



Bulletin

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CANADA REVIEWS ITS BAIL SYSTEM

The following passages are from a recent address by the Minister of Justice, Mr. John Turner, to a joint meeting of the John Howard Society and Elizabeth Fry Society in Ottawa:

"Crime continues to be a national disgrace and a world-wide problem. It is threatening, alarming, wasteful, expensive, abundant and apparently increasing! It seems to increase faster than the growth of population, faster than the spread of civilization." With these strong words, Dr. Karl Menninger opened his classic work, *The Crime of Punishment*, on criminal justice, the penal and rehabilitation systems. He pointed out that perhaps our worst crime is our ignorance about crime.

At the risk of preaching to the converted, let me ask some rhetorical questions: First of all, what percentage of the Canadian population has ever been accused of a criminal offence that required his or her appearance in a courtroom? What percentage of Canadians has ever been convicted of an offence where a period of incarceration was imposed? How many Canadians have ever spent a night in a city lock-up, or have known the indignity of a "body-

frisk?" How many have been inside a federal maximum security prison?

I doubt that anyone has the detailed numerical results that answer all these questions, but in every instance, the number who could reply "yes" would be very small. And this may be the real problem that those of us involved with the criminal process must face: we toil in an area where most of our fellow citizens do not know what is taking place, do not know of the injustices, past and present, nor of the advances and reforms that have been achieved....

In Canada, and elsewhere, there has been a tendency to subdivide the criminal and penal reform process into tidy little areas of activity: the legislators draft the laws; the police forces enforce the laws; the judges interpret the laws and decide innocence or guilt; the prison wardens have the responsibility for custody and rehabilitation. Each of us has his own part to play in the system and does so as best he can. And yet, as we are apt to forget, one human being is involved throughout - the person who is accused and convicted. The convicted person travels the complete route.

POSSIBILITY OF ERROR

As a legislator, I have called for "credible laws credibly enforced"; yet still the accused may have been arrested when there was no need for arrest, or held in custody until his trial when he was entitled to bail.

The prisoner is told that the purpose of rehabilitation programs is to make him socially responsible, yet he faces a highly regimented life in prison where he is not allowed to make even the most basic decisions for himself.

The inmate often finds that the demands of the modern labour market, where job mobility and re-training have become the norm, have left his training in prison out-of-date even before his release.

It is no longer sufficient for us to think of crimi-

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nal justice and penal rehabilitation as a series of connected events. We must see it as a convicted person does, as a total system. We must work to achieve clearly enunciated goals that work for the entire system. And we must do it from the point of view of the man or woman involved. We cannot talk of better criminal laws, or better police enforcement or more efficient penal systems, unless we look at it as the convict must. As Professor Julius Stone has written, we must study the broad area of the interaction between law and legal institutions, on the one hand, and the attitudes and activities of men and women governed by these rules on the other. We must analyze the effect of law on men and men on law.

We can no longer work only in our own sphere of activity, oblivious to the needs, achievements and reforms being made in adjacent areas of the legal process. For instance, the new Law Reform Commission of Canada, under Mr. Justice Patrick Hartt, will shortly be starting a review of the Criminal Code. Reform of the criminal law must now reflect the total criminal judicial process, including rehabilitation programs. What must be analyzed is the system as a whole and not just a component part. Only by adopting a systems approach to the criminal process and utilizing feedback analysis can we achieve what we hope from the completed process. In so doing, we will find that such an analysis forces us to think in terms of total impact upon the individual as a person, rather than in terms of a series of isolated problems that somehow involve individuals.

IMPORTANCE OF FIRST CONTACTS

It was this approach — the ultimate effect on the individual — that governed my thinking in the Bail Reform Bill, which has now received second reading in the House of Commons, and is now before the Standing Committee on Justice and Legal Affairs. The bill, if it becomes law, will bring about fundamental changes in the law relating to the powers of arrest and the release from custody before trial of accused persons. The attitudes of ordinary men and women in this country about our laws are based on the first contacts that they have with the local law enforcement authorities, with the local police force, or local criminal court. A prisoner's first impression of the law may determine whether he can be properly rehabilitated later. The Bail Reform Bill aims to make that first contact between citizens and the criminal judicial process less abrasive.

In this age of confrontation, law enforcement agencies the world over are required to deal with a complete spectrum of problems that run from so-called misdemeanors of petty crimes such as theft, assault and so on, through to new and sophisticated ranges of crimes that border on civil disobedience, all the way to violence and organized, syndicated crime. The law must give our police the flexibility they need to meet whatever particular situation is at hand

and to meet it, of course, with measures that are effective in preserving or restoring public order. Yet, these measures must not amount to overkill, which can destroy the *rapport*, public support and community identity, which police forces across Canada are striving, I believe, to achieve. This feeling of community identity between our law enforcement authorities and the people who entrust them with the preservation of freedom and order under law, is the only continuing basis for sustaining the rule of law in our country.

BELIEFS BEHIND BILL

The provisions which the Government has submitted to Parliament for its approval are based on the belief that the personal freedom of the individual should be interfered with by the state only where such interference can be proven by the state to be necessary to protect the larger interests of society as a collective whole.

I believe we must go farther than that. I believe that we have to give the courts and the police reasonable guidance on what we mean by the "public interest". I believe that we have to support legislation which will diminish personal freedom only when any restrictive measures will, in fact, result in protecting the public interest. In a free society, we have to strike a balance between the rights of the individual and rights of society. The most difficult decisions that police and magistrates have to make, particularly at the arrest-and-bail stage, involve testing the rights of the accused against the rights of the community. Striking the balance between liberty on the one hand and the security of the state or maintenance of public order on the other, requires the most difficult human judgment that men and women are called upon to make.

OBJECTS OF REFORM LEGISLATION

The objectives of the Bail Reform Bill are fourfold: First, to avoid unnecessary pretrial arrest and detention; second, to ensure that in cases where arrest with or without warrant has taken place, the person accused, whatever his means, is not unnecessarily held in custody until his trial; third, to ensure an early trial for those who have been detained in custody pending trial; fourth, to provide statutory guidelines for decision-making in this part of the criminal law process relating to arrest and bail. Underlying these four objectives is the hope that anyone ultimately found guilty and convicted will feel that at least he has been fairly treated. This may make a difference — later.

The provisions of the bill place an onus on police officers not to arrest a person where the public interest can be satisfied by less stringent measures. The other options available to the police officer are the summons procedure that is already in effect under the Criminal Code, as well as a new

INTERNATIONAL WHEAT PACT

Canada will sign a new three-year International Wheat Agreement effective July 1, 1971, to replace the International Grains Agreement, which expires on that date, Mr. Otto E. Lang, Minister responsible for the Canadian Wheat Board, said recently.

The new instrument contains two conventions, one for wheat marketing and the other for food aid. Mr. Lang expressed disappointment that it "does not contain effective price provisions and is thus much less than we had hoped for".

The agreement, however, does provide for machinery to undertake consultations in the event of actual or threatened disturbance in market conditions, including price fluctuations. The object of such consultations would be to seek ways of restoring market stability.

It also provides that the International Wheat Council will maintain a continuing review of pricing provisions. When it is generally accepted that new pricing provisions are capable of negotiation, a conference will be convened for this purpose.

"We will remain in close contact with our major partners on this point so as to prepare the ground for a new conference," the Minister said.

Under the Food Aid Convention, Canada will provide 18.6 million bushels of the total of 150 million bushels of grain to be supplied each year to developing countries. Canada's commitment remains the same but the total quantity is less than the 160 million bushels provided under the old agreement, largely because Britain, Norway and Denmark have decided not to participate.

"The Government intends to sign the new agreement which we are confident will receive widespread acceptance by other governments, including major exporters and importers," Mr. Lang said. "We welcome the fact that international co-operation in wheat marketing will be maintained and intend to make effective use of the agreement's consultative machinery in the interest of maintaining market stability," he concluded.

POWER FROM THE OUTARDES RIVER

To regulate the flow of the Outardes, River, Hydro-Quebec created an 858-billion-cubic-foot reservoir covering 250 square miles, which was formed by two large rockfill dams, a series of smaller earth and rockfill dams, dykes and a concrete spillway. The largest dam, which contains 9,800,000 cubic yards of material, is 58 miles from the mouth of the river.

The Outardes 4 power-house, just below the main dam, contains four units rated at a total of 632,000 kilowatts under a net head of 395 feet. All units were commissioned in 1969.

About 15 miles downstream from Outardes 4,

Hydro-Quebec built a concrete gravity dam, 980 feet long and 275 feet high, to create a local headpond and a net head of 471 feet for the 756,000-kilowatt Outardes 3 power-station. This station, built underground, was also completed in 1969. Its four 260,000-horsepower turbines are the largest in the world, with cylindrical valves designed to cut off full flow.

Hydro-Quebec will build a third station on the Outardes River with a capacity of 454,000 kilowatts, but no date had yet been set. This station, to be known as Outardes 2, will replace a 50,000-kilowatt station that a private company has operated at the mouth of the river since 1937. (One of a series.)



Outardes 3, completed in 1969, is an underground power-house.

FIFTH BIG JET FOR FORCES

Mr. Donald S. Macdonald, Minister of National Defence, recently announced that the Government had authorized the purchase of a fifth Boeing 707 long-range jet transport for the Canadian Forces, to join the four others that had been in service since last March.

The 707s replace Air Transport Command's 12 turboprop Yukon aircraft, which are scheduled to be phased out of service by the end of next month.

The additional aircraft will provide a degree of flexibility not achievable with only four 707s, to cope with the long-range transport commitments that can occur at the same time. Two of the huge planes are being modified to provide an "inflight" refuelling capability for the deployment of short-range fighter and tactical aircraft.

The total cost for the new Boeing is estimated at between \$10 and \$11 million, including spare parts, which will be met within the fixed defence-budget ceiling for 1970-71.

Annual operating costs for the five 707s will be just under \$11.5 million, compared to \$16 million for the Yukon fleet.

FAITHFUL TO THE END

The Post Office in St. James-Assiniboia, Manitoba had a blue Monday recently when Buster, a brown collie, had to be put to sleep.

Every day for almost 13 years, whether the temperature was 30 degrees below zero or 90 above, the dog accompanied, protected, and even guided letter-carriers delivering mail on Albany and Rutland Streets.



On one occasion, about six years ago, when another dog attacked a mailman, Buster drove off the attacker. Another day, when a relief mailman had been assigned to Buster's walk for the first time, he quickly learnt the route just by following the dog from house to house — with a few short cuts thrown in.

Local residents, who shared the affection of the mailmen for Buster, often put out water for him on hot days. He was made an honorary member of the lunch room at the St. James Post Office (Station Winnipeg), where he was treated to such delicacies as barbecued chicken.

In recent years, however, Buster began to slow down. Arthritis set in, his hearing became poor and, finally, his kidneys began to fail. The painful decision to destroy him had to be made.

Nevertheless, on his last day, Buster was faithful to the end. As usual, there he was, lying beside the "drop" box, waiting to go on his walk.

STUDENT EMPLOYMENT

Federal departments and agencies hired 23,466 students last summer, more than twice the number hired in 1969, according to the Minister of Manpower and Immigration, Mr. Otto E. Lang. A survey by the Department of Manpower and Immigration shows that the 23,466 students hired — an increase of 106 per cent over 1969 figures — earned a total of \$22,018,000. Average monthly salaries increased to \$403 in 1970 from \$379 in 1969, although average earnings fell

slightly to \$938 from \$979, as a result of a small reduction in the average working period.

Besides those students employed by federal departments and agencies, an additional 13,800 students found opportunities for meaningful activities in special educational and travel programs supported by federal funds. These included increased militia- and cadet-training, an extension of student-travel and language-training programs organized by the Department of the Secretary of State, establishment of drop-in centres in major cities, employment of students as supervisors in day camps, run by the Young Men's Christian Association (YMCA), and educational projects of the Canadian Red Cross.

"In effect, a total of 37,266 students were provided with employment or the opportunity for other satisfying activities through the action of the Federal Government," Mr. Lang said.

"It is clear that a renewed effort by all sectors of the economy will be necessary in the coming summer so that students may have access to challenging opportunities, and a chance to earn funds to further their education," said Mr. Lang.

In accordance with Government policy, departments and agencies gave emphasis to hiring post-secondary students and senior high-school students so that this group might receive the greatest possible assistance in obtaining funds to further their education. Some 76 per cent of all students hired were returning or proceeding to post-secondary educational institutions. In order that students be placed in worthwhile activities, 25.2 per cent were employed in professional, semi-professional or related occupations, an increase from 21.5 per cent the previous year. Among post-secondary students, 32.4 per cent found employment in professional and semi-professional jobs, compared to 27.4 per cent the previous year.

CRACKDOWN ON OIL POLLUTERS

Convictions and fines in 1970 for the oil-pollution of Canadian waters by ships were more than double those in any previous year, Transport Minister Don Jamieson announced recently.

Of 57 prosecutions during the year, there were 51 convictions — a total of \$71,350 in fines. In 23 other cases, the shipping company concerned, or other commercial agency, paid for the cost of cleaning up the spills.

The stepped-up program of inspections and prosecutions is part of the program of the Department of Transport to prevent pollution by oil. Investigations are carried out by inspectors of the Steamship Inspection Service, which has regional offices and also maintains regular aerial inspection flights to help spot the offenders.

LITERARY AWARDS

Books by six Canadian writers have been chosen by the Selection Committee for the 1970 Governor General's Awards. They are the novels *The New Ancestors* by Dave Godfrey and *La femme de Loth* by Monique Bosco; four volumes of poems by bpNichol (sic); a book of prose and poetry, *The Collected Works of Billy the Kid* by Michael Ondaatje; a play, *Quand nous serons heureux* by Jacques Brault; and a collection of essays, *Les actes retrouvés* by Fernand Ouellette.

The award to bpNichol is for the collections of his poems *Beach Head*, *Still Water*, and *The True Eventual Story of Billy the Kid*, as well as for an anthology edited by him, *The cosmic chef: an evening of concrete*.

These prizes will be presented in Ottawa on May 18 by Governor-General Roland Michener. The authors will also receive cash prizes of \$2,500 each from the Canada Council.

SELECTION COMMITTEE

The award-winning books were chosen by the Selection Committee from an estimated 300 literary works by Canadians published in 1970. Robert Weaver, of the Canadian Broadcasting Corporation and *Tamarack Review*, was head of the Committee's English-language jury, which also included the literary scholar and former Government Film Commissioner, Hugo MacPherson, and the critic Warren Tallman of the University of British Columbia. The head of the French jury was the Ottawa writer Claire Martin, and the other members were the critic André Renaud of the University of Ottawa, and the Montreal writer Jean Simard.

The Selection Committee was autonomous and self-perpetuating from the inauguration of the prizes in 1936 by the Canadian Authors Association until last year, when the Canada Council named replacements for several members whose terms had expired. The Council has looked after the financing and certain aspects of administration of the Awards since 1959.

The Canada Council will enlarge the Selection Committee to 18 for the next Governor General's Literary Awards, thereby reducing the reading task. Three sub-committees, one each for fiction, non-fiction and the combined category of poetry and drama will be formed.

ERNEST RUTHERFORD STAMP

Twenty-four million stamps honouring Sir Ernest Rutherford, a pioneer of atomic research, will be issued by the Post Office on March 24. The six-cent commemorative stamps, in orange, red and black, measure 40 mm by 24 mm.

Ernest Rutherford, a native of New Zealand, was born on August 30, 1871. After he graduated from university in New Zealand, Rutherford studied at Cambridge University in England, where his work with the well-known physicist, J.J. Thomson, led to his study of radiation.

Rutherford came to Canada in 1898 to accept an appointment as professor of physics at the Macdonald Laboratory of McGill University, Montreal, where he conducted a series of experiments from which he developed his theory of the spontaneous disintegration of atoms. His findings made McGill University the world centre of atomic research at that time and established Rutherford as a leading authority on radioactivity. So thorough was Rutherford's work in atomic research that it became the basis for developments in nuclear physics in the twentieth century.



The design for the Rutherford stamp was created by Ray Webber of Toronto, who also designed the recently-issued stamp commemorating the discovery of insulin. Commenting on this latest design, the Post Office Design Advisory Committee said: "Although none of us can see atoms, most of us have an image of them as a sort of miniature planet circling around a nucleus. Mr. Webber has caught this image with great skill and has added to it the sense of energy which is contained in the burst of light. It symbolizes the great energy that the harnessing of the atom has given to us and which, unseen, affects so much of all our lives."

CANADIAN TO UN POST

Professor Douglas V. LePan, formerly of the University of Toronto and the Department of External Affairs, has been appointed by the Secretary-General of the United Nations as an expert consultant to assist in the preparation of a report on the economic and social consequences of the arms race and of military expenditures. The Secretary-General's report will be compiled in accordance with a resolution that Canada co-sponsored at the twenty-fifth session of the United Nations General Assembly, calling on all governments to extend their full cooperation to the Secretary-General to ensure that the study will be carried out in the most effective way and requesting that the report be transmitted to the General Assembly for consideration at its twenty-sixth session.

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procedure which will involve the issuance of a new type of summons defined in the bill as an "appearance notice". The appearance notice will instruct an accused where and when to attend court and may be issued on the spot by the police officer on the beat or in the car, or following an arrest if an arrest is in fact made.

ADVANTAGES OF NEW PROPOSALS

The Criminal Code does not at present offer any real direction to magistrates or justices of the peace on whether to admit an accused to bail. The new proposals, I believe, remedy the defects of the existing law in the following respects. First, the new general rule is that an accused person should be released simply upon giving his written undertaking to attend court as required for the purposes of his trial. Second, the burden is expressly placed on the prosecutor to justify either any more onerous form of release than a mere undertaking, or the detention of the accused in custody pending his trial. Third, the detention of the accused in custody pending his trial is justified only on the following grounds:

- (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.

I want to make it perfectly clear that the primary ground is whether or not the accused will show up at his trial, and that the secondary ground will be whether the public interest will be protected, focusing the mind of the magistrate first on the rights of the individual, and secondly, on the rights of society.

The second ground takes proper account, I believe, of the need to protect the public interest, but at the same time it affords the courts guidance against too broad an interpretation of the provision of protection for the safety of the public by using terms like "substantial likelihood" and a "criminal offence involving serious harm".

ONUS ON POLICE

It is significant that in their practical operation, the provisions of the bill place an onus on the police to initiate action in the first instance to grant bail. No

application by the accused is necessary. I believe this is important because the average citizen, the average layman, does not really know what his rights may be, and the obligation under the bill is on the police, the law enforcement authorities, to institute the procedures for bail. The Bail Reform Bill will require officials to make a first assessment as to whether or not an accused should be held in custody, and this will not require any initiative on the part of the accused, who, as I have said, may be unaware of the procedures available to him.

The British system of justice upon which our own is based, holds that a person is presumed innocent until proven guilty, and yet, many of those being held in local or county jails awaiting trial are innocent. In many cases, there is no segregation between those already convicted of an offence and those awaiting trial. The shortage of adequate pre-trial custodial facilities for women is of particular importance. The provisions of the new bill will eliminate, to a great extent, detention before trial and the inherent injustice of identical treatment of innocent and guilty.

I wish to stress that because the bill will bring about major changes in the law of arrest and bail, extensive education will be necessary to train the police of this country in the new procedures. It will be necessary to provide guidance for judges, magistrates, crown prosecutors, and defence counsel in the practical implementation of these new procedures....

POSSIBILITIES UNDER STUDY

The Department of Justice is now studying the possibility of eliminating some of the custodial and rehabilitation problems inherent in the present law by adopting conceptions of absolute and conditional discharge of an accused person. The procedure would be to dispose of a criminal case without entering a formal conviction against the accused even though his or her guilt has been established. This option was supported by the Canadian Committee on Corrections and would be another step in making the criminal law more flexible and responsive to the personal background and the character traits of the accused - that is, more responsive to the individual involved.

An acquaintance of mine once asked an inmate at Kingston to give his opinion of "the system". Back came the reply: "I don't think very much of it. I only got off twice and both those times I was innocent."

That was a facetious reply and a superficial response. We have come a great distance in Canada in reforming our law, but there remain many tasks before us; as these are eliminated new ones will take their places as the norms and value systems of society undergo rapid change....