The Chairman: Mr. Therrien, the Vice-chairman of the National Parole Board will now examine the parole system in Canada for us. Copies of his submission have already been distributed.

Mr. A. Therrien, Vice-chairman, National Parole Board: Honourable senators, as you can see, this document is rather technical. I thought it would be a good idea to examine in concrete terms the situation of an inmate entering an institution and possible actions by the Parole Board.

Let us take the example of an inmate who has received a three-year sentence. This means he goes into the institution and the first time his case is reviewed by the board is at the end of the first year he serves in the institution. At that time he is either granted or denied parole. If he is granted parole he will be on parole for two years. On a three-year sentence, he will have served one-third of his time in the institution and two-thirds on parole in the community under supervision. If he is not granted parole he will continue serving his sentence in the institution.

The term "remission" was explained to us this morning by Mr. Braithwaite. He will serve, through the effect of remission, about two-thirds of the sentence handed down by the judge in the first place. Then he will be released on what we call mandatory supervision. So, in effect, he will have served two-thirds of his time inside the institution and one-third outside.

The Parole Board has no jurisdiction over the length of time we will have control over this man. It has been set once and for all in the sentence imposed by the judge in the first place.

Ordinary parole is defined in the act as "authority granted under the Parole Act to an inmate to be at large during his term of imprisonment." Of course, the statute is the Parole Act and the authority is the National Parole Board.

As far as discretion is concerned, the act says that the National Parole Board has exclusive jurisdiction and absolute discretion in granting parole. That discretion is exercised within limits which are set out in the Parole Act and the Parole Regulations. The most important limits are the legal criteria and the time rules pertaining to parole eligibility. The legal criteria are set out in section 10(1)(a) of the act. They provide that the board may grant parole if it considers that: the inmate has derived the maximum benefit from imprisonment; the reform and rehabilitation of the inmate will be aided by the grant of parole; the release of the inmate would not constitute an undue risk to society.

The eligibility rules are found in section 2 of the Parole Regulations. This section establishes the portion of the term of imprisonment that an inmate ordinarily serves before parole may be granted. The general rule is one-third of the sentence or four years, whichever is the lesser. Eligibility is at 10 years for a commuted death sentence, or a sentence of life imposed as a minimum punishment; and at seven years for all other life sentences.

Section 2(2) of the Parole Regulations provides that the Board may waive these rules if special circumstances exist.

In cases of preventive detention—people who have been found by the courts to be habitual criminals or dangerous sexual offenders—there is a yearly review made by the board under section 694 of the Criminal Code.

Concerning the conditions of parole under section 10(1)(a) of the act, the board can impose any terms or conditions when it grants parole. In practice, the conditions imposed by the board are listed on the copy of a parole certificate. I do not know if the parole certificate has been annexed to the document which has been distributed.

Senator Prowse: They were distributed.

Senator Hastings: I wonder if we could stop here for a moment. With respect to the section dealing with preventive detention, as you say, the Criminal Code provides for an annual review. If the eligibility date of an inmate is January 1, and through a series of decisions by the board you reserve a decision and render it in September, your next review then becomes September of the following year which, in effect, is not an annual review am I correct?

Mr. Therrien: Yes, you mean if a board has reserved a decision for two, or three, or five months . . .

Senator Hastings: Or nine months, and then renders a decision.

Mr. Therrien: A decision to defer for one year, according to the law the man has not had two reviews in two years.

Senator Hastings: He ends up with two reviews in three years, or three reviews in five years.

Mr. Therrien: Yes, that is possible.

Senator Prowse: You do not consider that it must be looked at in each calendar year?

Mr. Therrien: Let us suppose we set the date at one year, in the example which you have given. This would mean that after obtaining all the information which may have taken five, six, seven or eight months, then you set another date at four months from the date of the last decision. We feel that having a yearly review creates a situation where the man is in a perpetual state of unrest. His case is always under some kind of consideration. It would be a worse situation were we to say to a man, "We defer you for four months," and it starts all over again.

Senator Hastings: He is under a great strain during the nine months he awaits your decision. But I think parliament intended that he be reviewed every year under the terms of the Criminal Code. Could it not happen that a great change could take place during this nine-month period while he is awaiting your decision?

Mr. Therrien: When a man's case was reviewed in the first instance and the board decided it was not prepared to put this man on parole at this time but it would go on investigating, and then after nine months, or six months, or five months, it makes another decision that the man is not ready, or that the Board wants something more to happen and sets another date, you could also say the case has been reviewed three times by these three decisions.

Senator Prowse: Having reviewed a case and decided that you are not going to let a man out, can more than a 12-month period go by before you look at his case again?

Mr. Therrien: No, that would be strictly illegal. We cannot say, "We will defer your case for a year and half."

Senator Prowse: In other words, if you review a man in September of this year, you will have to look at his case before the end of September of the following year, is that correct?

Mr. Therrien: That is correct.

Senator Denis: Does he apply for parole or is it automatic?

Mr. Therrien: In these cases, the Criminal Code provides an obligation that the board review these cases every year.

Senator Denis: That is in these particular cases. But generally speaking, is there a review of every case?

Mr. Therrien: This would depend on the sentence, senator. If a man is serving two years or more, there is an obligation under the Parole Act for the Parole Board to review his case automatically at the date set in the regulations.

Senator Denis: After one-third of his time?

Mr. Therrien: Yes, or four years, seven years, or ten years. Now if you are dealing with a sentence of less than two years, the man has to apply for parole; otherwise we do not know he is in jail.

Senator Prowse: That is if he is in a provincial institution?

Mr. Therrien: Yes.

Senator Prowse: In provincial institutions you only see them on application of the individual himself?

Senator Hastings: They do not see him.

Mr. Therrien: Yes, we review the case.

Senator Prowse: You do not look at each case. You do not know he is even there unless he lets you know.

Mr. Therrien: When we receive an application this is an indication that the man is serving so many months. And we have a rule which says that within four months we have to make a decision in the case.

Senator McIlraith: Reverting to cases under section 694 of the Code, where persons convicted are kept in custody under the sentence of preventive detention, do you know how many of these cases there are in the whole penitentiary system?

Mr. Therrien: I believe at this time, while I would not like to be quoted on the exact figures, I can give you a fair approximation. There are somewhere between 160 and 170 under the habitual criminals provisions and between 80 and 90 under the dangerous sexual offenders provisions.

Senator Thompson: May we return to your eligibility rules? By law it is one-third of a sentence, or four years. Eligibility is at 10 years for a death commuted sentence or a sentence of life imposed as a minimum punishment, and at seven years for all other life sentences. Would you know the reasons for these particular numbers of years? Is it on the basis that the public would feel that it is a safeguard—that he is in for 10 years, or is it that after 10 years you can carry out an assessment of a man to decide on rehabilitation? Could you give me any reason for deciding on those numbers of years?

Mr. Therrien: I was not in the organization when these regulations were made and I did not have anything to do with it. However, I suppose that this figure of 10 years must have come about by considering the experience of what had occurred in the past with respect to lifers. I think there was an internal rule before 1959 under which a man would be considered at approximately 15 years, but the experience indicated that a large number of these inmates could safely be released at around 10 years.

Senator Thompson: Are there actual facts with respect to that? Has any research been carried out that would indicate that?

Mr. Therrien: We have facts on the time of release of all lifers. If the committee would like statistics in this regard, I could provide them quite readily. We also have figures respecting the situation since 1959, when the board took over. Figures are also available as to what has happened to lifers during the five-year trial period of the new sections in the Code.

Senator Thompson: It would be interesting, Mr. Chairman, because, as we all know, there are some who suggest a lifer should be in for 25 years before this consideration is given. I would like to see whether your statistics indicate a 10-year period. You may even feel that it should be less than 10 years.

Mr. Therrien: We must remember that when we refer to an eligibility rule we are not discussing the moment of a lifer's release. There is some confusion in this connection. First of all, people seem to think that life is 20 years, for which I cannot find any basis in law. Life is life, unless a parole is granted. The second point is that when speaking of eligibility as 10 years people tend to think that all these inmates are released at 10 years, which is not the case.

I can provide the figures for this class of inmate. During the five years during which this change in the Criminal Code with respect to capital punishment was in force the average time at which inmates were released from this kind of life sentence was 13.8 years. Obviously, some have been released later than that, so when we refer to 10 years we are not saying that all these are released after 10 years.

Senator Prowse: You are saying they can be released before 10 years.

Mr. Therrien: That is right.

Senator McIlraith: Some are refused.

Mr. Therrien: Oh, yes.

Senator Hastings: Can you indicate how many are refused during one year? What percentage of murderers are refused? I think it is important that the public know that not all inmates are released after 10 years, but remain for 15 or 20, and some for life.

Mr. Therrien: The best approach I could make to this would be to provide you with statistics as to the numbers released during the last 10 years and the precise times at which they were released. For example, we have a table which indicates that so many were released between 10 and 12, or 12 and 13 years, and so on, up to some who spend 20 to 25 years. There are cases such as that.

Senator Hastings: I believe it is important that the public should know this.

Mr. Therrien: One must be careful when referring to refusing. Actually, we cannot just deny parole in a life sentence. The regulations provide that once a review is started and parole not granted, the case must be reviewed at least every two years after the first deferral. Therefore, in the case of a lifer, if at 10 years the board feels that any one of the three criteria is not met, it can only defer for two years or any intervening period.

Senator Hastings: Between 1961 and 1965 you could invoke section 2(2) with respect to murders and parole by exception under seven years.

Mr. Therrien: You mean section 2(2) of the Parole Regulations; this section was inserted in January, 1968.

Senator Hastings: I believe it was 1967.

Mr. Therrien: 1964.

Senator Hastings: In any event, at one time over that short period of five years you could parole a murderer by exception; that is, he did not have to serve seven or 10 years. Is that correct?

Mr. Therrien: Yes. Before this section was added to our regulations, the general power of exception applied to these cases.

Senator Hastings: How many were released by exception during that period?

Mr. Therrien: That would be before that regulation came into force?

Senator Hastings: Yes.

Mr. Therrien: I would not dare guess the number. I know there were a few released before they actually served the seven or 10 years.

Senator Hastings: What was the shortest sentence?

Mr. Therrien: I think it was 3½ years. I would have to check that.

Senator Hastings: And he has been a successful parolee?

Mr. Therrien: Frankly, I do not remember the case that well. I know the figure of 3½ years; I could not connect it with a specific parolee now.

Senator Hastings: He is very successful.

Mr. Therrien: Well, we did not hear about it.

Senator Thompson: Could you provide the figures as to the numbers released and their success? I am still trying to understand why it was raised to 10 years and the exception removed. Was this because of public opinion which pushed for a longer term for such offenders, or was it the fact that those who were released under the section were achieving success?

Mr. Therrien: I do not think it was ever raised to 10 years; this is how it started.

Senator Thompson: But that exception rule was included in 1968 and then removed.

Senator McIlraith: Was the problem not a little different? The 10-year rule came in with an applicability, or when we were beginning to deal with persons convicted of murder and the other persons sentenced to life imprisonment on other charges, which formerly had been nearly all the types of cases they had to deal with. It became only a section or group of the life imprisonment cases. Is that not where the difference in practice arose?

Mr. Therrien: It is true that during the years the same categories of offenders have not always been dealt with in the same manner. The law regarding capital punishment or lifers has changed through the years. If there is at some point capital murder and non-capital, as it was defined in the last five years, this is quite different from what it was before that five-year period.

Senator McIlraith: The statistics you mentioned you would endeavour to obtain were referred to in terms of the statistics respecting persons who had been convicted and sentenced to life imprisonment. Do the statistics include all life imprisonment, or are they separate as to those convicted of murder and sentenced to life imprisonment?

Mr. Therrien: They give two classes; death commuted sentences and life as minimum punishment and the other type of life sentences.

Senator McIlraith: Including the sentence of life for murder?

Mr. Therrien: Yes.

Senator Denis: If you parole an inmate, let us say after one-third of his sentence, and if he has earned some remission because of good behaviour, is it possible that such an inmate could be released much sooner after serving one-third of his sentence?

Mr. Therrien: I hope I understand your question correctly.

Senator Denis: Every month he earns three or four days for good behaviour, or for something that was explained this morning. Supposing he earned six months for good behaviour or for other reasons. When you parole a man after one-third of his sentence, is time added to that or taken away? Can a man get out of jail much earlier than after serving one-third of his sentence?

Mr. Therrien: Remission, either statutory or earned remission, is not taken into account in the computation of the date of eligibility. It means that it is not possible, through the effect of remission, to be released before one-third of the sentence is served. One-third is straight time. Remission is applied only at the time the man is released, either at that time or at the end of his sentence.

Senator Hastings: During the existence of the present National Parole Board, with respect to the parole of murderers, you have not had one repetition covering the further loss of life?

Mr. Therrien: I want to be clear here, you are talking about a man who would have—

Senator Prowse: Who was convicted of murder.

Mr. Therrien: Who was sentenced to death and his sentence was commuted. I think there has been only one example of that in the history of this country.

Senator Hastings: Which was in 1944. So you have not released one man who has killed again?

Mr. Therrien: There have been cases of parolees who have killed, but they were not in for that offence.

Senator Denis: Do you parole inmates who are recidivists?

Mr. Therrien: You heard this morning of the types of intervention that can apply in a case. I would say that a lot of the cases with which we deal have been before us under some kind of suspended sentence or they have been on probation. They have served a very short period of time before, or they have received a fine at some point in their life, they are doing time in a provincial institution or a federal institution, and we have to deal with them. This would depend on the way you define a recidivist.

Senator Denis: A recidivist is a man who has been in jail twice, or three, four or five times. Can you give us a list or the number of those who have been paroled after being in jail three, four or five times? I want to know if, in order to rehabilitate an inmate who has been in jail two or three times, he is freed the same as are other persons.

Mr. Therrien: We do this, but I would not say that he becomes free. We exercise a kind of control over him other than the kind that says, "You must stay in the institution!" We believe that it takes longer for some

people to learn. We always think that it is all right to give a chance to the 18-year old boy who stole a car, that you can take a chance with him, but that a man who is 40, and who has been in jail two, three, four or five times, should be dealt with. Personally, I have always found it easier to make up my mind when dealing with a man who is 40 than with a man who is 18. A man who is 18, I find, is sometimes unpredictable. It may be the right thing to say, "We will give him a chance and see how he operates under our rules outside, in the community," but a man who is 40 is more predictable, I think. I find that you can make up your mind that this guy has had enough. His record may show that he has been in institutions or before the courts two or three times, but he has finally realized that this is not the way he wants to spend the rest of his life, and so he turns his coat.

Senator Denis: Has it happened that you have paroled an inmate two or three times?

Mr. Therrien: Yes. This also has happened.

Senator Denis: What is the real reason for that? You gave him two chances and he came back to prison for almost the same crime—it could be for violence—and yet you put him back into society. If you have given him a chance, if you have paroled him once or twice and he commits another crime of violence, or commits a hold-up, why is he paroled again?

Mr. Therrien: I suppose the reason is that we never lose hope of eventually sort of forcing this man to put a stop to his criminal ways. One has to consider that when a man ends up in a penitentiary, it means that his family life has failed to make an honest citizen out of him, the church has failed, and perhaps everything that has been done with him at the juvenile court level has failed. So we are starting from scratch, actually, and if you want to make an honest citizen out of him, he has an awful lot to learn about how to live honestly in society. It would be quite natural, I suppose, to think that the first time you put him out in society he has so much to learn that he might still make some mistakes. So, at some point he becomes a failure of the system and goes back to the institution. Well, maybe he has learned so much. The next time around he is going to learn more, up to the day when he is finally no longer a threat to us. This is not, I think, being helpful to him all the time. This is trying to provide some long-lasting protection for society.

Senator Denis: If you have paroled a man twice or three times, does it mean that you must parole every inmate, that you never refuse parole to anyone? If you have paroled a man who has been accused of a crime two or three times, is there ever a case where you do not grant parole?

Mr. Therrien: Last year we paroled about 45 per cent of the people who applied for parole, which means that 55 per cent of inmates who applied to us were denied parole. This, frankly, may seem to be the thing to do, or an easy decision, but I find it is not the easiest decision to make. For example, if we deal with a man who, say, is doing two years, we look at him in nine months. It may seem to be very easy to say, "Okay, we will not parole you. You stay in," but the sentence is two years, and included in the moment when a man is told it is two years is the fact that he will be coming back into society. So it must become a question of: Do we want him to come back after having been told "No" a few times about parole, after having built up more anger towards society in general; or do we want to try to have some kind of control over him when he comes out, and try to provide him with some assistance at the time he comes out?

Senator Denis: Before you parole an inmate, do you get in touch with the judge who sentenced him?

Mr. Therrien: We used to have a procedure, in the first years of operation of the board, where in each case we would send a form to every judge who had given a sentence. We were asking the judge, "Please tell us what you had in mind when you said three years" or "15 years," so that we would not defeat the purpose of the sentence. We would try to get as much information as possible from the judge who gave the sentence.

Senator Denis: But this is done by a form letter. You do not get in touch with him personally or by telephone, or anything like that?

Mr. Therrien: At that time the return rate for these reports reached about 15 per cent.

Senator Prowse: Only about 15 per cent of the judges answered?

Mr. Therrien: Yes. So at that point we wrote to all of the judges in the country and explained to them that we felt we were losing money and time going through this exercise, and that we would welcome their opinions and the reasons for judgment, and that type of thing. We also told them that they were free to write us regarding any particular sentence.

Those who were reporting prior to the sending out of that letter are still doing so; also, the new judges who have been appointed since then do report to us.

Senator Prowse: Has the percentage remained about the same?

Mr. Therrien: Approximately.

Senator Denis: Don't you think that the judge who presides over the trial is aware of every fact and every reason for his imposing the sentence he does? Do you not think the judge is in a better position to judge than the Parole Board as to whether or not a certain individual should be given a chance? Do you not think that the judge takes into consideration every fact before handing down sentence? Do you not think that he is better qualified than the Parole Board? After all, you people are strangers to the case; you were not at the trial. Do you not think that the judges are well qualified to decide whether or not a man who has been sentenced to two or three years in prison should get parole?

I am not referring to this being done through a form letter. The judge has a great deal to do every day and perhaps does not have time to fill out this letter and return it. Instead of getting in touch with a community agency to determine whether or not a man should get parole, should you not send someone to the judge to discuss the matter with him? Do you not think that that would be better than the present situation of getting in touch with him by a form letter to be filled out by him and returned?

Mr. Therrien: I do feel the judges are well qualified, and I feel they take every factor that is before them into consideration when they hand down their sentence. However, I do not think they are better qualified to make the decision with respect to parole. That decision is made at another moment. The parole decision is made, perhaps, nine months after the judge has dealt with the matter, or four years after, or whatever. So I do not believe that the judges are better qualified to make the decision respecting parole.

If the country wants to have a system whereby the judge sets the sentence and also makes the decision with respect to whether or not parole should be granted, then we will have to change the law. The law at this moment says that the judge sets the sentence, and then there is a parole authority that will interfere with that to the point where it will change the manner in which that sentence is to be served. It seems to me that the system we have at this time is that the judge actually is deciding that the state will have control over an individual for a period of three years, ten years, or whatever, with the type of control being left in the hands of the Parole Board. Mind you, other systems could be devised. All these things could be decided by the judge. However, that is not our system at this time.

As far as getting in touch with the judges on specific cases by telephone or some other type of consultation is concerned, this is done in some instances. I myself on a few occasions have done this. However, some judges do not like it. I know a number of judges in this country whose attitude is, "Now look, in the total process of the administration of justice we all have our bit to do. I have done my work and the parole decision is yours. I can tell you what I had in mind, but I am not going to tell you how you should make your parole decision."

Senator Hastings: Does that not lead to a breakdown?

Senator Denis: How do you explain the fact that the citizen, the police and the judges criticize the Parole Board? This is a constant criticism. If it is not the judge, it is the police; if it is not the police, it is the citizens or the press. You seem to be the one agency that is held responsible when these cases fail. You must have received written criticism from the police or from judges, or from the general population.

Senator Hastings: From the inmates.

Senator Denis: Do you receive criticism in that respect?

Mr. Therrien: We receive critism from both sides. A certain segment of the population is saying, "Do not release these inmates; do not release them early"; and another segment is saying, "You are not doing enough. You are not providing control and assistance to these people in the community in as many cases as you could." So I get the notion, from the fact that we are critized from both sides, that we in the Parole Board must have a middle of the road attitude.

It is true that we are critized as to the time that we release people, and we are also blamed, as was pointed out this morning, for a good many things over which the board has no authority—such things as failures when a man is serving a suspended sentence, or is on probation, or out on bail. It seems that people say that because he was out, he was on parole. I suppose we are the most visible organization—

Senator Denis: You mean you are both responsible.

Senator Hastings: We are all responsible.

Mr. Therrien: I think it shows that the system is complex. It is difficult to understand all of the measures under which a man can be out in the community. The Parole Board is the first organization that people think about, and they say, "Oh, he was out, so he was on parole." It may be that the board has not been doing enough as far as selling what it is doing and explaining what it is doing. People do not make the distinction between such things as probation, suspended sentence, bail and parole.

There may also be another reason, and that is this: In this country we have newspaper specialists on police work and court work, but we have very few who are specialists on corrections. We do not have people in the newspaper field who know all of the fine print and all the sections of the Penitentiary Act, or those of the Parole Act, and who are aware of what is going on and can give accurate information. I have had the experience a number of times where someone from the press will come to see me to get information for a story resulting from the failure in some manner of one of our parolees. In other words, a parolee has committed a further crime so they want to write an article on paroler. In talking to these people I have found that they do not know what remission is or how parole work is related to the sentence, or anything about the time at which it is possible for us to release a man on parole. As a result of this, we are always spending our time giving basic facts. There seems to be a lack of this knowledge in the newspaper field. I suppose the finger is pointed at us right away because we are the most visible organization.

Senator Denis: If a man has been released on parole two, three, or four times, and each time he has committed another crime, do you not feel that these criticisms are well founded?

Mr. Therrien: There is one thing that has always surprised me about this type of thing and that is this: We are criticized if we release a man on parole who has been sentenced to two years, and during the parole period he fails. Supposing that same man got two years and served the full two years in the institution and upon his release he goes back to crime, in that case no one asks any questions; no one says, "Well, the sentence was wrong or the penitentiary did not rehabilitate this man." It seems that society accepts the fact that this individual will go back to crime. So what is the thing do do?

Senator Denis: But at least society was protected during that time.

Mr. Therrien: That is the only effect of it. In the case of a two-year sentence, society was protected for 16 months.

Senator Denis: Don't you think that that is enough?

Mr. Therrien: The chances are that he going to commit a more serious offence.

The Chairman: Isn't a lot of this criticism, Mr. Therrien, due to the confusion in people's minds? People regard parole as an act of clemency. It is not an act of clemency;

it is intended to rehabilitate the criminal as far as possible in order to protect the public when he is finally released.

Senator Denis: That is fine for the first offence.

Senator Prowse: It does not interfere with the length of his sentence; it merely determines where he will serve his sentence.

Senator Denis: That is fine for the first offence, but when it is two, three or four it is more dangerous than helpful.

Mr. Therrien: I think there is a basis for some people considering this as mercy. As you know, it flowed out of mercy. At one point our organization was called the Remission Service. In French it was even worse; it was called Le Service des Pardons, which was not when a man was put on pardon; it was not what "pardon" means; he was still under control. It was not like when you forgive someone, unless you say, "I am giving you a conditional forgiveness," which is not what you are doing.

Senator Williams: A little while ago you referred to letters of request or demands not to release a prisoner on parole. When these letters arrive and are considered by the board, perhaps a dozen or more of them, do they influence the board to say the inmate shall not be given parole?

Mr. Therrien: I do not believe we talked about letters of request asking that there be no parole.

Senator Williams: I may have used the wrong phrase.

Mr. Therrien: It does happen and, of course, it is taken into consideration. It could be said that when a parole decision is made two things are considered: first, is the man ready for the community; and secondly, is the community ready for the man?

Senator Williams: These requests come from the public, who have no knowledge of the penal system within the institution. On what do they base their request that, in their opinion, an inmate should not be paroled or released, which may influence the Parole Board?

Mr. Therrien: I do not want to give the impression that this is something that happens all the time.

Senator Williams: I realize that.

Mr. Therrien: I could think of two or three cases in ten years. If a crime is so serious that the people of the community sign a petition saying, "We don't want this man back in our community," the board will have to consider that. On what they base this kind of thing, I do not know.

Senator Williams: Maybe this has some relationship to the criticism the board gets. After a justice imposes his sentence, I, for one, cannot see what further responsibility he has in influencing the board on whether to parole or not to parole that inmate who is serving time; his responsibilities end when he pounds his gavel and says, "I sentence you to . . ." whatever it is. It is then in the hands of the penal system or those in authority on the Parole Board. This is the way it should be.

Mr. Therrien: This is the way most of the judges see this.

Senator Hastings: Is this not leading to a breakdown of the whole system? There are the police who arrest the man, the judges who sentence, the penal institution that keeps him, and then the board. The man has to go through that whole system, and one jurisdiction does not know what the other is doing with the man; the judges misunderstand your work, and so on.

Mr. Therrien: I think it is a basic defect in the administration of justice. It seems that all those in these different sectors are so busy playing their part that there is not enough time for them to find out what is done with the same man after they are through with him. The people at the end of the line do not have enough time to find out what those who dealt with the man at the beginning of the line had in mind. The board is trying to solve this problem, but there are several hundred judges who send people to jail in this country, and we are only nine making these decisions.

Senator Prowse: I should like to get something clear, which I think it is important to get clear in everybody's mind. When reference is made to the judges who send people to jail now, we are including what used to be called the police magistrates and are now provincial judges, the district court or county court judges, supreme court judges, and the appelate judges. Would 85 per cent of those now in penitentiaries have been dealt with only by those we used to call police magistrates and who are now called provincial court judges?

Mr. Therrien: About 85 per cent, I think, or more.

Senator Prowse: In other words, when we refer to judges we are talking about the stratum of judges who sit in the criminal courts as provincial judges, not judges of the Supreme Court of Canada, or the supreme courts of the provinces—is that correct?

Mr. Therrien: That is right.

Senator Hastings: A man sentenced to six years' imprisonment, who bounces from place to place along this road to the Parole Board, is in the institution two years before you see him; you have had no knowledge of what he has been doing, the programs he has undertaken in the institution, or what he has undertaken in the institution, or what he has been doing at all. After serving two years in the institution he comes before you as a stranger for a decision. Am I correct?

Mr. Therrien: Yes. I think two things have to be considered here. First, there will be contact with the parole organization at the time the man enters the institution. Our staff are undertaking introduction courses, which are conducted in most institutions, where parole is discussed, to show that there is such a thing as parole.

Senator Hastings: You say "in most"; how many is that?

Mr. Therrien: Most institutions. Our people give a briefing on parole to new arrivals at the institution. Even that is not enough. What you are getting at, I suppose, is some kind of early involvement of the board in programs, so that an inmate has an indication of what is expected of him to improve himself in order to gain parole, and at the same time become a better citizen. We have plans in this respect. For example, in your province we have started—and are extending throughout the country—to conduct

what we call a community investigation; that is, to go to the community from which the inmate comes to get some information about what kind of man he is outside, what are the factors that made a criminal out of him. This information is given to the Penitentiary Service right from the start.

Up to the present we have done this sort of thing but just before the parole decision, so that the information in the hands of the penitentiary people came mostly from the inmate himself. They will now have something about his lifestyle outside from the very beginning of his sentence, so that they can use it all through the sentence; they can make a better diagnosis of the problem and know what they have to deal with. These are defects we have to try to correct. We are now trying to get involved in the process much earlier than we have been up to the present. I agree it is not a very good situation when a man is sentenced to 12 years' imprisonment and spends the first four years without any word from the Parole Board.

Senator Hastings: Or anyone.

Mr. Therrien: Yes.

Senator Hastings: Many men go to prison, reach grade 10, 11, 12, and even university, but nobody has ever stopped them somewhere along the line and said, "What are you doing about this?" until he gets to you at the end of the line. He may have behaved himself, worked industriously at his education or trade, but no one has sat down with the man and taken the time to ask, "What about this?"

Mr. Therrien: The idea of the new system of getting more information about the inmate right from the start is also in order to get some kind of prescription program at the start of the sentence. When he goes into a reception centre, he may stay there for a month or so. At the end of that stage, the people from the penitentiary and also the people from Parole can sit together with the inmate and say' "The way we look at this, there are two or three things that you should be doing."

Senator Hastings: Early in the sentence?

Mr. Therrien: Yes, early in the sentence, or right after the induction period or when he is still in the reception centre.

Senator Prowse: If we were able to keep our prison populations within limits that permit us to use the living unit concept of treatment, do you see yourself as having a representative in each one of these living units, with these people, who would see the inmate all the time he is in there, so that he is operating with someone who is his key to the outside, you might say? Do you see something like this?

Mr. Therrien: Yes, this would be part of it. Once you start doing something at the very beginning, I believe that what will flow from that is that you will not be able to go for the first month and then go back to your office and not do anything for four years; you will have to get some kind of involvement.

Senator Prowse: Day by day.

Mr. Therrien: And you will be a link between the community and this inmate.

Senator Prowse: In other words, in a living unit you would have a representative of the parole board, although that individual might change from time to time as he was rotated around in other places; but there would always be in the living unit, from the time the fellow got into the penitentiary, a representative from the parole board, who would be there working with this group and passing on the information? Would this be a useful thing or would it not?

Mr. Therrien: The parole representative could be there. You see, that is the crux of the thing. If you take the parole man and you put him in an institution all the time, he becomes an institutional man.

Senator McIlraith: It is a method of liaison and review continuously from the date of induction, and as you work that out it becomes a little more complex.

Senator Prowse: It is not as easy to do it as it is to say it.

Mr. Therrien: If you want the man to bring to the institution or to the inmate the point of view of the outside, if you want to force the inmate to think always about the outside, he has to be from outside. The way I see this is that if you discuss the general program at the start of his sentence, then a parole representative has to go back and review this man's progress at periodic intervals; but not stay in, because he then becomes a classification officer.

Senator Hastings: Are any of your Parole Service officers members of inmate training boards in any of these institutions, or do they sit in on them?

Mr. Therrien: They have started to assist, to be present at some of these meetings; but this is time consuming and we will have to get much more staff than we had in order to be present at all times. As far as the beginning of the living unit community therapy is concerned, as in the case of Springhill, our people go there regularly to meet at night or during the day with the people in authority there.

Senator Quart: Have you a dossier on such persons—I am sure the warden has a dossier—with monthly or quarterly reports or progress reports that the Parole Board would be able to consult?

Mr. Therrien: I would say we work from two dossiers. When one of our parole officers will go and interview an inmate, he brings with him his own file. In that file he has information about the man's criminal record, his life history, a police report on the circumstances of the offence; he has pre-parole reports from all the people in the institution; but at the same time he has also access to the penitentiary file where you will find this kind of report, more regular reports, on what has happened to him in the institution. As Mr. Braithwaite was explaining, the man is assessed at monthly intervals, to decide whether or not he should get three days. All these are in the penitentiary file, so we have access to those two files in order to make that decision.

Senator Quart: Do you find, Mr. Therrien, the new system of panels going to the various institutions and penitentiaries better than eyeball-to-eyeball consultation, better than reading reports, as you used to do before? Do you find it is an advantage to the board as well as to the person applying for parole?

Mr. Therrien: It is difficult to talk in the name of inmates, I suppose. I would say that, in general, the reaction from inmates has been good. They like to be able to talk to the people who actually make that decision, even though it is not always the decision that they want. I have had a large number of cases where, after a hearing and after telling a man no, he is still happy about it, as at least he had his day in court, he had his chance of explaining his own case to the people who make the decisions. Of course, those who get paroled do not care that much, I suppose, as long as they go out, whether they get a letter from Ottawa or they have someone tell them. He goes out and that is what he wants. As far as board members are concerned, it is a much more time-consuming process, of course. When we talk about a hearing, you just cannot go to make an important decision in a man's life without some kind of preparation. So you have to read his file beforehand. In the previous system, after reading that file, I was ready to make a decision, but now that is only one step in the process. I have read that file and I have taken a few notes with me, and I bring it to the region where I am going. After that I get the latest information from the parole officer or the classsification officer, and then I hear the inmate. After that I am going to discuss it with my colleague on the panel and then the inmate will be brought back and will be told the decision. It is surely time consuming.

When you ask, "Is it more effective?" I think it is too early to find out. I do not think that decisions will be better if they are done here than if they are done on the spot.

I would say that in a few cases in the previous system, it would have been no parole; but now, once you see the man, and he has had a better chance to explain his case and you have had a better chance to ask the right questions, he gets a parole, whereas before he would not have got a parole. But it works in reverse, too. Take some who might have received parole in the previous system. Once you pry into the thing you find that he is an undue risk and you do not give him the parole. So, in so far as the effectiveness of the decision in terms of recidivism is concerned, I do not think we can say anything very much.

Senator Quart: Just thinking of myself and what I would do if I had to decide—certainly I am not qualified to do anything of this kind—meeting an inmate with personality, let us say, good looks, charm, call it what you like, and another person who was not able to explain his case so well and was perhaps dumb or bad tempered or something else, or one who would show a little bad temper, would that influence—the question I am asking is very unjust—in any way the members of the Parole Board who are judging the case?

Mr. Therrien: I do not think it is unjust. I think it is the fabric of a hearing, that is what we live with. We know, we have to know, that there are people who find it very easy to sell their case; we know that others are not very good at this. Of course, we take this into consideration. If you are facing a man who finds it very difficult to talk about himself, you try to take all kinds of means to make him more at ease.

I remember one hearing where the man did not talk for five minutes. He just could not talk about himself. It was a case where the man was doing seven years. He had done two years and three months in the institution, and this was a moment when an important decision was going to be made about four or five years of his life. He had been thinking about it, he had been preparing for it, and it became so important in hiw own mind that he just froze there. So, you have to take this into consideration and do somthing to bring the right atmosphere into the hearing, so that you get the information you want. Now, it does not mean that, because the man refuses to talk, we are going to accept that. At times there are cases when he wants to refuse or actually refuses to talk, but we will not accept that. If there are things that we want to know about him before we make a decision, well, he has to answer.

Now, as far as those who are pretty good at deception are concerned that is another question. Say you are talking about a fraud artist. Well, again I suppose this comes with experience. Once you have dealt with a large number of these people you begin to see through them and you get to know what kind of questions to ask. You also get to put a proper interpretation on what they say to you.

I suppose when you start up in the parole business you want to rehabilitate all of them; they are all "good". It is only through the years that you learn that a few of them are not so good.

Senator Lapointe: Some people have complained that the members of the National Parole Board are not close enough to the inmates of certain regions and, therefore, these people would favour regional boards, with perhaps one member of the National Board sitting with them. What do you think of that idea?

Mr. Therrien: That is something that is being discussed at the present time. It is very much a topic of discussion within the organization now. I suppose that there are some good points about having people in the regions, but there are some bad points as well. Frankly, it is a matter I have been thinking about a great deal in the last few months. I have not made up my mind as to the final conclusion I will come to about whether regional boards would be a better system.

Senator Lapointe: They say that you do not have time to review them thoroughly and to look at this man, that man and the other man individually.

Mr. Therrien: Well, that does not necessarily relate to being or not being in a region. If it is a matter of time, you can operate from here and still have the time if you have the number of people who can spend the time.

At the moment there are only nine of us, which means that within one month, for example, there might be four panels going out—that is, eight members of the Board going out during that month covering four regions—and the next month there might be three panels going out. So we do not have the facilities to spend all the time that we would want to, but that is not connected with whether you have a national board or a regional board; it could be done with a national board.

The Chairman: But the regional board would not have to do as much travelling. It would be much less time consuming, would it not?

Senator Quart: Aren't there some provinces with provincial boards? Ontario?

The Chairman: I am afraid I interrupted Senator Lapointe.

Senator Lapointe: I just wanted to know whether it would be better if you had 20 members.

Senator McIlraith: You get into another problem when you are talking regional boards, and that is the desire to get relatively equal justice administered across the country on a comparable basis. I can see some grave difficulties with regional boards, just as we have had very wide regional discrepancies in the whole prison system. For example, some of the institutions that were in existence in some parts of the country and seemed to be reasonably tolerable there were not tolerable in the other parts of the country at all. I think you would have to discuss and come to a conclusion on that whole point about the uniformity of standards.

Mr. Therrien: In fact, that is the most serious problem connected with regional boards. The time that you save in travelling by having regional boards is offset anyway. It can be organized, of course, but you would still have to have fairly regular meetings of all these people, and then they would still be travelling because they would have to meet at some point in order that some uniform practice would actually be the case in all regions of the country.

Senator Prowse: Could you work a system like this: Suppose we had, for the sake of argument, five districts across Canada in which you would have a board of, say, three members in each district. The chairmen of those various districts would then be the members of a national parole board which would act as an appeal board from the district boards. The chairmen would maintain contact with the local boards and would know what the others were doing. With that system, would you not be able to maintain some degree of equality between the boards?

Mr. Therrien: There are so many schemes that one can think of. In your proposition the chairman of regional boards are members of a national board, but actually they are in the regions, if I understood you well.

Senator Prowse: The chairmen would be the chairmen of the regional boards, but they would be members of the national board. Presumably, they would spend a certain amount of time in both places. I am just thinking now, but that is a suggestion that was kicked around when some of us were talking about this whole matter. In that way you would then have a regional board on the spot to deal with things immediately. It would be available for contact with the people who needed it and would be in contact with the local situation. On the regional boards, as well as professionals, you could have lay people who would be available to the local boards, and from the local boards there would then lie an appeal, at the instance, I would think, only of the person who felt that he was unjustly denied his parole. Perhaps you would want the appeal to be available to the government as well. That would be all right, too.

So the central board would always consist of, say, three of the five members of the central board plus two from the other areas. In that way each board's decisions would be subject to appeal to the central board, which could then work as an equalizing agency.

Would something like that be too cumbersome or would it be possible? Is it fair to ask you that question?

Mr. Therrien: As I say, I have not made up my mind yet, but in my opinion it is preferable to have a system in which all the board members are at the same level and can talk to each other on the same level. Once you get into the kind of system where you have regional as opposed to central, then you find one member saying, "Oh, he is a national member and this one is a regional member." You also get the type of discussion where the regional members says, "We are closer to the situation," and that is the end of it. "You are from Ottawa. You don't know the situation here; so that is the way it should go." But it can go the other way too. It can be, "Look! I'm on the national board. My voice is more important. You are just local people."

I do not object in principle to regional boards, but I can say that there are these problems and they have to be settled first. You have to find the way to avoid this type of situation I have mentioned, because it would be a bad situation.

Senator Thompson: What is the average time that the panel spends with each inmate applying for parole?

Mr. Therrien: I think it is about 40 minutes now. That includes a discussion of the case with a representative from the Penitentiary Service and a representative from the Parole Service; it includes the hearing itself; then the discussion and decision-making; and then the oral notification to the inmate.

This means that there are cases on which we spend an hour or an hour and a half, and I have even known them to go to two hours. On the other hand, there are cases on which we spend only 20 minutes. The average is about 40 minutes, though.

Senator Thompson: Or you might spend as little as about two minutes in some cases, I understand.

Mr. Therrien: Not in my experience.

Senator Thompson: I am thinking of a previous discussion we had with a representative of the board. We asked him this question: "What is the largest number of inmates you have ever seen?" And he gave us a rather extraordinary figure, I thought, which worked out to a very short amount of time that he had spent with each inmate.

My concern is: Do you think such a short amount of time is a sufficient length of time to spend with the inmates? You fellows must be very much harried, in my opinion. Certainly, if you were going to employ a man in a business you would spend a lot more time with him than 20 minutes, if it was an important job. Surely, it is a key decision for the inmate. Do you feel that you give him enough time?

Mr. Therrien: I do not think that 40 minutes is enough as an average; I would very much like the average to be an hour, but, frankly, 40 minutes is the best we can do under the present circumstances. It means that you see approximately from 10 to 15 inmates a day. There are only so many hours that you can be of service to an inmate. There are too many times, I feel, when board members are still hearing cases at 7 or 8 o'clock in the evening. I disagree with that. I do not think we should be forced to do this, but we are because of the circumstances and because of the large number of cases that have to be reviewed. How-

ever, I do not think that after five I am less of a board member to this man.

Senator Thompson: Do you think the solution to this is to have more members on the Parole Board? Am I right in that, or is there another solution?

Mr. Therrien: Well, once you have started on the system of conducting hearings, I think it is very difficult to get out of it. One solution, perhaps, would be to go back to the old system, but I do not agree with that. It is quite clear that we would save time because, as te chairman was saying, there is a lot of travelling time involved, but this is frequently taken care of by travelling on Saturdays, on Sundays or at night.

Senator Prowse: Did you have experience, Mr. Therrien, in the years back when you did not see the prisoner and when your decisions were made on the basis of files prepared for you here?

Mr. Therrien: Yes, I was a member of the board using that procedure from April, 1969 to January or February, 1970. Frankly, I was not too happy with it because I had been a parole officer before, so I was used to making recommendations and trying to make up my mind about inmates by seeing them and talking to them. I found it rather difficult to make these decisions just on the basis of 10 or even 200 pieces of paper.

Senator Prowse: Do you feel that you are now able to give better decisions, meeting the applicant face to face, than you were able to give when you were simply dealing with paper?

Mr. Therrien: Well, it depends on what one means by that.

Senator Prowse: Well, are you more comfortable with the decisions you make now than you were with the decisions you made before?

Mr. Therrien: Yes, I am; but, again, it depends on what you mean by a "better" decision. If you mean by that, "Does it lead to a reduction in the rate of recidivism?" I do not think we can say that. But I am satisfied that the decision-making process is better; I am more at ease with my decision, and I have an opportunity to explain to the man, especially in cases where the answer is no or where parole is deferred for one year or for two years, just what the situation is. I can discuss things with him and I can say to him, "The reason the decision is no is that, as I see your case, your problem is this, and you have not been doing anything about it." I feel that he should leave that room saying, "At least they considered my case, and that is how they see it." He may not see it that way himself, but he knows on what I have based my decision and he is free to do something about it. But under the previous system he would simply get a piece of paper saying, "Parole denied."

Senator Prowse: I do not know if you can answer this question, but I shall ask it anyway. Do you think the men themselves who now meet the Parole Board are generally happier with the decisions for or against than they were before, when they were merely dealing with some impersonal thing covered by letter?

Mr. Therrien: This indeed was a criticism—the impersonality of the decision-making process, and not knowing who these people were who were making the decisions; but as to knowing how these people react when they get a referral or a denial, I suppose your committee could ask a few of these inmates to come along and testify.

Senator Prowse: We will.

Senator Lapointe: Do you allow the inmate to hear everything said about him by the other persons during the hearing? By this I mean the social worker or people like that.

Mr. Therrien: Do you mean the social worker in the prison or our own parole officer?

Senator Lapointe: Every one who testifies. Is the inmate allowed to hear everything?

Mr. Therrien: No. We feel that the hearing is an opportunity for the man to explain his own case, and we want to give him as much time as possible to do so. The information from the classification officer and the parole officer comes to us before the hearing, and usually at the hearing itself it is a question of the man and the board member talking—there is a dialogue—but he does not hear what the other people are saying.

Senator Lapointe: So he does not know what these people have reported about him?

Mr. Therrien: He does not know that, but he will know that after the hearing. I say that because in the hearing these things will come out, not directly in terms such as, "Your instructor feels that you should not get parole," or something like that, because this is not the way it is done. But if there is something about his lack of initiative or his bad behaviour in the shop where he is working, then he will know about that indirectly.

The Chairman: Or if there are psychiatric problems.

Mr. Therrien: This is another tricky thing to start discussing. We do not talk in terms of people having been either for or against parole; but if this is to be a meaningful process, one has to talk about the problem, and we do that without pointing a finger at anyone. Actually, the technique is to present this as a conclusion that the board is coming to from the reports it gets. That is how it is. When I say to a man, "I feel you have not been doing enough on that score," that is my conclusion after reading the reports on it, and this is the way I present it. They can draw all kinds of conclusions from that, and they do, because you cannot prevent anyone from drawing conclusions, no matter what system you are using.

The Chairman: That brings me back to a matter which you mentioned earlier. You said that you considered it wise and helpful that the inmate should be able to express himself and that he should be able to talk to you. You have also said that there are inmates who can talk for themselves, and that some are good fraud artists, but there are others who cannot. Have you considered the desirability of allowing some one to talk for the inmates—and I am not thinking of counsel?

I will just follow through on that by saying that Senator Williams impressed on us the other day the particular problems of Indians as inmates. They may not understand the law; their culture is different; they may not understand parole. So how can an Indian, for example, in those circumstances express himself on his own behalf?

Mr. Therrien: I think that in the present system that role which is important for this type of person is played by these classification officers or the social workers in the institution. These are the only cases where they will actually intervene in the hearing, when everyone in the room realizes the inmate has a block of some kind and is not able to explain his case. Sometimes you ask a question and the answer will not be too good, or it will not address itself at all to the question. The classification officer will then say, "Now, look, he may be shy because he doesn't know you, but I have known him for a year and what he means is this . . .," or, "what he has done is this . . ." Then the inmate has a chance to say, "Well, yes, that is what I wanted to say." I think that role is played by the classification officer.

Senator Hastings: But he does not know him. We have had the evidence of a Parole Board member here who has said that there are classification officers who do not know the inmates. How can one classification officer with a caseload of 100 men be prepared to make a representation to you?

Mr. Therrien: I know what the situation is and it is not quite as bad as that in all institutions; but at least the classification officer, before the parole consideration, has had to prepare a report on this man so he has met him at least on that one occasion, but in a large number of institutions these days they see them more often than that.

Senator Thompson: But the classification officer may wish to make a negative report and he is not going to be an advocate for the parolee if such is the case.

Mr. Therrien: At the beginning of the hearing you are not asking for opinions. You are asking for facts. What you want to find out from the inmate are facts about his lifestyle before he entered the penitentiary, and what he has been doing in the institution. Surely, a professional classification officer will remain objective on that score and tell you what the situation is.

Senator Thompson: I am thinking of the case of an Indian, again, who impressed me as having difficulty with communications. He feels the classification officer does not understand his cultural background and customs, and perhaps he does not. Is there any consideration given to having a representative of a particular cultural group, and I am thinking of the Indians, who has an understanding of Indians, who enjoys their confidence and who might act as a cultural interpreter for you?

Mr. Therrien: I suppose that is something we might consider. I do not like to talk about criminals in a general way, and I do not think we should talk about Indians in a general way either. As we see them, we find some of them are pretty good at representing their cases. But I agree, they are a class of people for whom it is very difficult. It may be difficult for them to explain their case to a classification officer, or to a Parole Board member; but it may also be difficult for them to explain their case to another Indian.

During the last few years we have endeavoured to hire some Indians as parole officers in penitentiaries. We have four or five of them on staff now. Of course, in a regional office where we have these people at our disposal we will send them to interview Indians.

As far as allowing some degree of representation for an inmate is concerned, frankly, we are very leery about getting into this situation because once we open the door, God only knows what kind of situation we will be forced into. Are we going to end up having representation for everyone? Then there are two or three people who want to speak on his behalf and there are five people who love him and want to talk to Board members, and there is no end to it.

Senator Williams: There are many problems among the Indian people in Canada. I think the greatest problem, particularly for those in the northern parts of the provinces, concerns isolation in freedom. Once they are brought into a penal institution they have forced isolation where they are no longer persons who can decide and think for themselves; that is taken away from them; they just become numbers.

What I am getting at is this: Take the inmate who has had isolation in freedom and then becomes imprisoned for some considerable time and has no real communication with those in authority. It may be for more than one reason, such as a language barrier, and the isolation in freedom of his environment. He may be a craftsman or a fisherman. The outside world is very vague to him in his particular area, or in his isolation in freedom. Then he goes into an institution where there is forced isolation. He is no longer an individual who thinks for himself. He is told to get up at a certain time, to do certain things at certain hours, and this is very foreign to him.

There is a barrier between his way of life and that of society because the approach of your people were formed, for one thing, in Europe and elsewhere. This was to put criminals away to protect the public, not to rehabilitate them; and it has not changed much. I have visited one of your prisons in British Columbia three times, and there is no form of rehabilitation whatsoever. This Indian in the North, or elsewhere, due to poor communications with society, does not fully understand why he is in. What did he do wrong? This is not a wrong with my people.

Then, how can we have him apply for parole and understand the system and why he is in, with people who will stand up and speak on his behalf? Our present system treats all as equal; that is what it is and what it was set up for. A man may have 10 degrees behind his name, but he is no better than the chap who has been in the woods of British Columbia with no education whatsoever. He is equal in this prison-type institution in which he finds himself serving and paying society for the criminal act he may have committed. However, with respect to the Indian, we, you and this country cannot speak on his behalf in generalities as a prisoner. He is treated in a very foreign society.

What is the answer to this? All right, he may finally be granted parole and returns to his own environment, where he lives as he did in the past. He is told, however, that he must report to the parole officer once a week, or every 10 days. That parole officer may live 500 miles away and the parolee has no means of transportation, so what will happen to him?

I am informed that the number of Indian inmates is still increasing. I do not know whether that is true, but there are times when the inmate population is 50 per cent Indian.

Mr. Therrien: I am not too sure of your question. I would like to say something with respect to the fate of an Indian in an institution and what happens to him when he is on parole. I think it is important to know how we endeavour to treat them once they are on parole. First, a number of the things that you say happen to Indians in institutions are true of all inmates. This is the basis and essence of the institution; you sort of become a number.

Senator Williams: My point is that he is not equal with his fellow men in the way in which he is treated.

Mr. Therrien: The end result, no matter what handicaps he has in the institution, so far as presenting his case to us is concerned, for example, is not discrimination in the sense that the percentage of your people who receive parole would be less than that for whites. We have had a number of questions in this connection during the last few years and have researched our statistics for British Columbia and the Prairie provinces. It always results in approximately the same percentage making or not making parole, whether white or Indian.

The manner in which we deal with these people once they are released is a problem for us. We have been endeavouring to find supervisors who are not located 500 miles from the parolee. We try to employ some of the Indian people in communities. In some localities we have employed Indians who work with the RCMP. We have tried to employ numerous native organizations as supervisors so that there would be a degree of communication between the supervisor and the paroled Indian.

We would agree that to set up this list of 10 conditions applying to any parolee in this country may not be the best approach, but, of course, to have a set of conditions and a practice under which they are applied may be two different things. We attempt to take this into consideration with respect to Indian parolees.

I am sure I do not have the solutions to this rather serious problem, but I do wish to indicate that we know there is a problem and are attempting to take steps to correct it.

Senator Quart: Are there many cases where you require the services of the classification officer to help out the inmates in presenting their case? Are there many across Canada? Maybe the classification officers could help out very well in the case of the Indians.

Mr. Therrien: I would not say there are many people who come to us and are unable to make a decent presentation of their case. There is just a minority of people who cannot present a case. I suppose use is made of "prison lawyers." If you know that you are going to come before the board next month, you will try to get information on the type of questions to be asked. What are they interested in? What seem to be the right answers to the questions? This goes on, I am sure.

Senator Quart: We heard testimony from three inmates from Drumheller. They carried on a sort of small committee for the inmates, giving them guidelines on what questions to expect from the parole officers.

Mr. Therrien: That is why personally I try to change my questions each time.

Senator Prowse: I presume you are familiar, Mr. Therrien, with the practice in the Canadian Pension Commission of having pension advocates who are available to veterans who want a pension. This man is on the staff of each branch headquarters of Veterans Affairs across the country. Anyone who wishes to apply for a pension can go to this person, who prepares the case and presents it. If the person concerned wished to get other advice, he could. These men are highly skilled; they take real pride in the number of their successful cases, and in the appeals they win from the board. They take the appeals and follow them through. Could something similar be arranged to help men present their cases to your board or boards?

Mr. Therrien: We could initiate any kind of assistance regarding representation, I suppose, but I really think that in practice a lot of this goes on. Mothers are good advocates. Some inmates ask a lawyer to make representations to us; they have friends; their previous employer is a good advocate in some cases, and he will tell us, "Look, this man is not all bad. He worked for me for five years and he was a very good employee." A lot of people are making favourable representation on behalf of most of the inmates. It is not very frequently that we will go to an institution and have only the application from the man himself. In most cases we have comments from a number of people.

Senator Prowse: You do not feel that they are suffering any disadvantage by lack of representation in presenting cases to you?

Mr. Therrien: Frankly, I could live with a system where there is some kind of expert representation, maybe, but I do not think we could do it at this time. In a number of the American states, the practice has reached the point where the due process is the right to have a lawyer, and if you do not have a lawyer you are provided with one. I asked a number of board members in some of the states about their experience of a system where there was no legal representation compared with the arrangement they have now. They seemed to feel, frankly, that it does not change the percentage of people who do or do not get parole. It takes more time; that is the main effect of it.

Senator Prowse: I cannot see throwing the thing wide open by having lawyers come in. I am not prejudiced against lawyers, but I am not prejudiced for them either. I do know from my own experience with veterans' groups that these men who did nothing but this became very skilled and very competent and were able to handle things very quickly. They could listen to a fellow and tell him exactly what was missing in his application or what he had to get, and there were never any difficulties because they could handle them so well. A lawyer would be a fool to get into this area because it would cost him money. He could not begin to charge for the amount of time it would take him to acquire the expertise which these men have.

Those people are still operating. There are a devil of a lot more veterans in this country than there are criminals and a lot more pensioners than there are criminals, and every one of those pensioners has probably been represented at some stage by a pensions advocate.

Do you think this would make it easier for you people? Your staff could prepare the case for presentation beforehand. I should think it might be worthwhile to have the department take a look at that system as it operates in the

Pension Commission, to determine if it could not be implemented in your area. I should think this could be done very cheaply and that it would be very effective. You could have one advocate for, say, each area. This would give a good man a good job; it would keep him busy and he would be of value to everyone and save the board a good deal of time.

Mr. Therrien: Of course, the matter of having complete information before the board at the time of the decision is something that is the responsibility of our staff.

Senator Prowse: But the documentation is not always complete.

Mr. Therrien: It is one of their responsibilities to see that the documents required for the decision are there. If they are not there, it is their role to get them. Your suggestion might be useful in the representation aspect of it. I do not know exactly what the complexities of the Pension Act are. We like it to be done on a form which we provide, but we will accept it in any form. Some inmates simply write on a sheet of paper that they want to apply for parole, and that is a valid application. There are not too many complexities about that. It is strictly a matter of speaking for the individual.

The Chairman: That is what I was thinking of.

Mr. Therrien: But at the hearing we like the individual himself to speak to us. It is not that we do not see other people who come to us on behalf of the individual. Our offices across the country receive visitors every day who wish to talk to us on behalf of some inmate. So there is that degree of representation.

Senator Hastings: It seems to me that a continuation of this representation would just be a perpetuation of this "we/they." This is what bothers me about it. If there is one thing we have to break down it is the fact that the Parole Board is rendering a decision on his behalf. To bring counsel and other representation to a board hearing, the hearing is liable to become just another court and any effect that you now have you will lose.

Mr. Therrien: I am not saying it is a bad idea, but as a matter of priority I would prefer to have more time to give to the study of a case and to give to the inmate himself. If we get into a nice system where we have all the time we want and all the time that the inmate requires to talk with the board member, then we may start thinking about it.

Senator Prowse: To put it another way, in your opinion it would be a good deal more useful for everyone concerned if you had five more board members than you have now, rather than five advocates such as I was discussing. I suppose you could get them for about the same amount of money, too.

Mr.Therrien: I should like to have 7 additional board members, sir!

Senator Thompson: To come back to the different paroles—ordinary parole, day parole, parole for deportation or voluntary departure, and mandatory supervision—

Senator Prowse: How did we get away down there?

The Chairman: We will be getting to those three items, Senator Thompson. If your question is not on ordinary parole, I would ask Mr. Therrien to go on to day parole.

Senator Hastings: Could I just ask one quick question?

The Chairman: A very quick one.

Senator Hastings: What do you mean by "parole in principle"?

Mr. Therrien: A parole in principle is a judgment made by the board, saying, "We have assessed the whole criteria and find that there is no undue risk. We want this man on parole." Before he is actually put on parole we want one or two things to happen, and once they have happened he goes out. Mostly this relates to a job. The man is looking for a job; there is a chance he may get a job two or three weeks hence, and as soon as this is confirmed he goes on parole.

Senator Hastings: Whose duty is it to assist him through that period, the institution's or the Parole Service's?

Mr. Therrien: They both do it.

Senator Prowse: They are both supposed to.

Senator Hastings: What is "parole with gradual"?

Mr. Therrien: Parole with gradual is a decision when the board says the man goes on parole at a definite date in, say, two months; that in the meantime we want him to go back to society, but gradually. There are two documents that go with a parole with gradual. There is a document of temporary parole, which is a day parole, so that he is allowed to go out a few days a week in the first week, and maybe the second week for the whole week, coming back at the weekend, for a month, two months or three months, up to the time his parole date arrives, when he goes out with the real parole certificate.

Senator Hastings: In the interval is he under the Penitentiary Service or the Parole Service?

Mr. Therrien: He is on day parole.

Senator Hastings: He is under the Parole Service?

Mr. Therrien: Yes.

The Chairman: Would you now talk to us about day parole?

Senator Williams: Mr. Chairman, Before that I have one question. I have in mind an Indian with no skills that would qualify him for certain umployment, in particular those that I have referred to as "isolation in freedom." If a man is a trapper no one employs him; he employs himself. If it is off-season for trapping, who employs him? Who recommends his application for parole, when so much depends on job availability?

The Chairman: You mean: How can he satisfy the condition which reads, "To endeavour to maintain steady employment."

Mr. Therrien: There are two things, before the decision and after. If the season is one in which the man's main way of earning a living can be pursued, he can go to what he usually does. If not, there are a great many who go on some Manpower courses these days, for example.

Senator Williams: How can manpower train a 35-year old Indian in isolation who can neither read nor write?

Mr. Therrien: That is something the man will present to us. We never force a plan on a man.

Senator Williams: That was your answer.

Mr. Therrien: I am giving some examples.

Senator Williams: I am referring to the problem of the Indian inmate in getting parole.

Mr. Therrien: In getting parole?

Senator Williams: Yes. Job availability seems to control much of the parole as it now works. If an inmate has a job to go to his parole becomes a little easier, his application gets a little more consideration.

Mr. Therrien: I would not say that. First, the board will make up its mind about the man's parolability, whether we think he is the type of man we want out on parole. After that we consider the conditions, what kind of job he is going to. First, we make the decision about parole, and after that we consider employment. It is not the case that he does not get parole because he does not have employment. In some cases, because of what a man has done in the past, his way of earning a living, he may not be able to find a job from the institution where he is; he may be going 600 miles from the institution, and we know that his way of getting a job and earning a living is to be on the spot and to be able to talk to the people there. If we decide we want a man on parole, that we think he is not an undue risk, that he has derived maximum benefit from imprisonment and so on, we will parole him.

Senator Williams: Suppose in the past the trapping facilities have been very limited and the man has been on welfare for four or five years, what consideration does the Parole Board give him?

Mr. Therrien: He will get the same consideration as any other parole applicant.

Senator Williams: There is no parole then, is that your answer, because he has been on welfare for five or six years?

Mr. Therrien: We do not see that as a crime.

Senator Williams: This is the problem with the Indian people.

Mr. Therrien: It is the problem with very many white people in some of our cities too.

Senator Williams: They choose welfare rather than work, in most cases.

Mr. Therrien: I could not agree with that. I think there is a percentage of people who may, consciously or unconsciously, make that choice, but I think there are very many people who are on welfare and it is not of their choosing.

Senator Williams: We do not differ in our thinking on the matter of welfare, but there is a great number of these young people in British Columbia who are not prepared to work and who do not want to work.

Senator Thompson: I think the point is that if this Indian has no work, if the trapping is closed up, he has to go on welfare; all he has to do is go on welfare.

Mr. Therrien: No, the purpose is to decide whether he can be allowed on parole to be sort of half free in the community, subject to certain conditions, that he will not go back to committing crimes, and if we are satisfied that this is the case, then he goes out. If he is going back in a few months to the situation he was in before, we cannot create the job for him if there is no job there.

Senator Thompson: Might I ask you about another area from that of the Indians? I am thinking of the mentally retarded. Do you know the proportion of those who are in penitentiaries, or is there any way of assessing the proportion.

Mr. Therrien: I would not like to guess any percentage. I suppose people from penitentiaries may have this information, when they assess the I.Q. of these people when they come in. I know we see a certain number of these people who apply for parole, and it is a problem in those cases, especially on the matter of finding employment at times. When you review the case of such a person, he has not been in jail for thirty years, he was out at some time and he knows a few people, so you can go back to these people and you can find out what he actually can do. You try to help him find something that he can achieve outside. I am not saying it is easy but there are some organizations that try to help these people. We try to establish a relationship with this kind of an organization, where possible. We may refer him to a specialized agency that deals with this kind of people and tries to find jobs for them.

Senator Thompson: I am not thinking just of mentally retarded; I am also thinking of marginal cases who would have difficulty in learning some of the accepted skills, and so on. I am wondering how many of the unfortunate population make up the penitentiary population, and I am thinking of the difficulty of getting them readjusted.

Mr. Therrien: Yes. There is a certain number of so-called marginal people. The first thing the board has to assess is: What are the dangers of this man going back to crime? Because he is marginal, it does not follow that he is going to be a criminal. There are a number of marginal people who actually never get to an institution. They live the marginal life outside without getting to the system at all. But sometimes you have a man who has been out ten years of his life. He may have been marginal all along; then he comes into an institution. He may be a good risk for parole; it may be the last time he is in the hands of the police, or the courts, or the institution, or in our hands. You do not start to make a judgment and say, "We will release him if we can find a job for this kind of man as a teacher in a university". You have to adjust your ideals to what he can do. It may be he is going to be marginal, but this does not mean he is going to be criminal. So you have to satisfy yourself that this is the situation, and he stands an equal chance of getting parole.

Senator Thompson: It has been suggested that the requirements of parole are really middle-class values, and that we are imposing our middle-class criteria on the people coming out of the penitentiary. Do you think there is any justification in that?

Mr. Therrien: This has to be an opinion or a judgment that one makes after so many years' working in this, I suppose. I do not see how you can measure that. I think it is becoming an issue mostly because there are more of the so-called middle-class people in the institutions than there were ten years ago. Frankly, it is not my experience that the so-called middle-class man has a better chance before the Parole Board than the lower-class man, but I suppose you have to take my word for it. I cannot prove it, any more than I can prove the contrary.

The main aspect is that you have to consider the risk, and you have some people from the middle class who could be great risks as far as parole is concerned, and they do not get parole. The same may be true of any class, I suppose.

Senator Thompson: It seems to me that you go for references to the church, to school teachers, and so on. These are the people you go to, and they will say, "This fellow has held a good job. He attended the church in the community," and so on. So that the people who are reflecting whether they are good bets or not are people who reflect middle-class values.

Mr. Therrien: If people could prove this to me, I would be very concerned about it, but the fact is that each time you release a middle-class man because you think he is a good parole bet, witnesses of that release will say, "Oh, you see, it is easy for middle-class people to get parole." I do not see how you can fight that. That is just the way people will react each time you do it.

At the same time, you have to think in terms of not going to the adverse position of saying, "Because they are middle-class they have to stay in, because we don't want to be accused of discrimination or preferential treatment."

Senator Williams: In these penal institutions, who are considered middle-class men?

Mr. Therrien: I have been saying all along "so-called middle class". There may be a number of definitions. You are dealing with the white-collar type of criminal, for example, the man who may be a lawyer or a druggist.

Senator Williams: I have no idea what a white-collar criminal is.

Mr. Therrien: Again, these are all labels. They represent the reality behind the label, some in a better way and some in a worse way, but at times labels seem to be useful as a means of talking about certain classes of people. If you are talking about a lawyer who is doing time for some fraud or other, most people would say, "Oh, he is middle class."

The Chairman: Would you now clarify day parole for us, Mr. Therrien? And, for my personal information, would you differentiate between day parole and temporary absence, and tell us whether you consider it a satisfactory system that two different bodies are involved—that is, the Parole Board in respect of day parole, and the Penitentiary Commission in respect of temporary absence?

Mr. Therrien: One thing I tried to do in this document was to say a few words about the term "day parole" itself. First, I think it is a misnomer. It may create confusion in the sense that people think of day parole as implying a return to the institution each night—the man goes out every day but comes back every night. That is the situation in day parole some of the time, but it is not always the situation; it may be something else. Actually, it should be called "temporary parole," because it can be the situation where the man goes out during the week and comes back during the weekend. That is all included in what they refer to as "day parole" in the act, and which, in my opinion, should actually be called "temporary parole." So it is a parole, the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole, or to return to prison after a specified period.

Now, you have asked the question: What is the difference between day parole and temporary absence? Some of the words that are used are the same, like "from time to time," but at some point we have tried to define this difference, and this is what we came up with. We have always seen day parole as part of an organized program, planned mutually by the penitentiaries and parole staff, designed to involve the offender in a community, educational, employment or other program which is anticipated to extend beyond 15 days. While temporary absence is something less continuous than this, it will be relatively short, except for medical reasons, of course, and involve the offender being in the community for specific short-term periods, with or without supervision.

In day parole, of course, we always provide for supervision, either by one of our parole officers or a parole supervisor from a private after-care agency. We use day parole in the way that I explained when answering one of your questions; that is, as a preparation for full parole, in the sense that the man has been in the institution for so long that it would be unreasonable one day to take him out of the institution and put him out on the street where he finds himself on full parole in amatter of one day or one hour, which is the way it was done 15 or 20 years ago. At that time a man would do 12 or 15 years, and then one day notification would arrive at the institution and he got a parole. At 9 o'clock in the morning they put a suit on him and they put him out on the street. So now we have devised this gradual system, and this is one way in which day parole is used.

It may also be used in a case where it is felt that the man is really not a very good bet for full parole, but it is felt that he should be worked with in the community, at the same time having some kind of stricter control over him, with the result that each night or each weekend he goes back to the institution. At the same time you want to teach him to work because perhaps his problem is that he has never held a good job outside; or, on the other hand, he may be pretty good at getting a job but has never succeeded in keeping one. So you want to teach him that when he gets a job he must try to keep it. Therefore, you want to give him the opportunity and at the same time have some control over him, and you have more contact with him on day parole than you would have with him if he were on full parole.

You have these two elements: it can be a kind of testing period bebore he comes to full parole; or, as I have said, he may be a person you may not want to put on full parole, but you would still try to bring him back to the community gradually.

The Chairman: Is he released on day parole for a fixed period?

Mr. Therrien: As an internal policy, the board has decided to make these decisions three months at a time. For example, we may have a case where we will say to ourselves, "Well, we need to know more about him before we make a decision on full parole, and obviously we will not learn more about him by having him remain in the institution, so we will try and get that information by letting him out on day parole for three months." Now, this will be the stricter kind of day parole; he comes back to the institution every night. After three months we make an assessment of what has happened during the three months, and if we find he is progressing, we can extend these conditions and we can decide that he need only go back, say, four or five times a week. Then we may decide that he need only go back at weekends. You can do this for up to a year, and there is no law which forces us to do this, but it is a decision which the board has come to by experience. We have found that after a man is on such a program for a full year, you have to make a decision one way or the other: either you want him outside or you do not want him outside, and you have to make up your mind. You cannot stretch a period like that for two years. The inmates say that this is more difficult to abide with than full parole. They say you become schizophrenic, because at the same time you have to abide by the laws of a free society. But then you are not really that free because you have to return to the institution.

The type of practical situation is that you hold a job during the day, you begin socializing and you make friends with some of your co-workers. After a few weeks they say to you, "Tonight my wife and I are going to have two or three friends in. Will you come?" but he has to refuse because he is going back to the institution. This is very rough on inmates. They find this situation very difficult, more difficult than with full parole.

Senator Hastings: With respect to day parole to a convicted murderer, you consider yourself governed by section 684(3) in granting day parole?

Mr. Therrien: Yes, we would also be governed by a section in our regulations which says we have to go to the Governor in Council.

Senator Hastings: That is the section to which I am referring.

Mr. Therrien: Well, these are two different matters. We have had section 684(3) for five years; but at the same time there is also a section in our regulations which deals with this situation.

Senator Thompson: I suppose day care implies that the institution is near to cities where there are opportunities to work, or to go to university.

Mr. Therrien: As you know, there are more institutions now than we had five or ten years ago, so it is now easier to conduct day parole programs than it was five years ago. If an institution is near a city where there is a pool of jobs available, usually we use one of the minimum security institutions for day parolees. For example, in Quebec there is a dormitory which accommodates 25 people, and it is only for day parolees who go out during the day and return at night, or who go out during the week and return for the weekend. We can also use community correctional centres which are springing up across the country, such as those in Montreal, Toronto, Winnipeg, Saint John, Vancouver. We use these for day parolees.

Senator Thompson: It would be more advantageous for the Indian if there was an institution near his type of job opportunity in the North, so he could trap by day and return to the institution at night. Job opportunities for him are very limited in the city, in view of his past experience, so it is unfair to him.

Mr. Therrien: Well, I do not know what the proportion is, but some of these people are quite prepared to hold jobs near the jail where they are incarcerated, obviously because it is not possible for them to obtain parole in the region where they usually live. But this is also true for people in Montreal. For example, in Quebec most of the institutions are situated near Montreal. The situation is exactly the same for people who come from the Lac St-Jean district, the Gaspé, or Three Rivers, where we do not have federal institutions. They are all centred around Montreal, so they are in exactly the same situation. If they are going to get day parole, they will have to work around these institutions.

Senator Thompson: Do you think it would be advantageous? I am reading this article which appeared in *Maclean's* magazine with the suggestion of mobile prison units such as on a freight car travelling to a camp. Do you see any advantage for this particular category of inmates in providing a lock-up for them near a centre of work to which they are used?

Mr. Therrien: I have never run a penitentiary or jail system, but my offhand view would be that I would not like to have too many of this type of institution. I would be very much afraid of getting into the business of road gangs, with too much authority in the hands of too many supervisors with whom I would not have much contact. I would be very leery of going into this type of program. Also, you can never solve all of the problems. How many of this type of mobile institution would be required?

Senator Thompson: I wish to clarify this point. I do not mean a work gang such as those that exist in Arizona or somewhere such as that.

The Chairman: Georgia.

Senator Thompson: I mean facilities for someone who might be adapted to trapping. We might ask the RCMP to provide a lock-up where he can serve some of his time, or a facility such as a boarding house where he can return and sleep.

Mr. Therrien: How many such institutions would be necessary to cover the northern areas of the four provinces, or nothern Ontario? I do not know.

Senator Thompson: My point is there are none, but I think that with imagination we could acquire accommodation and arrange that it be used as institutions.

Mr. Therrien: But I would still hold to my idea that there are risks involved in this. I do not think that when these programs such as road gangs were started in the United States it was done in order that it would allow brutality. There is always the risk that these conditions will arise in this type of program.

Senator Thompson: I am not speaking of places where prisoners go to work for contractors, but of a fellow who is trained, for instance, in trapping, a solitary figure. If there were flexibility for this, he might go for a month on his trap line and when he comes back stay in a place stipulated by the board, which would be designated as a penitentiary. In actual fact, however, it may be the quarters of the RCMP officer and his wife. This would give such inmates an opportunity to move outside, but under supervision.

Mr. Therrien: Such programs are in effect from provincial institutions which are not situated so near the larger centres in the southern parts of the provinces. There is nothing to prevent us doing this with the day parole legislation in existence now. It does not force us to insist that the men return each night, but from time to time. They can also be allowed to go out and return to prison after a specified period. There is nothing to prevent such an inmate going on his trap line for a month and returning.

Senator Hastings: I was interested in your reasons for day parole; you said education and employment, which are practically the same as the reasons for the temporary absences which were granted. The general complaint is that decisions are hard to come by. When the local community needs help or labour it needs it immediately and cannot await a decision of your board. You realize that I am not criticizing you; I know how overworked you are and how difficult these decisions are to make. What would you think, however, of giving the day parole decision to the director and your district representative?

Mr. Therrien: First, I think this could not be done under the existing law. Secondly, there are certain principles that must be applied to this. We are discussing releasing inmates. I do not believe that such decisions to release are made just because a job becomes available. This is a decision which is arrived at after making a proper assessment of the case. I do not believe that availability of employment should exert too great an influence over an asessment of whether we wish to release an individual, and I do not believe in making such decisions quickly. They should be made as quickly as possible, as long as the proper assessment is made. I believe that the solution to this will be reached through the program I was explaining, under which we start to work with the man right from the start.

Actually, I can envisage a system where at some point you could go to a man rather early in the sentence and tell him, "Now look, this is the direction in which you are going, and we will be prepared to entertain an application for day parole, for employment or for education, at approximately that time in your sentence." There is a program that he knows about, and it is not a decision that is made just because some local contractor wants a man to work on a forklift, or something. I am not going to change my mind.

Senator Hastings: You do not believe that type of labour contributes to his rehabilitation?

Mr. Therrien: If there has been an assessment of what the program is for this man, what the problems are, whether it will form part of a plan to make a decent or honest citizen out of him. If it is only a matter of, "Well, it's too bad. He has been in prison for three years. There is a job, and we are going to send him to the job" That is not the way parole decisions are made.

Senator Hastings: I do not believe in that, either; but don't you believe that a director of an institution or a district representative can make an accurate decision, or just as accurate a decision as the board, which takes six or nine months?

Mr. Therrien: Well, it does not take six or nine months: in most cases the time is four months; in some cases it is less than that, even for day parole. What has happened in practice in a number of cases is that the board has been approached regarding some of these requests when the job was there. The board has never liked to be asked today, "Will you release this man tomorrow because there is a job waiting for him at 9?" The board does not want to work that way. It has been a problem. Personally I am going to fight against that. I want to make a proper assessment. Even with day parole you have first to make up your mind that the man is not an undue risk for society. You have to have reports on what assessment was made of him when he came in, and what he has done in the right direction since then. You then make a decision about parole, or even day parole, because the same criteria apply. When you are making a decision about day parole, you are not thinking in terms of whether or not he has done enough time. You think in terms of whether it is going to help his rehabilitation, and whether he constitutes an undue risk for society. Once you satisfy yourself on these two criteria, you can then start talking about planning.

The Chairman: Would you say that those criteria are not applicable to temporary absence for purposes of rehabilitation?

Mr. Therrien: I think the risk criterion is embodied in section 26. I am not familiar with it, but I think the risk is embodied there.

Senator Hastings: If I am a director of an institution which has had a man for three or four years, along with a district representative I could make just as accurate a decision as the Parole Board in Ottawa with respect to day parole.

Mr. Therrien: I am not saying that it is not possible; I think it is possible. But to me the facts are that you have to have at some point one authority that is responsible for the people in the community. My own feeling on this is that since we are blamed for all these things, we might as well be responsible for the decisions.

Senator Thompson: But you are not responsible for the fellow on temporary leave.

Mr. Therrien: What we were saying about regional boards might be a partial answer to this.

Senator Thompson: From listening to what has been said, it seems that economically day parole is a good thing. It seems a good thing from a rehabilitation aspect, but I am wondering about the eligibility clause. You may have someone within that category, and with the rigidity of it he cannot go out on day parole until he has completed four years, or wherever it is, of the 10 year sentence. Am I right in that understanding?

Mr. Therrien: Except that the Board has an internal rule which is set out here, which states:

> As an internal policy, the Board has decided that it would not entertain applications for day parole earlier than one year prior to the eligibility for ordinary parole.

So, actually, in the case of a man doing three years, for example, technically he could be released on day parole from the first day. However, if a man is doing 12 years, he is eligible for parole at four years. We will not look at a day parole application unless he has served three years. We are prepared to try him on day parole for one year, and then he is eligible for full parole.

Senator Thompson: But an individual serving ten years would have to be in for nine years before he is eligible for day parole?

Mr. Therrien: In this case we could not do anything because of section 2, paragraph 3 of our regulations which states:

> A person who is serving a sentence of imprisonment to which a sentence of death has been commuted, either before or after the coming into force of this subsection, or a person upon whom the sentence of imprisonment for life has been imposed as a minimum punishment after the coming into force of this subsection, shall serve the entire term of the sentence unless, upon the recommendation of the Board, the Governor-in-Council otherwise directs.

Since we have had this rule there has been no case where a man has been released on day parole before the 10 years.

Senator Thompson: I understood that in the Truscott case that boy was allowed out—

Mr. Therrien: He served more than 10 years.

Senator McIlraith: After 10 years.

Senator Thompson: I thought he was allowed to go to an outside institution, to some school outside the institution.

Mr. Therrien: That is at the beginning of the sentence. He was in an institution.

Senator Thompson: I thought he was allowed to go to school outside the institution.

Mr. Therrien: No, he was inside all the time.

Senator Prowse: But they do go out on temporary absence permits for educational purposes within the 10-year period?

Mr. Therrien: Yes.

Senator Thompson: So you can get around it for a fellow who has to wait for 10 years by calling it temporary absence as opposed to day parole.

Senator Prowse: No, they do not.

Mr. Therrien: We do not do anything or call it anything.

Senator McIlraith: There was a legal point raised. The provision in the Code says, " . . . shall not be released . . ." and, of course, a temporary absence is a release.

Senator Hastings: That means permanently.

Senator McIlraith: There was a big argument on that.

The Chairman: there is one more item on parole which I do not think will take very much time.

Do you just want to read what you have there, Mr. Therrien?

Mr. Therrien: We were asked to say a few things about parole for deportation or volumtary departure. The same things apply to this as to full parole, except that on the parole certificate the only condition is that the man agrees not to return to Canada for the duration of his parole. If he does come back, the penalty is parole revocation.

Senator Prowse: Which means he goes back to jail.

Mr. Therrien: Yes, to serve the balance of his sentence.

The Chairman: The final item is mandatory supervision.

Mr. Therrien: Mandatory supervision applies to all inmates who are released as a result of 60 or more days of remission. This, as I said earlier, takes place at about the two-third mark of the sentence, namely, one quarter of statutory remission plus three days per month. This amounts to about one-third of the sentence. The statute is the Parole Act; The authority is the Parole Act, not the Parole Board.

The only discretion invested in the Parole Board as far as mandatory supervision is concerned has to do with the imposition of conditions. There is a section which says that we can impose any condition we want on the mandatory supervision, notwithstanding that we are not the authority who decides to release the man. It is the law that says he is to be released. The conditions are the same as those for full parole.

If I may, Mr. Chairman, there was a technical point raised this morning concerning earned remission. The question was asked as to whether or not it is possible to lose earned remission. the example that was given was that if you go out on parole on mandatory supervision, earned remission is included in your parole time, so you actully do it on parole. What happen if you commit a crime and there is a parole forfeiture or a parole revocation so that you go back to the institution? Earned remission that was to your credit at the time you were released on parole is given back to you at that time.

Senator Prowse: When you go back in.

Mr. Therrien: Yes.

Senator Prowse: You get the earned remission but lose the statutory remission.

Mr. Therrien: You lose about three-quarters of it, because once you go back for the rest of the time you get a quarter of the rest.

Senator Hastings: So you are credited with your earned remission when you return?

Mr. Therrien: That is it.

Senator Hastings: Which applies to mandatory supervision too.

Senator Lapointe: Are there any cases of inmates wanting to remain in the institution, not wanting to come out?

Mr. Therrien: We have not experienced this yet.

Senator Hastings: There is one in Prince Albers.

Senator McIlraith: Yes, there is one.

Mr. Therrien: Is he still in, even though his time is up?

Senator Hastings: There is one eligible for parole who wants to stay; he does not want parole.

Mr. Therrien: That is for parole. There is a fair proportion of people who say they do not want parole at the time of parole eligibility. Are you talking about mandatory supervision?

Senator Lapointe: Yes.

Mr. Therrien: I do not know of anyone who has refused to go. I know of a number who say they do not want to abide by the conditions or that they will not abide by the instructions, which then becomes a case for suspending the mandatory supervision or revocation. I do not know of anyone who has actually refused. I do not know how this can be done. The law says you go, so you go.

Senator Prowse: Suppose I am an inmate doing ten years; I have been a very good boy while in there, but I do not want any part of parole. What would I get off altogether? On the statutory, a quarter of it would be two and a half years; then I would have three years coming to me at that point, and I would be out after about six and three-quarter years.

Mr. Therrien: Six years and eight months approximately.

Senator Prowse: I go to the end of the time. Under the old system I would then come out and that would be it. Now what happens? I come to that point, I go on to this system and I am now on parole. If I get into any kind of trouble in the next three years I am brought back to do the rest of my three years over again.

Mr. Therrien: Yes, the situation you describe is exactly what is happening.

Senator Prowse: This upsets a lot of prisoners, does it not? Do you know? I do not suppose I should ask you that question. I have had some letters on this subject, and I know Senator Hastings has had a lot of people talk to him, and also a great many letters, showing that this has really upset people, because they feel that with this mandatory supervision the government suddenly took away from them by this legislation something that had been theirs at the time they were sentenced; in other words, this does not apply to people sentenced after mandatory supervision came into effect.

Mr. Therrien: Oh yes.

Senator Prowse: It applies to everybody in jail at the time it came into effect.

Mr. Therrien: No.

Senator Hastings: Only those after.

Senator Prowse: It applies only to people sentenced after this?

Mr. Therrien: August 1, 1970, is the cut-off date. This does not apply to anyone sentenced in July, 1970. It applies to those sentenced after August 1, 1970. It means that the first people who were released were released around December, 1971, under that scheme.

Senator Hastings: How many were returned in 1972 for violation of mandatory supervision?

Mr. Therrien: In 1972 there were 58. I know we have started to look at the situation, and this is not a true rate. I do not know the exact number of those who have been released on mandatory supervision since December, 1971, but I do know that 17 per cent of those who have been released have been returned since then.

Senator Prowse: That is on mandatory supervision?

Mr. Therrien: Curiously enough, it would be the same percentage as on full parole.

Senator Hastings: How many of those are revocations and how many forfeitures?

Mr. Therrien: I do not have these figures here but I could provide you with these figures.

Senator Lapointe: What is the difference between probation after imprisonment and mandatory supervision?

Mr. Therrien: That is a good question. I guess that the authority for mandatory is in the Parole Act; probation after imprisonment is a decision that a judge has taken. There is a difference in the sense that if probation is included in your sentence you are going to be supervised by a probation officer, who is a provincial employee. If you are on mandatory supervision, you are going to be under a parole officer or an after-care agency working for the Parole Service. About the same conditions will apply, because in general the conditions that are asked of a probationer are about the same as those that are asked of a parolee.

Senator Prowse: The effect is approximately the same; it is the way in which it happens that is different.

Mr. Therrien: I think it is really a confusion of roles. All along, probation has been defined as something that you do instead of imprisonment, and parole is something that follows imprisonment. But now we have probation instead of imprisonment and after imprisonment, and parole after imprisonment, so I do not see the logic of it, but we live with it.

Senator Lapointe: In some of the briefs it is recommended that probation after imprisonment be abolished. What do you think of that?

Mr. Therrien: I am not making the laws. If a man is going to get a parole during his sentence and at the same time there will be a probation period, it allows for a longer period of control by the state. If he gets two and two—two years in jail and two years probation—and suppose he gets parole after one year, it means he will be on parole for one year and then probation starts, so he is going to be on some kind of control outside for some three years. This can be achieved through parole laws, too, in many ways. It may ensure that a man who is not going to get a parole is going to get some kind of supervision after the sentence. If you think in terms that only 45 per cent of those who

apply actually get parole, it means that 55 per cent get out, and then some are on mandatory; and then the jail case, for example, some do not get mandatory. For even a short term, three months, plus two years' probation, you may not get parole, but the two years' probation ensures that there is some control and assistance for you after you have finished your jail sentence.

Senator Hastings: You had 5,000 men out on parole on December 31. How many of those were under mandatory supervision?

Mr. Therrien: Frankly, I am not very good at figures; I think it must be just a few hundred.

Senator Prowse: I think it was 94.

Mr. Therrien: I may have something here.

Senator Hastings: You released about a thousand this year from penitentiaries. Are we not using the Parole Service to enforce this mandatory supervision over men who do not want it and who will not benefit from it?

Mr. Therrien: As you know, parole is often defined—and this is the way I see it—as control and assistance. They may not want assistance; they may not want control. It may be a way that society does exercise some kind of control over these people, and it may be they represent a greater risk to society. The experience up to this point, from talking with the parole officers who have been dealing with people on mandatory, is not so bad. They say that in general the first interview is bad, the second one, too; the man is not happy about being forced to go by these conditions. Then he realizes he has to live with it, and he starts working. It may be he is the type who does not like to ask for assistance, but since the guy is there and he has to come, they are going to talk about something, and they talk about some of his problems. He finds, "These parole officers, I thought they were all bad, but they are not so bad." It is said that after a few weeks some kind of relationship is established. I would suspect that after five years we will find that the percentage of those who break mandatory is not going to be so much greater than those who break parole, even though we consider them to be good risks and so on.

Senator Prowse: As a matter of fact, they should be on parole.

Mr. Therrien: I have the figures for you here, Senator Hastings. It is 549 at the end of December, 1972.

Senator Hastings: Do you consider parole an extension of custody or an extension of freedom, Mr. Therrien?

Mr. Therrien: I think it is a mixture of both, sir.

Senator Prowse: You phrased your question wrongly, Senator Hastings.

Senator Hastings: Well, you phrase it.

Senator Prowse: All right, I will try. Do you consider parole an interference with the sentence of the court or an administrative decision as to how the court sentence is to be carried out? That is a double-barrelled question which is probably leading, but let us leave it at that.

Mr. Therrien: I do not consider it an interference with the court. I would hope that it would be seen as just another step in the continuum of the administration of justice. I think we will never get anywhere in the administration of justice as long as the situation which Senator Hastings was describing continues to be our life story—the separation between all the interventions that are made with respect to an inmate. We are a long way from that. The different sectors have to meet and talk and realize that they are all trying to achieve the same end, and that they are all dealing with the same people; and we have to arrive at a day when there is some kind of consensus as to what we want to achieve when we send a man to jail or put him on probation, or when we keep him in jail or when we parole him. All these people have to have one aim in mind, it seems to me.

Senator Hastings: The protection of society.

Mr. Therrien: The protection of society, yes.

Senator Prowse: The other day I was looking at some figures in the Solicitor General's report for the last year. I have not the figures with me, but that does not matter. They gave the average earnings of parolees, and some of them were distressingly low.

Do you have any facilities at all? Are there any funds into which your parole servicemen can reach in order to give these men financial assistance to get them over difficult times when they are trying to find a job, other than directing them to civilian agencies?

Mr. Therrien: I am not too sure if you are talking about financial assistance.

Senator Prowse: Financial, yes—dollars, money.

Mr. Therrien: There is what we call a parolee fund or parole fund, where we can make a loan. We do not like to give money. Frankly, I would not like to be giving money to these people. I believe in entering into some kind of contract with them, saying, "Now, look, you are in a bad spot. It is Friday night. It is five o'clock. There is no way you can get help or financial assistance. We will make a loan to you." So we will lend him $10, $15 or $20, and he signs a paper agreeing to give it back to us, and then it is a revolving fund.

Senator Prowse: But you do have a fund of that type?

Mr. Therrien: Yes. But we do not have $2 million per office.

Senator Prowse: What I am wondering about is this—various figures have been loosely thrown around, and I do not wish to argue about what they actually are; but we are told that it costs roughly $10,000 a year to keep a man in prison while it costs $500 a year to keep him on parole. Now, if a man is out of prison and he is unable to live, might it not be useful for us to take some of that $9,500 that is being saved and make it available to help him over that first period when he is trying to get established, so that he will not be readily available to be enticed back into crime? Do you think some device of this kind might be useful?

Mr. Therrien: I am not too sure that my own thinking—and I am going to be very personal here—goes with what we usually do. I do not believe in setting up specialized agencies to give money to these people. Our purpose is to have them become law-abiding, or at any rate like the rest

of us, and therefore I think that as soon as possible you should make them use the agencies available and that they would use if they were not criminals. The other thing I do not like is to say, "Parole is a good thing because we save money through it." If this is going to be a consideration in the measures we take regarding criminals, then I can find you some very economical measures.

Senator Prowse: Then, let me put it this way: Would we be doing something useful if we suggested that men in a penitentiary, whether we pay them wages or not, should be enabled to build up what they would be doing in industry—that is, unemployment insurance benefits, and things of that sort—on which they would be able to draw from the time they left the penitentiary until they could get a job? What would your feeling be about that?

Mr. Therrien: I feel great about it. That is what we try to do through day parole. We send a man out to work, and we actually try to have some degree of control over his finances. You set up rules for him, and you say to him, "Now, you are going to send so much to your wife, and so much is going to stay there so that when you come out on full parole you will be able to see ahead of you for a week or two or three". We try to do this.

Senator Prowse: If, while they are in jail, we give them credit for X dollars a day, and then we subtract from that so many dollars for their cost of living and various other things like that—contributions to welfare and unemployment insurance—then, when they came out, they would have some kind of a balance, perhaps a very small one, and they would have the same kind of credits as every other man coming off a job. Would this, in your opinion, help these people to reintegrate themselves into society in a useful way?

Mr. Therrien: I think it would counteract some of the bad feelings you get in an institution where, in some cases, people really do work hard and at the end of the day there is $1.25 or 85 cents or something like that to their credit. Anything that would seem to attach importance to the work that they do would be useful. It is all right to say, "You work because you have been sentenced to work, but there is a value attached to work too on the outside." Some of these people have been working only when in institutions, and if we leave them with the impression that they work only because they are forced to, and if they do not get too much pay for it, then when the man is outside, work is associated with something that he is forced to do and it is not something he does because he wants to do it.

In France they have a system somewhat along these lines. In some institutions they pay the kind of salary they would get on the outside, but then certain rules are imposed as to how they may use it. If I remember correctly, one-third of it will go for restitution, for example, if that has been ordered by the judge; one-third of it can be sent out to his wife or his family; and the remaining one-third has to stay there as, what they call, un pécule. I do not know what the word is in English, but that becomes his going-out money.

Senator Lapointe: Is it true that judges are imposing longer sentences now because they know that parole will have the effect of shortening the sentence?

Mr. Therrien: Frankly, I could not say on what the judges base their sentences. I do not know that they do this. I know it would be illegal.

The Chairman: But it has been suggested.

Senator Quart: And it has been reported in the newspapers, too.

Senator Prowse: It has been admitted.

Senator Quart: Mr. Therrien, have women committed more crimes within the last year or two than they did previously?

Mr. Therrien: Well, it does not seem to show in the population. I do not think the population of women in institutions has increased to any degree. I know that just like the boys, a number of girls are in institutions for a new type of offence, drug offences. But it does not seem to have increased the population very significantly.

Senator Quart: Do you have as many women as men return on a second offence after being paroled?

Mr. Therrien: They seem to return at about the same rate.

Senator Quart: I may be very unpopular among members of my sex in saying this, but I read a report last week—and I wish I had kept it—that in the United States research indicates that as a result of the women's liberation movement crimes committed by women have increased with all this permissiveness.

Senator Prowse: No, no, the convictions of women.

Senator Quart: Well, they have to commit something to be convicted.

Senator Prowse: They used to be chivalrous to women, but women do not want chivalry any more.

Senator Quart: We do, too. Certain types of women may not want chivalry, but I do. That article was in the paper last week. I am serious about this.

The Chairman: Your complaint is that the women's lib. movement has not been as successful in Canada!

Senator Prowse: Mr. Chairman, I submit this is not really our business. We have troubles enough. I think the women's lib. movement has been very successful in Canada.

Senator Quart: I don't.

During the war and after World War II various service clubs, such as the Kiwanis and Rotary, used to offer to take up to six or ten men for their weekly meetings. Could we not ask these service clubs to co-operate and help in the rehabilitation of prisoners? At the end of the war many of these men found positions by chatting with some of these businessmen.

Mr. Therrien: This is being done. We are moving more and more into situations such as this under the general heading of "community involvement," where we are trying to involve not only the so-called experts, but people on the outside who can help a man when he comes out of jail.

I can cite you one example where we conducted a day parole program out of Dorchester. The Junior Chamber

of Commerce supplied cars for a whole year. A man from the Junior Chamber of Commerce would come to the institution in the morning and take a few of our people into Moncton to work; and another man would round them up at night and take them back to Dorchester. This kind of situation is very useful. Some of the people in the institutions do not believe this before they see it, but some people in the community are interested. We hear a lot of criticism from people who say, "Don't release them," but there are people who do things to help others. Usually they are not too vocal about it; they prefer to do things rather than talk about it.

Senator Prowse: People are shy rather than reluctant.

Senator Quart: But if they attended some of these service club meetings it would give them a friendly feeling and they would see how stupid some of these clubs are for fining the men for not calling each other by their first names! I do not know, it is just an idea.

May I ask to delete the word "stupid" with regard to service clubs? I am all for them. I spoke too quickly. I think they are wonderful. The camaraderie and informality of these clubs would help them to adjust to society again.

Senator Hastings: May I express our thanks to Mr. Therrien for a very informative afternoon?

I move we now adjourn.

The Chairman: The committee stands adjourned until tomorrow, March 7, at 2 o'clock.

The committee adjourned.

APPENDIX "A"

Statement for Senate Committee on
Legal and Constitutional Affairs

March 6, 1973

Legal Provisions for the "Conditional" Release of "Offenders"

In accordance with Mr. Jubinville's memorandum of February 27th to Mr. Cuthbertson the following matters are dealt with in this statement.

1. Bail - Pre-trial, Awaiting Appeal

When a person is accused of committing an offence he may be compelled to appear in court either by summons, police process or warrant of arrest. The peace officer may also arrest without warrant a person whom he has reasonable and probable grounds to believe has committed an indictable offence.

When the accused is required to appear in court by means of a summons, he is not taken into custody and remains free until the completion of his trial. A person who is arrested and detained before his trial has the right to pre-trial release in certain circumstances. The onus of showing that an accused person should continue in custody until completion of his trial is on the prosecutor. The justice or judge may order the detention of the accused on two grounds only. These are as follows:

(a) on the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to law; and

(b) on the secondary ground that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence involving serious harm or an interference with the administration of justice. The secondary ground applies only after it has been determined that his detention is not justified on the primary ground.

If the prosecutor does not show cause why the detention of the accused in custody is justified or why conditions and sureties should be given in addition to a recognizance, the justice must release the accused on his simple undertaking to appear for his trial unless it is an offence of murder or punishable by death.

Attached is Appendix "A", a more detailed explanation in relation to pre-trial release and detention of accused persons.

2. Remand

To remand an accused means to order some type of temporary postponement of the proceedings against him. For example, on his first appearance an accused may be remanded to a particular date to plead to the offence, he may be remanded to another date to fix a date for his trial and then remanded again to the date fixed for his trial. He may be remanded in or out of custody depending upon whether or not in the pre-trial release procedure described above he has been permitted to be at large. In the case of a remand for a mental examination he is always remanded in custody and for a period not exceeding thirty days, or sixty days if there is supporting evidence from a doctor. This can occur either at the preliminary inquiry, on the trial of either an indictable offence or a summary conviction offence, or on an appeal.

(a) Section of Statute Involved

Sections 465, 471, 608.2, 738(5),(6), 457.1, 457.3 of the Criminal Code.

(b) Deciding Authority

The deciding authority is the judge or justice having jurisdiction over the case at the time of the remand.

(c) Degree of Discretion

In the case of remands other than for a mental examination there is a wide degree of discretion except that generally speaking a remand may not be for more than eight days unless the accused is not in custody and he and the prosecutor consent to the proposed adjournment. In the case of a remand for a mental examination there must be supporting evidence of at least one duly

qualified medical practitioner unless there are special circumstances.

(d) Conditions of the Release

These are determined in the case of remands prior to and during trial by the release procedure already outlined. In the case of remands for mental examination the person is not released.

3. Suspended Sentence

The court may suspend the passing of sentence for a specified period of time during which the person convicted is free subject to an Order of Probation. If, during that period of time, he commits an offence or breaches the Order of Probation, in addition to any punishment that may be imposed for that act, he may also be required to appear before the court again to be sentenced for the original offence.

(a) Section of Statute Involved

Section 663(1)(a), section 664(4) Criminal Code.

(b) Deciding Authority

The deciding authority is the court having jurisdiction in the particular case.

(c) Degree of Discretion

Section 663 requires the court to have "regard to the age and character of the accused, the nature of the offence and the circumstances surrounding its commission".

(d) Conditions of Release

Section 663(2) sets out the conditions of release in a Probation Order and is as follows:

"(2) The following conditions shall be deemed to be prescribed in a probation order, namely, that the accused shall keep the peace and be of good behaviour and shall appear before the court when required to do so by the court, and, in addition, the court may prescribe as conditions in a probation order that the

accused shall do any one or more of the following things specified in the order, namely,

(a) report to and be under the supervision of a probation officer or other person designated by the court;

(b) provide for the support of his spouse or any other dependants who he is liable to support;

(c) abstain from the consumption of alcohol either absolutely or on such terms as the court may specify;

(d) abstain from owning,possessing or carrying a weapon;

(e) make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof;

(f) remain within the jurisdiction of the court and notify the court or the probation officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;

(g) make reasonable efforts to find and maintain suitable employment; and

(h) comply with such other reasonable conditions as the court considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences".

4. Probation

(a) Ordinary - the statement concerning probation on suspended sentence applies in this case.

(b) Following imprisonment. Section 663(1)(b) provides that in addition to fining the accused or sentencing him to imprisonment, whether in default of payment of the fine or otherwise, for a term not exceeding two years, the court may direct that the accused comply with the conditions prescribed in the Probation Order. As in the case of breach of Probation Order on a suspended sentence such breach amounts to an offence under section 666 of the Criminal Code. However where the Probation Order follows upon a sentence of

imprisonment and the accused is convicted of an offence including an offence under section 666 he may also be required to appear before the court which may alter the conditions of the Probation Order or extend its operation for a period not exceeding one year.

5. & 6. Absolute and Conditional Discharge

Absolute and conditional discharge may be applied to accused persons other than corporations and only for offences other than those for which a minimum punishment is prescribed by law, punishable by imprisonment for 14 years, or for life, or by death. If the accused is discharged absolutely it means he is free to go without any conditions attached to his release. If he is given a conditional discharge he is placed under a Probation Order. In neither case is he convicted of the offence. Should he breach the Probation Order this amounts to an offence in itself, and he may also have his conditional discharge revoked and be convicted of and sentenced for the offence with which he was originally charged. Generally speaking the consequences of breach of a Probation Order in the case of a conditional discharge are the same as those in the case of any other breach of Probation Order.

(a) Section of Statute Involved

Section 662 and 662.1 Criminal Code.

(b) Deciding Authority

The court having jurisdiction in the case.

(c) Degree of Discretion

The court may order an absolute or conditional discharge where the accused pleads guilty or has been found guilty "if it considers it to be in the best interests of the accused and not contrary to the public interest".

(d) Conditions of Release

There are no conditions attached to an absolute discharge. In the case of a conditional discharge the conditions are those specified in the Order of Probation and the breach of that order has the usual consequences.

7. Fines (In Default of Payment - Imprisonment)

Particular statutes may provide for imprisonment in default of payment of fine. In addition there is a general provision in the Criminal Code that where a fine is imposed and no provision is made for imprisonment in default that the court may order in default of payment that the defendant be imprisoned for a period of not more than six months. The court may also direct that the fine be paid forthwith or within such time and on such terms and conditions as the court may fix. The court may not direct that the fine be paid forthwith unless it is satisfied that the convicted person has sufficient means to enable him to pay the fine at once, upon being asked whether he desires time to make payment the convicted person does not request such time, or for any other special reasons the court deems it expedient that no time be allowed. The minimum time to be allowed is 14 days. If the time allowed expires and payment has not been made the court may issue a warrant for the committal of the accused unless the person has appeared and applied for an extension of time. Where there has been part payment of the fine the term of imprisonment is reduced proportionately.

(a) Section of Statute Involved

Section 722, section 646, section 650 Criminal Code.

(b) Deciding Authority

The court imposing the sentence has the authority.

(c) Degree of Discretion

The discretion has been described above and is found in section 722(4) and section 646(5) of the Criminal Code.

(d) Conditions of Release

There are no conditions other than that the fine be paid forthwith or within such time as is allowed.

8. Intermittent Sentences

Where the court imposes a sentence of 90 days or

less it may order that the sentence be served intermittently at such times as are specified in the order and direct that the accused at all times when he is not in confinement comply with the conditions prescribed in a Probation Order. The convicted person is, therefore, subject to all the consequences of being under a Probation Order that apply in the case of anyone else.

(a) Section of Statute Involved

Section 663(1)(c) Criminal Code.

(b) Deciding Authority

The court having jurisdiction in the particular case.

(c) Degree of Discretion

There is no limit on the discretion permitted.

(d) Conditions of Release

These are determined by the terms of the Order of Probation and the order requiring that the sentence be served intermittently.

9. & 10. Pardons and Amnesty

Although covered by the Criminal Code this is really under the jurisdiction of the Department of the Solicitor General. Free and conditional pardons are governed by section 683 of the Criminal Code.

11. Other Releases

Under section 617 of the Criminal Code the Minister of Justice may on application order a new trial or a hearing by the Court of Appeal in the case of a person who has been convicted. Where such an order is made the person in custody and serving a sentence may apply for release pending the determination of the new trial or the appeal. The terms and conditions of his release in such case would be similar to those that he would obtain in a case of release granted in the course of initial trial proceedings.

S.F. Sommerfeld
D.R. Watson

ADDENDUM TO APPENDIX "A"

1) ~~Bail - Pre-trial and Awaiting Appeal~~

~~Section of Statute~~ Involved

Pre-trial - Part XIV of the Criminal Code.

Awaiting Appeal from Indictable Offence - Section 608 of the Criminal Code.

Awaiting Appeal from Summary Conviction Offence - Section 752 of the Criminal Code.

Deciding Authority

Pre-trial - (1) Police officer in charge of lock-up - See Section 453 of the Criminal Code.

(2) Justice - See Section 457 of the Criminal Code.

(3) Superior Court Judge - See Section 457.7 of the Criminal Code.

Awaiting Appeal - (4) from indictable offence - Judge of the Court of Appeal.

(5) from summary conviction offence - Justice.

Degree of Discretion

(1) Pre-trial by officer in charge of lock-up - If not a serious offence (ie. punishable by imprisonment for five years or less), he must release unless he believes detention is necessary in the public interest or he believes accused will fail to attend court - for other offences, discretion to release or detain and bring before justice as soon as possible.

(2) Pre-trial by justice - He must release accused on his undertaking without conditions if offence is other than one mentioned in Section 457.7 of the Criminal Code (eg. murder, treason, sky-jacking) unless accused pleads guilty, prosecutor shows cause or accused is required to be detained for some other matter.

(3) Superior Court Judge (s.457.7) - May release accused unless prosecutor shows cause why detention is necessary.

(4) Judge of the Court of Appeal - In case awaiting appeal from indictable offence, may release if accused establishes his appeal is not frivolous, he will surrender when required, and his detention is not necessary in the public interest.

(5) Justice must release accused in appeal from summary conviction offence upon his entering into an undertaking or recognizance.

Conditions of Release

(1) Pre-trial by officer in charge of lock-up: on simple promise to appear, or on recognizance up to $500.00 without sureties or without conditions. (Cash deposit up to $500.00 if not resident of the province or within 100 miles of place of detention.)

(2) Pre-trial by justice: on undertaking or recognizance with or without both conditions and sureties but without cash deposit. (Cash deposit if not resident of the province or within 100 miles of place of detention.)

(3) Pre-trial by Superior Court Judge: on undertaking or recognizance with sureties, conditions and cash deposit.

(4) Judge of Court of Appeal awaiting appeal on indictable offence: on undertaking or recognizance with conditions, sureties and cash deposit.

(5) Justice in case Awaiting Appeal in summary conviction offence: same as (2) above.

Conditions may include:

(a) report at times to be stated in the order to a peace officer or other person designated in the order;

(b) remain within a territorial jurisdiction specified in the order;

(c) notify the peace officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;

(d) abstain from communicating with any witness or other person expressly named in the order except in accordance with such conditions specified in the order as the justice deems necessary;

(e) where the accused is the holder of a passport, deposit his passport as specified in the order; and

(f) comply with such other reasonable conditions specified in the order as the justice considers desirable.

APPENDIX "B"

CANADIAN PENITENTIARY SERVICE

Measures Relating to the Release of Inmates and to the Temporary Leave of Absence Program

STATUTORY REMISSION

Statute:

Penitentiary Act, Sections 22 and 23.

Section 22:

(1) Every person who is sentenced or committed to penitentiary for a fixed term shall, upon being received into a penitentiary, be credited with statutory remission amounting to one-quarter of the period for which he has been sentenced or committed as time off subject to good conduct.

(2) Every inmate who, on the 1st day of April 1962, was serving a sentence for a fixed term shall be credited with statutory remission amounting to one-quarter of the period remaining to be served under his sentence, without prejudice to any statutory remission standing to his credit immediately prior to the 1st day of April 1962.

(3) Every inmate who, having been credited with statutory remission, is convicted in disciplinary court of any disciplinary offence is liable to forfeit, in whole or in part, the statutory remission that remains to his credit, but no such forfeiture of more than thirty days shall be valid without the concurrence of the Commissioner or an officer of the Service designated by him, nor more than ninety days without the concurrence of the Minister.

(4) Every inmate who is convicted by a criminal court of the offence of escape, attempt to escape or being unlawfully at large forthwith forfeits three-quarters of the statutory remission standing to his credit at the time that offence was committed.

(5) Statutory remission credited pursuant to this section to a person who is sentenced or committed to penitentiary for a fixed term shall be reduced by the maximum amount of statutory remission with which that person was at any time credited under the Prisons and Reformatories Act in respect of a term of imprisonment that he was serving at the time he was so sentenced or committed.

Section 23:

The Commissioner or an officer of the Service designated by him may, where he is satisfied that it is in the interest of the rehabilitation of an inmate, remit any forfeiture of statutory remission but shall not remit more than ninety days of forfeited statutory remission without the approval of the Minister.

Deciding Authority:

This procedure is governed by the Act.

Discretion Permitted by the Statute:

a) No discretion is allowed by law with reference to the crediting of Statutory Remission.

b) Discretion is permitted by law for forfeiture of Statutory Remission and also for the remission of forfeited Remission time.

Conditions of Release:

A record is maintained in the case of each inmate listing credits and debits. The date of release is based on the number of days of Statutory Remission remaining to his credit and deducted from the term of the sentence.

NOTES:

a) This Statute is not applicable in the case of inmates serving life sentences.

b) Statutory Remission may be forfeited in whole or in part, if an inmate is convicted by an Institutional Disciplinary Board of a disciplinary offence. It is also forfeited if an inmate is convicted of escape, attempt to escape,or being unlawfully at large. In this case the forfeiture amounts to three-quarters of the Statutory Remission standing to his credit at the time the offence was committed.

EARNED REMISSION

Statute:

Penitentiary Act, Section 24.

Section 24:

(1) Every inmate may be credited with three days remission of his sentence in respect of each calendar month during which he has applied himself industriously, as determined in accordance with any rules made by the Commissioner in that behalf, to the program of the penitentiary in which he is imprisoned.

(2) Upon being committed to a penitentiary pursuant to section 20 or 21 of the Parole Act, an inmate shall be credited with earned remission equal to the earned remission that stood to his credit pursuant to any Act of the Parliament of Canada at the time his parole or mandatory supervision was revoked or forfeited.

Deciding Authority:

The Commissioner of Penitentiaries, through delegation to the Institutional Inmate Grading Board.

Discretion Permitted by the Statute:

The crediting of Earned Remission is governed by an evaluation by the Inmate Grading Board of the inmates efforts and attitude towards the programs of the institution in which he is imprisoned.

Conditions of Release:

Earned Remission credits are recorded in the case of each inmate and added to his Statutory Remission credits to be counted towards his date of release.

NOTES:

a) Earned Remission cannot be forfeited after it has been earned and credited.

b) Earned Remission is recorded in the case of all inmates including those serving life sentences.

TEMPORARY ABSENCE

Statute:

Penitentiary Act, Section 26.

Section 26:

Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time

(a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or

(b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate.

Deciding Authority:

a) The Commissioner of Penitentiaries may grant such absences for an unlimited period for medical reasons and a maximum of 15 days for humanitarian and rehabilitative reasons.

b) The Officer in charge of a Penitentiary has the authority for a maximum of 15 days for medical reasons, and a maximum of 3 days for humanitarian and rehabilitative reasons.

Discretion Permitted by the Statute:

The Statute permits discretion to the deciding authorities in determining the necessity or desirability for an inmate to be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate and also allows discretion as to the frequency of such temporary absences.

Conditions of the Granting of Temporary Absence Permits:

The case of each inmate is considered on its own merit. In cases of Temporary Absence for medical reasons, the medical authorities determine the necessity for granting such leave. In cases of temporary absence for humanitarian or rehabilitative reasons, each application is considered by the Institutional Classification Board and approved by the Director if within his authority or by the Commissioner of Penitentiaries as the case may be.

PROVINCIAL PROGRAMS

1. The Prisons and Reformatories Act provides for similar legal measures as applicable to the Canadian Penitentiary Service.

2. The Statutes governing are as follows:

a) Statutory Remission: Prisons and Reformatories Act, Section 17.

Section 17:

(1) Every person who is sentenced or committed by a judge, magistrate or justice of the peace to imprisonment for a fixed term in a place of confinement other than a penitentiary shall, upon being received therein, be credited with statutory remission amounting to one-quarter of the fixed term for which he has been sentenced or committed as time off subject to good conduct.

(2) Every prisoner who, having been credited with remission pursuant to subsection (1), commits any breach of the prison regulations is, at the discretion of the person by whom the breach is determined to be committed, liable to forfeit, in whole or in part, the statutory remission that stands to his credit.

(3) Every prisoner who is convicted by a judge, magistrate or justice of the peace of the offence of escape, attempt to escape or being unlawfully at large forthwith forfeits three-quarters of the statutory remission standing to his credit at the time that offence was committed.

(4) An official designated by the Lieutenant Governor of the province in which a prisoner is confined may, where he is satisfied that it is in the interest of the rehabilitation of the prisoner, remit in whole or in part any forfeiture of statutory remission.

(5) Notwithstanding subsection (1), no prisoner shall be credited with statutory remission that would reduce the term of his imprisonment to less than fourteen days.

b) Earned Remission: Prisons and Reformatories Act, Section 18.

Section 18:

(1) Every person who is sentenced or committed by a judge, magistrate or justice of the peace to imprisonment in a place of confinement other than a penitentiary may be credited with three days remission of his sentence in respect of each calendar month during which he has applied himself industriously, as determined in accordance with any rules made by the Lieutenant Governor of the province in which the person is imprisoned, to the program of the place of confinement in which he is imprisoned.

(2) Upon being committed to a place of confinement, other than a penitentiary, pursuant to section 20 to 21 of the Parole Act, a prisoner shall be credited with earned remission equal to the earned remission that stood to his credit at the time his parole or mandatory supervision was revoked or forfeited.

c) Temporary Absence: Prisons and Reformatories Act, Section 36.

Section 36:

Where, in the opinion of an official designated by the Lieutenant Governor of the province in which a prisoner is confined in a place other than a penitentiary, it is necessary or desirable that the prisoner should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the prisoner at any time during his period of imprisonment, the absence of the prisoner may be authorized from time to time by such official for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the prisoner.

TEMPORARY ABSENCES GRANTED FOR 1972	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
SPRINGHILL	96	73	112	69	68	107	122	145	150	151	101	101	1301
DORCHESTER	11	9	10	8	18	22	9	15	19	9	3	19	152
DORCHESTER FARM ANNEX	17	16	20	15	27	16	22	10	6	13	10	24	196
BLUE MOUNTAIN CORRECTIONAL CAMP	24	18	35	113	148	136	130	167	80	42	13	1	907
PARR TOWN CENTER										0	9	58	67
CARLETON CENTER										0	2	14	16
REGIONAL TOTAL													2039
ST. HUBERT CENTER				223	758	284	325	337	352	369	303	303	3314
ST. VINCENT DE PAUL	2	2	28	37	32	27	28	33	24	22	2	4	241
REGIONAL RECEPTION CENTER													
REGIONAL MEDICAL CENTER										29	18	1	48
LAVAL MINIMUM INSTITUTION	73	104	158	149	170	124	118	158	130	73	99	108	1364
FEDERAL TRAINING CENTER	76	26	80	100	64	66	67	53	74	61	26	68	701
ARCHAMBAULT	5	5	17	68	16	16	26	31	20	2	0	3	209
ST. ANNE DES PLAINES	6	7	13	14	35	110	130	84	39	21	19	5	482
COWANSVILLE	36	44	88	42	89	192	96	192	118	165	176	250	1488
SPECIAL CORRECTIONAL UNIT	0	3	14	13	33	7	5	2	3	7	1	7	95
LECLERC	47	46	95	83	131	168	149	160	180	116	57	184	1410
REGIONAL TOTAL													9418

MILLHAVEN MINIMUM												82	82
MONTGOMERY CENTER				54	60	56	35	30	39	49	56	50	429
KINGSTON SERVICE CENTER	10	9	13	9	9	13	15	11	10	2	3	7	111
MILLHAVEN	5	11	4	12	2	7	7	4	7	46	33	2	140
PRISON FOR WOMEN	30	22	48	34	48	39	21	32	12	248	213	241	990
COLLIN'S BAY	60	56	91	113	74	86	74	44	68	81	146	138	1031
COLLIN'S BAY FARM ANNEX	32	19	30	34	77	183	242	187	212	85	97	119	1317
LANDRY CROSSING	160	56	214	189	191	188	171	135	123	90	79	88	1684
BEAVER CREEK	472	304	502	74	1335	453	307	144	180	284	250	465	4770
JOYCEVILLE	32	25	21	53	109	103	131	117	84	90	28	23	816
JOYCEVILLE FARM ANNEX	189	180	181	387	533	381	369	320	304	226	233	236	3599
WARKWORTH	231	233	234	220	270	130	184	206	125	21	135	155	2144
REGIONAL RECEPTION CENTER										1	1	2	4
REGIONAL MEDICAL CENTER										4	4	6	14
REGIONAL TOTAL													17131
BURRARD CENTER											90	271	361
OSBORNE CENTER				569	645	544	444	431	521	601	600	714	5069
STONY MOUNTAIN	47	109	95	111	163	170	42	101	76	83	55	164	1216
STONY MOUNTAIN FARM ANNEX	52	50	71	55	70	62	51	71	45	47	65	86	725
SASKATCHEWAN	24	27	25	33	44	45	46	61	89	78	134	144	740
SASKATCHEWAN FARM ANNEX	5	18	59	14	52	54	36	23	22	14	19	45	361
DRUMHELLER	96	82	95	129	108	138	142	151	123	350	315	597	2320
SCARBORO CENTER				50	11	3	6	12	13	87	143	111	436

BRITISH COLUMBIA	21	18	15	12	23	12	7	12	9	11	14	16	171
WILLIAM HEAD	162	177	178	94	260	175	163	122	84	250	316	270	2251
GRIERSON CENTER						3	9	4	6	40	412	422	896
OSKANA CENTER							59	178	239	252	172	159	1059
MATSQUI	764	837	993	843	1151	1335	1164	1242	945	413	447	477	10611
WEST GEORGIA CENTER				464	504	357	469	472	529	325	179	192	3491
REGIONAL MEDICAL CENTER													0
AGASSIZ CORRECTIONAL CAMP	85	181	257	147	352	470	527	253	336	231	276	361	3476
REGIONAL TOTAL													33129

TOTAL OF TEMPORARY ABSENCES GRANTED FOR 1972 62,317

Number of inmates who failed to return: 285

Number of crimes committed: 58
These crimes were committed by 57 inmates, one inmate accounted for 2 crimes, namely theft

Number of inmates still at large 57

15-1-73

NO. OF TEMPORARY ABSENCES GRANTED
ON A REGULAR BASIS ON NOVEMBER 30, 1972

		Pre-release Employment	Regular Employment	Educational Proposes	Other	Total
ATLANTIC						
Minimum:	Dorchester Farm Annex	0	1	0	0	1
Medium:	Springhill Institution	0	0	1	0	1
Maximum:	Dorchester Penitentiary	0	0	0	0	0
C.C.C.:	Carleton Correctional Centre	0	0	0	0	0
	Parr Town Correctional Centre	0	3	0	2	5
		0	4	1	2	7
QUEBEC						
Minimum:	St. Anne des Plaines	0	0	0	1	1
	Laval Minimum Institution	0	0	1	0	1
Medium:	Federal Training Centre	0	0	0	0	0
	Cowansville Institution	0	0	0	0	0
	Leclerc Institution	0	0	0	0	0
Maximum:	Quebec Regional Medical Centre	0	0	0	0	0
	Quebec Reception Centre	0	0	0	0	0
	Archambault Institution	0	0	0	0	0
	Special Correctional Unit	0	0	0	1	1
C.C.C.:	St. Hubert Centre	27	16	2	9	54
		27	16	3	11	57

AS AT NOVEMBER 30, TEMPORARY ABSENCES 1972

		Pre-release Employment	Regular Employment	Educational Purposes	Other	Total
ONTARIO						
Minimum:	Millhaven Minimum	1	1	0	0	2
	Collins Bay Farm Annex	0	1	2	1	4
	Landry Crossing Correctional Camp	0	1	0	0	1
	Beaver Creek Correctional Camp	6	8	0	3	17
	Joyceville Farm Annex	3	5	5	12	25
Medium:	Collins Bay Institution	0	1	6	1	8
	Joyceville Institution	0	0	0	0	0
	Warkworth Institution	2	0	0	2	4
Maximum:	Regional Medical Centre (Ont)	0	0	0	0	0
	Regional Reception Centre (Ont)	0	0	0	0	0
	Millhaven Institution	0	0	0	0	0
	Prison for Women	0	11	4	0	15
	Kingston Service Centre	0	0	0	0	0
C.C.C.:	Montgomery Correctional Centre	14	0	0	0	14
		26	28	17	19	90
WESTERN						
Minimum:	Stony Mountain Farm Annex	0	0	1	1	2
	Saskatchewan Farm Annex	1	0	0	1	2
	William Head Institution	1	3	7	10	21
	Agassiz Correctional Camp	4	7	9	0	20

AS AT NOVEMBER 30, TEMPORARY ABSENCES 1972

		Pre-release Employment	Regular Employment	Educational Purposes	Other	Total
WESTERN (Cont'd)						
Medium:	Stony Mountain Institution	0	0	2	0	2
	Drumheller Institution	1	21	0	5	27
	Matsqui Institution	10	14	5	33	62
	Mountain Prison	0	1	0	12	13
Maximum:	Saskatchewan Penitentiary	0	3	0	0	3
	British Columbia Penitentiary	0	0	0	0	0
	Regional Medical Centre (Western)	0	0	0	0	0
C.C.C.:	Osborne Centre	0	8	0	5	13
	Oskana Centre	3	1	0	0	4
	Scarboro Correctional Centre	6	6	2	0	14
	Grierson Correctional Centre	5	5	1	0	11
	West Georgia Correctional Centre	5	0	2	13	20
	Burrard Correctional Centre	0	1	1	3	5
		36	70	30	83	219
TOTAL:		89	118	51	115	373

T.A. PROGRAM
LIFERS (Convicted of Capital or Non-Capital murder
from list submitted to Cabinet on 21-12-72)

REGIONAL TOTALS

Region	No. of Inmates	Type of Prog.		Purpose of T.A.				Average No. of Nights Spent In		Parole Consid.	
		b.tob.	Reg.	med	educ	work	other	Comm.	Inst.	Yes	No
ATLANTIC	15	2	2		1	3		4 sleep out avg. 5 nights/wk		4	
QUEBEC	11	1	0			1			sleeps in institution	1	
ONTARIO	22	6	15	1	2	7	11	2 sleep out avg. 5 nights/wk	19 sleep in	10	11
WESTERN	28	3	22		2	16	7	3 sleep out avg.. 4 nights/wk	22 sleep in	11	11
TOTAL	76	12	39	1	5	27	18	* of 76 Lifers, 67 sleep in institution 7 nights per week. 9 sleep an average of 4.7 nights per week in the community.		29	22

It is to be noted that 25 inmates are receiving T.A. on an irregular basis.

8.2.73

T.A. PROGRAM
LIFERS (Convicted of Capital or Non-Capital murder from list submitted to Cabinet on 21-12-73)

REGION: ATLANTIC

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Average No. of Nights Spent In		Parole Consid.		
		b.to b*	Reg*	med	educ	work	other	Comm.	Inst.	Yes	No	
SPRINGHILL	7	1	0	0	1	0	0	3 nights	4 nights	1		Four lifers on T.A.
DORCHESTER PEN.	2	0	0	0	0	0	0	0	0			program. They spend an average of five nights per week in the community.
DOR. FARM ANNEX	5	0	2	0	0	2	0	6	1	2		
PARR TOWN CENTRE	1	1	0	0	0	1	0	5	2	1		
TOTAL	15	2	2	0	1	3	0			4		

*Note: b.to b. - back to back
Reg. - regular

8.2.73

T.A. PROGRAM
LIFERS (Convicted of Capital or Non-Capital murder
from list submitted to Cabinet on 21-12-72)

REGION: QUEBEC

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Average No. of Nights Spent In		Parole Consid.		
		b.tob.	Reg.	med	educ	work	other	Comm.	Inst.	Yes	No	
LECLERC	6											One lifer
COWANSVILLE	2											on T.A. program.
ST. HUBERT	1	1				1			7	1		Inmate sleeps every night in the Inst.
LAVAL MIN. SEC. INST.	1											
FED. TRAINING CENTRE	1											
TOTAL	11	1	0	0	0	1	0			1		

8.2.73

T.A. PROGRAM
LIFERS (Convicted of Capital or Non-Capital murder from list submitted to Cabinet on 21-12-72)

REGION: ONTARIO

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Average No. of Nights Spent In		Parole Consid.	
		b.to b.	Reg.	med	educ	work	other	Comm.	Inst.	Yes	No
WARKWORTH	7	0	7				7		all 7 nights in	2	5
PRISON FOR WOMEN	3	1	2			3		1-3 nights in comm.	2 in Inst.	0	3
LANDRY CROSSING CORRECTIONAL CAMP	1	1	0			1			7 nights in Inst.	1	
JOYCEVILLE	3		3			1	2		7 nights in Inst.	2	1
COLLINS BAY	4	2	1		2		1	1 in. comm. 7 nights	3 nights in Inst.	2	1
JOYCEVILLE FARM ANNEX	2	1	0	1		1			both 7 nights in	2	
BEAVER CREEK CORRECTIONAL CAMP	1	0	1				1		7 nights in Inst.	1	0
MILLHAVEN ANNEX	1	0	1			1			7 nights in Inst.		1
									TOTAL	10	11
TOTAL	22	6	15	1	2	7	11	*Of 21 Lifers - 19 spend nights in institution - 2 average 5 nights per week ~~in the community~~			

T.A. PROGRAM
LIFERS (Convicted of Capital or Non-Capital murder
from list submitted to Cabinet on 21-12-72)

REGION: WESTERN

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Average No. of Nights Spent In		Parole Consid.	
		b.tob.	Reg.	med	educ	work	other	Comm.	Inst.	Yes	No
MOUNTAIN PRISON	5		5			3	2	1 lives out 7 nights	4 live in	3	2
MATSQUI	11		10		1	7	2	1 spends 2 nights out	9 live in	2	8
DRUMHELLER	2		2			1	1		all live in	2	0
STONY MOUNTAIN	3		2			1	1		all live in	1	1
WILLIAM HEAD	2		2			1	1		all live in	2	0
GRIERSON	1	1				1			all live in	1	0
B.C. PENITENTIARY	1		1			1			all live in	1	0
SCARBORO	2	2			1	1		1 spends 3 nights out	one lives in	2	0
SASK. FARM ANNEX	1		0				0		lives in Inst.	0	
								of 25 Lifers - 22 stay in institution 3 spend an average of		14	11
TOTAL	28	3	22		2	16	7	4 nights per week in the community.			

8.2.73

Inmates on "back to back" or regular T.A. program in Institutions and Camps

Region: Atlantic, Quebec, Ontario and Western Regions

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
Atlantic	3	1	2	-	1	2	-	2	1	Average of 4.66 nights per week spent in Community, per inmate
Quebec	2	-	2	-	2	-	-	2	-	Average of 1.5 nights per week in Community, per inmate
Ontario	73	28	45	3	10	22	38	46	27	57 inmates spend 7 nights in Inst. 15 spend average 6-7 nights per week in Community 1 inmate out 7 nights a week for medical reasons.
Western	95	3	92	1	11	48	35	26	69	78 inmates spend 7 nights in Inst. 17 spend average 2.2 nights per week in Community.
TOTAL	173	32	141	4	24	72	73	76	97	

This report include Lifers convicted of Capital or Non-Capital murder from list submitted to cabinet on 2-12-72

Inmates on "back to back" or "regular" T.A. Program in Institutions or Camps.

REGION: ATLANTIC

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
DORCHESTER	2		2			2		2		
SPRINGHILL INST.	1	1			1				1	
TOTAL	3	1	2		1	2		2	1	
										Of a total of 3 inmates, an average of 4.66 nights spent in community, the rest in the Institution.

9.2.73

Inmates on "back to back" or "regular"
T.A. Program in Institutions & Camps.

REGION: QUEBEC

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
ST. ANNE DES PLAINES	2		2		2			2		
TOTAL	2		2		2			2		
										Of a total of 2 inmates: -one spends 1 night in community, 6 nights in institution -other spends 2 nights in community, 5 in institution
										Average 1.5 nights in community.

9.2.73

Inmates, on "back to back" or "regular"
T.A. Program in Institutions & Camps

REGION: ONTARIO

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
MILLHAVEN MINIMUM	2		2			2		1	1	
COLLINS BAY F.A.	1		1	1					1	
LANDRY CROSSING C.C.	1	1				1		1		
BEAVER CREEK S.S.	10	1	9				10	1	9	
COLLINS BAY INSTITUTION	29	7	22		6	5	18	22	7	
JOYCEVILLE FARM ANNEX	5	5		1		4		5		
WARKWORTH INSTITUTION	8	1	7		1	1	6	2	6	
PRISON FOR WOMEN	15	13	2	1	3	9	2	13	2	
JOYCEVILLE INSTITUTION	2		2				2	1	1	
TOTAL	73	28	45	3	10	22	38	46	27	Out of a total of 73 inmates: 57 spend every night in Inst. 1 spends 7 nights in hospital Remaining 15 spend average of 6.7 nights in community.

9.2.73

Inmates on "back to back" or regular T. A. program in Institutions and Camps

Region: Western

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
Stony Mt. Farm Annex	1		1		1			1		
William Head Inst.	15		15	1	4	9	1	6	9	
Agassiz C. C.	12		12	-	2	6	4	4	8	
Stony Mt. Institution	4	-	4	-	2	1	1	2	2	
Drumheller Inst.	18		18	-	-	8	10	3	15	
Matsqui Institution	28		28	-	2	18	8	5	23	
Mountain Prison	13		13	-	-	2	11	4	9	
Saskatchewan Pen.	3	3	-	-	-	3	-	-	3	
British Columbia Pen.	1		1			1		1		
TOTAL	95	3	92	1	11	48	35	26	69	Out of a total of 95 inmates 78 sleep in Inst. every night 17 sleep out on an average of 2.2 nights a week

Inmates on "back to back" or "regular" T.A. program in C.C.C.'s.

REGIONAL TOTALS

Region	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
ATLANTIC	14	14				14		10	4	Of a total of 14, 14 inmates spent an average of 6 days in the centre and 1 in the community.
QUEBEC	22	22		1	1	14	6	22		Of a total of 22, 22 inmates spent an average of 5 days in the centre and 2 in the community.
ONTARIO	15	15			5	9	1	2	13	Of a total of 15 inmates, all sleep in the centre.
WESTERN	88	88			17	64	7	26	62	Of the 88 inmates, 31 spend all their time in the centre, of the 57 remaining, an ave. of 1.5 nights/week are spent in the community
TOTAL	139	139		1	23	101	14	60	79	
										*Of a total of 139 inmates on T.A. 46 stay in the center and of the remaining 93 each spend an average of .72 nights in the community per week.

8.2.73

This report include Lifers convicted of Capital or Non-Capital murder from list submitted to cabinet on 2-12-72

Inmates on "back to back" or "regular" T.A. Program in C.C.C.'s.

QUEBEC AND ATLANTIC C.C.C.'s

Region	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
QUEBEC										Average of 2 nights in community and 5 nights in institution per inmate.
St. HUBERT CENTRE	22	22		1	1	14	6	22		
TOTAL FOR REGION	22	22		1	1	14	6	22		
ATLANTIC										
CARLETON CENTRE	10	10				10		7	3	
PARR TOWN	4	4				4		3	1	
TOTAL FOR REGION	14	14				14		10	4	

8.2.73

25874-6½

Inmates on "back to back" or "regular"
T.A. Program in C.C.C.'s.

ONTARIO C.C.C.'s

Region	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
ONTARIO										
MONTGOMERY	14	14			4	9	1	2	12	All sleep in center. Passes may be granted for weekend visits.
PORTSMOUTH	1	1			1				1	Case prepared for presentation to Sol. Gen., presented to Cabinet 6.6.72.
TOTAL	15	15			5	9	1	2	13	

8.2.73

Inmates on "back to back" or "regular" T.A.
Program in C.C.C.'s.

WESTERN C.C.C.'s

Institution	No. of Inmates	Type of Prog.		Purpose of T.A.				Day Parole Consid.		Remarks
		b.tob.	Reg.	med	educ	work	other	Yes	No	
GRIERSON	29	29			8	21		7	22	Only one exception, one sleeps in community 7 nights
SCARBORO	16	16			1	15		5	11	2 sleep in Inst. nightly, 14 slee; an average of 4 nights in center and 3 nights in community.
WEST GEORGIA	15	15			2	9	4	3	12	of 15 inmates the average is as such-2 in community and 5 in centre.
OSBORNE	12	12				10	2		12	Of 12 inmates the average is as such-1 night in community, 6 nights in center.
OSKANA	5	5			4		1	3	2	Of 5 inmates, 4 spend 1 night community & 6 nights in center, 1 inmate is always at center.
BURRARD	11	11			2	9		8	3	Of 11 inmates an average of 1 night per inmate/week is spent in community and 6 nights/inmate in center.
TOTAL	88	88			17	64	7	26	62	Of 88 inmates, 31 spend all their tim in the institution. Of the 57 remaining, an ave. 1.5 nights/week are spent in the community.

ADDENDUM TO APPENDIX "B"

APPENDIX TO MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND "THE SOCIETY" CONDUCTING THE COMMUNITY ASSESSMENT

Procedure for Community Assessment

The plan for parole developed by a potential parolee or the plan developed by a person subject to mandatory supervision shall be submitted by Canada to the Society. The Society shall thereupon, if its capabilities permit, make an assessment of the feasibility and practicality of such a plan. In the case of a community assessment required immediately following sentence (post-sentence report), the information required to carry out the task shall be submitted by Canada to the Society. The assessments shall be furnished confidentially to Canada without delay and shall so far as practical contain the following:

(a) the sources from which information has been derived, including the name of the sources, their acceptance or refusal, their relationship if any to the prospective parolee and whether such information was obtained through the means of an interview in the home, an office interview, by telephone, or in other (specified) fashion;

(b) a list of the names, ages, addresses and occupations of those with whom the prospective parolee plans to live or who are particularly significant to the parole plan,

including parents, brothers and sisters, and close friends; and an assessment of their personalities and attitudes and the quality of the inter-relationship;

(c) in the case of a marriage partner, include any person with whom the prosepective parolee has formed a union usually described as a "common-law marriage", an assessment as in (b) above and an assessment of the stability and compatibility of the partners and their respective attitudes to the children;

(d) the location and brief description of the accommodation available to the person if paroled;

(e) the employment, or schooling, or both, available to the person if paroled, together with details as to requirements, financial or otherwise, (such as transportation tools and licences,) to enable the person to take advantage of such employment or schooling;

(f) the known assets of the person, including prison funds, savings, clothing, property both real and personal and the availability of any source of financial aid and the potential extent thereof;

(g) the known debts of the person, including amounts owing to his lawyer, to finance companies, by way of restitution or otherwise; and possible solutions;

(h) an opinion as to the organization of his social life: leisure, principal interests, net of friends, participation in the activities of his community etc.;

(i) the perception of the community and the attitudes likely to be encountered by the person in his secondary contacts in the community, including the police, any victims of his offence, his prospective neighbours, his relatives, and previous employers;

(j) an assessment of whether the persons described in paragraphs (b) and (c) of this Appendix:

(1) understand and accept the interpretation of the parole terms.

(2) are willing to accept entirely their role and responsibilities to the parolee and the supervisor;

(k) an assessment of the nature and frequency of supervision required and whether the supervisor will be available;

(l) the name of the supervision agency;

(m) the name of the police department to which the parolee will have to report;

(n) any recommendation for special conditions of parole, together with supporting reasons;

(o) an assessment of the plan for parole, together with a recommendation that such plan be approved, or that it be rejected, or that it be approved subject to specified modifications; and any special arrangements requested by the prospective supervisor regarding notice and timing of release and kindred matters.

.....

APPENDIX "C"

Summary submitted by the National Parole Board

This is in response to a request for information on the various legal measures under which an offender may be in the community. These measures are often mistaken for parole. As far as the Parole Board is concerned, we are asked specifically for information on:

1) Ordinary parole

2) Day Parole

3) Parole for deportation or voluntary departure

4) Mandatory supervision

1) Ordinary Parole

a) definition: authority granted under the Parole Act to an inmate to be at large during his term of imprisonment

b) statute: Parole Act

c) authority: National Parole Board

d) discretion: "absolute discretion" to the National Parole Board (Section 6). That discretion is exercised within limits set out in the Parole Act and the Parole Regulations. The most important limits are the legal criteria and the time rules pertaining to parole eligibility.

The legal criteria are set out in Section 10(1)(a) of the Act. They provide that the Board may grant parole if it considers that:

(i) the inmate has derived the maximum benefit from imprisonment

(ii) the reform and rehabilitation of the inmate will be aided by the grant of parole

(iii) the release of the inmate would not constitute an undue risk to society.

The eligibility rules are to be found in Section 2 of the Parole Regulations. This section establishes the portion of the term of imprisonment that an inmate shall ordinarily serve before parole may be granted. The general rule is one third of the sentence or 4 years, whichever is the lesser. Eligibility is at 10 years for a death commuted sentence or a sentence of life imposed as a minimum punishment and at 7 years for all other life sentences.

Section 2(2) of the Parole Regulations provides that the Board may waive these rules if special circumstances exist.

Preventive detention: yearly review (Sec. 691 C.C.

e) conditions: Under Section 10(1)(a) of the Act, the Board can impose any terms or conditions when it grants parole.

In practice, the conditions imposed by the Board are listed on the copy of a Parole Certificate attached as Annex "A".

2) Day Parole

a) definition: The term "day parole" itself could be a cause of confusion. I suppose it implies in the mind of an observer a return to the institution each night. It should more properly be called Temporary parole and its present definition is a parole "the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period"

b) statute: Parole Act.

c) authority: National Parole Board

d) discretion: The same elements apply as for ordinary parole except for the criteria that the inmate has derived maximum benefit from imprisonment. As an internal policy, the Board has decided that it would not entertain applications for day parole earlier than one year prior to the eligibility for ordinary parole.

(3) Parole for deportation or voluntary departure

Everything said about ordinary parole applies except for the conditions of the Parole Agreement. Under such a parole, there is only one condition: the inmate agrees not to return to Canada for the durati of his parole. The penalty for a breach of that condition is revocation.

(4) Mandatory Supervision

a) definition: applies to all inmates who are released as a result of 60 or more days of remission (statutory and earned)

b) statute: Parole Act, Section 15(1)

c) authority: Parole Act, Section 15(1)

d) discretion: A release on Mandatory supervision is not a decision of the Board, it is a simple application of the law. The only discretion exercised by the Board has to do with the imposition of conditions (Sec. 10(1)(b)

e) conditions: same as for ordinary parole. Annex "B" is a certificate of Mandatory Supervision.

CONDITIONS OF MANDATORY SUPERVISION
CONDITIONS DE LA SRUVEILLANCE OBLIGATOIRE

The person described in this certificate shall abide by the terms and conditions imposed by the National Parole Board and shall abide by the instructions which may be given by his supervisor.

La personne décrite dans ce certificat doit se conformer aux termes et conditions imposés par la Commission Nationale des libérations conditionnelles et doit se conformer aux instructions qui peuvent lui être données par son surveillant.

CERTIFICATE OF MANDATORY SUPERVISION
CERTIFICAT DE SURVEILLANCE OBLIGATOIRE

NATIONAL PAROLE BOARD
COMMISSION NATIONALE DES LIBERATIONS CONDITIONNELLES

Parole Act – Loi sur la libération conditionnelle de détenus S.R.C. 1970 c. P-2

This is to certify that
Le présent certificat atteste que

who was serving a term of imprisonment in
qui purgeait une sentence d'emprisonnement à

was
B

released under mandatory supervision on
été libéré sous surveillance obligatoire le

Provided he is not recommitted, supervision will terminate
A condition qu'il ne soit pas réincarcéré, la surveillance se ter-

on
minera le

Date _____ Signature _____ Issued on – *Délivré le* _____ Secretary – *Secrétaire* Georges Vincent

INSTRUCTIONS

You must proceed directly to
Vous devez vous rendre directement à .....

and report to your Supervisor
et vous rapporter à votre surveillant .....

at
à .....

Pursuant to the conditions of your Mandatory Certificate, you must obey these instructions. Failure to do so may result in recommittal.

En conformité avec les conditions de votre certificat de surveillance obligatoire, ces instructions doivent être suivies. Tout manquement peut amener votre réincarcération.

Representative – Représentant _____ Supervisor – Surveillant _____

ACKNOWLEDGEMENT – *RECONNAISSANCE*

I understand that the Certificate of Mandatory Supervision must be delivered on demand of the National Parole Board. I also understand that I am subject to Mandatory Supervision for a period equal to the remission granted to me.

I fully understand all the conditions (including the conditions printed overleaf) regulations and restrictions governing my period on Mandatory Supervision. I also understand that if I violate them I may be recommitted in the same manner as though I were a paroled inmate.

Je comprends que le Certificat de Surveillance Obligatoire doit être retourné sur demande de la Commission Nationale des libérations conditionnelles. Je comprends aussi que je serai sous surveillance obligatoire pour la même période que la période de rémission qui m'a été accordée.

Je comprends parfaitement toutes les conditions (y compris les conditions imprimées au verso), les règles et les restrictions auxquelles est assujettie ma période sous surveillance obligatoire. Je comprends également que si je ne les respecte pas, je puis être réincarcéré de la même façon qu'un libéré conditionnel.

Date _____ Signature _____

NPB 29

REPORTS TO POLICE -- *RAPPORTS A LA POLICE*						VISITS TO SUPERVISOR – *VISITES AU SURVEILLANT*					
Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date

CONDITIONS OF MANDATORY SUPERVISION

1. To remain until expiry of sentence under the authority of the designated Representative of the National Parole Board.
2. To proceed forthwith directly to the area as designated in the instructions and, immediately upon arrival report to the Supervisor and after to the Police as instructed by the Supervisor.
3. To remain in the immediate designated area and not to leave this area without obtaining permission beforehand from the Representative of the National Parole Board, through the Supervisor.
4. To endeavour to maintain steady employment and to report at once to the Supervisor any change or termination of employment or any other change of circumstances such as accident or illness.
5. To obtain approval from the Representative of the National Parole Board, through the Supervisor before:
   (a) purchasing of motor vehicle
   (b) incurring debts by borrowing money or instalment buying;
   (c) assuming additional responsibilities, such as marrying;
   (d) owning or carrying fire-arms or other weapons.
6. To communicate forthwith with the Supervisor or the Representative of the National Parole Board if arrested or questioned by police regarding any offence.
7. To obey the law and fulfill all legal and social responsibilities.

CONDITIONS DE LA SURVEILLANCE OBLIGATOIRE

1. *Demeurer jusqu'à l'expiration de la sentence sous l'autorité du représentant désigné par la Commission nationale des libérations conditionnelles.*
2. *Se rendre directement et immédiatement à l'endroit spécifié dans les instructions et dès l'arrivée se rapporter au Surveillant et ensuite à la police selon les instructions du Surveillant.*
3. *Demeurer dans les environs immédiats tel que désigné et ne pas quitter ce territoire avant d'obtenir au préalable, par l'entremise du Surveillant, la permission du représentant de la Commission nationale des libérations conditionnelles.*
4. *S'efforcer de travailler régulièrement et faire part immédiatement au surveillant de tout changement ou cessation d'emploi ou tout autre changement de circonstances comme un accident ou la maladie.*
5. *Obtenir au préalable l'autorisation du représentant de la Commission nationale des libérations conditionnelles par l'entremise du surveillant avant de:*
   (a) faire l'achat d'une automobile;
   (b) contracter des dettes par emprunt d'argent ou par achat à tempérament;
   (c) assumer des responsabilités additionnelles comme le mariage
   (d) posséder ou avoir en sa possession une arme à feu ou toute autre arme.
6. *Communiquer immédiatement avec le surveillant ou le représentant de la Commission nationale des libérations conditionnelles si arrêté ou interrogé par un officier de police au sujet d'une offense quelconque.*
7. *Obéir à la loi et s'acquitter de toutes les responsabilités légales et sociales.*

CONDITIONS OF PAROLE
CONDITIONS DE LA LIBÉRATION CONDITIONNELLE

The parolee shall abide by the conditions of his parole and all instructions which may be given by this supervisor from time to time:
Le libéré conditionnel doit se conformer aux conditions de sa libération et à toutes les directives que peut lui donner à l'occasion son surveillant:
and shall abide by this special condition:
et il doit se conformer à cette condition spéciale:

PAROLE CERTIFICATE
CERTIFICAT DE LIBÉRATION CONDITIONNELLE

NATIONAL PAROLE BOARD
COMMISSION NATIONALE DES LIBÉRATIONS CONDITIONNELLES

Parole Act – Loi sur la libération conditionnelle de détenus
1958 c. 38

This is to certify that
Le présent certificat atteste qu'à
who was serving a term of imprisonment in
qui purgeait une sentence d'emprisonnement à
was granted
a été accordé une libération
parole on
conditionnelle le
provided parole is not suspended, revoked, forfeited or terminated.
à condition que cette libération conditionnelle ne soit pas suspendue.
it will expire on
révoquée, frappée de déchéance ou terminée, elle prendra fin le

Date | Signature – Parolee/*Libéré* | Issued on – *Délivré le* | Secretary – *Secrétaire*

Georges Vincent

INSTRUCTIONS

You must proceed directly to
Vous devez vous rendre directement à .....
and report to your Parole Supervisor
et vous rapporter à votre surveillant .....
At
À .....

Pursuant to the conditions of your parole you must obey these instructions. Failure to do so may result in suspension and revocation of parole.
En conformité avec les conditions de votre libération, ces instructions doivent être suivies. Tout manquemant peut amener la suspension et la révocation du certificat.

Representative – Représentant | Parole Supervisor – Surveillant

ACKNOWLEDGEMENT – *RECONNAISSANCE*

I understand that the parole certificate is the property of the National Parole Board and must be delivered on demand of the National Parole Board or of my supervisor. I also understand that I am still serving my term of imprisonment and that parole has been granted to allow me to resume my activities as a citizen at large in the community under supervision.

I fully understand and accept all the conditions (including the conditions printed overleaf), regulations and restrictions governing my release on parole. I will abide by and conform to them strictly. I also understand that if I violate them I may be recommitted.

Je comprends que le certificat de libération conditionnelle appartient à la Commission Nationale des Libérations Conditionnelles et doit être retourné sur demande de la Commission Nationale des Libérations Conditionnelles ou de mon surveillant. Je comprends aussi que je continue de purger ma sentence mais que je suis libéré conditionnellement et sous surveillance afin de me permettre de poursuivre dans la société mes activités de citoyen.

Je comprends parfaitement et j'accepte toutes les conditions (y compris les conditions imprimées au verso), les règles et les restrictions auxquelles est assujettie ma libération conditionnelle. Je m'y conformerai complètement. Je comprends également que si je ne les respecte pas, je puis être réincarcéré.

Certificate Dated *Date du certificat*	Received on – *Date reçu*	Paroled Inmate – *Libéré*	
		Witness – *Témoin*	Date

PB 1 (9-70)

REPORTS TO POLICE – *RAPPORTS A LA POLICE*						VISITS TO SUPERVISOR – *VISITES AU SURVEILLANT*					
Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date	Initials *Initiales*	Date

CONDITIONS OF PAROLE

1. To remain until expiry of sentence under the authority of the designated Representative of the National Parole Board.
2. To proceed forthwith directly to the area as designated in the instructions and, immediately upon arrival and at least once a month thereafter report faithfully to the police nearest the place of residence or as instructed by the supervisor.
3. To remain in the immediate designated area and not to leave this area without obtaining permission beforehand from the Representative of the National Parole Board.
4. To endeavour to maintain steady employment and to report at once to the Parole Supervisor any change or termination of employment or any other change of circumstances such as accident or illness.
5. To obtain approval from the Representative of the National Parole Board, through the Parole Supervisor before:
   (a) purchasing of motor vehicle
   (b) incurring debts by borrowing money or instalment buying;
   (c) assuming additional responsibilities, such as marrying;
   (d) owning or carrying fire-arms or other weapons.
6. To communicate forthwith with the Parole Supervisor or the Representative of the National Parole Board if arrested or questioned by police regarding any offence.
7. To obey the law and fulfill all legal and social responsibilities.

CONDITIONS DE LA LIBERATION CONDITIONNELLE

1. *Demeurer jusqu'à l'expiration de la sentence sous l'autorité du représentant désigné par la Commission nationale des libérations conditionnelles.*
2. *Se rendre directement et immédiatement à l'endroit spécifié dans les instructions et dès l'arrivée et par la suite au moins une fois par mois se rapporter fidèlement à la police le plus près du lieu de résidence ou tel que requis par le surveillant.*
3. *Demeurer dans les environs immédiats tel que désigné et ne pas quitter ce territoire avant d'obtenir au préalable la permission du représentant de la Commission nationale des libérations conditionnelles.*
4. *S'efforcer de travailler régulièrement et faire part immédiatement au surveillant de tout changement ou cessation d'emploi ou tout autre changement de circonstances comme un accident ou la maladie.*
5. *Obtenir au préalable l'autorisation du représentant de la Commission nationale des libérations conditionnelles par l'entremise du surveillant avant de:*
   (a) faire l'achat d'une automobile;
   (b) contracter des dettes par emprunt d'argent ou par achat à tempérament;
   (c) assumer des responsabilités additionnelles comme le mariage
   (d) posséder ou avoir en sa possession une arme à feu ou toute autre arme.
6. *Communiquer immédiatement avec le surveillant ou le représentant de la Commission nationale des libérations conditionnelles si arrêté ou interrogé par un officier de police au sujet d'une offense quelconque.*
7. *Obéir à la loi et s'acquitter de toutes les responsabilités légales et sociales.*

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FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 2

WEDNESDAY, MARCH 7, 1973

Sixteenth Proceedings on the examination of the parole system in Canada

(Witnesses and Appendix—See Minutes of Proceedings)

31677-1

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(Witnesses and Appendix—See Minutes of Proceedings)

25877—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 7, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Eudes, Hastings, Lapointe, McGrand, McIlraith, Quart and Williams. (8)

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada; Mr. Patrick Doherty, Special Research Assistant.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Ecole de Criminologie, University of Montreal, were heard by the Committee.

Mr. Pierre Landreville, Professor;
Mr. M. Nicolas, Research Assistant;
Mr. André Beaulne;
Mr. René Blain;
Mr. Georges Paradis.

On Motion of the Honourable Senator Hastings it was Resolved to print in this day's proceedings the briefs entitled "Brief on the parole system in Canada by the School of Criminology of the University of Montreal" and "The parole system as perceived by inmates and ex-inmates of metropolitan institutions–Summary of the contents and conclusions of the study". They are printed as Appendix "A" and Appendix "B", respectively.

At 5.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 7, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2 p.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

[*Translation*]

The Chairman: We already have on hand the two briefs submitted by *l'École de criminolgie de l'Université de Montréal.* These briefs will be presented by the five witnesses appearing today. We will be hearing first Professor Landreville and Mr. Nicolas. Mr. Landreville?

Professor Pierre Landreville: Thank you, Mr. Chairman. If you have no objection, I would suggest that the best way to proceed in this regard would be to summarize or reread the recommendations suggested in our brief which contains 13 recommendations, the first of which is as follows:

1. All the inmates of penitentiaries should be paroled after serving at the most three-quarters of their sentence, less the reduction of the sentence earned. As a result, the provisions of the Act dealing with mandatory supervision should be abolished; the reduction of the sentence earned should be excluded from the term of parole to be served.

2. In general, the parole should run over a maximum period of five years.

3. In the case of disqualification of parole on account of a criminal offence, the inmate should only have to serve that part of the sentence not yet served when the criminal offence is commited, less the reduction of the sentence earned.

4. In the case of simple non-compliance with conditions or of a minor offence, parole should be suspended only for a maximum period of three months.

5. In the case of suspension, the inmate should be allowed to appeal to the National Parole Board, because we will discuss the matter of a regional board and a national board.

[*Text*]

Senator Hastings: You are using the word "suspension." Is this a translation? Do you mean "revocation"?

[*Translation*]

Mr. Landreville: Yes. The term used is probably not the right one. In fact, it is a suspension followed by a revocation. The question of a suspension as such would therefore never come up. It would be a new one, that is the suspension would always be understood as a suspension and a revocation for a maximum of three months. Is this clear?

[*Text*]

Senator Hastings: There is "revocation" and "forfeiture." To which are you referring?

Mr. Landreville: Revocation.

Senator Hastings: Revocation.

Mr. Landreville: If you wish, yes.

[*Text*]

Senator Hastings: That should apply also to 5 and 6. When you use the word "suspension", you actually mean "revocation."

[*Translation*]

Mr. Landreville: Yes.

Senator Hastings: Thank you.

Mr. Landreville: In the case of a revocation, the inmates should be allowed to appeal to the National Board.

6. Revocation should apply only when non-compliance with the conditions or the committing of a new offence can be proven.

7. Day parole should be considered as a pre-release or semi freedom phase, not as a form of semi-detention.

8. The Parole Board should be regionalized.

9. The regional parole boards should be integrated into the regional classification committee which already exists within the penitentiary service.

10. These new committees which might be called "Sentence Enforcement Committees" could include one or two members from outside of the penitentiary service—the present commissioners of the Parole Board—the Regional Director of Penitentiaries and another member of the regional office, a representative of the regional intake centre and one or several representatives of the main penitentiary institutions of the region.

11. These committees would have to take all the major decisions with respect to an inmate during his sentence: such as allowances and the transfers from institutions, temporary leave which is now referred to as code 26, day parole and final parole.

12. In the short term, the provinces would have to assume total responsibility with respect to parole, in the case of inmates from provincial establishments.

In the long run it seems preferable to us to unify all correctional systems by letting the provinces deal with all the inmates.

Senator Goldenberg: Do you wish to elaborate on certain things you have said, or would you like to be asked questions?

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Professor Landreville: Personally, I think the best way would be to move to the question period to be able to elaborate from problems which will come up.

[Text]

Senator Hastings: Mr. Landreville, I apologize for asking questions in English. I cannot speak French.

My first question deals with your first recommendation, which states:

> All penitentiary inmates should be paroled after having served three quarters of their sentence at the latest, minus the reduction of earned remission time.

We now have a stipulation as to the earliest date, which is one-third of the sentence. Firstly, do you have any views with respect to the earliest date which should be considered? And, secondly, is it not now in effect that a man is automatically paroled, albeit under mandatory supervision, at the completion of three-quarters of his sentence?

[Translation]

Professor Landreville: Yes, regarding the second part of your question, if we consider that inmates are now released on probation; of course, they are released at the latest after serving three-quarters of their sentence. But here we wish to do away with the concept of probation, and we think, at best, an inmate should be released during the course of his sentence but never after serving three-quarters of it.

Regarding your first question, we have not spoken of a minimum. We believe, that in general cases the present minimum is probably acceptable. We could accept, as it is the case now, exceptional cases. Here, it is not a matter of position, from a theoretical criminological point of view, but as a matter of policy, I think there should rather be a minimum and for the time being, in general cases, the present minimum seems acceptable to us.

[Text]

Senator Hastings: My second question deals with your comment on page 2 of the first draft which you submitted to us, which states:

> Sometimes, judges act as though parole will be automatically granted when the prisoner becomes eligible. Nothing is further removed from the truth.

And on page 3 of your presentation today, under the head "sentencing and parole", you say:

> . . . not only should judges use incarceration as a last resort, but they should also reduce as much as possible the length of the sentence and never increase its term with a view to counteracting the effects of parole.

What are your bases for making those two statements?

[Translation]

Professor Landreville: Some research has proved that, chiefly during the first years of parole, there has been an increase in the number of two-year sentences, a little less of them, and a little more of three-year sentences, so that it seemed we would be able to interpret this increase of long sentences or of sentences which are a little longer because of the way judges reacted some years ago. Now, we read in the newspapers often enough that some judges frankly admit that they extend the length of a sentence to be sure that a minimum of it will be served.

[Text]

Senator Hastings: You believe they are lengthening the sentences as a reaction to parole and not as a deterrent because of the increase in crime?

[Translation]

Professor Landreville: Yes, in fact, maybe for these two reasons, but there are several judges who assert that they must extend the parole period and the length of the sentence, to be sure that the individual will serve a minimum of the sentence either in prison or in a penitentiary.

The Chairman: But when you say, they assert, when and how do they do it?

Professor Landreville: Yes, in fact, I do not have any clippings here, but there are judges, we could read it, who state it in court.

[Text]

Le sénateur Hastings: Quelles recherches? Vous mentionnez des recherches, lesquelles?

[Translation]

Professor Landreville: Yes, the first research, it was a research,—I do not have it exactly in mind, but I believe that it was made by the Department of Criminology, by Professor Ciale, if my memory serves me right, during the years 63-64; at any rate Mr. Jubinville was aware of this,—I remember reading this research paper a few years ago; it could have shown that there was an increase in the number of three and four years sentences and a reduction in that of two years sentences, immediately after the Act was implemented at the start of the 60's.

Senator Lapointe: At item 2, which is titled "Selection", you state: "The main question is no longer whom to release . . . but when to release." Do you believe then that all prisoners should be released, even though they may be dangerous and they must have a chance to be paroled? Or are there any who cannot be released?

Mr. M. Nicolas: Basically, we must define what parole or the concept of parole is. It is an intermediate stage. Now, whether an inmate is more or less dangerous, there is nonetheless, a need for a transition stage between close detention and liberty. If we can refer to what Mr. Street stated before your Committee, I believe that at a given time, even the most dangerous inmates, or those who have been detained the longest in a prison or a penitentiary, have greater need for an intermediate stage. This is why we say: for us, selection must mainly focus on when, that is the optimum time for releasing a prisoner.

Senator Lapointe: Then, if, for instance, a prisoner does not behave himself inside the institution, and you say that it is not the

only criterion to consider, but, admitting that he misbehaves, and that his chances of improving, his expectations are not too good, do you think that we should at least give him a chance and release him?

Professor Landreville: I would believe–excuse me, but I do not like the word "chance"–, I believe that we should nonetheless give ourselves a chance, a chance in the sense that, even if his behaviour within the institution is bad and he is considered dangerous, the great majority of such inmates will be released anyway. Then, I believe that society would have a better chance and be better protected if we can arrange a transition period, usually a year or two, release the prisoner earlier, that is a year or two, and I think that, at that moment, we increase our chances, at the level of society; we are giving a period of transition to someone who will be released sometime or another.

Senator Denis: With this kind of reasoning, it would be useless to send him to prison. But if this reduces his sentence by two years, then during these two years he remains in prison and society is better protected, better protected than if we release him when he has badly behaved in prison.

Professor Landreville: I perfectly agree with you that society would be better protected during these two years if the individual remains in jail. But we must not forget that after these two years, if we release him all at once, we probably will be less protected. Naturally, we could simply wash our hands and forget him since he has served his sentence. But, from a practical point of view, he will still be at large in society.

Senator Denis: Thus, according to your reasoning, the good or bad conduct of an inmate has nothing to do with parole, whatever this conduct may be in the penitentiary, being a troublemaker or committing reprehensible acts. He would have as much chance as the well behaved inmate who wants to rehabilitate himself and who starts behaving himself in confinement.

Mr. Nicolas: His good or bad conduct in the penitentiary can be a clue among others as to the moment when he must or should be released.

Senator Denis: You do not mean that he should misbehave in order to get out before the others?

Professor Landreville: I do not imply a direct connection but I could certainly say that, in many cases, an inmate's misbehaviour is a good hint that he should be released because many people cannot endure prison life; we are increasing their problems and their inbalance by keeping them confined. I come back to what you said earlier in respect of whether a troublemaker in prison should not be released earlier? Within the institution trouble makers and disorderly inmates are punished, that is to say there is a disciplinary board within the institution and they will be punished for these offences. But, I do not think it is a good policy to look at their conduct in confinement and automatically conclude that we should postpone their parole. As I said, in certain cases, it should be the reverse.

Senator Denis: But if parole is to be automatic, the judges who sentence the accused are aware that he will be released after serving three quarters of his sentence. Is this true?

Professor Landreville: It is.

Senator Denis: Is it possible that the judge, being aware of how you want to apply the law, that the judge, as I say, who normally would want the accused to be confined for four full years, would thus sentence him to five?

Professor Landreville: As I said before in reply to a question, some judges follow this method at the moment and we deplore it. On the other hand, as we said before regarding another question, parole or mandatory supervision now applies automatically to all inmates. Inmates do not serve the full sentence passed by the judge. I do not think that things should remain as they are.

Senator Denis: Why then, do you object to placing a paroled inmate under mandatory supervision? I do not say that the supervisors will live with him, but they will exercise some sort of control or supervision. Why do you object to this supervision?

Professor Landreville: I am sorry but I do not know where you have . . .

Senator Denis: In "The provisions of the Parole Act should be abolished," that is as soon as you free someone.

Professor Landreville: We do not want parole to be abolished. What we do want is to abolish those provisions where mandatory probation is concerned, that is to say the Act that obliges an inmate to be freed after serving three quarters of his sentence. We want that part of the Act abolished because everybody falls under the parole concept. Parole applies to everyone and the concept of mandatory probation does not exist as provided by the Parole Act.

Senator Lapointe: You say that we should have recourse to imprisonment only in the last instance?

Professor Landreville: Yes.

Senator Lapointe: Then what measures do you recommend?

Professor Landreville: Alternatives.

Senator Lapointe: Yes, at least to have the convicted person realize that he acted wrongly?

Professor Landreville: In fact, several measures other than prison are available for more and more courts and if my memory serves me well, probably only 40 percent of people condemned for criminal actions go to prison. That means that 60 percent of the people concerned do not go to prison. Judges have other measures available such as mandatory probation or week-ends in prison.

Senator Lapointe: For example, would you recommend if there were one or two victims, that a deduction be made on their salary to pay the victims? Would that be an acceptable punishment?

Professor Landreville: I think it would be a very important concept to take the victim into greater consideration and, among other things, to think of compensation for the victim on a wider scale. I think it is probably a type of measure that could applied to offenders and that could be very important. We know, for instance, that it is a very old measure that is no longer applied, but which, I believe, could be of great benefit to society, among others, to keep the offender within society and to maintain the link between him and society. I believe society would be far less ready to reject an offender if he or she were to compensate the victim. Moreover, society, which identifies itself with the victim, would be less agressive towards the offender.

Senator Lapointe: That would give him a sense of responsibility. Do you think, though, that after a certain time he would get tired of that obligation; he would stop working, for example, to escape his obligation, knowing what human nature is like?

Professor Landreville: This is certainly an arrangement which should also be personalized, having regard to the conditions, the salaries, etc., of the person. This method is already applied at the civil procedure level where reimbursements are made.

Senator Lapointe: In your brief, you practically say that the National Parole Board should be abolished–not exactly so, but, in fact, this is what it comes down to, is it not?

Professor Landreville: We refer to regionalization and having a board at the national level. Insofar as regionalization is concerned, we think that the regional classification committee should be integrated with the regional parole board in order that the new board, which might be referred to as the sentence enforcement committee, could follow the inmate at each step, and thus participate in every important decision taken concerning him. This is why we mentioned transfer in an institution, the planning of inmate institutional treatment and, at then, we could consider the question of temporary absences. We could examine the possibility of day parole, where necessary, in a particular case. Furthermore, it would always be the same committee which would take the decisions, so that there would be standardization and a balanced treatment and parole system.

Senator Lapointe: It seems that, at some future date, you also would like to have the provincial governments take charge of them, if not actually administer them. How could we, for example, set up such a board as a provincial system within a federal institution? Would the federal institutions have to give up, not of their property rights, but their "management" rights?

Professor Landreville: Yes, this is what we mean: that the whole penal system should come under the provinces. That might be somewhat outside the frame of reference of this Committee, but I really don't see how, from a political point of view, agreements could be reached on this. Some programmes are certainly administered at present by the federal government, but this is another matter.

Senator Lapointe: Would you like it to be that way only for the sake of decentralization or for the purpose of political ideology?

Professor Landreville: For decentralization purposes. If it were for the purpose of political ideology, we could make other recommendations.

The Chairman: But you said that it seems better in your opinion to standardize all penal systems by entrusting the inmate to the provinces. How are you going to standardize the system when we have 10 provinces?

Professor Landreville: No, to standardize the penal system, probation, parole, at the level of each province. We would have then ten penal systems.

Senator Lapointe: But, do you think that with ten systems there might be some risk of rendering justice in different ways, since some systems would be too strict, while others would be too lenient. Moreover, these would be a lack of balance when considering the system as a whole.

Professor Landreville: Yes; there are certainly systems which would be permissive and others which would not. But those systems would likely fit the mentality or the aims of local people;–so I believe.

[*Text*]

Senator McGrand: I have two questions. When a prisoner is sentenced to a five- or six-year tern in penitentiary he is, for the most part, a discouraged individual and is often hostile to society. Sometimes, however, he might be resigned and willing to accept the situation. Could you tell us anything about the development of acceptance on the part of the prisoner or development of hostility on his part as time goes on? Perhaps you cannot put your finger on exactly what I am trying to ask, but what is the general rule with respect to the attitude of the prisoner regarding hostility or acceptance as time goes on?

[*Translation*]

Professor Landreville: I do not know whether you are talking of hostility or acceptance at the level of society in general or at the level of confinement as such. Many studies have shown that an inmate, when he enters prison, has still a relatively positive outlook on society, or at least he is not deeply-rooted in the prison sub-culture, and around half way through his sentence, his outlook on society becomes more negative. But when the end of his sentence is forthcoming he seems to come out of that hostility in order precisely to face his return to society,–his attitude follows somewhat the course which we have described and he beomes a little more positive, in outlook. That is what we have discovered in some studies on the attitude of inmates towards society, or . . .

[*Text*]

Senator McGrand: I brought that point up because of your program of rehabilitation. At what stage in his psychological attitude towards these things would you bring him along, and what type of rehabilitation could you use to sort of bring him along the way you like to? How would you treat him in the negative stage, and how would you treat him when he is on his way, getting ready to come out and has to go one way or the other when he does come out?

[*Translation*]

Professor Landreville: I do not know what I would do, in general, because I believe that any treatment or approach regarding an inmate must be on an individual basis. In general terms, we cannot find a ready-made formula. But one way which seems of interest to everyone, is to shorten somewhat the sentence, in order that the period which is most negative towards society,–or the aggressivity which has built up and the negative attitude towards society which develops within the penitentiary from the very loss of freedom and of contact with the outside world,–be as short as possible,–if that answers your question. Naturally, the same criterion of "dangerousness" must always be used–and the general formula of reducing sentences would not apply to some inmates, who must . . .

[*Text*]

Senator McGrand: Apart from the criminally insane or the psychopath on whom you never can rely, do you feel that you can do as much for the ordinary prisoner in the course of a one-year sentence as you could in the course of a five-year sentence? In other words, for the man who could be rehabilitated, you can do it in one year as well as you can in five.

[*Translation*]

Professor Landreville: Yes; I do not know whether my answer will satisfy you, but I believe that in general, imprisonment can hardly rehabilitate an inmate, and we can hardly do it inside prisons. Thus it is my personal opinion that the longer the sentence, the smaller our odds that the individual will be able to readily adapt to society.

[*Text*]

Senator Hastings: Professor Landreville, we are talking here about a man who, because of his conduct and his deviant behaviour, has been placed in custody. I cannot quarrel with that. I can quarrel with our system of custody and so fourth, but this individual has to be removed in custody. Now, that is where the motivation or the change must take place, surely, before he can qualify to come back to society. As inadequate as it may be, it has to be custody, surely?

[*Translation*]

Professor Landreville: Some of them should be imprisoned,–that is those who must really be segregated from society. But, as we have mentioned previously, their number is much smaller than the number of prisoners. As to these, there is actually no reason to send them to prison in order to protect society, if you will. For those who must be imprisoned, I believe that the best way to rehabilitate them, and that is a prerequisite, is to make imprisonment, that is life in prison, as closely similar as possible to outside life. The individual must not forget to live within society, or lose the means or the culture he has required outside prison walls. At that point, imprisonment should be as closely related as possible to outside conditions prevailing within society, and that the inmate could work, even earn money, or draw a salary. We wish to protect ourselves from the inmate, but we must not add, say . . .

[*Text*]

Senator Hastings: Are you saying that punishment has no place in the correction process?

[*Translation*]

Professor Landreville: No, but I think that confinement is not the only penalty, if that is what you have in mind. If you ask all those, on parole or who have paid a fine, they too think that parole and other sentences are also penalties. I am of the opinion that there is room for other forms of punishment than confinement and we should react in other ways.

Senator Lapointe: Do you want to replace some penitentiaries by rehabilitation centres? Do not some minimum security prisons actually constitute some sort of rehabilitation centres where living conditions are better and more interesting and less demanding. Would there be other forms of rehabilitation which could be called, for instance, rehabilitation institutes, where inmates would work and lead a more productive life?

Professor Landreville: Certainly, I believe that all prisons should serve as "resocialization" centres for inmates. This is a basic principle: if somebody is kept in jail to protect society, the institution must be able to help him to return to society and not to keep him off. Minimum security prisons allow much more freedom and reasonable living conditions, but the remedy is not to be found in these institutions, because an inmate who lives in a minimum security institution should not perhaps be confined.

Senator Lapointe: In your opinion, where should he be?

Professor Landreville: In society probably, and this person who is not a threat to society could be confined to an open minimum security prison, work where he pleases, hold a normal job, return home at night and serve another kind of sentence since he is no threat to society and has been recommended for a minimum security institution. I cannot see then why he should be kept in an institution, except in a few exceptional cases where society cannot tolerate to see him free, not because he is dangerous, but because it demands a severe punishment. I am thinking now about certain cases of manslaughter for which a punishment is required by society. In such cases, the judge must, to a certain degree, comply with this request, only in such cases is there room for minimum security institutions.

Senator Lapointe: Do you think then that we should set free all those who escape from minimum security institutions?

Professor Landreville: The Penitentiary Service Commissioner will probably disagree with me, but I think that the few inmates who are sent to minimum security institutions are not a threat to society. They are now bound to return to the institution, but most minimum security institutions inmates should not be there.

Senator Denis: You said earlier that the inmates should receive in prison the same treatment as they would in society, in order to rehabilitate them—or something to this effect?

Professor Landreville: Yes.

Senator Denis: If this is the case, what prevents a person from going out and committing a crime knowing that, if he is captured, he will continue to live the same way in jail as he does outside? If I rob a bank and steal $10,000, so much the better for me if I am not captured. If I am, I will be as well treated in jail as in society. Therefore, what would prevent somebody from committing a crime if, once in jail he is treated as well as he would be under normal circumstances?

Professor Landreville: First of all, We would answer that confinement, even though we try to obtain in the institution the same conditions as outside, will always be quite different because we have, among other things, deprived the inmates of his freedom.

Senator Denis: This is not what you wish; you wish him to be treated as well as if he were free?

Professor Landreville: I wish him to be treated as well, if possible, but he would lose his freedom just the same. I do not believe it is the worst punishment a person can receive; supposing I would take you to the Château Laurier and say to you that for the next three years you will have to remain inside the hotel, I have the impression that you would not find then that you are living the same way you are now.

Senator Denis: Someone who has no employment, who has no means of spending the winter and no money, will commit a crime, break a shop window and say: "I will spend a comfortable winter in jail and then start work again. First of all, I will be discharged after serving about three-quarters of my sentence."

Professor Landreville: You want then to use prison as a means of solving social problems.

Senator Denis: The question is to know whether we should abolish jails or maintain them. There must be an objective, somehow. Is it a correctional institution or a rehabilitation centre? There are laws providing for the rehabilitation of people if they want to. Moreover, I think that the government is now paying these people to study, to rehabilitate themselves or, in other words, to retrain themselves. Therefore, if jails are homes or institutions,—when we were attending school, we used to spend eight months in it as if we were in jail; we were well fed and we received some education.

Professor Landreville: I believe the objective of jails should be to provide immediate protection.

Senator Denis: Protection of the community?

Professor Landreville: Immediately. Moreover, I think a person should go to jail only if he is actually dangerous to society. The objective of confinement then, is to segregate him so that he will not pose a useless and serious risk to the community.

Senator Denis: To protect society?

Professor Landreville: You emphasize here the intimidating effect of jail. I believe that a sentence other than confinement could be passed unto the offender because most offenders would resent receiving another kind of sentence as much as they do imprisonment however exceptional its conditions may be. As I saw, for example, in Finalnd, there are inmates who go out to camps where they work and are paid by the Department of the Public Prosecutor in conditions which are almost equal to what lumbermens are paid in Canada or something else. To those who had to spend six or eight months there, this was no gift at all.

Senator Denis: You suggest that the inmates should be paroled after serving about three quarters of their sentence. If my understanding of the legislation is right, an inmate is considered for parole only after he has served two thirds of his sentence. Yesterday, a representative of the Parole Board told us that out of 100 cases studied, 45 were paroled, that is, after serving two thirds of their sentence. In other words, that is 66 and 1/3 percent, right? According to your suggestion, an inmate should be paroled after serving three quarters of his sentence. You are less lenient than the present legislation in this respect. Do you want to disregard the present legislation with respect to the term of parole. Do you want the parole to be considered after the inmate has served two thirds of his sentence or do you want both to operate concurrently?

[*Text*]

Senator Hastings: He is advocating exactly what is in process at the present time—three-quarters less earned remission, which works out to two-thirds.

Senator Denis: I am not talking about remission; I am talking about the study by the Parole Board after two-thirds of the sentence in order to accept or reject the parole.

[*Translation*]

Professor Landreville: Our brief does not mention any minimum period of parole eligibility. We said earlier that, in our opinion, the present time period for eligibility should probably be the same in a new system.

Senator Denis: In fact, do you not agree that, up to a point, you are replacing the judge who condemned the accused to four, five, or six years of imprisonment, since your recommendation implies that the judge's sentence was too long by one quarter.

Professor Landreville: We have suggested, as presently mentioned in the Parole Act, that the paroled inmate still continues to serve this sentence, but differently. We are of the opinion that the sentence given by the judge is mainly a confinement to prison. The

Parole Board should see that the parolee be allowed to serve his sentence some other way, in order to allow for a more flexible transition from the penitentiary, especially when an inmate is about to finish serving his sentence. However, we do not want to replace the judge. We only want the Board to change the way an inmate serves his sentence.

Senator Quart: Mr. Landreville, I know that you understand English much better than I speak French. I will therefore continue in English.

[*Text*]

Senator Quart: I just want to follow up on Senator Denis' comments regarding the conditions in penitentiaries. A few days ago I read an article which appeared in several newspapers, such as the *Globe and Mail* and the *Gazette*, which stated that in Prince Albert prison the prisoners were very well nourished. Now I do not object to anyone's being well nourished, as you can see, but the menu mentioned in the article was quite amazing. They had ham and wing steak plus vegetables and salads for the prisoners, while the guards were served sausages and mashed potatoes. Do you not think that that was in a sense very bad for the prisoners, receiving all these menus while the guards were served sausages and mashed potatoes?

Senator Hastings: If I may comment for a moment on that news story, I should like to say that I have been in Prince Albert on several occasions, and on that one particular day, the day they opened the dining rooms, they served the inmates steak for that one occasion only. On all other occasions, in every institution that I have been in, the staff eat exactly the same food as the inmates eat. But the press had to pick up that one particular story about that one particular meal on one particular occasion and enlarge it.

Senator McIlraith: There is something to that. One of the particular problems in the penitentiary system at the present time is that certainly in some of the better-run minimum security institutions the feeding standard is better than the inmate can expect to sustain when he goes outside, even in full employment. This is a situation that does bear heavily on the minds of some of the inmates–the fact that they are living well in a minimum security institution knowing that their families are not fed as well. It is a problem which does come up from time to time. I am not for a minute advocating inmates should not be fed well, but there is a problem in feeding them; they are on number one army rations now.

Senator Quart: I am not in any way objecting to them being well fed, believe me; but I thought the article was very strange.

Senator Hastings: And inaccurate.

[*Translation*]

The Chairman: You want to say something?

Senator Lapointe: No, I just wanted to speak on another matter, that is, the mandatory supervision as it applies to released inmates who have been granted a sixty-day sentence reduction. You said that, especially in Quebec, they are not supervised at all. Is there a shortage of staff?

What is it all about?

Professor Landreville: No, in Quebec prisons and penitentiaries, this legislation is not being enforced while the Act provides that all inmates having more than 60 days of remission should be released under mandatory supervision in the detention establishment and we believe that this provision should also apply with respect to the provincial detention establishment.

Senator Lapointe: When you say that this provision is not being enforced in Quebec, is it because you have only studied the situation in Quebec or . . .

Professor Landreville: This legislation does not apply to the inmates in Quebec prisons or penitentiaries. If they have more than 60 days of remission, they are released from prison, and as this has always been the case, and they are not subjected to mandatory supervision.

[*Text*]

Senator Hastings: You are talking about provincial institutions?

Professor Landreville: Yes.

Senator Hastings: But all federal institutions . . .

[*Translation*]

Professor Landreville: In federal institutions, in penitentiaries, individuals are watched in the same way as when on parole. But we wonder, when we read this piece of legislation, whether this Act should not also apply to provincial institutions, when we speak of any prisoner with more than 60 days of remission.

Senator Lapointe: Are you the one who recommends that after they are released from prison, the probation period should terminate?

Professor Landreville: No, we only say that, in general and for various reasons, the maximum period should be five years. On the one hand, five years on parole is quite a long time. After five years, the possibilities of relapse are insignificant. If the individual has not relapses into crime during his first five years, the probabilities of his doing so are probably from 5 to 6%.

Senator Lapointe: But I am talking about the period of probation after the individual has served all his sentence. He is released and we submit him, in some cases, to a period of probation?

Professor Landreville: We have not made any recommendations in this regard, but it was indicated by the Committee.

Senator Lapointe: Can you clarify for us the difference between half-freedom and half-imprisonment, because, in my opinion, I assure you, it is somewhat playing with words.

Professor Landreville: It may sound like it, but, in general, penologists and experts have agreed on the definitions of these terms. For us, half-imprisonment is a transitional period after a term of imprisonment while, half-imprisonment is a way of serving a sentence: it may be imprisonment at night and freedom during the day. Half-imprisonment would be, for instance, when a prisoner sentenced to one year in prison would only go there at night and during week-ends.

Senator Lapointe: And half-freedom, then?

Professor Landreville: Half-freedom would be at the expiration of a sentence where there is actually parole. In most cases this is half-freedom, as the inmate serves part of his sentence in prison and only towards the end, does he undergo a transitional period when he goes to the institution at night and works outside during the day. Half-imprisonment replaces completely the period of detention as from the beginning of the sentence and the inmate is free during the day.

Senator Lapointe: But when an inmate goes out to work or study during the day and returns to prison at night, does he meet his fellow prisoners who did not go out during the day? This is dangerous and could prompt jealousy, or whatever else, I do not know.

Professor Landreville: I could not give you a precise answer at the moment. I think this depends greatly on institutions and on the possibilities offered by institutions.

Senator Lapointe: There are no special quarters for persons on half-freedom?

Mr. Nicolas: What is happening now . . . take the case of the St Vincent de Paul complex . . . when there is a recommendation for day parole, the inmate is transferred to the minimum security Laval Institute where there is a dormitory for day parolees, but I do not know whether this policy is applied across Canada. I would like, perhaps, to add something concerning the semi-detention stage. We would like to state that we can hardly accept that the Board impose semi-detention by means of day parole, as when an individual is sentenced one week and, two weeks later, the Board determines that he should continue to study. Very well. We agree that he should, but we think that it is perhaps up to the judge to decide on passing judgment that the inmate can continue his studies.

Senator Lapointe: In a normal way, you mean?

Mr. Nicolas: By way of a semi-detention, that is, the judge will decide on the semi-detention.

Senator Eudes: At this point, do you not think that you are substituing the judge to the Parole Board?

Mr. Nicolas: No, what I mean is that the Board is not the judge, because it is the Board which decides, the day after the sentence, that the inmate should be day paroled. I think this is rather a semi-detention which, legally, falls under the judiciary power.

Senator Eudes: But, at the time of sentencing by the judge, the judge is not, after all, in position to foresee that the accused he sentences and finds guilty, would embark on or pursue study courses.

Professor Landreville: Well, I am sorry, but yes. I think that the judge could do it following a presentence report. In fact, it is possible for him to impose such a sentence. When the judge condemns someone to a prison term not exceeding 90 days, he can determine at which time the sentence will be served. Now, he can specify as is often the case now a days in the province of Quebec, that it will be the following four, five or six weekends, or he could also decide that the inmate will spend his evenings in jail during the next month or the next three months. The judge can do it under the recent provisions of the Criminal Code. So, we ask why the judge could not then take such decisions? As Mr. Nicolas has just pointed out when the Parole Board decides to day parole someone the day following his sentencing, it seems to me that the Board is rather substituting itself to the judge. There is also the fact, regarding prison sentences, that for semi-detentions it would mean that for nine months approximately or for six months at least, the inmate shall have to return to prison at night only. We think that nine months is a very long period and that very few inmates can endure being freed during the day and having to return to the penitentiary every evening for nine months. So it is really an exceptional method and we do not think that it should be part of the Board's policy to use day parole as semi-detention contrary to what Mr. Street has previously stated.

[*Text*]

Senator Hastings: Mr. Landreville, I would like to deal, if I could, with the document which you supplied dated August 28, 1972. It pertains to the summary of the contents and conclusions of the study you made of the institutions, I presume, in the Montreal area.

Under the section dealing with rehabilitation, on page 2, it states, "Except in one institution . . ." Which is the one institution?

[*Translation*]

Professor Landreville: Excuse me, but I think that you are probably referring to the other brief or to the other group.

[*Text*]

Senator Hastings: It is a study you made of the institutions in the Montreal area which was supplied to us on August 28, 1972.

Senator McIlraith: It pertains to the other group.

The Chairman: There are two briefs.

Senator Lapointe: It belongs to the men who are seated along the side and waiting to present their brief.

Senator Hastings: I will go back to your list of recommendations on page 11, where you say:

> In case of revocation, the inmate should be able to appeal to the National Board.

Does he not have that right now?

[*Translation*]

Professor Landreville: No; or rather yes and no.

Senator Hastings: What do you mean when you say yes and no?

Professor Landreville: According to the present system, a suspension must be revoked by the National Board. What we mean is that the Regional Board could revoke the sentence for a three months' period, after which time, the inmate could make an appeal to the National Board, since such a Board exists and it could be used as a Court of Appeal in the case of a revocation at the Regional level.

[*Text*]

Senator Hastings: This was based on the regional board. Your recommendation No. 6 reads as follows:

> Revocation should only occur when it can be proved that a breach of conditions or another offence has taken place.

Do you know of any revocation that has taken place where that has not been the case?

[*Translation*]

Professor Landreville: The Act, as it stands, allows the suspension of parole, even though no breach has occurred. The Act allows an officer to suspend a parolee because of a mere suspicion or because he himself believes that it is in the interest of the inmate that his parole be suspended. So, we think that this should be struck from the Act and that we should not be permitted to suspend a parolee unless it can be proved that there has been a breach of conditions, and not only on the mere hypothesis that he might be guilty of such a breach in the near future.

[*Text*]

Senator Hastings: Do you not think that if the public is in danger, the parole officer should have power to suspend and bring the man in if, by his conduct, he shows that he is slipping dangerously close to suspension?

[*Translation*]

Professor Landreville: We do think that there are enough recommendations and that they are clear enough, so that, in most cases, if we think that the parolee may become a public danger, we have specific reasons to revoke the parole, whereas, in some other cases, the Act, in its present wording, may leave great discretionary powers to the Parole Officers.

[*Text*]

Senator Hastings: But is a parole officer not doing a service to a parolee when he sees him slipping dangerously close to that line by bringing him in? I think he would be doing a service to a lot of men.

[*Translation*]

Professor Landreville: We may probably think so and we realize that, in many cases, it is true that the Parole Officer may be useful to the parolees, but he could, according to the Act as it now stands, very often suspend a parolee without giving him the impression that he is being done a favour.

[*Text*]

Senator Hastings: Of course, he will never think that is a service until perhaps later on, when he is saved from another three or four years. However, I would be very reluctant to take that away from a parole officer.

[*Translation*]

Professor Landreville: But I think that this provision does exist in several American states where it has to be proven, at least, that there was a breach of some of the conditions. We are already aware of the fact that there are a great number of conditions and that is, in fact, relatively easy to find a proof of breach. In such a case, the parolee would not get the impression that we are being unfair to him when we return him to the prison again, knowing that he has been guilty of a breach.

Senator Lapointe: The Parole system is highly criticized; you too are criticizing it; what are your main objections against it? Some of these recommendations are in fact criticisms, in a certain sense because we want to improve or change the system as it is now. One of the things that we criticize and that we want to change, is that we think the Board is not operating very efficiently. That is why we would like to see a decentralization, a regionalization. Furthermore, in view of the way the system is operating right now, we do not believe that there is always coordination between what is done inside the penitentiaries and decisions taken by the Board. That is why we also want a regional board made up of penitentiary officials and people from outside of the present National Parole Board so that decisions taken for inmates may be truly coordinated, that is that all decisions be coordinated. We do not believe that at present they are really coordinated. There is ample proof here before your Committee that some decisions by penitentiary authorities could go either against those of the Board or could be taken to force the Board's hand.

Would you accept that a representative of the National Parole Board sit on that regional board?

Professor Landreville: Yes. We said—we could always change our suggestion—that a good deal of time would have to be spent in discussing the composition of that regional Board, but we also suggested that it be formed of at least two members of the present Board or of the members from outside the penitentiaries who would now be commissioners.

Senator Lapointe: Do you want to say two members.

Professor Landreville: Of the Board.

Senator Lapointe: . . . who would not be from the area?

Professor Landreville: On the regional Board, there would be two members of the present National Parole Board.

Senator Lapointe: And how many members would be from the area?

Professor Landreville: The Committee could be made up of four or five members, according to the area, according to the number of important penitentiaries in the area.

Senator Lapointe: Not more members than that?

Professor Landreville: Not at the regional level. There would also be a board at the national level.

Senator Lapointe: If there would be several penitentiaries in the area, do you think that would be sufficient to take care of all problems, of all case studies, and so forth?

Professor Landreville: For most areas, I think a thorough study should be made, but, for most areas, it would be enough. There should probably be more members sitting on the committee for Quebec and Ontario. We did not linger over the number of members needed.

Senator Lapointe: Would there be women sitting on the committee or would you accept men only?

Professor Landreville: We have no sex discrimination and therefore, why should we . . .

[*Text*]

Senator McIlraith: Could I follow that up? You speak of the regionalization of the parole system, and so on. You then include the last recommendation, as follows:

> It would seem preferable to unify the correctional system by committing all prisoners to the charge of the provinces.

I am a little at a loss to understand how committing a prisoner to the jurisdiction of each of the 10 provinces would unify the system.

[*Translation*]

Professor Landreville: We mean that it would be much easier in our view to unify the parole system at the provincial level, unify the process at the level of the present provincial institutions and penitentiaries, so that the whole correctional field could be brought under the authority of the provinces; we would then have an integrated provincial system, ten systems in all, but all integrated.

The Chairman: You told us that this would mean that the expectations of the provincial community would be taken into account; this is what you said, is it not?

Professor Landreville: Yes, this is what I said in reply to . . .

The Chairman: Yes, and if according to the expectations of one of the provinces, parole is rejected, what would you say?

Professor Landreville: I would say that,—I would be very greaved, if you wish,—but I would then say that if a province rejects parole, it must be a province where the system is working very badly at the moment and where there must be lots of complaints. In this case, I believe that the administration of Justice should somewhat relate to the expectations of the people in a given region. I do not believe that this is the case at the moment.

[*Text*]

Senator McIlraith: If I could follow my question a bit further, the recommendation speaks of committing all prisoners to the charge of the provinces. How many of the provincial jails in the provinces, other than Quebec and Ontario, have you visited?

[*Translation*]

Professor Landreville: None whatsoever. The recommendation was then made mostly with respect to the provincial system which is familiar to me.

[*Text*]

Senator McIlraith: Have you, in the course of your studies, had an opportunity of studying the attitude of each of the provincial authorities towards the whole subject of parole systems, prisons and institutions?

[*Translation*]

Professor Landreville: May be not directly; I have not examined it directly, but in studying legislation and their attitude towards parole or towards the development of a provincial parole system, we can picture their general attitude towards the correctional field. I see your objection when you say that some provinces would be willing to put much doubt in a correctional system. In this case, I fail to see why no thought has been given, even from the federal government, as to the possibility of imposing a certain minimum, of allocating some amounts of money which would be specifically ear-marked for the correctional field, even of imposing minimum rules, but in this case, leaving each province free to distribute this money as it deems fit. But I can very well see your objection that important problems would arise in some provinces.

[*Text*]

Senator McIlraith: But how would you have a high standard of correctional treatment, that you obviously wish to have, applied in all provinces if you do not have jurisdiction over all the provinces, if each of the 10 provinces has its own jurisdiction in connection with this subject?

[*Translation*]

Professor Landreville: When it is a question of minimum security, only money is required for what appears at the heading of a program where the federal government prescribes certain compulsary standards, when handing out the money, to some rather sparsely populated regions, by regrouping, for instance, certain Maritime Provinces, but always imposing minimum conditions.

[*Text*]

Senator McIlraith: How can you apply minimum standards legislatively from the federal authority and have them applied in so many individual cases on a short-term, quick basis, because applications and decisions must be taken from day to day in this process?

[*Translation*]

Professor Landreville: I wonder if the present prison and penitentiary legislation is not,—there is also a federal legislation governing provincial prisons,—I wonder if it is not a way to impose a

minimum system across all provinces. At the moment, there is a federal legislation providing legal frame for the province's rights regarding provincial prisons.

[*Text*]

Senator McIlraith: Turning to another matter, I take it that recommendation 12 indicates that all persons who are sentenced to less than two years would come under provincial jurisdiction for parole purposes?

[*Translation*]

Professor Landreville: If my memory serves me well, I think that this was the recommendation of the Ouimet Commission.

[*Text*]

Senator McIlraith: Have you examined the work of the Ouimet Committee on that point?

Perhaps I can relieve your mind. It was always one of my own ideas.

[*Translation*]

Professor Landreville: I did not know which report I had to draw the idea from.

[*Text*]

Senator Hastings: I would like to come back to this question of "within custody"; you still have not satisfied me. On page 2 you say that the treatment in prison is a very small indication of his behaviour in free society; and over on page 4 you say we have just seen that the decision to parole a prisoner is closely related to his reaction in confinement.

On what basis, if you had to make a parole decision, would you make it, if you do not take into consideration this man's conduct within custody?

[*Translation*]

Professor Landreville: Well, as Mr. Nicolas just said, we must take into account the inmate's behaviour in the institution. But there must be no direct relationship between bad behaviour and parole used, then, as punishment.

Behaviour inside the institution can be a very valuable indication of whether the inmate is trying to make progress. But he can have a very negative behaviour, undesirable reactions, which would actually indicate that he cannot remain in an institution any more, or that if he stays any longer, his behaviour will increasingly deteriorate. I think that behaviour must be taken into account, that it is an indicator which whether positive or negative, must be interpreted in some individual cases.

[*Text*]

Senator Hastings: Which just happens to be the case right now, that when the board comes to make a decision, the conduct "within custody" is not the only criteria. There are many other considerations that the board uses, and it does take into consideration the circumstances under which the human being has been living, the pressures, and his natural reaction to those conditions.

[*Translation*]

Professor Landreville: Yes, but we wanted in particular to counteract the objection or the current belief that bad behaviour in an institution is in fact an indication that the inmate is not ready for parole and should be kept in confinement. I know this is not the way the Board operates at the present time, but many people think that it should operate that way and impose such a strict relationship.

Senator Lapointe: Do you find that judges lack imagination in their judgments, or do you think that they are limited by the law and that they are bound to pass sentences which are almost always the same: prison, prison—or could they impose more imaginative sentences, like sending the accused to work in Africa for a year, or things like that?

Professor Landreville: Judges are certainly restricted: they cannot send someone to work in Africa. However, I think that they do not make use of all the possibilities afforded them within the framework of the present legislation.

A moment ago, you spoke about compensation to victims. The legislation now provides for such a measure in the case of parole. However, judges very seldom use it.

There are many other provisions—new ones relating to interrupted stay in prison—but very few judges use them.

I think that the law should now allow for other solutions, and this has already been initiated with the new measures adopted last July. But as far as the present legislation is concerned, as you say, judges could use more possibilities.

Senator Lapointe: In your opinion, is there lack of contact between judges and the National Parole Board? Should they meet from time to time or hold seminars, to co-ordinate their views—things like that?

Professor Landreville: I do not know whether this comes within a different purview, but I know that judges have relatively little contacts with the Board. A more fruitful dialogue would certainly be desirable. The only time that the engage in a dialogue at present, is when a crisis erupts and then they criticize each other instead of having a continuing dialogue to really understand each other.

[*Text*]

Senator Hastings: Is it not necessary?

[*Translation*]

Professor Landreville: Yes, this is most necessary, yet I do not think it is done very much at the present time; but a better dialogue would be needed.

Senator Lapointe: A moment ago, we spoke about mandatory supervision, and things like that which were mentioned in the earlier recommendations concerning precisely the abolition of the condition regarding mandatory supervision.

Senator Hastings: Il veut simplement changer le nom.

Professor Landreville: We do not want the inmate to feel that he is under mandatory supervision. We want parole to be granted rather at the end of the sentence, and not the way it is under the present concept and as the inmates presently understand it, that is an imposed measure. There is also the fact that we have two concepts on mandatory supervision and parole. In practice, people also see two concepts, and so do many officers. We would like parole to be granted when the sentence is nearing its end, by the same people having the same concept of the service to be offered to the inmates.

[*Text*]

Senator Hastings: I should clarify one point for you, Professor Landreville, which Mr. Therrien, the Assistant Chairman of the Parole Board, clarified for us yesterday, and that is that no one has to re-serve his earned remission. If he is brought back he is always credited with the earned remission.

[*Translation*]

Professor Landreville: Yes, but in this case I know that there may have been a change of policy recently. However, if my memory serves me well, there is a conflict between the Parole Act and the Penitentiary Act: there are two sections in conflict, but I do not remember which they are. I think that recently we have followed the policy of taking into account the Parole Act rather than the Penitentiary Act, or vice versa, but there still is a conflict in the legislation.

[*Text*]

Senator Hastings: Getting back to your recommendation that the suspension would take effect only when it is proved—and I asked you this previously—proved to whom?

[*Translation*]

Professor Landreville: This is with a view to proving it to the Board; that is—in order that the officer can prove to the Board there has actually been an offence, and that the inmate may then have an opportunity to defend himself. At the moment, the inmate has no opportunity to defend himself against a charge, because no charges are laid. He should be told: you are charged with this offence; now what have you got to say? Can you submit any defence?

[*Text*]

Senator Hastings: Well, Professor Landreville, that is exactly the way it stands. If the man who has been suspended is brought into custody he is interviewed by a member of the Parole Service who informs him as to why he has been brought into custody. It is then referred to the board either to reinstate the parole or issue a revocation order. The man has every opportunity to appear before the board the next time it is in the institution.

[*Translation*]

Professor Landreville: The inmate can appear before the committee but, at the present time, we can suspend or revoke him without any obligation to prove that there has been a breach of condition. The Act even provides that if an officer believes the individual is about to commit a breach of condition, he may suspend or revoke him.

[*Text*]

Senator Hastings: He can suspend, but not revoke. The only authority to revoke the parole lies with the board.

Mr. Nicolas: Yes.

[*Translation*]

Professor Landreville: The only people revoked are revoked by the Board: they can be revoked even if they have not committed any breach of condition.

Senator Lapointe: But is there a difference between being suspended and revoked? Can he be suspended for three months, for example?

Professor Landreville: No. This misbehaviour should last for a maximum of 14 days before he can be revoked.

Senator Lapointe: Can inmates be suspended only, and then reinstated, so to speak, later on without being revoked?

Professor Landreville: Yes.

Mr. Nicolas: There is then a possibility that within those 14 days the officer may release the individual or that later the Board may cancel the suspension.

[*Text*]

Senator Hastings: The parole officer interviews the inmate in custody and informs him as to why he has been suspended. He can either reinstate the parole or refer it to the board with a recommendation to revoke. The board makes the final decision as to revocation or reinstatement.

[*Translation*]

Mr. Nicolas: Yes.

Senator Hastings: Ce que nous demandrons . . . La Commission prend-elle la décision finale?

Mr. Nicolas: Yes, as far as revocation is concerned.

[*Text*]

Senator McIlraith: There is quite a difference between a suspension and parole. This is covered by section 16 of the act and the Procedure set out in the subsequent subsections. The suspension procedure can be imposed rather arbitrarily and then the parole inmate,

> . . . shall be brought as soon as conveniently may be before a magistrate, and the magistrate shall remand the inmate in custody until the suspension of his parole is cancelled or his parole is revoked or forfeited.

Then it goes on the deal with the review of the suspension, the effect of the suspension, and then the clauses respecting forfeiture of parole. Those are two separate and distinct things.

[*Translation*]

Professor Landreville: But perhaps I might read one paragraph to emphasize what we really mean, what our conception really is. Section 16(1) reads as follows:

> A member of the Board or any person designated by the Board may, by a warrant in writing signed by him, suspend any parole, other than a parole that has been discharged, and

> authorize the apprehension of a paroled inmate whenever he is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole or for the rehabilitation of the inmate or the protection of society.

So it appears to us that this section just puts a very large discretionary power into the hands of the officer who may suspend parole if he simply believes or is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole or for the rehabilitation of the inmate or the protection of society. We would prefer this section to be deleted and the Act to say only: when the inmate has committed a breach of parole. This is exactly what we mean.

[*Text*]

Senator Hastings: Which would be too late, sir, in many, many cases.

[*Translation*]

Professor Landreville: Probably, in some cases.

Le sénateur Hastings: Dans bien des cas.

Professor Landreville: But in several cases, the inmate would not have the impression that he is denied his freedom without reason. Thus, we simply want to limit the discretionary power of the parole officer. For example, comparing with probation, a probation warrant cannot be revoked on mere suspicion alone. To revoke probation, it must be proven that there has been a breach of condition, and this can simply not be done before the fact.

Senator Lapointe: For example, if he has threatened once or twice to kill his wife.

The President: We have to wait until he has killed her!

[*Text*]

Senator Hastings: With great respect, I have yet to meet a parole officer who would suspend without just cause, nor one who would not go to great lengths to avoid suspension.

Mr. Chairman, will the brief be included in the record of today's proceedings?

The Chairman: You may make that motion, if you wish. We are not doing it with all briefs.

Senator Hastings: It is a very liberal brief–that is a small "1" liberal–and I think it should be included.

The Chairman: Is it agreed that this brief be included in the proceedings?

Hon. Senators: Agreed.

See Appendix "A" pp. 2:31-2:36

[*Translation*]

The President: Well, on behalf of the committee, I thank you very much for your brief and your patience.

[*Text*]

I suggest that we take a ten-minute recess before we hear the next group.

[*Translation*]

The President: Now we will hear the presentation of the second part of the study made by the School of Criminology of the University of Montreal. We have with us Mr. Beaulne, Mr. Blain and Mr. Paradis; who is first?

Who is going to start: Is it you?

Mr. René Blain: The fundamental assumption of the study is, then, based on the debates which took place before your Committee with the members of the Board.

So let us say no, not on this basis, but parole is the final stage of the treatment in institution. It has been presented as a continuum beginning with the admission into the institution. To explore this continuum, we have established a basic rationale. We start with the inmate entering the legal system, that is, from the moment he is convicted. He then starts asking himself questions about parole. How shall I get out of this jail? Thus begins a potential parole. This is the first stage of potential parole. In principle, this potential parole develops in the institution through treatment. The moment comes when the inmate begins to be really concerned with parole. He submits an application to the Board and his case is then discussed; it becomes a case under study. This is the second stage of potential parole.

Finally, once the Board has studied his case and if, under external or internal criteria, it is of the opinion that he is entitled to parole, the inmate then reaches the third stage, which is the actual parole: he is then a paroled inmate.

Our approach was to hold group discussions with groups of six inmates. We obtained a sample of 162 inmates in federal and provincial institutions, and former inmates as well. The discussions dealt with certain issues of this basic rationale. As I said, the first stage of potential parole is treatment and, more precisely, treatment in the institution. This is the first topic.

Secondly, what are the advantages and disadvantages to an inmate of potential parole, that is, to a confined inmate? His case has not yet been studied, but he hears about parole. What does that bring to him? Does that really motivate him or, on the contrary, will that be detrimental to him?

The third topic concerns the Board, that is its membership, its operation, anything that has to do with the Board.

The fourth topic deals with internal criteria, that is: what does the institution do to help the inmate to obtain parole? At this stage, we do not deal with the treatment, but rather with administration, personnel, employment officers and others; what they actually do to help the inmate to obtain parole?

The fifth topic deals with external criteria that the board uses: police report, community report or anything else.

The sixth topic concerns the actual parole, that is: what are the problems of the paroled inmate? What does he face while on

parole? The seventh and concluding topic of discussion is: what do the inmates recommend in respect of what we have discussed?

The topic itself was as simple and as objective as possible, in order that the inmates could vent their concern without being directed or without being led to say things they did not believe. Moreover, we have not touched in our questions on external criteria. We simply asked: what are the criteria of the Board?, without saying: what do you think of the police report? The inmate was free to emphasize what was important to him.

In the institutions visited, the demand itself centered on very specific stages in the basic rationale; the mates were in fact more concerned with potential parole. So they dealt at length with this point, without of course neglecting others, because to them this was the most important. But people in half-way houses, for example, were more interested in actual parole, so they dwelt more on it, while touching on the other points however, since they have of course lived through them.

Mr. André Beaulne: So, here is a brief summary of these meetings with the inmates. As a matter of fact, a document on this is included in the text that has just been circulated. I shall simply read a few sentences in order to put ourselves in the picture. Concerning adjustment of sentences, the inmate is first submitted to such an adjustment in relation to the eligibility date. So the inmate is aware that the judge, in adjusting his sentence, takes into account the possibility that he may be paroled. The inmates . . .

[*Text*]

Senator Hastings: The inmate says this or thinks this?

[*Translation*]

Mr. Beaulne: I beg your pardon.

Le sénateur Hastings: Le détenu le perçoit-il, ou le pense-t-il?

Mr. Beaulne: Is aware, yes.

[*Text*]

Senator Hastings: You have heard my question to the previous witnesses. Do you have any evidence that this is the case or are you just conveying to the committee the views of the inmates?

[*Translation*]

Mr. Beaulne: Yes. The thing is we went out to see the inmates. We asked them: what is your opinion on each of these topics? And that is what they told us.

Senator Eudes: Do you talk about the sentences that the inmates received from the judges? Now, have you been out to see the judges?

Mr. Beaulne: No, no, not at all. We transmit . . .

Mr. Blain: If I may, I shall give an example in that area. Mr. Paradis and myself are at the present time working as clinicians at the Bordeaux jail. I recently dealt with the case of an inmate who has been sentenced to five months. He had also been tried, two years before and convicted. Now, the sentence was postponed from time to time, and he received it only recently on this particular case. What happened is that the individual will be released on Friday. He got the final sentence last week, so this matter had been dragging on for two years, and his chances of being paroled or getting day parole were in these circumstances totally annihilated because no release could be granted when there was a judgment or a sentence pending. Can we say that the judge was aware of that or that he was acting in the best interests of the inmate? It is hard to say, but it is nevertheless a case that is rather . . .

Senator Eudes: But you do not answer my question. You just said that you had questioned inmates who say that the sentence they received from the judge is related to their possibility of being paroled. Now, in this case, there are likely two different offences, or two different crimes.

Mr. Beaulne: It is on the same offence.

Senator Eudes: On the same facts.

Mr. Beaulne: There were two different charges.

Senator Lapointe: So all your brief is simply stating the opinion of inmates, and not necessarily yours?

Mr. Beaulne: It does not state our opinion.

Senator Lapointe: Very well.

Mr. Blain: We want to be spokesmen for the inmates.

Senator Lapointe: Precisely.

Senator Eudes: So, you report what the inmates told you?

Mr. Beaulne: Exactly.

Mr. Blain: We want the other point of view to be heard.

The Chairman: Have you not questioned judges?

Mr. Paradis: No, since the terms of reference for this study were precisely to report on how the inmates saw the situation.

The Chairman: Yes, I understand.

Senator Eudes: In your opinion, is not the judge a person who is nevertheless in a position to assess the rehabilitation possibilities of the man he sentences, as much as the inmate can tell you?

Mr. Beaulne: No; let us say that this document was based on everything that we have gathered from various meetings which totalled, I understand, about 20 meetings. This text synthesizes elements that came up in all the meetings in the various institutions.

I wonder if this answers you question.

Senator Eudes: Yes. It goes on.

Mr. Beaulne: All right.

[*Text*]

Senator McIlraith: Could I follow that point? This group you met with, were they a group of prisoners who volunteered, within that prison?

[*Translation*]

Mr. Beaulne: They were free to attend these meetings. No pressure was exercised. We simply posted a notice that a meeting was scheduled.

Mr. Paradis: I, myself, contacted the directors of these institutions, asking if it was possible to form groups in their institutions in order precisely to discuss parole.

[*Text*]

Senator McIlraith: So you did not interview all the inmates in the institution. You only interviewed those who came forward of their own volition.

Senator Eudes: Well, they interviewed 162.

Senator Hastings: You interviewed 162 inmates. How many ex-inmates did you interview?

Mr. Beaulne: Eight.

Senator Quart: Only in one institution?

Senator Hastings: Was that eight parolees or eight ex-inmates?

[*Translation*]

Mr. Beaulne: That is quite correct.

Senator Hastings: Vous avez dit 162 prisonniers?

Mr. Beaulne: Eight.

Senator Hastings: Huit libérations conditionnelles, ou bien . . .

Mr. Beaulne: In three institutions, we have talked with ex-inmates.

May I proceed?

So,–inmates have doubts about the relevance of parole . . .

[*Text*]

Senator Williams: When you posted your notice in this institution, populationwise what was the attendance–and when I say "populationwise," I mean in terms of the total numbers of that institution. And out of that total number, how many come to your meetings voluntarily?

[*Translation*]

Mr. Paradis: It all depends on the number of poeple in the institution. For instance, at the special correctional unit, I believe there were 72 inmates at that time, we have seen fit to meet two groups of 6 individuals, by group naturally. At the Leclerc Institute, for example, where the population was over 400 at that time, we have had I believe four discussion groups, four interview groups. Obviously, it all depends on the number of individuals in an institution.

In transition or half-freedom institutions, it was rather hard at that time even to find a group of 6. Therefore, there have been groups of 3 or 4 inmates. It should also be mentioned that the inmates, were feeling, I would say, all the more at ease to talk that parole representatives or officers, or members of the administration, were not present. In my view, freedom was that much greater.

[*Text*]

Senator Williams: With respect to some of those volunteers who would attend your meeting and be interviewed by your group, were some of them in for four years, six years, eight years and ten years, perhaps?

[*Translation*]

Mr. Paradis: Naturally, perhaps you do not have here the implementation of the study.

Mr. Beaulne: No, we do not have it.

Mr. Paradis: You have, on page 22 of the report, the number of individuals by institution who were interviewed; of a total number of 72 at the special correctional institute, you had two groups totalling 12 inmates.

[*Text*]

Senator Williams: No, I have not the appendix.

Senator Eudes: We just have a resumé.

Senator Williams: If I can get that document, Mr. Chairman, that will satisfy me.

[*Translation*]

The Chairman: Proceed.

Mr. Blain: I think that the average would be about 50, in all the samples.

Le sénateur Hastings: Moyenne de quoi?

Mr. Blain: The average of sentences. The inmates doubt the relevancy of parole considering the large increase in the length of sentences since the setting up of the National Board.

Judges sometimes act as if obtaining parole is assured on the date of admissibility. Nothing could be further from the truth. It is even

dangerous and unjust for the future of an individual to gamble by giving him a long sentence, because, if his request is refused, he will serve a number of unwarranted additional years.

Inmates asked about rehabilitation as such said that rehabilitation in general is not found in prisons. It is society's way of clearing itself while also giving itself a sense of security by claiming that the guilty will receive a rehabilitation treatment. This results in an hypocritical game played by the inmate who wants to get out.

Rehabilitation does not exist when there is no real institutional base for the examination of the "behaviourial" progress of the applicants, except for brief meetings on rare occasions with the classification officer or the specialist.

When confined to a prison, the inmate is faced with the problem of isolation; he has no responsibility and is completely dependant on society. He must play the game that the penitentiary service wants him to play. He has nothing to say about the decisions which concern him directly. Parole is used by the penitentiary authorities as a means of applying pressure, as "a means of blackmail", and not for rehabilitation purposes.

The inmates told us: here is what we are being told by the authorities: if you do not comply with this requirement, an unsatisfactory report will be made in your respect and you will not be paroled.

There is a true parole when the individual becomes converted of his own will and abides by the social rules. However, nothing can help the inmate in this respect while in the penitentiary or in prison. It is while on parole, when faced again with physical problems and with responsibilities that he can readapt himself socially providing he is motivated and receives appropriate moral help.

With respect to the institution itself, the inmates feel that the penitentiary administration is distant and they complain about the distrust which exists when communicating–besides, there hardly is any such thing as communication. The penitentiary authorities want to keep the inmate locked in his status of prisoner. At the same time, there is no comprehensive planning so that would enable a better evaluation of the inmates' behaviour to be made and nothing is done to help him acquire a true sense of social responsibilities. So, we asked them: What do you consider as an ideal penal institution? We were told: The institution should play a greater role in rehabilitation by favouring programmes capable of making the inmates aware of their self-identity, of stimulating their willingness to assume responsibilities at various levels, of adopting system for the purpose of assessing the real efforts of the inmates held in institutions on which would serve as a reliable base for the National Parole Board in reaching decisions. Briefly, the inmates are unanimous in saying that communication must be encouraged at the following three levels: the penal administration, National Parole Board and the inmates.

As for the National Parole Board, it is considered as being inaccessible and distant. There is truly no dialogue between commissioners and applicants: hearings are disconcertingly short. On the other hand, procedures take much time and the admissibility date is often passed by under the mention "decision reserved".

The real deciding factors which enter into play are ignored.

As for matters related to personality, attitudes, and human contact with the commissioners, they are considered impersonal by the inmates. They do not permit a real dialogue with the applicant at the hearing. They press him to answer ambiguous questions about the institutional treatment programme–which does not exist, his accomplices, his private life, etc.

[*Text*]

Senator Hastings: Which all has a bearing with respect to the granting of parole.

Mr. Beaulne: Pardon?

Senator Hastings: The questions you just indicated that he is asked by the board simply might have a bearing with respect to the granting of parole. Do you agree that they are relevant?

[*Translation*]

Senator Lapointe: It is said that these questions obviously have no relation with his parole, the offence, and the treatment programme, in relation with probation conditions?

Mr. Beaulne: The inmate cannot make this distinction. He is in an institution, he lives in an institution, he is supposed to be preparing himself to leave; in saying that, he reads it entirely; it is they who have given him that.

Does that answer your question?

[*Text*]

Senator Hastings: It was not a question; it was just an observation. Excuse me.

[*Translation*]

Mr. Beaulne: Fine, – thank you.

Senator Lapointe: The other paragraph, read it, so it will be put on record, because it is very important.

Mr. Beaulne: Several groups think of the commissioners as incompetent and sadistic. The over representation of repressiveness within the Board is blamed fiercely. In spite of the applicant's efforts in a (penal) institution, the arbitrary and overbearing power of its members cut short any objective chance of obtaining parole.

Questioned on what the National Parole Board should be like, the inmates said: To compensate for the Board's remoteness and also its ineffectiveness, the overhaul would lead to institutionalizing the National Parole Board, that is the setting up of a permanent, regionalized board assigned to each penal institution. It goes without saying that the rehabilitation system will then be able to develop in a more functional way. Thus the admissibility date would cease to be relevant because the staff, which will be more qualified

and more numerous, will be able to follow closely the behavioural development of the inmate. When he will be ready for probation, the inmate will be able to take advantage of it, while the waiting period will not have all the detrimental effects corresponding to a long period of imprisonment.

The autonomy of that new Parole Board would no longer depend on the institution because it will be an integral part of the "prison" environment.

We also asked them what they thought of the various implications concerning parole as experienced by them, because there were some who had been on probation before. The most important problem they have seems to be a negative opinion of the public has about the former inmate. The most serious consequence of this is the difficulty to find employment. Money problems seem to be of a crucial nature. If the parolee cannot find employment, he will then have to live by his own wits which will lead him back sooner or later to the "prison" environment.

The probation officer is seen as being too suspicious and as having a tendency to establish a master-dependent relationship. A relationship based upon lending help seems to be more effective in maintaining individual motivation.

The efforts which a parolee is willing to make to fulfill probationary requirements are sometimes thwarted though too strict a police supervision and parole regulations which are both illogical and too difficult to observe.

[*Text*]

Senator Hastings: If I could return to that section again on sentencing, where you said that in the view of the inmates the sentence was irrelevant to parole, my first question is this: Do the inmates ever consider it relevant as to the offence?

[*Translation*]

Mr. Beaulne: I did not quite understand the meaning of the question. Could you repeat it, please? I do apologize.

[*Text*]

Senator Hastings: You stated that the inmate regards the sentence as being irrelevant to his opportunities for parole. I ask you: Does he ever consider his sentence as being relevant to the offence which he has committed and on which he has been convicted?

[*Translation*]

Mr. Beaulne: Firstly, we did not say that ourselves; the inmates did. That is the first distination. Then, did you understand the question? . . .

Mr. Paradis: Yes. I understood the question as such: "Is the sentence relevant? ". This is your question: "Does the inmate consider it as relevant or porportionate to his offence"?

Le sénateur Hastings: A son délit?

Mr. Paradis: Actually, that question was not brought up as such.

[*Text*]

Senator McGrand: You have spoken once or twice about when the inmate is ready for parole. Now you have done extensive research in your work, and the file on the prisoner includes all about his criminal record. But have you done any research into the childhood background of these prisoners? Events in childhood at the age of, say, 10, when he was probably a battered child, certainly influence his conduct at the age of 30. Now, if you have done any research in this field, what influence does it have in the granting of parole, and would you just take it from there and say something about it?

[*Translation*]

Mr. Beaulne: What you merely want to say is: Has the inmate been influenced by the circle in which he lived? Is there any connection between the atmosphere of his surroundings and the offence he committed? Do I understand your question properly?

[*Text*]

Senator McGrand: Well, what I mean is this; we know that what happens to a child when he is 8, 9 or 10 years of age,–or even younger,–does influence his conduct as he grows up. But I have a feeling that our courts, and so on, pay very little attention to the childhood of a prisoner when they are sentencing him for a particular offence. Have you done any research into the childhood of these prisoners to find out what happened that could influence then?

[*Translation*]

Mr. Paradis: I think it would be useful for you to consult the articles written by Bruno Cormier in the *Journal de la Société canadienne de criminologie*, where you would find, I think, an answer to this question.

Mr. Beaulne: Irrelevantly.

[*Text*]

Senator McGrand: I have tried to get some information on the background of prisoners and I never was able to get it. Where could I get that?

[*Translation*]

Mr. Paradis: You have, at the moment, a paper, written par Mr. Fréchette, of the Criminology Department, in which he deals mainly with the problem of identification of the recidivist during his first years of imprisonment, and where there is question of all the problems which can affect him, of his past behaviour and of

his actual conduct when he is still imprisoned, as well as of his behaviour when he leaves prison.

[*Text*]

Senator McGrand: Is this thesis in English or in French?

[*Translation*]

Mr. Beaulne: In French.

Mr. Blain: But Mr. Cormier's article in "*La Société canadienne de criminologie*" was written in English.

Senator McGrand: Number 1?

Mr. Blain: Is it published in No. 1 or No. 2?

[*Text*]

Senator McGrand: Number 1?

Mr. Blain: One or two, I am not sure. One of the first numbers.

Senator Hastings: Your brief contains some observations which certainly represent the view of a number of inmates of institutions. I find them negative and uninformed, and many of them are paranoid. I would like to go through them with you, and perhaps you will tell me whether you agree with them or what you did to correct the situation.

[*Translation*]

Mr. Beaulne: If you allow me to say so, you bring in very well the third part of the discussion; Mr. Paradis will reply to you.

Mr. Paradis: First of all, in order to sum up what has just been said, I must say that there is an information we had to get by ourselves; we had to do conduct group discussions in the institutions and have acted as group leaders. In the case of the basic rationale which the inmate did not understand and which left him rather puzzled was the following question: "After all, is parole something of a candy which an inmate is offered while serving his sentence? " The National Parole Board has merely said that Parole, . . . so to speak is a factor or an important means fo social apprenticeship for the individual. Therefore we wanted to discover exactly in that sense whether the inmate sees that step as being an important step in his re-integration into society. We came to the conclusion that the inmate sees parole if he ever gets one as being a sort of chance that is given to him; it was not so much a need for re-integration into society but rather they see it as a special favour that is given to him.

[*Text*]

Senator Hastings: They see it as a way out as quickly as possible.

[*Translation*]

Mr. Paradis: According to the basic rationale, it was exactly meant to determine whether the inmate had, within him, a possibility for reintegration. Taking into account existing means—and the National Board and eventual parole is one of them—is this, for the inmate, a means towards his social reintegration? He does not consider it as such having regard to institutional environment, to his situation when on parole, and also, if you will, to the phases of half-freedom which, according to him, he would be thrown into. Therefore, he would not have any decision to take concerning his own reintegration.

[*Text*]

Senator Hastings: So, there is a misconception regarding parole, it seems, by the press, the public, the courts; and now the inmates do not understant it—at least, the group that you interviewed.

[*Translation*]

Mr. Paradis: In fact, they have a very bad opinion which could run parallel to that prevail in the public. But I believe that a kind of balance could be struck some time in the future between the two groups, their opinions, views, as appears at page 8 of your form. We have prepared, at a certain point, a plan which, according to the inmate, would correspond to the gradual learning of freedom that he wishes to experience. First of all, as we have just said, the inmate would rather not have an alien body deciding on his parole or his half-freedom, because, according to its present arrangements, the Board is an alien body while he would much prefer an institutionalized commission, a commission which would follow him up in the field, taking into account the means now available to him. There are, at the present time, some prisons and penitentiaries where it is already possible for the inmate to be granted temporary absences and, furthermore he would like to be granted a half-freedom. There are already half-way houses which can take complete responsibility for the discharge of the inmate or for his parole. This would also represent an important step, but only after a period of half-freedom. The inmate would gradually advance towards complete freedom. This is the pattern in which he his.

[*Text*]

Senator Hastings: On page 2 of your brief it says:

> . . . Since the National Parole Board relies mainly on outdated instead of recent data . . .

Where do they get that idea?

[*Translation*]

Mr. Blain: We mean that we are not interested in their behaviour in prison, whether they are sincere or not, whether they change or rehabilitate themselves, if we are interested in what they have done in the past, what job they had and what their matrimonial relations were. They also told us that the Board has studied the institution's report but considers it as more or less important because they know very well that the classification officer deals with too many inmates to be able to produce a really reliable report on any given inmate.

Senator Lapointe: Still, this report, simple as it may be, would be better than no report at all!

Mr. Blain: But at a given moment, we have called this report "the report of reports". It is the report of the classification officers. It is often a question of compiling a report on the basis of those made by the guards and supervisors, and from this, we have tried to produce something without really knowing the person concerned.

Senator Lapointe: On page 2, you state that the inmates are very critical of the rehabilitation system within the institution, since they call it a monumental joke; is this somewhat exaggerated in your opinion or are they right in saying this? At any rate, is any attempt at rehabilitation being made in the centres?

Mr. Blain: Efforts are being made to this effect, they are endeavouring to start something, but I would say that the administration has to deal with a hierarchy which is not terribly cooperative in this respect. There is a lack of communication between the staff, the various levels of the personnel, and between professionals, administrators, psychologists, and so on. Moreover, there is a serious lack of qualified personnel for the work to be done in the institutions. This being the case, is it really possible for us to set up a truly efficient rehabilitation system, in views of the fact that we are short of personnel and that the people in the institution cannot really communicate among themselves. This is the present situation.

Senator Lapointe: Do you feel that there are institutions where the system works better than in others, or do you think that they are all just about equal in this regard?

Mr. Beaulne: There are certain differences. We have noted that there are differences at the Waterloo prison. When I say in an institution, it is to that institution I am referring, but this institution put aside, the answers given by other groups conformed to the image that has been presented.

Senator Lapointe: It is a very harsh criticism to say that all members of the National Parole Board are inefficient and sadistic. It is a little bit hard!

Mr. Beaulne: Yes, I admit it.

Senator Lapointe: As far as prisoners are concerned, whom would they like to have as Parole Board members, since they allege there is too much repressive representation, that is, too many policemen or do they consider judges as being repressive people, since you include them in the repressive representation structure?

Mr. Beaulne: I believe that in the inmates' minds, judges are part of the repressive system. They say so because at the hearing which lasts 2, 5 or 10 minutes, they get the impression of being judged a second time.

Senator Lapointe: Whom would they like to have on this Board? Would they like . . . I am at a loss myself, but we cannot pick up some members of the Mafia just because they would be more understanding.

Mr. Chairman: Maybe some senators!

Mr. Blain: As it happens. I have with me the inmate's recommendation concerning the Board's composition. They ask that the Board be formed of various specialists working in therapeutic teams thus insuring the Board's ability. By specialists, I mean social workers, psychologists and people who are rather chosen from rehabilitation circles.

[*Text*]

Senator Hastings: That is what they have now; there is one judge on the board, so they seem to think they are all judges. There is one policeman.

Senator McIlraith: There are no policemen.

[*Translation*]

Mr. Blain: There is a judge and a policeman.

Mr. Paradis: Yes, but as far as inmates are concerned the Commission is a basic accepted line. It is seen as a faraway body or, if you like, an alien body which comes in to decide on the inmate's desire to reintegrate society whereas he did not meet that body during his confinement. I think that the Board is considered as an alien body.

[*Text*]

Senator Hastings: They say that we served; it is just not that way. When the board sits down to interview an inmate it has the institution report, the community report and any other reports it desires and has an interview with the inmate. Now, I just do not know how this statement can be made, that he does not know the man. Yesterday Mr. Therrien said that while the interview lasts on an average of 40 minutes, 20 minutes without the man and 20 with him present, it takes hours of preparation before he sits down to talk with the man. This is a negative attitude that seems to exist in the minds of the men. The board does not sit down to attempt to figure out how to keep a man in jail.

[*Translation*]

Mr. Paradis: Yes, the first thing you mention is the report. Those reports are prepared in the institution, and if for instance, we consider the staff and the number of inmates in most institutions, we find that the same placement officer has a large caseload so that these reports, according to him, are hastily prepared and generally represent a synopsis of a summary. Concerning his institutional work, reports made by instructors or by supervisors are in the inmate's opinion chain production reports. I have myself worked in an institution and if we look at the way the inmate is evaluated according to his daily behaviour, I think that assessing him with letters from A to J or 1 to 10 does not mean much. Fine. Moreover, I feel that where the Board's responsibility is concerned one of the wishes that has been expressed is that the inmate would be much more in favour of an appeal board. Moreover, he thinks there should also be a Committee which would decide on his degree

of freedom in the institution and this Committee would discuss the treatment or any other aspect. Moreover, there should be, at a given point, a possibility of appealing in some way to the existing Board. Therefore, it is much closer, although we would like it to remain remote, while at a given point, it should be made into an appeal board, if need be. However, matters concerning semi-freedom should be left to the Institution or to the group who, in fact, knows this individual.

Senator Lapointe: Yes, but if you say that this group, who knows the inmates does not have the time, the competence, and that the reports are only half done, it is not more intelligent basically than the Parole Board.

Mr. Paradis: Yes, this is true, but at that point, the inmate will probably answer that all those experts who are being used should be assigned to the institutions and that they should be allowed to go out with these same experts. You understand that the whole set of experts presently outside of the institution who would occasionally give their opinion on community or other reports would probably prefer to see them in the institution, to see them act and so on.

Senator Lapointe: Obviously, there are not only nine members, it would seem, on the National Board and they themselves regret the fact that they are only nine and that they do not have the time to interview each individual during an hour and a half, as would be highly desirable. I feel that the number of members on the Board should be increased so that each individual can get more attention.

Mr. Paradis: Yes.

Senator Lapointe: Yet, there simply are so few of them that they cannot be distributed in each institution. In short, they are experts since they do this type of work during the whole year. These nine people cannot be distributed among the many institutions throughout Canada. There should be many more of them.

Mr. Paradis: Or, there should be more of them on location, that is in the institutions where they could live and be part of the staff. They would have to give their opinion before a group, maybe in front of the commissioners, or outside, or before a group. The only thing they want is to have a group who can observe how they live in the institution. If these people saw them living in the institutions maybe they could have their word in the paroling of an individual. They could give advice in this respect.

Senator Lapointe: Therefore, do you feel that if there was a greater number of officers in the institution, if they had a greater degree of competence, if they wrote better reports, if they made a better study of each case, that when the members of the Board came for their visit, they would be much better informed and would do a better job?

Mr. Paradis: Yes, exactly.

[*Text*]

Senator McIlraith: May we return to the paragraph that is very critical of the "... repressive members on the National Parole Board, such as the ex-chief of police ...", who is named, "... former judges, etc." Let us deal firstly with the ex-chief of police. You are from the University of Montreal School of Criminology, are you not?

Mr. Blain: Yes.

Senator McIlraith: Could you tell me what degrees in the specialist field the ex-chief of police, Mr. Gilbert, holds from your university?

Senator Lapointe: He is a chief of police.

Senator McIlraith: Yes, but what degrees does he hold?

Mr. Blain: A master's degree.

Senator McIlraith: A master's degree in criminology?

Mr. Beaulne: Yes.

[*Translation*]

Mr. Paradis: Yes.

[*Text*]

Senator McIlraith: So then, are we to conclude that in getting the specialists in the field, the ones who hold masters degrees in criminology, you must find out what additional experience or training they have in life and, presumably, take only those who came directly from school into the course?

[*Translation*]

Mr. Blain: The inmates object to this former chief of police because, as they say, a chief of police whose policy has been to put all criminals in jail cannot, overnight, change his outlook on prisoners. He has done that for a long time and this repressive trait has become part of his personality. Therefore, even if he tried very hard to change, it is certain that this repressive nature is always there.

Senator Lapointe: But, do you admit that he wants to put criminals in jail until they are released, or what?

Mr. Blain: No. We mean that as a police chief his purpose was to arrest criminals.

[*Text*]

Senator McIlraith: Allow me to follow that up. I know something of the qualifications and references today, and so on, and you rather alarmed me by that horrendous assumption which you have made. What evidence have you that as chief of police he wanted to put these people behind bars?

[*Translation*]

Mr. Beaulne: It is in their minds that the prisoners see him as such. If I am answering the question properly, they look at the

former police chief as somebody who has spent his life arresting people. He is now appointed to the National Parole Board but, to them, he is still entrenched in this repressive attitude.

[*Text*]

Senator McIlraith: Did you have any discussion on this point when they asserted this point of view to you?

[*Translation*]

Mr. Paradis: No. In general, there was no question of discussing with inmates any disagreements on certain points during our group meetings. We were really trying to find out what they thought within about the present Board or whatever else. There was no question of saying: "Indeed, listen a bit, you are wrong on such a point or you are going too far."

[*Text*]

Senator McIlraith: If I may follow up on that with respect to the chiefs of police, then I suppose you would have to deduce that they assumed that all chiefs of police, of whom there are many thousands in Canada, want to put people in jail. Would that follow?

[*Translation*]

Mr. Beaulne: In general, I think it would be in this direction, yes.

Mr. Paradis: The fact is, if we take into account the groups we have met, we can say that the reaction, towards this particular body was quite negative. This is all I can say. We can say that the prisoner considers . . .

[*Text*]

Senator McIlraith: I suppose, then, they would apply the same kind of reasoning to all judges? That would follow; and I suppose, if they wanted to follow it a little further, it would apply to all persons who saw them commit a crime and reported it, but not to those who saw them commit a crime and did not report it. Would that be a logical conclusion?

[*Translation*]

Mr. Beaulne: You infer things that go further than our terms of reference since we did not have to ask them for more details on the matter than we have. This could have influenced them; we could not ask them whether they believed this or that. We could not do it.

[*Text*]

Senator McIlraith: What troubles me is that the thrust of your brief talks about specialists. Then it excludes very quickly the specialists who claim to be specialists in this field. It then includes other specialists whom a great section of society, although not the School of Criminology, include as specialists in this field. I am trying to find out to what specialists they refer.

The Chairman: May I read you a clipping from the Montreal *Gazette* of March 2:

> Ex–convict on parole board.
>
> Chicago: "The governor wanted somebody who knows the loneliness of a prison cell," says John M. Nolan, a new appointee to the Illinois Pardon and Parole Board. And Nolan has that experience. He served eight years and four months at the federal penitentiary at Lewisburg, Pa., on a 25-year sentence for bank robbery and still has two years to go on his own parole.

[*Translation*]

Mr. Blain: This is indeed one of the recommendations put forward by the prisoners, that former inmates be appointed to the Board, because they know the problems facing the prisoner. They also suggested that members of the Board spend some time in penal institutions to really get the feel . . .

[*Text*]

Senator McIlraith: Is that what you want?

The Chairman: I was reading something to you that I happened to pick up in the *Gazette* last week.

Senator McIlraith: Do they know whether or not there are any ex-convicts on the staff of the board?

[*Translation*]

Mr. Beaulne: I think they believe that there are no former inmates on the National Board.

Mr. Blain: Nor in the Public Service.

Mr. Beaulne: Nor in the Public Service; they are well informed.

Le sénateur Hastings: Eh bien, ils le sont.

Mr. Beaulne: Well, I have just learned it from you.

[*Text*]

Senator McIlraith: There are?

Senator Hastings: Of the 162 that you interviewed, how many had been refused parole?

[*Translation*]

Mr. Paradis: There were no . . .

Mr. Blain: Yes, there were 51.

[*Text*]

Fifty-one received parole and 111 did not.

Senator Hastings: Fifty-one had applied and been deferred, and 111 had yet to appear?

Mr. Blain: They did not have it or they were refused.

Senator Hastings: You gave me a figure of 162 that you interviewed. How many had applied for parole and been deferred or otherwise?

Mr. Blain: We do not have that number. We have only the number of those who received parole. The inmates were in–

Senator Lapointe: Halfway houses.

Senator Quart: Were any of the inmates that you interviewed qualified people in different lines, such as psychiatrists, or ex-policemen? Did you take the background of any of the inmates that you interviewed? Were they willing to let you have their names, even if not for publication? I think this is an extraordinary statement when you say, "It is a colossal farce, since the National Parole Board relies mainly on outdates instead of recent data . . . to grant parole." How did they know that? Just how did they come to that conclusion?

Senator Quart: You have the names?

[*Translation*]

Mr. Paradis: Let us say that the information we have on these people,–we had the names . . .

Le sénateur Quart: Vous avez les noms?

Mr. Paradis: We had the names,–but we assured them no names would be published.

Senator Quart: No,–it is all right.

Mr. Paradis: The information we have about them deals with infractions, age, sentences, sex, etc.

[*Text*]

Senator Quart: When you approached the inmates of these various institutions to interview them, did they understand that it was just for research, or did they think that you were there as well to sympathize with them against the Parole Board, the establishment, or judges? Did you, after their testimony, leave them with the impression that you agreed with them?

[*Translation*]

Mr. Beaulne: I could answer your question by reading a short text we have written,–the introductory text we read before any discussions with inmates.

> I am from the University of Montreal and my name is N. We are conducting a survey on the opinion and experience you have of the parole system. I am not a parole officer and your participation in this discussion will not be taken into account when considering your own parole.
>
> I am a member of a group visiting different penitentiaries and prisons to gather the opinions of inmates on the subject. The final report of this survey will be sent to the Canadian Senate for the fall session where the question of parole will be examined. Our purpose was to contact those who are mainly concerned with this subject and also to complete the studies in order to obtain an image of what justice is in the eyes of attorneys, judges, the public, and the penitentiary staff. I am here to gather your opinion, if it is possible, and not to inform you.
>
> In order to preserve you anonymity, I ask that no name be mentioned. The discussion will be recorded so that we can be faithful and remember all you have said. The members of the group only will have access to the recordings. Thus your anonymity will be completely preserved.
>
> The length of our meeting should be about two hours. So, I will ask you to limit yourself to the themes of the discussion and to allow everyone to give his opinion.

[*Text*]

Senator Quart: Did you ever, by discussion, by smiling in agreement, by scowling in any way, or by any facial expression, show that you agreed or disagreed with them?

[*Translation*]

Mr. Beaulne: We wanted to know what were the ideas of the group on a certain theme. Our role was to stimulate the discussion of the inmates so they would express an idea as clearly as possible on the theme.

Mr. Blain: But there was no approbation since it was in a penitentiary and the time was limited; we had no time to see them afterwards.

[*Text*]

Senator Quart: In your opinion, without asking for any names, did any of the inmates impress you as being qualified to offer these various criticisms?

Senator Hastings: They had been refused parole.

[*Translation*]

Mr. Paradis: I believe that it is always embarrassing to say whether somebody is qualified or not to express those needs. One thing is certain however: since they are the ones who for all practical purposes are mainly concerned with parole,–in view of the fact that there is a tendency for inmates to gradually become more involved in their own reinstatement, and that it is not something which has materialized out of thin air, just like that,–I think that the inmates were in a position to express their concern in that respect.

However, are they or are they not qualified? Be that as it may, it is the inmates who at present experience those phases of parole. That is all we can say.

Senator Lapointe: In your discussions,–the conclusion of your short brief on that subject, is that your personal conclusion or is it inferred from what they said, or what?

Mr. Paradis: What you find in conclusion,–you are talking about the plan aren't you?

Senator Lapointe: Yes; you tell us at the end that as a result the National Parole Board and its parole system would become purposeless, since they would duplicate the role and the decision-making powers of the experts,–and you suggest that they should be within the institution and that the whole parole process should take place in the institution itself. You conclude by saying that as a result, the Board would no longer save its purpose. Is that your own conclusion?

Mr. Paradis: You have, at one point, the inmates who assess the present provincial system and, precisely in that same study, you have all the recommandations following each of the subjects involved, that is the Board, the sentence, and all that. At one point, they make an assessment of the provincial system and they blame precisely the fact that the Commissioners are not present, or on hand, since most of them do not meet them. Therefore, in that respect, there is an attempt to integrate the Board, of all those who would have to decide on a type of semi-parole which would take place inside the institution. That is the picture that emerges. What you gather there–the Board being inoperative . . .

Mr. Beaulne: That is, the last sentence.

Senator Lapointe: Yes, the last sentence of your brief.

M. Paradis: Progressive apprenticeship?

Senator Lapointe: Yes.

Mr. Paradis: That has been formulated by the group in question, by taking into account precisely the concern for the environment, to the extent that there was there a progressive apprenticeship, insofar as this was in accordance with that line of thought.

Senator Lapointe: Do you agree with that sentence, that is that if there were to be an integration of the whole rehabilitation learning system within that institution, the Parole Board would no longer serve its purpose?

Mr. Paradis: "Would no longer serve its purpose"? Let us say that the present Board,–and the inmates raised that point at one time,–would operate as a kind of Appeal Board. Thus it would be another group who would actually decide in connection with the progressive paroling of an individual.

In that sense, insofar as the inmate is concerned, that is not a direct organization.

Senator Lapointe: It would be so, only if there were cases where the inmates would not be satisfied,–they could make an appeal?

Mr. Paradis: Yes, that is correct,–make an appeal.

Mr. Beaulne: I would point out that the whole third part of the summary followed from our considerations at the end of the study.

Senator Lapointe: You mean the part that starts at page 5 in the French version?

Mr. Beaulne: Yes, at the bottom there.

Senator Lapointe: I thank you.

Mr. Beaulne: Unless, precisely, a time rehabilitation system is initiated within the institution,–a real one.

[*Text*]

Senator Hastings: The rehabilitation opportunity is there if the man will accept it, but we cannot drive him to it. Many, many men come out and find their way back into society–60 percent, as I have said. We cannot do much about the other 40 per cent until they are ready to respond to what we do. I do not know what else we can do. There is this 40 per cent who negatively criticize everything we do or try to do.

The observations you have brought forward are from men, I rather suspect, who are just not ready.

[*Translation*]

Mr. Blain: That is to say that a good part of the former inmates who have been met, of those who have been rehabilitated, have achieved that result by themselves,–an inner motivation–but also because they have been assisted by agencies outside the institution, like the AA, for instance,–I do not know if there are any others–but that organization has been quite successful in helping them in their rehabilitation. It is in that sense that we wonder whether the 60 per cent about whom we no longer hear have received assistance from the outside or if it is really because they underwent the treatment available in the institution.

[*Text*]

Senator Hastings: They started inside. Every one of them made the move within the institution. The help came from the outside, naturally. I would not deny that. A great deal of help comes after the release, but the individual must make the first move. It is only then that the help will come.

[*Translation*]

Mr. Blain: What the inmates have told us is that when one tries to act properly, he is considered a hypocrite,–if he tries to boost himself in the eyes of the authorities. This is one kind of difficulty for the fellow who wants to get out of his predicament, because he is banging his head against a wall,–and those are actual facts.

Senator Lapointe: Is he considered a hypocrite by fellow inmates or by the authorities?

Mr. Beaulne: No,–by the authorities.

Senator Lapointe: But, for instance, when an inmate is appointed president of sport activities or supervisor of the woodworking facilities, or has a kind of role to play in the workshop, is that not some sort of responsibility?

Mr. Blain: The fact is precisely that the report of the instructor in charge in that particular field,–his report seems to have very little impact in the eyes of the classification officer, who reports to the authorities. That is at least what the inmates told us; the instructor's reports are controlled; even if they are good, nothing happens.

Senator Lapointe: That would be the classification officer, as you say, who would be somewhat at fault in that respect, by not taking into account the merit points which the inmates could deserve, either at work or perhaps in the field of music or in any field where he has a good record?

Mr. Beaulne: I think one should avoid accusing anyone in the institution or on the Board but I believe that the situation should be analyzed with a view to trying to create an organization likely to produce something more efficient, more tangible in relation to the rehabilitation to be achieved.

Senator Lapointe: Would it not be necessary to know where the break occurs, where the deficiency lies in the channel of communications?

Mr. Paradis: The picture that would emerge in that area would be that the inmate precisely does not have this possibility of also taking into his own hands certain stages of his life, whether he is enjoying full or partial freedom, in order to be responsible for each of the stages. At the present time, he states that at the institutional level, this is very difficult, because the staff is often very limited as compared to the number of inmates, and this we have found in the field. Therefore, as he relies upon the Parole Board to obtain such aid, the situation is very difficult for him not only because there are very few members on the Board but also because at a certain point, at the provincial level, inmates are not met in the provincial institutions. So they feel that they are dealing with people who are there and yet not there. All they are asking is to be allowed to actually take part in their reintegration into society, to take part in the decisions.

Senator Lapointe: How can he do that?

Mr. Paradis: That is the question that we should perhaps also ask ourselves–how could an inmate reach a situation of gradual apprenticeship with a view to achieving total reintegration into society? This goes far beyond the field of research.

[*Text*]

Senator Hastings: I have a letter I received just yesterday from the young inmate at the Leclerc institution who was doing 15 years. He was denied parole a year ago and went up again this year before Mr. Gilbert, which disturbed him, when he was granted parole. He is now going to a $10,000-a-year job as a data processor. He came into that institution with a bad record and a bad charge of wounding. He is going out, I would say, well on the road to rehabilitation in this occupation, all of the studies for which he got in the Leclerc institution, which will put him on the road. Now, what happened to him? Was he a hypocrite?

[*Translation*]

Mr. Paradis: I am thinking of that.

Le sénateur Hastings: Était-il hypocrite?

Mr. Paradis: I am thinking of some work that should be done, which should not be questioned. On the other hand, the study shows the situation as seen by a group of people faced at a given time with the problem of total or partial freedom, people who have to live through those stages, and what you have here is simply how these groups see the situation.

The Chairman: Do you mean that as far as their views on the Board are concerned, they were unanimous, that there were no dissenters? Were they unanimous in their wishes concerning the Parole Board? Was there not at least one dissenting voice?

Mr. Paradis: There is a second part to this study, which we have sent, and which contains an analysis of each group meeting. There you can see, of course, various opinions and possible dissenting ones.

Mr. Beaulne: They are actual reports of each of the meetings. We have summarized each meeting and then we have compared the two, three or four meetings held in one institution. At Leclerc Institute, four were held, and we have drawn the image that emerged at the Institute, and so did we for the various other institutions. And then we arrived at the image outlined in the summary.

Senator Lapointe: Were the pictures different in relation to the quality of the institutions?

Mr. Paradis: Obviously, there was a basic reasoning, at one time, which Mr. Blain has explained a while ago, of respecting the fact that the same sentences occurred, but it is obvious about the institutions we are talking about, for instance, the Federal Training Centre, where emphasis was placed on the institutionalization of the National Parole Board, so as to have it closes to those it serves. Other institutions, for example, you have special correction units where work is mainly done in institutions. Those were blocks, but nonetheless each of the groups we met in these institutions had the same themes. Obviously, may be depending on the problems of the institution, there were themes which were more . . .

Senator Lapointe: . . .emphasized?

Mr. Paradis: . . .emphasized.

Senator Lapointe: Did many speak about halfway houses and did many express the wish for more of these houses or did they not speak much about them?

Mr. Paradis: Obviously many inmates never knew this stage, it is recent. We have met individuals in halfway houses who, obviously, would wish for more of these houses so that more individuals could benefit from them. Many prisoners in detention centres never knew these stages, so many of the groups never asked themselves the question.

[*Text*]

Senator Quart: Mr. Chairman, you asked the question I was going to ask, but now I am going to ask just one more. I promise I will not hold up the meeting. Was any one inmate favourable at all to the present system of parole or rehabilitation; or was it general dissatisfaction? I think it would have been a marvellous thing if you could have brought us four or five tapes of interviews, without knowing the man's name, so that we would hear the questions and the answers.

[*Translation*]

Mr. Paradis: First of all, in answer to your expectations, we have those tapes at the School of Criminology and you can listen to them. However, one should scrupulously abide by professional ethics. You can listen to them because we have kept them. Group analyses which you can also peruse, are reproduced in the second part; there, you will find the answers to your questions. Was there not one who did not agree? It is obvious that, at one time, an inmate had negative feelings forwards the members of the Board. It is also obvious that, in the case of the other person, the question was of little relevance, if at all. But there have been agreements, at times, on some points.

Senator Lapointe: A consensus?

Mr. Paradis: An agreement, yes.

[*Text*]

Senator Quart: When you interviewed the groups together, was there ever a difference of opinion or would one person say "it is not exactly like that"? Was there a difference of opinion when you interviewed groups, even?

[*Translation*]

Mr. Paradis: Exactly, there has been some, to a certain extent, because that was depending on the personality, the person, and his background; there have been discussions, but on the whole . . .

Senator Quart: Disagreements?

Mr. Paradis: In general, they quite of the same opinion.

The Chairman: Do you mean that all groups have insisted that the commissioners were sadistic?

Mr. Paradis: Let us say, in this respect, that it has been so in the majority of cases.

La sénatrice Quart: Je me demande ce qu'ils pensent de nous?

Mr. Paradis: During some of the interviews, we have not talked at all about the members, and since we could not succeed in having the inmate talk and in order to induce him to say something, we would ask him: "Now, what about the members, do you want to talk about them? " Then if the inmate was not concerned by that idea of members the question was ignored.

Mr. Beaulne: Perhaps I can complete the answer.

At a certain point if you will refer to tape 6 of number 2, you will hear: the Board is a secret society. You have on tape No. 2: it is difficult to imagine what it is, because we see it once in a lifetime if not ever at all. That is on tape No. 2. And so it goes. You know, that is an account of that, and other inmates have more categorical opinions, so that you have there what has been actually said.

[*Text*]

Senator Williams: Knowing that once they become inmates we have no definition of who they are or what ethnic group they may belong to, knowing that there is a very large Indian population at the penal institutions, did you in your interviews have interviews with an inmate or an ex-inmate?

[*Translation*]

Mr. Blain: No inmates have disclosed that they were Metis, but we could check to find out whether there had definitely been such inmates.

[*Text*]

Senator Williams: Maybe I put my question the wrong way. Among the inmates were there Indian dissidents without defining them as such?

[*Translation*]

Mr. Blain: At this time, I know that there are Eskimo inmates at the Bordeaux jail.

Mr. Paradis: Here, we have not taken notice of that, nor whether there were inmates of other ethnic origins.

Mr. Beaulne: We have learned at the end of the study when one of our colleagues compiled the notes describing the offence, the sentence, the age, the schooling, etc., we have learned, at the end of the summer, that we had interviewed 12 murderers and inmates who were found guilty of about 100 offences against property. We had no idea during the interview that we were addressing a murderer or an individual guilty of some offence. That was intentional in order that we would not be influenced in our capacity as interviewers.

[*Text*]

Senator Williams: I believe you referred earlier in your brief to the attitude of an inmate towards someone in authority when that

inmate was attempting to get a parole. The attitude of the inmate toward the ex-policeman and the ex-judge is something I can understand, because the Indian people in Canada have experienced that attitude and are still going through it.

Too many people in the employ of the civil service or in the Department of Indian Affairs are ex-policemen or ex-majors. In the first place, the policeman's job is to make an arrest and the judge's job is to sentence. After a lifetime in that environment they cannot change, and the Indian people have experienced their militancy. So I can see through the attitude of the inmates in regard to ex-policemen and ex-judges.

The Chairman: Of course, a judge sometimes also acquits, you know.

Senator Williams: That could be right.

The Chairman: Senator Hastings, did you have a question?

Senator Hastings: I would not dare. I just wish to express on behalf of the committee our appreciation to the witnesses for the work they undertook. It is very interesting. I know it represents a viewpoint that is held by a few within our institutions and it is just as well that we have that viewpoint before us.

I should have liked to explore the possibility of breaking down the wall, or getting rid of the myth of misunderstanding and trying to find out what we should be doing in that regard, but we do know now that this situation exists. Thank you very much.

The Chairman: Perhaps the committee should also note that this study was financed completely by the Solicitor General of Canada.

Senator Quart: When did you start your research?

Mr. Blain: Last summer.

Senator Quart: When did you receive the grant?

Mr. Blain: In February or March. We plan to go on next year with a questionnaire in more detail.

The Chairman: The committee is now adjourned until tomorrow morning at ten o'clock. There will also be a sitting at two o'clock tomorrow.

The committee adjourned.

APPENDIX "A"

SCHOOL OF CRIMINOLOGY

UNIVERSITY OF MONTREAL

Brief on conditional liberation
in Canada presented to:

The Senate Standing Committee on
Legal and Constitutional Affairs

September, 1972

by: Pierre Landreville, Ph.D.

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FOREWORD

This brief is the outgrowth of observations, interviews with the members of the Parole Service, the National Parole Board and the Penitentiary Service, of reading, reflection and discussion made during the summer by a research group of the School of Criminology of the University of Montreal under the direction of Pierre Landreville, Ph.D.

Right at the outset, we decided to limit our study 1–to the principles and goals of conditional liberation, 2–to mandatory supervision, 3–to day parole. The working paper prepared by the team is available for consultation at the Information Centre of the School of Criminology of the University of Montreal.

It is obvious that our reflections have often spilled beyond the limited field which had been decided upon. We have had to bring conditional liberation back into the frame of the correctional process and study the effects of the division of powers between the federal government and the provinces at that level. Our brief will also take stock of these matters.

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INTRODUCTION

Conditional liberation goes back to around the turn of the XIX century. Although that correctional measure has originated from the concept of mercy, it has quickly moved away from it. The ticket of leave (a method advocated by Maconochie and Crofton) directed the evolution towards the present system. According to that method, a deserving inmate was allowed to be released and to remain free if he would abide by the conditions of that ticket of leave. The concept of mercy was abandoned and the notions of privilege, selection and conditions were introduced.

Nowadays, when a better integration of the whole correctional system is being aimed at and when it is desired that all parts of the system favour above all the resocialization and the social reintegration of the inmate, these notions are undergoing new modifications. The selection is no longer to be based essentially on good conduct inside the prison (the points system of the Irish graduated system), but it must, to a greater extent, take into account the future and the reintegration of the inmate. No longer do the conditions serve only to protect society but they are an instrument of control and help for the inmate.

A-PAROLE

Before elaborating further on our notion of parole, we want to mention that the principles which we will formulate are intimately related and can be vindicated only in relation to a very specific notion of the freedom deprivation aspect of the penalty. We believe that internment is warranted only a) for offenders who seriously endanger the community, b) for those who need a treatment unavailable to them except in an institution, c) and for those who have committed crimes which are so deeply shocking to the collective conscience that the public cannot tolerate, at this time, that they would not be deprived of freedom.

Our notion of parole is not unlike that of the Fauteux Commission (1956), which stated:

"It is a transitional step between close confinement in an institution and absolute freedom in society." (p. 51).

The transitional step does not imply the successful treatment in an institution or the successful resocialization. Parole promotes a reintegration of the individual into society.

Whether treatment in an institution be a total or partial failure, most inmates are bound to be released one day or another and many of them will need that transitional step. Our confidence in the present institutional treatment is mitigated and we believe that the reaction to the treatment in prison is a very small indication as to the behaviour of the individual within society, since some persons react in an "artificial" way to the treatment undergone in an artificial environment.

Although conforming to the notion of social adaptation, the parole stage remains, in our opinion, a way of serving one's sentence. That means that the time spent under parole is actually an integral part of the sentence. At the present time, the definition of parole underlines that principle, but the practice runs counter to that since, according to sections 20 and 21 of the Parole Act, the person whose parole is forfeited or revoked must serve again the time spent outside prison.

Thus our position is rather simple: parole is a transitional step necessary to all inmates (barring exceptions) and it is actually the continuation of a sentence outside prison during a certain time.

Parole should end either by being revoked or forfeited (and the balance of the sentence is served inside the prison until its expiry or the granting of a new parole), or through a decision of the Board who is of the opinion that the individual can operate normally within society, or finally due to the expiry of the sentence.

1–*Need for parole*

What reasons can be put forward to justify the principle to the effect that all inmates should go through that stage?

a) *Life within society.* The problem of the offender is to abide by social standards, and isolating him does not teach him to live within society. Even though some inmates might go back into society with greater assets because they have undergone treatment in an institution, have followed a course or learned a trade, they need to adjust to that social life. The Ouimet report (1969) rightly says:

"One cannot learn to live in freedom without experiencing freedom, and even the most open institution provides a restricted, protected environment", (p. 337).

b) *Confinement impact.* It should be remembered that prison is an artificial environment wherein it is impossible for some to function. For many inmates, confinement has a disastrous impact which counteracts resocialization. While the expected outcome is the return of inmates to society, prison further desocializes some of them. If granted at the appropriate time, parole decreases the danger of further desocialization.

2–*Selection*

Although we may be of the opinion that all inmates should be paroled, the two acknowledged goals of parole must be kept in mind, namely: the protection of society and rehabilitation of the individual. We believe that to achieve those two goals, the crucial question is no longer who should be paroled, but rather when to parole an inmate.

a) *Protection of society.* The selection made by members of the Parole Board partly aims at protecting society. Some prisoners are more dangerous than others. Tables should be used to forecast on a more accurate scientific basis, the probabilities (and the seriousness) of a relapse. However, a strong probability of relapse should not preclude a prisoner from parole. On the contrary, he probably would need even more to undergo this transitional step of supervising and help. The most dangerous individual should be paroled later, but in no case after he has served three quarters of the sentence imposed by the judge.

b) *Rehabilitation.* If "rehabilitation" is one of the goals of parole and if it is sometimes argued that this must be one of the criteria for selection, it must be emphasized that parole is only granted when a prisoner is "rehabilitated" or if he can be "rehabilitated" only when on parole.

When it is stated that "rehabilitation" must be taken into account, it is rather a question of choosing the most appropriate time for parole, that is to say the most favourable moment for reintegration into society. If a prisoner who is deemed dangerous is confined until his sentence comes up, he may prove to have become even more anti-social after his release. In this respect, job opportunities and acceptance of the prisoner by his family should also be considered in each case to determine the most favourable time for parole. Finally, as we have already mentioned, each person reacts in a different way to imprisonment; thus, the saturation point must be taken into account in deciding when parole should be granted.

3–*Sentencing and Parole*

Parole is closely related to sentencing with these two decisions completing instead of neutralizing one another. In determining the maximum sentence, the judge must take into account the protection of the public, the deterrent effect of the sentence and the seriousness of the crime whilst the decision to parole an inmate is taken within legal limits considering his reaction to confinement and the most favourable moment for his social reintegration. We wish to emphasize, however, that not only should judges use incarceration as a last resort, but they should also reduce as much as possible the length of the sentence and never increase its term with a view to counteracting the effects of parole.

4–*Parole and the Correctional Process in Canada*

We have just seen that the decision to parole a prisoner is closely related to his reaction to confinement as well as to the other decisions taken in his respect during such confinement. We believe that there must be co-ordination between the type of activity or treament within the penitentiary, the type of institutions where the prisoner will be successively committed, his periodical contacts with the outside world and his family (through temporary leave or day parole) and the decision to release him permanently.

Thus, in addition to the criticism already voiced in connection with the operation of the National Parole Board (overwork and excessive travelling by the commissioners, too cursory consideration of records, etc. . . .) we believe that this reason speaks in favour of a regionalization of the Parole Board.

This regionalization should be made according to regional divisions already established by the Canadian Penitentiary Service. Moreover, in order to assure the desired co-ordination throughout the term of the sentence, we think that regional commissions should be integrated to the regional Classification Board which is already part of the penitentiary system. These "penalty application committees" would take all important decisions during the confinement of the inmate such as assignment to and transfer from an institution, temporary leave, day parole and permanent release. They would include in each region one or two members selected from outside the Penitentiary Service (the present commissioners), the director of the Regional Penitentiary Service or another member of the Regional Office, a representative of the Regional Reception Centre and one or more representatives of the main penitentiary institutions of the region. At the national level, the Commission constituted by its chairman and the regional chairmen would see to the establishment and implementation of a national parole policy and act as a committee of appeal in respect of important decisions (such as permanent release) which are appealed at the regional level.

It must be noted that this regionalization takes into account federal institutions only for we consider, as did the Ouimet Committee (1969) that "it is inefficient for an inmate to be the responsibility of one government until the question of parole arises and for him then to pass under the control of another level of government" (p. 283). We have reached the same conclusion as the committee, i.e.: that the provinces should assume responsibility for parole in respect of provincial inmates.

We therefore recommend, as a *short term* proposition, the establishment of two parallel correctional systems: one on the provincial level and the other on the federal level. But it seems to us logical to eventually devise one integrated correctional system by doing away with the arbitrary division of jurisdictions between the federal government and the provinces based on the length of the sentences (more or less than two years). Moreover, the arguments brought forward by the Ouimet Committee (1969, p. 281) and by the Prévost Commission (1969, p. 60), namely, to turn responsibility for all prisoners over to the provinces, seem convincing enough for us to adopt such a solution.

B–MANDATORY SUPERVISION

The Parole Act has been recently amended (1969) with a view to setting up a new measure known as "mandatory supervision" (mandatory release).

It is necessary to study this measure in order to evaluate its consequences as well as to distinguish it from our concept (as detailed in the preceding pages) regarding mandatory parole.

1–*The Law*

Section 15 of the Parole Act states:

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

This measure applies therefore to any inmate who is released at the expiration of his sentence and who has earned a remission of more than 60 days. The mandatory supervision terminates concurrently with the expiration of the sentence imposed on the inmate by the judge and is therefore effective in respect of all and any term of granted and earned remission.

2–*Implementation of the law*

Mr. Street, Chairman of the National Parole Board explains the proposal as follows:

> ". . . if a person selected for parole requires counselling and supervision, those persons who are not so selected need such counselling and supervision even more." (Senate vol. 12, p. 46)

We believe that all inmates are eligible for parole and whether they are eligible or not depends on the Board's decision. When this decision is negative the Board, though it rejects supervision, makes it indirectly mandatory thereafter (S.O.). Consequently, inmates under mandatory supervision are reluctant to accept such counselling and supervision. The implementation of the legislation is also complicated by the fact that inmates detect in it either injustices or encroachments on their "vested rights".

a) *Earned and statutory remission.* We have already mentioned that if the number of days credited to an inmate exceeds 60, supervision will be mandatory. According to the Penitentiary Act, an inmate earns remission through good conduct in the institution, equal to three days a month, together with a statutory remission of a quarter of his sentence, but he will have to serve the said number of days under mandatory supervision.

While he was entitled to be paroled without obligation, the legislation now subjects him to a supervision. The duration of the sentence is thus extended and the earned or statutory days do not serve their purpose, of rewarding good conduct. The authority of the Board would extend to and include the power of cancelling the days granted by the Penitentiary Administration by revoking the mandatory supervision certificate. The inmate would therefore lose not only his statutory days but would also serve again that part of his sentence served away from prison.

In order to correct this situation, we believe that those inmates whose parole is forfeited or revoked should not have to serve the remission that was credited to them as an earned remission.

Sections 20(1) and 21(1) of the Parole Act, besides conflicting with section 24(2) of the Penitentiary Act, should therefore be amended accordingly.

Moreover, we suggest that all inmates should be eligible for parole when they have served three quarters of their sentence at the latest, (minus any earned remission days) and the statutory remission concept would thus become redundant.

b) *Cancellation or forfeiture.* Nowadays, when an inmate is discharged under mandatory supervision, the complete freedom which he was earlier expecting to enjoy is conditioned and thereby restricted. His freedom is all the more precarious and the sword of Damocles hangs as menacingly since section 16(1) of the Parole Act provides that a member of the Board may suspend (then revoke) the parole or mandatory supervision of an inmate, "whenever he is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole or for the rehabilitation of the inmate or the protection of society".

This provision apparently constitutes an arbitrary measure towards inmates under mandatory supervision, as much as it also affects parolees, and we think that it should be fundamentally amended.

Indeed, we suggest that a paroled inmate should only return to serve that part of his sentence that had not yet expired at the time he commits a new indictable offence (minus any earned remission).

In the case of a simple breach of conditions or of a minor offence, parole could be suspended for a short period (up to three months) by the local Board with the right to appeal to the National Parole Board. This suspension would take effect only when it is proved that there has been an actual breach of conditions.

c) *Short Duration Sentence.* The law is now being ignored since paroled inmates (at least in Quebec) who have been granted a term of remission of more than 60 days are not supervised by the National Board although they fall under the jurisdiction of mandatory supervision.

It is easily understood that the Parole Board is too overworked to implement this legislation, but one wonders what the reaction of the provinces would be, in the event of the implementation of the law, when they will have to lay out several hundred thousands of dollars yearly to commit once again to prison those inmates under mandatory supervision who have committed indictable offences prior to the expiration of their sentence.

The effect (i.e. mandatory supervision) that such a federal Act produces on prisoners and provincial budgets alike is another example of the disadvantages created by the present joint system (federal parole and provincial prisons).

Conclusion

We fully agree with Mr. Street's statement to the effect that all prisoners need help and supervision when they are freed, but the only logical way to do it is through the parole system. Our concept entails that parole must be both mandatory and timely and that it should not be delayed until the sentence has expired as is the case with mandatory supervision. However, we think that parole should not be unduly extended especially in the case of long sentences. Even though hardcore prisoners should take advantage longer than others of the help of probation officers, the Board should release them from their obligations when help is not absolutely required or in general, after a maximum five-year period of probation.

C–DAY PAROLE

1-*Definition*

Together with the implementation of mandatory supervision, the Parole Act was amended by a new provision known as day parole.

Section 2 of this Act gives the following definition:

Day parole means the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period.

This definition has a much wider scope that the wording gives to understand. As a synonym, Mr. Street uses the expression "interim parole" which seems to us more appropriate. It is more appropriate because day parole can actually present different aspects and not necessarily imply a return to the institution in the evening. In effect, this period can extend to a day, a week or even a month.

According to the chairman of the National Parole Board, the aims of the above mesure are twofold:

> 1 – It may contribute to the continuation of an employment or of study courses when any interruption could entail grave consequences such as the loss of a long-term employment or of a school bear because a term was not completed or examinations passed.
>
> 2 – It is also used as a preparatory step towards parole as such and is often used to test an inmate's capacity to adapt to society and to help him in this respect thanks to employment, retraining courses, etc.

We can now turn to the nature of parole as described by Mr. Street.

2-*Its Use*

Should parole be used as a correctional measure in itself or as a pre-release step?

a) *Correctional Measure.* Under that approach, day parole becomes a way of implementing imprisonment. It is used to counteract negative effects which imprisonment may have on a particular prisoner. We would quote, in this connection, the following thought which Screvens wrote down in 1967:

> "... the penalty will be all the more effective when its evil effects are lessened".

Further to decreasing social alienation, day parole would allow an inmate to follow a more adequate treatment outside the institution.

We must, however, admit that in terms of treatment, day parole is of limited scope and can be resorted to for short periods only. It becomes quickly difficult for the prisoner to endure this periodic and unavoidable return to the institution and he unavoidably expects to be paroled following the "success" of day paroles.

b) *Means of Evaluation.* Should the success or failure of day parole serve as a criterion for granting or denying parole? The result of day parole used as a selective criterion might become an easy way out but the Board must not embark on this course. To assess the success of such a measure is difficult, because the individual does not fully partake of social life. However, the Board, following the success of that measure, is morally bound to grant parole to whom concerned. In other words, it cannot withdraw its confidence from that person especially if he has proved worthy of it. On the other hand, the opposite decision, that is the refusal of parole, cannot be based on a partial success of the day parole or even of a failure. Actually, an inmate who does not abide by the requirements of day parole may however behave normally when on probation.

The Board should, in principle, avoid considering day parole as a preliminary test to probation since it would be evading the problem and throwing back all the errors on to the inmate. The Board must help the prisoner to acquire social maturity and not to look for instruments to test him in this regard. Conversely, the difficulties encountered on the occasion of day parole may indicate to the Board the way to adequately help the inmate.

c) *Pre-release stage.* In our view, day parole is mainly a pre-release stage and unlike parole it is an interim step, although the inmate has probably some contact with society. The true quality of day parole lies in the economic stability of the individual before his release on parole. In this respect, day parole is part of a reformatory though strongly case-oriented process, because, on the one hand, some inmates find constant return to prison unbearable, and on the other hand, many of them do not need this economic security because they had a steady job and will have one on their release.

For this reason, day parole requires a knowledge of each individual's needs. Does an inmate with a family who can receive him and with guaranteed employment truly enjoy semi-freedom?

3-*Day Parole – and other similar measures*

Day parole is related to other correctional or judiciary measures, and it is important to differentiate it from semi-confinement and temporary leave of absence.

a) *Day parole and semi-confinement.* Day parole is a correctional measure which is part of a process aiming at the reintegration of an inmate into society. It must be applied at the end of confinement and be regarded as semi-freedom. On the contrary, semi-confinement is a sentencing process which from the outset implies partial imprisonment, generally in the evening or during the weekend. (1)

Screvens (1967) wrote in this connection:

"The difference between a convict who might be allowed by prison authorities to work outside of the institution (semi-freedom) and the offender who is placed in semi-confinement and therefore carries on his occupation during the day, has been pointed out and regarded as important." (p. 50).

It is a basic difference because the decision regarding semi-confinement falls within the jurisdiction of a court, whereas that of semi-discharge is the responsibility of a correctional agency. In this connection, when the Chairman of the National Parole Board, stated in 1971 that one of the purposes of day parole is to contribute to the continuity of employment, he probably overrode the limits of his jurisdiction or at any rate exceeded the meaning of the Act.

Basically, the two measures are different. As a correctional process, day parole aims at the social readaptation or reintegration of an inmate, while as a sentencing process, semi-confinement goes back to the idea of a particular retribution for a punishment, which offer the advantage of allowing the inmate to carry on some activities (work in progress), to prevent greater social alienation and to avoid permanent confinement impact.

This concept has just been recognized by legislators who have recently amended the Criminal Code along these lines, by adding paragraph *c)* to subsection (1) of section 663, which enables the court to pass a sentence of uninterrupted imprisonment provided it does not exceed 90 days.

This distinction is therefore essential since semi-confinement aims mainly at solving the shortcomings of short-term sentences whereas day parole provides for social readaptation.

b) *Day parole and temporary absence.* Day parole and temporary absence are two completely distinct measures which vary in several respects.

1) *Administrative differences.* Temporary absence is granted by the director of a penitentiary or the commissioner for penitentiaries taking into consideration the length of and the reasons for this absence. Temporary absence from penitentiaries is governed by section 26 of the Federal Penitentiary Act.

Day parole is granted by the National Parole Board for a period determined by the Board. This measure comes under the federal Parole Act. Penitentiaries and reformatories are also placed under the jurisdiction of the Board.

2) *Basic difference.* Even though both measures result in the temporary release of an inmate, their basic principles are specific. In principle, temporary absence is granted solely for medical or humanitarian reasons or to facilitate rehabilitation.

Day parole is also granted for humanitarian reasons, but of a more important nature, such as looking after a sick dependent or relative. However, these reasons are very often similar to those for temporary absences (see Senate, 1971, vol. 12).

In our view, the use of identical reasons to obtain a leave of absence from two different administrations points to the lack of co-ordination within the correctional system.

If we believe that under the present Act the penitentiary administration should be the only one to allow absences from the institution for humanitarian reasons, in practice it should not use temporary absences to allow, for example, an inmate to be employed outside (according to Mr. Faguy, Commissioner of the Canadian Penitentiary Service, 50 per cent of extended temporary absences are either for work or educational purposes (Senate, 1972, vol. 2, page 8).

As we have already pointed out, these are not the first ambiguities and duplications at the correctional administration level.

As regards day parole and temporary absences, the division of legislative powers between the federal government and the provinces increases this confusion. There are federal laws governing penitentiaries and provincial laws governing reformatories. In addition to this ambiguity, a federal law, the Prisons and Reformatory Act (1952, RSC 217) encroaches on a provincial area, namely: prisons.

In the province of Quebec, under the Provation and Houses of Detention Act, a system of temporary absence (Section 20) and of day parole (Section 19) has been established since May 1969. With the prisons falling also under the jurisdiction of the National Parole Board, there is again duplication as regards federal and provincial day parole.

Recommendations

1. All penitentiary inmates should be paroled after having served three quarters of their sentence at the latest, minus the reduction of earned remission time. Consequently:

1a) The provisions of the Act concerning mandatory supervision should be abolished.

1b) Any earned remission should be excluded from the time to be served under parole.

2. Parole should generally cover a maximum period of five years.

3. Should parole be forfeited following an indictable offence, the inmate should have to serve only that part of his sentence which had not already expired when he committed said indictable offence, minus any earned remission to his credit.

4. In the case of a simple breach of conditions or of a minor offence, parole would be suspended only for a maximum period of three months.

5. In case of suspension, the inmate should be able to appeal to the National Parole Board.

6. Suspension should only occur when it can be proved that a breach of conditions or another offence has taken place.

7. Day parole should be considered as a pre-release step (semi-freedom) and not as semi-detention.

8. The National Parole Board should be regionalized.

9. Regional boards should be integrated to the regional classification committee which already exists within the penitentiary service.

10. These "penalty application committees" could be formed of one or two members from outside the penitentiary service (the present commissioners), of the regional director of penitentiaries or another regional office member, or of a representative from the regional reception centre and one or more representatives of the main penitentiary institutions in the area.

11. These committees would be responsible for making all important decisions concerning a prisoner during the time of his confinement such as: assignment to and transfer from an institution, temporary leave, day parole and final release.

12. *Short Term* recommendation: Provinces should assume full responsibility for parole in connection with provincial inmates.

13. *Long Term* recommendation: It would seem preferable to unify the correctional system by committing all prisoners to the charge of the provinces.

APPENDIX "B"

UNIVERSITY OF MONTREAL

SCHOOL OF CRIMINOLOGY
May-August 1972

THE PAROLE SYSTEM AS PERCEIVED BY INMATES AND EX-INMATES OF METROPOLITAN INSTITUTIONS

SUMMARY OF THE CONTENTS AND CONCLUSIONS OF THE STUDY*

by

André Beaulne
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Director of Research

André Normandeau

This study was made possible thanks to a grant by the Department of the Solicitor General

"It does not seem possible to convince man, by any means whatsoever, to trade his nature against that of a termite; he will always have a tendency to defend his right to individual freedom against the will of the masses. A great number of battles within humanity are being fought and are concentrated on one task: finding an appropriate equilibrium, of such a nature as to ensure the happiness of all, between these individual demands and the cultural requirements of the community."

Sigmund Freud

"The Uneasy Civilization"

The aim of the present document is to summarize the contents and conclusions of the report bearing the same title which will be submitted in October 1972 to the Senate Standing Committee on Legal and Constitutional Affairs.

This study attempts to bring out the image and the representation resulting from the perception of the parole system by inmates and ex-inmates of the Montreal area. The total population affected amounts to 162 individuals, 112 of whom are from federal institutions, 42 from provincial institutions and 8 from private institutions (residential community centres for ex-inmates).

By means of group interviews, the team has attempted to find out and compare this image with that presented by legislators and administrators. The study has revealed that, to all practical purposes, the first assumption formulated by the National Parole Board to the Standing Committee on Legal and Constitutional Affairs according to which there is continuity between the so-called "rehabilitation" or institutional treatment and the parole system, does not really exist. There is rather a partition between jurisdictions which weakens all efforts at encouraging inmates to reassume their responsibilities as members of society. We recommend that the reader consult, if he is interested, chapter 7 of the report submitted to the Standing Senate Committee.

The team has developed its report from data collected during group interviews with inmates. Each of those meetings was analysed and appears in the report as an appendix (I to VI) grouped by type of institution, that is: penitentiaries; I. super-maximum security; II. maximum security; III. medium security; IV. minimum security; V. jails; VI. residential community centres for ex-inmates. Finally, a comprehensive presentation has been made with specific statement supporting references.

Synthetic Presentation

This document is a synthesis of various images that were brought out during group meetings in federal, provincial and private institutions. It is an attempt at a comprehensive regrouping of the statement made by those who are the most concerned by the parole system.

General Presentation

Adjustment of sentences

An inmate is first submitted to the adjustment of his sentence in relation to the date of eligibility. The judge will add up the mandatory number of months or even years of confinement before parole may be granted so that he will serve the chosen minimum arbitrary sentence.

The inmates question the relevance of parole in view of the fact that sentences have been substantially lengthened since the National Parole Board was established.

Sometimes, judges act as though parole will be automatically granted when the prisoner becomes eligible. Nothing is farther removed from the truth. It is even dangerous and unfair that someone's future be jeopardized by a long sentence for if his application for parole is turned down, he will have to serve a number of unwarranted additional years.

Rehabilitation

Except in one institution, institutional rehabilitation is altogether non-existent. It is used by society as a means of evading its responsibilities and guaranteeing its safety while claiming that the inmate will receive a "rehabilitation" treatment, thus leading to a game of deceit on the part of the inmate who wants to get out of it.

Rehabilitation cannot exist unless there is a various institutional basis to study the behavioural improvement of the applicants apart from the cursory and sporadic meetings with the classification officer or the specialist. It is a colossal farce, since the National Parole Board relies mainly on outdated instead of recent data (behavioural improvement during confinement) to grant parole.

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*The complete study (300 pages) is available tor consultation at the Information Centre of the School of Criminology of the University of Montreal.

A confined inmate faces isolation, total lack of responsibilities, total dependence on society, a game of deceit which the prison administration lays upon him, a deprivation of any right of intervention in the decisions closely affecting him. The penitentiary administration uses parole as a means of pressure, of "blackmail", but not for rehabilitation purposes.

Actual rehabilitation occurs when an individual voluntarily mends his ways and abides by social regulations. In this respect, however, nothing can help a confined inmate. It is only when on parole and face to face over again with material constraints and responsibilities that he can be socially rehabilitated provided he is so motivated and receives appropriate "moral" support.

Penitentiary

Bureaucratic alienation

We have just seen that inmates – except those of a single institution – do not feel that they are receiving institutional treatment. They rather learn about the hypocrisy of society. They do not see any relationship between their life in an institution, rehabilitation and parole.

The inmate is progressively depersonalized inasmuch as institutional environment compels him to play a role other than the one he would have ordinarily played under normal circumstances. In other words, he must prostitute himself in order to establish a good relationship and to be well treated.

The penitentiary administration is far removed from the inmate who complains about the climate of distrust prevailing, in communication, which barely exists anyway. The penitentiary authority wants to keep its ward in his status of inmate. On the other hand, neither a comprehensive plan for a better evaluation of inmates' efforts, nor a treatment is contemplated to stimulate the real learning of social responsibilities.

The inmates consider the work of classification officers as inadequate when it comes to preparing the candidate for parole. Respondents consider that the institution's caseload is too heavy for any serious work to be achieved. However, Classification officers are seen as being interested, at the outset, in helping inmates, but they finally side with the repressive administration. Nevertheless they have too much arbitrary power which can easily turn into favouritism. A classification officer is considered as the decisional turning point between the penitentiary administration and the National Parole Board.

The ideal penitentiary: a school of life in society

The institution should play a more important role in the rehabilitation process by promoting such programs as will awaken the inmates to their own identity – the establishment of living units under the direction of a criminologist or another specialist as a means of group therapy has been suggested by several study groups – or stimulate the acceptance of responsibilities at different levels, as well as by adopting a reliable system for evaluating the real efforts made by confined inmates and on which the National Parole Board could establish its decisional criteria. All inmates are unanimous in suggesting that communication should be stimulated on all three levels: the penitentiary administration, the Parole Board and the inmates.

The institution must adopt a comprehensive philosophy aimed at the individual rather than on an arbitrary generalization and on the passive role of social defence which only serves to put away, without too much concern, individuals who have offended a "just" society. One must not "break a guy" but break the inertia of an inefficient bureaucracy by forcing the latter to play the only role society expects it to play, namely to enable prisoners to assume their social responsibilities.

The National Parole Board

An unreachable and inefficient Parole Board

On the one hand, the Parole Board is seen as far removed and unreachable. The commissioners do not really exchange views with the applicants: interviews are disconcertingly brief. On the other hand, the protracted procedures are such that the eligibility date for parole very often falls far behind thanks to the mention of "decision reserved" appearing on the file. This bureaucratic excuse brings back to the applicant's memory the tense moments he had to go through awaiting his verdict.

Fully aware of the dilemma facing the National Parole Board which claims to advocate a process of rehabilitation which is actually nonexistant in the penal institutions, the applicant feels that the reports submitted by the penitentiary are unreliable and should not be used by the National Parole Board as a criterion on which to base its decisions. Furthermore, it seems that the National Parole Board wishes to be autonomous and does not want to be involved in the administration of penal institutions. Now, how is the National Parole Board to appreciate an applicant, if it does not listen to the penal institution? Simply by referring to the criminal record, that is to say to the applicant's background while ignoring all that might have taken place during his term of confinement.

In trying to find a logical explanation to inconsistencies of the National Parole Board, the inmates confess that they are unable to understand its internal operation. The National Parole Board looks like a secret organization whose internal mechanism is complex, if not altogether unknow. Parole becomes a "stroke of luck", the applicant relying on a chance decision that will allow him to readapt to social life.

The real elements of the decision making process are now known. However, it is stated that the police report is usually negative and all the more restrictive if police officers have had a hard time capturing the applicant at the time of the offence. The community inquiry report, the marital status (priority given to applicants with family responsibility) and the report of the classification officer – even though based on the inmate's slanted behaviour in order to get away from it all – are of major importance. The application for parole might be received differently depending on the seriousness of the offence and the background of the inmate.

Impersonal and arbitrary commissioners

Commissioners are generally looked upon as impersonal representatives. They do not allow the applicant to have a real

dialogue with them when the hearing takes place. Instead, they urge him to answer ambiguous questions dealing with the institutional treatment program, which does not exist, his accomplices, his private life, and so on.

For many groups, commissioners are unqualified and sadistic. The presence of too many repressive members on the National Parole Board, such as the ex-chief of police, J.P. Gilbert, former judges, etc., is consistently blamed. In spite of the applicant's efforts during confinement, the chances of being objectively paroled are curtailed by the arbitrary and discretionary powers vested in the Board.

A National Parole Board that should be involved in the rehabilitation process: (1)

In order to remedy the remoteness, and inefficiency of the Board,

(1) This paragraph does not contain the recommendations of the inmates who were interviewed. These recommendations appropriately appear in Chapter 7. We will try to draw out a comprehensive picture of the National Parole Board and project it in the future. This is a generally accepted picture which is not relevant to any group in particular, we should institutionalize the National Parole Board, that is, create a permanent regional board for each penal institution. Needless to say that a more functional rehabilitation program could then be set up. Thus, the eligibility date would lose of its relevance since a more numerous and qualified staff would be in a position to closely observe the behaviour of the inmate who, when "ready" for parole, would be able to enjoy it without having to put up with delays as harmful as a long confinement.

The autonomy of the new Parole Board will no longer be related to the institution as such since it will be integrated into the penitentiary structure. Its immunity will rather be of a judiciary, political and public nature.

Thus, a real exchange can be established with the institution being part of the National Parole Board. Thanks to the process of communication, it will be possible to determine the potentialities of the inmate and the guidance to be recommended. Many meetings will be scheduled to that effect. Moreover, the applicant will have the right to appeal the decisions rendered.

The actual Parole Stage

The parolee's problems

The problems facing a parolee are numerous and serious, the most important being the negative attitude of the public towards the ex-inmate. The most serious consequence is the difficulty to find employment. If the inmate is unable to find work, his financial problems become very accute; he will have to resort to dubious devices which will return him, sooner or later, to the penitentiary.

The Parole Board Officer is considered as being distrustful and too much inclined to establish a master/servant relationship with his wards instead of a helpful attitude which would show up individual motivation. If moral support could be also obtained, the inmate will be able, in most cases, to succeed as a fine man. It might be necessary someday for institutions or half-way houses to provide an adequate training to inmates.

Excessive police supervision added to unreasonable and exceedingly difficult parole requirements tend in some cases to thwart the efforts a parolee is willing to demonstrate in this respect.

III

The conclusions reached by the group are the outgrowth of reflection following its meetings and the examination of proceedings of the Committee on Legal and Constitutional Affairs. A few excerpts from Chapter 8 of the Report attempt to give the gist of these conclusions.

"In the present state of penal policy, the institutional treatment and the parole system are wholly inadequate to attain their first goal which is rehabilitation." Moreover it is "incoherent because, instead of solving the problems which are at the root of the inmate's criminal disposition, it only serves to complicate them along with others. We formulate a policy of progressive learning of freedom."

"Since the subject's basic problem is a wrong perception of freedom, the proposed system should teach him anew how to use his freedom. Three stages of learning enable the inmate to progress from a freedom in confinement (institutional freedom) to an open freedom (community freedom) through a semi-open environment (community and institutional freedom).

As soon as an offender is convicted, he is taken to a reception centre. In this diagnostic-pragnostic phase the capacity of the subject is evaluated. From there on, he is directed towards one or another of the three stages according to his needs. It is not necessary for him to pass through all three stages, because with some people the problem is less acute than with others: in some cases closed environment proves to be unnecessary and harmful.

When the subject is led to a closed environment, whether in a prison or a penitentiary, his life within the institution is structured around living-units (unités de vie). Therefore, the new learning and the use of freedom in institution are carried out through these small groups and, after a certain time, outside the institution, by means of temporary absences. These absences which are no longer granted on humanitarian grounds but for learning purposes, prepare the subject for the second stage.

At the second stage which takes place at the half-way house, the inmates are divided into two separate groups including, on the one hand those subjects who have gone through the preceding stage and, on the other hand, those reaching directly this stage following the evaluation made by the reception centre. A *pre-release house*, separate from the institution receives the first group. A restricted but more generous freedom than in the institution is allowed in these houses where more emphasis is laid on solving institutional problems than on those arising from community life.

When the prisoner is ready to move forward in progressive freedom, he joins the group directly referred to the semi-open environment stage in the *half-way house*. Community problems prevail in that type of house: for some, institutional problems are non-inexistent and for those who have cleared the other stages, they are negligeable, hence of secondary importance. Since the community takes precedence, freedom of the individual is geared to the community. At this stage, his apprenticeship is well advanced and he can enjoy a greater freedom in the half-way house.

Finally, the last stage before total release in terms of the social-political and legal aspects occurs when the individual living within the community, is able to meet specialists who will help his total integration into society. For we should not forget that the community problems facing him at this stage are a lot more complex than those encountered in semi-freedom where he is assured a certain security in the house. To solve these problems, the subject must have the possibility of obtaining qualified help in a climate of understanding and not of supervision.

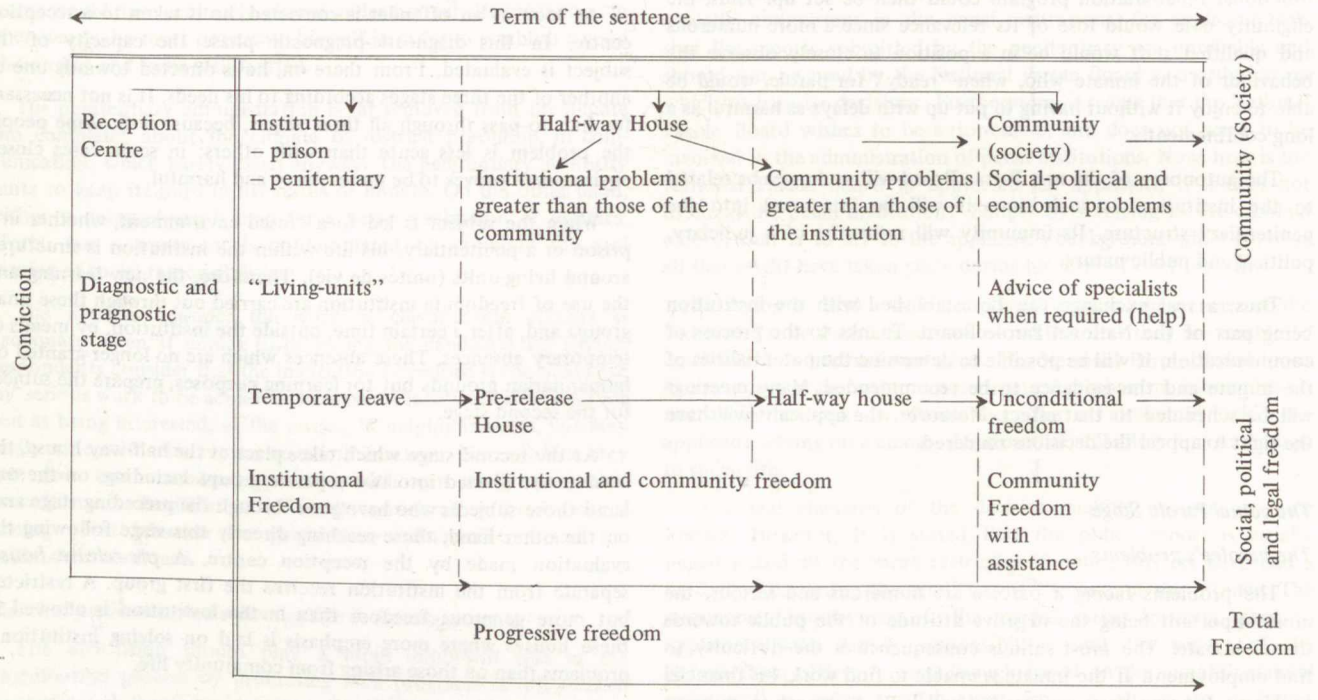
It is important, through all stages to retain a qualified team of specialists: for institutional problems, people who have acquired institutional experience, and for community problems, people living and working in the community.

Such a system would thus pave the way for a progressive apprenticeship of freedom. Treatment would continue uninterrupted through the various stages. We insist on the continuity in the practical or theoretical treatment in the various stages through which an inmate must pass. In order to guarantee social readaptation and to motivate the individual towards this goal, it is essential that he feel the permanence underlying the system. As suggested, the subject will first become freedom conscious and then will assume it progressively before becoming fully responsible and aware of it.

It is obvious that to insure the success of this system, the policy on which it is based should be integrated under one jurisdiction. The dispute over jurisdiction will disappear since the treatment and the process of progressive release are an integral part of the institution. Indeed, the institution alone can insure a continuous apprenticeship of freedom since it alone truly knows the individual. And, for the same reason, and as a result of the continuous evaluation of the individual by its specialists it alone can decide whether an inmate should go to a further stage or be definitely released.

The result would be that the National Parole Board and its parole system will become redundant since they would duplicate the treatment and the decision-making authority of specialists. Not only does the proposed system "undo the functions" of the National Parole Board, but it entails its disappearance and replacement by the freedom apprenticeship "treatment".

DIAGRAM FOR THE PROGRESSIVE FREEDOM APPRENTICESHIP SYSTEM



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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 3

THURSDAY, March 8, 1973

Seventeenth Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendices—See Minutes of Proceedings)

25879—1

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

March 8, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Choquette, Eudes, Flynn, Hastings, Lapointe, McGrand, McIlraith and Williams. (9)

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada; Mr. Patrick Doherty, Special Research Assistant.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Elizabeth Fry Society, were heard by the Committee:

Mrs. Monica Freedman, President, Elizabeth Fry Society, Kingston;
Miss Glennys Parry, Vice-President, Elizabeth Fry Society, Ottawa;
Miss Phyllis Haslam, Executive Director, Elizabeth Fry Society, Toronto;
Mrs. Kay Shaw, Board Member, Elizabeth Fry Society, Ottawa;
Mrs. Dorothy Flaherty, Ottawa Board Member, Liaison with Canadian Association of Elizabeth Fry Societies;
Mr. James MacLetchie, Executive Director, Elizabeth Fry Society, Ottawa;
Mrs. Joan Moody, President, Elizabeth Fry Society, Toronto.

On motion of the Honourable Senator Denis it was Resolved to print in this day's proceedings the briefs presented by the Elizabeth Fry Societies of the Province of Ontario and by the Elizabeth Fry Society, Toronto Branch; they are printed as Appendices "A" and "B".

At 12.05 p.m. the Committee adjourned to the call of the chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 8, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: We have two briefs before us this morning from the Elizabeth Fry Societies of Ontario, one being the provincial brief and the other being the brief from the Toronto branch.

I believe Mrs. Freedman will introduce the provincial brief.

Mrs. Monica Freedman, President, Kingston Elizabeth Fry Society: First of all, I should like to introduce those who have accompanied me this morning. They are: Miss Phyllis Haslam, Executive Director, Toronto Elizabeth Fry Society; Miss Glenys Parry, Vice-President, Ottawa Elizabeth Fry Society; Mr. James MacLatchie, Executive Director, Ottawa Elizabeth Fry Society.

We also have with us: Mrs. Dorothy Flaherty, from the Ottawa Elizabeth Fry Society; Mrs. Norah Law, from the Ottawa Elizabeth Fry Society; Mrs. Kay Shaw, from the Ottawa Elizabeth Fry Society; Mrs. Joan Moody, President of the Toronto Branch; Mrs. Susan King, a social worker from Hamilton; Mrs. Ruth Bruce, President, Hamilton Elizabeth Fry Society; and Mrs. Margaret McKee, Vice-President, Kingston Elizabeth Fry Society.

I would now call on Miss Parry to give you a summary of the brief from the Provincial Council of Elizabeth Fry.

Miss Glenys Parry, Vice-President, Ottawa, Elizabeth Fry Society: Mr. Chairman, honourable senators: We are pleased to have this opportunity to appear before you this morning to provide you, perhaps, with additional information on our viewpoints concerning parole policy.

As volunteer agencies assisting in the rehabilitation of women who have come into conflict with the law, we are vitally concerned with the subject of Canadian parole policy. We are convinced that parole is a valuable tool in the rehabilitation process and one which, ideally, should be made available as widely as possible to as many inmates as possible.

We commend the use of day parole during an inmate's sentence and urge the extension of this program.

A mandatory remission and parole policy in the case of women serving sentences of more than two years is, in our viewpoint, a desirable policy. We recognize the primary administrative responsibility of the National Parole Board and Parole Service in this sphere, and their component status in what the Solicitor General described before this committee as "a social defence network."

The general direction of additional policy reforms and advances which we hope to see is indicated in some detail in the brief submitted for your consideration. We look forward to answering your questions.

Senator Hastings: I wonder if you could repeat the statement with respect to mandatory supervision?

Miss Parry: Mandatory remission, perhaps?

The Chairman: Mandatory supervision.

Miss Parry: Mandatory remission in the case of women serving a sentence of more than two years.

Senator Hastings: Mandatory remission is desirable?

Miss Parry: Yes.

Senator Lapointe: From the summary of your brief, it would appear that you support the mandatory supervision provision. In the brief from the Elizabeth Fry Society of Toronto, it would appear that they do not support that provision.

Miss Parry: There is perhaps a divergence of opinion in that respect.

Senator Hastings: Are you referring to mandatory remission and mandatory supervision as one and the same?

Miss Parry: No. The point I made in the summary statement was that we do favour a mandatory remission and parole policy for those inmates serving a sentence of more than two years.

Senator Hastings: Mandatory remission and parole?

Miss Parry: That is right.

Senator Hastings: You mean the earned and statutory remission would be parole?

Miss Parry: Yes.

Miss Phyllis Haslam, Executive Director, Elizabeth Fry Society, Toronto: Perhaps I should speak to the apparent discrepancy here.

Quite correctly, the Toronto brief raised serious questions about statutory remission. We feel that there is an advantage in having people coming out under supervision. However, we believe that with the changes of policy and program within the total system, and the lack of clarification about the basic meaning of statutory remission, a great deal of confusion and resentment has been built up around this factor. The point we are attempting to make is that the whole question of the various types of release under day parole, temporary absence, statutory remission and parole should be clarified. We are really saying we believe this matter should be looked at again comprehensively.

Senator Hastings: Which we are trying to do.

Miss Haslam: I know. We are saying this is a basic issue, and this is why there is the apparent discrepancy.

Senator Lapointe: In the brief you recommend greater flexibility in the financing formula. What do you mean by that?

Mrs. Monica Freedman: With many women, we find a great deal more time has to be spent supervising them than is considered average for the supervision of inmates on parole, especially women who have problems with reintegrating into the family. Perhaps her children have been with the Children's Aid; or even if they have remained in her home or with her parents there is the added problem of reintegration with the children and into the community. Sometimes much more time than the approximately three hours a month is spent in supervision. There should be some sort of scale in the fee for services for supervision.

Senator Lapointe: What would you consider the ideal amount of time to be devoted to each inmate? Would you say more than three hours a month?

Mrs. Freedman: It depends so much on the inmate's or the parolee's needs. It would have to be considered on an individual basis rather than establishing a flat fee for services. I think we say that in our brief.

Senator Hastings: What is it now?

Miss Haslam: Thirty-five dollars a month.

Senator Hastings: Per parolee?

Miss Haslam: Per parolee.

Senator Hastings: What other fees do you receive?

Miss Haslam: For community assessments I believe it is $40 a month, but I am not certain.

Senator Hastings: Is that $40 for community investigation?

Miss Haslam: Yes.

Senator Hastings: Are there any other fees for service that you receive?

Mrs. Freedman: We run a halfway house for the federal government, and we receive a per diem rate for every inmate on day parole or temporary absence of $10 a day.

Senator Hastings: That is $10 per inmate?

Mrs. Freedman: Per inmate, yes.

Senator Hastings: You get $35 per parolee. As you say, it depends on each parolee, but do you base the fee on three hours per parolee? Do you know what it is based on?

Mrs. Freedman: No, I do not know what it is based on. It has been stated that it would be three hours, average, a month. In the last week we have had someone on mandatory supervision who occupied approximately 15 man-hours of supervisory work. That is in only one week.

Senator McGrand: In the brief of the Ontario Society you say that unless an inmate is dangerous to himself or others he should be eligible for parole. There has been a great deal of criticism of parole when an inmate has been released and committed a crime when on parole. That has given parole rather a bad name among a certain section of the population. The phrase "dangerous to himself or others" is hard to define, and it is difficult to say whether an inmate is dangerous to himself or others. I would like to hear some further elaboration of that. How do you decide?

Miss Haslam: I believe the kind of offence a person has committed and the inmate's behaviour within the prison may certainly indicate whether that person is a danger to other people. In looking at parole generally we have to keep in mind that the person will be released from the institution sooner or later, and if there is sufficient build up of supports as that person moves from the institution into the community on parole, it probably reduces the danger of repeating a crime than if there was merely release at the end of the sentence. From the point of view of the benefit to society, if someone can be released gradually into the community, and finally on parole, we believe this provides a greater safeguard to the community than merely releasing that person.

Senator McGrand: You mean letting him out one day at a time rather than giving him parole; let him out for a day at a time to see how he integrates?

Miss Haslam: We believe in the sort of thing that has been tried, for instance, in relation to the Vanier Centre for Women. Residents have been released on temporary absence under close supervision with a volunteer for a time, then on day parole, and there are fairly careful control situations in terms of going out to work and back again, hopefully to a unit which is not a part of the main prison, because the pressures there are too great. As the person demonstrates his or her ability to function in the community, then parole is granted.

Senator McGrand: Do you see much difference between female and male inmates who go out on parole? After all, the men are much the majority.

Miss Haslam: The men are much the majority, but many people who have worked with both men and women seem to feel that there is greater demand on parole supervision to help the women to become reintegrated than to help the men. There are a number of reasons for this. In the first place, a woman will more frequently be prepared to talk out her anxieties and fears, and the kinds of pressures which can lead her into further crime. She is more prepared to come in and talk and work through these with her supervisor than men are. The pressures the woman is under in coming back, as has already been said–the reintegration into a family, which so often tends to condemn a woman who has committed an offence, which is a bit of the double standard approach; the amount of emotional turmoil she has to overcome in coming back into the community–seem to be greater for women than men. This means that more time needs to be spent with the women. I believe there is sufficient experience in the field–and we have talked a great deal with various people about this–to indicate that undoubtedly the demands made on supervising a woman parolee are greater than for a man.

Senator McGrand: Is there a change in the trend of female crime? A few years ago bank robberies and that sort of thing were committed entirely by men. We now read in the papers that in many of these cases women are involved. Is there a tendency for women to associate with men in what I might call big crime?

Mrs. Freedman: I can speak to that from the Prison for Women's standpoint. I think many women who are in prison for such offences have been involved with men but may not have been the perpetrators of the crime; because they have been involved they have also been convicted of the crime. Their degree of participation in the execution of the crime may not have been as great, but their sentences may be equally as long.

Senator Lapointe: In the case of mental illness or mental unbalance, is the board careful enough when releasing a woman on parole? She might be dangerous to children. We have read of some women who have been released and killed other children. Are the psychiatrists careful enough in recommending release?

Mrs. Freedman: There are never enough psychiatric services inside the institutions as far as I am concerned. I think a great deal of effort goes into preparing parole reports, in ascertaining whether a woman convicted of child abuse is likely to do it again with other children who may be returned to her on release. I do not know that I can answer the question accurately without having any sort of statistics. I am not aware of any women recidivists in child abuse cases, as has happened lately with the males.

Miss Haslam: I think one of the problems has been that, unlike the men's institutions, where the Solicitor General's department has been able to arrange with the Government of Ontario to have men who show signs of being mentally ill transferred to the Penetanguishene Hospital, there has been no comparable long-term plan worked out for women who are mentally ill. Unquestionably, there are some women presently in our prisons–not many but some–who, if there was a hospital for the criminally insane for women, would be transferred there.

Senator Lapointe: Why is there no such provision for women?

Mrs. Freedman: There are not enough women in that category to warrant such an institution.

Senator Denis: When you say in the brief that unless an inmate is dangerous to himself or to others he should be eligible for parole, do you mean that if an inmate is dangerous he should not be eligible for parole?

Mrs. Freedman: I think there should be some sort of way of ascertaining whether that person is dangerous, at the time they are applying for parole. If someone has committed crimes of violence and has not shown any movement in their term of stay in the penitentiary, and if it is ascertained that there is no way of showing that he or she will not be dangerous when she is returned to society, then perhaps the risk is too great to release that person on parole.

Senator Lapointe: You speak of provincial parole boards. Are there some provincial parole boards?

Miss Haslman: In Ontario and British Columbia.

Senator Lapointe: Thank you.

Senator Williams: It is your statement that there are not enough mentally ill women in the prisons to warrant treatment as required by men. Does your society agree that there are not enough women suffering from this type of illness, that the authorities will not give consideration for treatment?

Mrs. Freedman: I think we believe that there should be consideration given to the female who is mentally unstable, but there are no provisions right now, because the government has not felt that it was feasible financially to build a separate institution or make room in another institution, just for women who would fit into the same category as the men who might go to Penetang. It has been discussed on various occasions as to the feasibility of buying services from the province in mental hospitals for the treatment of mentally disturbed or unbalanced inmates who may be sentenced to the prison for women.

Senator Williams: Then there is no treatment whatsoever made available to those few women who may be suffering from such illness?

Mrs. Freedman: At the present time, there are some women incarcerated in the Prison for Women in Kingston, who are receiving psychiatric services on an in-patient basis at the Kingston Psychiatric Hospital; but they are very few and it has to do with the diagnosis of what is mental unbalance and what is normality and this kind of thing.

Senator Williams: I am not quite clear on your answer that some women in particular are receiving psychiatric services. Does the word "services" in this case mean treatment?

Mrs. Freedman: I am assuming that "services" means treatment, yes.

Senator Williams: Using the word "services" as equivalent to the word "treatment"?

Mrs. Freedman: Yes.

Miss Parry: I think the difference is that for the men there is a special hospital where the security arrangements are such that the man can be transferred to the Penetanguishene hospital and that is a unit within itself. I think that the difficulty as far as the women are concerned is that while they can be transferred to the local Ontario Hospital there is not the same kind of provision within the hospital to provide the security which will be necessary. Therefore, there is a tendency to return them to the institution, where they are seen by the psychiatrist.

Senator Williams: I have tried not to bring forth a question that involves security, and I am merely trying to find out, for my own knowledge, the treatment that is made available.

Miss Haslam: I am suggesting that treatment in a setting where one can concentrate on treatment and not be worrying about other things is probably more effective than treatment in a unit where people are concerned about other things and, therefore, may not keep the patient in hospital for as long a period as they really need.

Senator Williams: Thank you.

Senator Lapointe: You could not take one floor, or half of one floor, for the women, in this institution?

Miss Haslam: There are not enough. But we do think that it is a matter that really should be looked after.

Senator Williams: Countrywise, if you included all provinces, would there be enough?

Mrs. Freedman: There is only one penitentiary for women in all of Canada.

Senator Williams: I realize that.

Mrs. Freedman: And there are now 130 women there. There are four or five women receiving services at Kingston Psychiatric Hospital at the moment, plus those receiving psychiatric services within the institution.

Senator Williams: Thank you.

Senator McIlraith: I would like to pursue this a little further by way of clarification–and it is not a new point I am trying to raise. Would it be fair to say that the problem in creating such an institution that is, with the security requirements as well as the psychiatric treatment required is the absence of a sufficient number of patients for such an institution, to assemble the necessary staff and organization?

Miss Haslam: Yes, that is the argument.

Senator McIlraith: It is not an unwillingness to provide the money and not a matter that can be cured with the provision of further money; it is, rather, a matter of trying to have the facilities created, to find some formula that could get it created. If that were done, it would seem to require the use of the same facility by at least several of the provinces, in order to have enough inmates to make the creation of such an institution possible. Would that be fair?

Mrs. Freedman: I could foresee inmates being paroled for the purpose of rehabilitation, with some of their parole restrictions being that they be a resident in a psychiatric or a treatment facility and that if they left that treatment facility then they would have violated their condition of parole and then would be returned to the Prison for Women. It would be possible to parole someone to a psychiatric facility, thereby giving the treatment staff the opportunity to impose the day-to-day conditions, but that the ultimate condition would be imposed by the Parole Board.

Senator McIlraith: I agree it is highly desirable that the facilities be there, but I was trying to pin down the nature of the problem of creating such a facility. It is highly desirable that it be created.

Miss Haslam: I think there are very few women right through Canada that actually fall into this category.

Senator McIlraith: It is a problem of size, and size in the context of having enough patients to make an institution, to assemble the staff that such an institution would require, and to keep the staff adequately or properly occupied in order to maintain their professional skill.

Senator Hastings: I would like to pursue a little further the questions that were raised by Senator McGrand, with respect to parole and how it is completely misunderstood by the public. It seems to me the myth that exists in society is that the accused goes before a judge and he is charged with breaking and entering . . .

The Chairman: Should you not say "she" now?

Senator Hastings: She is given three years for breaking and entering, by a wise, sage judge. Two years later, the Parole Board takes a look at her and considers she has made a certain amount of progress, and, therefore, deems it advisable to release her at this stage, in the best interests of society. They release her. Then, as Senator McGrand indicated, our accused robs a bank. Then society comes up with the criticism that if all these bleeding hearts and senators had minded their own business and let the sentence by the wise judge run its course, this would never have happened, and Johnny or Mary eould have come out of the institution as a relatively rehabilitated individual. They do not seem to understand, and they will not accept the premise, that this particular inmate was coming out a year ahead, in the best interests of society, and for the best protection of society, and in the best judgment of the Parole Board the odds were better to let this person out a year earlier. But we missed. It is this idea that if the judge's sentence had run its course this second offence would never have happened.

Miss Haslam: Possibly we need to encourage our community to read history a little more closely. For many years we really had no provision for people getting out of custody. They were kept in for sentences which frequently were very long sentences, and the recidivism rate was very high. So that the keeping of them, you know, to the end of their sentences, which many people do feel is the thing to do, did not succeed in doing what it was supposed to do.

There is sufficient indication of a very reasonable proportion of people who do get out on parole who do very well on parole. I think so often we concentrate on all the people who break down and we forget about the many people who do well.

Senator Hastings: Even breakdown is success.

Miss Haslam: Yes, because again we tend to see success or failure totally in terms of whether they committed another offence. We do not do it with other situations where people have longer periods of breakdown and then gradually get on their feet again. Parole gives that person that added help to get on his or her feet again. It really does, you know.

Senator Hastings: How do you explain that to a public which does not want to hear you? That is my problem.

Miss Haslam: That is why I suggest they read history.

Senator Hastings: And you agree that even though this inmate fails on parole, parole can be a great contributing force to his success in the future?

Miss Haslam: We have certainly found, for instance, in our residence that frequently the person who does best is the person who has had at least two failures after we started working with her. The reinforcement of feeling that there are people who continue to believe in her, who continue to be prepared to offer services to help, who continue to help her to build up the supports which she needs in the community, eventually results in that person's doing very well.

Other people do not. They continue to break down because we, unfortunately, so often do not help people until they have been so badly damaged that perhaps the main thing we can do is to help them to continue to feel that people care. But, certainly, just because some people continue to break down is no reason to feel that nobody should be given the chance. That is really our experience.

Senator Hastings: I agree that it is your experience, but how do you convince the public of this, when they demand that if a man is paroled he has to succeed? If he fails, "Damn you all for letting him out! If you had just left him there it would have been fine for that three years."

Miss Haslam: People hear only what they want to hear, really. It seems to me that the service that an organization such as the John Howard Society and Elizabeth Fry Society offer, of talking with groups, of sitting down with people and letting them talk their anxieties out, can be of great help. We have a large group of volunteers who meet with groups and talk with them. I think that the sort of programs which are put on television and radio should be able to help also, but I am afraid you are always going to have some people who always see the worst and never the best in people.

Senator Lapointe: The point you make in your brief, that to prepare the community to accept these persons is to have an effective public relations program, is very important, I feel. I think that is what is lacking in many cases. But how do you envisage this public relations program? Are you publishing articles in the newspapers and relating the success of one case after a few failures, or that sort of thing? Do the newspapers accept that kind of story or do they refuse them?

Miss Haslam: I would say that the newspapers, in places where we have societies–and remember that this is in a very limited area–quite often come to us for stories and they write very positively in this field. We also have people appearing on radio and television from time to time, but I am only speaking from one society and the others may have more to add to that.

Mrs. Freedman: Mrs. Shaw would like to speak to that, if she may.

Mrs. Kay Shaw, Ottawa Board Member, Elizabeth Fry Society: With respect to the point that the senator made that people do not think of the prisoners who come out without parole in the same way that they think of prisoners who come out on parole, one of the failures is that we do not publicize the failures who have not been on parole. I do not believe there are any records kept. These two should be compared and should be compared publicly. The rate of failures with people who come out without any help, without any parole supervision, ought to be compared to the rate of failure of people who come out with supervision. If these comparable figures were presented to the public from time to time I think this would obviate the problem because people do not consider the other cases at all. They just consider the ones that are out on parole.

Senator Lapointe: Are you giving stories to the newspapers just when it is time for a subscription campaign, for example, or do you give out stories during the whole of the year? The reason I ask that is that it seems that when there is a subscription campaign every society is giving news to the papers and it is a little indigestible, if I may put it that way. On the other hand, if you cared to distribute the news over the whole of the year that would be much more acceptable to the public.

Mrs. Dorothy Flaherty, Ottawa Board Member, Liaison with Canadian Association of Elizabeth Fry Societies: The Ottawa Society has a speakers' bureau, and we make it a point of addressing women's groups. There is not a week that goes by without some group telephoning to ask us to send a speaker.

We have corporate members; some of the largest women's organizations in Ottawa are corporate members of our Society. We have a news letter which goes to our members and anyone we think might be interested, and we have had very good reaction from the community at large. Not only that, but at the time of the United

Appeal our members are available for speaking engagements. I myself addressed a group of high school students at Fisher Park High School. The assembly hall was full. I was speaking about the work of the Elizabeth Fry Society and how important that work is. I told them that people are going to come out of prison anyway, because anyone who goes in, unless he or she dies in there, is going to be coming back out into the community and the whole point is to give persons coming out of prison some help so that they realize that people are caring about them and that they have someone to turn to if the going gets too rough.

I was most impressed by the reaction of these high school students, many of whom had just come to the talk because they had to be at the assembly that morning.

Senator Lapointe: When you go to meetings like that do you sometimes take along former inmates to communicate along with you?

Mrs. Flaherty: Yes, we have done that, but one point that I make quite frequently is that our successes are not visible. You cannot hold a person up and say, "Here is a successful person." If we are successful, our clients have disappeared into the community. If we are not successful, there they are!

In our situation you can boast of your success in numbers but not in actual individuals. As I say, you cannot hold a person up and say, "Here is a person who did this, that and the other thing," because now they are part of the community and who would know, and the minute you identified them you would probably be starting to destroy the work you had already done.

Mr. James MacLatchie, Executive Director, Ottawa Elizabeth Fry Society: If I may add a word, Mr. Chairman, in terms of public education, as Miss Haslam mentioned earlier, public attitudes are tricky things to deal with on this kind of issue, because it is an emotional issue. If I might venture an opinion, it would seem to me that we have really done the trip, if you will, about public speaking–you know, the concept in which the community can be brought together and we can tell them the truth and tell them where it really is.

It makes we wonder these days whether or not it is public involvement in our activities which is the best vehicle for public education. I am talking of that on many levels. A church group, for example, which will do newspaper clippings for us in order to do our work, or a group of people who will prepare a brief to bring to a committee at various levels, or people who will assist us in developing a program to bring into the schools to attach to their established curriculum about corrections and so on – it is where they have become personally involved that the education part really works.

We have all seen television and we all go to the theatre, and so on, and you have to be pretty well skilled to communicate the message through these media in today's society, it seems to me.

Senator McGrand: Just following on from that, you mention in your summary a residence for ex-inmates. Are you referring to females only, or are you referring to both men and women? There has been a suggestion that inmates could be boarded in private homes, but the idea of a criminal on parole boarding with an elderly couple was considered dangerous by a great many people. They drew mental pictures of these dangerous people living in homes with gentle old-age pensioners. I must say that I was very much in favour of this plan in selected cases. Would you be good enough to discuss whether you were referring to women only, or to men and women, and the problems that could be encountered in such a program?

Mrs. Freedman: Well, two of our societies run community-based residential centres. The Toronto Elizabeth Fry Society has provincial inmates or women in trouble with the law in their home. We have seven residents in our home who are on back-to-back temporary absences or day parole. The Kingston Society, and, I think, all the Elizabeth Fry Societies of Ontario, support the idea of community-based residential centres particularly for women because we are more informed about the women, and also because we feel that women, whenever possible, should go to their home communities.

To define "home communities" is very difficult; it is not necessarily the place where they were sentenced, but the place where they have ties and the community to which they will return. We feel they should have the chance of going into these communities.

Senator McGrand: What is the problem faced when an inmate,–and we will say it is a woman,–is taken into the home of an ordinary couple? What problems do they face? Is theft one of the problems?

Mrs. Freedman: I think one problem that is always apparent is the apprehension of the people who may be opening their home to someone with a criminal record, unless they are thoroughly prepared for the kind of individual who is going to be in their home, not just the type of person, but the specific person and the compatibility between that person and the couple in the home that that person is going to. There may be problems in this connection and that possibility has to be carefully studied on an individual basis.

Senator McGrand: You have had some experience in this. So what is the problem that comes up? I just mentioned theft as one example. Is theft one of the problems? Is there a fear that these people may steal something valuable from the home and walk away with it? You must have some experience in this field.

Miss Haslam: We have quite a lot of experience actually, and I think the first problem is the fact that we are dealing with adults, and adults usually do not like to be placed somewhere. So there is, first of all, the problem of finding a home which is compatible both ways. Sometimes you get a person who has had very limited social experience placed in a home where the social mores are different from his or her own, and I think there is a necessity for matching there.

Further, I think that one of the problems, certainly for a fair number of people, has been that of alcohol. More often we are

dealing with older people in this area and alcohol has been a problem. It works both ways. I can remember the case of an older woman who was working in a home and she seemed to be quite happy, and then she said that she really did not think that she could make it because she felt they constantly just did not believe her and did not have faith in her. She said, "You know, if you come to the door and you have been out for the evening, and you ring the doorbell and the lady opens the door like this and leans forward and says, 'Did you have a good evening? '" And she said, "You know, the constant reiteration of saying things like, 'Thank heavens she is not drunk tonight! '" Now she had not had any liquor when she was in the home, but this was her problem and the person in the home knew it. We have had very little experience of people staying in homes stealing from that home.

Senator McGrand: Very little experience?

Miss Haslam: Yes. Again, you see, it depends a little bit on the kind of way in which people function. In the case of an alcohol problem you have people who say, "Well, I left the alcohol all out because I wanted to show her that we trusted her," and they had already been told that this person was having great problems with alcohol, and such a person can get lonely and start to drink.

I think there are times when people may steal from the home in which they are placed and where, in a sense, the wealth of the home is almost being pushed at them; but I really think the problem is much more a question of inadequate preparation, as has been suggested, and interpretation, and also of setting up an opportunity for both sides to talk with an outside person.

It sometimes amuses me that people talk about the fact that they would be afraid to have this kind of person in their home, when they have had somebody come and tell them a little about the person and when they know where the person came from and they know what their problem is and everything else. At the same time they will rent their room to a person off the street who may have a far greater problem and who may be a much greater danger to them.

Senator McGrand: Well, you have been dealing with women, and perhaps you would not want to discuss men, so perhaps I should save questions in that respect for the John Howard Society.

Miss Haslam: Perhaps that would be better because our experience is limited.

Senator Lapointe: Are these persons paid for receiving former inmates into their homes; and, if so, how much are they paid?

Miss Haslam: Where people have gone into a rooming house or a boarding house and this is a commercial business, then they have paid and the person just accepted them. In some cases it has been a work arrangement, where the person is staying in the home and in return for room and board gives some help in the home.

Senator Lapointe: Are they screened before being accepted?

Miss Haslam: We want to screen both sides, both the home to which the individual is going and the person who is going to the home, because there are some people who want only some cheap labour. It is much more a question of providing a place where the person can go and see whether this is a home in which she would be comfortable.

Senator Hastings: Do you supervise men and women, or women only?

Miss Haslam: Primarily the Elizabeth Fry Societies have supervised women, but more recently some of the branches like Kingson have been supervising men. The Toronto Elizabeth Fry Society has been doing community assessments of men. Where a family is involved we have quite a good deal to do with men because where there are women there are frequently men and what with husbands, common-laws, and boy friends we may be doing quite some work with them.

Senator Hastings: I should like to return, if I may, to my original thought in dealing with failure on parole–which I know is going to lead to a question from Senator Denis. A failure on parole can be a success, and the Elizabeth Fry Society does not accept the suggestion that is being made that a failure on parole should not be considered again for parole.

Miss Haslam: I would disagree with that.

Senator Hastings: You would disagree?

Miss Haslam: Yes.

Senator Denis: According to your experience what is the main reason for either the first or second failure? Is it work, bad habit, or is it the good or bad treatment they receive in the prisons? What is the main cause for a man again becoming an offender?

Miss Haslam: I speak in terms of women because that is my experience. I think the first reason people have failed on parole is because they did not really anticipate the pressures they were going to be under when they came back into the community. In a sense, they were not prepared to be released on parole. People feel that because they have been out of the community the conditions in the community have changed and they will be able to fit in. They may not have been prepared to work closely with their supervisor and to meet those kinds of pressure.

I think the second reason people fail is that many of them begin to work in the community for the very first time in their lives. They come back to the community, and many of them have not had any prior employment experience in the community. The institutions are not set up to give a person the opportunity to do a full day's work with the kinds of pressure they face when they get out into the community. They are released and there is difficulty, let us say, in adjusting to working in a factory. You get the kind of young person who tends to react and say, "Oh, to hell with you, I'm getting out! " This does not work too well. Or you get the kind of person who feels she is doing well but is not receiving any support from her supervisor; and that is it for her.

I think the third reason, and perhaps one of the most important, is the question of loneliness. When a person comes out of an

institution where everything tended to be fairly well structured, and where there was always someone to talk to, where there was neither a sense of loneliness nor a sense of anxiety about what was going to happen in the future; and then she comes into the community and feels lonely and may very well move back into contact with people who will re-introduce her to criminal activities.

I think these are our experiences; but Mr. MacLatchie may have more to add to this discussion.

Mr. MacLatchie: The only thing I would add is that you must never forget the burden of the stigma these people have to carry, and the kinds of decisions and fears that hang behind just about every contact they have with the community. Whether or not their anxieties are real or merely perceived this is significant to them and they must cope with it on a daily basis.

Senator Hastings: Having listened to your reasons, parole failure is not their fault. They really did not blow it, as has been indicated. We should be assuming a bit of the responsibility if we are not preparing them, for the reasons you have given.

Senator Lapointe: You must not exonerate these people in your efforts to be kind toward them. We recognize they are not the only ones who are responsible; but you seem to exonerate them on all counts.

Senator Hastings: I am not exonerating them. I am sharing the blame. The witness has nodded her head and this will not show on the record.

Miss Haslam: I am saying that I think it is a shared responsibility.

Senator Denis: I think that perhaps society is not ready to accept them either.

Senator Hastings: In certain quarters, that is right.

Senator Lapointe: When she is in this home does the woman feel so comfortable that she does not want to leave, or she does not want to accept her own responsibilities, or to return to her own home?

Miss Haslam: That is right, yes. Certainly, one of the things that a person who is responsible for a resident must watch for is that they do not make a person totally dependent so that they want to stay on. Most residences, I believe, have a policy where there is constant discussion with the young person regarding why she wants to stay in the residence—is it really giving her anything? Should she not be moving out? I think moving out, and helping her to move out is important.

At the same time, I think that as a community we need to recognize that there are some people who are so limited, perhaps in intelligence, in health, or for a variety of reasons, and that they may need a constant setting where there is assistance for them, perhaps a sheltered workshop or a residence with that kind of facility—not in a custodial sense but as a facility available for them. Perhaps the residence part of the situation is more in terms of moving into homes which are prepared to take them, or it may be that we need some residences where people can stay happily, comfortably, and out of trouble for the balance of their lives.

Senator Lapointe: Are you preparing, for example, the husband to take her back?

Miss Haslam: Indeed, one of the jobs of a social worker in an agency such as ours is to help that person build relationships with people in the community who have meaning to them. This means getting in touch with the husband and finding out whether or not the husband is prepared to take her back, or whether or not she is prepared to go back to her husband. Where there is a lot of misunderstanding, the period of time she spends in residence may provide opportunities for these two to meet together without immediately moving back together. Gradually this relationship may build in such a way that the person is received back into the home which is prepared to receive her and to which she is prepared to return.

In other instances, I think our job is to help the woman understand that moving back into her own family home, or her parents' home, is really unlikely to work; and she cannot go on using this as an alibi for committing crimes for the rest of her life. She had better accept this fact and try to find other ways of getting satisfaction. This is true for men, as well.

Senator Denis: Does the situation occur where people on parole tell you they wish to return to the institution because they receive better treatment in prison than in society?

Mrs. Freedman: I think we have had instances where that has happened, where a person feels uncomfortable in the streets and that he or she feels more secure in the institution. I think a lot of counselling is needed as to why they feel more comfortable in the institution than they do in the community. This is a prime example of where there is constant need for counselling, not only with that person, but with people who are immediately related to him—his employer if he has one, his wife, his family, his parents.

Senator Hastings: What percentage would be in that category?

Mrs. Freedman: I cannot give you the statistics.

Senator Hastings: Would it be a few, or many? I think it is important to clarify that answer.

Mrs. Freedman: I think it is a small percentage of the women with whom I have been associated.

Mr. MacLatchie: I would say it is a small percentage.

Senator Hastings: Very small.

Miss Haslam: This is a very good argument for parole, and not too late in their sentence either. My experience is that people who feel this way become so dependent, not on the halfway house, but on the institution. They become institutionalized and then it is very difficult to get them out. So let us get them out on parole as soon as possible.

Senator McGrand: You mentioned that he felt secure. Is the security of the individual the basis of this whole discussion?

Mrs. Freedman: Yes, I think so. One basis for granting parole, in my opinion, is the ability of the individual to go into a community and feel some worth. I feel particularly that women who are incarcerated, or have been, do not feel very much self worth. The longer they are incarcerated, the more they lose their self confidence, if they ever had any to begin with.

Senator McGrand: Yes, but most people commit a crime for security. They rob a bank to get a few thousand dollars to achieve security in the first place.

Miss Haslam: Financial security is seldom, in my opinion, the basis on which women commit crimes.

Senator McGrand: I am thinking mostly of men, I suppose.

Mrs. Freedman: A great percentage of the women in penitentiary have some sort of addiction problem, whether it be alcohol or narcotics. I think this is something that must be considered. The list may indicate that they are in for fraud, theft, manslaughter or something else, but they have some problem other than that. In a great percentage of cases it has to do with an addiction problem, either alcohol or drugs. To get to the basis of why they need dependency on some sort of chemical is an important matter.

Senator McGrand: That is security; they are looking for security.

Miss Parry: It is a reflection of a basic insecurity, I would say.

Senator McGrand: They are insecure, but they are looking for security.

Miss Parry: Yes.

Senator McGrand: While you are discussing this subject, would you comment with respect to the relationship of women to the battered child syndrome which is so common today?

Miss Haslam: We have a number of clients who have been in custody because they have been involved in battering a child. I suggest that perhaps your committee might like to have Cyril Greenland testify on this, if you are interested; he is an authority, and we are not.

Senator Williams: Can you tell me if the average age of inmate is becoming younger?

Mrs. Freedman: The average age of women in penitentiary is from 24 to 26 years, although I would not wish to be quoted on that. However, we have women from 18 to 65 years of age in federal penitentiary.

Senator Hastings: Has the average age been increasing, or decreasing?

Mrs. Freedman: That is a statistical matter.

Miss Haslam: It has been decreasing.

Senator Williams: An inmate who has spent possibly eight, 10 or 12 years in penitentiary and becomes qualified for parole seems to have a feeling that he will be returning into the society he left possibly eight or 10 years ago. However, society has changed, and he suddenly finds himself in a very strange atmosphere and becomes overwhelmed with fear.

Mrs. Freedman: This is a severe problem. Most women have not spent 10 years in prison. In my opinion, programs such as temporary leave are attempts to cope with this situation in order that a person does not spend 10 years in jail and return to a community of new cars, new fashions and the whole gamut of such things in our society which are completely strange to him or her. This is one reason why we must be very careful in ascertaining whether an inmate is not really ready for parole at an earlier date. Perhaps 10 years incarceration would be too long for quite a few people and a shorter period would have sufficed, with a longer period on parole, rather than serving their sentence within the institution.

Senator Williams: Parole being made available at an earlier date would help them to keep up with changing society?

Mrs. Freedman: Yes.

Senator Williams: In your opinion, that would be beneficial to them?

Mrs. Freedman: Yes.

Senator Hastings: Do you have anything to offer with respect to the statutory condition now of serving one-third of sentences?

Mrs. Freedman: I believe parole ought to be a part of the treatment process of the individual inmate. The parole date, or eligibility date for parole, should be constantly evaluated with the appropriate authorities, such as the Parole Service representatives who make the evaluation to the Parole Board, the classification department and any others within the institution who deal with inmates, such as the psychiatrist, the psychologist and the work officers who are responsible for work placements. A constant re-evaluation of an inmate's progress within the institution and realistic planning of that person's ideas of what he will do on the street when he is released on parole are necessary. With this constant evaluation there need not be an arbitrary one-third of sentence served before a person becomes eligible for parole. It may be longer, or far less than one-third.

Senator Lapointe: You suggest that the board's membership be increased. How many members would you envisage?

Mrs. Freedman: We have suggested regional parole boards, with an appropriate number of members on the National Parole Board to enable it to participate in regional parole boards with regional

representation. I do not know exactly how many members should be added. I think that depends on the final make-up of the regional parole boards, should that be a recommendation of the Senate committee.

Senator Lapointe: You say there is a long delay between suspension and the revocation of parole. What is the delay? Is it a few weeks, or a few months?

Mrs. Freedman: It could be a few months. The regional parole representatives attempt to interpret to the suspended parolee why the suspension was imposed and make an assessment for a final recommendation to the Parole Board. This may take some time, however, involving psychiatric evaluations and quite a few other processes. In addition, regional parole representatives are often over-worked.

Senator Lapointe: You say that during that time they are back in jail.

Mrs. Freedman: They are back in the jail.

Senator Lapointe: Does this time count against sentences? You speak of dead time. Does that mean it does not count toward the sentence?

Miss Haslam: Mr. Street, perhaps, could speak to that.

The Chairman: He is not a witness now.

Miss Haslam: Very often this time is spent in the local jail, not where they previously were. It differs among parole boards. I believe it does count, but it does not help in terms of the planning for that person.

Senator Flynn: It seems to me that most of these briefs are directed at the failure of imprisonment as a penalty for an offence of any kind. I wonder whether the witnesses before us today have ever thought of any other punishment than imprisonment? I am not referring, of course, to a fine, because that is reserved for statutory offences, but really to crime. After all, this is the thrust of the briefs we have heard. They criticize the effect of imprisonment on an offender.

Miss Parry: I think, sir, that we are criticizing imprisonment not in its failure as a punitive measure, which is not within our interest, but in its failure to serve as an adequate rehabilitative measure. I think it is a significant distinction.

Senator Flynn: To my mind, it is about the same.

Senator Hastings: Do you believe there is a place for punishment in the corrective process?

Miss Parry: That would be a rather personal and subjective opinion, frankly. It certainly forms no part of our Society's platform. We are interested in the rehabilitation of individuals in order that they can again function as useful citizens in the community.

Senator Denis: You remarked earlier that most inmates are there because of drugs or alcohol. Would you say that they are sentenced because of the crime of being an addict, or is it for a crime as a consequence of taking drugs?

Mrs. Freedman: I would say it was a consequence of an addiction problem. I think that some people commit some offences under the influence of alcohol. Others have committed offences for their need to support an addiction habit.

Senator Denis: Naturally, because they are addicts.

Mrs. Freedman: My personal feeling is that it is not necessarily because they are under the influence of the drug at the time, but because they are in need of finances to support the habit.

Senator Lapointe: Do you think that the amount of $415 a year is enough to supervise a parolee? Would it be better if you had a little more?

Mr. MacLatchie: I believe we addressed ourselves to that earlier. I think we are looking towards a system that would essentially be open-ended on a fee-for-service basis, as opposed to the way it stands now, which we understand was established by the Solicitor General's department in a massive survey of the number of parolees, treatment agencies, parole services, and so on. The answer, of course, relates again to the needs of the particular parolee and the kinds of services required to assist him in functioning adequately within the community. One can perceive any number of devices for that—an hourly rate, or something of that order, where the amount of time charged up against the parolee could be registered somewhere and paid for.

Senator Lapointe: Are you getting $415 automatically for every parolee?

Mrs. Freedman: We submit a statement at the end of each month to the accounting department of the Parole Service, of those people we have had under our supervision, which is verified by the regional Parole Service representative.

Mrs. Joan Moody, President, Toronto Elizabeth Fry Society: In reply to the question, I should tell you about what we do, which explanation might help from the financial point of view.

In Toronto, and in the other Elizabeth Fry Societies, we rely heavily on volunteers. We have at our residence three full-time social workers as well as our executive director. We also have about 100 active volunteers. Now, these people do a lot of work with people who come to us for help, and some of those are on parole. The reason I want to make this point is, it gets increasingly difficult to get people to act in a volunteer capacity, because people are getting more and more busy in this life of ours and more women are seeking financial employment in the community. So we have less volunteer time to drawn on.

I am not sure whether the community always realizes how much support they get in this free time. The sort of thing that happens in our residence, a girl will come in, will be admitted and invited to stay with us. She will get her counselling from the trained social worker. Now, a volunteer will be a tremendous back-up person here. A volunteer may have seen this girl in court and already have spoken to her about taking part in the Elizabeth Fry program.

Once she is in the residence, the social worker can get a volunteer to take the girl into the community, down to Manpower, to talk about getting employment. The volunteer can also be used to talk with people in the immediate community where this person has come from, to see about accepting her back into the area.

All this takes a lot of time. None of this time is chargeable to the government. This is all free time. When you are talking about how much it costs to rehabilitate a person, you cannot say, "Shall we give you $400 a year or $400 per person? " It is just going to start costing more, because you are going to be using less volunteer time. It is just not going to be available.

Senator Lapointe: Is the government aware of this problem?

Mrs. Moody: Probably not.

Senator Hastings: I think that essentially we are dealing with the Toronto brief.

I have one final question. I wonder if each witness can tell me how many years they have been in the correction field. Miss Haslam?

Miss Haslam: Since 1953–twenty years.

Mrs. Freedman: Eight years.

Miss Parry: Since 1969.

Mr. MacLatchie: Since 1970.

Senator Hastings: Would you say that your proposals, as contained in your brief, were based on the result of solid experience or academic theory?

Miss Haslam: Solid experience.

Senator Choquette: Do you pay occasional visits to these women's penitentiaries and interview the inmates before they are released on parole?

Miss Haslam: The Elizabeth Fry Society in Kingston is visiting them constantly. The staff from the Toronto society visits the prison every two months and spends two or three days getting to know the women who are going to be coming back into the Toronto area. So there is some relationship built between our staff and the prison before the actual release into the community. There is also help in terms of making community contacts which can be helpful to the person on release.

Senator Choquette: So far we have mentioned that some of the main causes why people are incarcerated in women's penitentiaries are drugs and alcohol. Do you agree with me that the greater percentage is for sex crimes, repeated crimes of prostitution, committing abortion, being aborted, and that there is lesbianism rampant in those women's organizations or institutions? Do you ever have complaints about that, that the guards themselves are out-and-out lesbians?

Miss Haslam: There are very few women in penitentiaries for crimes associated with prostitution. This is a summary conviction offence. Abortions: some, but not very many. In any institution, where you are separating the sexes one from the other and putting people under the kind of pressures that exist in an institution, there is a tendency for homosexuality to develop. and, certainly, the Prison for Women is no exception, although I think that in more recent years there has been a great effort to try to combat the very causes of this within an institution. Again, the use of day parole, the use of parole itself, is one way of meeting this problem, but I think we need also to realize that homosexuality with women, lesbian activity with women, is a very deep-seated psychological problem, which frequently has developed long before the person ever got into custody.

Senator Choquette: Did you ever have complaints from some of the inmates that guards of such places are out-and-out lesbians and encourage such practices?

Miss Haslam: In the Prison for Women?

Senator Choquette: Yes.

Mrs. Freedman: There have been those accusations from time to time. I have not heard them in quite a few years.

Senator Choquette: Because I have heard them. I have done a lot of criminal law work and I have defended two or three women abortionists. Some of them served four years, and they came back to me and said, "It's amazing what goes on in those institutions. The guards are out-and-out lesbians." And I said, "Report it to the Department of Justice." It was done, but they did not believe it at all. Are people inventing these stories? I am wondering. That is why I am asking you the question.

Mrs. Freedman: There have been matrons from time to time who have been dismissed on those grounds, but right now, at the Prison for Women, there are quite a few males on staff. With the winter works project there is more male staff than there has ever been before, which counteracts lesbianism to some degree. There are males coming into the institutions in terms of volunteers for special reasons and special purposes. I have been going in for eight years, and I do not see it as a severe problem within the institution in terms of staff and inmate lesbianism.

Senator Lapointe: Are there female members on the National Board and the provincial boards?

Miss Haslam: There is one woman on the National Parole Board; there has been one woman on a provincial parole board, I believe, but I am not altogether certain about that.

Senator Lapointe: Would you suggest that there should be more?

Miss Haslam: I think there are many women who would make a very great contribution to a parole board. I feel that anyone coming on to a parole board ought to be chosen because of the contribution they can make. This would probably be one factor in getting balanced boards.

The Chairman: The Toronto brief suggests a close liaison between the Parole Board and the institutions. Are you suggesting a form of integration of the penitentiary and parole services?

Miss Haslam: In that recommendation I think we are trying to point out that sometimes within the institution programs are developed and a person involved in a program, and this is sometimes not recognized by the Parole Board. The type of thing that sometimes occurs is that you get a person out on, say, day parole where she is getting to the point of feeling secure within the community and to the point of moving forward with this amount of support and the tendency is to say, "Well, this person is okay; she can go out on full parole", whereas that may not be the best thing for that person at that moment.

On the other hand, there are other times when the institutional people feel very strongly that a person has reached the peak of what she can gain from the institution and that if she remains much longer she is likely to deteriorate in her attitude, her abilities and her readiness to fit back into society. However, in the sharing of this information, perhaps because of the limitations that are put on the Parole Board itself in their own regulations, it is not possible for that person to leave the institution at that time. I think this is rather the type of thing were are referring to in our brief.

The Chairman: You suggest the possibility of amalgamating temporary absence and day parole.

Miss Haslam: Providing there is this type of close liaison. If the regional parole boards are there, then it is possible to move people more readily. At the present time, it seems to me, there is no real clarification regarding the differences between these services.

Senator Hastings: Have we moved to the Toronto brief, Mr. Chairman?

The Chairman: Do you have some questions, Senator Hastings?

Senator Hastings: I yield to Senator Lapointe.

Senator Lapointe: In your brief you point to the unsatisfactory experience for those who have to accept mandatory supervision and the problems which it creates. Which problems are they?

Miss Haslam: I think they stem back to the whole question as to why there is statutory remission in the first place. The inmate tends to feel that this is something that is his or hers and suddenly they are told that they must have supervision at this period. In other words, she says, "I was to be free and now suddenly I am not free; I have to have supervision." I would question the whole basis of statutory remission as much.

Senator Lapointe: Would you want to abolish it or submit it to other kinds of regulations?

Miss Haslam: I wish someone could explain to me why we have it. If it is a question of control–"If you are good, then you will get these days off and once you get them off, then they are yours," sort of thing–that is one thing; but then we turn around and say, "But when you get out you will be supervised as you would be on parole, and you may lose those and be brought back again."

If we look at the total sentence and the most effective way of helping this person all the way along, then it seems to me that statutory remission just does not seem to fit in too well. The inmate sees it as double talk. On the one hand we say, "Because you are good, you earn it; and because you are bad, you lose it."

Senator Lapointe: But, actually, even if they are bad they get it.

Senator Hastings: No.

The Chairman: You are talking now of statutory remission as distinct from earned remission?

Senator Lapointe: Yes.

Miss Haslam: Yes, everyone gets statutory remission, but why do we suddenly say, "Okay, you are sentenced to three years and one year will be statutory remission"? I do not know whether I am correct in quoting these figures or not.

The Chairman: It is one-quarter of the sentence.

Miss Haslam: So, if they are sentenced to four years they serve three years. What we are saying in our brief is that we would like this whole question of statutory remission looked at, bearing in mind its validity in the present penal system. We do feel that it is a good idea to have everyone released under parole supervision. However, to base it on statutory remission for many people seems to us to be just out of keeping with the whole philosophy and policy of parole and the idea of when the individual needs this help.

Senator Lapointe: In your brief you say that the volunteers should be drawn from as wide a group as possible. First of all, do you have societies in small towns?

Miss Haslam: Two of the smaller centres would be Peel-Halton and Sudbury. Hamilton, Toronto, Ottawa and Kingston, in Ontario, and Vancouver, out West, are the larger ones.

Senator Lapointe: How do you manage to get volunteers in a small town? Are they as numerous as you would like?

Miss Freedman: We are trying at this time to start a chapter in Napanee, Ontario, which is where the regional detention centre is located. It is sometimes difficult to get volunteers because they are not used to having a penal institution in their area. Generally speaking, the people who are already interested in doing something for other people are the ones who have volunteered their services in setting up a core of volunteers to get the society started. This, as I say, is a very small community.

Senator Choquette: There was a time when the provincial court judge, if he wanted to make sure that the person remained in jail, let us say, two years, would hand down a definite term of sentence together with an indeterminate term, which meant that the person had to serve two years with no possibility of being released on parole.

Are your hands not tied in such cases, or is that type of sentencing still being carried out?

Miss Haslam: Sentencing procedure in Ontario for women is different than that for men. They are regarded as totally indeterminate sentences and are dealt with by the provincial parole board.

Senator Choquette: So you can start working on the future parolee at any time.

Miss Haslam: That is right.

Senator Hastings: I should like to return, if I may, to the matter of the volunteers and Mr. MacLatchie's comment with respect to the need for involvement. The suggestion has been made and will be made to the committee–and I should like you to comment on this–as to whether or not these volunteers would be overly sympathetic towards the liberty of the individual and the cause of rehabilitation. The theory is that the use of volunteers would, unfortunately, include do-gooders who would not have the proper training for the supervision and counselling of parolees, and whose judgment would be impaired by the doctrine of appealing to the good side of the individual rather than being fair and firm. Would you like to comment on that?

Mr. MacLatchie: I shall be happy to respond to that. I think about this type of thing in historical terms. Social agencies, as you know, historically were organized as groups of volunteers who wanted to be beneficent and helpful, and now gradually all social agencies, as we can see, are changing over to professionalism and are reducing the rate of volunteers.

I believe that today we are into a new kind of synthesis, if you will, of the professional and volunteer. I would dare say that in the use of volunteers it is essential to provide training, education and support, and I believe we have the capacity to do this. It requires adequate job descriptions, adequate screening measures, adequate reorientation programs, on-going supervision and support for volunteers, and so on.

We are also at a time, certainly in this country, when volunteers are coming forward at a greater rate. There is much more concern among people in the community today. Only five or six years ago it was very difficult to find volunteers. The attitude then was, "Well, that is what the social agency is for, that is the kind of work it is doing." Today there is much more involvement, particularly by the young, a desire to be part of the community and do something actively, and it is meaningful to them. It can be done, and I do not see why we should not capitalize on it.

I might add that with the changing role of women in our society and the freedom and education they have generally for voluntary work, being able to provide baby-sitting for their own families while they go out and do this kind of thing for us under our supervision, certainly makes for an exciting time for these volunteers, and I do not see why they cannot contribute more. They are there, and we know they are there.

Senator Lapointe: One of your colleagues said a moment ago that there were fewer volunteers, especially among women, because they were too busy working at full-time jobs.

Mr. MacLatchie: Our experience has been that we are getting more volunteers from among women whose children are in school or are getting older and can essentially take care of themselves after school. I cannot speak for the other societies, but certainly in the Ottawa Elizabeth Fry Society we are seeing more of them.

Senator Hastings: I can never understand the premise that when a volunteer makes a suggestion it is considered as based on sentimentality or emotion, yet when the police make proposals they are always said to be based on solid experience.

Mr. MacLatchie: The combined experience of our society, which has been operating programs for well; nigh two decades in prisons, detention centres and jails, and working in this field, is that we have not too many problems in respect of the kind of training programs and on-going support that we can provide. Remember, as I said before, the importance of this as a public education vehicle.

Miss Parry: I think it is also important to emphasize that our use of volunteers is selective. Not everyone who comes to the society and says they want to be a jail visitor is considered suitable to do it.

Senator Hastings: They are screened.

Miss Parry: There is an automatic screening process. On that basis I think it is fair to say that, while our viewpoint may frequently differ from that of the police, it is not to say that we are all sentimantalists.

Senator Hastings: I agree.

The Chairman: I have told that you need the volunteer to offset the bureaucratic tendencies of the professional. Is that right?

Miss Haslam: I am sorry I have been overpowering!

Senator Hastings: Excellently put, Mr. Chairman.

Senator Williams: How much briefing or instruction do you give a volunteer?

Mrs. Freedman: It varies from society to society.

Mr. MacLatchie: It varies depending on the task as well. A volunteer coming to the Elizabeth Fry Society might be involved with a client or a parolee in some fashion or other under the guidance of the professional staff we have. On the other hand, they might be involved in preparing a brochure for us, or in undertaking a public speaking engagement. The training required is related to the specific task.

I do not think we have the capacity to train a volunteer for all purposes for our society. What we have to do in reality is to clearly define our tasks. If it is a jail-visiting task, for example, the person concerned will be advised about the jail regulations, the kind of routine we have been in, the kind of relationship we wish to establish, and the kind of resources the agency has behind that visitor. They are likely to go in with another experienced visitor, and will be essentially counselled out if what they are telling us differs from how they behave in the institution itself. There are any number of other mechanisms. We have a responsibility to fire volunteers who are not responsible, even after the fact, if we have missed this in our screening.

Senator Williams: I realize it is impossible to train every volunteer, and that is the reason I use the word "briefing." There are the people who will be in direct contact with the individual as an inmate. I suppose a lot depends on the age of the volunteer and the age of the inmate; there could be a barrier or a difference.

Mr. MacLatchie: Oh yes.

Senator Williams: This is all taken into consideration?

Mr. MacLatchie: Certainly; most assuredly.

Senator Lapointe: Should the parolees in the residence do some kind of homework or not? I am referring to participating in work in the house.

Mrs. Freedman: All our residents participate in the upkeep of the house by keeping it clean, keeping their own rooms clean, cooking and so on. In our house we try to get them involved in community activities as much as possible, according to their needs and desires, rather than bringing the community activities into the house. If they are interested in theatre, ceramics or something else we try to provide a volunteer to get them slowly integrated into that kind of community, whatever it is they are interested in, such as parents-without-partners, daycare centres and all those kind of things, rather than bringing those things into the residence. If they are working during the day, whatever their interests may be we try to get them adjusted to going into the community for those activities, rather than bringing the activities into the residence.

Senator Hastings: Do you have one house in Toronto?

Mrs. Freedman: One house in Toronto, one house in Kingston.

Senator Hastings: How many women are in the house?

Mrs. Freedman: In Toronto?

Senator Hastings: Yes.

Miss Haslam: We have accommodation for 14. It averages about nine or ten.

Senator Hastings: I am a great supporter of the residence as a stepping-stone out to society, for the reasons outlined in the brief, but there is one thing on which I should like to ask a question. You refer to counselling staff who can help people who use the residence. I find the biggest problem is to get the individual to use the counselling, and I would like to know how you counsel clients who just do not want counselling. The centre is the stepping stone out, but most of the clients are not willing to be counselled; they want out; they just do not want any counselling.

Miss Haslam: This is one of the areas where there is a breakdown. They do not feel they need any counselling. They feel they can make it, as some of them can, when they get out. Perhaps this is one of the areas where it is easier working with women than with men. We have found that where a contact has been made with the women in the institution she is usually prepared to continue with counselling. With the girls in the residence we go through two periods. One is where she is sort of testing out whether she wants to stay in the residence. It may be that the residence is the worst place for her to stay and she would be better in the community. The very fact there is this period during which she can make up her mind before deciding whether she will stay on in the residence means that if she decides to move out she then feels free to come back for counselling. This does happen.

Senator Hastings: How often does a person come back?

Miss Haslam: If they have been in the residence even for a short time, I would say it is very high—70 to 80 per cent.

Mrs. Freedman: I agree.

Senator Hastings: This is one of the great problems. I do not know how you impress it upon your clients, that there is a place to go for assistance, but to get them to come there . . .

Miss Haslam: The original idea, of persuading them in the institution or persuading them when they were in court, with the idea that they need help, I think this was the difficult period; but once they have made the move, then the help they are getting and the feeling of support and the feeling that there is somebody that understands what they are going through and helps them through it, is the kind of reason they keep coming.

Senator Hastings: How big a staff do you have in Toronto?

Miss Haslam: We have three social workers.

Senator Hastings: Three social workers. It seems to me that it is part of this "we-they" syndrome that continues to exist with your clients, that "we" do not understand "they" and "you" won't—"if I

come to you with my problem you just do not understand me and I always slip into that other area where they know me and they know my problems."

Miss Haslam: This is the problem, certainly, but one of the advantages is that we usually have staff stay for some time, and we find that one girl will tell another girl and say, "It is okay, you can go and talk. They do understand; they do not get shocked; they will not condemn you; they will help you."

Mrs. Freedman: It shows the advantage also of an after-care agency, a private after-care agency, rather than the "we-they" penitentiary parole inmate system. It is a sort of stepping-stone to the ultimate authority, although as an after-care agency doing parole supervision we have authority to recommend for parole or against parole to the National Parole Service, which makes the ultimate recommendation to the Parole Board. We are not seen as that authority, and therefore we sometimes get the confidence of the women and have this relationship because of our position as a voluntary after-care agency.

Senator Hastings: The reason I am pursuing this is from a great deal of experience with the community correction centres, which are community-based services run here by the Canadian Penitentiary Service, which I support and agree with; it seems that the difficulty is not the shortage of counsellors but the shortage of inmates who will acceept counselling.

Mrs. Freedman: Perhaps it is the way the Penitentiary Service is run. They are community based residential centres rather than the ones run by the after-care agency. There is a move now to make a co-operative venture with these things, having parole, penitentiaries people and community people, involved in the management and program planning in these centres, which would make it a more cohesive effort and would tend to solve some of those problems.

Senator Hastings: It seems that they just move from the institutions to the centres.

Mrs. Freedman: To a smaller institution.

Senator Hastings: To a smaller institution, but the same attitude seems to exist between the staff and the client.

Mrs. Freedman: We do not find that in our half-way house.

Senator Hastings: You said they have moved to this concept. Where?

Mrs. Freedman: We are talking with the Penitentiary Service now, regarding another half-way house.

Senator Lapointe: Are you establishing some quality standards for the work of your different branches? Is someone looking at that, to see they observe some standards of quality?

Mrs. Freedman: We have our provincial council. We are all autonomous agencies, with our own funding, with our own constitutions and with our own way of managing our societies in the various areas. We feel that if any of the other societies across Canada, or emerging societies, wish advice, we have given them advice in setting standards and qualities. It is something that we are not prepared to do on a very systematic basis, because we do not have any funding, for our body at either the provincial level or the federal level, to have someone that is there all the time to give advice to a new emerging agency, although the existing agencies are willing to help any emerging agency in this kind of a plan.

Senator Lapointe: Is there a central authority which supervises the other ones?

Mrs. Freedman: No. We differ from the John Howard Society in that way.

Mr. MacLatchie: I would like to add, before we leave half-way houses, and the role of a half-way house, as such, in the system and as an alternative for a judge who would prefer to have a different facility than the penitentiary or jail to send a woman to—which is a very important kind of concept, in our opinion—that right now in Ottawa there is no half-way house. We are hoping to open one, with some luck, in June 1973. This is certainly one of the things that seem so important to us, to have an alternative for the judge, where again the institution or the penitentiary facility might not be suitable in some cases.

Senator Lapointe: Do you make a distinction between a half-way house and a residence?

Mr. MacLatchie: No, not necessarily.

Miss Haslam: I think we would make a distinction here, because we feel that a residence is a part of a total service, whereas a half-way house tends to be more often connected in the public's mind with a place where you go when you come out of prison.

Senator Flynn: This is an interesting suggestion, and I think it goes to the point I raised. Instead of sending someone to jail, you send someone to the half-way house; just like you do with boys, you send them to a boarding school. I was sent to boarding school when I was young and I did not like it very much. I do not know if it did me any good, but I suppose it was better than If I had been in jail!

The Chairman: You were still able to become a senator.

Mrs. Freedman: In some sections of the United States they are not only experimenting with this kind of program, of sentencing people on first offences, no matter what the mandatory minimum length of sentence would be, to a short stay in a community-based residential centre, to get away from the concept of just a half-way house, or sentencing them to a term of seven years, six years or three years, or whatever it is, putting them in a penitentiary for maybe six weeks, two months, and then releasing them and if they violate any of their conditions they would have to go back to the institution and serve that sentence. So it is a total concept of the whole idea of parole, too.

Senator Lapointe: Is this what you call "the more imaginative views" of the sentences?

Mrs. Freedman: Yes.

Senator Hastings: What do you mean, under "Purposes of parole, section (d)–Conditions of parole should be developed to meet the needs of the specific person? "

Miss Haslam: I think we were meaning that the person is within the institution. There are some people where perhaps the circumstances surrounding the committing of the offence are such that, with a relatively short period of time in custody, there is an opportunity to sort out the kinds of things that created the problem that got them into custody, rather than to continue keeping them in custody longer which may result in their deteriorating rather than their being helped. So they then might be released earlier. This is one of the kinds of conditions. The other thing is that if there is a case where there may be pressures and where it may be obvious that the person is under those pressures, if a condition can be written into their parole that would help that person in meeting that pressure, then that might be an advantage.

Senator Hastings: Is that not the case at the moment?

Miss Haslam: Not particularly. By and large, one would hope that conditions would be kept to a minimum, but there are times when this can be helpful.

Senator Hastings: Can you be specific about that? I believe that is exactly the way it is now–that it is all on a personal basis, that the board interviews the man and grants parole and the conditions are put on there to meet his specific problem or to try to help him to meet his specific problem.

Miss Haslam: It might be that if a young person were coming up for parole and there was a feeling that this person should stay within some kind of controlled setting during the time that she is on parole, or that it should be for a period of three months and then reviewed, that might be a type of condition.

For instance, I think that it used to be that alcohol was more or less routinely put on, and that you were not to have anything to do with alcohol. For the most part that is now changed, I believe, although it is still true in some jurisdictions. For many people alcohol is not a problem, and for a condition like that to be put in perhaps there should be some good reason why it is put in. In other words, rather than a condition should be written in there as a blanket condition, there should be some good reason for it. At any rate, with the exception of Ontario, I do not think that such a blanketing condition does apply at the present time.

Senator Hastings: With the greatest of respect, I disagree. I think that the conditions that are put in there are put in there for specific reasons. The problem is to convince your client that it is in his best interests that those conditions are in there.

Miss Haslam: I sit corrected, but the point we would like to ensure in any question of parole is that any conditions that are in any parole set-up should relate to the need of the person and not to a blanket kind of need. But, yes, there has been a change in the last few years in the national parole.

Senator Lapointe: Of the women in custody, are single women more numerous than married women? By "single" I mean single, divorced or separated? Are they more numerous than the married women who are convicted?

Miss Haslam: Of the ones who get into custody, yes.

Senator Lapointe: The single ones are more numerous?

Miss Haslam: The single ones are more numerous, yes.

Senator Lapointe: Is part of your work caring for the children left at home by the woman who is in prison?

Miss Haslam: No. Quite often the girl wants word of her children and we will find out about how they are doing and so on; but, no, that is not our job.

The Chairman: If there are no more questions, I want to thank the representatives of the Elizabeth Fry Societies for coming before us today and presenting these very helpful views.

Senator Denis: Mr. Chairman, I would move that the two briefs be printed as part of today's proceedings.

(For text of briefs see appendices "A" and "B").

The Chairman: The committee is now adjourned until two o'clock this afternoon.

The committee adjourned.

APPENDIX "A"

A BRIEF SUBMITTED TO
THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

BY

THE ELIZABETH FRY SOCIETIES OF THE
PROVINCE OF ONTARIO

The subject of Canadian parole policy is of immediate interest to the Elizabeth Fry Societies of Ontario who, as volunteer agencies, have entered into agreements to assist the National Parole Board in the rehabilitation process of parolees. Accordingly, we respectfully submit the following comments for consideration by the Standing Senate Committee on Legal and Constitutional Affairs.

In principle, we believe that parole is an essential step in the integrated rehabilitation programme which should begin as soon as an individual is sentenced to a term of imprisonment. Ideally, this process will culminate in the successful re-establishment in society of the ex-offender.

We recognize the primary administrative responsibility of the National Parole Board and Service in this sphere, and their component status in the "social defence net-work" described before this Committee by the Solicitor General, and we welcome the prospect of additional policy reforms and advances.

We support the Ouimet Committee's recommendation that the provincial parole boards should assume responsibility for inmates in provincial institutions, and that the National Parole Board's responsibilities should be continued to those individuals serving sentences in federal institutions. This would avoid much of the current duplication and overlapping of authority that at present exists between Federal and Provincial parole for those in Provincial institutions serving a combination of definite and indeterminate sentences. It would also ensure that everyone serving a sentence came under the jurisdiction of a parole authority. At present this is not the case.

We believe that the payment of Fees for Services is the most practical way for the Department of the Solicitor General to obtain the assistance of volunteer agencies in supervision and rehabilitation of parolees, but we are convinced that the present financial arrangements are, in general, insufficiently flexible, and, in some cases, patently inadequate in view of the supervisory time required for each parolee. The present rate of payment was apparently calculated on the basis of a large caseload, and with a projected estimate of three hours' counselling a month for each parolee. Our experience indicates that re-establishing some parolees in the community requires considerably more time than this. For example, helping a female parolee find suitable accommodation and employment can be very time-consuming and it is our experience that she needs and depends upon the supervisor as an acceptable social contact. We believe that parole supervision should be provided according to the needs of the individual and that the existing hourly rate, with no ceiling, should be established, so that clients can receive more personalized and effective supervision.

Almost all those serving terms in prison will someday return to the community. One way to prepare the community to accept these persons is to have an effective public relations programme emphazising the prositive side of rehabilitation and parole. Cooperation between governmental parole services and voluntary after-care agencies, besides increasing the number of professional staff workers capable of sharing responsibility for parole supervision, ensures individual and community involvement and interest, in a spirit of participatory democracy, in the subject of parole. This involvement will inevitably do much to dispel the concept of the ex-inmate as a social outcast or as an individual to whom the ordinary citizen cannot relate.

We consider this public and social education role to be one of our most important functions, and one which will encourage acceptance of under taking the individual's rehabilitation within the community in as many cases as possible. The Parole Service, together with voluntary agencies, can, through administrative coordination and frequent consultation, develop satisfactory quality standards for agency involvement.

Unless there is compelling evidence to suggest that an inmate is dangerous either to himself or herself or to others in the community, we velieve that he or she should be eligible to be considered for parole.

With maximum client benefit as the determining criterion, we suggest that the Parole Service direct the establishment of comprehensive aftercare programmes for all regions and, in consultation with volunteer agencies, special programmes for districts within each region.

In our opinion, the two roles presently the responsibility of the Chairman of the Parole Board, that of chairing the Parole Board and supervising and directing the National Parole Service, should be divided. We therefore support recommendations 1 and 2 of Chapter 18 of the Report of the Canadian Committee on Corrections namely:

1. The independence of the National Parole Board be formally acknowledged by legislation freeing it from the possibility of ministerial direction in any aspect of the function of the Board or any member of the Board.

2. The National Parole Service should be by legislation directed to supply services as required by the National Parole Board and be made directly accountable to the Department of the Solicitor General.

The present set-up of the National Parole Board which requires members to travel throughout the country and which limits the amount of time available for individual cases, may result in an inadequate evaluation by the Board of an inmate's readiness for parole and chances of success. Conversely, of course, parole hearings presided over by regional boards composed entirely of local citizens might be less objective towards individual inmates known to them, and more parochial in their viewpoint on parole policy.

For these reasons, we recommend a compromise whereby local boards could be appointed and a member of the National Parole Board serve as Chairman. Such boards should be required to include some minimum number of professionals from the field of Crimino-

logy, Social Work or Social Services, and, the National Parole Board could act as an appeal tribunal in cases where the inmate disagreed with the local board's decision. In certain cases, perhaps those involving a sentence of more than five years, the National Parole Board might have exclusive jurisdiction.

If procedural changes were not adopted, it seems that the most effective way of lightening the workload of individual Parole Board members would be to increase the Board's membership even more than was done in January, 1970. Such a step would presumably have the added advantage of reducing the delay between suspension and revocation of parole, during which time inmates are serving "dead time" in prison. The heavy caseloads of parole officers may be another delay-causing factor. A partial solution to this problem may lie in increased contracting for parole supervision by suitably qualified private citizens, especially in smaller communities, thus abolishing the "absentee supervisor" syndrome. Such private volunteer supervisors would themselves have to be supervised under the auspices of the government parole service or of a recognized professional body.

In conclusion, we believe that parole is a valuable tool in the rehabilitation process which would be made available to as many inmates as possible. For women inmates, few of whom are classified as dangerous offenders, parole appears to be an accessible and practical means of accelerating rehabilitation and social readaptation. We commend the use of day parole during an inmate's sentence and urge the extension of this programme. We would favour a mandatory remission and parole policy in the cases of inmates serving sentences of more than two years. Under no circumstances should parole be refused because the inmate refuses to admit his guilt, or without the inmate being given a reason for the refusal.

Recent figures show that it costs an average of $10,400 a year to maintain an inmate in a federal penitentiary, but only $415 a year to supervise him or her on parole. Thus, a substantial financial advantage will accrue as the programme becomes more broadly bases. Moreover, the parolee is, in most cases, contributing to the country's economy by working, sometimes with upgraded technical skills acquired through training received in prison.

Public acceptance of parole will increase, we believe, if parole is presented as an important stage in the rehabilitation of individuals who were formerly inadequate members of society. As stated above, nearly all offenders will eventually return to society and therefore any programme that will help them adjust to society must be encourage and expanded.

June 1972.

APPENDIX "B"

TO
THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS
WHICH IS EXAMINING THE PAROLE SYSTEM OF CANADA

FROM THE ELIZABETH FRY SOCIETY, TORONTO BRANCH

July 18, 1972

We have noted with interest the many presentations which have been made to your committee. It is our desire to share with you ideas regarding various aspects of parole with which we have had direct experience and which may not have been covered in other briefs.

1. *VOLUNTEERS*

Ours is a voluntary Society in which we call upon the knowledge and experience of both volunteers and staff, who work together as a team. Because of this we have seen the benefits of involving volunteers in the area of parole. Some of these are:

a) The possibility of finding a volunteer who has common interests and concerns with the potential parolee and who can start to develop a relationship with the person while he/she is still in custody.

b) The introduction of the parolee through this volunteer to valuable community contacts and resources.

c) The availability of the volunteer (or group of volunteers) to the parolee, following release, as a person who can help him/her to meet some of the problems of loneliness, anxiety, fear, etc.

In order to get the maximum benefit of volunteer participation, it is important that volunteers be drawn from as wide a group as possible. Variations in age, in social, economic and/or cultural background will improve the chances of finding the right people to fit the needs of the widely assorted group receiving parole. For some parolees, the best people to help them may be those who themselves have served a sentence.

It should be stressed that if volunteers are to be used effectively, it is important that there be careful selection, placement and supervision of the volunteer in a job which has been clearly defined and in which the areas of responsibility are understood and accepted. Staff should be readily available to help the volunteer in handling emergency situations.

We would urge the increased use of volunteers in the supervision of parolees under these conditions.

2. *RESIDENCES*

The Toronto Elizabeth Fry Society has had the benefit of a residence which has been available for clients of our Society when, in the opinion of the staff member and the client concerned, a period in the residence would be of benefit to the client. Through the experience which we have had, we would see a number of values for the Parole Service if such residences were available for the parolee and we wish to bring the advantages to your attention. Some of these are:

a) Testing periods spent in the residence, prior to release on parole, can give the potential parolee and the staff of the agency some indication as to whether or not a group living situation is appropriate for the individual in terms of his/her total parole plan. This is important because residence accommodation should be only one part of several services offered to him/her either in the residence or through other community services.

b) When a person is considered to be ready for parole but has been unable to find employment and/or accommodation prior to release, a short stay in a residence can provide temporary assistance until the person has found employment and knows where he/she wishes to live.

c) Some people need the structure of community residential living for a brief period between the institution and complete freedom in the community. Such a residence can provide this.

d) Some people run into periods of particular stress while they are on parole and can find help in handling this stress by moving into a residence for a short period of time.

In considering the provision of such a residence, it is important to note that "caretaker" type of staff is not adequate. Counselling staff who can help people to use the residence as an ongoing part of their development are essential.

3. *THE PURPOSE OF PAROLE*

Basic to any productive discussion regarding parole, it would seem essential that there be better clarification regarding the real meaning and purpose of parole. In talking with people, one gets varied answers as to the purpose of parole. There may well be more than an element of truth in all the suggested reasons, but, in fact, should these be the reasons for parole? For instance,

a) *"Parole is a way of reducing excessive sentences"*. In fact, some judges tend to lengthen sentences so that the person will get a sentence in custody which the judge believes is adequate. Little consideration is given to the many who are given longer sentences for this purpose but are not given parole and so serve a sentence in custody which is much longer than that anticipated by the judge.

b) *"Parole is given as a reward for good behaviour"*. Those who see this as the primary basis for the granting of parole, probably do not understand the dynamics of life is custody.

c) *"Parole is a way of getting a person out of custody who will gain nothing further from staying in custody and is no danger to the community"*. Such an answer seems to point up the problems around sentencing procedures where judges give sentences to institutions rather than adequately considering alternatives.

The Elizabeth Fry Society of Toronto believes that the primary purpose of parole should be to make it possible to use both

institutional and community resources in such a way that each individual can be given the most favourable opportunity to learn to live in the community in a manner which will promote a sense of self worth and minimize his/her threat to the community.

This purpose carries with it some obvious implications:

a) There should be close liaison between the staff of the institution, the parole service and community resources.

b) The Parole Board should be close enough to the institution so that it may be aware of the development of each person so that parole may be used wisely to enable the individual to move out of the institution at the point at which such a move would contribute most effectively to his progress.

c) If there was this close liaison between the Parole Board and the Institution, it would be unnecessary to have both Day Parole and the Temporary Absence Program. These two could be amalgamated. Release under this program should be seen as an integral part of the person's total program, not as a series of unrelated incidents. More imaginative use should be made of this type of release.

d) Conditions of parole should be developed to meet the need of the specific person.

e) If the purpose of parole is seen as above, then it becomes difficult to reconcile the idea of a period of mandatory supervision set at a time which is determined by the length of sentence, not by the need of the person. One would hope that an actively developed parole system would make it possible to release most people on regular parole prior to the end of their sentence and that the mandatory supervision program would be discontinued.

4. *STATUTORY REMISSION*

There is great resentment on the part of many inmates that they are placed on mandatory supervision. They see statutory remission as their right to free time if they have not forfeited it. One would believe that some of this problem stems from the whole concept of statutory remission. Presumably this was seen as a device for helping to control behaviour in the institution. If so, then its effectiveness has been severely undermined by the introduction of mandatory minimum supervision. It well may be that the place of statutory remission in the correctional field should be re-examined in light of modern developments in the field.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 4

THURSDAY, March 8, 1973

Eighteenth Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendix—See Minutes of Proceedings)

25881—1

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

*Ex Officio Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 8, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Flynn, Hastings, Lapointe, McGrand, McIlraith and Williams. (7)

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada; Mr. Patrick Doherty, Special Research Assistant.

The Committee continued its study of the parole system in Canada.

The following witnesses, representing the Social Rehabilitation Services Association of Quebec, were heard by the Committee:

Mr. Pierre Asselin, Vice-President of the Social Rehabilitation Services Association of Quebec;

Mr. Jean-Luc Côté, Member of the Board, and General Manager of the Social Rehabilitation Services, Quebec.

Mr. Stephen Cumas, Members of the Board, and General Manager of the John Howard Society, Montreal.

On motion of the Honourable Senator Hastings it was *Resolved* to print in this day's proceedings the Brief presented to the Committee by the Social Rehabilitation Services Association. It is printed as an Appendix.

At 12:05 p.m. the Committee adjourned until 2:00 p.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 8, 1973

The Standing Committee on Legal and Constitutional Affairs met this day at 2.00 p.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The gentlemen appearing before us this afternoon have to return to Montreal on the 5 o'clock train and they are taking your chairman along with them, so I hope we will be able to complete the hearing by 4 o'clock.

Senator Hastings: That is not closure.

The Chairman: That is not closure, no.

[*Translation*]

We have with us today the representatives of the Social Rehabilitation Services Association and I would ask one of them to begin by introducing the representatives.

Mr. Pierre Asselin, Vice-President, Social Rehabilitation Services Association: Mr. Jean-Luc Côté, at my right, is General Manager of the Social Rehabilitation Services in Quebec and member of the Board of Directors of the Association; Mr. Stephen Cumas is General Manager of the John Howard Society, in Montreal and a member of the Association's Board of Directors; I am, Vice-President of the Association and Director of Professional Services of a multi-purpose agency which I will explain to you.

Senator Hastings: Your name?

Mr. Asselin: I am Pierre Asselin.

The Chairman: Go ahead.

Mr. Asselin: First I want to apologize for the absence of the Social Rehabilitation Services Association's president, Dr. Marc Adélard Tremblay, and the secretary of our Association, Mr. Emmanuel Grégoire.

As I already told you, the delegation includes three persons and we want to thank you for the opportunity given to us first to submit our brief and for this afternoon's hearing.

What is the Social Rehabilitation Services Association? It is a provincial association with aggregates 25 private agencies. It includes three specialized agencies which are: the Social Rehabilitation Service, represented by Mr. Jean-Luc Côté, the John Howard Society of Montreal and the Social Rehabilitation Services Society (Société des services de réhabilitation sociale, SORS) of Montreal, whose General Manager is Mr. Emmanuel Grégoire who, concurrently is secretary of the Association. There are also twenty two Social Service multipurpose agencies scattered throughout the province and they offer, as suggested by their name, various services to the population. The services are namely marriage counselling, children placement, adult placement, adoption service and so on. Moreover, within these services, there is the delinquency service which receives inmates on parole. These multipurpose agencies, as well as the three specialized agencies, are staffed by experts in human relations, namely social workers,sociologists, psychologists, criminologists, and social counsellors.

The objectives of the Association are actually the promotion and improvement of services to adult delinquents in the province of Quebec. This Association is an intermediary between the agencies, the Department of the Solicitor General and the Quebec Department of Justice. The Association acts as a link between the agencies and the Department of the Solicitor General of Canada participates in the signature of contracts of service for paroled inmates and the distribution of grants by the Department, to institutions. Moreover, the Association is the spokesman for member agencies before the Board of Inquiry. It was also the spokesman for these agencies as member of the Board of Inquiry, and the Prévost-Ouimet Commission. This consulting service was requested by the Solicitor General of Canada. As another objective, it participates in national and international conventions on criminology.

I wonder if you have any questions in this respect. I have thus introduced the association and its member agencies.

Senator Lapointe: I have one or two questions.

I should like to know why there are multivalent agencies which deal also with the rehabilitation of the inmates, as well as other specialized agencies? Is it because the volunteer groups can work in places where specialized agencies would not have enough clientele, for example?

The private agencies, members of the Association, are not departmental agencies. They are administered by volountary citizens, members of the community. They have a certain autonomy, are flexible and innovative and are free to critisize the system.

Mr. Asselin: Indeed. Actually, the majority of offenders—those who leave the penitentiaries and the parolees—live mostly in urban centres, while most of the volunteer agencies do their work in semi-urban and rural centres.

[*Text*]

Senator Hastings: You do not have any inmate self-help organizations such as Inspiration which operates in the city of Montreal? Is there any particular reason for this?

Mr. M. Stephen Cumas, Director, John Howard Society: They are not part of the SRSA because they come and go. We have had Comprehension House, and another recent one. But I must admit our experiences have not been particularly successful.

Senator Hastings: Is there any particular reason for this?

Mr. Cumas: Is this an *in camera* session?

Senator Hastings: No, it is on the record.

Mr. Cumas: There have been three organizations and they have not been very successful. I am speaking about the English sector. You must understand that in Montreal we have a dividing line and I can tell you only about the English section.

Senator Hastings: We have that in Canada, too. It is not just in Montreal.

Mr. Cumas: I can only speak about the English group. There have been three or four organizations, and they have not succeeded very well. It is my considered opinion, and that of many others, that the self-help groups are very good, or could be very good. They have a certain réseau d'expérience, you know, which is necessary. But you should have some professional who is responsible to the social workers, to the Parole Board, to the probation officers, and so on. I would prefer not to mention the three or four units, but they have not been working for the benefit of the clients. They have been working for their own benefit, with the result and we have had this unfortunate Meloche outbreak. This was a self-help organization.

Recently, an organization has been set up—and it has been in all of the papers. The person set aside as executive director of this particular organization was picked up on an armed robbery charge while he was still the executive director.

These are the catastrophes which have hit private groups in the Montreal area. It may be something which has happened only to these particular groups, I do not know. This is the only way I can answer your question.

Senator Hastings: Again, I would be a little reluctant to judge them on a few incidents.

Mr. Cumas: No, I am saying these are the realities which have been facing us. I do not know what the future will be.

Senator Hastings: My second question pertains to remarks you made on page 1 of your brief where you say:

> . . . the private social service agency must be considered as an integral part of the correctional services network.

On page 2 you say—it is in a spirit of co-operation.

On page 3 you say:

> It works in close co-operation with the other public and private correctional services.

On page 6 you say it must be "a true participant in the work already undertaken." Do you believe there is team work, co-operation and understanding between the police, the judiciary, the custodial parole services, and the after-care agencies?

[*Translation*]

Mr. Cumas: Our Association considers that all the agencies whose purpose is to help the offender's rehabilitation constitute a services network. These are public or government services. However, we believe that agencies like ours, private agencies, because of the part they play in the correctional sector, must be considered as being a part of this services network. In other words, the network would consist of government agencies and also of private and non-government ones. By integrating themselves into that network, it is easier for the private agencies to achieve a better co-ordination of their activities with other members of the network which are government agencies and they wish to form a team with them, to work in close cooperation with all those engaged in the correctional sector.

[*Text*]

Senator Hastings: Yes, I agree. My question is: Isn't there team work prevalent throughout the various correctional jurisdictions?

Mr. Cumas: I think there is that cooperation between the parole system and the probation system. It varies. I do not think we have the co-operation which, perhaps we should have with the police, although it is better now than it was ten years ago. What other group are you suggesting?

Senator Hastings: The custodial group.

Mr. Cumas: Yes, there is much greater rapprochement with the custodial group, the parole and probation groups; and the situation regarding the police has improved. Years ago we suggested to the agencies that they set up a separate body of parole police for people being released on parole. They did field work in our agencies for a short period. They had an awareness of how we operate. In the meantime, we worked closely with them and we were capable of seeing their operations. There is quite a good relationship between us and the police who worked in that particular segment of parole.

Now, a man picked up and brought to station No. 10—contingent on the agency involved—in order to have a liaison between them and the client we have to be constantly re-interpreting. For example, in the west end we are enjoying a better relationship with station No. 10 than we did a year ago. We used this example case to interpret our work. It is not as complimentary in its functions as it is with the parole, probation or custodial groups from the Solicitor General's office.

Senator Hastings: When I was referring to custodial people I was talking about the Penitentiary Service. You have team work and co-operation with them?

Mr. Cumas: Yes, we have their co-operation. If X is incarcerated and has some problems, the classification officer immediately has recourse to the worker from social d'adapation, the SORS, or to Pierre Asselin's group, or to my group to discuss these problems. Our agencies in the community know the other problems involved concerning the family. So, in order to flush out that individual, and for the classification officer to do a better job and to use the proper treatment, we are an absolutely neces-

sary resource. They are now aware of this and we are working quite closely.

Senator Hastings: They are aware of it; but are they using it?

Mr. Cumas: Yes, they are using it more that they did years ago.

[*Translation*]

Mr. Jean-Luc Côté: Would you agree if the probation officers made increasing use of them—the teams working in penitentiaries—more so than they did in the past?

Mr. Cumas: Yes, I do agree.

[*Text*]

It is not an ideal situation. Nothing is ideal. I can only tell you about its evolution. We are certainly happier with the situation now.

I am considered an old timer. About 15 years ago when I was working in the mother house at St. Vincent de Paul, the maximum, as a case worker, we had nothing like this. So there has been a natural, positive evolution.

Senator Hastings: So, as I understand it, you do have co-operation, understanding and team work with the National Parole Service?

Mr. Cumas: Yes, and the custodial people in the penitentiaries.

Senator Hastings: But it breaks down, or it has not existed between the police and the judiciary?

Mr. Cumas: Well, it is hard for me to answer that question. At one time we did all the probation work. Now we have the Quebec probation system which takes care of this. We are not allowed to go near the courts except in specific cases. So the dealings there are between the probation system and the judges. When we do intercede in a particular case, it is usually contingent on the evolution of that judge in the psycho-social sciences as to what extent we are going to receive any co-operation, the first promise as to what action will follow.

[*Translation*]

Senator Lapointe: You say that your agencies' representatives do a lot in order to help the inmates at the beginning of their imprisonment: they make enquiries in their circle of friends so that they come to know the inmates very well. However, when the inmate becomes a parolee, you are obliged to withdraw and let his Probation Officer take care of him. But you don't approve of this situation, because this gentleman does not know the inmate at all, whereas, in your case, you know him very well. What would you suggest as a possible solution?

Mr. Cumas: Perhaps, it is better if I explain what we would like to do in the institutions about that. We are representatives of the community, so to speak, who introduce ourselves into the system and we are recognized as such by the inmates. Often, they ask to meet us and they are referred to us by the classification officers of the institutions. We try, first, in co-operation with the classification officer, to get the inmates to accept their imprisonment. We also try to motivate them to participate in a programme developed for them inside the institution. But, at the same time, we go and visit the families, we keep in touch with them and work together; we help the families to accept the situation and also to settle the difficulties which can be created by the absence of the imprisoned member.

All his work is done with the inmate and his family while he is still in prison. We also discussed with him plans for his release. Furthermore when the release date approaches he asks us to contact his employer, to contact his wife or to discuss his problem with various social agencies. We make those interviews. We create a trusting relationship; the inmate knows us, we are not strangers to him and some measure of esay contacts are established so that, very often, he would rather continue to take care of him after his release. We say that, because we have already work with the inmate and because we know him, his family and his environment, we would like to continue that work. We think we are in a good position to make the community assessment which the Board needs to decide on parole. We have rather complete records on the environment as well as comprehension information. We would like to be able to cooperate at that level. Since the inmate trusts us and since mandatory supervision after parole is not only a means of control but, also and above all, a means of assistance placed at the inmate's disposal to enable him to solve his social reintegration problems more easily, we believe that the person most entitled, though not necessarily most qualified, to act in this situation, can probably bring the inmate to make greater use of his adviser in order to solve all his problems.

In some cases, because of the work already done with the inmate, we consider ourselves to be in a better position to assist more effectively the paroled inmate who needs help. At that time, we can probably better exercise the mandatory supervision of that inmate after parole while accepting the obligations and the real requirements of supervision and at the same time controlling the inmate's conduct.

Senator Lapointe: When the representative of Society that is of the National Parole Board, takes over, does he at least ask you information or does he go out by himself to take care of the inmate? Does he come to you for information concerning his past record and all the necessary means to look after him?

Mr. Côté: There is the human aspect of the problem of sharing such cases, as was pointed out a few years ago by Mr. Goyer, the then Solicitor General of Canada. I believe he said that sharing in the supervision area and community relations should be 50-50 between the public and private sectors. If that standard is quite rigidly applied, we face situations where the district representative or parole officer receives the file—I am referring specially to Quebec—and then we have to make a community assessment. Then, if the proportion of cases is more than 50, he will tend to handle the case and make the assessment himself. As a general rule, there is an agreement between our two officers and I think that it could be the same for other offices; that is, as the end of each month, we send a list of inmates whom we follow-up in confinement. It is agreed that this officer, the parole officer, who is in charge of a given inmate, will communicate with the officer who is assisting the inmate, whose name appears on the list when the time comes to initiate a community inquiry.

In general, this consultation takes place. Unfortunately, there are situations where we think that everything is fine, especially when the inmate asks us to keep on dealing with his case, but they forget to consult us. We decide to do the community evaluation. These are exceptions, but they do occur. The Community evaluation is done and a decision is taken to supervise, but we are not always asked what we have on file. It seems useless for them to gather this information because they already have enough data. We do not criticize this decision; they know what they have in their files; they know whether they need more information or not. But, we believe, that in many cases, we are in a position to give different information,—perhaps it is different, but we would like them at least to check each time what we have concerning matters on which they have to do a community evaluation and on which the Board will have to take a decision in the very near future.

Senator Lapointe: Does it happen sometimes that the inmate, the parolee still turns to you and asks for your help even if he is under the supervision of the other gentleman, the officer and where you say: Well, I cannot deal with you, because my part of the job is over! Or, do you deal with him anyway, only out of compassion or sympathy?

Mr. Côté: May I add a comment. We must say that this is very exceptional and this is why we must take into account the inmate's personality, since he has had problems with the law. Supervision is one way of helping. If he gets this help, and if it has been specified to him where he is to obtain such help, it is rather exceptional for this inmate to go elsewhere of his own violation and get involved with two people who are going to play nearly identical roles. We recognize that supervision can be exercised in one place just as well as in the other, because the responsibilities are the same and the qualifications of the staff involved are at least the same. However, very seldom does an inmate who is transferred to a parole officer come to see us. But when he comes to us, it is to ask services of a quite different nature. For instance, in some cases, they ask us for material assistance that they cannot obtain directly from the Parole Office. It is a completely separate service. But, for consultation, assistance, and social treatment, they depend of their supervisor, even though they sometimes state they would have preferred to continue with us.

Senator Lapointe: If, by chance, he asks for this material assistance, are you able to provide it or is it impossible to do so?

Mr. Côté: Yes, our services are available even if the person is not under our supervision. The services are available to all those encountering difficulties with justice. We have a fund for material assistance and to supplement inadequate assistance from public funds, we have social assistance offices. I will give you a very concrete example: somebody is working as a plumber or a mechanic and is in need of a tool box; we will try to convince him to go to the social assistance office; if he cannot obtain what he wants and if, because we know the individual, we think we ought to give him what he asked as a means of encouraging him to get the job and keep it, we will usually grant him a loan, providing he is ready to reimburse it. In some cases we even give the money.

Senator Lapointe: You, sir, you want to say something?

Mr. Cumas: Yes, I would like to complete the answer to your question. We are from the John Howard Society of Montreal and we take care of the English-speaking people. In such cases—they don't occur very frequently—if a man is designated for regional parole, the individual usually comes to us and says: See, there is a linguistic and a cultural difference, and I would prefer . . . there are never any problems. We call Jean-Guy Morin or Luc Genest and the transfer is made immediately because, in matters concerning parole, they want the client to be satisfied—this is the first premise as to what action is going to follow. In such a case, it is very rare for us to send to someone to other agencies when in fact he would like to come to us because of his language and all the rest.

The Chairman: Would you like to add something?

Mr. Asselin: Yes, i would also like to make a comment on the subject. I represent provincial agencies which are not in urban centres. As I was saying earlier on, the polyvalent agencies offer a whole series of services, including marriage counselling, etc; when the individual is in a penitentiary, his wife will come to see us; in fact, we also meet parents groups. Therefore, we get to know these parents and they come to meet us when the inmate is about to leave the penitentiary, on parole or otherwise. I must say that it is very easy to deal with the Regional Parole Office and, if necessary, there can be a transfer. The 50-50 standard we mentioned might be a bit less strict in the province than in urban centres. We are much more integrated into the community than is presently the case where the new parole offices are concerned.

Senator Lapointe: Do you ever take care of the indivudual's family.

Mr. Asselin: Yes.

Senator Lapointe: While the agency takes care of the parolee?

Mr. Asselin: It happens. Then we are asked to cooperate or, most of the time, we are asked to do a community assessment. Then they know. We have fairly regular relations with the parole office.

Senator Lapointe: Are relations friendly or is there any rivalry between you?

Mr. Asselin: No because our agency does not live of the parole clientele.

Senator Denis: At the end of your brief I can see a list of 25 agencies. That covers the province of Quebec—am I right?

Mr. Asselin: Yes.

Senator Denis: In general, how many members are included in these agencies?

Mr. Asselin: It depends, in general, on the agencies involved, that is, the multivalent agencies. Some agencies are there to serve the population of a certain area, while others that is, cover a diocese or a county. In the Quebec region, there are far more county agencies, while in the Montreal area, there are far more diocesan agencies.

Senator Denis: Does this imply the presence of 5, 10, 15 or 20 workers?

Mr. Asselin: In our agency, there are 100 workers.

Senator Denis: In each agency?

Mr. Asselin: We have 102 employees in our agency, but they are not all handling delinquent cases.

Senator Denis: The number of the agencies can be increased. For instance, let us assume that someone in Sorel wants to establish such an agency?

Mr. Asselin: Most of these multivalent agencies serve a population. For instance, at St-Hyacinthe,—you did mention Sorel—there are 283,000 people. In such a case, we have branches. There is one at Sorel, one at Granby and one at Iberville. Therefore, there is a decentralisation of the staff.

Senator Denis: What I want to say is that your Association deals with thousands of persons.

Mr. Asselin: That is exact.

Senator Denis: You are dealing with thousands of persons. You claim—and maybe you are right—that where parolees are concerned, you are in a better position to supervise a parolee, at least that is what you said earlier.

Mr. Asselin: Not necessarily.

Mr. Côté: In certain cases, there are those on whom we have kept an eye for some time or whose family is being supervised, while the inmate is confined or in . . .

Senator Denis: Then, your job starts, if I am not mistaken, when your help is requested by the Parole Board?

Mr. Cumas: Could I answer this?

Senator Denis: When does your job start?

Mr. Cumas: In our Association, some agencies follow different procedures. In our agency, our job starts before the accused has a criminal record. At this point we say that he is warehoused. He is waiting for his trial and that is where the agency starts its work. Then we ask all the Anglophones whether we can help them—we meet the man, his family, we contact his social environment, because we know that he will appear before a judge. We then start compiling his record. He appears in a court and he is sentenced, let us say, to less than two years of imprisonment at Bordeaux or more than two years. The following week, our social worker pays him a visit. We use the probation system techniques in dealing with this man. In this case, we know the man from the time of his arrest; we follow him while he is serving his sentence and we keep in touch with his family. We have a good knowledge of the man.

Senator Denis: This work is done without anybody requesting you to do so?

Mr. Cumas: No, no.

Senator Denis: You do that of your own volition?

Mr. Cumas: Of our own volition, because, as private agencies, we feel that we owe it to the community and that it is our duty to deal with those who break the law.

[*Text*]

They break the law.

Senator Hastings: In certain cases.

Mr. Cumas: I am speaking only of the work of our agents. We go through and ask to see every English-speaking person who is awaiting trial.

The Chairman: You are talking about the John Howard Society?

Mr. Cumas: Yes. I made that clear. In order to answer the gentleman clearly, I prefaced it by saying that agencies differ in their procedure. The reason for that is, because we are a minority group in Quebec we feel it is our duty to do this. We have done this since 1958. We feel that we should get involved, because the political situation is constantly changing, and we might think that we don't want to be playing cachette, or anything else, and so we ought to be in there, to know what is happening to our group.

In our particular case, the guy might say, "We don't want to see you dropping this thing." We say, "Thank you, that's fine; we want you to know that if you need legal aid, we are here." But I think the other agencies too, more or less, intervene in the career of a man, perhaps before the parole people do. I think so.

Senator Hastings: When requested?

Mr. Cumas: No; this is not a request.

Senator Hastings: When requested by the inmate?

Mr. Cumas: No.

[*Translation*]

Senator Denis: I am just wondering whether, according to your brief, you intend to be integrated into the penitentiary system.

Mr. Cumas: Yes.

Senator Denis: Your Association includes thousands of persons. You claim to be more qualified than others, because you have followed the individual and are in a better position to supervise the parolee. Why are better qualified then others to supervise parolees, and how are you going to choose among the thousands of persons serving your agency, who is going to handle the case of one inmate in particular from the moment he is paroled? Would it not be possible that, at some point, someone in a parish, in a community, decides to create an association, to establish an agency which would then become a member of your Association? Would it not be possible that this agency be responsible for the supervision of one, two or three inmates who might be one of their friends or could belong to a certain group. You know that the underworld is much in the news today. Let us assume that in Sorel, for instance, the underworld, if there is an underworld in Sorel, decides to establish an agency like one one you referred to and that one of their friends or one of the gang is paroled. According to what you propose, we would have exactly the same people or the same group to supervise the parolee. If you are in a better position to supervise an inmate, in what position are you, within the

Association, to supervise the member agencies of your Association?

Mr. Asselin: Senator Denis, I would like to clarify this situation. The social agencies, which are members of the Association are social agencies staffed by experts in human relations. In fact, an agency is incorporated under the Quebec Companies Act and staffed only by experts. The workers are selected. There are no members of the underworld in the agencies. The staff is made up of social workers.

Senator Denis: there is always a possibility, though?

Mr. Asselin: No, that is not possible.

Mr. Cumas: No, it is not possible. Later on, we will explain why.

Mr. Asselin: This is not possible because our employees have an academic background; they have studied either at university or in CEGEPS. They are professional social workers: sociologists, criminologists or psychologists, not commonplace people.

Senator Lapointe: They are not working on a volunteer basis?

Mr. Asselin: No. They are not. This work is not done on a volunteer basis, Senator Denis.

Senator Denis: No?

Mr. Asselin: No, no.

Mr. Cumas: May I interrupt? We do not mean to say that we are in a better position than the Parole Board. We say: we can offer a network with a thorough knowledge of criminal delinquency and criminal mentality. Take advantage of our knowledge. This is what we are saying. To put things in a realistic way: they are not thousands and thousands of offenders. Montreal has a population of about 2,300,000 inhabitants, out of which 600 or 700,000 suffer from poverty, while the figures concerning criminals or other offenders indicate only about 3,000; the John Howard Society takes care of 1,000 of them and our Association, deals with the remaining 2,000. It is not an awful lot of people. We are working with the same type of people and, through other agencies which have been in operation for years, we know, not only our own people, but also their fathers, grand fathers, etc.

When it comes to the underworld—if one of our lads is involved—I must say that less than one percent of the mobsters go to prison. How many times have Cotroni and the others—I don't know whether I should mention that—how many times have they been imprisoned—but if they use one of our boys, called "X", a young lad—if that boy comes to us, he cancels himself out, you understand, they definitely don't want this. Whereas in the case of the underworld, it is only through pure chance—we do recognize the existence of the underworld, because of the information provided to us by our clients, but they don't come to us; of course, they don't want to see us because we ask relevant questions concerning their personal behaviour and they do not want this, you know. The organized mob never gets in touch with us.

Senator Denis: In those fields, I find that the number of agencies and their representatives is enormous, because they can be integrated into the correctional institutions and then, how would one exercise control?

Mr. Cumas: If I may be allowed to interrupt you, Senator Denis, I should like to put thing more realistically: there are 22 diocesan agencies. Mr. Asselin has an agency which deals with unmarried mothers, with children, and with many other problems. This explains why the employees are 100 in number; these 100 social workers take care of various problems. You must understand that, in Quebec, there are only three agencies whith are working on a full-time basis—"quotidiennement"—with adult offenders. The social readaptation service employs about 20 persons; SORS about 40, and the John Howard Society, about another 20. In other words—pour travailler à plein temps avec les délinquants—you have 40, 60, 80 and I think that this is presenting the problem more "realistically". We have 80 employees who are working full-time, because, in most cases, the offenders are to be found in Montreal or Quebec City; they always go to those places where their help is most needed.

[*Text*]

Senator Hastings: It seems to me that the objective must be that the inmate receives the very best of supervision and assistance on parole. There is no doubt that your service can provide the best in some instances. However, in other instances the Parole Service can provide the best supervision and assistance. If the Parole Service, in their widsom, decide that it should be the supervisor for a particular inmate, I rather suspect there must be a valid reason for their doing so.

Mr. Cumas: I think this was proper in the political cases that we have had, such as the FLQ, and so forth. I think it was only proper in those cases for the Parole Board to take them because of the political État chatouilleux, and many cases should be taken. All we are saying is that the parole system should consider us, who are pioneers in this field, as we were in probation and everything else, and who have a good deal of experience in this area, as an integral part of the system. Our agency, for example, has existed since 1892 and SORS since 1945. It would be detrimental for the country for all of this experience to be negated completely. That is our theme. We feel we should be considered as an integral part of the correctional system.

I agree with the parole people who say, "We do not want to be just a mailbox for people to drop off their letters." Not only this, the importance of the national parole system is that it has done a tremendous job in setting a uniformity of standards throughout the entire country, which we, the local boys who may do a good job in our own area, could never have achieved.

I have never found that there is a conflict in the way I think and the thinking of my colleagues on the Parole Board. I am sure my colleagues on the Parole Board would agree—and Mr. Street is present and can speak if he wishes—that we have an excellent relationship with the regional offices of Quebec. I do not know if that applies to the rest of Canada, but it is an excellent relationship because we work as a team.

Senator McIlraith: In your answer just a moment ago, Mr. Cumas, you said that the agency should be considered as an integral part of the network of correctional services. It

has been my understanding for some years that it is. I do not understand your use of the words, "should be."

Mr. Cumas: I say this because there is considerable thinking, taking the parole group—let us take the probation system . . .

Senator McIlraith: Probation is provincial jurisdiction.

Mr. Cumas: Yes, but even there there is considerable thinking as to whether these organizations should consider taking over all of the parollee or all of the probationers and not use this réseau of after-care agencies.

Senator McIlraith: Dealing with those areas within federal jurisdiction, are you aware of any suggestion anywhere that they take over the full responsibility . . .

Mr. Cumas: There are people in these organizations who feel that they should take responsibility for all parolees or all probationers.

Senator McIlraith: Do you find many who feel that way within the federal areas of jurisdiction?

[*Translation*]

Mr. Cumas: Did you come here with the same idea I did, that is that there are, in the Parole System, some agencies which are ready to accept all cases?

Mr. Côté: A few years ago, we noticed a trend in the government service leading to an increasing wish to accept more and more cases, whereas the agencies were taking the opposite attitude.

Sénateur McIlraith: Voulez-vous dire que cela s'est produit au cours, mettons, des cinq dernières années?

Mr. Côté: I think that the trend existed until the rule was laid down—at least, we were aware of it until rule prescribing sharing on a 50-50 basis was introduced. Our personal impression, when Honourable Goyer stated: in the future, the share will be 50-50, was as follows: at the moment, we can see a trend, but this tendency should stop now; the status quo, at the moment, is 50-50. It is now necessary to share 50-50 with the community agencies; that sharing of the assessment of community functions and of supervision, is a trend that we discovered. Were we under the wrong impression?

[*Text*]

Senator McIlraith: I apologize, but I am having some difficulty with the translation. Can you identify the point of time a little better? I missed part of the translation.

Mr. Cumas: Well, I do not relate it in time. I figure that as the National Parole Board has grown . . .

Senator Hastings: The National Parole Service.

Mr. Cumas: Yes, as the Service has grown there has been a tendency, on their part, to get cases for their employees, and so forth, and that has created a certain anxiety, let us say, on our part that eventually we will be left out. One of our suggestions is that we should be considered as partners with the National Parole Board, to the extent that this should be a contractual relationship. There is at this point a fee for service, but if at any particular time they feel—and perhaps with justification—that they want to take it over, then it should be done gradually and over a period of time, because the financial dislocation to these agencies, whose work is sincere, would be tremendous.

Senator McIlraith: My problem was simply this: I was surprised at your use of the expression, "should be considered as an integral part of the network of correctional service," because I was quite certain that that was the case, certainly in the last five years; to my knowledge, and I was wondering if there was something new or something of which I was not aware.

Mr. Cumas: Perhaps I should rephrase it and say that we would also like the parole system to consider us a part of the correctional service, which they are doing. However, as Mr. Côté said, we feel there is a tendency which might obviate that primary supposition.

Senator Lapointe: Is it only since Mr. Goyer was minister? Was it during Mr. Goyer's ministership that there was this 50-50 division?

Mr. Cumas: I think that the problem was obvious to Mr. Goyer at this point, or maybe he responded to our feeling on that, and he suggested for purposes of equity a 50-50 division.

[*Translation*]

The Chairman: Are you sure that it was the Hon. Goyer?

Mr. Cumas: In my view, that was announced by the Hon. Goyer himself.

The Chairman: I am asking you that because the Hon. Senator McIlraith used to be Solicitor General before the Hon. Goyer.

[*Text*]

Mr. Cumas: He can speak for himself. Perhaps you could correct me.

Senator McIlraith: Didn't the 50-50 division arise out of the inability of agencies in some parts of the country to provide any service, and agencies in other parts of the country being able to provide very adequate service? It was rather some kind of a guideline to get a working basis, so as not to impair or impede either the service agencies or maintaining a parole service on a national basis. Was it not an arbitrary thing of that nature, bearing in mind the wide discrepancies and practices in different parts of the country, in different provinces?

Mr. Cumas: I think you have a point there. Again, this is the fault of lack of uniform standards throughout the country. There are agencies that say, "We cannot take any parolees for another 90 days," whereas other agencies say, "We would rather not take parolees." This penalizes the agencies who have a commitment to take these people, especially as they have known them since prior to sentencing.

Senator McIlraith: Perhaps I am not making myself clear. I had understood it was an arbitrary division on a national basis, bearing in mind that in some parts of the country there are virtually no agencies available; it was an arbitrary nationwide division. Are you now suggesting that it is being applied as a division in the local areas, on a local basis?

Mr. Cumas: It is contingent again on the particular agency. I am representing the ASRA, not the John Howard Society of Quebec. It depends on the individual practitioner or different agencies. Because of the English-French dialogue we find that we get perhaps much more than 50 per cent, because of the language. I know Jean-Luc feels that he is getting less than 50 per cent because they have to give more work to the parole people in his section. It varies; it is not that arbitrary. It is the principle enunciated, which we could live up to, but it does not apply in the same way in every area.

[*Translation*]

The Chairman: Do you have any comments to add?

Mr. Asselin: Yes, please. Where Quebec Province is concerned, we told you, a few minutes ago, that there is a fairly high number of agencies. Twenty-two of them are members of our Association. These twenty-two multivalent agencies cover Quebec Province—from Hull to Gaspe, the Madeleine Islands, and from Abitibi to the North Coast. It may be true that, during a certain period, some agencies were not able to help at the Parole system level—but this applies only to very few of them. I think that there is one in Quebec Province, there might be one in Valleyfield, I believe, which refuses to help parolees. But where the other agencies are concerned, that is not so. Some agencies have even engaged criminologists for the special purpose of providing help to parolees or to people on probation. Anyway, in St. Hyacinthe, in the very agency where I work, we have a criminologist who answers requests concerning parole and, even so, the province pays only part of his salary, because there are not enough parolees.

Thus, we are motivated to co-operate, in matters concerning parole, due do the fact that we have engaged someone for this prupose and we even pay ourselves part of his salary at the provincial level, out of the overall budget of our agency and not only out of the subsidies we receive from the National Parole Board. Does this to a certain extent answer your question?

Le sénateur Hastings: Merci.

Senator Lapointe: You suggest that parole regarding inmates in provincial institutions in Quebec, come under the jurisdiction of the Quebec Government. This means that there will be a provincial office or "Board", as is the case in Ontario and in British Columbia?

The Chairman: Is this what you are suggesting?

Mr. Cumas: We are suggesting that cases where parole is granted for less than two years, should come under provincial jurisdiction; there would be a provincial parole system because we consider it unreasonable that a single government agency should be responsible for the legal arrest, the confinement, the detention, and so on, while another institution is responsible for parole. We do not think it is reasonable, but we agree that the National Parole Board is the agency which should always deal with federal cases. But there is something else. We believe that standards should be raised, for standards vary with each province. In Ontario, they are rather high. If we can set up a Provincial Parole Board, which would go into these institutions, we will, first of all, be able to parole a greater number of prisoners and save taxpayers a lot of money since it costs $10,000 a year to keep a man in jail. Moreover, you would have a group of persons trained in psycho-social sciences to raise the standards of that province, in the same way as the National Parole Board does in many penitentiaries. They sent in their highly-trained personnel. We support the idea that there should be a Provincial Parole Board for cases of less than two years while acknowledging the principle that all the federal . . .

Senator Lapointe: Is the Department of Justice in favour of this suggestion? Has it already considered this suggestion?

Mr. Cumas: With Justice Department?

Senator Lapointe: Provincial.

Mr. Cumas: I think that the Honourable Mr. Choquette is so busy with other matters that I doubt he has had time to think about it. But I believe that Mr. Gauthier, the Director of penitentiaries, is interested in this. However, he has done nothing so far in this field. I believe that the agencies will want that, but . . .

[*Text*]

No steps are taken at this point, I think. Am I wrong? I do not know of any.

[*Translation*]

Senator Lapointe: Is this system working well in Ontario and in British Columbia?

Mr. Cumas: I, for one, feel that the parole system in Ontario works very well; it is a serious kind of freedom and I think that the Ontario system is well ahead.

Senator Lapointe: Provincial?

Mr. Cumas: Not more than the federal, but for provincial problems, it is well ahead. This has also helped with the development in provincial institutions. Among other factors it has promoted a greater development in the provincial institutions of Ontario than in those of Quebec and other provinces.

Senator Lapointe: You mean that this has helped to hire other specialists to work inside penitentiaries or . . .

Mr. Cumas: It is a source of inspiration, of initiative, of many things. There are many more highly-trained people who work within these places beside the ordinary guards and employees like that.

[*Text*]

Senator Hastings: I would like to return to your statement with respect to this team work that exists, as you said, in the City of Montreal. I have difficulty now in reconciling that statement with your evidence and the evidence of Mr. Côté, in regard to the Parole Service not consulting you. You mentioned where they do not consult your files and gallop off in the wrong direction. Where is this team work?

[*Translation*]

Mr. Côté: I would like to set the facts in their proper perspective. I must say that our agency maintains the best of relations with the Quebec Parole System. I believe they are very good as we regularly discuss our policies regard-

ing referrals and sharing of cases and we seek out the best possible solutions. I have mentioned that in certain exceptional cases we have unfortunately noted that they have omitted to come to us and get the available information we had. They knew we had it because we send them a monthly list of the cases we follow up. But this is exceptional and we should not conclude that the relations between an agency and the district office are bad on that account. On the contrary, we have ongoing relations which never suffer breakdowns or interruptions.

The proof is that our board of directors includes a parole officer and exchanges are very, very regular and continuous. But the 50-50 policy can be interpreted and administered in a very mathematical way. We point at the danger of applying it automatically, for there is a danger that certain people whom we have been following up for a long time, whom we know very well and with whom we have excellent relations would simply ask us to sit down and move over if we are not entrusted with the community investigation and supervising. The 50-50 policy should not be allowed to lead to such a result. In other words, we accept the 50-50 policy as a guideline, but the particular well being of a prisoner should not be allowed to be frustrated on account of the mathematical application of such a policy. This is what we have endeavoured somehow to point out in our brief.

[*Text*]

Mr. Cumas: I think perhaps we gave you the wrong impression. You felt that there was a difference in our approach, more or less, did you not, in bringing up that question, a difference in that you felt that Jean-Luc Côté was more or less implying that there was not this relationship with the parole people? No, you felt it this way. In about two or three weeks we are having a meeting with our parole colleagues, concerning post-sentence reports and how they are to be divided, and everything else. Every three or four months we have a meeting with the regional office, which is always a very amicable one, in which we try to work together on many of those cases. We are only expressing a fear that a tendency might evolve, more or less. I would like to be clear on that.

So far, I must agree, and I am not being Pollyanna-ish here, because I do not think I have the same relationship with the liberté surveillée, with the probation people, that we have with the parole people. Actually, this is something which is of such help because of our community of interest, the parole and us, to the offender, in that we want to keep this on, whereas I cannot say the same thing for our relationship with the other people.

Senator Hastings: I am coming now to the preparation of the community report that you give to the institution. You are doing that now; you are preparing community reports for the Parole Board in its consideration of parole; and you are also preparing community reports for temporary absence or code 26. Are you having difficulty in preparing these community reports, as to time?

Mr. Cumas: No. Again, we say this is the resource of the after-care agency, where we have already seen this man from the moment he is arrested. We have already seen his family and everything else, so we are the ideal people to do this community investigation. We know the community resources, we know the social milieu, we know that he comes from the north end, that he is not only X but he is X from the north end of Montreal. We have something definitely. We are preparing these, and we do not find it too onerous a task.

Senator Hastings: Is it time consuming?

Mr. Cumas: It is time consuming, but it is a chance for the worker to do it, to get out and plunge himself more into the work he is doing. We find it a healthy challenger. I am speaking from my particular operation, and I think it goes for the others. In fact, we want to do this community investigation—not all, Parole does some—but we do in the case of a man we have known prior to Parole knowing him. Naturally we have already a dossier on him, so it is easy for us to follow it up. When the guy has just come into the pen, if he is not known . . .

Senator Hastings: No, you just stay with that—the community investigations. When we were inquiring with respect to so many reserve decisions by the board, the evidence would indicate that one of the reasons was the lack of documentation at the time of the Parole Board hearing; and the community investigation was one of the documents missing. I am asking why are these so time consuming? I think we should have a better reason than just training community workers.

Mr. Cumas: I think many factors come into that. Where these community investigation reports are undertaken by Parole, the private agencies—which agencies are very quick to sent them in, and which take a longer time—you have to make a study to see in what areas is this tardiness, in what particular groups. I do not think we can make a blanket statement that the community investigations are tardy and they help reserve decisions in many cases, as a result of the fault of agency X. Sometimes it can be Parole, or sometimes somewhere else. I cannot answer you this, because there are so many agencies to whom the community investigation is entrusted and it depends on the procedure and the alacrity with which they work.

Senator Hastings: Are you agencies aware of the urgency of the report, with respect to the inmate?

Mr. Cumas: I would say so.

[*Translation*]

Do we have two or three weeks for community estimates?

Mr. Côté: There are no specific indications, there is no preset period. But I think that we still should point out that for Montreal or perhaps other areas, everything is fine. However, there are other areas where files circulate and where this circulation creates delays, and correspondence takes time and so on. We should perhaps also say that the multipurpose agencies whose duty, although secondary, is to deal with some inmates in their own territory, because they perhaps have one, two, or three inmates in their very isolated outside agencies—a distinction should probably be made between these agencies which do not have the same motivation perhaps, which want to do the job but are, maybe, less sensitized and less prepared to act immediately. However, I think that the situation has improved since the Association and the Department of the Solicitor General have signed a service contract providing for the payment of services rendered by the agencies and that the agencies have become aware

of this at that point. The agencies, especially when multipurpose, which were perhaps less concerned by these customers because they were already overworked, have become aware that their contribution was unknown and I think that from now on we will have fewer or more delays on account of this fact. The Rehabilitation Services Association has a role to play in order to help the agencies to respond as quickly as possible and, also, to provide services as adequate as possible, each in its own territory. This is one of the roles of our Association.

[*Text*]

Senator Hastings: When Mr. Street was the witness I asked him why there was this delay and he said he had to give 50 per cent to the agencies, which implied to me that he was not quite satisfied with the time you were taking. I am pleased to hear that that has been rectified.

Mr. Cumas: It would have been interesting to make a study at that point, when all these community investigations came in, to determine what number were tardy on the part of the private agencies and what number were tardy on the part of the Parole Service itself. It may be that some private agencies were tardy, because I must admit that there are private agencies that perhaps should not be in the field at all, but not everybody has to be labelled by these odd groups. Some research should have been done there, because even a simple minor research into that, one lasting a couple of days, would have told the story.

The Chairman: Before we pass on to the second part, did you have something to add, Senator McIlraith?

Senator McIlraith: No, I wanted to deal with two other points.

The Chairman: Then I think we will go on to Part II, "Proposed Reforms". Did you want to raise some question on that, Senator McIlraith?

Senator McIlraith: On page 16, in your list of recommendations, No. IV states:

> That agreements should be concluded between the federal and provincial authorities in order that the Criminal Records Act might apply to provincial offences.

The reason that it does not apply is fairly obvious, I think. To get the ten provincial jurisdictions to agree on a formula that would make it applicable in the provincial area would be a little time-consuming, shall we say. I think the reason why it is not in there be taken for granted.

In making that recommendation, are you expressing a hope that, through one constitutional device or another, efforts to have it made applicable to the provinces will be pressed forward? Or do you have some specific recommendation as to the technique of achieving this desirable result?

Mr. Cumas: We feel very strongly about it. The injustice of it is fantastic, but I will not go into that now. We were wondering, though, if the Senate, or the Canadian Corrections Association, could make a study as to how this can be brought about. Unfortunately, we are not legal people and we do not know how it should be done.

We do know that we are faced with the real agony of people who, believing they are free, go to get a job but are refused because the companies get their records from the provincial police. I am not sure of this, but I suspect that even if they have committed federal crimes their records are available to the companies through the provincial police.

So we feel very strongly that it is contrary to the spirit of this law that has been proposed. But I feel you people would be in a better position than we would to determine how it should be done.

Senator McIlraith: I, for one, would certainly appreciate a lot of help on it. I must confess that the problem was foreseen from the first when the act was drafted, and a lot of thought was given to it then, but it was a question either of getting on with an act that would create some system of removing the criminal records, or of continuing to wait in order to try to get something that would cover provincial offences as well, which might have meant a rather substantial delay.

Mr. Cumas: There is one flaw we find in it as it is now.

Senator McIlraith: What is that?

Mr. Cumas: The flaw we find is this time space, this uniformity of three years for misdemeanours and five years for the rest. These time factors do not take into account the offence or the personality of the individual.

For example, it says five years for a serious crime, but it will do the same thing for the man who is a known, hardened criminal, un vrai dûr récidiviste—you know what I mean—as it will with the délinquant d'occasion—the accidental offender, the late offender in crime. Here again is a place where the agency or Parole Service can be used to give a summary, because it takes about six months anyhow to give a summary of what the individual is like.

The question is whether a man who is a real hardened criminal—one who has quite a dossier and, although he has not really changed very much, has managed not to get into crime for five years—should be judged the same as the individual who in one moment of depression has pulled off something for which he got five years. All the indices point out that this guy is much more—well, should he wait five years? See what I mean?

If some kid did something just over his adolescence, say, at 19 or 20, should he have to wait three years if you have responsible people saying, "Well, look, this was a bit of folly at 19, 20; why should he wait three years? He has ajob waiting for him now, and he has been crime-free for a year and a half or two years. He has assisted in his own rehabilitation"?

So this is another weakness we find in this uniformity of time space.

Senator McIlraith: May I ask you one other question on another point? Recommendation No. VIII says:

> That the N.P.B. should have jurisdiction to release without the approval of the Governor-in-Council inmates who have been sentenced for murder.

With respect to that recommendation, are you aware of any case where the recommendation of the National

Parole Board for release was not approved by the Governor in Council?

Mr. Cumas: No, but I know of cases where the delay was tremendous. For example, one man should have got out about three and a half years before he did. We had to fight—that is, we had to keep phoning and trying to bring it to the attention of the cabinet. I believe Mr. Turner was the Minister of Justice at the time, and we had to bring it to him. I feel that it creates a great deal of delay.

Then we also find something illogical about it because we know from our figures, as many of you know, I am sure, that in the cases of homicide there is very little recidivism. Any worker will tell you that if you give him a caseload of 20 murderers he will have hardly any caseload at all, because they rarely kill again. But the cabinet takes unto itself the right to look after these particular people when, illogically enough, it allows the National Parole Board to pass judgment on whether to release the sexual psychopath and the psychopath with violence, which are infinitely more difficult cases with a higher rate of recidivism.

Senator McIlraith: Do you think the public of Canada are ready to amend the legislation at the moment to provide a board that would not be answerable to the public or directly to Parliament; in other words, an independent board? Do you think the public is ready to accept that such a board would be granted the right to release convicted murderers within the ten years? I am addressing myself to the practical problem now.

Mr. Cumas: Well, are they not releasing murderers now? The cops bicker and the judges bicker—is it capital or non-capital? So these people come out strictly on the National Parole Board's say-so. Right? This particular group, I mean, not all murderers.

Senator McIlraith: I am talking about the ones who are convicted of murder.

Mr. Cumas: Capital murder?

Senator McIlraith: Yes.

Mr. Cumas: I do not know if the public is ready, but I think the elected representatives of the nation should be setting the pace in terms of progress, and not have to worry about things like capital punishment. I mean, in many cases I feel maybe as strongly about capital punishment as the elected representatives, but here you have a réseau of about 300 people, With a certain standard of education, who should be making decisions which the mass is not prepared to make; and the mass is not prepared to make them for a variety of reasons, not perhaps because it is against capital punishment but because it feels that the oldsters are not getting the breaks, or that the group of young people with college degrees cannot get jobs, or because the situation is so restless in the country that we have not given a mandate to any political party. All these factors are frustrating factors in which, out of sheer frustration, the public are looking for bread and circuses, and our representatives should be able to see this in its *gestalt* and set the paces, if you want to put it like that, for progress.

Senator McIlraith: That may be, but you are into an area that is very difficult in legislative terms at this stage, and perhaps I can just leave it at that. I am aware of the points you are raising and I am not trifling or differing with your reasoning.

Mr. Cumas: Could I raise another point that is very important? With all due respect to the cabinet, if I have a legal problem, I go to a lawyer, but he is not in a position to know the changes that have occurred in this particular individual, whereas we are. His discipline is not in the psycho-social sciences; he has no knowledge of the man's milieu or of the man himself, so I do not think that he is the proper person.

Senator McIlraith: May I suggest that that is not quite his role in this, that he is keeping control over the independent board, the National Parole Board, and in this aspect of its work the independence has been taken away somewhat and it has been brought under more direct control. Isn't that what he is doing?

And my second point in answer to your question, if I may describe it as such, is that he does have a remarkable amount of the information which you have described before him in each of these files. They are very interesting and they are very much more complete than your statement implies.

Mr. Cumas: You will not believe this but, as you know, we have files, and all the files went to the National Parole Board in Ottawa. Then following the Ouimet Commission this part of parole was ceded to Quebec. I was on that. And we said that you must have visiting people from the Parole Board to see these people; it is one thing to see the cold file and another thing to feel, to smell, to understand and to see the man in front of you. You are simply getting cold facts in a dossier.

Senator McIlraith: All right, that has dealt with my first point, but the state of the law is not that the cabinet makes the decision as to whether or not to parole the murderer. The Parole Board makes the decision and the cabinet—what is the word used? I do not have my Code here—the cabinet merely consents to the action being taken.

Mr. Cumas: You are saying that it is the Parole Board which decided and the cabinet consents?

Senator McIlraith: The cabinet merely concurs. I have forgotten the exact wording.

The Chairman: I think we should get out of the realm of political philosophy and back to the reforms suggested.

Senator Hastings: Perhaps my first question should be directed to Senator McIlraith, and perhaps I should ask him whether he knows of any cases where the cabinet refused.

The Chairman: He is not a witness.

Senator Hastings: But I am in complete agreement with your recommendation in this regard with respect to murderers, that the Parole Board should have authority to release inmates who have been sentenced for murder. But would you extend that also to commutation—which I hope we will never have to deal with again?

Mr. Cumas: Do you mean, should we have capital punishment?

Senator Hastings: No, no, I hope we will never have that again, but should we continue to have commutation of the hanging? Should the board make that decision regarding commutation of the death sentence?

Mr. Cumas: You have got me there, and it is not because I am trying to avoid an answer.

Senator Hastings: But for the same reasons as you have outlined here, would that not also apply to commutation?

Mr. Cumas: You mean, if we had capital punishment?

Senator Hastings: If we had, yes.

Mr. Cumas: Yes, I feel there should be commutation.

Senator Hastings: For the reasons you have outlined here, should the Parole Board make the decision?

Mr. Cumas: No, not in cases where you have capital punishment. I think that should be left to cabinet.

Senator Hastings: Why do you differ there?

Mr. Cumas: I differ there because on that level I feel that if the Parole Board takes that upon itself, then the mass—and I am not an elitist—but at our stage of development it would bring down the Parole Board. That is the only reason.

[*Translation*]

Senator Lapointe: You say that every inmate should be assisted when he is interviewed before the Board and you seem to recommend that one of the members of your agency act as advisor because he knows him well?

Mr. Côté: Here, we should perhaps try to put ourselves in the shoes of the inmate living in an institution who is visited by two Ottawa commissionners, as they are seen presently; for them, these are important people, two gentlemen from Ottawa who have the power to decide on their case. We try to put ourselves in the inmate's shoes because, in general, he is very impressed by this visit. First of all, he is often times unaccustomed to contacts with organizations or officials such as these and it is really something for him to come into contact with these people, and above all to have to defend or explain his case. Therefore he loses—or is often in danger of losing his cool. Therefore, we say: due to this human factor, we do not recommend that this be necessarily done through us, by a representative of our organizations—but we say yes, if our representative knows the inmate very well and if the inmate trusts him. We also recommend the appointment of the classification officer whom the prisoner really trusts. But it is mostly to give him a sense of security, so that psychologically, he will be able to show himself as he is and submit his case as it is and not necessearily lose his cool in front of such a mechanism, which is still rather impressive.

Senator Lapointe: Are the commissionners who go into the institutions bilingual? That is to say, when a prisoner is French-speaking do French-speaking commissionners visit him or are they always English-speaking?

Mr. Cumas: Yes,—in Montreal, they are bilingual. Those who go to Montreal are bilingual.

If I could add something to support this statement . . .

Senator Denis: Could he also be assisted by a lawyer?

Mr. Cumas: No, because this would be an approach to parole by lawyers. Three people who know the prisoners will be present at the interview. They are: the Parole Board employee who cannot represent him because he has his bosses who pass judgment. It should be the classification officer or the social worker,—since the inmate is known to all the people who go to the different agencies. The inmate, the criminal, as an image to build up,—il a, de lui-même, la pire opinion—and when he appears before the authority, the doesn't not make any sense, he is completely terrified, he is shy and so on. He needs someone to support him, help him, show him the facts objectively, when he has lied: "But no, this is not true, Jack, you also have problems but on the other hand, you have these qualities",—and so on. He needs advice.

Let us look at the rate of progress of the prisoners in general,—the academic revolution,—you know what I mean?

Senator Lapointe: Yes.

Mr. Cumas: I had to have a beer before coming here to discuss with you. Do you think that the prisoner who appears before the authority . . .

[*Text*]

Senator Hastings: Mr. Cumas, you made a very disturbing statement when you said that the parole officer cannot help him because his bosses are present. Surely, we must dispel this idea that the parole officer and the Parole Board are there not in the interests of the inmate.

Mr. Cumas: I do not think I said that.

The Chairman: No, he said that his bosses would have to make the decision, and that puts him in a difficult situation.

Senator Hastings: But, surely, they are all in the room to make a decision in the interests of the inmate. No one is opposing, and there is no confrontation.

Mr. Cumas: No, but he is still a public official, and he is for the man that the decision is against and it creates problems within the parole system itself. Not only that, it is inevitable that the parole officer supporting the offender might want to go along with what he can see is the opinion of his bosses. We must be able to avoid the situation. It is not that the parole person is less honest than Luc or me with this man; it is just that we are a private agency and we do not have to worry about such things. If I were in his position, perhaps I would have to react in the same way, because I have a family and I have obligations. We expect an integrity from the parole officer which we do not expect from other echelons in the public service.

Senator Hastings: But what I am saying is that everyone in the room at the time of the hearing is there in the interests of the man, and we have to dispel this idea of a confrontation between the inmate and the board, or between the inmate and the parole officer.

Mr. Cumas: But there is another problem which comes into play. The offender feels the parole officer is a man of authority, the same as those who are standing on that podium.

Senator Hastings: But we have to dispel this idea.

Mr. Cumas: I know, but it takes years of education. I agree with you, there are some parole officers who are delightful to work with: they have the same background as we do; they are as compassionate; and they are for the offender. The public does not accept them as readily as they accept us; but perhaps in 10 or 15 years, through education, this situation will change.

On many occasions a man is put on parole, and he will come to us. We feel there are no cultural differences or language barriers. We say to him, "Look, they are not authoritarian. Go to them and be as frank with them as you are with us." We find that we have to interpret for, and educate some of the offenders we have known in order for them to be as free with their parole officers as they are with us. His particular parole officer may be more frank than my particular social worker. So this is something which exists in the minds of the public.

Senator Hastings: Do you mean the public or the inmates?

Mr. Cumas: I mean the inmate. He is part of the public; he is part of my public; he makes my living possible.

[*Translation*]

Senator Denis: Do they object to a parent attending?

Mr. Cumas: It would be too suggestive.

Senator Denis: A friend, or someone, if, in your opinion, they are afraid of being misjudged, because he is the assistant of the one who is going to decide. However, what I would like to know from you is whether, according to your recommendations, the welfare officer is the only person who can help him?

Mr. Cumas: No.

Senator Denis: This is not clear.

The Chairman: There is also the classification officer.

Senator Denis: Yes,—and the representative of the welfare agency. It is rather limited, is it not?

Mr. Cumas: They both know him best and, conversely, there are relatives who would be suggestive,—or one of their friends who would be himself a member of the underworld . . .

Senator Denis: Yes, but you make a recommendation; you name two persons who are liable to be good assistants; are there any others but these two persons? Your recommendation limiting the assistance to two persons: namely: the classification officer and the representative of social agencies, is not, in my opinion, very clear.

The Chairman: The brief does not say exactly that. It says: such as the classification officer and so on.

Senator Denis: Yes, but I am asking him if a parent or a friend could attend, and he says no. Therefore, if I ask for a cousin, he will say no, and if I ask for a neighbour, he will say no. We must therefore simply conclude that only the classification officer and the representative of the social agency are qualified, or should have the right to help him.

Senator Lapointe: No. It is because a certain training is needed to answer questions. If it is the mother, she will start to cry, and if it is the father, he will start to swear, which would not iron out the situation.

Mr. Cumas: If it is the parish priest, he will say he is a good guy. It must be someone who knows him, but who understands professional objectiveness. The only two persons we find in this category are the classification officer and the social worker.

Senator Denis: Supposing we accept your recommendation and the government decides to amend the legislation in order to help inmates. Then, how will we legislate according to your brief? If we legislate, we will have to define who has the right to attend or can attend. So much the worse for him, as Senator Lapointe said, so much the worse for the inmate if he chooses an assistant who is unable to help him. There should be some definition as to who are the persons who could attend. I find your recommendation vague. It is so vague that when we ask if he could be assisted by a lawyer, you say no; and when we ask if he could be assisted by a parent or a friend, you say no. We must finally conclude that only two persons can assist him. Consequently, you would want us to legislate so that only the classification officer or the representative of the welfare agency will be entitled to represent the inmate. Is this what you say?

Mr. Cumas: This is not true; we say specifically that it is the classification officer and . . .

Senator Denis: But you will be no more satisfied if we pass the legislation. I mention two or three examples, and you say no.

Mr. Cumas: After I finish work, I would not like to see a mother who knelt before the judge to impress him; but he nonetheless gave two or three years.

Senator Denis: Did she not succeed?

Mr. Cumas: No. We also note that if it is a friend, he might be a notorious safe-cracker who wants to get him out to help him. Therefore, friends cannot be considered. We cannot consider a lawyer either for many other reasons, one of which is that he would immediately make a legal case of it; he would ask to be paid and this would entail a lot of other things. In this case, we must proceed by elimination, with these two very reliable persons: the classification officer of the Solicitor General's Office in penitentiaries, and the social worker of the Corporation of Social Workers, to work objectively and professionally in their agency.

In this case, we can also supervise the conduct of these two persons.

Senator Denis: But, from a family point of view, some member of the family must be informed, just as well as the agency, a member of the family who would be aware of its difficulties, because of the confinement of the father, of the misery they suffered. We could also have, as an assistant, someone who would say: "I am ready to employ him", that is a potential employer. This should be limited or defined.

Je veux donner un emploi à cet homme, ne puis-je pas l'aider à demander sa libération conditionnelle?

[*Text*]

If I want to give the man a job, can't I assist him in asking for parole?

[*Translation*]

Senator Lapointe: Right now, is it possible to have someone to help?

Mr. Cumas: No.

Senator Lapointe: It is not allowed?

Mr. Cumas: No.

SEnator Lapointe: Presently, he must be left all alone to defend himself?

Mr. Côté: The classification agent is present, but he has no official part to play.

Senator Lapointe: Do you think that we should change the law and allow him to have someone to speak on his behalf?

The Chairman: The law or the regulations should be amended.

[*Text*]

Senator Williams: What I have gathered out of these discussions is that it appears to me the inmate, during his serving of time, has had his self-confidence taken away. Therefore, he breaks down when he comes before an outsider, whoever that outsider may be.

What is the real purpose of the penal system when we are talking about rehabilitation? Is it up to this committee to try to give you answers, or is it up to you to try to answer our questions?

Mr. Cumas: In the first place, the difference between us and the offender is not a great one. In the first place, he is lacking in self-confidence.

Senator Wiliams: Society is suffering on both sides.

Mr. Cumas: Yes, that is one thing. When he is incarcerated his lack of self-confidence is accentuated because of the conditions which exist in prison. Our problem is that we sentence far too many people. Some people suggest that we should change the jails, penitentiaries, and so on. Holland and many Scandinavian countries are doing this. We sentence far too many people. If you look at the graph of criminal categories you will find that only about 8 or 10 per cent are people of violence. The rest fall into the category of crimes against property. These people can be contained in various ways other than by us spending all this money for maximum security institutions, throwing him in there, where any initiative he has had is taken away. His self-image is lessened. Then you get these men who can do nothing but steal again. So, our problem is that we sentence too many people.

If you examine vehicular crimes, soft drugs, and so on, in relation to the whole picture of criminology, crimes of violence, which we have indicated amount to about 8 per cent, drop to 2 or 3 per cent.

So our problem is that we sentence too many people. If you add the vehicular crimes, the soft drugs and so on, to the whole correctional picture of criminality, that crime of violence of 7 or 8 per cent drops to about 2 or 3 per cent and we do not need institutions. It is a very strange thing, but any worker entering our agency, when he starts goes in. He comes back, and we are always waiting to see how long he is going to take to say, "For crying out loud, only about 60 per cent should be in there; the others could be contained outside." Another will say that 70 or 80 per cent, should not be there, that they can be contained outside. We imprison too many people. Our whole correctional system is wrong in that sense.

We talk about giving psychiatric help and so on within the institution. Well, we have very little of that, because our institutions are geared primarily toward custody. But, more and more we should be making the community itself the clinic in which this guy receives his rehabilitation. We can do it. The prisons end up as a catch-all for many medical cases. Your mild sex deviate, your alcoholic, your addicted person, not the pusher, but the addicted, they all end up there. Your mental cases; we are involved when there is trouble with one of our relatives and we say we do not want any notoriety connected with our name. We will do anything to give him treatment. These people have neither the money nor the ability to even spot insanity in their own families, but they say, "Well, that son-0f-b., my son, could never get on with anyone," and they discard him. He just ends up in the prison, which is a catch-all for many mental cases.

Senator Williams: I understand some of the things you have said, but many I do not understand. For instance, we had no prisons before your forebears came . . .

Mr. Cumas: Before who came?

Senator Williams: Before your forebears came to this country we had no prisons.

Mr. Cumas: That is right; man was allowed to live in his free state and commune with nature.

Senator Williams: How do we get back to that?

Mr. Cumas: We could get back to that by a more liberal assessment of our fellow man unless he is doing things which are a real danger to society in terms of violence and the rest of it. You know, in Bordeaux, and all the provincial jails, 50 per cent of the inmates are what is known as the "in-and-outers". The "in-and-outers" are not criminal; they are persons who have fallen within the interstices of a highly complex and materialistic scciety and cannot make it. You know, "Going Down the Road", that movie. We throw them in there, whereas they would be all right outside in a refuge or with day release programs. There are a thousand plans that we could use. They are not very innovative or original, because they are general in other countries. In other words, we are no more criminal than Holland or any other country, but we do not seem to have the intelligence to properly dispose of our criminal statistics as should be done.

Senator Williams: The "in-and-outer" you refer to is viewed by this society as unreliable and a misfit in society, so he is thrown in every time he sits down on the sidewalk.

Mr. Cumas: That is right and he is only a menace to navigation. You keep him out, give him $5 a week and he thinks the John Howard is his club. You give him $10 or $15 a week instead of $10,000 a year to keep his in there, so

we are not being particular. One of the problems is that we do not study the problem with which we are dealing. Very few people know what the criminal categories are. If we had time and felt we would not bore you we could go on, but I think it is ridiculous.

Senator Hastings: You should give that speech to the Quebec Bench, Mr. Cumas.

Mr. Cumas: Oh, the Quebec Bench; I feel more comfortable here.

[*Translation*]

Senator Denis: The 10th recommendation deals with the provisions regarding the protection of rights and the application for parole. Do we, at the moment, deny an inmate the right to apply for parole? I understand that he can accept or refuse parole, but do we refuse nowadays to an inmate the right to apply for a review of his case in order to be paroled?

Mr. Côté: You are aware, of course, that this report has been prepared by a committee several members of which you present when this question was raised by representatives coming rather from regional districts than from the larger communities of Quebec city and Montreal. There were provincial formasts made and these people doubted that the information given the inmates regarding parole was adequate. We said that not all inmates are aware of the parole system and that they can apply for it at some point in their sentence. Personally, I have never heard of such cases, but we brought this question to the attention of the representatives from rural regions where penitentiaries are smaller and also from the districts where the inmates population is not very large. I am not sure that the information system for all inmates who enter provincial penitentiaries is very adequate.

Senator Denis: But you cannot assert it positively.

Mr. Côté: No, I cannot assert it, but we speak with some inmates. We cannot start only from the inmates account but, on hearing it, we get the impression that they do not know much about parole. For them, this measure is very, very abstract, very remote and very difficult to understand.

Senator Denis: Yes, but there is a difference between the right to apply for parole and information.

Mr. Côté: We said in our report, I think, that it is the right to apply for parole.

Senator Denis: That is right.

Mr. Côté: The inmate cannot apply for parole if he lacks information at the outset, if he knows nothing about parole and does know that such thing exists.

Senator Denis: Do you believe that inmates ignore that they can be paroled.

Mr. Côté: Perhaps they know among themselves, by hearsay form one another. Is it really the kind of information they should receive to take a decision whether or not to apply for parole?

Senator Denis: That is right.

Mr. Côté: Yes.

Senator Denis: May be they get poor information, but they know they have the right to apply. Consequently, your recommendation No. 10 is not justified since this right already exists. Any inmate can apply for parole. I understand if, for example, you had said, in lieu of your recommendation No 10, that this information must be given to each inmate on his commitment, and you had recommended that it should be mandatory; but you do not say that; you say that he should have the right to apply. He has it, now. So, in my opinion it is like bursting in an open door.

Mr. Côté: I think that the text of our recommendation is not clear enough.

Senator Denis: I think so.

Mr. Côté: You are right there.

The Chairman: Senator Lapointe, do you have other questions?

Senator Lapointe: Do you not think that the autorities of each institution should, a few days after commitment, provide the inmate with a pamphlet or a circular informing him of his rights and of the procedure towards obtaining parole. It would be quite easy and better than to learn it from one cell-mate or other.

Mr. Côté: I think that we are all aware that parole, as a procedure, is quite complex. Now, to provide him with a pamphlet explaining what parole is, is probably not enough for him to understand the procedure adequately. The measure, I would suggest—although it was not discussed by the Association— is that everytime an inmate is confined, the parole officer should get in touch with him, give him the necessary information and make sure that he understands it well. If they are unable to do it in some regions, they should train to this end some officers in the penitentiaries, especially in provincial institutions, in order to have a staff that is capable of providing adequate information.

Senator Lapointe: Some inmates said that the Parole Board looked like a secret society, because they do not know precisely how it operates; so, they have likened it to a secret society. Do you think they were exaggerating a little, or is the question rather mysterious in their minds?

Mr. Côté: Personnally, I have gathered from the inmates that this matter is very difficult to understand, and extremely complex. It is beyond them and they cannot relate to it. It is a system which is outside their normal sphere.

[*Text*]

Senator Hastings: You were dealing primarily with provincial institutions in this last reference. Are you alluding to that?

[*Translation*]

Mr. Côté: In Quebec City, we are far from federal penitentiaries and we work in the provincial institutions. There are two prisons in Quebec City, one for women and one for men. There is a very large regional prison for men. Many of our employees work inside the institution and contact inmates as soon as possible to discuss their personal problems. In the meantime, we have a four-mem-

ber team that makes a three-day visit each month to the federal institutions to contact inmates of the Quebec City area. Out of about 180 to 200 inmates in our area, we can, unfortunately, only contact approximately half of them, at present, if we want to carry out our work seriously. We should increase the number of persons who can visit and perhaps increase the frequency of visits, because the same persons, besides working with the inmates, continue to work with the latter's families. This same person does the work on both sides.

[*Text*]

Senator Hastings: Dealing specifically with this right to apply for parole, you say, "We recommend that each inmate should be informed at the time of his admission and that this right should be observed in all institutions". Is your complaint directed particularly to provincial institutions or to federal institutions also?

Mr. Cumas: I think it is more likely in the provincial institutions. A division was suggested between having a provincial parole and another one, because there are more people in provincial institutions. The parole system is sometimes so hard-pressed that there cannot be as much attention given to federal institutions as provincial. This is a problem which applies more to provincial jails, but they are still eligible for parole. Yes, you are perfectly right.

Senator Hastings: With the federal, a man is informed at the time of his admission of his right to apply for parole.

Mr. Cumas: Generally.

Senator Hastings: Generally, or always.

Mr. Cumas: You say "always." I have had no complaints. I think you are right.

Senator Hastings: He is advised of his right, and he is advised of his eligibility date and when to apply.

Mr. Cumas: But in the provincial institutions there are backlogs. It is not always that he has not been advised. Often they cannot get to him. The sentence is so short that by the time the process of parole is complted, it is hardly worth giving it to him. That is why we are strongly in favour of a provincial parole system, because we have 7,000 people in federal penitentiaries serving sentences of over two years. Across the country we have 25,000 to 30,000 in provincial institutions. This way we may lose a lot of money, but these are the people whom we should be letting out more and more.

Senator Hastings: Mr. Chairman, I would move that the the brief be printed as part of today's proceedings.

(*For text of brief, see appendix*)

The Chairman: On behalf of all Committee members, I thank you, gentlemen, for your assistance.

The Committee is adjourned until Tuesday next at 10 a.m.

The Committee adjourned.

APPENDIX

BRIEF OF THE SOCIAL REHABILITATION SERVICES ASSOCIATION TO THE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS ON THE STUDY OF THE PAROLE SYSTEM IN CANADA

Social Rehabilitation Services Association,
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June, 1972

INTRODUCTION

The Social Rehabilitation Services Association (S.R.S.A.), interested in all measures which promote the rehabilitation of offenders, has considered it necessary to respond to the invitation of the Senate Standing Committee on parole. It therefore respectfully submits this brief in the hope that it will merit your kind attention and will permit improvements to the parole system.

BASIC POSITION

S.R.S.A. recognizes the validity of the principle of parole and considers this measure as an indispensable element in the process of social rehabilitation of ex-inmates.

S.R.S.A. believes that the private social service agency must be considered as an integral part of the correctional services network. The private agency intends to play a role that is particular to it and is defined by its objectives.

Our Association believes that the role of the private social service agency must first be to complement the role played by the other correctional services. This does not prevent the private agency from assuming duties considered as the responsibility of public organizations.

PRESENTATION OF S.R.S.A.

At the time of its establishment in 1962 upon the request of the Minister of Justice, S.R.S.A. consolidated the specialized social service correctional agencies whose exclusive functions were assistance to offenders in all forms. Later on, various social service agencies came to join the Association because they also had among their clients prisoners, ex-prisoners, parolees, etc... The new provincial association has several objectives: to create a link between these agencies and the Department of the Solicitor General, to facilitate and simplify the method of distributing subsidies, to promote a mutual cooperation between the various rehabilitation organizations through the exchange of information and services, finally, to develop programs for prevention and research on criminological subjects.

In 1970, the Parole Service organized several meetings with S.R.S.A. for the purpose of determining new financing standards. These meetings resulted in the signature by the 25 member agencies(1) of a service contract negotiated by S.R.S.A.

S.R.S.A. played an important role at the time of national and international congresses, notably those of the Canadian Criminology Association and the International Prisoners Aid Association. It also participated in the work of the great commissions of the last ten years such as the Commission of inquiry into the Administration of Justice on criminal and penal matters in Quebec (Prevost Commission) and the Canadian Committee for Penal and Correctional Reform (Ouimet Commission.). It participated in every conference requested by the Department of the Solicitor General and notably in the study undertaken by the Planning Committee on the costs of parole in 1969.

By reason of its charter and the role of intermediary that it plays between private organizations and the public sector, S.R.S.A. supports the objective pursued by the Senate Standing Committee which deals with the effectiveness of the parole system.

It is in a spirit of cooperation, and with the mandate of its members, that S.R.S.A. asked to participate in this study and then to be heard by the Standing Committee on Legal and Constitutional Affairs on the study of the parole system in Canada.

(1) Annex A—List of member agencies

PART I

THE PRIVATE SECTOR IN PAROLE

PRESENTATION OF THE PRIVATE SOCIAL SERVICE AGENCY

The private social service agency is a means created by the citizens to assist those who cannot reach a level of adequate social performance. The private agency belongs to its community and is run by its representatives, all without pay.

The rehabilitation of the offender has always been an important concern of the private social service agency. In Quebec, three of these agencies (two in Montreal and one in Quebec) serve this clientele exclusively, whereas the other private agencies, said to be unspecialized, provide their services to a more diversified clientele including the offender.

S.R.S.A. feels that the private social service agency must be considered as an integral part of the correctional services network. The private agency is not intended to supplant nor to duplicate the work of the other members of the network, but to play a role which is particular to it and defined by its objectives. It works in close cooperation with the other public and private correctional services. There is teamwork between the different correctional services.

THE ROLE OF THE PRIVATE SOCIAL SERVICE AGENCY IN THE CORRECTIONAL SECTOR

Our Association believes that the role of the private social service agency must first be to complement the role played by the other correctional services. This does not prevent the private agency from assuming duties considered as the responsibility of public organizations. Among these duties, we will retain for purposes of this brief the

community evaluation made for purposes of studying a request for parole and the supervision of parolees.

In order to address with maximum effectiveness all of the problems posed by the rehabilitation of the offender, the functions of the private social service agency must be many: direct service, social action, prevention, research and the practical training of the future professionals of the correctional sector.

Our intention is not to describe in a detailed manner the last four functions, but rather to deal with the function of direct service to candidates for parole and to parolees themselves. Let us mention, however, that in its own area the private social service agency recognizes its responsibility to sensitize the public and to increase its participation in the different correctional programs. The private agency also has the duty of developing and applying programs for the prevention of offences. Research is another of its responsibilities: it must benefit from the data collected on its clientele and analyse it in minute detail in order to increase its knowledge and the effectiveness of its assistance. Finally, it has the duty of contributing to the practical training of the future professionals of the correctional sector, by receiving as trainees the students from our schools or faculties for social service, criminology, professional guidance and psychology.

THE DIRECT SERVICE FUNCTION OF THE PRIVATE AGENCY IN THE CORRECTIONAL SECTOR

By direct service, we mean the services offered to accused persons, to persons on probation, to inmates, to parolees and to subjects whose sentence has expired. For the purposes of this brief, we will deal more with the services offered to inmates and to parolees, since the services for inmates are the principal justification for the intervention of the private agency for the community evaluation and the supervision of certain parolees.

A. SERVICES FOR INMATES

At the beginning of imprisonment, the private agency can play a consultative and informational role with regard to the treatment team of the institution. This role consists of obtaining and providing to the team personal, family and social data about the inmate. The treatment officer of the institution obtains certain information from the inmate, but it will often be advantageous to have it corroborated and completed by another source in order to avoid a wrong direction in the initial plan developed for the inmate.

The private agency is also called upon to play a role with regard to the family of the inmate. The family often needs assistance in the face of the new situation. The private agency can help the family to accept imprisonment and to settle the difficulties created by the absence of the imprisoned member. The private agency can motivate the family to maintain its ties with the inmate and to participate in the rehabilitation work undertaken at the institution.

Later on, the private agency has a more active role to play with regard to the inmate. The agency representative will seek to establish a relationship of trust with the inmate. Thanks to this relationship, he will be able, if necessary, to cooperate with the treatment officer of the institution in order to assist the inmate to accept the reality of the sentence and imprisonment and to adapt himself to the institution. It is true that this work is the responsibility of the institution, but in certain cases, the intervention into the "system" of an outside unidentified agent will prove necessary.

Also thanks to this relationship, the agency representative will be able to commence preparations for the release of the inmate. The release plans will be discussed, the responsible person from the agency will determine if they are feasible and, if necessary, will assit the inmate in working out new ones. At the same time, the agency representative will work with the family in order to make it, if necessary, a true participant in the work already undertaken. Applications will be made to former or future employers. Finally, the agency representative will benefit from his visits to the detention institution in order to exchange views with the classification officer so as to obtain a better knowledge of the inmate and an arrangement of their respective work plans.

This assistance relationship will be improved to the extent that the work continues. We expect that at the time of release, thanks to this relationship, the offender will be able to use our representative to settle the different problems that he will have to face during the period of reentering his environment.

B. SERVICES FOR PAROLEES

The cooperation generally requested of the social agency by the National Parole Service is twofold. In the first place, it consists of a study of the family and social surroundings where the inmate plans to live upon his release, and a study of his possibilities of employment. This is what is called the community evaluation. In the second place, this cooperation consits in carrying out the supervision of the parolee.

We believe that these duties are well-suited to the private social service agency. With a good knowledge of the environment and its resources, and with a staff specialized in the human sciences at its disposal, the private agency is well-suited to proceed with the community evaluation and to carry out the supervision of the parolee.

We must understand, however, that the private agency does not research the case of parole simply because it is a case of parole. This type of client is of interest to it particularly when it is a matter of a subject or a family with which the agency has been working continuously for a certain period of time. Because of its knowledge of the subject, his family and his environment, because of the contact which has already been made, it is natural for the private agency to be responsible for proceeding to the community evaluation in such a case, if only because of the concern for effectiveness and the saving of time and money. In addition, if we really believe in the importance of the relationship of trust between expert and client as an effective means of helping the latter to rehabilitate himself, we cannot justify the cessation of this relationship because of the mere fact that the inmate becomes a parolee. The S.R.S.A. believes that the N.P.B., in requesting the expert of the private agency to withdraw in such a case in order to replace him with their own supervision officer (who often knows the parolee only on paper), creates a new handicap for the parolee which he would have

to overcome in order to succeed in his very difficult return into society.

The S.R.S.A. supports the principle of the continuity of treatment by the same assisting agent as a condition of greater effectiveness.

The S.R.S.A. recognizes the responsibility of the National Parole Board for the application of the Parole Act and its complete jurisdiction for the determination of the requirements and standards for the community evaluation and for supervision. The S.R.S.A. believes that the private agencies who agree to cooperate with the National Parole Service meet these requirements and standards and that they will continue to do so in the future.

IInd PART

PROPOSED REFORMS TO THE PAROLE SYSTEM

Criminal Records Act

The S.R.S.A. supports the principle of this law. Such legislation appears to us to properly fit into the current of a more humanistic philosophy that the Canadian government is attempting to adopt in the correctional field. In addition to being an acknowledgement of the notion of "REHABILITATION," in our opinion the new law constitutes an important link in the chain to be established between penal law and correction.

This law will have as a long-term beneficial effect the reduction of the prejudices of the public toward the ex-convict. We believe that it will contribute to considerably reducing this 'stigmatizing' attitude of which the applicants are often the victims.

However, the law does have some limitations which considerably reduce the effects sought. It does not cover violations against provincial laws.

This is why we believe that agreements between the federal and provincial authorities will have to be concluded in order to ensure that every eligible person can benefit from a real pardon.

The present law does not take account of the type of offence and the type of offender. In our opinion, this uniformity is a denial of the principle of individuality advocated by the human sciences and which prevails more and more before our Courts.

We are dissatisfied with the legal delay required before an applicant can apply for a pardon. A distinction should be made between an accidental offender and a notorious recidivist.

We are of the opinion that the National Parole Board must be responsible for the inquiry made with regard to the applicant. In bringing the Royal Canadian Mounted Police into the investigation, the believe that the legislator has adopted a measure which is incompatible with the spirit of the new law. We consider that this action will replace the parole officers. In this task, the Board could make use of the services of the private social service agencies when the applicant and/or his environment are already known to them.

THE DIVISION OF RESPONSIBILITIES IN THE MATTER OF PAROLE

A—Federal or provincial authority in the matter of parole

Without involving ourselves in constitutional questions, we believe that it would be preferable for the parole of inmates of Quebec provincial establishments (local or regional prisons) to be the responsibility of Quebec government.

We believe that it is logical for the government administration which has the responsibility for detention and for training during detention, to also have the authority over the release of inmates under its jurisdiction.

We completely share the point of view of the Canadian Committee on Penal and Correctional Reform which we believe necessary to repeat here: (1)

> "Parole is seen as an integral part of the correctional process. Rehabilitation demands continuity and flexibility, including flexibility in determining whether an inmate should serve all of his sentence in the institution or whether he should serve part of it within the community. It also demands coordination of knowledge about the offender. It seems inefficient to the Committee for an offender to be under the jurisdiction of one government throughout his institutional career but for another government to be responsible for deciding whether he should be granted parole and for supervising him if he is granted parole. It is for these reasons that the Committee recommends that the provinces assume responsibility for parole as it affects all inmates of provincial prisons."

(1) Report of the Canadian Committee for Penal and Correctional Reform, pp. 362-363.

Finally, we recommend that inmates sentenced for 2 years and more remain the responsibility of the N.P.B. according to the machinery that we will outline in another chapter.

B—Jurisdiction in cases of murder

The S.R.S.A. believes that the intervention of Cabinet in the case of parole for inmates convicted of murder is not desirable. Experience demonstrates that this procedure can result in undue delay to the detriment of the inmates. The preoccupations of the members of the Cabinet leave them only a small amount of time to look after individual problems. In addition, the majority of Cabinet members have difficulty in appreciating the change which occurred on the part of the inmate since his imprisonment and the risk that he will commit an offence of the same kind. The N.P.B., composed of persons accustomed to appreciating the numerous data gathered during the study of the case, appears to us to be the most capable of rendering a decision in these cases.

Since the Cabinet is composed of elected members, and therefore subject to public opinion, it is perhaps less well-suited to take such decisions than the Commissioners of the N.P.B. who are appointed. We therefore believe that the actual procedure whereby the Governor in Council makes parole decisions in cases of murder is not justified. Moreover, it appears illogical to us for Cabinet to retain this jurisdiction whereas it leaves to the N.P.B. the responsibility to parole the sexual offender, the violent

psychopath and other categories of individuals who have a rate of recidivism which is much higher than those convicted of murder.

New Structure for the N.P.B.

The S.R.S.A. believes that the structure of the N.P.B. should be modified in order to permit the establishment of regional boards. This new formula could be described as follows:

National Board
Composition

We advocate the maintenance of a national parole board but with a change in its role and method of operation. The number of its commissioners should be sufficient to permit an adequate service throughout the country.

Roles

—to apply the law and the policies of parole and to account to the legislator for its mandate.

—to ensure uniformity of application in the regional boards.

—to review the decisions of the regional boards.

—to accept or refuse parole to murderers, sexual psychopaths and other criminals presenting a more serious danger to public safety.

Regional boards

We recommend the creation of regional boards in sufficient number to take account of the regional characteristics and the density of the prison population. By decentralizing the decision-making power, the regional boards would permit greater speed in the study of applications and a greater respect for the characteristics of mentality, resources and local problems.

Each regional board would include two resident commissioners from the region and a travelling commissioner belonging to the National Board in order to ensure a uniform policy across the country. It is understood that each of the commissioners will be selected on the basis of rigorous criteria of professional qualifications.

Roles

—Application of the law

—Study of applications for parole and decision.

This new structure would restore to the N.P.B. the complete responsibility for the parole of all inmates of federal penal institutions. It would create an appeal procedure from the decisions of regional boards. It would personalize its approach by the establishment of regional boards. Finally, it would serve to accelerate the decision process.

Steps to guarantee the right of the inmate to request parole

All persons have the basic right to be informed about existing laws and to benefit from the advantages of these laws.

Thus, the S.R.S.A. believes that the N.P.B. must take steps to guarantee to the inmate the right to present a request for parole.

As a result, we recommend that each inmate should be informed at the time of his admission and that this right should be observed in all institutions whatever the duration of the sentence and the seriousness of the file.

Right to be assisted by counsel at the hearing

A large number of applicants for parole need to be assisted at the hearing before the N.P.B. Their appearance before the commissioners often provokes a psychological blockage which prevents them from expressing themselves freely and presenting themselves as they are. The persons who could help them the most, we believe, are those who have attended the inmate for some time such as the classification officer and the social agency representative.

Partner relationship between the Parole Service and the private agencies

We have shown in the first part of this brief the importance of the role of the private social service agencies in the application of the parole system.

In several regions of Quebec, these agencies almost single-handledly assume the community evaluation and direct supervision services. On the other hand, in other regions, these duties are divided between private services and the public service.

If we admit the value of the principle of continuity, we must accept the division of duties between the public and the private sector with regard to the community evaluation and the direct supervision. A 50-50 division standard appears somewhat arbitrary to us. We prefer a division based on recognizing the organization which is most qualified to render the service.

It is therefore essential that the two partners negotiate a long-term contract which specifies a sufficiently long notice to allow the two parties to plan their action in the event of cessation of services. Finally, the financing will have to be based on the real cost of the services rendered and adjusted periodically.

Information and education of the public in order to promote the acceptance of parole

We believe that the N.P.B. would benefit from increasing the information to the public by press releases, publicity pamphlets, conferences, television broadcasts and other means.

This information could deal with its role and its objectives, the process of operation, the criminal effect of prisons, the choice between an unconditional release at the end of sentence or parole with supervision. It could in its statistics take into account the number of successes, the characteristics of parolees (age, status, ethnic origin, family, etc. . .) and the savings realized through such a system.

There are several forms of conditional release. Thus, a judge can exempt an accused from detention by ordering him to keep the peace or else . . ., he can put him on probation by placing him in the custody of parents or social organizations. On the other hand, we are familiar with temporary releases under the authority of the director of the detention institutions, release for a stay in the transition centres, parole itself, and statutory release.

It is therefore easy to confuse these various conditional releases. Moreover, in a general manner, public opinion is against early releases. Inevitably, the National Parole Board serves as a scapegoat for recidivists of all categories of conditional release.

In order to avoid confusion and to leave each decision-making level with the responsibility for its acts, we recommend that the N.P.B. should better inform the public on its objectives and its operation.

RECOMMENDATIONS

The S.R.S.A. recommends:

I. That the private social service agencies should be considered as an integral part of the network of correctional services.

II. That the principal of continuity of treatment should be considered as a prime criterion for the division of cases between the N.P.B. and the private agencies.

III. That the standard of division (50-50) proposed by the Solicitor General should only be an indication to the organization which is the most qualified to assume the responsibility for parole.

IV. That the agreements should be concluded between the federal and provincial authorities in order that the Criminal Records Act might apply to provincial offences.

V. That the N.P.B. alone should proceed to the evaluation of applicants for pardon under the Criminal Records Act.

VI. That the Parole Act should be amended to give provincial governments the power to create a parole system for the inmates under their jurisdiction.

VII. That the N.P.B. should retain jurisdiction over all inmates imprisoned in federal penal institutions.

VIII. That the N.P.B. should have jurisdiction to release without the approval of the Governor-in-Council inmates who have been sentenced for murder.

IX. That the N.P.B. should decentralize into regional boards in order to facilitate a greater individualization in its approach while taking account of regional characteristics and accelerating the decision-making process.

X. That the N.P.D. should adopt measures guaranteeing every inmate the right to request parole.

XI. That every inmate should be represented at the time of his hearing before the board.

XII. That the social service agencies which are members of the S.R.S.A. should be considered as partners of the N.P.B. and they should negotiate a long-term contract which would guarantee them security in the face of their obligations.

XIV. That the N.P.B. should better inform the public about its objectives and its operation.

ANNEX I

LIST OF MEMBER AGENCIES OF S.R.S.A.

Guidance and Social Rehabilitation Society
MONTREAL

John Howard Society of Quebec,
MONTREAL

Social Rehabilitation Service Inc.,
QUEBEC

Social Service of la Mauricie,
THREE RIVERS.

Social Service of Western Quebec Inc.,
AMOS.

Social Service of the Diocese of Chicoutimi,
CHICOUTIMI.

Social Service of Outaouais,
HULL.

Social Service of Joliette,
JOLIETTE.

Social Service of the Diocese of Mont-Laurier,
MONT-LAURIER.

Social Service of Central Quebec,
NICOLET.

Social Consultation Centre,
RIMOUSKI,

Social Service of the Sherbrooke Region Inc.,
SHERBROOKE.

Social Service for Childhood and the Family,
LA POCATIERE.

Richelieu-Yamaska Family Service,
ST-HYACINTHE.

Family Social Service (South Shore)
LONGUEUIL.

Laurentian Socio-Familial Centre, Inc.,
ST-JEROME.

Social Service of Saguenay,
HAUTERIVE.

Social Service of Gaspe,
GASPE.

Social Service of the Diocese of Valleyfield,
VALLEYFIELD.

Social Service of the County of Megantic,
THETFORD MINES.

Social Service St-Joseph de Beauce,
ST-JOSEPH DE BEAUCE.

Social Service Ste-Germaine de Dorchester,
STE-GERMAINE DE DORCHESTER.

Family Service of the South Shore,
LEVIS.

Social Service of Portneuf,
DONNACONA.

Regional Social Service of Chateauguay,
CHATEAUGUAY CENTRE.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 5

TUESDAY, MARCH 13, 1973

Nineteenth Proceedings on the examination of the parole system in Canada

INCLUDING THE APPENDIX

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(Witnesses and Appendix—See Minutes of Proceedings)

25883—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 13, 1973.

Pursuant to adjournement and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Hastings, Laird, Lapointe, McGrand and McIlraith. (6)

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Canadian Criminology and Corrections Associations, were heard by the Committee:

Professor Ronald R. Price, Chairman of the Parole Committee;

Mr. William F. McCabe, Member of the Parole Committee;

Mr. W. T. McGrath, Secretary of the Parole Committee;

Professor T. C. Willett, Member of the Parole Committee.

On Motion of the Honourable Senator McIlraith it was *Resolved* to print in this day's proceedings the "Official Statement of Policy" submitted to the Committee by the Canadian Criminology and Corrections Association. It is printed as an Appendix.

At 12:10 p.m. the Committee adjourned until 2:00 p.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 13, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The brief this morning will be presented by the Canadian Criminology and Corrections Association. Professor Price will make the opening statement on behalf of this association.

Professor Ronald R. Price, Chairman, Parole Committee, Canadian Criminology and Corrections Association: Mr. Chairman, honourable senators: It gives us very great pleasure to have this opportunity to appear on behalf of the Canadian Criminology and Corrections Association before this committee. As you probably know, ours is the principal official body representing the correctional community in Canada. This brief is the product of long gestation of the very able committee that I have had the honour to work with.

Present with me, representing the committee and the association, are: the executive director of the association, Mr. Bill McGrath, who is familiar to you and is responsible for most of the drafting of the brief; Mr. William McCabe, of the John Howard Society of Kingston; and Professor Terence C. Willett of the Department of Sociology, Queen's University. I am with the Faculty of Law at Queen's.

We had a committee that we are rather proud of, which consisted of the present members, and also people, who were not there in a representative capacity but assisted us throughout, from senior levels of the Canadian Penitentiary Service and the National Parole Service. They are in no way responsible for the brief; they were there as advisers. Similarly, we had representatives from the Ontario Ministry of Correctional Services, all of whom were relatively senior officers. We had Professor Ryan from our faculty, and representatives of the inmates, of whom we had two on the committee, and the Elizabeth Fry Society. I guess that pretty well covers it.

We met over a period of one year in ten full-day meetings. I mention that to give you some idea of the time we have spent. I must say that even towards the end of this period we were still finding difficulties with the subject, which I am sure you are very much aware of after all the time you have spent on it. The brief went, as is required by our constitution, to the board of directors of our association, who spent a further two days on it and made about three modifications, which may come up during the discussion of the brief which is now before you.

The basic orientation of the submission is, I think, twofold. First of all, we make quite a number of recommendations that are designed to increase the flexibility of the parole process, and to enhance its rehabilitative aspect in its operation. I think this is one thing that runs through this submission. The second main theme, and perhaps more than in any other submission you may have received, is a very strong emphasis on procedural due process, as the Americans would call it, or natural justice safeguards. I want to talk about this at some length, but not at undue length. I would emphasize, at least, that this is not just from lawyers but from representatives of the correctional community itself.

I want to do two things—and this will be something of a departure, I understand, from your ordinary practice, but I have discussed it with our committee and with your chairman. One will be the standard thing, to lead you through the principal recommendations of the brief and this will not take long, because I am sure you have read it, and I will just indicate the main points in it.

What I do want to do that is different is to lead you through the facts of one rather celebrated case, celebrated in the sense that it received a great deal of newspaper publicity, to show you from a procedural safeguard perspective how the parole process works. I think this may come home to you in this fashion rather more than it sometimes does in the abstract fashion that one gets in reviewing recommendations in that form. So I hope you will bear with me. This may take about ten minutes to do but I hope it will be worthwhile. We felt that it would be.

The Chairman of the National Parole Board, in appearing before you, said that they are used to criticism. I suppose there is criticism implied in this. It is not criticism of him, but it is criticism of the system. It is the system that we and many academic commentators want to see changed.

In his submission of December 17, 1971, Mr. Street said this, in talking about the parole granting process:

> But even though I am very conscious of our very awesome responsibilities and powers in regard to this man's life and liberty, I do not think it involves legal matters. Whether he is released on parole or not is a matter of whether it appears that he is safe to be released. Can he be released? Can he be controlled in the community? Is he a suitable risk, and so on? None of these is a legal matter. We do not allow or encourage lawyers to attend a hearing. They may very easily talk to us or write to us at any time and make their representations to us on the inmate's behalf.

He is talking about parole granting, and I do not know whether you have had much attention given to parole revocation. This particular case is a parole revocation case. The same things do not apply to the same degree in parole granting, but I think we can start at this end and see what happens. Let me preface it with this remark. This is a case which is not *sub judice*, it will be. I am going to be very careful. I am not going to give you the inmate's name, and I am not going to identify it in any way or discuss the issues that are likely to be litigated in court. I am really just going to deal with accepted fact, not contested fact, the things that seem to be evident on the surface.

Senator Hastings: Mr. Chairman, can we deal with it when it is in this category? Can we deal with the case or ask questions with respect to the case, if it is before the court?

Professor Price: I have been careful, senator, to say it is not before the court, no proceedings have been filed, but it did receive a great deal of newspaper publicity.

Senator Hastings: Did you not say that it is *sub judice*?

Professor Price: No, I said it is not–not yet.

Senator Hastings: Not yet?

Professor Price: Not yet, and I am not going to identify it in any way. The inmate will not be named in any way. My purpose is not to embarrass the Parole Board; it is to give you a case that was already in the press and that received quite a bit of publicity.

Senator Laird: Are we not going to be able to guess it pretty well?

Professor Price: I am not going to identify it, and I hope it is not discussed and the name is not identified in the proceedings. This is the problem, that the bad cases are the ones that do find their way out.

Senator Laird: That is right.

Senator McIlraith: This raises an interesting question. I quite understand about not putting the name in the record, that is quite elementary; but it leaves us in a rather awkward position. We are now going to be put in the position of taking, with great deference, Mr. Price's evidence as the truth, the whole truth and nothing but the truth; and we have no way, really, if we are interested, of pursuing the case further or seeking to get other information on it, if we wish to get other information on it, at some time, if there is some point that appears to be a little doubtful. It leaves us in a very awkward position, Mr. Chairman. Surely, we are not going to be asked to render ourselves useless and take a witness's evidence in this way? I have a very high regard for the witness's evidence, let me say. Do not misunderstand me on that point.

Professor Price: May I clarify that I am not going to go into anything which is to be contested. There is just no conflict of evidence here; it is just the effect of a parole revocation.

Senator McIlraith: Yes, I am very much interested in that, but I dislike passing judgment and expressing a recommendation on a case which I have had no opportunity of investigating further myself, if your evidence indicates it should be investigated further by us, or checking out other points on it. It is a horrible position, really, to put a member of the committee in and to put the committee itself in.

Professor Price: The purpose is not for the purpose of this case; it is to show parole revocation, what can happen in any case, and many of the effects I am going to discuss are effects in any case.

Senator McIlraith: Yes, but why should the committee be denied the right to check out the case you are going to give evidence on? It may be it wants to have it checked out by other experts in the corrections field. The committee might want that. It is a very horrible position to put the committee in, in my view. I doubt if it leaves the committee in a position of making a report, based on that evidence; and the committee certainly has every intention of seeking to try to make a report on parole procedures.

Senator Laird: Mr. Chairman, there is another point. If this case exists and will be dealt with, is it not in fact right now *sub judice*?

The Chairman: I think there is a great deal to be said for that. My understanding, when Mr. Price mentioned it to me when he came in, was that he was going to use it to illustrate how the procedure in cases of parole revocation worked. I did not know it was a case that would be landing in the courts. I have some hesitancy about dealing with the case which, if it is not *sub judice* now, is pretty close to being so.

Professor Price: It may be I can help you out, Mr. Chairman, if I did this.

The Chairman: After all, you are a professor of law.

Professor Price: I am well aware of it, and I considered very carefully the form of this. You will understand I am allergic to this, for your sake. If I remove it from the facts of this particular case, change the facts very slightly–it does not even have to be all that slightly–and just in effect give you the principles involved in the issue, they would apply to any case, really, any parole revocation case.

In this particular case, the period is longer; really, that is all that is involved. That will remove it even from the context of the individual case.

The Chairman: I will ask the members of the committee how they react to that.

Senator Laird: I think we are treading on dangerous ground if we are dealing with anything that is *sub judice,* and I still think this in this case. In other words, if we discuss any case that is *sub judice* and it is publicized, then we are in trouble.

Senator Hastings: Mr. Price, could you not take the points which you wish to raise with respect to revocation, and take them one by one?

Professor Price: I can. Let me tell you, then, what happens on a parole revocation. I will do it this way, and there will not be any difficulty arising. You can take it as far away as possible from this particular case. It does not hinge on this. This is just an example.

An inmate, say, is sentenced–we will take any year, and it is not the year in this case–say, 1960. Suppose he gets a sentence of 10 years. On entering a penitentiary, as you probably have been told, he is automatically credited with one quarter of his sentence, so that brings it down to a 7½ year sentence.

The Ontario Court of Appeal has held that this period of time, is a legal entitlement, that it cannot be taken away arbitrarily. He can lose it, if he is convicted of a disciplinary offence. The commissioner may take away up to 30 days: if it is up to that much, the commissioner has to approve. If it is more than 90 days, the minister has to approve, if it gets to the minister. It cannot be taken away without a proper hearing; and this has been held by the Ontario Court of Appeal.

Secondly, he is entitled to an earned remission of up to three days per month, so this is 36 days a year that he can earn. He is entitled to this automatically; it is not credited when he comes into the institution, he earns it. It is credited each month to him, but once he has earned it, it cannot be taken away at all, under the penitentiary rules; it cannot be taken away for disciplinary or other offences.

So, as a result of this, I suppose approximately one-third of his sentence comes off–that is, in a ten-year sentence a little more than three years that he is entitled to.

Suppose he is admitted to parole, say after six years. That is a little long, because he is already down to the better part of six years anyway, with all the time he has earned. Say, after four years. The requirement of the Parole Act is that he serve all his time on the street, including the statutory and earned remission. So he will serve the full ten years. In other words, if he is released after five–let us say five–he will serve five years on the street. Suppose, then, he is going to serve the full ten, if this was 1960, he would be due to come out in 1970, but he is released on parole in 1965; so he has this period 1965-1970.

Suppose that after two years the Parole Board says that this is not working out, "We are going to take you off the street." What happens to him? By virtue of the Parole Act, this is what he loses; he loses the two years on the street, the "street" time does not count,–no euphemism intended; he loses that two years. He loses all of the statutory remission that stood to his credit up to the time of release, which will be one-quarter of five years, which is roughly a year and a quarter. He loses, if he earned it, his earned remission of three days per month, 36 days times *pi*,–you can figure it out, at about half a year.

This man, then, by reason of this process loses about four years of time. He comes back in, he starts serving the sentence from the time it was revoked; he has to serve all the time he was on the street, those two years; he has to serve the 180 days of earned remission that he lost–that may be debatable–but he certainly has to serve the 1¼ years of statutory remission.

If this takes place after the amendments in 1969 came into effect, the result of the parole revocation is that now, even the statutory and earned remission that he earned after he comes in off parole, he has to in effect serve again because he goes under mandatory supervision. So he has to serve that last roughly one-third again under some sort of control.

The Parole Board can do all of this, and it does all of this without a hearing and without any obligation under the Parole Act to grant a hearing, and it does it on the theory that this is an administrative and not a judicial act.

Well, let us look at that. On what basis does the Parole Board revoke a parole? The person is released on certain conditions of parole, but you do not have to have a breach of condition to be brought back in, because under the Parole Act it is possible to bring a person in in order to prevent a breach of any term or condition. Well, is the person at fault? It is really hard to know. He may have breached a condition; he may have been brought in because they thought he was going to breach a condition; but he is not entitled to hearing on this; so one never has a way of finding out. He is not entitled to the information on which the decision is based. So there is no way of finding out. We take it on faith that the Parole Board is going to add four years to the man's sentence without any safeguards whatsoever.

It even goes a bit further than that, because in the literature that it sends out to supervisors the Parole Board talks about parole revocation being possible not only where there is a breach of the condition of parole but where it is necessary for the rehabilitation of the inmate–whatever that means–or where it seems that the parolee does not intend to behave.

These are very serious things. For example, in some cases it has happened that the Parole Board has exercised this power to revoke without a hearing after the man has been on the street for a very considerable period of time, and, indeed, just before the expiration of his sentence. One senses and I have sat in on hearings of the Area Classification Committee in Kingston that these things are subject to some of the pressures of the day that are on the Parole Board. For example, it is rather evident–I do not have figures, but I think they could be found–that the number of parole revocations since things got tough for the Parole Board in the last year have increased very substantially. You look at any list of cases of intake into Kingston Penitentiary and you will see a very significant number of parole revocations on it. These are not parole forfeitures. Parole forfeitures occur when the person has committed another offence and, indeed, he should be brought in. These are parole revocations without any clear establishment that the person has violated the conditions.

The Parole Board also relies on the fact that, "Well, after all, the fellow contracted for parole, didn't he? He did not have to go out on parole. He entered into an agreement with the Parole Board. He did not have to. He knew the terms of the agreement; he did not have to accept them". I really wonder whether to talk about any kind of contract between a man in custody, who has been in custody for four or five years, to talk about his being free to contract, to talk about him understanding all of the implications of what can happen to him, is really all that meaningful.

The United States Supreme Court and any Canadian lawyer quickly learns that you do not quote American cases very readily, nonetheless in June of last year the American Supreme Court passed a major decision in the case of *Morrissey v. Brewer.* If anyone wants it, I can make the citation available. The decision of the court held that under American law, under the Fourteenth Amendment as a matter of American due process, one is entitled to a parole revocation hearing; that this is so central to the whole notion of due process considerations that parole may not be revoked, first of all, without a preliminary hearing on the scene to determine whether sufficient facts are shown to establish it, and, secondly, without a full hearing on the parole revocation itself, with safeguards, written notice, opportunities to be heard, the right to confront and cross-examine witnesses, a neutral and detached hearing body and so on.

According to the American Supreme Court–and I will refer to only one paragraph of this decision, after which I feel I will have said enough to stop–the parolee is not the only one who has a stake in his conditional liberty. Society has a stake in whatever may be the chance of restoring him to normal and useful life within the law. Society thus had an interest in not having the parole revoked because of erroneous information or because of erroneous evaluation of the need to revoke parole.

Given the breach of parole conditions, society has a further interest in treating the parolee with basic fairness. Fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding arbitrary actions.

Is is certainly my submission and certainly the feeling of many people who work in this area, certainly the feeling of many academic commentators, that the parole process insofar as revocation is concerned is arbitrary and unfair, and the recommendations that appear in this brief give voice to that feeling.

The Chairman: Did the United States Supreme Court in that case interpret the particular section of the parole legislation?

Professor Price: No, it is only on general principles and it applies to all states with different statutes. Many American states, including the federal system, do give parole hearings, but this is of general application.

The parole-granting process is another thing, and it is rather harder to talk about procedural safeguards at that level.

Senator Hastings: Professor Price, could we deal with revocation now?

Professor Price: All right, if you like, and then we can come back to what you wish on the brief.

Our recommendations form the more lengthy part of the brief simply because of the nature of the subject matter. They start at recommendation 20 and really run over to recommendation 25, because we have embraced both the suspension process and the revocation process.

Now, the Parole Board can suspend at any time when a man is on parole. This does not have the effect of revoking the parole. This is a useful thing. I think it would be unfortunate for lawyers to demand too much here, or for civil libertarians to demand too much, because it is quite possible to bring the man up short when he seems to be getting into trouble, to bring him in for a sharp shock, if you will, and this has a rehabilitative purpose. I think one would hesitate to see that removed. As the law presently provides, the person who has the power to suspend must make a decision within 14 days whether he will keep the man on suspension or release him, or, alternatively, if he needs more than 14 days, within 14 days he is obliged to refer the matter to the National Parole Board in Ottawa for a decision.

There are a couple of problems here. One is that the person is automatically held in custody, and really the principles such as bail and conditional release can quite properly apply here, and we have made recommendation 21 on page 19 that it should be open to either bring the person into custody or, alternatively, simply to inform the parolee that his parole has been suspended and issue a suspending notice with special conditions, such as restriction of liberty, remaining in his own home and so on. Some of the suspension cases are not so serious that the person need be taken into custody. The other problem is that there is no effective way of ensuring that the board is dealing with the case.

In many cases inmates remain on suspension for really incredible lengths of time–five to six months. The inmate does not know whether the person has referred it to Ottawa.

In the case of Beauchamp, one of the only cases in the field, which is before Mr. Justice Pennell, the inmate complained that he did not believe that it had been referred on within 14 days. Mr. Justice Pennell, who, after all, has had some experience in the field, expressed very great sympathy. He said, "I am limited by the powers conferred by the Parole Act as to what I can do for this man. But the Parole Board may not act arbitrarily." What does that mean? Well, it means, I suppose, if you could ever show–and this is your position as anyone representing the parolee, that you never can show, because you do not have any information, you are not given any, and the Parole Board is not terribly forthcoming with it–that if he could ever show arbitrariness, then, you know, by implication the learned justice would have considered some action. So, that is the suspension process.

The American provisions, and provisions introduced in a bill in the U.S. Senate, I think are both–the *Morrissey v. Brewer* requirement and the other–very similar to our own. We require that action be taken on the suspension fairly quickly. These are set out in recommendation 22. I do not know whether you want me to read them, since you have already had the brief and I do not want to take too much of your time at this stage.

What they are really designed to do is to force a very early decision on this matter, with safeguards, to ensure that the process is moving ahead. If the decision is to revoke, then it will proceed to a full revocation hearing with proper procedural safeguards as set out in recommendation 25 of our submission.

Now, I want to emphasize that this sounds very lawyer-like, but it is not just the lawyers who are saying this; I am sure that Mr. McCabe of the John Howard Society will gladly speak of his experience in the same area.

These recommendations tend to get related into some other more general aspects of the committee's brief, such as our proposal that there should be area parole boards. We feel that these decisions can take place much more effectively and swiftly given parole boards operating on a regional basis. I shall come back to that at a later stage in the proceedings. I do not know if you want to ask specific questions at this stage, and if you do I would not want to take up your time in going through all these details.

Senator Laird: Could I get one fact straight before we come to the questions? This *Morrissey* decision in the Supreme Court of the United States, did it hold that the parolee was entitled to legal counsel?

Professor Price: No, but I might add–and this is the point that was quickly seized upon by commentators–the court was split. Some said that he was entitled to his own counsel if he could provide one. But the moment you say that there is a right to counsel, in the American context, there immediately arises a question as to the right to counsel as a constitutional guarantee and to have it provided, and the court held off on that. Roughly about three or four members of the court, if I remember correctly, said, "Yes, he is at least entitled to his own lawyer if he can get him." But there is legislation before the United States Senate–and I do not know at this time what stage it has reached–resulting from a bill that came out of the Senate committee inquiring into this matter, providing that he is entitled to an advocate who need not necessarily be a lawyer but a para-professional, who could be as effective as a lawyer.

Senator Laird: What does your association feel about the right to have legal counsel at the time of revocation?

Professor Price: Yes, and I think the Americans will be at that stage very soon. The next case that comes along, I think we will all be very surprised if that does not occur.

Senator Hastings: You are confining this to the revocation proceedings?

Professor Price: Yes. Not to parole granting because we are not prepared to recommend a right to counsel for parole granting.

I have sat in on parole granting hearings–the board has been very generous to me in this respect–and I do not see the need for a lawyer at that stage; but I do see a need for access to information. I have tried to help quite a number of inmates, and I am quite sure that others such as Mr. McCabe have tried to do so in different ways, and you hear the most incredible rumours about the basis upon which boards reach their decisions. You try to find out if they are true. This chap was a member of the White Panthers or he was engaged in gun running, and the inmate somehow hears this–here I am thinking of one who gave me this story and I mention it without identification. So you try to trace it down, and you do not think they did, but there is no record and no way of finding out. But one certainly knows of cases, because the ones that have come to me have been cases that came from the institutional people or from the institutional psychiatrist who said, "For God's sake, the board won't move on this case and all the facts are for it."

Sometimes they are wrong, because sometimes these are cases where the minimum period of eligibility has not come up, and I think the board is quite justified in requiring the man to serve one-third of his sentence, and I think that perhaps they have been very badly burned in giving parole by exception where less than one-third has been served; but you cannot find out the basis on which the board decided.

Senator Hastings: At a meeting of the inmate training board of an institution where a decision is made to move a man from minimum security and return him to maximum security, this is a rehabilitative decision made by a board. Would you suggest the same procedure?

Professor Price: Yes, and I think it is coming very soon. This power is now being tested in the courts, and you are perhaps aware of the case of *Green v. McGee* and *Moloney v. Trono* which is up before the Federal Court and which I do not think has been decided yet. It has been tested on a number of occasions in the States, but I do not know if an affirmative decision has ever been reached. This is a very difficult problem in that context because very often these are scoops, which is the lingo for ten guys picked up. They know there is a problem, and all the rumours in the institution say that these guys are the problem. Then they say, "I think we have them all, but we cannot hold a hearing for obvious reasons; people are not going to testify, and we do not have enough facts, so let us move them over to maximum security." And then all hell breaks loose. I sit in on disciplinary boards as part of current research and with the approval of the commissioner. They come up and you say, "Why are you here? " And the reply is, "I don't know; they never told me." Institutional directives indicate that he is to be told. He may have been told. Inmates are not always credible. Now, one feels that the institution is attempting to be fair, and they themselves will say, "If we find out we were wrong, then we will move them back," but there is no way of testing the decision. I think that soon there will have to be some way of getting information on which that decision is based for some appropriate reviewing body.

Senator Hastings: All of these recommendations you are making with respect to procedures, do you not think that these involve a perpetuation of this "we-they" syndrome which continues to be the biggest obstacle we have to overcome? The inmate has been through the courts and is now in the institution; he has gone through the battle out on parole and back in again. Do we not now have to sit down and do something in his interest?

Professor Price: Yes. That is why we would not want it at parole granting, I do not think. I think I speak for the others here in saying that. If you have a man whose sentence is to expire–and, again, I am avoiding any identification or the facts of the case I started with–but if you have a man whose sentence is to expire in 1966, and by reason of a revocation decision–maybe he did not get along with his supervisor, or there can be any one of a number of reasons–that sentence now ends in 1970, then that is four years that the court never imposed. One wonders if that is not a tremendous amount of power to give to a board which is operating in secret, on its own criteria, not subject to any review; nor is any information provided as to the basis upon which that decision was made. To me that is

fundamentally wrong, and many people feel that way. I know that, because it is so evident in the literature.

Senator McIlraith: Just to clarify this point, you took the 1970 date and said that that was not the sentence that the court imposed. At least, I think that is what you said. But, in fact, in the example you were using, that is the sentence that the court imposed, so the Parole Board's use or misuse of authority, as you have described it, is in fact restoring and giving a literal application to the exact sentence imposed by the court.

Professor Price: No. You see, the sentence imposed by the court could have been ended, even without statutory and earned remission, and you would get a situation where the sentence of the court would have ended in 1970, but by the time the Parole Board is finished putting the guy out on parole–and I should say that some inmates will not go out on parole for this reason and they are very, very bitter–by the time the Parole Board is finished that sentence goes on to 1975.

Senator McIlraith: But the example you just used will be in the record and it was 1970, which is the same date as the date that the court sentence would have expired.

I want to clarify this for the purposes of the record here. There was an apparent inconsistency in the example you used just now. You gave 1970 as the end of the time of the sentence the court imposed, and then used language to indicate that they were adding to the sentence. As it stood on the record, it appeared to be an inconsistency, and what I wanted to do was to have you restate your answer in a way that would not leave that inconsistency on the record.

Professor Price: All right. The man, in the example I gave, was paroled in 1965. He is left on parole. On parole he has to remain for the full period of the sentence, notwithstanding statutory and earned remission, so he is out on parole in 1965, which does not end until 1970, which is the time the original sentence would have expired, that is, without any allowance for remission. He is left on parole for four years–and this happens–and then he is taken off parole and he then serves those four years again, starting now in 1969, so that in 1973 he gets credit for new statutory and earned remission, but now he has to go out on mandatory supervision so, in effect, it is 1973. So, even on those facts, it is at least three years longer than the sentence imposed.

Senator McIlraith: That is the point I want to clarify for the record.

Senator Hastings: I should clarify too, Mr. Price, that we heard the evidence the other day that he does not have to re-serve earned remission when he re-enters an institution. He is credited with whatever remission is standing to his credit at the time of parole.

Professor Price: Thank you. There seems to be an inconsistency between one section of the Parole Act and a section of the Penitentiary Act. I was not quite sure of the situation.

Senator Hastings: In any event, this would lead to your recommendation that a man should not have to re-serve any time that he has successfully served on parole. He was serving his sentence on parole and he successfully served four years, so he should not have to re-serve that time.

Professor Price: Yes.

Senator McIlraith: If I may suggest, in the example you have been using the point may be well taken, but the amount of time he could possibly serve could not exceed about a year and a half with no allowances for earned remission.

Professor Price: Why is that?

Senator McIlraith: Because the statutory remission is two and one-half years and he does not have to re-serve that time.

Professor Price: Oh yes, he does.

Senator Hastings: He does not have to re-serve earned remission.

Senator McIlraith: I am sorry, I miscalculated. He does not have to serve that 180 or 200 days.

Professor Price: He has to serve a year and a quarter. You must remember the prison cannot take away that year and a quarter, but apparently the Parole Board can.

Mr. William F. McCabe, Member, Parole Committee, Canadian Criminology and Corrections Association: There is a point of confusion here. The man would lose that year and a quarter statutory remission but it would be recalculated on the basis of the remnant. So if a man spent five years in an institution, was well behaved and had earned his statutory remission, he loses a portion of that statutory remission because it has to be recalculated on the shorter sentence.

Senator Prowse: Yes, but he will, nonetheless, have to go out on mandatory supervision since this was subsequent to 1969, so he is losing a portion of it. Certainly, he is not at liberty. . .

Senator McIlraith: In any event, the point is only as to the amount of calculation which you used in your example. It does not add up to four years; it adds up to something less than that. Whether it is a year and a half or whatever, the point is the same.

Professor Price: Unless you wish to pursue this further, we want to emphasize and counteract the assumption which is often made about parole, and perhaps it has been made to you, that parole is nothing but benefit to an inmate. It can be a severe detriment to him in some cases.

Senator Hastings: Revocation could be a benefit to a parolee as well?

Professor Price: In what sense?

Senator Hastings: If he is in a position where he is running dangerously close, a further sentence could be saved.

Professor Price: It could be. But then the question is: How is that decision reached? And how do we know?

Senator Hastings: I do not think that parole officers are going around throwing men back into prison. That is not their job.

Professor Price: How do you know? They won't tell you. They say, "We make our decisions on criteria acceptable to us, and you have to trust us." Well, we can trust them so far, but it is pretty hard to explain to an inmate that it was based on reasonable grounds.

Senator McIlraith: Would you not agree that there could be cases of revocation where it is beneficial to the person concerned?

Professor Price: Yes, I am not opposed to revocation, but I want the procedures adequately tested.

Senator Laird: For instance, he might get involved with drugs and revocation would be a real benefit to him.

Professor Price: Yes.

Senator Lapointe: In paragraph 2 of Recommendation 22 you say that we should "ensure that the parolee is produced in court." Are you referring to the court that sentenced him in the first instance or to a special court?

Professor Price: Presumably, this would be an Ontario provincial judge. The only purpose for this is to get him before a judicial body so he is not held in violation of the requirements of the statute. A provincial judge would be sufficient for this purpose.

Senator Lapointe: But does he have to go through all of the case?

Professor Price: No, all they have to determine is that the requirements of the statute are met. I am trying to remember. Do you have that at hand, Mr. McCabe?

Mr. W.T. McGrath, Secretary, Parole Committee, Canadian Criminology and Corrections Association: It is at page 20, paragraph 3.

Professor Price: He has to ensure that the time period involved has been met; that there is a proper warrant of suspension; that he has been advised of the reason why his parole has been suspended; and that a decision has been made with regard to whether revocation proceedings will commence. That is all the provincial judge has to do. The purpose of this is to get around the problem which exists at present regarding the 14-day requirement. No one knows whether it has been observed or not because there is no way of testing it.

Senator Lapointe: But before this court convenes, does the Parole Board have the obligation to give the reasons for revocation?

Professor Price: That is my recollection, yes.

The Chairman: Not at the present time. That is your recommendation.

Professor Price: This is the recommendation.

Mr. McGrath: The recommendation is that if the Parole Board does not deal with the case in a specified time it must justify why a longer period is required.

Senator Lapointe: You mean this is not done as a matter of course?

Mr. McGrath: No, it is not done now. If they wish to extend the period beyond the established time they must justify why they cannot deal with it in the time allowed.

The Chairman: Mr. Price, do I understand you to say that at present you are not certain that the member of the board, or the staff member who suspends parole, acts as the law requires—that he refers it to the National Parole Board after 14 days?

Professor Price: Yes, simply because there is no way of testing it. The act says that this is the obligation of the person suspending parole. I suppose if he does not act within 14 days, either theoretically or in actuality, he will hear from the National Parole Board in Ottawa as to why he has not observed the obligation.

Senator Hastings: How would they know?

Professor Price: They would not know unless the case came forward well after the 14 days. The point is that the inmate does not know; and many remain on suspension for a considerable period of time. They are sitting there wondering what is happening.

The Chairman: Is that because the 14-day period is not observed, or because the National Parole Board acts too slowly after it has been referred to them?

Professor Price: It could be for either reason but, again, you have no way of monitoring this to find out.

Mr. McGrath: My guess is that the second reason applies. I suspect most people act within the 14 days and the delay is in the Board's action.

Mr. McCabe: I am in the same boat as everyone else. As a community supervisor who may have given information which lead to the Parole Service suspending parole, I do not receive copies of the documentation which passes between the regional office and the headquarters, so I cannot be sure that action has been taken. Once suspension occurs it becomes an internal matter of the Parole Service, between their district office and headquarters.

Senator McIlraith: Let me clarify this point. I am referring to section 16(2) of the Parole Act, dealing with suspension, where it says:

> A paroled inmate apprehended under a warrant issued under this section shall be brought as soon as conveniently may be before a magistrate, and the magistrate shall remand the inmate in custody until the suspension of his parole is cancelled or his parole is revoked or forfeited.

So it does not remain peculiarly within the control of the authorities at all. The magistrate and the court are interjected there and they have a responsibility. Is that not the point at which your monitoring can be done? It may not be convenient, but if you wish to obtain knowledge, is there not an opportunity of checking in all the courts?

Senator Lapointe: It is stated in Recommendation 22 that:

> This procedure is time-consuming and, since the magistrate has no discretion in the matter, it serves no useful purpose. It would be more expeditious if the revoking officer were given authority to order the parolee's detention without reference to a court.

Professor Price: Do you find this inconsistent?

Senator Lapointe: I do not know, but there seems to be a direct contradiction.

Senator Hastings: You should explain that the sole purpose of the appearance before the magistrate is for identification.

Professor Price: That is right; the sole purpose is to make sure it is the right man. It is an administrative act.

Senator McIlraith: Exactly, but if there is a record, the suspension cannot take place without anyone knowing about it; it becomes a record of the court.

Professor Price: That is right, but the next question is the obligation of the person suspending. I think that deals with the question of no one knowing that he has been suspended, although it is not a very public record.

Senator McIlraith: A court of record is one of the most public institutions we have in this country; the legislation is very specific on that point.

Mr. McCabe: I think the significance is that the court has no obligation to follow up after taking that action of commitment.

Senator McIlraith: I understand that, but it does provide a record, although it is a little different from evidence.

Professor Price: But the inmate has appeared before a provincial judge and is remanded in custody on the strength of the suspension warrant. The next thing that is supposed to happen is that he is released within 14 days from suspension or the case is forwarded to Ottawa. He does not know: 14 days go by, and two or three months can go by.

Senator McIlraith: I understand that point, but it is the other which was not clear.

Professor Price: That is a fair comment. We were a little sloppy in that part of our response.

Senator Laird: In other words, it is not completely surrounded by secrecy, which is the impression you left.

Professor Price: Yes.

Senator McIlraith: The point you are really seeking to make is that the person who is in difficulty, the inmate or a convicted person, should have more knowledge of what is happening, rather than something being done surreptitiously and secretly, without any authority having knowledge or any source from which to gain it.

Professor Price: To try to clear up this inconsistency which has just been raised, I would point out that in our recommendation we were less concerned by this initial presentation before the provincial judge. Conceivably, this may be a problem of identification, but I am sure it must be very rare. However, if the person knows, in any event, that he is to have a date for a parole revocation hearing set within 14 days, or be produced before a provincial judge, that is his principal protection. For all but the most exceptional case, in my opinion, that would be far more protection than presently exists.

Senator Hastings: Could we move to a new area, Mr. Chairman? This is with respect to your recommendation No. 12, that the Chairman of the National Parole Board should not be the executive head of the National Parole Service. Would you care to explain your reasoning once more?

Professor Price: I would just as soon have one of my colleagues respond to some of these questions.

The Chairman: Is that because you do not agree?

Professor Price: No, not necessarily; I do not feel so strongly in relation to some as others. This is not one in which I feel more strongly than others.

Mr. McCabe: I personally am rather lukewarm with regard to this situation.

Senator Lapointe: But who is hot about it?

Professor Price: There must be a member of the committee who was.

Mr. McGrath: I do not want to say more than is contained in the brief, but at page 10 the two paragraphs in the centre of the page read as follows:

> The present arrangement whereby the Chairman of the National Parole Board also "has supervision over and

direction of the work" of the National Parole Service is unsatisfactory. It puts the person carrying these responsibilities in the position of being both advocate and judge, since as the person responsible for the National Parole Service he prepares the case for consideration by the Board and then, as Chairman of the Board, has a voice in determining whether parole is to be granted.

Also, as the person responsible for the Service he is subject to administrative direction by the Department of the Solicitor General. As Chairman of the Board he should have the kind of independence enjoyed by a member of the Bench. To ensure the fact and the appearance of impartiality, the position of Chairman of the National Parole Board should be a separate appointment.

Those are our two points.

The Chairman: But at page 12, in the second paragraph following recommendation 13, you state:

These area boards should be made up of members of the Canadian Penitentiary Service, the National Parole Service, and the public.

If the representative of the National Parole Service prepares the case for consideration before the board, how would you justify making him a member of the board?

Mr. McGrath: The point is well taken, except that we saw the function of these regional boards somewhat differently. We suggest that the person representing the Penitentiary Service and the representative of the Parole Service would be allocated that function, rather than the individual who handles the case, if you follow me. We felt that these area parole boards should function more nearly as classification boards, putting more emphasis on the treatment aspect, perhaps, than on the legal aspect. The team working with the individual in the institution, as part of their plan for him, would develop the date they considered he would be eligible for parole. Therefore it is more a commonly-agreed-on plan than an individual act, such as an appearance before the board. Viewing this as a process up to that point, we considered that the direct participation of both Penitentiary and Parole Services was important. Since it is more a treatment decision than with provision for appeal to the National Parole Board, the assurance of due process and such procedure could be provided.

Professor Price: This is a question of degree. If we start at the point of relating the parole decision to the treatment planning in the institution, there is very strong feeling on the part of some in the corrections field that parole should be integrated as much as possible with that decision and that the inmate should be integrated as much as possible. This is easier with some inmates than with others, obviously. However, the plan would be that on the intake into the system the classification authorities, together with a representative of the Parole Service, would develop a treatment plan for that inmate. This would include the type of progress that he should endeavour to accomplish, and when he might be considered eligible for parole if he met the timetable of that plan. We must go two stages beyond that. We felt that the parole decision must still be independent of that treatment team. In other words, it is proper that the treatment team work with the inmate but, for one thing, they tend to develop a very biased interest in the case. There must be some form of external review, particularly representing the public. At that time this is the function of the Parole Board.

We want to integrate these as much as possible, so that there is the external representative of the Parole Board and representatives of the public. Dr. Willett argued strongly in committee, although it does not appear in the recommendation, that a representative of the judiciary should be included. Be that as it may, these are possibilities. Then the two processes would come together and there would not be nearly as much separation of the Parole Board from the treatment planning. It is necessary, as we say it, in order to preserve some type of monitoring that there should be a record of the process. We do not desire a full, due process type hearing, as the Americans are somewhat moving toward, though there would be room for this at the appeal level. We can discuss that later. The period of minimum eligibility for parole was one hang-up we had in this regard. A treatment plan is developed for a man in an institution which says that if he follows the plan he should be qualified for release at the end of a prescribed period of time. In some cases, and I think not infrequently, this might be before the minimum period of eligibility.

As the parole regulations presently stand this is one-third of the sentence, that the Parole Board has the power by special exception to release a person on parole earlier; and this power has got them into a great deal of difficulty. As we originally formulated our proposal, there would be no minimum eligiliby. This was unacceptable to our board of directors, and I think it might very well be unacceptable to the public. We were ourselves very concerned about it.

So we adopted a compromise proposal, which is not new–it is done in some American states–which is included in recommendations of a bill which came out of the United States Senate committee: that there be a fixed minimum eligibility period, that it be open to make application to the court–I waffle on the word "court," because a decision as to what is an appropriate court would have to be made; that it be open to apply to have that minimum period of eligibility reduced; and further that this application can only go–because we are not concerned with flooding the courts–with the endorsement of the National Parole Board itself.

This is the system which exists in Washington, D.C. It seems to work not too badly, from what I have been able to gather. So you thus have the protection that the minimum period of eligibility is being served; that the Parole Board is relieved of this criticism that they are flouting the sentence of the court. It then becomes a form of judicial decision as to when that minimum period can be reduced. So there is a kind of inter-relationship with these various recommendations that I hope I have helped to clarify.

Senator McIlraith: May I revert for a moment to the area parole board spoken of here? I get the impression that you are in some difficulty in formulating a proper remedy for the improvements needed. In having a member of the parole system on the board, there would appear to be a conflict of interest, since he is adjudicating the work which he or his immediate colleagues have

done. You then have another conflict of interest when you have the Penitentiary Service, who are charged with the custody of the person who has been temporarily removed from society, from the community at large, in that they adjudicate on their own work. So you have sought to correct the situation by bringing in a member of the National Parole Board.

I get the impression, from reading your recommendations and others which have been made here, that it is most unfortunate, in this step that you are seeking to make at this point in the treatment of the individual, that you have used the term "area parole board," or, indeed, used any terminology so closely relating it to the quasi-judicial aspects being exercised by the National Parole Board, where they have a duty to protect the outside community from the person who has been temporarily removed from access to the outside community. It seems to me that it is unfortunate you have used the term "area parole board" in seeking to describe this step in the process which you have envisaged. You are into some difficulty, surely, on that. Surely, if it is an area parole board, it must have a determination that will take account of all the evidence of what is desirable in the correctional process to rehabilitate a person. It surely must have a more substantial feed-in for the protection of society as it exists outside the institution. It seems to me that you may have come up with something that deserves a great deal of attention, and probably action, but that you have not quite landed on a satisfactory remedy. This is what is puzzling me. Would you care to develop that aspect a little?

Professor Price: We feel a little like the celebrated story of the gentleman who was asked some incredible question about how he would get something from England to Canada. The solution was that he would drain the Atlantic Ocean. He asked, "How would you do that? " and was told, "I just come up with the principle; I leave you to work out the details." We have been in that difficulty in several cases with our recommendations.

Dealing with the area parole board, there was certainly no disagreement, I think, in the committee; that it had to be some board external to the people working with the inmate who function now; and we would hope for a greater input of local parole service people to that parole planning than takes place now. The two would come very close together.

However, there are real problems. One gets involved with this, even as a lawyer, because very often you get these cases referred to you by the institution. They get so identified with the inmate that that is all they see. Perhaps the broader picture is not seen. So there has to be some external review group.

The question is, how can you bring that external review group closer to parole planning? This is, I think, the point you are making.

There are a variety of ways, I suppose, that it can be done. The U.S. Senate bill incorporates a local parole board member who is called a parole commissioner. He is advised by parole examiners, and they make a decision. As I understand it, it is the parole commissioner's decision, and it is an attempt to bridge that gap.

We saw it as having a regional member of the Parole Board who would be a member of the National Parole Board, and, on assignment and on rotation, he would spend time in Ottawa reviewing at the national level, keeping in constant touch with the formulation of policy at the national level. We saw a major role of the national board in formulating policy, in reserving to themselves certain kinds of cases that are other loaded, such as dangerous sexual offender cases, or cases of notoriety, and so on; that they would monitor the criteria.

There are two real crunches in the programming of decisions, which is different from the revocation decision. One is the criteria employed. There is an excellent study, the Dawson study, which is well worth looking at. It shows a whole variety of ill-defined criteria which come into making a decision. That is one. The second is the information problem. I think you have had that in other submissions made to you. Very often it is difficult to be satisfied that the board really has the facts. You have to rely so much on overworked people collecting information. These are the two main crunches. The national board would at least formulate policy on criteria, and there would be procedures built in with those criteria which could be reviewed.

At the same time the local man would be on the scene, working more closely with the parole planning process than before; and then we would have the safeguard of outsiders, whoever they might be. There could be quite a bit of debate on that. We have talked about a panel of six. There was some difference as to what kind of outsiders were most desirable—members of the general public, semi-specialists such as academics, a member of the judiciary, or whatever. They would represent an attempt to check. That is the principle. The details may be rather fuzzy, and I fully concur on that, but we would involve the classification, the Penitentiary and Parole Service people on reasonably senior levels, such as the regional representative of the Parole Service or his direct designate as their representative.

Senator McIlraith: The weakness of this body, which you have called here the area parole board, would seem to lie in the area of protecting that part of society outside the penitentiaries, or in adequately representing them. Have you thought about some kind of pre-recommendation by this local board, of whatever name, for all sexual offenders, for example, and possibly for murder convictions, or, in any event, for some classes? I do not know how one would approach this. Perhaps you could exclude the 25 per cent of penitentiary inmates who are, for the most part, in maximum security areas and limit their work to the other 70 per cent. Have you thought about trying to get some division of that sort in setting up the jurisdiction of these area boards? Has that been discussed?

Professor Price: Yes.

Senator McIlraith: What do you have to say with respect to that, and how would you apply such a method?

Professor Price: This is provided under recommendation 15.

Senator McIlraith: Yes, but it does not—

Professor Price: It is not spelled out in as much detail as you want?

Senator McIlraith: I should like you to speak on it.

Professor Willett: Mr. Chairman, I believe Mr. McCabe has some views regarding this which revert to the first point the honourable senator made regarding the safeguard and that the interest of the public be attended to. We would hope that the representatives of the public will attend to this. We see no reason whatever for supposing that the members of the board, who are of the National Parole Service and the Penitentiary Service, nor, indeed, the chairman, would not have the interests of the public very much at heart. After all, mistakes made by area parole boards or any other parole board are going to be held against them and do them damage, so they have to take into account the protection of society.

As regards the safeguarding of particular kinds of cases, I think the committee felt that the present practice is undesirable, whereby certain kinds of cases, particularly those concerning murder, rely upon Cabinet decision. The committee felt that the decision for parole should rest with the parole authority, properly advised, but that the parole authority should have certain built-in controls. I think you will see from our brief that this supposes that the National Parole Board would review the decisions of the area parole boards.

We would, however, underline—and I think Mr. McCabe would like to add something here—the review process by the National Parole Board of the area board's decision in a particular way, so that it would be incumbent upon the National Parole Board to cite well in advance what decisions they wanted to review; and that, other than those, the decisions would be made by the area parole boards. We felt it was perhaps time consuming and unnecessary for the National Parole Board to review all of the area board decisions.

Senator McIlraith: At the risk of taking up too much time, I should like to pursue the question a little further. Your recommendation, as I understand it, envisages the area boards having jurisdiction in all cases, subject to review by the National Parole Board that could be applicable in all cases.

Professor Price: That is not quite correct.

Senator McIlraith: My question, in any event, was somewhat different. I am wondering whether you have discussed giving the so-called area boards original jurisdiction only in defined areas—the 70 or 75 per cent of the cases?

Professor Price: Yes. I believe we came at it from the reverse position.

Senator McIlraith: Exactly.

Professor Price: We approached it from the position that there might be certain cases which they would not be permitted to take. I confess to our being divided on this. I was one of the hard-liners, which is a position I am not used to being in. I felt that there are certain cases that should automatically go to the national board, such as indeterminate sentence cases and capital cases, and that the board would have the power to reserve certain classes of cases. This is what our recommendation states.

It has been some time since we held our last meeting, but, as I recall it, our plan was that the area board would pass on recommendations. In other words, the hearing would be held locally with respect to cases that would go forward to the national board, but they would go forward as recommendations, much as the process tends to work in England.

Senator McIlraith: Your language here—and this is what I want to clear up—is that in relation to certain limited classes of inmates there should be provision for automatic review by the National Parole Board. That presupposes that the area board is dealing with all classes of cases.

Mr. McGrath: I think that is correct.

Senator McIlraith: You get into an area there where you have the men from the institution who are close to the convicted person—and I am speaking now only of the troublesome areas—and the Parole Service man adjudicating on their own work, when they are obviously dealing with a class of case where there should be great concern for the protection of society. I am trying to get at whether you considered excluding the area boards from that class of case altogether.

Mr. McGrath: We did, and I think our feeling was that the area board's decision was a major recommendation, and that it might be helpful if the National Parole Board had the recommendation of the area board which works so closely with the man. This was our feeling. The other possibility is not to have them here at all. However, our feeling was that their advice would be helpful to the National Parole Board.

Senator McIlraith: But that is not quite what it says in your brief. This gives them the right to make the decision, and then the National Parole Board can review it. That is quite a different thing.

Mr. McCabe: Mr. Chairman, we handled this at our last meeting and it was a rather hurried-up job. It caused me great concern, not in relation to the points you are raising, Senator McIlraith, but from the point of view that if an area board makes a decision in relation to one of these difficult cases to grant parole and then that decision goes to the National Board for review and it is denied, the inmate is going to be badly torn. He hears from the local board that he is going to get parole, and then the National Board denies it. It is my view, in those classes of offences where the National Parole Board wishes to retain the decision-making role, that the area board should only make a recommendation.

Senator McIlraith: Yes, but that is hardly the way it is expressed here.

Mr. McCabe: Yes, and I am disturbed about that.

Senator McIlraith: That is my point.

Senator Lapointe: Did you change your mind about this after having this booklet prepared?

Mr. McCabe: No. I did not see the booklet. I telephoned too late after our original brief to make this point. The problem is that the inmates hear only good news. I recently spoke with a man who appeared before the panel which, for practical purposes, might be considered comparable to the area board which we are proposing, and he certainly got the impression that he would be making parole, even though he was assured that a majority of the board must confirm what the area board had said. Unfortunately, his parole was denied thereafter. I think we have to be careful that we build in a safeguard. Even though the man in point was warned that he had not gotten parole yet, he did not hear that.

Senator Hastings: They do not hear that.

Senator McIlraith: It may be that the man should not be before the area board at all at this point. If it appears he is going to get a favourable decision from the area board and in the end that decision is reversed by another authority, it could be very damaging to him.

Mr. McGrath: Your point is well taken.

Senator McIlraith: I do not think it is fully covered here.

Mr. McCabe: There is another problem, and that is this: If you are going to give inmates in a federal penitentiary system the right to appear before a board or a panel, as it presently exists, surely you cannot deny those serving the longest sentences and facing the toughest future the right to appear before someone in order to get the answers.

Senator McIlraith: Yes, so it may be that they should be excluded from this first step. You yourselves have recommended that it be reviewed and, indeed, you have the sentence, "Certain limited cases should be reviewed." So you are really putting two steps in there, and it is just possible, taking your evidence before this committee, that they should be excluded from these area boards. Any information that the area board has, of course, would go to the National Parole Board. Perhaps they should attend at the National Parole Board hearing to give their evidence; or perhaps some other procedures could be implemented.

Mr. McCabe: Either that, or the board would have to visit the individual.

Mr. McGrath: Your point is well taken, senator.

Senator Laird: Mr. Chairman, having gotten this far, I wonder if we could expand it to this extent: Personally, I should like to get the opinion of the association as to one body being constituted—probably the name would have to be changed from the National Parole Board to something else—with complete charge for all types of absences—temporary leave, and that sort of thing.

The problem is that in the minds of the general public there is no distinction made as between parole and temporary leave. I found that out when I introduced the resolution which started all this. Some people in very high places pointed the finger at some event and said, "Look what that parolee did," and it turned out that it was not a parolee at all but, rather, someone on a temporary leave permit from a penitentiary. This is a pretty fundamental consideration for this committee. Should there be one body, under whatever name might be chosen, constituted to deal with all types of absences from institutions?

Professor Price: Our recommendation 13 on page 12 goes well along the way. One thing that has been happening, which perhaps will stop now, is what we call back-to-back temporary absences. As you know, under the Penitentiaries Act is is open to the director of an institution to release an inmate for medical, humanitarian and rehabilitative purposes, as I remember it. I have forgotten the periods of time.

Senator McIlraith: For medical reasons it is unlimited.

Professor Price: With the development of day parole and certain tensions that developed between the penitentiary authorities and the parole authorities, which perhaps others can speak to, concerning the interaction of the two systems, which I do not think exists any more, although I may be wrong, the practice developed either to anticipate a day parole by giving back-to-back temporary absences, to the institution would put a man out for three days, three days, three days, three days, in the expectation that he would get day parole, or sometimes, when he did not get day parole, there was a way of saying, "We are interested in rehabilitating this man too. We think he can got out."

Let me take one example with which I am familiar. A man was released for ten weeks on temporary absence.

The Chairman: You mean back-to-back for ten weeks?

Professor Price: Back-to-back; three days automatically released awaiting a decision on day parole. He brought his wife up to the town in question; he got a job; things were going great. On temporary absence he was not under any supervision, whereas under day parole he would have been. Everything was going great, but day parole did not come through; the institution had to take him back in. There was a petition from just about everybody in town, from the employer, from the union; they all wanted him, but day parole was turned down, perhaps understandably, because the minimum period of his eligibility had not expired at that stage. That was the kind of problem being created by this.

We have felt we should go at least this far—and it would be easier to go this far with an area parole board concept—that basic decisions relating to any extended period of temporary absence beyond the minimal one can be made locally as a paroling decision; they would all be, in effect, day parole. We have, however, left a very limited power in the director. I do not think I could articulate this as well as some of the others, perhaps, but I would feel he should still have that power to release for up to five days for sickness, and on humanitarian grounds. There has to be some basis for dealing with emergency medical problems, although those are not very well developed either.

Senator McIlraith: The medical problem has not caused any confusion so far.

Professor Price: It has caused some.

Senator McIlraith: It is the repeating of the periods for three days, putting them together and making them amount to six months or a year, as the case may be.

Professor Price: They have created some technical problems. For example, there are admissions to psychiatric hospitals, not for treatment but for assessment; the man stays there for a long period of time and the hospital is not clear what the authority for holding is. That is a very special problem. I agree that the main problem is the back-to-back temporary absence, and we would certainly recommend that that be done away with.

Does anyone want to speak on the question of retaining the short periods of time?

Senator Hastings: With respect to the back-to-back temporary absences, the Canadian Penitentiary Service is moving into the community correction centre concept, where the inmate is held in minimal custody in the community; he has a job, or he goes to school. The only way you can operate with these men under these standards is on temporary absence.

Mr. McGrath: Which raises the question of where these centres should be located.

Senator Hastings: These centres are useful, but you might as well close them up if you are going to withdraw the temporary absence, or else put them under the Parole Board and let the Parole Board run the community centres.

Mr. McCabe: We do have both day parole centres and community release centres, and I think there will be a movement towards using them for either class of men; I certainly hope so. Originally the Montgomery Centre in Toronto was not available to day parolees. Subsequently it has been. I would hope that in Kingston the day parole centre will be available to men who are out on temporary absences. There may be more day parole centres developed in other communities, so that Kingston can take those who really need Kingston because of significant community resources there.

Senator Hastings: These are day parole centres. Who operates those?

Mr. McCabe: The day parole centre is part of the Penitentiary Service, but it is administered by Parole Service staff, as I understand it. The men are carried in Kingston on the strength of Collins Bay Penitentiary, but the administration of the day parole centre is under an employee of the Parole Service.

Senator Hastings: This is not a community correction centre?

Mr. McCabe: No, this is a day parole centre.

Mr. McGrath: If temporary absence were confined to what it was intended to do originally, the need for the Parole Board or some action of this nature would be less. Also, if we get into the system of a more carefully planned program for the inmate involving parole and decisions as to when parole would happen, hopefully the need to release these men on an emergency basis for treatment, finding a job and this kind of thing, would also lessen; it would just become part of an organized plan. That would leave the temporary absence to be used perhaps chiefly for such things as death in the family or something of this nature.

Senator Laird: Still, should it not all be centralized with uniform guidelines of some kind under one body?

Mr. McGrath: On temporary absence for humanitarian reasons the man might well be accompanied by a guard, which is quite a different thing from parole.

Senator McIlraith: There is another difficulty when you try to centralize it too much. The need for temporary absence can arise in some local circumstance very quickly, and action must be taken immediately. Any kind of waiting until the next morning to get to the central authority, with different time zones and so on, can render part of it useless in some cases. There has to be some local arbitrary power to grant temporary absence.

Professor Price: Let me give one very simple example. At the request of the Prison for Women we submitted a provincial appeal. In the Prison for Women they do not have a commissioner for oaths. What can we do? We are doing this as a favour. If we went up there we would have to find a commissioner for oaths, and all get up to the Prison for Women. In this instance the director very kindly said, "I'll send the girl down." There are i5 commissioners for oaths in the law school, so she can come down under custody and be there, instead of going through some sort of day parole or central authority.

Senator Laird: She was in custody, you say?

Professor Price: She was under guard. It still requires a permit for the day release.

Senator McIlraith: There can be family emergencies that require quick action, and do not allow time for getting to a central authority, or perhaps even regional authority. There has to be some immediate local control. There are 34 or 35 institutions now in the Penitentiary Service.

Senator Hastings: Forty now.

Senator McIlraith: Whatever it is.

Mr. McCabe: I accepted this recommendation in anticipation of the establishment of regional boards. I do not think that all of the things which our recommendation suggests could practically be handled with the centralized parole operation we have at the present time, that would seem feasible, if we get into a regional operation for parole boards.

Senator McIlraith: You are really expressing your concern, and you are illustrating it with the confusion that has arisen. It is on the

usage of the temporary absence provision for three days, for a longer term that really is for a positive treatment program for the inmate.

Senator Lapointe: How can a man work during temporary absence, what kind of job can he perform during temporary absence? You spoke about some inmates who were working that temporary absence.

Mr. McCabe: The prisons are free to release a man–Collins Bay penitentiary, for instance, makes a vehicle available to bring men downtown to attend university regularly or to do work. Once their pay cheque starts to come through, they may have to call a taxi if there is no public transportation readily available.

I had one man working for better than six months on temporary absences in a trailer park in Kingston. They were setting up trailers, maintaining the grounds. We had another man who worked as a stationary engineer, and the Joyceville Farm Annex was quite prepared to make his hours away from the prison flexible, to meet shift requirements. After he proved for a couple of weeks capable of handling things that way, they gave him his three days back to back, and he had a room in town and reverted to the institution a couple of times a week.

Senator McIlraith: It is really a clarification of clause 26, where a limitation of three days is put on the period, with the qualifying phrase dealing with the necessity to repeat it in a case of a particular inmate. The usage of the term "time to time", that having been interpreted as a continuous operation for a longer period of time, it is the method of getting clarification of that that you have pursued, and you have made a small change in changing the three days to five days. Your problem here really centres on the usage of that clause 26 and the desirability of some clarification.

Senator Lapointe: If a man was reliable during temporary absence, why does he not get parole? Is it because the first portion of the sentence is not over? Why is he only on temporary absence, if he is very reliable and if he is a success?

Mr. McCabe: This is a decision which rests with the parole authority, and they at times do not see eye to eye with the perceptions which the prison administration have.

The Chairman: It also may be, may it not, that a man is eligible for temporary absence before the expiry of his eligibility period for parole?

Mr. McCabe: I am getting on to some slightly shaky ground here. I believe that the Parole Board is prepared to grant day parole one year before the parole eligibility date, so this offers some flexibility. I think of one man who I expect we will get supervision on, who wanted to embark on a three-year course at a community college. The first year he took inside the walls, because the community college was offering courses in the prison. In the second year of his course, he was not eligible for day parole, so the institution gave him back-to-back temporary absences to take his second year. In the third year of his course he was being granted day parole. He will be coming up for consideration this spring and it is hoped that he will get favourable considerable because he will have graduated in his human behaviour course at St. Lawrence College.

Senator Hastings: But if he comes up and he fails?

Mr. McCabe: That is the big question.

Senator Hastings: I know of instances where men are being released–

Mr. McCabe: This man has one thing going in his favour. The board saw fit to grant him day parole. He will have performed that satisfactorily for nine months. You would fully expect that the decision on regular parole would be built on the day parole decision. Frankly, I cannot see how he would fail.

Senator Hastings: Not regarding that particular instance.

Professor Price: There is this–and I think it should be said and I cannot document it. There is certainly a sense in the institutions that the Parole Board's readiness to grant, and its frequency of revocation, are very much related to the political temper of the time. Perhaps this should be so to some degree. Certainly, paroles around last summer were getting, on my reading, very difficult to come by, and very often in cases where certainly the institutional people and very often the psychiatrists get particularly upset. They felt the men were ready to go. There is certainly plenty of indication that concerns about public safety–which are quite legitimate and I think the Parole Board should respond to them, to some degree–are causing the rates of revocation to go up. This is fine, to a degree, but unless one has some way of monitoring these processes to protect the inmate, I get a little concerned in regard to the revocations.

Senator Hastings: They are forfeitures?

Professor Price: A forfeiture, if he commits an offence.

Senator Hastings: Let us be fair. The forfeitures are going up too.

Senator Laird: This brings up a very fundamental question which I should like to hear your association expound on. When it comes to a matter of incarceration and release, I presume you will agree that there are certain incorrigibles who should never be released ahead of time? You would agree with that?

Professor Price: H-m.

Senator Laird: All right, then. How and by what effective method can we ever determine whether or not a man is incorrigible or is capable of rehabilitation?

Professor Price: You certainly ask the fundamental questions, don't you?

Senator Laird: I do.

Professor Price: I do not know. The board, for one thing, relies considerably on psychiatric reports. I think this can be very

misleading. It is an area that I have some familiarity with, not through these reports but through knowledge of the literature and of people who tell me about these reports. I think the danger of the sexual offender illustrates the problem. How can the psychiatric reports in these cases have been so shoddy as to be really beyond belief? Yet, having said all that, when the board has gambled on dangerous sexual offender cases, they have been burned.

I did do a fairly major article on the question of the dangerous offender provisions proposals that were at that committee. I looked at prediction studies and I looked at the ability of clinicians to predict. There is no literature, or certainly there was not up to a year ago, that would satisfactorily indicate that psychiatrists can predict future behaviour. When you look at it in terms of averages, they may be more effective than the average on that, although there are some studies which indicate that the ability to predict behaviour goes down the higher you go up the educational scale. So, very often a correctional officer, for example, will be a better predictor than a social worker, who in turn will be a better predictor than a doctor.

This is rather disturbing, but I can see perhaps a reason for it, because the level of identification with the guy is often closer and there are some studies which suggest that.

We had a committee of the Ontario Criminology and Corrections Association, where they did a similar study of the dangerous offender proposals. The psychiatrists on this, who were in the prison business, to a man disclaimed the ability to predict. So, I really do not know the answer to that problem, other than what one can gather from institutional behaviour, which is sometimes very misleading because the institutional situation is so unreal.

Senator McGrand: Following Senator Laird's question, we realize how difficult it is to assess the dependability of an inmate when you are going to send him out on parole. I would like to get some information on this. As a person grows older in prison, I do not say his dependability increases, but the risk in letting him out probably gets less as he gets older. Would you say that a person at 30 would be more dangerous, if let out, than a person at 50?

Professor Price: Yes and no. First of all, there is the sort of so-called "burned-out" theory of a lot of criminal behaviour. It is certainly true that for many offenders, for a variety of reasons, they tend to present a lesser risk as they get older.

Dr. Cormier has made excellent studies of this; at least to my untutored mind they seem excellent. I am sure that Mr. Street could tell you of people who have been let out in their sixties and seventies. I think there was one in his seventies who got engaged in a serious offence after being let out. I may be wrong, but certainly there are some offenders who do not.

This is getting into fundamental theory on the causation of behaviour, but Cormier made a distinction in his earlier writings, which he may still hold to, between what he calls primary and secondary delinquents. A primary delinquent is one who has disturbed behaviour patterns that go right back into very early childhood. On his studies of penitentiary inmates, he felt that for these people the period of remission was longer depending upon how early it started. There are people with this kind of personality problem, which may be a behaviour disorder and nothing more, for whom it could be a very long time, whereas others who come rather later to the scene tend to remit earlier.

Senator McGrand: I was thinking of Alvin Karpis. He is out now. He is beyond middle age, I think. He has written a book on his experiences in which he says he is not a bit sorry he did these things, and that if he were put in the same position again he would do them again; but he says he does not intend to do them again.

Senator Laird: He has slowed down.

Senator McGrand: Yes, he has slowed down. That is about the size of it. It is just not worth the risk any more.

Professor Price: Do you want to comment on the criminological aspect of this?

Professor T.C. Willett, Member of the Parole Committee, Canadian Criminology and Corrections Association: I do not think I have much to add to what Professor Price has said. The classic illustration of cure in criminality seems to be advancing age—or, if it were possible, change of sex. But, certainly, advancing age, to be serious, appears to be one of the strongest criteria associated with falling out of the criminal path of life. There are exceptions, of course, but that is the generality.

Senator Lapointe: Someone suggested here that the more of a reble an inmate is the sooner he should be released, because the prison does not suit him; he is not fit for prison or fit for jail; he should be out on parole. Do you think that is logical?

Professor Price: Sometimes, but only sometimes. Dawson's Study of Criteria for Parole indicated some interesting things, as I remember it. Sometimes there is real conflict in the institution with respect to the basis for granting parole. For example, there is the fellow who has proved himself in the institution by conforming to institutional rules, and that kind of thing; but sometimes the fact that a fellow does not conform to institutional rules is a very good indicator of parole success, because, you know, the institutional experience is often just so unrealistic that he rebels against it. He may, indeed, have all kinds of problems that he is sorting through which lead to acting out; but, on the other hand, there are all these sorts of people who are acting out at Millhaven, and the acting out does not prove that about them. So I think you have to know a lot more about the psychology of the individual you are dealing with and you have to have criteria for discriminating between the one kind of situation and the other. Some programs, for example, for the younger rebel type, if I can use the term, are really geared to meeting that.

As I remember it, Borstal used to be geared to the theory that there were some people, particularly in the years from 18 to 21, whose problem was that they did not have adequate controls. So you put them in an environment which forced them to develop those, often with a great deal of rebellion along the way. But through that process you readied them for release and it was the

sort of program that proved to be pretty good—or, at least, at the time I knew something about what they were doing. I do not think one can generalize that acting out behaviour is an indicator of parole success, without its being much more carefully defined.

Mr. McGrath: One might reverse that and say that the person who is too comfortable in prison is not a good risk on the outside.

If I may make this one comment on your question about the dangerous offender, senator, one of the difficulties with psychiatry in this field is that we do not have enough specialists. A psychiatrist may be a very good psychiatrist in another field but not have much experience in this. The Penitentiary Service is in the process of opening a series of psychiatric centres. The first was opened in B.C. and they hope to open others. My hope would be that once they are available perhaps we could get sounder psychiatric assessment on these various dangerous people.

Senator Laird: That is very interesting, because going back, if I recall correctly, I myself asked Mr. Street whether or not there was a shortage of psychiatric staff and he said, "very definitely."

The Chairman: That is specialized psychiatric staff.

Senator Laird: Yes.

Senator McGrand: Is there not an awful shortage of money to do this type of research? There is no money for this type of research.

Professor Price: Most psychiatric staffs in penitentiaries spend most of their time on assessment; they spend little time on treatment. This is very discouraging to an inmate. I can remember one who told me—and I think this was verified—that he had been denied parole and told that he should receive psychiatric treatment, and he would be reconsidered. Well, he saw a psychiatrist for about an hour every six months. That is all he could get to see him for that purpose. The system gets hypocritical. I do not mean anybody is purposely being hypocritical, but the way the system operates becomes very hypocritical if that happens.

Senator Laird: Maybe some day a computer will be invented to do the trick.

The Chairman: We have heard about the jurisdiction of the Canadian Penitentiary Service and the National Parole Service, and in your brief you quote a specific recommendation of the Ouimet Committee that the Canadian Penitentiary Service and the National Parole Service be drawn together administratively under a director of corrections. You do not commit yourself on this point. Have you anything further to say about this?

Professor Price: I do not. I do not know whether other members do.

The Chairman: You recommend consideration of this recommendation, but you do not express your own view.

Mr. McGrath: We had a nice example a little earlier, Mr. Chairman, on these discharge centres, where we have what are technically penitentiaries being operated by the Penitentiary Service for people who are on full-time employment in the community. Up until recently they were not available for parolees.

Senator Hastings: Did you say, "up until recently"?

Mr. McGrath: Up until recently they were not available for parolees.

Senator Hastings: Where are they available for parolees now?

Mr. McGrath: Well, there are now some parolees coming to some of them. What is the one in Toronto?

Professor Willett: Montgomery.

Mr. McGrath: Montgomery Centre has had some day-parolees up there.

Senator Hastings: A day-parolee would still be under the Penitentiary Service.

Mr. McCabe: His absence from his original institution is authorized by the Parole Board.

Senator Hastings: I can see your point now.

Mr. McGrath: I think there are any number of programs offered by the two services which could be tied together. My own feeling is that it is at the regional level that this thing could be done most effectively. Instead of having a series of penitentiary regions and a series of parole regions across Canada, there should be simply regions for the department, and within those regions the services should work together as closely as possible.

Another example we have in this book is at what point the parole people come in on the planning of the inmate's program. Our feeling is that they should be in right at the very beginning. It should be a combined penitentiary-parole program as to how you get this plan for the man worked out; the two of them can be tied together. I think this is what we mean, but whether it is done at the head office under the Director of Corrections could be debated, since the particular structure is another matter, but certainly they should be working together.

The Chairman: Would you go so far as to recommend an integration of the Canadian Penitentiary Service and the National Parole Service?

Mr. McGrath: At the regional level, Mr. Chairman, yes. I would like to see a series of regions in Canada, not being parole regions and penitentiary regions separately, but I would like to see parole and penitentiary regions, whatever the title might be—in other words, a single unit with a single director.

Senator Laird: That is what I was trying to get at a while back.

The Chairman: That is what I thought, Senator Laird.

Professor Price: One matter that gave us a lot of anxious consideration, and we finally came down firmly on it, was this division of responsibility between the national parole authority and the provincial parole authorities. I think our brief speaks for itself, but this matter really slowed us down; I think we had three or four meetings at the beginning before we could get a single resolution approved.

Senator McIlraith: Your recommendation is quite clear on that point. But there is another point which is not dealt with in the brief and about which I should like to ask you.

The present provision is that the person sentenced to more than two years is sent to a federal institution, and this does not come from the BNA Act. That act provides for where a person is sentenced to more than one year. Have you given any thought to or done any study on that provision for two years being the cut-off date in determining whether they go to a federal institution or a provincial institution?

Professor Price: No, and I know of no one who has. The only single article that I have ever seen discussing this and attempting to discover the constitutional basis for this distinction was an article by an alderman in Toronto named Jaffary, written either in the *Canadian Journal of Corrections* or the *Criminal Law Quarterly* seven or eight years ago. The Prison and Reformatories Act to any lawyer picking it up is a constitutional wonderland. Here you have a federal statute providing for the shipping of inmates from one provincial institution to another, and even from one province to another. It is incredible.

Senator McIlraith: It has always mystified me. But the point I want to get at is this. In looking at statistics where sentences have been imposed by the courts, I have been impressed by the fact that once you get beyond sentences of nine months or six months, or less, you get into a blank period, and the sentences seem to start at two years. In very few instances are sentences imposed for a duration of between nine months and 23 months. I have often wondered if there should not be a reduction in this two-year term to one year, and then the removal of the jurisdiction over the correctional treatment and parole from the national level. In other words, the federal jurisdiction would apply only in their own penitentiaries. I think this is an extension of what you have recommended.

Professor Price: I think you have given your own experience, and you are familiar with some of the history of that.

Following the report of the Fauteaux Committee, the Correctional Planning Committee, as I remember, had proposed exactly such a distinction, with no sentences of between six months and a year. Certainly, my recollection of the history is that a number of provinces held off institutional building for a number of years waiting for the implementation of that. I think what has happened in the interim is that some provinces–and here Ontario is a good example–have developed such active programs of their own that while at one stage they might have welcomed this, I am not at all sure that now they would.

Senator McIlraith: Bearing in mind the different approach to treatment when you have the possibility of a person's being in custody for a longer period of time, and their different requirements, I hope that the association may have an opportunity of studying this sometime. In my view, it is an area that requires further study, and I hope that at some point, either you or some other agency working in the correctional field will have an opportunity of examining the situation to see if you can not come up with some more suitable arrangement.

The Chairman: In reference to the provinces, you say in your brief that, ". . . the requirements in the way of a parole system vary so much from province to province it would be difficult to lay down further proposals that would apply to all." Could you elaborate on that?

Professor Price: I think, depending on who was making the decision at the provincial level, one may vary all the way from a fairly traditional characteristic legal approach to the serving of imprisonment, with parole being a way of relieving the sentence and with, perhaps, some formalization of the process, to a process that would move very much in a welfare direction, perhaps somewhat similar to the juvenile court process.

We did some sounding on this. We wrote to each of the provinces on a confidential basis and received replies from them on a confidential basis, and some of them certainly would think very much in these terms. For example, what they might do is not even to consider parole at all; they would consider a process whereby all decisions would be made at the institutional level rather than at some central level, and the institution would release the man into the community, perhaps under guidelines from the central office of the Director of Corrections; and it might very well be planned that the person would go out into the community and then he would be brought back for a period of testing, and a variety of things of this sort.

We did not think that for purposes of a submission to a committee of the Parliament of Canada it was proper for us to pass judgment on what might be the most appropriate form of program at the provincial level. I know that Alberta–and I am not citing them with respect to this particular distinction–debated a long time about putting their Department of Corrections into their Department of Health, Education and Welfare, or whatever name they have for it there, and came very close to doing so; but then they changed their mind. Now, had they done that, I can see where they might have planned for release into the community on an entirely different basis, and I make no judgment as to which is preferable.

Senator McIlraith: Doesn't that raise a question as to the type of inmate you have, and whether he is sentenced to less than two years or to less than six months or nine months, as the case may be? At a younger age they tend to be local persons, whereas the penitentiary inmates tend to have a higher average age and to be operating actively on a less local basis and more on a national basis. You get into a lot of distinctions there that are relevant in the treatment of parole and the applicability of the methods of handling the convicted person with a view to having him fully restored to society.

The Chairman: President Nixon made it clear at the weekend that he would not put it under welfare.

Senator Hastings: I wonder if I could direct a question to Mr. McGrath, Mr. Chairman, with respect to allegations reported in the press by Mr. Paul Gascon? He is reported as saying that:

> The rehabilitation of prison inmates will remain a monumental farce costing millions of dollars as long as we remain unable to separate the inmates capable of rehabilitation from those whose behavior is closer to that of animals rather than human beings,

Do you agree with that? Do you concur?

Mr. McGrath: I am not entirely sure what he means. I certainly agree with the need for effective classification.

One of my complaints with regard to the Penitentiary Service is that the institutions are too large and, as a result, there are people going into maximum security institutions who could be dealt with in other types of institutions. If we had smaller institutions, and that is the trend, it would be possible to separate inmates more realistically. I think this is a very good thing, if this is what he means.

What was the other point?

Senator Hastings: Would you say that these large institutions are self-defeating at the present time?

Mr. McGrath: Yes, I think large institutions are self-defeating, if that is what he is saying. I think it is exceedingly difficult to run an effective program in a large maximum security institution which houses people of a wide range of categories, and where any effective separation or breakdown for program purposes is impossible–yes, I think it is self-defeating.

Senator Hastings: The author is blaming the current penitentiary unrest on the politicians and self-styled reformers. Would you agree or disagree with that?

Mr. McCabe: I wonder which politicians and self-styled reformers he is talking about?

Senator Hastings: I think he is referring to you and me.

Mr. McCabe: Obviously, it is something to which you cannot very well react. If one looks at the changes in the Penitentiary Service over the last 10 or 15 years. one can only approve of some of the things which have happened. This is a broad statement. I would classify myself as one of the reformers, and I hope I am not being held responsible for any of the errors which are being made. I do not know how to react to his statement.

Senator Hastings: Mr. Price remarked earlier about the decrease in paroles. It seems to me that one of the great contributing factors to the current unrest is the longer sentences–sentences of 12 to 20 years–together with the fact that fewer paroles are being granted. This creates in the minds of many inmates a complete state of hopelessness which, in turn, creates dangerous inmates.

Mr. McGrath: Are there longer sentences being handed down?

Senator Hastings: Yes, longer sentences and fewer paroles.

Mr. McGrath: Can you support that statistically?

Senator Hastings: Do you mean with regard to fewer paroles?

Mr. McGrath: No, the longer sentences.

Senator Hastings: I think it is a generally accepted fact that sentences are longer as a result. . .

Mr. McGrath: I have been trying to dig this information out of the DBS, or Statistics Canada, without success to date. Some people feel there are fewer sentences of two years less a day and more sentences of two years or more being handed down. But statistically I cannot support that fact.

Senator Hastings: Our institutions are jammed. We are opening areas that have been closed for years. All of these factors create a self-defeating atmosphere where hopelessness sets in, and immediately you have dangerous men on your hands.

Professor Price: I think there is another point too. Curiously enough, as the historians say about the French Revolution, difficult situations often develop in a reform context. For example, I think the Canadian Penitentiary Service has moved very quickly to develop, as well as they could, more open programs varying with the kind of institution with which they are dealing. This, in turn, creates problems, one of which is the drug problem. We have a problem controlling the flow of drugs into an institution. The situation in medium security institutions has been very serious indeed. It creates all kinds of understandable status anxieties on the part of the correctional officer who, at one stage, had a fairly defined role and now sees that role altering in ways which are rather difficult for him to adjust to. I have a great deal of sympathy for the position in which he has been placed. I do not know how to deal with this situation. Sometimes it is a problem communicating with the correctional officer as to what you are trying to do. But that does not always work either. So you have the situation–how does one describe it–symbiotic where everything an inmate does creates a certain reaction on the part of the guard; and what the guard does in turn creates a further reaction on the part of the inmate.

As we are well aware, a few months ago our institutions were ground to a halt because the correctional officers decided there were certain conditions under which they were going to function, and no others. They have an awful lot of clout. Privileges were withdrawn, and to withdraw privileges is an entirely different matter from receiving them in the first place. A great deal of the unrest relates to this situation. It relates to the correctional officers' reactions as to how the inmates are going to be dealt with; and I make no allegations of brutality, but they are being dealt with much more firmly than they were before. If the inmates feel the process is

suddenly changed and is operating more harshly than it was before—this situation along with the other points you have mentioned add to a very tense state. And without adequate grievance procedures to review these matters by anyone outside the institution you have a real build up of frustration.

I do not have answers to these questions, but I think these are some of the factors which enter into the situation.

Mr. McGrath: Returning to your earlier question, senator, it has been proposed that the Parole Board should take on a broader function and become, in effect, an appeal board for the department. We did not go into that because we were talking about parole.

Senator Laird: We are not confined to parole under our new resolution, am I right Mr. Chairman?

The Chairman: The new resolution deals with every form of leave.

Mr. McGrath: We were not aware of that fact. We dealt only with parole. The proposal has been made, not only in this country, but elsewhere, that the Parole Board should broaden its functions and become an appeal board, especially if this idea of a regional area board goes into effect and the National Parole Board would then perform an appeal function. There may be some merit in that suggestion, I do not know.

Senator Hastings: You said "an appeal board of the department."

Mr. McGrath: Yes, so that not only would it deal with. . .

Senator Hastings: Departmental decisions?

Mr. McGrath: No, but for instance, if someone was punished in a penitentiary, or had some complaint about the interpretation of his time off, there would be an appeal procedure. How this would work requires more time than I have spent on the matter.

Senator Laird: There is the feeling on the part of the public that all of these leaves, no matter what they are called—parole, temporary absence, or otherwise—should be under one jurisdiction because, as they see it, they may be working at cross-purposes. Unfortunately, some of the more heinous crimes have been committed at a crucial time by people on temporary leaves and not by parolees at all.

The Chairman: On behalf of the committee I want to thank the Association for appearing before us today. Before we adjourn, I require a motion to print the brief we have just heard.

Senator McIlraith: I so move.

(*For text of brief see Appendix*)

The Chairman: We will adjourn now until two o'clock this afternoon to hear the brief of the Canadian Association of Chiefs of Police, who may have some different views.

The Committee adjourned.

APPENDIX

An official statement of policy of the Canadian Criminology and Corrections Association.

The Parole System In Canada

Complexity of the System

One of the unfortunate features of the parole system in Canada is its complexity. Face with over-lapping jurisdiction and a multiplicity of technical provisions and procedures, the individual caught up in parole, whether as an offender, an official responsible for its application, or a member of the public, often finds himself at a loss. The need for a more simplified system should be a major guide as revisions in parole are introduced.

When a more simplified system is introduced, it should be accompanied by an organized program of interpretation and education which would take into consideration the differing requirements of the various groups: offenders, officials and the public.

RECOMMENDATION 1

It is recommended that as revisions are introduced, every effort be made to construct a system of parole in Canada that is readily understandable by prison inmates, parolees, the police, members of the Bench, prison and parole staffs, and the public.

The Nature of Parole

The Report of the Canadian Committee on Corrections defines parole as follows:

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

The Canadian Criminology and Corrections Association agrees with this definition. However, it must be stressed that parole should function as a step in a correctional process intended to assist the rehabilitation of the individual offender, and not as amelioration of punishment. It is distinct in essence from mandatory release into the free community whether under supervision or not. (Mandatory supervision is discussed later in this brief.)

This distinction has not always been maintained in the past. Parole often functions as something akin to appeal of sentence or amnesty. The guidelines laid down by the National Parole Board to determine exceptions to the Regulations that specify when an inmate becomes eligible for parole constitute a good example of the confusion that has arisen. These guidelines are set out as an appendix to the Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs for December 16 and 17, 1971. There are indications that the same confusion has arisen in the United States of America[1].

[1]See, for example, Thomas, P. A. (1963): "An Analysis of Parole Selection". *Crime and Delinquency*, 9, 173-179, and
Dawson, R. O. (1966): "The Decision to Grant or Deny Parole: a Study of Parole Criteria in Law and Practice". *Wash.* U.L.Q., 243-303.

Parole should not involve any review of or reduction in the sentence of the court. The only way in which it affects the sentence is in the decision as to *where* the sentence is to be served. Hence parole is not release into freedom, but a continuation of the custodial sanction since the offender's movements and activities are limited by the conditions of parole. While on parole an individual is subject to controls that may be as demanding as those he lived under while in prison since he is required to conform to strict rules while subject to the same pressures that may formerly have led to offences. Moreover, the risks of detection or of being under suspicion are proportionately greater than if he were in freedom.

To be consistent with this interpretation of parole as an intrinsic part of the sentence of the court, we consider that the power to change the sentence by discharge from parole before completion of the parole period or to revoke or suspend an order made under the Criminal Code prohibiting any person from operating a motor vehicle should be removed from the National Parole Board.

We are also of the opinion that the National Parole Board should be relieved of its present responsibilities under the Criminal Records Act. The Board would then be free to concentrate on one function alone–parole.

It is understood that these important functions would be transferred to some appropriate agency which might also assume certain other functions of a remission nature, such as commutation of sentence, free and conditional pardon, confiscation orders, escheatment of recognizances, and providing for new trials beyond the normal provision for appeals in special circumstances. It might be desirable to create a new agency to carry these responsibilities. Such an agency could be located within the Department of the Solicitor General or in some other appropriate department.

RECOMMENDATION 2

It is recommended that

(a) *the power to change the sentence of the court by discharge from parole before completion of the parole period and the power to revoke or suspend an order made under the Criminal Code prohibiting any person from operating a motor vehicle be removed from the National Parole Board and that the National Parole Board be relieved of its present responsibilities under the Criminal Records Act: and*

(b) *study be given to the possibility of appointing some agency to carry these functions, perhaps along with certain other functions of a remission nature.*

Parole supervision combines control with assistance to the parolee in reestablishing himself in the free community. Parole supervision should not be seen primarily as surveillance but should stress helping the parolee to work out adjustments in living arrangements and employment, and in his own feelings, attitudes and human relationships.

A clear distinction must be maintained between what might be termed regular parole and day parole. Day parole is a procedure whereby an inmate is released for a specified portion of certain days so he may attend an educational institution in the free community, undertake employment, or carry out some other related and

specified activity, returning to the prison at night. Unless otherwise stated, all references to "parole" in this Brief will exclude "day parole".

Value of Parole

Parole offers many advantages to both society and the offender:

1) The offender is released from prison when he is psychologically and socially ready; this increases the chances of his successful adaptation to the free community. If this period is allowed to pass without his release he may deteriorate and his chances of success diminish.

2) The knowledge that parole may be available gives the inmate a sense of hope, and encourages him to make the adjustments in his attitudes and patterns of behaviour that are necessary if he is to be successful after release. Such a positive stance on his part will help him and also contribute to a better prison program.

3) The fact that society has expressed confidence in him and the fact that he has agreed to the conditions of his parole give him maximum encouragement in his efforts to reestablish himself in the free community.

4) The offender is enabled to re-assume his family and community responsibilities with a minimum of separation. The longer the period of separation, the more difficult the roles of parent and citizen become.

5) The assistance given by the parole supervisor aids the offender's chances of successful adjustment in the free community.

6) Parole offers considerable financial saving over incarceration.

Society's interest and the offender's interests are in harmony in this situation. The well-being of both is served to the maximum if the offender becomes successfully established in the free community and is able to live a law-abiding and socially useful life. Parole thus offers advantages to both.

There are, of course, risks in releasing offenders on parole. However, there are risks in any program for offenders. The short-term risks of parole are calculated risks over which there is some measure of control. The risks involved in keeping the offender in prison too long, thus robbing him of hope, self-confidence and initiative before turning him free without assistance in making the adjustment, are greater in most cases.

Suggestions have been made in Canada recently, particularly in connection with the debate on whether the death penalty should be abolished, that there be provision in the Criminal Code for life sentences in certain defined cases that would not be subject to parole. We would strongly oppose such a proposal. It can never be predicted with any certainty that a particular individual cannot be rehabilitated, and experience has shown that some of the most unpromising cases have adapted successfully. In some cases there may be little chance of success, but the door should never be completely closed. Also, to deprive a person of all hope of release is to remove the incentive to try to adapt, and such a person may see his only sensible course in escape and, since he has nothing to lose, he may be tempted to use violence in effecting his escape.

We reaffirm our belief in parole and, indeed, consider it an essential step in the correctional process. Instead of favouring a reduction in the use of parole in Canada, we are of the opinion that as many prison inmates as possible should be released on parole and as early in their sentence as possible, consistent with the safety of the public.

The Nature of Mandatory Supervision

The Report of the Canadian Committee on Corrections uses the term "Statutory Conditional Release" rather than "Mandatory Supervision" but we prefer the second term since it recognizes the compulsory aspect of the provision. The Report of the Canadian Committee on Corrections defines the term in this way:

> Statutory Conditional Release (or Mandatory Supervision) is a procedure whereby an inmate of a prison who has not been granted parole is released before the expiration of his sentence at a date set by statute so he may serve the balance of his sentence at large in society but under supervision and subject to return to prison if he fails to comply with the conditions governing his release.

The main difference between mandatory supervision and parole is that mandatory supervision occurs automatically. In parole, the inmate must take the initiative and convince a parole board that he is a fit subject for release. He agrees deliberately to conditions attached to his parole. In mandatory supervision, the inmate takes no initiative in applying. If he is given the right to reject mandatory supervision (as recommended later in this Brief), then his acceptance of it implies some commitment on his part but it is obviously less deliberate than in the case of parole.

Once released, the person under mandatory supervision should be given the same help and supervision as that given a person on parole and similar benefits in terms of his rehabilitation should accrue.

Value of Mandatory Supervision

At present, about one-half of the 3,200 inmates coming out of federal penitentiaries each year do so on parole. If there were no provision for mandatory supervision, that would mean that some 1,600 would be released into the community each year at termination of sentence without supervision, and without assistance unless they sought help from a private agency. Among those so released would be many of the most dangerous offenders since the group would include those who were refused parole.

It is too early to judge the efficacy of mandatory supervision from the experience with it in Canada over the last few years, but we are of the opinion that the experiment should be continued, although later in this Brief we recommend different procedures.

Federal-Provincial Responsibility

At present, the federal government is responsible for parole of all prison inmates sentenced for an offence against federal legislation, whether the inmate is confined in a federal or a provincial

correctional institution. The provinces are responsible for parole of offenders against provincial legislation or municipal by-laws.

An exception to that rule arises in Ontario and British Columbia where the provision for definite and indefinite sentences applies to offenders against federal legislation as well as against provincial legislation. Power to grant parole during the indefinite portion of the sentence rests with the province. This means that both levels of government have jurisdiction over parole for some inmates of provincial institutions in these two provinces, resulting in overlapping of efforts, confusion to the inmate, and sometimes a conflicting approach to the inmate's rehabilitation.

There are other difficulties that affect all provinces. Inmates of federal institutions are subject to automatic review for parole while inmates of provincial institutions must make application. Inmates of federal institutions have an opportunity to appear in person to support a request for parole before a panel of the National Parole Board; inmates of provincial institutions who are under the jurisdiction of the National Parole Board do not have that privilege. The time required to process an application to the National Parole Board is such that an application from a shorter-term inmate of a provincial institution is often not feasible; if the application were to a provincial board, it could be processed more quickly.

However, the most important consideration relates to the continuity and flexibility of program. If parole is accepted as an essential step in the correctional process, as it ought to be, the same authority should have jurisdiction throughout. It makes for poor programming for one government to have jurisdiction up to the point where parole enters in and then for another government to take over.

The provinces should, therefore, take over responsibility for parole as it affects inmates of provincial institutions. However, some of the provinces, particularly the smaller ones, might find it inconvenient to operate a separate parole system. To meet this difficulty, there should be provision for the federal government to operate the parole system in any province that prefers not to operate its own.

RECOMMENDATION 3

It is recommended that the federal government retain responsibility for parole as it applies to all inmates of federal penitentiaries and that, in respect to offenders imprisoned in a provincial institution for offences against the laws of Canada, legislation be enacted to permit provincial legislatures to establish their own parole authorities or to leave the parole jurisdiction for those inmates to the federal parole authority at their option. The National Parole Board would automatically be responsible for parole in provinces where the provincial legislature elects not to create its own parole authority.

This arrangement would have the further advantage of bringing the decision-making responsibility related to parole closer to the inmate in the provincial institution, and closer to the staff who know him. Supervision can be carried out by provincial staff. Also, community facilities could be incorporated in planning more easily.

There is a considerable group of inmates in Canadian prisons for whom no opportunity for parole now exists. These are the inmates of some provincial prisons committed under provincial statutes. The provinces have the legal power to introduce parole for these inmates but few have done so.

We are of the opinion that parole should be available to every inmate of every prison in Canada who meets the criteria for release and we believe that every province should establish a parole board and service to deal with these inmates who now do not have access to parole. If the province assumes responsibility for parole as it affects those inmates of the provincial institutions who are committed under federal legislation, as recommended above, a single system of parole could deal with all inmates of the provincial institutions.

Where the federal government operates the parole system in any province, it should include responsibility for parole of offenders against provincial legislation as well as against federal legislation in its program.

A particular problem arises in relation to federal-provincial responsibility for parole when an inmate of a federal prison is transferred to a provincial mental hospital. If the treatment program of the mental hospital is to be of maximum benefit to such a person, he should be subject to the normal paroling and release procedures of the hospital. At the moment, the consent of the National Parole Board is required for such a release. This problem should be examined jointly by the authorities involved.

RECOMMENDATION 4

It is recommended that responsibility for parole as it applies to inmates of provincial prisons committed for offences against provincial legislation be discharged by either (a) the provincial parole board and service where they are established or (b) the National Parole Board and Service in those provinces where the federal government assumes responsibility for parole.

There should also be provision for exchange of supervisory responsibilities between the governments.

RECOMMENDATION 5

It is recommended that the federal and provincial parole boards and services operate independently, except that by mutual agreement (a) the National Parole Board may serve as provincial parole board in any province as recommended above and (b) either service may take over supervisory responsibility for the other.

If these recommendations are implemented, then the provision for definite and indefinite sentences now in effect in Ontario and British Columbia can be revoked.

RECOMMENDATION 6

It is recommended that the provision for definite and indefinite sentences in Ontario and British Columbia be revoked.

Elements of a Parole System

We are of the opinion that changes are needed in the basic structure of our parole system. The aim is to simplify the system and at the

same time to make it more flexible by removing unnecessary restrictions.

Changes in the mandatory supervision system are also needed to accomplish the same ends. With this in view, a specified portion of each prison sentence should become a period of automatic mandatory supervision. One advantage of this arrangement would be that both the sentencing judge and the inmate would know exactly what is involved.

The portion of the sentence that should form the period of mandatory supervision is obviously debatable, but we suggest that one-third is probably the most appropriate figure.

The above provision would apply only to those sentenced under federal legislation. The provinces might be prepared to consider a similar provision for those sentenced under provincial legislation.

This provision would not apply to life sentences.

RECOMMENDATION 7

It is recommended that the sentencing provisions set out in Canadian criminal legislation be amended to make the last third of any fixed prison sentence a period of automatic mandatory supervision.

Such an arrangement would ensure that a period of supervision would be available to all inmates serving relatively long sentences, including those whose application for earlier parole is turned down.

The present provision for statutory remission should be revoked. It adds to the complexity and is no longer needed as an aid in controlling inmate behaviour. Stress should be put on gaining the inmate's cooperation rather than on negative restraints, and he should be encouraged to concentrate on qualifying for earned remission and parole rather than on avoiding loss of statutory remission. At the same time, the amount of remission the inmate can earn should be increased to five days a month.

RECOMMENDATION 8

It is recommended that the provision for statutory remission be revoked, and that the provision for earned remission be amended so that the inmate may earn up to five days a month.

We have been concerned over the power of the National Parole Board to make exceptions to the provisions in the Regulations that set a minimum period of imprisonment to be served before the inmate is eligible for parole. Provision for such exceptions is necessary to deal with special cases, but in our opinion this power should rest with the court. So that the court will not be loaded with frivolous applications, the prior consent of the National Parole Board should be required before an application can be made.

RECOMMENDATION 9

It is recommended that the present Regulations establishing a minimum period of imprisonment that must be served before the inmate is eligible for parole be maintained; that the power to reduce the minimum period of eligibility be removed from the National Parole Board and placed with an appropriate court; and that the prior consent of the National Parole Board be required before an inmate may make such an application to the court.

This recommendation does not, of course, apply to day parole. All inmates should be eligible for day parole without any required minimum time to be served.

Under the present legislation, an inmate on parole receives no credit for time served in an acceptable manner in the free community if his parole is revoked or forfeited, despite the fact that the parole certificate states that while on parole he is serving his sentence in the community. We are of the opinion that he should be credited with all the time he has served on parole to the satisfaction of the correctional authorities.

In those cases involving a new offence, the judge in sentencing for the new offence could take into account the fact that the offender was on parole when he committed the new offence. This will provide any deterrence needed to protect against the commission of offences by those on parole toward the end of their parole period.

One of the unfortunate results of the present provision is that an inmate may require a period considerably longer than the original sentence to complete the sentence. If, for instance, an inmate serving five years is paroled two years before the end of his sentence and has his parole revoked after one year, he is required to serve the full two years in the institution. That could make a total of six years to serve a five-year sentence. This situation can be repeated several times during the course of a sentence.

RECOMMENDATION 10

It is recommended that an inmate released on parole be credited towards the completion of his sentence, in the case of revocation, with the time served up to the date the parole suspension warrant is issued and, in the case of forfeiture (if forfeiture is to continue) with the time served up to the date the earliest offence was committed.

In all instances, the inmate should have the right to reject either parole or mandatory supervision and to complete his sentence within the institution. Parole and mandatory supervision require a commitment on the part of the inmate and an acceptance by him of stated conditions. To force him to leave the institution against his will would defeat the whole purpose of parole or of mandatory supervision.

RECOMMENDATION 11

It is recommended that in all instances the inmate has the right to reject parole and mandatory supervision and to complete his sentence within the institution.

The Federal Parole System

Because they deal with inmates serving longer sentences, and because they serve the whole of Canada with its great variations in conditions, the National Parole Board and National Parole Service face problems that are somewhat different from those faced by their provincial counterparts. For this reason the federal system will be dealt with separately in this Brief.

The present arrangement whereby the Chairman of the National Parole Board also "has supervision over and direction of the work" of the National Parole Service is unsatisfactory. It puts the person

carrying these responsibilities in the position of being both advocate and judge, since as the person responsible for the National Parole Service he prepares the case for consideration by the Board and then, as Chairman of the Board, has a voice in determining whether parole is to be granted.

Also, as the person responsible for the Service he is subject to administrative direction by the Department of the Solicitor General. As Chairman of the Board he should have the kind of independence enjoyed by a member of the Bench. To ensure the fact and the appearance of impartiality, the position of Chairman of the National Parole Board should be a separate appointment.

This arrangement would facilitate consideration of one of the recommendations contained in the Report of the Canadian Committee on Corrections. That recommendation stresses that the need for a coordinated service from the admission of the offender to prison to his release on parole or mandatory supervision should be reflected in an administrative reorganization that would bring the Canadian Penitentiary Service and the National Parole Service under a single director. The specific recommendation in the Report of the Canadian Committee on Corrections reads:

> The Committee recommends that the Canadian Penitentiary Service and the National Parole Service be drawn together administratively under a Director of Corrections.

RECOMMENDATION 12

It is recommended that the two responsibilities now carried by the Chairman of the National Parole Board, that of chairing the National Parole Board and that of supervising and directing the National Parole Service, be carried separately by two different individuals.

Some confusion has arisen over the relationship between the day parole program operated by the National Parole Board and the temporary absence program operated by the Canadian Penitentiary Service. The Canadian Penitentiary Service has been following a policy of granting temporary absences "back-to-back" (in sequence) so that the total time involved for some inmates can be considerable. The two programs have thus, in many instances, been performing the same function.

Disappointments have arisen for the individual inmate who has been on temporary absence and then applies for day parole and is refused. It is difficult for him to see why different criteria are used for what seem essentially similar programs.

It seems to us that "temporary absences" should be confined to those purposes specified in Section 26 of the Penitentiary Act, i.e., "medical or humanitarian reasons", or, within the time allotment authorized, "to assist in the rehabilitation of the inmate". Back-to-back temporary absences should not be used to extend the time periods laid down by statute. If longer periods outside the institution are required, we consider that this should be accomplished through day parole or by specific procedures for transfer to medical institutions, etc. We do think, however, that the three-day period authorized under the Penitentiary Act for humanitarian and "rehabilitative" relief by the institutional director should be increased to five days, having regard to problems encountered by inmates travelling over long distances.

Any inmate who is working or studying outside an institution during the day, while returning to the institution at night, should be housed in a facility intended for that purpose. The inmate who spends his days in the free community and his nights in a prison that also holds inmates who are not on day parole or temporary absence is in a most awkward position. He has to change his whole outlook each morning and each night as his status changes. He cannot participate as an equal in community activities because of his continuing status as an inmate, nor can be participate comfortably in institutional activities since he no longer fully belongs there. Further, he is apt to be under pressure from other inmates to bring in contraband.

The day parole program cannot be suspended until sufficient day parole centres are available but plans to provide such facilities should be pressed with vigour. Arrangements with the provincial authorities might make facilities operated by the provinces available to federal day parolees. There are also facilities operated under private auspices that could be utilized.

Additional board and staff members are also needed to implement a good day parole program. If such a program is to be effective, it is essential that there be sufficient board members available to deal with applications quickly, and that there be sufficient staff members to supply supervision.

RECOMMENDATION 13

It is recommended that temporary absence be confined to those purposes specified in Section 26 of the Penitentiaries Act, subject to extending the period the institutional director may authorize for humanitarian and rehabilitative purposes to five days; that temporary absences not be granted "back-to-back" (in sequence); that, when possible, day parole be operated only from an institution where all inmates have the opportunity for regular access to the free community; and that the Department of the Solicitor General move as quickly as possible to implement this policy by establishing sufficient day parole centres, and to supply additional board and staff members. This recommendation is not intended to interfere with Canadian Penitentiary Service programs where groups of inmates go out to community programs that are deemed advisable for certain categories of inmate.

The present arrangement of having all parole hearings conducted by panels of the National Parole Board should be replaced by a system of area parole boards. This arrangement would bring the paroling process closer to the reception and classification process and bring the decision-making responsibility nearer to the inmate and those working directly with him. However, to maintain consistency in policies and procedures across the country, each of the area boards should have a permanent chairman who is a member of the National Parole Board.

These area boards should be made up of members of the Canadian Penitentiary Service, the National Parole Service, and the public. The representatives of the Canadian Penitentiary Service and of the National Parole Service should be permanent appointments, preferably carrying this function on a full-time basis. In their case, and in the case of the permanent chairman who is a member of the National Parole Board, there should be provision for a temporary replacement whenever that becomes necessary.

There should be two representatives of the public on each area board, drawn from a panel of six. Where an area board has responsibility for institutions considerable distances apart, the panel of representatives of the public should be spread geographically to reduce travel on their part. In larger centres, the panel members should be called in turn. In this way, it would be possible to avoid placing too great a demand on the time of any one individual. These panel members should be paid a per diem and expenses for each day served with an area board. Citizen groups interested in corrections in each area should be consulted in selecting panel members from any community.

Secretarial services should be provided for each area board.

Each area board should be assigned an appropriate geographical responsibility, in no case larger than would constitute a full-time commitment, allowing sufficient time for reading files and making other preparations for each hearing. Sufficient time should be allotted so that each person appearing before an area board could be dealt with adequately.

When an inmate is appearing before an area board, he should be accompanied by the treatment staff who are working with him so the area board would have the benefit of the opinion of these staff members.

RECOMMENDATION 14

It is recommended that the federal parole system operate primarily through area parole boards made up of one staff member of the Canadian Penitentiary Service, one staff member of the National Parole Service, and two members drawn from a panel of representatives of the public, with a permanent chairman who is a member of the National Parole Board.

Although the area boards would hear all applications for parole in the first instance, and would also conduct revocation hearings, there should be provision for appeal from a decision of an area board to the National Parole Board. In relation to certain limited classes of inmates, there should be provision for automatic review by the National Parole Board. These would include those classes of inmates who must now go to the Cabinet for final decision as well as those the National Parole Board indicates it wants to have reserved for its attention.

The National Parole Board should also establish the policies under which the area boards function and should monitor their general operations to maintain a uniformly good service across the country.

RECOMMENDATION 15

It is recommended that the National Parole Board (a) hear appeals from the area parole boards; (b) automatically review decisions of the area boards in relation to applications from certain limited classes of inmates, including those who now by statute or regulation must go to the Cabinet for final decision and specific classes of cases the National Parole Board indicates it wants reserved for its attention; (c) provide from among its own members the chairmen of the area boards; (d) establish the policies under which the area boards function; and (e) monitor the operations of the area boards.

To provide for appeals, it would be necessary to keep a written record of the hearings held by the area parole boards and by the National Parole Board. This need not be verbatim, but could be in summary form. Also, both the area parole boards and the National Parole Board would require power to summon witnesses. To handle the volume of work. it would be necessary for the National Parole Board to function in panels.

There should be provision for appeal from a decision of the National Parole Board to the Federal Court by the parole applicant, the parolee (in relation to revocation), and by the authorities, but only on points of law, and only with leave. The authorities should be entitled to refer a point of law to the Federal Court for an opinion. These appeals should result in the establishment of criteria in matters related to law to be applied by the various parole boards.

RECOMMENDATION 16

It is recommended that there be provision for appeal from decisions of the National Parole board to the Federal Court by the parole applicant, the parolee (in relation to revocation), and the authorities, but only on points of law and only with leave.

With area boards, structured as above, at work, the parole, reception and classification processes could be better integrated. It has long been stated that parole planning should begin from the very time of the inmate's reception into a correctional institution. The recommendation that follows is designed to give effect to that objective.

One matter that should be settled during reception and classification is the specific date when parole for the inmate should be considered. While the minimum period is specified by statute before an inmate will ordinarily be eligible for parole, under our Recommendation 9 it will be possible to seek a review of that date by the courts in appropriate cases. The inmate should retain the right to make application for parole at any time and should not be bound by the review date set at reception.

RECOMMENDATION 17

It is recommended that the parole review date be set as part of the reception and classification process, involving parole and classification staffs and the inmate working out together a correctional plan that includes parole, sets out both short-term and long-term goals, and is subject to continuous review; the inmate should; however, have the right to submit an application for parole at any time after sentence. Reference is also made to Recommendation 9 in relation to this proposal.

The inmate's correctional plan thus worked out should be submitted to the Area Parole Board as soon as it is complete, and the Board should be kept informed of changes in the plan as time goes along. This will help avoid a situation where the inmate is encouraged by staff to anticipate parole at a specified time, providing he lives up to his commitments, and then has his application rejected by the Board.

In our opinion, the nature of parole is such that the introduction of full due process to parole hearings would be undesirable. Several arguments support this position:

1. The decision in parole hearings is based on treatment considerations which do not lend themselves to the concise formulation demanded by due process.

2. The applicant should not be encouraged to seek advantages based on technicalities.

3. If the applicant is represented by counsel, such counsel will see his function as getting the applicant paroled at any price.

4. The cost in time and money of parole hearings will increase sharply if due process is introduced.

However, an examination of the system in practice raises some difficulties. Few inmates really understand parole or how to present their application in the best light. Some inmates, because of low intelligence, lack of education or some other factor, are quite incapable of making an effective parole application. Therefore, some assistance to the inmate in preparing for his parole hearing is indicated.

At present, a penitentiary staff member may help an inmate prepare his application on a personal basis. This is of obvious assistance to the inmate, but such help is not available to all inmates and the quality of the application depends, at least in part, on the goodwill of the institutional staff. If the paroling process is brought closer to the reception and classification process in the institution, as recommended above, the question of parole will be constantly before the treatment team of which the inmate is a member and, when the time for parole comes, the application will go forward with the support of the team. However, if the treatment team carries too much influence, the area parole boards will be put in the position of rubber-stamping decisions already made by staff.

The procedures set out in the following recommendation seem to us to give the parole applicant sufficient protection, at the same time avoiding the difficulties full due process would introduce.

RECOMMENDATION 18

It is recommended that the following rules apply in relation to parole hearings and the appeals, whether automatic or discretionary, that may follow therefrom:

A) *In the hearing before an area parole board:*

1. The applicant may seek assistance in preparing for the parole hearing, including legal consultation. However, since there appears to be no particular advantage in legal consultation over lay consultation in this matter, legal aid should not be available;

2. The applicant has the right to be present throughout the hearing;

3. The applicant has the right to full disclosure of all evidence against him, subject to the power of the Area Parole Board to deny this right for good reason. The Area Parole Board might withhold evidence if the safety of some person or persons would be threatened if it were disclosed. It might also refuse to produce witnesses who are not reasonably available and require the applicant to manage with written testimony; this decision would be influenced by whether the evidence involved is essential or peripheral to the applicant's case. When evidence is withheld from the applicant, he shall be told that this has occurred;

4. Where evidence or information is withheld, the relevant material will be sealed and the inmate may seek a review of the decision to withhold through the appeal procedures provided;

5. The applicant has the right to make a full statement and produce evidence, including documentary evidence, and to refute adverse evidence;

6. If his application is rejected, the applicant has a right to a full written statement of the reasons, subject to the power of the Area Parole Board to deny this right if the safety of some person or persons would be threatened by full disclosure of reasons;

7. The applicant does not have the right to counsel during the hearing or to cross-examine witnesses, although it is anticipated that any objections he raises to adverse evidence will be followed up by members of the Area Parole Board;

B) *In appeals to the National Parole Board:*

1. Any inmate whose application for parole is rejected by an area parole board may appeal to the National Parole Board. However, the National Parole Board should develop procedures to screen out appeals that have no merit;

2. The National Parole Board is not confined in dealing with an appeal to the points raised in the applicant's statement of his reason for appealing, but is empowered to deal with any matter related to the case;

3. The National Parole Board is not required, during an appeal, to hear the witnesses who testified in the hearing before the Area Parole Board but may rely on the written record of the earlier hearing. It may, however, hear these witnesses and may call additional witnesses. It may also call for a statement, written or verbal, from the Chairman of the Area Parole Board. With these qualifications, the rules that apply in a parole hearing before an area parole board would apply in appeals to the National Parole Board;

C) *In appeals to the Federal Court:*

1. Appeals may be launched by either the applicant or by the authorities. The authorities may refer a case to the Federal Court for an opinion;

2. Appeals may be launched with leave only, and only on points of law;

3. Full procedure, including right to counsel, prevails.

The Criminal Code provides that there be an automatic review of all cases involving preventive detention each year. This

keeps the inmate in a constant state of upheaval since with such short review periods he is always either in the midst of a review or looking forward to a review in the near future. He also faces a constant series of disappointments since such cases are not usually granted parole for many years. It would be better if these cases were reviewed every two years.

RECOMMENDATION 19

It is recommended that the Criminal Code provision for an automatic yearly review of all cases undergoing preventive detention be changed to an automatic review every two years.

Suspension, Forfeiture and Revocation

An individual's period on parole or mandatory suspension may be terminated before completion by either *forfeiture* or *revocation.* Forfeiture is automatic when the parolee is convicted of an indictable offence punishable by imprisonment for a term of two years or more. Revocation is at the discretion of the National Parole Board and involves a failure on the part of the parolee to conduct himself in accordance with the conditions attached to his parole.

When revocation is being considered, it is sometimes thought desirable to hold the parolee in custody until a decision is reached. In this instance his parole may be *suspended* and a warrant issued for his arrest. This procedure is intended to ensure the safety of the parolee and of the community but it can have the secondary effect, in those cases where parole is reinstated, of warning the parolee what will hapen if he continues to ignore the conditions of his parole.

We are of the opinion that automatic forfeiture of parole for the commission of an offence or for any other reason constitutes an unwarranted restriction of the flexibility of the parole system. Obviously, a parolee who commits an indictable offence would be likely to have his parole revoked by the appropriate parole board if discretion were left in their hands, but there may well be desirable exceptions. If a parolee is serving a long period on parole and commits a relatively minor indictable offence of a nature not related to his original offence, it may be unwise and unjust to cancel his parole and return him to prison for a long period.

RECOMMENDATION 20

It is recommended that provision for automatic forfeiture of parole for the commission of an offence or for any other reason should be repealed.

A related problem is the loss of the period of time spent by a parolee under arrest for a new offence. The period of time between the date of arrest and the date of sentence for the new offence is not credited against his original sentence. A similar difficulty existed previously in reference to inmates arrested for escape but this was removed by recent amendments to the Criminal Code. Similar changes in relation to the parolee under arrest for a new offence are indicated.

Suspension may be ordered by a member of the National Parole Board. It may also be ordered by specially-designated staff members of the National Parole Service for a period up to fourteen days without reference to the National Parole Board. During this period the staff member must decide either to reinstate the parole or refer the case to the National Parole Board for revocation, continuation of the suspension, or reinstatement of the parole.

The present provisions require that a parolee whose parole has been suspended be held in custody. There are cases, particularly those where suspension is used as a warning to the parolee, where it would be better if parole could be suspended but the parolee left in the free community, so he can continue to fulfill his social obligations. A suspension of this nature might be accompanied by temporary additional conditions imposed on the parolee, including restrictions on his freedom of movement.

RECOMMENDATION 21

It is recommended that there be provision to suspend parole by either (a) warrant, which would involve placing the parolee in custody, or (b) notice, which would inform the parolee that his parole has been suspended, and that the official issuing a suspension notice be empowered to attach special conditions, including restriction of liberty, thereto.

Unfortunately, the National Parole Board often permits suspension to continue for a period of two months or longer before reaching a decision. There can be no justification for keeping the parolee in uncertainty for such a long period. The officer who ordered the suspension should be required to dispose of the case within fourteen days by either cancelling the suspension or bringing the parolee before a single member of the Area Parole Board. If for any reason the officer who ordered the suspension does not take one of the required steps within the fourteen-day period, he should be required to produce the parolee in court and justify the delay. If there are very good reasons for the delay, the court should be empowered to extend the fourteen-day period. In the absence of such reasons, the court should be required to order the reinstatement of parole. The parolee should be entitled to counsel during the court hearing.

Where the parolee is brought before a single member of the Area Parole Board, that member should be required to dispose of the case by either cancelling the suspension or setting a date for a revocation hearing before the full Area Parole Board, with the date for the hearing being not later than thirty days from the appearance before the single member of the Area Parole Board. When the member of the Area Parole Board decides not to cancel the suspension and sets a date for a revocation hearing, he should be required to inform the parolee in writing of the alleged violations being charged against him. If for any reason the revocation hearing is not held within the thirty-day period, the single member of the Area Parole Board before whom the parolee was brought should be responsible to see that the parolee is produced in court and the delay justified. If there are very good reasons for the delay, the court should be empowered to extend the thirty-day period. In the absence of such reasons, the court should be required to order the reinstatement of parole. The parolee should be entitled to counsel during the court hearing.

Where the whereabouts of a parolee are unkown, and a warrant of suspension has been outstanding against him for a period of sixty

days, the Area Parole Board should be empowered to order revocation in his absence.

These provisions are set out in the following recommendation:

RECOMMENDATION 22

It is recommended that the following rules apply in relation to suspension of parole:

1. In all cases of suspension the officer who orders the suspension must within fourteen days of service of the notice of suspension or execution of the warrant of suspension (a) cancel the suspension, (b) bring the parolee before a single member of the Area Parole Board, or (c) produce the parolee in court;

2. Where the parolee is brought before a single member of the Area Parole Board, that member must (a) cancel the suspension, (b) inform the parolee in writing of the alleged violations being charged against him and set a date for a revocation hearing that must be held within a period of thirty days from the appearance of the parolee before that member, or (c) ensure that the parolee is produced in court;

3. Where the parolee is produced in court, whether by the officer who ordered the suspension or by the single member of the Area Parole Board before whom the parolee was brought, an explanation of the delay must be made to the court. If necessary information is required that could not have been reasonably obtained within the fourteen or thirty days respectively, the court should have the power to extend the period. In the absence of such reason, the court should be required to order the reinstatement of the parole. The parolee has the right to counsel in such hearings;

4. When a suspension warrant has been in existence for sixty days and has not been executed, the Area Parole Board is empowered to order revocation in the absence of the parolee.

The Parole Act provides that a parolee apprehended under a warrant of suspension shall be brought before a magistrate and "the magistrate shall remand the inmate in custody until the Board cancels the suspension or revokes the parole". This procedure is time-consuming and, since the magistrate has no discretion in the matter, it serves no useful purpose. It would be more expeditious if the revoking officer were given authority to order the parolee's detention without reference to a court. A precedence for this kind of procedure appears in the Immigration Act.

RECOMMENDATION 23

It is recommended that the present provision that requires bringing a parolee whose parole has been suspended by warrant before a magistrate be cancelled and that the officers who are empowered to order suspension be given the authority to order a parolee's detention.

At present, the National Parole Board grants revocation hearings only to those parolees who are serving a sentence of two years or more and who specifically request such a hearing. Also, the hearing takes place only after a decision to revoke has been made, sometimes several weeks after. This procedure gives the parolee little protection against personality conflicts with his supervisor and little opportunity to present his side of the case before a decision is reached. It also means that he is given no official explanation as to why his parole was revoked until some time after the event, if at all.

In our opinion, a hearing should be held in every case where revocation is being considered and it should be held before a decision is made. Further, the parolee should be given every opportunity to present his defence. These hearings should be held by the appropriate area parole board. There should be provision for appeal to the National Parole Board except in those cases where the parolee is convicted of an indictable offence that is punishable by imprisonment for a period of two years or more. These are the cases where forfeiture now applies and the reasons for revocation are so obvious that the time of the National Parole Board should not be taken up with such appeals.

If the decision to revoke is taken, every effort should be made to explain to the parolee why such action is thought necessary and what adaptations he must make if he hopes for a successful application for parole at a later date.

RECOMMENDATION 24

It is recommended that the appropriate area parole board hold a revocation hearing in every case where revocation is being considered, that such hearing be held before a decision is reached, and that there be provision for appeal to the National Parole Board except in those cases involving a conviction for an indictable offence punishable by imprisonment for a period of two years or more.

Rules of procedure should be established for these hearings. We are of the opinion that the parolee in these circumstances should be entitled to representation through counsel or agent because an adverse decision at the revocation hearing, in contrast to the parole hearing, would change the status of the offender from being in the free community to being incarcerated. Further, the revocation decision is based on evidence of misconduct in that he is charged with breaking one or more of the conditions of his parole. The alternative of an "agent" to "counsel" is suggested because in such hearings the lawyer may have no special competence.

RECOMMENDATION 25

It is recommended that the following rules apply in relation to revocation hearings and the appeals that may follow therefrom:

A) *In the hearing before an area parole board:*

1. The parolee has a right to be represented by counsel or agent;

2. The parolee has a right to a written statement of the alleged violations in advance of the hearing. This should be given to him when he is brought before the single member of the Area Parole Board;

3. The parolee has the right to be present throughout the hearing and to have his counsel or agent with him throughout;

4. The parolee has the right to full disclosure of all evidence against him, subject to the power of the Area Parole Board to deny this right for good reason. The Area Parole Board might withhold evidence if the safety of some person or persons would be threatened if it were disclosed. It might also refuse to produce witnesses who are not reasonably available and require the parolee to manage with written testimony; this decision would be influenced by whether the evidence involved is essential or peripheral to the parolee's case. When evidence is withheld from the parolee, he shall be told that this has occurred;

5. Where evidence or information is withheld, the relevant material will be sealed and the inmate may seek a review of the decision to withhold through the appeal procedures provided;

6. The parolee has a right to confromt and cross-examine adverse witnesses, subject to the power of the Area Parole Board to deny this right for good reason. As in the preceding paragraph, this right might be denied to protect the safety of some person or persons or because witnesses of peripheral relevance are not reasonably available;

7. If his parole is revoked, the parolee has a right to a full written statement of the reasons, subject to the power of the Area Parole Board to deny this right if the safety of some person or persons would be threatened by full disclosure of reasons;

B) *In appeals to the National Parole Board:*

1. Any parolee whose parole is revoked by an area parole board, except those convicted of an indictable offence that is punishable by imprisonment for a period of two years or more, may appeal to the National Parole Board. However, the National Parole Board should develop procedures to screen out appeals that have no merit;

2. The National Parole Board is not confined in dealing with an appeal to the points raised in the parolee's statement of his reason for appealing, but is empowered to deal with any matter related to the case;

3. The National Parole Board is not required, during an appeal, to hear the witnesses who testified in the hearing before the Area Parole Board but may rely on the written record of the earlier hearing. It may, however, hear those witnesses and may call additional witnesses. It may also call for a statement, written or verbal, from the Chairman of the Area Parole Board. With these qualifications, the rules that apply in a revocation hearing before the Area Parole Board apply in appeals before the National Parole Board;

C) *Appeals to the Federal Court:*

1. Appeals may be launched by either the parolee or the authorities. The authorities may refer a case to the Federal Court for an opinion;

2. Appeals may be launched with leave only, and only on points of law;

3. Full procedure, including right to counsel, prevails.

Parole of Inmates Serving Life Sentences

The National Parole Board requires Cabinet permission to release an inmate serving a life sentence as a minimum punishment for that offence. This procedure is cumbersome and, with the pressure of other duties on the Cabinet, delays of months and even years occur between the completion of the investigation of the case by the National Parole Board and action by the Cabinet. Further, it introduces an unknown element to the process that can cause great anxiety to the inmate. There is also the objection that the effective parole decision is made by a political body rather than by the independent Board.

In Recommendation 15 of this Brief we suggest that all such cases would be dealt with in the first instance by an area parole board with an automatic review by the National Parole Board. With this provision for double review, the value of the second consideration now provided by Cabinet would disappear.

We are of the opinion that every case involving murder should be automatically reviewed for parole every two years. This is in line with our earlier recommendation regarding review of cases of preventive detention.

It should be kept in mind that experience with murderers has shown they have an unusually high success rate on parole.

RECOMMENDATION 26

It is recommended that the policy that requires the National Parole Board to obtain Cabinet approval before paroling a person serving a life sentence as a minimum punishment for that offence be revoked and that all inmates be subject to the same parole policies and procedures.

The Provincial Parole Systems

We have already made recommendations in this Brief that will affect the provincial parole systems. We do not feel it is appropriate to deal with the provincial systems in further detail in a brief addressed to a committee of the Senate of Canada. Further, the requirements in the way of a parole system vary so much from province to province it would be difficult to lay down further proposals that would apply to all.

Parole Conditions

There does not seem to be much of a problem in relation to the conditions attached to parole in the federal system. Such conditions should be kept to a minimum and should bear a reasonable relationship to the parolee's behaviour and present circumstances. Conditions should be flexible enough to permit the staff of the National Parole Service to make changes to meet changed conditions faced by the parolee. In revocation proceedings, the reasonableness of the conditions the parolee is charged with breaking should be an issue.

Supervision

There seems to be no problem related to supervision. It is suggested that the use of volunteers in parole be continued with a view to possible expansion.

Measuring Success

Not enough is known about the success of the parole system with specific types of parolees in specific circumstances. The present statistical and other information available is not sufficient. We are of the opinion that the National Parole Board and Service require the services of a research and information director who will plan required testing and feed-back. Some of this work can be done inside the Department, some of it is better done outside. It would be up to the research and information director to ensure that all such information is made available to the Board and Service. To ensure the independence and credibility of this work, a research committee of people from outside the Department should be appointed in an advisory capacity. Further, the results of all studies of this nature done by the Department should be made available to the public.

Probation Following Imprisonment

The provision in the Criminal Code which permits the court to impose a period of probation to follow a period of imprisonment is undersirable for a number of reasons:

a) It confuses probation with parole. A period of control and supervision following a period of imprisonment is in the nature of parole and should be left to the parole authority.

b) Confusion is created in the mind of the offender. He sees both parole and regular probation in a positive light as an alternative to imprisonment. He sees probation to be served after he has completed his prison term in a negative light as an unwarranted continuation of his punishment.

c) There is a contradiction in such a sentence. One of the functions of probation is to protect the offender against exposure to undesirable prison influences. To precede probation by a period of imprisonment negates this aim.

d) The court cannot anticipate the effect on the offender of the period of imprisonment and is therefore in no position to estimate the period of supervision that will be required following the imprisonment.

e) Jurisdictional confusion arises when an inmate who has been sentenced to a period of imprisonment to be followed by a period on probation is paroled. Who is responsible for his supervision? Is he to be supervised by a parole officer during the parole period and then by a probation officer during the probation period? These two supervisors may come from different jurisdictions.

f) Enforcement of the probation conditions is most difficult. The offender has completed his prison sentence and his probation cannot be revoked. Thus the supervisor finds himself with very little authority. All he can do is seek a conviction for breach and that is an uncertain process. It must be recognized, too, that this offender may present more difficulties than most probationers as a result of his period of imprisonment.

g) One result of this provision is that the judge creates a new offence punishable by imprisonment since the offence of breach is defined by the conditions he attaches to the probation order.

RECOMMENDATION 27

It is recommended that the provision in the Criminal Code that permits the court to impose a period of probation to follow a period of imprisonment be repealed.

Implementation

The revision of Canada's parole system should be approached with a clear recognition of its essential place in the corrections system, and with a determination that passing criticism, even when such criticism is caused by serious errors that have been made, will not be permitted to hinder continuing development.

We hope that the system will be studied as a whole and that piece-meal reforms of inter-related facets of the system will be avoided. Piece-meal amendments often cause as many difficulties as they solve.

However, there are some changes in the system recommended in this Brief that can be implemented immediately without the delay that a thorough review of the full system will demand. These should be considered for immediate implementation. Among them are these:

a) assumption by the provinces of responsibility of all inmates of provincial prisons;

b) crediting the parolee whose parole is revoked or forfeited with the time spent successfully on parole towards the completion of his sentence.

This Brief was prepared by a Committee consisting of the following:

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Président:

Members: Peter Norman Blacklock
Membres: Donald Dunn
Monica Freedman
Barbara Grove
W. F. McCabe
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Secretary: W. T. McGrath
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The Committee expresses its appreciation to the following who served as consultants:

Le Comité est reconnaissant envers les personnes suivantes qui ont fait fonction de conseillers:

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 6

TUESDAY, MARCH 13, 1973

Twentieth Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendix—See Minutes of Proceedings)

25885—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

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Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

25885—1½

Minutes of Proceedings

March 13, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Eudes, Hastings, Laird, Lapointe, McGrand, McIlraith and Quart. (8)

Present but not of the Committee: The Honourable Senators Denis, Molgat and Neiman. (3)

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

Mr. W. H. Kelly, Deputy Commissioner, Royal Canadian Mounted Police (Retired), and Delegation Leader of the Canadian Association of Chiefs of Police, was heard by the Committee.

Mr. Bernard E. Poirier, Executive Director of the Canadian Association of Chiefs of Police, was also present.

On Motion of the Honourable Senator McIlraith it was *Resolved* to print in this day's proceedings the Brief presented by the Canadian Association of Chiefs of Police. It is printed as an Appendix.

At 3:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 13, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The spokesman of the Canadian Association of Chiefs of Police is Mr. Kelly, former Deputy Commissioner of the Royal Canadian Mounted Police. There are others with him who may speak or reply to questions. Would you proceed, Mr. Kelly?

Mr. W. H. Kelly, Deputy Commissioner, Royal Canadian Mounted Police (Retired); Delegation Leader, Canadian Association of Chiefs of Police: Mr. Chairman, honourable senators: May I first say that the Canadian Association of Chiefs of Police appreciates the opportunity of presenting to you its brief and making known its views on this very important subject.

The association feels that in addition to its brief it should make various points related to the matter of rehabilitation, certainly to the extent that its members believe that rehabilitation is an important part of their duty. They feel that they should support any steps taken to ensure that once a person becomes an offender he does not again become a problem for society.

In spite of that view, however, the members of the association believe that the present trend in the field of rehabilitation is not entirely in the interest of the individual citizen and community security. They feel that, although statistics must be considered, too much emphasis can be placed upon mere statistics. Only after a parolee is convicted in court does he become a statistic. On many occasions the police are interested in a parolee long before this happens.

Even if parolees are caught committing crime, they do not become a statistic until they are convicted, and that is not always assured under our system.

It would be wrong to overlook other aspects of this matter. It is appreciated that we must work on the basis of what we know; and this is the number, as far as statistics are concerned, of parolees who are convicted after committing offences while on parole. It is reasonable, however, for practical people—and we like to think that the police are practical people and we hope that you are—to believe that parolees who are caught are not caught the first time they commit a crime, nor are all parolees who commit crime caught by the police. We think that in analyzing statistics these ingredients must be kept in mind.

The association also believes that when police views are requested by the Parole Board, they are all too often overlooked when analyzing the basis for the release of offenders on parole. We believe that police knowledge and experience comprise as important a factor as any other in making parole decisions. The police are not unaware that some risk is entailed in any rehabilitative process; but they also believe that not enough is being done to minimize that risk. It is police opinion that they are supported in this view by the views of the general public. Terms such as "undue risk" and "reasonable risk" may well be defined in an academic sense, but, in the final analysis, in relation to the matters under discussion, the real meaning can only be established on the results of the policy of the Parole Board, with which, it is submitted, even the Parole Board itself is not entirely satisfied.

We believe that there is need for closer relations between the police and board officials. There are too many relationships which are anything but satisfactory, and matters dealing with parole cannot be handled with complete satisfaction even through written reports, and certainly not by way of the telephone, as so often happens.

That there is distrust between the police and many parole officers is commonly known. More personal contact would allow better relations to develop; but the lack of board personnel and the number of parolees per parole officer makes mandatory supervision, about which we have heard so much, unworkable. Mistrust is caused sometimes by parole officers working more in the interests of the parolee when the interests of the community should be considered.

To sum up, the basic problems of the police in matters of parole can be listed as follows:

Firstly, the police believe there is a lack of information, which should emanate from the Parole Board, on criminals being released and sent to a particular area. It is believed that anyone who is sentenced by way of the judicial system requires the continuous interest of that system in efforts to rehabilitate that offender. It is suggested that this can be done through greater police participation in all aspects of the parole procedures. The police originally involved in the procedures which resulted in a conviction are especially interested in the parolee, and such interest is strictly in keeping with their responsibilities to maintain law and order and to enforce the laws of the land.

Secondly, lack of police knowledge and experience in the decisions made by the Parole Board.

Thirdly, too many parolees are released without proper evaluation in relation to the risk being imposed upon society.

Fourthly, the lack of proper supervision of parolees makes mandatory supervision unworkable.

Fifthly, the lack of supervision of parolees prevents the authorities from knowing whether parole is successful, other than when a parolee is convicted for another crime. This lack of supervision contributes to the high rate of successful rehabilitation that is claimed.

Sixthly, there is need for a close analysis of those matters which create mistrust between the police and the parole officers.

Seventhly, there is need for greater personal contact between the police and the parole officer.

Eighthly, there is need for closer contact between the police, the penitentiary authorities, and the Parole Board in dealing with temporary releases.

Ninthly, there is need for greater personal contact between the police and the parole officer, so that each can learn more of the other's difficulties in carrying out their respective duties.

Tenthly, there is need for an amendment to section 12(b) of the Parole Act and pertinent regulations to ensure that all offenders released on the basis of mandatory supervision come under the supervision of a parole supervisor.

I would like to mention that we have with us today in this delegation representatives of the Montreal Urban Community Police and the legal representative of that force, as well as a representative from the Quebec Provincial Police. These gentlemen are here to support the CACP in the submission of its brief. The Montreal officers, however, hope to be given an opportunity to submit a brief to this committee at some later date on particular aspects of the Montreal situation, which covers a special relationship between the police there and members of the Parole Board in dealing with investigations into the release of potential parolees. The association believes that the committee will be interested in learning how this relationship works and the views of the Montreal police in this regard. The manner of its operation is not perfect, but it is a starting point from which we think we might be able to set a pattern for the rest of the police forces in Canada.

The Chairman: You mean the relationship between the Montreal police and the board; is that it?

Mr. Kelly: And the board, yes; and we think that the Montreal brief will complement the CACP brief in that it will deal much more with the details of this particular situation. Thank you.

Senator Laird: Mr. Chairman, in order to get off on the right foot, may I raise a preliminary matter with Mr. Kelly? Perhaps I should try to endear myself to Mr. Kelly by pointing out that despite a reasonable amount of formal education, I have a certain distrust of academics and consider myself a practical man by having, for example, prosecuted in my day a number of cases for the RCMP. I hope that puts me in good with you.

There is one thing right at the outset that I wanted to get clear. I notice, on the very first page of your brief, where you speak about considering the matters therein, you say, at the bottom of the page, ". . . from the objective point of view which is the Police as compared to the subjective point of view which is the inmate and the Parole Board . . ."

Are you suggesting there, for example, that you honestly believe your own viewpoint is objective and that the point of view of the Parole Board is subjective? Because, frankly, I do not know how you can help but be subjective. If I were in your position, I certainly would be. I want to get that clear first.

Mr. Kelly: Well, I think, senator, that our view is that we try to be objective, and we feel that we are objective; and certainly, speaking in relation to the potential parolee, we think that it is nearly impossible for that person to be objective.

Senator Laird: I agree with that.

The Chairman: What about the board?

Mr. Kelly: I think we would be prepared to place the board in another category.

Senator Laird: I certainly would hope so. Now that I have asked one question, perhaps I could follow up with two more, Mr. Chairman. They will be along the same lines as the questioning this morning

Mr. Kelly, you speak about the risk involved in release and the evaluation of the inmate who is to be released. Have you given enough study to the matter to come up with any foolproof test as to when a person is incorrigible and should not be released ahead of his time, and, on the other hand, when he is capable of rehabilitation and should be released?

Mr. Kelly: No, I do not think so. I think the police appreciate the extremely difficult position in which the Parole Board finds itself. I think the most that the police can do is to suggest that those offenders who have been committed for particularly serious crimes involving violence, and that sort of thing, be placed pretty much in a category that will require much more serious attention. You cannot always base this even on the amount of punishment that a person receives; and I think that in the brief you will note that we have tried to suggest that even by law there might be differentiation between certain kinds of crimes so that there is perhaps a better chance of release in the case of what we call a *crime passionnel* in the brief, rather than for, say, some crime committed under other circumstances. That is where we try to differentiate and enable the authorities to come up with a better basis for the release of offenders.

Senator Laird: There are no further tests which you suggest, I presume?

Mr. Kelly: The only thing that we are suggesting, and suggesting very strongly, of course, both in the brief and in my remarks, is that the police point of view be considered a little more than it appears to be considered today.

Senator Laird: Yes, I noticed that. In that same connection, what about the utility of psychiatrists in appraising a man who is applying for release?

Mr. Kelly: I have to be careful here to differentiate between how I personally feel and how I must speak for the association. I will try to blend the two.

The Chairman: I can tell you that there are no psychiatrists in the audience.

Mr. Kelly: You have one there, sir, with all the qualifications!

The Chairman: To whom are you referring?

Mr. Kelly: Senator McIlraith.

The Chairman: Well, he is a man of many facets.

Senator Laird: We will check his degree!

Mr. Kelly: I feel that it would be wrong to overlook the value of psychiatrists. On the other hand, I think it would be wrong to accept entirely the views of psychiatrists in these matters. Again, I believe that we must take into account the circumstances under which the psychiatrist operates. We must not overlook the high degree of intelligence that one finds in offenders. I think it is impossible to say that we should have it all or we should have none. I feel there is a blend somewhere, and we should make use of it.

Senator Laird: And, as you have said, you feel there should be more consideration given to the opinions of the police in these matters?

Mr. Kelly: I believe that, sir.

Senator Laird: Thank you, Mr. Chairman. I do not want to monopolize the conversation.

Senator Hastings: On page 4 of the brief, Mr. Kelly, you state:

> Greater exchange of information between police and parole authorities in the area of release would be helpful.

And on page 16, sir, you say:

> . . . inmates being released in areas other than the area of their commitment. For example, inmates have been transferred to provinces foreign to their environment and then released into communities without knowledge of the local representatives of the law enforcement agencies. In some cases these individuals have committed offences of a violent nature, and police have been hampered in their investigation. . . due to their not being informed of the parolee's release into their community.

And starting at the bottom of page 20 you repeat this:

> In this respect advice of a parolee's whereabouts in a given area may have been given to a specific officer who is not necessarily disignated for such a procedure and may not be versed in follow-up activity necessary in the circumstances.

Once an inmate is paroled, sir, the second condition of his parole is that he report to the police. I believe he reports every month to the police.

Mr. Kelly: That is right. He should report every month.

Senator Hastings: If he does not report, he is in violation of his parole.

Mr. Kelly: That is right.

Senator Hastings: What more can we do?

Mr. Kelly: I am not saying that every police force is faced with this situation, nor do I think it is one police force continuously; it is one police force now and another police force the next time. What we are referring to there is that the police forces are not advised, according to my information, that a parolee has been released within its particular area, and there is sufficient time before the parolee reports for offences to be committed. What we are asking for here is that there be a definite policy to the effect that when a parolee is released in a certain area, the police in that area–not just *a* policeman–be notified that this parolee is going into its area. I know that someone is going to say, "This is done," but, unfortunately, we are running into many instances where the police force has not been informed. This is the basis for these statements in the brief.

Senator Hastings: Are you saying that there are parolees in areas and the police are not aware of their presence?

Mr. Kelly: There have been parolees who have committed crimes in an area, and the police have not been aware of their presence in that area.

Senator Hastings: In other words, a parolee is in an area and is not reporting to the police?

Mr. Kelly: That is right–or he has not reported up to that time.

Senator Hastings: Could you name a couple of areas?

Mr. Kelly: This brief is based on contributions of police forces from across the country. I have not at the moment that specific information, but I am sure we can provide it.

Senator Hastings: If the police are not aware of a parolee's presence, then someone is negligent.

Mr. Kelly: I think that is implied in our statement.

The Chairman: You say that the police force is not notified, but a policeman may be notified. How do you notify one policeman?

Mr. Kelly: I think probably what we are talking about here is something that has been accidently brought about. If a policeman on a police force knows of the release or of the existence of a parolee in the area, he just feels that he is there with the knowledge of the proper officials in the police department. Perhaps he should say, "Well, if this is so, I must check." On the other hand, I think it is reasonable to think that he would assume that the parole authority and the police have knowledge of each other's responsibilities.

Senator Hastings: Turning to another subject, sir, you say that the public should be better informed on all aspects of parole. I agree with that statement.

On page 15 you say:

> We submit that the information that has reached the public, not necessarily through a lack of publications by the Parole Board or the Penitentiary Commission, has far from enlightened the public on the nature of parole...

And on page 16, again with respect to informing the public on parole, you say:

> We would further emphasize that no stress should be laid on the so-called success of these programs since the failures, being publicized the way they are, can only hamper the work of the Police and the Parole Board.

Are you saying that in informing the public we should emphasize the failures of the program?

Mr. Kelly: I think the intent there is that in informing the public we should discuss parole very objectively. We should not, as we suspect is being done, emphasize the degree of success without mentioning the degree of failure. We have no objection to—I was going to call it "propaganda"—information being given to the public as long as there is a proper balance. From the police point of view, right at this time there is an over-emphasis on the successes.

The Chairman: Don't you think it is really the reverse that it is the failures that are publicized in the newspapers?

Mr. Kelly: We are talking about two sources here. The criticisms in the newspapers emphasize the failures; but I think the successes are emphasized when the information comes from, shall we say, the Parole Board or from some government department.

The Chairman: Well, in your brief at page 3, Mr. Kelly, you say:

> We feel that we cannot measure success in such matters as parole even by a high percentage because in this case we are dealing with something whose danger potential is at a high level.

So that you are, in effect, saying that there cannot be real success in parole.

Mr. Kelly: We would not want to leave that impression with the committee. However, for various reasons, we do not think that the degree of success is as great as that claimed by the proponents of the present type of rehabilitative process. I think we bring into our thinking at this stage the fact that success of parole is considered if a person does not commit a crime during that period of his sentence that he serves outside the prison gates; whereas the police are concerned with the success of parole in the light of whether or not that parolee, after he has come out from under the umbrella of supervision, then goes back into crime. I think the police view on what is success or not is based on a much broader issue.

The Chairman: The rate of recidivism.

Mr. Kelly: The rate of recidivism would be one way—perhaps the only way—to establish the degree of success. The thing with which the police are concerned, as I mentioned in my earlier remarks, is that even recidivists, over a longer period of time, continue to commit crimes before they are caught by the police. If only we could feel that when the parolee breaks the conditions of his parole the first time, he is caught, it would be something that I think we could use in favour of the parole system. If we could feel that the recidivist was caught the first time he committed a further crime, I think we could consider that as going towards supporting the degree of success. But when we know from experience that parolees commit crimes and they are not apprehended by the police, that recidivists commit crimes and they are not apprehended by the police, these are the kinds of things the police take into account when considering the success or otherwise of the rehabilitative program.

Senator Hastings: In your opening remarks you said, "We know the number of parolees convicted, but they are not always caught." You are practical people. They do not differ very much from citizens generally, then, do they? You do not catch every citizen.

Mr. Kelly: Every citizen does not commit crime either.

Senator Hastings: But you do not catch all the citizens who commit crime.

Mr. Kelly: No, that is true. In fact, it would be a sad day for our courts and our system if we did!

Senator Hastings: Then the parolee is not much different from the ordinary citizen.

Mr. Kelly: Except that a parolee is someone we know has committed a crime. We do not know that citizens have committed crime, but we have evidence that a parolee has. What we are trying to do is to bring the parolee back into society.

There has been a complaint that the police are too interested in parolees, in wanting to supervise them too closely. It was put to me very recently that unless a parolee is prepared for the kind of supervision given him by the police, the kind of surveillance that is perhaps necessary, he is not ready for rehabilitation. This is another thought. Maybe this is the police mind coming into play, but it is another point of view that we might consider in relation to the supervisory process. It is allright to have mandatory supervision brought into the law, but in practice—

Senator Hastings: It is a farce.

Mr. Kelly: You said it, sir. I was trying to find another word. I said it was unworkable. I used that word deliberately instead of calling it a farce. That is the position the police find themselves in, and the police do have responsibilities to protect the security of the individual against these very persons.

Senator McIlraith: Could you elaborate a little on your statement that mandatory supervision is a farce?

Mr. Kelly: No, sir, I did not say that; I said it is unworkable.

Senator McIlraith: Then why is it unworkable? I do not follow what you are trying to get at. Are you saying there is not adequate supervision in the period of mandatory supervision?

Mr. Kelly: Yes, sir.

Senator McIlraith: Is that what you mean to say?

Mr. Kelly: Yes. Because of the number of parolees under the supervision of a parole officer, it is literally impossible for that parole officer to give the kind of supervision necessary to make mandatory supervision effective.

Senator McIlraith: Is that not a bit different from saying that mandatory supervision is unworkable? Are you not in effect saying that there is not adequate supervision of the persons under mandatory supervision?

Mr. Kelly: In order to make it work.

Senator McIlraith: Isn't that what you are saying?

Mr. Kelly: Yes, I would be prepared to say that it is unworkable under the present system.

Senator McIlraith: I do not know that it is unworkable; it is not working. On your evidence now, it is quite workable; it may be workable, but it is not working because there are insufficient personnel.

Mr. Kelly: It is workable only if there are sufficient personnel, yes.

Senator McIlraith: So the recommendation and your comment on that point might well have taken another form, and it might well have developed into a recommendation for more trained personnel being assigned to the task of supervising persons under mandatory supervision.

Mr. Kelly: I think that is in the brief, and it is certainly implicit in anything I say on this point.

Senator Lapointe: You said that parole should be viewed as a privilege and not as a right. Are there other countries in which this same philosophy is held? Are there others who think the same as you do in that regard?

Mr. Kelly: I do not think this statement was made on the basis of what is being done in other countries. It is a statement that has been made in this brief on the basis, I think, of the problems that arise when offenders are able to look upon parole as a right rather than a privilege.

Senator Hastings: Has anyone said that, that parole is a right?

Mr. Kelly: I do not know that they have said it in those words, but I think it is implied in the law and in the policy.

Senator Hastings: The application for parole is a right.

Mr. Kelly: That is right.

Senator Hastings: But parole is a privilege.

Mr. Kelly: That is true. The way we feel about this particular point is that it really amounts to a right, even though it is in the hands of the Parole Board to say "Yes" or "No". We have heard many times that parole is practically automatic in a large number of cases. This is merely tantamount to being a right. We do not want to push that point too hard, but we would like to emphasize the fact that potential parolees should be impressed with the fact that it is more of a privilege than it appears to be, and not as much of a right as it appears to be.

Senator Lapointe: In paragraph VI you say that minor and non-violent criminals are often a greater source of trouble than the more violent criminals, because they are paroled more easily. Which kind of minor crimes do you refer to? Is that in the category of thieves, for example?

Mr. Kelly: Yes, I think that would be a very good example of the category referred to in this brief. They come out more easily because the offences for which they are charged are not looked upon as being that serious. They come out and cause more occurrences—if I may use that word—with which the police are faced; but generally they are of much greater nuisance value. I do not like to use that phrase, but they are more nuisance value than somebody who commits a murder, which is a one-shot crime. In spite of what is said, murder is the most serious crime committed against the criminal law, but murderers are certainly not the criminals who give the police the most trouble.

Senator Lapointe: With somebody who has committed a *crime passionnel* would you be inclined to be more lenient, even if they killed someone?

Mr. Kelly: The nature of the *crime passionnel* would have to be analyzed. I think we are talking about the kind of crime that happens once as a result of passion, which arises between two people who normally should be living peacefully together.

Senator Lapointe: Do you believe many people think there is a larger chance of rehabilitating these people?

Mr. Kelly: I personally would think so, and I think the police of this country feel that way too.

Senator Lapointe: Do you think the Parole Board should have the right to give them parole instead of the matter having to go to the Cabinet?

Mr. Kelly: Of course, you know, there is a lot of argument on the other side, and that is that the Parole Board should not have the authority to change the sentences of the court.

Senator Lapointe: No, but is granting parole changing the sentence?

Mr. Kelly: No, it is not; not in the strict sense. I do not think that the Cabinet, really, need be concerned with every procedural consideration that is given in the crime that we are referring to. There may be certain serious crimes where it is advisable, perhaps for various reasons, to go to the Cabinet, but I do not think that as a general practice these matters should go to the Cabinet.

Senator Lapointe: Thank you.

Senator Laird: Mr. Kelly, in your brief you mention at page 10 day parole, temporary leave, temporary absence, full parole and minimum parole, and you suggest that these should be co-ordinated in some fashion or other. We had some discussion about this this morning, and I should like to pursue it further with you. Do you think there is any merit in an overall body of some kind that would have jurisdiction in all matters of release?

Mr. Kelly: Yes, I do. May I say that we believe that day releases and temporary releases are sufficiently important that they should not be left in the hands of penitentiary authorities; but it is as serious a matter as the other kind of parole and the Parole Board should have that authority. We are suggesting that in these cases not only should the Parole Board have the authority but there should also be close liaison between the police, the penitentiary authorities and the Parole Board.

You know, it has been said somewhere or other—and it is perhaps so common that you have heard it a dozen times—that day parole, temporary release, is very much akin to giving a child a loaded revolver to see whether or not he is able to be given one permanently. And I think that is a very good analogy.

Senator Laird: Right. We have been talking in terms of general principles, but have you given any thought specifically to organization, to how it would be accomplished, to whether it would be a central board plus regional boards, or something else?

Mr. Kelly: Well, as you know, there is discussion going on as to how the Parole Board's functions can be decentralized and how the provinces can take over certain responsibilities. We are not yet at the point where we think that this is going to be easy to accomplish because, after all, a day parole, a visit to some place in an emergency situation, is not something that can wait while you ask for the opinion of the police, and so on and so forth. I think, again, you would have to look at the various categories of day release and temporary paroles, whatever they are called, in order to differentiate between what we might term the emergency and the non-emergency cases.

I do think that although it is all very well in an emergency situation to leave the decision in the hands of the penitentiary authorities, who are probably quite capable of handling it, nevertheless when it comes to a situation where a man is allowed out to attend university or is allowed out to work on a job over a period of time, then these are matters that need a little more consideration and more input than can be given them by the penitentiary authorities.

Senator Laird: Yes. As to the actual organization, you would decentralize more, then, I suppose, for certain matters, but centralize more for others. Is that the idea?

Mr. Kelly: Yes, that is the idea, but the decision to do this would be based on an analysis of the type of temporary release that is made and the authority that permits it, and so on and so forth.

Senator Laird: In other words, you would suggest that rules exist as to when, for example, the head of a penitentiary could grant a temporary release on his own. Is that what you are saying?

Mr. Kelly: Well, I think those rules exist now.

Senator Laird: But I am talking about the future, at which time we will have an overall body of some kind that might not bear the name National Parole Board. It might have some other name because it would include all these other things, you see.

Mr. Kelly: Right.

Senator Laird: But I am talking about the type of situation, as you yourself have indicated, in which the head of a penitentiary could, on his own, grant a temporary release. Would you lay down certain specific rules as to when exactly these releases could be granted—for example, in the case of a death in the family or something like that?

Mr. Kelly: That is a good example of where it would be ridiculous to refer it to the Parole Board, the police and everybody else. Yes, I certainly do.

Senator Lapointe: But should everybody be allowed to go to his mother's death bed—even the most dangerous criminal?

Senator Quart: Under escort, maybe.

Mr. Kelly: I think I would probably allow him to go to his mother's funeral, yes.

Senator Lapointe: But not his father's?

Mr. Kelly: Oh, yes, his father's, but I might object to his going to the funeral of his brother or of his cousin. As Senator Quart suggested, it would be under escort, and that might be an embarrassing situation, too; but, just the same, that is something these people have to put up with.

Senator Quart: I believe it was very embarrassing a week ago, Mr. Kelly, when there were two of them who were under escort in different areas, Cowansville and Montreal.

Mr. Kelly: That is right. I think what we have to consider here, when we talk about escort, is that it is not likely a prisoner would want to go to a funeral handcuffed to his escort. But if you give a man an escort and he is not handcuffed, I cannot guarantee that that prisoner will return, even though he has an escort, and that is a problem that is faced in this kind of situation.

Senator Denis: Mr. Kelly, I should like to get your views on the recommendations of some previous witnesses. For instance,

some witnesses have recommended that there should be regional boards in addition to the National Parole Board, and that there should be an appeal from those regional boards to the National Parole Board. Would you favour such a system over what exists at the present time?

Mr. Kelly: I am not quite sure what this brief we are presenting today says, but my own opinion is clear on this point. I do not think that there is the urgency to parole that requires the local board or the regional board as opposed to the National Parole Board. I do believe that the cases in the regions require the expertise that is available at the federal level, and I would be inclined to think that if there is any particular delay which is calling for these kinds of regional boards, then an expansion of the National Parole Board is probably the answer.

Senator Denis: Do you mean that you would double or triple the number of members, or the staff, of the National Parole Board?

Mr. Kelly: Whatever the traffic demands in the way of additional staff.

Senator Denis: In some other briefs it has been recommended that there should be separate boards instituted by provincial jurisdictions for provincial institutions, with a recommendation that those who have been sentenced to less than two years should come under their exclusive care. What do you think about that suggestion?

Mr. Kelly: I believe that the offences for which an inmate is sentenced to less than two years are obviously the lesser offences committed, and I believe that the provincial governments, having the responsibility for the enforcement of the criminal law, could well have the responsibility for administering other aspects of it, including what you have just suggested. In that sense, I believe it would be somewhat similar to establishing the regional boards you referred to earlier, and yet it would leave the more serious matters in the hands of the federal parole board.

Senator Denis: Do you think there would be any danger in the sense that in one province offenders might be treated differently from the way similar offenders are treated in another province? In other words, do you think there would be a grave lack of uniformity?

Mr. Kelly: I think that is quite possible, but I do not think the difficulty would be any greater than that which we now find in our courts whereby a crime committed in one part of the country is not treated in exactly the same manner as it might be in another.

Senator Denis: In another brief it was suggested that every inmate should be paroled after serving three-quarters of his sentence, no matter how he has behaved.

Mr. Kelly: I do not think that is very practical. I think that if a person shows during his incarceration that rehabilitation is a hopeless effort, then I say that the longer he is kept within the confines of a jail the better. But, on the other hand, if there is any hope of rehabilitation, then I think you have to set other conditions for release.

Senator Denis: I think a member of the Parole Board told us that inmates have been paroled twice or even more often. What do you think of that?

Mr. Kelly: I think it is terrible.

Senator Denis: So do I.

Mr. Kelly: Let me qualify that. I think that under certain circumstances it is terrible, but I do not think that because a person commits a second offence he should never again be considered for parole at some future date. But I do believe that on the second offence when the question of parole comes up, what happened the first time should be taken into consideration and there should be much more care taken so far as his release at that time is concerned. I think it would be a very unprogressive move to say that regardless of who he is he must stay in.

Senator Denis: I am not speaking now of where he has committed a crime during his parole: I am speaking of a situation where following parole, and when he is free just like anybody else, he then commits another crime, is sentenced and then paroled again.

Mr. Kelly: That is where I think there should be a much more serious approach to consideration of his release on parole on that second crime.

Senator Hastings: Do you feel that that is not the case right now?

Mr. Kelly: I do not know. I would expect it to be, but I am just answering this specific question.

Senator Hastings: Because you give the impression that that is not the case right now.

Mr. Kelly: If I did, I would not want to leave that impression because I was just speaking strictly to the question.

The Chairman: You make one exception in your brief, and that is in the case of a parolee who has escaped. He would automatically lose any and all privileges of subsequent parole.

Mr. Kelly: We think that is appropriate.

Senator Hastings: Why?

Mr. Kelly: We are not thinking of it in connection with a further crime. As I understand it, we are thinking of it in connection with the crime he has committed.

Senator Hastings: You think that any escapee should never be considered for parole?

Mr. Kelly: That is right.

Senator Hastings: Why?

Mr. Kelly: I suppose one would have to look at the circumstances behind the escape,–but I think the basis for that statement is that he has shown that there is little hope for rehabilitation. Of course, we could be wrong.

Senator Hastings: I think you are wrong. The first year a man goes into an institution, he commits some rather irrational acts, and he will attempt to escape; but the normal inmate, after that time, settles down and starts making progress.

Mr. Kelly: And perhaps making more serious plans.

Senator Hastings: He starts making progress, and I think that has to be taken into consideration.

Mr. Kelly: Well, I would not be prepared to push that point to any great extent.

Senator Laird: Mr. Kelly, just a question arising out of one of your answers to Senator Denis. I am referring to this matter of lack of staff to deal adequately with the situation, which brings to my mind an observation in your brief that you take a dim view of volunteers being in on the act at all. You recall that?

Mr. Kelly: Yes.

Senator Laird: You say that you do not think that they would adequately fill the bill, or words to that effect. I should like to pursue that a little further because, after all, the hiring of full-time trained staff is a very expensive proposition, and the money has to come from somewhere. Any senator who is on the Senate National Finance Committee, as I am, realizes the problems involved in getting more money. Would it not be conceivable that you could, by proper screening, get volunteers who would be very helpful in connection with this whole problem?

Mr. Kelly: I am afraid, senator, our view here is conditioned by police experience with professionals, and you will notice that one of the things I said in my introductory remarks–which I think can be just as important as what we say in our brief–was that there is need for an analysis of the conditions which create mistrust between the police and parole officers. We find, purely from the police point of view, that too many of the parole officers have only one consideration in mind, and that is to keep the parolee out of police hands, regardless.

Now, since this condition exists among the professionals, and since I presume that the volunteers would come under the control and direction of the professionals, we could not look for any different approach to the problem than that which we see today. That is the basis–and a fair basis, I think–for our attitude towards the volunteer. On the other hand, while that is our opinion, I think it would be wrong for us to say that it should not be tried. Why don't we try it and see how it works? Some policemen would say it could not be any worse than it is today.

Senator Laird: Yes, I agree with the possibilities which exist in using volunteers–the bleeding hearts, do-gooders, and so on. But, of course, I was contemplating a system where they would be properly screened before being utilized. It seems a shame to have all this latent energy available and anxious to work, and then we do not put them to work.

Mr. Kelly: It may be that a lesser degree of professionalism on the part of the volunteer–who could remain closer to the individual than could the best qualified professional–may serve the same or even a better purpose than the professional who has so many to look after. It is quite possible. I do not think we would be too strongly opposed to any efforts in that direction.

Senator Laird: It may be worth trying in a specific area.

Mr. Kelly: I think there is room for a trial period at a particular point; and I think perhaps a good spot to try it would be in Kingston, Ontario. In spite of all the fuss and fury, and the feathers that seem to be flying around in Kingston, looking at it from the outside, I think we must suspect that this high degree of crime in Kingston along with the small degree of success might be related–and I will not say any more than that–to the number of releases in the Kingston area, both temporary releases and the so-called permanent parole.

Senator Neiman: Mr. Kelly, this is being tried, I understand, with the Elizabeth Fry Society in Toronto. Of course, you are dealing with women prisoners who, by and large, do not have the same difficulties, or the same latent problems. But it seems to me in that particular instance you are dealing with volunteers. I may be prejudiced in this regard, having been a member of the Elizabeth Fry Society, but I feel that the degree of concern which is brought by these volunteers is very high. Perhaps what you are saying is that we need more liaison between the police and the Parole Board in an endeavour to understand one another's problems, whether they are volunteers or true professionals.

Mr. Kelly: I think I said exactly those words in my opening remarks. I agree with you entirely that dealing with women prisoners is probably an entirely different proposition from dealing with what we have termed the more vicious elements of our society, which few people really understand. This is a good point.

I submit that these people are not always seen inside the jail or penitentiary as they are seen by the police when they are dealing with these people at the time the crime is committed, or soon after, when they come into their hands. The kind of person the policeman sees at the time of arrest is rarely the kind seen inside the penitentiary, although I admit there are times when this vicious element takes control–as they have done–and shows its real colours. But the police see a different type of person, at their time of control, from the one the custodial or parole people see at a later time.

Senator Hastings: We have 8,000 inmates. What percentage would be in that category?

Mr. Kelly: Probably you can cut them up into various categories. You have the people who are harmless. . .

Senator Hastings: No, I mean how many do you think are in the category to which you have just referred?

Mr. Kelly: You would have to go back and analyse each individual circumstance at the time of arrest, and so on and so forth. I really cannot give you that figure.

Senator Quart: I would like to follow up on what Senator Laird asked regarding volunteers. Do you mean voluntary agencies or individual volunteers?

Mr. Kelly: I was referring to individual volunteers.

Senator Laird: So was I.

Mr. Kelly: Mind you, these people may very well come from volunteer agencies.

Senator Quart: I do not know very much about this situation, but do you frequently have cases where it is the individual volunteer or an individual volunteer within an agency, or recommended as a member of an agency? Would it not be a risk to have the individual volunteer responsible to no one but himself or herself?

Mr. Kelly: No, I think probably Senator Laird and I believe that these volunteers would come under the supervision and direction of the professional parole officer, and that he would work in conjunction with the parole officer. He would go to him for advice. He would be an additional arm of the professional parole officer.

Senator Quart: Would that volunteer be paid an honorarium?

Mr. Kelly: I think this would depend on the circumstances; or whether policy could be established; or whether or not these people are prepared to work.

The Chairman: They usually belong to after-care societies.

Mr. Kelly: That is right; they are volunteers working free of charge.

Senator Hastings: I am referring to page 22 of your brief where you say:

> . . . inasmuch as rehabilitation has its good points reduction of the crime rate under any circumstance or by any group will not be achieved by appealing to reason but rather by strong physical deterrents. . .

To what strong physical deterrents are you referring?

Mr. Kelly: From what paragraph are you reading?

Senator Hastings: The second paragraph. I notice you propose the lash. I wonder what other strong deterrents you may have in mind.

Mr. Kelly: I am still looking for the quotation.

Senator Hastings: It is on page 22, the second paragraph, where it says:

> Further difficulties arise from the fact that parole is going through a period of change. . .

The Chairman: That is on page 23.

Senator Hastings: It says that page 23 follows.

The Chairman: Why don't you say page 23?

Senator Hastings: You state:

> . . . no proper assessment can be given to the principles of deterrents as compared to the principles of rehabilitation.

Yet, further on, you advocate rather strong physical deterrents. I am asking: What deterrents are you advocating other than the lash?

Mr. Kelly: I suppose one of the physical deterrents is the penitentiary itself—that is, a longer period in the penitentiary or the jail. Personally, I cannot support stronger physical deterrents. This is a view held by the chiefs of police: they feel there is a need for some sort of physical deterrent.

Senator Lapointe: Do you include solitary confinement?

Mr. Kelly: I do not think we would go that far; although, I suppose if you are going to consider the penitentiary as a physical deterrent, solitary confinement is a part of that total situation.

The Chairman: Mr. Kelly, do you believe that if a man is incarcerated for a longer period he comes out a better man than if he is incarcerated for a shorter period?

Mr. Kelly: No, I do not think we feel that way. I think there are some cases where this is so. We leave this very difficult job to the judgment of the Parole Board. But I certainly do not think that the longer a man stays in jail the better chance he has of being rehabilitated. I certainly cannot go along with that point of view.

On the other hand, however, I do not believe that it can be said that the shorter the period of time a man spends in jail the better chance there is of his being rehabilitated. We must consider each case as it arises.

Senator Hastings: Then we come to this point of risk of which you spoke. Every time we release a man from an institution there is risk involved, is there not?

Mr. Kelly: Right.

Senator Hastings: If, in the judgment of the board, it is less risky to release him on parole earlier rather than leave him in the environment where continued deterioration is practically guaranteed, is it not the wiser course to take the risk earlier?

Mr. Kelly: The answer cannot be found solely on the points that you have raised. Other factors must be taken into consideration, such as the type of crime the man committed.

Senator Hastings: Oh, yes; I am not saying otherwise.

Mr. Kelly: We must consider the fact that a man has committed one or two violent crimes. Another point arises, however, and probably police thinking is conditioned by this. So often men are released, but after they have been out and got into trouble it is obvious to all concerned, from the information held by the police, the federal board or the Penitentiary Service, that they were not ready to be released. Yet, because of this insistence that it is better to release an inmate than keep him in, he is released, and it is not even good for the man himself to be sent out.

Senator Hastings: When he is not ready?

Mr. Kelly: When he is not ready.

Senator Hastings: Yes, I agree with you.

Mr. Kelly: But this happens all too aften and, without going into cases, it happened as recently as yesterday.

Senator Denis: Would you say that the better inmates are treated in the prison, the less afraid they are to return?

Mr. Kelly: No, I would not say that.

Senator Denis: Well, suppose a man steels, is sent to jail for two or three years, finds he is well treated, with three meals a day, recreation, nice week-ends with sports, is released after being very well treated and is tempted to steal again . . .

The Chairman: Just to go back?

Senator Denis: Suppose he says to himself, "I do not care if I am caught; I will be well treated again in prison"?

Mr. Kelly: Persons of such a mentality must be kept either in that prison or elsewhere. I certainly do not believe that we should handle the prisoners in our jails by employing some sort of application of physical force. It would be a retrogressive step if we adopted such a policy. There are, however, some men who will be helped by that kind of force, but others who will not. As a general policy, I really believe that it is not just the way they are treated, with three meals a day, a good bed, very little work and all the entertainment they desire. We must take advantage of the situation to endeavour to rehabilitate them as much as possible within the institution, before they are released. The answer, in my opinion at least, is not in one direction or the other; it is a combination of efforts.

Senator McGrand: Some criminals, due to their psychological make-up, cannot be trusted with their liberty without being a menace to society. What type of confinement, over a very long period, would best protect society, yet preserve the personal dignity of the inmate? When men are confined for long periods of time in close association with each other, they tend to become violent and protest that confinement. What can be done for those who must be kept in confinement for most of their lives, without at the same time destroying them as individuals?

Mr. Kelly: I do not think it can be done, sir; I do not think it can be done.

Senator McGrand: Would it not be possible to establish a large penal colony wherein people would have a certain amount of freedom of movement and use of their time? Perhaps they might have their families with them. I am not referring to such places as existed in Australia, or Alcatraz. We have plenty of land.

Mr. Kelly: Do you mean, to confine them somewhere where they would have, after a fashion, a meaningful life?

Senator McGrand: A communal life, yes.

Mr. Kelly: If you mean sending their families and children with them, you are defeating part of the purpose. You would hear the cry that this is punishing wives and children. There would also be the problem of these people associating with others, because there would have to be a group of them to make such a system viable. We must always remember that we are discussing people who cannot be allowed back into society, yet such places are developing another kind of society.

Senator McGrand: They would not return to our society, but would be in their own society, which we would make. You have told us plenty of bad things. Can you not think of a good thing?

Mr. Kelly: No, I do not think that the wives and children themselves would permit it. I also believe that the general public would howl to high heaven if we ever attempted to create another type of society with the families of the kind of person to which you refer. That is my view.

Senator Laird: A nice, clean, psychopathic society!

Mr. Kelly: There would still be guards, discipline, punishment and rules.

Senator McGrand: There would be a lot less, though.

Mr. Kelly: Or more.

Senator McGrand: It would depend on how it worked out.

Mr. Kelly: It would have to be 500 miles from a railroad, right in the middle of bush country.

Senator Laird: How about a Canadian Siberia?

Mr. Kelly: What other part of Canada could be used and still provide the security of keeping these persons away from the other society to which you refer?

The Chairman: We have been told, Mr. Kelly, that in Canada we imprison too many people. Attention has been drawn to the proportion imprisoned in Holland and some of the Scandinavian countries, where the percentage is much lower. Do you think that we imprison too many people in Canada and resort to incarceration unduly?

Mr. Kelly: In my opinion, it is something that bears analysis. I think of the number of people in our jails who are there because they cannot pay fines. I think–and thank goodness that this is being changed–of the number of people who are in our jails because they have been drunk, solely drunk and cannot pay a fine. This kind of thing needs analysis. It is all very well to say we are imprisoning more people, but I think the basis for doing so should be analyzed.

For instance, how many Indians are in jail for five or ten days, out of all proportion to the numbers in the country, because they cannot pay fines? That is a statistic, and, in my opinion, in the realm of statistics it is just as important with respect to the statement you made as the statistics of a person in Holland who goes to jail for five years for a more serious crime. So I think it is essential that we analyze these statistics; and to make a statement that we put more people in jail than they do elsewhere on a per 100,000 basis, or whatever it is, is dangerous. It may well be so, but I think that to understand the real problem we have to analyze the basis of every case that goes to jail.

The Chairman: You mentioned the Indians. I was thinking of the Indians, because I was looking at some statistics which show that in some jails 50 to 100 per cent of the inmates are Indian.

Mr. Kelly: That is right, sir.

The Chairman: When I saw that the offences, to a large degree, were drunkenness or related to drunkenness . . .

Mr. Kelly: This means not just drunkenness, but the inability to pay a fine.

The Chairman: That is right.

Mr. Kelly: In fact, it is quite common in Western Canada, I know–I am reasonably familiar with the statistics–where 20, 25, 28 per cent of the jail population are Indians. In the Community they are probably 5, 6 or 7 per cent of the population.

The Chairman: And in my own province of Quebec, in Roberval–I happened to notice the statistics–the same thing applies.

Senator Lapointe: What would you suggest instead of jailing them?

Mr. Kelly: I do not know. I really could not suggest anything–except this: I was an advocate of this in its very early stages. If there is anyone here from British Columbia, they can take a bow, because it was British Columbia which first decided that drunkenness was not a crime. It was applied in Prince George and Prince Rupert, where the loggers used to come in and get drunk. The police would try to arrest them–Senator McIlraith is very familiar with that; there would be a fight on the street; and the RCMP had to send in six-foot, 220-pound men in order to manhandle these people, to put them in jail. When the policy came in that they were to be taken to jail and released the next morning to go back to their jobs sober, a very different rapport began to grow between the loggers and the police: the community was saved the cost of guards; they were saved the cost of court proceedings; they were saved the cost of all the guarding that had to take place. The loggers themselves would not have to pay any fines, and those with no money would not have to go to jail. There were so many benefits in this sort of thing that it was a very welcome breath.

Senator Lapointe: But this does not apply to drunken driving.

Mr. Kelly: No. This is just drunkenness *per se.*

The Chairman: Those Indians cannot afford cars.

Mr. Kelly: This may be a very radical statement, but I do not think that putting an Indian in jail for non-payment of a fine is goind to help that Indian. You might as well keep him until he sobers up.

Now, let me tell you another wrinkle of this same thing. Certain people in the community are complaining about this system, because it does not give the Indian or the other kind of drunk time to dry out. He goes right back to drinking, whereas they claim that sending him to jail would give him a period away from alcohol. So you see, this is really not a police problem any more.

Senator Laird: Should there not be a special institution?

Mr. Kelly: Then it becomes a problem for more experienced people in dealing with these sociological problems.

Senator McIlraith: With reference to your interjection a few minutes ago about drunken driving, you might go on and tell about the other experience in Vancouver when they began to hand over their car keys when they were stopped; they would give their car keys voluntarily to the police. There is no statistic on the number of serious car accidents that did not happen because of this new policy.

Mr. Kelly: I think there is room in our system for all kinds of things like this which keep people out of jail. This, to me, is

progressive. The moment we try to say that the old system is good enough, that we have to incarcerate these people for long, long periods of time, put them in and throw away the key, it becomes a very retrogressive step. We are not supporting that kind of thing at all. We want progress. We want to keep people out of jail. We want to keep them out of the hands of the police; and, certainly, we want to try to make society more secure in so doing.

Senator Lapointe: Senator Williams, who is an Indian, would be pleased to hear you. He is not here today.

Senator Quart: When we were travelling with the Poverty Committee at Whitehorse, I had the opportunity, and enjoyed it tremendously, of going for a drive with Chief Elijah Smith. In driving around and explaining, he said, "Well now, there is where the mission house is being closed. The Indians used to go and drink there. They would buy their bottle and go and drink there; and they were under a certain amount of protection. The other people, you white people, working in this area have clubs. They go in there and they get drunk." But he said, "when that mission house is closed, where are our Indians going to go? "

The same thing happened when we were travelling on the Constitution Committee, at Yellowknife. Again, they allowed the Indian to drink in the lounges all night, and in the morning, when that poor chap came out, the manager of the hotel was going to call the police, after letting him drink in there all night. Senator Fergusson–I wish she were here–and I objected. We said, "Well, you are taking his money until he is in this condition," and he said, "Oh, he will be arrested by the RCMP when he gets around the corner." This is the attitude I found, in the North anyway.

Mr. Kelly: Well, of course, I feel this way: I just drink enough not to be called a teetotaler. My attitude towards drunkenness is conditioned somewhat by the fact that provincial governments and the federal government collect so much in taxes. They are the purveyors of this, and it is most unfair, knowing the effects of this commodity, to then prosecute people for getting into a condition that is obviously going to come about. You see, I am a private citizen now. I am talking for the police, but I can talk rather freely on these subjects–much more freely than I could before, I might say.

Senator Laird: Coming back to this matter of jail conditions, is it not a fact–it is perhaps trite to say this–that they are really breeding grounds for crime, in many cases.

Mr. Kelly: That is right.

Senator Laird: I would suggest this, and invite your comment, that there are two main reasons for the existence of crime: number one, of course, is family conditions–how a child starts out in life; number two, is our system of incarceration–in other words, we do not have an enlightened system of incarceration, probably due to the lack of expenditure to do a proper job. I think those two things cause more crime than anything else. What would you say?

Mr. Kelly: I could not agree more that the wrong environment at an early age is the cause of most of our problems today. However, having said that, one has, I think, to take into account the degree of what today we call white-collar crime; when people who have had all the advantages, or relatively great advantages, as youngsters, good schooling, and so on, turn to crime; and this kind of crime is increasing. So, environment is only one aspect of the problem, even though, I agree with you, it is responsible for a large segment of the crime problem that we have today. But we must not overlook the other factors.

Senator Laird: Right; except that perhaps that type of criminal is created more by drugs, or something of that nature.

Mr. Kelly: Not necessarily. Or by greed. What is it that makes people in financial institutions defraud the people who have supplied them with the moneys, as we have seen? We have seen royal commissions in this province looking into this very thing.

Senator Laird: Sure.

Mr. Kelly: The federal government is supporting squads right across this country, not to investigate crime by themselves, but it is supporting the fraud squads of local police forces investigating this kind of crime that is committed by criminals who have probably had a much better environmental background than I.

Senator Laird: Simply for reasons of avarice I suppose.

Mr. Kelly: That is right.

Senator McGrand: How many of those people ever get into penitentiary?

Mr. Kelly: Well, a reasonable number. I think what you are getting at is this: In relation to the value of the commodity they have disposed of they do not get nearly as much as the poor fellow who steals $100 or ten bags of wheat or three bags of cement.

Senator McGrand: That is the point I wanted to make.

The Chairman: Isn't it also true that it is easier for those individuals to get parole?

Senator Neiman: They would have much better legal help and all of the advantages.

Mr. Kelly: We have seen a good many examples of how easy it is for some of these people to get out on parole. Whether it is because they belong to this class of criminal, I do not know. I am thinking of kidnappers, particularly, and that type of criminal; but it is true. Are we not all waiting for the day when a certain Maple Leaf Garden director gets out? Are we not all waiting for that? However, if it is rehabilitation that is being considered, perhaps he has been in too long already. People's minds are conditioned to this type of thing.

Senator Laird: There is also the matter of risk.

Mr. Kelly: That is right.

Senator Laird: There would certainly be less risk involved.

Senator Hastings: In your brief, Mr. Kelly, you speak about the matter of the inmate cunningly inveigling parole. It seems to me there would be something wrong with a man who would not cunningly inveigle parole. I wonder if you would state your views with respect to the police inveigling parole for an inmate for the purpose of securing Crown evidence or a conviction?

Mr. Kelly: I do not know of any such case. I am not suggesting it has not happened, but in my experience I have not known of the police attempting to obtain parole for a person with a view to using him as evidence. I have known of people who turned Queen's evidence or King's evidence, who plead guilty and who are treated leniently for the services they have rendered the Crown–not the police. All too often people think it is the police. The crown attorneys are often involved in these matters. Sometimes it is beyond the police, and the police are obviously taking instructions from crown attorneys. The police get the reputation of wheeling and dealing with these people.

If any of my colleagues have any knowledge of the police bringing people out on parole to use them as informants or–

Senator Hastings: To lead them to evidence or the solving of a crime.

Mr. Kelly: No. I think probably what you will run into are situations where, if a person has evidence, the police may go and see him in the penitentiary, and then say a good word for him or advise the Parole Board that he has been co-operative and that this would be another point to take into account when discussing parole for that individual. However, I doubt if the Parole Board would give it much weight, if they knew–and I am not suggesting that they do–that the police were doing this type of thing. I do not think the police have that much influence with the Parole Board.

Senator Lapointe: How do you feel about a man who was caught on the spot being released the following morning to await his trial?

Mr. Kelly: I wrote an article for the *Ottawa Journal* on this very subject two or three weeks ago. I am probably better acquainted with this than any other point I have spoken on this afternoon.

I think that the bail situation in this country needed reform. However, I do not think it needed reform to the point of where it would take a very valuable tool in the investigation of crime out of the hands of the police, that tool being the finger printing of people found committing crimes.

In spite of people accusing the police of enforcing this law so ridiculously strictly that its rigid enforcement is bringing criticism, the police are only enforcing this law in accordance with the spirit of the law. No self-respecting policeman would agree that a person should remain in jail, before he is convicted, any longer than is absolutely necessary. However, when a man is found committing a crime of theft under the sum of $200 and the policeman concerned has to release him because he identifies himself and there is no reason for him to think that he would not turn up for his trial–everything about the man is satisfactory, he can produce false identification, and the police have to accept it because they have no means of really checking it–that is where the problem lies. This man has to be released without being finger printed. If he does not turn up for finger printing a few days hence, as is required by the reference on the ticket he is given, then the police have no real way of knowing with whom they were dealing. If the man leaves the community, then the police are in an invidious position: they cannot get the finger prints, to see if this man is wanted for the commission of other crimes; they cannot check those finger prints against prints obtained from the scene of the crime to see if this man was that criminal; and they have no sure means of knowing that when they are looking for the man who gave his name as "John Jones" his name is, in fact, John Jones.

Regardless of the name he uses when he is committing crimes, with his finger prints when he is caught,–as he is likely to be at a later date–he can be related to every crime that he has committed, even though he evades the court proceedings in respect of every crime.

This is the trouble with our present Bail Reform Act. It has resulted in a man being released on one occasion in Southwestern Ontario a number of times during a 24-hour period, and at the end of that 24-hour period he was still free to continue committing crimes under this new regulation, because there is no way for the police minds to get together to identify this man as the man who committed the previous crimes.

I think it is, if I may say–and this is the first time I have ever been able to say this–a noxious law.

Senator Neiman: Is the aspect of it concerning finger printing going to be changed, Mr. Kelly?

Mr. Kelly: Whether it is or not, it is certainly needed.

Senator Laird: Another problem that I foresaw, frankly, and I almost spoke against the bill because of this–I did not do so, and eventually I went along with it–is that is puts far too much onus or strain, perhaps is a better word, on the police. If they pull a boner, Lord knows what they may have to put up with in the way of reprisal.

Mr. Kelly: The police are required under this law to make a judicial decision on the street, and it is usually the younger patrolman–without benefit of the experience and the expertise within his own organization and which is available at the police station–who has to make the decision.

Senator Laird: That is exactly what I was afraid of in that act. The sponsor of the bill spent two hours with me and convinced me to go along with it and try it out. It has not worked?

Mr. Kelly: It has not worked, sir.

Senator Lapointe: What do you think of the opinion of Mr. Mesrine, who was caught recently in France, who said that the Canadian police are children compared with French policemen?

Mr. Kelly: Let me put it this way, because I have to be careful how I put it: Compared with the police services of other countries, the manner in which the police enforce the laws in this country makes this country one of freedom par excellence.

Senator Lapointe: Yes, but perhaps too much freedom. I think that is what Mr. Mesrine intended to say.

Mr. Kelly: Maybe this is so, but the police can only enforce the law as it is.

Senator Hastings: Isn't the fact that we have so many in jail a reflection on the excellent police work done?

Mr. Kelly: It does not take much in the way of police work to put drunks in jail, who are included in the statistics.

Senator Hastings: I should like to return to temporary absence, which I think you said should all be put under the one authority.

Mr. Kelly: With certain exceptions.

Senator Hastings: On pages six and seven you say that penitentiaries should in no way deal with the release of an inmate, and further on you say that the penitentiary administration should not in itself be concerned with parole legislation, which is the rehabitation of individuals. I do not think you mean what you are saying. Surely, the penitentiary has to start dealing with the release of an inmate the day he arrives, preparing him for his release?

Mr. Kelly: I think our statement there refers to the policies followed by the penitentiaries.

Senator Hastings: That brings me to my next question. Temporary absence just happens to be a very valuable rehabilitative tool in working with the inmate, and if you take that away from the institution. . .

Mr. Kelly: This is the kind of thing we were discussing earlier. My answer to that was that we would have to break down the kinds of temporary releases that exist to see which ones could be left in the hands of the penitentiary authorities and which ones could be placed in the hands of the Parole Board.

Senator Denis: A few days ago a lady who appeared as a witness before us said that the main reason for women being in jail was as a consequence of taking alcohol or drugs. Do you think the same could be said of men, because they are drunk or drugged?

Mr. Kelly: I think there is a certain degree of that involved in crime committed by men. I also think, on the basis of what we read and learn and experience, that alcohol plays a much greater part. . .

Senator Denis: And drugs.

Mr. Kelly: Yes, and drugs–but alcohol plays a much greater part in the commission of crime than we give it credit for.

Senator Denis: Especially violent crimes?

Mr. Kelly: That is possible. I could not support what I have said in light of a particular crime; I can only say it in the light of crime generally.

Senator Lapointe: Do you think there should be some institution, apart from jail, that could receive those women, a kind of halfway institution?

Mr. Kelly: If it is a genuine case of alcoholism or drug addiction, yes. Then, of course, in the case of drug addiction we run into the problem that has been peculiarly North American–Canadian as well as United States–where the majority of our drug addicts were, until comparatively recent times, actually criminals first and addicts second. I think the problem for the authorities is what to attack first–a person's problems as a criminal or a person's problems as a drug addict. We have known that once a man is a criminal and becomes a criminal addict, as he is referred to, rather than a straight medical addict, that man's problems do not end even when he is free of drug addiction; all too often he returns to a criminal way of life when he goes back to his old milieu. That has been my experience.

Senator Hastings: Two or three times you have referred to "the Drumheller experiment." What are you referring to?

Mr. Kelly: Is there not an institution in Drumheller where they have progressed further in the way of temporary releases and some additional aspects of parole than they have in any other place? I am advised it involves a work program, where they go out to work by day and go back to the penitentiary at night, and they are doing it at Drumheller on a greater scale than they appear to be doing it elsewhere.

Senators Hastings: You agree with that, do you not?

Mr. Kelly: With real controls, Yes.

Senator Hastings: When dealing with temporary absence and day parole you say:

> . . . only where it is possible to provide adequate control of the individual in all respects.

That really cannot be provided, can it?

Mr. Kelly: No. Isn't it the same problem with parole generally? If I am a supervisor and a well-meaning professional parole officer, how can I under normal circumstances stay close enough to a parolee to ensure that he does not commit crimes when he is out of my supervision? This is not possible, I agree. I am advised that one of the things about Drumheller is that they have a much better type of supervision than most other places, so it is supervision-cum-work programs that make it something we can agree with.

The Chairman: On behalf of the committee I want to thank you, Mr. Kelly, and your associates for appearing before us this afternoon.

Before we adjourn, I require a motion to print the brief we have just heard.

Senator McIlraith: I so move.

(*For text of brief, see Appendix*)

The committee adjourned.

APPENDIX

BRIEF ON PAROLE
PRESENTED BY THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
TO THE SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS, OTTAWA, SEPTEMBER 1972

The Canadian Association of Chiefs of Police is grateful for the opportunity of presenting its views on the implementation of present legislation as well as practices concerning parole and of also having the opportunity of commenting on proposals dealing with amendments related thereto which proposals, in part, have been suggested by other groups.

We wish to emphasize at the outset that this brief is presented in a spirit of collaboration between those responsible for making the law and those responsible for seeing that it is observed and respected. We have welcomed the opportunity of discussing our points of view with members of the Parole Board and other groups and while some points of view may differ we are agreed that the sole approach capable of producing desirable results is one of constructive criticism and cooperation.

It is also recognized that this brief represents the sum of the experience of the Senior Police Administrator with the people with whom he works on a daily basis and who in effect is the sole link or channel between the legislative and the executive element of society. In this respect the Police Chief is in a privileged position to evaluate the law and its applicability to the society he serves.

Inasmuch as some points of view presented by the Canadian Association of Chiefs of Police run contrary to the generally accepted sociological principles it is recognized that some honourable members may well disagree with these points of view but we respectfully submit that such disagreement might well stem from the difference between the academic outlook on the one hand and the practical experience, upon which this brief is based, on the other hand.

The Canadian Association of Chiefs of Police anticipates the comment that the brief is based solely on the shortcomings of the parole system and ignores the benefits that have been derived therefrom. Such an approach might be understood but not justified inasmuch as, though perfection is nigh impossible the object of law amendments and indeed, of this brief, is to put before you those very shortcomings and attempt to improve where improvement is possible. It will therefore remain with the Honourable Members of the Senate Committee to evaluate the facts as laid before you in recommending whatever changes are deemed necessary to make parole that which it is intended to be, taking these changing times into consideration.

The Canadian Association of Chiefs of Police feels that a brief which simply comments without offering any constructive suggestions is useless. We therefore do take the liberty of making suggestions and we trust that these suggestions will be taken in the spirit in which they are made.

Introduction:

The Canadian Association of Chiefs of Police presently represents over 250 active and associate members responsible for a personnel of nearly 50,000 who are in direct rapport with the millions of people subject to Canadian law. At one time or other legislation on parole either has or may affect any one of these millions and our members would like to be in a position to deal effectively, based on experience, with any problems that may arise as well as assist in any manner possible with the implementation of parole legislation. We are in the fortunate position of having had the opportunity of reviewing many of the proceedings of this Committee and we are happy that in the majority of cases it has been recognized that the police forces do have a very real interest in rehabilitating the offender. Unfortunately proportionate recognition does not seem to have been given to the shortcomings of the legislation with which the police has to deal nor to the risks that face society in the name of theoretically successful experimentation.

We intend to bring these anomalies before you and in order to facilitate our presentation and in striving for brevity we adhere as closely as possible to the topics (and the order in which they are listed) in the pamphlet dealing with the invitation to submit written briefs on parole.

1. *General Principles and Definitions:*

The broad sociological definition of parole is "A release of an inmate from a penal institution—under certain conditions—so that he can serve the remainder of his term of imprisonment in the community. Any adult inmate who is serving a sentence under a federal law in any penal institution in Canada may be released on parole under the Parole Act. The dual purpose of parole is to assist in the reformation and rehabilitation of the offender so that he can become a law abiding citizen and to insure there is no excessive risk to society. It is a matter of helping those who want to help themselves and giving them another chance, if they seem to deserve it."

This definition contained in the publication "An Outline of Canada's Parole System for Judges, Magistrates and the Police" published by the National Parole Board, Ottawa, contains every element of what ideal parole should be but the Parole Act in stating "parole means authority granted under this Act to an inmate to be at large during his term of imprisonment" reflects much more the practical aspect. We, as policemen, would like to emphasize that in the "sociological definition" the words "assist", "no excessive risk to society", "those who want to help themselves" are most important. Certainly an unvengeful society, acting with a true sense of justice, as is reflected in the definition of "un

bon père de famille" in the Quebec Civil Code, would want to give anybody a second chance. This can only be done effectively if there is the means of assistance and indeed "no excessive risk to society". The term "excessive" is difficult to interpret. If we recall the axiom favouring any accused before the bench that "it is better to let one hundred guilty go free than to punish one innocent" it is conversely true that one death as a result of social negligence is one death too many. We submit that in reviewing the comparative statistics of December 31, 1971 as compiled by the National Parole Board for a period of 154 months there were a total of 5,391 forfeitures or revocations for a total of 38,567 paroles granted. While this figure may seem attractive an analysis of these statistics compiled in an editorial of the Ottawa Journal dated March 10, 1972 shows that whereas there was a 10% failure rate for 1963-64 the failure rate increased to 32% for 1971. In Mr. Goyer's own words "It is possible that we may have reached the optimum number of inmates released in any one year who can benefit from full parole".

In view of the above and in analyzing the purpose of parole, inasmuch as the Canadian Association of Chiefs of Police agrees with the sociological definition, it gives much more credit to the legal definition and a "rapprochement" is certainly required in order to make the two compatible. In dealing with the basis and the purpose of parole, the Honourable Solicitor General for Canada in an address to the Ottawa Richelieu Club in January of 1972 stated that "in the olden days, a great many citizens were put to death or were sent away to forlorn colonies. Nowadays, however, since citizens acknowledge and accept the principle of responsibility and solidarity of society with all its members, it is quite normal that the need of social reintegration should take precedence over the concept of revenge." We agree with the last phrase of the quote and certainly reject the principle of revenge but we seriously question the acceptance by society and, in this respect even some members of Parliament as indicated in an editorial of Le Droit, Saturday, April 29, 1972 question the liberalizing philosophy of the authorities involved.

On October 7, 1971 the Honourable Solicitor General for Canada told the House of Commons that "criminologists, psychologists, psychiatrists and senior officers with a long experience of the correctional field are agreed on the fact that at least 80% of our inmates can be rehabilitated. Therefore, a policy must be established concerning those 80%, that is, the larger part of our inmates, rather than a punitive policy intended to meet the needs of a minority. We will undoubtedly have to keep on protecting society against dangerous criminals but we will also take into consideration the fact that most inmates do not belong to such a category."

Concerning the above, we greatly respect academicians for what they are and we would hope that these in turn would respect the statistics offered by practical experience. Inasmuch as a perfect record is something devoutly to be wished we must stress our original question as to what value do we place on one human life at the hands of an individual who has succeeded in inveigling the correctional authorities and obtaining his freedom. Mr. Goyer in his speech to the Richelieu Club further suggested that "we are presently living in a world presumed to take more and more into account the humanitarian aspects of life; consequently, a more human approach to the problems of delinquency should be developed." Undoubtedly, this sentence taken out of context would not seem to apply to parole but the principle of humanitarianism is introduced and we would submit at this time that extreme care must be exercised in evaluating what is humanitarianism for one individual in the light of society in general. The point to be made here is that all too often in the name of democracy individuals are going to cry out in favour of the rights of an individual as such. It should never be forgotten that democracy is not the right of the individual but the right of society as such.

We therefore submit that the recommendations based on theory should be extremely carefully evaluated inasmuch as there is a clear impression that the present system and procedures that are being followed are shrouded in uncertainty and sometimes confusion therefore leaving something to be desired.

By way of constructive comments may we suggest that the basis of parole should be "an intra-mural" operation embodying the facets of the sociological definition (as being implemented in one of the projects discussed under Section XIV) and not the outright release into society, under what in many instances appear to be unfavourable conditions. Present problems arising out of the parole system lie in great part on the lack of coordination, in some areas, between the agencies responsible for the administration of justice, police, courts, probation services, correctional institutions and all types of after-care services. We respectfully eliminate "ex-inmates groups", unless under strict supervision, inasmuch as it is too easy for one bad apple to spoil a potentially sound group.

Recommendation:

In the light of the above comments the Canadian Association of Chiefs of Police recommends that every effort be made by competent authorities, whether they be the Federal or Provincial Governments, or agencies such as the John Howard Society, to educate the public in a yet more forceful fashion to coordinate their efforts and to establish means whereby it would be virtually impossible for a parolee to go wrong. All too often, as is indicated in a number of other representations, the parolee remembers "easy street", or the bad side of society and little effort is made to "brainwash" reality into him.

II. Legislation:

Of immediate concern to Police authorities is the knowledge, in the proper areas, of the conditions of release and what are the facilities for the parolee to abide by these conditions. This ties in with the comments made by Mr. Street in his presentation to the Senate Committee where it is stated that "an inmate is always a citizen who sooner or later will return to normal life in our society and as such is basically entitled to have his human dignity,

and his rights as a citizen respected by all to the largest possible extent." The savings words are "to the largest possible extent" but even in context this statement reflects the attitude of the Federal Government and the Legislators and would appear to be categorical. We respectfully submit that an inmate is not always returnable to normal life and this has been stated in other comments by the very same sources quoted above. Is it not therefore proper to ask whether or not there is a clear and definite policy envisaged by the Government authorities. Years ago under the Civil Code, a criminal was shorn of his privileges as a citizen and we agree with the statement previously made that we no longer live in days of yore but we equally question whether the new liberalization policies are accurate. If a criminal has deigned to disregard the laws of society, then surely society should not be so naive as to pamper such an individual. If there is to be any rehabilitation, the original intent of the Act, the circumstances of commission, the nature of the law violated and any other aspect must be examined.

Recommendation:

The Canadian Association of Chiefs of Police would like to see increased liaison and indeed in some areas such as Montreal such liaison has worked admirably. In other areas however, it seems to have broken down where supposedly it existed. Among other procedures that are being followed is the remittance of a copy of the release certificate to the police authorities in a jurisdiction where the offense was committed as well as where the parolee will be living and presumably working. It is understood that the Parole Board has also taken the responsibility for the registration of any subsequent changes and finally the cancellation of parole with the information given to authorities of Canadian police. These however do not form part of the Parole Act and we could recommend that Section XII of this legislation be amended accordingly in order to make such procedures mandatory.

We would also recommended that Section XVII of the Parole Act be amended so that any individual found guilty of an offence under Section 133 of the Criminal Code dealing with escape or breaking out would automatically lose any and all privileges of subsequent parole.

We also recommend that pardon, under Section 4(5) of the Criminal Records Act remain the prerogative of the Governor in Council.

In further dealing with recommendations concerning legislation we feel that, legislation being the tool with which the police will work, and being the authority which will govern the actions of the individual, this section should be the object of an exercise in itself rather than part of a presentation upon a specific subject. Not only should the Parole Act govern parole or "the release of the inmate" in all its facets but the Penitentiary Act should likewise deal with the administration of penitentiaries and in no way deal with the release of inmates. Also the Criminal Records Act should deal strictly with the manner of maintaining criminal records, their transfer and disposal as required by legislation. We respectfully disagree with the recommendation of another group stating that procedures under the Penitentiary Act and under the Parole Act should be melded into one in order to simplify the matters. We believe that penitentiary administration is a sufficiently big undertaking in itself and should not be concerned with the prime function of parole legislation which is the rehabilitation of individuals. There is no doubt that a coordinating committee, group or commission could act as liaison between the two administrations, but the functions and legislation should remain separate.

In giving further recommendation to the heading of legislation the Canadian Association of Chiefs of Police feel that the nature of the crime, the circumstances in which it was committed, the nature of the individual should have a bearing not only at the outset and at the time of sentencing but should be considered at subsequent intervals when eligibility for parole is being considered. Though we subscribe in part to the theory that a person can change over a period of time we lend a greater emphasis to the nature and the intent of the Criminal Act and find it easy as is done in some European jurisdictions to differentiate between the "crime passionel"; premeditated acts of violence; and repeated criminal acts either of a minor or major nature. We suggest that though these may be recognized at the present time in our courts it is purely through the process of legal representation and no distinction is made in law. We feel that a distinction as to type, circumstances, and nature of crime, categorized by legislation, would in itself be a beginning of a step in the right direction and bring into play the academicians in a much more practical manner and scale.

We wish to stress that the National Parole Board operates within the confines of the legislation by which it is governed. If we find fault therefore it is not primarily with the Board or its officers, though we would like to see closer collaboration, but even shortcomings in that area may well be the result of inadequate legislation.

III. Division of Responsibility in Parole Matters:

In reviewing the division of responsibilities in parole matters we find another definition suggested by the Chairman of the National Parole Board in December of 1971 in a presentation to this Committee whereby "parole is considered as a means by which an inmate who gives definite indication of his intention to reform can be released from prison so that he can serve the balance of his sentence at large in society, under supervision and surveillance, subject to restrictions and conditions designed for the protection of the public and his own welfare." We realize the extreme danger in generalization and the following comments do not apply to all inmates on parole or who have applied for parole. We wish to stress however the implication of the words in the definition above involving "definite indication of his intention to reform" and compare them to the requirement that he will be released, under supervision and surveillance, subject to restrictions and conditions designed for the protection of the public and his own welfare.

At first glance this would seem to be an ironclad formula and therefore it is that much more difficult to understand the increase in recidivism. Present parole authorities recognize the necessity of

police reports since the inmate in applying for parole will place himself in the best possible light and is likely to suppress certain of the facts surrounding the commission of the offence in the first instance. We therefore ask if in the procedure of reviewing parole applications it might not be misleading to rely on any indication of conduct that the inmate himself can give, even during that portion of his sentence whose service is mandatory, since when being committed to the institution he knows full well the game he intends to play. While this does not apply to all inmates the number of recidivists from practical count would indicate that there is a shortcoming in this area of evaluation.

For this reason, among others, it is difficult to establish a division of responsibility and it is comforting to hear that the Parole Board recognizes there are criminals who have selected crime as a way of life or who are dangerous and pose a serious threat to public safety if they are permitted to be at large. Such persons must be controlled and this can be done adequately only by a prison sentence. Some suffer from mental illness and should be sentenced for treatment in psychiatric institutions. Since two thirds or more of the people in prison are not dangerous or vicious or violent, and again we quote from the Board Chairman's remarks to this Committee in 1971, most of them could be controlled and treated in the community and parole is one of the means by which this could be accomplished. We question however, the establishment of "two thirds" as a realistic figure when we consider on the one hand the previous estimate of 80% that can be rehabilitated and the actual failure rate on the other hand referred to in the editorial of the Ottawa Journal of March 10, 1972.

In reviewing quickly some of the aspects of the division of responsibility, we find that the release of inmates occurs under the authority of the Canadian Penitentiary Service as well as under the National Parole Board Service which may tend to be confusing from the administration point of view. There is further day parole, temporary leave, temporary absence, full parole, minimum parole, administered under different regulations that in the final analysis are working towards the same result. These should be coordinated for the benefit of all concerned. For example, the Parole Board has certain programs and on the other hand the Penitentiary Service has temporary absence programs. Furthermore, the Provinces have their own parole or probationary services which in most cases, operate independently of the Federal Services. Some research into the possible integration of all parts of these services regarding the release of an inmate should be investigated and be given the appropriate consideration.

It is also indicated by the Board Chairman in the reference noted above that recommendations from Judges are given the most serious consideration when the Board reviews application for parole supposedly, of course, when Judges do make recommendations. It is also stated that where pardon is concerned considerable importance is given the provisions of the Criminal Records Act.

In view of the variety of definitions as well as the variety of procedures which at the present time are done under a regulatory basis rather than through clear cut legislation we respectfully submit that the field is rife for confusion brought about in part by some procedures which have been super-imposed on antiquated operations in an attempt to precisely clarify the issue. There is the further complication of Provincial and Federal jurisdictions and there is therefore merit in considering the centralization of a national system so that Provincial offices may be set up and there is further merit in giving priority responsibility to Provincial authorities. Consideration could also be given to having Federal offenders dealt with by Federal legislation and authorities under one Board and offenders of Provincial legislation by Provincial Boards.

It is recognized that this issue comes dangerously close to a problem of Federal/Provincial jurisdiction. However, much in the same way as problems are dealt with under the Criminal Code or the Bankruptcy Act with the policy being set by the Federal Government and the administration left to the Province, it might be advisable to consider policy being set up by a Federal Agency and implemented by a Provincial authority.

RECOMMENDATIONS:

Consideration could be given to the integration of the services mentioned in the foregoing and at the same time, thought could be given to decentralization where Boards could be established and maintained in each Province and thus, be closer to the community, the prospective parolee's family, former employers, and any other person who might be contacted so that as much information as necessary could be obtained right at the source. In this respect we agree with many representations that have been placed before you previously in that the Parole Board is inadequately staffed in this respect. Even with the participation of the Police to the extent it presently does alternate means should be investigated such as the use of minimum qualified staff for routine matters and investigations.

The Association recommends that under Section 2 of this brief dealing with legislation, consideration should be given to the consolidation of requirements under the Parole Act for a single service of "release of inmates" with policy being set at the Federal level. Such legislation should set out the procedures for acquiring any pertinent documentation such as decisions from the court and reasons for judgment as well as an outline of procedures to be followed by the Parole Board in establishing liaison with police. By way of further specific recommendations we include the retention of the prerogative of the Governor in Council in dealing with murder cases. Inasmuch as corporal punishment and prohibitions from driving are or were at one time reviewed by the Parole Board as a matter of prerogative as is the case with the earlier release of inmates and at the time prescribed by law we submit that the true role of the Parole Board is the evaluation of a candidate's eligibility and suitability for release and not the analysis of whether a sentence should be modified which in effect is what takes place though there is now the introduction of mandatory supervision to accompany past surveillance procedures. We therefore recommend that there be a reconsideration of the reintroduction of corporal punishment but that this be re-introduced under the jurisdiction of another body. If we include in this category earlier releases then that prescribed by law for

given sentences, it is because the evaluation system while commendable and successful in some cases has shown its inadequacy in a sufficient number of instances to be made a general rule.

IV. Composition of the National Parole Board:

This title could well have been a sub-division of the section above and consequently we do not feel that the composition of the National Parole Board is a major issue. On the contrary, in reviewing available documentation the schematic representation of the National Parole Board organization leaves little to be desired. We can only suggest that the National Parole Board should retain responsibility of the nature we have indicated previously, but if regional parole authorities come into being then there should be greater contact with, and reliance on, police sources.

Indeed if any change should be made or be contemplated in the administration of the Parole Service we would respectfully recommend that a Police Liaison Section should be implemented primarily at the field or local level under the Chief of Parole and could well be an element in the case preparation as well as parole supervision itself. Indeed, there may be shortcomings on both sides but a consolidation and clarification in the Parole system would result in greater confidence and responsibility being placed upon the Police authority in the areas previously mentioned.

V. National Parole Service:

In view of our acceptance of the sociological definition of parole the Canadian Association of Chiefs of Police feels that the role of the National Parole Service should be one of rehabilitation. It is considered however, that more emphasis should be laid on impressing parolees with the fact that parole is a privilege and that they must abide by the rules laid down. We cannot accept the implied premise mentioned previously that an inmate remains a citizen with all attendant privileges. If someone choses to violate the laws of society, then any program designed to restore such privileges should not be considered as a matter of right.

VI. Parole Applications–Parole Eligibility:

From time immemorial, and based on the philosophy of the Greeks who invented democracy, it should be remembered that in the words of Lincoln democracy is the government of the people, by the people and for the people. It has also been stated that the line between democracy and dictatorship is very fine. Likewise it should be remembered that with over-democratization the line between democracy and anarchy becomes even finer. If it becomes barbaric to punish individuals who refuse to abide by the laws set by the community, it is equally barbaric of these individuals to prevent society from enjoying the freedoms which it has deemed fit to give itself. With this in mind, we do not feel that the inmate has a "right" to apply for parole but rather is given the privilege of doing so and therefore no additional measures are needed. In fact were the application for parole to become a "right" then as a pure matter of logic the sentence originally imposed would have even a lesser meaning even if such application were still subject to refusal because the one time offender under a "crime passionel" would almost certainly be granted his parole, if not a pardon, by principle and the recidivist who could not be termed as the vicious, violent criminal would also be given "his second chance". If we further analyze the theory that time changes a man it is not inconceivable that even the so-called vicious, hardened criminal might play his cards so well as to give an indication that he has indeed reformed.

By way of general comment on this line of thought, we feel that some standard policy should be elaborated and made perfectly clear to society in publicising the benefits of parole. In the Solicitor General's speech to the Ottawa Richelieu Club in January of 1972 it is stated that society has the right to protect itself against any risk of recidivism. It has also been stated earlier that the release of the inmate, assessed under the present standards, is beneficial to the individual providing it does not constitute an undue risk to society. It is difficult to reconcile "any risk" in the first instance, and "undue" particularly where police have found, when arresting persons for committing offences whilst on parole, that the same individuals have been granted parole on previous occasions and, even though they have violated the conditions of parole in the past, and have had to serve revoked time, they have again been considered for parole. Statistics of the particular nature provided by the Winnipeg area would make it appear that parole was almost granted without sufficient consideration.

The Canadian Association of Chiefs of Police submit that there should be concern, without of course losing the proper prospective, about the attention being paid the individual rather than the common good of society. It is a known fact that many citizens have suffered; that there has been miscarriages of justice from time to time; that some sentences have been disproportionate to the crime committed. Invariably these instances are blown out of proportion and all too often provide fodder for the defense of the underdog. We feel that this also affects the evaluation of parole eligibility.

The question has been asked if the potential parolee should have the right to counsel. We feel that since it is the sworn duty of counsel to assist his client to the best of his ability, and some are very able indeed, using whatever means are appropriate, it is felt that the use of counsel up to and including the parole hearing might well tend to turn such parole hearings into retrials and paint a biased picture of the parolee's situation. On the other hand the Association feels that the "proper" type of assistance should be available in the same sense that those who will be working with him while on parole, and who have experience in assisting parolees, should be in attendance.

Similarly it is felt that potential parolees should have complete and free access of the Parole Act and other statutes and related documents. Undoubtedly some critics would say that some potential parolees are much better off intellectually than others and the use of statutes would be more meaningful to them and that therefore the use of lawyers would even things out. We respectfully refute this argument in that the probation officers or other agencies responsible for supervising parolees would be in a position to give the assistance required. Undoubtedly the Parole

Board would take into consideration every humanitarian aspect in evaluating the intellectual potential of the parolee in his application.

Recommendations:

The nature of the recommendations for this section of the brief aim towards the maintenance of legislation that is already in existence and procedures for which provision is already made. Though there are some new aspects we would treat them "en bloc" and recommend that before being eligible for parole anybody who has been sentenced to serve 2 years or more should serve at least 9 months of the sentence and anybody who has been sentenced to serve 3 years or more should serve at least one third. We further recommend that anybody who has previously, in three distinct and independent instances during the last 10 years been found guilty of a criminal act punishable by imprisonment of 2 years or more, should serve at least one half of his sentence before being eligible for parole also, the National Parole Board should be required to submit to the Governor in Council any case going beyond guidelines and restrictions on parole as set out in present legislation. Lastly, we recommend that anybody serving a sentence of less than 2 years should be able to have his case reviewed by a provincial body at any time. While this last recommendation may imply that creation of Federal Parole Boards at the provincial level we do not think that the machinery need be so heavy that it could not be undertaken at least on a joint effort with provincial authorities.

VII. Parole "Hearings" and Decisions:

This section is a natural follow-up on the previous section and while the subdivisions pose specific questions the Canadian Association of Chiefs of Police would like to depart from the straight answer procedure and analyse in greater depth the matter of "hearings" and decisions. The Chairman of the Parole Board in December of 1971, and reference was made to this earlier, maintained that the Parole Board gave very serious consideration to recommendations from Judges at the time of sentencing. Judges being aware of the possibility of release on parole in accordance with the provisions of the Parole Act are considered as adopting the practice of making known to the Parole Board their views on the desirability of parole as a tool of rehabilitation in particular cases.

It has been the experience of the Police in certain areas that the above statement may be true but we respectfully submit that this would seem to be in isolated cases only. It is not the general practice though that would be something devoutly to be wished. On the contrary, a matter of great concern to Police Departments is that prior to some persons being sentenced to terms of imprisonment the Judge has the benefit of psychiatric, psychological, medical, pre-sentence, and other reports which are taken into consideration at a time of sentence. The Parole Board maintains that these reports are used at the time parole is being considered as well as the fact that the element of time often changes an individual. No doubt the above procedure is carried out in any number of cases but the number of psychopathic recidivists must therefore remain an unexplained enigma further pointing out the necessity for clearer, more precise, possibly more stringent and definitely a more selective type of procedure backed up by appropriate legislation.

In any representation or recommendation that the Canadian Association of Chiefs of Police has made both sides of the coin have always been viewed. If therefore in certain metropolitan areas it would appear that no action is taken by the Parole Board against a parolee charged with a criminal offence it may be that in its efforts to get the information on the charge laid by the Police, the Parole Board is not given the required information. On the other hand there may well be restrictions preventing the Police from divulging such information while the case is being prepared. It is therefore suggested that relations could be improved through proper recommendations being made by the competent authorities, short of legislation. This would seem to be of paramount importance since experience has indicated that in the same metropolitan centres a number of parolees have no fear that their parole will be revoked as a result of any breach of regulations on their part. It is known that in many cases any action taken by the Parole Officer has been in the form of a verbal admonishment of the parolee over the telephone. If this is ascribed to shortage of staff by the Parole Board then the answer begs the question.

Recommendations:

The comments above could serve in part as recommendation but suffice it to say that the present conditions and stipulations in the Parole Act concerning suspension, revocation and the forfeiture of parole should be maintained. If it is too costly to have police officers and investigators present at the hearings in order that their report might be made known, these reports of the Police, since the Chairman of the Parole Board in December of 1971 was kind enough to recognize that they were unbiased then they should form an integral part of the documentation upon which parole would depend and continue to serve as one of the principal tools.

VIII. Day Parole and Temporary Absence:

These two copies have by far been most thoroughly misunderstood and confused with Parole.

We submit that the information that has reached the public, not necessarily through a lack of publications by the Parole Board or the Penitentiary Commission, has far from enlightened the public on the nature of parole, day parole and temporary absence. The fact that a sentence is not terminated by parole but that the parolee remains under surveillance for the remainder of his sentence is not only not known but misunderstood by virtually every Canadian unless he has had some experience with the system.

By way of further comment we submit that, although not governed by parole, individuals being released to half-way houses and similar institutions, should be thoroughly screened in order that those persons granted this privilege have a reasonable opportunity in

assisting this valuable program in achieving a reasonable degree of success. In the Winnipeg area such establishments have been fairly successful and the persons in charge have been qualified personnel, strongly motivated towards ensuring that the released prisoner is integrated into society as a law-abiding citizen. Unfortunately, some of the individuals selected have not been that cooperative, and as a result, have hampered the program to some degree.

Although not specifically tied in to a temporary release program we would like to bring up at this time the matter of inmates being released in areas other than the area of their commitment. For example, inmates have been transferred to provinces foreign to their environment and then released into communities without knowledge of the local representatives of the law enforcement agencies. In some cases these individuals have committed offences of a violent nature, and police have been hampered in their investigation, or delayed in affecting the arrest of the person responsible, due to their not being informed of the parolee's release into their community. We wish to emphasize that this is not a general situation and that information on a parolee's release is given in both areas of the commitment and the release as a matter of routine. Unfortunately the exceptions may be sufficient in number to warrant a further recommendation later on.

In the same case as for parole proper, the question of day parole and temporary absence also brings up the question of assessing who is a reasonable risk and who is not. In the speeches and declarations that we have read we have the inference in one instance that society should not be subjected to "any" risk and in another instance we have the principle that society should not be subject to "an undue risk". However the Parole Board in its press release of March 8, 1972 has established the principle that it releases only those who they consider to be "reasonable risks". To the police whose duty it is to protect society, and to society itself there is little doubt that the policy of the Parole Board is the acceptance of dealing with what is fundamentally an unknown quantity. Furthermore the Parole Board states that day parole is useful to test an inmate under partial freedom to determine whether he should be granted a full parole. If temporary absence and day parole are so successful as implied by an article in the Ottawa Journal of Wednesday, March 8 then it is difficult to reconcile the actual parole failure statistics in relation to the method of assessment described above.

Recommendations:

The Association would recommend that the widest publicity through the news media, law enforcement agencies and schools be given to the various terms and programs as contained in the Parole Board's publication titled "An Outline of Canada's Parole System for Judges, Magistrates and the Police". We would further emphasize that no stress should be laid on the so-called success of these programs since the failures, being publicized the way they are, can only hamper the work of the Police and the Parole Board.

The Canadian Association of Chiefs of Police would strongly recommend the establishment of set standards which would serve to evaluate the potential of a parolee by methods that are beyond the comprehension of this individual. Such methods are well known in psychological circles.

We have already recommended that "absence from prison" operating under the Parole Act and the Penitentiary Act only tend to confuse the issue and therefore should be integrated into one program under rehabilitation.

We further recommend that day parole should be allowed only in cases where the individual has not committed an act with violence or the threat of violence or the use of firearms or imitations thereof in the perpetration of the offence for which he is serving a sentence. In such cases of crimes with violence it is further recommended that day parole or temporary absence should be granted only after the individual has served at least half of his sentence which in effect makes him eligible for parole as such. While it would appear that under present legislation such an individual would be eligible for parole prior to the above suggested time, the recommendation is that such a time limit be extended to the "half-sentence". This type of day parole or temporary absence should also be granted with the specific aim of allowing the individual to attend courses which are not given or cannot be given in the institution to which he is committed or should be directed to work towards his own benefit but in this case only where it is possible to provide adequate control for the individual in all respects.

IX. Mandatory Supervision:

The Canadian Association of Chiefs of Police commends the Government for instituting mandatory supervision on an automatic basis during warrant time as a further safeguard to society.

X. Parole and Special Categories of Offenders:

Much of what has been said under Section VII applies also to this section. We understand that categories of offenders is something which is already being considered much in line with this Association's point of view. We understand that a particular problem requiring special attention is that of inmates which represent a more serious risk for society. We are gratified that Government authorities intend to refine the screening process for inmates eligible for parole and to establish criteria to assure that inmates which are a serious threat to society are not liberated. Reference specifically being made to those serving life sentences, to dangerous sex offenders, to members of organized crime and to well-known recidivists.

We subscribe whole-heartedly in this respect to the speech of the Solicitor General to the Ottawa Richelieu Club in January of 1972 stating that "the system has to be improved and completed in order to increase the chances of rehabilitation of the inmate".

XI. Staffing of Parole Services and Use of Private Agencies:

The staffing of parole services and the use of private agencies extends over a wide area of functions inasmuch as the inmates will provide a full scale of problem areas including narcotics and alcoholic problems as well as borderline mental or medical situations and plain hard core criminals who are cute enough to enveigle the authorities and this has been done time and again.

While the Canadian Association of Chiefs of Police wants to demonstrate an unbiased opinion and an unbiased approach the main responsibility of the Police remains the protection of society and the maintenance of law and order–the duty and the inherent role of the Police Officer. Police administrators are concerned when a parole who has been convicted of a serious and violent offence, is released into the community without what would appear to be a sufficient investigation into his background, factual assessment, or without adequate supervision when he is released. May we make it perfectly clear again, that this is not a general rule but there are sufficient cases on record to indicate that it is a problem and that it does require official attention. It is believed that any right thinking Police Officer will agree that each case must be judged on its individual merits. Presently there are personal investigations and enquiries made of citizens, police officers, psychiatrists, sociologists, judges, and so on prior to a parolee's release. While this would appear to fulfil every requirement to ensure successful parole statistics show that there are obviously shortcomings. It is equally obvious therefore that these procedures should not only be maintained but a greater number of field personnel trained to the level of their employment should be encouraged together with increased liaison with law enforcement authorities.

In the above-noted official publication of the Parole Board it is stated that "many inmates applying for parole were under the influence of alcohol when they committed their crimes. Some are chronic alcoholics". When alcohol is directly involved the Board believes "it is in the best interest of society and the inmate that complete abstinence from intoxicants be one of the conditions of parole." In spite of the noble efforts of many societies including Alcoholics Anonymous it would be naive to think that an alcoholic criminal is going to consider his parole as incentive for remaining sober. Alcoholics themselves admit that unless one has passed the experience of abstinence, it cannot be understood. Mechanical removal has proven time and again to be of little use and even where there is strong motivation the thirst for alcohol often times is stronger. So, if we have an individual who is already bent on crime even if it be only when under the influence of alcohol, his chances of recovery compared to a non-drinking criminal is lesser yet. Even regular attendance at Alcoholics Anonymous meetings there is no proof that a parolee has indeed abstained. Alcoholics Anonymous is based to a great extent on the honour system that is self-discipline and it is unreasonable to make these requirements of somebody who has already proven incapable. Rather the rehabilitation should start within the institution and these programs should be initiated under the strictest supervision.

The publication goes on to say that "we expect the inmate to recognize his problems and do something to overcome them. Indeed we are encouraged by the number of inmates who take advantage of Alcoholics Anonymous programs available within the various institutions and who continue their affiliation with A.A. upon their release". This last sentence coincides precisely with the recommendation of the Association and should be adhered to in the strictest sense of the word. It should be noted however that this program of self-discipline and adherence thereto is a condition of parole. A number of inmates are certainly willing to try and they are given the chance, but to expect an inmate to recognize his problems and do something to overcome them at precisely the period where the greatest assistance should be given the individual is asking somewhat too much of him.

In an over-simplified statement one could state that "if they don't try they go back." With anybody willing to try on that basis it is feared that a number of our unfavourable statistics result from those who try just hard enough to get outside the walls and then commit the crime that sends them back.

The Canadian Association of Chiefs of Police is therefore gratified that more stringent measures of supervision are imposed in the case of the drug addict inasmuch as his problem is not only from his own personal point of view but his past connections in the drug world are difficult if indeed not impossible to set aside and the "temptation network" may just prove too much for those facilities that are available.

It is our general opinion that the parole service is understaffed and this has been mentioned time and again. Full liaison and co-operation with police forces and the establishment of definite procedures would help considerably in the prevention of recidivism on the one hand and the prevention of crime by parolees on the other. It is not impossible that if adequate funds were provided some members of police forces, already involved in rehabilitation programs, could be put to greater use in such matters.

The division of responsibility could well be the provision of information to the greatest extent to police forces by the Parole Board with supervisory responsibility being assigned to the Police or to a Parole Board representative working within the confines of the police organization. In all instances, however, the Parole Board should take action on reports made by Police authorities.

XII. Probation following imprisonment:

The Canadian Association of Chiefs of Police believes and recommends that any legislation of the nature in question should continually be reviewed in the light of the rapid rate of change in the attitude and moral standards of today's society.

The Association also feels that any release under any conditions should be considered as a parole and governed by that one Act concerning temporary release.

XIII. Community Response to Parole:

The evaluation of community response to parole from the policeman's point of view has not been altogether happy. Whenever a crime has been reported and it is a known fact that the offender is a parolee, there is the intimation that the police has not done his job properly though the police in some cases may have been totally unaware of the parolee's existence within a given area. In this respect advice of a parolee's whereabouts in a given area may have been given to a specific officer who is not necessarily designated for such a procedure and may not be versed in follow-up activity necessary in the circumstances. We would therefore welcome the opportunity of suggestions and discussions with the proper au-

thorities of the Parole Board and the Legislature to establish proper methods of operation.

It is our general impression that society is not ready to accept parolees on the scale envisaged by the National Parole Board and it is felt that a public relations program based on solid proposals rather than academic theories would prepare the public in a much better fashion. Real progress is being made and we are proud to say that the Police is doing its part in cooperating with the Parole Board and we are gratified that the Parole Board in turn recognizes this cooperation and assistance.

All too often authorities are quoted by stating that "the public wants this" or "the public wants that" and any reform is based on the so-called "desire of the public."

In what appears to be convenient circumstances, however, the public feeling is ignored, as in the case of capital punishment, and therein lies our recommendation that public opinion, expressed in many ways should be heeded in rehabilitating from within in the initial stages providing for a safer parole in the later stages.

We note with interest the suggested subdivision of Section XIII of the invitation to submit briefs on parole submitting the idea of using volunteers in the parole system. The Canadian Association of Chiefs of Police feels that the use of volunteers is laudable in such institutions as hospitals and social organizations but, without questioning the sincerity of the individuals involved, wonders if these very volunteers would not be over-sympathetic towards the liberty of the individual and the cause of rehabilitation. Furthermore, the use of volunteers would unfortunately include "do gooders" who would not have the proper training for the supervision or counselling of parolees and whose judgement may be impaired by the doctrine of appealing to "the good side" of the individual rather than being fair and firm.

XIV. Evaluating the Parole System:

It is difficult to say how a parole system can be assessed under the present conditions inasmuch as there are too many variables such as good police liaison in one area with none at all in other areas of the country. Statistics on recidivism are inaccurate at best inasmuch as it is virtually impossible to assess whether a recidivist was on parole at the time the offence was committed or whether his sentence had been completed. This latter comment is most important in evaluating what statistics are available.

Further difficulties arise from the fact that parole is going through a period of change with the further complication that no proper assessment can be given to the principles of deterents as compared to the principles of rehabilitation. We note with interest however that even the younger generation are now not only recognizing but accepting the ancient Greek principle of "spare the rod and spoil the child." We therefore feel that inasmuch as rehabilitation has its good points reduction of the crime rate under any circumstance or by any group will not be achieved by appealing to reason but rather by strong physical deterents if need be since the individuals concerned have long abandoned the "reasonable" approach.

It is the opinion of many police officers that if the objectives of the Parole system are to be achieved and are to be of benefit to the rehabilitation of prisoners, these prisoners must first be given reasonable training, guidance and education, or otherwise their chance of completing the parole period is jeopardized to a great degree. It is also felt that in many cases, parole officers and after-care officials have to carry too heavy a case load, and as a result, cannot give the individual attention required of each of the parolees under their supervision. It goes without saying that, in a good number of cases, without proper supervision, the parolee does not stand the same chance of successfully completing his parole period. We do not suggest that any stumbling block be placed in the way of a prisoner seeking parole but it is believed that any prisoner who is likely to commit an offence on parole or some person who could be considered dangerous by the public while on parole should not be released unless there is some assurance of adequate supervision and guidance while this person is on parole.

The Association believes as did Mr. Goyer in his statement to the House of Commons on October 7, 1971 that "among the most significant of proposed reforms (is) the new concept of work and industry within the penitentiaries. It is a well known fact already that the organization of industries within our institutions at the present time tends to promote unsound production habits. The efficiency rate for our inmates is assessed roughly at one third of a normal worker." The Drumheller Project is cited as a good example of the new concept of work and industry within the penitentiary. The Canadian Association of Chiefs of Police commends the Government for instituting this particular type of program. This we firmly believe is the initial step in the proper type of rehabilitation.

No doubt, education of a criminal can play a great role in his rehabilitation and the extension of campuses to penitentiaries as was done by the St. Lawrence Community College at Kingston may prove beneficial. This program however, unlike the Drumheller Project, would be limited to the more receptive and intellectually prepared individual whereas the Drumheller Project has overall application and should be considered as the initial program at the moment an offender is committed to an institution.

By way of final comment on the suggested headings on which this brief is based, the Canadian Association of Chiefs of Police feels that success or failure of the system must not be assessed by National Parole Board statistics alone. The experience of many members of the Association is that a parolee may be nursed along (this includes apologizing for his shortcomings persuading him, procrastinating for him or excusing him) to his remission date simply to ensure that he will be counted as a success statistically. This is not, in the long run, good for the parolee, the Parole system, or for society in general.

Conclusion:

All too often society sees only one side of the coin and legislators are pressured by powerful groups to consider amend-

ments which have been stressed from one point of view only. As stated earlier we therefore welcome the opportunity to present the point of view of those who are involved with the practical application of pertinent legislation and who face the day to day problems in that field. We would respectfully recommend that where at all possible a proposed legislation or amendment should be prepared in consultation with those who are responsible for its enforcement. We recognize the prerogative of the Honourable members of both Chambers to be the first informed and this procedure is not being questioned. Rather we would wish consultation to take place at the Departmental level.

The Association has compiled a rather impressive list of statistics but we respectfully submit that these statistics not only cover a period of some years but are also extremely voluminous. Their compilation has been made on the basis of being prepared to cite examples of recidivism and of psychopathic cases which have been released time and again. Some of these statistics have already been presented to you by the Chairman of the Parole Board, by the Ontario Association of Chiefs of Police and by other bodies. It has often been stated that statistics can be made to tell the story as required by the teller. This is true only insofar as interpretation is concerned and usually this is the most troublesome area. In using the statistics that we have gathered we again wish to emphasize that we are not looking to criticize any existing system and certainly we offer them in support of our comments but we hope to do so in such a way that their interpretation will be totally unbiased. Because of the volume as mentioned before we have not reproduced these statistics and if this should prove inconvenient we extend our apologies to the Honourable members of the Committee. We wish to assure you however that these statistics and case examples are available on file and if deemed necessary to complete your study will certainly be made available.

We trust that these comments will commend themselves to your attention and if the Canadian Association of Chiefs of Police at any time can be of further assistance or if any of the Honourable members of this Committee require additional information, our Secretariat will be most happy to do whatever possible to accommodate such requests.

Respectfully submitted,

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The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 7

THURSDAY, March 15, 1973

Twenty-first Proceedings on the examination of the
parole system in Canada

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

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(Witnesses and Appendices—See Minutes of Proceedings)

25887–1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

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Minutes of Proceedings

March 15, 1973.
(11)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Hastings, Laird, Lapointe, McGrand and McIlraith. (7).

Present but not of the Committee: The Honourable Senator Denis.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Salvation Army of Canada, were heard by the Committee:

Brigadier Frank Watson, Director, Salvation Army Correctional Services in Canada;

Lieutenant Colonel Thomas Ellwood, Assistant to the Chief Secretary, Salvation Army of Canada;

Brigadier Victor MacLean, Administrator of Correctional Services of the Salvation Army in Metropolitan Toronto;

Major Thelma Worthylake, Correctional Services Officer, The Salvation Army, Metro-Toronto.

On Motion of the Honourable Senator Hastings it was *Resolved* to print in this day's proceedings the Brief presented by the Salvation Army of Canada; it is printed as Appendex "A".

In addition it was *Resolved* to print a Report received from the Nationai Parole Board entitled "Indian and Métis Population of Individual Western Penitentiaries, as reported to October 24, 1972." The Report is printed as Appendix "B".

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 15, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: I see we now have a quorum. Senator Hastings has given me notice that he wishes to move that something be placed on the record of today's proceedings.

Senator Hastings: I will make the usual motion that this morning's brief be included in the proceedings of today's meeting. In addition, Mr. Chairman, I should like to ask the committee's permission to include in the record a report which I have received from the National Parole Board indicating the Indian and Métis population of the individual western penitentiaries.

The Chairman: Is it agreed that these be entered on the record?

Some Hon. Senators: Agreed.

(See Appendices "A" and "B")

The Chairman: The brief this morning is presented by the Salvation Army of Canada, and it will be introduced by Lieutenant Colonel T. Ellwood.

You may proceed now, if you wish, sir.

Lieutenant Colonel T. Ellwood, Salvation Army of Canada: Mr. Chairman, honourable senators: I should like first of all, if I may, to introduce the members of our group. To the left of the Chairman is Brigadier Frank Watson, Director of Salvation Army Correctional Services in Canada. On my right is Brigadier Victor MacLean, the officer in charge of our correctional services for Metropolitan Toronto. On his right we have Major Thelma Worthylake, whose work is largely serving in the women's courts in Toronto.

I should like to say that we appreciate the invitation to present this brief with respect to the parole system in Canada and also the opportunity which has been afforded us of being present at this hearing this morning.

I should just like to take a moment or two to explain how our brief was prepared. It was prepared by the Salvation Army Commission on moral and social issues. This commission is a group of Salvation Army officers and also lay people who have the responsibility of considering matters such as this. While our commission was engaged in the work of preparing the brief we also had, because of their knowledge of correctional services work, the assistance of both Brigadier Watson and Brigadier MacLean. As the chairman of the commission, I wrote to a number of our correctional services officers in various parts of Canada requesting their views, comments and suggestions with respect to the brief. Their replies, of course, went into the input of the discussions of the commission.

I should like to say, with regard to our brief, that we do stress very strongly our belief in the use and the value of parole. We feel that it is a very real way to assist in the rehabilitation of ex-inmates. Behind this, of course, is our conviction, our belief, in the worth of every individual and the possibility of their rehabilitation, regardless of how difficult or unpromising the situation appears.

We quite realize that there has been a tendency, perhaps, to criticize those who strongly support parole. There is the feeling that perhaps they are not sufficiently concerned with the protection of society. I should like to make it clear that we are concerned with the protection of society, and we quite realize that there will always be some situations where it would not be wise to grant parole. We do feel, however, that the majority are worthy of parole. Actually, we feel that the use of parole is not only in the interests of the individual, but it is also in the interests of society. That is, it is not only something which is humane, but it is something which is practical and sensible because society will certainly be better served if rehabilitation can be achieved through the use of parole.

If there are any questions, we will be glad to do our best to answer them. If we are not able to provide the answers immediately, we shall be pleased to endeavour to secure them.

Senator Laird: Before I ask you this question, let me assure you that you do not need to convince us of the desirability of rehabilitation and the innate possibility of most people being capable of being rehabilitated.

If we ask you questions about mechanics, it is not because we are unaware of the personal problems and the excellent work that your organization does. We have had to consider the question of whether or not, in dealing with the mechanics of the situation, the authority which handles parole should be the same as that which handles temporary leaves. I note with interest that you take a point of view which is different from most of our witnesses, namely, that you feel they should still be separate. Will you explain why you take that point of view?

Lt. Col. Ellwood: We did have considerable discussion concerning this point in our committee meeting. There is, perhaps, some concern or some feeling that it would be desirable to have the granting of parole all under one hat, as opposed to having two bodies involved in the situation. However, we feel that there are certain circumstances, such as a case involving only a temporary absence, where it could be better handled by the Penitentiary Service rather than the Parole Board. We did not feel that we could advocate integration of the two systems. We feel that the Parole Board is more essentially concerned with rehabilitation, and can better operate separate and apart from the Penitentiary Service.

Senator Laird: In fairness, those who felt that there should be integration also, as I understood their evidence, thought that there should be left with the Penitentiary Service the problem of an emergency such as a death in the family. However, as I have been hearing the evidence, most people feel that, because there is confusion in the minds of the public regarding these temporary absences—they think they are granted by the Parole Board—it would be well to merge or integrate the two types of leave, whether parole or temporary absence, under the one head. It interests me to have you make that observation. This is your considered opinion, is it?

Lt. Col. Ellwood: Yes, senator, we feel it would be desirable to keep them separate. Their responsibilities should be clearly defined to prevent any duplication or over-lapping. We can see the situation, as you have already mentioned, where it would be desirable to grant the leave of absence immediately, such as in a case where there is an emergency in the family. Perhaps those cases could be processed more quickly by the Penitentiary Service. Generally speaking, however, we feel that we have to be careful of two groups granting parole and absences; we have to be careful to avoid any conflict. It is our feeling that perhaps this can be overcome if there is a clear defining of the roles of each service.

The Chairman: There is temporary absence which is granted for three days, but we have been told that there is a temporary absence which has been described as back-to-back, in other words, three days renewed for longer periods. Do you think that temporary absence back-to-back, as it has been called, should be left to the Penitentiary Service?

Lt. Col. Ellwood: No, Mr. Chairman, I do not. I feel that the Penitentiary Service should only grant absences for a few days in the case of an emergency situation. Anything of a longer period should be the responsibility of the Parole Service.

Perhaps another member of the delegation would like to comment on that question.

Senator Hastings: In your brief you advocate the two services not being integrated—and this carries on the discussion with regard to temporary absence and day parole—and in your remarks a few moments ago you indicated that the Parole Board should be kept separate. You made the remark that it is interested in rehabilitation.

I think the belief that just the Parole Board is interested in rehabilitation is one which we have to dispel. Rehabilitation must start in the penitentiary. Both services are dedicated to the rehabilitation of the inmate.

I should like to hear why you feel they should be kept separate. My point of view is that we have to bring all the forces to bear as quickly as possible on the man in order that he does not bounce from jurisdiction to jurisdiction. Speaking for myself, I disagree with your comment.

Lt. Col. Ellwood: I quite agree with you, senator, that the responsibility for rehabilitation should not be restricted to the Parole Board. I do not mean to suggest that no efforts are made concerning rehabilitation within the penitentiary. I do feel that much is being done within the Penitentiary Service with the idea of rehabilitation in mind. However, it seems to me that the Parole Service is perhaps more exclusively and definitely involved in the process of rehabilitation, and we feel there would be value in keeping the Parole Service separate from the Penitentiary Service.

Senator Hastings: The complaint of the inmate is that they are under the custody of the Canadian Penitentiary Service and spend their time on programs designed by the Penitentiary Service, and when they come before the Parole Service they find they have been wasting their time. Suddenly the Parole Board says, "Well, you have been doing all these things which really you should not have been doing." So I feel that the Parole Service has to come into the picture right from the beginning with their community reports, their court reports, and so forth, and say, "Now, start here . . ." and plan for this man's custodial care, along with the Canadian Penitentiary Service.

Lt. Col. Ellwood: I agree with that, but I feel that perhaps that can be done without integration of the two groups. The Parole Service could be involved in the rehabilitative process right from the beginning, but at the same time the Parole Board and the Parole Service should be kept as a separate group from the Penitentiary Service.

Senator Hastings: With respect to temporary absences and inmate training, it has been suggested that the Parole Service sit in on the inmate training boards and classification boards in the penitentiary where these decisions are made. The granting of a temporary absence permit is made by the inmate Training Board. The suggestion has been that there should be a parole representative on that board in order that it have the input of the Parole Service.

Lt. Col. Ellwood: Yes, I would certainly go for that, but without a complete integration of the two services.

Senator Hastings: More as a liaison, is what you are saying?

Lt. Col. Ellwood: Yes. The roles of each service should be clearly defined, but they should work together for the benefit of the inmate.

Brigadier Frank Watson, Director, Salvation Army Correctional Services: Perhaps I could just add to what the colonel has said. I

think we favour the co-ordination of effort and programs without necessarily integration *per se*. Elsewhere in our brief we do mention the thought of having regional representatives and also the concept of regional boards which might be more closely allied to the institution and which would be involved from the very commencement of an inmate's incarceration.

Senator Lapointe: First of all, I thank you for having prepared a French version of the brief. However, I was rather puzzled by item number 3, the second paragraph, which states the contrary of what is in the English version. It states that corporal punishment should be abolished and those matters directly concerned with the paroling of inmates should be the responsibility of some other body. It should read, ". . . not directly concerned. . ."

Lt. Col. Ellwood: Yes, there is an error there. I might say we did go to considerable expense to the extent of having a professional translation bureau do the work for us. There would seem to be an error there. I apologize for that.

Senator Lapointe: Is corporal punishment in effect in the penitentiaries now?

Lt. Col. Ellwood: No, senator. Since preparing the brief we have discovered that corporal punishment has been abolished. We have been in the process of preparing this brief for some considerable time and then it was delayed with the election, and so forth. When we first commenced work on the brief corporal punishment was still in effect. However, when the brief was finally completed we discovered that it had been abolished.

Senator Lapointe: To what kind of agency would you refer the prohibitions for driving, for example?

Lt. Col. Ellwood: This was dealt with by one of our correctional services officers in British Columbia who was quite concerned about this. He felt that perhaps the Parole Service was loaded down with matters such as that.

As to which agency they would go to, this would perhaps vary from province to province. Perhaps I could just read what the correctional services officer had to say on this point. This is a man of considerable experience. He had this to say on the point:

> Much work could be eliminated if the question of driving prohibitions was left in the hands of local or provincial prohibition branches. Since this is a matter which involves many persons not ever likely to be in the prison system for other matters, and because it is, in many cases, the interest of the Motor Vehicle Branch of each province, it seems much more efficient to have investigations in this line handled by people who are aware of local working conditions and who have more access to the answers to questions about the individual's need to drive. Many of these suspensions need immediate action so that employment may not be lost, and so prompt action is of the most utmost concern. The many hours spent by the parole service in looking after this type of problem could be spent with more reward and the load would be passed on to a local agency more able to look after it properly.

He did not really spell out the kind of local agency which should look after these matters, nor did we, because perhaps there could be some variation from province to province. What we are touching on here, however, is that it would relieve the Parole Service of a lot of unnecessary work if this were turned over to some local or, perhaps, provincial body. If this were done the Parole Service could concentrate on matters directly involved with parole.

Senator Hastings: Why do you want the cabinet still to consider the parole of a person convicted of murder?

Lt. Col. Ellwood: We feel that this is a vital decision and differs from other decisions regarding parole. We feel that it would be wise to have this additional review at the cabinet level.

Senator Hastings: Notwithstanding that, the Parole Board has the final decision with respect to dangerous sexual offenders and habitual criminals who are in a much more dangerous class than we have found murderers to be. It seems superfluous to go to the cabinet for this one area when it has been proved they are not as dangerous to society as others.

Lt. Col. Ellwood: Yes, that is so. However, it does seem to me that murder is in a different category. That would be my personal view.

Senator Hastings: Do you feel the convicted murderer is a more dangerous individual than the dangerous sexual offender?

Lt. Col. Ellwood: Perhaps not in every case, but in some cases. It is my view that it is a matter of such importance that I think there is value in having a final cabinet review.

Senator Laird: Incidentally, the Chairman of the National Parole Board, if I recall correctly, indicated that some of the better parole risks were murderers. Would your experience support that statement?

Lt. Col. Ellwood: Well, I am not directly involved in my work with the correctional services. My colleagues are directly involved in correctional services work and perhaps they would be better able to comment on that.

Brigadier Watson: I would say that that is true in many cases. Of course, each case has to be considered on its own merits. I would not say that it is always the case, but it is recognized that those who have been so convicted are generally speaking, pretty good parole risks.

Senator Laird: That brings up another issue which has been discussed in this committee. What do you think of utilizing the services of individual volunteers in connection with the parole system? I realize your organization is a volunteer organization, but I am speaking of individual volunteers. Would you consider that there is any merit in using individuals who are anxious to help in matters of this kind, or is that feasible?

Brigadier Watson: You are thinking in terms of laymen?

Senator Laird: Yes.

Brigadier Watson: Yes, I think that is a very practical suggestion, There would certainly need to be careful screening as to who should be utilized. We have found on our staff that lay people very often do every bit as good a job as the professional. You just have to find the right person. I am certainly in favour of using such volunteers.

Senator Laird: That is very interesting. As you say, they would have to be screened rather carefully.

Brigadier Watson: The secret, senator, is having a good screening process and also follow-up training where they could be oriented to the concepts.

Senator Laird: You just could not throw them in cold.

Brigadier Watson: That is right.

Senator McGrand: Is your organization concerned more with the man while he is in prison or after he comes out of prison, or do you give equal attention to both phases of his life? On which do you concentrate?

Lt. Col. Ellwood: Perhaps Brigadier Watson would be the most competent to reply to your question.

Brigadier Watson: It is very difficult to give you a perfectly honest answer to that question. I think that we take an interest in the individual in any circumstances; but we see our ultimate end in his rehabilitation and also in assisting his family because very often they have to be rehabilitated as well.

Senator McGrand: But then you follow him up after he comes out of the prison?

Brigadier Watson: Yes, sir.

Senator McGrand: What attention do you give to the younger people who have not arrived in the courts but are in trouble, or who can be recognized as those who are going to get into trouble? Do you have any opportunity to communicate with that phase of a person's life, before he becomes recognized as a criminal?

Brigadier Watson: Yes senator. You are not referring now to parolees?

Senator McGrand: No, this is before that stage; he is just a "bad boy" in the community.

Brigadier Watson: We very definitely are interested in that class or category. As a matter of fact, this is the primary function of our House of Concord programs which are probationer homes for young adult offenders and are an alternative to incarceration.

Senator McGrand: You have answered that question. I have another question or two.

I understood you to say that the cabinet or the Governor in Council should have the final decision on the death penalty, or with regard to granting a man parole. Now why would you say the cabinet—because they are concerned with everything from the cost of living to the James Bay project? And it seems to me that these parole people who have concentrated on the individual case and have given it a thorough study are closer to the truth of the situation than to pass it over to the cabinet to make a final decision when they probably have very little evidence, without doing a lot of work in order to review the matter.

The Chairman: I think Senator McGrand's point is a very important one.

Lt. Col. Ellwood: Yes Mr. Chairman and honourable senators, it is. I feel there is a need—and again I say it is a vital matter—for some additional review before a final decision is made. It seems that the cabinet would be the appropriate body to do this work. After all, they are men of wide experience, knowledge and ability. Whether it is the cabinet or some other group, it would seem to be there is a need in such a case for some additional review before a final decision is made.

Senator Laird: Following that up, on an auxiliary point, I noticed with interest an article in the *Law Quarterly* which appeared, by the way, in the Toronto *Globe and Mail* this morning. This author suggested that the judge who hears, or takes the trial should be best qualified to specify in his sentence that a minimum period of such-and-such should be prescribed; and that until the lapse of that period no parole should be granted. What do you think of that?

Lt. Col. Ellwood: I would think the only difficulty there, senator, would be that it is difficult, perhaps, at the point of sentencing to determine what progress or development an individual has made. You are putting the authorities in a straitjacket. It could be that after sentencing, as time goes on, this inmate will give indications that he really is worthy of release on parole; and if it has been arbitrarily laid down, it is not possible to put him on parole. I think you have to judge every case on its merits.

Senator Laird: Well, I must say I agree with you.

Senator McGrand: I have one more question. A criminal is not reformed or rehabilitated just because he goes to the penitentiary. In the minds of the public, he goes to the penitentiary for punishment. While he is there something happens to him and he evolves from a criminal to a good citizen, or he comes out a pretty good citizen. He actually teaches himself, or he learns to be a good citizen. In the teaching process, the teacher at school teaches—but the child learns, isn't that right? And if the prison is going to help criminals it must be the teaching process that brings them from one state to the other.

Now, a good many criminals, or at least some of them have, in their later years, written books or autobiographies. I do not know if they are doing this to help other people or whether they are trying to make a quick dollar. However I have here a review of a book

entitled *The Metamorphosis of a Criminal* by Ed Edwards. I have never heard of this man. He was on the FBI's list of the most wanted men. He was a hold-up man, a bank robber, a dangerous character, who spent 14 years in five different jails. Now he is a writer and a respectable citizen, the head of a family of five. How could one man be so many things in his lifetime? He has written an autobiography and tells all about his experiences, and he does not hide behind the turrets by suggesting a disadvantaged or deprived childhood, or bad company. His autobiography is one of the best books ever published on the subject of crime, criminals and finding oneself. This interests me, and I thought I would mention it. You do not know anything about this book?

Lt. Col. Ellwood: No senator, I do not.

Senator Hastings: You would know semething about finding oneself. What do we do to help a man find himself, if anything?

Senator McGrand: Yes, that is the important point.

Lt. Col. Ellwood: Well, I think it is important to help people to help themselves they should not always be leaning on somebody else, but we should try to get them to stand on their own feet, to provoke or stimulate them into doing something to help themselves, to give them the motivation. That seems to vary from person to person. I think you will find some people who are concerned about helping themselves and who do want to change their situation. It seems to me it is a great moment in the life of any man when he realizes that things can be different and he can get out of the rut and be a different kind of person. Then he can move on to greater things.

Of course, there are some people who are difficult to stir up so they want to do something for themselves.

For four years I was in charge of our welfare service work in Metropolitan Toronto. Sometimes I have had men come into my office–I am not thinking of offenders–but they would come seeking assistance. Some of them had an alcohol, or some other problem. On occasion I have said to them, "You have an alcohol problem or some other deep-seated problem. We could help you with our Harbour Lights Centre", or, "we could help you with our rehabilitation centre." Quite often you will find men who are not interested in going there; they seem to be quite content to be in their groove. Of course, you get others who are anxious for someone to help them. It is a difficult problem. But I think it is a wonderful thing if you can stir people to the place where they have a desire to make the effort to help themselves.

Senator Hastings: Can you punish a man into helping himself? Does our present system of punishment in our institutions contribute very much in this regard?

Lt. Col. Ellwood: I suppose it would in some cases. You know, it has been said that sometimes a real good scare will help some people more than good advice. I suppose it could happen in some cases that punishment could bring some people to their senses where they say, "I am never going to get into a situation like this again; and when I get out of here I am really going to make a change in my way of life." It all depends on the attitude. Of course, we all know the old poem: "Two men looked through prison bars, one saw mud and the other saw stars." It depends on your attitude.

Senator McGrand: That was part of my question. A child begins school and he has no knowledge of arithmetic, literature, grammar or anything else, and the teacher teaches him. You have said something to the effect that when a man comes into prison he has to decide whether he wants to help himself. His education has put him at the point where at that particular moment he does not want to know anything else. That is his career. And he has to be taught, he has to be educated the same as the child who goes to school, through the process of learning.

Now Senator Hastings asked about punishment. I distinguish between discipline and punishment. The child who is beaten in school because he did not know his lesson, became a dropout. He is the fellow who dropped out as soon as he could. I would feel that a prisoner who is subjected to punishment, real punishment, in anxious for a door to open so he can escape the prison. Would you carry on from there?

Lt. Col. Ellwood: Well, I think you have made a good point, senator, when you distinguish between discipline and punishment. I feel that is a good point. I do not look upon punishment as the most desirable thing. We should be more concerned about rehabilitation.

Senator Hastings: They are not compatible?

Lt. Col. Ellwood: Perhaps not completely. I believe that in this area of thinking you are dealing with people and their motivations, people who won't help themselves, and there is a great deal of difference between people. I think we have to keep in mind that some people, from the very beginning, have had lots of strikes against them. At the same time, I think we have to be careful about removing personal accountability and personal responsibility–excusing them because of their backgrounds. But at the same time, it is a fact that there are some men who have not had much of a chance in life, that all the way from the very beginning life has been a very difficult experience for them. I think these things has to be considered as well, if we have compassion and sympathy for them.

Senator Laird: How can we be sure when a man is really ready for rehabilitation? This is a terribly broad question, but what tests would you apply?

The Chairman: Senator Laird, do you mean when he is ready for rehabilitation, or when he has been sufficiently rehabilitated to let him back into society?

Senator Laird: I suppose I mean the latter because what I am thinking of is that you have to arrive at an opinion, while he is still incarcerated, as to whether he is ready for the outside world. Now, to complete his rehabilitation, of course, he must get into the outside world and function properly. I realize that is a very broad question, but what tests can you apply?

Brigadier Watson: Senator, I think that his rehabilitation really begins, or should theoretically begin, as soon as he is sentenced. But

the point you are introducing is: When is he ready to move into the main stream of society?

Hopefully his rehabilitation has already begun and this is a continuation of it. I am thinking in terms of his rehabilitation beginning with his incarceration. There are many factors that are brought to bear upon his life, many influences, not only with regard to the official administrative staff of the institution but other private organizations who come into the institution. We place a good deal of emphasis–although I think we are a very practical organization–on the spiritual dimension. For instance, when I was working in the British Columbia Penitentiary the psychiatrist there would often ask me to work with a man whom he thought I might assist in that area. So there is a great deal of team work that is involved. All these factors should be assisting in preparing the man to enter the community.

As to the exact point of when he enters the community, this depends a lot on how he has responded, and possibly how efficient those who have been working with him are. Generally–I should not say generally–always a case is built up on an inmate and from that case a decision is arrived at as to whether he has reached that point. It is a little difficult to say just when–but it is generally when he has shown sufficient response and the feeling is that he is capable of meeting the demands that will be placed upon him.

Senator Laird: Speaking of the spiritual aspect which, of course, is all important, there can be a deception on the part of the inmate.

Brigadier Watson: There could be a deception in any area. Certainly, very definitely so, I would say, in regard to religion. I would differentiate between the two. One of the problems is to be able to sort out the con men and the manipulators; there is no doubt about that.

Senator Laird: Along that same line, it has always seemed to me that one of the most fundamental factors is the definite possibility of proper employment after release from the institution. Do you agree that this is a very important factor in the completion of rehabilitation–to be able to get a job and to hold that job?

Brigadier Watson: Yes I do, and this is one reason why I say his rehabilitation must begin with his incarceration. He must develop some work patterns and life patterns that will help him. He cannot just move into the community unprepared and be expected to dovetail into the demands of industry or vocation.

Brigadier Victor MacLean, Salvation Army of Canada Correctional Services, Toronto: Could I say a word about that? My work, of course, is largely in supervising parolees. I find that those who have steady employment are the most successful parolees. Where there is no employment it usually spells failure.

Senator Laird: Isn't this the problem with the Indian and Métis population? Do you know anything about their particular problems? They have difficulty getting employment.

Brigadier MacLean: That is right.

Senator Laird: Therefore, they get desperate and resort again to crime. So the preponderance, percentagewise, of Indians and Métis in custody is out of this world.

Brigadier MacLean: Yes, I find that in every case where a parolee comes to us–of course, I am only responsible for Metro Toronto–but when they come to us, if they are successful in obtaining fairly steady employment, we usually have very successful performance as far as parole is concerned; but when it is otherwise, it usually spells failure.

Senator Laird: That is the key of the matter?

Brigadier MacLean: Yes, I think that is one of the best keys we have. If we can keep a man busy, then half the battle is over.

Senator Laird: Does your organization play any part in obtaining employment for parolees?

Brigadier MacLean: Yes, we make contacts with certain firms. We do this primarily in our community assessment before the man comes out of prison. When we are making a community assessment, usually we will go back to his former employers, and very often they will agree to take him back. That, too, is a very good sign. We do not do too much with regard to employment.

The Chairman: I think Brigadier Watson wanted to add something to the matter.

Brigadier Watson: Yes, with regard to your question concerning employment, we also have rehabilitation centres and Harbour Light centres for a man who would otherwise be eligible for parole but who has not developed the necessary working habits or does not possess the skills. We do take parolees into the rehabilitation centres for job training; and from there, an effort is made to find him a job. The same applies with the Harbour Light centres, if they have a history of alcoholism and need some assistance in that area.

Senator Laird: By the way, that brings up another issue. From your experience, do you find that drugs play a considerable part in the whole matter of, firstly, the commission of crime and, secondly, rehabilitation?

Brigadier Watson: Yes, I would say so. Drugs and, of course, included in drugs, alcohol play a part in crime.

Senator Denis: First of all, I should like to praise the Salvation Army for the great service they render, not only to society but to parolees. My question is this: What is the percentage of success in the cases you have handled?

Brigadier MacLean: I would think, sir, that our rate of success has been fair. At the present time in Toronto there are 16 on parole to the Salvation Army, and of those 16 there are four who are giving us a little concern. Unfortunately, two of those four are in custody. I think four out of 16 is a good rate of success.

Senator Denis: In relation to those four, are they parolees who have been sentenced for the first time, the second time, or more than that?

Brigadier MacLean: Those parolees are on their second time around; in other words, this would be their second time on parole.

Senator Denis: So it would be their second offence?

Brigadier MacLean: No, they would have a number of offences. This means that they were paroled from penitentiary; and while on parole their parole was suspended and they were returned to prison on another offence and then paroled the second time.

Senator Denis: And they came back to you?

Brigadier MacLean: Two of them.

Senator Denis: What about the other two?

Brigadier MacLean: Of the other two, one chap, unfortunately, has a very, very low I.Q., and I do not think he quite understands the whole implication of parole. They found him with a little bit of steel in his pocket and they charged him with being in possession of burglary tools. The other chap is, more or less, in between; he just does not quite get the implication of it.

Senator Denis: Of those four, have some of them been sentenced because of a crime involving violence?

Brigadier MacLean: Yes, one of them was convicted of the offence of robbery with violence.

Senator Hastings: What was the first offence for which he was convicted, just to take that one?

Brigadier MacLean: To take the one with the most serious record, he is a comparatively young man; I would say he is about 27. The first offence in his case was fraud and robbery. Following that, he was paroled; and the second offence was a repetition of the same thing. This chap is writing a lot of bad cheques.

Senator Hastings: Can you give us the background of the other one?

Brigadier MacLean: The other chap was first convicted of break and enter. This is the chap who was found with a little bit of steel in his pocket and they charged him with possession of burglary tools. They sort of dove-tail; they follow a pattern.

Senator Hastings: The second charge is not as serious as the first.

Brigadier MacLean: No, not at all.

Senator Hastings: So parole did work in the first instance.

Brigadier MacLean: I would say in both instances.

Senator Hastings: There seems to be the idea that once a man fails we put him in the category of a failure, but in many instances the charges become less and less serious, so parole is not altogether a failure. What I am trying to bring out is that even though those two men failed on parole there was some element of success.

Brigadier MacLean: I think parole is a valuable thing in every instance. Even though an individual fails, we should still give him another opportunity. I do not think he should be put off from it, by any matter or means. For example, we had an 18-year-old boy who came to us from the Guelph Reformatory and while on parole he went out and took a car from a parking lot. In that instance we went to court to plead his cause and the court did grant re-parole. I think he benefited even from the short time he was on parole the first time, and he now values that parole more than he did in the first instance. So I think the second opportunity or chance–

Senator Hastings: Or the third.

Brigadier MacLean: –is very valuable.

Senator Denis: I have one last question. I am glad I was interrupted by my colleague; it was very interesting.

Would you suggest, from your experience, that the National Parole Board be more severe in the granting of parole to recidivists?

Brigadier MacLean: I think there should perhaps be a little scrutiny or greater consideration given to it. I think the nature of the crime or the offence would play a very important part.

Senator Denis: Whatever the crime may be, if he commits the same crime two or three times and gets paroled just the same, would that really be a good way to rehabilitate the man? If he has been given one chance, that is one thing; but sometimes they get several chances, so I have been told. The point is, do you have more trouble looking after recidivists than you do first offenders?

Brigadier MacLean: I have to admit that in most cases we do.

Senator McGrand: You have said several times that rehabilitation should start on the day of incarceration. That takes me back to the teaching-learning process in prison. You have had many years of experience watching prisoners in prison and observing the process of teaching and learning. It goes without saying that the learning process cannot happen without the teaching process. What do you feel are the weaknesses of the teaching process? I realize that the finger cannot be put on all of those weaknesses, bur perhaps you can name a few of them. If we could start the teaching process so that it dovetails with the learning process, that would help to rehabilitate the person, would it not?

I understand that prisoners have considerable freedom; they can watch television, for example, and there is no doubt that they see a great deal of crime and violence on television. What effect would that have on their learning process?

Brigadier MacLean: It could have a very serious effect. For instance, if a man has inclinations that way, some television shows

which are pretty well produced might teach him "angles" that he would not otherwise learn. For that reason, the programs that are shown in prison should be fairly good ones.

Senator McGrand: They should be selective.

Brigadier MacLean: Yes, and they should have a good moral to them, something that will help the inmate to learn.

Senator McGrand: What do you suppose the weaknesses are in the teaching process? When a child goes to school his mind is easily adjusted, but the mind of a 30-year-old prisoner is pretty well fixed with regard to his sense of values. He is pretty tough material to work on. Can you give me what you would consider are the weak points in the teaching process?

Brigadier MacLean: Do you mean in the programs sponsored while the inmate is in prison?

Senator McGrand: Yes.

Brigadier MacLean: It is really very difficult to find a point there. All the teaching programs that are sponsored in prison, from the chaplins, the hobbycrafts and all that sort of thing, are really geared to help the man find himself and start a process of rehabilitation, but an awful lot depends on how the individual himself responds to those programs. The motive and method may be all right, but the response of the inmate to them is also very important.

I find it difficult to answer your question.

Senator McGrand: There are many prisoners who do not care whether they turn over a new leaf.

Brigadier MacLean: There are many like that, yes, but there are also many who are sincere and who really want to make the grade. I believe what is on the outside has a great deal to do with it, too, so far as that is concerned. In other words, if a man has a family, a home and that sort of thing and is in prison for the first time, his incentives for rehabilitation are possibly greater than the incentives for a man who, as Lieutenant Colonel Ellwood pointed out, has had a poor start in life and has had to take it from there.

Brigadier Watson: You have really thrown a curve at us with that question, senator. It is very difficult to answer. We do recognize, of course, that the administration is dealing with a very difficult segment of society. There have been some genuine attempts to try to improve the educational process, using the word "education" in its broad meaning; but some of the old guard, if I can use that term, of the penal institutions are perhaps rather set in their ways. Nevertheless there has been a real effort, an endeavour, in my opinion, to try to produce a program that would be beneficial to all inmates. I do not think that is really a straightforward answer, but I find it very difficult to pinpoint your question.

Senator McGrand: Well, you know, when we talked to the authorities from the penitentiaries they told us that they feel that their program is adequate, naturally–just as, when you go to the school board and talk to them, the school board will tell you that they have the best system possible and are doing the best they can. The point is that you people are in a position to look at the situation and see weaknesses that they are not conscious of.

Senator Laird: For example, Drumheller, it seems to me, is in a different league from a lot of other prisons. Senator Hastings knows a great deal about Drumheller and its very enlightened program of education.

Senator Hastings: Only as a visitor!

Senator Laird: Yes, as a visitor. He has never been caught yet!

Senator Hastings: You mentioned the old guard and the fact that they are set in their ways. Have you any suggestion as to how we can teach the old guard and change their attitudes?

Brigadier Watson: Well, I think a lot of them have learned. Some of them are perhaps finding it difficult to learn, but again it is a matter of education. With the old guard, very often it is a question of re-educating them.

Senator Laird: There are a certain number of incorrigibles, are there not? Everyone seems to admit that there are some inmates who simply never can be released.

Brigadier Watson: I would agree with that, definitely.

Senator Hastings: But you cannot run institutions based on the minority of incorrigibles.

Senator Laird: No, it has to be run otherwise.

Incidentally, have you any suggestion as to how you can detect an incorrigible?

Brigadier Watson: I think that is a matter more for the administration of the institution than for anybody else. I suppose the institution detects incorrigibles by keeping surveillance and keeping a history of the cases that are accumulated on individual inmates, which essentially indicates those who have absolutely no interest in rehabilitation.

The Chairman: I notice in your brief that you say inmates should have the right to representation or assistance up to and including the parole hearing. What kind of representation do you have in mind?

Lt. Col. Ellwood: Mr. Chairman, we had in mind a minister of the church or a Salvation Army officer or some citizen; we were not thinking particularly of legal representation.

Senator Laird: The Parole Board feels pretty keenly, I guess, that legal representation is not desirable.

Lt. Col. Ellwood: Yes. Of course, it was not our thought that the inmate should have legal representation. As I say, it could be a friend, a social worker, a clergyman and so on.

Brigadier Watson: We felt on this point, honourable senators, that even to have moral support might be of value to that person.

Coming back to your inference of a while ago, that you might get a man who is a real "con," a manipulator, a talker who can put across his story, there is, on the other hand, the type of man who might have a lot more going for him but might be nervous and reticent to speak. In his case very often just having someone standing along side him to give him support would make all the difference.

I might say that that very thing is allowed in immigration hearings, at which ministers or Salvation Army officers can be present.

Senator Denis: Could the representation be by a member of the family?

Brigadier Watson: We had not really thought about a member of the family, senator. I do not know if that would be the best representation, but I would not see any real argument against it, just offhand, if it were a suitable person.

Senator Denis: Could it be another inmate?

Brigadier Watson: I personally would feel, no, that he would be better off to have a "outsider," who would be a little more objective in his viewpoint.

The Chairman: Were you thinking, Senator Denis, of another inmate who might be a lawyer?

Senator Denis: No, just that it might be a friend. It might be difficult to find another inmate who was a lawyer.

Major T. Worthylake, Salvation Army of Canada: If I may just add to what has been said, Mr. Chairman, I work in women's reformatories as well as in police courts, and just the other day I was interviewing a lady who was very nervous and upset because she would be approaching the Parole Board shortly. She said, "Why can't you come in with me? You know me better than they do." I had to give our excuse, of course, that we were not accepted there at the moment because of the rulings of the National Parole Board, or the provincial, and she said, "Well, there are many inmates who feel this way." In other words, they would like to have a bit of moral support. They are very fearful when they go in, especially the women.

Senator Laird: That is perfectly understandable.

Senator Hastings: You use the term "they," which is continually used in this "we-they" syndrome. How do you convince the inmate that it is not a "we-they" situation any more, and that the board, as strange as it may seem, is there to find ways of hhelping the individual and is not there to hurt him? I do not know where this thinking sets in, that the board is there to keep them in. The board is there to get them out.

Major Worthylake: I think they fear that the board is not there to protect them. Those in the cottages the girls come from can express an opinion on whether or not a resident should be paroled; perhaps they recommend no action, and when the girls come before the Parole Board they feel that the Parole Board will listen to all the other views that have been presented and then turn them down. This makes them very fearful that the Parole Board is not with them very often, that they are against them. I think we should try to get the residents, as they call them in the reformatories, to feel that the Parole Board is interested in them. In the beginning, the Parole Board assured them of this. I think the women residents, particularly, would be more aware that you are there to help them rather than hinder them.

Senator Hastings: That brings me to parole revocation. You have not covered this in your brief. This week we had a brief which suggested a new procedure with respect to revocation, that the man appeals, which goes right up to some court. In your practical experience have you ever encountered a parole revocation that you felt was unjustified?

Brigadier MacLean: I do not think I have, speaking generally.

Major Worthylake: I would say, no. In most cases when I have been at the institution and a girl has been turned down, I have had the feeling that she was not ready.

Senator Hastings: I am speaking about parole revocation. Has there ever been an occasion when you felt revocation was unjustified?

Major Worthylake: No, I would say not.

Senator Hastings: This again is hard for the inmate to understand, but revocation can be in the interests of the inmate in many cases.

Brigadier MacLean: That is right.

Major Worthylake: Yes.

Brigadier Watson: I feel that the revocations are only a last resort. Our experience has been that the parole authorities are very considerate of every aspect of a case. I do not think we have encountered any case where we would say there has been an unjustified revocation. On the contrary, if anything, there has been leniency to a point that might even be questioned.

Senator Hastings: I am glad to hear you say this, because it agrees with my experience.

Brigadier Watson: Of course, if you speak to an inmate who has had his parole revoked you get another story. That is the other side of the coin.

Senator Hastings: It is hard to put over the fact that the Parole Service is there to keep men out of jail. They do not bring them out, chase them round and bring them back in. It is difficult to convince inmates of that.

Brigadier Watson: I have found that if you sit down and talk to somebody who has had a parole revocation and really lay it out, you can usually bring them to the point where they will admit that it was a justified revocation.

Senator Hastings: They will admit it to you, but I wish they would admit it to other inmates. No one wants to admit failure to his contemporaries: he lies about circumstances and tells them how he was run around. However, when you come down to the basic facts, as I have with these men, they will admit, as you say, that they were treated pretty squarely by the Parole Service.

Offenders come out of penitentiaries, either three to five per cent dead or 95 to 97 per cent on parole. From provincial institutions they come out three to five per cent dead, or with 95 to 97 per cent completion of sentence. The decision is not whether or not to release a man, but when he is ready. Every inmate now is coming out on some form of parole at some time. The decision is not whether or not to grant parole. Isn't the basic decision when to grant parole?

Brigadier MacLean: I suppose sometimes they might come out a little prematurely, when they are not quite ready for integration back into society. Perhaps Brigadier Watson might have a better answer.

Brigadier Watson: Are you introducing the thought of mandatory supervision?

Senator Hastings: Yes. Ninety-seven per cent of the inmates of our institutions will be coming out on some form of parole called mandatory supervision. The basic decision is now when that should happen, not whether or not to grant parole. Everyone is coming out on parole.

Brigadier Watson: If you consider mandatory supervision as parole, yes.

The Chairman: You mean they come out under some form of supervision.

Senator Hastings: Yes, under parole supervision in essence.

In your opening remarks, Colonel Ellwood, you referred to informing the public, and said that the Parole Board is under a great deal of criticism by the public. You indicate the need for public education. Have you any idea how the fact we have just mentioned can be brought home to the uninformed public?

Lt. Col. Ellwood: I understand that the National Parole Board is doing a great deal. I think we mentioned in our brief that they are doing a great deal to inform the public about this. We think that continuing and increased efforts are necessary to explain the meaning and value of parole and secure greater public acceptance of it. I do not know that I can suggest anything more than is already being done by the Parole Service.

Perhaps organizations who are concerned about this should be doing more to educate the public about the value and use of parole, in particular to indicate that it is not only in the interests of the individual, although certainly we should be concerned about that, but also in the best interests of society. It seems to me that people who criticize the use of parole and the Parole Service because there are some failures are taking a very superficial and short-sighted view of the situation, because the welfare of society is involved as well as the best interests of the ex-inmate.

Senator Hastings: We can make all the speeches and issue all the pamphlets we like, but one of the best ways to educate the public is through involvement. Certainly, I commend your organization for the involvement of the public in concern for those less fortunate than ourselves. When a man becomes involved, he then knows what it is all about; but until he is involved, this correction procedure is something he is totally uninterested in.

The Chairman: Thank you very much for appearing before us today with this helpful brief and discussion.

The committee adjourned.

APPENDIX "A"

BRIEF

THE PAROLE SYSTEM IN CANADA

Submitted to the
Standing Senate Committee on
Legal and Constitutional Affairs
Ottawa, Ontario

From
THE SALVATION ARMY
CANADA

January, 1973

Introduction

This brief has been prepared by The Salvation Army Commission on Moral and Social Standards and Issues, and is submitted by The Salvation Army in Canada, under the authority of Commissioner Clarence D. Wiseman, Commander for Canada.

The Salvation Army, founded in England in 1865, and in Canada in 1882, is an international organization with the dual function of a church and social welfare agency. Operating within a Christian setting, it has a network of social welfare activities, activated by the principle of love to God, manifested in service to man.

The work of The Salvation Army in the courts, prisons and reformatories began in Canada in 1890. As early as 1905 its care of ex-prisoners was so successful that the Federal Government appointed a Salvation Army Officer, Brigadier Archibald, as the first Dominion Parole Officer.

The Correctional Services Department is now at work in twenty-six centres across the country and is staffeed by seventy-seven men and women Correctional Services Officers. Correctional Services are also provided by Social Service and Corps Officers.

The Salvation Army has an agreement with the Federal Government to conduct community enquiries for parole applicants and provide supportive supervision for parolees. Apart from the agreement, we assist prospective parolees in the preparation of their cases. We also sponsor potential parolees. Assistance is given with job placement. Material aid such as food, temporary shelter, clothing, work tools, eye glasses, medicine and transportation is provided. We also seek to meet the spiritual and material needs of the families of inmates.

We feel that much progress has been made in the use of parole, and the National Parole Board is to be commended for what has been accomplished. However, we appreciate the opportunity to present this brief in which we make comments and present recommendations on some aspects of the parole system.

1. Parole – Purpose and Principles

The paramount purpose of parole should be the social, moral and spiritual rehabilitation of the offender, in his own interests and the interests of his family, as well as for the benefit of society.

The possibility of parole gives an inmate something to hope and strive for. It encourages him to help himself and assist in his rehabilitation.

The use of parole is a recognition of the inmate as a person who deserves every opportunity to reform and live a useful, abundant life.

Parole facilitates the inmate's re-integration into the community with safeguards for the protection of society.

Parole provides a sensible and creative alternative when it becomes clear that it is useless to keep a man in prison when incarceration will no longer serve any useful purpose, and when he gives indication that he can be helped by a return to society under helpful supervision.

Parole is important because one of the best places to rehabilitate offenders is in the community under skilled, friendly supervision, where so many helpful resources are available.

2. Relationship between Parole System and other Social Defence Agencies and also with other Interested Organizations

Continued close co-operation is important. There should be close liaison between the parole system and the private agencies in order to establish a strong connection with community resources.

3. Division of Responsibility in Parole Matters

Decisions in murder cases should continue to be made by the Gorvernor in Council upon recommendations of the National Parole Board. This exception to the autonomy of the National Parole Board should be retained.

Corporal punishment should be abolished and those matters not directly concerned with the paroling of inmates from institutions should be the responsibility of some other body. This would include prohibitions in driving.

There should be no change in the present Parole Act provision making the Chairman of the National Parole Board its chief executive officer as well as the officer responsible for supervision and direction of the National Parole Service.

4. Composition of the National Parole Board

We recommend that a clergyman, preferably one who has had experience in the Correctional Services, or as a prison chaplain, should be a member of the National Parole Board.

The National Parole Board should retain responsibility for all parole but create Regional Parole Boards with full power to act on paroles within their region. Doubtful cases could be referred to the National Parole Board and appeals could also be made to it.

Members of voluntary agencies should be included in the membership of Regional Boards and the boards should make use of the local voluntary agencies.

At present some inmates wait for lengthy periods before receiving decisions. A long wait causes uncertainty for the inmate and persons in society willing to assist him. In some cases

employment is lost. It is desirable that decisions be given quickly. The establishment of Regional Boards would speed up the process.

5. National Parole Service

We do not see any need to integrate the operations of the National Parole Service staff, and the Federal penitentiary staff for the planning of inmate institutional treatment and training plans and parole programs. However, there should be close co-operation and the responsibilities of each should be clearly defined.

6. Parole Applications – Eligibility

Inmates should have the right to representation or assistance up to and including the parole hearing.

The inmate should have the right to complete and free access to the Parole Act, and other statutes and related documents.

The National Parole Board should retain the power of making exceptions. There will always be some cases which deserve special consideration.

7. Parole "Hearings" and Decisions

Inmates should be able to appeal Parole Board decisions if granted leave to appeal.

Reasons should be given for refusal or deferment of parole. Inmates should be told how they can earn parole.

8. Day Parole and Temporary Absence

These programs should not be integrated. However, the responsibilities of each system should be clearly defined.

Day parole is important as it helps the inmate to gradually move into the life of the community instead of stepping right out of the institution into society.

The granting of day parole should be handled by the parole service. It should be determined locally and on an individual basis, using where possible staff in private agencies to provide any required information, assistance or supervision. Day parole should be granted for such matters as employment, and attending educational classes.

Temporary absence should be granted by the penitentiary staff. It should be strictly controlled and only for a few days. It should be granted for such matters as serious illness in the immediate family, attendance at funeral of members of immediate family, domestic problems and employment interviews.

9. Mandatory Supervision

This new provision in the Parole Act is based on the view that if a person selected for parole requires counselling and supervision, those persons who are not so selected need such counselling and supervision even more. It is the intention of the Parole Board to provide persons released under mandatory supervision the same level of support, counselling and assistance as is available to persons on parole. However, some take the view that mandatory supervision makes remission provisions obsolete and offers little incentive to the inmate. It is viewed by some as an additional penalty.

We endorse the principle of this supportive program. However, it is difficult at this time to assess the value of mandatory supervision. We recommend that after a reasonable trial it should be examined and evaluated.

10. The use of Private Agencies

The role of the voluntary after-care agency is to act for the Parole Service in the preparation of community enquiries and provide supervision and guidance for parolees. Voluntary agencies are in a position not only to provide guidance and support during the parole period, but to continue helping the person if necessary following the completion of the parole period. This further service would be in an unofficial capacity which would help the person and benefit society.

A proper division of the work load between the public and private services would be fifty per cent of the cases cared for by the private services on a national basis, with the private agencies prepared to accept more. In some localities private agencies could look after more than fifty per cent of the cases.

The staff of the private agencies who provide the service should be persons who have shown they can effectively do this work. They should have the ability to relate to the people they serve, and should possess those qualities of life and character so necessary in a work of this kind. We put primary emphasis on those spiritual and human qualities experience has taught us over the years are absolutely essential in this kind of work.

11. Community response to Parole

We understand that the National Parole Board is using all means at its disposal to inform the public, by the use of the media, through the meetings of its officers with the public, and by the publication of reports to give factual data on the results of the activities of the Board.

Continued and increased efforts are necessary to explain the meaning and value of parole, and secure greater public acceptance of it.

Volunteers can perform a useful service in the parole system by inviting parolees, and inmates on day parole, to their homes, and taking them to special events. They could also assist by helping them to secure employment.

However, volunteers should be wisely selected and carefully supervised.

It is important that the community should be concerned about helping the offender. The attitude of the community should be that of a compassionate, caring society. It is also to the community's advantage to welcome and assist the ex-inmate. Sir Winston Churchill, when the British Home Secretary, stressed the importance of a nation having a right attitude to the offender, in the following words:

> "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused and even of the

convicted criminal against the State; a constant heart-searching of all charged with the deed of punishment; tireless efforts towards the discovery of regenerative processes; unfailing faith that there is a treasure, if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminals make and measure the stored up strength of a nation and are sign and proof of the living virtue in it."

Conclusion

The Slavation Army respectfully submits this brief for the consideration of the Standing Senate Committee on Legal and Constitutional Affairs.

We hope that it will assist the Committee in its examination of the parole system in Canada.

APPENDIX "B"

Indian and *Métis Population* of *Individual Western Penitentiaries,* as reported to October 24, 1972

INSTITUTION	POPULATION(1)	INDIANS		METIS	
		No.	%	No.	%
Osborne Centre	19	1	5.2	–	–
Manitoba Penitentiary	360	94	26.1	10	2.7
Manitoba Farm Annex	90	23	25.5	–	–
Saskatchewan Pen.	379	82	21.6	19	5.0
Sask. Farm Annex	57	10	17.5	1	1.7
Reg. Community Corr. Centre	7	–	–	–	–
Drumheller	349	52	14.8	40	11.4
Calgary Community Corr. Centre	10	–	–	3	30.0
Edmonton Community Corr. Centre	24	3	12.5	2	8.3
TOTAL: PRAIRIE	1,295	265	20.4	75	5.7
West Georgia Centre	20	2	10.0	–	–
British Columbia Pen.	468	37	7.9	8	1.7
William Head	136	11	8.0	3	2.2
Matsqui (Males)	317	22	6.9	2	0.6
Matsqui (Females)	17	1	5.8	–	–
Mountain	163	8	4.9	1	0.6
Agassiz	75	9	12.0	1	1.3
Pacific Medical Centre	16	2	12.5	–	–
TOTAL: PACIFIC	1,212	92	7.5	15	1.2
TOTAL: WESTERN	2,507	357	14.2	90	3.6

(1)All males, except for Matsqui Female Unit.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 8

TUESDAY, APRIL 10, 1973

Twenty-second Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendices—See Minutes of Proceedings)

15869—1

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INSTITUTION	POPULATION[1]	INDIANS		METIS	
		No.	%	No.	%
Osborne Centre	19	1	5.2	-	-
Manitoba Penitentiary	368	99	26.1	10	2.7
Manitoba Farm Annex	90	23			
Saskatchewan Pen.	379	82		19	5.0
Sask. Farm Annex	57	10		2	3.7
Rpt. Community Corr. Centre					
Drumheller	348	52	38.4	57	11.4
Calgary Community Corr. Centre	10			3	30.0
Edmonton Community Corr. Centre	24	1	12.5	2	8.3
TOTAL - PRAIRIE	1,295	268	20.4	93	6.7
West Coast Centre	20	2	10.0	-	-
British Columbia Pen.	468	97	23.0	7	2.7
William Head	136	11	8.0	1	2.2
Matsqui (Males)	317	22	7.2	2	0.6
Matsqui (Females)	17	1	5.5	-	-
Mountain	163	8	4.9	1	0.6
Agassiz	75	9	12.0	1	1.3
Pacific Assist Centre	16	2	12.5	-	-
TOTAL - PACIFIC	1,212	92	7.6	15	1.2
TOTAL - WESTERN	2,507	360	14.4	90	3.6

[1] Male males, females and juveniles.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 8

TUESDAY, APRIL 10, 1973

Twenty-second Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendices—See Minutes of Proceedings)

25889–1

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams–(20)

**Ex Officio* Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

25889–1½

Minutes of Proceedings

Tuesday, April 10, 1973.

Pursuant to adjournment and notice the Senate Standing Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Choquette, Laird, Lapointe, McGrand and McIlraith. (7)

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing a group of parolees under the supervision of the John Howard Society of Ontario, Toronto Office, were heard by the Committee:

Mr. John Smerciak,

Mr. Heiko Sauer,

Mr. Edward Elliott

On Motion of the Honourable Senator Choquette it was *Resolved* to print in this day's proceedings the brief submitted by the Parolee Group of the John Howard Society of Ontario-Toronto Office. It is printed as Appendix "A".

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Choquette, Eudes, Laird, Lapointe, Martin, McGrand and McIlraith.

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Montreal Urban Community Police Department, were heard by the Committee:

Mr. André Ledoux, Legal Counsel.

Mr. Daniel Crépeau, Inspector.

Mr. Jean Ratelle, Inspector.

Mr. Jules Charbonneau, Captain Detective.

On Motion of the Honourable Senator Choquette it was *Resolved* to print in this day's proceedings the brief submitted by the Montreal Urban Community Police Department. It is printed as Appendix "B".

At 4:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 10, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 11 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The witnesses before the committee this morning are a group of parolees under the supervision of the Toronto John Howard Society. Mr. Sauer is on my left, Mr. Smerciak is on my right, and on his right is Mr. Elliott. Mr. Smerciak will start.

Mr. John Smerciak, Parolee, Parole Group, Toronto Office, John Howard Society of Ontario: Ladies and gentlemen, we are a group of parolees sponsored by the John Howard Society, through the National Parole Board. Some years ago the Parole Board, started on an accelerated program of parole. This happened at the time I was in the pen, and these other gentlemen were in too.

We are the beneficiaries of the program that was started. I was one of the non-believers, or recalcitrants, at that time. I believed there was no such thing as parole. I was belligerent and, call it what you like, I guess maybe I am a sample thereof. I have a long criminal record. There was no hope for me.

Nevertheless, the National Parole Board gave me the option of getting back on the right track again. I did not have anybody to sponsor me, and the John Howard Society accepted me verbatim.

Parole at that time was–the expression is "very easy to make." This really was not true. The National Parole Board saw something that existed, that was positive, that rehabilitation of the bulk of the people in institutions was a possibility.

I was there at the time. I was one of the beneficiaries, and here I am today. When I came out, I reported to the John Howard Society–and, of course, they are our guardians, and will be for years to come. While I go there and report, and we have our little conversational "do," there are others who appear at the same time. The volume is a little bigger–you just can't carry one man–and we formed a group. The group is, I imagine, something like 15 or 25 persons, or thereabouts. We are a typical example here, the three of us who were available.

Things were going fairly well. Of course, we always hit the exception to the rule. A celebrated case here and there gives the Parole Board a black eye. The big brake goes on, the power brake: "Oh, stop the paroles! " I think Imentioned at one of our meetings, "Gee, pick up the newspaper and, gosh, what an awful black eye for the Parole Board. One incident, one bad apple in the barrel and it will throw the whole barrel out." This did not rest too well with a number of us, and we said, "Well, is there something we can do to get this railroad train back on the tracks? " The brake was put on. Were I in penitentiary today I would not be a benificiary of parole. That's a foregone conclusion; there's no question about it. I would not be given parole; I would be a high priority risk.

Senator Buckwold: Is this because of the tightening up of parole leaves?

Mr. Smerciak: That is correct. The few celebrated cases have thrown the train off the track and we cannot get it back on again. This is not a good thing. All things being equal, I am sitting here before you today a relative success as far as rehabilitation is concerned. I've been on the street now a few years.

The National Parole Board accelerated the number of parolees a few years ago and things were moving a little too quickly in order for the population of the country to absorb this new program. Of course, when you've aiming for volume production, as in everything else, the odd bad one gets through, the bad security risk, and they are in the limelight. These become the celebrated cases. Those opposed to parole magnify them and the press publicizes them. This is detrimental to the majority of inmates. The majority of persons in institutions aven't the typical celebrated case. For every bad risk there are a good many more good risks, and these are being prevented from getting back on the road to a productive and progressive life where they can benefit not only themselves but the community at large.

Parole did not exist when I was a youngster; there was no such thing as parole. I was in and out of jail so fast it would make your head spin. When they told me that a parole program had been implemented, I did not believe it, but when it was offered to me I said, "If there's such a thing as parole, this I have to see." And they gave it to me. I took advantage of it. I have had a lot of trouble getting re-adjusted or re-oriented to society, but I have had a lot of help.

As a matter of fact, I did slip once and the John Howard Society pulled me back up on my feet and got me going again. Because of their assistance, I was able to get back into society. You cannot do it on your own. I am a mature person–I am not a youngster–and, all things being equal, I should know what it's all about. However, we are cultivated from year to year; we are a product of our environment and the manner in which people treat us. When I say "people," I mean everyone, from the top to the bottom. John Q. Citizen is one thing, but society is an intangible thing. We follow what society teaches us, not what a particular person teaches us. By that I mean, when I came out of penitentiary on my own I bucked the crowd; I had no choice but to find, by hook or by crook, a way of life. I was released back into the community without guidance. However, the last time I came out there was guidance available; I had my man to fall back on, and this is as it should be.

The Parole Board says, in effect, "We will give you a few days of liberty if you give more of yours." Well, that is not a bad exchange, but how does the inmate believe that? He has been oriented in a different direction. I'm not speaking of the youngster who is on his first time around or who has just come in, but rather of someone like myself. The youngster is, perhaps, more easily changed. However, I'm not subject to change, I'm like the old oak tree: I have to see it to believe it, and, yes, I do see. The John Howard Society accepted me. I was a terrible security risk. If my record was produced to you, you'd probably throw me out the door. I'm not a very nice man. The National Parole Board, however, did not see it that way.

I'm a product of an environment which changed me from a drain on society to, let's say, a progressive, constructive individual. Were I your neighbour, you'd probably take a dim view of me or you'd not want to take a chance on me. Nevertheless, here I am, and I am doing well; I am rehabilitated. I've already been on the street for three years. Financially, I don't need a dollar. I'm working fairly steadily, and I have things going for me. This wouldn't be the case had I served my full time. Had I served my full term, taking into account time off for remission, I would have been a free man a year ago.

However, on parole I still have a year to go under the supervision of the National Parole Board. It is a piano-accordian effect. They gave me a year's liberty and took three, which is not a bad exchange for myself nor for the Canadian public.

Now I am a consumer. I have to keep my home up and I pay taxes. Instead of being a drain on the Canadian taxpayer, I complement him. I am a taxpayer and, as you will see, I pay a pretty fair dollar, as do the rest of you. I am on the road to success. I am an example of what can be done with people for whom there is little or no hope. Without the National Parole Board, they have no chance of getting out; they will stay there for years to come and we've going to pay for it. Out tax dollars are going to keep them. Yet a lot of those people are good risks and they can be put back on to the right track with proper guidance.

Society has chosen to set up the National Parole Board and give it powers. The National Parole Board saw this and they put things in motion. Things accelerated and came to a peak, and now the Parole Board has had their knuckles rapped because of a few celebrated cases here and there. The press, instead of magnifying the successes, have magnified the failures. If the National Parole Board can successfully pull one out of a hundred from the garbage can of humanity, that is a big thing. That is the one which should be magnified. Cases such as my own and many, many others are the ones which should be publicized. Instead, the press and the public have chosen to magnify the failures.

We, as a group, were at the John Howard Society facilities one day having our little chit-chat and, because of our feeling in this respect, we were asked if we would like to put our views before a Senate committee. As soon as I heard that, I said, "I'd be like a fish out of water up there." This is not my ballpark, I am supposed to be as nervous as God knows what. You people are a typical example of the best in the community and I, at one time, was a typical example of the worst in the community. With guidance I have progressed from stage to stage. I couldn't have done it on my own, even though I am mature and able and have no financial problems. I needed part of society in order to make it, and the only part of society available was the National Parole Board. This is the buffer zone between society and the inmate or the ex-inmate. There are, in effect, two societies, the regular honest John Citizen and the garbage can of the penitentiary. You cannot mix those societies; mixing them has never worked. The National Parole Board is the interface, the buffer zone, as you are going through a clearing house, so to speak.

Of course, not all parolees are going to be a success. The Ford Motor Company does not build all perfect products. However, the ratio of failures at the start is going to be greater than, let's say, the ratio after a period of 15 or 20 years during which time the National Parole Board can perfect a system of being able to screen and evaluate a human being. They are not getting this opportunity because on the first forward thrust they picked up a couple of bugs in the system and these bugs have been magnified, the result being that they've had to chop back. That's not a good thing. It would be far better if the press and the public were made aware of the successes and what success means. It's not a case of a one per cent failure rate but rather the success rate percentage-wise. You can't just pick out a few from the Hell hole of humanity and throw them on a table and say, "Okay, pick the good ones out! " There are no good ones; there are only bad ones. We have only potential, and they say, "Here's a potentially good one. We will try to process him and throw him back in the millstream of society. Here's another one . . ." If the successes were magnified, they are the ones we should possibly deal with, not the failures.

I think I will leave it there. Are there any questions, by any chance?

Senator Laird: Perhaps I could start on the same theme. I notice in your brief you take a dim view of categorizing people. Is it not a fact, speaking from your experience, that in the institutions used for incarceration there are certain incorrigibles who should really never be released?

Mr. Smerciak: The answer is yes and no, because the incorrigible ones are really mental cases and should not be there in the first place; they should be in a mental institution.

Senator Laird: In other words, you would categorize any incorrigible as a mental case?

Mr. Smerciak: Now we are going to push that to the limit. As long as we are dealing with the extreme case, this is so. That man who is in jail should be in jail because he did something that puts him in jail; but if there happens to be a mental factor he should not be there. If they put him in jail and he is a mental case, he has got no right to be there.

Senator Laird: That is right.

Mr. Smerciak: Therefore, as soon as you take that group out, all people in jail are, let us say, subject to being rehabilitated and put back on the street again.

Senator Laird: That brings up another point. When it comes to granting parole there has to be a screening process – Is that right?

Mr. Smerciak: That is correct.

Senator Laird: We have been trying through the months to examine into what factors are important in the process of screening. Let us start with one. What do you think of the utility of psychiatrists in connection with screening persons for release?

Mr. Smerciak: I spent a couple of months in the Clarke Institute of Toronto, which is supposedly one of the best psychiatric clinics we have in North America. While I was there, I understood from Dr. Clarke that it was even superior to any New York clinic. Again the answer is yes and no; to some cases yes, to some cases no. If it is a case where there is a possible mental question and it comes to screening, you ask, "Well, shall we put this guy in the booby hatch, or nuthouse? " or whatever it is. Yes, for that purpose.

Senator Laird: Suppose he is not a mental case. Are there not certain individuals in institutions, not mental cases, who should not be released? From your experience, can you give the answer to that?

Mr. Smerciak: I can't think of one.

Senator Laird: That is what we want to get at. You think everybody is capable of rehabilitation?

Mr. Smerciak: I am a particular, basic example of it.

Senator Laird: It is good to hear from somebody like you. That is what we are trying to get at.

Mr. Smerciak: To brief you shortly is kind of hard. The worst thing in the world is for somebody to go ahead and "let it all hang out." My first experience with the lock-up was in 1935, in Bordeaux Jail, Montreal. My criminal record goes back that far, 38 years or thereabouts. That is when I was first locked up. If my criminal record was brought out it would take pages, not a couple of lines. Here I am today in front of you gentlemen, under the guidance of the National Parole Board and, let us say, their elected representatives.

Senator Laird: You made a good point there.

There is something else along the same line. As I understand your brief, you would eliminate any help from the police in connection with the granting of parole–Is that right?

Mr. Smerciak: You are very right, sir, very right. The summary is made this way. As long as you people think positively along one train you are going to find you have no problem. To begin with, the police, the cop-shop, call it what you like, they have one job, and their particular job is putting people in jail; and just let them stay there. When you try to mix it you are going to have a problem. The National Parole Board is a different avenue altogether; they are rehabilitating people. Now, don't try to mix them up, because you just can't do it.

Senator Laird: We have had evidence, of course, from police associations. Some of them take a narrow view, but others take quite an enlightened view.

Mr. Smerciak: Well, the bulk of them will take a narrow view.

Senator Laird: That is your experience?

Mr. Smerciak: Now I am going to deal with the bulk of them. Police associations do have, let us say, a small percentage of enlightened people, but not enough to take the secondary point of view, so when you start mixing it you are going to create a problem. Let's not create a problem. You have the National Parole Board; they have a job; let them go on their own, and don't bring in interferences from other people.

Senator Laird: I have one more question along the same line, and then I will give up the floor to someone else. What about a judge's report? Has it any utility in determining when a man should be released?

Mr. Smerciak: From my experience I am going to say no, unequivocally no.

The Chairman: Is that because the judge who sentences may not know the individual after he has served a few years?

Mr. Smerciak: That is correct. One of the first things in a court room is that the judge makes, let us say, a survey, and he is close to the prisoner in the box. He doesn't know very much. He knows less than you do about me right now, because I have just spoken to you. The last time I was up in court I didn't say "boo"; I didn't say one word. What does he know about me? I just stood up and sat down, and that's all the judge knows about me.

Senator Laird: But does he not have a pre-sentence report nowadays?

Mr. Smerciak: You can have it too if you want it. There is nothing good in it, so I'm garbage to begin with in his eyes.

Senator Laird: It would show up badly in the pre-sentence report?

Mr. Smerciak: Absolutely. On the other side of the coin, the report from the Clarke Institute, you can take that.

Senator Laird: That is worthwhile?

Mr. Smerciak: Oh yes. They put you on a scale and weigh you.

Senator Laird: But the Parole Board has to get help from some source; they cannot do it all on their own, can they?

Mr. Smerciak: That is correct.

Senator Laird: They just have not the time. Do you place a great deal of stock on the reports of classification officers?

Mr. Smerciak: No.

Senator Laird: Why not?

Mr. Smerciak: I am going to bring this to your attention; I am going to take two minutes of your time about when I made out my application for parole.

The Chairman: Go right ahead.

Mr. Smerciak: "Parole? What are you talking about? There's no parole for anybody like me. You've got a hole in your head." You see the classification guy anyway. You've got to. "Who are you? " he asks. He said to me, "There's not a hope in hell of you making parole. What do you want to make out an application for? Parole? Happy day! I'm wasting my time with you. I need you like I need a hole in my head." I go to the "sky pilot" and he tells me the same thing. I was told directly to my face that I'd no hope in hell of making parole. When I made out my parole papers the first thing I put on there was–and it still exists today on record–"It has been brought to my attention, without any ambiguity, that parole for me is a non-existent thing, and if this is the case please don't read any further, just throw it out," and then you go on with the resumé.

Senator Laird: Then why do you think they granted you parole?

Mr. Smerciak: Would you like to speak to Mr. Street? They made the evaluation; I didn't. How they went about their business, I don't know.

Senator Laird: Well, you do not know?

Mr. Smerciak: I don't know.

Senator Laird: Anyhow, you got it.

Mr. Smerciak: Yes, and here I am.

Senator Laird: And you feel rehabilitated.

Mr. Smerciak: Yes. I'm mighty happy.

Senator Laird: I feel I have asked enough questions.

Senator Choquette: You have said you have been in and out for 38 years. Would any judge or investigator judge you as incorrigible, a repeater?

Mr. Smerciak: Yes, 100 per cent–1,000 per cent, never mind 100 per cent. There's no hope for me, when you pick up my criminal record.

Senator Choquette: But then you say there is hope?

Mr. Smerciak: Yes. Here I am. I am going to summarize this, not from my own point of view. I can tell it to you from my point of view, but I have my sponsor here from the John Howard Society, and he is intimately connected with all the details of my life from the day I was born to the day when I got out of jail.

The Chairman: Which is three years ago?

Mr. Smerciak: About three years ago.

Senator Choquette: Is it too intimate to ask you what types of crime you have committed?

Mr. Smerciak: No, you can ask me everything you want.

Senator Choquette: Is it theft, mostly?

Mr. Smerciak: My criminal record has varied from nothing to everything–short of murder. Let us say, the lowest one would be picking up something that didn't belong to me in a store, under $25; that is the smallest one. The largest one is rape.

Senator Choquette: Any safecracking?

Mr. Smerciak: No, I never got that far. I would say the largest one is rape.

Senator Choquette: It has been quite a varied career. Did you learn anything in the penitentiary?

Mr. Smerciak: Yes!

Senator Choquette: Have you a trade now?

Mr. Smerciak: Oh, you confused me when you asked did I learn anything. I had one thing in mind, and you had something else.

Senator Choquette: Did you learn a trade? I know you learned a lot.

Mr. Smerciak: I am sorry; I was on the black side and you were on the white side. Yes, I did learn, but I am an exception to the rule. I want you to bear this in mind; I am a direct 100 per cent exception to the rule, one out of 10,000. While I was in the penitentiary, I had the option at one time of getting into a C.T.I. frames office, that is the design office, the engineering office of Kingston Penitentiary. At that time I was doing a little study on the side. This was at the time from lockup, 100 per cent, with no recreation, no activities, nothing. So I am oriented to be locked up in a cell, solitary confinement, "the hole," and all the rest of this old stuff you read about back in France and the rest of it. In the late 40s and early 50s, they started a little recreational type of campaign in the penitentiary system, and I got a job in the C.T.I. frames office to look after the drawings and do a little studying also–study in a course from the Canadian Institute of Scientific Technology in production engineering, so I was allowed to study by this, let us say, correspondence course, and I had to pay for it myself and all the rest of it. They wouldn't put a penny out in your direction, and I didn't have any money, but somehow I scraped it up and I got it. I spent a few years in the engineer's office on drawings of the Canadian Penitentiary Service.

I did so well that when I came out, I put this to use. I came out in the early 50s about 1954. Of course, the regular thing occurred–I cannot get a job; I cannot get a job; I cannot get a job, you know. So you live by your wits or–So I went down to Windsor, Ontario, and got a job there to keep me going for a period of time. But the automative work is only seasonal. This job was phased out. I

answered an ad in the paper. Incidentally, it turned out to be an engineering office on automated welding machines, so I was hired right on the spot. What happened was that, quickly, Ford went into Detroit, picked out an engineering firm, set it up in Windsor, and said, "We want 50 men to set up engineering specifications for Oakville, for automated welding machines, Canadian content, 100 per cent." So they had to get 50 Canadians in a hurry. Their man heading the program was a Ford man from the Ford Windsor office, who happened to be an alcoholic, and at that time he did not come in until 10 o'clock, when there were 20 or 30 people standing around. They pulled him out and put in a new office manager, just another designer on the board; they put him into the Windsor office. The very next day I applied for the job. He asked me if I knew anything about welding machines, and said, "There's a 14-foot drawing on the wall." I said, "Yes, here are your transformers; there are your welding guns; there are your electrodes," and all the rest of it. He said, "There's a pencil and there's a board; go to work." I walked around the board for about three days before I put a line on the paper. From there on I started in the engineering field, and automotive engineering has taken the bulk of my life from then on, from 1955, or so, until today. Things were going on pretty good, and I was kind of rehabilitated. Yes, I was out 15 years without taking a fall, from 1954 to 1968, or whatever it is. But I was not rehabilitated; I was an ex-convict; I was on the street; I was doing well; I was earning enough money to keep myself going for a period of time. I was an ex-convict.

Senator Choquette: In whose eyes?

Mr. Smerciak: Only one person's.

Senator Choquette: Your own?

Mr Smerciak: Yes, right through here. (*Pointing to back of head*).

Senator Choquette: In your own head. I would think that you were well rehabilitated in that kind of position, with a good salary.

Mr. Smerciak: This is what I am trying to bring to your attention. A person who has a long criminal record can never afford to get into a circle of investigation, for any little trip or fall. This time, when the police stopped me, everything had been going real good, and possibly I would never have gone to the pen had I no criminal record. I was on the street at the time; I had a home in Islington, Toronto; so moneywise there was no problem. I got into trouble with my maid, indecent assault. If I was an ordinary John Q. Public from Islington, all that would have happened to me would have been like–Well, Red Kelly and the rest of them lived in my backyard. I was taken to the cop shop. They had me out of there so fast it would make your head spin. But the very next day they get back my criminal record, and say "Oh, this no good sonofabitch; we will nail him to the cross." It cost me thousands of dollars for the best lawyer I could get, but it was no good; it was a case of "Look at that criminal record! Look at that criminal record! " You can't get over that goddam criminal record. It does not matter what you do; it is that goddam criminal record you can't get over.

So you can imagine my frame of mind after that. If you think that I thought society was a sonofabitch before, it was a helluva lot worse after. I am in Kingston Penitentiary; and now they have Joyceville. What the hell is this Joyceville? I know Kingston from way back, so when one goes back it is like, "put the fish back in the water"; it's a happy day. But they put me out into Joyceville. I can walk away any time I want. Sure, walls don't make a prison. But where am I going to go? Yes, I can walk away, but where am I to walk to?

So then this parole thing comes up; it's a happy day. You have already got the brief. Here I am. I've had two shots at this. One, I have been on the street for 15 years; I have made a success of myself, on my own. But I wasn't rehabilitated. I did not take, say, a view of society, of the public at large, with a constructive viewpoint, you know. When I saw somebody, say honest John Citizen, I didn't have any respect for him. He represented what? You get by the best way you can, because he is not going to help you. The only kind of help that I ever had was when somebody came along and knocked on the door collecting something, taking from me, looking on me like a pal. Nobody ever came and give me anything. No one ever said, "Here's ten cents; buy yourself a newspaper"–never. But now that I've had the opportunity of going through the national parole system, I see society today has set up a committee of some kind, to reprocess people, let us say.

In 1935, when I first went into jail, if there had happened to be such a thing as a parole service, let's say, it would take me out there and put me back on my feet again and show me the right way. Nobody ever showed me the right way. There is only one thing they ever showed me, and that is that the cops pick you up off the street and put you in there, in the back room, beat you from top to bottom until you are black and blue, and then they throw you out in the street, and you say, "What's that for? " This has happened to me at least a dozen times.

Senator Choquette: You strike me as being a very brilliant man, and I do not know why you would want somebody to take you by the hand and show you the right way. You strike me as a brilliant man. You express yourself well. I want to ask you what is your present occupation. What do you do now?

Mr. Smerciak: I am a tool designer, Canadian Arsenals, Small Arms, Long Branch.

Senator Choquette: And do you get a good salary?

Mr. Smerciak: I could do better. If I wanted, I could force another hundred a month from them but I wouldn't do it.

Senator Buckwold: All of us are certainly impressed that here we have a man who obviously feels that as a result of the parole system he has been rehabilitated, I would say not just physically but, in his terms, mentally.

You now feel that you are ready to go straight, as they say in the vernacular, and that you are a success story. You are therefore taking yourself as a symbol or as an example of the successes that are possible under the parole system, and all of us would agree that this is very desirable.

Unfortunately, that is not always the case. You indicated perhaps a minimal problem in this regard. You talk about the

hundreds who are rehabilitated through the parole system and of the very rare cases of people going back to a life of crime, sometimes serious and very often dangerous. But somewhere along the line something happened to you, and that is what I am interested in.

The parole system has been going for a long time, not just the last few years.

Mr. Smerciak: I beg to differ.

Senator Buckwold: Maybe it has been more active lately than in the past.

Mr. Smerciak: Now, that is right.

Senator Buckwold: Maybe in the past it was not going for you, but why, when you were released this time, was it different? I know you had the shock of somebody saying, "Okay. We are going to give you a break," whereas perhaps nearly everybody had said you would not get it. Through the Parole Board you were turned over to the John Howard Society for supervision, and perhaps you were fortunate in having a top-notch supervisor or rehabilitation officer, whatever they call him, but in some way some metamorphosis took place in your life and you saw the light. Why was this time different from any other time?

The Chairman: Particularly during those 15 years when you said you were unsuccessful on your own.

Senator Buckwold: This does not normally happen, and I want to know why it happened to you and not to others.

Mr. Smerciak: Perhaps I am a bit of a Doubting Thomas, but you might say that I wanted parole and I didn't want parole. When I came out on parole I was a somewhat more established person in the community than the normal ex-convict, but still I got pressures put on me from the neighbourhood. Apparently, my meighbours went right up through the roof. The people across the road had a friend who was a police inspector. The police inspector didn't know I was out. "What's this sonofabitch doing across the road mowing the lawn in August? He's supposed to be in jail." That's what happened. It was unknown to me at the time. Then I started getting static back and forth. Of course, I went right back to the John Howard Society and asked, "What gives here? " The community rose up to throw me out.

So I came out with the agreement that I would take a course in Humber College as a computer programmer for a year. It was a three-year course that was being done in 52 weeks. It was solid, condensed. I liked it; I didn't like it. Humber College is in my backyard, and to reorient myself and the community, et cetera, was kind of like running the gauntlet–a big one. I did not expect the reaction from the community, yet I got it.

I am an older man and not subject to change like a 20-year-old, and going back to Humber College I just found the load got a little too great. I had insured my wife and myself just nicely a couple of weeks before I was going up Highway 27 to Humber College, and I thought to myself, "I know one way to end it now and put a nice $50,000 kitty in my wife's lap. I can clear it. All I have to do is give the steering wheel of the Thunderbird a little pull and go into a culvert at 80 miles an hour, like some of the fellows did a few years ago, and that will be the end of everything in a hurry." I was at that stage. I was ready to commit suicide. I just had to give it one pull and I would end it like that and clean the whole slate and leave my wife financially independent and sitting clear. All these worries and all this flak and static in the neighbourhood and everything else, I could wipe it all out in one shot. The only thing is that when I went up Highway 27 there was no culvert. I got all the way to Humber College and there still was no culvert.

So things just became a little too heavy for me mentally at the time. Little things–like a poke in the ribs–that don't hurt individually can build up to the point where they put you on the verge of committing suicide, and that's what happened to me.

Senator Buckwold: What I am really interested in is what motivates a man to go straight. Can you help me understand that?

Mr. Smerciak: Yes, I think I can. To make a long story short, subconsciously I wanted to go back to jail, and, accidentally on purpose, I got myself caught shoplifting.

Senator Buckwold: This was after your parole?

Mr. Smerciak: It was within the first 30 to 40 days that I was out on parole. That is where all the action is, the brunt of it. So the cop-shop came down and picked me up. Well, that's when the change came in. The Parole Board came in and got involved. I'm not prone to policemen any more. For a policeman to approach me he has to go through the parole officer, no matter what it happens to be about. If the policeman wants to talk to me, I've got a guardian. I've proved this out, you know. I'm not talking through my hat.

So there I was already locked up in jail. They were going to process me and throw me back in again, but the parole people stepped in. They said, "No. We have hope for you. Back out on the street and on parole. Get this slate cleaned off."

So I didn't go back for a parole violation. I had violated my parole by committing an act of theft, but they wouldn't accept it. They put me back on the street again with a little more guidance. So that's where the chance of mind came about that I wanted to bring to your attention.

Before I was out and did it on my own, but society was not behind me. This time I blew it purposely. I blew it subconsciously, not deliberately; I didn't plan this deliberately. It came out subconsciously that I blew the parole; I wanted to subconsciously, and I committed an act to make sure that I blew the parole.

Of course, when it got into their hands they just took it out of the cop-shop and put me back on the street again.

Slowly the process came in, and now I see that I have somebody behind me, and they are not just going to throw me back in the barrel. This is what happened before. I would no sooner get out of jail than they would grab me and throw me back in again. Just as fast as you could get out of that barrel, they threw you back in and put the lid on, but that's not the case now. The difference between

my success after 15 days and my success today, after three years, is that the outlook today is different. Before I was not rehabilitated. I made a success, but I was not rehabilitated. But this is only a mental thing that goes through your mind.

Senator Buckwold: Well, I am not quite sure what happened, but obviously at the moment you are motivated in the right direction. Does this happen to most people who are now released?

Mr. Smerciak: Well, I'm going to say most. Why? Well, I'm an old oak tree and I cannot be changed, and I did not think that my mind could ever be changed. A youngster is still flexible, and in his twenties or early thirties a man is still more easily changed, but I was not subject to change. I was very, very well set in my ways. If anybody could change my mind, they would be doing a big thing. It's much easier to change a youngster's mind than to change my mind. So, if they could change mine, they sure as heck could change somebody else's.

Senator Buckwold: I am now going to take a negative side. We have a penitentiary system which is there, we are told, to protect society—and we won't go into that aspect too much. Even today, under the best conditions, we are told that of about 1,000 people released on parole, after a five-year period 35 per cent of them will probably be back in the penitentiary again.

Mr. Smerciak: Well, if I may answer that quickly, 65 per cent is a tremendous success. It depends on whether you regard the glass as being half full or half empty.

Senator McGrand: I should like to put a question at this point while the iron is still hot, so to speak. My first question has been partly answered by your answer to Senator Buckwold.

Now, if I may go back to Father Flanagan who was the founder of Boys' Town in Nebraska, he did a tremendous job, and was successful in the rehabilitation of many young criminals, including murderers. He always maintained throughout his lifetime that there was no such thing as a bad boy. If these so-called bad boys were recognized when they were just boys, teen-agers, and guided or treated, do you think this would cut down the amount of crime and the number of criminals to any appreciable extent?

Mr. Smerciak: Not to any appreciable extent . . .

Senator McGrand: I don't want you to make a speech; I just want you to give me an answer.

Mr. Smerciak: Yes,—unequivocally. I shall be quick. In my case my first conviction was car theft—and I never stole a car; I was just with two guys. I was 15 or 16. I came out, and my second conviction was car theft and I still couldn't drive a car. I had a criminal record of two car thefts, and I still couldn't drive a car. That's your answer.

Senator McGrand: Then, in summary, you think that if boys were looked after when they were boys, the Mountie would never have to get his man?

Mr. Smerciak: When I was first taken out of that car and put in jail for car theft for one year, that was the time to get me.

Senator Buckwold: Let's get back to what we were discussing earlier. We are examining the parole system; we are really not examining the police system, though there is obviously a relationship there, and we are not examining the penitentiary system. We simply want to know, as a committee, what recommendations we can make to the Department of Justice or the Parliament of Canada to improve what we have.

You have given some recommendations, some of which we might agree with and others we would not agree with. I was a little astounded by your response regarding reports, that other than the Parole Board and its assessments, consideration should not be given to classification officers' reports. You have indicated that that would be meaningless. You have said that perhaps some psychiatric reports could be helpful. But I think that in the past we have had some evidence that those are not necessarily satisfactory. You have also said that you do not want to look at a police report and you do not want to look at a judge's report. But who, then, is going to advise the Parole Board?

Mr. Smerciak: This is what I cannot see. I am here; I am the beneficiary of it. The classification report was bad; the police report was bad; everything was bad; and I was a hopeless, incorrigible criminal with a record that long. Nevertheless, they gave me parole, and here I am speaking to you. But with the system they have today, there would be no hope whatever of my ever getting parole.

Senator Buckwold: Well, I would disagree with you because people are being released on parole today. Perhaps they are being a little more selective, but they are still releasing people. I think they are sticking their necks out a little, as they did, perhaps, in your case, but paroles are still being granted. So the fact remains that although there is some tightening up, the figures are still very impressive.

However, our concern is the success rate. Despite your success, the figures we get are not necessarily very impressive, and we are trying to find out how this system can work.

Now I have just two more questions, and the first one is this: In your opinion, is employment the primary rehabilitation factor in keeping a man on the straight and narrow when he is released on parole? If we had a job to give everyone, would this be a help?

Mr. Smerciak: You may have noticed me smile there because you have hit the target right on the head. You have heard me say that I am working for Small Arms Canadian Arsenals, Long Branch. I have only been there since March 1—a little over a month. I have tried to get a job and I have used all my mental efforts. I have set up a resumé, I have been interviewed and I have tried every hook and crook up to the point where I said, "Don Irwin, goddam it, get me a job!" I don't need money; I have enough money to live on, and I don't have to go on welfare. But a man's happiness is in what he does. Happiness is in a man's work. A man has to like what he is doing and he has to do what he likes, and we won't get to the point of saying, "Joe Blow is on a production line and he hates his job." This is the trunk of the tree. Now I agree that there are a lot of

branches on the tree and many leaves on the branches, but the trunk of the tree is, to be gainfully employed–period.

Senator Buckwold: Well, I am not making any great, astounding statement, and neither are you.

Mr. Smerciak: No, no, but this is the core; this is the trunk of the tree.

Senator Buckwold: So a man gets out on parole and gets a job–and you have said a meaningful job, but sometimes it is not that easy to get a meaningful job. Then we go back to this whole prison system of training people for employment. You have indicated that you were able to pick up something, but we gather that the general level of training received in a federal institution or penitentiary is almost zero. Obviously, this is something we should be looking at from the point of view of seeing that people can be trained to do something that is as near as possible to being meaningful.

Mr. Smerciak: A system was put in whereby they trained a great number of barbers. So they pumped out a great number of barbers, and now there is no need for barbers. So we say that that avenue was kind of unsuccessful.

Senator Buckwold: Well, this happens even in the universities; we have turned out quite a few Ph.Ds who could not find jobs.

Mr. Smerciak: Well, there was a concentrated effort on training barbers at a barber school, and they kept rotating them and giving them a certificate as a licence.

Senator Buckwold: In your opinion, if every man had a reasonable job to go to when he was released on parole, our success rate would be higher?

Mr. Smerciak: Yes, absolutely.

Senator Buckwold: Some European countries have very limited parole systems, from what I gather, but they handle this problem by giving lower sentences. In other words, the courts are not as severe; they do not try to take it out on the man who breaks the law, the criminal, by being a vindictive society. The sentences are much more realistic. In some countries a two-year sentence is considered a fairly long sentence, so, to some extent, you eliminate the need for parole. Could I get your reaction to this kind of thinking?

Mr. Smerciak: Yes, the judges and society as a whole miss one major point; the sentence is not the big thing. But this is what they do, they say, "Gee, give this guy ten years." The punishment is in the criminal record and what comes after the conviction; we never finish paying for it. No matter how light the sentence happens to be, whether it is for Ballard or anyone else–they can speed it up–six months is more than enough for him; as a matter of fact, a three-month sentence will do the job for him. The penalty is that he is going to pay until he dies. Time becomes secondary. Whereas in our Canadian system we have used time as the number one issue. The number one issue is not the time that you serve. You have that cross and you are going to carry it in your mental outlook back in here (*Indicating back of head*): "I am an ex-convict and . . ., and . . ., and . . ." This is the punishment. If it were a matter of serving that year or two in jail and nothing else,–if our Canadian system operated that way,–if after they sentenced him to a year and he served that time in jail and they let him out clean, then they would have something. But if they leave him with a prison record and . . ., and . . ., and . . ., then the punishment comes after he has served his sentence and not while he is serving it.

Mr. Edward Elliott, Parolee, Parole Group Toronto Office, John Howard Society of Ontario: Could I respond to that point as well, senator? I did some reading while I was in prison about the Scandinavian prison system. As I understand it, they are intensely involved, not only with training the man, but in getting him actively employed so he is earning a wage. There is a system of incentives, apparently, where he can earn time off to be with his family. His present sentence is geared so it will not be a waste of time. It is hoped to be an educational experience. As you say, it is normally a much shorter period of time than a comparative sentence in this country. From my impressions of it and the statistics I have read, it was very impressive and it worked very well for them. The percentage of men they found to be incorrigible and for whom they couldn't do anything, was quite small–in the area of 8 or 10 per cent. Most of the people did respond to employment as well as the fact they had to bear as much responsibility as a normal person in society, although some additional restraints were placed on them.

In fact, it is of some benefit to industry in Scandinavia. Some of the automobile and engineering plants use prison labour, but it is useful work and the man knows it is useful work. They are not make-work projects, such as we have in our penitentiaries. I think these are marvellous ideas, and I would like to see them adopted in Canada.

Senator Lapointe: You say you are strongly against day parole?

Mr. Smerciak: Day parole? That is a different matter altogether. No, what I am speaking of is the regular, standard national parole.

Senator Lapointe: Yes, but in your brief you say day parole should not be granted.

Mr. Smerciak: This brief contains a summary which was put together by a group of people; it is not my brief. I know nothing about day parole. I did not have the option or privilege of using it. So we will let some one else take over that aspect of parole because I cannot tell you anything about it.

Senator Lapointe: Do you feel that after your time on parole has ended you need the counsel and advice of your counsellor?

Mr. Smerciak: You have brought something to mind. Just about two months ago we had a jam session, and I brought it to their attention that I liked it and I will carry on with it. By the way, Mr. Sauer, the gentleman on the other side of the chairman, is off parole and he is still with us. Yes, I will carry on with the group.

Senator Lapointe: You are the owner of a house?

Mr. Smerciak: Oh yes.

Senator Lapointe: Is your wife working?

Mr. Smerciak: Yes.

Senator Lapointe: That is why you are not too anxious when you do not work?

Mr. Smerciak: No, let us look at it this way, Bing Crosby works, Henry Ford works. I have definitely established that a man's happiness is in his work. In the same way, if I am at home and not doing anything, then, gee, I can go right up a cotton-pickin' tree. I should be gainfully employed.

Senator Lapointe: But is your wife very understanding of your situation? Has she encouraged you?

Mr. Smerciak: I am fortunate in that I have a very good wife.

Senator Lapointe: Do you have children?

Mr. Smerciak: Unfortunately no, we lost one just last May.

Senator Lapointe: You said that parole may be defined as a contract. It is not a written contract of any kind. It is only a mental contract or a moral contract.

Mr. Smerciak: Aren't all contracts basically this way? We have a marriage contract on paper, but it doesn't mean anything. But if we put our minds to it, a mental contract is by far more positive than a written contract. I don't think anyone will disagree with that statement.

Senator Lapointe: They say that when people reach the age of 45 years or over there is less chance that they will repeat their crimes if they are put on parole, so perhaps this statistic has played a role in your rehabilitation. If you had been younger, perhaps they would have considered you a bad risk.

Mr. Smerciak: Well, I was never given that opportunity. When they first put me in jail they kept me there, and kept me there. I am a product of the non-believers, and until the last couple of years I did not take a dim view of society, but now . . .

Senator Lapointe: You are opposed to the classification of offenders. Do you feel the same way about sexual offenders?

Mr. Smerciak: I am a direct result of this. This piano-accordian effect will apply in some instances but not in others. I have a sexual conviction in my criminal record, and I went around with a married woman.

Senator Lapointe: That is not a crime.

Mr. Smerciak: Hold it–I committed adultery and, zoom, I was put in the spotlight, picked up by the police and charged with rape on account of my criminal record. On my criminal record is a conviction for rape. I never raped that woman, no more than did the man in the moon. But the idea of having sex with her, yes; I was with her for about six months. But there I am, a sex offender and a rapist.

So, we go to this other time. I have a maid in the house and I make advances to her. Now, when the criminal record is brought out–are you with me? –I have a long criminal record which includes a sex offence, and they say, "Lock up this no good son of a bitch." And when an application for bail was made the judge said, "This man is a vile and vicious person; he cannot be let out on bail."

Senator Lapointe: So, if the maid had said "Yes" nothing would have happened?

Mr. Smerciak: Well, you're a woman; I don't have to tell you that.

Mr. Elliott: In your question to Mr. Smerciak you stated that we were opposed to the classification of offenders. That is not quite accurate. We attempted to say that we are opposed to the classification of offenders limiting or restricting certain types of persons in consideration for parole. For the purposes of the institution, of course, they must be classified. It has turned out, however, that those sentenced for murder and other serious offences are not considered for parole until a certain period of time has elapsed. We feel that is unreasonable; in other words, the offence should not determine whether a person should be considered or be eligible for parole, or whether he will succeed if it is granted. There is a slight difference.

Senator Choquette: Do you know whether there has been a change in the parole system? At one time it was useless to apply for parole unless and until one-half of the sentence had been served. Is it now possible to start working on the application after one-third of the sentence? I understand that there is no specified time with respect to the women's penitentiary at which negotiations can be commenced. In the case of men is it correct to say that the application can be made after one-third of the sentence has been served?

Mr. Elliott: To my personal knowledge one-third of the sentence must still be completed before an application for parole is considered, I have read instances in the newspaper, one particular case being the kidnapping in Toronto, in which a parole was granted before the normal one-third of the sentence had expired. In very rare cases the parole board will consider it, but the general rule of thumb is still that one-third of the sentence must have been served. That was certainly so in my case.

Senator Choquette: Did you go to reform school before the penitentiary?

Mr. Elliott: No. Briefly, I was convicted of armed robbery in Hamilton. The causes of the offence were psychological, an unhappy home situation and problems with my wife. I robbed a bank, was convicted and given a sentence of seven years in Kingston. I eventually applied for parole and was turned down on my first application. I believe the rejection was justified because I perhaps stressed my feelings that it was very stupid

for me to spend time in prison; it wasn't doing me any good and I realized that I was a drain on the taxpayers. I reflected the attitude of many inmates, that it is a very stupid thing for the government to support us so well, supplying good food, recreation time and movies, and not expecting very much from us.

Senator Choquette: How long were you there?

Mr. Elliott: Three years. In my original parole application I stressed the pointlessness of leaving me in prison when, in fact, I would be quite happy to return to work and pay taxes again. It was my view that having no previous criminal background, everything would be fine with a little supervision from the Parole Board. After the rejection of that application I again applied, stressing my plans for further education. I became interested in sociology and, in fact, I was interested in entering the field of criminology, but I have abandoned that plan. I received a training program in hospital technology and graduated from it.

Senator Choquette: Where are you located now?

Mr. Elliott: I am in Toronto now; I was paroled to Hamilton.

Senator Choquette: Was that not a mistake? Why should a person who wishes to be rehabilitated and be given a good position not go as far away from his home or the place where he committed the offence as possible? Do you not think that angle should be considered?

Mr. Elliott: It was my choice; I preferred to return to Hamilton, particularly because my mother was there.

Senator Choquette: Yes, but others in the community knew about your record.

Mr. Elliott: I did not return to my former employment with the Steel Company of Canada. I got work in a hospital and attended night school courses, so my circle of activities was quite different than prior to sentence, although the physical location I was living in was the same. I don't think that was a problem in my case. It turned out that the course I was interested in was carried on in Toronto, which brought about my move there, where I was subsequently remarried and settled down.

Senator Buckwold: What are you doing now?

Mr. Elliott: At the moment I am driving a truck; I got a little fed up with the work in the hospital. I completed the course, though, and expect to find work in one of the Toronto hospitals as a respiratory technologist one of these days. At the moment I am driving a truck because I can make more money doing that.

Senator Laird: Time is running short and we have more witnesses this afternoon. Would Mr. Sauer outline his background and reaction to parole?

The Chairman: I was about to call on Mr. Sauer, especially as I understand that he is no longer on parole. Is that correct?

Mr. Heiko Sauer, former parolee, parole group, Toronto Office, John Howard Society of Ontario: That is correct, I am off parole.

The Chairman: Would you comment in any way you wish on the matters which have been raised and on your own experience?

Mr. Sauer: I will briefly go through my past history, which started around 1960. I am 30 years of age and was first convicted of boat theft, for which I got three years. This was my first offence and I served the sentence in B.C. I committed several small offences and was then convicted of fraud in Toronto and sentenced to five years. I was paroled after 20 months, which was the maximum parole at the time. I was out on the street approximately two months and broke my parole, returning for 10 months, which was necessary at the time. Then I received another maximum parole, and since then I have been out. That is a total of three paroles that I have received so far.

I would like to emphasize that the best thing to do is to keep a man in fail as short a time as possible. Parole should be continued, or he should be kept in touch with society at least in some way, shape or form.

Senator McGrand: We have heard many times that rehabilitation of a criminal should start on the day of his incarceration. On first entry into the penitentiary he is certainly in a state of shock of some kind. Would you give me your suggestions as to the first step in this attempt to re-educate and redirect a person so that he can rediscover himself?

Mr. Sauer: I suggest immediate personal attention, such as classification, but not the kind of classification that is known to us. It should be carried out by people who are not in continuous connection with the institution. Outside people should come in and take a personal interest. At that point I think that a very close look should be taken at the man and that an assessment should be made. Whatever the assessment indicates should be carried out, whether it be to remain in jail for five years, committed to a mental hospital or immediate parole, but there should be a very careful study.

Senator McGrand: You mentioned a different classification, by people not employed in the institution. Have you a feeling that they have been in confrontation with crime and criminals for so long that they in some way do not have a proper approach to the problem and need new ideas?

Mr. Sauer: Yes, I do have that feeling.

Senator McGrand: I recently read a very good article regarding mental hospitals. Eight psychologists who were perfectly normal had themselves committed to mental hospitals for treatment.

Mr. Smerciak: I read it.

Senator Choquette: That is where they should be!

Senator McGrand: Classification should be neutral. They remained in the institution for a number of weeks and the psychiatrists there did not recognize them as being normal, but the patients did. After a while they were discharged as cured. That is what goes on in mental institutions. Does it occur in penal institutions that the authorities are not able properly to assess cases?

Mr. Smerciak: Let me answer that. We identify those classification officers as not being neutral. They are part of the prison staff. If we could have them neutral–a neutral person should go in there–independent of, then we would have something.

Senator McGrand: This is the conclusion that the psychologists arrived at when they came out, that the psychologists and the hospital staff–that everybody was mental, insane.

Mr. Elliott: I was going to say roughly the same thing. In our experience, classification officers are, of course, members of the prison staff. I think the staff of the prison has the primary objective of worrying about security within the prison. So, the information that they are gaining about a man has to do with whether he is going to be a security risk, his behaviour in the prison, and many other things that pertain to his prison activities.

In the best interests of the man, as a potential parolee or of being rehabilitated back into society,–his whole prison experience, anything that he learns in there about how to exist, should be minimized, because, in fact, the type of submissive behaviour of wasting time in one form or another, of not questioning orders–which is necessary in order to exist in a prison–of turning his mind off, is very detrimental to that same man when he comes out.

A classification officer must be concerned with the man's prison behaviour–that is his primary concern–and it is unrealistic from our point of view to expect that same man to have a greater interest in the man's eventual rehabilitation.

This is what we are faced with when we see our classification officer. This man is given a broad scope. He is our contact with the Parole Board. He is the fellow we see if we get into any trouble with the prison guard, or anything like that. It is too much to expect that person to have this broad a perspective of the man.

Senator Lapointe: There is a contradiction between the brief and what you have said. The brief says, at page 6:

> We feel quite strongly that surveillance of parolees should not be a function of the National Parole Service. Surveillance as such should be limited to the police department and should be held to the necessary minimum to protect society.

It is not exactly your idea.

Mr. Smerciak: The brief was compiled by a group of us; 12, 15 or more compiled this.

Senator Lapointe: But are you not one of them?

Mr. Smerciak: Yes, I am one of them.

Senator Lapointe: So you read it, I suppose. You do not seem to like the police very much. I am very surprised. Would you answer that?

Mr. Elliott: We differentiate very strongly between counselling and surveillance. Surveillance is a term that we apply to the police. They are checking on our behaviour and, in fact, looking for any aberrations of any kind. They are not available to counsel us on correct behaviour, but are ready to pounce on us when we step out of line.

On the other hand, the counselling service of the John Howard Society are benevolent to us. We know that we can present a problem to them and they will honestly try to find the answer. We have learned to trust our counsellors from the John Howard society.

Rightly or wrongly we would do no such thing with the police. We realize that the police have only a minimal interest, anyway. In fact, our experience in reporting to the police is that if there is nothing new to report, we are in and out in a matter of 30 seconds. They want to know whether we are at the same address and if anything has happened in the meantime. If everything is fine and dandy, they do not want anything to do with us. It is only if there is some trouble brewing that they might become interested. That is why we think that surveillance should be limited to the police. We do not expect our counsellors to act also as policemen, ready to turn us in if we do something wrong.

Senator Lapointe: Does that mean that the National Parole Service does not have any good counsellors?

Mr. Elliott: No; the counsellors are fine. What we said is that we think they should not keep us under surveillance. Surveillance, as such, should be limited to the police. We think that it should not be a function of the Parole Service to keep us under surveillance, as such. Naturally, they are going to be involved with us. They are, hopefully, going to put down negative things as well as positive, but not just leave them there; that if they find something negative in our attitude, they will do something about it; they will talk to us, and find out what we intend to do about it. That is our view of the Parole Service, or our parole officer, as a counsellor, not as a man who is just keeping an eye on us, and does not want anything to do with us if everything is going well.

Senator Lapointe: Do you mean that if you are a protege of the John Howard Society, the National Parole Service would have nothing to do with you?

Mr. Smerciak: I think the elastic has been stretched out of place. The origin of this paragraph started with the fact that we must report to the police on a monthly basis, and the police and . . ., and . . ., and. We hashed this out over and over again. There is one thing that I didn't care to do, and that is go to the cop shop–mainly because I did not feel there was any value in reporting to the police on a monthly basis. I brought it to their attention. I said, "Look, you are my guide in the first place, and this is where I shall give all my attention, unless they sever connection with the other area."

This actually is what started the whole thing, about putting in this paragraph.

Senator Lapointe: But are the others in favour of reporting to the police?

Mr. Smerciak: Very few. There have been some. I believe I will quote one man. He said "At least I can go to the police station and know they can't lock me up." He had a sneer on his face when he said that. He was mimicking his action in reporting to the police station. He was using this as a humorous buffer zone, which did not have any connection with rational thinking.

Mr. Elliott: You asked whether the National Parole Service had any competent counsellors. All I can say is, I don't know because I have never been directly under the National Parole Service. I am sure they do have competent counsellors, but our cases are being handled by the John Howard Society.

Senator Choquette: Mr. Elliott, you said something a while ago that impressed me very much: that a convict should not spend too much time in an institution of that sort. A few years ago I knew an embezzler who had been sentenced to five years. I went to see him a couple of times, and he said that the most demoralizing, the most frustrating thing, was to know that you were to stay there for so many months or years. He said, "At that time it doesn't matter if they put me in the library to read and to hand out books; it doesn't matter if they put me in the barber shop to help the barber, or the baker: the most frustrating thing is to know that you are going to stay here for a certain length of time." Have conditions in penitentiaries changed, in that your mind would be occupied, your leisure time would be occupied with sports, and that sort of thing? What is the situation now in the penitentiaries?

Mr. Elliott: I think that most men still waste most of their time in penitentiaries. You can keep occupied with any number of activities of a recreational nature, watching movies, reading magazines from the library, or the old-fashioned one of just talking to other inmates in the yard. But I think there hasn't been any significant change. I think that probably the meals are better, and the physical facilities are better; they have nice gymnasiums for men to exercise in.

Senator Choquette: You do not spend so much time in a cell; you just sleep in the cell. Confinement, to my mind, is ridiculous.

Mr. Elliott: With respect to the minimum security institutions, such as Joyceville, we were out of our cells for most of the day. In fact, we were only locked in our cells from 10 or 11 o'clock at night until breakfast the following morning.

Senator McGrand: What about the maximum security institutions?

Mr. Smerciak: It is pretty tight.

Mr. Elliott: The maximum institutions vary. I was in Kingston at a time when they tightened up as a result of a riot, and we were in our cells twenty-four hours a day at that time. That is not the normal practice. The normal practice in Kingston at that time was to have the inmate locked up 13 or 14 hours a day.

Mr. Smerciak: When I first went into Kingston you got out of your cell for two or three hours in the morning and two or three hours in the afternoon, and that was it; there was no other recreation.

Senator McIlraith: That is a long time ago. There have been many changes since then.

Mr. Smerciak: Yes.

Senator Buckwold: Mr. Chairman, if I may, I should like to go back to the problem of co-ordinating the sentence and parole. I think this is the real key to our whole problem.

I spoke earlier about the severity of sentences and the fact that this adds to parole problems. I am one of those who subscribe to the philosophy that there is a relationship between the sentence and parole. There is an interdependence, in my opinion, between the courts and the parole system. Can we, by some means, administrative or otherwise, relate the sentence to the parole system? Can we get the judges involved in it at the point of sentencing, or would it even be feasible, before sentence is passed with respect to a penitentiary term, to have representatives of the Parole Board in discussion with the courts insofar as the sentence is concerned, and at that point come down with some recommendation as to the individual's future as far as parole is concerned—in other words, do away with the statutory requirement of one-third of the sentence? Is there any way, in your opinion, to relate the sentence to the parole system?

Mr. Elliott: I think so. I think there should be the earliest possible contact between the Parole Board or any rehabilitation agency and the individual being sentenced. I also feel there should be this consultation between the rehabilitative agency and the judge handing down the sentence. If early contact is made between the Parole Board and the inmate, the more optimistic we can be about that inmate's chance for success. The inmate, whether or not he is ready for it, will have had the initial contact, the initial glimmer of light at the end of the dark period he is facing. He knows there is a goal to work towards. He is given an opportunity to ask questions as to what type of behaviour is expected of him and what his goals in prison should be.

Senator Buckwold: My question was directed towards something more fundamental than that. I am wondering whether it would be practical or beneficial to have the judge consult with representatives of the parole system—and these would have to be regional representatives, I presume—before sentence is handed down. This could not be done in every case, of course. I am suggesting that it might be possible in cases where the individual is facing a penitentiary term. At that point the judge and the Parole Board representative could make some recommendation as to when that individual might receive parole, taking into

account the crime and the individual's history. In other words, as the result of such a consultation it might be recommended that he be paroled quickly or that there be no parole, which is sometimes necessary.

The Chairman: This is before sentence is handed down?

Senator Buckwold: Yes. I am wondering whether there is any practical application of that kind of philosophy?

Senator Choquette: There are certain minimum and maximum sentences, which result in the judge's hands being tied.

Senator Buckwold: Generally speaking, the minimum sentences are fairly minimal, if you look at the Criminal Code. I am thinking along the lines of relating the individual's particular crime, history and future, in the actual sentencing itself, to the parole system. At the moment there is no such relationship. Could there be such a relationship?

Mr. Elliott: I certainly hope so. I think it is an excellent idea. I am afraid I do not have too many ideas as to the mechanics of it, but consultation such as that is an excellent idea.

Senator Laird: The problem is one of mechanics, let's be honest about it.

The Chairman: There is a system in California where sentencing is preceded by consultation. We have some information concerning that in one of the briefs.

Senator Buckwold: In fact, it is almost an administrative sentence rather than a court sentence.

The Chairman: That is right.

All three of you have told us how important counselling was and how dependent you could be on your counsellor. I notice in your brief, however, that you are opposed to mandatory supervision. You are willing to accept supervision in the general course of parole, but, according to your brief, you are unanimously opposed to the concept of mandatory supervision. Could you elaborate on that, please, Mr. Elliott?

Mr. Elliott: Yes. We feel that the reason we benefited from counselling was because we welcomed it; we wanted counselling. We recognized that in one way or another we failed to measure up. There was some sort of problem, so we wound up in prison. Because we recognized that we needed counselling, it was of benefit to us.

We also recognized, however, that there are men who do not want any type of counselling, and we felt that it would be futile to try and impose counselling on a man unless he is going to be responsive to it; it would be a waste of his time and a waste of the counsellor's time. That has been our feeling. However, we have heard from Don Irwin, our own parole counsellor, that, in fact, mandatory supervision has a 50-50 success rate. We are impressed by that and, frankly, surprised by it.

The Chairman: Mr. Sauer, you are no longer on parole and yet you are still part of this group. Do you still keep in touch with your councellor?

Mr. Sauer: Yes, quite frequently.

The Chairman: Would you explain that for us? There is no compulsion.

Mr. Sauer: The reason, really, is the idea for the entire report that we have made here. A few individuals actually managed to attract so much publicity that it has knocked down the entire parole system involving thousands. Having had several chances myself, I know the benefit of parole. Therefore, I do not want to see it go down the drain simply because of a few headlines.

We are quite unanimous in our stand on mandatory parole. Freedom is taken away by force. I really cannot understand why it should be returned by force. I think it should be up to the individual. If he feels he is ready for parole, that is fine; if he feels he is not ready, then it should be up to him.

Senator Lapointe: Do you feel that many inmates would prefer to remain in jail instead of asking for parole?

Mr. Sauer: I do not think that anyone really wants to be in jail. I think it is a question of pride. Pride is something which is taken away right from the start. If you release a man on mandatory parole, he may go straight because he feels he is only being released now in order that they can get him for more time at a later date. That is the only thing that will keep him out. I do not think that is a healthy attitude. Sooner or later, it will blow up again, probably much worse as a result.

Senator McGrand: I should like to ask Mr. Elliott a question. I have been listening to your discussion. You are an intelligent man, and I do not think anyone who was going to hire an employee would know from your conversation, if you came in with an application, that you had anything in your past that was wrong. You robbed a bank when you were an adult.

Mr. Elliott: That's true, sir.

Senator McGrand: At what age do you think you made your first slip from what we call normal society? I do not believe that a person becomes a criminal overnight, as an adult; It is gradual. Somewhere up the line from 10, 12, 14 or 15 a man gets off what we call the straight and narrow path.

Mr. Elliott: In my own case, I believe it was very early.

Senator Laird: What was your age?

Mr. Elliott: My age would be 12 or 13 years old. My father was a high school teacher and progressed from being a heavy drinker to an

alcoholic and lost his job as a teacher. Of course, our home became kind of broken and destroyed by that. I took a few short cuts then myself in school to get good marks, and so on. I think at that point, when I was willing to cheat in order to gain a certain objective, probably that set a bad pattern in motion, but it didn't culminate in any real criminal activity until this outburst when I was 28 years old.

Senator McGrand: But it was building up; it was laying a foundation.

Mr. Elliott: It was dormant; it was there all the time, yes.

Senator McGrand: Then would you agree with me that the only way to control crime and criminals is to get the boy when he is a boy and treat him, give him guidance when he is 12? If you had got the proper guidance at that age, do you think you would have robbed the bank?

Mr. Elliott: I agree with you, senator, very strongly, but I think it is very difficult to do that. My mother could sense some problems in my outlook. I had an opportunity to go to college, but I said, "No, I'm going to go out and get a job and make some money. I don't want to go to college." There were a number of other things I said to her that displayed a sort of irresponsible attitude towards my own future. She took me to Toronto to talk with a psychiatrist. I treated it as a lark and thought, "I know there's nothing wrong with me. I am not going to admit anything; I don't feel there is anything wrong with me." But here was my mother doing this; some friends of hers had advised her to do this, to take this boy down–"He's got some funny ideas. Let's see if we can't straighten him out." The attempt was made in my case, but I guess I wouldn't allow them to do it.

Senator McGrand: How old were you then though?

Mr. Elliott: I would be 16 or 17.

Senator McGrand: It's pretty hard to tell a boy at 16 or 17 that he has to do something; it should be done when he is 10 or 12. It is my opinion that this sort of thing shows up before the age of 12, 14 or 15; it starts when they are 8, 9 or 10; that is when the thing begins.

Mr. Elliott: Very true. If the boy is showing by his behaviour that he is prone to getting into trouble, that is true. Unfortunately, there are not enough agencies or people; society just does not provide enough big brothers, let's say, to take a hand with these boys. It's a shame.

Senator Laird: That is the trouble.

Senator Lapointe: When you robbed the bank, did you need money or not? Was it just for the thrill of it?

Mr. Elliott: I needed money partly. I had been going to the racetrack. That was another manifestation of my irresponsible behaviour. I had a good job–good in that it was paying me good wages, but it wasn't very satisfying. As I say, I had some marital problems at the time. I was kind of confused. I recognized the possibility of being caught, and I faced that quite frankly; if I was caught, that would be fine. You know, I wasn't controlling my life to my own satisfaction, and if something went wrong during this robbery–which, incidentally, was with a toy gun, and I certainly hoped not to hurt anybody or get hurt–if I were arrested I would be carted off to prison, and there someone else would start managing my life, or maybe I would have some time to think things out. You know, it was an escape. I can see that very plainly now; it was an escape.

The Chairman: If there are no further questions, on behalf of the committee I want to thank the witnesses for a very interesting presentation, presented so frankly and so articulately. I congratulate you.

Mr. Elliott: Thank you very much.

Mr. Smerciak: Excellent.

The Chairman: Can I have a motion that the brief be printed?

Senator Choquette: I so move.

Hon. Senators: Agreed.

For text of brief see Appendix "A"

The committee adjourned until 2:30 p.m.

[*Translation*]

The Committee resumed at 2.30 p.m.

The Chairman: This afternoon, we are going to study the brief presented by the Montreal Urban Community Police, which will be introduced by Mr. André Ledoux, legal adviser. You are aware that, should any of your colleagues wish to answer or add something, or correct what you have said–if it is judged necessary to correct the legal adviser–they are allowed to do so.

Mr. André Ledoux, legal adviser of the Montreal Urban Community Police: Mr. Chairman and honourable Senators, we are very pleased of having this opportunity to express the views of the Montreal Urban Community Police, concerning the Canadian parole system.

In the past, police officers have often been considered as unyielding antagonists to the parole system, which could be considered as an unsuitable manner of granting mercy. You are well placed to judge that, if such an attitude had ever existed the Montreal Urban Community Police, through the submission of its brief wishes to judge the facts impartially, and offers its full co-operation for the effective and gradual working out of this programme.

Our service agrees with the twofold purpose of the Parole Board, that is participating in the protection of the public and

in the rehabilitation of offenders. The officers of our Service become easily aware, mostly while searching for criminals, of the numerous failures of this system. Thus, in order to maintain an attitude which does not risk to deform the truth, the Police Service has established a committee with the purpose of studying the parole system, composed of the eight representatives who are with me here today, in order to introduce this brief of which they are the authors.

The Chairman: Would you, please, excuse me, Mr. Ledoux, I wish to inform my colleagues that the brief has been submitted in both languages–en français et en anglais. I am sorry, you may carry on.

Mr. Ledoux: Thus, these members are ready to answer any relevant questions.

It was judged that, in order to appreciate the parole system in an objective fashion, we had to carry out a statistical study of a valid and present-day sample, the criminal background of all individuals accused by our Service in 1971 of crimes for which they are liable to be taken into custody for two years or more. The four Tables which are annexed to the brief give the results of this study.

We believe that the parole system's rate of success is far from reaching 87 p. 100, as alleged by the Board's officials. In our opinion, it would be somewhere between 0 and 68 p. 100. Furthermore, if we suppose that the parolees have committed a certain percentage of crimes which our Service has failed to solve, a realistic success figure for the Montreal district would, according to our data, be about 40 p. 100 for the year 1971.

We submit that we are far from the 87 p. 100, which was mentioned here before your committee, by the Board's Chairman.

Thus, if we are allowed to make a first recommendation, we suggest that a complete, elaborate, detailed statistical study, covering the whole of Canada, be made, should this not already have been done, in order to allow your Committee to make a fair and realistic appreciation of the present parole system.

Second, it seems essential and urgent to us that the choice of candidates eligible for Parole should be made more carefully. Our Service offers its full co-operation and has done so, has proven so, within the last year, especially since a pilot-test is being carried out in Montreal and that the Board accepts to use our sources of information.

Third, for all practical purposes, the supervision of parolees is presently non-existent. This puts its objectives in a false light and reduces the parole system to merely granting clemency. Adequate supervision is of capital importance in order to assist the parolee in achieving rehabilitation which is his avowed purpose.

Fourth, we cannot imagine a parole system which would give good results, without intensified social work, at the parolees' level as well as at the community level itself.

Finally, we believe that a real parole system could be a valid means to ensure the protection of society, only if all the unsuccessful efforts made by all organizations dealing with judicial matters were taken into account.

It is necessary to realize that parole is very often the latest remedy, to be used with circumspection and carefulness. It should not become a panacea for all the offenders, obliging the public to take unjustified risks where its own security is concerned.

Now, should honourable members of this Committee have any questions to ask, we will do our best to answer them.

Senator Lapointe: You seem to indicate, in your brief, that granting parole is a means towards rehabilitation? This is what I understood. Don't you think, rather, that this is quite simply a less harmful way to serve one's sentence? If you consider it as a means of rehabilitation, it is understandable that you would include in your statistics the rate of criminality, after they have served their term. But, if it is not a real means of rehabilitation, you could stop your statistics from the day they have completed their parole. Do you understand my question?

Mr. Ledoux: No doubt that the parole system is more or less harmful. First in the case of the parolee, if he serves his sentence outside the walls of a prison, of course, there is no doubt that, insofar as he is concerned, it will be less harmful. But it will be harmful to society if he serves his sentence outside the walls, if it is not done within the framework of a parole system which, in our opinion, must include several essential points.

First of all, parole must he granted when an individual is already on the way to rehabilitation, i.e. after he has, according to the Act, progressed fully, from the moment he entered prison. Thus, that is to say that he must show, when he is still inside the prison walls, that he really wants rehabilitation, that he has taken advantage of all the services which were willingly offered to him there and that this took place when he was on the way to rehabilitation. This not just a matter of his showing good intentions towards rehabilitation but this has to occur when he was still inside prison and was really on the way to rehabilitation. In such a case, we consider parole as a kind of convalescence, where the inmate is shown more confidence and he is granted freedom subject to certain conditions,–certain conditions which will be duly supervised. As we mentioned the word treatment, we may conclude that he does not enjoy complete freedom: I repeat, he is in a convalescent state. He receives social assistance through his guardian outside. He feels that he is being supervised with respect to the conditions that have been imposed upon him. Now, we suggest that under those circumstances, if he knows how to take advantage of the parole scheme which has been prepared for him, if he is also being helped to do so, we suggest that, in such circumstances, it is less harmful, also for society, since, instead of an individual who would be allowed to leave prison without having improved in any way, if he is rehabilitated, a subsequent crime can be avoided, and he will also become an active member of society. In that case, it would be less harmful. But, all depends on the way the granting of parole will be conducted; it could be nothing else than granting clemency, as you have mentioned earlier, or it may become, in the long run, permament freedom.

Senator Lapointe: You mention, in your brief, that the collecting of certain types of information concerning offenders is not sufficiently detailed–i.e. that the study of all information concerning an offender is not thorough enough before his parole is granted to him. In which way, would you like to see it more

detailed? Does the shortcoming occur in studying his family or in gathering information from the police, psychiatrists, psychologists, or from the prison staff?

Mr. Ledoux: We must be aware of the fact that as the statistics show, on the average, inmates are paroled after having committed 7.7 per cent of crimes punishable by two years and more. Therefore, he is not a novice. On the average, we are not dealing with a "first offender". He is already known by a great number of organizations, both at the level of the school and that of the Social Welfare Court, at the level of probation services and the court for adults, and without any doubt at the level of the prison and subsequently at the level of the penitentiary and, of course, there have been various police services that have had to consider his behaviour and to take him to court. Therefore, this is an individual who is known by many organizations, both public and private. We submit that if a parole plan is to be really effective, fruitful, harmless, the selection must be done very thoroughly and that, at least, research should be made with the various organizations which have known him before, since, on the average, he benefits from parole at 26 years of age. Therefore, we submit that this individual, without having gone through all the information sources accessible to the Board, inasmuch as it attempts to get them, therefore, before the decision is taken, we submit that it is essential that a thorough selection be made and that, subsequently, the risks or benefits of a parole be appreciated in the case of this individual.

Senator Lapointe: Do you mean to say that there is not sufficient co-operation between the parole office and the police, as you assume on page 20 of the brief?

Mr. Ledoux: Of course, as far as we are concerned, we can only speak on behalf of the police services that we represent; we submit that the co-operation which existed before the period of one year, therefore, before the event of the pilot experiment which is currently under way, well, the exchange of information was very limited. That is to say that when the accused was brought before the court, the investigating officer wrote a simple report on the circumstances of the crime, sent it to be Board authorities and that was the end of the information requested of the police service.

We are happy, and I am telling you that in the last year approximately, the Parole Board, following an agreement with the authorities of our Service has wanted to intensify this co-operation by informing the members of our Service of the cases being studied and by asking you if we had remarks on the various cases.

Therefore, this list covers the various sections or divisions of our Service and the various investigating commissioners who have gotten to know this individual in the past make their own observations, giving their opinions and the information that they might have on the individual.

Moreover, the investigating commissioners for the Board, at the first stage, the members of the Board themselves, direct themselves to the members of our Service and for many months, they are the ones who make the assessment for the Board, who personally contact either by telephone or in person the various investigators and deal with the case that they are reviewing.

Therefore, at that point, we submit that with a personal exchange carried out in this manner, we are already in a position to verify that the selection of candidates has very much improved. We have regretted earlier, especially for a section that is one of the most important in our Service, the criminal investigation section, for the more serious crimes, a section which deals with armed robbery and homicides that, in 1971, several individuals, the most violent ones, had been chased by policemen nearby several banks and that, unfortunately, some of them were parolees; one of them had been paroled since 29 days, he had a machine-gun and had aimed it at a policeman whom he had injured. I think that at one point, we had 12 similar cases.

However, since that time, the Board has met with the members of our Service, they have shared ideas, and they co-operate more closely and we are now able to verify that the most hardened, most aggressive criminals, the most violent, benefit with more circumspection from parole.

Senator Lapointe: You seem very concerned by those who commit violent crimes when you say that they very often relapse after the first parole and sometimes after the second one. Therefore, would you recommend much more circumspection and consideration before releasing those who commit violent crimes?

Mr. Ledoux: In general, I feel that we are not taking any risks with individuals in a penitentiary. Gone are the days where courts considered only the seriousness of the crime to impose a penalty. It must be understood that nowadays, judges impose very serious penitentiary penalties as a last resort; that before a judge brings himself to condemn an accused to the penitentiary, he uses all kinds of other means to solve the problem and the probation services are supervising many accused.

Unfortunately, I do not have the figures, but I believe that the accused presently in the Canadian penitentiaries are the minority among those who are condemned for criminal acts punishable by two years and more. I think that the majority of the condemned are either on probation having benefited from a suspended sentence or are still under parole and that may be a third of them, maybe more than a third.

Senator Lapointe: I think that your friend, sir, would like to say something. Did you want to say something?

Mr. Daniel Crépeau, Inspector, Police Services, Montreal Urban Community: Yes, I would like to add that this was in the same context, since he has started talking, I think that he said more or less what I wanted to say, but I would like to add this: When the inmate must be considered for parole, he has often been under all kinds of other therapies and this, quite often, from his younger years. We have tried to rehabilitate this person. He has appeared several times before the major courts, before going to the penitentiary. Therefore, we must consider, even if it is not for violent offences, that is to say, when we must consider the possibility of parole, we believe, especially in view of the fact that many attemps have been made beforehand, the protection of society must be given high consideration before granting, before

taking a decision with respect to parole. This decision must be based on a serious diagnostic, a diagnostic including at least a serious assessment of the risks taken by society at large by granting parole. These risks can be analyzed only by considering the criminal character of the inmate, and we do not see who else but the police could be able to give a serious enough image of the criminal character of the inmate.

You were asking earlier if the workers of the Parole Board ask the opinion of the police. Yes, we must say now they do and this increasingly so but not to our satisfaction, far from it. To give a recent example, we had to reiterate in two cases that as far as the inmate who was presenting himself for parole was concerned,–this on Monday of last week–the Board's employees have not yet contacted the policemen to know what we had to say, after we had given them the names of the policemen interested in criticizing these requests. It happens quite often that, in the second instance, pressures are exerted on the Board before consideration is given to us, even after much progress has been made. If we are speaking of the time when all those who are here were preparing this statistical study, at that time we were still far from what we have to-day. The experiment made in Montreal has often been mentioned to you as an indication of improvement. The city of Montreal has often been mentioned as a model case. Well! If it is better than elsewhere, in our opinion, it is not yet what it should be. There is still a lot to be done at the cooperation level. Furthermore, we noticed it because, in Montreal, we approached not only the Parole Board but other agencies as well. Lately, we were on a selection committee with representatives of a federal penitentiary and from this experience we realize that even penitentiaries complain that the Parole Board does not ask to be given the information they have; that the Board has valuable information it does not communicate to the authorities of penitentiaries, for example, for the granting of temporary absence under section 26 of the Penitentiary Act.

I want to bring to your attention that, not later than last Friday, in a federal penitentiary, a classification officer said that a community investigation conducted by the Orientation and Rehabilitation Agency, did not reveal anything. These are the words of two classification officers of a federal institution who had no knowledge of the community report because at that time the names of the individuals on whom an investigation had been conducted for a few hours had not been revealed to them. They were given so much information that they did not know what to do with it; if they compared these data with the community report they had received on this matter, it was completely meaningless. The family of the inmate had been studied in order to determine if they were ready or not to receive him outside. Is there somebody ready to help him or not? Is the environment favorable to crime or not?

On the other hand, there is the classification officer in the institution who says: How does the inmate behave since he is in the institution? Even Mr. Street, when he first spoke here to the Committee, said that the attitude of the inmate in the institution, has very little importance where parole is concerned, for he himself admits that those men are responsible, when they have appeared several times in court, and they eventually find themselves in a penitentiary, they are often intelligent enough to behave so as to be released as soon as possible. It is in their own interest. We do not believe there are many criminals who are so stupid as to tell a classification officer they intend to relapse into crime after their release.

Senator Lapointe: But, precisely about the classification officers, you say that several of them are blackmailed or threatened by inmates if they do not write a good report on them; is it really a usual occurrence? Is it common?

Mr. Crépeau: For my part, I could not say that it is common. But we have heard of similar occurrences mentioned and we have good reasons to believe it happens. Moreover, according to certain comments addressed to us on Friday by penitentiaries officials, when we pointed out to them that they granted temporary absences without any justification, but because the inmates would soon have a hearing about parole, it was decided to grant them temporary leaves. Then about our comments, they would say . . .

Oh yes, where threats are concerned, some classification officers have said they were in the habit of releasing a certain number of inmates every weekend. They admitted we were right, that they said to themselves that if they reduced the number provided in code 26, I apologize, of weekend temporary leaves, what will the inmates say? Then, what will they do now that they are used to a certain number of absences under code 26, we are not going to reduce what is provided in code 26, they will be dissatisfied. Therefore, what has the world come to, when we must consider the release of an inmate who was under maximum surveillance 24 hours a day, in a cell, behind bars and a 30-foot wall, with armed guards, then he leaves without being submitted to any supervision. Furthermore, when in a penal institution they say that a temporary leave was beneficial, it means they did not hear about the inmate while he was outside. Then they say things are bad when he his arrested by the police for an offence he has committed during . . . but between committing an offence during his release and saying he behaved properly because he has not been arrested, there is a big difference.

Senator Lapointe: But when they get these weekend leaves do you get their names, addresses, phone numbers, in case they go home or something of the sort?

Mr. Crépeau: Yes, but we are not satisfied with the information we receive. We are especially not satisfied with the conditions imposed upon them. It is that, now, the way it is done, the police cannot determine whether the inmate is or is not where he is supposed to be, because if we give this information to the penitentiary they tell us: "Yes, but he was released on the weekend to visit his family." But he has other relatives besides his mother. Therefore, if he did not go to his mother's on Saturday and Sunday, we asked him where he went, so he told us he went to see his uncle Arthur who lives on Beaubien Street, but who has checked whether this is true? It cannot be done, the police cannot check it either. Now, for the first contacts, at this level the authorities of the penitentiaries begin to be more cooperative. They begin to lay down conditions. But you must understand that it requires a whole mechanism in order to be effective, when there are at least one hundred and even more inmates who are released on weekends at the same time, just in the Montreal area. You can well immagine that it requires a whole communication mechanism with the authorities of the penitentiaries to know who is released so that

before the inmate goes out, conditions may be suggested to him. The police is often able to suggest conditions, for example if they know the type of people the inmate associates with, in a pool room for example, where he meets criminals and his former accomplices. Therefore, they are able to suggest conditions which are favourable to supervision and to the rehabilitation of the inmate as well.

Senator Lapointe: I will give the others the opportunity to ask questions.

[*Text*]

Senator McIlraith: I have two matters I wish to take up with you. The first relates to the use of statistics in your brief and the conclusions drawn from them, starting at the bottom of page 4 of the English version, with paragraph 2, "Results of the Parole System," and continuing at some length through the brief. You convert the figures of crimes committed after a person who has been paroled has been released from the institution to a percentage which you interpret as success or failure of the parole system. Of course, that also involves the criticism of another interpretation of figures used by certain parole authorities when giving information on the success or failure of the system. All the figures have been accepted as being quite valid and I am not questioning them.

I address myself to the conclusion drawn in your brief from those figures and your interpretation of their meaning. The brief tends to indicate that the fact that these men have committed another crime and been re-incarcerated indicates a failure; similarly, that if they do not commit another crime, it indicates success.

My first concern is in connection with the case of a man paroled five years ago whose parole expired three years ago and three years following that he commits a crime. Your statistics interpret that as a failure of the parole system. In arriving at that conclusion, did you consider whether other elements of our judicial system might have failed? For example, is it possible that the police themselves failed in the last year of that period when he was free in something they were doing in the nature of preventing the commission of crime?

Inspector Crépeau: All crimes, without exception, are committed by those who succeed in evading the preventive aspect of police work. This applies whether they are parolees or not, even to first offences.

Senator McIlraith: My question relates only to those who had received a parole at an earlier time. The fact that he subsequently, at some time in the future, commits a crime, you have interpreted in your brief as a failure of the parole system. Is it not quite possible that the fact that he committed that later crime could be due to a failure of some other element of the system of administration of justice? Could it be a failure of police work, the handling of the offender in jail after arrest and before trial and conviction, a failure in handling him in the courts when he is actually at trial, or many other factors?

[*Translation*]

Mr. Crépeau: It is a possibility. However we maintain that, at the stage of parole, failure is no longer a possibility but a reality. We take as a basis for such reality the very principle of the parole system.

On page 2 of the publication by the Parole Board, which is unfortunately not provided with our brief but has been prepared by the National Parole Board for judges, magistrates and police forces, it is said as follows:

As objective of the parole system. Such a system has a double purpose: to assist in the rehabilitation of the inmate so that he respects the law and to protect society against serious risks.

It is the real aim of the Parole system. Therefore, when we say in the statistics published by the Parole Commission that the success rate is 87 per cent, we don't include in this percentage all those who have relapsed when on parole. Therefore as it is claimed that rehabilitation has been achieved as well as the objective, and that such objective is the rehabilitation of the inmates, and that they are not taken into consideration because they commit a crime after the parole period, we say: you must take such inmate into consideration because he has not been rehabilitated. Because if he had been, he would not be brought back even after his parole period, while the Commission takes into consideration only those who have relapsed into crime during their parole time. Therefore if you wish to go on a day to day basis, if, on the last day of the parole period of an imate he commits a crime, he is included in the Commission's statistics; but if he commits his crime the day after the expiry of his parole time, he is not included; he is considered as having succeeded, as being a successful case within the 80 per cent success rate. We dispute the validity of this process. We say that they have not achieved their objective.

[*Text*]

Senator McIlraith: Exactly. That is quite clear. He is included in your 87 per cent figure as a success factor, when he may not be. What is more obvious is that in the statistics that you seek to use, you are charging the failures to the parole system, when they may well be chargeable to some other element in society, and, indeed, to some other factor in the justice system. That element of failure may have been contributed to, or brought about, by the failure of the parole system, failure of the police system, failure of the court handling system when the man is before the courts, or failure of the jail system when he is held pending trial. The failure may lie in several directions. Isn't your figure equally biased, if you like, for wholly different reasons? That is the point that I am trying to make.

[*Translation*]

Mr. Crépeau: Our research did not deal with the weaknesses of the police or with the sharing of responsibilities when the granting of parole was or was not a success.

Nevertheless, we agree with you that there are many other factors that may be involved. For instance, what was the relationship between the resocialization work accomplished at the juvenile delinquency level?

Then, at the suspended sentence level of the same individual if he is a first offender before a superior court, while on suspended

sentence and without any supervision? I missed one: when he is temporarily freed on conditions by the judge before the trial who is entrusted nowadays with supervision?

At the day parole level almost no supervision is exercised. Finally, you have parole as such, and, in its absence, mandatory supervision. But who now links together those different investments in correction and rehabilitation? No one presently. The relevant organizations do not even know one another. How can they do additional work? They start over and over again and unfortunately, in most cases, parole means to start anew, not for the second time but for the umpteenth time. It comes after many other attempts. This, is why we insist at that time on a serious diagnostic, so as to evaluate the risk; if an individual has betrayed the confidence of different organizations which have wanted to rehabilitate the accused or the inmate and work with him to this end and if he has already betrayed three or four times this confidence, it becomes necessary at one time or another to take matters somewhat seriously in order to provide society with a modicum of protection by not releasing such an individual without every precautionary measures being taken before hand.

But, presently, he is released even without supervision. The rate of success cannot be measured. It is only possible to measure the efficiency of all this work only by considering: whether he is or is not arrested for another crime. But between being arrested for a new crime and being rehabilitated there is a world of difference. We know very well that if the rate of crime solution in Montreal is about 20 p. cent, it means that we arrest one criminal and solve one crime out of twenty. So, when a man on parole is arrested, he is but one out of 20. What is the relationship between the two in terms of risks to society? This is what we would like to be able to analyse. Also, it could be measured by a close supervision of each individual.

[*Text*]

Senator McIlraith: Yes. I quite understand that. I was trying to clarify something in your statistics which I thought did not add to your argument, but tended rather to weaken your argument for the need for closer supervision. That is the point that I was seeking to make. Your argument for better integration of all the services concerned with the individual is quite clear. It is quite valid. And your point of view for closer supervision is also quite clear.

What I was seeking to question you on was the interpretation put on the statistics, your use of the figures to prove a case which already was valid without the statistics being used in the way you were using them. I do not think that is a fair way of using the figures in the statistics. I think you have shown a weakness in the statistics being used by the Parole Board, and from there have jumped immediately into using a set which has a greater weakness. That is what I was seeking to draw out.

[*Translation*]

Mr. Ledoux: You were right to note that we apparently do not interpret words in the same way. For the Parole Board, "rehabilitation" means no problems during the period of the inmate's discharge, that is, he has respected the conditions set out.

[*Text*]

Senator McIlraith: That is a very narrow view. You made that point. That is quite clear, but it is a very narrow view.

[*Translation*]

Mr. Ledoux: As far as we are concerned, we want to bring a meaningful content to what we call "rehabilitation". In our mind, rehabilitation means reeducation, reorientation of the individual. Now, if it is only during a period of six months or one year, he can really have rehabilitated himself. As Inspector Crepeau has pointed out, he could certainly have been lucky since, unfortunately, we only solve 20 p. cent of all reported crimes. Perhaps this is the failure of the police force that you mentioned a little while ago and that it is very unfortunate that we cannot solve all crimes. Our responsibility goes no farther than that, I do not believe that we encourage criminals to commit crimes except by our lack of supervisory staff.

Since we have a different interpretation of what is a true rehabilitation, for us, rehabilitation is a permanent reeducation, it is another item of the inmate's present objectives, those that he previously had that brought and motivated him to commit crimes. For us, it is a change of behaviour that should last not only during the months or years of parole, but permanently.

[*Text*]

Senator McIlraith: Quite; but the failure is not, as you imply here, due necessarily to failure of the parole system. It may be due to any one of a dozen other elements in the justice system, or society.

[*Translation*]

Mr. Ledoux: We agree, of course, that we have to seek out the causes of crimes which may be of a social, economic, family, educational or psychological nature and so on. Now, each one is responsible for the crimes that are committed; Let us assume that society probably has its share of responsibility as much as the criminal. We do not intend to attribute this responsibility either to the Parole Board or to the police or to the public in general. What we want is that everybody, all of us together, by collaborating, joining forces and helping each other, we may achieve the two common goals defined by M. Street and with which we agree.

Senator Lapointe: May I ask another question? Are there many paroled inmates who, at the end of their parole, agree to continue to be guided or supervised? Or do they say: "That is enough", they want to be completely independent? Then, they are in greater danger of relapsing into crime.

Mr. Ledoux: Generally, they feel rehabilitated and have no more use for our help.

Senator Choquette: But you sometimes meet them on street corners?

Mr. Ledoux: We meet them when they commit crimes.

[*Text*]

Senator McIlraith: There is one other point I wish to clarify. At page 15 of the English brief, paragraph (1) reads:

> it is just as difficult for the parolee to obtain employment when employment is at an all time high as it would be when it is at a low ebb.

I find it difficult to understand how it would be as difficult to find employment when employment is at an alltime high as it would be when it is at a low ebb. Surely, the scarcity of available jobs is one of the elements in preventing a man from obtaining employment?

[*Translation*]

Mr. Ledoux: You are probably right to point out this weakness of the paragraph as it is written. It must be re-read in the context. It seems to us that a criminal who has spent some time in an institution, is labelled as such and, notwithstanding present economic conditions, has always encountered some difficulty in finding a job; it is the job of a social worker at the parole level, to work not only with the parolee but also with the community and specially with the employers. We submit that this should be part of the social work applicable to parolees in order to facilitate their employment since they have trouble, anyway, finding a job, because they were criminals, and also, for some of them, because they are not used to working having constantly had a criminal record for 5 or 10 years during which working periods were almost non-existent. We know very well that it is a difficulty inherent to their own personality to find a job, to keep it, to stick to it and to like it. We think that one of the tasks of the parole supervisors should also be to help him, independently of the economic context now prevailing or which prevails at the time of parole.

[*Text*]

Senator Buckwold: First of all, I certainly have, from experience, some sympathy with the police departments. I served as chairman of the Board of Police Commissioners in a medium sized city for many years. That in itself does not necessarily say that I fully appreciate the police point of view, although I know what they are up against.

On page 24 of the English brief you conclude by saying:

> . . . the parole system has been a commendable effort but a deplorable failure . . .

And at an earlier point in your brief you make some recommendations as to what you would do to improve the parole system. Were I Mr. Street, after looking through those recommendations, I would say that to the very best of our ability we follow the list of suggestions which you set forth, namely, what to look for in the selection of parole applicants–personality of the subject, social profile, criminal profile, and so forth. I think Mr. Street would be able to say that to the very best of their ability they are attempting to follow those guidelines. I really feel, from the point of view of the studies that have been made in Montreal, that your department has been a leader in this field. I think all senators would agree with that. Yet, I do not read into this brief what the practical application is. I say "practical" rather than parole co-ordination; obviously, that has to be done.

How do you select an applicant who is worthy of parole? You give us the very unhappy statistics that you have come up with. I do not agree with those statistics completely, nevertheless, there is no doubt that they could be interpreted as indicating a fairly heavy failure rate.

How would you change the parole system to make it work better than is currently the case, bearing in mind that, if you really want to allow men out for rehabilitative purposes rather than punishing them by keeping them in prison, it is going to be reasonably imperfect?

The punishment aspect, in my view, is sometimes the police point of view, though hopefully not too often. In your brief you say:

> We propose modifications in the selection of parole applicants because we believe that very often the choice of candidates has been haphazard.

The direct question, then, is: How would you propose modifications in the selection of parole applicants–again, in a reasonable, workable and practical manner–other than what is being currently done?

[*Translation*]

Mr. Crépeau: I think I would express exactly what our chairman means if I say that by having a joint study of various judicial organizations, whether it be about the rehabilitation or the penitentiary organizations, jails, and police forces, because only when they decide together will they share the responsibilities involved in protecting society.

At present, each section of the judicial system assumes part of the responsibilities, and when we want to offer congratulations or evaluate the efficacy of each section, it is impossible to find the person responsible for it because each acts individually. To prove this point, one only has to compare the role of sentencing to that of the parole system. When giving his sentence, the judge must consider all the possibilities of rehabilitating the inmate and recognize the criminal nature. Afterwards, in the case of a ten-year sentence for example, the Parole Board is allowed to change it by releasing the prisoner. So, what is the use if two organizations may, one, give a sentence and the other change it. But what is their role when the sentence is shortened? In other words, the court, once it has given out its sentence, has nothing more to say. And if it does, as is said in the regulations of the parole system, we will gladly accept what the judge has to suggest. But who asks for his opinion? As he has already considered many factors, it would be a good thing to see what he said when giving the sentence, why he gave ten years. The sentences should be revised in this context to be able, later, to learn more about the criminal nature of the inmate and to be able to analyze his behaviour in jail. That is not done at present.

To sum it all up, each organization of the judicial system will share the responsibilities when it will be able to express its opinions. And this is also true for the parole system.

The Chairman: Mr. Crépeau, the example you have given talks about a man who has been sentenced to ten years. Is it not right that the Board has no power before a third of the sentence has been served?

Mr. Crépeau: I do not have the section of the Act, but unless there are some special circumstances . . .

The Chairman: Yes, but it does not happen very often. And I want to go on. You talk about the opinion the judge has; does the judge still know the individual, say four years later? Could it not be possible that the inmate, after four years in jail, has changed and that the judge's opinion is no longer as valid as it was at the time he brought down his sentence?

Mr. Crépeau: That's right, we think it can have changed, but at least, we should take it into account and then add what we know has happened afterwards, so as not to nullify the results of the pre-sentence inquiry made by the Orientation and Rehabilitation Society, upon a request by the judge, who allows one month to do it. That Society and the police should then make representations to the judge, and the reasons on which the judge bases his sentence should not be made known at the time parole is being decided upon. That is because we say this is a new start. How did he behave inside the jail? His mother writes him every month, his cousin comes to see him . . .

Senator Choquette: He has communion every morning!

Mr. Crépeau: He has communion every morning, he did not escape, he did not hit his guards, and so everything is well. He has already shown possibilities for rehabilitation.

I repeat it, even Mr. Street says that that has no great importance in the selection of candidates. We do not add to what has already been done.

For example, lately, as police officers, we were invited to comment on 25 cases that were being studied for weekend leaves. I have already talked about it. In two cases, the authorities of the penitentiary, the selection Committee of the penitentiary including a sociologist, criminologists, social workers and guards, came to the conclusion not to grant temporary leave, and we, the police officers, were suggesting to grant it. But we had based our opinion on factors that we knew but they did'nt. For example, we made a difference in the case of an individual who had made four hold-ups, but in only two days. Never before had he been arrested, and he had no criminal record whether as a juvenile or an adult. The man was now 28 years old and the main criminal factor was a nervous breakdown following marital problems. So, in our opinion, he is a fellow with no progressive criminal career behind him. And although there had been a criminal offense, if you will, for the police it is much less serious on the whole than if that man had been arrested, sentenced and then had done it again.

Senator Choquette: Four times?

Mr. Crépeau: But at that time, when studying the case, they did not seem to make a difference between a man who has been sentenced four times to a penitentiary for hold-up, and a man sentenced to a penitentiary for four hold-ups. Now sometimes, we were suggesting to grant him temporary leave to encourage his rehabilitation. In other cases, we were against that while the others were in favour because they lacked information to refuse it, either because the joint record was not complete or because it was blank. So, when no information was available on the family, temporary leave was granted. Furthermore, since the inmate will have parole hearing very soon, it is easy to forget about one's responsibilities because someone else will soon take over. This is why we can insist on the lack of co-operation between the various institutions who have the same objective, that is protecting society.

The Chairman: Have you heard, senator Lapointe, they are blaming the woman!

Senator Choquette: Mr. Crépeau, nobody seems to have raised the point. I think all those somewhat conversant with criminal law or who have dealt with criminals know that there are ways of communication for the inmates to communicate with their outside friends. I think you will agree.

Mr. Crépeau: Certainly.

Senator Choquette: There is an old English expression; through the grapevine; information is relayed by the cook, a driver or visitors. Now, here is my point. With all your policemen you are usually in a position to know if ringleaders continue to give orders to their group, you would know, since you keep a close watch and even have what we call stool pigeons ready to let you know their activities; if you had all that on hand would you tell Colonel Street and his group that you would object and would not recommend the release of this man, even if he had been a good boy during all the time he was inside?

Mr. Crépeau: Yes, we do, but it is not done the way we would like it to be, because we are not organized to help as much as we could in that field. However, we are willing to ask ourselves the necessary questions, to change our way of thinking about the help that we could bring in order to contribute in a tangible way, to express opinions. We are doing just that; we study the list of those whose case come up for hearing and we submit names of policemen who are ready and who know the accused enough to be able to give an opinion. For my part, I am presently in charge of an area, if you like, of the Montreal Urban Community, at the level of legal inquiries. When a particular case concerns our division, as when the individual is going to live there after getting out of jail, or has operated as a criminal or committed crimes in the area, we contact the people who investigated the last crimes of the individual and we study the criminogenic factors, those that we have on hand, the family circle, the accomplices, the role played by the men in the crimes committed. Was he the instigator of the crime? What part has he played? What was his part of responsibility? Then, we organize a meeting of all the policemen concerned, after which, together we write a summary of the representations that we are going to make to the Parole Board. Which enabled me, not later than yesterday, to be called by an investigator of the Parole Board to whom I was saying: Well, the man who is to get a hearing, is a

member of an organized gang; we know him as such. The police department has known him for 15 years, he has been part of the same organized group, not part of the wide crime organization now under inquiry but a ring of thieves in warehouses and trucks. We are able to give the criminal character of all his accomplices and to tell the Board: We consider that releasing this man is to take a great risk for he will probably repeat his offence. Therefore a danger for society even if he does not commit any crimes with violence. Now, I must say that several members of the Board really appreciate our co-operation. We have been allowed this not very long ago; it is a very recent development. The report that we are submitting you now was completed in April 1972. We can say that since that time enormous progress has been made.

Senator Lapointe: 1972 or 1971?

Mr. Crépeau: 1972.

Senator Lapointe: Last year?

Mr. Crépeau: Since that time enormous progress has been made but we still have to do a lot in that field. You were talking about communication among inmates. I would like to bring another aspect of communication among inmates. If we consider the objective of the parole system which is the rehabilitation of an inmate and the protection of society; let us say, if we really want the parole system or other forms of releasing under conditions than those stated before, have a therapeutic value on the person, for the person's sake, we should not parole anyone because if there is someone in a penitentiary that knows the intention of an inmate it is really another inmate, the inmate that really deserves to be released, to get temporary absence should be granted those privileges, but we no longer express confidence into him if everybody gets parole. It is not an obligation for him, it does not have any therapeutic value for the one that is to become rehabilitated. It does not have any more value for the one that is not to become rehabilitated. So, it has a value for whom, if it is to be given to anybody, like we think it is still done today.

Senator Choquette: I think so.

Mr. Crépeau: If we are not serious and careful in the choice and diagnosis of cases, the therapeutic effect of parole is lost as a means of rehabilitation.

Mr. Jean Ratelle, Inspector, Police Department, Urban Community of Montreal: I would like to answer Senator Buckwold if you would allow me to.

The Chairman: Would you like to speak into the microphone.

Mr. Ratelle: Naturally, before saying such things we were careful. I have noted a few points that have terribly surprised us during our study about the selection of candidates. The change in the attitude of the inmate for his crime was mentioned a few minutes ago. We all agree on that point. Ask an inmate who is in jail because he has committed 14 holdups: When you go out will you commit any others? and he will answer: never. There is also his good conduct in the institution and that we have already talked about. There is also the fear of reprisals from the part of the classification officer which was also mentioned. There are other cases that have come to my mind during the discussion. The report of a rehabilitation society tells about a case now before the members of the Board where an inmate's mother, when she was asked questions about him, answered that she had a very good son. It was also learned that the individual had a job waiting for him on his getting out of jail. A deeper inquiry from the police department showed that the mother had not seen her son for seven years. When the classification officer asked her how was her son, it is obvious that a mother would answer that way. When we investigated about the job waiting for him when he was going to come out of jail, we soon found out that he was going to be employed by his wife who was the manager of a licenced joint belonging to suspect people. Therefore it is very easy to come up and say that he had a job waiting for him, but what kind of a job? It is obvious that if he goes back to his criminal element, it will be extremely dangerous. That is why we said before our study that the choice of candidates seemed a bit hazardous. So that is why, like Mr. Crépeau has just said, we are willing to help in any positive way. You can be assured that all sections of police force in Canada will give a great co-operation to the Board.

Senator Choquette: If I understand well, until recently the Board was not asking for the co-operation that you are offering it now or has this always existed?

Mr. Crépeau: I think Mr. Charbonneau will answer very easily to that.

Mr. Jules Charbonneau, Captain Detective, Police Department, Montreal Urban Community: In 1971, there was an unprecedented occurrence of holdups in Montreal. Every time we arrested individuals, they were parole people and who had spent only a quarter of their sentence in jail. We, then, asked for a meeting with the Parole Board, that took place in September 1971, at our offices, at the criminal investigations, in Montreal. We submitted to the Board several cases of individuals that were arrested. I can give you a few examples. Two individuals armed with machine guns were arrested on June 8, 1965 at the door of a bank. They were condemned to 20 years of emprisonment and their sentence should have expired on June 7, 1985. They were released on June 1, 1970. On June 25, 1970, we arrested them in a fusillade on St. Denis street in Montreal where a policeman was injured. I could give you a dozen of similar cases where individuals have served only a quarter of their sentence. Following our requests, we have met with representatives of the Board and they suggested to submit us all cases of individuals involved in holdups that were to come for parole hearing and they allowed us to make some objections. At the present time they submit us a list a month in advance. We study the case. We then, meet the investigators that arrested the individual. We take into account the effect that this had over the vicitim. Let us say that we consider what happened to the victim and the role that the individual has played, and then only do we bring objections.

I can say that in 1972 in cases of holdups we raised 24 objections up so that individuals would not be released, and all

24 objections have been respected by the Parole Board. None of those 24 individuals has been released. We checked last week and they were all in prison.

Senator Choquette: But, is this recent?

Mr. Charbonneau: Yes.

Senator Choquette: Haven't the Board always taken this into consideration?

Mr. Charbonneau: No, this came into effect in September of 1971; before that time we had no communications with the Parole Board.

Senator Choquette: It takes holdups?

Mr. Charbonneau: Because there was more violence, we are more concerned with the fate of the victim, when the person is hurt.

The Chairman: Can you tell us if, since you have established a collaboration with the Board, a year ago, there was a reduction of the number of parolees?

Mr. Charbonneau: I have figures, that is we have figures on the number of parolees among those who had committed armed robberies. Yes, there was a reduction. But, since we give codes 26,–I do not want to say that we attribute this to code 26,–but, holdups have almost doubled in Montreal in 1972, since we began giving weekend holidays to people who were committing armed robberies, and then, thefts have doubled in banks in Montreal since December 1972.

The Chairman: Yes, but, in this case, you are not talking about the Parole Board?

Mr. Charbonneau: No. However, every objection we raised to parole of convicts were listened to.

Senator Choquette: I also believe, sir, that sometimes, there is a lack of types of crimes, then, all of a sudden, you see a safe theft where the bottom was taken off and then you say: well, such and such an artist must have been freed, and then you recognize, I believe, the type of beautiful work certain criminals can do?

Mr. Charbonneau: Yes, we keep records, each crime is analyzed. We make an M.O. (modus operandi). We cannot always recognize the offenders, but, often by their "modus operandi", we can attribute a certain type of crime to an individual, or to a group.

Senator Lapointe: However, when you say that since it is impossible to rehabilitate the prisoner, let us at least protect society by keeping him inside an institution, and, if it is possible to rehabilitate him, let us not wait until he has an elaborate criminal life, because it will probably be too late; by that do you mean that you want to give them more chances when they are very young? What do you mean exactly?

Mr. Crépeau: By that, we mean that we should concentrate our rehabilitation efforts at the first offenders level. That is, we try several times; first we keep on trying but not in a deep enough nor in a sustained enough manner. Then, when finally there is a long incarceration, following several attempts, then we believe that we will really work efficiently at the delinquent level. We believe that we should mainly concern ourselves with conclusive rehabilitation cases, rather than insisting maybe on spending a lot of energy at the hopeless level. We say this: let us begin with the first offender; let us first work with those who apparently have the best chances of rehabilitation, and, if we have energy to share, well, we will take care of the most serious cases.

Senator Choquette: Will you now have the Board accept the collaboration that you have been offering for a year or two, is that decided?

Mr. Charbonneau: It seems quite happy with it, as much as we are. Yes, we can say, what is said in our report is based on an agreement concluded in April 1972, and, since then, we have made astonishing progress. We believe things will get better. However, we are quite optimistic, in that sense, when contracts are actually multiplying. Certain members of the Parole Board would hope that one day, policemen will be asked to participate in the selection of parole candidates.

Senator Choquette: I think that you are more qualified than any of these people.

Senator Lapointe: Why would the members of the Board object to you finding jobs for prisoners? What objections did they bring?

Mr. Charbonneau: Well, I believe that their objections were not ideological, but rather at the civil servants level, who were seeing somebody else doing the same work they were doing. Perhaps it was to protect their service, and, if you want to go a little further, even in certain cases, we know that certain civil servants should maybe go against the objectives of their functions. But, these are isolated cases and we should not ride the subject to death because we know that the Board's structure is not at stake.

Senator Laird: Mr. Chairman, I would like to follow the line of questioning started by senator McIlraith. Frankly, I would prefer to ask the question in English.

[*Text*]

Reading your brief and listening to this line of questioning, I cannot help but get the impression that you people in Montreal have had more problems with the parole system than has been the case in any other place in Canada, with the possible exception of the situation amongst the Indian population out West. If that is the case, perhaps it may be, as Senator McIlraith suggested, due to other factors, and I would like to probe more deeply into them.

Do you suppose the situation in Montreal is unique in more than one respect? For example, the population is very large; there has been in the past, as we all know, an infiltration of organized crime and there has been the so-called Quebec Revolution with the FLQ, and that sort of thing. Do you suppose that those factors or some one of them could be the root cause of your rather unique problem with the parole system?

[*Translation*]

We prefer that you answer in French.

Mr. Crépeau: Yes, we do not believe that we have a unique situation in Montreal. As a matter of fact, we say in our brief that this is what allowed us to make a nation-wide projection on the experience, based on the statistics that we had gathered in Montreal. We do not think that the situation is different elsewhere, with the exception of the Indian population as you mentioned, and we believe that Toronto, Vancouver, as police authorities in these places have told us, face exactly the same phenomenon as Montreal. Maybe in Montreal, we have succeeded in proving further to throw the light on this matter. We do not believe that we have a unique situation in Canada. On the contrary, we simply believe that we are living in a nation-wide situation, in cities of the same size or of a similar size, if you want.

Senator Lapointe: In the matter of narcotics, do you deal with many cases that have something to do with the trafficking of narcotics, since Montreal is a crossroad for trafficking?

Mr. Ledoux: Unfortunately, these problems mainly concern the Royal Canadian Mounted Police. All we do, is to go after those who possess different kinds of narcotics, mainly the less harmful types. Then, we charge them with possession. As far as trafficking is concerned, it is generally dealt with by the Royal Canadian Mounted Police which is concerned, mainly in Montreal, and in the province, with this aspect of the crime.

Senator Lapointe: But are there any crimes due to the use of drugs? Does it often happen that someone under the influence of drugs commit murders or rapes or whatever? What is the proportion? Do you know in what proportion criminals act under the influence of drugs?

Mr. Crépeau: No, unfortunately, we have no statistics to determine how many crimes are committed under the influence of drugs, nor how many persons arrested committed their crimes under the influence of drugs. But, as a police officer with 20 years of experience and 10 spent on criminal investigations, I think I can tell you that crimes are mostly committed under the influence of speed and not of any other drugs. But it is true that men who commit holdups for example, take speed before but not other drugs of the soft type.

Senator Choquette: Barbiturates.

Mr. Crépeau: Yes, barbiturates. But we do not think so. It is certain that some people, in some circles, commit crimes because they use hallucinogenic drugs. Even then, that is not the main reason for most of the crimes committed in Montreal.

[*Text*]

Senator Buckwold: Mr. Chairman, I wonder if I could go back to the relationship between the police department and the Commission; and just for clarification purposes, when you say the Commission, does this mean the Parole Board?

Mr. Ledoux: Exactly, the Parole Board.

Senator Buckwold: It is the Parole Board—I was not quite sure of the terminology. It is very interesting to see the development.

I gather that at the present time, insofar as parole applications on behalf of those who have been incarcerated for armed robbery are concerned, there is some communication between your department and the Parole Commission. Is that as far as it goes, or does this extend to other parole applications as well?

[*Translation*]

Mr. Ledoux: Certainly Montreal, and also the whole province of Quebec, has a very special and very well-known problem where holdups are concerned, as Mrs. Lapointe and your colleague were talking about a moment ago. This is why a close cooperation first started in these cases. And then, as you mentioned, this cooperation involved the whole police force in Montreal. Nowadays, the long list of all the candidates eligible for parole are distributed to each and every police investigator. Then, our remarks about all kinds of crimes are sent to the members of the Board.

[*Text*]

Senator Buckwold: Mr. Chairman, I hope you do not mind if we pursue this matter in greater depth.

The Chairman: No go ahead.

Senator Buckwold: I gather from your remarks that there is a fairly extensive relationship in so far as your department and the Parole Commission is concerned. Would you go so far as to say that every one who is being released on parole in the Montreal area from, I presume, penitentiaries in that area now has police opinion as to the advisability or otherwise of his parole application?

[*Translation*]

Mr. Ledoux: No, because all the criminals of the Province of Quebec are sent to the federal penitentiary of St. Vincent de Paul. But you are right in the case of inmates known by our department who become eligible for parole. Among the numerous police departments in Quebec, that of the Montreal Urban Community is one of the most important and the only one that closely cooperates with the Parole Board. I think the Board is now also in communication with the Quebec Provincial Police Force. I must say that our department sends remarks to the Board about all the inmates it knows.

[*Text*]

Senator Buckwold: Could I look at the mechanics of that for a moment? Does this just apply to parole applications from institutions in Quebec—let us begin there; or, for example, if someone is being released from the Prince Albert Penitentiary do they advise you, and somewhere along the line you get into the picture; Or is it confined to the Quebec area?

[*Translation*]

Mr. Crépeau: No, we receive only lists of candidates that are in Quebec institutions. And not only from institutions in the Montreal area, but in the whole province.

The Chairman: But if there is a Montrealer in Prince Albert, he could come back to Montreal?

Mr. Crépeau: Even if he wants to come back to Montreal they do not seek our opinion when he asks for parole.

[*Text*]

Senator Buckwold: I only use that as an example. At least you got that far.

Now, a man applies for parole and in due course he is entitled to a hearing. I think this is rather important: Automatically that man's application, or the knowledge of that man's application is relayed to you and, I would presume, to the Quebec Provincial Police for a report and perhaps for your recommendation, is that correct?

Mr. Ratelle: That is correct.

Senator Buckwold: How long has this been going on?

Mr. Ledoux: In Montreal, for a year.

Senator Buckwold: Could you give me your assessment of this situation? You have talked about the armed robbery end of the picture, and, although I presume this is important numerically, in the overall picture what has been, in our opinion, the general effect of this kind of liaison?

[*Translation*]

Mr. Ledoux: As mentioned before by inspector Crépeau, collaboration has become effective since a year and it has progressed since then. It has begun to increase. We have to prepare also the members of our Service to answer to these applications. The members of our staff must believe that it is not simply for appearances that we ask for their observations, that maybe now people will listen to them. This type of work takes place inside our service. In the first place, members of criminal inquiries' office deal with serious cases such as homicides and holdups. This has now reached also the level of different sections that deal with other kinds of crimes. This collaboration began directly between our service and the members of the Board and the commissioners themselves, some commissioners who more particularly deal with parole problems in the province of Quebec, for it seems that commissioners have divided the work between themselves by areas in Canada. More particularly, we have underlined that since the nomination of Mr. Gilbert, former director of our Service, and now member of this Board who already knew the functioning of our Service, that this has played an important role in bringing closer our Service and the Board itself. Therefore, this is a collaboration, a co-operation that has intensified day by day in the last year. We have not come up with astonishing results. We are entitled to give our opinion only as observers, that is, in making observations. Of course, we do not have the right to make any decision, but they consider our observations, information and opinions and we are very satisfied with this because previously this was not done. We could not take the advice of one another and I think this is where originated the opposition of several members of our Service who considered that the work of the Parole Board neutralized completely the work that we were doing, in attempting to protect the population, in prosecuting an offender in front of a court. So it seems that we were working one against the other, that is, we were making efforts to put criminals in jail and to stop them from hurting society, and it seems that the work of other organizations was to have those same criminals released, thus bringing in more insecurity into the population.

[*Text*]

Senator Buckwold: I presume you refer the file down the line to someone in the division who is familiar with the case. Do you believe that an average police officer is able to respond objectively to the question asked?

[*Translation*]

Mr. Ledoux: We have to understand that the lists we mentioned now are lists of candidates eligible to parole and that they are issued among investigators and not among the staff of our Service. Therefore, the investigators of the Police Service are the same people of the legal branch, that is, detectives that are themselves officers. Therefore, they range from Sergeant-Detective to higher up. Those are all people who have at least six years of experience in the police field. Therefore, they are investigators, detectives, members of the Quebec Police Force, who make these observations because they have investigated about the offence made; they have talked with the inmates, they have investigated about the circumstances as to where the crime was committed, and they have, of course, been in contact with the inmate whom they have arrested and prosecuted in fromt of a court. They followed the case through all stages of legal procedure and they were present in court until the sentence. They are therefore officers of experience and they have known the inmate long enough, that is, since his arrest until he was condemned. Therefore, I believe that they are individuals who are able to give an objective appraisal of the individuals they have met.

Senator Buckwold: This will be my last question.

[*Text*]

Have you any statistical record of the number of affirmative replies or consents to applications for parole as opposed to the number of rejections, in which your representatives have requested that the parole not be granted? In what percentage do you concur in the applications?

[*Translation*]

Mr. Crépeau: We do not have this information.

Mr. Ledoux: Maybe, Captain-Detective Charbonneau of the Section of Criminal Investigations who deals particularly with holdups and homicides, could give you some figures for his section.

[*Text*]

Senator Buckwold: I would be interested not just in armed robbery, which I know is very important to you, but in the overall situation.

[*Translation*]

Mr. Charbonneau: Concerning armed robberies, I do not have exact figures, but I can say that we object only in about 50 per cent of the cases.

[*Text*]

Senator Buckwold: Did I hear correctly, that you concur in approximately 50 per cent of the applications?

Detective Captain Charbonneau: That is it, sir.

Senator Buckwold: The logical question then is: Of the 50 per cent in which you do not concur, for what percentage is parole granted, notwithstanding your objection?

[*Text*]

Detective Captain Charbonneau: Last year we made 24 objections, which were all maintained.

Senator McGrand: Many persons in Canada own guns, short guns, long guns and all varieties. Some have legitimate need for possession of weapons. If all the unnecessary guns were confiscated and taken out of circulation would there be fewer crimes of violence? If there were less guns in circulation would you have fewer problems?

Detective Captain Charbonneau: Yes; if there were better control of firearms we would have less armed robberies.

The Chairman: We will give you an opportunity in that regard because this committee will conduct a study of the control of firearms when we have disposed of parole.

Senator Choquette: This might not relate to the parole system, but what would you think of a committee similar to this which would invite all chiefs of police in Canada to appear and tell us what they expect from us, the judiciary and certain authorities who are concerned with the administration of justice, in order to provide the necessary methods to cope with gangsters? We have now reached the point at which some of them are better organized than our police forces.

Senator Buckwold: They are certainly better organized than the senators.

Senator Choquette: Knowing that that might be possible at a future date, I will ask you when you discover in the big City of Montreal, for instance, that you are not as well equipped as some gangsters, to where do you address your complaints and requests?

[*Translation*]

Mr. Ledoux: More and more. Previously, the police used merely to enfored the law as it was formulated by the legislators; and at the same time there used to be criticism among them, but they would never level anything at the legislators. Increasingly for the last two years, the police force has not hesitated to set up within its service, committees of particularly qualified people in different subjects and to submit briefs like today, to submit them directly to the legislators and, as far as possible, if they have the opportunity, to listen to our complaints. We have done it in the past before different parliamentary committees in Ottawa and in Quebec city as well and we are very happy about it. It seems that the legislators appreciate such remarks, which were not made before. And so your suggestion perhaps makes us optimistic because we know the problems facing some of the great urban centres like Montreal where we have special problems must often resort to certain laws to help us solve them; this is why for some years now, we have not hesitated to go directly to the legislators for remedy.

The Chairman: In your brief you talk necessarily, and duly, of the protection of the public; you told us that, for the protection of the public, some inmates must not be granted parole. I am asking you: if a man serves his sentence and comes out after 15 or 20 years without any follow-up supervision, is the public more protected?

Mr. Crépeau: For 15 years, yes.

The Chairman: But after that?

Mr. Ledoux: Unfortunately, it seems that by regaining his rights and freedoms completely, by not being resocialised in any way after having been to the school of crime for 15 or 20 years, after having lived among a criminal world, among criminal culture, we must expect him relapse into crime shortly if he still has the strength to do so; you are talking of 15, 20 years of detention which is sufficient to break a man and to prevent him from committing other crimes since he cannot any more. But of course, if he is not normally broken by the system, he is integrated into the criminal culture and we should simply be prepared for a relapse sooner or later.

Mr. Crépeau: If we do not parole an individual, I do not think that we should ask ourselves the question. However, should we not do anything to rehabilitate him? It should not be one or the other, it should be both. The fact of not granting parole to an individual because he represents too big a risk of relapse and a great risk for society, should not prevent us from doing an adequate work of resocialization within the institution. This work of resocialization can be done even within the institution. The individual can be prepared, and there will be towards the end, that is to say during the last quarter of his sentence, according to the present legislation, automatic compulsory supervision; the latter applies to one quarter of the sentence plus three days a month which he will have earned during his detention. So, there will be a period of transition while he is on parole. It is not one or the other and we have never asked ourselves the question in that sense, that is if it was one or the other. Let us say it is both.

Senator Goldenberg: Thank you.

[*Text*]

Senator Choquette: Before anyone moves the adjournment, I want to congratulate all those detectives and chiefs who have

spoken. They have given us the impression that they want to co-operate with the parole system, and they have given me the impression that they are bright and brilliant men.

[*Texte*]

Le président: Comme il représente ma ville natale, là où j'habite, je vais ajouter quelque chose. Le sénateur Laird a parlé du crime organisé à Montréal. Je veux l'assurer qu'il y a du crime organisé à Toronto. Le sénateur Lapointe a décrit Montréal comme un carrefour de drogues. Je peux affirmer que Vancouver lui fait de la concurrence.

Me Ledoux: Si vous me permettez, également, de remercier chacun de vous, sénateurs, car c'est une opportunité très importante de savoir que nous sommes écoutés. Nous pouvons maintenant nous adresser directement à ceux qui peuvent formuler de meilleures lois afin de nous assurer une meilleure protection. Donc, nous vous remercions de l'opportunité que vous nous avez donnée de nous entendre.

Le président: Merci, messieurs.

[*Text*]

May I have a motion to print the brief presented?

Senator Choquette: I so move.

Hon. Senators: Agreed.

(*For text of brief, see Appendix "B"*)

The Chairman: The committee is now adjourned until 10 a.m. tomorrow.

The committee adjourned.

APPENDIX "A"

Parole Group,
John Howard Society of Ontario – Toronto Office,
168 Isabella Street,
Toronto 285, Ontario.

Standing Senate Committee on Legal
and Constitutional Affairs,
Ottawa, Ontario.

Honourable Sirs:

We, the undersigned, are a group of men on parole under the supervision of the John Howard Society of Ontario, Toronto Office. At the present time we are all on parole, having been sentenced by our judicial system to sentences ranging from two years to life. We welcome the invitation to submit a brief to this Inquiry, as we feel that we have in many ways a unique contribution to make as individuals who are intimately involved with the parole system.

General Principles and Definitions:

Parole may be defined as a contract between a prison inmate and the National Parole Board, which allows that inmate to serve a portion of his sentence in the community. Parole is the conditional release of a prison inmate. The offender, by re-entering society, is given an opportunity to re-establish himself as a worthwhile responsible member of that society.

The fundamental principles of parole should be based on the traditional values of faith, hope and charity. By re-admitting an offender to the challenges and opportunities of a normal life in the community, society demonstrates:

Faith – in that individual human being to discover his role as credible, valuable, and reasonably happy member of society.

Hope – that that individual will strive to function in the best interest of himself and his community, and also that the community will welcome and assist him whenever and wherever necessary.

Charity – by not demanding continuous punishment for previous offences and shortcomings, but rather by providing a chance for a fresh start.

The advantages of release by parole include:

1. To provide an opportunity for the convicted to become a responsible, worthwhile and self-respecting member of society.

2. To reduce the detrimental effects of a prison term on the offender's personality. For example, a parole would:

   A. Reduce the duration of his socialization into the anti-social prison sub-culture.

   B. Reduce the period of frustration, remorse and growing dependency on a highly structured prison environment.

   C. Conserve and nurture any sense of self-worth and self-confidence which is all too often eroded and destroyed during a prison sentence.

3. The prevention of future anti-social activity via the rehabilitation of the potential repeat offenders.

4. A reduction in the prohibitive financial costs of maintaining offenders in prison.

5. A reduction in the secondary social and financial costs resulting from imprisonment; for example:

   A. Financial support for an offender's family.

   B. Family stress as a result of a prolonged absence of one of its members, usually the head of the family, the bread-winner.

6. reduction of extremely long sentences which cannot help but do more harm than good if the sentence is served only in prison.

7. Many men on parole respond to the feeling of trust that is conveyed to them by parole board members in granting parole.

It is obvious that we as a group believe firmly in the advantages of release from prison via parole. It seems to us that there are three fundamental principles involved in granting parole: namely; an agreement by the parolee to adhere to certain conditions under the supervision of a responsible authority; secondly, that the inmate be released to the community from the institution while still under sentence; and thirdly, that this release be a contract between the two parties involved: namely the parolee and the National Parole Board.

Sentencing is, in our estimation, an unavoidably punitive measure relating to the offence committed. Parole, however, relates to the human potential of the offender as a socially acceptable member of the community. Sentencing stems from past behaviour, parole relates positively and optimistically to future attitudes and behaviour. It is our opinion that the relationship between sentencing and parole should be kept to an absolute minimum. Parole should not be seen as a reduction in the sentence imposed by the Court, but rather as an alternative to incarceration.

We feel the parole system should have no direct links with the police, probation, or correctional institutions. Any relationship between the parole system, and after-care services such as the John Howard Society, ex-inmate groups, Churches, volunteer groups and so on, should be at the discretion of the parolee under the National Parole Service. It is important that any such relationship have the mutual consent of both the parolee and of the Parole Service. Any compulsion to establish such a relationship will inevitably result in an oppressive, unproductive and unworkable situation which will have no value for either the parolee or the post-correctional service.

The main function of the police, and correctional institutions, is the protection of society from criminal activity. As such they are extremely limited in their ability to assist in the rehabilitation of the offender. By the nature of their tasks police and institutions must protect society from possible harm from active and potential criminals, and therefore rehabilitation must play a secondary role. This may even come in direct conflict with their primary objective, which is the protection of the community from crime. On the other hand, parole must be primarily concerned with rehabilitation of the offender and therefore it must be used on an optimistic and positive

approach towards the individual offender which conveys the belief that the parolee can and will become a worthwhile member of the community. For this reason police and prison authorities should not be actively involved in the parole process. They should, however, provide channels of communication between a prisoner and the National Parole Service.

The Probation Service provides the Court with an alternative to a prison sentence. For this reason it should not be involved with the National Parole Service.

After-care services and volunteer groups can provide an invaluable resource to any man on parole. The particular services available must be ones for which the parolee feels a need. For example, job placement, family counselling, social contacts, or non-specific areas such as reassurance or reinforcement of positive goals. Social agencies should be able to make all community resources available to the parolee if he requires them. Once again, this relationship must be free from compulsion on either side in order to be effective. Should it ever occur that a parolee is denied service from a private after-care agency, the Parole Service must be able to provide a similar service on request.

Division of Responsibility in Parole Matters:

At the present time the decision making process for all men in Federal institutions is the sole prerogative of the National Parole Board. We believe that the responsibilities for making any decision pertaining to a man's parole should be exclusively that of the National Parole Board.

We are aware that in the two Provinces where the Courts may pass a sentence composed of a definite plus an indefinite portion there exists Provincial Parole Boards to make decisions pertaining to the indefinite portion of such sentences. We feel that this process duplicates and further complicates the entire parole process, and would urge that consideration be given to making the responsibility for all parole that of the Federal Boards. If such a procedure were adopted the entire system would be much easier to comprehend and hopefully would be more effective, in that it would allow for better control of all aspects of the program.

We are aware that some consideration is currently being given to developing Regional Parole Boards. We feel that this is a proposal which is worth further exploration and implementation, as it would allow Board members to become more intimately acquainted with the institutions in the region and to become more familiar with the man's eventual destination. The Board member would then be in a better position to make a sound and realistic judgement pertaining to the reality of the man's post-release plans.

It is our feeling that the Parole Board should have full responsibility and authority for all decisions made pertaining to an inmate and/or parolee. We see little justification in carrying the decision in murder cases to the Governor in Council. Under the present Parole Act the National Parole Board has authority pertaining to corporal punishment and prohibition from driving. In respect to the former, we would urge this committee to do what it can to advocate the abolishion of corporal punishment, as this in our judgement constitutes a cruel and unusual punishment. We feel that rather than simply giving the Board the right to alter a sentence which includes corporal punishment, that corporal punishment should be eliminated entirely and that the Parole Board should reflect this in its decision making process in such situations.

In regard to the right of the National Parole Board to alter a decision to prohibit an individual from driving, we are somewhat perplexed as to why the National Parole Board is required to make a decision in such situations. It is our understanding that the Province handles the majority of such situations under the Highway Traffic Act, and should a man lose his licence for accumulating too many demerit points he must face the consequences of his behaviour. We do feel though that if this man requires a driving permit in order to secure gainful employment that some alternate arrangements be made for that individual to be provided with a licence which would enable him to maintain his employment. It is our feeling that this is more of a social problem, although in some situations a man may indeed become involved in the criminal correctional process.

Enquiries under the Criminal Records Act should continue to be the responsibility of the National Parole Service and National Parole Board. It would seem to make good sense that those persons who are expected to have some body of knowledge on which to base their decisions about human behaviour should be the ultimate judge in terms of the decision as to whether or not a man has changed his way of living and become a member of Square John society.

Under the present Parole Act the Chairman of the National Parole Board has the responsibility not only for the daily operations of the Parole Board, but also for the supervision and direction of the National Parole Service. If the Parole Board is divided into Regional Boards it is our feeling that the Chairman will have to exercise a good deal more control in order to provide the same continuity and consistency of decision making that now exists. We thus feel it would be too onerous a task for the Chairman to carry the responsibilities of the National Parole Service. It should be the task of the Parole Service to provide supervisory service to the individuals on parole and to make the necessary representations to the members of the Board when they request such information.

We feel that the National Parole Board and the Parole Service should do their utmost to bring the decision making process as close to the inmate's concern when they are making these decisions. We feel that any steps that could be taken to bring the two parties closer together would be most advantageous.

Composition of the National Parole Board:

We feel that the National Parole Board should be representative of the major social groupings in the community, particularly those groups that tend to produce offenders. For example, we would suggest that a representative on the Board come from a working class background, where he would have a direct knowledge of the meaning of a broken and/or deprived home. We feel that in some areas it would be important to have specific religious and/or racial groups represented on the Board. These persons should have some training in sociology and criminology, with preferably some experience in working in a positive relationship with people. It is our contention then that while representation from the legal and judicial professions does in fact reflect one or two particular groups in society, they should not be predominant in terms of numbers.

The membership on the Parole Board in terms of religious and/or racial groupings could be reflected by creating Regional Parole Boards. As indicated earlier, we see this as a positive step, and hope that it will soon be implemented.

National Parole Service:

The role of the National Parole Service should be to provide the necessary support services to the National Parole Board. This would include case presentation, direct supervision to men on parole, and post-release reporting to indicate progress and/or areas of difficulty. We feel that the Board's job and that of the local Representative should be one of constructive co-operation with each parolee. Every assistance should be given in such areas as job placement, social re-identification with the appropriate community, and in general to help a parolee to plan and execute realistic ideas and goals.

The actual role in terms of task of the National Parole Service prior to the man's release would be to assess and to evaluate all parole applications as quickly and as efficiently as possible. We feel quite strongly that the applicant should be kept posted as to the information and research deemed necessary in arriving at a decision in his particular case, and that he should be given the reasons for any delay encountered in the processing of his parole application. We, as a group, feel that there is no need for any additional legislation to protect the inmate's right for parole. There is though a definite need to revamp the institutional handling of the parole application.

We feel that the applicant would not be able to make much use of the benefit to legal counsel. We feel quite strongly that the application process should be representative of the inmate, and he should be able to convey in his own words his reasons for desiring a parole at that time.

The National Parole Service should be responsible for giving the individual the reasons for denial, and/or deferral when an inmate's request for parole has not been granted. Suggestions should also be offered as to ways in which an inmate can improve his chances of being accepted as an acceptable parole risk on a future application.

The Parole Service should be actively developing job contacts and opportunities and/or training programs to assist the parolee upon his release.

The Parole Service should publicize the generally successful operation of the parole system, stressing examples of parolees who have become integrated into the community and are now living as responsible citizens. We feel that this is particularly important in view of the tremendous amount of negative publicity which the National Parole system has been receiving in recent months.

The Parole Service should be prepared to provide a counselling and a social service facility to parolees requiring this type of assistance.

We feel quite strongly that surveillance of parolees should not be a function of the National Parole Service. Surveillance as such should be limited to the Police Department and should be held to the necessary minimum to protect society. The only purpose served by surveillance is the protection and the reassurance of the public regarding the general behaviour of parolees. In this regard many of us feel that the requirement requiring us to report to the Police Station on a monthly basis serves no useful purpose in helping us to fulfil our obligations.

It is our feeling that the National Parole Service should avoid any involvement with institutional treatment and/or training programs. The Parole Board must try to maintain a separate identity from the prison system. Imprisonment, even under the most humane conditions is punitive. Parole, on the other hand, must strive to demonstrate society's faith in the offender to develop an acceptable behaviour pattern on his own initiative. In-prison training programs have proved to be an almost complete failure, as evidenced by the high recidivism rate amongst released inmates. Parole is largely successful as a rehabilitative measure in that the parolee is reasonably free to pursue positive goals of his own choosing, and must function as a normal citizen free from the compulsion of prison routines. The Parole Service must give all possible support to this objective.

It is our feeling then that if the National Parole Service staff and the Federal Penitentiary staff integrate their operations that the service presently provided by the Parole Service will suffer. The institutional staff, burdened with the problems of custody as their first priority, must give serious consideration to re-thinking their priorities and perhaps place the rehabilitation of the inmate first and foremost, rather than simple detention.

Parole Applications and Parole Eligibility:

It is the contention of this group that every inmate should be immediately eligible for parole, rather than having to adhere to the formula of completing one third of his sentence. We feel that in some situations the individual is psychologically ready for parole a few hours after his sentence has been passed, or after he has been admitted to the penitentiary. We think that a man's parole eligibility date should be geared to the needs of that particular individual, and not to the statutory regualtions. In this way we would hope that the Parole Board would be able to reflect individual needs, rather than simple acceptance of what we regard as a rigid rule.

By the same token every inmate should have the right of chosing whether or not he wishes to apply for parole, or remain in prison for the total duration of his sentence. This proposal would do away with the statutory and earned remission portion of the sentence, and would in our estimation place the initial onus on to the man in terms of bearing some responsibility for what happens to him in the institution.

We feel that the Parole Board's power to make exceptions to the parole regulations should be expanded. As we have already indicated, we do not see the need to report to the police on a monthly basis for the great majority of men who find themselves having to do this monthly task on their release. By the same token rather than attaching a special condition to a man's parole, i.e. a clause to abstain from the use of intoxicants, it would seem advisable to us first to determine whether alcohol is indeed the cause of a man's being in custody, or whether this is simply a symptom of a much larger problem that the man is fleeing from by his excessive use of alcohol. A treatment program within the institution should be geared to helping the individual accept the

reality of his problems and working with him on that basis, rather than responding only to the symptomology.

We, as a group, have difficulty comprehending about some specific conditions such as that requiring a parolee to ask permission prior to getting married. We feel that the selection of one's mate is an extremely personal choice, and should not be open to personal scrutiny. The supervisors must assume that the parolee remains a human being who in spite of his previous difficulties can solve some problems and undertake some responsibility without first consulting his supervisor. If the parole is to be regarded as a contract between an individual and the Parole Board it should reflect the degree of confidence and independence that particular individual has achieved.

Parole Hearings and the Decision Making Process:

The concensus from most members of this group who have had the opportunity to appear before a Parole Panel has been generally positive. Some concern by some group members was expressed in that they felt the Parole Panel had already made its decision prior to meeting with them, and if this was the case how was that individual going to be able to convince a Panel member that he has indeed changed his thinking and perhaps value system to the point where he should be given a chance to be released into the community. Many members argued though that Board members, generally speaking, did take the necessary time to prepare themselves and to examine individual cases at great length, and for this the Board should be applauded.

We, as a group, are concerned that many Parole Board members are becoming typed as to their own particular biases, and some members of the group feel that the applicant should have the right to appear before a Panel which did not include an individual whose biases were known. With the present situation the applicant simply has to do the job as best he can with the Panel that happens to be scheduled for that particular institution prior to his parole eligibility review date. We recognized that there is a right to appeal to a full Board, but if the applicant follows this course, he does not have the opportunity to make any representation on his own behalf, but rather he is represented to the Board by those Board members with whom he has had an unsatisfactory experience. Would it not be better to provide that man with the opportunity to simply defer his appearance before the Parole Panel for one month.

It is our understanding that the inmate is to be given the reason or reasons for a decision of a parole deferred or a parole denied. In practice the rationale for the decision is defined in very broad, vague terms, that the inmate does not understand in his frame of mind following a rejection. It is to be hoped that in reaching this decision that the Board members would be aware of the realities of the institution in which the man is incarcerated. The Parole Board could clearly define what it is they were looking for, and this would give the inmate something to work towards, and make the time he has to spend in the institution more meaningful to him.

We feel also that the man should be re-interviewed by either a representative of the National Parole Service, or John Howard Society, following the parole decision, particularly if the decision resulted in a deferral or denial of parole. This interview could be used to further interpret, clarify and elicit additional information. We understand that the John Howard Society of Ontario does this simply as a matter of what they consider to be good practice.

In relation to suspension, revocation and forfeiture provisions, it is the unanimous feeling of this group that if a man is to be considered as serving a sentence in the community, that should suspension, revocation, and/or forfeiture become necessary or applicable at some point in a man's parole, that the time spent living in the community in a law abiding fashion should be just that, time spent, and that the parolee should not have to risk his entire sentence. In other words if the man is given a five year sentence, his sentence should terminate five years from the date of sentence. The key question facing the Parole Board would be whether that individual will serve his sentence in the institution, or in the community.

Day Parole or Temporary Absence under the Penitentiary Act:

Section 26 of the Penitentiary Act states that the Director of an institution may grant a temporary absence "for humanitarian reasons in order to assist in the rehabilitation of the inmate".

It is our understanding that in recent months the National Parole Service began to require a community assessment on each individual who applies for a temporary absence prior to his being considered for such an absence. We have heard that some individuals are now virtually free under temporary absence programs, that is the inmate is given a seemingly never ending series of three day and/or five day passes for a specific purpose. While we do not wish to spoil the benefits which some inmates now enjoy, we feel that such a practice is wrong for two major reasons. The first of these is that in reality the individual is neither inmate nor a member of society. He must struggle to live in this inbetween world, which must be most difficult for him, because he is neither fish nor fowl. The community on the one hand says to him that he has committed an act which requires him to be incarcerated, and yet the institution makes the decision that he is sufficiently able to control himself to be allowed to be free in the community. The second point follows from that statement, in that if the institutional authorities are saying that the man should be permitted to be at large in the community, why could this individual not be given a full parole.

We understand that the day parole process has been extended to include periods of up to six days, where the man may remain in the community as a free citizen. In at least two situations of which we are aware the man is required to be back at the penitentiary by 4 p.m. on Saturday, only to be released at 4 p.m. on Sunday. Here again we have to ask ourselves why could this man not be given a full parole.

We recognize that since the majority of the Federal institutions are centered in the immediate area of the city of Kingston, it is virtually impossible to grant a man day parole to a city such as Toronto. It would seem necessary then to encourage and support the development of more pre-release centres such as Montgomery Centre in order to facilitate the development of such worthwhile programs while a man is in custody. It is our opinion that the vehicles of temporary absence and day parole will allow the institutional authorities to better understand each individual, as well

as helping him to deal with the reality of the outside world and not permit him to drift into the fog that besets so many men during lengthy periods of incarceration.

Mandatory Supervision:

As a group we are unanimously opposed to the concept of mandatory supervision.

In the previous section it has already been stated that we as a group feel that the individual should be immediately eligible for release on parole if he so chose to apply. By the same token there are a number of individuals who do not wish parole and who would prefer to do their total sentence within the institution and not be subject to any controls on their release. For these individuals we consider it an infringement on their personal right to compel them to accept a period of supervision in the community. We would suggest that there is no contract between the parolee and the parole authority, and to all intents and purposes this period of supervision is simply given to the man and he has to take it whether or not he accepts it. We understand that an individual under mandatory supervision is subject to the same conditions as an individual on full parole. If this is the case we anticipate that many men will be applying for a full parole in order that they can get as much time as they possibly can in the community.

Theoretically under mandatory supervision individuals can spend much longer than the Court anticipated in giving him the original sentence. For this reason we would like to state we firmly believe that if a man is indeed serving a sentence of five years, then that is as long as the sentence should be. After the expiration of that time neither the Parole nor Penitentiary Service should have any authority over that particular individual.

Special Categories of Offenders:

We as a group are of the opinion that it is impossible to develop a concept of a particular category of offenders. From our experience each individual who has committed the offence for which he is incarcerated for variety of reasons, some of which he is aware and others which he has managed to suppress. Regardless of the offence that a man commits we feel that that particular individual committed that particular offence to meet his own particular need, and for this reason we are opposed to classification of offenders in any way.

Staffing of Parole Service and Use of Private After-Care Agencies:

Parole Service, After-Care Services, and Volunteer Groups can provide invaluable assistance to a man on parole. The particular services available must be ones for which the parolee feels a need, i.e. job placement, family counselling, social contacts, or non-specifics such as reassurance or re-inforcement of positive behaviour. Social Agencies should be able to make all the community resources available to the parolee as he requires them. Once again this relationship must be free from compulsion on either side, in order that it be effective. Should it ever occur that a parolee is denied service from a private after-care agency the Parole Service should be able to provide a similar service on request.

We, as men on parole under the supervision of a private after-care agency, feel that the loosely knit association that this agency has with the Parole Service is quite effective in the day to day operations. The staff of the Toronto Office are able to work with their counterparts in the Parole Service Office in Toronto with a minimum of difficulty. The National Parole Service appears to respect the decisions which are reached with our supervisor on an individual basis, and appear to be quite supportive of the total process.

Probation Following Imprisonment:

Section 638B of the Criminal Code provides for probation following imprisonment. It is our understanding that a sentence of probation at the time a man appears in Court is an indicative of the Court's opinion that the man has sufficient strengths to enable him to adjust in the community without a period of incarceration. It is our feeling then that a sentence of incarceration, followed by probation, is indeed a contradiction in terms.

Now that mandatory supervision is compulsory for men sentenced to Federal institutions, it seems as though the judge were endeavouring to provide for some period of supervision for the offender, and that this actor is now covered with the implementation of mandatory supervision, and thus this section of the Criminal Code should be deleted.

Community Response to Parole:

We as a group are particularly concerned about the general communities' response to the parole process. We have indicated earlier in this submission our feeling that the National Parole system is doing little to publicize the fact that many men come out on parole and never again see the inside of one of our institutions. By the same token, for other men on parole even though that individual may return to the institution can prove to be a beneficial experience, in that he may develop a relationship with a helping individual which is continued following release from a subsequent sentence(s). We as a group have indicated our willingness to the John Howard Society to meet with the press, and to convey to them our feeling that parole is indeed a useful tool, and that in the long run the man's successful reintegration into the community is the yard-stick by which our correctional system is measured.

Due to the recent events of such individuals as Geoffrey, Warburton and Sweringen, many restrictions appear to have been tightened by the Department of the Solicitor General. We are of the opinion that the application of further conditions is a retrogressive step, and we are fearful that once again our penitentiaries will return to the concept of punishment, rather than of rehabilitation. Success or failure cannot be measured by the activities of two or three individuals, but it can in the long run by the number of individuals who never see the inside of an institution again, or who have indicated some substantial personal development during their period on parole. We would submit that each individual's growth pattern be placed on a continuum and that their adjustment be measured in these terms, rather than simply as success or failure in terms of fulfilling the parole period.

We believe that volunteers are crucial to the correctional system, and that volunteers represent the broad community, and it is their interest and support that we require, in order to help us to surmount the problems of discrimination in employment, courage and a feeling of self-worth as adequate individuals to help us feel accepted as a contributing member of society. We as a group feel that we have come a long way in our own personal adjustment, and we appreciate the opportunity provided to present our views on this topic. We do hope that they will merit the earnest attention of this Commission.

Respectfully Submitted,

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APPENDIX "B"

CANADA'S PAROLE SYSTEM

A PRESENTATION TO THE SUB-COMMITTEE OF THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS APRIL 10, 1973

by

Mr. René Daigneault,
Director,
Montreal Urban Community
Police Department.

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FOREWORD

The Montreal Urban Community Police Department unquestionably possesses considerable experience on the criminal behaviour of a large number of individuals; this knowledge being moreover an essential condition to the realization of its principal objective: the protection of the public.

Because of this objective, the Montreal Urban Community Police Department directly endorses the dual goal of the National Parole Board whose aim is the protection of the public and the rehabilitation of the delinquent(1).

However, the Montreal Urban Community's role with regard to parole, is that it does not wish to be merely that of an onlooker, rather it desires to contribute in an active and useful manner, the implementation of a sound service that will lend assistance to the common objective: the protection of society.

The Ouimet report on the "Penal and Correctional Reform" and Prévost report on "The administration of justice in Quebec" have stressed the lack cooperation and coordination of the various agencies of the judicial system.

It would be regrettable if such fundamental principles were to remain futile theoretical concepts left to die before hatching.

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(1) Brochure published by the National Parole Board entitled "Outline of the Canadian Parole system designed for Judges, Magistrates and Police Forces - at its foreword -

Therefore, it is in the spirit of a better advancement towards the common objective and improved cooperation with the National Parole Board that the Montreal Urban Community Police Department submits this Brief to the Legal and Constitutional Affairs Committee of the Canadian Senate.

Our Department has already made its views known to the Legal and Constitutional Affairs Committee of the Canadian Senate when it endorsed the Brief submitted by the Canadian Police Chiefs' Association last March.

The purpose of this Brief is to outline the aspects which relate particularily to the Montreal Urban Community Territory which our Department covers and to inform your committee of the recent closer cooperation which is in the process of being established between our Department and the National Parole Board.

CHAPTER I

ANALYSIS AND COMPARATIVE STUDY

1. PRINCIPLES AND OBJECTIVES OF CONDITIONAL RELEASE

The principles of conditional release have been defined by the United Nations Department of Economic and Social Affairs who state(2):

> "Defined in general terms, the conditional release (parole) is a process by which an inmate, who, following a selection procedure, has been designated to benefit from temporary liberty prior to the expiration of his sentence, subject to certain conditions. After he has been granted conditional release the parolee remains under the supervision of the state or an authority designated by the state who may reincarcerate him in the event of bad conduct. Conditional release (parole) is a penal guideline designed to assist the inmate in the transition from the strict surveillance which characterizes the penitentiary system to the freedom which is encountered in social life. It is not a gesture of clemency, nor a gesture of pardon (forgiveness).

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(2) Conditional release (parole) and Post Penitentiary assistance - United Nations - Department of Economic and Social Affairs - ST/SOA/SD/4 - New York - 1954 - pp. 1 to 9.

> Conditional release is sometimes subordinated to one obligation, that is, that the delinquent abstain from committing another criminal act but he may be also subjected to further conditions which have been expressly defined. These stipulations have a double purpose: to guarantee public safety and to contribute to the parolee's rehabilitation."

and the same author further explains the principles upon which the parole system is based.

Closer to home, we find in the introductory passages of the National Parole Board Publication(3):

> The brochure is intended to contribute towards a better comprehension of the Commission's work and to encourage its cooperation with institutions involved in the domain of moral recovery, in a manner which would permit us to achieve our common objective: the protection of the public and the rehabilitation of the delinquent.

We are in agreement with the principle and the stated objectives. What results have thus far been achieved?

2. RESULTS OF THE PAROLE SYSTEM

The Commission has declared that since its inception (1959) it has contributed to the rehabilitation

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(3) Ref. Page 1

of 87% of 38,444 parolees. It explains this percentage as follows:(4)

Out of a total of 38,444 parolees, 5,250 were reincarcerated for the following reasons:

- 3,180 were found guilty of committing criminal acts punishable by two years or more while benefitting from conditional release; and
- 2,070 for committing minor criminal acts during conditional release or for not honoring the conditions which had been imposed.

As the Commission only takes into consideration persons who have been reincarcerated during the period of their conditional release, one must conclude that in the Commission's concept, a subject is rehabilitated if he has not been found guilty, during his period of parole, of having committed a criminal act or if he has not infringed upon any of the conditions imposed at the time of his release.

We cannot accept the figures submitted by the Commission for they cannot be factual as they do not take the two following elements into account:

a. since the principal object of parole is the protection of society by the rehabilitation of the parolee, one must consider not only the crimes

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(4) M.T.G. Street, Q.C. - in the deliberations before the standing Committee on Legal and Constitutional Affairs concerning the study of the Canadian Parole system - Gazette no. 12 - December 16 and 17, 1971 - p. 12:7 -

committed and the infringement of conditions during the period of parole, but one must equally consider the crimes committed after the expiration of the conditional release term.

To consider the system from any other aspect would be equivalent to the deletion of the sentence, thereby promoting the pursuit of a criminal caree.

b. parolees have, beyond any doubt, been responsible for the commission of a certain percentage of crimes which normally cannot be attributed to them, as they remain unsolved.

In order to fully appreciate the statistical yield of conditional releases, we have made a survey of information obtained from our Identification Branch files for the Montreal sector, bearing in mind the same elements which have previously been set forth. The following pages will show that our panel has maintained the same standards as those of the Commission in order to achieve a comparable study, irregardless of the variance of results. To continue, we will outline the weaknesses and problems encountered in the application of the system, and make suggestions that would in our opinion, improve its effectiveness. Corrective measures are presently being developed in our region.

3. SELECTION AND DESCRIPTION OF OUR COMPARISON PATTERNS

The criteria which have guided our panel in its choice of standards are the following:

a. We chose the year 1971 as being the most contemporary, permitting a minimum risk of error.

b. We have made a study of the criminal history of all individuals who were charged(5) in 1971, by our Department, of at least one criminal offence, in order to choose subjects who benefitted from at least one "parole" under the existing system.

c. In order that our analysis would consider all cases where conditions of forfeiture would apply, we have only selected individuals who have committed in 1971, crimes punishable by two years or more, the following offences (which are enumerated with the Federal statistics code number) and where the said individuals must comply with the Law governing the identification of criminals.

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(5) 584 individuals selected -
- 161 charged during period of parole
- 423 charged after expiration of parole

01 - murder, first degree
02 - unpremeditated murder
03 - attempted murder
04 - manslaughter
05 - rape
06 - other sexual violations
07 - wounding with intent
09 - armed robbery
10 - breaking and entering
11 - auto theft
12 - theft over $50.00
13 - theft under $50.00
14 - receiving
15 - fraud

With due regard to this criteria, a basis of comparison with the statistics of the Commission was established to the effect that 3,180 parolees committed criminal acts, during their period of release, punishable by two years or more.

This elemination carried the number of samples to 425, that is, 134 charged during their parole period and 291 after their parole had expired.

d. In order to study the condition of the statistics, that is: "to be found guilty of a criminal act punishable by two years or more", we subtracted the number of accused who had been acquitted, released, or against whom the complaints had been withdrawn. This

second elimination brought the number of samples to 368, of which 114 arrested during parole (37 cases which are still pending) and 254 arrested subsequent to the expiration of parole (95 cases still pending).

If we apply the principle of elimination heretofore utilized we finally arrive to a total of 346 individuals out of whom 107 were sentenced for crimes committed during their parole and 239 others were sentenced for crimes committed after expiration of parole.

The following table indicates the various processes of elimination in order to arrive at the group concerned in our analysis.

- 77 sentenced, 18 acquitted, 2 withdrawn, thus out of all cases heard, 82% of the individuals were sentenced.
- 159 sentenced, 32 acquitted, 5 withdrawn, thus out of all cases heard, 84% of the individuals were sentenced.
- Out of the 37 cases still pending, 82% of the individuals will hypothetically be sentenced namely, 30.
- Out of the 95 cases still pending, 84% of the individuals will hypothetically be sentenced, namely, 80.

4. COMPARISON OF OUR RESULTS WITH THOSE OF THE COMMISSION IN RELATION WITH SOLVED CRIMES

a. We have just demonstrated that our analysis (1971) is comprised of a study of 346 individuals who committed crimes either during or after their parole period. Out of these 346 individuals, 107 were sentenced for crimes committed during parole.

b. Since the Commission's figures show us only the number of individuals found guilty for crimes committed during their parole, let us apply our ratio, 107/346 X 3180/x which will give us a total of 10,283 individuals who would have committed crimes during and after their parole. This would be a realistic presumption if identical data emanated from all Canadian Police Forces during the 153 month span of the National parole system.

c. If we were to add to this number (10,283) the 2,070 who infringed the conditions or committed minor offences during their release, we figure 12,353 parolees who were not rehabilitated. Out of the 38,444 parolees during the 153 month period, there would then be 26,091 parolees rehabilitated or a percentage of 67,9% taking into account solved crimes only. Table II indicates the method utilized to calculate these results.

5. ADJUSTMENT OF THE COMMISSION'S FIGURES BEGINNING WITH OUR STUDY, TAKING INTO ACCOUNT THE NUMBER OF UNSOLVED CRIMES -

Now considering that the protection of society is affected, as well by an unsolved crime than by a resolved crime, we must also consider the number of unsolved crimes committed by parolees during or after their release.

During 1971, our Department handled 48,293 crimes in the selected categories, solved 7,325, so that 40,968 remained unsolved.

We can now formulate an hypothesis for the Montreal region based on the aforegoing figures: If 346 parolees are partially responsible for 7,325 solved crimes in Montreal during 1971, by applying the same radio, we obtain 1935 parolees partially responsible for 40,968 unsolved crimes.

$$\frac{346}{7325} \times \frac{(X)}{40968} : (X) = 1935 \text{ parolees.}$$

If we apply the same reasoning from the figures on a national level, the following hypothesis would apply : -

If 10,283 parolees have committed solved crimes, 57,501 parolees have committed unsolved crimes during 153 month span of the national parole system.

$$\frac{346}{1935} \times \frac{10,283}{Y} : (Y) = 57,501$$

Table number III outlines our reasoning.

If we add to these 57,501 parolees assumed to have committed unsolved crimes, the 10,282 who have committed solved crimes and also the 2,070 who have committed minor criminal offences or infringed conditions of their releave, we come to a total of 69,853 parolees who are not (statistically) rehabilitated when in fact only 38,444 individuals have benefitted with a conditional release during the 153 month span of the National Parole System.

These figures are evidently unlikely, but it is possible to explain them by the following reasoning :

- because we assumed from the start that the Montreal standards were applicable on a national basis.
- because we assumed that all parolees have committed at least one and not more than one crime.

The Montreal standards must be normalized before being applied on a national basis, in order to be more rational, and we must take into account that some parolees do not relapse

into crime, whereas other relapse more than once. These calculations were not made, but we would probably find an answer to this obviously unsound result.

However, this strange outcome brings out all the more evidently the figure of 67.9% as the success of the parole system.

Indeed to accept such a percentage, one must admit that none of the 26,092 successful parolees have relapsed into crime during or after their parole, which is improbable.

To evaluate this impossibility, let us refer to our Montreal analysis in order to consider the number of crimes committed by the 368 parolees at the time of our study (Table number IV). And yet we must remember that these are reported crimes emphasizing the importance of the criminal career of individuals released conditionally before benefitting from their first parole (31.77% have committed from 6 to 10 known crimes).

Table number V outlines the ages of parolees having committed crimes punishable by two years or more, in 1971. These figures show that parolees under 36 years of age relapse in the largest proportion, 81.5% or that the rest, 18.5% have acquired an experience which permits them to more easily evade the law.

Nevertheless, these tables (Nos. IV and V) enable us to assert that a certain amount of parolees commit unsolved crimes. We can consequently conclude that the success of the parole system is not in the order of 67.9% but between 0% and 67.9%, depending on the rate of relapse of each parolee.

6. INTERPRETATION OF THE RESULTS

a) The evaluation of the results calculated on the basis of solved crimes reveals that if we take into consideration the re-socialization of the individual during and after his period of parole, the success ratio of 87% brought forth by the Commission would appear to be exagerated. As a matter of fact, our first figures show a first result of 67.9% or a reduction of more than 20%.

b) As soon as we extrapolate towards unsolved crimes, the figure drops to well below this mark of 67.9% because we project that parolees are proportionally responsible for as many unsolved crimes that solved ones.

We therefore maintain that the results of our calculations do not prove a good application of the parole system.

CHAPTER II

OUTLINE OF PROCEDURE WEAKNESSES AND RECOMMENDATIONS

Obtaining such results in our calculations certainly brought many questions to our minds, especially when it is admitted that we have observed during the past few years, a sharp increase in relapses and in violations of parole conditions. (6)

Doctor Justin Ciale (7) states that the main reason is the high rate of unemployment in Canada, more important yet than a bad selection of parolees or the lack of surveillance imposed upon them.

We are not inclined to endorse such an opinion for the following reasons : -

1) it is just as difficult for the parolee to obtain employment when employment is at an all time high as it would be when it is at a low ebb.

(6) Deliberations of the Senatorial Committee of Legal and Constitutional affairs, on the Parole system. Volume No. 7 - April 27, 1972.

(7) Reference as No. 6.

2) A certain number of parolees have difficulty in being rehabilitated after a 10 to 15 year criminal career, others because of psychological difficulties.

3) the increase may be the consequences of greater efficiency on the part of the various Police Departments in solving crimes committed by parolees.

4) or again, the increase may be due to the greater ease with which the delinquents may obtain their freedom under the existing system.

To the best of our knowledge, it would be impossible to pinpoint the major reason for this increase.

However, we will outline some suggestions and modifications with a view of improving the present parole system.

1. SELECTION OF PAROLE APPLICANTS

When selecting the parole applicant, we believe that the utmost care should be exercised in obtaining criminal background, social behavior and psychological reports, etc... in order that only those who show an aptitude to return to a normal place in society should be granted parole.

The various public and private organizations who know the applicant should also be con-

sulted and submit evaluations. More particularily, the Commission should avail themselves of the information contained in the various Police Department's files, which would give a more complete portrait of the applicant's criminal and social background. With this information, the Commission could then base its decision whether or not to grant parole, using the following criteria : -

PERSONALITY OF THE SUBJECT

1) Age
2) Family situation
3) Attitude towards society
4) Attitude towards authority at the time of the crime
5) Attitude towards authority at the moment of arrest
6) Attitude towards authority during the trial
7) Attitude towards authority during imprisonment
8) Effect of the crime on the victim(s)
9) Prior failure to meet conditions (promise to appear in Court, postponement of sentence and parole)
10) Use of drugs or alcoholic beverages

SOCIAL PROFILE

1) Reputation in his social milieu
2) Possibility of social aid after parole

3) Prisoner's plans and their worth
4) Possibility of steady employment
5) Possibility of surveillance

CRIMINAL PROFILE

1) Number and gravity of crimes committed
2) Progression of his aggresiveness
3) Membership in a criminal organization
4) Risk of subsequent offences

We propose modifications in the selection of parole applicants because we believe that very often the choice of candidates has been haphazard. To cite an example, our sampling of 368 individuals showed that out of this group, 52 had benefitted from 2 while 15 others bad benefitted from 3 paroles before their next offence in Montreal in 1971. Thus, out of this group of 368 sampled in 1971, we found that they had benefitted from 450 paroles.

Furthermore, these 368 individuals had committed from 1 to 68 crimes (8) before their first parole for an average of 7.7 crimes and committed 6.6 other crimes after their first parole.

In addition to this, among these 368 individuals, 126 had juvenile records for an average of 4.9 crimes, 128 of them had committed crimes with violence before their first parole, whereas 158 of them had committed crimes with

(8) See table IV

violence after their first parole, and 76 of the 368 committed this type of crime both before and after parole.

These facts disclose a fault pertaining to the selection of candidates. They also reveal another fault, the lack of coordination among the various rehabilition services. We also question the importance given at the time of selection of candidates, to their change of attitude towards crime. On the one hand because we believe that the prisoners are sufficiently intelligent to behave in a manner that would merit parole (their main objective is to gain freedom, a prisoner will never make an admission to his classification officer that he has the intention to relapse into crime upon release) and on the other hand, because a permanent danger of threats to the classification officer by the prisoners could falsify the officer's objectivity in an appreciable manner.

2. LACK OF COORDINATION

Although it is desirable that the parole system would contribute to rehabilitation, this frequently comes too late. Table IV, as well as the preceeding lines, stresses the individual's criminal career and we can presume that many criminal offences were committed before his first parole was granted, whereas Table V

shows from our sampling of the 368 individuals, that their average age at the time of the first parole was 25.6 years. Among this number, many had experienced incarceration in detention homes for juvenile delinquents, probation, prison, penitentiary and parole.

Ignoring unsolved crimes committed by him, we could have many cases when a youth of 12 or 13 would be brought before a Juvenile Court and following two or three warnings, the judge would send the delinquent to a detention home, and after release, return to crime, appear before the Courts, be placed on probation, return to crime, go to prison, be released, return to crime, sent to penitentiary, benefit from his first parole and attaining the average age of 25.6, would be a hardened criminal. At this stage, it is too late for parole to serve any rehabilitation purpose. Legislature should be revised so that sentencing, probation and parole would become instrumental in the protection of society and the rehabilitation of parolees, and not an incentive for individuals to commit crimes by seeking the release of prisoners under the cloak of economical measures. Should it be deemed impossible to rehabilitate the parolee, at least let us protect society by keeping him within the confines of an institution, and should he be considered a worthy

candidate for rehabilition, let us not wait for his criminal career to develop before the various social services can become available to him for his eventual return to society.

Not only will the existing laws have to be modified, but also their application will command both from the Courts and from the various public and private organizations engaged in the dispensing of justice, an improved coordination and cooperation in order to obtain the desired results.

3. SURVEILLANCE

Surveillance is inherent to parole, as release without control of the conditions imposed, becomes more or less a remission of sentence.

It is a fact that parole surveillance is presently inadequate, indeed absent, consequently conditional releases do not actually exist.

In order to bring the system back to its original purpose, the parolee would have to accept surveillance as a condition "sine qua non" of his release, or he is not a suitable candidate for parole. And for the surveillance to be enacted in a proper manner, we consider that the probation officers should work in concert with the Police Forces, because

a) Police officers exert more authority;

b) Police Forces have at their disposal the resources and personnel to keep surveillance 24 hours a day, 7 days a week, which is understandably an impossible task for probation officers. To achieve this, police forces should be aware of all the planning projected in the process of social work towards the parolees.

Without this collaboration between the Police and Probation Officers, the rehabilitation of these individuals will be more a coincidence than an incidence to their parole.

4. SOCIAL WORK

Social work, which should accompany a parole, is inadequate and is confused with social motives which must be of value at the level of the selection of the candidates.

In our opinion, social work does not consist solely of a study of the social conditions, past and future, but also in positive action for the parolees' welfare. He must be helped to choose his place of residence with regard to his tendencies, his means and the area of his former criminal activities, to formulate plans for his life and that of his family, to establish his budget, to urge him to join social activities, to counsel him in the art of forming a new circle of friends, to help him find employment, to encourage him in the efforts necessary in

order to change his life and guide him towards a new scale of values. One cannot really help a parolee by listening to his once-a-month confidences, for the most part, impossible to verify. One then risks becoming his shield against social justice by an emotional paternalism.

In order to prove that certain members of the Commission are misguided regarding the social work which should accompany the release, let it suffice to mention that there was a strenuous objection to the fact that our Department had found employment for parolees. Another example is that one of the parole officers, acting upon instructions from a superior, obtained a warrant for one of the parolees, subsequently counselling him to go into hiding as the police were looking for him to execute this same warrant.

We also believe that the social work for parolees is too delayed and spasmodic, due to a lack of coordination between the various government levels. Positive action at the level of primary delinquency would be more efficient if the social work were sustained throughout the individual's criminal career. Let us take the case of a person of 18 or 19 years of age who, as a juvenile, led the life of a criminal and appears before the Court of Sessions. He will be considered as a novice,

a beginner who is entitled to one or more suspended sentences, to be followed later on by light prison sentences. At the age of 22 or 23 years, he is given a penitentiary term. What happens to the social work performed for him as a juvenile ? It is erased, forgotten, or simply annihilated.

We have to believe so as a new process of re-socialization will be undertaken in order that he benefit from an umpteenth chance to rehabilitate, being oftentimes too late. He is addicted to the taste of crime and his whole outlook conditioned against society.

5. CONCLUSION

The 153 month span of the parole system has been a commendable effort but a deplorable failure in its objective, due mostly to a poor selection of candidates, inadequate surveillance and social assistance, and finally a lack of coordination among the various judiciary bodies.

In summation, the parole system means little more than a mitigation of the penalties that had been imposed upon the delinquent.

A serious analysis of the parole system could never be achieved without taking into account crimes committed after the parole period especially considering the relapse of parolees in unsolved crimes. It is also essential to

undertake a complete study of the 38,444 history cases which resulted in paroles. Only then would the true weaknesses of the system come to the surface.

EXPERIMENTAL PROJECT CONDUCTED IN MONTREAL

Collaboration on a very small scale has been experienced in the Montreal region for several years. All investigating officers would present a pre-sentence report at the time of an individual's arrest, relating the extenuating circumstances of the crime, the effects on the victim, certain traits of character and the reputation of the accused. This information, in turn, was conveyed to the Commission.

In 1966, the Montreal Police Department established a sub-section comprised of three officers whose duties are : to control the periodic visits to our Department by the parolees, and to supervise the conditions of their parole.

The executive members of the Commission and our Department have exchanged viewpoints on numerous occasions and are in the process of forming a well structured and efficient collaboration.

At lower levels, personal contacts are more and more frequent. A list of study cases is transmitted to our Department, and the personnel is invited to express its views concerning individuals who are known to them. There are already indications that the selection of candidates is improving. Our Department is also in a position to participate in the surveillance aspect of the parole, whenever the conditions are brought to our knowledge.

We firmly believe that this experiment should be continued for it is certainly a measure among many others that will enable the system to become more efficient and satisfactory.

The opportunity that the Commission has provided for the submission of our viewpoint in this very important matter is greatly appreciated. We trust that this Brief will be accepted in the spirit in which it was conceived, the desire to collaborate so that all concerned may benefit.

Respectfully submitted,

MONTREAL URBAN COMMUNITY
POLICE DEPARTMENT

René Daigneault,
Director.

April 10, 1973

SAMPLING M.U.C.P.D.

TABLE I Individuals accused of a criminal act in 1971 and having benifitted of at least one parole.

Stages of sampling	1 accused of a criminal act	2 punishable by two years or more	3 less acquitted and liberated	4 found guilty	5 hypothetically found guilty	6 standards
TOTAL	584	425	368	236	110	346
During parole	161	134	114 (1)	77	30 (3)	107
After parole	423	291	254 (2)	159	80 (4)	239

TABLE II

COMPARISON OF OUR SOLVED CRIME REPORTS WITH THOSE OF THE COMMISSION

	Crimes committed during parole	Crimes committed during and after parole	Offences and infringements to conditions	Total of non rehabilitated
Montreal (1971)	107	346		
Canada (153 months)	3,180	10,283 (1)	2,070	12,353

Total and average of rehabilitated:

38,444 - 12,353 = 26,353 or 67.9%

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(1) 107/346 X 3180/x or 10,283

TABLE III

ADJUSTMENT OF THE COMMISSION'S FIGURES CONCERNING OUR STUDY, TAKING INTO ACCOUNT THE UNSOLVED CRIMES.

	solved crimes	unsolved crimes
Crimes committed	7,325	40,968
Montreal, parolees accused	346	(x) = 1,935
Canada parolees	10,283	(y) = 57,501

TABLE IV CRIMINAL RECORDS, MONTREAL SAMPLING

NUMBER OF CRIMES COMMITTED	INDIVIDUALS	%
1 à 5	65	17,6
6 à 10	117	31,7
11 à 15	86	23,3
16 à 20	30	8,2
21 à 30	37	10,1
31 à 40	21	5,6
Plus de 40	12	3,5
TOTAL	368	100,00

TABLE V AGE OF PAROLEES WHO COMMITTED AT LEAST ONE CRIMINAL ACT IN MONTREAL IN 1971, PUNISHABLE BY TWO YEARS OR MORE.

AGE	NUMBER OF PAROLEES	%
18-21	43	11.7
22-25	97	26.3
26-30	82	22.3
31-35	78	21.2
36-40	30	10.3
41-50	23	6.3
Plus 50	7	1.9
TOTAL	368	100.00

FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 9

WEDNESDAY, APRIL 11, 1973

Twenty-third Proceedings on the examination of the parole system in Canada

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(Witnesses and Appendix—See Minutes of Proceedings)

25891—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Laird
Buckwold	Lang
Choquette	Langlois
Croll	Lapointe
Eudes	*Martin
Everett	McGrand
*Flynn	McIlraith
Goldenberg	Prowse
Gouin	Quart
Hastings	Walker
Hayden	Williams (20)

**Ex Officio Members*
(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate,–
The question being put on the motion, it was–
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

25891–1½

Minutes of Proceedings

Wednesday, April 11, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.10 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Choquette, Eudes, Laird, Lapointe, McGrand, McIlraith and Williams. (9)

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system in Canada.

The Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Federation of Saskatchewan Indians, were heard by the Committee:

Mr. Peter Dubois,
First Vice-President,

Mr. David Ahenaken,
Chief,

Mr. Bruce Fotheringham,
Legal Consultant,

Mr. Alex Kennedy,
Second Vice-President.

On motion of the Honourable Senator McIlraith it was *Resolved* to print in this day's proceedings the Brief presented by the Federation of Saskatchewan Indians and by the Native Brotherhood. It is printed as an Appendix.

At 11.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, April 11, 1973

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: This morning's brief is presented on behalf of the Federation of Saskatchewan Indians. Mr. Peter Dubois will present the brief.

Mr. Peter Dubois, First Vice-President, Federation of Saskatchewan Indians: Thank you very much, Mr. Chairman.

First of all, may I say that it is both a pleasure and a unique privilege for us to be here this morning to present this brief on behalf of the Federation of Saskatchewan Indians.

Honourable senators, the Federation of Saskatchewan Indians is pleased to present to the Senate of Canada a two-part brief on the parole system in Canada. A summary of our research and survey is listed below in point form along with our recommendations. The recommendations set forth by the Native Brotherhood are dealt with at the end of part II of the brief.

1. Many Indian people in Saskatchewan today are not informed about the nature and function of parole. A survey of reserves was restricted to community response to parole rather than dealing with the more complex elements of parole such as legislation or regulations.

2. The survey generally reflects that Indian people on reserves view the reserve as a positive environment for a parolee to return to, but that more concrete steps need to be taken to alleviate the conditions which undermine the process of rehabilitation.

3. Some of the elements which make it difficult for a parolee returning to the reserve and undermine his rehabilitation are as follows: lack of steady employment; too much leisure time; no trade or vocational training on the reserve; lack of proper counselling or professional help; lack of involvement, by community and parolee, in band activities; and alcohol.

4. Opinions from the reserves generally reflect that resources from within the reserve, such as Chief and Band Council, Band Administration staff, Indian parole officers and so forth, should be called upon first to assist a parolee and encourage him to become involved in community activities rather than resources from the outside. Response was almost unanimous in favour of a reserve program for parolees.

5. Acceptance of a returning parolee varies from reserve to reserve, depending on a number of factors, but is generally present owing to the tendency of Indian people to attach more blame to the conditions on the reserve which may have precipitated the individual's crime rather than to the individual himself.

6. The National Parole Board offices across Saskatchewan which are chiefly responsible for supervision of Indian parolees have only recently begun to modify their approaches to the Indian parolee. Although the effort is commendable, the service does not, and cannot, go far enough.

7. A number of unique problems confront the National Parole Board in respect of Indian people on reserves and parolees, which the National Parole Board is powerless to overcome at this time, some of which are as follows:

a) The lack of necessary involvement by many bands as a whole in the field of corrections.

b) The inability of staff of the National Parole Board adequately to promote parole programs on reserves due to the limited number of staff and the necessity of promoting these programs in the various spoken tongues of the reserves.

c) The culture and education gap which presently exists between National Parole Board staff and voluntary reserve-situated Indian supervisors, for which there is no formalized training program educating in these areas for both groups.

8. It is apparent that attitudes of prejudice towards Indian people and their reserves are prevalent amongst staff of the National Parole Board, and that these attitudes are still affecting not only imprisoned Indians considering parole but also the chances for successful rehabilitation of those Indians released on parole.

Recommendations:

1. Recognition by the Solicitor General's Department, the National Parole Board, and the Canadian Penitentiary Service that they, as well as the Indian people of Saskatchewan, face unique problems in the field of corrections including parole, which require new approaches in order to deal with those problems.

2. Recognition by the Solicitor General's Department, the National Parole Board and the Canadian Penitentiary Service that the extent of involvement of Indian people in the field of corrections in the past has been minimal in spite of the high proportion of Indian inmates in Saskatchewan's prisons and the

rate of recidivism of released Indian offenders, and that a complete involvement of Indian people in Saskatchewan in the field of corrections is needed in order more successfully to deal with the problems of Indian offenders.

3. That the Federation of Saskatchewan Indians would like regular consultation to take place between the three above-mentioned parties and the Federation of Saskatchewan Indians in order to establish guidelines outlining how Indian people in Saskatchewan could become involved in the field of corrections, and in what manner resource agencies could assist.

4. That monies be made available by the Government of Canada to develop programs on reserves for parolees, since in spite of the desire of Indian people to become involved in the field of corrections and in attacking the problems on reserves from a preventive point of view, it is mainly the lack of funds which has prevented people on the reserves from organizing and becoming involved in combatting these problems.

5. That the Solicitor General's Department, National Parole Board and Canadian Penitentiaries Service develop an in-service training program for field staff and supevisors of their jurisdictions which would provide education about the culture of Indian people, and develop understanding amongst these people of the Indian in his milieu. It is necessary that some attitudes be developed and others changed in order that supervisors can be more effective with their staff in cases involving Indian people, and also for field staff who deal directly with Indian parolees. Such a training program should involve Indian educators and could be provided, in part, at the Indian Cultural College in Saskatoon.

6. That a training program be established and be developed for Indian parole officers either separate from or in conjunction with the above-mentioned training program in order that these people may learn some professional skills for their work with parolees.

7. That the hiring of ex-offenders in the field of corrections should not be restricted or disallowed, particularly as many of these people can make very valuable contributions in helping released offenders to rehabilitate themselves.

8. That the Solicitor General's Department provide the financial support for a pilot-project proposal recently created by the Federation of Saskatchewan Indians which will serve as a precedent for the involvement of Indian people in the corrections field through the hiring of corrections liaison workers.

Senator Buckwold: I speak first, Mr. Chairman, because I am well acquainted with these gentlemen who are our guests, and I consider them my friends. I personally want to extend a welcome to them, and to let them know how pleased we are that they are here today to present to this committee a problem of which I do not think most Canadians are aware.

I refer to the extent of the Indian involvement with the law, and the large percentage of the inmates of Saskatchewan jails who are Indian or of Indian descent. This is a very real social problem here and, as the brief indicates, we have not really come to grips with it. I am really making a general statement backing up what Mr. Dubois has said.

I wonder whether you could make some general comments about the situation, Mr. Dubois, I think you have been very objective in what you have done, but from the point of view of information it might be interesting and informative to the committee to hear a little about the statistical evidence of the situation I have referred to, and some of the problems facing Indian people so far as parole and prisons are concerned.

We are not a crime commission, of course; we are not really here to get into the problems of what creates crime, although sometimes you cannot separate that. We are interested in the overall picture.

Mr. Dubois: Speaking generally, to summarize our whole presentation, it might be apportioned into three areas. First of all, there should be more consultation on parole and after-care with Indian organizations, the Solicitor General's Department, the Penitentiaries Service and the Parole Board. The second part would be to have more Indian people involved in the process of after-care, rehabilitation and the preventive process. I believe the third part of the summary of the whole situation would be to develop a program of sensitivity, of awareness, among penitentiary staff in the areas of Indian culture, and the unique problems the Indian offender faces when on parole.

Senator Buckwold: I was really trying to get a more generalized statement, not on the brief itself but on the statistical evidence of the large number of offenders incarcerated in Saskatchewan jails. I do not know whether you have any statistics available.

Mr. Dubois: I believe we do have some statistics.

Senator Buckwold: I am really trying to make the committee aware of the extent of the problems.

Mr. Bruce Fotheringham, Legal Consultant, Federation of Saskatchewan Indians: I happen to practise law in Prince Albert, where the penitentiary and two provincial institutions are located. In the Pine Grove Correctional Centre, which is an institution for women offenders, there are never less than 90 per cent native people, and at times it is 100 per cent. It probably goes in cycles, but there have been times over the years when there would be 100 per cent native people in that institution. The men's correctional institution also located in Prince Albert and called the Provincial Correctional Institution, usually has in excess of 80 per cent native people, which is a rather constant figure. The federal institution has perhaps less, mainly, I think, because it is a maximum security institution, to which many offenders are transferred from other parts of Canada.

Senator Buckwold: Are there a large number of Indians in the federal penitentiary?

Mr. Fotheringham: There are. You will note in the latter part of the brief . . .

Senator Buckwold: We have not had a chance to read the brief yet.

Mr. Fotheringham: I understand that. I just point out that there is a second portion of the brief, prepared you, will note, by a native brotherhood, which is an organization within the penitentiary of Prince Albert. There are a large number of native people there. I can only give an estimate, but I would say it is in the neighbourhood of 75 per cent.

The Chairman: In answer to your question, Senator Buckwold, may I refer to the *Minutes of Proceedings and Evidence* of the Justice and Legal Affairs Committee of the House of Commons of March 29. The Minister of Justice, who appeared before the committee, was asked this question:

> Do you have any figures with you of the number of native people involved with the courts?

His answer was:

> I do not imagine we have those figures with us. But in some provinces, it is an extremely high proportion of those charged with offences in the total criminal and in the provincial enforcement side. It is away out of proportion to the number of people involved.
>
> Similarly, in prison there is a significantly higher proportion from among the peoples of native or mixed ancestry than from others.

Senator Buckwold: I am aware of the statistics. I just wanted to reiterate that in our Saskatchewan female jail, of which there is only one in the province, 90 to 100 per cent of the inmates are Indian, or of Indian descent, I presume. There is one major jail for men–although I think there is a correctional institution in Regina for young offenders–and there, 80 per cent are Indian or of Indian descent. I have heard that as many as 50 per cent of the penitentiary inmate population could at times be Indian or of Indian descent. I say this only to show you the immensity of the problem, keeping in mind that for Indian people and those of Indian descent, I presume these figures probably tie all these in, and they would represent perhaps 10 per cent of our population. That would give you an idea of the disproportionate percentage.

The Chairman: Perhaps Mr. Fotheringham, as a lawyer, would tell us what the principal nature of the offences is.

Senator McIlraith: Mr. Chairman, could we get these figures from one of the research authorities in the department, as to the numbers in the three Prairie Provinces? It would be useful to have an accurate basis and at some point have it put on the record.

The Chairman: I saw the figures up to about 1969 in the report of the Department of Indian Affairs. I am sure those figures could be brought up to date. I will ask our executive director to follow that up.

Mr. Réal Jubinville, Executive Director of Study: Could I give an explanation? I do not think that figures are collected now on the basis of racial origin in the Penitentiary Service across Canada. I believe that has been discontinued.

The Chairman: Because of the Bill of Rights?

Mr. Jubinville: Yes, in part; but also in part because it is impossible to determine the origin of a great many of these inmates.

Senator Buckwold: Getting into the parole end of this question, and this is our major concern, you have come up with some very good general suggestions. As I see it, largely it involves using native people on the reservations, to be more active in the rehabilitation of those who are on parole. Could you tell us a little about Item 8 on page 8 of your brief, in which you say that you have "a pilot-project proposal recently created . . . as a precedent for the involvement of Indian people in the corrections field"? Is that operational? Is that just a proposal or are you in fact doing something; and, if you are, what are you doing? If it is a proposal, what kind of thing were you proposing?

Mr. David Ahenaken, Chief, Federation of Saskatchewan Indians: Mr. Chairman, we submitted a proposal for community corrections liaison work to the department. We did receive funds for one worker specifically to deal in the area of communications between the provincial jail, the penitentiary and the women's jail. We have one person on staff now and he is really just communicating on the difficulties encountered by the inmates as well as by the people who are on parole, with the band councils and the appropriate agencies. We just have the one person. It is a young program, and we do not know the effectiveness of it yet.

One thing which is happening, however, is that many more Indian people at the reserve level are concerned about the number of crimes committed by their own band members and the number there are in these institutions. What is happening is that the band councils, with the authority of the band members, are going into these institutions to discuss matters with the inmates. This is not the solution in itself; it just makes people aware of the conditions, and it makes people aware of why so many crimes are committed by the Indians.

I think this is leading to some concentration in the area of prevention at the reserve level. There has to be an educational process and there has to be concern by the leadership of the reserve, as well as by the province. This is the direction in which we are going now. As I say, we have presented a brief, and we did receive some funds for this one worker.

We hope also in two weeks to have the special constable program. It was supposed to start last October but, due to some difficulties between different departments and agencies, this did not happen. We will have this special constable program in Saskatchewan starting roughly in two weeks from now. In this area, we do not want special policemen, special constables, under the regular RCMP force, to enforce laws and to prosecute people, or things of this kind. The real idea behind this special constable program is to educate people–not only the Indian people but the general public, as well as the RCMP–in their attitudes and their approaches in dealing with Indian people, and so on.

These are some of the things that we are doing, and we hope we can expand this a wee bit on the community corrections liaison work. We know we have many problems. I suppose I can say this honestly, that a lot of our young people are now starting to defy the law of the land, the enforcement officers and so on. There are many reasons for this. Nevertheless, the fact of the matter is that we must

start getting concerned, getting involved and becoming aware of the situation, and really develop programs which will be preventive in nature rather than come after the crime is committed. Doing something about it then is a little too late. This is what has been happening. There were no programs at all for prevention. The result is the high percentage of Indian inmates of these different institutions.

The Chairman: Are you aware of three new programs announced by the Minister of Justice recently, to promote communication between native people and the courts and the police?

Mr. Ahenaken: We heard something about it, but nothing specific.

The Chairman: The committee may be interested. I do not think the committee is aware of this. I am quoting from the *Minutes of Proceedings and Evidence* of the House of Commons Standing Committee on Justice and Legal Affairs March 13 and 27, and 29. The Minister of Justice announced as follows:

> The Department of Justice proposes to undertake three programs which should help to reduce the communication barrier that exists between native people and those who represent the legal system—the judges, the police and the legal profession. These three programs are:
>
> First of all, a $50,000 amount to be spent on regional meetings to be attended by magistrates, native people, and those interested in helping the native people. The purpose of the meetings is to foster mutual understanding of the problems and points of view.
>
> Secondly, $200,000 to permit the Department of Justice to establish two native court-worker programs as pilot projects. The purpose of this program is to provide native defendants in our criminal courts with guidance and information concerning the problems associated with their case.
>
> Thirdly, $30,000 to support a program to encourage native people to enter the legal profession.

In connection with the court-worker programs, the Minister of Justice, Mr. Lang, said:

> The way the plan is envisaged, is that the court worker will be available right in the court where the persons are likely to appear. He is either available always or he is on call; he can make a first contact with the native person, explain the situation and try to bring some understanding about what the legal situation really is.
>
> What we are trying to overcome, is that, on occasion, the native person, not understanding the situation, will take what looks like the easy way out—a simple guilty plea and you are away and it is over.

I thought the committee would be interested in this announcement.

Senator Buckwold: You talk basically about parole problems on reservations. Again I am getting into the parole system, zeroing in on how to improve it.

From what I gather, sometimes the record is not too good when Indians are released on parole; very often they are involved in further crime while on parole. You have indicated some of the suggestions that might help. In this respect you refer basically to the reservation. Could you tell us something about the Indians who are not on reservations? Then I suppose we should get into those of Indian descent as well. That is all part of the problem; it is a little broader than just the reservation.

Mr. Dubois: To begin with, in reply to that, you will notice that throughout our brief we do not make any mention of the native. We are referring only to the Indian people of the province. This follows the position of our constitution that we are representative of the Indian people of Saskatchewan and cannot begin to take on more problems than we can handle ourselves. I mean to say, we would like to solve our own problems first, and then, possibly, go out to assist other people in attempting to solve their problems. But, generally speaking, we realize that they feel much more confident in their own environment to begin with, and a program of rehabilitation right at home certainly would be most beneficial to them.

Yet again, at the same time, we are also following the trend to urbanization, and in the new environment we find that there are many obstacles and difficulties in adjusting. So we feel that, certainly, we do need some assistance in this area as well. There is nothing to say that we completely despair of finding a solution in this area.

Senator Buckwold: In other words, you are really talking about how to tackle problems on the reserves, but there are problems in the urban areas as well which probably fit into the overall problem of parole. I suppose, though, that there are specific pressures on Indians in urban areas which are different from what white people would face.

Mr. Dubois: Yes, I believe there are. We know that there are very difficult, unique problems that the Indian people face in the transition of environments, forgetting the fact that we have not the educational standing to compete successfully with our non-Indian neighbour in any given community.

Senator Laird: In that connection, how useful would the Indian Cultural College in Saskatoon be?

Mr. Dubois: We certainly feel at this point in time that it is serving a most useful purpose for our people by informing them of certain programs and developing educational programs to prepare our people to make the transition from the reserves to the urban situation. Much as we feel this is successful, we feel that the Indian Cultural College should be an even greater asset in developing the types of training programs which the people are prepared to accept.

Senator Laird: As you keep emphasizing in your brief, there must be more participation by Indian people in the matter of parole administration, but isn't your big problem that of getting proper personnel?

Mr. Dubois: Yes, we believe this. Certainly, the very fact of our being present here at this point in time shows that we

realize that the government, in isolation, cannot solve the problems of the Indian people; nor can we, as a people, solve our own problems in isolation. Therefore, we are attempting to communicate the problems we have at the community level to those who are in authority.

Senator Laird: Speaking of solving problems by yourselves, it is human nature to view with suspicion not only people of other racial origins but also people of the same racial origin who belong to a different type of organization. To put it bluntly, are there any problems arising out of antagonism between bands?

Mr. Ahenaken: If I may reply to that, Mr. Chairman, to be perfectly honest with you, I really do not think there is any antagonism between bands and so forth.

Let me just go back in history for a moment. In my day, which is not very long ago, anyone who was convicted of any crime at all, or anyone who broke the law and had to face charges, was an outcast in the reserve. That was our legal system at that time. We do not have that today.

I just want to make some general comments on the announcement by the Department of Justice concerning its communications and court work program and its intention to encourage Indians to go into the legal profession. That is very commendable and is certainly the direction that our organization is going in. In fact, we are trying to get as many qualified professionals as possible in any area.

However, at the present time our big problem is in the area of prevention; I suppose you could say in the area of education. Education will, of course, breed understanding so that people will certainly react differently to different situations.

The parole system as it exists today is not really serving the needs of the many people we have coming out of these institutions. Many of them are going back again because of lack of guidance and supervision, and so forth. The point is that the people on the reserve generally do not know how they can help. First of all, they do not understand the parole system. I suppose we could start educating our people to assist parolees, but there are many factors involved, only one of which would be the fact that they just do not know. Moreover, it is still part of the culture that I understood in my day, that the people on the reserve just do not want to have very much to do with the parolee. The parolee is a person who has committed a crime; the parolee, rightly or wrongly, has come from an institution. It is this type of attitude that we must break.

Talking about attitudes, most parole officers or law enforcement officers do not really understand what makes us tick. That is one reason we want to get into these areas. It is not only because we wish to educate our people; it is also because the people in the legal profession, and certainly the public, the enforcement officers and so on, definitely do not understand. Just last Friday I gave a lecture to the RCMP/NCOs on course in Regina. Some of the questions they asked me were really stupid, from my point of view. It made me aware that they really do not understand: they are simply there to enforce the law; they never have time for any educational prevention of crime; there is never any real communication taking place between the law enforcement officers and the Indians. It is simply a matter of hostility when they face each other. That is exactly the way it is, and that is a sad situation.

That is why I mentioned the special constable program that we have now, and that is why we are getting into these areas. It is a matter of education on both sides in order to change attitudes.

The cultural college we have for urban Indians is not geared for this type of work. It is an educational institution which has been developed by Indians in conjunction with other agencies such as the Department of Education and the universities. Through this process we hope that many attitudes will change and that a real understanding will arise not only in the urban centres but also right where ideas are supposed to hit people—and that is in the classroom. It is a long-range program, and it is a program which we hope will work eventually, so that we will see many more Indians in the urban centres working and no Indians in the penal institutions. I think this is possible, but we have to make those reserves a place that they can call home, a place they can go back to, should they be on parole. The situation that exists now is that a person has very little chance of getting parole if his destination is a reserve, because it is regarded as a bad environment.

Again, it is a process of education on both sides—the Indian and the non-Indian people. This is the area where we must work, and this is why we went into this community corrections liaison, to try it out, to see if it would work. We do not want to go about it in a big way because it might flop. I think what we have to do is to take it in stages and evaluate the whole program as we go along. We are not trying to segregate ourselves. We need the various agencies to help us resolve our problems. We have never said that it takes an Indian to correct an Indian situation. It is fine to say that, but I think we are really just fooling ourselves if we say something like that. In the organization we say that we need all the agencies we can get. Perhaps we have to educate the agencies, and they may have to educate us as well.

So these are some of the areas we are trying to concentrate on, and we have to take some small steps to try to correct this serious problem.

The Chairman: Really, what you are saying is that under present circumstances the parole system is of little value to Indian people because it is almost inapplicable to them?

Mr. Ahenaken: That is right, particularly if they go back to the reserve on parole.

Senator Lapointe: In the brief you say that even if the parolee is forbidden to go back to the reserve, he sometimes disobeys this order and goes back anyway because he feels lonely, or he misses his wife or his children, and so he goes back to the reserve and breaks his parole. Are there many cases like that?

Mr. Ahenaken: I have not heard of too many cases of this kind, but it becomes a little difficult for the parolee if he is restricted to an urban area, for example. While I do not mean to run down the urban centres, I must say that I believe that the urban centre is one place where a parolee can get into really serious difficulties. There are more dangers and more things to do . . .

Senator Laird: And there is also a lack of employment.

Senator Lapointe: So it is a vicious circle. If it is not very good to go back to the reserve and it is not very good for him to go to an urban centre, should he go to a rural community?

Mr. Ahenaken: What we would like to do is to create employment through development on the reserve—and we are doing this right now. Once the band council becomes interested in the band members on parole, they will give them the first choice in any training program or any employment they may have within the reserve. This seems to be the trend, and we are certainly trying to encourage this type of thinking.

Senator Lapointe: But are there such numbers of parolees that a training centre would be of some use? How many parolees are there on one reserve, for example?

Mr. Ahenaken: Well, not too many. I do not know the figures, but we have 137 reserves in Saskatchewan, and some of them do not have anyone in a penal institution, while some others do.

Senator Lapointe: Well, could a training centre be established on one reserve, and could you have people from other reserves come there?

Mr. Ahenaken: I think we would be skirting the real issue if we were to do that; that is, if we were to create a training centre for a specific type of person—in other words, a parolee. If we were to create such a training centre for parolees, to a degree we would be encouraging other people to get into trouble so that through jail they could get the benefit of this training. If we were to do this, we would not be meeting the real problem head on.

We have a tendency, I think, to create new programs which are superficial. This is how I view it, and perhaps I am wrong. We do not really get down to the root of the problem and say, "Look, let's get the people involved; let's create things that will work for all people—not just for the parolee," because the parolee is going to have to join society, whether it is on a reserve or in an urban centre. Personally—and here I think I am speaking for the Indian people of Saskatchewan—I do not want these make-shift programs for a specific type of people.

Senator Lapointe: So, those training centres would have a preventive role as well as a corrective role for the younger people?

Mr. Ahenaken: We have some training centres in urban areas, and there are some upgrading academic classes that are conducted on the reserves periodically over the year. It is not impossible to get the parolees into some academic training centre or into a class in an urban area or on the reserve. That is not impossible, but we would not specifically create anything for them. In other words, they must get back into the mainstream of society and, if it is a question of training, then they take it just like anybody else in any given area.

Senator Lapointe: You seem to be a little hostile towards the RCMP. Are there any members of the RCMP who are of Indian descent?

Mr. Ahenaken: There are a few. Let me say that I am not at all hostile and, in fact, I have a great deal of respect for the RCMP; But I have some concern about the directions they get from their superiors. Here again we are discussing these things with the assistant commissioner of the force in Saskatchewan, as well as with the attorney general's office, in order to bring about a change in some attitudes. There is no use hollering and screaming about things that are happening because this tends to divide people and to create more problems.

Senator Lapointe: Is the case of the Saskatchewan Indians unique? Aren't the Indians of Manitoba and Alberta in the same situation?

Mr. Ahenaken: Oh, yes.

Senator Lapointe: Are there some judges or magistrates of Indian descent?

Mr. Ahenaken: Again we are discussing a J.P. program with the attorney general's office whereby we will have special training for Indian J.Ps who can handle minor cases at the reserve level, rather than having them dealt with by a magistrate. We are hoping that when they get this training these people will be able to help to educate the young Indian and, indeed, the adult Indian, about crime and so on.

Senator Lapointe: Do you feel, then, that drunkenness is the main problem, and do you think that those people should not be put in prison but should be elsewhere?

Mr. Ahenaken: There is one thing I want to make clear, and that is that we do not want a law for the Indian and another law for the non-Indian. I do not like having to say this, but I am going to say it for clarification purposes. Right now it seems that there is this distribution in the application of justice, and this has created further problems. I know of some cases where an Indian has committed a serious crime. Certainly, we can argue that it was because he was ignorant and things like this, but the fact remains that the crime was committed. Now, this person did not get the same sentence that a white man would have got for the same crime.

The Chairman: Did he get less or more?

Mr. Ahenaken: He got less, and that is something we do not like. If we are to maintain law and order in this country, then everybody who commits a crime gets the same sentence and the same treatment as everybody else. If we charge an Indian with a serious crime, and give him next to nothing by way of sentence, then what we are in fact doing is encouraging the breakdown of

law and order amongst the Indian people. I think this is one of the things that has developed; and the sooner the judicial system learns that there is no distinction in the eyes of the law, the better off we will be. This is what I mean by superficiality.

Senator Lapointe: Yes, but do you not think that we have to consider the background, the degree of education and many things like that which lessen the responsibility of the criminal?

Mr. Ahenaken: I am not throwing that out completely, but what I am saying is that if a serious crime is committed, or any crime, then deal with it accordingly.–I think the majority of Indians in Saskatchewan today are aware of the law as it applies to the people of the country–and in five years most of the people will know what law and order is all about. But if we are going to start feeling sorry for an individual group of people and, when we charge them with serious crimes, give them next to nothing by way of sentence, then that is not going to resolve the problem we have now.

Senator Laird: Why do the judges do that?

Mr. Ahenaken: I have never asked them, sir.

Senator Choquette: Just a moment. You are aware of the *Drybones* case that went to the Supreme Court of Canada a few years ago? It was decided there–and all the lower courts were bound by that decision. The highest court in Canada decided that there was one law for the white man and the same law for the Indian. The Indian could not be allowed to commit a crime because he was intoxicated, as was the situation in the *Drybones* case. The judge would find him guilty because there is a law for the Indian and they should not do this sort of thing on the reserve or outside of the reserve. You are aware of that decision. That is the principle that was set down: there is not one law for the white man and a different law for the Indian–that is, for the purpose of finding a man guilty or not guilty.

You know that all courts in this country take into account everything that should be. That is why a lawyer says, "There are mitigating circumstances, your honor. This man had a terrible upbringing; he was abandoned when he was just a child. Give him a chance." He is free to make as many representations as he wishes. So, there is not one law or from of justice for the Indian, as you say, and a different law or from of justice for the white man. The judge is addressed in mitigation, and it is his duty to take everything into account in passing sentence. Isn't that the attitude most judges take when dealing with an Indian offender?

Mr. Ahenaken: I would certainly hope so.

Senator Buckwold: There are some judges who go the other way and are sometimes harder on the Indian than on the white man.

Mr. Ahenaken: This is also true.

Senator Laird: Each case should be treated individually.

The Chairman: Mr. Kennedy wants to say something on this point.

Mr. Alex Kennedy, Second Vice-President, Federation of Saskatchewan Indians: Yes, I had the opportunity some time ago to ask that very question, as to why an Indian person gets a lesser sentence when he has committed a crime than his non-Indian neighbour. The answer I received was, for instance, when an Indian is picked up on a drinking charge, or for drunken driving or some minor charge like this, the judge takes into consideration the economic background of that person. If he is only making $5 a day and he is fined $50 for having open liquor, it is going to be much harder for that person to scrape up the $50 than for a farmer who has 2,000 acres under cultivation with 200 head of cattle. He is not going to have any problem paying a $200 fine on behalf of his son. This is the case when people are charged with drunken driving and things like that.

But when it comes to assault, rape, murder, or something like this, I do not know what they take into consideration. I assume that the judges also give a lesser sentence to a native person, but I do not know what they take into consideration.

Senator Laird: By the way, who were you talking to, Mr. Kennedy?

Mr. Kennedy: I talked with various lawyers and members of the RCMP.

Senator Laird: You did not talk to a judge?

Mr. Kennedy: No, I did not.

The Chairman: Would you say that Indian people have relatively less recourse to parole because the offences for which they are sentenced involve shorter terms and, perhaps, they are not as interested in parole because they would be out within a reasonable time?

Mr. Ahenaken: I suppose this is true, to a certain extent. But, you see, when they go out on parole and name the reserve as their place of destination, it makes it that much more difficult for parole officers to maintain contact with and supervision of these people. Therefore, the best thing to do is to remain in close proximity to the parole office.

Senator Lapointe: Cannot the parole officer go on to the reserve?

Mr. Ahenaken: No, there are very few of them. I think we have seven or nine parole officers who cover the whole province of Saskatchewan.

Senator Laird: That is why you need more of them, isn't that correct?

Mr. Ahenaken: That is right. We cannot blame them because there are only very few of them, their case loads are extremely

heavy, and the geographic area they have to cover is very large. So, it is not their fault.

Senator McGrand: I would like to go back to a remark you made, I think it was about the Indian who goes to an urban area. You do not want him to stay there when he is on parole, and you feel that he should go back to his reserve, if possible. But then you mention on page 2, in 3, under the heading "Negative Elements on Reserves":

No trades training available on the reserve.

Would you give me some idea of what is on the reserve that a man can work at to provide himself with a livelihood when he is out on parole, or even the fellow who has not been in trouble? What is the employment situation like, and what do they work at on the reserve?

Mr. Ahenaken: We do not say we would like to see them back on the reserve. If they choose to go back to the reserve there are many things that have to happen, or many things that need to be taken into consideration.

Senator McGrand: But what is there on the reserve for them to work at, if they choose to return?

Mr. Ahenaken: There are some bands that have special projects such as housing, band administration, welfare administration, the administration of the housing program. There are some farm operations, both grain and cattle. That is just about the extent of it. There could be some janitorial work available, and so on.

Senator McGrand: What I am talking about is a source of livelihood; I am not talking about housing and that sort of thing. You say it is a question of farming and that sort of thing?

Mr. Ahenaken: Yes. There is very little work available because there has not been that much development on the reserves yet.

Senator McGrand: What can be done on these reserves to make them self-supporting?

Mr. Ahenaken: Perhaps Mr. Kennedy can answer that question.

Mr. Kennedy: We have to take many things into consideration. The number 1 consideration would be social services–the different social services that people are operating now in the Province of Saskatchewan. For instance, there is the community development program which helps people to help themselves. In the field of family counselling there are workers out in the field counselling parents to get together and to carry the responsibility of parenthood instead of losing their children. Their kids are taken away by the Department of Welfare and placed in foster homes. These family counsellors are going around doing this. There are alcoholism rehab. centres and different social programs. These social programs are not enough without economic development to support them.

Senator McGrand: That is what I mean, the economic development. Stick to that please.

Mr. Kennedy: The social services prepare the people to a certain extent. Then there must be economic development for them to enter when they are ready. There is no use rehabilitating a person from a problem and not supporting him in the sense that he can make a living.

Senator McGrand: Give me an idea of the economic needs.

Mr. Kennedy: I am coming to that, but in order to give you a clear, concise picture I must go way back and explain.

Some economic development has been introduced at the reserve level. A few farmers have 50, 100 and some even 200 head of cattle. Some have 2,000 or 3,000 acres under cultivation. These resources on the reserves must be assessed by the people themselves; they must decide the best route to go as far as economic development is concerned. Some wish to develop community rather than individual or band projects. All the lands are amalgamated and developed as a band farm and employ people on the community level in the field of agriculture. Some are established individually, but the saddest part is that in most cases, in which we are making some progress now, people with 50 or 100 acres lease their land to non-Indian farmers. In return, they receive only a Christmas present, perhaps, in October; it is not even a Christmas present. So we must persuade such people who give up their lands to do so within the band so that they can be made into viable units.

The Indian people are considering developing certain industries such as coin laundries. As a matter of fact, they are building them now. Service stations and small businesses such as stores are being established. We hope to develop the resources on the reserves to the optimum and begin to develop off the reserve. There is no reason why an Indian person cannot establish or own a hotel, motel or some other kind of business in the neighbouring town or within a band. This is a long-range program, however.

At present we have what the government terms the Local Initiatives Program. There are many such projects on the reserves now, employing in the range of 20 to 30 people. Another program is Work Opportunities, under the Department of Indian Affairs. These are only temporary sources of livelihood, rather than permanent. Does that give you an idea?

Senator McGrand: Yes.

At the beginning of our discussion this morning reference was made half a dozen times to the Indian culture in the correctional centres. I have a feeling that the Indian wishes to remain an Indian; he does not wish to be assimilated into the white man's culture, but would like to be integrated into it and be able to get the best of both worlds. Would you give some idea of the gap that exists between the Indian culture and conditions and what takes place in the correctional services that makes it so difficult to achieve satisfactory results?

Mr. Dubois: I believe that the biggest gap is to be found in the area of education. To begin with, we lack the education to adjust ourselves to the transition of environments. On the other side of the coin we have a system of administration which is totally unknowledgeable of the feeling and the attitudes of the people for and

to whom it is responsible. This is the greatest gap facing us. Therefore, the problem is a gap in communication.

Senator Lapointe: Is the discipline and regular hours of work a problem?

Mr. Dubois: That is true and, this takes us into another vast area of cultural value conflict. We value time to the extent that time is always with us. To the non-Indian it is time lost, which can never be regained. I have had Indian friends who have figured out how much money they have lost to the minute for the time they have wasted. We value time differently. We have a great culture value conflict in nature itself. We live with nature; you attempt to master it.

Senator McGrand: I know that this is the gap, but how can it be overcome? If the Indian is to integrate and make a livelihood under the conditions which exist in this world of technology that the white man has created, how can he do that and not lose those values that you have mentioned and which the Indian has had for centuries? How is the Indian to integrate and take advantage of our technology without losing those values which are so basic to him and the loss of which would destroy him?

Mr. Ahenaken: I think I can use those sitting here as examples who have not lost their culture. I do not like the word "integration," but they and many others do make a living off the reservation and have retained their cultural values. My skin has not changed its colour; I still speak my Indian language; and I think I can get along with you or anyone else. I can argue with you and I think I can win out on some of the arguments, and I still retain what I value as an Indian. This is just it; I think Peter hit it on the head when he mentioned the educational gap existing between the non-Indian and us. This is where our cultural college is working very, very hard, to develop a curriculum which will be applicable and suitable to the Indian as well as the non-Indian values. That is the gap we are working on right now.

Senator McGrand: That is my point.

Senator Laird: The point you raised with respect to language was informally discussed before the hearing started. Senator Buckwold pointed out that there are a vast number of Indians who do not speak anything but Cree. Does that in itself not create a difficulty?

Mr. Ahenaken: Yes, but it is not that much of a difficulty, because I think we are entering an era in which the Indian people will have many more students this year than they had before graduating at the Grade 12 level. I think that within the next five or 10 years we will see professional Indians who have gone through the regular stream of the university. This is developing, and there will be more and more of them. The Government of Canada is finally living up to its promise by teaching us the cunning of the white man and at the same time allowing us to retain our culture.

Senator Laird: In what language will that be taught, Cree or English?

Mr. Ahenaken: I think I can go to school right now and never lose my language. Language is the big thing that allows one to retain one's identity. The Indian people must learn that they do not have to get rid of something in order to obtain something.

When integration first came into the picture, it was good—we wanted the best for our people, and so on; but it so happened that the people in my area were speaking Cree, and when they went to the joint school they found that there they were speaking nothing but English. The result was that parents started talking to their children in English. The reverse is just starting to happen now. Today they are talking in their own language. But when a child went to school knowing no English at all, the other kids, the white kids, laughed at him and said, "What's the matter with you? Can't you speak the language? " All these kinds of intimidations occurred, and, I suppose, there were insults to a degree.

Senator Laird: What is the situation now, let us say, in the public schools? Which language is used?

Mr. Ahenaken: The English language.

Senator McGrand: Is the Cree language taught in the schools?

Mr. Ahenaken: We have some Cree language instructors in the schools, but there are very few; I think there are six of them.

The Chairman: You mean, in the public schools?

Mr. Ahenaken: Right. Right now they have started on the reserve schools, really, but they will be branching out to the joint schools. But they also have an Indian teacher-training program at the university. The organization negotiated for this with the Department of Education and the university, and the university accepted our submission.

The teachers go through the regular teacher-training program, but they are also being taught the skills they must have in order to come to grips with changing situations, with the different value systems of people. They have to learn how to come to grips with various situations, instead of learning just one system right down the line. They learn a lot more than an ordinary teacher would. The program takes six months longer than the regular program, and Indians who are now being trained speak the Cree language. That is one of the requirements.

Senator Choquette: A while ago somebody mentioned construction work for parolees. On the reserves did the government build units for you, or do you still have houses of your own choice and of your own making? Has there been a plan of construction?

Mr. Ahenaken: Yes. Indians themselves handle that program; they construct houses, and everything else.

Senator Choquette: Financed by?

Mr. Ahenaken: The department.

Senator Choquette: So, over the years you must have developed quite a few young carpenters.

Mr. Ahenaken: Right.

Senator Choquette: And that can keep them busy.

Mr. Ahenaken: Many of them take their training right on the job. They go back to the technical institute in the winter time when no housing program is going on, and quite a number of them are getting their journeyman's papers. These people will either run the program on the reserve or they will take a job off the reserve. We are not trying to keep Indians on the reserves. We know that we must move on, and we must be prepared to move out. That is what we are talking about now, the type of education that we must develop, the type of preparation that we must develop on the reserves, so that when these people go out they will have a half decent chance of succeeding, instead of going out with no preparation whatsoever.

Senator McGrand: We are speaking about land on the reserves. I have no knowledge of what happens in Northern Saskatchewan. I have never been there. The reserves are quite large, and are pretty far North. How does the land in that area compare with land in Southern Saskatchewan for farming purposes?

Mr. Dubois: There is no comparison.

Senator McGrand: Is it better or worse?

Mr. Dubois: It is worse in the south, and when you go north you have rocks to contend with.

Senator Choquette: In 1958 I went to Batoche. You all know where that is. There was a street there that was considered one of the main streets. It was pathetic to see the poverty that existed at that time. At that time there were a lot of Indians living in back yards. They had built their own homes with pieces of tin, potato bags, and things like that. Does that situation still exist, or did they live that way because they were off the reserves?

Mr. Ahenaken: Those people must have been Métis. We still have a housing problem on the reserves, but the situation is improving. We are catching up slowly, and eventually, I suppose, we shall. We still have a tremendous housing shortage, but I do not think that conditions are as bad as some people describe.

Senator Lapointe: I do not know whether my question is relevant, but is it not a fact that the proportion of Indians living on the reserves who go to jail is larger than the proportion of those who are enfranchised, who live off the reserves?

Mr. Ahenaken: The people who are living off the reserves, in the urban areas, are those who have integrated successfully, if you will, and you do not hear about those people. You never hear about them, because they mind their own business, they work, they look after their families, and so forth.

Indians are not enfranchised, incidentally, just because they live off the reserves; they are still very much treaty Indians as long as they so desire. The reserves need development, to provide the kind of preparation that I was talking about for Indians to move off. The Indians who are enfranchised are those who are not registered as treaty Indians. We are not concerned with them. At this particular time we have enough problems of our own to try to resolve, without getting into somebody else's problems.

Senator Lapointe: Should we conclude that lack of regular employment is the main cause of delinquency?

Mr. Ahenaken: Yes. It is a sad thing that these reserves did not have the human and financial resources 50, 75 years ago to develop. They were completely ignored. It is only in the last few years that people have started to develop their reserves, so that they at least support some people on them, and they, in turn, set an example for others to follow.

Senator Lapointe: With respect to the younger generation who attend school, and who are better educated, is the crime rate lower?

Mr. Ahenaken: Absolutely.

Senator McIlraith: Would you elaborate a little on that last answer?

Mr. Ahenaken: About the crime rate of better-educated Indians?

Senator McIlraith: Yes, the younger ones who are better educated.

Mr. Ahenaken: We have many young people who have dropped out for various reasons, and for some good reasons, at an early age, 16, 17, or something like that. There are others who have completed Grade 12 at age 21. They have gained enough academic knowledge to be able to think like anybody else, and therefore they have a better chance of getting a job or of going into further training for a profession. But those who have, say, anywhere from Grade 6 to Grade 8—about Grade 8 or Grade 9—have enough knowledge about people that they can communicate, but not enough to be able to compete with people. There lies the problem: they cannot get a job; they have not enough qualifications or experience if they are young, and so on and so forth.

Senator Lapointe: Is the problem regarding women who go to the city very severe? Is it a real problem? We hear that some Indian women are leaving the reserves and going to the cities, and they are liable very often to go to jail. Are such incidents numerous or not?

Mr. Ahenaken: Well, the inmates of the correctional institution at Prince Albert are 95 per cent Indian and, in some cases, 100 per cent.

Senator Lapointe: Are they coming from the city or the reserves?

Mr. Ahenaken: Both.

Senator Lapointe: What is the main crime? Is it drunkenness or abortion?

Mr. Ahenaken: Well, drunkenness, because it is a minimum security type of institution, and people are there for either 14 or 60 days, or something like that.

Senator Choquette: Does what we used to call the "Indian list" still exist as far as purchasing liquor is concerned?

Mr. Ahenaken: No.

Senator Buckwold: Thank God we got over that. Perhaps I could ask one or two more questions.

Could you elaborate a little more on the special constable program, and also on whether or not these special constables will have a role to play in parole?

Mr. Ahenaken: If I may, I will just briefly bring you up to date as to what has happened with respect to that program and also why such a program was proposed.

Not too long ago the Indian people had real respect for law and order. As a matter of fact, the band council was the law and order on the reserve. However, this has changed over the past few years. There is no longer this respect on the part of some Indian people–not the majority, but a small minority–towards law and order. It seems that the younger people are defying the law more and more.

The Chairman: That is not confined to Indian youngsters.

Mr. Ahenaken: No, but in this particular case it is the Indian youngsters with whom I am concerned.

Senator Lapointe: Is this the law of the tribe you are referring to?

Mr. Ahenaken: No, I am talking about the law of the land. Every time someone commits a crime there is a law enforcement officer there to charge him with committing that crime. Because of this, it seems we are becoming con men; in other words, we want to get away with as much as we can. Usually, however, we are caught. As a result, the relationship between the law enforcement officers and, as I say, a small group of Indian people is starting to deteriorate. I realize that our law enforcement officers have certain policies and orders to follow, nevertheless, we are sometimes the victims of circumstances. We do not like to use that as an excuse.

There have been rumors of police brutality and harassment towards Indian people who had not committed any crime at all; and, in my opinion, there is some foundation for many of these rumors. These rumors led to the attitude, "What the Hell, he is bothering me anyway so why shouldn't I commit a crime? Maybe I will get away with it." The result of that attitude, of course, was that many more Indian people ended up in our penal institutions.

Because of the number of Indian people in our institutions it was decided that we would try to get some of our own people who would deal not only with the Indian, but with other people as well. It was felt this would promote the education and communication process which is needed.

Meetings towards this end took place about this time last year amongst the chiefs in five areas throughout the province of Saskatchewan. At the end of those meetings it was agreed to by our organization, the attorney general's department and the RCMP that a special constables program would be set up, and a budget was set aside for this purpose. The program was to commence in October, but somewhere along the line something went wrong. There followed a task force on police services. This is how things started in Saskatchewan. It was finally agreed that the Department of Indian Affairs and Northern Development would finance a program consisting of eight constables. The next we knew, we were recruiting the best we had. It was our hope that our recruits would go through this special constable program, join the regular force and that perhaps someday one of them would become a commissioner. This was the whole idea behind the program.

We wanted this to be a pilot project in the province of Saskatchewan. However, department of government decided that it should be a national policy, as each province has the same problems. This is not a problem unique to the province of Saskatchewan. The result of this, of course, was a further delay in the commencement of this program. Everything was ready, including the recruits and the financing, and finally the money was not even there. The delays seemed to be endless. We then had several meetings with officials from the Solicitor General's Department as well as with the Attorney General of the province of Saskatchewan. At these meetings it was learned that the program should be a shared cost arrangement, 40 per cent coming from the province and 60 per cent from the federal government. Again we were delayed.

When this program was first discussed the tab was to be picked up by the Department of Indian Affairs and Northern Development. That department had set aside $200,000 to finance this program. Everything was ready.

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The ultimate number of special constables to be employed was to be 32, and someone in Ottawa liked the program so much that it was suggested that we start at 32 instead of eight. Well, it did not pan out that way. We are back to square one. I hope that in two weeks' time we can start this program with eight special constables.

The purpose behind this program is to create the communication and the relationship which is so badly needed between the law enforcement officers, legal institutions and the Indian people, and people in general. We do not want our own Indian constables dealing solely with Indians; they are to be the preventers of crime. This is the whole purpose of the program.

Senator Buckwold: Where will they be located?

Mr. Ahenaken: In the subdivisions across the province.

Senator Buckwold: They will not be confined to the reservations?

Mr. Ahenaken: No.

Mr. Dubois: Perhaps I could present the situation with which we are confronted with respect to this program. This is indicative of the frustration with which we, as Indian people, have to contend.

Since this program was to go into effect last year the recruitment of candidates commenced last September. These candidates, as Chief Ahenaken has stated, are the best we have. In the process of making application for this particular program, many of them gave up the positions they held, and now, as a result of the many delays, they are in a position where they do not even know whether this program is going to continue. It is a frustrating time that they are going through. They have been given every bit of confidence that the program will go through, but they are wondering when. How much patience can we expect them to have?

Senator Buckwold: Are they not ready to go out on duty fairly soon?

Mr. Ahenaken: We met with the Attorney General last Friday, and he felt that the program would start in about two weeks.

Senator Buckwold: They have already gone through the RCMP training course in Regina?

Mr. Dubois: Not as yet, no. It is at the stage where they have been processed for that program.

Senator Buckwold: They are not ready to go into the field yet, then?

Mr. Ahenaken: No. The training has not commenced because of these delays?

Senator Buckwold: Do you feel that these people will be accepted by the Indian people generally?

Mr. Ahenaken: We definitely feel that they will be accepted. During our meetings throughout last year it was made clear to the Indian people that these constables were not for the sole purpose of working with them, although certainly some of them, along with a regular constable, will be serving on the reserves; but the special constable's role in that instance would be that of an ambassador, I suppose.

Senator Buckwold: Senator Williams and I had the dubious pleasure of meeting with a group of young Indians from Saskatchewan a few weeks ago. They very pointedly advised us that they did not like this program; they felt it was merely using Indians in order to extend the RCMP image. Is there any validity, in your opinion, to that claim?

Mr. Ahenaken: There are some people saying that, but I think we have to maintain a positive stance. There are some people who feel that these special constables will be joe-boys to do the dirty work of the RCMP. However, the Indian leadership is going to be involved throughout the process of training, as well as at the reservation level, and we are not going to allow such an image to destroy the program. If that is what is going to happen, we will not have any part of it. The firm understanding on the part of all the agencies involved is that this will not happen.

Senator Buckwold: I feel it is an excellent program, but whether or not it is successful will depend, to a very large degree, on the man himself. As with any other force, some individuals might get through who do not get along with people.

Mr. Ahenaken: It is so easy to rip a program apart.

Senator Buckwold: Personally, I think the program will work.

To get back to the area of parole, do you feel that there is some relatively important part that these special constables could play in the supervision and guidance of Indian parolees? Should certain constables be trained for that purpose, or should they not be in the parole sector at all?

Mr. Ahenaken: I think that to a very minor degree we would expect them to supervise or assist the parolee, but certainly not to the extent that it jeopardises their main work, which is education for prevention.

Senator Williams: Mr. Ahenaken, you referred to the attitude of the Indian people towards someone who has been charged and sentenced being looked upon as an outcast by his people. I must commend you for that statement, because it is so true. In my time this was the attitude of the British Columbia Indians towards a former prison inmate; he was no longer acceptable to his society after his release. As you have said, this attitude no longer exists among our Indian people. Nowadays, anyone who has been charged, sentenced and released is just another person who has perhaps run the course. What I am trying to say is that the Indian people have lost something here.

Have you observed—as certainly I have in my time in my province—that there is usually a very bad image on both sides? The law enforcement side looks upon an Indian as a bad person, and he is arrested at the first possible opportunity. This has happened from time to time in British Columbia. Usually his sentence is very heavy. In some instances when a man should have been sent home he is arrested and given perhaps 30 days, two years, as the case may be. Possibly the law enforcement side gets a very bad image and picks on us. In the past there has been a great deal of brutality in the treatment by the police. I suppose you and your organization have knowledge of such things in your own province.

In British Columbia we have not recovered, but we are working towards the recovery of, law and order on the reserves. I do not know how many special constables we have in British Columbia who have received training from the RCMP; a dozen or so, I suppose. I believe we have three or four regular, full-fledged constables. We have four magistrates. A magistrate is of no use to the community unless there is a policeman to do the arresting. We found this out, having started out with magistrates and no police. It is working out.

Senator Buckwold: That is better than starting out with police and no magistrates.

Senator Williams: I should like to refer to some of our younger generation who are militant. One day a committee colleague and I had the opportunity of meeting six young people from your

province, who had a very definite militant, if not belligerent, attitude towards the law enforcement set-up of this country. They were also very belligerent towards their own leaders.

Mr. Dubois: These were from Saskatchewan?

Senator Williams: Yes.

Senator Buckwold: That is what I was referring to earlier.

Mr. Ahenaken: I would like to respond to that. It is true that there is brutality and so on. I think the right approach is to bring these things to the attention of responsible people, which is what we try to do. It is no use hollering and screaming, and so forth. There has to be an approach adopted whereby people will start to correct the wrong that happened in the past, in a responsible way.

We have a youth organization composed of Indian and Métis, which represents a very small group of Indian and Métis people, I think. Certainly, I know this is so on the Indian side. They used to come to our conferences and say that those under 25 were in the majority of the Indian population of Saskatchewan. They would ask "What are you going to do? If you are not going to do anything, then we will correct the situation ourselves." That is how this militancy started. We also have militant adults in Saskatchewan who were supporting and agitating the youth, which is a very irresponsible thing to do.

Two years ago we adopted a policy with the native youth of Saskatchewan, whereby we will not support anything they say or anything they do, good or bad. This happened two years ago. This is the position of the chiefs on the reserves. Therefore, what they are doing is developing their own movement at the reserve level, involving the old people, the middle-aged and the youth. In the Indian culture there is no such thing as groups of youth, middle-aged and old people, where one organizes the old, the middle-aged and the youth separately. That is how generation gaps are created. We have never had that. We said that if this happened, if we started supporting a youth organization to deal strictly with youth we would be separating one group from another, which is wrong. We say there is no such thing as a generation gap, and we build an organization and a movement in which all these groups mix their ideas, so that we can come up with a program or policy that is applicable to everyone rather than one individual group.

Last Wednesday morning the leaders of the native youth organization met me. I was amazed, and certainly surprised and suspicious, to hear them ask, "What can we do to build a parent organization that is much stronger and better? " This is a really good sign. We are going to take advantage of this offer and start getting these people involved. Certainly, through the cultural college and our programs, we do have youth, particularly in the summertime, working with us on our field staff, our office staff, and even our executive, in order to teach them what we are trying to do and how we are going to achieve our ends, which are no different from theirs, except that we will maintain the things we value. That kind of very positive approach is being developed in Saskatchewan.

Senator Williams: I am very glad to hear that these young people met you. I hope that among them was one of the six my colleague and I met when I told them, "Go back and meet your own provincial leaders and talk your problems over with them." I hope one of them was there. If so, they certainly must have listened to my colleague and myself.

Senator Buckwold: I was very proud to hear the presentation made by Mr. Dubois and Chief Ahenaken. We have had a very enlightened discussion, which has been very thoughtful, provocative and helpful to me and, I think, to the rest of the committee. I was particularly pleased with the chief's assessment of the situation.

We had discussions some years ago on this whole problem. In the end, we really come to the problem of education. In the end, this is where we are going to solve this question, if we ever solve it, of providing integration into the community, maintaining Indian culture, and giving employment opportunities and making the Indian able to compete with his neighbour. This is a process that takes some time; it is not going to happen in five years. A lot of it will depend on the Indian people themselves. Until such time as the Indian people—I am not talking about the leadership, but about the ordinary person—realize the benefit of education, I would go so far as to say that until the parent is prepared to make a sacrifice in order to make sure his or her youngster gets as high an education as they are able to achieve from the point of view of abilities, we will not make real progress. That is happening, with the leadership we have, with the assessment of the Federation of Saskatchewan Indians. So we thank you for your presentation, and we are sure it will be helpful to us in formulating our recommendations.

Mr. Dubois: Thank you very much, honourable senators.

Mr. Ahenaken: Honourable senators, we are here this morning basically not to try to sell you anything. It is for clarification purposes, to show where the Indians are going, what they are doing about their own situation, and so forth. The things that we discussed with the House of Commons Standing Committee on Indian Affairs last night, and some of the things we have discussed with you this morning, are long-range programs. I think this is the solution to the many problems that we have now.

We are optimistic that the problem is not that serious, if people will get together, sit down and discuss these matters and come to grips and propose things that will work and try these things that are of concern to us today. We are thankful to be here and, as I said earlier, whatever support we can get from the Senate committee here, on the ideas that we have, will certainly have long-range benefits for everyone.

Senator Buckwold: Mr. Chairman, I wish we had more Indian senators. Do you notice that they never speak longer than to deal with the point at issue? If we had them in the Senate, we could cut down on our sessions by at least three-quarters.

Hon. Senators: Hear, hear.

The committee adjourned.

APPENDIX

The Federation of Saskatchewan Indians

BRIEF ON PAROLE

A Submission to the Senate
Standing Committee on Legal
and Constitutional Affairs

December, 1972

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PART I

Introduction and Background

At the discretion of the Senate Standing Committee on legal and constitutional affairs, many groups and organizations including the Federation of Saskatchewan Indians were invited to prepare and submit written briefs on the Parole System in Canada.

The Federation of Saskatchewan Indians, being a representative body of the elected chiefs and band councils on the reserves across Saskatchewan, undertook to prepare a written contribution to this study of the Parole System in order that the Senate would have an opportunity to hear the initial views of Indian people on the subject.

We are certain that with the passage of time we as Indian people will become more and more involved in the field of corrections through deciding what our own contribution should be, and these decisions will undoutedly reflect our thinking towards elements such as Parole.

Method and Scope of the Brief

The brief is essentially a two-part submission identifying in the first the research done by the Federation on community response to parole, and in the second part, some recommendations put forth by the Native Brotherhood group within the walls of the Saskatchewan Penitentiary.

In addition to approaching penal institutions in the Province, the Federation conducted a sample survey of opinions on the reserves. In spite of the limited sample of opinions recorded, we feel it reflects the attitudes of Indian people on reserves in Saskatchewan. A copy of the questionnaire is attached (annex A).

The three district offices of the National Parole Board were also approached by letter (annex B) for their opinions, and with the exception of one, co-operation was obtained to do follow-up interviews with the district supervisors to allow expansion and clarification of their ideas.

The Provincial R.C.M.P. were approached as were the Prince Albert City Police for any ideas they might contribute to the rounding out of our brief. However, it was discovered that the police role in parole in most instances tends to be a passive one and without opportunity to become too directly involved.

Community Response and Involvement on Reserves

In attempting to obtain opinions on parole from the reserve, the Federation realized that it would first be necessary to outline to a great number of people what parole is and what is normally expected of someone on parole. The necessity of having to provide very basic information about parole to people precluded the possibility of developing a survey dealing with the more sophisticated elements of the parole system such as legislation, regulations, and so forth. Instead, the survey dealt with such matters as the suitability of the reserve environment for a parolee, the reaction of local reserve residents to the parolee, and some elements of reserve life which are both helpful and harmful to a parolee trying to successfully rehabilitate himself.

On the basis of the sample taken, it would appear that about half the people interviewed see the reserve as a negative place for a band member to return to after he is released from prison. Since a large number of the total surveys taken came from one area of the

Province, where a great deal of trouble is experienced, we are inclined to interpret this viewpoint as not truly representative of the Province as a whole. It is also noteworthy that the reasons given by people for viewing the reserve as a negative place are applied to parolees and not to themselves since they reside on the reserve. One of the main reasons for rejecting the reserve as a rehabilitative environment was the lack of employment. This "lack" in turn produces other conditions such as too much leisure time which can of course provide the setting for more serious problems for a parolee.

On the positive side of the question, many reserve residents view the reserve as a good place for a band member to return to since it is his home and the home of his relatives, and for what the reserve has to offer in terms of understanding, companionship and acceptance.

In general, therefore, we feel that the reserve environment essentially can be a positive influence on a parolee trying to rehabilitate, but that more concrete steps need to be taken to alleviate the conditions which undermine that process of rehabilitation.

Negative Elements on Reserves

In the questionnaire, people were asked whether or not they thought it was hard or easy for an Indian on parole to stay out of trouble upon returning to the reserve, and also what things in the reserve life would make it hard for such a person to stay out of trouble.

The majority of responses indicated that most people felt it would be hard for an Indian to finish his parole. The types of conditions that would make it difficult for a parolee to complete his parole successfully are listed below. The conditions are not totally applicable to all reserves, but do represent accurately what a parolee could face depending on what reserve he is from.

1) Lack of steady employment.
2) No agency on the reserve that would assist parolees or ex-inmates.
3) No trades training available on the reserve.
4) Lack of recreational facilities on some reserves.
5) Unnecessary police visits.
6) Too much leisure time.
7) Old friends could be bad company.
8) Parolee on the reserve neglects his parole officer.
9) Alcohol.
10) Overcrowding of homes.
11) Lack of proper counselling and professional help.
12) No program for parolees.
13) The standard of living and use of welfare.

Positive Elements on Reserves

In this aspect, there was an almost total response in favour of having someone assist the parolee to stay out of trouble if he was living on the reserve. Suggestions as to who should help the parolee are listed as follows:

1) Chiefs and Councillors.
2) Welfare Administrator (Band Administration).
3) Department of Indian Affairs
4) Indian Parole Officers.
5) Alcoholics Anonymous.
6) Friends and relatives.
7) John Howard Society.
8) Salvation Army.

Asked as to what ways the parolee could be helped, the respondents answered that the parolee should be encouraged to participate in social activities and seek good companionship, and should be financially assisted if not employed. Asked as to whether or not they would like to see a regular program on the reserve that would try to help people who are on parole, the respondents were almost totally unanimous in answering yes.

The questionnaire furthermore sought the opinions of people on what things in the reserve life they thought would help a parolee to finish his parole. Answers were as follows:

1) Being with his relatives and in his own surroundings.
2) Hunting, sports, hobbies.
3) Getting involved in band affairs.
4) Farming on the reserve.
5) Financial assistance if unemployed.
6) Use of older people to counsel the parolee.
7) Indian parole officers.
8) Employment.
9) Encouraging the parolee to take part in social activities.

In addition to the aforegoing, mention should be made of the general feelings of the band membership towards a parolee in the community.

Attitudes

In most cases a parolee in a reserve community is apt to find acceptance from the band membership, although this is tempered by such things as the nature of the offence committed, the conduct of the individual upon his return, whether or not he is a member of that band, and how the people felt about him before he got into trouble. There are a number of reserves with limited experience in terms of paroled offenders, and they would probably express a greater acceptance of a returning band member than a reserve regularly experiencing the imprisonment and parole of their band members. Nonetheless even the most troubled reserves express acceptance of an individual who has done time, possibly because the emphasis of blame is not attached forcefully and exclusively to the individual but rather with the prevailing conditions surrounding the individual at the time the offence was committed. Similarly the process of rehabilitation of a paroled offender does not stress effort from the offender as much as it does equipping the reserve community with the kind of assistance needed by the offender upon his return. In summary, community acceptance of a parolee on reserves is not a total thing and in many cases is absent where people feel the individual would be better off in the city. However, the tendency towards rejection seems to be based upon the lack of resources for the individual in the reserve rather than upon outright rejection of him because he has done time, or because the people don't want him on the reserve.

The National Parole Board

Today, the most significant official resource agency to Indian people on parole is the National Parole Board. It is ultimately to the National Parole Board that the Indian on parole is responsible, and from whom he takes direction.

In Saskatchewan there are three regional offices located in Prince Albert, Saskatoon, and Regina. Each office serves a large rural area to jointly cover the whole Province. Up until as little as six years ago, the Prince Albert office served the whole Province alone and employed approximately four staff to handle the work. Additional assistance in handling cases of parole has been given by such organizations as the John Howard Society, and in places where neither office is located, the Saskatchewan Government has agreed to handle parole cases through the Department of Welfare probation officers.

In contacting the offices of the National Parole Board, we were mainly interested in leaning what their involvement has been with Indian offenders on parole, and whether or not they felt special problems were being encountered in the course of working with Indian parolees.

The most significant picture that began to develop in our minds after discussions with representatives of two of the National Parole Board offices, was that in spite of sincere efforts to expand services, in order to accomodate the parolee living on a geographically isolated reserve, the service does not, and cannot go far enough. Not very long ago the reserve was considered by the office of the National Parole Board as a poor environment for rehabilitation of an Indian offender, and to some extent we know that this attitude has not been entirely washed away. There are still a number of Indian people in jails in Saskatchewan who believe that if their application for parole shows the reserve as their destination in the parole plan, they will be rejected or their parole plan discouraged.

This attitude within the National Parole Board offices was not without reason considering the limited number of staff and the more immediate proximity of paroled inmates in the cities, the difficulty in supervising a parolee from a great distance, the supervisor's knowledge of both the parolee and to some extent his reserve environment including the negative pressures, and the availability of traditional resources to a parolee in the city as compared to the reserve.

On the other hand the Indian parolee was obliged to tailor his parole plan in order to meet supervision requirements regardless of whether or not his preference lay in returning to the reserve. With a move to the city often came the burden of general cultural adjustment, the stigma of being a criminal coupled with the pressures of prejudice and discrimination experienced because of his Indianess, and the culturally based problems in communication between himself and his non-Indian parole supervisor. All of these factors and more have contributed to a decline in the probability that an Indian parolee would successfully complete his sentence outside the walls.

We were pleased to learn that two of the Saskatchewan offices of the National Parole Board have begun taking positive steps towards establishing meaningful relations with reserve communities in order to enable Indian parolees to return to the reserve, and that various officials on the reserve including the Chief, Band Councillors, or Band Administration staff, have from time-to-time agreed to provide direct or intermediate supervision to a parolee. Unfortunately, however, these steps cannot be taken with all reserves in Saskatchewan nor are they always successful owing to a variety of problems while the National Parole Board offices are powerless to overcome at this time:

1) Geographic isolations of many reserves from urban situated National Parole Board offices and the inability of these offices to carry out extensive public relations programs regarding parole on reserves because of:

    a) the limited number of staff and large caseloads.
    b) the inability of staff to adequately communicate parole programs in the spoken tongues of these reserves.

2) The lack of necessary involvement by many bands as a whole at this time in the field of corrections, and the necessity for the bands' membership to generate this involvement and interest from within, and not at the impetus of the National Parole Board.

3) The lack of specialized training programs for reserves situated Indian parole officers or intermediaries in the field of parole. At the present time at least one of the National Parole Board offices in Saskatchewan is making use of local people on reserves to help supervise parolees. However, these people lack the professional skills and knowledge very often needed to assist a parolee.

    Training programs would have to be geared specifically for Indian people from the point of view of including input on cultural differences which could affect an Indian parolee's performance while on parole. At the very least, some specialized education about Indian people should be included in the training curriculum for non-Indian parole officers, as it appears from the research done by the Federation on this brief that some field staff of the National Parole Board express very blatant attitudes of prejudice and rigidity towards Indian people and their reserve environment. In one interview the reserve was likened to the skid rows in larger cities with the parolee given very poor odds at successful rehabilitation, and in one instance the reserve was labelled as "crummy".

The Federal Government's moves to incorporate more Indian people in various parts of the Corrections Civil Service was viewed as a failure, but on the part of the Indians who participated in it. The general impression given was that very few Indians have the strength of character and degree of moral purity required to become professional staff within the corrections field.

One office of the National Parole Board interpreted our list of questions (annex B) as "loaded" and would not reply in writing, stating that we could not possibly be asking these questions from a vacuum, or in other words, without some ulterior motive behind them. Full follow-up discussions were never held with this office because of the premature interpretation placed upon our research.

Summary

Throughout the mainbody of the brief we have tried to identify different areas touched upon in our research including community response on reserves to paroled band members, and our impressions of the work that the National Parole Board has been doing with paroled Indian people. A summary of the salient points is hereby included followed by our recommendations.

1. Many Indian people in Saskatchewan today are not informed about the nature and function of parole. A survey of reserves was restricted to community response to parole rather than dealing with the more complex elements of parole such as legislation or regulations.

2. The survey generally reflected that Indian people on reserves view the reserve as a positive environment for a parolee to return to, but that more concrete steps need to be taken to alleviate the conditions which undermine the process of rehabilitation.

3. Some of the elements which make it difficult for a parolee returning to the reserve, and undermine his rehabilitation are: lack of steady employment, too much leisure time, no trades or vocational training on the reserve, lack of proper counselling or professional help, lack of involvement (by community and parolee) in band activities, and alcohol.

4. Opinions from the reserves generally reflected that resources from within the reserve such as Chief and Band Council, Band Administration staff, Indian parole officers and so forth, should be called upon first to assist a parolee and encourage him to become involved in community activities, rather than resources from the outside. Response was almost unanimous in favour of a reserve program for parolees.

5. Acceptance of a returning parolee varies from reserve to reserve depending on a number of factors, but is generally present owing to the tendency of Indian people to attach more blame to the conditions on the reserve which may have precipitated the individual's crime rather than to the individual himself.

6. The National Parole Board officers across Saskatchewan who are chiefly responsible for supervision of Indian parolees have only recently begun to modify their approaches to the Indian parolee. Although the effort is commendable, the service does not, and cannot go far enough.

7. A number of very unique problems confront the National Parole Board in respect of Indian people in reserves, and parolees, which the National Parole Board is powerless to overcome at this time.

   a) The lack of necessary involvement by many bands as a whole in the field of corrections.

   b) The viability of staff of the National Parole Board to adequately promote parole programs on reserves due to limited number of staff and the necessity of promoting these programs in the various spoken tongues of the reserves.

   c) The culture and education gap vehicle presently exists between National Parole Board staff and voluntary reserve-situated Indian supervisors, for which there is not formalized training program educating in these areas for both groups.

8. It is apparent that attitudes of prejudice towards Indian people and their reserves are prevalent amongst staff of the National Parole Board, and that these attitudes are still affecting not only imprisoned Indians considering parole, but also the chances for successful rehabilitation of those Indians released on parole.

Recommendations

1. Recognition by the Solicitor General's Department, the National Parole Board, and the Canadian Penitentiary Service that they, as well as the Indian people of Saskatchewan face unique problems in the field of corrections including parole, which require new approaches in order to deal with those problems.

2. Recognition by the Solicitor General's Department, the National Parole Board, and the Canadian Penitentiary Service that the extent of involvement of Indian people in the field of corrections in the past has been minimal in spite of the high proportion of Indian inmates in Saskatchewan's prisons and the rate of recidivism of released Indian offenders, and that a complete involvement of Indian people in Saskatchewan in the field of corrections is needed in order to more successfully deal with the problems of Indian offenders.

3. That the Federation of Saskatchewan Indians would like regular consultation to take place between the three above-mentioned parties and the Federation of Saskatchewan Indians in order to establish guidelines outlining how Indian people in Saskatchewan could become involved in the field of corrections, and in what manner resource agencies could assist.

4. That monies be made available by the Government of Canada to develop programs on reserves for parolees, since in spite of the desire of Indian people to become involved in the field of corrections and in attacking the problems on reserves from a preventative point of view, it is mainly the lack of funds which has prevented people on the reserves from organising and becoming involved in combatting these problems.

5. That the Solicitor General's Department, National Parole Board, and Canadian Penitentiaries Service develop an in-service training program for field staff and supervisors of their jurisdictions which would provide education about the culture of Indian people, and develop understanding amongst these people of the Indian in his milieu. It is necessary that some attitudes be developed and others changed in order that supervisors can be more effective with their staff in cases involving Indian people, and also for field staff who deal directly with Indian parolees. Such a training program should involve Indian educators and could be provided, in part, at the Indian Cultural College in Saskatoon.

6. That a training program be established and developed for Indian parole officers either separate from, or in conjunction with, the above mentioned training program in order that these people may learn some professional skills for their work with parolees.

7. That the hiring of ex-offenders in the field of corrections should not be restricted or disallowed, particularly as many of these people can make very valuable contributions in helping released offenders to rehabilitate themselves.

8. That the Solicitor General's Department provide the financial support for a pilot-project proposal recently created by the Federation of Saskatchewan Indians which will serve as a precedent for the involvement of Indian people in the corrections field through the hiring of Corrections Liaison Workers.

PART II

Preamble

The following brief on recommended changes of the present National Parole System was compiled and drafted upon a collective pooling of suggestions made by the Native recidivists who have practical experience in poverty and other social ills.

Our brief does not ignore or discredit any existing programs and agencies geared to help us. Therefore, our recommendations are not intentionally connected to segregation, although they may be interpreted as such by those with misunderstanding.

After a thorough research done for the purpose of this brief, we discovered the incarceration and recidivism rate of the Native is beyond reasonable.

We understand the primary purpose for incarceration is for the protection of society and for the punishment of our offensive actions. We believe that equal emphasis should be put on rehabilitation and resocialization, because it is only a matter of time before many of us are released. It is our desire and to society's advantage that when we are released we will be an asset to society instead of another liability.

We know in spite of the many difficulties the Parole System faces, it seems to be operating successfully, but from the Native viewpoint we believe it is not operating successfully enough. Therefore, we believe our recommendations will increase its effectiveness, thus helping the present parole system to operate more successfully.

Who Can Help?

We do not believe that the National Parole Service, or for that matter, the white society as a whole, is capable of solving our problems on their own, and 100 years of experience has taught us that they do not have answers to the Native problem. We are not sure that we, ourselves, have all the solutions, but we are certain that we can communicate and work with our own people in a way no white authority can.

What is the "Native Brotherhood"?

You may not have heard of our successes as prison administration are quick indeed to step forth and take the credit! The National Parole Service has been guilty of this attitude also, claiming that successful Native ex-inmates were a product of their programs. But this is simply not true in the majority of successful Native ex-inmates.

The Native Brotherhood of Indian and Metis is a self-supporting organization directed towards the Native's own rehabilitation. It abides by a constitution devised for the betterment of the Native inmate, not to mention the role it proposes to take for the betterment of all Canadian subjects, as outlined in Section 2, Article 1, of our constitution which reads "Aims and Purposes."

Aims and Purposes

The aims and purposes of the association shall be:

(a) To promote understanding between Indian and Metis, and other Canadian subjects to form a stronger Canadian nation.

(b) To help its members solve their problems through its affiliations with any recognized agency or organization set up by the federal, or municipal authorities for that purpose.

(c) To improve the social and civil status and standards of Indians and Metis.

(d) To serve as spokesman, mediator, when and where possible and permissible, for Indian and Metis who are not capable of speaking for themselves.

Many penologists, educators, social scientists, and political leaders, who have been in a position to evaluate this organization, have expressed their overwhelming support in recognizing the rehabilitative value that this organization cannot only play in the correctional field, but, perhaps more important, should be expanded to include parole, after-care services, and community involvement.

The reason we emphasize these recognitions is to stress that with federal co-operation towards expansion of these organizations, both in the institutions and community, a valuable therapeutic tool for the purpose of rehabilitation could be utilized to escalate the goals of the whole correctional scope.

Therapeutic Value

Through the Native Brotherhood many of us incarcerated Natives have begun to develop a sense of our personal worth. We have witnessed the rebirth of our self-esteem, dignity and capacity to be responsible, not only to ourselves, but also to our Native people.

We have decided that we must make an all-out effort to become involved in the Native Movement. The Native Brotherhood in institutions is waging a heroic struggle in undertaking what we truly know to be the only solution to the deplorable plight of the incarcerated Natives.

We are struggling to pull ourselves up by our bootstraps. We have decided that prisons will no longer be a place for the punishment of

Natives, but that through the Native Brotherhood we will strive to make them into training grounds where Natives who are incarcerated can mould themselves into people who will in the future be a valuable asset to society.

We have begun by training our people in leadership programs which involve public speaking, common sense psychology, journalism, debate procedures, parliamentary procedures, human relations, life skills, recreation, and our Native culture.

We intend to show by example the strength of real brotherhood. We intend to study our Native culture so we may never forget that we have much to be proud of. We intend never to forget to respect our traditions and our elders. We intend never to lose touch with grassroot people and the Native people who need help the most.

We have resolved to avoid the power struggles and petty bickering that have weakened the fabric of real Native Brotherhood. And, perhaps more important, to escalate, promote and contribute to the essence of our main objective, as outlined in our constitution, of forming a stronger Canadian Nation.

The Native Brotherhood of Indian and Metis, in the institutions of the western provinces, has been able to create an atmosphere of mutual respect and understanding that has produced positive results of which we can give many examples. We feel that the National Parole Service can utilize this valuable organization and recommend that they hire Native consultants and liaison officers to act as counsellors and parole representatives. Many Native people (inmates) have dedicated their future to work for the betterment of, not only the incarcerated Native, but all of our people. Many of these are self-educated, however, many do have the experience of incarceration and most important have the experience of cultural background and life style. Thus a more effective response is motivated.

The Native acknowledges the value of formalized studies and training in coping with the contemporary world, but we are not prepared to accept the argument that this social training is an established prerequisite for dealing with the problem of our people.

We submit, we have become a responsible group over a period of time through encounter sessions and meetings, and we get to know our members far better than the administration ever will. Therefore, we suggest this report should be given serious consideration at the member's parole hearing, and we hereby submit the following recommendations.

Recommendations

Incentive Program

We feel that an incentive program should be formed to enable a parolee to work towards shortening his parole.

We feel this is very important because if this was so a parolee would try his best to earn some time on his good behaviour.

Through the process of his efforts toward gaining good behaviour remission, we feel he will create for himself a greater lead in getting to know how to get along in this world, as well as learning how to respect others in the community, and will also be able to guide the next parolee to his success through his experience.

We feel an incentive program similar to the present program now within the prisons, which gives an inmate a shorter prison term for his good behaviour, should be given to a parolee.

Parole Revocation

A parolee should be allowed to defend his case when his parole officer has made application to revoke his parole.

This is necessary because too many times a parolee is returned to an institution because his parole officer can't get along with him or doesn't like him, regardless whether or not the parolye is keeping away from trouble. Many a time a parole officer will go by someone's complaint, i.e. "That so and so is on parole and he was at my party last night drunk! ! ", or some other minor complaint.

We feel that a parolee should be allowed to defend his case in similar fashion as when he went up for a parole. If he should require witnesses, he should be allowed to introduce them. We definitely feel that the sponsors, employers, guidance officers, classification officers, and parole officers together should decide whether or not to revoke a parole. For example, an inmate No. 000, is given a parole outside of his own province with the stipulation that he does not go to his own province to see his family until he finishes his time or receives special permission from his parole officer. As a result of this stipulation, he goes into heavy drinking and soon finds himself at home with his loved ones with a parole violation tag on his back. The parole authorities send out an arrest warrant; the police pick him up; throw him in jail; and he waits there until he receives a letter from the National Parole Service stating that his parole has been revoked, and that he will have to remain in jail until the expiry of his time.

Many a time a parolee hadn't committed a crime of any sort, other than failed to abide by this one stipulation.

In such cases as this, we feel that a parolee should be given the chance to defend himself, or at least be given a chance to be heard in order to explain his actions.

Community Involvement

The public should be involved in corrections. We believe it is the only answer toward rehabilitation of prisoners regardless of the nature of their crimes.

There should be more correctional community centres, not only in the cities, but also in the reserves where they are needed the most by people who have no knowledge of the city life, and don't want to go to a community release centre in a city. A lot of lower educated Natives in prisons have a lot to offer in their own ways to people of their own level in their own communities.

Some of the things that the Native Brotherhood Organization has taught them while being incarcerated are that:

1. The communities on the reserves are capable of helping and could stand being helped by an ex-con.

2. By having community release centres on the reserves, we are sure that the population of incarcerated Natives will drop a considerable sum.

This would also give an inmate a chance to spend time with his own family and he would be able to support them directly. Most of all, however, would enable him to live up to his own standards with people he understands and who understand him.

Parole Deferral

When an inmate has been deferred to some future date, we suggest that he be given a run-down as to the reason and also be given guidelines toward his bettering himself if such is the case. An inmate should be assigned some time alone with an administration officer, classification officer, psycologist, or a guidance counsellor to work on his personal program. He should also be allowed to examine personal reports from his file.

Many inmates try hard to help themselves by joining such groups as alcoholics anonymous, Native Brotherhood, group therapy, etc., and think that they have their problems solved, or that they are ready to be let out on a parole, but to their disappointment, they get deferred, and wonder why. Many are left wondering without any explanation given for their deferral. This is a simple step towards involving an inmate in his own eventual rehabilitation, yet the present lack of it reflects a lack of consideration for the individual and undermines the process of his rehabilitation.

Reserved Decisions

We feel decisions should be made when an inmate is facing the Parole Board, and not held on reserve. The Parole Service sends word to an inmate advising him to make parole application five months before his eligibility date for a parole, and they should follow the inmate through that period.

To our understanding during the five months all the required reports and investigations are being looked into, and are supposed to be in by the time on inmate goes up to the board. The inmate looks forward to getting an answer when he appears in front of the Parole Board. At the present time, when a decision is held in reserve, the man has already experienced a buildup of tension and worry, and, as a result, he loses all hopes and feels deep rejection.

We feel the Parole Board should keep their end of the deal. Five months means five months, not six.

Recommendations on T.L.A. Passes

Under the new approaches on T.L.A. Passes, it should be recognized by the National Parole Board that special recognition should be given to overlap the T.L.A. program with the parole program, and further expand this into a day parole system, before granting of parole to an individual.

The present system of T.L.A. recognition for support on possible granting of parole is in a set stage where the T.L.A. passes are segregated from the parole system, and have very little bearing toward support in obtaining a parole following grants of T.L.A. passes.

Special recognition should be given towards positive progress steps for an individual to follow from T.L.A. passes, to day parole and followed by a granting of parole into the main stream of society. This would help the individual to feel out society on T.L.A.'s and on day parole to give him the opportunity to work in the community and prepare in functioning directly with society, employment, and those involved. In the third stage the individual by then will know and will have experienced the means of parole, and understand how to function in becoming a successful individual on parole.

Recidivist Responsibilities

The lack of direct responsibilities that lie in the institution has in most ways robbed the individual in his desire to continue his own supporting functions once he has entered such a place. With the present system of the administration, in taking away such responsibilities, and directing him in an institutional fashion under authority, has caused many to become institutionalized.

With the new systematic programs that are geared toward rehabilitation should in such a manner give an individual direct responsibilities within the full working and recreational period to assist him in the decision making of self, to who and how to communicate and function accordingly with administrational and classificational staff and procedures.

This would feed directly to the individual in broadening his scope of attitude, and to practice the uniqueness of responsibilities which he will directly face upon entering society. Besides preparing individuals in this manner, one has to consider the communicational aspect which is needed desperately to maintain success in overcoming the problem of one becoming institutionalized during his time of incarceration within an institution.

General List

1. We recommend that the Canadian Penitentiary Service and National Parole Service admit and recognize that they have a special problem, which deserves consideration in dealing with incarcerated Indians, and those of Native ancestry.

2. We recommend that the Minister of Justice provide funds to the recognized Native organizations of this country to work out ways in which the Native organizations can begin to meet the problems of their own people with the co-operation and in conjunction with the Federal Government including the National Parole Service.

3. We recommend that the Canadian Penitentiary Service and National Parole Service utilize and expand the Native Brotherhood behind the walls of institutions, and into the community for the purpose of its therapeutic value toward rehabilitation.

4. That all levels of government and National Parole Service make an effort to provide worthwhile confrontations with the Native inmate to better understand how our own people feel we can best be helped.

5. We recommend the hiring of experienced Native ex-inmates at all levels of the correctional process, National Parole Service, prison service, probation, court worker, training schools and aftercare agencies.

6. We recommend the right to have Native people on the National Parole Board, if for no other reason than Native people are the majority who are in the institutions.

7. We recommend the opportunity to provide financially assisted parole services that make sense and can be understood by Native people who are on parole.

8. We recommend that the Federal Government make efforts to induce Native community involvement in the corrections field.

9. We recommend that special effort be made in both juvenile and adult institutions to develop vocational training of particular interest to Natives.

10. We recommend that where Natives are concerned, responsibility of parole counselling be given to responsible Native organizations that include ex-inmates, and funds be all allotted to these organizations for that purpose.

11. We recommend that the Minister of Indian Affairs and his Department become more actively involved in the rehabilitation process and notify the various Native organizations of their intentions in this regard.

12. We recommend that a committee be formed consisting of ex-inmates and professional corrections personnel to seek more effective innovative means of dealing with the problems related to corrections.

ANNEX "A"

PAROLE: COMMUNITY SUITABILITY AND ACCEPTANCE

1. Do you think the reserve is a good place for a band member to go to after he gets out of jail? Why? Why not?

2. If an Indian on parole returns to the reserve after getting out of jail, does he find it hard or easy to stay out of trouble? Why?

3. Should a band member on parole have some help to stay out of trouble until his parole is over? If yes:
   1) Who should help him?
   2) What ways can he be helped?

4. Would you like to see a regular program on the reserve that would try to help people who are on parole?

5. Do people on the reserve still like a person who is on parole, when they know he has been to jail? Why? Why not?

6. When a band member on parole returns to the reserve, does he or she choose to keep the friends he had before he got into trouble?

7. Do you think the kinds of friends a person keeps are important when he is trying to stay out of trouble?

8. Do you see any things in the reserve life which make it hard for a person on parole to finish his parole without getting into trouble?

9. What things in the reserve life could benefit or help a person to finish his parole?

10. If an Indian on parole chooses to live in the city or off the reserve, will he have a better chance to stay out of trouble than if he went back to the reserve? Why or why not?

ANNEX "B"

The Federation of Saskatchewan Indians is at the present time preparing a brief on the Parole System at the invitation of the Senate in Ottawa. We would appreciate very much having your opinions on some of the following items which we will likely be exploring in our brief.

(1) How does the National Parole Service in your area of jurisdiction view an Indian reserve as an environment for rehabilitation of a parole applicant who wishes to return to his Reserve?

(2) What do you feel are some of the problems you face as the official Parole Agency in your relations with Treaty Indian people when deciding whether or not to grant parole, and also in following up Indians who are on parole?

(3) Do you think that Indian people adapt suitably to the frame of reference for parole as presently laid out in the National Parole Service? If not, do you think that perhaps special changes should be made to accomodate the needs and variances of Indian people? If so, could you elaborate on both of the above.

(4) Do you feel that establishing special local "parole boards" with Indian people seated, would have any merit in helping to ensure successful rehabilitation of Indian offenders on parole? Could such a parole board have a role to play in reviewing cases of possible forfeiture and accordingly making recommendations to the National Parole Board?

(5) Does your office have any general or specific recommendations affecting the Parole System as it applies to Indian people which you would like to bring out at this time?

Would it be possible to have your serious consideration of these questions and your most honest viewpoints in reply? This is an area of very serious concern to many Indian people today, who would like to explore the best possible approaches to rehabilitation of fellow offenders now and in the future.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 35

TUESDAY, MAY 29, 1973

Twenty-fourth Proceedings on the examination of the parole system in Canada

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(For complete table of contents see back cover)

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Issue No. 10

TUESDAY, MAY 29, 1973

Twenty-fourth Proceedings on the examination of the parole system in Canada

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(Witnesses—See Minutes of Proceedings)

26134—1

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*

The Honourable Senators:

Asselin	Lang
Buckwold	Langlois
Choquette	Lapointe
Croll	*Martin
Eudes	McGrand
*Flynn	McIlraith
Goldenberg	Neiman
Gouin	Prowse
Hastings	Quart
Hayden	Walker
Laird	Williams—(20)

*Ex Officio Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

26134—1½

Minutes of Proceedings

MORNING SITTING

Tuesday, May 29, 1973.

Pursuant to adjournment and notice the Senate Standing Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Hastings, Laird, Lapointe, McGrand, McIlraith and Neiman. (7)

Present, but not of the Committee: The Honourable Senator Heath. (1)

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system; Mr. James Vantour, Assistant Director; Mr. Patrick Doherty, Special Research Assistant.

The Committee continued its examination of the parole system in Canada.

Mr. T. George Street, Chairman of the National Parole Board, and Mr. Jean-Paul Gilbert, Member of the National Parole Board, were heard by the Committee.

At 12:45 p.m. the Committee adjourned until later this day.

AFTERNOON SITTING

The Committee resumed at 2:15 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Hastings, Laird, Lapointe, McGrand, McIlraith and Neiman. (7)

In attendance: Mr. Réal Jubinville, Executive Director for the Examination of the parole system; Mr. James Vantour, Assistant Director; Mr. Patrick Doherty, Special Research Assistant.

Mr. Jean-Paul Gilbert, Member of the National Parole Board, and Mr. George Street, Chairman, were heard by the Committee.

At 3:40 p.m. the Committee adjourned its public session.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, May 29, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 11 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: This morning's proceedings will open with a statement by Mr. George Street, the Chairman of the National Parole Board. The meeting will then be open to questions to Mr. Street. He will be followed by Mr. Gilbert, a member of the National Parole Board, who as Director of Police in Montreal established a liaison between the police and the Parole Board. Mr. Gilbert proposes to describe that, and he will then be open to questions.

Senator Hastings: Are copies of Mr. Street's statement available?

The Chairman: Mr. Street has just made notes, but his statement will be printed as a matter of course.

I should at the outset welcome Senator Hastings on his return. We missed him at our meetings. I am glad to see that he is restored to health.

Senator Hastings: Thank you, Mr. Chairman.

The Chairman: Will you now proceed, Mr. Street?

Mr. T. George Street, Q.C., Chairman, National Parole Board: Thank you, Mr. Chairman and honourable senators. I should like to thank you for the opportunity of appearing here today. In an effort to explain some of the things which have been said in other briefs, I first thought of going through all of the briefs and making comments on them individually, but in putting them together I found that we had a book of considerable size and I felt it would take too much of your time to proceed in that fashion.

Perhaps it would serve better if I made a few general comments, after which, of course, I would be very glad to answer questions.

As you know, certain of the statements made by some of the people submitting briefs, although not very many, were rather ridiculous. For example, I think of statements by inmates to the effect that the board is composed of a bunch of sadists. I hardly think it is necessary to comment on that kind of statement, but I will comment in a general way on some of the things on which there seems to be complete agreement by almost all parties, or all those who submitted briefs to your committee.

As you can imagine, it is very difficult to please everyone when you are operating a parole system, because so many different people have different points of view. The public has a certain point of view; the police have a certain point of view; judges have a certain point of view; lawyers and after-care agencies, the inmates themselves and the people who run the institutions all have their own points of view. So it is not exactly a popularity contest, and sometimes it is difficult to reconcile all of these apparently conflicting points of view.

I think it is significant to bear in mind, though, that the federal prisons, especially, get these inmates only after everyone else in the world has failed with them. The family units have failed to have an beneficial influence on them; the school system, which is pretty good in Canada, has failed to have any good influence on them; the church has failed to do anything to help them; and all the other means we have of aiding such people in our society has failed to have any beneficial effect on them. The result is that they become criminals and end up in federal prisons, at which point, in all probability, they have already been convicted as juveniles, been sent to juvenile training schools, have been on probation and have been in provincial prisons. Then they end up in federal prisons, and even though, as I suggested before, I am inclined to think that we are sending too many people to prison, most of the sentences are of very short duration.

Some of the public seem to think that we should magically reform them into useful law-abiding citizens but, as you know, it is not that easy. Our job is to try to select some of those who give some indication that they intend to reform, and to try to help them do so. I think it is significant to remember that it is much better if these men come out under control because, not only are they given the services of a parole officer or somebody of that kind to help them with their problems, but at the same time they are supervised, and we do the best we can to see that they are under surveillance so that they cannot easily return to crime, even if they want to.

We think it is much better to have them come out under control, for the reasons I have mentioned, because it means they are under control for a much longer period of time than they would be if they completed their sentence, because they are also under control for their remission time. Two or three years ago a person who got a three-year sentence was eligible to be considered for parole after serving one year. If he gets a parole at that time, then he is on parole for two full years. If during

that time he misbehaves, he may be returned to prison to serve the remainder of his sentence, and this has quite a deterrent effect. But if at that time he did not get parole, then he would be released after serving two years, because he would get one year off for good behaviour, without restrictions, because at that time there would be no control and no conditions. I think that this sometimes affected the judgment of members.

I say this because, when considering a case, you must keep in mind that we do not find many "Sunday-school teachers" in prison, and while it might not look all that good, we might be considering granting parole to an individual for the sake of having him under control for a long time by letting him out of prison for a short time. What it amounts to is this: on a two-year sentence we might be trading two or three months outside prison for eight months of supervision.

However, this reasoning does not apply any more because now we have a system of mandatory supervision, which was introduced and came into full effect a little over a year ago. So now we know that such a person, whom we would call a borderline case, would be under supervision anyway. I say this because if such a person were serving a three-year sentence, then he would be released at the end of two years, even if he did not get parole, and then he would be under mandatory supervision for one year.

On the question of mandatory supervision, I know there are some differences of opinion, but our experience has been very positive. Most of those who submitted briefs to you seem to be in favour of the idea of mandatory supervision, and the violation rate by those who have been released under mandatory supervision has not been as high as I would have thought it would have been, because these are individuals who did not get parole. We think it has been very successful. These people are under control and they are given the opportunity of having the services of parole officers, and they have the right to request the assistance of the parole officer.

At a meeting in the Maritimes the other day some of our people stated that it seemed as if these individuals were almost unusually motivated to prove they were as good as those of their fellow prisoners who were given parole. So, as I said, the violation rate is not very high and is not any higher than in the case of those we have selected for parole. This is rather surprising.

In any event, our experience of mandatory supervision has been on the whole, I think, satisfactory, and this is one of the things that most people seem to be in agreement with when submitting briefs.

The Chairman: What you are talking about there is statutory remission?

Mr. Street: Yes. They would be under a form of mandatory supervision, which is the same as being on parole for the period of the statutory remission and earned remission.

The Chairman: I do not know if it is proper for me to anticipate, but we are receiving a brief tomorrow morning which recommends the abolition of statutory remission.

Senator Hastings: I think we received another brief earlier which suggested that it should all be called parole and not called remission any more; that is to say, they would be on parole for either one-third or two-thirds of their sentence.

Mr. Street: Yes, that is right. They call it parole, which it really is, but which is simply a different name. I think that almost everybody is in agreement with the idea of releasing people on parole, under some form of control, whether we call it mandatory supervision for one-third or parole for two-thirds. As I say, I think most people seem to agree with the idea of having them come out under control; but, as things are now, all we are dealing with is the middle one-third of the sentence. Of course, we do have the power to release somebody before he has served one-third of his sentence, but that is exercised very rarely and only if there are exceptional circumstances. For example, if a bona fide student were due to be released in October, and we know that school starts in September, then we would let him go back to school, which would mean letting him go in September; but otherwise it is not exercised very often.

Senator Hastings: In the light of that record and the very positive results from mandatory supervision, do you not think that it indicates that these people should have been released on parole?

Mr. Street: Well, senator, I would like to know more about that. One of the follow-up studies that we have done indicated that 40 per cent of the people in a certain year who did not get parole did not return to crime. Therefore, it would seem that we should have parolled those people. So I would like to have some research done to find out why we missed them, and to find out what were the characteristics of these people who did not return to crime and who did not get parole. I would also like some studies done on the ones who did go back to crime having got parole. If we could get the answer to that, we could have the perfect parole system.

Another main topic mentioned in many briefs was that of supervision, and many people, especially the police, think that our supervision is not as good as it should be and that we do not have enough staff.

I agree with that. We think the supervision should be better than it is. If we are releasing a case that is difficult—say, somebody who has been involved in a crime of violence—then, naturally, we try to make the supervision more intensive than would be the case if it were a property offence. But it is our experience generally that the rate of violation for those persons who might be considered by the public as being dangerous is not as high as it is with those involved in property offences. Naturally, we are more concerned and more careful about people who have committed crimes of violence and who are considered to be dangerous, because the results of their doing so again would

be serious. We do not worry quite so much about the fact that a person may, for example, cash another cheque. We would not like it to happen, but at least nobody has been physically hurt or injured when it has been done. We know that the rate of recidivism in that type of offence is higher.

We agree that supervision should be adequate, and we think there should be much more control in the community, but by that I mean effective, adequate, authoritative control, while at the same time offering all the help we can to these people. I often think it is rather unfortunate that when we have a man locked up in prison, where he cannot do any harm, we have one government employee watching two inmates, but when he is out on probation or on parole you are lucky if you have one government or other employee watching 40 to 50 people. So I think it would be more desirable to have more control in the community.

Senator Hastings: By this are you saying that you are not adequately staffed?

Mr. Street: Well, we can always use more supervisors and more people, because even though the number of paroles has been decreasing in the last few years, our time has been more than occupied with processing the applications for parole and processing community investigations for temporary absences and things like that. So, to answer your question, we can always use more people. This has been suggested by many, and I think perhaps it will be attended to.

Another matter which has been mentioned by several people is that of statistics. We do not have as many statistics as we would like to have. We keep track of our own statistics, which have to be hand counted by our own personnel, and we have only two people in our organization who are allocated to do that work. Unfortunately, Statistics Canada is three years out of date. It is only recently that they published our detailed statistics for 1970, which is too late to be of much use to us. It is three years since they published a book of criminal statistics which would have been very useful. For some reason or other they have been unable to provide us with the statistics we need.

One thing I have been trying to get for a number of years is a follow-up of every single person who has been paroled in the last ten years. We have certain follow-up studies which show how many people have returned to crime in five years—I am speaking now of those who are paroled—and some follow-up studies of those who were released at the end of their sentences. But we should have this for every single person paroled in the last ten years, so we would know exactly how many returned to crime within five years. We know exactly how many violated or returned to crime while on parole, and the average violation rate over 14 years out of 42,000 cases is 20 per cent. But we would like to have the statistics for every single one, and we have never been able to get those.

I would respectfully suggest that you might see fit to think about this in your deliberations. We certainly do need more statistics than we have been able to get. Many of those who have submitted briefs to you agree with us that we should have more research. We have had a good deal, but have not been able to obtain as much as we would like. The idea of research is related somewhat to the possible use of parole prediction tables. We have not been able to use those extensively, although each of our members has copies of these tables which indicate the various positive and negative factors which are of some help in arriving at a decision. These tables are based on the statistical experience of other parole authorities, mostly in the United States and Canada, and are useful as a guide. No one, however, is suggesting that they should be used exclusively, but only as a guide in making judgments with respect to applications. For instance, they provide the benefit of the experience with an applicant such as a cheque artist, indicating the likelihood of his committing a further offence. These tables will be useful if we are able to obtain more sophisticated statistics and establish a uniform classification system in all federal prisons.

As you perhaps know from previous statements I have made and newspaper reports, we deliberately tested paroles during the last six or eight years because the failure rate five or six years ago was very low, but we thought we were using parole as much as we should. We increased its use to 5,200 in 1970 from 1,800 in 1964. However, we then felt that the violation rate was becoming too high, so we deliberately reduced the rate of parole, only granting approximately 3,600 applications last year. In other words, in 1970 approximately 64 per cent of those who applied were paroled, and last year, unfortunately, the percentage was only approximately 36 per cent, which is rather discouraging, to say the least.

The Chairman: 70 per cent was your peak?

Mr. Street: That is right, sir.

Senator McIlraith: Those statistics as to the numbers paroled, of course, relate to a period during which there was a smaller residue of long-term prisoners eligible for parole. You would therefore require the statistics of new arrivals in the penitentiaries in order to have the figures run parallel.

Mr. Street: Yes, we would.

Senator McIlraith: And to know exactly what the statistics indicate. The 3,600 figure may include paroles of prisoners who would not have been eligible in 1970, when the figure was 5,200.

Mr. Street: Yes, that is true.

Senator McIlraith: So that those statistics considered alone, without an understanding of the flow of inmates into the penitentiaries, are not really fully meaningful; they are only illustrative of a point.

Mr. Street: Yes, it is true that in order to analyze them we must have more sophisticated research than we have had.

Senator McIlraith: You see, the rate of 5,200 paroles per year would have reduced the population to nil in a number of years. Therefore, when you say you reduced the number of paroles granted and quote the figure of 3,600, it is slightly misleading, is it not?

Mr. Street: I see what you mean, sir, but I do not really think so. The significant fact is that during 1970 we granted parole to two out of three of those who applied; whereas in 1972, two years later, we received more applications, the population of the system was higher and only a little more than one out of three applications were granted.

Senator McIlraith: But had you maintained the rate of 5,200 each year, the prison population would have been reduced to nil in X number of years because 5,200 was greater than the rate of inflow.

Mr. Street: Of course, the numbers sent to prison each year would have to be taken into account.

Senator McIlraith: Exactly; that is my point. To say you reduced parole when you granted only 3,600 two years later is somewhat misleading when the two figures are taken by themselves, 5,200 in 1970 and 3,600 in 1972. The number of paroles granted was reduced, but not by as much as appears from those two figures alone.

Mr. Street: Yes, I see, except that we know in a statistical way that we were granting fewer paroles numerically and proportionately. These other factors you mentioned would have to be considered.

Senator McIlraith: You grant fewer numerically, that is clear; but how many fewer as a percentage of the population entering the system is not clear. Your statistics would therefore need further refinement before an absolute conclusion could be drawn from them.

Mr. Street: Yes, sir, that is correct. We can only say that it is fewer numerically and proportionately, but we do not have the other information you mentioned.

Another point which I think was mentioned in many of the briefs, with respect to which there seems to be almost unanimous agreement, is that we should promote a better understanding of parole and, of course, that there should be more public education. We certainly agree with this and have devoted our assiduous efforts to inform the public as often as we can by making speeches, appearing on television, speaking on the radio and using other media. We do not seem to be able to do as well as we should. I agree we should have more resources and personnel to improve that. We have just one information officer and it would be desirable if we were able to obtain more. There has been some confusion in the minds of the public as to the difference between day parole and temporary absence. A great many of the public do not seem to understand this, which has created some confusion.

There has been much discussion, Mr. Chairman, as you know, as to whether the board should be regionalized. I presume this is one of the points you will be considering. Off-hand, in my opinion it is correct to say that almost all who express an opinion consider it should be regionalized. As you know, honourable senators, we have had to discontinue the practice of panel members visiting the federal prisons simply because it was not possible to keep up with the work load and still deal with all the other cases, such as the provincial cases which are referred to us in Ottawa and have to be dealt with here. So, before panel hearings can be re-introduced we must have a good many more members. Then it would be for the appropriate authority to decide whether those members should be stationed in certain parts of the country, such as two in each of British Columbia, the Prairie provinces, Quebec and the Maritime provinces, or all stay in Ottawa, as at present, and travel in panels. I think most of those who submitted briefs to you expressed the opinion that there should be some form of regionalization. We consider it to be desirable, of course, to establish a uniform parole policy throughout Canada. I believe most of those who commented in this respect also expressed that view.

The Chairman: What would be your recommendation if we were to think in terms of regionalization? Do you think it would be preferable for the regional members to be located in the regions?

Mr. Street: I am inclined to that view, Mr. Chairman, yes; and especially if it is decided that we should be given the responsibility for all forms of release, such as temporary absence, day parole and so on. Day paroles, especially, should be dealt with rather quickly because if an inmate is suitable for day parole and has a chance to obtain a job or attend school, which are the main reasons for the granting of day parole, speedy processing of the application is essential.

If we were to be doing that, I think it would be desirable to have resident members, depending on what our terms of reference are. At first our members were not unanimous about that. There are now eight of us and all but two of our members are in favour of the idea of some form of regionalization. Two of our members think that they should stay in Ottawa and travel, as we do now.

Senator Laird: Would such a new set-up make it more difficult to have uniform guidelines for application throughout the country?

Mr. Street: I think, Senator Laird, it would be a little more difficult, but I do not think it would be impossible. We would have to establish a great deal of communication between the board and British Columbia, if there happened to be one there, and one on the Prairies, and so on. We would probably have meetings, say, three or four times a year in which we would get together; we would watch the track record in each case carefully, and so on; we would establish guidelines and policy, as we do now; and we would just have to do the best we could to keep in touch with each other.

For instance, there would be certain cases in which we would not have two members parole people. That

is the way it is now. Two members can parole most people, but two members sitting on a panel cannot. For instance, a person convicted of murder—of course, that has to go to Cabinet, anyway. They cannot parole a dangerous sexual offender, a habitual criminal or a person convicted of criminal violence. That could come to five members at least, or seven, or nine, depending on the type of case that it is. That idea would, of course, be used if we had regional members. I would not be in favour of letting two members, sitting in another part of the country, parole a man convicted of a crime of violence. That would come back. In that sense it would help to keep uniformity.

Senator Laird: Do you think it would be feasible to do the same as lawyers do in connection with court cases: keep some sort of record available to everyone in the system, so that they could turn to a particular case and say, "Ah, this one adopted this principle; therefore we will follow it."?

Mr. Street: No, I do not think it would be, except that I agree with the idea of adopting principles. Our principles should be uniform. It may not appear to the inmates that our decisions are always uniform or can be reconciled; but I am concerned with the fact that we should maintain a principle or a policy. I am not much concerned with an individual case, whether A or B does or does not get a parole, as long as the principle which has been applied to that decision is uniform. If that is what you mean, yes, I agree.

Senator Laird: Would it not disclose whether or not the proper principle is being applied, if you had available centrally a report on an individual case?

Mr. Street: Yes, I think it might. But again, it is mostly a matter of assessment. When you come right down to it, it is a matter of assessing that man's readiness for parole, and there is no exact system of doing that. That is the trouble. Two people might look the same, but they may be assessed differently.

Senator Hastings: If the national board were used as an appeal body, wouldn't that be regarded as a case for uniformity?

Mr. Street: I think so, Senator Hastings; but I think I would have to respectfully suggest that we would have to be careful that the headquarters board sitting in Ottawa would not be occupied most of the time with a bunch of frivolous appeals by people who think they have nothing to lose. If there is to be an appeals procedure—and I agree that it is desirable that there should be—then that would help to establish uniformity, but we would have to be careful that frivolous appeals were screened out, because we get thousands of them.

Senator Hastings: Perhaps Mr. Gilbert could respond to this question. Do you think that the very heavy work load which your members have been carrying, and the long hours they have been putting in at penitentiaries, and so on, has had an exhaustive effect on members of the board and thereby impaired their decision-making?

[*Translation*]

Mr. Jean-Paul Gilbert, Member of the National Parole Board: I agree with Senator Hastings that granting parole, if we have too many cases to study on the same day, might prove to be a disadvantage for the one who wants to be paroled.

If the work days are regular, then there is no risk. However, in view of the situation which existed, until the Chairman decided to stop the hearings, the work load was too heavy both physically and psychologically, because we sometimes had to work two evenings out of three until 8:00 p.m., or we had to work until 9:00 p.m. or 9:30 p.m. every evening, although we began in the morning at 9:00 a.m.

I do not know whether that answers your question.

[*Text*]

Mr. Street: I think that certainly it has been difficult for them, but I do not think it has impaired their ability to make judgments.

Senator Hastings: Correct judgments.

Mr. Street: We watch these statistics very carefully. I watch them every single month. When we see violations getting too high, as a matter of policy we reduce the number of paroles being granted. I think it is impossible to ask these members to go on working 12 to 16 hours a day, which they did in some of these cases.

Senator Hastings: They have been working two or three evenings a week at these institutions, and they are exhausted. I give them great credit; I am not criticizing them; but it seems to me that after so many hours of work a man's ability to make a correct judgment becomes clouded.

Mr. Street: Certainly it is not improved.

Senator Laird: It has been found, for example, that a judge in court can only concentrate effectively for a very limited number of hours per day.

Mr. Street: Yes, that is true.

Senator McGrand: In the selection of prisoners for parole, you have a problem as to whom to select, and so on. Mental disease comes and goes with patients. They will have periods in which they are incapacitated, and they go to a mental institution and receive treatment. Then they will go back into private life and become useful citizens for perhaps two or three years, with the occasional check-up.

Criminals are mostly disturbed persons and much of the crime is committed during those periods in which they are disturbed. I understand that criminals in penitentiaries have long periods in which they could be useful citizens. Then something happens: they have an outburst and they commit some offence for which they have to stay in the prison for a length of time; or, if they are in the outside world and have one of these outbursts, they are back for three or four more years.

Could you give me your opinion on this rather extensive field that would be opened up in this work?

Mr. Street: Yes, sir.

I think that proportionately very few people in prison are so disturbed that they require psychiatric treatment or are psychotic. I think that not much more than 10 per cent of such people may need psychiatric assistance. If the psychiatrist says they are all right and have been cured, and if we should consider paroling them, we might make it a condition of parole that they continue treatment on the outside, or whatever is necessary. I thing the majority of inmates are not psychotic or even neurotic, but they are inadequate types. You prefer to call them disturbed people; but I do not think, with respect, that they are disturbed to the extent that they need psychiatric treatment, as such.

Senator McGrand: I am not thinking of psychiatric treatment in the terms that you may be. I mean that the line of demarcation between madness and badness has never been defined. I am thinking of those prisoners who, for some particular reason, will commit an offence. They may not think it is an offence. They are mostly disturbed; there is no mistake about that. Whether they need psychiatric treatment or not, I do not know, but they are mostly disturbed.

Mr. Street: That is true. Whether you say they are disturbed, inadequate, or abnormal, they are certainly different; they are certainly abnormal. The question is to try and find out why they did it. It may be that in some cases there was a particular reason or a particular set of circumstances which is unlikely ever to occur again. If he needs and further treatment on the outside, he gets it. I am not sure if I have answered your question, senator. They are different, anyway.

Senator Hastings: I have a supplementary question, Mr. Street. Would you agree with me, regardless of what is wrong with a man, whether it is inadequacy, or whatever, under our present custodial concept of correction, whatever that difficulty is, it simply remains dormant and buried while that man is in custody and does not surface again until he has been put back into society?

Mr. Street: That might very well be.

Senator Hastings: He spends all his time covering it and joins the paranoid club within the institution, and we do not have the opportunity or the staff adequately to assess that individual's condition, or to determine why he committed the crime.

Mr. Street: That could very well be. Certainly, a cure is not going to take place by simply locking him up.

Senator Hastings: This is the custodial concept that society seems to be demanding.

Mr. Street: That is right, senator. Society seems to expect that there will be magic reformation with respect to everyone sent to prison. It does not work that way: prison does not make them better; it makes a good many of them worse. I suggest that prison should be reserved for those who cannot be treated or controlled in any other way. If they are dangerous, vicious or violent, or a menace to society, then I would lock them up forever. Let them die in prison! But if they are not, then we should try to treat them, to the greatest extent possible, within the community.

This is what the National Parole Board is trying to do. If we know nothing else, we know that locking people up in institutions does not work. Surely, in a society that can put a man on the moon we can think of a better method of dealing with 20,000 inmates than simply locking them up? As I say, this is what we are trying to do, but with little public acceptance, certainly, in the last year.

Senator McGrand: That is the point I had in mind. A man is in prison for several years, during which time he is a respectable citizen. Then he is released and he has this period during which he has that outburst, although he may have it while he is in the prison. If he is treated in the community, it is easier to assess the importance of that outburst than it is by simply putting him back into the prison again. Is that not correct?

Mr. Street: That is right, senator.

Senator McGrand: That is the point I am trying to make.

Mr. Street: I apologize if I missed your point, senator. I think what we should be trying to do is teach these people to have some sense of responsibility, and the best way to do that is not by locking them up in prisons where they do not have any responsibilities, but by taking those who can be trusted outside and testing them. This is what parole and probation are all about.

Senator McGrand: I do not want you to think that I am way out in the realm of fantasy. The Menninger Institution, which is probably one of the most successful psychiatric centres in the world, has large tracts of parkland where mentally disturbed patients can wander, under supervision, and enjoy nature, and so on. These people are eventually able to rediscover themselves. My feeling is that a lot of our criminals are people who would like to rediscover themselves as individuals and responsible citizens. What can be done on the outside through which these individuals can rediscover themselves, in the same manner as a mental patient can? After all, the man in the mental institution and the man in the prison institution are just cousins under the skin, for the most part.

Mr. Street: I agree with you, senator. Carl Menninger wrote a book, as you know, entitled *The Crime of Punishment*. In that book he takes the same position as I take with respect to the harm we are causing people by locking them up, and so on. If a man has problems such as that, as many of them do, then it is a matter of trying to put him into a suitable environment. You can do certain things to change a man's

personality, but there are limitations. However, you can do a great deal to change the environment which caused him to become involved in crime in the first place. As Carl Menninger wrote, putting people into an environment which is beneficial to them and which makes them rediscover themselves is by far the better course. If you can make them look at themselves and like what they see, they are all right. However, in real therapy, such as reality thereapy as proposed by Dr. Glazer, sometimes he does not like what he sees and the idea is to teach him to change himself so that he will like it. Real deep therapy treatment is very difficult, but it is necessary in some cases. I think it is a matter of changing the environment to suit him.

Senator McGrand: This is something to which we have not paid enough attention.

Mr. Street: I agree.

Senator McGrand: I got my point across.

Senator Neiman: I have been rather taken with the suggestion that people who commit crimes against personal property should not be jailed and that we should reserve our jails for people who commit crimes of violence or crimes against other people. This is a suggestion I have heard quite frequently recently. I should like to get your views on that.

I suppose, as you say, that would be rather a radical position to take today. At the same time, I should think that some of the people who do commit crimes against personal property also need treatment, although perhaps not of the same kind. I do not know if we can divide these two types of criminals into two entirely separate and distinct categories.

Do you feel we should try to get to the point where we do not jail people who commit crimes against personal property only?

Mr. Street: Yes, unless it is necessary. As you say, they need some treatment, they need some help. They also have to be under control. I think control is the key element. We have too much imprisonment and not enough control. In the ideal situation it would be desirable to keep these people in the community, but under adequate control. For instance, if necessary there could be one parole officer for ten individuals. If that were the case, he could practically see each and every one of them every day. Of course, if they do not respond to that treatment or that training in the community, then they may have to be imprisoned for the protection of society, which always has to be predominant in all our considerations. I am simply suggesting that we should do more than we are presently doing. We need effective, adequate control in the community, as opposed to keeping these people in institutions. Let us try it; or, at least, let us try more of it. In our effort to try more of it we have not had much public acceptance. There are four investigations going on at the present time to find out what is wrong with us!

Senator Neiman: But the main point, of course, is the lack of adequate control in the community. We do not have the supervisory personnel needed.

Mr. Street: That is right, senator.

Senator Hastings: You have been very successful.

[*Translation*]

Senator Lapointe: May I ask Mr. Gilbert a question? Did you hear a radio program during the weekend on the CBC network, during which inmates in a Quebec institution said that the number of commissioners on the Parole Board was far from sufficient. In fact, this may have been the reason why there were fewer paroles during the last few years.

Mr. Gilbert: No, I did not see it.

Senator Lapointe: This was not on television, it was on the radio.

Mr. Gilbert: On the radio, no.

Senator Lapointe: Do you feel yourself that the number of commissioners is insufficient?

Mr. Gilbert: Yes, absolutely, I agree. If there were more commissioners, as Mr. Street started to say a while ago, with this regionalization concept, we could pay greater attention, not so much to individual cases as a whole, but to the programs that could be implemented.

Senator Lapointe: And, as far as you are concerned, how many more should there be?

Mr. Gilbert: I would rather let Mr. Street answer this question, Mr. Chairman.

[*Text*]

Senator Lapointe: How many more board members should there be in order that the National Parole Board can be an effective body?

[*Translation*]

Mr. Street: At least seven or eight.

[*Text*]

I think we would probably need that many. Again, senator, it depends upon what we will be asked to do. One of the things we need to know soon is whether or not we will continue to be the body granting paroles from the provincial institutions. That aspect alone represents 50 per cent of our workload. It appears to me that most of the provinces will probably want their own parole systems. That would make some difference in our work. If we were to put two members in, say, the Prairies, they could concentrate on visiting the federal prisons in the Prairies much more frequently than they were able to do when we were sending two members out—we could send them out there only once every two months. Subject to those things, we would need at least seven or eight at the moment.

Senator Lapointe: What was preventing you from going into the provincial institutions? Was it lack of personnel?

Mr. Street: Yes.

Senator Lapointe: Or regulations against that?

Mr. Street: There is no regulation against it; we just did not have enough members. We could not keep up sending members two at a time to the federal prisons, and there are many more provincial prisons than there are federal prisons. We would never have been able to do it. I do not know that we would ever be able to, unless we have some form of regionalization. I suspect, as I say, that the provinces will want to take over their own parole system. We would never have been able to do that.

Senator Lapointe: Do you think it would be a wrong decision to have as many boards as there are provinces?

Mr. Street: No. I rather subscribe to the view expounded by Chief Justice Fauteux in the Fauteux Report, made 15 years ago, in which he suggested that there should be one national board, for the sake of uniformity and so on. In that sense I agree with him. I think it would be desirable to have one. I do not have any particular objection to the provinces having their own, nor do I have any firm convictions one way or the other. I think there is a good deal to be said for their having their own. The situation is a little more complicated, because Ontario, which is a big province and has almost as many people in prison as the federal prisons—namely, about 5,000—has a parole board, but they deal only with part of a certain type of sentence. Therefore, they should either get rid of their board and that type of sentence, or they should do it all. They do have a board. British Columbia has one too. They are the only others.

The Chairman: They deal with the indeterminate portion of the sentence?

Mr. Street: Yes, sir. We deal with the definite part. That is the other thing that is wrong. If a man gets 12 months' definite and 12 months' indeterminate, in an Ontario or British Columbia prison, we have jurisdiction over the 12 months' definite and they have jurisdiction over the 12 months' indeterminate, so there you have two parole authorities and two different staffs dealing with the same man and the same sentence, which does not appear to make much sense. Even though we work with them very well and get along with them very well, there is still some duplication, in that sense, that is not good. I do not see any harm in Ontario having its own, except for the reason you mentioned.

Senator McIlraith: I should like to clarify something in my own mind. You used the expression, "the province take over its parole system." I presume by that you meant that the province would take jurisdiction for parole over all persons presently or in the future in custody in provincial institutions.

Mr. Street: Oh yes.

Senator McIlraith: That means all those persons sentenced to less than two years.

Mr. Street: Yes, sir.

Senator McIlraith: In the system today that would mean about two-thirds of the total number of persons in custody, would it not?

Mr. Street: Yes, sir, roughly 12,000 in provincial prisons and 8,000 in federal prisons.

Senator McIlraith: When you say "do it all," you of course refer to the person who may be in a provincial institution with part of his term definite and part indefinite. You were asserting the view there, I take it, that one parole authority rather than two parole authorities should have jurisdiction over that inmate, as at present in those few cases where part of their term is definite in custody and part of it indefinite?

Mr. Street: Yes, sir, that is what I meant.

Senator McIlraith: As I recall—and I want you to correct me if I am wrong here—was it not the Fauteux Report that first suggested that responsibility for providing custodial facilities for inmates should be changed from the present two-year break-off line—those more than two years in the federal and those less than two years in the provincial—to one year?

Mr. Street: Six months, sir.

Senator McIlraith: Six months, was it?

Mr. Street: Yes, sir. It recommended that they would only have sentences of imprisonment up to six months, and they would be provincial responsibilities; there would be no sentence between six months and one year. Anything over one year would be a federal government responsibility. That was what the now Chief Justice Fauteux recommended, but, as you know, Mr. Justice Ouimet did not.

Senator McIlraith: I understand he recommended that it stay at the two-year term. That leaves this question outstanding. On the premise that we recommend that the system at that point stay as it is, that persons sentenced to more than two years go to federal institutions and those to less than two years go to provincial institutions, are you prepared to make a recommendation to us as to which authority should have parole jurisdiction over persons in provincial institutions?

Mr. Street: Yes. Let me say first that I do not have any strong convictions about it. I am not going to feel badly if we are relieved of responsibility for people in provincial prisons. I would be willing to carry on with that. If we are to carry on with it, then we will probably need more members, as I indicated to Senator Lapointe. We have no objection to doing it. I am inclined to think that it might be desirable to let especially the larger provinces do their own. I suggest, however, that it would not be appropriate for Prince Edward Island, for instance, to have a parole board, or even Nova Scotia, New Brunswick or Newfoundland. It might be desirable to have one board for those four Atlantic provinces; but it certainly would not be desirable from anybody's point of view to have one in Nova Scotia, one in New Brunswick, one in

Newfoundland and one in Prince Edward Island. If we did, they would have to have a part-time board, which I really do not think is desirable.

Senator McIlraith: Taking that a little further and dealing with those smaller provinces who might not be able, by reason of size, to set up a proper parole board to deal with the inmates in their provincial institutions, would you be prepared to provide that service under contract if the appropriate authority were granted in an amendment to your legislation?

Mr. Street: Yes. We are doing it now, and we would certainly carry on doing it. Perhaps, if we were to be asked to carry on doing it, we would attempt to have a regional board so that the members could visit those provincial institutions too.

Senator McIlraith: It would be an adaptation.

Mr. Street: Yes, sir.

Senator McIlraith: Pursuing that subject a little further, I assume that one of the reasons you are not reluctant, to see jurisdiction granted to the provinces to deal with all these persons sentenced to less than two years is that one of the advantages of that change would be that the shorter term in custody for those persons probably means that there is less opportunity to assess them for suitability for parole than there is when you have a man sentenced to a minimum of two years. Would that be correct?

Mr. Street: That is correct.

Senator McIlraith: The criteria would be slightly different in the two types of case.

Mr. Street: Yes, I think that is so, because, generally speaking, I think it is fair to say that the people you find in provincial prisons are not as difficult or as potentially dangerous as those that you find in federal prisons. I said that Ontario has, I estimate, 5,000 people in prison, but they probably have 10,000 people going in and out of prison every year, as you know; some go in for 30 days, 60 days and so on. Parole is not really suitable for people serving very short sentences.

When the board first started though, because there were some provinces in Canada that did not have probation, 20 per cent of our decisions were with respect to sentences of less than six months, even though, as you have indicated, there really is not enough time to assess the person adequately, and so on. The provincial boards would only be concerned, I would think, generally speaking, as honourable senators have indicated.

Senator McIlraith: Of the inmates in the provincial institutions sentenced to less than two years, do you have any statistics readily available with you, or can you give us a general answer, as to the length of those sentences in terms of proportion of the total number of inmates in provincial institutions?

Mr. Street: I could give you exact statistics as to the number of paroles we grant.

Senator McIlraith: Not the paroles average, just the length of sentence.

Mr. Street: The length of sentence, no. This is the sort of thing you can get only by a special survey every few months, and even then it changes every month. I do not think that we would have anything readily available. I would estimate offhand that of the 12,000 people in provincial prisons across Canada, not more than one-third are serving a sentence of longer than nine or twelve months—something like that. Most of them are serving very short sentences. I am sorry but I do not have that information.

Senator McIlraith: That is what I was seeking.

Mr. Street: As you know, having been the minister responsible, we would have to make a very special survey on a day-to-day basis to get that information. It is a small percentage that is serving more than a year.

Senator Hastings: Is the average term served in the provincial prison not nine months?

Mr. Street: I do not know, sir. I do not think we ever got that far, but I would not be able to argue with it one way or the other.

Senator Hastings: That was my feeling.

Mr. Street: It could be so; but I am sorry, I do not know.

Senator Heath: Mr. Street, could you tell us how much consultation there is between the sentencing judge and the Parole Board, where there is a serious offence involved and a very severe sentence?

Mr. Street: In a case like that, senator, if we think it necessary to seek the views of the judge, certainly we do so. However, as a general rule we used to ask judges to give us a report on every case where they sentenced a person to, say, longer than one year, because we knew that person would be applying for parole. To this end we designed a special form which meant we could get the maximum amount of information with the minimum amount of effort. But our experience with that was not very good; very few of the judges cared to send us these reports, and then, of those who did, they did not give us very much meaningful information.

Then I wrote to all judges in the country—and I write to every one as he is appointed—saying that we would be delighted to have their reports and their assessments, or their recommendations, or their views, or their reasons for sentencing, in every case in which they see fit to do so. Some like to do it that way, but it is a small proportion, and our experience was that it just did not pay to seek the views of the judge in every case, because most of them did not care to give them to us. But in the special type of case, such as you mentioned, where it is a long sentence or the person appears to be particularly dangerous, we might go and seek his views.

We have made arrangements with all courts of appeal in the country to get reasons for the sentences sent to

us, and many judges send them to us automatically. Quite often, judges will want to write us a special report, especially in cases in the superior courts or the Supreme courts. They do this very frequently. They write us a special report; they give us their assessment, and so on. I do not know if I have answered your question, but that is the way we try to do it.

Senator Heath: Thank you.

Senator Hastings: As a supplementary to the previous question, I have been looking at the brief to be presented tomorrow by the Canadian Bar Association. They say "There is, however, agreement that the trial judge may make recommendations to the Parole Board, and if he does, the Parole Board should not act contrary to these recommendations without first consulting the judge." What agreement are they referring to?

Mr. Street: There is agreement, it said?

Senator Hastings: It says: "There, is, however, agreement that the trial judge may make recommendations to the Parole Board and if he does, the Parole Board should not act contrary to these recommendations without first consulting the judge."

Mr. Street: The second part of that statement is not correct. There is an understanding, as I have just indicated, that we encourage judges to give us their views any time they wish, and we are very glad to get them. Some of them like to do it, but there is no agreement—we are not offering a right of veto, or anything like that.

The Chairman: I do not think it means that there is an agreement; it means that the Bar agrees.

Senator Hastings: Agrees among themselves?

The Chairman: That is what it means. I read that carefully.

Senator Lapointe: My question has been partly answered; but I want to report that on a radio program I heard during the weekend the inmates said that they preferred being sentenced to more than two years, in order to get a parole, because when they were in provincial institutions they were not certain to get one and they thought that they were neglected in the provincial institutions by the Parole Board.

Mr. Street: That is interesting, senator. I did not hear that program. It used to be that they preferred to do it because they got more time off for good behaviour in a federal prison, but that has been changed now and the time is the same in both. I am surprised to hear what you say, because it is as easy for a provincial prisoner to apply for parole, and his case will be processed in the way it is now.

The Chairman: I think that the Bar Association brief, which will be presented tomorrow, is suggesting the same thing, that prisoners prefer serving time in federal institutions.

Senator McIlraith: One of the requests I used to have on that was quite specific. It was because they said they got better training and had an opportunity to get started on learning a trade. That was a request that was not infrequent. I was never certain of the validity of it, but it was a request made from time to time.

Mr. Street: When you first became minister, before you changed it, they used to make that request, based on the thought that they would get out in 16 instead of 22 months.

Senator McIlraith: Until that amendment was made to the Prisons and Reformatories Act, bringing it into line with the Penitentiaries Act.

Mr. Street: I think it is probably fair to say that in some of the provincial prisons the availability of training programs is just not as good as in the federal prison. There is no limit to the training he can get in the federal prison, when and if he wants it, but to get him to want it is the question, as you know.

The Chairman: You were going on to other points that have been covered in the briefs?

Mr. Street: Yes, sir. There was a good deal of talk about improving the parole criteria, and I do not think any of the people who mentioned the question of improving parole criteria showed us how we could do it. We do have criteria which are well known and well publicized. I do not think anyone has shown us any better or any other criteria; they just simply said that we should have better parole criteria. I respectfully submit that we do the best we can and that no one has been able to show us any better way of selecting people. If they can, we would be delighted to find out, because certainly there is no exact science about it and it is a matter of judgment, based largely on experience, based largely on reports which we get and various assessments we get, from everyone who has dealt with the person. That I notice is mentioned in many of the briefs.

There was some criticism, I think mostly by the police, in that they suggested our supervision is not as adequate as it should be. This could be cured if we get more officers.

There was some criticism that we should not use outside agencies. Of course, outside agencies have a different view of that. We were told by our previous minister that we had to use outside agencies for 50 per cent of the cases; and at the time they were complaining we did not have any choice.

Senator Hastings: Could you give us your views on a very important aspect of our inquiry, the use of aftercare agencies, and volunteers? Could you give us the benefit of your experience and your recommendation in this respect?

Mr. Street: It is highly desirable to make as much use of volunteers as we possibly can. The more people we can get interested in the problems of crime and the treatment of criminals, the better, as you know. We are trying

to tap these resources and to get our people in the field to get more people interested in various ways, in supervising, in helping people, and so on. To that extent, I agree it is very desirable.

So far as the use of after-care agencies is concerned, some are very good, but we would like to be able to use them if, as and when we see fit. I would have preferred —and it was the policy two years ago—that most of the parolees should be supervised by parole officers of our own, so that we would have more adequate control over them. We could tell them, "You do this! You do that!" and so on, instead of being in the position to ask them, and then we would not run the risk of the possibility of their being shielded from the police, and so on. Then we have better control and we can have our policy implemented more effectively.

I would like to be able to use the after-care agencies if, as and when we need them, which, according to my guess, would be 25 or 35 per cent, something like that. But I would suggest that they concentrate on areas we do not concentrate on, such as family counselling, training and public education, rather than spending too much of their time on parole supervision, which we are able to do quite efficiently and just as cheaply, or more so.

I do not suggest that there is not a large role for them to play in the field, but I respectfully suggest that the bulk of their work should not be in parole supervision, but that they should concentrate on areas that the government agencies are not concerned with, such as public education, as I say, and famliy counselling and things like that.

We would be able to use them in the cases where it is appropriate to do so, either to supervise the case under our direction or to help the parolee, along with us—in other words, to use them as a community resource. But when we have to give 50 per cent of our cases to an after-care agency, this does not save us 50 per cent of our time. It simply means that we have to supervise the supervisor and we have to ensure, as far as we can, that the supervisor is carrying out the supervision in the way the board wants it carried out: fair, firm, authoritative, with adequate control; co-operation with the police, and so on. This would all be much easier if we had more officers.

Senator Hastings: I do not have it with me, but in the brief presented by the John Howard Society, their statistics show a high success ratio compared to your service. Do you recall that brief?

Mr. Street: I do not want to discredit anybody in the John Howard Society, because they are a very good agency and they do good work, but it is fair to say that when members are looking at a difficult case they grant parole only on condition that the man is supervised by one of our officers, because they know we can have him do it exactly the way we want. So we are inclined to keep some of the more difficult cases ourselves so that we can watch them. This is no discredit to the John Howard Society, but it is just that we have to be a little more careful with the difficult cases.

Senator Lapointe: Are you in favour of telling the inmate the reasons why the board refuses to grant him a parole?

Mr. Street: I most certainly am. That was the main reason I wanted to have panels of members visit the institutions. Senator McIlraith knows this because he was our minister at the time. If you are going to give him a parole, I do not think it matters whether you hand it to him on a platter or send it to him through the mail. The important thing is that if the two members who make the decision not to give the inmate the parole are there they can tell him, right then and there, why, and that is the most important feature of panel hearings. That is why I think we should give reasons, and we do give reasons.

There is another suggestion somewhat related to that which is contained in two or three other briefs. Somebody suggested that we should make the information in the file available to the inmate. With the greatest of respect to those of contrary opinion, this simply would not work. We have to treat these reports as confidential, or we would not get the reports we do. It is unfortunate that we have to deal with this on a confidential basis, but I assure you that it is not possible to do otherwise. If the person in prison who made a negative report on the prisoner knew we were going to tell that prisoner that, he would not give it to us.

Now, in the course of the hearing the members can give the inmate the substance of the report, or the gist of it, and indicate in a general way that, "Reports indicate that you do not do so-and-so," or, "You are doing this or not doing that," so that he knows the reason why he is not getting the parole; but they cannot identify the source to him.

There are other problems, of course. For example, the psychiatrist may not be able to give his reasons; or the wife may have given certain information which, if it were revealed to the husband, might cause him to kill her. So, some of the information contained in these reports is very sensitive. As a matter of fact, even some of those who recommended full disclosure would allow for a reservation so that it would be possible to stop the information going to the inmate. But, generally speaking, if we started giving the file to the inmate the file would not have adequate information in it.

Senator Lapointe: But you can give the inmate the global results.

Mr. Street: That is right. We give him the gist of it. He is told the reasons why he is not given a parole. He is given the substance or the gist of the reports we have, without our identifying the source or giving sensitive information, which would cause nothing but trouble.

Senator Hastings: Well, Mr. Street, now that you have discontinued the parole panels, he is not getting that information, is he?

Mr. Street: We only discontinued the panels last month. The inmate will get the reasons, if he has any doubt about them. Most inmates know why they have

been refused, but if an inmate has any doubt he can ask the classification officer, who can second-guess what the Parole Board has said, or the inmate can ask the parole officer, if necessary.

Senator Hastings: You say, "if necessary". Isn't it really necessary that he be confronted as quickly as possible with the reasons why he has actually been refused parole?

Mr. Street: Inmates know themselves in many cases, but this is one of the disadvantages of not continuing the panel hearings, and it is one of the advantages of having panel hearings, because the inmate can be told in words of one syllable right then and there. But even though we are not able to confront him now, to talk to him personally, it is still possible for him to find out the reasons by writing to the board, or he can find out verbally from one of our officers.

Senator Hastings: It is possible for him to write, yes, but is it not our obligation to tell him?

Mr. Street: Yes, probably, but it is a little difficult to write out all these things because we would spend more time writing the reasons for parole refusals, in cases where they do not really need to know, than we would spend in granting paroles, if we tried to write them out in every case.

Senator Hastings: I am not suggesting that you should write them out. I am not trying to put more work on your board—not at all—but I believe it is imperative that your service visit the man as soon as possible.

Mr. Street: It is understood now that, if there is any difficulty about it, the inmate writes to the district office and gets an interview with the parole officer who will tell him what the reasons are. Of course, so could the warden or classification officer tell him what the reasons are.

Senator Hastings: Do you advise the after-care agency of the reasons why a man has not been granted parole?

Mr. Street: Yes.

Now, those are the main points, Mr. Chairman.

There is one other suggestion, about the Parole Service and the Penitentiary Service being integrated. I do not know whether that is within your terms of reference or whether or not you care much about it, but several people have recommended that.

I have no particular objection to it, but the reason I am not particularly in favour of it now is that I think it is desirable that the Parole Board have the means of control over its staff in the field. We have 200 parole officers at the moment, and we will probably have more than that in the future. It is desirable, therefore, that we have means of controlling them.

Almost all of the administrative work is done now by the Executive Director, who does it under my direction. I am concerned with the overall policy and with problem cases, and so on. I think it is desirable that we have the means of control of parole officers carrying out our work for us, because otherwise, if the parole officer did not carry out our instructions or did not implement our policy, we would have a long chain of command to go through in order to ensure that he did, instead of being able to tell him directly ourselves.

The Chairman: Then you would not be in favour of integrating the Parole Service and the Penitentiary Service?

Mr. Street: No, sir—not at the present time anyway. For what it is worth, the members of the board are not in favour of it either, especially not at the present time. Even those who recommended it in the first place were not in favour of it happening at that time. Whether they are now, I do not know.

Senator Lapointe: What do you have to say about control by the board of temporary absences?

Mr. Street: That is a matter for somebody else to decide but, instead of there being temporary absences of more than three days, one of the alternatives is that it should be by day parole or not at all. It has also been recommended throuhgout the briefs that those two should be integrated.

Senator Lapointe: Are you in favour of that?

Mr. Street: Yes.

The Chairman: That is, tomporary absences of more than three days?

Mr. Street: Yes.

Senator Lapointe: I mean back-to-back or weekends.

Mr. Street: Yes, senator. I am not talking about the odd three-day pass to go home on the weekend to see the family; I am talking about anything longer than three days. You asked me if I would be in favour of day parole. If the inmate is on day parole, he is under supervision. If he is on temporary absence, back-to-back, he is not under any supervision. If he violates day parole, there are certain penalties attached to that violation, which might not be so much the case if he were on a temporary absence.

Senator Hastings: Getting back to the integration of the two services—and let me state that I am not particularly interested in the actual integration, but do you not think there is need for much more co-operation and co-ordination of effort between the two services with respect to the treatment of the inmate? At the present time we have the custodial people having him under control for three years, or whatever time his sentence is; and then, suddenly, he comes before your board for his final release only to find out that you are not very interested in what he has been doing for the three years.

Mr. Street: How do you mean, senator, that we are not interested?

Senator Hastings: Well, he has been in an institution for three years, but during that time he has never faced his problem, as you see it.

Mr. Street: I agree that there should be the closest possible co-ordination and liaison and working together between our service and the Penitentiary Service at all stages of service, and this has been substantially increased in the last few years. We have members of our staff sitting on classification boards. We have started to provide them with what we call post-sentence reports as soon as the inmates are sent to prison; and we have increased this co-ordination and liaison over the last few years. There is no limit to the amount of co-ordination we should have, I believe.

Senator Hastings: Are members of your service serving on the inmate training boards in any institutions?

Mr. Street: Yes.

Senator Hastings: How many? Is it general?

Mr. Street: Well, I would have to ask somebody else that; but, as an example, in the city of Edmonton it is our officers who decide where the inmates will go when sentenced in the courts. It is our office there which decides whether they will go straight to Drumheller or to Prince Albert; and that is better than having them sent to Prince Albert for two or three months and then sent back to Drumheller. They are the ones who are screening them out and deciding whether they should stay there or go to Grierson.

Senator Hastings: They do not send them directly to Grierson.

Mr. Street: No, but that is what is happening in Winnipeg too. I am afraid I cannot give you the names of the other places where our officers actually sit on these classification boards.

Senator Hastings: And what about inmate training boards?

Mr. Street: I am not too sure whether it is classification or inmate training. But they are concerned with this.

Senator Hastings: But you said that they were sitting on boards.

Mr. Street: Yes. I was thinking of classification boards, and I will have to find out exactly where they are.

Senator Hastings: It is a very desirable objective to have them sitting on classification boards or inmate training boards and guiding the inmates while in custody.

Mr. Street: I agree that it is desirable that they should be involved with them early on and throughout the entire process.

Senator Hastings: You also said that you were interviewing these men. Do you decide where they go, or does the Penitentiary Service decide?

Mr. Street: I think it is very largely decided by us. Perhaps they are somewhat involved. You might know more about this, beecause I know that you are in touch with our Calgary and Edmonton offices. I think that the decisions are made mainly by us in Edmonton because there is no federal prison there, as you know, and rather than have them go to Prince Albert and then back, they send them there in the first place. No doubt this is done in close liaison with Mr. Jutras and his staff.

Senator Lapointe: There were some people here who testified and who said that there should not be a former police chief on the board. They resented it very, very strongly. What do you think about that, Mr. Gilbert?

Mr. Gilbert: Up to a point, it is an insult to an individual to say that.

[*Translation*]

If we were to follow up this reasoning, I would ask how come a former commissioner of the Royal Canadian Mounted Police has been appointed ombudsman in a Canadian provincé? Must we question the integrity of a man because he has been a policeman? Being a policeman involves responsibilities: he must see that laws are enforced, and arrest those who break these laws. A policeman cannot apply his own views on what should be the best correction system to reduce crime.

It was also said that there were no former judges on the Board; the same group of inmates mentioned it. If we follow this reasoning to its extreme limit, where will we find the members of the Board in charge of applying the social reintegration system of individuals?

[*Text*]

Senator McIlraith: I do not have the brief here, but in almost the same paragraph where they recommended against the appointment of police chiefs or police officers to the board, they also proceeded to set out the qualifications for experts. They gave all the degrees that you have there precisely and in great detail. The paragraph was rather inconsistent and can be used in support of your appointment or in opposition to your appointment, depending upon where you stop reading the sentence.

Mr. Gilbert: I agree on that, and I shall have the opportunity later to give more detail on that.

Senator Lapointe: Where?

Mr. Gilbert: Right here. This is one of the reasons why I have requested an opportunity to express my views.

The Chairman: Mr. Street tells me that he has one more point he would like to deal with in connection with revocation proceedings. After that, Mr. Gilbert has a statement to present to us. So, the question is now whether we should hear Mr. Street on the revocation point and then adjourn, or whether we should hear Mr. Street on this point this afternoon. We have the whole

day. Should we hear Mr. Street on that point now, or would you prefer to adjourn? I am entirely in your hands.

Senator Lapointe: Whatever you decide, Mr. Chairman.

The Chairman: Suppose we go on with the question of revocation now and finish with Mr. Street, subject to the right of the committee to question him?

Mr. Street: The point I want to deal with, Mr. Chairman, concerns revocation hearings. Some of those who submitted briefs to you suggested, or even recommended, that where there is a revocation hearing there should be a right to counsel and to call witnesses, and so on. With great respect to those of contrary opinion, I do not think that this is desirable or necessary. We do not revoke a parole unless there is good reason for doing so, and when we do so the inmate is given a hearing before two members, during which he has a chance to state his side of the case. If the parole is revoked, it is only revoked after extensive reports from the parole officer who investigated the case and who reports that he has committed certain violations or that he is not doing this or he is not doing that. Since he has also been interviewed by the parole officer, he knows why his parole is being revoked. I honestly think that if we had too much due process in that decision it would not be beneficial.

As some of you may know, I am President of the Association of Paroling Authorities, which is mostly American and is called international because I am in it, I guess. These people are plagued with these due process decisions which, I say with all respect, have caused a great deal of trouble and have slowed down the whole process. I also suggest, and some of them will admit it privately but not publicly, that if they were faced with too much due process in the means they have available to revoke paroles, they would not be inclined to grant parole as freely as they do now. So, I think if there were too much due process, requiring lawyers, witnesses, formal hearings and so on, it would not be in the best interests of the inmates, because I know the members of the Parole Board would be reluctant to grant paroles if they were faced with a great deal of difficulty in returning violators of the conditions of parole.

I am more interested in the security and welfare of 22 million Canadians than in the possibly exaggerated emphasis on the rights of a handful of offenders who may violate the terms of their parole. So, I respectfully suggest that it would not be desirable to have formal revocation hearings requiring witnesses, lawyers, and so on, any more than we do now. Lawyers can write to the board and make representations. It is desirable that submissions should be in writing anyway, because then they will be on file. They can also visit us at any time, quite easily, and make representations on behalf of their clients. The question of whether a man does or does not receive parole, however, is really not a matter of legal considerations. but assessment, a decision as to whether he can be safely released into the community. I do not think that even the Bar Association recommends that lawyers should be involved in that process.

If an inmate needs assistance at a parole hearing, I suggest it should and can be provided either by the classification officer or the parole officer, both of whom are present at the hearing.

So far as revocation is concerned, for the reasons I have mentioned, I do not think it is desirable to have too much due process involved. The board is not anxious to return parolees to prison, and they do not do it without sufficient reason. However, if they were faced with great difficulty in revoking paroles, I think they would be less inclined to grant parole, and this would not be in the interests of the inmates.

Senator Hastings: You mentioned exaggerated emphasis, Mr. Street. The committee should bear in mind the number of revocations last year, which I think was 1,035.

Mr. Street: The figure for federal institutions was 1,057.

Senator Hastings: How many of those were due to the commission of an offence?

Mr. Street: Last year, with respect to federal institutions, 666 plus 86 committed indictable offences while on parole. Some of those whose parole was revoked may have committed minor offences.

Senator Hastings: 752 committed indictable offences and put themselves back?

Mr. Street: Yes.

Senator Hastings: So you really only revoked 300 out of 5,000 on parole?

Mr. Street: That is correct.

Senator McIlraith: And several of the 300 may have been returned because they committed non-indictable offences?

Mr. Street: This leads me to the opinion that the introduction of too much due process would waste time and resources on too few, which I do not think would be in the interests of the inmates.

Senator Hastings: It would be for 300.

Mr. Street: In the event, last year, it was 306.

Senator Hastings: Each inmate I asked if he received a square deal from the board when his parole was revoked replied, yes.

The Chairman: Does that complete your points?

Mr. Street: Yes.

Senator Hastings: Mr. Street, your evidence this morning makes it obvious that you are understaffed in practically every area—supervision, members of the board, only one information officer and two research people.

Mr. Street: Those two are clerks, not statistical personnel. We do not have a statistical expert, nor do we receive much help from the department in that connection.

Senator Hastings: You used the ratio of one-to-two under custodial. We should clarify that statement and point out that you include clerks, guards and so on.

Mr. Street: One federal prison has approximately 400 inmates and 200 staff.

Senator Hastings: Your figure for those having an impact on the inmates is 1-to-50.

Mr. Street: Is it that high?

Senator Hastings: Yes. If we implemented the improvements which you have suggested and transferred temporary absence to your board and enlarged regional boards, would we approach anywhere near the solution of the problem, or would we simply add another band-aid to the problem of corrections in Canada?

Mr. Street: Of course, I was referring to the ideal situation, which involves a great many aspects, such as legislation in the field of sentencing and including philosophy and principles of sentencing in our statutes, which is not the case at present. I mean, to put a man on probation and not send him to prison without reasons why he cannot be kept in the community. When I speak of keeping him in the community, I do not mean caseloads of 75 to 100, but of 25 to 30, with adequate supervision. Curfews should be applied where appropriate, and the man should be made to work at anything at all, not just sit around drawing unemployment insurance for doing nothing and complaining he is not paid enough for doing nothing. I am talking about making him work and applying discipline, which obviously he did not have before and which is why he got into trouble. It is the general situation. If he can be controlled, fine; if not, then we will put him in prison for the protection of society, because society is entitled to be protected from these people.

Senator Hastings: Can we make any progress so long as this punitive concept persists in the minds of the public?

Mr. Street: That is what I am afraid of. During the last two years I have come to the conclusion that the public is more punitive-minded than I thought. I am not against punishment. I think there should be some, but the whole thing should not be based upon punishment, vindictiveness and retribution alone. They are punished by being in prison and the loss of their liberty, so while they are there let us attempt to reform as many of them as we can. I am not suggesting that we will reform them all, because probably 25 per cent should never be released from prison. They are dangerous, vicious people who just cannot be controlled. I have in mind those who are not dangerous, vicious and violent and perhaps can be controlled in the community with adequate supervision, but not in a caseload situation of 75 spread out all over a county for some poor little probation officer. That is not good enough.

Senator Hastings: Nor can we correct them in custody when there is only one classification officer to 75 inmates.

Mr. Street: No, sir, you certainly cannot.

Senator Lapointe: Aren't there institutions in which the concept of punishment has been left and rehabilitation is the main endeavour?

Mr. Street: I am not speaking of the theory of punishment, but the attitude of the public. I do not believe any of our prison staffs are punitive-minded. They are very progressive in this direction and do the best they can to reform as many as possible. When I say that there should not be too much emphasis on punishment alone, I am referring to the public attitude.

Senator Lapointe: But are the prisons the ideal place for rehabilitation or training?

Mr. Street: No.

Senator Hastings: Therefore, it is a self-defeating process.

Mr. Street: For a great many inmates it is. If we do not know anything else, we know that. Probably, say, 25 per cent of the inmates who cannot be controlled have to be kept in prison. I suggest that if we are sending too many people to prison, it has to be controlled in the community.

Senator Lapointe: Should there be other kinds of training institutions than jails?

Mr. Street: The government is talking about that now. They call them community release centres. They are at the other end of the scale. I suggest we could have more of that, such as detention homes, which the English have, where a man is kept in a detention home and is not locked up in a maximum security prison. That type of thing is beneficial.

Senator Hastings: The community correction centre?

Mr. Street: That is the same idea. That is at the other end, the way they use it now. He is released there first, and then into the community.

Senator Hastings: I have watched men come into the correctional centre, Mr. Street, and, invariably, in the first or second week they go through very erratic behavioural action. By having that type of custody, having to come home at night, it is spotted very quickly and possibly corrected just as quickly. If that man had been on parole, you might not have had an opportunity to catch him as quickly, and correct him. In my opinion, that is why we are losing men on parole, and why I agree with you that we have to have closer supervision on parole in order to catch erratic behaviour and get them over that period when these things surface and they are back in society.

Mr. Street: I agree. That is why we like to test them sometimes in gradual release. In Kingston, as an experimental project, one of our parole officers is running, and is in charge of, a community release centre. So, he is in touch with them all day and every day, and

he watches these things that you are speaking of. That is very desirable.

Senator Hastings: The third thing is that if that man had been in prison for years with a difficult emotional instability, which had never been spotted and had been quietly buried somewhere until he came out, and he had to face it in society, that is when it is likely to surface.

Mr. Street: At least in the community release centre he does not have to face it entirely—

Senator Hastings: He has the security of that centre to run to at night, where he can receive some sort of assistance and guidance over this difficult period.

The Chairman: I suggest that we adjourn until 2.15 p.m.; and I will ask both Mr. Gilbert and Mr. Street to be here.

The committee adjourned.

Upon resuming at 2.15 p.m.

[*Translation*]

The Chairman: We have with us this afternoon Mr. Jean-Paul Gilbert, member of the Board, who will submit a brief to us. He is ready to answer our questions. Mr. Gilbert?

Mr. Gilbert: This Committee has received a number of briefs from the various Chief of Police Associations, among others, from the Canadian Association of Chiefs of Police, the Quebec Association and also from the Ontario Association of Chiefs of Police. In addition, the Brotherhood of Montreal Policemen and the Montreal Urban Communauty Policemen wants to let you know their point of view on the present parole system.

I asked for and received permission to give my opinion and to state my point of view on police taking part in the parole process. I take this opportunity to thank your Committee for taking time out to listen to me. I wish to state that I have been a policeman for 29 years of my life, the last four as Director of the Montreal Police. On retirement, I was First Vice-President of The Canadian Association of Chiefs of Police. I was also, during these last four years, General-Secretary of the Quebec Association of Chiefs of Police.

When I left the Force in 1970, I became a professor in the Criminology Department of the University of Montreal, a position I occupied until I joined the National Parole Board, in other words, nearly a year and a half ago.

During my years as a policeman, I obtained a master's degree in criminology from the University of Montreal and I am presently writing a thesis for a doctorate.

On page 2 of the brief, both in French and English, I pointe out that there seems to exist what amounts to an antagonism or at least a misunderstanding between policemen and members of the Parole Board, but, when we examine the objections brought up by police forces, we find that it is not as strong as it may appear. I, for one, find that instead of trying to limit ourselves to contacts, to which I referred, in the brief as social contacts, to social meetings, we should develop programmes to exchange information, aid programmes and control systems for the parolees, in order to promote the social reintegration of those who continue to serve their sentence outside our penal institutions beginning, first of all, by the selection process.

You are no doubt aware that the Board asks police to supply them with a detailed report on the crime or crimes committed by the parole applicant. You probably know about this booklet entitled "Outline of the Canadian Parole System". It is intended for judges, magistrates and police forces. The booklet is also published in French. On page 5 of this booklet are shown, for the police interest, all the informative facts of interest to the Board, so that it will have a good idea, not only of the nature of the crime committed, but also of other points I have not listed, but which you will find in the booklet. You can trace, for example, the category of crime involved, the violence used, if at all, the effects on the victims, the public's attitude towards taking back on parole the candidate who was convicted by a court. Unfortunately, some police forces neglect to send us this report.

You have also noticed that in the testimony of the policemen who submitted the brief of the Ontario Association of Chiefs of Police—they stated that it was not their responsibility to supply reports of this nature, and moreover, that they were overworked and, very often, had no time to do it. I think that this is a misconception of the responsibilities entrusted to a policeman to simply say: We are too busy arresting criminals, we cannot be interested in their reintegration into society or in their rehabilitation.

The Chairman: When you ask them to supply you with a copy of this report, is it when the prisoner...?

Mr. Gilbert: ...is found guilty. In the case of prisoners, of persons who were sentenced to more than two years, we ask for a report. Some police forces supply them without request.

The Chairman: Automatically?

Mr. Gilbert: Furthermore, being aware of the needs of the Board, they do it every time, without knowing if the person will be interested in parole later. This would be one of the recommendations we, of the Board, would be willing to make as this would update our files when the time comes to study the case of an applicant.

The Chairman: The police is not compelled to supply you with this report?

Mr. Gilbert: No, Mr. Chairman.

Senator Lapointe: Then, if I understand you correctly, you have already prepared a form that they have only to fill in. Have you already done it?

Mr. Gilbert: For several years now, the Board has been sending a form which contains a whole series of

questions and we want to know the answers. But one of my suggestions is that, increasingly, we try to adopt a form already prepare for the purpose, i.e. a form where the policeman, aside from detailing all the circumstances surrounding the crime, would simply check the answer to the following questions: Was the person under the influence of alcohol? Was he under the influence of drugs? Is he married? Finally, a whole series of definite questions: What is his reputation? Etc.

We also have a part reserved for the effects of the crime on the victim. Thus, we will then be assured of having a standard form.

Senator Lapointe: Standard?

Mr. Gilbert: Standard, in order to obtain all the information the Board is interested in. We will thereby obtain a much greater participation by the police which will be able to give us a series of details that we did not have until then. Now, some police forces tell us: Well, we will only give you a copy of the indictment. But, this is no good to us, because what we, members of the Board, are interested in, is to know, as well as possible, the personality of the individual who will be returning outside.

I will now turn, maybe more particularly, to the Montreal Police, not because I consider that the Montreal Police is a body where everything works well, but because I cannot take as an example the English police or the American police since I know the Montreal Police better. I can tell you that such a form has been used for the last six years by the Montreal Police, which has now become the Montreal Urban Community Police.

[*Text*]

Senator Hastings: Mr. Street stated this morning that the National Parole Service were now providing the Canadian Penitentiary Service with a post-sentence report. Would that not include all the information that has just been outlined by Mr. Gilbert?

Mr. Gilbert: They have a copy of the police report in their own file.

Senator Hastings: Mr. Street said this morning that the National Parole Service were now providing the Penitentiary Service with a post-sentence report. Would that post-sentence report not carry all the information that you are now referring to?

Mr. Gilbert: No, I do not think so, sir.

Senator Hastings: If that post-sentence report were a standard report used across Canada, would it not be much simpler to do it that way than to carry the police report?

Mr. Gilbert: I am not able to answer to that, because you absolutely need—naturally, I say this because of my background—the facts, coming from the police department which was involved in the arrest of the person, because they know all the facts, because they were responsible for the investigation. They know all the facts, they know more than the court—the effect of the crime on the victim, not only the physical effect but also the psychological effect, on a holdup victim or a person who was detained, sequestered.

Senator Hastings: Couldn't that all be included in the post-sentence report?

Mr. Gilbert: No, I do not think so.

Senator Hastings: Isn't that of interest to the Canadian Penitentiary Service?

Mr. Gilbert: Usually—I would not say in every case—they will get a copy of the police report, but generally when we see the inmate at a panel hearing they are in possession of that police report.

Senator Hastings: It is amazing that this very important information is not available to the custodial people, or to you, until the end of the man's sentence.

The Chairman: Is that correct?

Mr. Street: They send it automatically, right away.

Mr. Gilbert: As soon as the man is found guilty.

Senator Hastings: Mr. Gilbert is saying he is not receiving it.

Mr. Gilbert: I do not want to comment on that, because I am not sure if the penitentiary in every case receives a copy of the police report. I am not sure of that. Personally, I know that in Montreal we send a copy—I mean, the police send a copy to the Parole Service.

Senator Hastings: But did you not say that this is a very important report that should be available to your board on making decisions, and that you are not getting them? Isn't this what you have just said?

Mr. Gilbert: Sometimes yes, from police departments.

Senator Hastings: Sometimes? How many times?

Mr. Gilbert: I have not the statistics with me; we do not have statistics on that.

Senator Hastings: This is what I find hard to understand, that this very important information on the offence and the offender is not available until the end, and sometimes it is not available when you come to make a decision.

Mr. Gilbert: You mean, for the Parole Service?

Senator Hastings: Yes.

Mr. Gilbert: I am very sure of that, because some police departments do not believe in the necessity of their participation, so it is as clear as that.

Senator Hastings: It is not available.

The Chairman: In those cases.

Mr. Gilbert: It is not available—oh, yes.

Mr. Street: When they get it, we get a copy, too. We get a copy of the police report in virtually every case, and they get a copy, too, especially in federal prisons, where the sentence is two years or more.

[*Translation*]

Mr. Gilbert: Now, with respect to this report, my brief stresses that the Quebec Police Commission has accepted to set up a Committee which will make it mandatory, in the Province of Quebec, to draft a police report for the Parole Service.

In some provinces, the Police Commission has certain powers. I don't know whether such is the case for the Ontario Police Commission, however I know that in Quebec we have the Police Commission which can give instructions to all Police Corps to submit a report. This is not the case now, and that is why some Police Corps do not comply with our invitation to send a report.

Now, some police services have suggested to the Committee that the police should take a greater part in the screening of candidates for parole.

About a year ago, the Board established a system through which the opinions of many police officers can be obtained. As the Montreal Urban Community police is eager to participate to a greater extent, we have been sending them for a year now the list of all inmates whose cases have been studied by the Board. We send them this report two months in advance. Moreover, they are invited to provide us with their comments on the inmates whose names are on this list.

Thanks to these comments, the members of the Board sent to the area to meet the inmates are aware of the police's most recent views. Therefore, the police who sent us a report dealing with the inmate when his sentence was handed down, has the opportunity to contact us once again when the inmate is eligible for parole. This is a pattern which we would like to spread all across Canada, insofar as police services are interested in taking part in the parole system. This system which has been in existence for about a year now in co-operation with the Montreal Urban Community Police, has also been in existence with the Quebec Provincial Police for about three months now. This means, in principle, that about 9,500 police officers are in a position to make statements. Thanks to these lists, the Police Corps already know the name of the police officer who did the investigation, and they approach the latter in order for him to express his views. This does not mean that, if the police is of the opinion that a given inmate should not be paroled, that the Board will not parole him. This is one factor among many others which will be taken into consideration. It happens sometimes that all the people who are consulted are not of the same opinion when the matter comes to paroling an inmate. We might also change a decision following recommendations by a person or a special group, simply because we have far more elements on which to base a decision and this is better than the opinion of a single person familiar with only one aspect of the situation.

Senator Lapointe: Are you the one who studied this method aiming at establishing a better co-operation between the National Parole Board and the Police Department?

Mr. Gilbert: Yes. A good part of my career as a police officer was devoted to training police officers in Montreal. My concern with criminality problems as well as the failure of the rehabilitation system were such that in 1960—and this for the first time—we started to study the problem of criminology in Canada and this was at the University of Montreal with Professor Szabo. I thought it necessary for myself to register in this program of criminology. Thanks to this course, I was therefore convinced, as early as 1966, of the importance of the matter. I was then director of the Police Department and I decided to establish a more realistic communication pattern, which, I thought, would be more effective, as I said earlier, than the mere discussion of the value of a system.

With respect to criminality, I am rather pragmatic in my approach. If we want to obtain better results, I believe that we must establish a system like the one I just described and where you have an active participation at the operational level.

When we notice that in our penitentiaries 80% of the inmates are people who have already been arrested, we realize that traditional police methods are not adequate. The police have to realize that they must be more deeply involved in social rehabilitation programs and the crime prevention programs.

The police started to realize only some 15 years ago, that they have a role to play with regard to young offenders. Until then, we used to say: Well, the prevention of juvenile delinquency is not our problem. Our role is limited to arresting offenders. Luckily, this tendency has expanded enormously so that today, the great majority, although I would not say everyone, but the vast majority of the police corps believes in the necessity of developing programs seeking to combat juvenile delinquency by means of prevention systems.

For my part, however, I hold that where adult criminology is concerned, the police have to be involved in a program which does not limit itself to arresting criminals but where they would participate to the social rehabilitation of inmates.

So, this is why I am so strongly convinced of the importance of the role of the police, as I was in 1966.

Senator Lapointe: About these briefs submitted by various bodies, have you noticed, now that you are a member of the Board, whether this could help a lot in taking a decision?

Mr. Gilbert: Yes, I have been a member of this Board for a year and a half. Some will say that is not long compared to other members of the Board who have been members for over ten years. However, I will tell you that having been concerned since 1960 with methods, with the inadequate systems which exist is the police, the year and a half I have passed on this Board has convinced me more

deeply of the necessity of developing programs like the ones I recommend. I am even more convinced now that it is essential that the police provide us with detailed reports based on criminological principles. When we take the responsibility of granting or refusing a parole, we must have the best possible knowledge of the personality of the individual before us. Our responsibilities are different from those of the judge, because, when he gives a sentence, he must take into account the proof which is presented, whereas the Board must rely on the possibility of success of the subject's rehabilitation. Therefore, we must get as close as possible to knowing the individual's full personality. We also take into account that where personality is concerned, we are all different. We know very well that the individual who decides to commit a crime and who does so, does not act in the same way during detention, particularly after a year or two when he has had the time to think about the consequences of the acts he has committed. So the Board obtains information concerning his behaviour at the institution from the reports written by the personnel of the institution. But, we must also know the other aspects of which you are aware—from the inquiry made among his family: how was he brought up? What happened during his early youth? We must also have information about the individual who chose crime. It is then that the policeman can help us, not in taking a decision, for this decision should not be taken on the basis of the police report, but it is an aspect that we must know. Here, some will not agree with me, even a few of my former university colleagues will say that that is not important, but the Board finds that the policemen's opinion is very important when this aspect is concerned.

[*Text*]

Senator Hastings: Mr. Gilbert, you said that you commenced this program of consultation a year ago in the province of Quebec?

Mr. Gilbert: This very precise consultation of sending them the list two months previous to the parole hearings.

Senator Hastings: How successful have you been in obtaining a feedback?

Mr. Gilbert: I would say that we receive comments from the urban community police. I should point out that the Montreal Police Department does not exist any more. It is now the Metro Police Department, which is referred to as the urban community police, because the same procedure goes on for the whole island of Montreal. We receive comments from them on approximately 10 per cent of all cases.

Senator Hastings: Just 10 per cent?

Mr. Gilbert: That is logical, because, you see, in the majority of cases they do not have anything further to say than what they have already said on the police report.

Senator Hastings: The original report?

Mr. Gilbert: Yes, in the majority of cases. They would like to comment only on very special cases, such as inmates who were involved in organized crime or crimes of violence, or inmates who are in some way keeping contact with their old friends.

You know, the reason we send that list to them to obtain their comments is that on many occasions the police are able to know something about what goes on when the inmate is in penitentiary. So that is why the percentage is very low; and I consider that a good thing.

Senator Hastings: When the Canadian Association of Police Chiefs appeared before us they said they wanted participation in the decision-making process. You have given them the opportunity to participate, but you only have a 10 per cent reply.

Mr. Gilbert: Yes, we have a 10 per cent reply, and we are satisfied with that and so are they. As you say, they want more participation on their part, but I hope you understand my point, that that 10 per cent information we receive from them is a very good sign, because there is no harrassment coming from the police.

Senator Neiman: Mr. Gilbert, aren't you really saying that that 10 per cent consists only of additional information or comments that they give you? They are satisfied with everything else. They are satisfied with the other 90 per cent, but in 10 per cent of the cases they have extra information or advice to give you.

Mr. Gilbert: Yes.

Senator Neiman: So that is a very hopeful or helpful indication, I would say.

Mr. Gilbert: Yes.

Mr. Street: Besides that arrangement, senator, we have an arrangement with the police such that, if they have reason to think that any person in prison is involved with organized crime, they let us know; and we have an arrangement that we will not seriously consider giving that person parole unless we consult further to get further information in order to make sure that if some person in organized crime is in prison we will know of it.

Senator Neiman: Yes.

Mr. Street: The arrangement that Mr. Gilbert is talking about is just in the few cases, as you understand, where they want to make special representations. And that is in the 10 per cent of the cases, as you said.

Senator Laird: Do you accept their word on the matter of who is in organized crime?

Mr. Street: I would say that in most cases we would, yes. We undertake not to consider parole until we consult with them further. Then, if we think it necessary, we will do that, just so they will have the privilege of making special representations to us again, as Senator Neiman has indicated to Mr. Gilbert.

Mr. Gilbert: Well, speaking for ourselves, we usually go to the RCMP and the local police department. Let us

say we make a double check, not because we do not believe in the information given by one police authority, but because we prefer to explore all possibilities. Sometimes, if there is a provincial police force, such as is the case in Quebec and Ontario, then we will go to the three levels, municipal, provincial and federal, because at times each police department has its own files and sometimes, too, they are very jealous of the information they have on a person. It is only a human reaction, I suppose.

[*Translation*]

The Chairman: Am I to understand that you do not send the list you are referring to, to the police of the other provinces?

Mr. Gilbert: No, we intend to offer them this possibility.

The Chairman: But you have not done it yet?

Mr. Gilbert: No, we have not done it yet. Now, I must say,—please note that I make this comment as a former policeman for most of my life and that I am now a member of another organization—that I think that, here and there, a lot more could be done. The problem is that, either through courtesy or otherwise, the trend is to say, either on the police side or the parole side, that if they are interested in getting our opinion, let them tell us. A comment, in the brief of the Ontario Association of Chiefs of Police, has particularly intrigued me, when a chief of police stated: Well, I have been here for six years now and I have yet to meet the Parole Officer. Therefore, who has the responsibility for meeting and discussing greater involvement. I think that your Committee can play a very important part in this matter.

[*Text*]

Senator Hastings: We were discussing at that stage, Mr. Gilbert, the preparation of the community report by the Parole Service officer. As part of the preparation of that report he consults with the police, but the police chief from Brampton said that he had never consulted with a parole officer in seven years. This seems to me to be contradictory.

Mr. Gilbert: Well, we should make the move.

Senator Hastings: But we were led to believe that the officer, in preparing his community report, consulted with the police, and what Chief Rich was saying was that he had never been consulted.

Mr. Gilbert: Maybe somebody from his staff was consulted.

Senator Hastings: No, that is not so, and that is what is so strange.

Senator Lapointe: Is this in Ontario?

Senator Hastings: Brampton, Ontario.

Senator Neiman: Just north of Toronto.

The Chairman: That is where the Premier of Ontario comes from.

Senator Hastings: Mr. Street, based on the program in Quebec for the past year, do you have any comment to make with regard to the enlarging of that program to cover all of Canada?

Mr. Street: Yes, as Mr. Gilbert said, we intend to offer them. This arrangement was made, by special request, with the Quebec police. We, of course, agreed to it. But all police in all places are invited to make special representations any time they wish, especially if they have reason to believe that there is a man in prison who is from the Mafia or something like that.

Senator Hastings: But with regard to the program of advising the force of the candidates who will be coming up in the next few months.

Mr. Street: We will offer them that, but I honestly do not think it is necessary. Every police force in the country knows that if a man gets three years in prison, then one year from them he will be considered for parole. So, if they wish to make representations, they know they can do so. But in the Quebec situation we went a step further and sent them a list to remind them. It really should not be necessary, because they know when the man is coming up. They know when he will be considered for parole; anybody knows that. Then they can make representations if they so wish.

Senator Hastings: And they are consulted by the parole officer preparing the community investigation?

Mr. Street: Usually, yes, because we want to know where he is going to go, what the situation is there, and so on. This is apart from the police report prepared under the circumstances which Mr. Gilbert described.

[*Translation*]

Mr. Gilbert: Furthermore, Board regulations emphasize that parolees must report to police once a month. This procedure is also questioned by police forces; some will say, for example: We do not see the reason for a parolee to report once a month to the police. Others will say: We insist that parolees report once a month.

I revert to the example of the Montreal Police. In 1966, I personally considered that the fact of reporting to the police once a month was of little value if it amounted to having the parolee sign a register used for that purpose, thus complying, in the space of two minutes, with a Board regulation. I believe the intent of the Board, when he made such a regulation, had in mind other purposes than to simply have a name in a register. This is why I consider, personally, that, in police forces numbering several thousand policemen,—there are not so many in Canada,—but these police forces assume the supervision of a large population, especially in cities such as Toronto, where policemen number, I believe, around 4,000. The Montreal Urban Community Police has now more than 5,000 men. The Quebec Provincial Police has around 4,000, while the Ontario Provincial Police is about the same size. Personally, I consider that, in

the best interest of the whole system of judicial administration, these police forces should have a corps of policemen whose sole duty would be to deal with all matters related to the parole system. For smaller police forces, at least one policeman should be responsible for all matters related to parole in our system of judicial administration.

I will now indicate—if you have no objection—on page 9 of the French version and on page 17 of the English version, the advantages of having such a system, of giving this responsibility to members of a police force. What are the three advantage, first for the police, then for the Board and, finally, for the parolee? Therefore, when we speak about what it can give to the police, we consider—must I read it, or...?

The Chairman: Yes.

Mr. Gilbert: Then, I will go faster. This contributes to a better protection of society due to the fact that a greater emphasis is placed on crime prevention. This also avoids very often that a dangerous offender be released before he offers maximum chances of rehabilitation. This offers a more adequate supervision of the parolee, and allows a more efficient liaison with the Canadian Penitentiary Service.

Now, some will say: Why talk about the Canadian Penitentiary Service in relation to temporary absences, Section 26 of the Penitentiary Act? Personally, I feel that this question of temporary absence is so closely connected with the work of the board that when we are given the opportunity of improving the mutual participation pattern, it is advisable to study the question in co-operation with the police department. I want to reiterate this assertion because I am quite aware of the situation prevailing in Quebec. Regular contacts have been established with the penitentiary service concerning temporary absence. But when police officers appear before the Committee stating that the Board is too generous with its parole system or that it does not scrutinize the inmates' records before granting parole, they do not—you have experienced it yourselves—make the distinction between a temporary absence and a day parole. Therefore, when a police force or a police officer have been granted total responsibility in this respect, they might also, while concerned with parole, get involved with this question of temporary absence. You often hear complaints from the police corps claiming that inmates on temporary absence take this opportunity to relapse into crime, because they believe—and quite often with good reason—that the police do not know they have been freed.

You know the process police officers follow to solve a crime. Through their modus operandi, that is, the circumstances surrounding the crime, police officers have sufficient indications to get at these individuals who might be involved and interrogate them. Therefore, when police officers are unaware that some inmates are on parole or have been granted temporary absence, they are inclined to criticize the system, claiming that these people are being freed while under sentence which is detrimental to the investigation. Thus, the police department would be provided—as it is being done now, following Mr. Faguy's instructions given to all penitentiaries across Canada—with a list of inmates on temporary absence, under Section 26 of the Penitentiary Act.

[*Text*]

Senator Hastings: I believe the temporary absence notice is compiled in seven copies, one of which is forwarded to the police department in the locality where the inmate will go.

Mr. Gilbert: Yes. Prior to that agreement with Mr. Faguy, he used to receive that list sometimes a week or two after an inmate was out on a three-day pass. I am ready to take their criticism into consideration, because I admit that we also must do our part. I am convinced that the police should do more, but I consider that we also could improve.

Senator Hastings: Also the Canadian Association of Police Chiefs made the criticism that parolees were in areas that they know nothing about. Would someone care to comment on that criticism?

Mr. Street: That should not happen, because they are notified of every parolee.

Senator Hastings: But you heard the criticism.

Mr. Street: Yes, I have heard quite a lot of criticism which was not quite fair, but we do notify the police. The parolees, as you know, report to the police every month, and must report to them immediately upon their release.

Senator Hastings: I wonder if that criticism, which is not fair to the Parole Board, might not apply to temporary absence also?

Mr. Gilbert: You yourself ask for facts. I notice that you often say, "Give us facts! Give us names!" You did that with the police departments when they were here.

Senator Hastings: I asked them to give instances when parolees had been in their areas and they had not been notified, but they had none to give.

Mr. Gilbert: This is what we need ourselves when they complain about that. You see, it is only a human reaction coming from police officers. They remember a case; something happened maybe a year or two years ago, and they often use the same case as an example. Every time we meet with them they might say they remember that case. Judges are also like that.

Senator Hastings: But Parole Board members are not?

Mr. Gilbert: Sometimes they are, I imagine. I said it is only human.

Mr. Street: Sometimes we also make mistakes.

Senator Hastings: I wondered if your criticism of the temporary absences might not be in the same category.

Mr. Gilbert: I realize that sometimes board members may decide it is no use attempting to get in touch with

the police in connection with a case. Three years ago I tried that once, so I do not want to exaggerate, but we have to consider that it is a normal human reaction to criticize the whole system because of a few failures.

[*Translation*]

Senator Lapointe: I do not understand the second paragraph quite well, namely the benefits for the police. You say that this will often prevent a dangerous criminal from being paroled before maximum chances for rehabilitation exist for him. However, when he reports to you, once a month, he has been already paroled.

Mr. Gilbert: No, when I say that the police is involved, it is not only the reporting to the police station which is at stake, but the active particpation of the police department itself. When there is within the major services of a police department a section where these cases are being dealt with, as I already said, at the beginning of the study before being paroled.

Senator Lapointe: Before the inmate is paroled?

Mr. Gilbert: Yes, yes.

Senator Lapointe: Is it the same as in the first paragraph concerning the benefits to the Board?

Mr. Gilbert: Yes, this is correct.

Senator Lapointe: This means that you obtain information before an inmate is paroled?

Mr. Gilbert: Yes, before he is paroled.

Senator Lapointe: This is what it means. Thank you.

Mr. Gilbert: Now, the Board is being supplied with more essential information with respect to the selection of inmates eligible for parole. Moreover, this helps to insure a better supervision of parolees and contributes to their rehabilitation. There is also a better co-operation with the police department and regular communications are being facilitated.

There is also another point which I feel is very important with respect to paroled inmates which is the question of social integration and rehabilitation where the police department can contribute by reconciling the offender with social standards and the authortiy as embodied by the police.

Finally the paroled inmate must once a month report to the police and sign the register, as I stated earlier, and go back home. A great benefit derives from speaking to a police officer for 10 or 20 minutes if need be. Thus, the paroled inmate realizes that the role of a police officer is not only to catch him in the act. Moreover, the parolee could benefit from the protection offered to him against his environment since inmates who were once rather active in criminal surroundings very often are not in a position to say: "I cannot go on like that, because I am rehabilitated." You know how it is in these circles with the pride of not belonging to the system and to be able to continue to be an outlaw. The fact that the paroled inmate says: For my part, I must report to the police. The police is concerned about my case. I am under police surveillance. So, I am not interested in going out with you anymore, you who persist on living with people engaged in organized crime.

Moreover, we show him that the police is also there to understand him, to help him, even to give him a hand on special occasions where you have to turn, for example, to legal assistance, social welfare associations, the Manpower Department, and so on.

However, I would like to make something clear. This does not mean that policemen have to play the role of a social worker or of a parole officer. However, nothing prevents a policeman who, during an interview, finds out that the parolee has problems from providing him with advice and even from giving him all the latitude needed; all this is part of the process that I was talking about earlier; that is the involvement of the police in another area than the repression area only.

[*Text*]

Senator Hastings: Do you know of an instance where this is actually being practised by the police department?

Mr. Gilbert: In Montreal.

Senator Hastings: Do you know of an instance where

Mr. Gilbert: I do not want to say that other police departments do not care about helping parolees. It is done in many places. I personally know of police chiefs who are doing that themselves, instead of asking one of their policemen to do it. They receive the inmate and they discuss matters with him. They get in touch with, perhaps the John Howard Society or the Elizabeth Fry Society. I do not want to give the impression that it is only in Montreal that something is done for parolees. But the police association and the police departments should try to get together to have, if possible, one policy or the same attitude.

Senator Hastings: You have to change the attitude; but you have also to change the attitude of an inmate. You will find that it is just as difficult in that respect.

Mr. Gilbert: That is what I am saying, on page 11 of the French text, and, I think, on page 9. I mention that the police should try to get together and have the same understanding of the situation and the same solution. We receive more complaints from police departments about the attitude of after-care agencies regarding information they want to obtain on parolees.

This should be corrected. Sometimes the police, when they want simple information on the parolee, will receive the reply: "Well, professional ethics do not permit me to discuss my client's case."

Senator Hastings: That is what the police were referring to when they said that some officers will go to any length to protect their clients.

Mr. Gilbert: Yes. On that matter, they are right. A good way to change that attitude is by getting

together. They should try to meet regularly with after-care agencies. In Quebec we are doing that often. Since I joined the board a year and a half ago, I have had a meeting with police officers about four times. I am supposed to meet with them next week. We are trying to have the after-care agencies and the police get together to discuss matters.

[*Translation*]

Senator Lapointe: Do they want, if we might say, the report to be favourable and hide a part of the truth to show that they have very well succeeded with their clients?

Mr. Gilbert: No, I would not say it is due to that, I would say that they pretend that the relations they have with their clients...

Senator Lapointe: The information obtained is confidential?

Mr. Gilbert: It is confidential information that they cannot give to the police.

Mr. Street: Excuse me, that is not the policy of the National Parole Board.

Their instructions are to give to the police all the information they require.

[*Text*]

Senator Lapointe: But what about other agencies such as the John Howard Society?

Mr. Street: Certainly, our officers have to give information to the police at all times.

Senator Lapointe: But what about the private agencies?

Mr. Street: We have a little difficulty here and there; but the fact is that it should not happen. If the police want information, they should be able to get all they want about a man. Those are our instructions to all officers.

Senator Lapointe: Even from the private agencies?

Mr. Street: Of course, they should. They have no right to shield them from the police in any way.

Senator Lapointe: Sometimes they are reluctant to give the information, but they should give it?

Mr. Street: They certainly should. It is our policy that the police should be given all the information they require.

Senator Neiman: I think the attitude, that I have seen from the briefs of parolees from the John Howard Society, is that they like the after-care agencies because they know they will protect them, to a certain extent. They dislike or distrust the police. They feel that the police are quite often looking for an excuse to put them back into prison.

Mr. Street: We would like to have the police contact the parole officer and have the parole officer bring the man right down to the office. That is the way it should work. Certainly, our officers would give them all the information they want. In no circumstances should they shield a man. As regards this nonsense about confidentiality, there is no confidentiality as to a parolee's progress or behaviour.

Senator Neiman: It is a question of getting all the facets together—the agencies and the police.

Senator Hastings: This is the thrust of your remarks, Mr. Gilbert, that there has to be some co-ordination and co-operation between the after-care agencies, the police, the inmates and the Parole Service—all for the benefit of the parolee.

Mr. Gilbert: And the penitentiary.

[*Translation*]

Now, let us go on about the information on a parolee.

On page 12 of the French text, and page 10 of the English text, "Accessibility of information"; when a parolee receives his parole certificate it sometimes happens that there is special conditions to be applied, as for example, interdiction to drink alcool, to hang around with old friends from the crime circle, interdiction to go into another town, finally, conditions that you all know about. To my opinion, it is essential that all the police departments have access to this kind of information 24 hours a day. At the Montreal Department police, now called the police of the Urban Community of Montreal, at their information center, they have, for the guidance of all policemen of the Urban Community, all the special conditions that are listed on the parole certificate. That means, like the example I give in the text you have, that a policeman, at any hour of the day let us say it is four o'clock in the morning, who questions a suspicious individual on the street, by a verification, if he has with him portative radio of the type "walkie talkie", or has a police car, he can obtain in one minute or a few minutes later all the details on the individual he has headed off and that he is questioning, and know right away if this individual is under special restrictions. This information, you will say, is already in the police records. We have to realize, however, that in majority of cases the police departments have a staff that have access to the files only during the day; at night and early in the morning, the information must be provided in another way. So, an information center which exist in all the important police bodies, it is nothing new to have an information center big enough to give you information, for example, on an individual searched for murder or that has not paid contraventions. We can obtain in many police services these informations in 60 seconds. As for us, we consider that all the police services in Canada should, each in his organization, have access to this information.

Thus, the Montreal Urban Community Police has, in its information centre, files that are immediately accessible to all policemen, containing the names of all parolees in

the province of Quebec as well as those of individuals under mandatory supervision. This represents a total of 1,400 persons in Quebec.

This service will apply, in the near future, to the whole country and across the whole of Canada. We have been recently in touch with the central office of the Royal Canadian Mounted Police which operates the C.P.I.C.—the Canadian Police Information Centre—and the RCMP authorities have agreed to include, from now on, with the certificate, all the special conditions, which means that, within two years approximately, anywhere across Canada, the police will be able to learn, on a minute's notice, what conditions apply to a parolee. I am giving you these details in order to prove that the Board is greatly involved in these means of communication, as well as in police involvement.

[*Text*]

Senator Hastings: At the present time if an inmate is paroled to the city of Edmonton, the Edmonton City Police have a copy of his parole certificate and all the conditions thereon?

Mr. Gilbert: Yes, they have that in their regular files. However, this information is not available in the middle of the night.

Senator Hastings: The thrust of your remarks is directed to the police, not the board? You have done your duty.

Mr. Gilbert: This is the point I am trying to make this afternoon. We are very much concerned with the remarks made by the Association of Chiefs of Police. We are interested in having their participation. We are doing our part.

Senator Hastings: Am I to understand that if I were released on parole from Drumheller Institution with one of the conditions of my parole being a no drinking stipulation, under this new system the city of Montreal police would know that there was a no drinking condition as part of my parole?

Mr. Gilbert: Actually, they already have that information; they have access to that information through the information centre. The urban community police have all the information on Quebec parolees only.

Senator Hastings: But you said that in a couple of years, with this new system, they will be able to hook into an information centre which will provide information to police departments right across the country.

Mr. Gilbert: Yes. For example, the Victoria Police Department, through this information centre, will have access to information on inmates in Prince Edward Island.

Mr. Street: Many police departments, to a large extent, can get such information now.

Mr. Gilbert: Not with respect to specific conditions. They know whether or not a man is on parole, but they do not have access to the information in the middle of the night through the police information centre.

Senator Hastings: So that if a man is released in Victoria, with a no drinking condition being part of his parole, he had better not drink in Montreal.

Mr. Gilbert: That is right.

[*Translation*]

Senator Lapointe: Excuse me, Mr. Gilbert, maybe I am a bit ahead of you, but you say that policemen must study human sciences in order to understand the behaviour of parolees. Presently, are there many in Montreal or elsewhere who take this course?

Mr. Gilbert: If you have no objection, I wall reply to your question at the end.

Senator Lapointe: No.

Mr. Gilbert: You are right, I am finally there. Please excuse me.

No. I was saving this for my conclusion. When the police—or society as a whole—is interested in a better co-ordination between all services to allow the social reintegration of the individual and the reduction of crime, well, this would require, among other things, on the part of the police forces, the inclusion of elements of human sciences in the training programmes, first of recruits and also in the so-called retraining programmes of the personnel already on the job.

You will never be able to convince policemen to show an interest in rehabilitation if you do not teach them, through existing training programmes, the elementary concepts in subjects such as psychology, sociology and criminology.

Research shows in fact that a large part of police activities do not involve the enforcement of the law. Recent research undertaken by the Toronto Police, as well as by the Urban Community Police, last year, shows that more than 70 percent of police activities are of a social nature and not repressive actions or arrests of criminals.

Therefore, the police has a role to play at the social level in to-day's society. Thus, if police forces are not aware of this responsibility, by not including in their training programmes the teaching of human sciences, well, we run the risk of waiting several more years before we can notice a reduction in the number of crimes.

I must tell you that the present tendency in training programmes is in this direction, in many police schools. I might add that the RCMP, in training its recruits, shows an increasing interest in this subject. The Montreal police, that is, the Quebec police, in all cities where there are police schools, realize ever more the importance of this teaching. I repeat that this does not mean that we are trying to make social workers out of policemen, but you cannot separate completely police training, the training in police techniques, including revolver shooting for self defence, this cannot be separated completely; these things must still be taught and we must add to them the elements I have just mentioned.

With regard to social agencies and the personnel of the Parole Board they must try to better understand police work, to realize, even admit, that, in these investigations, the police very often risk their lives to arrest an offender, while spending weeks, if not months, to complete an investigation, and it is then that the social agencies and the police very often risk their lives to arrest an offender, in view of the dramatic failures of some parole cases.

Senator Lapointe: May I ask you a question about the frustration of policemen when they see a person they have arrested a few months before, when they see him suddenly on the street, either on temporary leave or otherwise?

Mr. Gilbert: Policemen who are well-informed as to the objectives of the Parole Board are less likely to criticize the decisions taken by the Board, because when you begin to examine all the aspects of the problem, you realize that, at any rate, the individual on parole will come out one day and, rather than having him come out without help, and also without control at the end of his sentence, when he has not been granted a parole, the fact that he continues to serve his sentence on parole gives us a better chance to prevent relapses into crime. Well-informed policemen also realize that the success or failure of a case is not the sole responsibility of the Parole Board. It must be realized that the whole of society must share in this responsibility.

When we examine the file of a prisoner who has been in penitentiary for several years, or has been there several times, we notice very often that, as a child, he lived in an unstable family environment from which he practically could not escape. You have prisoners who, before reaching the age of 16, lived in about ten foster homes.

Now, with regard to the associations that are interested in young offenders, certain questions arise. If we succeed in preventing a young delinquent from continuing, once he has reached an adult age, well, all the better. When the police blames the Parole Board because there are so many repetitions of offences, well, when we look at all the aspects of the problem, we notice that it is a shared responsibility and that there are other elements than the parole that force an individual to repeat an offence.

The Chairman: Are you through with your evidence?

Mr. Gilbert: Yes.

The Chairman: Thank you very much, Mr. Gilbert.

[*Text*]

Have you anything to add, Mr. Street?

Mr. Street: Just this, Mr. Chairman. Whether a person comes out on parole or under mandatory supervision, this gives the police a means of control they would never have otherwise. For instance, as the Chief of Police of Halifax remarked to me once, if he saw a man hanging around by the docks at three o'clock in the morning under suspicious circumstances, if he were not on parole he could not do anything about it; the man would just refuse to answer questions, unless he were found committing an offence, as you know. If that man is on parole the police can see that he does not hang around down by the docks at three o'clock in the morning. This is just an example of the type of control the police are able to exercise. If they see one of our parolees in Montreal in the nightclub area under suspicious circumstances or, as Senator Hastings said, if he is drinking, they are able to stop that. This gives them a means of control that they did not have otherwise. I therefore think the police are pleased with the idea of having people released on parole, especially having them released under mandatory supervision.

I agree that we should do everything we can to co-operate with the police. Besides the various details that Mr. Gilbert has given you, we lecture to police colleges all across the country; our officers are in touch with them at all times; we do our best to co-operate with them.

Some of the statements they have made are a little hard to prove, such as that parolees are committing too many offences. If a parolee committed an offence, we would know; we would know the exact statistics about that. I suggest that most crime is not being committed by parolees, because we know they are under control and cannot easily commit crime, even if they are disposed to do so; and if they do that fact will be known.

It is understandable that the police would be critical when they see parolees committing crime, because they see every single one of our violators, and so do the judges, and naturally they get fed up. They do not see the 70 or 80 per cent of parolees who are not misbehaving or causing any trouble, so this naturally leads them to believe that parolees are perhaps causing more trouble than they are. They are not causing as much as they would have been if they had not been on parole, but had been released at the end of their sentence. I think that is all I need to add, Mr. Chairman.

Senator Hastings: Mr. Street, you mentioned a book that you have there. Will that be made available to the committee, your comments on the various allegations that have been made during our hearings?

Mr. Street: These are points that could have been answered. I did not put my answers in because I knew I could answer these points extemporaneously. All of these points I could have answered satisfactorily, but I did not think I should take up the time of your committee.

Senator Hastings: I was wondering if you could make the book available to us?

Mr. Street: Certainly. I think the answers will be apparent to you because of the testimony we have given. These are points that I think could easily have been answered.

Senator Hastings: You also prepared a report with respect to 1,500 parolees, as at June 30, 1972, indicating

their earnings, where they were, and what they were doing.

Mr. Street: Yes.

Senator Hastings: Is that a confidential document?

Mr. Street: No, it is not confidential. In fact, we would like every newspaper in Canada to print it. It shows that 78 per cent of the people who were on parole last June were working; their average wages were $438, their gross earnings were $978,000, and they supported 2,200 dependants. These are people who would have had to be supported otherwise, probably most of them at public expense. That is only half the people we have on parole; that is just the opposite of the people we are supervising. That is certainly not confidential.

Senator Hastings: I was very impressed by that, and I think the committee should have it. It was broken down into the regions of Canada.

Mr. Street: We will see that you get that.

Senator McIlraith: That report dealt only with some of the persons on parole?

Mr. Street: Yes.

Senator McIlraith: What was the basis on which some were left out? You could not find them?

Mr. Street: No. They are being supervised by people outside our organization, in accordance with the direction of the minister, and we were not able to get the reports.

Senator McIlraith: That is the basis?

Mr. Street: Yes. These are the ones we supervised, but I think it is fair to say that the same could be said of the other cases, because, generally speaking, they are slightly better cases.

Senator Lapointe: You say you would like that to be published in the papers?

Mr. Street: I certainly would, and it has been.

Senator McIlraith: Excerpts.

Mr. Street: Based on that, it is fair to say that a little more than half the parolees in Canada are earning $1 million a year, which is money going into the economy of the country that would not be going into it otherwise. One of the criticisms made by the police is that we offer this as an excuse for parole. This is not the reason we parole; this is a by-product, an advantage that goes with it. We say it is a better way to treat people, which has effected a considerable saving of expense. These people will come out anyway. One of the police suggested that we do this to save money. That is not so; it is an added advantage.

Senator McIlraith: That is only one?

Mr. Street: Yes, just one.

Senator Hastings: Mr. Chairman, this will be our final meeting with Mr. Street, so may I express our appreciation to you for your co-operation and the co-operation of your board in all of our hearings these past two years?

Speaking personally, I think Mr. Gilbert hit the problem right on the head when he indicated that we all have a responsibility; it is not just yours. All segments of society have a responsibility. He dealt with the police and the Parole Service; but it goes further than that, right through the whole judicial system. We must find ways and means of co-operating on this problem, assuming a responsibility and becoming involved. As long as the myth continues to exist that when an inmate is sentenced to three years, he will three years later come out an exemplary young man, a pillar of society, and if you people on the board would just mind your own business and leave him alone that is what would happen—we will run into these problems.

I would like to congratulate you, Mr. Street, and the members of the board, for the work you have been doing. I think we have an excellent Parole Board. I think you have done an excellent job and your success certainly points to that end. Hopefully we can now make some recommendations for further enlightened reforms in this area.

Mr. Street: Thank you very much, honourable senators.

The committee adjourned.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 11

WEDNESDAY, MAY 30, 1973

Twenty-fifth Proceedings on the examination of the parole system in Canada and Complete Proceedings on Bill S-6 intituled

"An Act respecting Centre Amusement Co. Limited".

(Witnesses and Appendix—See Minutes of Proceedings)

26136—1

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Lang
Buckwold	Langlois
Choquette	Lapointe
Croll	*Martin
Eudes	McGrand
*Flynn	McIlraith
Goldenberg	Neiman
Gouin	Prowse
Hastings	Quart
Hayden	Walker
Laird	Williams—(20)

*Ex Officio Members

(Quorum 5)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Monday, February 5, 1973:

"The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Thompson:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada, including all manner of releases from correctional institutions prior to termination of sentence;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the third and fourth sessions of the 28th Parliament be referred to the Committee.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 22, 1973:

Pursuant to the Order of the Day, the Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Laing, P.C., that the Bill S-6, intituled:

"An Act respecting Centre Amusements Co. Limited", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Laing, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

ROBERT FORTIER,
Clerk of the Senate

26136—1½

Minutes of Proceedings

Wednesday, May 30, 1973.

Pursuant to adjournment and notice the Senate Standing Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Choquette, Eudes, Hastings, Laird, Lapointe, Martin, McGrand, McIlraith, Neiman and Williams. (12)

In attendance: Mr. Réal Jubinville, Executive Director, Examination of the parole system in Canada; Mr. James Vantour, Assistant Director; Mr. Patrick Doherty, Special Research Assistant.

The Committee continued its examination of the parole system in Canada.

The following witnesses, representing the Canadian Bar Association, were heard by the Committee:

Mr. Louis-Philippe de Grandpré, Q.C.,
Président;

Mr. Eric L. Teed, Q.C., Chairman,
Special Committee on parole;

Mr. John Cassels, Q.C., Member,
Special Committee on parole.

On direction of the Chairman of the Committee the Brief presented to the Committee by the Canadian Bar Association is printed as an Appendix to this day's proceedings.

At 11:35 a.m. the meeting on parole terminated and the Committee proceeded to the examination of Bill S-6, intituled:

"An Act respecting Centre Amusement Co. Limited"

The Honourable Senator Connolly, Sponsor of the Bill, and Mr. John G. Dunlap, Q.C., Dunlap and Schreider, provided explanations relating to the Bill.

On Motion duly put it was Resolved to report the said Bill without amendment.

At 11.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

DENIS BOUFFARD,
Clerk of the Committee.

Report of the Committee

Wednesday, May 30, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-6, intituled: "An Act respecting Centre Amusement Co. Limited", has in obedience to the order of reference of May 22, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, May 30, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada; and to consider Bill S-6, "An Act respecting Centre Amusement Co. Limited".

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: This morning The Canadian Bar Association will present their brief, of which copies have been distributed to all members of the committee.

[*Translation*]

We have here with us this morning the President of the Canadian Bar Association, Mr. Louis-Philippe de Grandpré.

Mr. Louis-Philippe de Grandpré, Q.C., President of the Canadian Bar Association: Mr. Chairman, distinguished Senators, the Canadian Bar Association thanks you again for your kind reception. We are always happy to join you and try to present useful opinions. On this subject, our point of view has been specially studied by our Criminal Law Section and by the members of our Family Law Section. The study was carried out by a special committee. This special committee was formed, at your suggestion, in January 1972. It is chaired by Mr. Eric Teed who is here, on your left. Many lawyers across Canada gave their best to study the question entrusted to us, among them, Mr. John Cassells of Ottawa who was an active participant, which explains why he is here this morning, on my right.

[*Text*]

Mr. Chairman, the brief prepared by the special committee of our association, with the assistance, as I have mentioned, of the Criminal Justice Section and the Family Law Section, has been endorsed by the Executive Committee of The Canadian Bar Association and thus is a brief of the association itself. I take it, Mr. Chairman, that it is not your intention to ask us to read the brief, so may I suggest that we be permitted to ask Mr. Teed to present its highlights? Following that, obviously, both Mr. Teed and Mr. Cassells will be prepared to answer any and all questions. Might I underline before closing that Mr. Merriam, the Executive Director of the association, is also with us to present the brief. With that, may I now, Mr. Chairman, turn the matter over to Mr. Teed?

The Chairman: Mr. Eric Teed.

Mr. Eric L. Teed, Q.C., Chairman, Special Committee of the Canadian Bar Association on Parole: Mr. Chairman and honourable senators, it is a privilege on behalf of the Bar to make this explanation of our submission. We would hope that to an extent it is self-explanatory, but possibly a short review of the contents of the brief might be of some assistance. Basically, we have reviewed the history of the concept of remission. As you know, originally offenders were sentenced to prison and stayed for the term of the sentence. Then, as we understand it, the authorities decided there should be some credit for good behaviour within the prison itself. Various provisions were introduced whereby an incarcerated person could, through diligent application and so forth, earn a remission and, in effect, shorten his sentence. Then came the concept of parole which, in our submission, is based not on good behaviour within the prison, but is basically a means of placing the incarcerated person back in society in a proper aspect. We agree in principle with parole, but we do feel that the public today, rightly or wrongly, justified or unjustified, has criticized to some extent what they believe to be the present application or which was until very recently the application of the parole system. We hope that some of our submissions may allow you to take steps which might improve the system or, at least, improve the public acceptance of it. The brief sets out a number of procedures and methods. We have endeavoured not to go into too much detail, but rather restricted ourselves to what we term concepts or principles. We do not feel that it is our position to dictate particular methods. Rather we say this is the philosophy which we think is acceptable.

We have submitted, first, that we agree that there should be a National Parole Board. We have suggested that the concept be extended to establish local or regional boards or officials. We are really not concerned whether local boards are established or officials delegated, as long as there is a local representative with a supervising national board. The present concept is that the board, in effect, deals with all applications, either by a member or the board as a whole. We feel that this is wrong and it should be a directional board or concept, this being partially based on the theory that there should be a right of review.

Senator Buckwold: Shall we ask questions as the witness proceeds?

Mr. Teed: I would be quite happy, Mr. Chairman, to attempt to answer them.

The Chairman: Like yourself, Senator Buckwold, he has been a mayor and now is a member of the legislature, so he is prepared for anything!

Senator Buckwold: He was a good one too. You refer to regional parole boards with a federal Parole Board. What would you visualize as the relationship between these two? How would they work together? What would be the operational methods that would in fact bring the National Board into relationship with the regional boards?

Mr. Teed: Possibly something similar to the pattern of courts and appeal courts. The National Board would be, under our concept, responsible firstly for setting out general principles, concepts and rules. The local authority, which could be styled local boards or regional boards, whether they are comprised of three members or one-man boards does not matter, would provide a local representative to deal with a situation.

Senator Buckwold: In other words, the National Board would not be directly concerned with granting parole?

Mr. Teed: That is right.

Senator Buckwold: They would establish the ground rules?

Mr. Teed: That is right. We feel that it is a very awkward situation now, in which a member of the National Board must deal with a specific parole application, after which no further steps can be taken. That is why we feel that our concept of the right of review or appeal is important.

Senator Buckwold: Is that a right of appeal to the National Board by a parolee when rejected?

Mr. Teed: Our concept embraces both. We term it a right of review, rather than appeal, to avoid some of the complications involved with the status of appeal. The concept is the important thing, whether the parole has been granted or rejected. We feel that it is important that the Crown also have the right to say that something was not brought to the attention of the authority granting the initial parole. This would be of protection to the public and we feel of considerable importance.

Senator Buckwold: Do you not feel that every applicant who has his application for parole rejected would automatically just go to the next step? From my limited experience they would, because they have very little to lose. The National Parole Board would be busier than ever.

Mr. Teed: By the same token, everyone who has been convicted of an offence has the right to appeal, but they do not.

Senator Buckwold: I would not say that they were similar appeal situations. I can only judge from the number of letters I have received from applicants for parole, once they know I am a member of this committee, asking me how I can assist them to have rejections changed. I think this is rather important. For example, would it not work equally well to divide the federal Parole Board into regions? In other words, it would be one board, but operating in regions as the National Parole Board.

Mr. Teed: Mr. Chairman, the only concept there is that there be a second stage. Now, whether they were divisions of the National Board with a residue, or a sub-unit with a residue, the concept is that somehow there must be a right to both sides to go to the next level to contest rejection or approval of a parole application. We concede that the theory that all who have been rejected immediately have the right to a review. We suggest that in practice that would not happen, because presumably there would be ground rules established which would, in effect, inhibit frivolous reviews. As it stands at the present there is nothing to prevent a person whose application for parole has been rejected making another application the next day, but this is not always done.

We feel the concept is important in order to protect the public as well as the individual. We have heard stories of many cases but it is rather difficult because we only receive them second hand, in which there is prejudice toward an individual, or misinformation. In effect as it is now the applicant has to make a new application and is never sure whether the same material will be brought forward. In our concept there would be a right to go to a higher board. There are several methods. If the initial parole-granting authority set out the reasons for refusing parole this would be the base of a review. If those reasons were not set out, the mechanics to produce the material which was before the Parole Board would be implemented. This involves many problems: how much material is confidential, such as psychiatrists' reports; how much of the material can be released to the individual? Should he know that someone said he is not very bright? We feel however, that the overall concept is important. Similarly, if the Parole Board grants a parole and the public makes an outcry or the Crown represented by the attorney general representing the public asks what can it do, at present it can do nothing. It can go to the Parole Board and they tell him that is tough but it is their decision. We feel that in the public interest if he could go before the Parole Board and say: "Look, we do not understand it; "in our view this material was not brought out" it would be a safety valve which would ensure a better system and remove a great deal of the criticism which apparently exists today. We quite agree that there are administrative problems, but we do not feel that the difficulty of administration should destroy the concept of, in effect, a two-tier system.

Senator Buckwold: You do not think that there should also be a supreme court level in connection with the Parole Board? I mean, if we are going to carry this concept right through.

Mr. Teed: I will put it this way: In theory the federal government can appoint as many supreme court levels as it wishes. In practice it doesn't. If Parliament wishes to establish a seven-tier system, that is its privilege.

The Chairman: You would allow an appeal by the inmate from a refusal of parole, and an appeal by the attorney general in the case of the granting of parole?

Mr. Teed: Yes, it is only fair both ways, because the criticism we hear is that offenders are released when they

should not be. We do not know if it is right or wrong, but obviously someone thought they should have been released. We have all seen in the press various cases that so-and-so was arrested while on parole for committing another crime and is again released on parole. We say that the best way to stop this is to have a representative of the public make representations of the precise situation. Obviously there are two sides to the story. As the system exists, the Parole Board is under attack without an opportunity of defending itself, which we do not think is good for the public interest.

Senator Lapointe: Would the regional boards be appointed because their members would know the applicants better than would the members of the National Parole Board because they are closer to them?

Mr. Teed: Mr. Chairman, the concept of the regional board, whether it be a one-man or a three-man board or one delegated official, would certainly provide closer contact. The danger is that very often the paroles are to some extent granted on information. The staff can sometimes inadvertently offer misinformation, or may have a certain complex toward a person. These are human errors which creep in. This concept provides for an overall right of review.

The original concept was that a man is entitled to trial. Now society has adopted the view that not only is he entitled to trial but to appeal. This is a comparatively new concept; there was no appeal previously. An offender was tried by his peers and that was it. Now however, we have established the right of appeal and even second appeal. We feel the same principle could apply to parole in order to protect the public and the individual from being deprived of his right to an impartial board making an impartial adjudication.

Mr. John Cassells, Q.C., Member, Special Committee of the Canadian Bar Association on Parole: I believe we should point out another factor also. In the studies we examined we discovered a sort of bumpy application throughout Canada because of the variations from province to province. For example, in British Columbia and Ontario very highly developed systems exist. This is true also of the Province of Quebec. There may also be variations with regard to the information available to the parole authorities. We feel it is very important when dealing with an area, for example such as the Province of Saskatchewan or even Ontario for that matter that there should be some method of ensuring that basic information is obtained right in the locality where the problem is. One method of obtaining this ground-roots information is the suggestion which Mr. Teed has explained to you that perhaps there should be a local base for information and a local base for decision directly connected with the institutions and available facilities in the province or district involved.

Senator Buckwold: Don't you think that it would tend to perpetuate these inequities that you talk about?

Mr. Cassells: Isn't the situation such that the review procedure was intended in part to assist in ensuring a uniform policy; because when the matter gets to the subject of review, the parole Board, as the reviewing authority, will have to decide how they are going to deal with this kind of situation in the future; and from this kind of review you will get a uniform approach in the regions on the question of policy. That is what we discussed.

Mr. Teed: The administration of it would be done in such a way that you would endeavour to have as uniform an application as you could. In theory you might have travelling, or regional boards who would visit different areas in Canada for a one-year period, or something like that. That would still accomplish the end, of ensuring equality.

Senator Laird: Might I ask any one of the witnesses, having in mind the language appearing on page 36 of the brief, whether it is contemplated, after the board of review, that you can still go to the Federal Court?

Mr. Teed: No.

Senator Laird: I am trying to determine what you have in mind on page 36. This procedure cannot keep on indefinitely.

Mr. Teed: That is intended to apply to the information on which the initial board based its decision. A party may say, "It is confidential information. If it is released, it will be detrimental to the public or to the individual." In that case the suggestion here is that there should be some mechanics whereby an independent authority could say, "We feel that information can be released and made available for use," or "It is of such a type that it cannot be released."

Senator Laird: It is confined to that alone?

Mr. Teed: Yes. We feel that there should be a right to a review appeal, a second stop, so that the national organization can check on what is being done; and at that stage there should be representation by both the individual and the Crown.

Senator Laird: On the same point, yesterday Mr. Street, the Chairman of the Parole Board, expressed some concern about the possibility of numerous frivolous appeals. You have already mentioned that. What legal procedure would you suggest to eliminate frivolous appeals?

Mr. Teed: Again, I am looking at the appeal court, to the provision relating to criminal matters. Everybody has a right of appeal, but in fact everybody does not appeal. In practice, it does not work that way. If it is found that there are a great many frivolous appeals, then, I presume, there would be administrative changes, based on experience, to somehow eliminate them. Everybody can appeal, or apply for leave to appeal on sentence, but they do not. If we found that everybody automatically applied for leave to appeal on sentence, I presume they would re-institute the basis that if you applied for leave to appeal on sentence, your sentence would not run. That was the law for a period. You took

the gamble. If you lost your sentence, you would have wasted all that time. That has since been eliminated, presumably because experience had shown that there were not a great many frivolous appeals on sentence. I presume the same thing would work over a period, but if you found administrative difficulties, and everybody automatically applied, you would automatically have to devise some method of screening them. But we cannot at this stage say that it is going to happen. We recognize that it is a possibility, but we say that in practice we do not think it will work that way. If it does happen, then, obviously, you would have to have some changes.

Senator Laird: What concerns me, as a lawyer, is that under our procedure in Ontario you can move to, say, strike out a statement of claim on the ground that it is frivolous. But how often does that sort of thing succeed? Scarcely ever.

Mr. Teed: That is true; but, again, you are dealing with civil matters. We are dealing with criminal matters.

Senator Laird: In criminal matters you would be inclined to be much more generous in allowing the appeal.

Mr. Teed: You may be right.

Senator Neiman: Aren't a lot of appeals inhibited in ordinary practice simply because of the cost factor? This would not necessarily apply to a prisoner. That is one aspect of it alone. They have nothing to lose from a monetary standpoint by making the appeal.

As I understand it, you are suggesting that a national body, or whatever it may be, act as a review board or appeal board. Would it not be better to use our national body to set the criteria, to obtain an evenness, disposition of applications across the country? As you say, we are flexible and open to suggestion regarding local courts. There is a great deal of merit in connection with local courts, but I feel that the national parole body should set the criteria and not simply turn itself into an appeal court. Part of what you are suggesting could be obviated if the Parole Board instituted the practice of involving each attorney general and the local police force. The local boards would do this as a matter of practice when anyone's application was being heard, so that the attorney general would have an opportunity of input at the beginning.

Mr. Teed: We certainly agree that the national board would set the policies and regulations. We do not at this moment feel that in connection with every application for parole the attorney general should be represented at that stage.

Senator Neiman: I do not say represented, but consulted simply as a matter of routine. In other words, A and B are being considered for parole. "Do you have anything on these grounds, or do you wish to make any representations?" This is done now in some jurisdictions as a matter of routine.

Mr. Teed: If the Parole Board, or whatever the organization is, wishes to do that, we see no objection; but we do feel that from a public viewpoint there should be some method of questioning the original decision for parole from both sides, because the complaint on one side has been that people are let out, the public does not understand why, and the attorney general is absolutely helpless on behalf of the public to do anything about it. On the other hand, you do have the occasional complaint from the inmate that he has been prejudiced because somebody has an axe out against him. Those are the two different concepts. We feel that the concept of going a second step to assure and silence everybody is very important.

Senator McIlraith: You said that the attorney general is absolutely helpless. That is the same attorney general who is advised when the man went into the penitentiary, who knows the rules, and who knows when he will be up for hearing for parole. He is absolutely helpless under the existing law?

Mr. Teed: My understanding is: (a) no one knows when the applicant is up for parole, because the board right now has absolute power to give them parole the next day if they wish; (b) I do not believe the attorney general, in practice, is consulted on parole. If he is, it is more by accident than by right. I do not think he has any right to appear before the Parole Board, as it stands now. Nobody can appear before the Parole Board as of right.

Senator McIlraith: That is your understanding of the situation existing between the attorney general and the present Parole Board. Thank you.

Mr. Teed: I could be wrong about that.

Senator McIlraith: I am afraid you are wrong about that.

Mr. Cassells: When you talk about the provincial attorney general being involved at the earlier stage, one of the problems you have is that you may have two of them. You may have the inmate in one province and he may be paroled to another province. You may get into a nightmare situation at a very early stage, when it may not need to arise.

Senator Neiman: I think that is the best time to have it arise. If you are going to have a nightmare situation, it should be before the man it out. It is a matter of communication to some extent, is it not? We know that a man is in Kingston, but he may be paroled to the Montreal area. Surely, rather than advise the local police chief in one area, you could advise two, if you have to.

Mr. Cassells: One of the problems that we were looking at was how to ensure that you have not only a national approach to the principles that may be involved, in how the Parole Board acts and its independent function, but how to make them stick. One of the ways of doing this is by ensuring that the national board, by means of the review procedure, can make it stick. You may get into a situation where there is a conflict related to the provincial situation, which may have to be reviewed in the light of the whole position of parole in Canada. How the

National Parole Board would be able to deal with that situation, if the local board in effect is creating a situation which may have a bad effect on another province, is a difficult problem. It is a two-way street on this question of how to establish the principle.

Senator Buckwold: I am sorry that we got Mr. Teed off his track. I have one last question. It is important to the whole mechanics of the question. I am thinking now of an appeal by the Crown, which I gather from your presentation may be just as important as an appeal by the parolee. How does this work? The Parole Board says, "We will give you parole." I presume that is effective fairly quickly; you would not keep a man in prison very much longer. I would presume that if the Crown wants to appeal, they would have to do it very quickly. There would be a time limit. It might be a week. I do not know what you have in mind. The mechanics of appealing, or having the case heard by the National Parole Board, could take, if other courts are any indication, six months. Are you going to keep the man incarcerated during that period, in which, in fact, parole has been granted? Could you go a little further on that?

Mr. Teed: Again we would hope that the administrative technicalities would be worked out to the advantage of all concerned. As it stands now, certainly the attorney general has no right in law to appear before the Parole Board, any more than an accused or any individual has a right to have a lawyer. I know that in some provinces lawyers make representations and in others they do not. Secondly, if the board said to the attorney general of Newfoundland, "You can come up because there is an application being heard in Ottawa," that would be nonsensical. Let us assume that the board gives parole. At some stage, presumably, it will come to the attention of the attorney general. Whether it does so by notice to him, or whether it does so by the police saying, "We saw Johnny out on the road," I do not know. We agree that there should be a time limit. It may be that every parole that is granted must go to the attorney general. I do not think it does now. That might solve it. There would be a period to check it and make application. We would presume that every effort would be made to have a hearing in a reasonably short time. We quite agree there is a practical problem if a fellow is out on the street wandering around. On the other hand, if you have a 15-year or 10-year sentence, two weeks or three weeks out is not going to make that much difference.

Senator Buckwold: I am thinking of it going back to the board and having them review the case. There would be, I presume, a very substantial number. There is the matter of being able to deal with a case quickly. This poses a very difficult problem. You have to try to represent the right of prisoners. You could keep a man in jail for another six months by the time the thing is really finalized.

Mr. Teed: That is correct. We have the same situation with a person who is in jail awaiting trial. You try to expedite these things, but the administration falls down.

Senator Buckwold: But that is fairly rare, to keep people in jail while awaiting trial.

Mr. Teed: It depends on the section of the country you come from. It is not that rare down our way.

Senator Laird: Where are you from?

Mr. Teed: New Brunswick. We have found that in spite of the fact that we have national policies, the administration does differ and concepts differ from region to region. What they say is a problem with parole in British Columbia does not apply in New Brunswick, and what applies in New Brunswick does not apply in Ontario. It is an interesting concept when you get down to the real application of some of these problems.

The Chairman: Of course, discrepancies do not only exist in the matter of parole.

Mr. Teed: That is true.

Senator Hastings: Just one quick question. If the Parole Board grants parole to an inmate and the attorney general appeals that, to whom are you suggesting it be appealed?

Mr. Teed: To the National Parole Board.

Senator Hastings: But the National Board granted the parole.

Mr. Teed: Our concept is a two-tier system.

Senator Hastings: Then you would have the inmate and the National Parole Board going before another board to defend the decision?

Mr. Teed: The concept is that there will be a two-tier system. Let us say there is a Parole Board of 15 and it is regionalized so that one man makes the decision in New Brunswick. Now, if that decision is not acceptable to either the attorney general or the inmate, it can be appealed to the National Board which, first of all, sets policy and, secondly, is a safety valve, if you want to call it such, to ensure that the rights of the public are protected. We feel that people have made mistakes. One of the big complaints is that the public does not understand why certain people are allowed out on parole, and there is no means of finding out. This appeal procedure would come into effect if all the facts were nos brought before the first board.

Senator Hastings: Some suggestions have been made that the National Parole Board should reserve the decision to grant parole to inmates convicted of murder and some of the more serious offences. Under your concept, to whom would the appeal be in that instance?

Mr. Teed: You mean, if the National Parole Board reserved it?

Senator Hastings: To whom would the appeal be if the National Parole Board made a decision to grant parole with respect to an inmate convicted of murder or some other serious offence?

Mr. Cassells: That would be a Governor-in-Council situation.

Senator Hastings: It has been suggested that decisions to grant parole in the case of dangerous sexual offenders, habitual criminals, inmates convicted of kidnapping or murder—I believe there were five categories— should be reserved for the national board; in other words, the local boards could not deal with those cases. The decision to grant parole in those cases would be made by the national board.

Now, let us assume that the National Parole Board grants parole to a dangerous sexual offender, say, in the province of British Columbia. In that instance, to whom would the attorney general appeal that decision?

Mr. Teed: In that case, there probably would not be an appeal.

Senator Laird: But the right of appeal exists, or you like the right of appeal to exist.

Mr. Teed: We are saying that if there is a two-tier system, there would be the right of review respecting those matters which come within the jurisdiction of the bottom tier. If there is a two-tier system and the bottom tier, if I may use that term, does not have the right to deal with some matters, then the top tier does. This applies in law to many cases. Some applications you make to a trial court and some you must make to the appeal court.

Mr. Cassells: If you turn to page 15 of the brief we talk about where the provincial attorneys general get involved. At the bottom of the page we deal with the differences of opinion with regard to the judge's rights at the time of sentencing. We say:

> There is however agreement that the trial judge may make recommendations to the Parole Board and that if he does the Parole Board should not act contrary to these recommendations without first consulting the judge.

We feel that in that respect there is a valve right there. It is a warning to the Parole Board that they should not act contrary to such recommendations should they decide to go outside of the judicial recommendations with regard to parole. This, perhaps, would be an occasion where they decide to do that and, if so, they should inform the provincial attorneys general who are involved. We also talk about the special circumstances provision under the regulations where the Parole Board has been releasing people, in some instances, under the special provisions regulation. Perhaps that is another example, if that power is to be retained—and we have reservations as to how far it should be retained—where the provincial attorneys general could be involved. We see a number of situations where they would not necessarily be involved and other specific areas where, in the brief, we say to you that these particular situations, perhaps, should involve a notice to the provincial attorneys general, and then they could become involved if they wished to make some submissions.

Senator Buckwold: Some of us will be very interested in the relationship of the courts to sentencing and parole, as you have outlined it in your brief, and perhaps that will be the subject of some other questions as we move into that area.

Senator Neiman: Just on this point, we have heard some testimony to the effect that the Parole Board has a procedure whereby it sends out questionnaires to sentencing judges and magistrates requesting them to fill them in. This is done immediately upon the incarceration of the individual. Some judges, we are told, have co-operated in this respect and others have simply ignored the questionnaires. They said quite frankly that they would not co-operate in any way with the Parole Board. This questionnaire was simply to give the Parole Board a chance to build up a file on a prisoner from the time he was sentenced.

How are we going to get around this if some judges take the attitude, "It's none of your business," or, "I don't have the time to do this"? Apparently, they have found this same attitude with some police forces, whereas they have had great co-operation with some others.

Mr. Teed: There are two philosophies. There is no question that there is quite an argument within the group itself. One philosophy is that the sentencing judge, in effect, has the right to have his viewpoint made before the Parole Board, by one method or another, as of right, and the other as a matter of courtesy. There is a suggestion that the judge's function is to sentence an accused based on the facts before him at the time of sentencing and once he has sentenced the accused his duty has been discharged. The same thing applies to the police constable. His job is to arrest the individual and bring him before the court. He does not speak to sentence; it is none of his business. His job is to bring the accused before the court and present the facts of the case to the court and, in effect, say to the judge, "Your job is to sentence this man."

The Parole Board has its job. If, as a matter of courtesy, the Parole Board wants to write to the judge —and we understand in some cases it does—that is fine; it is their privilege; but it is questionable as to whether or not the judge should have this as of right. I think this is set out in the brief showing that there is an argument pro and con; we just sort of left it. Some judges, in effect, want a veto over the Parole Board. We feel that this is akin to the policeman saying that he wants a veto over the sentencing. We do not think that is right. There are various steps involved. There is the arrest, the finding of guilt, the sentence, and there is a step after that which is now vested in the Parole Board itself and that is to rehabilitate the prisoner based on all the information they can gather, not presumably based on what happened before the crime, because that, to a large extent, is taken into consideration by the sentencing judge.

Senator Hastings: Do you agree with the concept that the judge's responsibility is finished at the time of sentencing?

Mr. Teed: Personally, I think it is.

Senator Neiman: Don't you think his input would be useful? I do not agree with a veto in any sense, because these are different steps.

Mr. Teed: Even in the administrative procedure you have the practical problem. You have magistrates who are dealing with 20, 30 or 40 cases in a day and for the board to ask them to fill out another form does not make sense. I presume some of you have been in the criminal courts. An accused gets up and pleads guilty to petty theft, or whatever it is, and away he goes. To say at that instance that the magistrate or judge should be involved with the Parole Board, just administratively, is a pile of bureaucracy. There may be cases where they may want to have the advice of the judge, of course, and this is their privilege.

Senator Buckwold: I thought perhaps I might delay moving into this field, Mr. Chairman, because I felt the witnesses may wish to make some general comments. However, I gather we are into the relationship of the courts and the Parole Board.

Some of us are beginning to feel that we have to have more active liaison in some way between the judge handing down the sentence and the Parole Board itself. You have indicated that this would be a nightmare from the point of view of having such a liaison in every case which comes before a magistrate. I would presume that this might apply, say, to sentences of more than one year, thereby eliminating a great multitude of less severe sentences. In the opinion of The Canadian Bar Association, should there be an improvement in what we are doing now?

I have had a judge say to me—and this is a very severe kind of judge—that he will add to the sentence because he knows that after one-third of the man's term he is going to have the right of parole and, quite likely, will be granted parole. So the sentence becomes a little more severe under those circumstances. This happens, I think, perhaps more often than you might think. Other judges, of course, take a real interest in the parole procedures and will write fairly lengthy reports expressing some extenuating circumstances regarding an accused, and these reports are available to the Parole Board.

Your general opinion—and I am just now trying to assess what you have said—is that as far as you are concerned the present system seems to be satisfactory?

Mr. Teed: The difficulty is this: At page 15 of our brief we say that there are several phases in the admininstration of justice. The first phase is the apprehension of the individual, and that is basically vested in the various police forces; the second phase is the trial, which is vested in the judge assisted by the Attorney General and defence counsel; the third phase is the sentencing procedure. At present, that is vested in the same judge who presides at the trial. In this brief we have not gone into whether or not that is a desirable system. There are suggestions that the judge should merely find the accused guilty in the same way as a jury, with the sentencing being left to someone else. But under the present system, as long as the trial judge hands down the sentence, that, in effect, finishes his job. The detention end of it is up to the custodial authorities, which is a separate system. The judge has no control whatever over what takes place in the penitentiary. If the penitentiary authorities wish to put him up or down, let him out, or have him working or not working, it is up to them. The judge is not consulted as to that, and that is certainly part of the concept. We then come to the fifth step, which is the re-introduction into society, and that step lies with the Parole Board. Quite frankly, we do not see at the moment why, as of right, the judge has any more rights in that respect that he has with respect to what happens in the penitentiary.

Senator Buckwold: Let us go back to the earlier step; that is, the relationship of the sentencing to the future parole application. You do not feel there is any room for some form of compulsory liaison between the Parole Board and the courts?

Mr. Teed: Let me put it this way: the judge, in theory, has the right to determine all the relevant factors up to the time of sentencing. Assuming he has the staff, he can get pre-sentence reports, if he so chooses, and so forth, and his job at that time is to assess the individual with the then known facts and to impose his sentence based on those facts. If the person does not like it, he can appeal to the court of appeal, and the appeal court, whenever that case comes before it, then applies its knowledge to the then known facts, which may have changed in the interval between the sentence and the appeal. A great number of rehabilitative events may have taken place between the time of sentencing and the time the matter is before the court of appeal and the appeal court, in that event, can change the sentence on the basis of the new information before it. That is recognized in law. But, having exhausted all these steps in the appeal procedure, then we do not see, frankly, where the judge has, by right, any jurisdiction, any more than he has the right to call the warden of the penitentiary to find out how the fellow is making out. It is none of his business. He has sentenced in accordance with the facts presented at the time of sentencing, and that is his job under our present law. We do recognize that there is a human feeling. The judge now says, "Well, if I sentence him to three years, automatically he is out in two, or if I sentence him to four years, by statute he is out in three, and if the Parole Board gets their hands on him he is out in anywhere from one to two."

Senator Hastings: And he ends up serving ten years.

Mr. Teed: Well, whatever the figure is. In other words, he increases the sentence to compensate for those factors. Our courts have said that that is wrong. The law is that the trial judge cannot take into consideration the fact that another body, exercising its jurisdiction based on facts which it may deal with, has the right to, in effect, ameliorate the sentence. I am not saying that is right or wrong, though in a sense it is. Otherwise, the judge is not sentencing on the facts; he is sentencing on something which may or may not happen in the future.

Senator Buckwold: You are basing this on the present regulations?

Mr. Teed: We are going on the basis that parole today comes about after the sentence takes effect.

Senator Buckwold: You are satisfied that this does not need change?

Mr. Teed: No, we are not saying that. We have not really studied the aspect of sentencing here.

Senator Buckwold: That is what we would like to know.

Mr. Teed: There was some debate and we felt that the concept of this deals with after the sentence has been imposed. It is at that time that the Parole Board starts to function. There may be a lot of merit in some study as to the procedure of sentencing, because certainly the concept of sentencing, as we see it, is not necessarily the best. There is a question as to whether judges are properly trained, whether there is adequate staff available for pre-sentence reports, and so forth. Many judges do not use pre-sentence reports. They take the view that they have heard the trial evidence and that is sufficient. Other judges do use pre-sentence reports extensively and, in fact, what happened at the trial has very little bearing on the sentence. They look at the background in considering their sentence. Under our present system that is in a state of evolution, if I may use the term. Our brief is based on the concept that when under the present system the judge has sentenced in accordance with the present criteria the board takes over.

Senator Hastings: On page 17 of the brief you state that rehabilitation is the ultimate aim of any system of justice.

Mr. Teed: That is right.

Senator Hastings: Are the judges and the police not interested in that ultimate aim? In the next sentence you say rehabilitation must be accompanied by the full co-operation and support of the public. Are judges not part of the public?

Mr. Teed: To put it this way, the judge when he sentences someone to penitentiary, in theory follows the concept that if he goes to the penitentiary there will be equitable services, psychiatrists and so forth to look after the person. In fact in many cases this does not happen. We just do not have the personnel and they are not given the adequate treatment which is in theory envisaged.

Senator Hastings: The judges know that, do they?

Mr. Teed: Some do and some do not. I expect they say the theory is there and we must act on the theory rather than on the fact. Again, it varies. Judges in our area of the province, for example, would not sentence a person to the penitentiary, because it gives a penitentiary record. Not too long ago they would give them two years less one day, which they would serve in the county jail, knowing that in the county jail they did nothing for two years because the system did not exist. In the penitentiary they could learn a trade, but the concept then was that with a penitentiary record it was very difficult to get a job. This depends on the region in the province, so I would not say the judges close their eyes to it. They merely say it is beyond their capacity to control it. If we consider the sentencing procedure today, my heavens, it is wide open to the judge. He can do everything, in effect, from giving a discharge to sentencing to the penitentiary. There is a whole range between. In view of the concept that the judges' rights to sentence are so broad, we do not see why if they are exercised properly they should then be involved in the second step. The judge can suspend sentence, put an offender on probation or do almost anything.

Mr. Cassells: Further to Mr. Teed's point, at page 15 of the brief at the centre of the page it is stated: "It is felt that proper sentencing is directly related to proper parole". Then reference is made to the case of *Regina v. Willmot*, which clearly says that the sentencing judge must in effect not delegate his functions to the Parole Board. The next paragraph points out that there is a difference of opinion among those on the committee:

> Nevertheless, there is a clear difference of opinion as to the consideration, if any, which the trial judge may give to the possibility of parole in determining a proper sentence. On the one hand there are those who hold the view that parole should not be a factor in determining sentence while others contend that parole is a significant consideration.

We were, in effect, agreed that the Parole Board should be in a position to ask the judge to make comments. One of our serious problems as a committee was that the two points of view are valid in their own way. If the judge sentences, he does so at a point of time at which he is receiving facts up to that point of time. The Parole Board is involved later on, after the sentencing process is terminated, but with further information. The significant point from the other standpoint is that the judge is always subject to appeal on sentencing. Frankly, I do not agree with the suggestion that the vast majority of judges in any way attempt to abuse their position in sentencing by imposing X years and adding Y years so that the offender will serve a little longer period. Really I do not think it is quite as bad as that. What should happen is clear from the *Regina v Willmot* case. A young man was sentenced on a rape charge and the judge did attempt to explain why he gave a long sentence. It went to the Court of Appeal which asserted that the judge is not entitled to delegate his functions. It may well be that if the judge is placed in the position of having to comment on the future custody of the accused beyond the serving of the time of sentence it can be reviewed in the Court of Appeal, which reviews sentences every day. That constitutes a check on the abuse or otherwise by the judge and affords the offender the right of review immediately. That is when we get into the second, or grey area of what happens between the judge's comments and the Parole Board's action in the matter. This is where we encountered difficulties.

With respect to your suggestion that the judge be forced to consult, there is no doubt that he takes the view that his function is over and he does not want anything more to do with the case. There may be merit to that point of view, because he probably does not know what has happened since. On the other hand, many judges feel they should at least be asked to express their views. They may not wish to express them, but they feel they should be asked. It may be a negative or positive reply.

I think it is wrong for a judge, as you indicated, to give the maximum and tell the Parole Board that the offender should not be released because of something else. The judge should be allowed to say anything he wishes on the record at the time. We have not been able to obtain consistent points of view and, frankly, it was very difficult. We studied this in great depth and considered all types of points of view. If it does not appear to be as definitive as you would like it is because of these different points of view.

Senator Neiman: I understand your difficulty and mean no discourtesy to the bench or the Bar. However, in Toronto, for instance, we knew certain judges before whom we simply did not take an alcoholic offence, sexual assault or other cases, whatever they may be. They were famous for the sentences they would impose if one ever had the misfortune to appear before them. The key, in my opinion, is your question of proper and consistently fair sentencing by all judges. I must agree with Senator Buckwold that I have heard the view expressed more than once that some judges in fact will add to their sentences because of what they feel the Parole Board can do at a later date. I believe that, on the contrary, the suggestion has certainly been made that perhaps the Parole Board will look a little more favourably at an application involving a sentence such as I have referred to, which they consider to be unduly harsh.

Mr. Teed: Mr. Chairman, that is the opposite end of the stick. Some judges say it does not matter, they will give a harder sentence and the Parole Board will act as a review. This is a wrong concept. The judge imposes a sentence which he feels is proper on the basis that the man presumably will serve it. The Parole Board does not consider whether it is a long sentence, because that is a matter of appeal, not for the Parole Board, but whether the man has shown by his actions that he is prepared or is in condition to be re-introduced into society. That in our opinion is the distinction. The Parole Board acts basically on information available after the sentencing. The trial judge acts on information acquired at the time of sentencing, which is the fundamental distinction as we visualize this. We are not saying that the sentencing procedure is right. We are merely pointing out that under the present sentencing system the Parole Board takes over and operates on a certain basis. We suggest there should be certain changes to overcome the apparent public disapproval or reaction to their concept of how parole now operates. It may be simply plain lack of understanding, but there is certainly in our experience from speaking with various members of the public, the impression that they do not like the present parole system. They cannot put their finger on why, but many offer different reasons. They just do not like the system and this in our opinion has been reflected in public sentiment. We believe the parole concept is right. We suggest that to improve it there should be established a regional concept, or two-tier system. At the second step of the two-tier system, because the attorney general would have to be represented by counsel, the applicant or inmate should also have that opportunity. At the first step, however, it is not a question of being represented by lawyers at all. It is, in effect, an administrative function.

The Chairman: Your brief agrees that parole is not a right.

Mr. Teed: No; you have the right to apply for it. In other words, there is no question that we can set out rules. If an inmate has behaved for one year without being reprimanded and has taken the opportunity to learn a trade, does that automatically qualify him for parole? We came to the conclusion that it does not establish a right. It is not a matter of right. When the sentence is handed down that is the end of the right. There is, however, an administrative board charged with the duty of re-introducing the inmate into society. That board then, presumably, should administer the system. Maybe an ombudsman would be required to whom application could be made in the event of rejection.

The Chairman: If you agree that parole is not a right, do you still feel that the inmate should have a right to appeal?

Mr. Teed: Mr. Chairman, we call it a right of review on the concept that an appeal contemplates legal steps such as take place in courts of law, whereas there are many reviewing bodies. The distinction is very subtle, but it is for two purposes, not only for the interest of the inmate, but that of the attorney general. Either may feel that the board has exercised its discretion based on misinformation. The attorney general in taking into consideration the public good may wish to make representations to bring his side before the board, just to ensure there were no mistakes. Mistakes do happen. Similarly, the inmate can claim that the interviewer, or the Parole Board representative had a personal prejudice against him. To avoid that possibility we suggest that there should be a review, but with certain limitations.

The Chairman: At what stage would you allow the introduction of counsel?

Mr. Teed: Only at the review.

The Chairman: Do you not think you would be re-opening at that stage the original case?

Mr. Teed: Mr. Chairman, we have suggested in our brief some mechanics. If the Parole Board sets out the reasons for rejecting or granting an application as the case may be, our suggestion is that, just as an administrative board reviews in *certiorari*, they give their reasons. If the Parole Board for other reasons indicates

they are not giving reasons, then to ensure fairness we thought there must be a right to review some of the material. That is the distinction we made. As we all know, any court can find for the plaintiff or the defendant—period. However, the more common practice is for it to give reasons. This can be dangerous because as soon as the court states the reasons someone can find loopholes to appeal. However, that is the chance. On the other hand, the person is satisfied to some extent, at least as to why he is denied or granted what he feels he should receive. The modern concept is that it is better to explain or attempt to explain to the person why his application is accepted or rejected than just proceed without giving reasons. We discussed this at some length. If the initial board gave the reasons then any review board would be stuck with them as a practical approach. If the initial board had not given reasons then the right would exist to attempt to go behind their decision if possible. The reason for allowing counsel at the review is basically that if the attorney general was contesting a decision, automatically he would have to be represented by counsel. If there is counsel on one side, there should be on the other. The applicant might not want counsel, and counsel is limited because, in effect, this is an administrative rather than a Court of Appeal review in our concept. We concede there are problems and we had much debate, but we did agree that in effect it would be a two-tier system.

Senator Buckwold: Mr. Chairman, if we ever admit counsel to appeal procedures the delay factor to which I referred earlier would become really inhibiting; in fact, it would be almost a prohibitive situation.

The Chairman: Do you say that even though you know you are in the presence of The Canadian Bar Association?

Mr. de Grandpré: Probably because he is.

Senator Buckwold: It would be delay, delay, delay. It would be four years before the appeal would be heard because the lawyer would be on vacation or dealing with other cases.

I have a more general question now: I happen to be one who thinks our courts are too severe; in other words, we have a very punitive type of sentencing system. Studies carried out in European countries indicate that the sentences there are much lighter for even serious crime. I am not referring to super-serious crime, but to serious crime. We think nothing of imprisoning people for six, seven or eight years for a variety of offences. I have a fellow riding me now who is in for five years for fraud. In the countries that have developed a court system where the sentencing is relatively light in comparison with ours, the parole aspect then becomes much less important because of the shortness of the sentence. Do you have any comment to make in that regard?

Mr. Teed: Let me put it this way: I think Parliament, in its wisdom, has changed the law comparatively recently, so that the courts have much greater leeway and control in respect to sentencing. They can suspend or put people on probation. As yet I do not think the courts have caught up with that concept. They are working towards it, but they really have not got to it yet. That may solve part of the problem. I certainly agree that perhaps it is the Canadian philosophy that time spent in jail does not matter. I can only think of the classic case we had in New Brunswick where somebody was sentenced to 10 years and 10 strokes of the lash. He appealed it, and the court said, "This is a very terrible sentence; we must reduce it," and they knocked off the 10 strokes of the lash. The fact that the fellow was going to lose 10 years of his life meant nothing.

Unfortunately this is the Canadian concept, that time spent in jail means very little. Why it exists, I do not know. I hope we are gradually changing it. It seems to me that time spent in jail is basically time wasted, unless the fellow ends up a better person. Under our present system there is still some question whether that is the aim and whether the mechanics of it are working out. I do feel that the changes in the law, allowing for greater use of the courts and the various procedures, are there legally. It is just a matter of indoctrinating the courts in them, or persuading the courts to make greater use of them. Part of the problem is the fact that they do not yet, in some areas, have the facilities; they do not have the probation officers or the pre-sentence personnel to do it. Again that is a matter of improving the administration. I think the whole concept is gradually working towards the view that jail is about the last place to be, is the very last resort.

Senator Laird: What about mandatory supervision? I am trying to find the spot in your brief where you seem not to favour that system.

Mr. Teed: That is correct, Mr. Chairman. That is, the statutory remission.

The Chairman: That is on page 42, Senator Laird.

Mr. Teed: We say that, in effect, that is a deception. The history of statutory remission was that the person incarcerated could earn time by good behaviour within the jail itself. In effect, it is a quarter.

Senator Hastings: This is earned remission or statutory remission?

Mr. Teed: I call it statutory remission.

Senator Hastings: That is, one-quarter of his sentence.

Mr. Teed: Automatically it is out. But now, it effect, it is not out, because as soon as he is out he is, in fact, on parole. It is a mandatory supervision. We call it statutory parole. We feel that it is a misconception; that if he earns remission in jail, it should be related to his work in the jail. We are saying that you should abolish statutory remission entirely.

Senator Hastings: He does earn remission; he earns statutory remission . . .

Mr. Teed: We say that statutory remission should be abolished.

Senator Laird: Would you increase the benefits of earned remission?

Mr. Teed: A fellow should earn it by good behaviour in jail, and if he is outside, he should not lose it. That is our submission. We do not think it is fair to say, "Look, a quarter of your sentence is off, plus whatever else you may have earned for good behaviour; but if you get out on parole and do something wrong you are going to lose the quarter, plus whatever you earned on good behaviour." That does not make sense. In effect, you are getting something, but you are not giving it to them.

Mr. Cassells: I would like to direct my remarks, Mr. Chairman, to an earlier question about the comparison between methodology and penology in Europe and Canada. We tried to find out whether there was anything we could usefully gather that might help us in what we were doing. There is a paper that has been done called "A Review of Selected Criminological Research on the Effectiveness of Punishments and Treatments" by Diane Barlow, a research assistant at the Centre of Criminology in Toronto. If you look at that, I think you will find that it is very difficult to say who has the better method, or whether it is working. I am not an advocate necessarily of lengthy sentences, but I think that before we depart from some of the things that we are doing in Canada we would be more realistic in determining whether we know the results of what is happening in Europe and in United States. There are studies referred to here. The result we arrived at, from reading this particular study, is that it is very difficult to say whether these methods that you are talking about are as effective as they are claimed to be.

Senator Buckwold: Perhaps a note is being made in our *Hansard* record of that study, in order that we might have a look at it. Perhaps Mr. Jubinville would get it for us.

Senator Hastings: On page 40 of your brief you deal with temporary absence. You say,

> In particular, inmates are released without any notification whatsoever to any police department.

Are you not aware that a copy of the temporary absence goes to the police department?

Mr. Teed: If that is the case, then apparently we were not told. The complaint has been that the first the police know about it is when they find a fellow walking down the street. Perhaps it is an administrative breakdown.

Senator Hastings: Probably the local constable does not know, but there may have been notification in the police department that an inmate will be in Toronto from a certain date. You say:

> ... information make it plain that many of these inmates are committing offences for which they are not being detected by local police departments.

What information?

Mr. Teed: If the local police knew they were around, they would keep an eye on them. But the first information the police often get is when they are hauled up for having committed an offence.

Senator Hastings: But you say: "information makes it plain that many of these inmates are committing offences." What information makes it plain that they are committing offences?

Mr. Cassells: My occupation is that of Crown Attorney for this judicial district; but I have consulted with many other criminal attorneys and I do not have to go very far from this city to be able to tell you that there are situations where persons are released from federal penitentiaries and subsequently it is discovered that they have committed offences while on release on temporary absence.

Senator Hastings: But does that justify the use of the words "many of these inmates"? I agree there are instances, but surely this is stretching the case when you say "many of these inmates"?

Mr. Cassells: May I suggest that we amend the brief to say "significant numbers".

Senator Hastings: I would suggest you use the term "a few". At Christmas they released 1,485 men, of whom two committed offences. Is that a "significant number," two out of 1,485?

Mr. Teed: I will concede that the word "many" is not appropriate. I presume it was based on information where the Crown Prosecutor or the attorney general said that people were getting out and the police were not being notified—perhaps it was an administration brealdown—and they were being picked up after having committed a crime, before the police even knew they were out.

Senator Hastings: The police department came before us and told us that all the parolees were coming around and stealing, and that they could not catch them.

Mr. Teed: That is a slight exaggeration.

Senator Hastings: But you are making the same statement.

Mr. Teed: We will retreat from that one. The point is, with regard to temporary absence, that administratively they do not know they are out until they bump into them on the street by accident. This is the thing we are trying to get across. There should be greater administrative improvement.

Senator Hastings: I suggest that the words "a few" would be more appropriate. Will you amend it to read "a few"?

Mr. Teed: Yes, Mr. Chairman, we are quite prepared to do that.

The Chairman: You say here that the temporary absence program should be modified. Have you any suggestions as to how it should be done?

Mr. Teed: The information we are getting is that to some extent they are using temporary absence not for compassionate reasons, or for some sociological problem. In effect, they are saying, "He is a pretty good fellow, so we will let him out." In effect it has been used as sort of baby parole—not on compassionate grounds, but saying, "He has been on good behaviour in the penitentiary, and so we will let him out." Temporary absence is used as a method of giving a man parole.

The Chairman: Would you suggest that the function of granting temporary absence should be transferred to the parole authority?

Mr. Teed: Administratively that might involve some difficulty. If it could be done expeditiously, it might work. We are thinking, really, of compassionate grounds, of a death, or a severe illness, where a person gets out for a specific reason and then gets back; but not by simply saying, "He has been a good boy and we will let him out for the weekend so that he can go home and come back."

Senator Hastings: You do not see temporary absence as a very valuable rehabilitative tool, as an incentive?

Mr. Teed: We think that if you use it for that purpose, it is a method of parole. We think that is the purpose of parole.

Senator Hastings: Custodial staff are just as interested in rehabilitation as parole. You cannot leave it up to the parole staff to do all the rehabilitation. Rehabilitation has to start while the man is in custody. Temporary absence happens to be a very valuable rehabilitative procedure or tool.

Mr. Teed: Our feeling is that in effect it should not be used for that purpose, but should be used more on compassionate grounds. If it is to be used as a rehabilitative tool, it should be vested in a different organization than the present set-up.

Senator Hastings: But the custodial staff must be just as interested in rehabilitation as some other administrative body.

Mr. Teed: If that is understood, then we should abolish the Parole Board.

Senator Hastings: What would you suggest should be done while they are in custody, if there is no interest in in rehabilitation?

Mr. Teed: They should be receiving advice from the appropriate medical and professional groups and receiving training to be of some use. When this has been accomplished, then presumably the fellow would apply to the Parole Board and say, "I have now received my training; I am a better fellow now, and I would like to come out." In effect, you are now saying to the jail authorities, "The fellow has applied for parole. It has been denied; so we will give you temporary absence"; and the fellow is happy.

Senator Hastings: I do not think we are talking about the same thing. We do not give a man temporary absence like that. We give him temporary absence as an incentive for good behaviour, as a means of rehabilitation, and it is a very valuable tool for the custodial staff of an institution. I do not think we say, "You did not get parole, so we will give you temporary absence." I cannot agree with that. These are two or three-day temporary absences during the period of incarceration.

Mr. Teed: On page 41 we say:

> ...temporary release provisions should be limited to the granting of daytime release from penal institutions for reasons other than rehabilitation of the prisoner.

That is our position. We feel that the parole system provides for release for reasons of rehabilitation.

Mr. Cassells: Basically, what the questioner is saying is that the temporary absence program is a good thing. Frankly, we are not disagreeing with the concept that you are enunciating. We are simply saying that we have discovered in our studies that there have been serious variations which have created problems. We feel that the temporary absence program, so called, and run from individual institutions, ought to be part of the rehabilitative process, but that within the overall control of the Parole Board.

We are not against the temporary absence concept. We are concerned about who is running it, because we have found that serious anomalies have arisen over the past two years because of individual problems in different institutions, individual problems in different offices within institutions, which have created serious discipline problems within the institution. If you have the control of it within the institution, you may tend to have a serious problem between those running the institution and the inmates. If the control of it is outside the institution, namely, vested in the Parole Board, we feel that you are going to have a better-run system from the standpoint of the institution itself and its relationship with the inmates, right across the country. We are not against the concept of temporary absence. It is just the running of it, as it presently exists. Regarding the other question, of the control of the inmate outside, do the penitentiaries have adequate supervision facilities for someone who is on temporary absence? Do they send someone with him? Does someone go out and inspect what he is doing?

This is one of the problems. We feel that one of the problems of the institution is that they have a very tough and a very difficult job right now in the light of a lot of the things that have happened over the last two years, and I do not think I have to go into examples. We are all familiar with them. Therefore, we feel that there are many things that can be done in the institution and adequately done if those in the institution devote their time to it. Where the man is outside the institution on temporary absence, or whatever you want to call it, we feel that it should be run on the basis of those responsible for the outside care of the inmate, namely, the National Parole Board.

Senator Laird: How would you do that practically? This is always what has worried me about the concept

of appeal, and so forth. It is fine to have this concept philosophically, but we have to be pragmatic when we make our recommendations.

Mr. Teed: I think if you have regional organizations they could handle it just as well as the penitentiary. There would be a little closer liaison, perhaps—

Senator Laird: In other words, you would use the local parole board?

Mr. Teed: Yes. They would arrange for temporary absence leaves. If you do not want to call it parole, call it temporary absence, but it should be administered by the same body. Our concept is that rehabilitation should be, in effect, outside the institution and should be vested in, or controlled by, the Parole Board. As it is now there are two groups doing it.

Senator Laird: Incidentally, you are aware that some of the more heinous and more publicized crimes have been committed, not by parolees, but by people on temporary absences.

Mr. Teed: Well, they are all people outside; they have been released by some authority.

The Chairman: But you have to draw a distinction, Mr. Teed. You have been consistently talking about the public discontent with parole. I was going to ask you whether you were talking about parole, temporary absences, or any other form of release before termination of sentence.

Mr. Teed: Well, Mr. Chairman, let me put it this way: I think the public view is that the fellow is out of the institition on some authority when probably he should not be. If these people on temporary absences are committing the crimes, then it strengthens our case that the supervision should rest with the Parole Board.

The Chairman: That may be the public view, but surely The Canadian Bar Association should know better.

Mr. Teed: Well, you may be right.

Senator Laird: One of the things that annoys us in this study is that the Parole Board is getting blamed for some of these well-publicized crimes which have been committed by people who are out on temporary absence, not parole.

Senatord Hastings: Or those who have been released by a judge.

Senator Laird: I think most of us on this committee feel that the Parole Board has done a pretty darn good our brief. We are saying that the public is blaming the job.

Mr. Teed: Well, again, this is one of the reasons for Parole Board; we are not saying they are doing so justifiably, but, in fact, they are.

Senator Laird: That is right.

Mr. Teed: We feel the Parole Board does have a few problems, but they are, really, administrative problems. We feel that the two-tier system would resolve some of the problems because, in effect, there would be the right of appeal. Even if that right of appeal was never used, it is there and the Parole Board could say, "Well, if the Attorney General did not like the decision, it could have appealed it." There is duplication or lack of control, we feel, with respect to temporary absences. Leave on compassionate grounds, we feel, should be under the wing of the Parole Board, which has the mechanics to deal with it. Certainly, if the penitentiary allows an inmate out for a weekend or for three or four days, they have no control over him. They just do not have the mechanics for such control. This may be the very problem. These are the type of people who are committing crimes and the blame is being placed with the Parole Board.

Mr. Cassells: I think the basic theme of what we are trying to say in this brief, really, is this: There are all kinds of methods of release. Problems have arisen because of the uses of the different methods of release. The Parole Board has taken a considerable volume of the blame for things for which it is not responsible. We feel that there should be some central controlling agency so that there will be uniformity and fairness in dealing with all forms of release. This is what we are trying to say. This would get over the anomaly.

Senator Laird: That makes sense.

Senator Hastings: Are you suggesting that the Parole Board administer the Bail Reform Act? You say, "all forms of release."

Mr. Cassells: Release post conviction.

Senator Hastings: Well, should the Parole Board administer release from provincial institutions under the Reformatories Act? That is exactly the same wording as the Penitentiaries Act.

Mr. Cassells: As I understand the way it operates at the present time, an inmate in a provincial institution, by means of an in-writing application, can have his case considered by the National Parole service for release.

Senator Hastings: I am not talking about a release; I am talking about a temporary absence. Temporary absences are administered by provincial institutions in the same method as we release inmates from federal institutions. Are you suggesting that the Parole Board administer the temporary absences in every province under the reformatories act?

Mr. Cassells: The concept, as I think we put it in the brief, is that we are suggesting that there should be more regional information, more regional control, of what is going on. This is one valve through which this problem you are referring to can be vented.

Mr. Teed: Our point, Mr. Chairman—and I think it is the very last—is that we feel there should be more favourable public acceptance of parole. At the moment, for sundry reasons, the public is not very happy about it. Again, some of this, or a large portion of it, may not be the fault of the Parole Board. But there is no point in

having a system if the public does not accept it. In our view these would be what we call improvements in the system. We want to improve the concept of parole. We feel this might be one method of improving the public acceptance of it. We feel it is a very important part in what we call the rehabilitation of the convicted person in our society, and we hope to see it continue. However, if the public does not accept it or are not prepared to accept it, then obviously the thing is liable to be stopped. If the public is completely against something, people react and it falls by the wayside.

Senator Hastings: The public are misinformed.

Mr. Teed: To a degree, no doubt.

Senator Lapointe: I think the public resents more the system of temporary absences than it does the parole system.

Mr. Teed: Well, the public does not understand it. All they understand is that the fellow was in jail and now he is out, and if he commits a crime they blame it on the Parole Board. I think 99 out of 100 people do not know the difference between a temporary absence, parole, day parole, or whatever. As far as they are concerned he is out and if they are to blame it on someone they will blame it on the Parole Board.

Senator Lapointe: But they are under the impression that when an individual is released on parole his case has been reviewed in much more depth than is the case on temporary absence release, which is given to anyone.

Mr. Teed: That is one of the reasons we suggest that it all be vested in one authority, and if they cannot control it, then they will get the blame justifiably instead of unjustifiably.

The Chairman: This completes the questioning. Thank you very much, gentlemen, for your appearance here this morning. Your presentation has been very interesting.

Senator Buckwold: I may say, Mr. Chairman, that this is the first time I have had the legal advice of three distinguished counsel without getting a very substantial bill!

The Chairman: How do you know you are not going to get a bill?

Mr. de Grandpré: The day is not over yet.

The Chairman: Lawyers do not send out bills immediately after the conclusion of a hearing.

Mr. de Grandpré: Although there have been suggestions that we carry Chargex cards.

It has been a pleasure to appear before this committee this morning. Thank you very much, Mr. Chairman.

The Chairman: Honourable senators, we also have a private bill, Bill S-6, which has been referred to the committee for consideration. It should not take long and I would ask for a quorum to remain.

Perhaps we could proceed, then, with the consideration of Bill S-6, an act respecting Centre Amusement Co. Limited.

Senator Connolly: Mr. Chairman, I was the sponsor of this bill in the chamber. In introducing the bill in the Senate I said everything that I thought needed to be said. There are two distinguished members of the Bar of the County of Carleton present this morning, Mr. John G. Dunlap and Mr. John B. Ebbs. These are the individuals to whom I referred when I discussed the two estates that were involved in the share ownership of this company.

The plain fact is that the returns required under the Canada Corporations Act, through inadvertence, were not filed. Death had intervened both before and after the default and, frankly, what happened was that the filing of the returns fell between stools. To re-establish the company it is desirable, first of all, to deal with a very small bank account, of less than $2,000, and also to allow the estates to continue to deal and wind up their affairs with the tax office by the use of the facilities that the existence of the company provided.

I think that is all I need to say, Mr. Chairman. Mr. Dunlap and Mr. Ebbs are both here and can answer any questions which members of the committee might have.

The Chairman: Are there any questions?

Senator Buckwold: Are there any complications in so far as heirs or creditors are concerned, other than the problem that may exist with respect to the Department of National Revenue?

Mr. John G. Dunlap, Q.C., Dunlap and Schreider, Barristers: There is no problem in that respect. In fact, they have paid close to $600,000 in estate tax. There is no question of creditors.

Senator Buckwold: There is no dispute between beneficiaries under the estate?

Mr. Dunlap: No, no dispute whatever.

Senator Connolly: I should say that I discovered at the time of my investigation that any tax returns for the corporation which could not be made before the charter was surrendered are now ready and will be filed when the charter is re-established.

The Chairman: Are there any other questions? Is it agreed that the committee report the bill as it stands?

Hon. Senators: Agreed.

The Chairman: I wish to advise the committee that we have another private bill, S-7, an Act respecting The National Dental Examining Board of Canada, which was referred to this committee by the Senate yesterday.

According to the rules we must act on it within seven days of its referral to the committee. I understand that its consideration will take approximately half an hour,

but there may be further questions. I am not familar with the details. I would suggest that, since the Senate will be sitting next week, we might meet on Thursday morning at 10 o'clock to consider this bill. Is that agreed?

Hon. Senators: Agreed.

Senator Hastings: Has it been established that we will conclude our parole hearings on June 14?

The Chairman: We will ask Mr. Faguy, the Commissioner of Penitentiaries, to appear on June 14, subject to any development in the interval. There has been a suggestion that the Solicitor General may announce some administrative changes shortly which may require us to reconsider the date. The Solicitor General has informed me that he would appear before this committee if he made those recommendations to Parliament.

The committee adjourned.

APPENDIX

The Canadian Bar Association
L'Association du Barreau Canadien

SUBMISSION BY THE
CANADIAN BAR ASSOCIATION
TO THE SENATE COMMITTEE
ON PAROLE
APRIL, 1973

The Canadian Bar Association
L'Association du Barreau Canadien

HONOURABLE SENATORS:

The Canadian Bar Association appreciates the opportunity of presenting a submission on Parole in Canada.

The problems of parole vary from Province to Province and are related in great measure to the rehabilitation facilities now available in each Province. There is a similar variation from Province to Province and even in different locations within a Province in the public attitude towards parole. It has become apparent to members of the Association that in general Parole is misunderstood. Specific instances of apparent abuse have created a public distrust for the existing system and a mounting cry of parole reform although it is difficult to ascertain the particulars which the public wants manifested in the reform. In these circumstances we have concluded that we should restrict this presentation to general principles rather than attempt to suggest specific answers to individual problems.

H I S T O R Y

We feel a review of the statutory history of remission of sentence and parole in Canada could be of assistance in determining fundamental concepts and their development.

The earliest references to remission of penitentiary sentences in a Canadian statute after prisons were placed under the control of the Federal Government is found in 31 Vict. C. 75, Section 62 passed in 1868.

The Section reads as follows:

> 62. In order to encourage convicts to good behaviour, diligence and industry, and to reward them for the same, it shall and may be lawful for the Directors of Penitentiaries to make rules and regulations, under which a correct record may be kept of the daily conduct of every convict in any Penitentiary, noting his industry, diligence and faithfulness in the performance of his work; and the strictness with which he observes the prison rules; with a view to permit such convict under the prison rules to earn a remission of a portion of the time for which he is sentenced to be confined, not exceeding five days for every month, during which he shall have been exemplary in industry, diligence, and faithfulness in his work, and shall not have violated any of the Prison Rules.
>
> If any convict be prevented from labour by sickness or any other infirmity, not intentionally produced by himself, he shall be entitled, by good conduct, to two and a half days remission from his sentence every month.

Certain things should be noted about these provisions. First, there was unbounded belief in the salutary moral potential in leading a certain kind of ideally conceived life within the prison environment. Second, the remission had to be earned. Third, the emphasis on earning remission is highlighted by the fact that remission was cut down if the inmate became sick. Fourth, there is a very heavy

emphasis on the moral qualities of industry, diligence and faithfulness as factors in meriting remission. We will see later that the spirit of this section has survived into the parole concept even though the section itself has become outdated.

In 40 Vic., C. 39, Sec. 3, provision for remission of sentence was made applicable to prisons:

> 3. Every prisoner sentenced to the Central prison after this act comes into force in Ontario shall be entitled to earn a remission of a portion of the time for which he is sentenced, not exceeding five days for every month during which he shall have been exemplary in behaviour, industry, and faithfulness and shall not have violated any of the prison rules; and if prevented from labour by sickness, not intentionally produced by himself, he shall be entitled to earn by good conduct a remission not exceeding two and one-half days for every such month.
>
> 4. Every prisoner to whom this Act applies who commits any breach of the laws or of the prison regulations shall, besides any other penalty to which he is subjected, be liable to forfeit the whole or any part of any remission which he may have earned under this Act.

Provision was made for the application of these sections to prisons in other provinces should they be "of such character as to render the application of this Act to such Province."

Substantially the same provisions were incorporated in the Revised Statutes of Canada 1886, C. 183, Secs., 15 & 16:

> 15. Every prisoner sentenced to such prison shall be entitled to earn a remission of a portion of the time for which he is sentenced, not exceeding five days for every month during which he is exemplary in behaviour, industry, and faithfulness, and does not violate any of the prison rules, and if prevented from labour by sickness,

not intentionally produced by himself, he shall be entitled to earn, by good conduct, a remission not exceeding two and one-half days for every such month.

16. Every such prisoner who commits any breach of the laws or of the prison regulations shall, besides any other penalty to which he is liable, be liable to forfeit the whole or any part of any remission which he has so earned.

The concept of a sliding scale of earned remission was introduced in the Penitentiaries Act, 46 Vic., C. 37, Sec. 53:

53. Provided always that when any convict shall have earned and have at his credit any of the several number of days of remission hereinafter respectively mentioned, it shall be lawful to allow him for every subsequent month during which his industry, diligence, faithfulness in his work and observance of the prison rules shall continue satisfactory, the following increased rates of remission, that is to say:-

a. When he shall have thirty days' remission at his credit, seven days and one half days' remission may be allowed him for every month thereafter:

b. When he shall have one hundred and twenty days' remission at his credit, ten days' remission may be allowed him for every month thereafter.

While this section allowed for greater rates of remission, the previous philosophy that remission must be strictly earned remained. Sickness cut the opportunity to earn remission to which the inmate might otherwise be entitled by one-half and the commission of certain acts resulted in the forfeiture of the whole of the period of remission:

55. Every prisoner in any penitentiary who, at any time, attempts to break prison, or who forcibly breaks out of his cell, or makes any breach therein with intent to escape therefrom, whether successful or not, shall be guilty of a felony...besides forfeiting the whole of the period of remission of sentence earned by him.

> 56. If any convict, confined in any penitentiary, assaults any officer or servant employed therein, he shall be guilty of at least an aggravated assault, and shall also forfeit the whole of the period of remission of sentence which he may have previously earned.

In 6 Ed. VII, C. 62, the basic rate of remission was increased from five to six days per month, and when the convict had earned and had at his credit 72 days of remission his monthly rate of remission was increased to ten days per month. The convict was still liable to forfeiture of remission for breach of the prison rules and for the commission of certain offences. The Warden with the concurrence of the Minister of Justice could decide what proportion of remission would be lost as a result of sickness. Remission could also be forfeited if the holder of a license granted thereunder also, under the Ticket of Leave Act, 1899 forfeited such license.

The remission sections remained substantially the same until the Penitentiary Act, 1960-1961, C. 53, Secs. 22, 23, and 24:

> 22. (1) Every person who is sentenced or committed to penitentiary for a fixed term shall, upon being received into a penitentiary be credited with statutory remission amounting to one-quarter of the period for which he has been sentenced or committed as time off subject to good conduct.
>
> (2) Every inmate who, upon the coming into force of this Act, is serving a sentence for a fixed term shall be credited with statutory remission amounting to one-quarter of the period remaining to be served under his sentence, without prejudice to any statutory remission standing to his credit immediately prior to the coming into force of this Act.
>
> (3) Every inmate who, having been credited with remission pursuant to subsection (1) or (2), is convicted in disciplinary court of any disciplinary offence is liable to forfeit, in whole or in part, the statutory remission that remains

to his credit, but no such forfeiture of more than thirty days shall be valid without the concurrence of the Commissioner, nor more than ninety days without the concurrence of the Minister.

(4) Every inmate who is convicted by a criminal court of the offence of escape or attempt to escape forthwith forfeits three-quarters of the statutory remission standing to his credit at the time the offence was committed.

23. The Commissioner may, where he is satisfied that it is in the interest of the rehabilitation of an inmate, remit any forfeiture of statutory remission but shall not remit more than ninety days of forfeited statutory remission without the approval of the Minister.

24. Every inmate may, in accordance with the regulations be credited with three days, remission of his sentence in respect of each calendar month during which he has applied himself industriously to his work, and any remission so earned is not subject to forfeiture for any reason.

Section 22 introduced for the first time the concept of statutory remission in addition to earned remission which was continued under Section 24. These sections reflect a marked change of emphasis from the concept of forfeiture of remission to that of retention of remission once credited.

Also they ennunciate a significant departure from the previous policy whereby a reduction in sentence was directly related to the industry and moral improvement of the prisoner. There is a remnant of this policy in the requirement that the inmate apply himself industriously to qualify for earned remission but three days per month is hardly a significant quantity when compared to the amount obtainable through statutory remission.

The sections have not changed significantly since 1960-61. In 1970, by the Prisons and Reformatories Act, R.S.C. 1970, C. P 21 similar provisions were made applicable to prisons and reformatories.

Section 17 of this Act provides for statutory remission of one-quarter of the sentence and for earned remission of three days per month:

> 17. (1) Every person who is sentenced or committed by a judge, Magistrate or Justice of the Peace to imprisonment for a fixed term in a place of confinement other than a penitentiary shall, upon being received therein, be credited with statutory remission amounting to one-quarter of the fixed term for which he has been sentenced or committed as time off subject to good conduct.
>
> (2) Every prisoner, who, having been credited with remission pursuant to subsection (1), commits any breach of the prison regulations is, at the discretion of the person by whom the breach is determined to be committed, liable to forfeit, in whole or in part, the statutory remission that stands to his credit.
>
> (3) Every prisoner who is convicted by a Judge, Magistrate, or Justice of the Peace of the offence of escape, attempt to escape or being unlawfully at large forthwith forfeits three-quarters of the statutory remission standing to his credit at the time that offence was committed.
>
> (4) An official designated by the Lieutenant-Governor of the Province in which a prisoner is confined may, where he is satisfied that it is in the interest of the rehabilitation of the prisoner, remit in whole or in part any forfeiture of statutory remission.

Further inroads were made on the idea that a prisoner should serve his full term with the passage of an Act to provide for the Conditional Liberation of Penitentiary Convicts in 1899, c. 49. In 63-64, Vic., C. 48 assented to in 1900, the provisions of this Act were amended to make it applicable to convicts in gaols and other public and reformatory prisons. In the same Act it was provided that the Act of 1899 could be cited as the Ticket of Leave Act, 1899 by which name it was known until its repeal in 1958.

The granting of a license to be at large under this Act was a matter of favour:

> 1. The Governor-General by an order in writing under the hand and seal of the Secretary of State may grant to any convict, under sentence of imprisonment in a penitentiary, gaol or other public or reformatory prison, a license to be at large in Canada, or in such part thereof as in such license shall be mentioned, during such portion of his term of imprisonment, and upon such conditions in all respects as to the Governor-General may see fit.
>
> The Governor-General may from time to time revoke or alter such license by a like order in writing.

If the license was revoked or forfeited the inmate was required to serve his original sentence, R.S.C. 1952, C. 264:

> 9.(1)When any such license is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction or otherwise, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, further undergo a term of imprisonment equal to the portion of the term to which he was originally sentenced and which remained unexpired at the time his license was granted.

Forfeiture took place automatically upon conviction for an indictable offence, while conviction for an offence punishable on summary conviction rendered the holder of a license liable to have his license revoked:

> 6. If any holder of a license under this Act is convicted of any indictable offence his license shall forthwith be forfeited.
>
> 7. When any holder of a license under this Act is convicted of an offence punishable on summary conviction under this or any other Act, the justice or justices convicting the prisoner shall forthwith forward by post a certificate in

the Form B in the schedule to the Secretary of State, and thereupon the license of the said holder may be revoked in manner aforesaid.

Basically the same provisions have been retained in the Parole Act which repealed the old Ticket of Leave Act. On conviction for an indictable offence parole is automatically forfeited, and the paroled inmate must serve out the balance of his sentence, Parole Act, R.S.C. 1970, C P 2:

21. (1) When any parole is forfeited by conviction for an indictable offence, the paroled inmate shall undergo a term of imprisonment commencing when the sentence for the indictable offence is imposed, equal to the aggregate of:

(a) the portion of the term to which he was sentenced that remained unexpired at the time his parole was granted, including any period of remission, including earned remission, then standing to his credit, and
(b) the term, if any, to which he is sentenced upon conviction for the indictable offence, minus
(c) any time he spent in custody after conviction for the indictable offence, and before the sentence was imposed.

A large discretion to suspend parole for reasons other than conviction for an indictable offence has been provided for in the Parole Act;

16. (1) A member of the Board or any person designated by the Board may, by a warrant in writing signed by him, suspend any parole, other than a parole that has been discharged, and authorize the apprehension of a paroled inmate whenever he is satisfied that the arrest of the inmate is necessary or desirable in order to prevent a breach of any term or condition of the parole or for the rehabilitation of the inmate or the protection of society.

The person who has signed the warrant may in his own discretion subsequently cancel the suspension or refer the case to the Parole Board which may in turn cancel the suspension or revoke the parole. If the parole is revoked the paroled inmate must again

serve out the balance of his sentence. This includes any earned remission which he may have standing to his credit. In both the case of forfeiture and revocation of parole, therefore, earned remission is lost according to the terms of the Parole Act. Despite this, provision is made in both the Penitentiary Act, and the Prisons and Reformatories Act that,

> 24. (2) Upon being committed to a penitentiary pursuant to Section 20 or 21 of the Parole Act, an inmate shall be credited with earned remission equal to the earned remission that stood to his credit pursuant to any Act of the parliament of Canada at the time his parole or mandatory supervision was revoked or forfeited. (Penitentiary Act, R.S.C. 1970, C. P 6).

In making a calculation as to what constitutes the balance of sentence which must be served subsequent to the forfeiture of revocation of parole the Parole Act of 1970 makes the following provisions;

> 25. Where,
> (a) under the Parole Act, authority is granted to an inmate to be at large during his term of imprisonment, or,
>
> (b) a person who is at large by reason of statutory or earned remission is subject to mandatory supervision under the Parole Act,
>
> his term of imprisonment, for all purposes of that Act, includes any period of statutory remission and any period of earned remission standing to his credit when he is released.

Thus under the terms of the present Parole Act both earned and statutory remission would be lost upon forfeiture of parole. In fact, however, only statutory remission is forfeited thanks to the saving provisions of the Penitentiary Act and the Prisons and Reformatories Act with respect to earned remission.

However, the statutory remission is now in fact a form of statutory parole as the convict is subject to mandatory supervision during the time he is free on statutory remission.

WHAT IS PAROLE

The Canadian Committee on Corrections defined parole at page 329 of their report - the Ouimet Report - as follows:

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

However, it is our view that the definition found in the United Nations Report, United Nations Department of Social Affairs, Parole and After Care, New York 1954 (1) of P-399 is to be preferred.

This reads:

> "Parole may be defined as the conditional release of a selected convicted person before completion of the term of imprisonment to which he has been sentenced. It implies that the person in question continues in the custody of the State or its agent and that he may be reincarcerated in the event of misbehaviour. It is a penological measure designed to facilitate the transition of the offender from the highly controlled life of the penal institution to the freedom of community living. It is not intended as a gesture of leniency or forgiveness."

Parole, therefore, is a means whereby a prisoner is released from prison prior to the expiration of his sentence. It is based on the principle that an individual should not be kept in prison purely for punitive reasons when he may, in fact, be at the point of readiness to return to social and economic productivity. The concept of parole is a distinct and separate concept from that of statutory remission in that it is based on the consideration that the inmate is ready to return to society as a productive member thereof and is not, like

statutory remission, automatic.

This general concept of parole is not the technical definition used in the Parole Act which reads:

> "PAROLE" means authority granted under this Act to an inmate to be at large during his term of imprisonment.

This definition is not, however, complete in itself for the Board, before granting parole must comply with the provisions of section 8(1) (a) of the Act. This section provides:

> 8. (1) The Board may
>
> (a) grant parole to an inmate, subject to any terms or conditions it considers desirable, if the Board considers that
>
> (i) in the case of a grant of parole other than day parole, the inmate has derived the maximum benefit from imprisonment,
> (ii) the reform and rehabilitation of the inmate will be aided by the grant of parole, and
> (iii) the release of the inmate on parole would not constitute an undue risk to society.

Taking these two sections together, then, parole can thus be said to be a means whereby an individual who shows potential to be admitted back into society as a productive member thereof can be released from prison prior to the expiration of his term.

It is our submission that parole is a step in the path of the inmate's rehabilitation and is an administrative function. A prisoner is not entitled to parole as of right. It should only be granted as and when responsible, and qualified members of the parole service are satisfied that the granting of parole would meet all of the requirements under the legislation. This of course, would include

adequate consideration of the question of the gravity of the offence and the risk to society.

THE RELATIONSHIP BETWEEN SENTENCE AND PAROLE

We respectfully submit that the administration of our system of Criminal Justice has five distinct phases:

1. apprehension;
2. trial;
3. sentencing;
4. detention;
5. re-introduction into society.

It is not our intention to comment on the first two of these phases.

It is felt that proper sentencing is directly related to proper parole.

The present rule is set out in Regina v Willmot, 49 CR 22 as follows:

> In passing sentence the Judge must consider the elements rehabilitation, deterrence, and punishment. He is, by law, bound to ignore the policies of the Parole Board. He must sentence without delegating or abandoning his functions to the Parole Board.

Nevertheless, there is a clear difference of opinion as to the consideration, if any, which the trial judge may give to the possibility of parole in determining a proper sentence. On the one hand there are those who hold the view that parole should not be a factor in determining sentence while others contend that parole is a significant consideration. There is however agreement that the trial judge may make recommendations to the Parole Board and that if he

does the Parole Board should not act contrary to these recommendations without first consulting the judge.

Courts are frequently criticized for not taking sufficient account of the benefit or lack thereof to be derived by the community from confinement in a penal institution and Judges are said to give too little thought to the rehabilitation of the man in the prisoner's box. The Parole Board, on the other hand, is criticized for giving these aspects too much consideration and not giving enough to the protection of society. When considering the matter of parole, it should be borne in mind that the granting of it will arise basically in two situations - following sentence to a federal penitentiary and, in the case of a provincial institution, following application in writing by the inmate.

There are however, certain surrounding circumstances which must be borne in mind.

Commissioner of Penitentiaries Faguy has said that eighty percent of inmates in federal institutions have been in some correctional institution before and forty-three percent have been in penitentiary before. A high percentage of inmates have been on probation under supervision in the community before a gaol sentence has been imposed. We feel that it is exceedingly difficult on the basis of present available statistical information to adequately assess the effectiveness of present parole methods.

It is understood that there is presently under study a group of two hundred and forty-six persons from federal medium

security institutions on a follow-up basis over ten years. This is undoubtedly a good beginning but must be, of necessity, expanded to all forms of federal institutions to determine in fact what is the "success rate" of parole following the completion of the period of parole.

The successful rehabilitation of the offender is the ultimate aim of any system of justice. That rehabilitation must be accompanied by the full co-operation and support of the public. Where public confidence in our system of justice has been seriously disturbed, as we believe it has been in Canada by recent events, every effort should be made to ensure that such confidence will be restored. For the granting of parole to become an item of ridicule surely cannot create confidence in its effectiveness.

Similarly, it is our view that any economic argument of the value of parole as opposed to imprisonment should not be the basis of enlargement or curtailment of the program of parole. The value of parole should be related to the rehabilitation of the individual and the protection of society.

Returning then to the role of the sentencing judge and the Parole Board, we feel that the criteria (particularly rehabilitation and protection of society) used by the judge in sentencing are also applicable to parole. However, of necessity, the Parole Board must take into account events occurring both before and after the sentencing of the inmate and therefore its function must be directed towards interpretation of all this information in the light of the possibility of rehabilitation through parole.

RELATION BETWEEN THE PAROLE SYSTEM AND OTHER SOCIAL DEFENCE AGENCIES

It is essential that those charged by law with protecting the public be notified that an inmate is under supervision in the community. This should be a requirement of the grant of parole and not a matter of courtesy. This notification should apply to all cases of accelerated release no matter how short the period.

DIVISION OF RESPONSIBILITY IN PAROLE MATTERS. SHOULD THE RESPONSIBILITY FOR PAROLE BE EXCLUSIVELY THAT OF THE NATIONAL PAROLE BOARD OR SHOULD PROVINCIAL AUTHORITIES HAVE RESPONSIBILITY FOR PAROLING PROVINCIAL PRISONERS AND THE NATIONAL PAROLE BOARD RETAIN JURISDICTION OVER FEDERAL PRISONERS?

The question of division of responsibility in parole matters is a difficult one. In some cases, as in British Columbia, a separate provincial parole board exists, virtually independent of the National Board. The British Columbia system, taken in isolation works well. That province has a reasonably well developed prison and reformatory system ranging from maximum security to minimum security institutions, young offender's units, forestry camps and the like. But difficulties do arise. There are numerous cases of convicted persons attempting, by fair means or foul, to have their sentences increased in order to have them served in a federal institution where these inmates believe their chances of being released on parole are better. The theory seems to be that there is a narrower range of federal institutions in which a sentence may be served and therefore parole becomes a more readily apparent alternative than in the provincial system. A similar conflict exists in the day parole versus a temporary release situation.

On the other hand, our surveys indicate that some provinces which do not have provincial boards have difficulty in having applications for parole in provincial institutions heard. In Manitoba, for example, the Board sits only at federal penitentiaries with the result that prison officials make frequent use of the temporary release programme rather than go through the relatively

more complicated process of obtaining parole in that province.

We feel that it is preferable that parole should be administered by one body as outlined elsewhere in this report having regional divisions with local knowledge of the institutions and conditions in that region. The problem of access to the Board can probably be solved by an enlarged parole service. The result would be, in our opinion, a unified concept of parole administered fairly in each institution and without inmates attempting to obtain transfers from one institution solely for the purpose of obtaining parole.

SHOULD DECISIONS IN NURDER CASES CONTINUE TO BE MADE BY THE GOVERNOR IN COUNCIL UPON RECOMMENDATIONS OF THE NATIONAL PAROLE BOARD? SHOULD THIS EXCEPTION TO THE AUTONOMY OF THE NATIONAL PAROLE BOARD BE RETAINED?

It is our view that the paroling of persons convicted of murder is a decision of such serious nature, involving as it does the granting of liberty to one who has demonstrated a grave threat to society, that this decision should remain with the Governor General in Council.

PROHIBITION FROM DRIVING BE MODIFIED

It is our view that those provisions in the Parole Act relating to prohibition from driving should not be within the purview of the Parole Board.

Prohibition from driving is based upon the facts which existed at the time of sentencing. It is a form of punishment and public protection. We feel there is little if any rehabilitation value in prohibition and such should not be within the ambit of the Board.

SHOULD ENQUIRIES UNDER THE CRIMINAL RECORDS ACT CONTINUE TO BE THE RESPONSIBILITY OF THE NATIONAL PAROLE SERVICE?

Involving as they do aspects of rehabilitation, we feel that enquiries under the Criminal Records Act should continue to be the responsibility of the National Parole Service. At the practical level, the Parole Service is, at the present time, the one body which is most likely to have access to the material upon which a pardon under this Act is based.

The expunging of a criminal record ought not be automatic without application by the person involved. It is suggested that when the anniversary date arrives, or initially on conviction, the individual should be advised of his rights under the Criminal Records Act.

If a person wishes a pardon before the approximate time period, then he should take his chances on the necessary inquiry bringing forth his past.

COMPOSITION OF THE NATIONAL PAROLE BOARD

WHAT SHOULD BE THE COMPOSITION OF THE NATIONAL PAROLE BOARD

It is our view that there should be a National Parole Board. However, as an administrative necessity, there should be regional or local Boards or panels or parole officers who could deal with parole in the first instance. The National Board should establish policy and have the right to review all original procedures or decisions.

To this end there should be a Central National Parole Board office with one or more provincial or regional offices in each province or region. There should be Parole offices in all major cities with appropriate liaison with penal institutions, federal and provincial, to ensure sufficiency and efficiency of operation. Provincially located Federal Parole Services should process, consider and decide on the refusal or grant of Parole in the first instance.

Any inmate should be able to seek a review of the refusal of parole through the National office in Ottawa. These reviews would form the basis for the general interpretation of the role of the Parole Service and would constitute guidelines throughout Provincial offices in Canada.

NATIONAL PAROLE SERVICE

(a) WHAT SHOULD BE THE ROLE OF THE NATIONAL PAROLE SERVICE AND ITS REGIONAL OFFICERS?

At the present time a substantial part of the supervision of parolees is the subject of contract agreements with social agencies in the community. Such agencies are a vital and integral part of any successful parole system. Public spirited citizens must be encouraged to participate and aid the parolee in integrating back into the community.

Citizens engaged in such work through social agencies are naturally anxious to succeed in their chosen task. The extent to which "supervision" succeeds may tend to be measured in terms of violations reported and the attendant effect on the "success" rate in rehabilitation on Parole. There may be a tendency to turn a "blind eye" to a developing situation which the supervisor cannot control. The compelling need to establish an empathy with the parolee may tend to obscure the broader implications for society of a lack of knowledge or understanding of why the parolee ended up in a gaol in the first place. In other words, supervision of a parolee must require a basic knowledge of the many and varied facits of the circumstances which brought the parolee into an institution as well as the post conviction developments.

It is suggested therefore that where supervision of a parolee is in the hands of a contract agency that the National Parole Board should establish criteria for training, education and

information for such agencies. No agency should be eligible for contract work unless:-

(1) Its parole supervisors are regularly assisted and advised by Regional Parole Board Parole Officers.

(2) Minimum standards of competence as supervisors are accepted.

(3) Regular review of case work is accepted.

(4) The Agency accepts removal from service of members shown not to comply with standards set by the National Parole Board.

TO WHAT EXTENT SHOULD NATIONAL PAROLE SERVICE STAFF AND THE FEDERAL PENITENTIARY STAFF INTEGRATE THEIR OPERATIONS, IF AT ALL, FOR THE PLANNING OF INMATE INSTITUTIONAL TREATMENT AND TRAINING PLANS AND PAROLE PROGRAMS?

From our inquiry it appears that at the present time a form of jurisdictional struggle is going on between the National Parole Board and the Federal Penitentary Service.

It seems that this struggle is affecting the ability of both agencies to develop in their own way integrated programmes. There should be a clear defining of roles with the ability to know clearly which agency has a particular responsibility. This is apparent when one considers "Temporary Absence" and what is called "Day Parole". Both of these things, in effect, can be used to accomplish one objective.

Day Parole should be a matter for consideration for the Parole Board only.

Temporary absence given by the Penitentary authorities should be limited in time and on compassionate grounds only. It should not be used as an indirect means of re-introducing the inmate to society. We recognize that at present there are useful programmes such as half-way houses being conducted through the penitentary service using the medium of the temporary absence programme. We do not in any way wish our recommendations to be construed as cutting back these programmes. We do however feel that temporary absence is not the appropriate vehicle for conducting such programmes. Elsewhere in this submission it is recommended that there should be an expanded

parole service regionally based. Such programmes and release other than temporary absence should be handled within this structure.

PAROLE APPLICATIONS - PAROLE ELIGIBILITY

ARE THERE MEASURES NEEDED TO PROTECT AN INMATE'S RIGHT TO APPLY FOR PAROLE?

We have said elsewhere in this report that an inmate does not have the "right" to parole. He does, however, clearly have a right to apply for parole. In this respect, the Parole Service is doing an excellent job and few inmates have legitimate complaints that they have not been given the right to apply.

In some provinces, however, it appears difficult for persons in prisons and reformatories as opposed to penitentiaries to have access to the Parole Service. Additional staff would correct this situation.

SHOULD THE PROVISION IN THE PAROLE REGULATIONS REGARDING THE NATIONAL PAROLE BOARD'S POWER OF MAKING EXCEPTIONS BE MODIFIED?

It is our view that there appears to be an abuse in the use of Section 2 (2). The Parole Board appears in specific circumstances to be using these provisions to circumvent its own regulations.

While the provision of Section 2 (2) which allows the Board in "special circumstances" to give immediate parole may be proper the general view is it is used to a much greater extent than was anticipated. Examples can be produced which could be described as abuses and which suggest the "special circumstances" require re-definition.

If our recommendation of regional panels or boards is accepted, then the use of this provision should be limited to the National Board itself, rather than regional boards.

ARE SUSPENSION, REVOCATION AND FORFEITURE PROVISIONS IN NEED OF REVISION?

We feel that provisions for suspension of parole are in need of revision. We are particularly concerned with the parolee who is arrested and charged with an indictable offence during his parole. Many cases have been brought to our attention where a parole officer has refused to review or revoke parole in such a case on the basis that a charge is not a conviction and that it would be unjust to suspend a man's parole merely on the basis of a charge. We feel there should be an immediate review of a parolee's case by the parole board immediately a charge for an indictable offence is laid against him. Criminal process by way of indictment is not commenced frivolously or capriciously. Anyone initiating such a process is liable to severe sanction for initiating it without just grounds and in our view gives rise to the need to review the reasonableness of the grounds for continuing parole. While the existing provisions of Section 16 (1) clearly give the right to the member of the board to suspend parole whenever that member is satisfied that the arrest is desirable to prevent a breach of any term or condition of the inmate's parole, the right of suspension or review is not clearly set out where an indictment has been issued. On a legalistic approach to section 16 (1) the power may be said to exist as being necessary or desirable from the rehabilitation of the inmate for the protection of society but it should be noted that Section 21 of the Act dealing with forfeiture of parole requires conviction for a criminal offence. Accordingly we recommend that

Section 16 (1) of the Act be amended to clearly state that parole may be suspended where a parolee has been charged with an indictable offence in like manner as for breach of a term or condition of parole. We are also of the view that where parole is suspended pursuant to Section 16 (1) for the breach of a term or condition of parole that the term breached must be one contained either in the statute, the regulations, or contained in writing in the terms of the inmate's parole. There have apparently been incidents where a parolee has violated a term of parole given to him orally and not reduced to writing. In our view a parolee should clearly understand all the terms and conditions of his parole and this is best achieved by reducing them to writing. Such written terms and conditions would, of course, be subject to variation and any such variation should also be in writing.

REVIEW OR APPEAL

We feel that an inmate and in certain circumstances, the appropriate Provincial Attorney General, should have the opportunity to have the grant or refusal of Parole reviewed.

The means by which this review would be accomplished, however, is not unanimous. This is in part because of the peculiar nature of parole and the concept that it is not a matter of right. Many circumstances can arise which affect the granting or refusal of parole, which involve a consideration of the effect of disclosure on the inmate and the potential damage to his future rehabilitation. A considerable degree of confidentiality is necessary. The sources and nature of information upon which the original decision was made cannot be subject to normal criminal evidence concepts. The prime concerns of any review procedure are:

(a) whether the original decision was made fairly, having regard to the protection of society and the future rehabilitation of the inmate;

(b) whether or not the materials examined by the review authority, if confidential and likely to affect the future rehabilitation of the inmate, are disclosed to the inmate;

(c) that the review itself be speedy and the reasons for confirmation, variation or rejection stated in appropriate terms having regard to (b);

(d) that the review, in the case of Provincial Attornies General include both the Attorney General for the Province in which sentence was imposed and the Attorney General of the Province to which the inmate may be parolled;

(e) the need to avoid creating procedure and technical evidence rules which would not be appropriate to considerations of rehabilitation.

As far as recommendation (d) is concerned, while we recognize that the power to enact the criminal law rests in the Federal Government it must be borne in mind that administration of it is essentially a provincial matter and may involve the Attorney General of more than one province.

* * * * * * * * *

While it has a simplicity about it which appeals to the average advocate we feel that the introduction of a right to counsel as a method of protecting the inmate's rights can result in development much against the granting of parole. It may create a totally artificial approach to the question of rehabilitation by means of parole with the resultant almost total destruction of the kind of relationship necessary for re-integration in society. It could reverse the percentage of those being granted parole.

Approaching parole as a right as opposed to a matter of discretion and giving it over to the full battery of legal

remedies for or against the granting of parole creates a situation in which the risk-taking factor in release on parole becomes a paramount consideration; it also involves a progression into revocation of parole following breach and the formalization of legal procedures with counsel on the subject of revocation.

The existence of revocation problems in this area will make it less likely for the Parole Service to take the risk of releasing a parolee.

The creation of the right to legal counsel on parole matters or on prison disciplinary offences could create a situation in which the former contacts with the inmate containing invaluable opportunities of assessment would begin to disappear.

It is felt that any decision to grant or refuse parole basically depends upon the assessment of an experienced regional Parole Service officer. The creation of criteria to cover all of the relevant factors in such a decision could effectively create more obstacles to the granting of a parole than to the refusing of parole.

Therefore, we feel it is dangerous to assume that the use of counsel in parole review is appropriate. Much of the discussion regarding the right to counsel for a parolee pre-supposes that all of the rights of a private citizen are his. This is not correct as the conviction and sentence clearly deprive him of the right, during sentence, to be at liberty.

Despite these reservations about the role counsel can play in review procedures it is felt that an inmate should be entitled to representation at the review hearing. Written submissions should be permitted with or without oral argument in support. Original material used in the decision under review could be examined by the counsel involved, except where such material includes confidential information which if disclosed, would affect the future rehabilitative prospects of the inmate or prejudice prison control or discipline. The Review Board would have an overriding discretion as to disclosure of such information.

Where the original decision is found by the Review Board to involve the basing of a grant or refusal of parole on confidential information in the category above described then it must so certify in its decision on the review. If it is satisfied that such information is reasonably reliable it may base its decision upon it.

Where an inmate or the Provincial Attorney General is aggrievedby grant or refusal of parole being confirmed by a Review Board and the decision is based upon information certified as confidential, then either may apply to a Judge of the Federal Court of Canada to examine the information which is the subject of certification as confidential. When the Judge receives such material and information, accompanied by reasons from the Review Board, he will conduct an independent review of the material and make such order as he deems in the best interests of both the parolee and the safety of the community. While the material which the Judge reviews would not be available to counsel unless the Judge so orders, the Judge

may hear submissions of Counsel.

The Judge should be authorized to:

(1) Confirm the certification of the Review Board on the question of confidentiality;

(2) Confirm the use of the information by the Review Board; or

(3) Confirm the use of the information by the Review Board and direct that the inmate be permitted to made submissions to the Review Board in specific areas defined by the Judge (where he believes such submissions could reasonably assist the Review Board);

(4) Disallow the certification and direct disclosure of the material and information to counsel on such terms and conditions as will best ensure the interests of the inmate and the safety of the community.

The Review Board would be required to act in a manner consistent with the order of the Judge. Appropriate cases could involve a rehearing of the matter and a decision based on the material considered at the rehearing.

* * * * * * * * *

The concept of earned remission if accompanied by good behaviour on parole constitutes real steps towards rehabilitation.

Parole is granted during the period of sentence yet to be served and the inmate is thus in the community but still under sentence. Remission is earned both inside the institution and while on parole.

Earning of remission is one means of encouraging good behaviour during time in the institution. It also hastens the time when the total sentence will terminate. We feel that loss of earned remission by the commission of an indictable offence or serious breach of parole while on parole would constitute a further sanction to encourage good behaviour on parole.

The sanction of the loss of earned remission is a necessary part of the instruments of rehabilitation. The extent to which remission is lost would depend upon the crime and other factors occurring in or outside the institution. Loss of remission should be automatic but should be accompanied by a review procedure in which both the Penitentiary and Parole service are involved. The purpose of this review would be a determination of:

(a) The extent to which forfeiture should be total;

(b) The extent to which succeeding good behaviour would permit relief from forfeiture.

The review should be available to the applicant in the event his application for parole has been refused, and also should be available to the Crown in the event parole is granted.

This would ensure both protection to the applicant from prejudice or misinformation and protection to the public from leniency or action inconsistent with public safety.

It is our recommendation that on such review the parties could be represented or assisted by counsel. It is obvious that the Crown through the Attorney General of necessity would be represented by an agent who probably would be a lawyer. Therefore, the applicant himself should have the same opportunity of being represented by an agent and we see no reason why counsel could not be used.

The matter of procedure on a review is one which has caused some concern. Conflicting views on the right to a written decision or use of the material used on the initial hearing have not been resolved.

A compromise proposal is that the initial Board should give written reasons for granting or refusing the parole. When such reasons are given the review is based upon the reasons. Where such reasons are not given then the review could be based upon all the material available to the initial Board with such additional material as the parties may choose to advance.

There are many precedents of review of administrative decisions and it is our view that the concept is more important than the actual mechanics of procedure.

DAY PAROLE UNDER THE PAROLE ACT AND TEMPORARY ABSENCE UNDER THE PENITENTIARY ACT OR THE PRISONS AND REFORMATORIES ACT. SHOULD THESE PROGRAMS BE INTEGRATED?

The "Temporary Absence" programme from the penitentiary at the wish of the superintendent or some senior official in the penitentiary service should be modified. Experience has shown that the methods by which this programme has been implemented have given rise to serious problems in local regions. In particular, inmates are released without any notification whatsoever to any police department and information makes it plain that a few of these inmates are committing offences for which they are not being detected by local police departments because they are unaware that they are released on a temporary basis.

WHAT CRITERIA SHOULD BE SET FOR THE GRANTING OF TEMPORARY ABSENCE?

At the present time there is little distinction between the granting of "day parole" under the Parole Act and "temporary release" under the Penitentiaries Act . We feel that the temporary release provisions should be limited to the granting of daytime release from penal institutions for reasons other than rehabilitation of the prisoner. It is our concept of parole that it is the parole system that provides for release from institutions for rehabilitation.

The temporary absence from the programme should be limited solely to cases of a compassionate nature thereby preventing the overlap which exists at the present.

DOES MANDATORY SUPERVISION MAKE REMISSION PROVISIONS OBSOLETE?

We feel that statutory remission should be abandoned as a reduction of time to be served. Time remitted should be earned.

The procedure whereby an inmate had to serve out his whole term, subject of course of the possibility of pardon, has been eroded over the years by various legislative provisions, namely those providing for earned remission, licenses to be at large under the now repealed Ticket of Leave Act, statutory remission and various types of parole. We agree with the trend towards increasing emphasis on rehabilitation up to a certain point. However, it is submitted that the present provisions of the Penitentiary Act and the Prisons and Reformatories Act granting statutory remission of one-quarter of an inmate's sentence is an unjustified encroachment on the idea that an inmate should serve the full term to which he is sentenced. It is an anomaly in that it is automatic, is not based on any concept of merit or reform, and does not seem to be subservient to any significant rehabilitative design. In addition, by virtue of Section 15 (1) of the Parole Act, when an inmate is released from prison before the expiration of his sentence due to statutory remission, he is in effect on parole,

> 15. (1) Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission and the term of such remission exceeds sixty days, he shall, notwithstanding any other Act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.

It is suggested that the provisions for statutory remission be repealed since its purpose is not rehabilitative and because it amounts to nothing more than an automatic parole after three-quarters of an inmate's sentence has been served.

However, earned remission credits should be increased. The original concept of a bonus after earned remission warrants favourable consideration.

STAFFING OF PAROLE SERVICES AND USE OF PRIVATE AGENCIES.

It is our view that subject to the requirement of adequately trained personnel handling the parole cases, the question of use of private agencies as related to Government employees is not a matter of policy, but rather administration.

CONCLUSION AND RECOMMENDATIONS

It is the purpose of our submission to deal with broad principles rather than details as to administration in so far as we can.

Therefore in summary we recommend as follows:

(1) There be a National Parole Board.

(2) There be a procedure of Regional or Local Boards or officials who would be able to process parole application without reference to the National Board, but based on policies and regulations established by the National Board.

(3) There be a right of review by the National Board, for both the prisoner and the Crown represented by the Attorney General of any refusal or grant of parole.

(4) On such review the parties be able to be represented by Counsel.

(5) The statutory remission be abolished.

(6) Earned remission be increased but be based on activities within the institution.

(7) A change in administrative policies which have allowed abuses of existing procedures be instituted to ensure more favourable public acceptance of parole.

Respectfully submitted

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 12

THURSDAY, JUNE 7, 1973

Complete proceedings on Bill S-7 intituled:

"An Act respecting The National Dental Examining Board of Canada"

(Witnesses—See Minutes of Proceedings)

26316—1

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Lang
Buckwold	Langlois
Choquette	Lapointe
Croll	*Martin
Eudes	McGrand
*Flynn	McIlraith
Goldenberg	Neiman
Gouin	Prowse
Hastings	Quart
Hayden	Walker
Laird	Williams—(20)

**Ex Officio Members*

(Quorum 5)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 29, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Phillips, seconded by the Honourable Senator Smith, for the second reading of the Bill S-7, intituled: "An Act respecting The National Dental Examining Board of Canada".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Phillips moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

26316—1½

Minutes of Proceedings

Thursday, June 7, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:20 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Lapointe, McIlraith and Prowse. (5)

Present but not of the Committee: The Honourable Senators Phillips and Smith.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill S-7 intituled:

"An Act respecting The National Dental Examining Board of Canada".

The following witnesses were heard by the Committee:

Dr. James D. Purves, President,
National Dental Examining Board of Canada;

Dr. W. H. Feasby, Past President,
Royal College of Dentists of Canada;

Mr. Jeffrey L. D. King, Solicitor,
National Dental Examining Board of Canada;

Mr. Robert Owen, Solicitor for the Royal College of Dentists of Canada, was also present.

On Motion of the Honourable Senator McIlraith it was *Resolved* to report the said Bill without amendment.

At 11:35 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, June 7, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-7, intituled: "An Act respecting The National Dental Examining Board of Canada", has in obedience to the order of reference of May 29, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 7, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-7, respecting The National Dental Examining Board of Canada, met this day at 10 a.m.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the Senate has referred to this committee Bill S-7, respecting The National Dental Examining Board of Canada. We have as witnesses this morning: Dr. W. H. Feasby, Past President, Royal College of Dentists of Canada; Mr. Robert Owen, Solicitor; Dr. James D. Purves, President, National Dental Examining Board of Canada; and Mr. Jeffrey L. D. King, Solicitor.

I will ask Mr. King to make some opening remarks on the bill.

Mr. Jeffrey L. D. King, Solicitor, National Dental Examining Board of Canada: Thank you, Mr. Chairman.

Honourable senators, basically the purpose of this bill is, firstly, to see that the name "National Dental Examining Board" is changed so that the French name is incorporated within the act of incorporation, and is used interchangeably in the future. Presently, it is only constituted in the English name.

The other main purpose of the bill is to alter the act of incorporation so as to broaden the activities and the scope of The National Dental Examining Board to include not only the dental practitioners but also the dental specialists, dental assistants, dental hygienists, and dental auxiliaries, so as to allow for the portability of their licensing privileges throughout Canada.

The bill, I must say, is the result of considerable negotiations which have gone on between The National Dental Examining Board and the Royal College of Dentists of Canada, which has offered a great deal of co-operation in this really monumental effort, and which will result in an integrated concept of the licensing of the dental profession throughout Canada in all its phases.

Basically, those are the objectives and the purposes of this bill.

The Chairman: Are there any questions?

Senator Buckwold: Other than the changing of the name, so that there is a French version as well as an English version, do I gather that the real impact of this bill is to bring dental specialists, dental assistants, dental hygienists and dental auxiliaries under the examining aegis of The National Dental Examining Board?

Mr. King: That is correct.

Senator Buckwold: That is really what you are doing?

Mr. King: That is right.

Senator Buckwold: So, up until this bill becomes law The National Dental Examining Board of Canada handles only the dental practitioner, as such? The National Dental Examining Board sets the standards and certain examinations for the qualification of the dental practitioner, only, and does not handle the dental specialists, dental assistants, and so forth?

Dr. James D. Purves, President, The National Dental Examining Board of Canada: I think there are two concepts, senator. The first concept is the problem of the term "certification." Certification is the licensing prerogative of each provincial licensing body. The National Dental Examining Board is an agency of the licensing body and is comprised of representatives from each licensing body in Canada. We have formed a national agency of examinations through which graduates of all Canadian dental schools could apply to write The National Dental Examining Board examinations and, as such, be accepted into the participating provinces of those who participate in The National Dental Examining Board.

Simplified, all of the provinces now are full members of our National Dental Examining Board and, as such, this gives portability to the graduates from any Canadian school throughout Canada. Two years ago we changed this to the point where we accepted without examination portability of graduates from Canadian dental schools.

Senator Buckwold: Does that mean portability of new graduates or anyone who graduated at any time from a Canadian dental school?

Dr. Purves: Essentially, it means new graduates, as of the year 1971, Graduates prior to the year 1971 are still required to write The National Dental Examining Board examinations.

Senator Prowse: At the present time?

Dr. Purves: At the present time, that is right.

Senator Buckwold: What you are saying is that student graduates in dentistry from a recognized dental college in Canada write The National Dental Board examinations, or does the degree from the university automatically give him the right to practise anywhere in Canada?

Dr. Purves: That is right.

Senator Lapointe: But now he will have to pass an examination?

Dr. Purves: Well, all graduates, from 1971 on, who apply will get their certificate. This is not an automatic thing; the individual must apply for it. Anyone who graduated prior to 1971 would have to write The National Dental Board examination in order to obtain the certificate. A Canadian graduate from an American school, for instance, would have to write the National Dental Board examinations.

Senator Lapointe: He would have to pass a real examination?

Dr. Purves: Do you mean a clinical examination or a written examination?

Senator Lapointe: Any kind of examination.

Dr. Purves: It is a real examination.

Senator Smith: A graduate of an American college of dentistry would have to pass both a written examination and a clinical examination?

Dr. Purves: No. We have reciprocity with the American schools through their accreditation system. We have them write the examination only; they do not take the clinical examination.

Senator Smith: What about the so-called recognized dental colleges in the United Kingdom or the rest of Europe?

Dr. Purves: This comes under a category which is known as foreign dentists, and we are the only country in the world, to my knowledge, which accepts a graduate from any university in the world which is listed under the World Health Association list of dental schools.

Senator Buckwold: You mean, accept for examination?

Dr. Purves: Yes, for examination. Those people must pass an examination in depth. In other words, they have to take the written examination and, if they are successful on that, they then take a preclinical examination; and, again, if they are successful on that, they then take the five-day clinical examination.

Senator Lapointe: Is that not a kind of monopoly that you are trying to exert on these people? You call it integration.

Dr. Purves: We are after the setting and maintaining of certain standards. We ask the foreign graduates to pass the minimum standards we ask of our own graduates.

Senator Lapointe: Are you trying to start a monopoly of all dental professions in Canada?

Dr. Purves: We feel that this offers greater facility. In the national picture currently, speaking of portability, an individual has to be accepted by each provincial jurisdiction. We feel it is desirable for specialists in the future to be allowed to have portability from coast to coast. We feel they should be acceptable to the dental licensing bodies and acceptable to the Royal College of Dentists of Canada. All schools of dental hygienists are accredited in a similar manner. We feel that the dental hygienists should now have portability from coast to coast. We feel this has a certain facility. This is a certification mechanism to allow this national portability.

Senator McIlraith: There are two lines of questioning I wish to pursue, one of which, perhaps, should be directed to the lawyers rather than the dentists themselves. I will leave that aside for the moment.

Addressing myself to clauses 3 and 4 of the bill, those clauses purport to amend the act by extending the purposes of the act and extending the powers that are complementary to the purposes by bringing thereunder new classes of professionals. Have the dental hygienists, dental assistants and dental auxiliaries, now operating or in existence, been notified of this legislation and, if so, who is present today representing their points of view?

Dr. Purves: The Royal College of Dentists of Canada has been approached in very great depth and has acceded to this concept. The national organization of dental hygienists has also been apprised of this policy or philosophy, and they completely accede to it. The dental assistants, with the myriad dental assistant courses being mounted throughout Canada, also agree to this type of policy, so that there will be minimum standards for dental assistants. We have not taken it further than that. The rest are included in the term "dental auxiliaries," and this will take in any future auxiliary profession that might have this basic philosophy.

There is one other aspect and that is that this is contingent on the Canadian Dental Association's recognition of these areas, and it is contingent on the participation of The National Dental Examining Board and on the committees on dental education of the Canadian Dental Association who participate in this large accrediting program. So we are only picking the programs that are accreditable from the national concept of the way dentistry develops and anything that the Canadian Dental Association will accredit, so we are talking about an accreditation process.

Senator McIlraith: I am not opposed, as such, to granting these powers. I think they will improve the profession or given it an opportunity to maintain and raise standards. What I am concerned with is a somewhat narrower point. The act deals with a single, standard national dental certificate of qualification—singular— so obviously it refers to dentists as such. The bill extends that to include the term: general practitioner dentists, which was covered by the act; dental hygienists, which

was not covered by the act; dental assistants, which was not covered by the act; and auxiliaries of dentistry, which, I take it, will mean future supplementary professional help.

What I am concerned with at the moment is a rather narrow point. It would seem to me that there would be a possibility of a slightly different point of view or interest between the dental hygienists and the practitioner dentists. We have the practitioner dentists here representing their association. Is there anyone here for the dental hygienists? Were they notified of the meeting today or invited to it?

Dr. Purves: I suppose these things appear to be overly simplified. Dentists are licensable in every province. Dental mygienists are licensable in every province except Alberta, where there is no licensing by the Alberta Dental Association. Dental assistants are not licensed. They come as an assistant under the various provincial licensing bodies, and through the land, as you can imagine, they mount training courses which come under the guidelines of minimum standards for acceptability. They are accredited, and it is our feeling that this is to their advantage. We have discussed this with their national organizations and the representative of each province, and they are most happy with it.

Senator McIlraith: I also think it is to their advantage, but my concern is that I would like them to speak for themselves. They are an association and we are taking a final step that gives you a rather extensive, although also a rather desirable power. Nonetheless, it is an extensive power and we are asked to do it on the say-so of a segment of the group covered by the act, who may have an interest slightly different from that of the dental assistants. I wonder if we could have some enlightenment as to whether they were notified of the meeting today.

Senator Phillips: They do have their own association and attend its meetings. I cannot say whether they were notified of this meeting.

Senator McIlraith: Can the committee clerk enlighten us?

The Chairman: Notice was given, under the rules, by The National Dental Examining Board of Canada that it would apply to Parliament.

Senator McIlraith: That would be the newspaper publications.

The Chairman: Yes, the *Canada Gazette* and newspapers. I do not think anyone other than this association was notified of the hearings this morning.

Senator Prowse: May I have some basic clarification? I know what a dentist is, but I am not just sure what a dental hygienist does. I could guess, but that is not very helpful to me when considering legislation. What are the ordinary duties of a dental assistant? What is covered by "auxiliaries of dentistry"?

Dr. Purves: At this point of evolution we are at the stage where the dental hygienist is formally trained in the university atmosphere. At the moment this is in the process of amendment to the point of being trained also in colleges of applied arts and technology. It is a two-year course. Their main function is oral prophylaxis, topical application of fluorides, dental hygiene education and taking an active part in instructional areas such as dental public health and working for departments of government in the dental public health field.

Senator Prowse: Would they do the scraping, cleaning and polishing of teeth?

Dr. Purves: That is right.

Senator Prowse: But not fillings?

Dr. Purves: That is correct. The field of the dental assistant refers to the individual actively assisting the dentist at the chair and in the whole field of preparation as such. These areas are under consideration for expansion into intra-oral duties. This is why we feel there certainly must be ground rules and guidelines of training that meet the standards of these areas.

Senator Smith: Are you now referring to the dental hygienist, or the dental assistant who would be upgraded to extended activities at chairside?

Dr. Purves: Both.

Senator Smith: It was my understanding that the dental hygienists were those whose duties were to be extended. It is a big jump.

Dr. Purves: There is a rather active program in British Columbia extending the duties of the dental assistant. We are quite agreeable to this because it is under their licensing jurisdiction.

Senator Prowse: They might go so far as to look after the anaesthetic for extractions?

Dr. Purves: No.

Senator Prowse: Is it just preparing the equipment? The surgical nurse helps in the operating theatre.

Senator McIlraith: Does the B.C. group of dental assistants have an association?

Dr. Purves: Yes.

Senator McIlraith: You will see what I am getting at, Mr. Chairman. I am not questioning the desirability of what is being requested here, but the wisdom of passing a bill and then having other groups covered by it appear in six months or so and say they were never heard. I am rather distrustful of the effectiveness of notices in the *Canada Gazette* and newspapers in lieu of written notice. I wonder if there is some manner in which we could tidy up the point of notification of these groups other than through another segment of the classes covered in sections 6 and 7 of the act, who may have opposing or slightly different interests?

Dr. W. H. Feasby, Past President, Royal College of Dentists of Canada: Sir, I believe that the approach perhaps needs redirecting slightly in this manner. The National Dental Examining Board, represented by Dr. Purves, is composed of the licensing bodies throughout Canada. They are those bodies in each province established by provincial statute for the licensing of the practice of dentistry, dental hygiene, et cetera, plus a few others. Consequently, the issue as to whether the hygienists should be notified returns to the provinces. Each province licenses its own dental hygienists et cetera, and the body that carries out that licensing is represented on The National Dental Examining Board.

Under these circumstances, it seems inappropriate to ask the national organization about the licensing of the various functions in each individual province. For instance, the Canadian Dental Association is not represented here. The dentists in general are not represented here. It is The National Dental Examining Board which is the national organization of licensing bodies.

Senator McIlraith: But it is the interested party asking to have its power extended by means of this bill. There may be others who will say that you should not have that power extended, or you should not have this power at all. We have no means of knowing who those may be, but we are asked to deal with the bill on your say-so. The bill appears to be fine, as far as I am concerned, and I am all for it. Surely, however, in the process of legislation we should have all possible interests notified that the process is going on, so that if they have anything to say they may be heard. I have no suspicion of the bill.

Senator Phillips: Mr. Chairman, if I may, I would like to attempt to reassure Senator McIlraith on this point. I would point out that while Dr. Feasby stated that the Canadian Dental Association is not represented here, this matter was discussed by the Canadian Dental Association. The dental hygienists, assistants and so on have their own associations and they also attend the Canadian Dental Association meetings. Through the board of governors of the Canadian Dental Association the various representatives of hygienists and so on agreed to this at the annual meeting in Montreal last year.

Senator Prowse: Would the dental auxiliaries include those referred to in some places as dental mechanics—or I think they describe themselves now in some areas as denturists?

Dr. Purves: Inasmuch as that whole concept is a little, what would you call it, maverick and...

Senator Prowse: That is the point I am making.

Dr. Purves: I would hate to accede to the fact that they enjoy a training, licensing and co-ordinated effort comparable to dentistry and its licensing agencies. They do not even agree with their own associations, so I could not speak on their behalf.

Senator Prowse: But they would be included under dental auxiliaries.

Dr. Purves: I do not know what will happen in the future. There may be six others included in the future, but we would like to keep our act available and open so that we do not have to return time and time again.

Senator Prowse: This does not affect the field of licensing of the provinces?

Dr. Purves: No.

Senator Prowse: Once you have licensed them, with the consent of the province, they can go into any province?

Dr. Purves: Just as you said, "with the consent of the province." If the province does not wish to abide by any aspect of The National Dental Examining Board's policy they may decide not to accept it.

Senator Smith: I may be wrong, but it has been my understanding that your function has nothing to do with the actual licensing to practise dentistry in any province.

Dr. Purves: No.

Senator Smith: The answer to the question indicated to me that there was some confusion in Senator Prowse's question or the answer. I cannot conceive that this examining board will be the licensing body. Far from it. That is why you have the power to examine auxiliaries. This is good to have in the bill, but you have no power, except to set the type of examination agreed upon by each of the provinces concerned, who run their own show and do their own licensing.

Dr. Purves: You said that beautifully, sir.

Senator Smith: I speak as a dentist of some 16 years ago.

Senator Prowse: What I have in mind is the situation in the province of British Columbia, which has an act for denturists. They are allowed, without reference to a dentist and without dental supervision, to provide dentures. There are certain limitations. If I read the newspapers correctly, there has been a continuing row going on in Ontario in connection with exactly the same subject. In Alberta they are licensed by the provincial government.

Dr. Purves: It is the Department of Labour.

Senator Prowse: The Department of Labour, or whoever it is. It is the provincial government which gives them the authority to carry on an independent practice. This is being sought by them in Ontario. If Ontario and other provinces licensed denturists, you would set minimum standards with which they should comply in order to qualify as denturists. They would then be able to move to any province that would allow them to carry on that particular type of practice. Would that be correct?

Dr. Purves: If the Canadian Dental Association, the representative of the dentists of Canada, in its deliberations felt that the present concept of dental mechanics

was feasible and they were in favour of mounting a program for accreditation, then we would go into an association here of the same type.

Senator Prowse: Suppose you had similar legislation to that in Alberta—I do not know whether they have it in Manitoba or Saskatchewan.

The Chairman: I think Nova Scotia has it.

Senator Prowse: Suppose you had it in half a dozen provinces, would you approach those provinces with the right to set up standards that would allow them to move back and forth in those provinces that permitted them to do so, or would you leave that to them?

Dr. Purves: I said it was under the Department of Labour. It is not under the Department of Health in Alberta. This is taking a completely different tack. They are now doing a study in Alberta to determine the efficacy of their actions over the past several years: Did it indeed help? Was it indeed desirable?

Senator Prowse: Under "auxiliaries", you will be setting minimum standards for people to whom dentists could send out for the mechanical work, making the dentures, and so forth?

Dr. Purves: A denturist, by law, must work in the confines of a dental office and must pass certain examinations in Ontario. If Ontario sets a standard that is acceptable to the rest of Canada, maybe it will catch on from there. Right now it is every which way. Every province is doing it a different way and, as such, it is not something that comes within the sympathetic understanding of the Canadian dentists.

Senator Prowse: In other words, in Ontario you do not have a group of dental mechanics setting up their own service where they service several different dentists?

Dr. Purves: Well, yes we do.

Senator Prowse: But under the direction of a dentist. The teeth are fitted, but they do not touch or see the patient. They do the work that they are instructed to do by the dentist.

Dr. Purves: The new act provides that they be allowed to do the work within the confines of the dental office.

Senator Prowse: That is your act; but in Alberta they are allowed to do full plates.

Senator Smith: You mean in the province of Ontario.

Dr. Purves: That is what I am speaking of.

Senator Lapointe: Is there not a battle going on in the province of Quebec?

Dr. Purves: There is a battle going on all over.

Senator Lapointe: They want to be independent from the dental association.

Senator Prowse: You are interested in minimum standards, anyway.

Dr. Purves: Yes.

Senator Phillips: One question that was raised by Senator Prowse deserves some clarification. He asked who would make the approach. The National Dental Examining Board would not make the approach; it would be the provincial association that would approach the national board. In other words, the board does not impose any conditions on the provincial body; it is there basically to assist the provincial body and it only operates on request from the provincial body.

Dr. Purves: That is right.

Senator Buckwold: I think we are getting to the significant part of the bill. I have a series of questions that I should like to ask about the relationship of denturists. I suppose somebody came up with the idea of calling them auxiliary services so that you could cover any future dental development which might take place. I gather it is getting to be a very real thing, not from the point of view of denturists, but of non-university trained dentists who do a variety of dental procedures.

For example, in the province of Saskatchewan they have a great provincial program going on where somebody can go out and do a wide variety of preventive and simple operative dentistry under the supervision of a dentist. There is a great shortage of dentists. Correct me if I'm wrong, but they will have people in health regions all over the province who are not dentists, working under the supervision of a professional dentist and, in fact, carrying on dental work of a simple nature that has been defined for them to do. That is the only way that we are going to provide a dental service for many of our rural areas in Saskatchewan.

We then move into this relationship of denturists. I know that very real problems have been created between dentists and denturists, many of whom have had very little training. Some provinces are bringing in regulations, and I gather that others do not have regulations. People can almost put up a sign saying they are denturists.

Is it the objective of this act that on the basis of standardization and the examining board you will have control of that kind of certification on your terms? I would want to be very careful to make sure that there is a relationship between these various bodies. This would also include the point raised by Senator McIlraith concerning hygienists and assistants—which I do not think are quite as vital at the moment, although I can understand hygienists having certification standards. Again, I am going back to the understanding that provinces still would have the right. We are now talking about national board standards.

Are we, under this bill, just developing a monster in the hands of the Canadian Dental Association, or The National Dental Examining Board, in which you will, in fact, create a giant monopoly of anything remotely dealing with the practice of dentistry, professional or otherwise? This is what is worrying the committee.

Dr. Purves: I did not think, when we came here to discuss this, that we would get into specifics like such a hot issue as denturism or dental mechanics.

As far as I am concerned, every association, be it big or small, or be it legal or medicine, is being attacked from the point of view that you really do not need the big bonanza there.

We are not alone in this. As far as we are concerned, dentistry is involved with the saving and the maintaining of dentition, not destruction of the oral cavity.

Right now we have a list of four training schools for dental technicians who have applied to us for accreditation. The Canadian Dental Association has set down minimum guidelines for standards. An accreditation team will go out this fall to accredit those people. There is one in Toronto, one in Vancouver, one in Edmonton, and one for the armed forces course.

We put in auxiliaries to ensure that if the dentist is going to have technical services provided by an auxiliary, we would like him to have "the good housekeeping seal of approval," an assurance that this is the minimum standard, so that when the dentist accepts the services from him, he can say with all honesty to his patient, "I am delivering the best possible service in that capacity."

Senator Buckwold: Like every member of the committee, I recognize the importance of professional standards. I am personally concerned with the standard of denturists; but, on the other hand, we want to make sure that other aspects of dental care are taken care of.

I can visualize that a province might say, "Fine, we think there should be some certification, some standard for denturists, and before you can hang up your shingle as a denturist you should pass a provincial test. In view of the fact that The National Dental Examining Board have a test, we are quite prepared to accept that as the test". Is that a reasonable projection? The province of Manitoba might say, "We are not going to start up a whole series of things. We will take your test as being the one that will qualify a man for practice as a denturist. By passing your test, he is also acceptable in other provinces, if those provinces agree to that test."

My real concern at the moment is that in view of the relationship of professional dentists and denturists, the kind of standards that you would accept, as compared to what perhaps the denturists are offering now —and in some cases they are providing a not unreasonable service—you would make it almost impossible, in the interest of protecting your own professionals, for the average man to become a denturist. Can you answer that?

Senator Prowse: He would have to be, before he could provide me with a set of false teeth!

Dr. Purves: There are many ways of rendering a service. It depends a lot on the type of practice which you enjoy. If you are asking me a personal question, I will give you my personal attitude. I want, for the patients that I serve, an assurance that if I am going to use technical services from a laboratory, then they are the best. I do not want to hand my carefully taken impression to an incompetent.

Senator Buckwold: It depends on how you set your standards.

Dr. Purves: The minimum standards that we ask are those of our graduate schools, be they graduate or undergraduate schools, hygiene schools, et cetera. We ask for the minimum standards that anyone else would require.

Senator Buckwold: This seems to be a major point of conflict between professional dentists across the nation. But you have not answered my question. Don't you think you would raise standards of denturists to the point that they would become less of a competitive factor for dentists?

Dr. Purves: I think we have to straighten out the situation a little. Again, I would like to make a personal observation. In my judgment, no denturist makes a denture, no mechanic makes a denture. To make a denture requires six to eight hours of office time. What the mechanic or the denturist can do, I can do in 25 minutes in office time. So you are talking about a plate versus a denture. I, and I think many of my confreres, are not at all in conflict. If the public wants a plate, then I do not care if there are 30,000 denturists. However, if the public wants dentures, then do not sell them a plate for a denture. That is my personal feeling in this matter. I do not think you can ever marry the two. I do not agree with what they have done in my own province, because then the association takes the attitude that they will match it. They take the attitude that they will make a cheaper denture, and there is no such thing as a cheap denture. It takes six to eight hours of office time, as we teach the students in our university, to make a denture which is satisfactory to replace the missing physiological part of the human anatomy known as the teeth.

I could go into a much longer discourse on particular necessary procedures which one has to go through, but I do not feel I should. But at the same time, I do not think the professions are in conflict. We have many dentists who are making plates and charging denture fees, and we are ashamed of them, too. There is no short cut. When you are in the practice of dentistry today operating, say, on $40 an hour in order to keep your head above water, it takes six hours at $40 an hour for a total of $240. In addition, your laboratory charge for the technical services is between $110 and $140. That, added to the number of hours it takes to make a denture, gives you a total of $350—plus. There is no mystery about it at all. That is plain economics. If the public wantes plates, they can get them. You can hand the material to people. They can take their own impressions. They can make some things that are plates, but that is all they are. Many, many people are very happy with plates. That is fine. If they are happy and they know they have a plate, that is fine. However, they do not have a denture.

Senator Buckwold: I can understand that. I think Senator McIlraith's question was directed to the difference between a denture and a plate. I would not presume to answer that question. I presume that a plate is something for which you just take an impression and put in some of that plaster of paris, or whatever you use, get your impression and then pour it into a mould for your plate.

Senator Prowse: The bite may be all right or it may be all wrong.

Senator Phillips: We use better materials.

Senator Buckwold: Well, whatever you use. I presume it is just the degree of professional care which goes into the making of it.

Mr. King: The licensing of dentures, basically, is a provincial responsibility. The problem, basically, should be solved at the provincial level. What we are attempting with the examining board is, basically, to obtain certificates of qualification.

Senator Buckwold: But you are ignoring the point I made earlier. Although it is at the provincial level that standards are set, more than likely the provinces may turn that over to the national board. It seems reasonable and logical for them to do so; and in the end this so-called professional clash may create certain problems.

Mr. King: I appreciate that, senator, but it would not come under the purview of the National Dental Examining Board until such time as the provinces are willing to give licensing recognition to these bodies. The National Dental Examining Board concerns itself only with bodies which are subject to licensing within the province, and this comes back to the matter raised by Senator McIlraith. The board itself is composed of licensing bodies of the provinces. The various bodies we are attempting to incorporate under this new act come within the purview of the licensing body. The people who control the licensing and supervise those bodies, really, have given their approval to this bill before you, by virtue of the annual meeting, when this was passed unanimously by every provincial licensing body.

Senator Lapointe: Without exception?

Mr. King: That is right.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Including the Province of Quebec?

Mr. King: That is right.

Senator Smith: Mr. Chairman, my personal view—and I did practise dentistry for some 30-odd years before I was forced to retire for various reasons—is that this legislation is an improvement and is in the public interest. When all the provinces are able to solve their problems with regard to such enterprises as present-day denturists and are able to reach agreement, this legislation comes before us so that we can examine those denturists from coast to coast, and will be a recognition of them as an auxiliary under the dental profession. I am rather hopeful that by that time the provinces themselves will have established the proper kind of training facilities, and so forth, to a greater degree, perhaps, than has been the case with the dental assistant programs. I do not know much about the training of a dental assistant, but they vary from A to Z. A high school girl can come in...

Senator Prowse: She has to be good looking.

Senator Smith: Yes, if they are good looking you can get them for $40 a week.

Senator Phillips: You mean, a day!

Senator Smith: Well, that is a good-looking dentist I am talking about. I can visualize the time coming when the provinces will be aware of the public pressure that now exists—and from some of the sentiments expressed here this morning, it is present in this committee—that denturists should be recognized as an auxiliary profession, provided they are educated in an acceptable manner, not only to the dental profession but also to some lay people who have some further additional public interest at heart. They may find themselves separated from the dental offices themselves, with restrictions as to how they operate and with much higher standards than those of any of the denturists that I know of today. When that time does come it will be a good thing for the public and it will be a good thing for the dental profession. They can take the burden of the mass of applicants for dental treatment out of the offices of the dental practitioner, so that some of us will not have to wait two months for an appointment, which is the case today.

I do not intend to make a lecture on this subject, but I do think about it a fair bit.

There are two opposite points of view presently which, in my mind, leads me to believe that we are eventually going to arrive at something which is going to be better. In my own province, the province of Nova Scotia, they have gone altogether too far; they have licensed denturists. They are now qualified to set up an office and turn out what has been described by Dr. Purves as plates. I know what they are getting for them. However, there is higher ground than that. I do not think the province of Ontario has gone far enough in this respect. The province of Ontario should have gone a little further and provided an opportunity, at least, for these people who have been illegally practising as what we call denturists to be able to get a much higher level of training so that when the day does come when we do establish a national standard, this legislation will allow them to hang out a shingle. Then people will know that if they want a really good job they will go to Dr. Purves or someone like him, and if they simply want plates, then they can go to the denturists, or a retired dentist such as myself who is not practising any more. I thought, perhaps, with my background, that it might be useful for me to put that forward for our consideration.

There seems to be some fear in the minds of some of the members of this committee that somehow, by passing this bill, Dr. Purves, and those who follow him in the National Dental Examining Board, are going to have some horrible amount of power. The power of The National Dental Examining Board is only the power that is given to them by the provincial authorities. They cannot license anybody. If they set standards which are too high, we will find provinces breaking away, or someone else will be running the show in The National Dental Examining Board. I have great faith in the ability of the people to react to situations as they develop.

Senator Prowse: Any abuse of power is self-correcting.

Senator Smith: I am somewhat concerned about what I gather has been said and that is that the dental assistants are presently ready to be integrated and to be examined under The National Dental Examining Board. There are dental assistants' associations which are closely associated with the dental associations. I know in my own province of Nova Scotia they have a close association with the dental association of that province. There seem to be a great many of them who are temporarily in positions of that kind. I do not know what type of training, other than a rather short course, would properly prepare them to perform what is, in my view, the role of a dental assistant.

I am also concerned, on the other hand, that we must do more. I am going to ask Dr. Purves whether he can inform the committee if more is being done in giving higher education to dental hygienists who are graduating in fairly substantial numbers, though in numbers far below the demand for their services. I believe the Dalhousie School of Dental Hygienists turns down nine out of every ten young men or young women who apply for that profession. I am wondering what is going on within the profession to upgrade the dental hygienists so that more of them will be able to take impressions for inlays and to cement the inlay back, under the supervision, of course, of the dentists in the group practice, or whatever it may be.

Dr. Purves: I seem to be monopolizing the discussion. Dr. Feasby is on the staff of The University of Western Ontario and is well versed in this area.

Senator Smith: You have a friendly court here.

Dr. Feasby: My role here is to support The National Dental Examining Board and Dr. Purves in their application, because we hold strongly to the same principles and because, as you look at the act, there is potentially an area of conflict We want to make it clear that we co-operate with them completely in those areas where we have a common interest.

With regard to your question, senator, the various universities which have dental schools, and even some which do not, are quite anxious to expand the availability of their usefulness to the public. The Province of Ontario is taking steps at the present time to initiate additional programs in dental hygiene, not only at those universities which have dental schools but also at some institutions which do not have dental schools. I cannot give you facts and figures at the present time. This is not the area I was supposed to report on this morning. However, I would point out that this is true right across Canada. There are determined efforts being made to expand the training programs for auxiliaries in general and hygienists in particular. In addition, the role of the hygienist is being defined, so we are in an area of evolution. Certainly, those of us in education and those in the profession who are concerned about these matters are working very hard to try to talk the various provincial governments who run these things into developing and establishing additional training programs. We are well aware that there is a shortage. We are well aware that the roles need to be redefined and expanded. We can only go as far as the provincial governments will permit us in terms of funding and so forth.

Senator Phillips: Mr. Chairman, if I interpreted Senator Buckwold's concern correctly, it is that we are creating a monster which would establish certain standards, thereby eliminating certain people from the profession.

Dr. Purves, it is my understanding that not all of the candidates who have passed the National Dental Examining Board examinations are licensed by the provinces. In other words, even though The National Dental Examining Board has granted a certificate of qualification, it is not necessarily recognized by the provinces.

Dr. Purves: It is recognized by all provinces. In Ontario and in Nova Scotia, the only entry into the provinces now is with The National Examining Board certificate.

Senator Phillips: Yes, but in past history?

Dr. Purves: This was not the case in past history, but as it came along they gradually joined us.

Senator Lapointe: Would you have the power to limit the number of those applicants in such-and-such a category?

Dr. Purves: No, we would have nothing to do with admission requirements or anything of that nature. It is just the end product, if you like, with which we are concerned.

Senator Lapointe: The National Dental Examining Board cannot limit the number of those who obtain certificates of qualification?

Dr. Purves: I cannot visualize that ever happening. We have basic guidelines. Really, if an individual sees the guidelines and assesses how he meets the guidelines, there could be an honest difference of opinion at a very minimal level as to whether he is over or under. That exists in everything and I do not see that it is in any way limiting. I feel that we have the basic philosophy of keeping the standards of Canadian dentistry high. I continually repeat the term "high minimum standards", because we are not discussing the requirement at the top, but at the bottom.

Senator Prowse: They must achieve that standard before holding themselves out to serve the public.

Senator Buckwold: Mr. Chairman, I do not think that the rather trenchant questions which were asked of Dr. Purves and the delegation were for any reason but to get answers to questions that obviously will be asked by others in connection with a bill such as this. In my opinion, those answers are now on the record.

The Chairman: I believe Senator McIlraith has another question, and I also have one.

Senator McIlraith: As we have finished with the substantive aspect of the bill, I have some questions as to its form, which bothers me a little. Perhaps our own counsel could answer. The bill follows two different forms. The operative part is clauses 3 and 4, then sections of the act incorporating The National Dental Examining Board of Canada, which is quite clear and the usual method of proceeding. However, clauses 1 and 2 do not appear to amend the act incorporating The National Dental Examining Board, but go on as an independent bill which, if we pass it, becomes a separate act. For the life of me I do not understand why, because the act itself creates the board in section 1 and gives it a name. Clause 1 of the bill now before us, to a limited extent, changes the name, or gives the right to use an alternative name. Clause 2 provides, very properly, that the change of name does not alter or affect the liabilities of the earlier board. That is not done, however, by way of amendment to the act, and I am a little mystified as to why that procedure or format is used in the preamble and clauses 1 and 2 of the bill, rather than a simple amendment to the act.

The Chairman: Mr. Hopkins, the Law Clerk, will speak to this.

Mr. Hopkins: This has been the manner and form we have used for the last 20 years for many other corporations and companies to provide an alternative name in French. It has become very popular over the last 20 years. You have a number of examples, Mr. King, which I have discussed with you. It has been effected in exactly this manner. This is a standard form which, in fact, amends the original act. It is not a separate statute, but part of the bill.

Senator Prowse: But this does not become part of the original act.

Mr. Hopkins: It does in effect amend it though. It is not separate and apart from this bill. This has been a convenient method of doing it and has been followed over the years, ever since it became more popular to have a French alternative.

Senator Prowse: How do we give effect to clauses 1 and 2? Is this set up as a separate act in the statutes?

Mr. Hopkins: In effect, it changes the original act.

Senator Prowse: If I required an office consolidation of the National Dental Examining Board of Canada Act, would I require both of these?

Mr. Hopkins: Yes, it might be that you would receive two acts.

Senator McIlraith: That is right and is exactly the aspect I do not understand.

Senator Prowse: Clause 1 would be an amendment to the original act establishing the board, clause 2 would be the same thing, which I presume would be a new section.

Mr. Hopkins: It may seem a little odd, but it has been happening for 20 years and no difficulty has ever been encountered.

Senator Prowse: That is because the question was never asked.

Mr. Hopkins: Anyway the alternative names are used under the law, which accomplishes the result.

Senator McIlraith: Yes, but it also leaves a very sloppy situation for any member of the public attempting to find the authority for the usage of those names. The preamble reads as follows:

> Whereas The National Dental Examining Board of Canada, hereinafter called "the Board",...

That is hereinafter in this bill called the board.

Mr. Hopkins: That is right.

Senator McIlraith: Almost the same words are found in section 1 of the act, which reads:

> ..."The National Dental Examining Board of Canada", hereinafter called "the Board",...

There are two different acts claiming to call a certain body "the Board.' There should be only one act doing that. There is only one National Dental Examining Board of Canada, and it is only intended that there be one.

Mr. Hopkins: This does not change that at all. It simply says "the Board," which is identified.

Senator Prowse: It gives it the right to call itself two different names under two different acts, instead of under one act.

Dr. Purves: This is only a bill amending the original act.

Senator McIlraith: That is precisely my point. It says a very different thing. It says: "The Board ..." that is the board under this bill, "... may use, in the transaction of its business, either ..." and it gives the name in the English and French versions. It does not, however, say that the board under this act may use the two names. It is curious.

Mr. King: But, senator, it is an act respecting an existing body, The National Dental Examining Board of Canada, which by the prior art of Parliament is called "the Board". In our preamble we recite the existence of the same body and indicate that it is to be called "the Board" in this act. We are not changing the shorter reference to it in the act.

Senator Prowse: This goes as a separate act with the other act, whereas if it were an amendment it could be incoporated into an office consolidation. Now the two acts are required. Clause 3 can be inserted, reading as follows:

> Section 6 of chapter 69 of the statutes of 1952 is repealed and the following substituted therefor:

Clause 4, replacing section 7, can be inserted, but clauses 1 and 2 cannot. This is the point being made. These two would have to sit as a separate act to give that authority. Clauses 1 and 2 could be made an act amending. I imagine they merely re-word. Is clause 2 different in the original act?

Mr. King: I really do not think clause 2 would be a part of the original act, because no matter what we do today we are not changing any prior rights or responsibilities of the board.

Mr. Hopkins: You will notice that we have to take care in this act that "any transaction, contract or obligation" hitherto "entered into or incurred by the board... shall be valid and binding on" it. That would be meaningless if it was incorporated into the original act.

Senator Prowse: Don't you have a board in the original act?

Mr. Hopkins: Yes, but these words are necessary:

> It may sue or be sued in either or both of such names, and any transaction, contract or obligation entered into or incurred by the Board in either or both of the said names shall be valid and binding on the Board.

Senator Prowse: If there were no clause 1, clause 2 would not be needed and it would be a shorter act.

Mr. Hopkins: One of the difficulties is that we are not giving the French name retroactively but just as of from now. The remaining clauses, you will see, are necessary and could not really sensibly be inserted into the original act. That is my opinion and it is the method that has been used.

Senator McIlraith: Clause 2 becomes unnecessary by reason of the words in clause 1 allowing the use of either the French or English name.

Mr. King: Again, senator, is has been customary to include such a saving clause in all similar bills.

Senator Prowse: We are paid for straightening it out, so let us proceed.

The Chairman: In any event, the dentists are not responsible for it.

Senator McIlraith: No.

The Chairman: The question was raised at the commencement of the hearing as to whether the parties to whom the authority of the board is to be extended were advised of this hearing. The reason no party was advised, other than those who are here, is that we were not notified by anyone of an interest.

I wish to ask one question, which I believe has been answered. Can we take it that no opposition by any of these groups—the dental hygienists, the dental assistants and so on, was voiced to your board?

Dr. Purves: We have nothing but enthusiasm. I have met with the hygienists nationallyy on two occasions and with the dental assistants nationally in Montreal last year. They are just waiting and hoping that this goes through, because it serves for them a wonderful purpose of certification, in which we will carry out the housekeeping, so to speak.

Senator Prowse: They are like lawyers, they can all now come to Alberta.

The Chairman: What is the wish of the committee?

Senator McIlraith: To report the bill without amendment.

Hon. Senators: Carried.

The Chairman: I will then report the bill to the Senate as it stands, without amendment.

The committee adjourned.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 13

THURSDAY, JUNE 14, 1973

Complete Proceedings on Bill C-177 intituled:

"An Act to amend the Judges Act" and Twenty-sixth and last Proceedings on the examination of the parole system in Canada

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REPORT OF THE COMMITTEE on Bill C-177

(Witnesses and Appendix—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin
Buckwold
Choquette
Croll
Eudes
*Flynn
Goldenberg
Gouin
Hastings
Hayden
Laird
Lang
Langlois
Lapointe
*Martin
McGrand
McIlraith
Neiman
Prowse
Quart
Walker
Williams (20)

*Ex Officio Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 7, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Paterson, for the second reading of the Bill C-177, intituled: "An Act to amend the Judges Act".

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was–
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 29, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Phillips, seconded by the Honourable Senator Smith, for the second reading of the Bill S-7, intituled: "An Act respecting The National Dental Examining Board of Canada".

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Phillips moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was–
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

26318–1½

Minutes of Proceedings

Thursday, June 14, 1973

Pursuant to adjournment and notice, the Senate Standing Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Hastings, Lapointe, McIlraith, Neiman and Prowse. (7)

Present, but not of the Committee: The Honourable Senator Lawson.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director, Examination of the Parole System in Canada.

The Committee proceeded to the examination of Bill C-177 intituled: "An Act to amend the Judges Act."

Mr. Donald S. Thorson, Deputy Minister of Justice, was heard by the Committee in explanation of the Bill.

On Motion of the Honourable Senator Prowse it was Resolved to report the said Bill without amendment.

At 10:40 a.m. the Committee resumed its examination of the parole system in Canada.

The following witnesses, representing the Canadian Penitentiary Service, were heard by the Committee:

Mr. Paul Faguy, Commissioner
Mr. J. W. Braithwaite, Deputy Commissioner

On Direction of the Chairman, the statistics provided by Mr. Faguy are printed as an appendix to this day's proceedings.

At 12:15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

Report of the Committee

Thursday, June 14, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-177, intituled: "An Act to amend the Judges Act", has in obedience to the order of reference of June 7, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 14, 1973

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-177, to amend the Judges Act, met this day at 10 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the Senate has referred to this committee Bill C-177, to amend the Judges Act. We have with us this morning Mr. Donald Thorson, Deputy Minister of Justice, and Miss Belisle of the Department of Justice. Perhaps our best procedure would be for Mr. Thorson to outline briefly what the bill entails, and then they will be prepared to answer any questions you might have.

Mr. D. S. Thorson, Deputy Minister of Justice: Mr. Chairman and honourable senators, basically the bill follows the traditional pattern of the annual bill to amend the Judges Act, with two exceptions which I should like to come to in the course of a few brief introductory remarks.

The bill would authorize additional salaries for 18 judicial positions in the courts throughout the provinces of Canada, and it would also provide for four additional positions and salaries for the Federal Court of Canada. There is a requirement for four additional judges in the Federal Court in view of its increased workload, and the amendment relating to the Federal Court would enable that court to keep up with appeals that may reach it, and with applications from a variety of federal boards and tribunals.

With respect to a provision for salaries for 18 additional judges throughout the provinces, the bill would provide for salaries for those positions that have already been created or are in the course of being created by the appropriate provincial legislation. All of these positions have been created as a result of the attorneys general of the provinces having concluded that the additional judicial positions were necessary, and as a result of confirmation, by inquiries concerning the requirements for these additional positions, made by or on behalf of the Minister of Justice and the Attorney General of Canada.

The bill would amend those provisions of the Judges Act also—this is one of the two additional features that I mentioned a moment ago—relating to the supernumerary positions which were introduced for the first time into the Judges Act in the 1971 amendments. It is now proposed to permit judges who have reached the age of 65 years and who have served for at least 15 years in a superior court of a province to elect to become a supernumerary judge, thereby to be available, of course, at the call of the Chief Justice of that court, to serve the court as the need arises. A supernumerary judge, honourable senators will recall, is one who is no longer required or called upon to assume a full load of judicial work. At the present time, under the existing provisions of the Judges Act, a judge must have reached the age of 70 years and have served in judicial office for ten years before he can elect to become a supernumerary judge. In view of the younger appointments now being made to the judiciary, the view is that it is appropriate to permit experienced judges, at a lower age, to elect to become supernumerary judges in order to further expedite the efficient administration of justice in the provinces.

I might add that it must be recognized that, in certain cases, judges who have reached the age of 65 years or more may find it desirable to remove themselves from the necessity of carrying a full load of judicial work. Under the proposed amendments, however, they would still be available to the courts to do at least some portion of the normal work of a judge of the court, as the Chief Justice of the court may find desirable or appropriate.

The second additional feature I mentioned is an amendment proposed by the bill, for the first time I believe, which would provide a group or, colloquially, a "pool" of potential judicial salaries that would be available for future positions that may be created by appropriate provincial legislation. The purpose of this particular amendment would be to enable the government to move more expeditiously when it appears that there is a need for an additional judicial position, determined as usual by the judgment, in the first instance, of the provincial attorney general, and in the second instance, of course, by the provincial legislature. The appointment could then be made under the provision in this bill you are now studying, and the salary would then be provided from the group of potential salaries for which there is also provision. It is hoped that this would facilitate the administration of justice in the provinces by avoiding the delays which may now be said to be inherent in the practice which we have had up to now of seeking annual amendments to the Judges Act, with the attendant delays that that involves, for the purpose of providing additional positions to meet the requirements of provincial legislation.

Senator Prowse: What you are saying is that as soon as the province makes the appointment by legislation, then you can proceed to appoint a judge and this pool would provide the money for paying the appropriate salary from that date?

Mr. Thorson: That is the idea. The bill, as I have said, does two things; it does the traditional thing of providing the salaries in direct response to changes in provincial law of which we have been

notified; but, in addition, and in order to enable us to act more than simply *ad hoc* from one year to the next, we have built in a provision whereby, if the provincial law calls for more positions than the Judges Act provides salaries for, then there can be a call-down on the provision in question.

The provision in question, which we will be coming to, and which, no doubt, you will wish to examine in detail, strictly limits the aggregate numbers of the positions that are provided for in this manner, and it is a provision that is really outside the terms of the Judges Act itself. As part of the bill it would become law, as such; but it would not become a permanent feature of the Judges Act. The idea is that as the authority would become exhausted and spent, Parliament would have to approve any re-enactment of the provision.

Senator Prowse: It is five and ten at the present time.

Mr. Thorson: It is five, ten and ten, in the sense of an aggregate of five positions for the courts of appeal right across Canada, ten positions for superior court trial judges across Canada, and ten positions for county court and district court judges across Canada.

Senator Prowse: It works out at approximately one per province, but it will not in fact work out that way in practice?

Mr. Thorson: We are not sure about that. We are not quite sure how the allocation will in fact work out. But it will, perhaps, stave off, and enable us to meet some of the criticism that we have encountered in recent years as to the necessity for, coming back every year for amendments to the Judges Act to provide specific positions. This might enable us to go for, say, two years without a further bill.

Senator Buckwold: Does the federal government have any control over the number? If provincial requests come in for a number of increases, could that be rejected by the Federal court?

Mr. Thorson: Well, senator, this has always been a very difficult and sensitive problem. Constitutionally, of course, I think you are familiar with what the position is. The constitution of the courts, which includes the number of judges of the courts, is a matter for appropriate provincial legislation under the British North America Act. Our duty is to provide the salaries for the judges of the courts, so that necessarily there has to be a very close working relationship between the provincial authorities and the federal authorities in order to ensure that we, since the Parliament of Canada is providing the salaries, may be satisfied that there is a need for the additional appointment, and that is done in the traditional manner by close consultation with the provincial authorities, including the chief justices of the courts concerned, in order that we may be satisfied that, indeed, the need is there. Traditionally that is the way this has been accomplished.

Senator Prowse: Has there been any move to follow up the suggestion that has been made from time to time that the distinction between county and superior courts, differently described in different provinces, should be removed, and that there should simply be one court?

Mr. Thorson: Indeed, in the last few years, senator, this has been the subject of continuing discussion, and I might even add controversy, in various provinces in Canada. In British Columbia and Ontario the question has arisen and there have been sharp differences of opinion at the provincial level and among the members of the legal profession itself. I think there are a number of pros and cons in the debate, but perhaps that is out of my field and I should not be commenting on it. Certainly many members of the legal profession feel that the idea of a county court, very close to the people, with the county court judge knowing the area in which he lives very intimately, is a desirable thing to retain as a feature of the legal system. Others, of course, take a different view and say, "Why not amalgamate them all and eliminate the jurisdictional differences that now obtain?" In the case of Quebec, for many years, perhaps since the inception of the Superior Court of Quebec, there has been no such thing as a county court. There are only judges of the Superior Court.

The Chairman: But we did have a circuit court which was an inferior court.

Mr. Thorson: A federally appointed court, yes. There are, of course, provincial court judges in all provinces.

Senator Prowse: Our district court judges in Alberta normally reside in either Calgary or Edmonton. I think perhaps there is one in Lethbridge, but that would be the only case outside of Calgary or Edmonton. The reason I ask the question is that I suppose there are too many district court judges for them to suddenly change the legislation to take advantage of this to achieve this changed situation because there are more judges.

Mr. Thorson: You are speaking now of the new provision?

Senator Prowse: Yes.

Mr. Thorson: Yes, quite clearly it could not be used to accomplish that.

Senator McIlraith: In most of the discussions it comes down to the question of having a judge available in the local county town to sign the innumerable numbers of orders required to be dealt with, and we have not been able to evolve a system of having just one set of judges with the assurance that they would be in a particular county town when required; that is, for this type of work, as distinct from the trial work or criminal work or civil cases in the ordinary sense. That is where the discussions, usually in the final analysis, founder.

Senator Prowse: We use a circuit court in the district court in Alberta. They travel. They take turns going around, so it would not apply. But in Ontario and in other provinces I believe it does.

Mr. Thorson: In Ontario, of course, we have a mixture in the sense of county courts based on the traditional county geographical boundaries; but with the addition of what are known as judges at large, who can be assigned by the chief judge of the district and county courts of Ontario as the need occurs.

Senator Prowse: We probably are in that position, because our roads are better in Alberta.

Senator Lawson: Mr. Chairman, my concern is in the area of judges' salaries. I have long disagreed that judges' salaries should be tied to every five years or ten years or on some disorganized basis and tied to a bill that makes an adjustment for MPs or senators. I do not think the sins of the politicians should flow to the bench. It should be a matter for separate review.

It was my intention to consider an amendment to this bill, and I had the benefit of Mr. Hopkins' opinion as it affects the Constitution. But notwithstanding that, I thought that there should be a fixed period, either biannually or not less often than every three years, a fixed review dealing with the cost of living and salaries and the recommended adjustment. I understand from the discussion this morning that it may not be necessary now to propose such an amendment.

Mr. Thorson: If I may comment on that, Mr. Chairman, much depends on the rate of increase in lawyers' incomes and in the cost of living. The appropriate period for review of judicial salaries can, therefore, vary according to the times in which we are living, but this is a problem which we have recognized as being very real in the case of judges, having regard to the need to obtain the best possible members of the Bar as candidates for judicial appointment.

On the occasion of the most recent amendment to the Judges Act, which was in 1971, the then Minister of Justice, Mr. John Turner–in the House of Commons, or before the justice and legal affairs committee of the House of Commons–gave a commitment on behalf of the Government of Canada that judicial salaries would be reviewed systematically not less frequently than every three years. Indeed, that we would propose to do, because we appreciate the very great importance of ensuring that there is no appreciable lag. We do not, of course, in bills that set judicial salaries, attempt to provide only for a single year ahead. What we have been in the practice of doing in the past is to try to strike a figure that we hope will hold valid for perhaps two, three or even four years, and then to review it later on.

Senator Lawson: That is going to be the policy of the present minister of the government?

Mr. Thorson: Yes.

Senator Lawson: That would certainly satisfy my desire for such an amendment.

Mr. Thorson: That is his policy.

Senator Lawson: One supplementary question on the subject of salaries, because I am not sure I truly understand it.

I am thinking of the British Columbia Supreme Court. There is one judge to whom I would refer, and perhaps if I describe him by name you might know which category I am talking about–Mr. Justice Makoff, a county court judge before he was elevated to the Supreme Court. He functions in chambers and deals largely with injunctions and these kinds of matters, as a local judge of the Supreme Court. When he is relieved for a week for "judgment week," he must be relieved by a member of the Supreme Court bench as the only person qualified to relieve him; and yet his salary is at the $25,000 figure, whereas the others are at the $35,000 figure. If you apply the rule of equal pay for equal work, and it takes a Supreme Court judge who is paid at a higher salary to relieve him, then it seems to me that there is need for a special review of that category of judge.

Senator Buckwold: I think there is a whole new field open to Senator Lawson!

The Chairman: I fully expect Senator Lawson to organize the judges and constitute them as a local of the Teamsters Union.

Senator McIlraith: Some of them think they have a very tight union as it is.

Senator Lawson: One of the Supreme Court judges, a friend of yours, Mr. Chairman, delegated me as their "shop steward" to raise these matters for them.

Mr. Thorson: I believe the situation you are describing is not common to all the provinces. It may be unique to British Columbia. I assume that the duties being performed by that particular county court judge are duties that are devolved upon him by provincial legislation which he has accepted, so that the situation may be rather unusual. Perhaps I should not comment beyond that, sir.

Senator Lawson: He is paid under this federal legislation.

Mr. Thorson: True, but the duties he performs would be duties devolved upon him by provincial legislation: hence the proposition that, when he is absent, those duties must be performed by a member of the high court.

Senator Neiman: It sounds like duties that would normally be performed in Ontario by a high court judge, dealing with injunctions.

Senator McIlraith: I believe that would also involve mechanics' liens actions.

Senator Lawson: He is largely dealing with Supreme Court matters. I don't know the title, but the previous occupant was Mr. Justice Makoff, before he was elevated. He is dealing, three out of four weeks with these matters which would ordinarly be handled by a Supreme Court judge. They are in-chambers matters and I believe he is referred to as the Chambers Judge.

Senator Prowse: That would be a matter of local arrangement under the local legislation.

Senator Lawson: It seems to be patently unfair. I am assured that the only man who could relieve him has to be a qualified Supreme Court judge. He is the only man qualified to relieve him to deal with matters of that judicial nature. It seems, on the face of it, unfair.

Mr. Thorson: I would assume, Senator Lawson, when he is acting in this capacity he is acting as a local judge of the British Columbia Supreme Court.

The Chairman: I am interested to note, Senator Lawson, that you want to see an increase in the salaries of judges who grant injunctions.

Senator Lawson: I find it hard to be objective in these matters!

Senator Buckwold: Mr. Chairman, my question is: Why isn't there an annual review of salaries rather than a review every three or four years, in which time there is usually a very large increase which gets a substantial headline, such as, "Judges' salaries go up $5,000", which is usually followed by letters to the editor saying that judges are getting paid too much? The same is probably true with respect to MPs' salaries. It seems to me it would be logical that a modest increase be given to judges as the cost of living increases and there should not be such a long waiting period, if only for the sake of public relations.

Mr. Thorson: I suppose the only type of answer I can give you is perhaps an indiscreet answer: it is probably a case of, "damned if you do, and damned if you don't." It is a very nice question, just what kind of reaction one might anticipate to an annual review, which, of course, would have to be ratified by this Parliament. As you know, the salaries must be fixed by the Parliament of Canada and cannot be treated in any other manner. Would the reception be more favourable if we were to pre-arrange annual bills to review judicial salaries, or should we grasp the nettle and hope to be able to provide for salaries for a period of two, three or fours years at a time? One of the difficulties we face, of course, is that the public, as a rule, has difficulty in understanding the order of magnitude of salaries that are necessary to attract good people to judicial office. This is a very real problem in relation to the technique that has developed over the years of seeking increases in judicial salaries. It is a major problem.

Senator Buckwold: Is there no mechanical means of having an annual increase without going to Parliament?

Mr. Thorson: Only, I suppose, if somehow we were to index the salary in the way we index pensions. I am not sure that would be a satisfactory answer, because we must be very responsive, not only to the rates of increase in the cost of living but also to the situation in which we find ourselves at any given time in terms of levels of remuneration to the legal profession, as distinct from the cost of living.

Senator Buckwold: If they keep passing the complicated legislation that we are processing these days, I guess the legal profession incomes will be rising pretty rapidly.

Mr. Thorson: That is a distinct possibility!

Senator Lapointe: Is it because the federal government has the right of veto that the provinces have not asked for a larger number of additional judges in the past? They always have said they needed more and more and there were not enough.

Mr. Thorson: By and large, the federal authorities have done their very best to respond to demonstrated needs for additional judicial appointments coming from the provinces. We keep in contact with the responsible authorities in the provinces, that is to say, the Attorney General and his officials, as well as with the chief justices of the courts concerned with whom we are also in contact on these matters–and there are very few instances, to my knowledge, where we have not proceeded to provide the appropriate additional salaries. The confrontations which are theoretically possible are usually in fact resolved amicably, to the satisfaction of both parties.

Senator Prowse: Usually, the request is based on demonstrable backlogs in the courts.

Mr. Thorson: Quite so, sir, backed with statements concerning the need, and very often with detailed statistics concerning court workloads and their progressions over the years.

Senator Prowse: If a judge decides to go supernumerary, am I correct that he continues on full judicial salary and, in effect, is on call the whole time?

Mr. Thorson: That is correct, sir. That is the arrangement. You appreciate that under the British North America Act a judge continues to draw his salary while he remains a judge, until the time for his retirement. This arrangement really is one that recognizes there are a good many judges at the age of 65 to 70 who find themselves, for reasons of health as a rule, unable to carry a full workload, but who are more than willing and able to carry a reduced workload. The arrangement has worked out very well in a number of instances of which I am aware, where the judge is able to work part of his time but finds it impossible for personal reasons to carry the full workload.

Senator Prowse: It would permit specialization to some degree.

Mr. Thorson: Yes. We are still in the early stages of this experiment and we will need a little more time to evaluate really how well it is working out. We think it is a step in the right direction. Once the supernumerary judge elects for that status, it then becomes possible to create an additional full-time judge, which is another reason for the proposal. It has in mind, really, the facilitating of the administration of justice.

Senator Prowse: His election is the first step in the process, I presume. Does the Chief Justice have the right to say, no, he will not let him elect?

Mr. Thorson: No. The right of election is with the judge, but he must notify the Attorney General.

Senator Prowse: Must he meet the minimum terms you are now laying down?

Mr. Thorson: That is correct.

Senator Lawson: Following on Senator Buckwold's remarks about not being able to have the annual review, I think under the

circumstances described by Mr. Thorson a review not less often than every three years is reasonable in the circumstances. I do think that there must be a way that you could put in an escalator clause or a cost-of-living clause, which is not uncommon in many agreements. I know that there is a greater acceptance by the public at large of the kind of salaries you pay here and probably the most common comment made to me is, "Why don't you, in those circumstances, put in a cost-of-living clause? " And I think that would serve two purposes: it would have regard to the graduated or even exaggerated scale of cost-of-living increases; but, in addition, when you had made your review, if you were having 2, 3 or 4 per cent increases following the cost of living each year, then when you did make your salary review it would not be this large amount that we are faced with, which Senator Buckwold referred to. Is it not possible to consider something like that?

Mr. Thorson: It is certainly possible to consider it, sir. As you say, it would have the advantage of avoiding what appear to be very substantial increases, particularly if you have waited a full three years in a period of rapidly increasing costs of living. Again, I think the real problem comes back to the question of our ability to attract good candidates for judicial appointments. The relationship to the cost of living is not necessarily the relationship that must be looked at when we are considering that question. That I think is the problem.

Senator Lawson: I accept that point.

I think the public at large accepts that we do select from our midst in the legal profession the best quality minds we can find and put them on the bench; we give them an ever-increasing work load and expect that of them; but we do not necessarily reward them in the way we reward all other classes of senior civil servants. What I am thinking of is a sort of annual amendment, which you indicated would have to be made legislatively on this kind of bill. If you had a one-time legislative cost-of-living escalator clause, it would not be necessary to bring it forward again.

Mr. Thorson: I suppose our apprehension in that situation would be that we might indeed succeed in making it more difficult, rather than less difficult, to justify legislation to increase salaries where we had found that the gap was widening in relative terms between the cost-of-living increase and the general level of lawyers' remunerations in the community. It is a very delicate judgment. I am sure you appreciate that.

Senator Lawson: Yes, I do.

Senator Prowse: The discussion now being given to establish a recognition of specialized services and specialized fields of law, while it is taking place, has not been formally recognized. I would think there probably would be an increase in salaries in those areas at least, in which a person would be able to hold himself out, after proper safeguards, as a specialist in that particular area. Presumably he could do more work in the same time if he was doing just one type of work, and could provide a better service and command better fees as a result.

Mr. Thorson: Of course.

Senator Prowse: That means he would be competing in a tougher market. He is not competing with judges at $35,000 a year; really he is not that concerned about the price of meat in the supermarket.

The Chairman: Honourable senators, I do not want, and I have no right, to restrict discussion on this measure, but we are going a little far afield. The reason I make this statement is because we will next be hearing from Mr. Faguy, the Commissioner of Penitentiaries, and I believe that he cannot stay beyond the lunch hour today. Honourable senators can ask any other questions on this bill, but I just thought I ought to draw that to your attention. Are there any other questions on this bill?

Senator McIlraith: I have one more, Mr. Chairman. Senator Lawson used the term "escalation" for cost-of-living increases. I suppose he would include changes in the opposite direction as well. We would have a repetition of what happened in the 'thirties, when the cost of living indices went down sharply and we were deluged with every lawyer in the country trying to be a judge, at salaries that now look ridiculously low. What would you do to your bench if you suddenly started reducing salaries rather drastically? What would be your position about government and Parliament interfering with the independence of the judiciary and so on? Wouldn't that have to be considered?

Senator Lawson: Yes, it would, but under today's market conditions I would be willing to take that chance.

Senator McIlraith: Legislation is never just for today.

Senator Lawson: I understand that.

Senator Neiman: I was curious about the allocation of these additional judges who are being provided for. Will this possibly be on a "first come first served" basis, or are you contemplating that one province might somehow manage to take two of those positions, say, to the Appeal Court?

Mr. Thorson: You are referring, of course, to clause 10 of the bill?

Senator Neiman: Yes.

Mr. Thorson: There is no rule laid down. There is no stipulation in that clause as to the allocation. What we have in mind is that normally we would not expect to see all the positions going to one province; it would be a very unwise move to go that way. We would see it being a pool available on an across-Canada basis as the need is clearly demonstrated. Of course, the provision comes into play only in a situation where the provincial legislation has been altered—which would be something that would take place in the future—in such a manner that the number of positions provided for by the provincial law exceeds the number of salaries authorized by the Judges Act. We cannot really anticipate how that will work out in the future. Indeed, the call on the reserve pool of salaries provided for by clause 10 may be hypothetical. We would anticipate that there will be some call on it, but whether we would exhaust the positions is something we simply cannot determine at this stage.

The Chairman: Are there any other questions? Does the committee agree to the bill as it stands?

Hon. Senators: Agreed.

The Chairman: Is it agreed that I shall report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: I will so report to the Senate. Thank you very much, Mr. Thorson.

Mr. Thorson: Thank you, Mr. Chairman.

The Chairman: Honourable senators, the committee will now resume its examination of the parole system, with Mr. Faguy, the Commissioner of Penitentiaries, and Mr. Braithwaite, the Deputy Commissioner.

Mr. Faguy, have you a statement you would like to make to the committee?

Mr. Paul Faguy, Commissioner, Canadian Penitentiary Service: Yes. I have a brief statement, which will take about five or six minutes, and then some basic information on temporary absences for different groups of people, which I think will be information of some use to the committee.

The temporary absence program, made possible in law by revisions to the Penitentiary Act in 1961, has realized a great deal of success and also, I have to admit, censure. This may appear to be a paradoxical statement, but it is supported by the fact that in the fiscal year 1972-73 there were 48,657 temporary absence permits granted to 6,423 different inmates, for a total 86,913 days.

(See Appendix "A")

Senator Buckwold: What year was that?

Mr. Faguy: 1972-73.

Senator Buckwold: April 1, is that?

Mr. Faguy: Yes. That number is exclusive of those who are residents of the community correctional centres. Of these, 255 inmates, or 4 per cent, failed to return and 35, or 0.5 per cent, have been charged by the police with committing a further offence. However, I want to impress the point that if one looks at the percentage of failures on the basis of the opportunities for inmates to fail or to commit crimes–which is the number of permits and not just the number of inmates, because one inmate may get more than one permit–then the failure rate is only approximately 0.5 per cent; the success rate is 99.5 per cent and to me this is a successful program, however you look at it. However, the censure and criticism has arisen as a result of specific, spectacular cases that, in some instances, have even resulted in tragedy.

It is submitted that a total program cannot, and should not, be judged on the basis of certain highly publicized failures. This would be tantamount to closing our highways as a direct result of a spectacular crash. Progress has its price and programs have their failures. It must also be recognized that failure is an intrinsic part of a corrections program, especially a corrections program that deals with men who receive penitentiary sentences. Only 6 to 8 per cent of all those convicted of indictable offences receive penitentiary terms. Of those who do receive penitentiary terms, almost 80 per cent have been in federal or provincial institutions on a previous occasion.

Our correctional institutions have failed them and so have our schools, churches and families. The Penitentiary Service then becomes the final sanction of society and the last hope for the offender. That there be failures on temporary absence is not unusual and can be expected. But let me say that every time there is a failure and especially a crime committed, I am most concerned. In fact, more concerned, I can assure you, than any of you gentlemen or any member of the press or of the public. It is a constant concern with me, but I cannot stop progress in our programs. As I say, sometimes publicly, we take them at the end of the meat grinder and we are supposed to rehabilitate them.

I cannot stop the granting of temporary absences, which is an essential part of the return to society of inmates. But our staff is being reminded of the need for caution at all times, and for real care to be exercised. I believe we have improved our procedures and checks and counterchecks.

It should be pointed out that virtually all of our inmates are destined to return to society. We feel, therefore, that we should do everything possible to enhance the possibility of success in relation to the man's return to the community. That was the reason for mandatory supervision being introduced. That is the reason why we have established community correctional centres. That is the reason we have contracts with half-way houses; why we provide financial assistance to after-care agencies. That is the reason why we attempt to train inmates to become responsible citizens rather than regimented convicts.

A survey conducted in the summer of 1972 revealed that 276 inmates on temporary absence were employed on outside work, at an average wage of $2.45 an hour, with projected annual earnings of close to $1½ million.

We and the inmates would welcome more supervision as we both recognize the need for additional help in the reintegration process; but that is not say there is not supervision at the present time. Again, I think it is important to remember this. Some temporary absences are under escort, and the escort has instructions to keep the man in sight at all times. Men on temporary absences from community correctional centres have a staff of eight to deal with a group of 15, a ratio of 1:2, seen each and every day by the staff. In addition, there is the powerful force of the peer group itself to help preserve a muchvalued program. Unescorted individual temporary absences are granted for a specific destination with a specific temporary residence in mind; with the police and parole offices having been notified; with the family having been investigated by the Parole Service; and, frequently, with a responsible citizen–for example, a minister or member of the John Howard Society–being designated as a sponsor.

Indeed, one might argue that the majority of men on temporary absence are subject to closer supervision, as they should be, than parolees.

There have also been suggestions that if a man is late in returning from a temporary absence no disciplinary action is taken. I categorically deny this. If there is a suggestion that a crime has been committed, the police lay a charge—this is done automatically if there is a criminal offence—and we have no control over this; we leave it to the police. If the man is tardy, he automatically loses his temporary absence privileges and he may even be charged with being unlawfully at large.

Finally, there are those critics who suggest that temporary absences, at least for rehabilitative purposes, constitute pampering the criminal. For those who work with inmates, this concept does not square with the facts. It has been said that, for many offenders, entering an institution represents much less of a trauma than having to leave it. In a large institution, men are able to hide their concerns within the total group to go unnoticed and to avoid responsibilities. However, on temporary absence he must cope with the realistic responsibilities of life: he must get to work by himself; he must find his own food; look after his own needs in every respect; and, above all, assume the responsibility that goes with the privilege, to make the decision to come back to the institution. In short, he must leave the concrete womb of the penitentiary.

As one inmate expressed it, "It all started too long ago and too many things had happened between then and now, and anyway, all that mattered was that in a few hours he'd be walking down that long, long corridor and through that door. They'd take his prison clothes off him and give him new ones, fresh and clean, and then they'd walk with him through the last door and down the road, then turn around and walk away, and he'd be all alone in the free world—all alone."

The community remains the crucible in which the offender is tested, any man on temporary absence will testify to that.

It may be helpful to review some of the reasons why so-called "back-to-back" temporary absences have become more common than day paroles.

To begin with, a temporary absence program was provided for in the Penitentiary Act in 1961, whereas reference to day parole only appeared in the Parole Act in 1968-69. Moreover, the Parole Board was certainly overworked and found that day parole was time consuming on both service staff and members of the board. This may account, in part, for the fact that many provincial correctional systems will use authority for temporary absence under the Prisons and Reformatories Act, in preference to day parole authorized by the Parole Act.

The decision for day parole relates to local needs—for example, farmers near Drumheller requiring assistance with harvest. It is easier for the director of the institution to make the decision than it is to submit lengthy formal applications to Ottawa for day parole. Some cases of day parole applications require the consideration of as many as five members of the Board. Other cases would require the consideration of all members of the Board, plus Cabinet approval. The same case preparation procedures are followed in applications for day parole and full parole. In addition, by its own rules, the Parole Board prefers not to consider a case for day parole until the individual is within 12 months of his parole eligibility date. Some of our best prospects, for a community-based program, are not within 12 months of parole eligibility.

Last year a total of 6,423 different inmates benefited from our temporary absence program for medical, humanitarian or rehabilitative reasons. The population at the end of the year in our penitentiaries was approximately 9,000.

This is not an indication of an inordinate use of temporary absence. The turnover of our population each year is approximately 50 per cent. This means that half of our population in any one year is discharged from institutions, and our temporary absence program has been used to plan for their release. Only about one-third of those who were granted temporary absence last year are still in the penitentiaries.

The use of temporary absences for rehabilitation purposes is obviously primarily to ease and enhance the inevitable and impending release of the offender into the community.

I cannot stress too strongly the need for quick decisions in relation to opportunities that present themselves in the community, such as Manpower training courses and job opportunities. Employers and educators will simply not wait months to have training or job positions filled. If the director of the institution cannot make the decision, then there is much merit to the proposal of the John Howard Society of Canada, that day parole decisions be made by a group composed of the director of the institution, the district representative of the Parole Service and a responsible citizen.

In any event, there must be a close working relationship with National Parole Service.

Recommendations for the integration of the Penitentiary and Parole Services have been made and are contained in the reports of several committees, including the Canadian Committee on Corrections, and departmental and interdepartmental committees. Our service supports these recommendations.

We are firmly of the view that both services must work very closely together and co-operate fully in view of the fact that we share the same clients as well as the same overall objective.

Pending a policy decision to bring our services under a single authority, we have continually explored ways of integrating our efforts in order to avoid working at cross-purposes. A degree of success has been achieved already in the field services, and the Canadian Penitentiary and National Parole Services are operating closely together in several areas. I cite a few examples:

(a) Joint conferences at regional and institutional levels.

(b) Staff exchanges.

(c) National Parole Service representatives sit on institutional training boards.

(d) National Parole Service representatives do a screening following sentence and designate appropriate initial institutional placements (Atlantic region and prairie region).

(e) Shared facilities (staff training colleges and the community correctional centre at Kingston for day parolees).

(f) Common induction courses for classification officers and Parole Service officers.

(g) Consultation on innovative programs–e.g., inmate forestry co-op in New Brunswick through the Manpower Local Employment Assistance Program (LEAP).

(h) Community assessments for temporary absence now done by National Parole Service.

(i) Joint participation in public education programs.

The joining of the two services into a single correctional agency would prove beneficial in facilitating manpower planning and career opportunities and in coordinating policies and integrating programs to provide for consistency in policy formulation, interpretation and implementation. Certain economies in operating costs can also be envisioned. These factors would facilitate our ability to achieve better decisions more quickly, which is so vital if we are to assist the inmates to take advantage of the appropriate opportunities offered to them in the community.

In any system dealing with the granting of permits to leave the institutions for work purposes, I cannot over-emphasize the need to have a system which will provide prompt decisions so that opportunities for employment are not lost, and so that the inmates can be given the best possible chance of rehabilitation, which, on a long-term basis, is the very best protection the public can have.

Mr. Chairman, this is the end of my statement. I have some information here with regard to parole eligibility for inmates in community correctional centres which I thought would be of interest to the committee. We have in our twelve community correctional centres people who are on continuing leave, and as of the beginning of March, 1973 there was a total of 163 residents, and of these 102 were past their parole eligibility date.

(See Appendix "B")

Senator Hastings: What date are you using for this?

Mr. Faguy: The 7th of March, to be exact. The beginning of March, 1973. Then 54 were within 12 months of their parole eligibility date, and only 7 were passed the 12 months eligibility date. Therefore the majority of these people were eligible for day parole and could have been considered.

I have also some statistics on the number of temporary absences in the first four months of 1973 for the community correctional centres. Here we have for the month of January, February, March and April 1973 a total of 8,878 absences. The number failing to return was 15, which is .1 per cent failure rate, and the number of crimes committed was 11.

(See Appendix "C")

I have also made an overview of one correctional centre, and we took as an example the St.-Hubert centre in Montreal to see what was happening with our population. We found that in April, 1973, we had a total population of 36 inmates and of these 36, only 3 were unemployed. One was a pensioner, unable to work, and two were employable, but had not found employment. Three were attending school, two at university and one at CEGEP. There were 21 employed outside the centre, four were working at the centre on maintenance, and one also as a clerk. One was hospitalized but was employed before being hospitalized. Four were on induction courses with two having jobs assured, so it shows that for 36 inmates in that centre, all but three were adequately occupied. The average weekly wage for these people was $124 and the total salary earned was $5,976. They paid room and board back to the government at the rate of $12.50 a week, so that we got back almost $500. I think this is interesting because it shows that these community centres are, in fact, quite successful.

Senator Hastings: They were.

(See Appendix "D")

Mr. Faguy: Then I also have a report on 15 "lifers" who had been granted back-to-back temporary absences, and I think this will be of interest to the committee. As of May 18, 1973, there were 416 "lifers" incarcerated in our federal penitentiaries.

(See Appendix "E")

Senator Hastings: How do you classify them? Capital and non-capital?

Mr. Faguy: Capital and non-capital, yes.

Senator Hastings: And death commuted?

Mr. Faguy: Yes.

Senator Hastings: You are not considering the habitual?

Mr. Faguy: No, these were "lifers", capital and non-capital. Out of this total, 15 were on a back-to-back absence program, six have not reached their parole eligibility date, nine have passed their parole eligibility date and may be awaiting also cabinet approval. I am informed that in the case of these 15 people on back-to-back temporary absence there was no failure. You may recall that last Christmas we granted leave of absence for the Christmas holiday to 76 "lifers"–people convicted of capital and non-capital murder–and there was no failure. They all returned on time, except one who was two hours late and I sweated until he got back. Of these 76 lifers, 12 were on back-to-back T.A.s prior to the Christmas leave, 39 were on regular temporary absence, and 25 were receiving from time to time temporary absence.

Now, once the capital punishment bill is settled, and this is a matter for Parliament, particular attention will be given to these cases to ensure that full consideration is given to the possibility of continuing this program with these people.

I also have here, although I would not want to give the names, the history of these 15 people, and I might take three or four of them to show you as examples just what we are doing and what it is that they are doing.

We have one in the Maritimes serving a life sentence for the murder of his mother. He received extensive psychiatric treatment; he was originally considered shy and withdrawn and now he is described as being confident and able to converse with others and communicate, possessing a positive attitude conducive to successful reintegration into society. He has completed grade 12 inside the pentitentiary, and has obtained a plumbing certificate. He is presently employed as a plumber with a firm in the city, has $5,000 in savings, and I am told he is contemplating marriage with a nurse. So everything seems to be working out very well.

Senator Hastings: And he is paying for his room and board?

Mr. Faguy: Yes. All these people, when they work outside, pay. I might say that in this particular case the cabinet itself recommended that he be continued on temporary absence. It was a case that was referred to cabinet.

Senator McIlraith: The cabinet does not recommend. It simply approves the recommendation. That is a very important difference.

Mr. Faguy: Yes, you are right.

Then we have another case here of a lady convicted of the non-capital murder of her husband, an act provoked by the infidelity of her spouse. Her reaction to her crime was abhorrence and deep remorse. She has now received extensive psychiatric counselling in the prison for women. Her prison record has been excellent and she has worked for quite a while as a nurse's aide in a hospital for mentally retarded people, and presently works as a cleaner in a federal building and in private homes. She is doing extremely well.

Mr. Lyding I don't need to introduce to you, because I think he appeared before you last year.

Then there is the case of another "lifer" also who undertook a series of courses from Queen's University in an attempt to finish off an undergraduate degree which he began some ten years ago in the United States. He hopes to graduate with an honours psychology degree. He is studying at Queens this summer. He has responded well to the use of the temporary absence program over an extended period. He wants to become a probation or parole officer. These are good examples of cases that have been successful as opposed to those few grandiose failures that we have had.

The Chairman: And those are all cases of back-to-back?

Mr. Faguy: Yes. They are all cases of continuing temporary absence.

Senator Hastings: I wonder if we could discuss the back-to-back with you?

Mr. Faguy: Yes. But this is all information I want to give as background. I am free to discuss some cases in particular but this would have to be in private session.

Senator Hastings: We will discuss the particular cases *in camera,* but I wish to open the discussion primarily on temporary absences, which is our responsibility, Mr. Faguy. I would start with the back-to-back absences. I would draw your attention, first of all, to your minister's statement in the house in which he said that the act will provide for three- and 15-day absences. He meant "three-day to 15-day absences," didn't he?

Mr. Faguy: Yes.

Senator McIlraith: No. He meant three and 15. Fifteen days is the authority of the Commission under section 26. The three-day absence is the authority of the warden.

Mr. Faguy: Honourable senators, I can grant five days, six days or seven days. It does not have to be three or 15.

Senator Hastings: The minister went on to say that for those inmates who are now on successful back-to-back temporary absences, which you have been discussing, and where the future extended absences are considered necessary and desirable by the penitentiary authorities, provision will be made for a greater use of parole under the Parole Act. But you in the Penitentiary Service or the penitentiary authorities are going to have no say.

Mr. Faguy: That is right.

Senator Hastings: You will make recommendations but the final authority will be vested in the Parole Board?

Mr. Faguy: As stated by the Solicitor General, the authority will be under the National Parole Act to grant day paroles and, therefore, all we will be able to do will be to recommend cases which will be reviewed by the parole service and Parole Board.

Let me say, however, that I hope because we are doing this in some places now, in some cases, that there will be joint consultations at the local level between the national parole service and the Penitentiary Service on these cases and then recommendations will be sent to Ottawa. I hope that in the majority of cases there will be agreement before the case goes up as to what the recommendation is and, therefore, hopefully, will save time.

As I said in my opening statement, this is terribly important. This program could fail now if we do not have very quick decisions. If somebody finds a job which is available Monday morning, he must have authority to get out and go to that place to be available for the job on Monday morning. This could be a short notice of three or four days or even less.

Senator Prowse: In other words, you need parole in principle standing there ready to be used when the opportunity arises.

Mr. Faguy: That could be the way to do it, to have parole approved in principle so that if a job comes up and is available you can automatically move. This is important.

Senator Hastings: You had a very satisfactory operating program on back-to-back leaves. It has been a great contribution to rehabilitation where they receive support and assistance and guidance in these community correction centres and where they

have been penalized for violations. It was an excellent program. You have taken it and turned it over to the Parole Service which means hiring 25 parole officers to process paper, to do the work that has been adequately done by your service, under which the men were adequately receiving treatment and training but which will now be contributing nothing to this program.

Mr. Faguy: First of all, let me say that I think we can be proud of our program. I am proud of it. I think it has been a real success. The relatively few failures have been well publicized, unfortunately, and I am more concerned than anyone here or in the public or in the press–I am very concerned when we have failures. It is a constant worry of mine when we have these people out.

Nevertheless, I think the program as a whole has been 99½ per cent successful. However, in this particular instance there was a question of legality which I believe the Solicitor General mentioned in the House of Commons. I myself brought this matter up at one point, that although we were carrying out these programs very well in helping these people, there was a question as to whether or not it was really within the legal bounds of the interpretation. Therefore, on that basis there was a review, a decision rendered and we had to go to parole.

Senator Hastings: Would it not have been much more simple to have cured it by legislation than to go to the hiring of 41 parole officers and support staff to process day paroles?

Mr. Faguy: It may have been felt in some quarters that there was already authority in some piece of legislation that could do this, so why should we be doing it.

The Chairman: I believe you wanted to ask a question, Senator McIlraith.

Senator McIlraith: Mr. Chairman, as my question might involve the names of inmates, I think I will reserve it until the *in-camera* portion of our meeting later on.

The Chairman: Senator Hastings?

Senator Hastings: You mentioned the need for quick decisions. I noticed the one in Calgary, where the population was dropped from 15 to 9 since your new procedure came in. I asked why, and they are awaiting decisions on day parole.

Mr. Faguy: Well, we have started to process cases, jointly with the parole and penitentiary services, and these are coming into Ottawa now for approval. Whether this is the very specific reason for the decrease from 15 to 9 in Calgary I am afraid I don't know.

Senator Prowse: With the granting of day parole they would be limited to the minimum restrictions as to when persons can go out. In other words, one-third of the four years and ten years for the commuted ones and seven for the capital cases. In other words, day parole could not be granted to a number of these 16 lifers that you have.

Mr. Faguy: Normally, no, sir.

Senator Prowse: But there is a hurry-up provision there. There is parole by exemption.

Mr. Faguy: There are always special circumstances, sir, where cases can be considered. These people have been on programs already, some for months, some for years. I would hope these would be considered special circumstances and that these cases would be looked at.

Senator Prowse: This is one of the things under the present new regulations that can save some of these fellows.

Mr. Faguy: That is right.

Mr. J. W. Braithwaite, Deputy Commissioner of Penitentiaries: As I understand it, to convert those men from a temporary absence program to a day parole program would require the approval of Cabinet in each and every case.

Senator Prowse: That is an exceptional case.

Mr. Braithwaite: Yes.

Senator McIlraith: Mr. Braithwaite, I am sure you do not want to leave us with the impression that the provision requiring approval of Cabinet was not also applicable to persons granted absence on back-to-back temporary programs. There is a nice question of law there. It is a little sticky.

Mr. Faguy: It is a little sitcky, yes.

Senator Prowse: Is it, with your lifers who are out before they reach the parole eligibility date, where they normally are not on parole? Without that are you able to give them temporary absences without Cabinet approval?

Mr. Faguy: We can give them temporary absences, as opposed to parole, on our own initiative.

The Chairman: To a lifer?

Mr. Faguy: To a lifer.

Senator McIlraith: A lifer convicted of murder?

Mr. Faguy: We have been granting them.

Senator McIlraith: I know that.

Mr. Faguy: There could be, again, a matter of legal definition or interpretation.

Senator Prowse: Have any of these people involved you in any of these unfortunate incidents?

Mr. Faguy: We had a couple of cases two years ago in 1971 and 1972. People had been convicted of murder and then failed on temporary absences. I know of two off-hand as you talk about this type of case.

[*Translation*]

Senator Lapointe: A while ago, you emphasized temporary absences as incentives for studies and courses, but you did not say too much about events at the Forum or visits to the *Salon de la Femme*. Do you consider that going to hockey games is a very effective means of rehabilitation, while you can see these games on television?

Mr. Faguy: Madam, our people, certainly, sometimes make decisions that should be reviewed. In such a case as this, where it involved going with the father who had bought the ticket, this certainly would have helped relations between father and son. But, as long as things go well, the principle is accepted by everybody until this individual escapes and, then, everybody says that it is ridiculous to have an inmate watching a hockey game at the Forum. But, indeed, in this case, this was useful in establishing relations between father and son.

Senator Lapointe: But, do you not think that the father, in some cases, can facilitate the escape of his son?

Mr. Faguy: Sure, it is possible. The father, the mother can do it. There is always a possibility, madam. My Minister asked me one day: "What do you do when you are in doubt? " I answered: "Sir, there is always a doubt, because each time I approve a case–because there are cases which must be dealt with at headquarters,–I cannot but think that there is a possibility of failing to toe the line, of weakness in those cases, because they are people who have been incarcerated because, precisely, they have failed. Therefore, there is always the possibility of failure, of their not returning, but sometimes the doubt is so great that I say: no." There is always this possibility, Madam.

Senator Lapointe: But in this case, there was no guard with the two of them, just the father and the son?

Mr. Faguy: In that case, there was a guard, but the inmate went to telephone, he had gone to telephone and the guard lost sight of him. That is against instructions which state clearly that he must keep him in sight continually.

Senator Lapointe: Because you do not believe that there is an element which seems extremist to me, a kind of scandalous element there, because so many honest people cannot go to the Forum and must be content to stay home and then, when they see an inmate who is at the Forum, it is really a bit of a scandal?

Mr. Faguy: Precisely, madam, that is why I said, in that case, when it involved judging a case such as this, of seeing the implications if there is a failure, if there is a weakness in that case, if there is a possibility of escape, then the public reaction, even if there was a relationship between father and son, and the father had bought the ticket, etc., etc., it must be realized that, if something goes wrong, public reaction will be quite strong, because as you say, most people cannot afford to go to the Forum. But, as far as I am concerned, I would say that, in a case such as that, I would not have sent him to the Forum. Now, we have delegated our responsibilities, and this was absolutely necessary, to all the institutions, to the warden, to the classification office in these institutions which is made up of three or four persons: the director of security, the chaplain, the assistant director of security, the assistant director of programmes; they review the cases and decide. I do not always agree with their decisions, but that is hindsight. It is always a matter of looking back afterwards.

Senator Lapointe: In the case of this kind of amusement, that you consider rehabilitating, does this involve, for example, movies or things of this nature, where it is very difficult to watch an inmate in the dark, and do you consider that an element of culture?

Mr. Fuguy: It all depends.

Senator Lapointe: There are movies on television, if they want to look at them.

Mr. Faguy: Listen, it is not only a matter of watching a film. It is a question of going out with another person. To me, there are three very important elements in rehabilitation: social habits, some do not have many of them and they must learn them; working habits, that we hope to give them; and also a relationship with some person, either family or friend, or a volunteer, a citizen who wants to help. These three factors are very important. Thus, how do we help this person to meet people, to visit outside the penitentiary? Now, would it be better if he stayed at home? Would it be better if he went out in the streets? Would it be better if someone said: Let us go see a film together? To go to the cinema to see a movie. is something that is normally done in families. But, it all depends on numbers. If you have an inmate with an escort, very well; one to one, all goes well. There is a problem when we have several inmates under one escort, as happens sometimes for sports events, because they themselves take part in these activities. In those cases, there is always a risk, madam. But, certainly, we must try to do things as normally as possible, as we have a normal society in the way of letting them out, of placing them in a normal situation to see their reaction and to accustom them to react, as we do, in a normal manner, although even we sometimes react in a quite peculiar manner, and then bring them back inside.

[*Text*]

Senator Hastings: No one seems to think of or give consideration to the rehabilitative value of these temporary absences you have outlined. They always seem to say that, "They are coddling criminals, they are letting them out high, wide and handsome."

Mr. Faguy: The important statement that needs to be repeated is that, first, rehabilitation is the best possible protection to the public. You can talk about incarceration, walls, security, anything you want, but if you manage to rehabilitate the inmate you have finally and formally protected your public completely. The inmate is rehabilitated and he is a normal member of the public. I think in order to get there you must do something. We need only look at the statistics of recidivism; they are the same for decades, the same thing on and on and on. We are hoping to do something better. How

you rehabilitate is by hopefully giving them a sense of responsibility, giving them chances to use their sense of responsibility, while we are still keeping them under control and discipline.

Believe me, I do not believe in permissiveness; this is not what we are talking about. We are not talking about molly-coddling; we are not talking about what what some do-gooders say we should be doing. We want control, we want discipline. We do not want permissiveness. We want to teach a sense of responsibility. That is quite different. How do you do it? They have to be given opportunities. The majority of our people who last year went out on temporary absences are out in the community, so we say to ourselves, "Let us test. Let us try it out, but let us do it under some control." This is what we are doing all the time, so that when they get to the point of release they have been out, contrary to the old days when they would be in for two, three, four or five years, and finally you said, "Goodbye, chum. Good luck. There's the door. Goodbye." The reaction was unbelievable. I have talked to some of these people. We are trying to do something better, to rehabilitate by helping them to come closer to society.

Senator Hastings: Let me deal with one of your failures. The other morning at four o'clock I got a phone call from Johnny, who had been on the loose for three months. He wanted to talk to me. First of all he said to me, "Is your 'phone tapped? " I said I did not think so, and asked him to tell me where he was. I went down to an all-night coffee shop and asked him where he had been for the three months. He explained, and finally I told him he had two options: he could keep on running, or go to the police station. I said, "I will wait five minutes for you to make a decision. I will wait in my car." He came out to me in my car and said, "Take me to the police station," where he surrendered himself. He was penalized 30 days. On the way to the police station he asked me what he would get, and I said he would get from 12 to 18 months, but I added, "Whatever you get will be far less because of coming forward and doing what you have done." In fact, he got 30 days.

That act was the first exercise of responsibility this man had displayed in three years, and to me it did him more good than the whole three years of custody. As the judge said to him, "Hopefully, you have made the correct decision. Now go on making correct decisions during the time you are in custody." Many people would want to throw that man back in the cage for 18 months for doing what he did.

Mr. Faguy: Hopefully he has finally made the decision that he will accept some responsibilities and the consequences of his acts, which is very important. We must keep this in mind at all times. This is why when people talk about our failures on temporary absence, we talk about 99.5 per cent success rate on the number of permits, when you think back to the number of times every inmate has to take a decision that he will or will not come back, every day he is out, every hour, he has to think of it; certainly every time his pass is over he has to think and decide to come back, and the great majority, by the thousands, come back. Surely this is a useful program. Surely this is worth while. If it were not for these success cases, as someone said in Ottawa the other day, "the frustrations would be greater than the satisfaction," because you would give up. We must not give up, because when you look at the other side, the success rate is tremendously high.

Where in business, or anywhere else, would you find a 99.5 per cent success rate? If they had it they would be very happy. I think we have to look at it in this way. Unfortunately in one grandiose case, such as the Forum case, where no violence was involved, the man escapes and the public say, "I can't afford to go to the hockey game. Why is he there? " Everybody reacts and wants to stop us from doing it. We cannot stop. If we stop doing this type of work we will not be able to move towards the rehabilitation we want.

Senator McIlraith: Surely, that last statement is not right at all? That is not what is confronting the committee. There is not a need especially to argue the desirability of rehabilitation or using out-of-custody treatment for these persons more than it has been used. That is not the point.

The point we are getting into, and where the committee has real trouble, is how that should be used in the correctional service. You are here speaking as the Commissioner of Penitentiaries, the one who, rightly or wrongly, the legislature gave the responsibility for handling those persons who are to be kept in custody. Your arguments for treating persons out of custody are excellent, but that does not help us any. The point is, how they are to be assessed and handled. In discussing this we have to get down to some specific things, that I do not think it is in the public interest to put on record, it is simply not fair to the persons involved, the inmates, and so on.

There are two things that are being mixed in your evidence, if I may say so. One is that in your correct zeal for having more of these persons treated outside the walls of the institution you have mixed that always with temporary absence, which may or may not be the method of getting them that kind of treatment. I may have picked up your last answer a little quickly, but I did so because I thought you were mixing a very good point with an assumption that does not necessarily follow. It is in this area that we want to examine you more thoroughly. I find it unfair, both to you and the inmates, to get into a discussion involving persons that we have to get into to get to the root of the matter, and I will reserve it to the *in camera* stage.

Mr. Faguy: I certainly agree with you. I may have at the moment been addressing myself not only to the committee but to some of our critics on the outside when I said that we cannot stop the program. There are other ways. Temporary absence is certainly one way, where you bring the person into the community, under escort or not under escort. We also have, as honourable senators know very well, community correctional programs within minimum security institutions, where we are trying to go one second last step sort of thing, where they are without security fences of any kind, where the programs are nice and loose, well organized, but no tight security; they are still in the institution under the control of guards. This is certainly just another step towards leading them to being out of the institution. I agree with you that there are many other ways; this is not the only way.

Senator McIlraith: There are all sorts of questions whether in your part of the correctional process this should be your direct responsibility or should be exercised by another authority; and also there is the question of the need for speed, whether that should be developed by other remedies than giving the arbitrary authority to

the commissioner or warden of a penitentiary. All these kinds of questions are involved.

Mr. Faguy: Let me say that I am not–and I hope I made myself clear–preaching or suggesting that it should be left entirely with the Penitentiary Service. All I am saying is that the program must continue under some authority. Whether it is parole, penitentiary or some new one I do not care, as long as it is continued and continued properly, with quick decisions and flexibility so that the needs of the inmates are met.

Senator McIlraith: Now you have come exactly to the point I inadequately raised. You were making that point but leaving the impression that it must be continued in a way that is based on doubtful authority. I will pursue that with you, if I may, a little later in the morning. The point, as you make it now, is excellent.

Mr. Faguy: I can assure you the point I wanted to make was that I am proud of what we have done, even though we have had failures. All I am saying to you gentlemen is: please let us make sure we continue. I am sure you agree. If we are going to do it, let us make sure it is done properly, with the proper control, but with quick decisions and flexibility to meet the needs day to day.

Senator Hastings: Mr. Faguy, I think you have every reason to be proud of your officers and your inmates on this program, which we started at Drumheller in 1967. I do not think we ever envisaged the success it would be throughout the years There is one item that is always brought to our attention in many of the briefs, and it pertains to the police not being advised of the presence of an inmate in the city or area. I notice on this temporary absence form there is a copy for the police.

Mr. Faguy: Oh yes.

Senator Hastings: They are always sent a copy of this?

Mr. Faguy: The instructions are quite clear. We say in our instructions, which is a directive issued to everyone who deals with temporary absences, that the police must be–not may be but must be–notified. We say that must be done by telex, and if there is not telex–by telephone. In other words, there cannot be any delay; we want them to be notified before the inmate gets there. They know the inmates and sometimes will say, "Tell him to report to us," and this is what happens. This must be done. I have heard of some cases about a year ago when the police said they were not notified until afterwards. We took action on those cases, but I can assure you the directive is quite clear. It is a must; by telex, or if there is no telex by telephone.

The Chairman: Does that apply whether the temporary absence is for one day, three days, four days or five days?

Mr. Faguy: Yes, whenever they go out.

Senator Hastings: There is a copy of the temporary absence that goes to the local police department.

Mr. Faguy: The directive reads:

> It is imperative to provide the police force and the National Parole Service representative with a copy of the permit by mail prior to the commencement of the temporary absence. If this is not possible, the following information shall be provided by Telex where possible–or otherwise by telephone: inmate's name, destination and address, FPS . . .

The fingerprint number . . .

> and duration of absence.

That is so they know where they are. I think this is required. I believe it is essential.

Senator Hastings: You have a community investigation prior to the granting of a temporary absence?

Mr. Faguy: Yes.

Senator Hastings: Do you not consult the police then about the advisability of release?

Mr. Faguy: Yes. The instructions also say that during the community investigation the police must be contacted and their opinion given. In fact, only two weeks ago in a case about which people had been writing to me personally, and hopefully would be able to help, the one basic reason why I said no was that, when I saw the police report and got the police reaction I said, "Sorry, no temporary absence." We do rely, and have to rely, on the police.

Senator Hastings: I know of instances where the police have said no, and they will not let the man go to that locality. However, we still have evidence coming before us that the police are not notified.

Mr. Faguy: If so I would like to know, because it is certainly negligence as far as I am concerned. It is clearly written in all our directives and the reports.

[*Translation*]

Senator Lapointe: Do you grant a temporary absence as from the first day of imprisonment or is there a short period of . . .

Mr. Faguy: Everyone must wait at least six months. However, we have special cases, certain restrictions or special conditions; for example, those who are serving life sentences must wait three years before being considered and even then the first two absences must be reviewed by the regional director.

The same applies to those who have been recognized by the court as being confirmed criminals as well as to those who have been identified by the police as having contacts with or being related to organized crime. Thus, these three classes of inmates must wait three years, that is six times longer than the ordinary cases for which the waiting period is six months.

We have one category of inmates who can never be considered for a leave of absence; they are those who have been declared

dangerous sexual offenders; those who have been recognized and identified as such by the court; they are not eligible for absence.

Senator Lapointe: That inmate from Vancouver, was he not one of them?

[*Text*]

Le sénateur Hastings: De quel cas s'agit-il?

M. Faguy: Il s'agit du cas Head.

[*Translation*]

It is precisely that case, Madam, which made us realize that we should deal with it *in Camera*. Although there have been 97 or almost 100 examinations and psychiatric interviews, that he has been out on temporary absence without any problem before, that there was a recommendation from my employees and the representatives of the Parole Board, well, in spite of all that, everybody agreed that he should be given a chance in the Community. In spite of all that, all of a sudden, there was a failure. So it is clear that one such case can ruin the whole program because the reaction was incredible: a murder had been committed, a person had been killed. This is when we decided that a sexual offender, recognized as such by the court, should not be allowed a leave of absence.

Now, I have received objections, I can assure you, from psychiatrists and professionals who say: You do not allow treatment, you keeps him inside, you do not give him a chance to go out and try. We cannot take a chance in a case like that. So he stays inside which precludes complete treatment but from a practical point of view, it is better.

[*Text*]

Senator Neiman: I should like to have some clarification about the back-to-back. As I understand it, you are allowed to grant temporary absence. I had thought it was originally three days and then another three days. Is it cumulative up to a point of a 15-day period that you were talking about?

Mr. Faguy: The director of the institution can grant up to 3 days on his own authority without reference to Ottawa. The Commissioner of Penitentiaries can grant more than three days. He can grant indefinite leave for medical reasons, for instance, and he can grant up to 15 days for other reasons. But what we have been doing, in effect–and this is where the legal interpretation came into view–that because of the need of these inmates to go out and work, say, on a farm or to study at a university, or to work generally, we have been granting back-to-back, that is repeated temporary absences. They come back to the institution, these people, either to the community centre–not all of them–but the great majority are coming back every night to the institution, and they were granted a temporary absence every day or every three days to go out.

Senator Neiman: Every day you send one of these people out again you have to fill a form?

Mr. Faguy: Unfortunately we had to fill a form each day. That was to make sure that we were within our legal limits. So we were repeating these absences continually so that the inmates would be out to go to university for months at a time or for weeks at a time or to go to a job or to work on a farm.

Senator Neiman: At no time could another back-to-back leave be granted unless the inmate returned?

Mr. Faguy: That is right. He had to be physically present. We found some cases where they were not coming back, except for the weekends. So we said, "Make sure that these people are coming back to cover." It all depends what leave was granted. If we had granted him 15 days, he did not have to come back for 15 days. Some would be granted five days, or a week, depending on whether they were at university or at work. Then they would come back for the weekend if they were in the institution. But if they were in a community correctional centre they would come back every night. It is their home. They go out every day and come back every night to the community correctional centre, which is officially an institution–a penitentiary–but we do not call it that.

Senator Neiman: Then under these restrictions, if you allow them to go, for example, to university, must they proceed directly with the condition that they must not visit anywhere else?

Mr. Faguy: Different conditions apply in different cases.

Senator Neiman: The police are advised as to how far they can move under the terms of their permit?

Mr. Faguy: They are usually advised of the conditions of their leave. But if they go, for example, to Queen's University, then these people will be out every day and back so there is not of necessity notification of the police every day. These people are going there as regulars and coming back again. They come back to the institution at night.

Senator Neiman: There are conditions as to how far they can get away.

Mr. Faguy: Well, there are different conditions. In some cases the inmate will drive no car or truck, he will not use illegal drugs–naturally–and will not take alcohol. There are different conditions.

The Chairman: The conditions are set out on the back of the form.

Mr. Faguy: We can add any specific conditions in a particular case, and in every one of these cases we must deal with this on an individual basis. We cannot make rules that apply rigidly and automatically to all.

Senator McIlraith: The real difficulty arose out of the fact that the authority to grant a three-day leave by a warden, or a 15-day leave by the Commissioner, is limited to granting it, "from time to time", and the argument arose as to whether granting it continuously was not in fact a violation of the "from time to time" limitation and was in fact granting something which was beyond the authority of the act.

Mr. Faguy: That is quite right. I brought the matter up myself because I was concerned. I like the programme and I want to continue it, but I must make sure that as a public servant that I am within the legal bounds of the act.

[*Translation*]

Senator Lapointe: You seem to be enthralled by this programme, which is quite interesting–I am not against it–, but does it enthrall you as much as the parole one? No, but it is true, do not look at me like that! But does it enthrall you more than the parole one? You look more impassioned about that one?

Mr. Faguy: This is obvious, this is my programme, this is my responsibility, these are my results, in spite of all criticisms; but, I believe that we have succeeded, in spite of my problem cases. Therefore, I am proud, yes, I am more impassioned about the penitentiary programme, because paroles do not belong to me.

The Chairman: After all, the Commissioner is human.

[*Text*]

Senator Hastings: I have just one question before we move into your contribution to parole. I am using your figures for 1972 where 58 crimes were committed. Can you tell me how many of that number represented injuries to persons or violence to individuals?

Mr. Faguy: I am afraid I don't have that information right now. I mentioned this morning that we do not have the types of crimes committed in the report that I have with me. However, I can get it for you. But as a rule, looking at the average, normally the majority does not involve violence to a person. However, I would have to check this for you.

Senator Buckwold: I want to get into the mechanics of the temporary leave and day parole, and get some suggestions from you, if possible, as to how these can in fact operate. I think the new regulations that have been laid down as of June 1 will have a very adverse effect on a program which I think it is desirable to support. At the present time the director of the institution gives up to three days. From what we have been led to believe, since this new directive came out, there has been a really severe curtailment of these three-day temporary leaves. Is that a correct statement?

Mr. Faguy: I would say no, offhand, senator.

Senator Buckwold: I say "led to believe" because of the publication I was reading to you yesterday.

Mr. Faguy: Senator, the new regulations do not affect the normal, short, temporary absence program. It does not affect it at all. But I would say that from time to time we have told our people, "Please, be cautious." We all realize that one case can spoil the program.

Senator Buckwold: Then the person asking for a three-day pass today will have as good an opportunity of getting it now as he had previously?

Mr. Faguy: Certainly. That is the normal T.A. as provided from time time in the act.

Senator Buckwold: And of the 6,423 you mentioned, would this apply to a significant number?

Mr. Faguy: No, I think the higher percentage–and here I am guessing–would apply to people who are out regularly from the community correctional centres because they are the people going out every day.

Mr. Braithwaite: Excuse me, you quoted figures on the numbers coming out from community correctional centres in the order of 163.

Mr. Faguy: For the first four months of 1973 for the correctional centres we had 8,878 permits. For all other institutions, but not including the community correctional centres, we had a total for four months of 15,000, so I guess I am wrong. The majority would apply, then, to these short-term temporary absences. That is 15,315 for the first four months of 1973.

(See Appendix "F")

Senator Hastings: Out of 60,000?

Mr. Faguy: That would indicate that we are still on the same number, pretty well, and as I said in my remarks at the beginning you have to keep in mind that the turnover of our inmates is 50 per cent, so most of these people are going to be out in the community anyway, and in that last year we had better start trying them out.

Senator Buckwold: I am not arguing about the philosophy; I am just trying to get into the mechanics of how we can improve it. It seems to me that the new regulations have been a bit of a backlash and could in fact put severe restrictions on the overall program.

Mr. Faguy: Not as we are doing it now. We are following closely the implementation of this new program, and we have met for two days with my regional directors here in Ottawa, including the parole service people, and we have agreed that together we must follow up the implementation and the transfer of these people from our authority over to the parole service authority. We have asked, and it has been agreed, that the Parole Board review these cases, and having reviewed them we will get from them an answer as to how many were approved and how many were not approved. Then again there will be communications with our field staff, both Parole Service and Penitentiary Service. So it is to be hoped that the thing will be tied up together. Furthermore, for those people who are due to be out within the next six months, there is no need to apply this new policy, because they would in any event be out in the six months, so these people will continue under the program we have now. We will continue the program because they will be out in that six months. This is what the minister has announced as the implementing period.

Senator Hastings: You said you are going to move the man from your authority to that of the Parole Board, but in essence what you

are doing is you are taking him from your authority to the Parole Board authority and back to your authority again.

Mr. Faguy: No, not quite, because then he will be under the Parole Act at all times.

Senator Hastings: But he is under your officers in your community correctional centres.

Mr. Faguy: Yes, because these people must come back to an institution, and I am the only person under the Penitentiaries Act who has the authority to run an institution, so therefore it must be run by one of my people.

Senator Hastings: Then your director in fact becomes the parole supervisor.

Mr. Faguy: No, the Parole Service will provide the parole services, the surveillance and the supervision, but once they are in there, then he operates that community centre as an institution making sure that they are provided with all the services, that they are behaving and that they have room and board within that institution for the hours that they stay there. At that point in time he is a director of an institution, officially and legally. He is not a parole person.

Senator Hastings: I have seen the parole certificates issued by the board designating your directors as parole supervisors.

Mr. Faguy: Maybe in that sense, but he is still, under the Penitentiary Act, a director of an institution. We are doing this, for instance, at Kingston. Some people call it a day-parole centre, but in fact it is our centre–a community correctional centre–but we have accepted day parolees. And this is exactly what it was, a testing period. We wanted to see how it could work. We had the parole people there, and when I went to visit I met both the parole representative, who was working in the community correctional centre, and my representative, and we discussed the problem and how the whole program was working.

Senator Hastings: Which is the point I originally made–you had a very efficient operation, but now you take a man and you put him over to the Parole Service and then you take him back to the Canadian Penitentiary Service under day parole and under the supervision of your officers, and hire 41 parole officers to push the papers around.

Mr. Faguy: Well, sir, I hope they are not just pushing papers around. I hope they will provide proper and adequate supervision.

Senator Buckwold: I do not think anybody should be critical of the fact that we have more parole officers. In the end they cannot help but improve the situation.

Mr. Faguy: I think this is important because people have said that our temporary absentees were without supervision. That is completely false. It is much better than any parole system at this point. And I am not being critical of the parole system. But the fact is that we have a ratio of one to two within a community correctional centre. These people go out and come back every night. They are supervised and checked and talked to every day. Now a parolee may be two or three weeks or maybe a month without that direct supervision which we are providing, so I think it is better than any other system right now.

Senator Buckwold: I just want to clear up one point. I am not quite sure of the role of this community correctional centre.

Mr. Faguy: It is a home away from home.

Senator Buckwold: But I would be led to believe by what you have just said that the only people to get temporary absences would be those who would be in a community correctional centre.

Mr. Faguy: Oh, no.

Senator Buckwold: I know it is not true, but from the way the last question was answered, this is the impression that was given, and that this was the be-all and end-all with the fellow going back to the community correctional centre. So could you explain it just a little bit better for those of us who don't know.

Mr. Faguy: The community correctional centre used to be called a pre-release centre where inmates would be sent. It is located in a city, directly inside a city, and it is usually a small home or a building which we have rented or purchased. Normally they are small, having about 20 inmates or so. They live there–not in the institution–although officially it is an institution, and for the last three months of a man's sentence he would be sent there and from there he would go out and look for employment or do studies or whatever was appropriate. Mostly he would seek employment. Then after three months he would be sent out and he would be free. Now we are still doing that, but we have moved away from the three-months' element, and take them there for six months or sometimes even a year. If we think a person is suitable to be working in a community and that this would help his rehabilitation, we put him in a community correctional centre, and he stays there and goes out to work or to study or to do whatever it is he is doing under his program, and comes back there at night, just as he would to his own home.

Senator Buckwold: Does he need temporary absence for this?

Mr. Faguy: Yes, unfortunately we have to meet the requirements of the law.

Senator Buckwold: How many of these centres do you have?

Mr. Faguy: Twelve.

Senator Buckwold: In every province?

Mr. Braithwaite: Not in every province.

Mr. Faguy: We have one in Halifax, Nova Scotia, and one in Saint John, New Brunswick. We hope to open one in Moncton, but

we have not been able to get the building. We have one in Quebec, the Centre St-Hubert in Montreal. I am hoping to have one in my hometown, Quebec City. I think we need it there, too. We have one in Toronto and we hope to open one in Hamilton. We have one in Regina, Saskatchewan, and one in Winnipeg, Manitoba. We have one in Edmonton, Alberta, and one in Calgary, Alberta. We have two in Vancouver, one of which, like the one in Saint John, New Brunswick, is using the YMCA by contract to put these people in and work the program. We have one in Kingston.

Senator Buckwold: You have a total capacity for 259 people. Senator Hastings was kind enough to give me that information. On the basis that you release 50 per cent of your prisoners every year and that you have about 9,000 in penitentiaries, which would mean that about 4,500 are being released each year, it would be a pretty insignificant number who would be able to be accommodated at these centres. How do you make that decision?

Mr. Faguy: We must decide, first of all, that the inmate is ready and capable of accepting the responsibility of living in a community correctional centre during the day without any control, because he goes to work on his own just as we do. Therefore, we must be assured that that person is suitable, that he will not create trouble, that he will not fail. Once in a while we have a failure. This is why the number is relatively small.

We have discussed on many occasions the possibility of enlarging or increasing the number of community correctional centres, but we have reached a point where we must hesitate and say that that is all we care to put in those centres.

We have increased tremendously the number of centres though, because when I came in on this we had only two centres and we are now up to 12. We hope to go to 15.

Moreover, we have something which is not quite the same but which is comparable with regard to security. I am referring to the minimum security farm annexes and minimum security camps where people are living, working and studying sometimes without any perimeter security of any kind. They are free to walk away, as we say. That is why I want to distinguish between escapes and walk-aways. All they have to decide is to walk away and they can go. There are no fences of any kind. There are some staff, but only a minimum number. We are relying on their sense of responsibility to stay within the institution. Either they are not suitable for work outside or they may need more education or they are not quite ready to go out.

In Beaver Creek, for instance, near Toronto, which is a minimum security camp, we have an extremely good relation with the community. We have a citizens' committee working with us inside the institution. I have met with them and I am very impressed with the local citizens who are well-known for participating in the program and helping us to have these people work in the community. That is a minimum security camp or institution. So it is not quite a community correctional institute in town. They live away from town, although not too far away, and they are under the control of the institution. But by agreement with the community we work them in and out. They go to sports activities and they go to work, not necessarily on a regular basis but maybe doing odd jobs from time to time.

Senator Buckwold: Mr. Faguy, I wonder if you would review your recommendation for the kinds of liaison or improvements in liaison between the Parole Service and the Penitentiary Service which would improve the kinds of program that you are talking about.

Mr. Faguy: First of all, there must be at the local level, to start with, a very close liaison to the national Parole Service and Penitentiary Service. I would go a step further. I hope to see a parole officer right inside the institution who will know and will then have a chance to get to know the inmates and get to work with them and know how they react to situations.

You know, the institution is quite different from the outside, the free world. These parole officers, to me, should be sitting, living, working with our people right inside the institution. That is the beginning.

Senator Buckwold: Are they doing that now?

Mr. Faguy: No, not in the institution. But in some places like the Maritimes, for instance, we have a very good relationship with the Parole Service field representatives and our own people who work very closely with them. Now, that is one thing.

When we look at a case before taking a decision—and there should always be joint consultation, hopefully, in these cases where we are reviewing back-to-back absences—we say, "Well, together we review the case, together we make recommendations," and, hopefully, there will be unanimous recommendations. If not, why not? Who disagrees? Why?

Regionalization has been mentioned by the Solicitor General in the House of Commons. We are regionalized. We are trying to improve our regionalization and the effectiveness of regional headquarters so that we can do it even more. I would hope that this would be done also so that you would have the people living in the community, known in the community, working with our people all the time. They would get to know one another. They would get to know the local conditions of employment and they would also know the local culture.

People say Quebec is different, but the Maritimes are different and the Prairies are different. We are so different in this country of ours that we should have, therefore, regional people, not to say local people, dealing with inmates at all times so that they know the local conditions of employment, of culture and of the way people live and react to situations and judge cases locally.

Therefore, I say bring in outsiders. I have no objection whatsoever to bringing in outsiders. I don't want to be necessarily on our own in deciding these cases. I think we should certainly bring the parole people in. Why not also the police or a judge or a local citizen who is well-known? The John Howard Society suggested that we should bring in local citizens, a minimum of at least three people: parole, penitentiary and a well-known, capable local person. Then they would deal with the case properly.

Senator Buckwold: You mean at the institutional level.

Senator Hastings: I would now move on to your contribution to parole. Adequate parole or success depends on case preparation, which is under your authority. We have to have co-operation in the institutions between the various segments of your staff and I have noticed a very distinct difference of opinion as to what the objective is between custodial and classification. I am wondering what programs you have to bring these two together to meet the objective.

Mr. Faguy: Well, last year, or a year and a half ago, we reviewed very carefully the training programs for our staff. In the new induction training program, which is an eight-week course, and also in the refresher course, which is a one-week course, we are bringing in the professional element, the human behaviour element, the need to combine these–although keeping in mind security which is very important at all times–in order to get to the point where you can deal with people as individuals. While trying to relate and help the inmate you still must keep in mind security, but at least you try to relate.

One major thing we have done is to institute the living unit concept, which I believe I mentioned the last time I appeared before this committee. We are proceeding now with having the living unit concept in all medium security institutions. I hope to have this completed by the end of the year.

We have started now the recruiting program. We have selected people in three or four institutions. We have given them the training and now they are implementing the program in five institutions and we hope to complete the other medium security institutions this year.

I have said to my people, "Please don't start until you are ready," because there is nothing worse than starting something when you are not quite ready for it. So we want the selection and training of these people with the human behaviour element included, and we want to discuss what you do with an inmate, apart from guarding a tower.

Therefore, I think we have done what we can to make our correctional staff aware of what the needs are. We have not been able to train them all, because our colleges are full. We have trained 820 people in the past year and my colleges are full. I cannot cope. It will take me most likely up to two years to catch up with my training program.

Because of the living unit concept we find that we have two distinct groups. Some people will remain guards, and I use the word now purposely. They will be taking care of security posts and nothing else. They will be on the towers, gates and control centres and whatnot, but they will not be dealing with inmates inside the institutions in group discussions or in programs and so on. They will always be away from the inmates on security posts.

Senator Buckwold: On perimeter.

Mr. Faguy: On perimeter and control.

Senator J. Harper Prowse (*Acting Chairman*) in the Chair.

The Acting Chairman: They will be impersonalized.

Mr. Faguy: In a way. You know, some of these people wish to be nothing more than security guards in that sense. We say, "Fine, let's train those people very well to be security guards. Let's give them weapon training, firing range practice and leave them in the towers so that when something happens they know they have one thing and one thing only to do, namely, to prevent escape from that perimeter security."

Otherwise, you find them becoming mixed up. If one day you have them inside asking them to relate to the inmate and the next day you have them on the tower, expecting them to fire on an inmate if he is trying to escape and will not stop, there is a contradiction there. So we find that it is better to go the way we are doing it now, with a living unit officer inside and the security guard outside, doing that only but doing it well.

Senator Hastings: That would be confusing to the inmate, too.

Mr. Faguy: And it is confusing to the poor guard as well.

Senator Hastings: We seem to have a complete lack of ability to identify and segregate in our institutions, and now with your over-crowding you have no real segregation or identification. You have maximum security.

Mr. Faguy: I would not say no, but the major problem I have right now, undoubtedly, is the over-crowding of the institutions. Because they are over-crowded we have lost the flexibility that we had before, where first of all you select only those you are pretty sure are medium security. The others you keep in maximum and that is it. Because of the over-flow and over-crowding of maximum security, they have had to move people out to other institutions where we have had room.

Therefore, the classification criterion has been changed. They have to move people and then they take a greater risk that they would have done otherwise.

That is the first problem that is created, but the other problem is just as serious. Before, when we sent an inmate from a maximum security institution to a two-thirds full medium institution we had flexibility within the institution to move the man out and put him in different groups with different inmates. But also, if he did not behave or suddenly you had a doubt like, "Gee, he is not right, you know. He should not be here," then we yanked him back to the maximum security institution very quickly. Now they say, "You have to wait three weeks. We are full up." And in the meantime anything can happen. As you know, things have happened and I am more concerned about them than anybody else. But this is basically the main problem we have now.

So it is not so much the classification system that is at fault, because we are dealing with personnel selection. I have been in personnel selection for years in my career. You do the best you can. You select a person, you think he is qualified to do a job, you think he should be there or there and you hope that you are right. Maybe 95 per cent of the time you are right in your personnel selection. Now, that is with the so-called normal person, but when you are

dealing with inmates, people who are already problem cases, which is why they are incarcerated, the chance of being not right in your selection and classification is even greater. But it is not really the system that is at fault. It is the fact that we have had to put a little bit of elastic on the classification system owing to the fact that there was no room in the institutions.

We are looking now for new institutions. We hope to buy a couple to relieve the situation as quickly as possible and then to go back, hopefully, to a more normal situation.

Then I think people will go back to agreeing again that the classification system is not so bad after all.

Senator Hastings: But there are detrimental effects to the inmate. I am looking at the one who is motivated and has the initiative to start moving towards his parole. He is affected by being in a maximum security institution where he is overpowered by your maximum security risks.

Mr. Faguy: I agree.

Senator Hastings: And you cannot move him.

Mr. Faguy: Senator, I regret it, but I have to agree with you that in some maximum security institutions we now have some inmates who could be in medium security institutions. The only reason I do not have any facilities to move them to medium security, but we are taking steps.

Senator Buckwold: Is the overcrowding you refer to a result of the tightening up of parole granting?

Mr. Faguy: One of the main reasons: not as many paroles granted; more paroles revoked; stiffer sentences; there are life sentences for drug trafficking on the west coast; the mandatory supervision that we now have and did not have before, and some of these people are coming back when they did not come back before. In one area, I am told, 50 per cent of the people under mandatory supervision were pulled back in for cause. All of this has raised that problem very quickly. In 1970 and 1971 we had increases of .3, .5 per cent, sometimes 1 per cent in our institutions. The population was stabilizing. I was even told it would go down, and it looked like it. We suddenly found ourselves up to 3 or 4 per cent; over 100 years or so the average mean increase has been about 4 per cent, but it varies from year to year up and down. We were going down because of parole and more probation. Then they said the population would decrease. Then we suddenly found, because of public reaction, stiffer sentences and parole revocation, not as many granted, that we were going right up; we suddenly jumped from 4 to 7 to 10, and two months ago were up to a 14.4 per cent increase.

Senator Buckwold: Over the year before?

Mr. Faguy: Over the year before. We had 1,300 more inmates in the nine months, and that means a lot of institutions that I have not got.

The Acting Chairman: That was not 1,300 more people convicted of crime?

Mr. Faguy: No, 1,300 more inmates admitted in my institutions in nine months. If you take an institution now it is about 300 to 350 an institution. We would like to have smaller institutions located in each province close to their community; it is 150; that is a lot of institutions.

Senator Hastings: With all this overcrowding and the disruption of your programs, you are making little contribution to the case preparation for parole.

Mr. Faguy: No, no, I would not agree with that. We still have to do the work. There are forms that people must use to show the complete background of an inmate before he is considered for parole or a temporary absence. This includes the length of sentence, criminal history, his eligibility date for parole and for temporary absence, his reason for request, the people who have been contacted, the result of the community assessment, parole reports, medical or psychiatric clearance is required, comments from security people, who are also involved.

Senator Hastings: I do not mean the case preparation at the time the parole is considered. I am talking about the year before he is eligible.

Mr. Faguy: It is not quite as good, I agree.

Senator Hastings: You say it is not quite as good. It is no good at all?

Mr. Braithwaite: Perhaps I am somewhat biased, but some of the questions lead me to the conclusion that we must have a program that enables us to make full use of the community correctional centres and minimum security institutions we now have. The overcrowding makes it essential to have a program that will permit us to make full use of the minimum security institutions we have.

Senator Prowse: You do not care whether you call it day parole or temporary absence and so on.

Mr. Braithwaite: So long as it is legal, so long as it is flexible, and so long as it is prompt, and alert to the needs.

Senator Prowse: And controlled to your satisfaction.

Mr. Braithwaite: Certainly.

Senator Hastings: I was not leading to that. I was leading to the fact that there is a complete breakdown in your rehabilitative program within your institutions, and during the time of custody now there is precious little being done to build a man up to his eligibility date. That is what I mean by case preparation.

Mr. Faguy: I would take objection to your use of the expression "precious little." There are still good programs going on for inmates, but they are not as good as we would like because of the overcrowding. In a shop, for instance, where you would hope to have a normal radio of one instructor to eight or nine inmates, you may find 15 inmates, and therefore attention is not given to these people as it should be. I agree.

Senator Hastings: Which is the point I am making.

Mr. Faguy: But I would not use the expression "precious little."

Senator Hastings: When you are bringing your best risks into this all-corruptive atmosphere of your institution, it is only natural that these men follow the majority and adopt this negative paranoid attitude.

Mr. Faguay: Senator, I agree it is affecting our program. I have said so publicly. You are quite right in that sense, without going to extremes; it is affecting our program, undoubtedly; we are not as effective as we were, or would like to be.

Senator Prowse: Unfortunately you have less than a satisfactory norm.

Mr. Faguy: Right, I will buy that.

[*Texte*]

Sénateur Lapointe: Pour revenir aux absences temporaires et pour continuer dans les questions un peu piquantes, est-ce que vous avez constaté chez le détenu un amour extraordinaire pour sa mère, alors que, peut-être, dans la vie courante, il allait la voir une fois par cinq ans? Donc, quand ils demandent un congé pour aller voir leur mère, est-ce que vous croyez cela?

M. Faguy: Écoutez, parfois c'est véridique. Nous poursuivons, justement, une enquête communautaire afin de vérifier ce point-là. Vous avez aussi l'inverse, la mère qui dit: je ne veux pas le voir parce que j'en ai peur. Il faut alors étudier le cas. Il y a certainement—il nous a même été dit—je l'ai constaté dans plusieurs cas,—le détenu type nous dit qu'il veut aller visiter sa mère; lorsqu'on vérifie, on constate qu'il ne l'a jamais visitée, qu'il n'est pas allé là depuis de nombreuses années, ou, même parfois, que la mère n'existe pas. Alors, l'amour maternel, ou paternel, ou filial, on le vérifie.

Le sénateur Lapointe: Qu'est-ce que vous faites dans ce temps-là si l'on formule une demande de ce genre?

M. Faguy: S'il le demande, et que c'est bourré de mensonges, alors, on n'accepte pas sa demande. On a des cas de ce genre.

[*Text*]

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Are there any other questions now?

Senator Hastings: If not, on behalf of the committee I would like to thank Mr. Faguy and Mr. Braithwaite for their evidence. I think, Mr. Braithwaite, your difficulty is the same as with parole; it is a job of educating the public as to what you are doing, what a parole is and what a temporary absence is. The policeman sees on the street an inmate he put away three years ago and he screams about it. No one seems to understand why that inmate is there and the rehabilitative contribution that is making. You are branded as coddling criminals et cetera. We had the Bar Association, for example, come before us and say that many offences are being committed by men on temporary absence. I would have thought the Bar would have been better informed, but this is what you are up against.

Mr. Faguy: As you know, we sometimes try to publicize the positive side of our programs. It may be written but it may not be read by the public. The public will read the sensational headlines; they may not read about the good program at Drumheller, for instance, or Beaver Creek, or the educational program where we have teachers and school boards involved in our program inside the penitentiaries.

Senator McIlraith: Those are the two they do read about, but they do not read about the other more difficult areas.

Senator Hastings: You let out 485 men at Christmas and lost six, I think, but nobody bothered about that, there were no headlines. But you lose one and we will soon hear about it.

Mr. Faguy: One case and we will hear about it.

The Chairman: Good behaviour is never news; it is only violation that is news. We are now going to have an *in camera* session. We have three quarters of an hour left, if the members of the committee are prepared to sit until one o'clock. From what I understand, we will not complete the *in camera* session by one o'clock. The alternative that I am prepared to suggest is that we ask Mr. Faguy and Mr. Braithwaite if they can return next Thursday morning.

Mr. Faguy: Mr. Chairman, I can be here until approximately three o'clock today. I have called the minister and he said he can manage until four o'clock, so I could be here until three o'clock.

The Chairman: The Senate is sitting at 2 o'clock and we are not allowed to sit as a committee while the Senate is in session.

Senator Hastings: Do you think we will be longer than three quarters of an hour?

The Chairman: Let us start now.

Senator McIlraith: I would like to have it on another day, because I want to take some time to go through some parts of this in a rather lengthy way.

The Chairman: The committee was planning to meet next Wednesday afternoon if the Senate does not meet, or after the Senate adjourns, and resume on Thursday morning.

Mr. Faguy: I will be available, sir.

The Chairman: On both of those days?

Mr. Faguy: Yes, sir.

The Chairman: Does the committee prefer that we resume *in camera* next week? Can we decide whether to go ahead now and have three quarters of an hour *in camera*? Is that agreeable?

Senator McIlraith: I would prefer not to proceed now.

The Chairman: Because of the uncertainty of the hour we can sit on Wednesday afternoon, shall we ask Mr. Faguy and Mr. Braithwaite to appear at 10 o'clock next Thursday morning *in camera*?

Senator McIlraith: Are you going to preclude Wednesday afternoon?

The Chairman: We have other matters to discuss on Wednesday afternoon anyway. We need both Wednesday afternoon and Thursday morning.

The committee will adjourn until next Wednesday afternoon at 2.15 or, if the Senate is in session, as soon as the Senate adjourns. We will also sit on Thursday morning at 10 o'clock. Both of those sessions will be *in camera*. Our meeting on Wednesday is an executive meeting.

The committee adjourned.

APPENDIX "A"

Temporary Absences Approved in 1972-1973
Excluding Community Correctional Centres

Type of Institution	No. of Participating Inmates	No. of TA issued	Population as of 8 May 1973
Minimum	2047	21,864 (44.9)	1464 (16.9)
Medium	3650	23,194 (47.7)	4021 (46.4)
Maximum	726	3,599 (7.4)	3191 (36.7)
TOTAL	6423	48,657 (100)	8676 (100)

Note: A greater number of permits are granted in medium institution because of the larger population (46.4% of population in medium where only 16.9% were in minimum).

Failures

	Failures	% of participating inmates who failed	% of permissions who failed
Minimum	138 (47.5)	6.7	.6
Medium	114 (39.4)	3.1	.5
Maximum	38 (13.1)	5.2	1.1
TOTAL	290 (100)	4.5	.6

Note: Of the total 290 failures, only 35 were charged by police or 12% of the total failures. The other 255 were unlawfully at large, of which only 37 were still unlawfully at large as of March 31, 1973.

APPENDIX "B"

Information on Parole Eligibility Date of Inmates in Community Correctional Centres

As of March 7, 1973

	Number of Residents	Past Parole Eligibility date	Within 12 months of Parole Eligibility date	Past 12 months Eligibility date
Carleton Centre	14	1	13	
Parr Town Centre	10	5	3	2
St. Hubert Centre	25	24	1	
Osborne Centre	11	11	0	
Oskana Centre	9	4	5	
Scarboro Centre	15	2	9	4
Grierson Centre	39	22	17	
West Georgia Centre	13	12	1	
Burrard Centre	11	8	2	1
Montgomery Centre	16	13	3	
	163	102	54	7

Note: This clearly indicates that all but 7 out of 163 residents could be considered for day parole—so in fact the Canadian Penitentiary Service filled a void because the need was there.

APPENDIX "C"

Temporary absences approved in 1973 for community correctional centres

	Jan.	Feb.	Mar.	Apr.
ATLANTIC REGION				
Carlton Centre	1	5	5	13
Parr Town Centre	94	73	32	79
Regional Total	95	78	37	92
QUEBEC REGION				
St. Hubert Centre	265	266	280	294
Regional Total	265	266	280	294
ONTARIO REGION				
Montgomery Centre	45	139	57	45
Regional Total	45	139	57	45
WESTERN REGION				
Osborne Centre	50	35	32	48
Oskana Centre	132	225	387	242
Scarboro Centre	118	114	112	87
Grierson Centre	466	309	417	425
West Georgia Centre	270	278	239	261
Burrard Centre	340	393	907	1,224
Regional Total	1,376	1,354	2,094	2,287
Total by Month	1,781	1,837	2,542	2,718
Cumulative Total	1,781	3,618	6,160	8,878
Failed to Return	4	3	6	2
Cumulative Total	4	7	13	15
Crimes Committed	4	4	2	1
Cumulative Total	4	8	10	11

FAILURE RATE: 0.2% or 1/5 of 1%

APPENDIX "D"

ST. HUBERT CENTRE

Population at Centre	36
Unemployed	
(1 pensioner, 2 employable)	3
Attending School	
(2 University, 1 C.E.G.E.P.)	3
Employed Outside Centre	21
Working at Centre	
(exceptional cases – lifers, protection cases; given T.A.'s only for meals)	4
Hospitalized	
(previously employed)	1
Induction Course	
(2 have jobs assured)	4
TOTAL	36

Average Weekly Wage (4 June 1973)	$124.00

April 1973

Number of inmates employed	21
Total Salary earned	$5976.00
Board and Room paid @ $12.50/wk.	488.25

The men are employed in a variety of jobs which include those as drivers, cooks, mechanics, welders, salesmen, cleaners, foremen and labourers.

There is no difficulty obtaining jobs. The Centre has a good working relationship with Canada Manpower and many employers call the Centre directly to hire men. All employers are aware that the men have criminal records.

APPENDIX "E"

LIFERS

As of May 18, 1973, there were 416 lifers convicted for Capital Murder or Non-Capital Murder incarcerated in federal institutions.

Out of this total, 15 were on a back-to-back temporary absence program.

- 6 have not reached their parole eligibility date
- 9 are passed their parole eligibility date.

FAILURE RATE: NIL

At Christmas 1972, 76 lifers, convicted of Capital and Non-Capital Murder were granted temporary absence.

Of these –

12 were on a back-to-back T.A.
39 were on a regular T.A.
25 were receiving irregular T.A.

FAILURE RATE: NIL

APPENDIX "F"

TEMPORARY ABSENCES APPROVED IN 1973 EXCLUDING COMMUNITY CORRECTIONAL CENTRES

	Jan.	Feb.	Mar.	Apr.
Atlantic Region				
Springhill	31	101	111	162
Dorchester	5	9	9	26
Dorchester Farm Annex	15	15	42	36
Regional Total	51	125	162	224
Quebec Region				
Quebec Reception Centre	–	15	11	–
Quebec Medical Centre	3	85	37	42
Laval	111	101	160	116
Federal TRG.* Centre	95	57	59	98
Archambault	1	–	–	1
Ste. Anne des Plaines	41	28	18	31
Cowansville	57	112	289	130
Correctional Development Centre	4	9	20	21
Leclerc	80	100	137	153
Regional Total	392	507	731	592
Ontario Region				
Kingston Service Centre	1	–	2	2
Millhaven Min. Sec.	72	63	70	74
Millhaven Max. Sec.	–	–	–	1
Prison for Women	191	215	199	218
Collins Bay	57	31	45	31
Collins Bay Farm Annex	88	102	118	129
Landry Crossing	45	81	91	109
Beaver Creek	376	498	597	464
Joyceville	14	28	18	42
Joyceville Farm Annex	155	244	235	374
Warkworth	59	100	83	109
Ontario Reception Centre	–	–	–	–
Ontario Medical Centre	6	5	16	10
Regional Total	1,064	1,367	1,474	1,563
Western Region				
Stony Mountain	60	152	101	188
Stony Mountain Farm Annex	46	70	123	91
Saskatchewan	68	78	104	99
Saskatchewan Farm Annex	54	53	173	68
Drumheller	245	333	453	461
British Columbia	4	12	8	18
William Head	136	171	222	270
Matsqui	262	422	414	477
Regional Medical Centre	–	–	–	–
Agassiz	197	231	353	362
Mountain Prison	64	135	147	137
Regional Total	1,136	1,657	2,098	2,171
Total by Month	2,643	3,656	4,465	4,550
Cumulative Total	2,643	6,299	10,764	15,315
Failed to Return	18	17	19	23
Cumulative Total	18	35	54	77
Crimes Committed	2	1	2	4
Cumulative Total	2	3	5	9

*Federal Training Centre
Failure Rate: 0.5% or 1/2 of 1%

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FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 14

THURSDAY, OCTOBER 13, 1973

Complete Proceedings on Bill C-176
intituled:

"An Act to amend the Criminal Code, the Crown Liability Act
and the Official Secrets Act"

REPORTS OF THE COMMITTEE

(For contents see inside front cover)

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REPORT OF THE COMMITTEE

(Witnesses See Minutes of Proceedings)

26320—1

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman.*

The Honourable Senators:

Asselin	Lang
Buckwold	Langlois
Choquette	Lapointe
Croll	*Martin
Eudes	McGrand
*Flynn	McIlraith
Goldenberg	Neiman
Gouin	Prowse
Hastings	Quart
Hayden	Walker
Laird	Williams—(20).

**Ex Officio Members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 11, 1973:

The Order of the Day being called to resume the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Inman, for the second reading of the Bill C-176, intituled: "An Act to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act",

It was—
Ordered, That it be postponed until later this day.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Inman, for the second reading of the Bill C-176, intituled: "An Act to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Goldenberg moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, December 13, 1973

Pursuant to adjournment and notice, the Senate Standing Committee on Legal and Constitutional Affairs met this day at 10:10 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Choquette, Croll, Eudes, Hastings, Laird, Lapointe, McIlraith, Neiman and Quart. (11)

Present, but not of the Committee: The Honourable Senators Argue, Cameron, Carter, Godfrey, O'Leary and Sparrow. (6)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill C-176 intituled:

"An Act to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act."

The following witnesses were heard by the Committee:

Chief Harold A. Adamson, Toronto, representing the Canadian Association of Chiefs of Police;

The Honourable Otto Lang, Minister of Justice;

Mr. Bernard E. Poirier, Executive Director, Canadian Association of Chiefs of Police;

Mr. Jacques Dagenais, Legal Adviser, Montreal Urban Community Police;

Mr. D. H. Christie, Associate Deputy Minister of Justice.

The Honourable Senator Croll moved that the said Bill be amended as follows:

Page 18: Strike out lines 16 to 44 inclusive.

The question being put, it was Resolved in the Affirmative.

On motion of the Honourable Senator Croll, it was *Resolved* to report the said Bill as amended.

On motion of the Honourable Senator Hastings, it was Resolved to print 800 copies in English and 300 copies in French of this day's proceedings.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, December 13, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-176, intituled: "An Act to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act", has in obedience to the order of reference of December 11, 1973, examined the said Bill and now reports the same with the following amendment:

Page 18: Strike out lines 16 to 44 both inclusive in the English version, and lines 18 to 46 both inclusive in the French version.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, December 13, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-176, to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act, met this day at 10 a.m.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the Canadian Association of Chiefs of Police is submitting a brief, and the Minister of Justice, the Honourable Otto Lang, is here.

I will call on the minister after we have heard from the chiefs of police. Their spokesman is Chief H. A. Adamson of Toronto.

Senator Croll: Mr. Chairman, yesterday or the day before I requested that the RCMP be invited to attend the committee hearings, and you invited them. We then found that it is the practice to have the Solicitor General present with them when they give evidence. However, he is not now available as he is attending the corrections conference, which will last a few more days. That is understandable. This brief comes from the chiefs of police. The bill is new also to the RCMP. If they want to be heard, I think provision should be made for them to be. We will be here all next week, so, if the committee's consideration of this bill is not completed today, they should be given the opportunity to be heard.

The Chairman: I will note that, senator.

Chief Harold Adamson of Toronto: Honourable senators, I may say at the outset, before I present the brief, that we of the Canadian chiefs' association appreciate the opportunity to appear before the committee to express our views regarding our concern with Bill C-176.

The first nine pages of the brief cover some of the philosphy and opinions as to our concern. I shall not read them, but I would ask that you peruse them at your convenience so that some of our opinions might rest with you.

I would ask honourable senators to turn to page 10, and I will proceed from there.

There are three principal areas that would seem to merit immediate consideration and these will be dealt with in turn, as they appear in the bill.

The first concerns the listing of offences—that is section 178.1; the second deals with the emergency procedures—that is section 178.15; and the third concerns notification to be given within 90 days following the period for which the authorization was given—that is section 178.23.

The list in question, as presently drafted—that is, section 178.1—leaves much to be desired since five major categories of crime have been omitted. They are: stock market manipulation, jailbreaking, pimping, illegal lotteries, and pornography.

In the case of stock market manipulation, appearing at section 340 of the Criminal Code, it has been one of the areas that organized crime has infiltrated most dramatically.

Illegal lottery is believed by many to be an insignificant crime, but the underworld is rampant in this field, deriving a major source of revenue therefrom. In plainer language, this is parallel to the numbers racket in the United States and all it implies.

Printing and distribution of pornography is a similar source of revenue, but of a nature that permits the underworld to reap untold profits at the expense of society in general.

Pimping speaks for itself and needs no further elaboration.

Jailbreaking, on the other hand, requires the escapee to seek outside help and the jailbreaker is, therefore, particularly vulnerable in his communications. A prime example of this is that in the last 12 months the most important Canadian escapee-and I am referring to Claude Mercier, who escaped from the maximum security prison in Montreal this year—was recaptured with the help of electronic surveillance.

The second area of concern deals with emergency procedures. As presently drafted, section 178.15 of the Criminal Code requires the physical attendance before a judge and the obtaining of a written authorization prior to commencing interception. Emergency situations require police action in a matter of hours and even minutes, making the present bill totally unworkable since, at best, the procedures suggested would take at least two hours, considering that:

(a) the police must firstly reach his designated agent;

(b) he in turn must reach the designated judge, if possible;

(c) he must attend before him personally, presenting obvious problems of distances on evenings or weekends; and,

(d) he must obtain the written authorization personally.

By way of exammples where quick action is necessary we submit the following, which are only a few examples from the multitude that could have been cited. I stress "only a few". Time does not permit us to give you the many, many examples that could be cited to set out the need for this emergency permit.

1. A famous escapee—and again I am referring to Mercier—received a phone call from a telephone line that was under surveillance. Decoding the signal permitted the

police to locate his hideout. An immediate tap of the telephone at the address of his hideout was then necessary to monitor his movement pending the moment his arrest could be safely effected.

Just think about that one for a moment, had it been necessary for us to obtain permission before putting the tap on.

Senator Hastings: You were not tapping his line originally; you were tapping another line?

Mr. Adamson: That is right. Once we decoded the signal we were able to locate his hideout and put a tap on that line.

Continuing:

2. In April 1971, five well-known criminals were followed by Mobile Support Officers from Toronto to Windsor, Ontario. At this time, it was known that they were active in bank inspector fraud rackets. They were observed using a pay telephone in the city of Windsor and then going into a restaurant. A radio transmitter was placed over the door in the telephone booth, a transmitter that transmitted back to the police car. The suspects then returned to the same telephone five minutes later and made further calls, and as a result of the information obtained from the radio transmitter it was learned that a bank inspector fraud occurrence was taking place. The identity and location of the complainant was obtained following visual surveillance to be taken up in the vicinity of the complainant's house. There was a successful conclusion to the phony bank inspector fraud investigation, and all five suspects were arrested and subsequently convicted. Again, time was of the essence.

3. In December 1971 several persons were arrested on charges of importing into this country 500 pounds of marijuana with a street value of $60,000, as well as hashish. An employee of the Customs Branch was involved in this criminal activity, which led to his arrest. In this case there was a three-hour period in which to install audio surveillance which was necessary to conclude the case. Again the time element was important.

4. In March 1972 there was a case of trafficking in large quantities of metaphetamines made in illicit laboratories. This criminal activity led to the arrest of 17 persons and the seizure of 50 pounds of speed with a street value of $50,000. In this case there was a two-hour period in which to install audio surveillance equipment to assist in concluding the case.

5. August 1972. Investigations concerning the importation of 500 pounds of marijuana with a street value of $60,000, flown in by a private plane, resulted in the arrest of four Canadian and American criminals.

Senator Hastings: Was that at Red Deer?

Mr. Adamson: Yes, senator. Investigations prior to an electronic device being used in this case led to the knowledge that one telephone call only would be made indicating where the plane would land with the illegal cargo. There was a one-hour period in which to install audio equipment on the line. This was accomplished and, as a result of the information obtained, the arrests and seizure were made.

6. December 1971. $1,300,000 was obtained in Canada's largest bank holdup in Windsor, Ontario. Information had been obtained naming six possible suspects and visual surveillance had been taken up on one of the suspects. Eventually a second suspect appeared and, in company with the number one suspect, went to an address in Mississauga. Technical surveillance was immediately installed on this address, and as soon as the equipment was activated it was found that a third suspect was at this address and was in the process of making a telephone call to Montreal. This telephone conversation was the key to the investigation and was the major contribution to the solving of the crime, resulting in the arrest of seven people and the recovery of a large amount of money which was at the recovery of a large amount of money which was at the Mississauga address at that time. Again, time was of the essence.

7. In August 1973 a tractor-trailer loaded with liquor valued at $96,000 was stolen from a transport company. Three days later information was received concerning a suspect in this crime. Audio surveillance was immediately placed on the suspect's telephone and in a matter of minutes after the installation a telephone call was placed by the suspect, which revealed the identity of the persons responsible for the theft and their whereabouts. As a result of this information the police were able to effect the arrests and recover the stolen liquor.

In all of those examples, honourable senators, the police could not have obtained the information they did, because of the time factor involved, had the proposed legislation been in effect, and the apprehension of these individuals might not have been effected.

Considering the foregoing, a positive suggested procedure would be to reintroduce the former version of the pertinent section as it was proposed by the House of Commons Standing Committee on Judicial Affairs recorded in that committee's report tabled in the House of Commons in November. In the light of the concern expressed by some members over the period of 36 hours, the above procedure might be modifed to provide a shorter period of time—even eight hours, we suggest—which would nevertheless have allowed the authorities to comply with the formalities involved.

Not the least of our concerns is the matter of notification within 90 days next following the period for which the authorization was given. Honoourable senators, we are seriously concerned about this. We would have no qualms with this section were the authorities required to give such notice in cases of complete and absolute mistake. But it is folly—and I must emphasize that word—to believe that such notice as is presently required would not serve to educate the hardened criminal in the operations, location and strategy of police operations.

As was done for the previous section of the bill that was reviewed, we would like to set forth some examples relating to this particular section.

1. In January of this year, the RCMP successfully concluded a major international heroin trafficking investigation. This case received considerable publicity in the media and illustrates that with the legislation as presently proposed this matter would never have reached the courts and heroin of a street value of $32 million—and let us not just concern ourselves with the cost to the criminal, but rather the impact on society that 70 pounds of heroin distributed in a community would have on addicts and the amount of crime which would have ensued therefrom—would have been distributed. There were seven

arrests in this matter with five of the accused receiving sentences of life imprisonment.

With the help of the RCMP we have prepared a chart to illustrate just how this case would have been affected by the 90-day disclosure rule. In May of 1971 the Royal Canadian Mounted Police drug section in Toronto received information that there was a plan afoot to import a large amount of heroin into Canada by means of taking an automobile to Northern Italy, placing the heroin in the gas tank of that automobile and bringing it back to Toronto where the drug would be removed and distributed. The installation of electronic surveillance was made on a residence in May of that year and some of the information they derived occurred in May and June. No information was received in July and August at all, yet the tap was continued. In September the car left and went to Italy, with the driver, who was one of the people who was conspiring. The heroin was eventually installed in the car. Two incidents happened that made them remove it. First of all, the car went on fire on one occasion as a result of a gas leak and, secondly, at the time they were ready to leave Italy with the heroin a large seizure was intercepted in New York City that came from the same source in Italy, so the heroin was removed. The car came back to Canada with the owner, the police descended on it when it arrived, searched it, found nothing, but did arrest four people and charged them with conspiracy to traffic in narcotics. The charges were subsequently removed. As of that time, the case died. No other information was obtained, and this went on right from November straight through to the following July.

Now, if the police had nothing else to go on, I am satisfied that under this legislation there is no way a judge would give an order to continue that wiretap. It would not be possible, because they simply did not have any information. But they continued on regardless. So we see right from this November, for almost a year, before they got any information.

There was a man by the name of Benedito Zizzo, who was part of this conspiracy. He had a long history of being involved in narcotics cases in the United States and shipping them into Canada. For a time he went back to Italy, and then came back to Canada. He decided that this was not a good method of bringing the drugs in, so he decided that they would start a new method of importing them by means of using two trunks with false bottoms.

Electronic surveillance was maintained on this residence, and on all the people who frequented it, and on his office. Things started to happen here, where the green line starts. Certain information started to gather. It was found indirectly, through the means of audio surveillance and through no other way. He was under constant observation, but we were not able to read his mind.

What happened here was that a young man, with two trunks loaded with 70 pounds of heroin, set out from Italy for the eastern shores of Canada in a regular passenger ship. When nearing Canada, for some reason the ship had to be diverted to New York City. As a result of the information the police were getting on this wire, they found out when the ship was arriving and where the cargo was. They installed an electronic device inside the trunk. It made its way through customs into Canada and was taken to an address in the north of Toronto. The electronic bug was operating. When the equipment signalled that the trunk was being opened, the RCMP descended on the place, arrested these people and seized 70 pounds of heroin. That could not have happened under this proposed legislation, if it had been in effect at that time. Just think of it, if, because of this legislation, 70 pounds of heroin were on the streets of Toronto! I am sure you are concerned. I know I am, and so is every other citizen. That is just a graphic illustration of what the 90-day rule means.

Now if I may continue with the brief, on page 17.

2. In January 1973, technical surveillance was placed on airport employees regarding stolen property, in general, and surveillance was removed in February because no other information was received. In September of the same year, because of additional information, surveillance was resumed resulting in seven arrests and the recovery of $70,000 in stolen gold.

3. In 1971 audio surveillance was commenced, as a result of information received, on a well-known criminal for frauds on elderly people, and he disappeared shortly afterwards for a nine-month period. Upon his return, early in 1972, electronic surveillance was re-instituted and he and three other persons were arrested, directly as a result of this surveillance, on charges of fraud involving 83- and 85-year-old women.

4. In May 1973 audio surveillance was commenced on a person in a counterfeit case but no information was obtained at that time. Audio surveillance was re-activated in August of 1973 resulting in three arrests and the seizure of $100,000 of counterfeit money.

5. In May 1972 information was received regarding a proposed large Brink's robbery and audio surveillance was commenced in that month. The surveillance was terminated because no results had been obtained as of the end of May 1972. Further information was received in September 1972, however, and audio surveillance was re-activated resulting in the arrest of four men charged with the breaking and entering of the Brink's office in Kingston, Ontario. When I say "further information received" it would not be sufficient information to get an order, because it would be very sketchy information.

6. In May of 1973 surveillance was commenced on an individual for fraud and smuggling. This was terminated in June because of lack of results. In September 1973, because of additional information, surveillance was re-activated resulting in three arrests and the recovery of $100,000 of stolen liquor.

7. In August of 1972, as a result of information received, audio surveillance was commenced on a known criminal and was terminated in September 1972 because no information was obtained. In March of 1973 audio surveillance was re-activated, resulting in the arrest of three persons for a series of break-ins, theft and possession.

Judging from the above examples, there is little doubt as to the effectiveness of electronic surveillance, and it would be difficult to find the involvement of "every Canadian" as has been suggested. The time, cost and personnel involved must surely be considered as an indication that investigation of this nature is resorted to exclusively in the case of major crimes.

An effect of that section of the bill, as presently drafted, would be that in the next twelve months Canada's top criminals would receive such notification enabling them to take necessary evasive measures to avoid further detection and so escape law and order.

It would therefore seem reasonable to amend this section, giving the judge the discretion of determining whether or not the person under surveillance should be notified, with the proviso that, if the judge is satisfied that this person is implicated in criminal activity, then such notice shall not be given.

I submit to you that that is a very important point. We trust this brief will commend itself to your attention. I and my associates are prepared to answer any questions that we can.

Senator Laird: The provision for renewal by the judge for a 30-day period, would that have been of any help in the cases you mentioned?

Mr. Adamson: We are not so concerned with the renewal. I think that is reasonable, a 30-day extension. We do not mind that, because we have to go back to the judge and tell him the reasons for having it renewed. We do not mind the renewal, but those two points, the 90 days and the fact that we have to go to the judge first to get the emergency permit, are the keys to the whole thing. So the whole thing, in effect, is going to put us out of business in fighting crime in that way. This is a theoretical exercise and it will not work in practice.

Senator Croll: That may save us a lot of money.

Mr. Adamson: That is right, Senator Croll, but I suggest to you that you need us.

Senator Croll: That is so. I do not understand why you suddenly decided to compromise in your last paragraph. Either that section has meaning and purpose or it has not.

Mr. Adamson: All through the debates in the House of Commons I saw the point being made by members, "We have to control the police". We have no aversion to this but we think it is reasonable, if the government is that concerned over our activities in wiretapping, that we be fully accountable, but, surely, a judge should be able to determine whether a man or woman should be told whether or not the line is being tapped, if we have not sufficient information to charge them? If we have to tell every criminal that his line is being tapped, that will, in effect, eliminate us from wiretapping.

Senator Croll: That is what I am saying: unless he has a criminal record, in which case you do not have to tell him. But a criminal may have been involved in criminal activity 20 years ago and be completely out of it now.

Mr. Adamson: There is the odd one like that, Senator Croll. Well, that is our view. Of course, we would like it eliminated and be able to go back to the original provision of the bill whereby we had a 36-hour tolerance period.

Senator Laird: I take it you suggest this as a compromise?

Mr. Adamson: That is right.

Senator Laird: In other words, you are being frank in saying that you would rather have this out entirely?

Mr. Adamson: Yes. We have said that further back.

I suggested to you that certain people were concerned. Mr. Diefenbaker, for one, was very unhappy about this 36-hour clause. We say: Give us 8 hours, any length of time, to get the tap on before we have to go for the permit. Then if the judge says no, we will take it off. But we should have the opportunity to go and install it in order to pursue the investigation of crime.

Senator Croll: Let us get the two objections; let us put them this way. We realize you are dead against the notification.

Mr. Adamson: That is right, sir.

Senator Croll: And we will talk to the Minister of Justice about that shortly. The other you are worried about is the ability to get on the job quickly.

Mr. Adamson: That is right.

Senator Croll: Those are the two objections?

Mr. Adamson: Those are the two objections, yes; and, of course, as we have said previously, there are other offences that should be included. But, outside of that, there are the three points which are all we are concerned with. We do not mind the controls or the accountability factor, but please don't eliminate our efficiency in this field. It is important to law enforcement and to the protection of the public, and I am not dramatizing this. This is vital! If it were not so, these gentlemen and I would not be sitting here today, I can assure you.

Senator Croll: May I put a question to the Minister of Justice, Mr. Chairman? He is a witness today.

What is your reaction, sir, to the 90-day provision and the immediate tap? How do you meet the arguments put forward by the chief?

Hon. Otto Lang, Minister of Justice: Well, Mr. Chairman and senators, my position here is an intriguing one today, because on the question of the notice I myself moved an amendment in the House of Commons to delete that particular section and it lost on a fairly close vote.

I should like, though, to deal with the three items raised in this brief, and really to try to indicate why I think, notwithstanding my views and some of the views expressed here by the chiefs of police, we ought to try the bill in its present form. That is really the job I am going to try to perform with the committee here today.

With respect to the first question, that of the definition of offences, I think there are words in that section which will in practice allow for a proper amount of flexibility, because there is a reference to organized crime and any indictable offence where there is an organized crime element present, and I really think that in practice that will prove to be broad enough to deal with some of the serious cases missed otherwise in the sections to which the chief referred.

I have the same kind of argument in regard to the cases I referred to about the manner of getting authorization and the need for speed.

As I look through the examples cited by the chiefs of police, I believe that in many cases authorization could have been obtained in advance under the regular section, let alone under the emergency section, because so long as they can indicate the kind of situation in which they are likely to need the surveillance they will be able to get the authorization, as I read the section.

It seems to me that, where they have to name a person where they can and name a place where they can, it also provides that, if they cannot do that, they can either generally describe the place or, if a general description of

that place cannot be given, generally describe the manner of interception which can be made. So, when they are facing an upcoming situation, I believe they will find that they can make it work. It is my belief that that section will cover many of the situations where it looked as though they were going to need an emergency tap.

I also think that the emergency provision is somewhat more flexible than it might be thought to be at first glance. The section provides for the naming of a certain number of judges who will be available to grant the emergency provision, when requested by a certain number of senior people who will be known to them. This is how I read the section. The senior investigating officers, who will be known to the judges and who will know which judges are to give the authorizations, will be in a position to get those authorizations very quickly, I think. While the authorizations may have to be given in writing, they may not have to be given by hand to the person some miles away who has to put the equipment in place ready to use.

It is workable, and while we have introduced the judge into that procedure, it is not so different from the original section where we had provided 36 hours' emergency without a judge.

I think the 90-day notice is the more difficult one. That is why in the house I moved for its striking out. I looked at a variety of amendments as well; nevertheless I moved for its striking out. I was aware of the specific case Chief Adamson has referred to as an example of the kind of problems one has. The house, of course, focused on the question very carefully, too. It did have this argument before it.

The fact is that there is in this provision the power for a judge to set a much longer time period before the notice has to be given—a much longer time period. The judge can interpret the section as giving him the power to extend, but if he does not interpret it that way, then he will be more inclined to set very long time periods indeed, in situations where that is needed.

Again, I think it may be possible for a judge to work his way through to that conclusion, and, if it is the top 12 members of organized crime, he will choose a distant date or find that he can give extensions before notice has to be given to them.

Notice then would, in the end, have to be given in lesser and less important cases where investigation has ended and no charge has been laid. I do not think the notice does a great deal of good in those circumstances. We do not ask the police to give such notice in other investigations that come to nothing, and I do not see much difference, in principle, between the two; but, again, I really suggest that we can live with this situation.

I put it that way, because the House of Commons has very thoroughly argued this issue and, knowing where we are in the session, I am concerned that if we do not go along with the bill as it stands, we will not have a bill at all. And, of course, the bill is extremely important because it creates offences of wiretapping by private persons having in their possession electronic intrusion devices, and I very much want to see it become law.

I take the position that I will want to watch very closely, with the provincial Attorneys General, the manner in which the bill operates in practice, and I will be prepared at an early date to bring back an amendment to the bill, if there is an indication from them that in their experience that is required.

Senator Hastings: Mr. Minister and Chief Adamson, you have both used the term "organized crime". I wonder if one of you would define that term for me.

Mr. Adamson: There is no definition of that term. That was a question I had for Mr. Lang: What is organized crime? It has to be left to a really nebulous interpretation. I say those offences should be included and that it is too broad. No one has been able to give me a definition.

Senator Hastings: If you and I conspire to rob a bank, is that organized crime, chief?

Mr. Adamson: I say it is. A number of solicitors in this country have an entirely different view, but I say that would be organized crime, and I say that this is a poor definition—

Senator Croll: But, chief, you have used the words "organized crime" in public statements. I thought you knew what you were talking about! Don't you have a definition of "organized crime"?

Mr. Adamson: My views are perhaps different from those of some other people in this room.

Senator Hastings: Well, let us hear your views.

Mr. Adamson: I think it is where two people conspire to commit an indictable offence; that is organized crime.

Senator Laird: Two or more people?

Mr. Adamson: That is right.

Senator Croll: I am not sure you are right on that, but you probably know more about it than I do.

Chief, a very important point was made by the Minister of Justice, who shares our view, when he said that we are running a good chance of not getting any sort of bill at all if we try to amend this bill now. And he knows what he is talking about in respect of the present tenor of the house.

Weigh it for a minute. In those circumstances, sitting where we are sitting rather than where you are sitting, what do you think?

Mr. Adamson: As a Canadian, Senator Croll, I am more concerned with the far-reaching effects of this bill than I am with whether this bill passes the house or not. That is the way I feel. I don't think it is right and I don't think it is fair to the citizens of Canada to pass the bill as it stands.

I am not finding fault with Mr. Lang. He has done his best, and I am familiar with the problems he has had.

Never mind whether it is fair to the police—fairness does not apply to them in this instance, because they are here to do a job; but it is not fair to the citizens of Canada to put a prohibitive law through by which, in effect, the police are going to be curtailed in their job of prohibiting people from preying on the citizens of this country. I think it is wrong.

Senator Lapointe: Why did you include the police in this bill? Why did you not restrict the bill to private individuals using bugging devices, persons outside of the police? I think it is downgrading the police, because it shows that they do not know their business and that they are abusing the situation.

Hon. Mr. Lang: I really see it the other way around. What the bill is designed to do, and does, I think, very effectively, is outlaw wiretapping and other intrusions by electronic devices on privacy in Canada, and it outlaws the possession of that equipment. Now, having said that, as the broad and general rule, the question was: Should there be exceptions? We said that, yes, there should be exceptions. There should be exceptions for the police—the law enforcement officers.

The question then was, how properly to assure that those exceptions would be used with responsibility. One can always say that you do not have to worry about good policemen, and good police forces, which are in the majority; but you still may have to worry occasionally about some who might abuse the privilege of using wiretapping and electronic intrusions.

If you recall, the members of the House of Commons have discussed the subject for four years now, which is why we are so concerned about getting it finally to law, and they decided there were these desirable limitations upon it, the kind of limitations, in my theory, that should be built in, so that police generally would have no difficulty living with it, and yet which guarded against the kind of things which can be held up as very serious examples of abuse—the tapping situation where it really is snooping, and snooping on someone who ought not to be investigated. People worry about the investigation of politicians for political reasons, of lawyers in breach of privilege, of the press in breach of the freedom of the press, and want to be sure that this is not done. As I say, ordinarily you can say it is not going to be done; but how are we to guard against it being done if somewhere, some time, some police force with the privilege of using the devices is inclined to abuse it? The answer was: the judge in the process and the responsibility of the attorneys general, as safeguards.

Senator McIlraith: Mr. Lang, I accept your statement that in dealing with these exceptions—that is, exceptions permitting the police to use the devices—we have to be sure they are used with responsibility. Of course, your desire, very properly, is to get that responsibility built into this act as well; but remember, there is other responsibility over them. They are answerable, under our constitution, to the attorneys general in the provinces, who are given, under the BNA Act, certain responsibilities in the administration of justice which are rather clear. There is a remedy there, as well as what we put into this bill.

Within that context, I want to deal with the three points made by Mr. Adamson separately, and I would like to keep them separate, if I could, in discussion, for the purpose of getting some more information that I want on them. If I may, I would like to ask the chief and yourself questions alternately.

The question that bothers me a great deal is somewhat as follows. I followed the debate in the House of Commons rather closely. I think I am fair in saying that I have as great a respect for the House of Commons as anybody in the House of Commons, or here, today. I have held that view for some time, and perhaps developed it over a lifetime, most of which has been spent in the House of Commons. For the life of me, however, I could not discern clearly, from the debate in this house of minorities, exactly what the purpose was for, or what was being achieved by, the 90-day notification; because the same body had made sure that the surveillance would only be applicable to suspected criminals, by elaborate and proper procedures for getting a judge's order. I should not perhaps fall into the way of using the slang term "wiretapping". The surveillance we are talking about is under the safeguards we have put in; and, having put those desirable safeguards in, we then require the person, the suspected criminal, under the provisions of the act to be notified.

As I understand the operations of criminals—and I have observed them a bit—I do not understand the purpose of notifying them, because, using a much narrower version of organized crime than Mr. Adamson does, it is perfectly obvious that if this kind of surveillance was being used on them, whether or not it resulted in an arrest and a conviction, and the notification were given, two things would happen. One is that they would eliminate that person, or change the personnel; and when I say "eliminate", I mean, literally, in some areas of the country, eliminate that person totally, or they would remove him from the activity he is engaged in in the crime web. So why are we assisting criminals by this provision?

Just dealing with that aspect of it at the moment, leaving out all the other aspects, why is this? What is the purpose of our legislating to assist the criminal? Let us assume that it is a convicted criminal. Why are we legislating this assistance to him in this field, in his business or his profession? What is the purpose? I was really greatly concerned with the debate as it went on, and I just cannot understand this aspect of it. I could not get any help, with the greatest of deference, from that institution that I so dearly love, the House of Commons, in their debate. I simply did not get it. I did not get the answer to that point.

Senator Choquette: We will get it here, senator.

The Chairman: The minister, of course, told us what his own position was, but if he cares to comment on what you have said, Senator McIlraith, I will leave it to him.

Hon. Mr. Lang: I will, Mr. Chairman, with the caution that since I was on that side of the argument, too, I may not have seen the other arguments quite as forcefully as they were intended; but we were told that one good thing it would achieve would be that if somebody found a tap and did not get a notice then they would know it was illegal. I must say I find that a little strained.

The other suggestion, I believe, was made at one point in the argument, that if they got a notice they then could consider whether in fact it was properly done, in a legal way, or was in fact illegal. In other words, they would have the chance of determining whether it was done in a legal fashion when they got the notice because the police thought they were doing it in a legal fashion, and they would be able to deal with that in a legal way. I suppose there is something in that. I suppose there is the shadow of a possibility, in a certain case, where they would be able to explore whether the thing was technically and properly applied for, and draw attention to it. But, I must say, I do not see a great deal in that either. I did ask whether they thought that was useful, because if you did not get any notice you would know you had not been legally tapped. That is the other thing. All of us would have the quiet confidence that, at least up until 90 days ago, we had not been legally tapped. Again, I do not see a great deal of merit in it, so I am with you on that; but I put those arguments in the house, and I lost the argument in the house on a vote. What I am really saying to you now is that, notwithstanding the fact that I prefer the bill without that section, I believe we can live with that section.

The house did at least cerefully consider and debate the matter, and chose to put the section in.

Senator McIlraith: I would like to pursue this a little, Mr. Chairman.

Mr. Lang, you have raised a new point, of course, when you speak of living with the section. If I am correct in my assessment of the harm that would flow from the section, I do not see how we could defend or accept our responsibilities to the public and let something harmful like this go on, with the hope and expectation of correcting it in a year or two, as the case may be. It is about three years since this bill first came before the House of Commons. I just do not go along with this legislation. But if they had a chance to look at this point, and some things I am going to say about some other points, a second time, knowing that we took a different view but that we took that different view while wholly supporting the principle and being equally eager with them to support the main thrust of the bill, I believe that they would be willing to change their views on these points and that they would be willing to do it quite promptly, in a way that would meet the time schedules for legislation and parliamentary sittings, and get your bill for you—which I hope, incidentally, you will get.

Now I want to pursue the first aspect I was asking about. I want to ask Mr. Adamson something more about the association here today. Were the Vancouver members of the association involved in the feed-in in preparing this presentation? You must have prepared this very quickly.

Mr. Adamson: Yes, we worked very diligently all day yesterday, sir, preparing this. We could have given you much more paper on this because there are many thousands of examples right across Canada.

Senator McIlraith: Were the Vancouver men in on this?

Mr. Bernard E. Poirier, Executive Director, Canadian Association of Chiefs of Police, Incorporated: Mr. Chairman, I can answer that. The preparation of the first brief in 1969—

Senator McIlraith: I am only talking of the one at the moment.

Mr. Adamson: The matter of time did not allow them to get here, so it was done by some of us who were close, members of the Law Amendments Committee and some vice-presidents who were here.

Senator McIlraith: So it is primarily the group in central Canada?

Mr. Adamson: Yes, but with the consent of all the members.

Senator McIlraith: Of course.

Now I want to go on to deal with the question of notice. Of what use would it really be to persons who are not engaged in criminal activity? Let us suppose that somebody is wrongly placed under surveillance. Now he has his remedy under the act and he has his right to have the police investigate the matter, but how does this notice help him? Let us suppose a person is not an active criminal and is not reasonably suspected of being engaged in criminal activities, how is he helped by notice?

Mr. Adamson: As I say, that is a compromise on our part. We felt, in putting that submission in, that if everyone was so convinced that we had to be totally accountable for all these factors, we would go back to the judge or to the Attorney General and say, "We have tapped, and this is the information we have." Then, if we felt we had wronged this man greatly and he was an innocent person, he would be notified. But we do feel that the crux of the thing is in notifying the criminal. I cannot but comment on what Mr. Lang said, that members of the House of Commons would have an easy feeling that we would have to account for our taps. There would be just as much wiretapping done as there is now by people in illicit enterprises and by criminals. This law will not stop them, and I hope that everybody realizes that.

Senator McIlraith: Well, frankly, I do not like this compromise.

Mr. Adamson: Well, senator, we are not happy about it either. But we come in here not trying to push our views down everybody's throat. We think it is a fair compromise; at the same time, we are not happy with it at all.

Senator McIlraith: Well, I do not think it is a fair compromise, because in that circumstance your Attorney General, through your commission—depending on what the structure is in the province—may need some assistance in tightening up. Somebody has just said to me in an undertone that policemen don't compromise with the law. In any event, we can let the point go. But there is such a thing as administrative responsibility.

Mr. Adamson: I heartily agree with you, sir.

Senator McIlraith: This seems to have been forgotten, but it is a pretty effective weapon, and it is the one effective weapon, the constant answerability in the legislature or Parliament of those who have the responsibility. It is the only really effective protection.

Mr. Adamson: From the outset, we have said that we believe we should be accountable. We have never objected to that.

Senator McIlraith: This point takes that accountability away from the Attorney General in the provincial legislature or the Solicitor General of Canada, when he can be put on the mat by the elected representatives and let it get into a process of the courts where it is not any more easy.

Mr. Adamson: I do not disagree with you, sir, as long as this could be considered.

Senator McIlraith: I wanted to move on to another aspect of the places where this could be needed. I am speaking now of the second point you make.

Mr. Adamson: About the emergency?

Senator McIlraith: There is one minor point I would like you to look at. However, before we leave the 90-day element, I notice it says that the judge may grant "a determinate reasonable delay". Now, how any delay more than 90 days, when the fixed period is 90 days, can be regarded as "a determinate reasonable delay," whatever that may mean, I cannot see. It certainly means something there, and I think it would be interpreted as meaning something less than 90 days.

Hon. Mr. Lang: I would not take that view, and I would think that he would not be tied in any way, and if he saw the prospect of a long investigation, then he could set a very long period of time.

Senator McIlraith: The provision you started with having been 90 days?

Hon. Mr. Lang: Yes, but that is simply so that he has to review it within that period.

Senator McIlraith: Perhaps it is a small point that just follows the other, but I do not quite share that view.

Now, coming to the question of getting a judge in time, I have no difficulty about the regualr applications in the regular cases, and I am not concerned with them at all. However, I am concerned with the emergency cases, and as I see the police requirements, they are for constant change and modernization and development of the techniques to meet the new type of crimes in the large international stock fraud cases, which involve, among other things, some departures from main airports on very short notice. It also involves many persons working together over a period of time.

Dealing with these stock fraud cases for the moment, and leaving out the ordinary crimes, I cannot see how you can take the necessary measures to establish surveillance quickly to pick up the escaping criminal who has decided to take off because things have got too hot for him. Say he decides to take off on a certain flight, at a certain hour, in the middle of the night. Here I am thinking of a particular case. I do not know how you get a judge quickly enough, anywhere, in the middle of the night.

Perhaps I had better not put it on the record, but at some stage of my career I have had to pursue judges, mostly in another province, in the wee small hours of the morning or late at might to get bail for certain people who knew these buildings well. I do not know how the judge's order can be obtained quickly enough. There is no way that I know of to obtain it, and that provision is not reasonable. On this point I go along with the House of Commons in attempting to find a method that will work, but to require the order in all circumstances and with the time limits involved, I do not follow. There are circumstances such as applied in the case to which I have referred. With respect to the drug cases you have spoken of in your examples, your did not have the benefit of those drug cases coming through Montreal from Marseilles to the American side.

Mr. Adamson: That is right, there were no Quebec examples in that list. If you recall, I said that time was of the essence to us and we could only prepare a few examples.

Senator McIlraith: Yes, but they are not contained there.

Mr. Adamson: That is right, sir.

Senator McIlraith: Neither are the Vancouver scofflaw cases.

Mr. Adamson: That is right, but they are all the same.

Senator McIlraith: Yes, and I do not see that it is possible to obtain the judge's order in those circumstances.

Mr. Adamson: That is right.

Senator McIlraith: You are talking of minutes.

Mr. Adamson: That is right. That is why we say that if the 36 hours is so unpalatable, then make it eight hours, or six hours, but give us the opportunity of putting the surveillance on and then going right away to the judge, if you wish.

Senator McIlraith: Oh, yes, immediately. I have no quarrel with that.

I would like the minister to address himself to the narrow point, accepting that they must be answeable to the judge in all cases. On the point of the emergency cases, however, why can we not permit them to go within "X" number of hours, whatever we said, afterwards?

Hon. Mr. Lang: This point was very thoroughly canvassed in the House of Commons and, again, this element of concern was apparent with respect to a tap being installed which may somewhere, at some time, be used in an improper fashion. Perhaps it might indeed never be proceeded with, but it would still constitute an invasion of privacy, which we always endeavour to avoid. That led to the judge being introduced in the emergency provision as well. He would be introduced, however, in a manner which I believe is workable and which will allow for very quick and effective obtaining of the emergency permits. The judges will be designated as, in fact, standing by for this purpose. They will know that they are apt to be contacted at any hour by certain senior investigative personnel and it will not be a surprise to them if the call comes at two o'clock in the morning. They will be chosen in a manner that is also likely to place them conveniently; and, indeed, there can be a standby ready at all times to receive these calls. It is true that the section does provide that the authorization must be put in writing by the judge, but I do not see that as a difficulty either. It does not indicate that it must be delivered to the person who is in fact going to install the equipment. He need not have it in his hand, so that the judge, located well and conveniently for the purpose, can put in writing, and in the hands of someone who can receive it, that piece of material. That, in fact, will be done in the case of a telephone caller within the time required, in any case, to mobilize the equipment. The equipment will not be at the right place at the right moment, but will take some minutes to get there. By the time the equipment is ready to be installed the calls will have been made and the authorization put in writing. So I believe that we can have the judge and also the emergency permits.

Senator Choquette: Chief Adamson, do I understand that all the examples contained in your brief were presented to the committee of the House of Commons?

Mr. Adamson: No, sir, they were not. These are recent examples. The last time we appeared the 90-day disclosure rule was not evident and the emergency permit problem did not exist, so we did not present these types of examples.

Senator Choquette: Mr. Minister, how close was the result of the vote on the 90-day modification in the house? I believe you indicated that it nearly disappeared during the debate.

Hon. Mr. Lang: I believe it was 118 to 113, but that is from my memory.

Senator Choquette: Would you be averse to the Senate removing this clause altogether? I do not see any necessity for it. We are losing a great deal of time on it, and I think the consensus of the senators present would be to get rid of that clause altogether. That would please our police. I have been engaged in a great deal of criminal law work for 40 years and, in my opinion, we are pampering criminals. It is difficult to obtain a conviction today, and I would say that more than 50 per cent of accused are

found not guilty, either on appeal or otherwise, and I do not like to facilitate their operations. The function of the police being to protect society, we should assist them, and I am all in favour of deleting this 90-day modification clause altogether.

Hon. Mr. Lang: I should say that although these particular examples may not have been presented to the committee, very many such examples were, so I do not believe anything new is added by this. I do not think that during the committee hearings the police were given an opportunity to discuss the 90-day rule, because it appeared late in the deliberations in the house. I did myself, however, make reference in the House of Commons to the type of problem that arises in cases such as the Zizzo case, so that was also brought to their attention. I am really suggesting to you that even in a case such as the Zizzo case we would not have had the difficulty, that a judge would have set such a far forward period for notification that the problem could have been avoided. That is why I am saying that, in my opinion, we can live with this. I really do stress, and I am sure that many of you will share the view, that the main provisions of the bill, which are to outlaw private electronic intrusion, are so important that we ought not now to risk losing that part if we can live with it at all. We are at a stage in the session at which there is not much time available for anything further in the way of discussion and this corrective action. That is why I am really saying to you that I think we can live with it.

Clearly, I would have preferred this bill without that clause. Notwithstanding that, I am saying that I hope you will not move to strike it out, because we might then lose the bill altogether, which would be a tragedy. I am saying that we will watch very, very closely, with the attorneys general, the operation of this bill. I am quite prepared, also, to return to the House of Commons next year, if necessary, with an amendment dealing with a variety of aspects of this bill, including the 90-day clause, with the support of the provincial attorneys general.

Senator Carter: I am not a member of the committee, but I would like to ask the minister one question with respect to the statement he just made.

The Senate is often criticized by the public and your house. Do you think that the statement you just made, that the Senate should abandon its responsibility with respect to this legislation just because it will facilitate something that the House of Commons wishes to do, is justified? It is something which cannot be defended. You have not defended it and no one has defended it. The police have told us they are better off without it. How can you expect the Senate, as a body, to take an action such as this and make themselves ridiculous in the eyes of the public, when there is no defence for it?

Hon. Mr. Lang: That is really asking for an analysis of the political science view of the role of the Senate when the House of Commons has carefully considered and decided a question. I think the defence I am offering you in this case is that the question would take some further time to resolve and that we can review it in another way at a later time. The obtaining of the passage of the bill is, in fact, important.

I am saying that if the Senate disagreed with the view taken by the majority in the House of Commons on this section, I think that nonetheless it could reach the view that the house, having seriously debated the matter, focused full attention and voted specifically on it; and the question could be turned around as to whether one can, in fact, live with the bill, as to whether this is such a fundamental matter that it destroys the whole possibility of the bill being useful in law.

Senator Carter: Are you not asking the Senate to be a rubber stamp to suit your convenience and the convenience of Parliament? It is a nebulous thing to say that you may or can come back. You may not be the Minister of Justice next week. We may have a totally different Parliament. It may be months or years before this comes back. You have been four years playing with it now.

Hon. Mr. Lang: I am sure the Attorney General will always take that attitude.

Senator Croll: Mr. Minister, let us be practical for a moment. You are such a reasonable man that it is hard to turn you down, but we are in a bit of a bind here. It is the overwhelming opinion amongst us, if I know the committee at all, to strike out the 90-day clause. Let us look at it. We sent it back to the house. The house is cold, the house is angry, the house is unsettled at the moment, and they pay no attention to it. It happens. So we have nothing. We are back here in February. We have an important bill. We have to start all over again in February. That is probably when we shall be back. Of course, we have done all the preliminary work, and the government thinks it is important. We could go through it pretty quickly. But are we not really doing a service to Parliament when we find something as vital as this and just take our chance? No law is better than a bad law, isn't it?

Hon. Mr. Lang: I would agree with that general proposition very easily, but I do suggest that this law has to be taken as a whole piece, and that taken as a whole piece it is a very important, good, law and the sooner we can have it on the books the better. I do not think that the proliferation of electronic intrusion devices is a good thing. We should put an end to it immediately. I am afraid I could not forecast the problems of parliamentary timetables in another session, no matter how important a measure is. It may well be a year later before we get this matter in law if we do not have it in law now.

Senator Carter: What we do with this legislation is our responsibility as a Senate.

Hon. Mr. Lang: Quite.

Senator Carter: And our responsibility, based on the evidence we have heard and our own intelligence, is to throw this clause out. If we do that, then it is your responsibility and that of the house to do something about it.

You are asking us to abandon our responsibility here in the Senate so that you in the Commons do not have to face up to yours. It is your responsibility when we send it back to you; the ball is in your court. It is your responsibility to deal with it. If you do not want to pass it, throw it out. That is the responsibility of the House of Commons. You should not come here, to the Senate, and ask us to compromise our responsibility so that you people over there do not have to face up to yours.

Senator Croll: I have one question for Mr. Adamson on which I should like to be clear. You may remember that I made a preliminary suggestion regarding the RCMP. Do they share your view?

Mr. Adamson: Yes, they do.

Senator Croll: So there is no purpose in calling them, Mr. Chairman.

Mr. Adamson: Unfortunately, they could not be here today. They have given me the details. They share our view and they are prepared to come, if they are asked. They share our view, from the commissioner down.

The Chairman: Senator Croll, you agree, then, that it is not necessary to call the RCMP?

Senator Carter: I do not agree, Mr. Chairman. I would have liked to have asked the RCMP. There is nothing in the evidence so far about how this legislation will affect the RCMP with regard to international police forces. That is a pretty important subject. I do not know whether or not you are qualified to give evidence on that.

Mr. Adamson: They are qualified and they are ready.

Senator Hastings: I think we should hear them.

Senator Godfrey: As a complete neophyte and not knowing much about how the House of Commons operates, I am inclined to agree that it is their responsibility, if we throw it back, to decide whether the bill is to be amended or whether there should be no bill at all. I would think they would consider it better than no bill at all. It rather appears to me that the compromise suggestion by Chief Adamson is a sort of face-saving device which will permit some of those in the Commons who voted one way the last time to vote another way this time. If the chief is satisfied with eight hours rather than 36, why should we not recommend the eight hours? Perhaps two or three people in the Commons will swing the vote. I do not believe in the 90 days at all. Surely, that is a face-saving compromise for the Commons? We are giving them an alternative suggestion, which they should find very reasonable and which should go through in a few minutes.

Senator McIlraith: Mr. Chairman, I want to revert to the point made a few moments ago on the practicalities of the situation. I agree with the minister that the main bill affecting privacy and outlawing certain equipment is desirable. We are proposing to make a simple amendment to one clause of a very long and important bill, on a point that the House of Commons saw fit to raise only at a very late stage, at the eleventh hour and fifty-ninth minute of their very long consideration.

As I see the situation—and I find myself a little hampered and somewhat restricted in attempting to do what I always want to do—I would like to suggest, with the utmost deference, that if we were to send this bill back with amendments on the narrower points we are talking about, the other place would accept those amendments; and they have the right to come back in a year if they think we were wrong.

That is what our legislative process is all about. That is the correct way for the legislative process to work. We are indeed being deferential to them in limiting ourselves to the narrower points we are talking about, the specific points, having accepted the main thrust of the bill.

That is the kind of amendment that should come back in a year, if in fact one comes, rather than an amendment to undo the wrong about which the minister speaks. This is, after all, new legislation. We are trying it out; and I have no doubt that within the course of the next ten years there will be other amendments to it that we do not now foresee. But I do believe that the correct parliamentary procedure is for us to correct it, if I read my fellow senators correctly. It is a point on which we think there is an error. Bearing in mind the close vote that put the provision into the legislation, I believe the House of Commons would accept the bill without this clause. I feel quite confident about that, because, after all, it is hard to legislate in a house of minorities. They have problems. They may have got themselves into rigid positions, and the clause got in on a very narrow vote. I do not have the exact figure, but it was a very narrow margin.

I think the house would be agreeable to accepting the bill without that clause. I think most members of the House of Commons recognize our role in the legislative process. I do believe the correct thing to do would be to delete that clause. If it is to come back with that clause, I would like to see the appropriate law officers given a longer time to make representations with respect to either the clause as it now appears in the bill or a clause which might replace it.

I am appreciative of the way in which the suggested compromise has been put forward, but I think the simplest way of handling it, from a legislative point of view, is for both houses simply to delete this clause.

Senator Laird: Mr. Minister, perhaps due to the shortness of time available to you, you are not aware that the matter we are now discussing was debated in the Senate. This has given all of us an ample opportunity to consider it. Senator McIlraith has correctly set forth the consensus of this committee, in my humble opinion. I thought I should draw that to your attention.

Senator Croll: First, I think I should say to the minister that he ought not to feel too badly about what we appear to be on the verge of doing. We in the Senate live in this constant world of, "Well, pass this bill and we will fix it next time." That is the hangup with which we live, and we have run out of hangups at this point. It happens that you are the one to get it in the neck. It has just happened that way.

There is something else for which you will have to appease in a minute. Would you give me the rationale for allowing the judge to receive illegal wiretap evidence, as set out in clause 178.16(2) on page 9 of the bill?

Hon. Mr. Lang: The rationale for allowing the judge to receive such evidence?

Senator Croll: Yes, evidence which may have been obtained illegally.

Hon. Mr. Lang: The general rules in our jurisprudence, of course, are that evidence is admitted in court if it is relevant. That has been a part of our jurisprudence here, in Canada, for quite a long time, as it has been in Britain, whereas the United States adopted a different rule.

Senator Croll: Well, it is more than just relevancy; it depends on how the evidence is obtained.

Hon. Mr. Lang: No, that has never affected the way in which evidence is brought into court, and there is good reason for that.

This bill creates an adequate sanction to deal with illegal wiretapping. Five years' imprisonment seems to me to be a pretty good sanction in that regard. I do not agree with the American rule which keeps out evidence relating to the fact that they did not have adequate sanctions at that time to deal with certain conduct. We have that here,

so we do not need to add an evidentiary rule to enforce that conduct.

The evidentiary rule, in any case, is a most inadquate and improper way, it seems to me, of dealing with a supposed wrongdoing by a policeman, which is what is focused on here. Even if there was a wrongdoing, as a result of which at some point in time the information obtained led to a very substantial piece of evidence—such as a murder weapon with fingerprints on it, with the ballistics matching—should we let the accused go, who is obviously guilty of that murder, as a way of punishing, supposedly, some unknown law enforcement officer? If we know who the law enforcement officer is, we can sentence him to five years in prison, so we do not need any additional rule. It is a strange attitude about our law enforcement process, in any case. It is more punishing to society, it seems to me, to let the murderer go than to punish the policeman.

In addition, there is an extremely important procedural reason for not introducing this kind of technicality which a defence counsel could raise. He would be invited to go on a fishing expedition in regard to every piece of evidence admitted in an important case, because he would be entitled to prove or, in effect, force the prosecution to prove, a negative, that being that nowhere, ever, at any time was there a wiretap that led to this evidence being obtained—an illegal wiretap, it is true, but he would be entitled to fish for a wiretap in order to find out whether it was a legal wiretap.

So, if a gun is introduced in evidence in a case where no one has heard of a wiretap, defence counsel would be entitled, it seems to me, to ask where and how the gun was found. There would be no question of its being relevant. The fingerprints, ballistics, and everything would be there making it clearly admissible, but defence counsel would be entitled to say to the police officer, "Not only do I want you to tell me where you found the gun, but I want everyone who had anything to do with this case to come here and show that this gun was found in a way that had nothing to do with a wiretap, because if it had I want to find out whether it was a legal wiretap." There would be an extraordinary fishing expedition possible. If the witness said he found the gun through a search of a house, defence counsel would be entitled to ask why the house was searched. If the answer was, "We had reason to believe . . ." then, of course, defence counsel would say, "Ah, where did you get your reason to believe that?" and delve into the whole range of five years of police investigation.

It may be that the police searched the house because they thought there was heroin in it, in which case they would have to give their reasons for thinking there was heroin. They might have gone to the house in search of heroin and, to their surprise, found the gun. You can see what I am driving at. There would be interminable delays in court, and the moment the judge becomes impatient he will say, "Now look, defence counsel, you are fishing too much, and I am going to stop you!" That, of course, would lead to the court of appeal deciding that the defence was deprived of its right to determine whether or not evidence was admissible, and might upset that result.

It is the delay in court, which would result from such a technical rule, that really disturbs me greatly.

Senator Choquette: What if that evidence were obtained by third degree methods, would it still be valid and admitted by the court?

Hon. Mr. Lang: Under our law, yes.

Senator Croll: It is up to the judge to admit it or not to admit it.

Hon. Mr. Lang: If it is relevant, it is admissible.

Senator Croll: He may say that it is relevant evidence, but because it was obtained by beating the man, or other such action, he would not want to admit it. That happens every day in our courts.

Hon. Mr. Lang: I used the word "admissible"; he may admit it.

Senator Croll: All right.

Senator Sparrow: Mr. Chairman, it seems to me the minister is concerned with having this bill go through in a certain time. I think he said it would take a year or more to pass this legislation if it is not passed this session. We have never had such a bill before us prior to this one. We have never had such a law for well over 100 years. Now, all of a sudden, there is some great urgency in having it passed. I should like the minister to be specific as to what part of this bill is so urgent that it be passed within the next week or two.

I assume now, as I always have, that the House of Commons is certainly a very responsible body, and will certainly be responsible in bringing this bill back to us again should we amend it. If this bill is amended by the Senate, it goes back to the House of Commons and they can either accept or reject the amendment. If they reject it, it will come back to us. It does not mean, as I see it, that the bill is lost in this session of Parliament.

If there is some urgency in having this bill passed in this session of Parliament, then I think the House of Commons would certainly be responsible enough to see that it is passed within a very short period of time.

Senator Croll: Mr. Chairman, if there is no one else offering, I am prepared now to move that the clause be struck out. I do have a seconder.

The Chairman: Would you give us the number of the clause?

Senator Croll: We should see what our law clerk, Mr. Hopkins, has to say about it. It struck me that the only way to deal with it would be to strike out the whole section. Subsections (1) and (2) should be struck out. I do not think section 3, on page 19, really affects this.

Hon. Mr. Lang: That is clause 3 of the bill, and it is not related to this point.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Section 178.23 is a reference to a section in the Criminal Code and it is covered by this clause 2 of the bill. I think the best way to remove it would be by lines, saying: "On page 18, strike out lines 16 to 44, inclusive."

The Chairman: It is moved by Senator Croll, seconded by Senator Hastings:

On page 18, that lines 16 to 44, inclusive, be deleted.

This is in section 178.23, striking out the whole of subsection (1) and the whole of subsection (2)—lines 16 to 44. Would all those in favour so indicate?

Those against?

I declare the motion carried—one opposed, Senator Buckwold.

Senator Croll: Mr. Minister, you notice that Senator Buckwold stayed loyal!

Hon. Mr. Lang: I saw that.

Senator Cameron: He has got to live in Saskatchewan!

The Chairman: Chief Adamson says he wants to say something in addition to what he said before, on another point.

Mr. Adamson: This deals with the emergency permit. Our solicitor disagrees with the minister, and I wonder if Mr. Dagenais could say something about it. Is that permissible?

The Chairman: Yes.

Mr. Jacques Dagenais, Legal Adviser, Montreal Urban Community Police: Mr. Chairman, as legal adviser to the Montreal Urban Community Police I would like to comment briefly on two solutions the Minister of Justice has set forth in trying to explain how the urgency section, as it is drafted now, could be workable.

I would say I disagree, with the utmost respect, because not only do I respect him as Minister of Justice but also as a distinguished jurist.

Mr. Lang has mentioned that in a case of urgency a new place could be tapped with a prior warrant. He mentioned that there is a reference to "places" in the bill. It says that not only the private line of an individual could be tapped but also places which would have been generally described.

The section is section 178.15—I am sorry, it is not the urgency section—it is 178.12, on page 4, at line 35.

If you read this carefully, it is apparent that "places" can be substituted for "individual" only when the names of the individuals are not known. The portion I refer to says that the affidavit of the police officer must mention

> the names and addresses, if known, of all persons, the interception of whose private communications there are reasonable and probable grounds to believe may assist the investigation of the offence, and if not known, . . ."

Now, in a realistic police operation there is a certain number of individuals you do survey, and in such a case the persons in whom you are interested are known. I would interpret the section as meaning only in cases where you know that something is going to happen in a particular place, but the conspirators are not known to you, would you be allowed to mention in your evidence a general description of places. This would be the first point.

The second point is this. The Minister of Justice has said that we could comply actually with the urgency demand because it is always possible to phone a judge. But we have to realize that the demand of an urgency wiretap, as well as any wiretap, must be made by the designated agent of the attorney general. This means that to be realistic there might be one, two or three people in a given police force who are the designated agents and who are the sole persons who can ask for an interception.

Imagine the following type of situation. I think the example of the telephone booth is a good one. There is a physical surveillance on fraud suspects, and then you see that they seem to have an interesting and a relevant conversation in a telephone booth. First, you have to reach your designated agent because, obviously, he is not part of the shadow team. If it is at the weekend, very likely he would be at home waiting for the call, but you cannot prevent his daughter or his wife from using the phone and it might take a little time before you reach him. Once you have reached him, then you must reach the judge. Even if we accept that the judge can be reached by phone, I am not sure that a judge would like to grant permission by phone. I should think that in such a difficult situation, because we are dealing with private lives and eavesdropping, he would certainly prefer to have the person before him. But let us say that the designated judge hears the demand on the phone. He must give a written authorization. The way I understand the law, you cannot commence your work unless you have written authorization; otherwise the law would have been spelled out that the judge could give oral authorization. If it has to be written, you must have it in your hands. So the way I see it, it is totally unworkable.

I refer to my experience as a crown attorney and adviser to the police. There is a recent case which happened in Montreal. Certain criminals were under surveillance and actually there was a fraud committed, at the expense of the Royal Bank, of half a million dollars. It was committed in England, but at the expense of the Royal Bank, by a group of Montreal people belonging to the criminal element. In that case, there came over a line under surveillance of one of the suspects the following message: "You are going to receive a telephone communication from England." They decoded the number of the line where the message was to be received, in England, but it was really a matter of minutes. Therefore, this is another good example. They had immediately to try and bug this line. If you put in the operation a delay of one hour or two hours, it is just finished.

Hon. Mr. Lang: Mr. Chairman, I must say I disagree with quite a few things the committee has just been told. I grant that you could take any provision and try to make out how it will not work. You know, when you have it and you have to make it work you see it in quite a different light, and I am seeing it as how it will work.

The judges will be designated. They will know that they are apt to be called at any hour. That is why they are designated. The senior people who are designated can be designated also in a way that will make it work. The senior investigating officer on duty may be designated for the purpose. It is a call to him that will start the call to the judge that will get the authorization in writing. It must be put in writing, presumably, so that there is substantial immediate evidence that in fact the authorization was granted. Whether, indeed, it has to be given to anybody is something I am not sure about, but, at the very least, it could be given to anyone in authority. It does not have to be given to the person who is going to make the tap or who asks for it.

So I think you will learn how to make it work and will make that one work without any difficulty.

Now, the other point was about the names and places. Again, as I read item (e) on page 4, line 29 to line 35, it indicates that, if the names and addresses are known, the judge may authorize quite a wide range of interceptions in relation to those persons.

To take Chief Adamson's example on page 12, where he thought that an emergency permission was going to be needed, he talked about five well-known criminals who were known to be active in a bank fraud and who then, at some stage, suddenly started using the telephone.

With the knowing of the names and the suspicion of the activity they were involved in, I believe they could have had the standing permission to intrude on their conversations by telephone or in other ways, and that they would not have needed an emergency one. They could have been provided and armed with a regular one by a judge.

It is only if they do not know the names. If the names are known, that is it; they can get the necessary authorization in relation to the suspected activity. If they are not known, then a general description of the place is to be put in; but, if a general description of the place cannot be given, a general description of the manner of interception proposed is to be used. Now, that is very broad. It was necessarily written broad to cover the whole range of cases. You will be able to provide yourself in advance, with a great deal of authorization to deal with organized crime, if I may use that expression perhaps in a slightly narrower way than Chief Adamson has been using it.

Senator McIlraith: I take it from what you have said, Mr. Minister, in the case of the telephone booth and the man under surveillance by other persons, that you believe that a general order, having been obtained covering the case of that criminal, would be sufficient under the last part of that clause, "a general description of the manner of interception proposed to be used", to permit them to get an order that would allow them to follow him around and bug the telephone booth he was going to use.

Hon. Mr. Lang: Yes. If either they know the names or, not knowing the names, describe the group that is involved, you would be able to get the general authorization to deal with their conversations in a whole variety of circumstances.

Senator McIlraith: Just for clarification, do you envisage a situation where you would get a general order where you did not know the names of the persons precisely, and you did not know the place where you were going to use the electronic surveillance, and you did not know anything more than the manner the police were going to use? Do you interpret the section as being that wide?

Hon. Mr. Lang: I do, yes.

Senator Laird: That ought to be good enough.

Senator McIlraith: I must say that is a little wider than I interpreted it when it was brought to me. If the judges put that interpretation on it, and I hope they do, it changes my understanding of the nature of the provision quite a bit.

Mr. Dagenais: If I might interject, every time a new person comes into the picture, you are out and you have no authorization.

In the case I was referring to, the half a million dollar fraud, there was a surveillance on a telephone line of one of the suspects. He telephoned a new person and, actually, this new person was a courier in the organization, a minor character not known to be working at that time for the organization, and he said, "You are going to receive an important telephone call from England." At that time there had been $350,000 given out by the Barclay's Bank in London on the certified cheque so it was very important to recover the money. That is a very recent case I am speaking about. That case is only three weeks old, but some persons have been detained in England.

Now, to recover the money we had this new character and we knew he would receive a telephone call from England which would be of the utmost importance to us because it had a bearing, actually, on the place where the money was to be located.

I agree with Mr. Lang that the telephone booth was a bad example, because it involved the same character, but in my mind, naturally, I was referring to cases where new characters come into the picture. In the bank fraud case there was no way we could legally have tapped the telephone within the right amount of time.

Senator Choquette: Mr. Chairman, the expression "designated judge" has been used. I was wondering, Mr. Minister, whether these judges were going to be designated by your department or whether they would be, *ipso facto*, designated.

Hon. Mr. Lang: No, the section later on provides for the naming of those judges by the chief justices; they will do the designating. Subsection (4) describes the chief justices, and the beginning of subsection (1), line 23 on page 7, indicates "designated from time to time by the Chief Justice".

Senator Choquette: Would it not be easier to say that every county court judge was designated? We have five here in Ottawa. We have some in the Ottawa Valley. What would be wrong with any county court judge being considered a designated judge? Then, out of the number of judges in the Ottawa Valley, for example, you would be sure to have at least one judge over the weekend. If the judge was playing golf, they could always call him in. I do not see why the chief justice is going to designate a man here and a man there. That will take some time. How will he make his list?

Hon. Mr. Lang: I do not think it will be all that difficult for him to do, and he will no doubt do it promptly.

There is a twofold advantage in having the person who is going to apply know to whom he will apply and having the people receiving the application knowing from whom they will be receiving the application. I think that relationship is important. It is useful because the designated judges can then always have in hand a list of the persons who are authorized by the Attorney General to apply. I think, if you broaden that too far, you end up with a completely uncontrolled situation.

Senator Buckwold: Is it the intention of your department, Mr. Lang, to pass out interpretations of this act to designated judges so that they are in fact knowledgeable of the kind of interpretation that you are giving?

I am concerned that if you do not do that, any number of problems will be created by judges not co-operating because they do not want to stick their necks out to the point of running the risk of being criticized later.

Hon. Mr. Lang: Other lawyers than myself will bring this to their attention.

Senator Buckwold: I do not mean you personally, but will your department, in fact, instruct judges on how to interpret these rules?

Hon. Mr. Lang: We do not instruct judges in that way. I really mean to say that lawyers not connected with the Department of Justice will, no doubt, when necessary, be making these points with the judges.

Senator Buckwold: Let us go into this question of having the authorization "in writing". I can envisage some judges—unless the rules are pretty clearly defined for them—indicating that, in fact, before anything can happen someone will personally have to have a document in writing giving the authorization. You have indicated that that is not necessarily so. Would an instruction like that be given?

Hon. Mr. Lang: Not really, because, while that is my opinion, it is, of course, a judge in the end, at some point, and not necessarily the judge giving the authorization but another judge, who will have to determine, or might have to determine, whether an authorization was properly in existence.

Senator Buckwold: Do you not foresee some problems in that area? Let us say there is a designated judge who is away that night and somebody is on call, like a doctor is on call. You phone at four o'clock in the morning and the substitute designee is perhaps not quite as aware of the situation and, in fact, insists upon somebody, who could be some time away, picking up a written authorization.

Hon. Mr. Lang: That is no different from the problem we always have with the law, in that once it is written it is in the hands of judges to deal with it. We have an intention which we give to the law when we write it. We expect the judges to find that intention in the words that have been written. If they do not, we have to change the law. That is the usual thing. All one can really do is say: Here is what one expects them to find in the words, and therefore they will find it.

Senator Laird: May I ask a supplementary to that, while it is on my mind? Is there any provision, Mr. Minister, in this act, for approval of surveillance *ex post facto*?

Hon. Mr. Lang: Not as it is now written, no.

Senator Buckwold: Mr. Chairman, can I just finish my last question, carrying this on? Because this worries me.

Do the chiefs of police feel that there could be problems in the communication process with judges?

Mr. Adamson: Yes, I do, sir. In answering for the group, I feel that this is a problem. If it were as Mr. Lang said, and they were given broad interpretation, fine; but I think one judge will interpret differently from another, and I see some great problems here. That is why I suggested the eight hours, making us still fully accountable, making us go back to the judge immediately, but giving us the opportunity to install the surveillance, and then go to him. I fail to see how we can avoid our responsibilities, or do anything wrong. We are liable both criminally and civilly in this matter, and this is a prohibitive part of it, also, the same as the 90-day disclosure.

Senator McIlraith: Mr. Chairman, could I ask another general question?

It is my recollection that the attorneys general had not been heard by the House of Commons committee. They had asked to be heard, or some of them had, and were not. Can either you or the minister refresh my memory on that point? I just do not know what the situation is.

Hon. Mr. Lang: Mr. Chairman, I do not know that they actually requested to be heard. One or the other of them did indicate that they thought more time should be given for them to consider the implications, specifically, of the exclusion of evidence rule, so that, in effect, in my view, has been cured by the subsequent action in the House of Commons.

Senator McIlraith: On this question of the emergency provision, or the absence of an adequate emergency provision, did they express any views in writing on that, recently?

Hon. Mr. Lang: No, I do not think so. I do not think we really saw anything from them on that.

Mr. D. H. Christie, Associate Deputy Minister of Justice: The main concern, senator, was with the exclusionary rule; that was their basic and main concern. They all wrote the minister objecting to the proposed bill as it was reported out of the Standing Committee on Justice and Legal Affairs.

Senator McIlraith: But the narrow emergency rule that was in—that is not in now—when that last change was made, they had not had an opportunity to be heard on at all, had they?

Hon. Mr. Lang: No, they had not.

Mr. Adamson: Mr. Chairman, if I may just add something to this, I have had no opportunity to talk to Mr. Bales about this. The bill, as you know, was passed on December 4, and we asked for an invitation to attend here. I have not discussed it. I do not know if our attorney general knows the ramifications of this completely. I have had no time to do so, though I certainly intend to do so.

Senator Croll: You have had a long time to put him in the picture. We have been playing with this for three years. He ought to know what it is all about.

Mr. Adamson: Senator Croll, the 90-day disclosure was not in here until the last few days in the house, I suggest.

Senator Croll: He should have had it by telephone two minutes after you knew it. He is your attorney general; he is the man you turn to.

Senator McIlraith: I am just addressing myself to the narrow point of the absence of an emergency rule. I am a bit concerned, because it came in very late in its present form, that there has not been sufficient opportunity for the ones who, in our political system, have the responsibility for the administration of justice, when we are making a drastic change in the administration of justice, to have their say. This aspect of it is really the administration of justice, as distinct from something purely substantive, by itself. Yet we are legislating without their having any chance to be heard on this narrow point at all. I do not grant them the right to be heard on the more substantive matters. I think we have to take our responsibilities on that without them; but in this grey area we have a responsibility in some part of it, and they have statutory or constitutional responsibilities for the administration of justice. When we have a section like this, that is purely concerned with the administration of justice, and we are

going to amend the practice as drastically as this without telling them, I do not—

Senator Croll: The Senate knows how to live dangerously in grey areas, and we have done it for years. I am now prepared to move that the bill be adopted, subject to the deletion—

The Chairman: As amended?

Senator Croll:—that we have already made. I move that.

The Chairman: Is there a seconder? We do not need a seconder, actually.

Senator Croll: All right.

The Chairman: Is it agreed, honourable senators?

Honourable Senators: Agreed.

The Chairman: Very well, honourable senators. I shall report the bill, as amended.

I would like to thank the minister for the time he has given us, and also the representatives of the chiefs of police.

Mr. Adamson: Thank you, gentlemen, for hearing us.

The committee adjourned.

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THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*

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