

## CHAPTER XVIII

## RECIDIVISM

Recidivists may be divided into three classes: (a) inebriates, vagrants, and beggars; (b) young recidivists; and (c) confirmed recidivists.

*Inebriates, Vagrants, and Beggars*

There is in every country a considerable derelict population of a non-vicious type that passes through the police court dock daily. It is composed of men and women of weak moral fibre, many of whom are of low mentality. These become the flotsam and jetsam of society. There is nothing very bad about them, often much good, but they are, nevertheless, derelicts. They find their way into the Salvation Army refuges, the missions, and the police stations, or wherever they can find shelter. There are no statistical tables compiled to record their movements. However, well ordered society demands that they be treated in a more efficient and economical manner than is the case at the present time.

This class of offender seldom commit serious crimes. They restrict themselves to petty thefts or acts of vagrancy, many are habitual drunkards. Our police court records contain innumerable cases of men who scores of times have been found guilty of drunkenness. The sentences imposed on this type of offender are short and the prisoner is soon again at large, a further expense to the community.

Your Commissioners were impressed by the method adopted in Holland and Belgium to care for beggars, vagrants, and drunkards. At Veenhuizen, the Dutch Government operates a large prison farm that has accommodation for approximately 1,500. This institution had its origin in post-Napoleonic days. Prisoners are committed to this farm by the courts. A vagrant or beggar may be committed for a period of three years and an habitual drunkard for a period of two years. The majority of the inmates work outside on the farm but a number are employed in modern workshops manufacturing articles for use in different Government departments. Considering the class of labour employed, the volume and quality of the goods manufactured are surprisingly good. The inmates earn from ten cents to thirty cents per day and work ten hours per day. One-third to one-half of the money earned may be spent on tobacco and other luxuries; the balance is given to them on discharge. The institutional life of the older inmates is similar to that which might prevail at an old men's home. On the whole it is much more free and pleasant than in the ordinary prisons and there is little custodial supervision. The policy of the Government is to pay little attention to escapes in view of the fact that the inmates are of a non-vicious type. Usually an escaped prisoner is sent back by the police, but if he secures honest employment his escape is overlooked.

At Merxplas, Belgium, a similar institution of similar origin is operated along substantially the same lines. Your Commissioners are of

the opinion that serious consideration should be given to setting up similar institutions in the more thickly populated areas of Canada, where offenders of these types may be housed for substantial periods at a time instead of following their present routine of arrest, sentence for thirty days or three months, release, rearrest, and resentence.

The initial cost of such an institution would be low compared with the ordinary type of prison because the usual custodial safe-guards would be unnecessary. If efficiently operated it might be substantially self-supporting, and the younger inmates might be trained in industrial habits so that at least a certain percentage of them would engage in regular employment on release and thenceforth cease to prey upon the public.

#### *Youthful Recidivists*

The treatment of youthful offenders is discussed in another chapter of this report. It is sufficient for the purpose of this chapter to state that, from the ranks of the recidivist youthful offenders, there are recruited a large percentage of the habitual criminals who create such a formidable problem in the administration of the criminal law. The following table, prepared by the Dominion Bureau of Statistics, shows the growth of crime among males from sixteen to twenty years of age in Canada:

INDICTABLE OFFENCES FOR AGE GROUP 16 TO 20 YEARS  
PER 100,000 POPULATION OF THE AGE GROUP

	Convictions of males 16 to 20	Population of males 16 to 20	Per 100,000 population
1891.....	653	254,080	257
1901.....	819	275,616	297
1911.....	1,536	357,118	430
1921.....	3,064	393,406	779
1931.....	6,840	516,673	1,324
1932.....	6,272	523,777	1,197
1933.....	6,487	527,263	1,230
1934.....	5,708	522,787	1,081
1935.....	5,660	522,683	1,083

The following table shows comparative figures in England and Wales:

INDICTABLE OFFENCES FOR AGE GROUP 16 AND UNDER 21  
PER 100,000 POPULATION OF THE AGE GROUP

Year	Number of convictions <sup>1</sup>	Census population	Convictions per 100,000 population
1891 (No figures available).			
1901(?).....	7,151	1,581,272	452
1911.....	4,497	1,628,982	276
1921.....	5,834	1,676,362	348
1931.....	4,843	1,724,277	281

<sup>1</sup>In comparing the figures of convictions for the year 1901 with those for the years 1911, 1921, and 1931, consideration should be given to the effect of the Probation of Offenders Act, 1907. The Probation of Offenders Act provides that convicted persons may be released on probation without proceeding to conviction. About forty per cent of those convicted of indictable offences are dealt with under the Probation of Offenders Act. Seven per cent of these were released after the charge was proved without proceeding to conviction.

The above tables indicate that crime among youths has been increasing at an alarming rate in Canada, while it has been decreasing in England and Wales. That the number of convictions for indictable offences per 100,000 of the male population between sixteen and twenty years of age should have increased in Canada from 779 to 1,324 in the ten year period between 1921 and 1931 is sufficient to arrest the national attention. Your Commissioners are convinced that if the large body of habitual criminals is not to be increased in Canada the adoption of the suggestions contained in the chapter dealing with the treatment of youthful offenders is imperative.

#### *Confirmed Recidivists*

The following table shows the number of convictions for indictable offences in Canada and the number of times convicted for indictable offences per 100,000 of the population:

Year	Charges	Per 1000-000 Pop.	Convictions	Per 100,000 Pop.	Convicted 1st Time	Per 100,000 Pop.	Convicted 2nd Time	Per 100,000 Pop.	Convicted 3 or more Times	Per 100,000 Pop.
1891.....	6,030	125	3,974	82	3,532	73	235	5	207	4
1901.....	8,291	154	5,538	105	4,430	82	624	12	584	11
1911.....	16,625	231	12,627	175	11,233	156	800	11	594	8
1921 (1).....	24,943	284	19,896	221	15,789	180	1,845	21	1,762	20
1922.....	21,032	236	15,720	176	13,022	146	1,335	15	1,363	15
1923.....	19,759	219	15,188	168	12,686	141	1,212	13	1,290	14
1924.....	20,667	226	16,258	178	13,109	143	1,329	15	1,820	20
1925.....	21,685	233	17,219	185	14,172	152	1,345	15	1,702	18
1926.....	21,976	233	17,448	185	14,286	151	1,365	15	1,797	19
1927.....	23,563	244	18,836	195	14,761	153	1,632	17	2,443	25
1928.....	26,683	271	21,720	221	17,314	176	1,955	20	2,451	25
1929.....	29,572	295	24,097	240	18,688	186	2,396	24	3,063	30
1930.....	34,751	340	28,457	279	21,319	209	3,051	30	4,087	40
1931.....	38,189	368	31,542	304	23,474	226	3,159	30	4,909	48
1932.....	37,021	358	31,383	299	23,841	227	2,895	28	4,647	44
1933.....	38,927	364	32,942	308	24,576	230	3,594	33	4,782	45
1934.....	37,408	346	31,684	293	22,805	211	3,219	30	5,660	52
1935.....	39,506	361	33,531	307	23,844	218	3,163	29	6,524	60

(1) Before 1922 Juveniles (under 16 years of age) were included in Indictable Offences.

Although this table includes all offenders over sixteen years of age (since 1922), it is sufficient to indicate that the number of convicted persons with multiple convictions has been so definitely on the increase as to require drastic action. Between the years 1925 and 1935 the number of convictions increased from 185 per 100,000 of population to 307, or 65.9 per cent. The number convicted the first time per 100,000 of population increased from 152 to 218, or 43.4 per cent. The number convicted for the second time per 100,000 of population increased from fifteen to twenty-nine, or 93.3 per cent. Those convicted per 100,000 of population the third time or more increased from eighteen to sixty, or 142.8 per cent.

The following table shows the growth of recidivism in Canada per 1,000 persons who have been convicted of indictable offences:

Year	2nd time	3rd time or more	Total recidivists per 1,000 convicted
1891.....	59	52	111
1901.....	111	104	215
1911.....	63	47	110
1921 (1).....	95	91	186
1922.....	86	87	173
1923.....	80	85	165
1924.....	82	112	194
1925.....	78	99	177
1926.....	78	103	181
1927.....	87	130	217
1928.....	90	113	203
1929.....	99	127	226
1930.....	107	144	251
1931.....	100	156	256
1932.....	92	148	240
1933.....	109	145	254
1934.....	102	179	281
1935.....	94	195	289
1936.....	107	224	331

(1) Before 1922 Juveniles were included in Indictable Offences.

The above figures cast a grave reflection on the methods of treating convicted prisoners in Canada. That the number convicted three times or more per 1,000 convicted persons should have risen from eighty-seven in 1922 to 224 in 1936 indicates that the present system is neither effecting reformation nor affording protection to society against further offences by prisoners when liberated.

The following table shows the growth of recidivism in Canada between the years 1925 and 1936:

CONVICTIONS FOR INDICTABLE OFFENCES  
1925-1936 (Canada)

	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936
First offenders.....	14,172	14,286	14,761	17,314	18,638	21,319	23,474	23,841	24,576	22,805	23,844	24,109
Second offenders.....	1,345	1,365	1,632	1,955	2,396	3,051	3,159	2,896	3,584	3,219	3,163	3,884
Third and over.....	1,702	1,797	2,443	2,451	3,063	4,087	4,909	4,647	4,782	5,660	6,524	8,060
Total.....	17,219	17,448	18,836	21,720	24,097	28,457	31,542	31,383	32,942	31,684	33,531	36,033

The number of convictions for indictable offences in Canada compares very unfavourably with the number in England and Wales. With a population of approximately forty millions, the number of convictions in England and Wales for indictable offences, from 1931 to 1935, was as follows:

1931.....	46,810
1932.....	51,180
1933.....	48,248
1934.....	47,834
1935.....	47,424

The figures are not available to show the number convicted on more than one occasion.

The causes of recidivism cannot be definitely determined or dogmatically assigned; sometimes they may be psychological, sometimes psychiatric, but we are of the opinion that they are more often due to the treatment the prisoner has received while in prison or to the difficulty of rehabilitation after the offender has been released.

For the purpose of determining the importance of the matter, the Commission made a study of the available material disclosed in the files of 188 prisoners confined in the Canadian penitentiaries on January 1, 1938 who had been convicted more than ten times. In considering the results of this study, it is emphasized that these 188 prisoners do not by any means represent the total recidivist population of the Canadian prisons, or even of the penitentiaries. A reference to the table set out above shows that, of the 36,059 persons convicted in 1936 of indictable offences, 8,060 were convicted three times or more and 11,924 twice or more.

The information available in the files of these 188 prisoners is insufficient to give an individual case history, but it is, nevertheless, sufficient to show many factors and trends that are of assistance in considering the treatment of prisoners.

The total number of prisoners confined in the penitentiaries on January 1, 1938, was 3,250. Of these 188 had been convicted more than ten times; some over sixty times. 181 of these prisoners (the record is incomplete as to the other seven cases studied) have been convicted 3,434 times, or an average of nineteen convictions per individual.

Appendix III contains six tables analysing the records of these prisoners, having consideration to the type of crimes committed, the number of convictions, the ages when first offences were committed, and the habits and status of the prisoners. This analysis shows that thirty-two per cent of these prisoners were convicted the first time before they were sixteen years of age, forty-seven per cent before the age of eighteen, and seventy-seven per cent before the age of twenty-three. Seventeen per cent of these prisoners were addicted to the use of drugs. Eighty-eight per cent did not have education above common school, while only one-quarter of one per cent had education above high school.

A study of the economic cost of these 188 recidivists is convincing proof of the wisdom of adopting a system of prison administration that will reduce recidivism to a minimum. We are convinced that this objective has been justified in England and would be justified in Canada if under proper supervision. The following tables show an estimated cost of conviction and maintenance of the 188 recidivists whose cases have been analysed:

*Cost of Conviction*

188 prisoners have been convicted.. . . . .	3,434 times
Those for liquor and vagrancy offences.. . . . .	798 "
Other offences.. . . . .	2,636 " <sup>1</sup>
2,636 convictions at a cost per conviction of \$1,200.. . . . .	\$3,163,200 <sup>2</sup>
798 convictions at a cost per conviction of \$120.. . . . .	95,760 <sup>3</sup>
<b>Total cost of convictions.. . . . .</b>	<b>\$3,258,960</b>
Number of convictions was 3,434, or 19 per individual.	
Cost per prisoner.. . . . .	\$18,005
Cost per conviction.. . . . .	948

<sup>1</sup> See the composition of this figure by type of crime in Table No. 1, Appendix III.

<sup>2</sup> Superintendent Hughes stated in his report for 1925-26 that the records disclosed the average cost of conviction for the commission of a crime to be about \$1,200. This figure would include the cost of detection, arrest, and trial.

<sup>3</sup> As Superintendent Hughes' figure for major convictions may well be in excess of the actual figure, the figure for minor convictions is made ultra-conservative, or one-tenth his cost for a major conviction.

*Cost of Maintenance*

	Years	Months	Days
Total time spent in jails and reformatories.. . . . .	553	11	21
Total time spent in penitentiaries <sup>1</sup> .. . . . .	1,483	11	2
<b>Total time spent in penal institutions.. . . . .</b>	<b>2,037</b>	<b>10</b>	<b>23</b>
Cost of maintenance in reformatories and jails <sup>2</sup> .. . . . .	\$1.31 per day		
Cost of maintenance in penitentiaries, exclusive of capital expenditure <sup>3</sup> .. . . . .	2.00 per day		
On the foregoing basis, the cost of maintenance would be:			
In reformatories and jails.. . . . .	\$ 264,876 76		
In penitentiaries.. . . . .	1,083,254 00		
<b>Total cost of maintenance.. . . . .</b>	<b>\$1,348,130 76</b>		
The average terms served by each prisoner was:	Years	Months	Days
In reformatories and jails.. . . . .	3	0	22
In penitentiaries.. . . . .	8	2	11
	11	3	3
The average cost of keeping each prisoner would be:			
In reformatories and jails.. . . . .	\$1,463 41		
In penitentiaries.. . . . .	5,984 83		
<b>Total.. . . . .</b>	<b>\$7,448 24</b>		

<sup>1</sup> Includes present sentence, even if not completed.

<sup>2</sup> Average computed from information supplied by provincial Governments.

<sup>3</sup> Approximate figure from Superintendent of Penitentiaries reports: i.e., 1934-5=\$1.82; 1935-36=\$2.01; 1936-37=\$2.04.

*Total Cost*

Without reckoning the loss occasioned by the crimes committed, the funds contributed to the support of dependents, or the economic loss occasioned by the criminals' incarceration, the total cost occasioned by these 188 recidivists would be as follows:

Maintenance in jail or reformatory.. . . . .	\$ 264,876 76
Maintenance in penitentiary.. . . . .	1,083,254 00
Cost of convictions.. . . . .	3,258,960 00
<b>Total cost to the state.. . . . .</b>	<b>\$4,607,090 76</b>
<i>Cost per Prisoner</i>	
Maintenance in jail or reformatory.. . . . .	\$ 1,463 41
Maintenance in penitentiary.. . . . .	5,984 83
Cost of convictions.. . . . .	18,005 00
<b>Total cost per prisoner.. . . . .</b>	<b>\$ 25,453 24</b>

One can only conjecture what would be the result of a similar computation in regard to our 8,000 recidivists, but the facts herein disclosed are a convincing proof that a prison system that on the whole, returns prisoners to society worse than when received into its custody fails in its function to protect society and, on the other hand, contributes heavily to the economic burdens that have continually to be borne by the taxpayer. We are of the opinion that the chief causes of recidivism are as follows:

1. The absence in Canada of an adult probation system providing for the release of offenders under supervision;
2. Contamination of young offenders in jails, reformatories, and penitentiaries, by coming in contact with degenerate and experienced criminals;
3. The failure of the prison system of Canada to give proper weight to the importance of reformatory treatment of prisoners;
4. The appointment of staff without training or capacity to fulfil other than mere custodial duties;
5. The antagonistic attitude of society toward a person who has been convicted of crime, and the absence of any well-organized scheme of rehabilitation of prisoners in Canada.

We have made many recommendations in this report that will involve in the first instance the expenditure of money to provide new buildings and additional staff. We have recommended treatment of young offenders on Borstal lines, a prison for habitual offenders, and proper supervision of paroled prisoners. The facts disclosed in this chapter should be conclusive evidence that expenditure to prevent recidivism will eventually prove to be a great economic benefit.

## CHAPTER XIX

## HABITUAL OFFENDERS

Notwithstanding the best methods of punishment and reformation that may be adopted, there will always remain a residue of the criminal class which is of incurable criminal tendencies and which will be unaffected by reformatory efforts. These become hardened criminals for whom "iron bars" and "prison walls" have no terrors, and in whom no hope or desire for reformation, if it ever existed, remains. They are the costly worthless dregs of society, for whom no adequate arrangements have been provided in Canadian prisons. They come before the courts on all sorts of more or less serious offences; they are the "ins and outs," sometimes in for long periods and sometimes short, but, nevertheless, "in and out."

In Great Britain, France, Holland, Belgium, and the United States of America, the principle of the segregation of habitual offenders has been adopted so that their contaminating influence will be reduced to a minimum both in prison and out.

The problem was first dealt with in Great Britain in the Gladstone Report. The committee that prepared this report referred to the habitual criminals as follows:

"To punish them for the particular offence in which they are detected is almost useless; witnesses were almost unanimous in approving of some kind of cumulative sentence; the real offence is the wilful persistence in the deliberately acquired habit of crime. We venture to offer the opinion formed during this inquiry that a new form of sentence should be placed at the disposal of the judges by which these offenders might be segregated for long periods of detention during which they would not be treated with the severity of first-class hard labour or penal servitude, but would be forced to work under less onerous conditions. As loss of liberty would to them prove eventually the chief deterrent, so by their being removed from the opportunity of doing wrong the community would gain. With regard to the locality of such institutions, we suggest that sites on estuaries or other places where there is ample scope for land reclamation, would be most suitable for consideration."

These recommendations were given legislative recognition in the Prevention of Crime Act (G.B.) of 1908. Part I of this Act made provision for Borstal institutions for young offenders and part II for the detention of habitual offenders.

"Lord Gladstone, in proposing the Act, made it clear that it was intended to deal not with the generality of 'habituals' but only with that more limited body of 'professional criminals' or 'persistent dangerous criminals' 'engaged in the more serious forms of crime'."<sup>1</sup>

<sup>1</sup> Fox—The Modern English Prison (p. 168), Lond., 1934.



The provisions of Part II are set out in Appendix XVII-1 to their report. They may be summarized as follows:

When a prisoner is convicted of a crime and subsequently admits that he is, or is found by a jury to be, an habitual criminal, and if the court passes a sentence of penal servitude (a sentence of three years or over), the court, "if of the opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years, may pass a further sentence ordering that, on the determination of the sentence of penal servitude, he may be detained for such period not exceeding ten and not less than five years . . . as preventive detention."

This Act was regarded as revolutionary in the administration of British criminal law, and was hedged about with "safeguards," since proved "difficulties" that have prevented the law from fully accomplishing its original purpose. These "safeguards," or difficulties, have been summarized as follows:

- (i) The consent of the Director of Public Prosecutions must be obtained by the Police before they can charge an offender with being an habitual criminal.
- (ii) The Secretary of State advised Police Forces that normally, they should only submit to the Director cases where, in addition the qualifications expressly required by the Act, the criminal (a) is over 30 years old; (b) has already undergone a term of penal servitude; (c) is charged anew with a substantial and serious offence.  
If the consent of the Director is obtained, and if the offender is convicted on the fresh charge, and if the Court decides to pass a sentence of penal servitude in respect to that charge, then
- (iii) The jury must be asked to find, on evidence, that he is an habitual criminal, and to this end they must be satisfied not only that since the age of sixteen, in addition to the fresh conviction, he has been at least three times previously convicted, but that he is 'leading persistently a dishonest or criminal life.' Should the jury find this charge proved, then
- (iv) The Court must determine that 'for the protection of the public it is expedient that the offender should be kept in detention for a lengthened period of years.' For varied reasons the Court does not invariably so determine, so that it is relatively rarely that a case reaches the final stage—
- (v) The passing of sentence of Preventive Detention."<sup>1</sup>

The Act provides that a prison or part of a prison shall be set apart for the purpose of confining those sentenced to preventive detention. The rules applicable to convicts and convict prisons apply to those under-

<sup>1</sup> Fox—The Modern English Prison (p. 169), Lond., 1934.  
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going preventive detention "subject to such modifications in the direction of a less rigorous treatment as the Secretary of State may prescribe. . . ."

The Secretary of State is required, at least once in every three years of the prisoner's sentence, to take into consideration "the condition, history and circumstance" of the prisoner, "with a view to determining whether he shall be placed out on licence and, if so, on what conditions." The Act provides that those released on licence shall be placed "under the supervision or authority of any society or person named in the licence." Provision is made for a committee at each prison at which prisoners are undergoing preventive detention to assist in interviewing the prisoners and in making reports for consideration in determining whether a licence should be granted to them under the provisions of the Act.

A fundamental principle embodied in the basic structure of this Act is a hope that the habitual criminal who is sentenced to preventive detention may still be reformed—a hope in which we express grave doubt.

"In 1928 when the Act had been in operation for twenty years, the Commissioners in their Annual Report (pages 12-18) published a detailed account of the operation of preventive detention, which showed conclusively that it had not had the effect which was intended. This view was confirmed by the Persistent Offenders' Committee of 1932 which recommended that Part II of the Act should be repealed and that further provision should be made for dealing habitual criminals. . . .<sup>1</sup>

The following quotation from the report of the Prison Commissioners indicates that in their view the Act has not been sufficiently utilized. This, no doubt, is due to its cumbersome and restrictive provisions.

"Between the date when the Act came into operation in August, 1909, and 31st December, 1928, 901 sentences of Preventive Detention have been passed, of which 735 were for the minimum period of five years and 34 for the maximum period of 10 years . . . in recent years the average number of sentences has been for men 31, for women 0·6 each year. How insignificant are these figures compared with the number of recidivist criminals can be seen by taking any sample batch of convicts and noting how numerous are those who have three or more previous convictions of crime. For example, in 1928 there were discharged from the convict prisons 434 men, of whom 308 were 'recidivists.' Of these 308 there were 54 with one or two previous convictions of crime, and 254 with three or more previous convictions of crimes. One hundred and fifty-nine of them had six or more such previous convictions and 134 of them had served previous sentences of penal servitude. . . . Seeing that this sample batch of 308 recidivists represents only a portion of the total number of recidivists who at any one time are at large . . . it is clear that 31 sentences a year of Preventive Detention can have no appreciable effect on the problem of recidivism."<sup>2</sup>

<sup>1</sup> Fox—*The Modern English Prison* (p. 173), Lond., 1934.

<sup>2</sup> Annual Report of the Commissioners of Prisons and the Directors of Convict Prisons, Lond., 1928.

Our doubts that reformatory effort can be applied with success to habitual criminals are somewhat confirmed by the following information taken from the same report of the Prison Commissioners.

Taking the men released from Camp Hill (preventive detention prison) during the seven years from January 1, 1920, to December 21, 1926, the total number licenced was fifty-five. Of these, four died, and one became insane. Of the remaining fifty, all but three had reverted to crime by the end of 1928. Of twenty-six discharged on expiration of sentence during the same period, three died and, with the exception of four, the remainder had all reverted to crime by the end of 1928.

In 1931, a committee was appointed by the Home Secretary of Great Britain

“to enquire into the existing methods of dealing with persistent offenders, including habitual offenders, who are liable to sentences of preventive detention and other classes of offenders who return to prison repeatedly and to report what changes, if any, are desirable in the present law and administration.”

In April, 1932, the committee made its report<sup>1</sup> to the Home Secretary. This report is an able and exhaustive treatise on the whole subject and is worthy of the most careful consideration by those who will be responsible for considering the recommendations contained in this report.

The committee was of the opinion, with which we entirely agree, that the procedure provided by the Act should be simplified and that a sentence to preventive detention should not be cumulative with a sentence to penal servitude. It is unnecessary to go into the committee's report in further detail except to say that it recommended the preservation of the reformatory aspects of the former practice and the principle that preventive detention should be less rigorous than penal servitude.

In Belgium, advanced experiments in preventive detention are being tried. These are modelled on the British system and are reported to be developing satisfactorily.

The same principles have been adopted in the Dutch and German penal systems but have not reached the same stage of development as in Belgium or Great Britain. Of preventive detention in German prisons, Mr. Harold Scott, C.B., chairman of His Majesty's Prison Commissioners for England and Wales, in a report published in 1936, states:

“Preventive detention for dangerous habitual criminals, which has been in force since the 1st January, 1934, has as its object to render the prisoner harmless by detaining him after he has purged his offence by serving his sentence of imprisonment, so that the public may be protected from further crimes. Absolute security of detention and prevention of escape is to be secured at all costs. In general persons in preventive detention are to be treated in accordance with the rules for ordinary prisoners; they are required to work, and provided their conduct and industry are good, they may receive

<sup>1</sup> Report of the Departmental Committee on Persistent Offenders, Lond., 1932.  
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certain privileges provided these are not contrary to the object of preventive detention, e.g., they may be allowed to chew or smoke tobacco."

In France, until 1937, habitual criminals were transported to the penal colony at Cayenne, the theory being that the severity of the punishment would operate as a deterrent to others. It is unnecessary in this report to discuss the success of this system. It has now been discontinued, and the French Government is directing its attention toward modernizing the administration of its prison system. Habitual criminals are now segregated in the prison of Caen (Calvados).

In New York State, and in several other states of the United States of America, provision has been made in the statutes whereby,

- (a) A second offender shall be sentenced to a term of imprisonment, not less than the longest term for which he might be sentenced as a first offender and not more than twice the longest term prescribed for a first conviction, provided the offence is not one for which a life term might be given on first conviction;
- (b) After a person has been convicted for a felony on a fourth conviction, he shall be sentenced to imprisonment for the term of his natural life.

We have not seen such evidence of such success in the enforcement of the rigorous terms of these statutes as would justify their adoption in Canada.

Your Commissioners recommend the enactment of the necessary legislation to provide for the confinement of those who may be found to be persistent and habitual criminals, and that the legislation governing procedure should be framed so as to provide that,

- (a) After an offender has been convicted of an indictable offence on three previous occasions, if he has attained the age of sixteen years he may, on subsequently being charged with an indictable offence, in addition to the charge that is preferred against him be charged as an habitual offender;
- (b) The offender shall first be tried on the charge that is preferred against him and, if found guilty, the crown counsel may then proceed with the charge that he is an habitual offender;
- (c) For the indictable offence preferred against him the accused should be tried according to the present procedure, but the power to find him an habitual offender should be vested only in judges of the Superior or County Courts sitting without a jury, or, in the province of Quebec, in a judge of the Court of Sessions, or in a judge of the Superior Court, without a jury;
- (d) If found guilty of being an habitual offender or habitual criminal, the sentence should be for an indeterminate period;
- (e) The prisoner may be released on ticket-of-leave if there is reasonable probability that he will abstain from crime. (This power should be exercised with great care in view of the purpose of the detention.);

- (f) The sentence of preventive detention should become effective at once and not on the expiration of any other sentence imposed for any offence on which he may have been tried.

For the purpose of carrying this recommendation into effect, a special prison should be erected remote from any other penal institution. In the erection of this prison it will be necessary to provide for safe custody by maximum security. Ample employment should also be provided. The attention of your Commissioners has been directed to the physical advantages, for the purposes of such an institution, of Grosse Isle, an island in the St. Lawrence river about twenty miles below the city of Quebec. This property was formerly used as a quarantine station by the Department of National Health. There are a number of buildings that could be altered for prison purposes. The station has been closed for a number of years but the property is still owned by the Government of Canada.

The treatment to be accorded the prisoners in an institution for habitual offenders is a matter for careful study by the prison authorities. The purpose of the prison is neither punitive nor reformative but primarily segregation from society. In Great Britain and Belgium, and in a measure in Germany, it has been the practice to treat prisoners undergoing preventive detention with greater leniency than prisoners undergoing penal servitude.

The report of the Departmental Committee on Persistent Offenders states:

"In pursuance of the provision in the Act that their treatment shall be less rigorous than the treatment for penal servitude convicts, special Rules have been made for preventive detention. Under these Rules a preventive detention prisoner can earn various privileges which the penal servitude convict does not normally enjoy. Thus he can earn a money credit for work done, and is allowed to employ this in various ways, including the purchase at the prison of certain commodities in the nature of luxuries. He has opportunities for association with other preventive detention prisoners, not only during working hours but also at meal times and in the evenings. During the periods of recreation the men can smoke and talk and play table games. They have greater facilities than a convict has for reading newspapers and other periodical publications, for writing and receiving letters, and for receiving visits. There are two other distinguishing features of preventive detention which are to prisoners of great importance. The preventive detention prisoner receives a more varied and liberal diet than other prisoners, and he has also greater freedom from detailed supervision than the average local or convict prisoner. In the arrangements made to ameliorate the lot of these prisoners all that is reasonably practicable seems to have been done."<sup>1</sup>

<sup>1</sup> Report of the Departmental Committee on Persistent Offenders, Lond., 1932.

The prisoners are permitted to earn money, starting at 2 pence a day, rising in a year (provided conduct is good) to 3 pence, and, after two years, to 4 pence, with gratuities of 5 shillings each for good conduct stripes. They are permitted to spend this money on articles of food, toilet requisites, and smoking material. Meals are taken in association and the prisoners are permitted to play certain indoor games together in the evenings. Newspapers are provided, and meals are on a more liberal scale than those provided for prisoners undergoing penal servitude.

The wisdom of the methods employed will become more manifest as these experiments develop. As has been stated, however, your Commissioners do not consider that much hope can be held out for the reformation of these habitual criminals. On the other hand, if the punishment imposed in preventive detention is unduly rigorous, judges will refuse to commit habitual offenders for preventive detention and those who ought to be segregated from society will continue to be released from prison on the expiration of their sentences, so that the system will thus defeat its own purpose. The experiments in England and Belgium, where the system is receiving careful trial, ought to form a guide for the Canadian authorities.

Your Commissioners are of the opinion that, if these recommendations are adopted, the indefinite deprivation of the liberty of offenders who have definitely adopted a life of crime will operate as a powerful deterrent for the reformable criminal who has not yet become an habitual, and, in addition, it should minimize the corrupting influence of the habitual criminal both in and out of prison.

It is essential to bear in mind that this chapter deals with habitual offenders who have been so found by the court, as distinct from incorrigible and intractable prisoners who must, under the scheme of classification recommended in chapter VIII, be segregated by the prison authorities.

## CHAPTER XX

## CONDITIONAL RELEASE

## ADULT PROBATION

Probation is the release of offenders who have been brought before the court, under the supervision of an officer of that court and on such conditions of good behaviour, etc. as the court may prescribe. The probation officer acts as friend and adviser, and, on the failure of the probationer to fulfil the terms of his probation, it is his duty to report him back to the court for the imposition of sentence for the offence on which the accused was originally brought before the court.

The object of a system of probation is to provide an opportunity, in proper cases, for those convicted of crime to effect their own reformation under the guidance, assistance, and authority of an officer of the court. At the same time the accused is not exposed to the degradation of a prison term or the demoralizing influences connected therewith.

The idea of probation had its birth in British countries in 1879 by an amendment to the Summary Jurisdiction Act of Great Britain. Section 16 of that Act provided, *inter alia*, that when a court of summary jurisdiction was of the opinion that, though the charge was proved, the offence was so trifling that it was inexpedient to inflict any punishment or other than a nominal punishment, the court, upon convicting the person charged, could discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, and to be of good behaviour. In connection with the administration of the amended Act, a practice grew up among the magistrates in England to ask the police court missionaries to give advice and help to offenders who were thus conditionally discharged, and this may be regarded as the inception of legal supervision of convicted offenders.

In 1881, a bill was passed in the British House of Commons making provision for a system of supervision of accused persons while on bail, but this bill failed to receive the approval of the House of Lords.

In 1887, a "first offenders" bill was introduced into the House of Commons. In introducing this bill, its sponsor stated:

"This modest bill proposes to give magistrates power—not to compel them—where a person is brought before them for the first time charged with an offence punishable by imprisonment only, to direct that he shall be conditionally released upon probation of good conduct."

It is interesting to note that the bill was opposed by one member of the House of Commons on the ground that it was "an extremely dangerous principle to leave it to a lot of amateurs to say that persons who have been convicted, shall be allowed quietly to merge into the honest peaceful population and be heard of no more." The bill, although amended in the House of Lords, received the royal assent on the 8th of August, 1887.

The effect of the Act was to extend the principle of release on recognizance, which had been contained in the Act of 1879, to apply to persons convicted of larceny, false pretences, or other offences punishable with not more than two years' imprisonment, and it was limited to first offenders. The Act, however, did not attempt to set up any machinery for the supervision of the persons dealt with under its provisions. This was left to court missionaries, voluntary workers, and friends of the accused. It was the practice of magistrates to bind over offenders under the provisions of this Act and to inform them they would be under the supervision of such persons as might be designated during the term of the bond.

In 1906, a bill was introduced in the British House of Commons that was designed to make provision for the appointment of probation officers, whose duty it would be to supervise offenders who had been released under the terms of the statutes already mentioned. The bill was withdrawn, but in the following year Mr., now Sir, Herbert Samuel introduced as a Government measure a bill which repealed section 16 of the Act of 1879 and the whole Act of 1887. This measure made provision for an effective system of probation and the appointment of probation officers who were to be paid out of public funds. On the second reading of the bill in the House of Lords, the Earl of Meath used the following oft-since quoted words:

"This bill can hardly be called a first-class measure in the ordinary sense of the term. It is not one which creates a great deal of popular excitement. There can be no doubt whatever that the bill will prevent crime, and to a large extent empty our gaols."

This bill cannot by any means be given the whole credit for emptying the English jails, but it has, no doubt, been a contributing factor to the results obtained in England during the last thirty years. The number committed on indictment who were received into the jails and prisons of England and Wales in 1909 was 9,613, while in 1935 it was 4,657.

Since 1892, the Canadian Criminal Code has contained provision for the release of convicted persons on suspended sentence. Under the provisions of section 1081 of the Criminal Code a judge or magistrate before whom any person has been convicted may, in certain circumstances, release the convicted person on probation of good conduct instead of sentencing him at once to any punishment. The accused is required to enter into a recognizance, with or without sureties and during such period as the court directs, to appear and receive the judgment of the court when called upon to do so and, in the meantime, to keep the peace and be of good behaviour.

The power of the presiding judge or magistrate to act under the provisions of this section without the consent of counsel acting for the crown in the prosecution of the offender is limited to cases where the person is convicted of an offence punishable with not more than two years' imprisonment and with no previous conviction proved against him. Where the offence is punishable with more than two years' imprison-



ment and where the offender has been convicted on a previous occasion for an offence not related to the offence in question, the court may act under the provisions of the section with the consent of counsel acting on behalf of the crown.

The section provides that in invoking its provisions regard is to be had "to the age, character, and antecedents of the offender, to the trivial nature of the offence, and any extenuating circumstances under which the offence was committed."

By an amendment to the section passed in 1921, the court was given power to impose conditions on the offender that must be observed by him while on probation.

There is no provision in the Canadian Act whereby, as in the English Act, the court may release an accused person on probation without proceeding to conviction. Your Commissioners do not recommend that such a provision should be made applicable to adults.

With the exception of the province of Ontario, no provision has yet been made under the laws of either the Dominion of Canada or any of the other provinces for the supervision of adult convicted persons who have been released under the provisions of this section. Such provision has been made only in the county of York and the cities of Toronto, Ottawa, and Hamilton.

With the exception of the above county and municipalities, moreover, no provision has been made, by either the federal or provincial authorities for any proper investigation or report to the presiding judicial authority such as would enable him to determine whether the offender is one who should be released on terms instead of being imprisoned.

At the present time, the judge who is to pass sentence is given information only as to the previous prison record of convicted persons and he is not provided with sufficient information to enable him to pass appropriate sentences. This is not in keeping with one of the essential aims of the penal system, reformation and rehabilitation. It leaves only the consideration of punishment as a deterrent factor.

Your Commissioners recommend that proper machinery should be established to provide the judge, before passing sentence, with a full story of the prisoners' background, the probable cause of his downfall, and a complete report of his mental and physical condition, prepared by an expert psychiatrist and physician.

It is quite true that, in many cases, investigation is made by the police authorities, and that counsel acting on behalf of the accused brings to the presiding judicial officer such relevant facts as would convince him as to the propriety of such a release. It is our view, however, that such methods are not satisfactory and that it is essential to the proper operation of an adult probation system that investigation should be carried out by trained probation officers appointed by the court. Only in this way can the court rightly determine who should be put on probation, or see to it that the offender who is on probation is placed under the constant supervision of trained officers of the court, and only in this way can those offenders who are not proper subjects for it be prevented from obtaining

probation. It is important that offenders who are proper subjects for probation should be given an opportunity for rehabilitation.

Your Commissioners fully realize that it is generally accepted that the first object of a court, in the matters of punishment or treatment of offenders, should be to deter persons from committing crime, and the second object to reform, as far as is practicable, those who commit them. There are many cases where the first consideration may preclude the use of probation and where it may be in the interests of society to send an offender to prison as a warning to others but, where that consideration does not arise, there are many proper cases where adult probation is preferable to imprisonment. In such cases the court should have every means of determining whether the offender can best be reformed by release under supervision or by a sentence to imprisonment.

In the province of Ontario provision has been made for supervision, and for the appointment of officers who may report to the court either before or after the offender has been released on probation.

The Probation Act, R.S.O. 1927, chapter 364, has been in force in Ontario since 1932. The object and scope of the Act is set out in section 2:

"2.—(1) For the purpose of giving effect to section 1081 of the Criminal Code and amendments thereto, it shall be the duty of the probation officer and he shall have power with regard to any person convicted at a sittings of the Supreme Court for the trial of criminal cases or at the general sessions of the peace, or the county judges' criminal court, or at the court of any police magistrate or justice of the peace or by a juvenile court in the county or district,—

- (a) to procure and report such information as to the antecedents, family history, previous convictions, character of employment and other information respecting any person so convicted as the court may require;
- (b) to supervise under the direction of the court before whom such person was convicted the employment, conduct and general condition under which the person so convicted may be placed during the period of probation imposed by the court;
- (c) to see that any person so convicted reports from time to time as the court may prescribe, and to report to the court if the person so convicted is or is not carrying out the terms on which sentence is suspended, and to see that such person, in case of such default, is brought again before the court for sentence;
- (d) to see that any person so released on suspended sentence duly makes restitution and reparation;
- (e) to see that any person so convicted while on probation duly carries out any order of the court requiring him to make due provision for the support of his wife and any other dependents for which he may be liable;
- (f) to do all such other things as may be directed by the court or by the regulations made under the authority of this Act.

(2) In the performance and exercise of the powers imposed by or under subsection one, the probation officer and any assistant of the probation officer shall be *ex officio* a provincial police constable."

The officers appointed under the Act are paid by the provinces, and the municipalities are required to provide them with office accommodation. Seventeen officers have been appointed under the provisions of this Act, which, as has been stated, is as yet confined to the county of York and the municipalities of Toronto, Ottawa, and Hamilton.

In the city of Toronto and the county of York, a chief probation officer has been appointed who is assisted by a staff of eleven officers. The services of these officers are available, not only to supervise probationers, but, when called upon, to make reports to magistrates and judges before sentence has been passed. Your Commissioners are of the opinion that the services of such officers ought to be utilized to a much greater extent.

According to evidence given before your Commissioners, many offenders have been admitted to probation without the necessary reports being received from probation officers. It is not fair to any system of probation that this should be done, and the results obtained in the city of Toronto and the county of York must be considered in the light of this fact.

The method of compiling statistics has not been sufficiently analytical to show what percentage of those who have been released on suspended sentence under supervision have later been convicted of crime. Judge H. W. Mott, the chief probation officer for the city of Toronto and county of York, stated in evidence before your Commission that, of 9,000 persons released under the supervision of the probation officers since 1921, ninety-one per cent have failed to appear subsequently in the Toronto courts. No record is available as to their appearance in other courts. In England, forty-two per cent of those convicted of indictable offences in the year 1936 were released under the supervision of the probation officers, but reliable statistics are not available as to the subsequent history of these offenders.

Making all allowance for the paucity of statistics that are available, however, your Commissioners are satisfied, on the evidence submitted to them, that the principle of adult probation is sound and that, wherever given adequate trial, the system has been successful. The evidence shows that in the province of Ontario, where the system has been in limited operation, it has succeeded, not only in saving a large portion of those so released from the taint and degradation of penal confinement, but in assisting them to become useful members of society.

In adopting a probation system certain cardinal principles should be followed. Probation should never be either lenient or harsh. It should always be definitely disciplinary in purpose. The conditions of probation should be wisely imposed by the court and strict compliance therewith should be demanded. In no sense should it be regarded by the offender as equivalent to being "let off." He should always be made to realize

that probation is a conditioned liberty. It may be necessary at times to impose conditions that are even irksome, but the good probation officer should be able to make the offender realize that the conditions of liberty, instead of being for punishment, are for the purpose of assisting him to acquire good habits and to adopt a more ordered and disciplined mode of living.

When an offender is released on probation the court does him an injustice if it does not surround the release with all the solemn dignity of a sentence of the court. The conditions should be carefully read to the offender in court, he should be required to subscribe to them in writing, and a copy should be given to him on his release. If a recognizance is taken a copy of this should be attached to the conditions.

The success of any probation system will depend on the character of the personnel appointed to administer it. All probation officers should be appointed by the court. These officers should be carefully recruited from the ranks of well-trained social service workers. They should be persons capable of exercising infinite patience and, where necessary, firm discipline. Males should be appointed for the supervision of male probationers and females for the supervision of female probationers. In no case should a probation officer be appointed as a political reward for services rendered.

Your Commissioners are of the opinion that, in addition to the reformatory influence it exerts, the establishment of an adult probation system throughout Canada would effect an economic saving to the authorities charged with the responsibility of administering the criminal law in all its phases.

The 9,000 offenders dealt with without incarceration in the city of Toronto and county of York since the Adult Probation Act came into force have ceased to be a liability to the state during the term of their sentences, and, in most cases, they have become an asset. Moreover, they have not been exposed to prison influence and all its resultant consequences.

The value of adult probation cannot be expressed in clearer language than that used in May, 1935 by the Lord Chief Justice of England in a lecture on the subject of treatment of young offenders:

"But of course the right-hand man, an indispensable handmaid of the court, is the probation officer. The men and women of this service are as remarkable as they are unknown. In a single year nearly 20,000 men and women, boys and girls, are assigned to their care. If a similar number were sent to prison for a year the cost would be twenty times as great. The saving of money to the State is striking. The saving of the stigma to the individual is immeasurable."<sup>1</sup>

Your Commissioners recommend:

1. That an adult probation system be adopted throughout Canada modelled upon the system now in force in England;

<sup>1</sup>Harris—Probation and Other Social Work of the Courts (Clarke Hall Lecture), Lond., 1937.

2. That the probation officers be appointed by the courts and that they be recruited from the ranks of trained social service workers;
3. That the services of the probation officers be made available for the preparation of histories of convicted persons, and that such reports be furnished to the presiding judicial authority before the accused is sentenced;
4. That, as hereinafter recommended, probation officers be given supervision over persons who are released on ticket-of-leave.

#### REMISSION

##### *Statutory Remission*

Under the provisions of the Penitentiary Act, prisoners are allowed to earn a statutory remission of a portion of their sentences, subject to satisfactory conduct, application to industry, and strict observance of the prison rules.

This remission has the effect of arbitrarily shortening the sentence of the prisoner. When remission has been granted to a prisoner, his sentence has been executed and he is entitled to be discharged and set at liberty, subject, however, to the cancellation for misconduct of all, or a portion of, the remission granted. In addition to the provisions of the Penitentiary Act, which are applicable to prisoners incarcerated in penitentiaries in Canada, provision is made in the Prisons and Reformatories Act for the remission of a portion of the sentence of prisoners incarcerated in prisons and reformatories. The following are the provisions of the Penitentiary Act which are applicable:

“ 64. The Superintendent, subject to the approval of the minister, may make regulations, under which a record may be kept of the daily conduct of every convict in any penitentiary, noting his industry and the strictness with which he observes the prison rules, with a view to permit such convict to earn a remission of a portion of the time for which he is sentenced to be confined, not exceeding six days for every month during which he is exemplary in conduct and industry.

2. When any convict has earned and has at his credit seventy-two days of remission, he may be allowed, for every subsequent month during which his conduct and industry continue satisfactory, ten days' remission for every month thereafter.”

Pursuant to the above section, regulations have been passed from time to time. The following regulations are now in effect:

“ 172. The Warden is authorized to deprive a convict of not more than thirty days of earned remission for any offence against Penitentiary rules. For the forfeiture of any longer period it shall be necessary to obtain the sanction of the Minister of Justice.

“ 173. Every convict who escapes, attempts to escape, breaks prison, breaks out of his cell, or makes any breach therein with intent to escape, or assaults any officer or servant of the Penitentiary, or

being the holder of a licence under the Ticket-of-Leave Act, forfeits such licence, shall forfeit the whole of the remission which he has earned.

" 174. A convict who forfeits all or any part of his remission as a punishment for an offence against prison rules, may at once again begin to earn remission or further remission, but if the forfeiture is accompanied by another punishment of a continuing nature, he shall not again begin to earn remission or further remission until the expiration of the punishment of a continuing nature.

" 175. Should a convict forfeit all his remission twice during any term of imprisonment, he shall not again begin to earn remission until, in the opinion of the Warden he shall have given definite evidence of reformation.

" 176. No remission forfeited by a convict may be restored."

On January 21, 1935, the Superintendent of Penitentiaries issued a circular, No. 10/35, which is an eight page memorandum sent to the wardens of all Canadian penitentiaries explaining and amplifying the manner in which the regulations are to be applied.

Notwithstanding the fact that regulation 171, which provides that the right to earn remission for good conduct should not start until the expiration of six months after the date the prisoner enters the penitentiary, has been incorporated in the penitentiary regulations since 1889, your Commissioners are of the opinion that it is an unwise one. The object of these provisions of the Act is to give the prisoner an incentive to conform to prison discipline. The first six months of incarceration in a penitentiary is probably the prisoner's most difficult period, and it would seem that he ought to have this encouragement to observe good conduct and to adjust himself to prison discipline by being afforded the right to earn the remission of a portion of his sentence. It will be observed that this provision in the regulations operates to the detriment of the prisoner in two ways:

1. He earns no remission for the first six months;
2. He does not commence to earn the ten days per month, as provided in subsection 2 of section 64, until he has served eighteen, instead of twelve months' imprisonment.

Over a period of two years this means a difference in the length of the sentence of sixty days. In this respect, your Commissioners are of the opinion that regulation 171 violates the spirit, if not the letter, of section 64 (2). While the tribunal sentencing the prisoner would have before it the provisions of the Penitentiary Act, the regulations passed thereunder are not published generally, and, in this way, it is quite probable that a prisoner would serve a longer sentence than intended by the sentencing authority. In England, the right to earn remission begins at the date of the commencement of the sentence. Your Commissioners are of the opinion that the regulations should be amended to make similar provision in Canada.

Your Commissioners are also of the opinion that regulation 176 is unduly harsh. It is quite conceivable that in many cases a difficult prisoner might quite rightly be subjected to a punishment involving the forfeiture of remission and, as a direct result of this punishment, the prisoner might determine on a new course of conduct during his confinement, which, in the opinion of the prison officials, would justify giving him an opportunity to recover the forfeited remission. The rules in force in England and other countries give discretion to the warden to permit a prisoner to re-earn his forfeited remission. Your Commissioners are of the opinion that the penitentiary regulations should be amended to make a similar provision in Canada.

Many complaints were made to the Commission in regard to the operation of subsection 3 of section 64, as interpreted by circular 11/35. The wardens have been instructed that if a prisoner is unable to labour, although through no fault of his own, he may not be allowed the usual remission. Toward the expiration of the prisoner's sentence, if the warden sees fit he may recommend the allowance of remission not exceeding three or five days (according to whether the prisoner has, or has not, earned credit for seventy-two days' remission). The effect of this regulation is that a prisoner who is ill, although of exemplary conduct, serves a longer sentence than a prisoner in good health. Your Commissioners are of the opinion that the regulations should be amended to give the wardens greater discretion in this matter. If the medical officer expresses the opinion that a prisoner is malingering, the warden may withhold the full remission during the period the prisoner is unable to work. If, on the other hand, there is no doubt that the prisoner is suffering from an illness for which he is not responsible, it seems unjust to subject him to greater detention than the prisoner who is in good health.

The interpretation of regulation 171, made by circular 11/35, paragraph 6, restricts the right to earn marks for industry to working days, and such marks are the basis of calculating remission. The following is a paragraph taken from the circular:

"The method of arriving at the amount of remission which may be allowed to a convict shall be as follows:

'Vide Penitentiary Regulation 171, after six months' imprisonment in the Penitentiary, a convict may be allowed three marks for each working day that his conduct is exemplary. He may also be allowed three marks for each working day that his industry and diligence are exemplary. The maximum number of marks that may be allowed to any one convict on any one day shall be six.'

There is nothing in the act to suggest that the right of earning remission should not apply to every day of the week, and your Commissioners are of the opinion that this regulation operates in a provocative manner, which is irritating to the prisoners during the long hours of their confinement, especially on Sundays and holidays. In England, the prisoners are permitted to earn remission on Sunday according to conduct on that day and to the degree of industry shown by them during the week.

Many complaints have been made to your Commission regarding the interpretation of the regulations in regard to consecutive sentences. Since circular 11/35 was published, a prisoner who has been sentenced to a term in a penitentiary on one charge, followed by a further term on another charge, is allowed to earn less remission than if he had been sentenced to the aggregate terms on each charge to run concurrently. For example, if a prisoner is sentenced to a term of two years, to be followed by another of two years, with sentences to run consecutively, he would serve thirty-five days' longer in prison than if he had been sentenced to four years' imprisonment on each charge with sentences to run concurrently. In the former case, under the interpretation put on the present regulations, the prisoner who has been sentenced to consecutive sentences serves six months without earning any remission, and, after this, he may earn six days' per month remission until he has earned seventy-two days. After having earned seventy-two days' remission, he is entitled to earn ten days' remission per month until the expiration of his sentence. At the expiration of the first sentence of two years the prisoner must revert to earning six days per month on the second sentence. When he has earned seventy-two days on this sentence he is again permitted to earn ten days per month until the expiration of the second sentence. If, however, the prisoner had been sentenced to four years' imprisonment on each charge with sentences to run concurrently, he would commence to earn six days per month at the end of six months and, when he had earned seventy-two days' remission, he would then earn at the rate of ten days per month until the expiration of the four-year period. The English rule in respect to consecutive sentences is as follows:

"Where one term of imprisonment (including imprisonment in default of sureties) is by order of the Court consecutive to another term, the two will be treated for purposes of remission as one term. Where one sentence is partly concurrent with, but overlaps another, the overlapping sentence will wholly supersede the other for purposes of remission."

Your Commissioners are of the opinion that the provisions of the English rule should be adopted in Canada and that the whole question of remission should be revised to do away with the petty and vexatious regulations that have been engrafted on the statute by the interpretation contained in the Superintendent's circular 11/35. These regulations have been irritating and vexatious in their nature, in many instances unjust, and have resulted in serious disturbance of the discipline of the penitentiaries.

Remission being an incentive to good conduct, its principles should be easily understandable and the prisoners should be fully informed regarding the rules which govern it. They should also be informed periodically of the amount of remission earned so that they may realize the reward of good conduct. If mistakes have been made in calculating remission they should be simply and clearly adjustable so that the prisoners may be able to discern clearly that they are being dealt with according to law.



The Prisons and Reformatories Act contains a provision respecting the amount of remission that may be earned in provincial institutions. The number of days is limited to five for every month during which the prisoner is exemplary "in behaviour, industry and faithfulness, and does not violate any of the prison rules." If the prisoner is prevented from labouring by sickness, not intentionally produced by himself, he is entitled to earn remission by good conduct, but this is not to exceed two and one-half days for each month. The result is that a prisoner earns less remission in a reformatory than in a penitentiary. Your Commissioners are of the opinion that it would be advisable to have a uniform rule applicable alike to penitentiaries, prisons, and reformatories.

#### *Remission by Royal Prerogative*

In addition to the provisions of the Penitentiary Act and the Prisons and Reformatories Act, the Governor General may in the exercise of his royal prerogative of mercy remit any portion of the sentence imposed on any convicted person. This power, which is exercised in the commutation of the death sentence in capital cases and in the remission of corporal punishment, is also frequently exercised to effect an unconditional release from custody. The Under Secretary of State has informed your Commission that, during the year from 1st of October, 1936 to 30th of September, 1937, 493 prisoners were granted a remission of a portion of their sentences. In most of these cases the time remitted was short, often involving but a few days.

There will always be cases in the wise administration of justice where it is necessary to exercise the royal prerogative of mercy. No category of rules can be laid down in advance that will govern the principles that ought to be applied in any particular case. The prerogative is one of *mercy and grace*, not one of *right*. It should only be applied in cases where a gracious and merciful sovereign, having regard to the welfare of his subjects, would in his wisdom see fit to extend mercy, lest, by the rigorous enforcement of the law injustice be done.

At the present time, two officers of the government service handle all matters pertaining to remission. All applications for remission of sentence or for release on ticket-of-leave are made to the chief of the Remissions Branch in the Department of Justice. He supervises investigations and makes recommendations to the Minister of Justice who, in due course, advises the Governor General. The Governor General communicates his decision to the Secretary of State, and the latter makes the decision known to those concerned. This procedure involves the maintenance of a Remissions Branch in the offices of the Secretary of State as well as in the Department of Justice.

Your Commissioners are of the opinion that a certain amount of duplication is involved in this procedure. They recommend that the whole subject of remission should be dealt with by one authority operating under the Prison Commission herein recommended.

## TICKET-OF-LEAVE

In Canada, a prisoner may be liberated under the provisions of the Ticket-of-Leave Act, R.S.C. 1927, chapter 197, quite independently of his right to earn a remission of sentence under the provisions of the Penitentiary Act.

The Ticket-of-Leave Act provides that the Governor General may, by order in writing under the hand and seal of the Secretary of State, grant to any prisoner under sentence of imprisonment in a penitentiary, jail, or other public or reformatory prison, a licence to be at large during such portion of his term of imprisonment and upon such conditions as to the Governor General may seem fit. Power is given to the Governor General to revoke or alter any such licence.

The licence is in form "A" to the Act, and contains the following conditions:

1. The holder shall preserve his licence, and produce it when called upon to do so by a magistrate or peace officer;
2. He shall abstain from any violation of the law;
3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes;
4. He shall not lead an idle and dissolute life without visible means of obtaining an honest living."

If any conditions other than those annexed to form "A," as set out above, are attached to the licence, a copy of the same shall be laid before both Houses of Parliament within twenty-one days after the making thereof if Parliament be then in session, and, if not, within fourteen days after the commencement of the next session of Parliament.

Under the provisions of the Act, every holder of a licence is required to report to the chief officer of police or the sheriff of the city, town, county, or district in which he resides, and, if he moves from one place to another, to notify these officers accordingly. Every male holder of a licence shall report once in every month to the chief of police or sheriff, as the case may be, or to such person as these officers may direct. The Governor General may, however, remit these requirements, either generally or in the case of any particular holder of a licence.

The statute applies to prisoners in jails and reformatories as well as to those in penitentiaries. The Governor General acts on the advice of the Minister of Justice and, in order that the Minister of Justice may be in a proper position to advise the Governor General, the Remissions Branch of the Department of Justice has been organized to deal with applications for ticket-of-leave under the provisions of the Ticket-of-Leave Act.

The Remissions Branch is presided over by an officer known as the Chief of the Remissions Branch, who has as assistants three officers seconded from the Royal Canadian Mounted Police.

The Branch does not attempt to compile case histories of the applicants in the ordinary sense of the term. The information that is acted upon is very meagre, and is gathered from three main sources:

1. A species of questionnaire completed by the prison officials. Their sources of information are chiefly the prisoner, himself, and the prison officers;
2. Reports from the sentencing judge or magistrate;
3. Letters and representations received on behalf of the prisoner from those in no way connected with the administration of justice. These too often appear to emanate from those purporting to have political influence.

There is no pretence at any organized inquiry into the social background of the prisoner or the conditions to which he will return if released. No definite rules have been promulgated. The Minister of Justice, speaking in the House of Commons on the 19th day of October, 1931, made the following general statement as to the practice:

"I will state generally what that practice is. I am not permitted by established rule of the department to go into details or make public reports or furnish particulars in regard to individual cases of prisoners. That information is not even furnished to the House of Commons. But I may state generally the rule which prevails. Where a prisoner is a first offender, and has not been found guilty of a crime involving violence or an attack upon women or a crime which may be described as a bestial crime, such as incest, and where the conduct of the prisoner while in prison has been satisfactory where there is no adverse report by the trial judge or magistrate—because in every instance these reports are obtained, then that prisoner will be granted a parole when he has served approximately half his term of imprisonment. He is then allowed, upon the conditions endorsed upon his ticket-of-leave, to serve the remainder of his term outside of prison walls.

This rule does of course admit of some exceptions, because there are cases where further confinement may endanger a man's life, or a serious operation or the like may have to be performed. These are considerations to which we must have regard. But the general rule and practice is as I have stated; no matter what the offence, except those special offences I have mentioned, any prisoner of whatever class who is serving a term for a first offence, not for a crime of violence, and whose conduct has been good and is so reported by the warden, may expect favourable consideration on an application for clemency when he has put in half his term. And in computing the half term, if the prisoner's conduct has been good he is allowed six days a month for good conduct by way of remission."

M. F. Gallagher, K.C., the chief of the Remissions Branch, appeared before the Commission and submitted a memorandum which purports to deal with the "rules of general application," which, he stated, governed

the practice of the Remissions Branch. The following relate to applications for release on ticket-of-leave.

As to sentence:

- (a) No interference in drug cases;
- (b) No interference until approximately one-half a sentence has been served.

As to prisoner:

- (a) No interference if a prisoner is a confirmed recidivist or an instinctive criminal;
- (b) No interference if a prisoner has been previously convicted of one major crime, or two intermediate, or several minor offences;
- (c) No interference if a prisoner was previously granted clemency;
- (d) No interference if a prisoner is under treatment for syphilis;
- (e) No interference unless reform is indicated.

As to procedure:

- (a) No submission to Governor General without investigation, i.e., reports from judicial and custodial authorities in all cases, and from an attorney general, police, and other sources, as required;
- (b) No investigation while a case is *sub judice*;
- (c) No investigation unless a prisoner is in custody;
- (d) No grant of clemency is made in advance;
- (e) No interference unless reform is indicated.
- (f) Advice to be tendered to the Minister upon analysis of merits in each individual case, following careful and impartial collection of necessary data.

The memorandum goes on to state:

“Operating within the scope of these rules, it has still been possible to grant Tickets of Leave to over 100 prisoners a month ‘to assist in their further reformation.’ Clemency is granted in such cases, upon clear indications of reform, sufficient punishment endured, and a reasonable prospect of rehabilitation. The favourable decision is grounded upon clement features which have been weighed along with those other considerations relating principally to public interest. In isolated instances, the clement features are so strong as to warrant exception being made to the general rules.”

The memorandum lists clement features as follows:

“Clement features—without reference to their importance, which varies with cases, are listed as follows:

Ill-health;—impaired mentality;—youth, or great age;—sex;—assistance given to Crown;—improbability of guilt;—

extenuating circumstances;—technical offence;—a lack of criminal intent, which may be linked with youthful ignorance, persuasion of evil companions, self-defence, extraordinary provocation, mere thoughtlessness, etc.;—first offence with previous good character;—public interest served by mere conviction;—uncommon views of Magistrate, and finally error at trial reported by Judge.”

Your Commissioners are of the opinion that some of the rules are safe guiding principles to be applied to the administration of the Ticket-of-Leave Act. One such rule provides that no one who has once violated parole shall again be eligible for ticket-of-leave. Unfortunately, this rule has not always been followed, and its violation has been the cause of appalling tragedies. Other rules introduce principles which are entirely foreign to the purposes of the Act.

The purpose of the Act is to provide that, in proper cases prisoners who have served part of their sentence may have an opportunity to serve the remainder of it under licence at large. In order to determine which are the proper cases, the predominant consideration must be, has the prisoner formed a fixed determination to forsake his former habits and associates and to live as a law abiding citizen, and will he be assisted in that determination by being allowed to serve the balance of his sentence under supervision and at large?

Your Commissioners do not agree that all first offenders after having served half their sentences should, as a matter of course, be granted ticket-of-leave. A so-called first offender may be a man of bad record in the community who has been clever enough to evade the police authorities in the commission of countless offences. The mere fact that he has served half the sentence that has been imposed upon him by the court is no measure of his fitness to return to society.

On the other hand, your Commissioners do not agree that the report of the convicting magistrate or judge ought finally to determine the matter against the prisoner. Magistrates and judges are often called upon to make their reports several years after the accused has been sentenced. The whole purpose of the Act would be defeated if a prisoner who gives every indication of reform should be denied his release because the magistrate who tried him, but who has not seen him for several years, should report against his release. The report of the trial judge or magistrate is an important consideration, but it should not be conclusive.

Your Commissioners are of the opinion that the clemency features mentioned in the above quoted memorandum, with the exception of the special cases governed by ill-health, are not features which ought to be allowed to override the purposes of the Act.

Youth, age, and sex must all be taken into account in considering the reformation of the prisoner but not as a reason for departing from sound principles in deciding upon his release on ticket-of-leave.

Assistance given to the crown ought never to justify release on ticket-of-leave. Contribution of his assistance to the crown in order to procure his release on ticket-of-leave is little indication that a prisoner has reformed. It is contended by prisoners in the penitentiaries that certain inmates obtain recommendation for ticket-of-leave because of their services as spies among the inmates. If such practice exists, it is contemptible. No officer should afford the slightest justification for such complaints.

"Improbability of guilt" is not a matter for the remission officers. Guilt is for the courts. It is most unfair for one prisoner to have the merits of his case reviewed by the Remissions Branch while another has not. If there is any doubt as to a prisoner's guilt, the Minister of Justice should direct a new trial under section 1022 (2-a) of the Criminal Code, or refer the matter to the Court of Appeal under section 1022 (2-b) of the Criminal Code. It is essential to the fair administration of justice that all questions of guilt should be determined in open court. "Extenuating circumstances" are also matters for the courts.

It is difficult to understand why remission officers should review a matter for which a prisoner has been tried, found guilty, and sentenced, and label it a "technical offence," one in which there was "lack of criminal intent," or one attributable to "youthful ignorance," "persuasion of evil companions," "self-defence," "extraordinary provocation," "mere thoughtlessness," etc. These matters may in some cases be considered in remitting a portion of an excessive sentence, but should not influence the officers in considering the release of the prisoner on ticket-of-leave unless there is a reasonable probability that he will be rehabilitated if so released.

To proceed on any other principle would be to permit all sorts of undesirable representations being made on behalf of the prisoners. Your Commissioners are of the opinion that in the past officers of the Remissions Branch have listened to, and in some cases acted upon, representations which were not founded on sound principles. Undoubtedly, members of Parliament and those in positions of influence have had too much attention from the officers of the Remissions Branch. A perusal of the files in that Branch indicates that effect has been given to representations of this type, which are no more than appeals on grounds of compassion. When prisoners are released on ticket-of-leave on any other than sound principles it degrades the administration of justice and hampers the maintenance of discipline within the prisons.

The present system has been the subject of vigorous criticism for many years. The Chief Constables Association of Canada has repeatedly passed resolutions condemning its administration, but criticism by this association does not imply that the police officers are opposed to the principle of parole. In the proceedings of the 32nd annual convention of the Chief Constables Association, their views are expressed as follows:

"The police are not against parole,—the right kind of parole—nor are they against men who have served prison terms being aided

in being re-established in life. Undoubtedly parole was originated to give the first offender a chance to reform and rehabilitate himself. Any man convicted of a crime, if he displays a reasonable desire to do so, and providing his crime be not heinous, should be given a chance to make a new start in life. But when convicts with extensive criminal records against society are turned out of prison cells for no other apparent reason than that they have asked for it, or that they have conducted themselves according to the rules of the prison, then there is something wrong with the system under which individuals can obtain their release before completing their sentence."

With this statement your Commissioners agree.

The following record of the visits of representatives of the Remissions Branch to jails, reformatories, and penitentiaries shows the inefficiency of the present administration:

PROVINCIAL INSTITUTIONS

Year	Headingley			Prince Albert			Regina			Oakalla			Lethbridge			Ft. Saskatchewan			Quebec			Bordeaux		
	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days
1933.....	1	215	1	1	91	1	1	129	1	1	393	1	1	145	1	1	219	1	1	48	1	3	169-152-186	4-4-5
1934.....	1	100	1	1	69	1	1	131	1	1	356	1	1	74	1	1	205	1	1	41	1	2	172-189	6-6
1935.....	1	271	1	1	80	1	1	168	1	1	198	1	1	118	1	1	208	1	1	56	1	2	158-163	5-6
1937.....	1	157	1	1	70	1	1	159	1	1	206	1	1	77	1	1	.....	1	1	42	1	3	188-160-188	6-5-6

PENITENTIARIES

Year	Br. Columbia			Saskatchewan			Manitoba			Kingston			Collin's Bay			St. Vincent de Paul			Dorchester					
	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days	Number of trips	Number of cases	Number of days			
1932.....	1	51	1	1	47	1	1	53	1	1	64	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1933.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1934.....	1	192	3	1	163	3	1	155	3	1	253	6	1	144	3	1	313	8	1	380	9	1	287	6
1935.....	1	124	3	1	142	2	1	93	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1936.....	1	84	2	1	120	2	1	81	2	1	243	6	1	85	2	1	256	6	1	274	6	1	224	5
1937.....	1	82	2	1	140	2	1	60	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	

\* Will be visited in November

October 29, 1937.



It will be observed that, in the year 1936, twenty-five days were spent in the penitentiaries by representatives of the Remissions Branch, during which they dealt with 1,045 cases, or 41.8 cases per day. No institution was visited more than once during the year.

In the same year, the eight provincial institutions were, with one exception, visited only once. Eighteen days in all were spent in these visits and 1,420 cases were dealt with.

The institutions in Ontario have not been visited during the last five years. The reason given for this is that Ontario has its own board of parole. The Ontario Board of Parole, however, has no jurisdiction over determinate sentences, and the explanation given forms no justification for neglecting Ontario institutions.

Your Commissioners are of the opinion that an efficient well-organized system of parole operating under the provisions of the Ticket-of-Leave Act is a necessary part of our penal system. It provides a means of giving a worthy prisoner an opportunity to become rehabilitated under supervision. If a system of parole is to be successful and if it is to obtain public confidence, it is essential that means be provided for full investigation and report before release and adequate supervision after release. It is essential, moreover, that in order that the Act may be properly administered it should be removed from any suggestion of political influence.

Your Commissioners recommend that the administration of the Ticket-of-Leave Act should be brought under the direction of the Prison Commission herein recommended.

Provision should be made for the appointment of a parole officer in each of the provinces, or in each group of the more thinly populated provinces, so that responsibility and authority will be centralized. The duty of these officers would be to receive, and deal with, each application for parole (ticket-of-leave), interview the individual applicant, and arrange that proper case histories should be prepared. There would be no more need for lengthy petitions signed by citizens, reciting the reasons for release. Any prisoner would be entitled by right to put his name on the list prepared for the visit of the parole officer and be interviewed by him. In this connection, he would have the co-operation of the probation officers whose services should be enlisted to supervise the prisoner when released. The Prison Commission would be given authority, on the recommendation of the parole officer, to release the prisoner on ticket-of-leave only on receipt of satisfactory reports on the recommendations of proper officers. "Influence" should be disregarded with the same scruples as it is in the administration of justice in the courts.

Any expense that might be involved in putting this plan into effect would be more than counterbalanced by the reduction in the prison population because of the rehabilitation of prisoners.

#### INDETERMINATE SENTENCES AND PAROLE

Under the provisions of the Prisons and Reformatories Act R.S.C., 1927, chapter 143, section 46, when a prisoner is convicted in the province of Ontario of an offence against the laws of Canada that is punish-

able by imprisonment in the common jail for a term of three months or for any longer term, the court may sentence the prisoner to imprisonment for a term of not less than three months, and for an indeterminate period thereafter of not more than two years less one day in the Ontario Reformatory instead of in a common jail of the judicial district in which the offence was committed.

Under section 43 of the same Act, the Lieutenant-Governor of the province of Ontario is given power to appoint a board of parole to inquire from time to time into the cases of prisoners sentenced to the reformatories, and to permit prisoners serving indeterminate sentences to be paroled "under conditions approved of by the Minister of Justice." When the terms on which such prisoners have been paroled have been complied with, the board may recommend for the consideration of the Minister of Justice the final discharge of such prisoners.

The provision in regard to indeterminate sentences has been in force in Ontario since 1913, and the provision in regard to the establishment of the board of parole has been in force since 1916. These provisions have not been extended to any other province of Canada. Your Commissioners have been unable to find evidence that after over twenty years' trial the operation of indeterminate sentences has been satisfactory. Much criticism has been levelled against the boards of parole, but your Commissioners do not believe that it is necessary for them to consider the merits of these boards. They are convinced, however, that the most serious difficulty is not so much a matter of the duties to be performed by the boards of parole as the education of judicial authorities throughout the provinces in the proper application of indeterminate sentences.

The whole matter of indeterminate sentences and parole came before the Ontario Court of Appeal in April, 1937. This was an appeal by one, Leonard Bond, from a sentence of two years less a day to the Ontario Reformatory at Guelph and an indeterminate sentence thereafter not exceeding two years less a day. The court was presided over by Rowell, C.J.O., Middleton and Masten, J.J.A. The judgment of the court was delivered on the 25th of May, 1937, by Middleton, J.A.

In the "Reasons for Judgment" the learned judge exhaustively considered the underlying principles to be applied to indeterminate sentences and on parole thereunder. It appears from the judgment that in the province of Ontario magistrates have been sentencing accused persons with long criminal records to the reformatories at Guelph and Burwash for determinate periods and for indeterminate periods thereafter. An examination of the records at the reformatory at Burwash by one of your Commissioners disclosed that the observations of the Court of Appeal in this regard were well founded. The member of your Commission who made this examination selected at random the names under the letter "T." The records disclosed were as follows:

No. 1—

1930.—One conviction for theft; sentenced to the reformatory for twelve months;

1930.—Two convictions for burglary and theft; four years in the penitentiary;

1930.—One conviction for escaping; two years penitentiary;

1933.—One conviction for participating in riot; six months;

1936.—Two convictions for receiving; sentenced to two years less one day determinate plus two years less one day indeterminate.

No. 2—

1936.—Sentenced to twelve months determinate and eight months indeterminate in the Ontario Reformatory on charges of possession of house-breaking implements, illegal possession of drugs, and theft. This prisoner had five previous convictions for small thefts. His file disclosed he had been a drug addict for four years.

No. 3—

1921.—Convicted of breaking and entering;

1930.—Convicted in Detroit of breaking and entering; sentenced to three years determinate and fifteen years indeterminate;

1933.—Convicted on five charges of housebreaking; remanded for sentence on probation;

1935.—Convicted for assault; sentenced to thirty days in jail;

1936.—Convicted for shopbreaking; sentenced to two years less a day determinate and three months indeterminate.

No. 4—

This prisoner was first convicted in 1920 for fraud, and committed as a lunatic;

1928.—Convicted on a charge of false pretences, and sentenced to a term of six months determinate and eighteen months indeterminate in the Ontario Reformatory;

1929.—Released on parole;

1930.—Convicted in the state of Minneapolis for forgery, and sentenced to a term from nothing to ten years in the State Reformatory;

1936.—Convicted on seven charges of theft and three charges of false pretences; sentenced to serve a term of two years less a day determinate and two years less a day indeterminate in the Ontario Reformatory.

No. 5—

This prisoner first came before the courts in 1932 on a charge of theft from his employer, when he made restitution, paid the costs, and the charge was withdrawn;

1933.—He was again charged with theft from his employer and ordered to pay the sum of money or receive three months in jail;

- 1934.—He was again charged with theft from his employer and received one year suspended sentence;
- 1935.—Charged with theft of an auto and received a sentence of one year in the reformatory;
- 1936.—He was charged with theft from the person, and was sentenced to a term of six months determinate and eighteen months indeterminate in the Ontario Reformatory.

## No. 6—

- This prisoner first came before the courts in 1934 on a charge of theft, which was withdrawn. In the same year he was charged with obtaining food and lodging by false pretences, and allowed to go at large on making restitution. In the same year he was again charged with obtaining money by false pretences and given one year suspended sentence;
- 1936.—He was convicted on four charges of false pretences and sentenced to six months in the reformatory;
- 1937.—He was charged with an attempt to obtain money by false pretences, and sentenced to a period of three months determinate and three months indeterminate.
- 1937.—The prisoner was convicted on a charge of obtaining money by false pretences and sentenced to a term in the reformatory of one year determinate and one year indeterminate.

Mr. C. F. Neelands, the Deputy Provincial Secretary of the province of Ontario, who is charged with the duty of superintending the jails and reformatories in that province, stated that, until the matter was brought before the Court of Appeal, the cases above noted were average examples of the class in which indeterminate sentences had been imposed.

The Honourable Mr. Justice Middleton pointed out in his "Reasons for Judgment" that it has been the practice of the Board of Parole to refuse consideration for parole, except in unusual cases, to prisoners who have previous records. His Lordship also pointed out that many judges and magistrates when imposing indeterminate sentences were wont to address the prisoner in terms such as the following:

"It is my duty to impose upon you the sentence your crime deserves. Your crime, according to the Code, would authorize me to direct your imprisonment for.....years. I have confidence in your ability to resist temptation and to reform. I shall impose upon you a determinate term of.....months as a punishment for the offence you have committed, and I shall direct that you thereafter serve an indeterminate term of..... If, during this determinate term, you prove yourself to be a good prisoner and comply with the rules of the institution and show a disposition to be law abiding, the Parole Board may at the expiry of the definite

term allow you your liberty. It all depends upon yourself and your conduct as to how much, if any, of the indefinite term you may be called upon to serve."

His Lordship went on to say:

"Thus encouraged, the prisoner proves to be a model prisoner. He gives every indication of his reformation, and is taken at the expiry of the definite term before the Board. He is hopeful of liberty and full of good resolutions, and the Board announces that by reason of an earlier conviction, a fact well known to the Judge who imposed the sentence, they will not allow him parole and he must serve the indefinite term. I can imagine no situation more cruel and more likely to convert a man really desiring to reform into an enemy of society."

Your Commissioners are of the opinion that if indeterminate sentences are to be continued in the province of Ontario there should not be such conflict between the Board of Parole and the judges and magistrates in the province. It is clear that judges and magistrates should not sentence prisoners to the Ontario Reformatory for indeterminate periods when, having regard to the prisoner's previous record and his opportunities for reform, it is clear that he is not likely to be a good subject for parole at the end of the determinate period. As has been pointed out, the success of a prisoner on parole does not depend on his behaviour in prison, but on his will and determination to conform to the laws of the country and the conventions of society and on the likelihood of his carrying out that determination under proper supervision.

The efforts of the authorities who are in charge of the reformatories in Ontario are greatly handicapped by the practice of sentencing incorrigible criminals to the reformatories, by means of imposing indeterminate sentences, for longer periods than would otherwise be justifiable under the Act. Mr. Neelands drew the attention of your Commission to one case in which a prisoner was sentenced to the reformatory for terms of two years less one day determinate plus two years less a day indeterminate on each of two charges which were to run consecutively, with the result that the prisoner was required to serve a term in the reformatory of eight years less four days. Your Commissioners are of the opinion that this was not the intention of Parliament when the legislation was enacted.

Following the judgment of the Court of Appeal in May, 1937, Mr. I. A. Humphries, K.C., the Deputy Attorney General for the province of Ontario, sent out a circular letter to all magistrates and county judges, enclosing a copy of the "Reasons for Judgment" of the Court of Appeal, and adding certain observations thereon. These observations may be summarized as follows:

1. The period of the indeterminate sentence should bear some relation to the period of the determinate sentence. For instance, a definite sentence of three months should not be followed by an indeterminate sentence of two years less a day;

2. Consecutive indeterminate sentences should not be given;
3. In no case should the court state to the prisoner what the action of the Board of Parole may be, or the considerations which may impel the Board of Parole to release the prisoner.

It appears that this letter has had some effect in correcting the situation that had previously existed in respect to indeterminate sentences.

Your Commissioners are of the opinion that, if the recommendations of this Commission are adopted in respect to the establishment of an adult probation system, and a central parole board is established to administer the Ticket-of-Leave Act, with adequate investigation and supervision in the provinces and an adequate system for the treatment of young offenders in the prisons, the present statutory provision for indeterminate sentences in Ontario might be repealed.

## CHAPTER XXI

## REHABILITATION ON RELEASE

It would be redundant to stress the principle that some definite assistance must be given to prisoners when they are released from custody and faced with the problem of their re-entry into society. Unless this principle is more universally accepted by the general public and given more effective application by federal and provincial Governments, certain obvious consequences will follow, and imprisonment under present conditions will, in most instances, have but two major results: first, the temporary removal of the prisoner from society, thereby preventing him during that period from committing any further crime; and, second, branding him forever, even if he is reformed, as an outcast from society no longer worthy of trust or help.

Such an eminent authority as the Lord Chief Justice of England, Lord Hewart of Bury, succinctly summarized the situation in an address delivered at a meeting of a discharged prisoners' aid society in England, when he stated:

"It would be grotesque and silly to imagine that the duty society owes to them is completed when imprisonment is ended. It is then that the real struggle begins. How often have I heard it said of men and women that their real punishment begins on the day they go out of prison.

When you think of the number in prison who might very well not be there and of the number outside who might very well be in, there is no great difficulty in ascertaining the kind of duty which society owes to those who are unfortunate to be inside. I often wonder when I see prisoners in the dock or in a penal establishment, whether the people outside the prison are really worth the sacrifice which they compel the people in prison to make.

No doubt prison, with all its appalling faults is necessary until we can find a better substitute. But at least society does owe to those unfortunate persons—some are no doubt wicked—but all are unfortunate—the duty of helping them as far as may be."<sup>1</sup>

Elsewhere in this report tables will be found which show the alarming growth of recidivism in Canada. Your Commissioners are convinced that this increase is to a great extent due to two factors: first, the absence of any serious attempt to effect the reformation of the prisoner while he is incarcerated, which is dealt with throughout this report, and, second, the failure to provide him on release with adequate assistance to enable him to obtain honest work and support himself and his dependents.

<sup>1</sup> Address delivered at the annual meeting of the Holloway Discharged Prisoners' Aid Society, April, 1936. (Quoted in report of the Executive Secretary of the John Howard Society of British Columbia, March 3rd, 1937.)

When on release the prisoner finds himself confronted with the world he is under a grave handicap from long confinement. He has been more or less shut off from the outside world with little knowledge of what is going on there. Apart from illicit sources of information, his only news is derived from any infrequent visits he may receive from members of his family, a restricted number of letters from the same source, and a résumé of public events that is given to him once a week by the prison officials. If he has no family, or one which has lost interest in him, he is still more restricted. These are his only sources of information. Conditions under which he spends his time in the penitentiary and the demoralizing effects of such a life have been dealt with in another part of this report.<sup>1</sup> They result in another handicap that must be overcome if the prisoner is to effect his rehabilitation in the world. When his sentence has expired, he is furnished with clothing made in the penitentiary, which is often all but labelled as such, given a small amount of money, which he has earned during his imprisonment, provided with transportation to the place where he was sentenced, which may be, and often is, hundreds of miles from his home, and told to "go and sin no more."

According to the annual report of the Superintendent of Penitentiaries for the year 1936-37, during that period seventy-two per cent of the penitentiary inmates were recidivists. Sooner or later at least ninety-five per cent of our present penitentiary inmates are released, and it must follow, therefore, that at least two out of three of these will again sooner or later commit crimes against the state and be returned to prison. It cannot be concluded that, even if given proper after-care, none of these would ever again become involved with the law, but your Commissioners are convinced that, if given the opportunity, a great number of them would become useful citizens and remain so for the balance of their lives.

Any system of after-care must provide for contact with the prisoner before he is liberated. Mr. Alexander Maxwell, when chairman of the Prison Commission of England and Wales in 1932, stated:

"No system of aftercare for discharged prisoners will ever be effective until full investigations into the man's home surroundings, or absence of home surroundings, are made, and plans for his after-care are completed before the day arrives for his discharge into the world again."

Under the heading "Assistance of Liberated Prisoners," in the rules drawn up by the International Penal and Penitentiary Commission, the following appears:

"The assistance given to prisoners for the period after liberation demands most careful attention. This assistance should begin during the period of detention and should be based upon an exact study of the personality of the prisoner, his conditions of life and those of his relations. Its object should be to give to the discharged prisoner the possibility of leading henceforth a straight and regular life."

<sup>1</sup> Chapter VIII.



For a number of years, organizations have been in existence in different parts of Canada that were formed for the purpose of assisting prisoners to re-establish themselves on their release from prison. The following appeared before the Commission: The Prisoners' Welfare Association, Halifax; The Prisoners' Aid and Welfare Association of Montreal, Inc.; La Jeunesse Ouvrière Catholique, Montreal; The Prisoners' Rehabilitation Society, Toronto; The John Howard Society of British Columbia, Vancouver; The Prisoners' Welfare Committee of the Regina Welfare Bureau, Regina; The Manitoba Prisoners' Aid Association, Winnipeg, and the Salvation Army.

These organizations are doing valuable work in their respective fields and should be commended for their public-spirited efforts. Unfortunately, these efforts are severely handicapped in many ways. Financial support is obtained mainly by voluntary subscriptions from the public. In some provinces a small government grant is provided, but no adequate financial assistance is given by most of them, and no regular contribution is made by the federal Government. No co-ordination exists between the various organizations whereby a definite uniform program can be followed throughout the Dominion, and this undoubtedly detracts from the usefulness of their work. Instead of receiving the hearty co-operation and assistance of the penitentiary authorities, who, it might be expected, would welcome such offers of assistance, these organizations find in too many instances that their efforts are largely nullified by the regulations and the manner in which they are interpreted.

The penitentiary regulations governing prisoners' welfare associations are as follows:

"114. The Warden may at such time as he may arrange before the release of a convict, at the request of the convict, permit him or her to be interviewed by a duly authorized representative of the Salvation Army or any recognized Prisoners' Welfare Association or Society, with a view to assisting the convict to re-establish himself or herself after release from the Penitentiary.

115. Such interview shall be held in the visiting cage or some suitable place to be arranged by the Warden, an officer being present throughout the interview. Representatives of the above mentioned organizations shall not be permitted access to other parts of the Penitentiary.

116. Should the Salvation Army or any recognized Prisoners' Welfare Association or Society make a request to have an interviewing representative authorized, the name of the person sought to be authorized, and the Association or Society to which he belongs, shall be submitted to the Superintendent for approval."

Regulation 114 provides that representatives of these associations may only be permitted to interview a prisoner before release "*at the request of the convict.*" Regulation 115 provides that such interviews shall be held in the visiting cage "or some suitable place to be arranged by the

Warden," and that an officer shall be present throughout the interview. It also provides that these representatives shall be denied access to other parts of the penitentiary.

The underlined words forming part of regulation 114 practically nullify the attempts of association representatives to get in touch with the prisoners, because the latter have no knowledge of these regulations and the notice posted up in their cells does not mention them. Furthermore, for obvious reasons many prisoners would not request an interview even if they knew they were permitted to do so, and these include a great percentage of those who are most in need of such assistance.

Formerly, it had been possible to make arrangements whereby the representatives of these associations could interview the prisoners either at the request of the latter *or by arrangement with the warden*, and at one penitentiary a list of the prisoners to be released during the following month was for a time supplied by the warden to the local association. Under this arrangement, the representatives of the association were able to arrange interviews with such prisoners and secure a great deal of information regarding their future plans, where they intended to go, what were the circumstances of their families, and what work would be most suitable for them. This information was of the greatest value to the association in its efforts to find work and provide other assistance for the prisoners on release. After a few months, however, the arrangement with the association was revoked and the practice as set out in regulation 114 was put into effect. The Superintendent of Penitentiaries was unable to offer any adequate reason for making this change, which so seriously impeded the effectiveness of the association's activities, and your Commissioners find themselves unable to discover any such reason.

Your Commissioners are further of the opinion that such interviews should be held in the prisoner's cell or some room other than the visiting cage—if necessary within sight, but not within hearing, of an officer. If officers are to be silent participants in such interviews many prisoners will refuse to discuss their personal affairs with the representative.

From evidence obtained by the Commission it is apparent that the associations are accomplishing very little at any of the Canadian penitentiaries. At Dorchester, Kingston, Manitoba, and Saskatchewan penitentiaries no efforts of any importance are being made by local associations. At St. Vincent de Paul Penitentiary the Prisoners' Aid and Welfare Association of Montreal and La Jeunesse Ouvrière Catholique are attempting, under the difficulties already mentioned, to achieve some satisfactory results, and at British Columbia Penitentiary the John Howard Society of British Columbia is doing much useful work.

#### *Prisoner's Pay*

The pay of prisoners in Canadian penitentiaries, which has been dealt with in another part of this report,<sup>1</sup> provides them with a minimum of ten dollars each, on which, in lieu of private means, they must subsist until they have found employment. At least a portion of such money

<sup>1</sup> Chapter IX.

has been earned by industry and, when it has been placed to the credit of a prisoner, it is, or should be, considered his property. There have been many instances, however, where this money has been withheld from the prisoner and retained by the authorities. This has been done by virtue of penitentiary regulation 184, which is as follows:

“If a convict is being released or discharged, either by expiration of sentence, conditional liberation, or otherwise, and it is known to the Warden that he will be rearrested and taken into custody immediately on his release and discharge, the Warden shall furnish such convict with a sum not exceeding one dollar and fifty cents. The arresting authorities will be responsible for the transportation expenses of the convict from the Penitentiary to his destination.”

This regulation was put into force at a time when prisoners were not being given any remuneration. On release they could be given a sum of money not exceeding \$10, as provided by the Penitentiary Act. It will be noted that payment of this sum was optional, and prisoners were not entitled to it as a right. In spite of the change, however, the authorities still consider that the moneys *earned* by prisoners can be disposed of in the same way. This practice has caused a great deal of discontent among the prisoners, who feel that, having earned this money, they should receive it on discharge.

Regulation 184 affects two classes of prisoners, those held for deportation, and those re-arrested and transferred to other custodial authorities. The money withheld from deportees is retained on the ground that a similar practice prevails in other countries and that Canadian prisoners who are deported to Canada on release from custody do not receive the money they may have earned in the country from which they have been deported. There may be some justification for adopting this principle until reciprocal arrangements are entered into which other countries, particularly the United States of America. With regard to the second class, however, there seems to be no adequate justification for retaining the money earned by prisoners during custody. If a prisoner is re-arrested on his release, and convicted, and sentenced to prison on another charge, it might be in his interest to hold such money until his release from the second institution, or to hand it over to his dependents to assist in their support during his imprisonment. The practice, as authorized by regulation 184, has resulted in many instances of injustice, and it is difficult to understand the position of the penitentiary authorities in regard thereto. The following instances that were brought to the attention of your Commissioners will illustrate the point.

Prisoner “A” was released from the penitentiary and, on instructions from a provincial official, was handed over to the custody of the local police as a parole violator from a provincial institution. While still in the custody of the local police, the latter were notified that since prisoner “A” had been handed over to them penitentiary officials had received instructions from the provincial authorities to release him. As a result, prisoner “A” was released by the local police but, under the

interpretation given to regulation 184, he did not receive the money to his credit at the penitentiary because he had been "taken into custody immediately on his release and discharge."

Prisoner "B" was to be released from the penitentiary on the expiration of his sentence, but, before that date, the penitentiary authorities were requested by the provincial authorities to hold him as a parole violator. Two days before he was released the provincial authorities wired the penitentiary cancelling their earlier order to hold the prisoner. As a result, on release prisoner "B" was given the money he had earned.

The circumstances in both these cases are practically the same, and both prisoners were eventually released, but because the order from the provincial authorities for the release of prisoner "A" had come *after* he had been handed over to the local authorities he did not receive any money, whereas prisoner "B," the order for whose re-arrest by the provincial authorities had been cancelled *before* his release, did receive the money that had been credited to him.

It is instances such as these that cause prisoners to lose their faith in prison justice and to leave prison thoroughly embittered and anti-social. Moreover, when a prisoner knows he is subject to rearrest and that, therefore, he is not eligible to receive his earnings, he is more apt to rebel against prison regulations and to become a trouble maker.

Regulation 182 provides that, if a prisoner has not more than ten dollars due him from his prison pay, a sum not exceeding this amount shall be given to him on discharge and he shall be given transportation to the place where he was sentenced. Your Commissioners believe that, in deserving cases transportation should be furnished, not to the place of the prisoner's conviction, but to his home, even though this might entail some further expense to the Government. The present regulation undoubtedly results in the commission of further crimes and, when a prisoner has previous knowledge of the regulation, acts as a deterrent to his reformation. This applies particularly to young first offenders. A youth, who may live in Ottawa but who is convicted in Vancouver and sent to British Columbia Penitentiary, will be given transportation to Vancouver and not to Ottawa when he is released. As an "ex-convict" in a city far distant from his home, and without friends, his chances of success in finding employment will be extremely small and he may quickly be confronted with the alternative of starving or stealing. If he is driven to the latter alternative his previous conviction will count against him and his second sentence will be more severe. During his second sentence he will be convinced of the hopelessness of recovering a place in society and will issue forth the second time as an habitual recidivist offender. Had he been given transportation to his home he might have profited by his experience, and, with the help of his family, have settled down to become a useful member of society.

When prisoners' aid societies come directly under the supervision of the Government, consideration should be given to evolving a working

agreement with them whereby the prisoners' pay may be administered in proper cases through these societies, so that the temptation to dissipate it may be minimized.

#### *Discharge Clothing*

During the visits of your Commissioners to the different penitentiaries in Canada they had an opportunity of examining the clothing provided for the prisoners on their discharge. The cloth used in the manufacture of these suits and overcoats is usually of fair quality, although in some cases it is not. The principal criticism is that such clothing is not properly measured or fitted and the prisoner is often given a suit or overcoat many sizes too large or small. The quality of the hats and caps might be improved with little cost to the Government. Your Commissioners are of the opinion that, except in cases of prisoners released under ticket-of-leave, there is ample time to have clothing properly measured and properly fitted.

#### *Visits and Communications*

Probably nothing can exert a more wholesome influence on the conduct of a prisoner than the receipt of visits or letters from members of his family. Such communications should be encouraged, and the regulations concerning them should be made as elastic and reasonable as the circumstances will permit. After observing the operation of the present system in Canadian penitentiaries, your Commissioners have reached the conclusion that the regulations governing such communications are altogether too stringent and that too often they are carried out in a manner antagonistic to the prisoner and his family.

The important bearing of visits and letters on a prisoner's life after his release justifies the enumeration of the principal objections to the present regulations:

#### *Visits*

1. Visits are usually too short, especially when a relative, because of financial reasons or the distance from his home, is only able to come to the penitentiary on rare occasions.

2. The prisoner is often given no time to shave himself before a visit and must appear before his parents or children with a growth of hair on his face.

3. Conversations take place in the visiting cage through bars and screens that sometimes have a double close mesh. Regulation 105 provides that a male prisoner may receive a visit from his mother, wife, sister, grandmother, daughter-in-law, and his son or sons when under sixteen years of age, across a counter in a visiting room instead of through wire in the ordinary cage. Regulation 106 provides that a female prisoner may receive a visit from her husband, the females above mentioned, and her son or sons when under sixteen years of age, in similar circumstances. This provision has not been carried out in any of

our penitentiaries and your Commissioners are of the opinion that a visiting room, such as is contemplated by regulation 105, should be provided and used for all visiting purposes except when the prison authorities may decide that, in the interests of security, the use of a cage is necessary.

4. No visits are permitted on Saturdays, Sundays, or holidays, although this may be the only time when relatives are able, without losing pay, to leave their employment.

5. Regulation 101 lists those who may be permitted to visit inmates. This list should be amended to add the following: uncle, step-father, step-mother, half-brother, half-sister, step-daughter, step-son, and cousin. Any of these should be permitted to visit the prisoner at the discretion of the warden, and no hard or fast rules should be allowed to keep a prisoner from obtaining visits from anyone whose influence would assist in his reformation.

Your Commissioners also recommend the installation of metal detectors, such as are installed in some institutions in the United States, in the admission rooms of every penitentiary. They are not expensive, and yet provide an efficient safeguard against weapons or metal instruments being brought in by visitors.

#### *Communications*

1. The rules regarding the censorship of communications should be less stringent in their application.

2. The writing paper that is provided for the prisoners should not have regulations printed on the back, because anyone who is shown such a letter will know that the sender is in a penitentiary. Instead, a separate sheet containing the prison regulations could be enclosed in the first letter sent from the institution. The list of those entitled to receive or send letters should be amended to include the additions recommended to be made to the visiting list, and should also include clergymen of the prisoner's faith. While it is recognized that some regulations must be laid down to limit the list of those who may receive from, or write a letter to, a prisoner, more authority should be vested in wardens to allow exceptions to the rule. Numerous instances have been brought to the attention of the Commission where the absence of such discretion has occasioned considerable trouble between the prisoners and their families. Christmas and Easter cards from the persons already mentioned, and newspaper clippings regarding the death of relatives, should also be permitted. The custom of stamping photographs received at the penitentiaries with the penitentiary stamp should be abolished and some other means of identification adopted that will not mar the photographs. Prisoners should also be allowed to receive a letter or a photograph from a relative who is an ex-prisoner but who has since reformed and become rehabilitated. When letters or parcels are withheld or destroyed because of the provisions of regulation 127, the inmate should be notified. No such notification is given at present, and on more than one occasion this

has been the cause of estrangement between members of a family because the receipt of the letters or parcels has not been acknowledged or any explanation given for the omission.

3. In special cases it should be possible for a prisoner to write a letter to a close relative without the receiver knowing that the sender is in prison. The present practice deters many prisoners from writing home, and their parents have no knowledge as to whether they are alive or dead.

Realizing the importance of the whole question of rehabilitation and after-care, and having become convinced that some comprehensive scheme dealing with this subject should be adopted in Canada, your Commissioners have made a careful study of the systems in use in other countries. Most countries appear to have attached more importance to the necessity of giving some tangible assistance to the discharged prisoner than Canada. While recognizing the merits of other systems, your Commissioners are of the opinion that the system prevailing in England, Wales, and Scotland is best suited for adaptation to Canadian conditions. In England and Wales, rehabilitation activities are divided into two parts: those in connection with prisoners serving sentences of penal servitude (not less than three years), who are classed as convicts, and those committed to prison for sentence up to two years. The first class corresponds more or less to inmates of Canadian penitentiaries, and the second class to those confined in various provincial institutions.

#### *After-Care Treatment of Convicts*

The first class is attended to by the Central Association for the Aid of Discharged Convicts, which was formed in 1911. Its objects are: (a) to combine, in one organized effort, all persons and agencies engaged in the work of assisting discharged convicts; (b) to effect economies in operation, and to prevent overlapping; (c) to strengthen the hands of those who are engaged in assisting convicts, and to render their work more effective. Its officers consist of a president, who is the Home Secretary, a chairman of the council, who is the chairman of the Prison Commission for England and Wales, and a council consisting of representatives of the principal societies engaged in the work of assisting discharged convicts. The societies represented on the council are the Catholic Prisoners Aid Society, the Church Army, the Church of England Temperance Society, the United Synagogue Discharged Prisoners Aid Society, and the Methodist Prison Committee. All these societies actively co-operate in the work of the association, and some hundreds of experienced social workers act as associates throughout England. The Salvation Army also assists in special cases. The head office of the association is in London, and it has a branch office at Liverpool that deals with cases discharged in that area.

The essentials of after-care, as laid down by the association, are as follows:

1. Contact must be established before discharge in order to gain confidence and co-operation;

2. Arrangements must be made with an agent or associate in the district chosen by the discharged convict as his future place of residence,
  - (a) to find work,
  - (b) to establish him in a home or lodging,
  - (c) to act as a point of reference and appeal,
  - (d) to provide maintenance, working clothes and, if necessary, tools;
3. On discharge, suitable clothing, travelling facilities, and cash for the journey must be provided.

The administrative expenses of the association and expenditures for fares, clothing, tools, stock, and maintenance are included in the Treasury appropriation for the Prison Commission. This sum is estimated annually and is subject to the usual Treasury audit. Grants have also been obtained from certain trust funds, and also through contributions made by friends of prisoners for use in individual cases. A bi-monthly visit is made to all convict prisons by a representative of the association who interviews men noted for discharge within three months. Each prisoner is interviewed by a representative at least twice before his discharge. On the first occasion, which is some time during a period of three or four months before discharge, the prisoner's plans and prospective employment are discussed. On the second occasion, which is a month or two before discharge, the convict is notified of the arrangements which have been made on his behalf. The convicts are interviewed in private and an opportunity is afforded to every man to hold a full and frank discussion of his hopes and opportunities.

After the first interview the association arranges with the appropriate associate for the man's reception and material assistance on discharge. The associates include voluntary organizations, probation officers, local discharged prisoners' aid societies, Toc H, and many others throughout the whole of Great Britain.

On the prisoner's release he is given a railway ticket to his destination and a small sum of pocket money for travelling expenses. He is instructed to report to his local associate, who, in addition, arranges for his maintenance for at least a fortnight and helps him in his search for employment. Four out-door men are permanently employed by the association to seek new work outlets, visit homes, supervise discharged prisoners, and maintain continual touch with employers with whom they have already established friendly relations, and make new contacts with others. When work has been found for a discharged prisoner, a suitable working outfit and, if necessary, tools of his trade are provided. In some cases stocks for street hawkers are provided. All expenses incurred by the associates are refunded by the central office and, when required, a small honorarium is sometimes paid.

The association has also been entrusted with the supervision of men discharged from preventive detention on licence. Such cases do not then have to report to the police, and the association is responsible to the



Home Office for the supervision of these persons during the period of their licences. The association also supervises a number of first offenders who have been excused from reporting to the police on condition that they keep in touch with the association during the period of their licences.

In the event of any difficulty the associate advises and helps the discharged prisoner to become more firmly established and, in general, acts as an adviser to whom the convict may at all times appeal.

Generally the association arranges to support a prisoner for at least a fortnight after his release, because, even if he secures employment during the first week, he does not draw pay until the end of the second week. In the case of a man still unemployed at the end of the second week and, where there appears little prospect of his securing immediate work, he will have needed this time to get in touch with the necessary relief authorities. In other cases, where there is some prospect of employment in the near future, assistance is continued at a general rate of twenty-five shillings per week.

#### *After-Care Treatment of Prisoners*

In England and Wales, assistance to prisoners discharged from local prisons, as distinct from convict establishments, is given through the medium of about fifty local discharged prisoners' aid societies, in addition to special societies dealing with Roman Catholic and Jewish prisoners. The local societies have a long history, generally associated with the old county prisons. In the days when almost every county had a prison, every prison had a prisoners' aid society, which was conducted entirely by voluntary effort. Many of these societies were founded as long ago as the early years of the Eighteenth Century.

During the last twenty-five years many changes have taken place in the administration of prisons, and a large number of the old county prisons have been closed. For many years these societies continued in the old way, without receiving any official recognition or financial aid from the Government. In 1862, however, statutory recognition was given to them and certificates were issued to societies able to attain a proper standard. The Discharged Prisoners Aid Act permitted justices of the peace to exercise the powers with which they were vested to give aid on discharge through these societies, and empowered them to contribute to certified societies a sum not exceeding £2:0:0 for each discharged prisoner given assistance by them. This Act also empowered the justices to provide prisoners with the means of returning to their homes.

Since then, statutory changes have been made affecting the societies and the system of financial assistance to be given to them. Efforts have also been made to bring about closer co-operation between the various societies and to centralize their work. Finally, about 1920, a new central society was incorporated, known as the Central Discharged Prisoners' Aid Society. Its objects were set forth as follows:

- “1. To promote co-operation among Discharged Prisoners' Aid Societies.

2. To encourage the maintenance of a Discharged Prisoners' Aid Society in connection with every prison in England and Wales.
3. To discuss subjects of interest to Discharged Prisoners' Aid Societies.
4. To provide a centre of information as to the best means of assisting youthful and other offenders.
5. To concert means for the reclamation and after-care of discharged prisoners.
6. To deal with 'difficult' cases submitted to it by any of its constituent Societies.
7. To educate the public with regard to the value and importance of the work of Discharged Prisoners' Aid Societies in general.
8. To assist the local Discharged Prisoners' Aid Societies by making them grants from their funds, by giving advice and by rendering such assistance as may be asked for."

The extent of the financial assistance given to the societies by the Government has varied from time to time, but, since 1931, a flat rate of two shillings per head for all convicted prisoners has been made by the Government. This grant was made subject to the provision that each society should secure contributions locally to the extent of one-quarter of the government grant. In 1936, subscriptions and donations to the local societies amounted to over £25,000. Government assistance is provided with the following intention:

"Here are contained two important assertions of principle on which has been based the action of the Government since this date.

1. That it is the duty of the Government to make a charitable donation in aid of discharged prisoners in addition to the gratuities under the stage system, which are an affair of prison discipline.
2. That the sum should be regulated by the amount of private subscription, provided that a maximum calculated on the total number of discharges is not exceeded."<sup>1</sup>

The state thus enters into partnership with associations of charitable and benevolent persons duly certified under the Act in order to secure a double object:

- (a) the state object, that steps shall be taken at least to lessen the chances of a man's relapse into crime; and
- (b) the private and charitable object of relieving misfortune and distress.

#### *Unofficial Prison Visitors*

Another phase of prison work that is carried on in Great Britain, which has contributed greatly to the rehabilitation of prisoners, is the system of "Unofficial Prison Visitors." These must be definitely

<sup>1</sup> The English Prison System, Ruggles-Brise—Lond., 1921.

distinguished from the official Board of Visitors referred to in chapter XXX of this report. A brief description of this system, its aims, and procedure, is given by a former assistant commissioner and secretary of the English Prison Commission, as follows:

“ Unless he is attending an educational class or lecture, a prisoner is normally locked up in his cell from sometime between 4 p.m. and 5 p.m. till next morning—a bleak and lonely period for many, since not all are capable of concentrated reading, and the cell task is monotonous and easily disposed of by the experienced prisoner. It is at this time that a visit from someone from the outside world, quite unconnected with the prison staff—someone to talk about ordinary matters of everyday interest, to take an interest in his family, perhaps to help him to understand how he has gone wrong and to discuss the future—may not only prevent the prisoner from solitary brooding over real or fancied grievances, but may actively direct his thoughts in profitable directions, give him fresh hopes and interests, and assist to restore his self-respect by letting him see that someone thinks it worth while to come and talk to him and take an interest in his affairs.

To this end the Commissioners in 1922 decided to extend to men the system of ‘unofficial visitors’ which had for many years been so successful at certain women’s prisons, and it would appear from their reports that their hopes have been realized with notable success. Notwithstanding the exacting nature of this voluntary service, and the difficulty of finding suitable persons who are both willing and able to spare the time for it, there were in 1931 557 men and eighty-five women acting as Prison Visitors. The work of the men has been consolidated by the formation of a National Association of Prison Visitors, an active and valuable body which not only serves to give the Visitors a corporate spirit, but by arranging annual conferences provides for the discussion of their common problems among themselves and with the Commissioners, and serves as the channel through which the views of Visitors about their work may reach the Commissioners.

Meanwhile, under the guidance of the National Association of Visitors to Women Prisoners, the work among women has been extended to all women’s prisons, and the experiment has been successfully inaugurated of inviting women visitors to see young male prisoners under 21 years of age. The special work of the woman visitors at the Boys’ Prison at Wormwood Scrubs is described later (see also Appendix H).

Visitors are invited to serve by the Commissioners on the recommendation of the Governor and Chaplain, who first satisfy themselves as to their suitability by local inquiries, by consultation with the Visiting Committee, and finally by a short trial on probation. The period for which the Visitor is invited to serve is 12 months; all the invitations are reviewed annually, and are not renewed to

those who have shown themselves unsuitable for the work or unreliable in their attendance.

Not every prisoner has a Visitor allotted to him; the Reception Board considers in each case whether a Visitor would be helpful, and the cases are so allotted that each is visited, about once a week. The Visitor has a cell-key, and sees his man alone and in his own way, but he must not visit anyone not allotted to him by the Governor."<sup>1</sup>

On appointment, each visitor is furnished with a printed memorandum containing a very complete set of notes and rules prepared by the Prison Commissioners, which is intended as a guide to be followed in the performance of his duties. These visitors come from every walk of life, and their choice is not governed by any prescribed rule or standard. As John A. F. Watson, the secretary of the National Association in 1935, stated in an address:

"The men who are wanted as prison visitors need not be either criminologists, penologists, pathologists or psychologists—in fact no kind of 'ologist' at all nor must they be sentimentalists or suffer from morbid curiosity—but on the contrary just human minded Englishmen, not too young and not too old, hardheaded but not hardhearted, broadminded, tolerant and sympathetic, and possessing more than a grain of humour: above all, energetic, active and in intimate contact with modern conditions and modern problems."

It is obvious that such visits will have a very wholesome and encouraging effect upon the prisoners. The prison officials, whether wardens, chaplains, or others, are too often regarded by the inmates merely as paid prison officials and, as such, are neither trusted nor regarded as friends. On the other hand, the prisoner realizes that prison visitors are not connected with the management of the prison, but that they come to see him in an unofficial capacity and in a friendly spirit to discuss his problems and to help him solve them. The visitor is able to get in touch with the prisoner's wife, mother, or other relatives and dependents, whose welfare is so often one of the prisoner's main sources of worry, and keep him advised of the health and welfare of each member. The information gathered from the prisoners during these visits is of great value when provision must be made for them on discharge, particularly as many such visitors are also members of a prisoners' aid society.

While in England, your Commissioners had the opportunity of observing several of these visitors at their work and were very much impressed with the manner in which they conducted it.

Your Commissioners have reviewed the work being done by prisoners' welfare associations and other such organizations in Canada, they have studied the methods of operation in Great Britain, and have discussed the problem of after-care with those who are foremost in this work, and they are now firmly convinced that a system based on that now in effect

<sup>1</sup> Fox—The Modern English Prison, Lond., 1934.

in England, if developed along much the same lines in Canadian penitentiaries, would achieve similarly successful results. It is not intended here to prescribe in detail how this should be done. The following is suggested merely as an outline:

1. A central authority, under the direction of the Prison Commission, patterned along the lines of the Central Association for the Aid of Discharged Convicts, should be established to provide for the rehabilitation and after-care of prisoners released from our federal penitentiaries. Prisoners' aid societies now in existence could be utilized to serve at the different penitentiaries, and, if necessary, other such organizations could be created in order to embrace the entire field. Such societies should be given financial assistance, but in such a way as to encourage private contributions. Associate voluntary workers, who are so important in this scheme, could be recruited from the large army of social workers scattered throughout Canada, including members of the various churches, social service clubs, and other similar organizations, who, when the importance of this task is impressed upon them, will no doubt evince the same enthusiasm to serve as has been displayed in Great Britain.

2. The same prisoners' aid societies could be utilized to look after prisoners discharged from provincial institutions so that there would be no duplication or overlapping of such services, but it would be necessary to establish close co-operation and reciprocal arrangements between the provincial and federal authorities if the work is to be accomplished in the most efficient and economic manner.

3. Certain experiments patterned after the English system of voluntary visitors should be undertaken under strict supervision in certain selected Canadian institutions.

The success or failure of any system of rehabilitation or after-care for discharged prisoners depends in the final analysis upon the attitude of the public. Granted the closest co-operation between the state, the prison authorities, prisoners' aid societies, and volunteer workers, the system can accomplish little unless all citizens can be brought to realize their obligation to assist the ex-prisoner as willingly and readily as they would any other fellow citizen in distress.

Your Commissioners recognize the fact that, when work is as scarce as it is under present conditions, it may seem unfair to many that employers of labour should be asked to give work to ex-prisoners when so many innocent people require it. This argument is not new, and there will always be those who will advance it. A discharged prisoner has paid his debt to society when he is discharged from custody. It is the duty of society to assist him and to help raise him to the level on which honest men compete for employment. It is a grave ethical mistake to continue the punishment of one who has already been sufficiently punished, and it is a grave economic mistake to condemn an ex-prisoner to unemployment and thereby drive him into recidivism which will involve his con-

tinued support at public expense. The case is well put in the following remarks of the late Roy Calvert of the National Association of Prison Visitors:

“Objection is sometimes made to giving help to an ex-prisoner on the ground that there are many honest men who are equally needy and more deserving. This dilemma is as old as the parable of the Prodigal Son. But the ex-prisoner is not necessarily worse than a man who has not been in prison, and it is in the interests of the State to save him from being forced into a life of crime. It is not always possible to be logical in such matters and reasonable help to an ex-prisoner is a common sense compromise. It is a false economy to withhold necessary funds for after-care work when a few pounds spent on an offender at the beginning of his criminal career may save him from becoming an habitual criminal at a cost of many hundreds of pounds to the State.”

Finally, your Commissioners suggest that, if the various Governments and municipal councils throughout Canada would adopt the broad general principle that a man's conviction should not automatically act as a bar to his ever obtaining employment in the public service, they would set an example to all employers of labour. Knowledge of an applicant's conviction must necessarily be taken into account, but it should not alone decide the issue against him.

One of the largest industrial concerns in the United States, which employs thousands of men, does not discriminate against a man merely because he has been in prison.

Information was given to your Commission that, although no regulation of the Civil Service Commission expressly bars ex-prisoners from obtaining employment in the federal Civil Service, for many years it has been the practice that no one who had been convicted would be considered eligible for appointment. In recent years this “unwritten law” has been less rigidly enforced, and there has been an occasional instance where such a person who has shown that he had reformed and lived an honest life since his release has been given a position in the government service. Your Commissioners approve this principle, and suggest that the question, “Have you ever been charged with a criminal offence?” should be followed by a note, “The fact that you have been convicted of a criminal offence will not in itself bar you from appointment to a position in the Civil Service.”

## PART III

### CHAPTER XXII

#### DORCHESTER PENITENTIARY

##### *Buildings and Grounds*

The penitentiary buildings are of the old style and the cell blocks, which contain barrier type cells, are out of date. Your Commission is of the opinion that the closed door, or outside cell, is vastly superior to the barrier, or inside cell. This is quite generally conceded and, while transformation of the barrier into closed door cells would be very costly, there is nothing to prevent the latter type being adopted in future buildings. This would have the advantage of eliminating the conversation period, which, as arranged at present, is considered objectionable. Some prisoners prefer privacy in which they can read, and would rather have conversation permitted when they are walking in the yard, or at other times. These observations have a general application and are not confined solely to Dorchester Penitentiary. In order to avoid the expensive transformation of the present barrier cells into closed door cells, alterations might be made that would provide shower baths on each landing and enclose the corridors to permit deserving prisoners to associate during the evenings and on Sundays and holidays.

Your Commissioners found that some of the cells are very damp, a situation which could be remedied by better ventilation. The cleanliness of the cells is also open to criticism. This might be corrected by making each prisoner responsible for cleaning his own cell. The punishment cells differ little from the others except that the only furniture in the former consists of a wooden bed.

A new cell block, which is called "Building B7," and which was recommended on December 22, 1932, is now under construction. It is patterned upon the temporary cell block at St. Vincent de Paul Penitentiary, and consists of a two-story two-tiered cell wing with inside cubicles and open barriers facing outside corridors. Only the foundation had been completed when work was stopped by authority of a memorandum of October 19, 1936, issued by the Superintendent, who had decided upon outside cells instead of inside cubicles in order to provide for a more suitable segregation of the prisoners. The revised design provides for 232 cells of the closed type with two shower baths and one cleaner's cupboard on each floor. The foundations and the first floor of this new cell block are now finished. Your Commission recommends that construction of the building should be hastened to completion.

Since August, 1933, there have been over one hundred communications between the penitentiary and the Branch regarding details of construction and arrangement, covering such subjects as beds, floors, ceilings,

requisitions, control cages, cooking, seats in cubicles, seepage in the floor, stairways, toilets, costs of construction, and control of staff. This enormous correspondence and the consequent delay in construction are attributable to the failure of the Branch to supply the warden and the chief trade instructor with detailed specifications and costs of materials at the inception of the project. The building of the change room has been held up for six years because no details have been furnished to the penitentiary regarding shower bath partitions. Inspectors Dawson and Sauvart reported under date of May 14, 1937 that the transfer from the present change room to the new one is being held up pending decisions on:

- (1) Installation of ventilation equipment;
- (2) Changes to the dryer;
- (3) Placing of control cages;
- (4) Arrangement of bins;
- (5) Central shaft of individual dryers from machines.

The final recommendations of the inspectors are that a plan should immediately be put into force at the central office providing that, so far as is possible, no project should be authorized until detailed specifications of all parts of the buildings, complete lists of materials, and details of machinery and equipment, are prepared, and further, that, when general plans are sent to the penitentiaries, details of the interior of buildings and of the machines and equipment should accompany them. With the reservation that, where it would be difficult to anticipate all requirements minute details of equipment might possibly be omitted, your Commissioners entirely agree with these recommendations.

The new firehouse and bell house and a new barn and an implement shed are being completed, and some work is also being done toward excavating for, and laying, a new sewer. The tower platforms on which the guards are stationed could be made much more suitable if they were enclosed to the height of about three feet. This would protect the guards from the strong winds that are common in this locality, and would also protect the floor from snow in winter time.

Nine brick houses, including both single and double residence, are located on the penitentiary property and are rented to officials. The foundation of two more brick dwellings were constructed seven or eight years ago, but, since then, nothing further has been done to complete them. The houses already built are well constructed and maintained. They have garages attached and are heated by hot water furnaces. The basements are well constructed and spacious. The main floors have an enclosed front verandah, large living room, dining room, and kitchen, and, upstairs, there are four bedrooms. The single brick dwellings rent for \$15 a month, and the double ones for \$12.50 a month for each half.

There are ten wooden houses, which were erected about fifty years ago. They have become dilapidated, and are badly in need of painting and other repairs. Each contains a basement and three stories heated by stoves. These wooden buildings constitute a serious fire hazard; they are



built so closely together that, should a fire break out, it would be almost impossible to confine it or to permit the occupants to escape without injury.

The warden believes that additional brick dwellings should be constructed, but at a considerably lower cost. He is of the opinion that considerable expense could be saved by heating them with hot air instead of hot water.

The greenhouses for plants and vegetables are small and, in order to function efficiently, should be enlarged to a considerable extent.

The water supply, which is dependent on springs that fail during dry seasons, is inadequate and unreliable. The water in the upper reservoir is very badly discoloured and scarcely suitable for drinking purposes. In the opinion of your Commissioners, expert opinion should be consulted as soon as possible with a view to rectifying this situation.

The penitentiary property in front of the buildings slopes down to the main highway. A suggestion was made by the Superintendent that a fence should be erected along the boundary of the penitentiary lands adjacent to the highway. Your Commissioners believe that this expense is not necessary and that the same result could be achieved by planting a hedge, the shrubs for which could be obtained without extra expense from the land owned by the penitentiary.

In the opinion of your Commissioners, the concrete steps leading down toward the highway do not need to be extended any farther. Instead, the land from the bottom of these stairs could be graded down to the highway and steps erected from the highway opposite the wooden buildings, so that the officers and guards could use them to go to and from the penitentiary without having to detour along the highway for a considerable distance before turning into the penitentiary grounds.

At the time of the visit of the Commission, the main highway that runs along the front of the penitentiary grounds was being constructed. As this road will now be paved, your Commissioners suggest that it would be advisable to pave the road running from the penitentiary's main entrance to the highway.

#### *General Discipline*

We found discipline in the penitentiary to be fair. With two or three exceptions, the officers appeared neat and alert, and apparently co-operated with, and had confidence in, the warden. The list of prison offences and punishments is not abnormally large. Corporal punishment is very seldom resorted to, and then only in extreme cases and as a last resort. It was only applied twice in 1936 and once in 1935.

#### *Warden*

The warden of Dorchester Penitentiary impressed your Commissioners as being vigilant, energetic, and humane. While a strict disciplinarian, he does not favour those militaristic methods that are so out of place in a penitentiary.

Training of officers is under the personal supervision of the warden with the result that, according to the Superintendent's letter of March, 1936, the officers of Dorchester Penitentiary made a better standing under examination than those of any other penitentiary.

After the present warden had been for some time in charge of this penitentiary, ex-Superintendent Hughes wrote: "A new era of efficient, humane administration and business-like management dawned in Dorchester Penitentiary with the advent of Mr. Goad's assuming control." The warden made many valuable and constructive suggestions to your Commission. But for the opposition of the Superintendent, many of his suggestions, which would have been of benefit to the administration, might already have been put into effect.

#### *Deputy Warden*

The deputy warden is of the old school and does not believe in reformatory treatment, but rather that penitentiaries exist only for punishment. He suggested to us that the regulations should be made more severe because they now offered prisoners inducements to return to the penitentiary. Being asked whether there was any prisoner who was not anxious to leave the penitentiary, he could not name one, and, being asked if he knew of any prisoner who was glad to return to the institution, he cited one. The deputy warden does not assimilate, or agree with, new penological ideas. Although he was given ample notice that your Commissioners were anxious to obtain his views on penitentiary matters, he failed to prepare himself or to devote thought to the matter.

#### *Industries*

There are no real industries in this penitentiary and trades are not taught. There are carpenter, tailor, shoe, blacksmith, machine, and tin-smith shops, but no work is provided in these shops such as would enable a prisoner to learn a trade to fit him for employment on discharge. The shops are used only to provide the necessary supplies for the requirements of the penitentiary, and trade instructors, whether they are capable or not to teach the trade, either have no time to do it or no interest in doing so. However, it must be borne in mind that they are acting also as custodial officers. In addition to shop employment, prisoners work in the dome and wings, kitchen, laundry, stone shed, yard, farm, stables, quarry, root cellar, ornamental grounds, power house, piggery, and library. Out of a population of 388, there are only ninety-three inmates working in the shops. As in other penitentiaries, inmates are not allowed to use material, even waste material, for experimental purposes. This is probably one of the reasons why no trade is taught as it should be. Circular 217, of December 5, 1933, forbade the expenditure of government material without the authority of the Branch.

#### *Farm*

Approximately 533 acres of farm land are under cultivation, 146 acres of which are devoted to growing oats, thirty-one to potatoes, nine

acres to turnips, and thirteen acres to other vegetables. Two acres are used for green feed for cattle; and the balance of the cultivated land is used for growing hay. There are also 626 acres, mainly composed of pasture, woods, and waste land, due largely to the fact that the whole frontage of the penitentiary property is situated in a marsh district, which is often greatly damaged by the high tides. The farm instructor was of the opinion that the only way in which much of this waste acreage could be utilized would be in the production of beef, using the marsh lands in rotation for hay, oats, and pasture, and the uplands in rotation for different root and cereal crops, and for pasture. A herd of 375 cattle would have to be maintained in order to raise beef on an economical basis. The recent price of beef might not appear to justify the expenditure but, if the price of beef should increase, the plan should receive full consideration. In view of the absence of fresh water on the marsh land, and its shortage on the uplands, the main difficulty in putting such a scheme into effect would be in connection with watering the animals. Your Commissioners, therefore, suggest that, before entering upon such an undertaking, the report of an expert should be obtained.

#### *Recreation*

In addition to the exercise of physical training, permitted by regulations 46 and 47, the prisoners are allowed to play volley ball and pitch horseshoes. Up to 1933, it was the practice on each statutory holiday to hold concerts in the school room during the afternoon. These consisted of singing, dancing, and instrumental playing by the prisoners, and motion pictures provided by the institution. Since that time, however, no concerts have been held, because regulation 713 cannot be complied with at this institution without causing expense to the public. Free transportation by penitentiary vehicles is out of the question during the winter months, and even during the summer months with present transportation facilities. The warden would like to be able to provide concerts for the prisoners because these entertainments form a diversion from which much benefit is to be derived. The warden is also of the opinion that table games, such as checkers, chess, and dominoes, should be permitted. There was no radio at Dorchester when the Commission sat at that penitentiary, but radio programs had been provided at Christmas time by the Salvation Army. Receiving sets were set up in each corridor of the wings and in the hospital. The radio equipment for this was supplied free of cost by the T. Eaton Company, of Moncton. Ninety per cent of the prisoners have contributed voluntarily six cents per month from their "peculium" in order to purchase a radio receiving set, which has now been installed. Our views as to the installation of radio in the penitentiaries in this manner are fully set out in chapter VIII of this report.

News bulletins are mimeographed every week and copies are issued to all prisoners.

*Young Offenders*

The young prisoners are now housed in one cell wing segregated from the adult prisoners. They are employed at out-of-door work on the farm, on the construction of the new barn, on the ornamental grounds, bricklaying, excavating new sewers, painting, and building. They attend school two mornings of each week, but they receive no industrial training whatsoever. Contrary to the general public belief, the young prisoners have not the least opportunity to learn a trade. According to the present policy of the Branch they are not even allowed in the shops.

*Kitchen and Steward*

The cooking in this penitentiary was unsatisfactory, due, we believe, to lack of supervision by an experienced cook. The steward has died since the Commission visited Dorchester. Your Commissioners trust that only a man of ample experience will be appointed to replace him. The importance of this was fully realized by the warden.

There is no range in the kitchen and all food is cooked in steamers. Although some meat is subsequently placed in the bakery oven, the previous steaming takes the value from what was first-class meat when it entered the penitentiary. The same thing applies to potatoes, which become soggy and wet through steaming. At least two large ranges should be installed if the food is to be properly prepared. The kitchen, particularly the floors, were not kept clean, and disorder was prevalent. No dishwashing machine has been provided and all dishes are washed by hand without sterilization. In the opinion of your Commissioners, this situation should be rectified by the installation of suitable equipment.

*Hospital.*

Your Commissioners found the hospital in very good condition, clean, and modern. At the present time, part of the first floor is taken up by the key room with its noises and traffic, but, when this extra space becomes available, the accommodation will be quite adequate. The hospital occupies three floors. On the first floor, the medical and dental clinics, the pharmacy, and the doctor's office are located. The second floor is occupied by cells for the ordinary patients and also for those suffering from venereal disease. On the third floor, in addition to cells for the ordinary patients, there are cells for those suffering from tuberculosis, together with a small solarium for the latter. The hospital cells are clean, roomy, and much larger than those in the regular cell blocks.

*Doctor and Medical Services*

The medical service is capably handled by the medical officer in charge, who is an ex-army officer and has specially prepared himself for the position he now occupies. He is still pursuing refresher courses during his holidays, and appears to be an efficient and competent official. Under his guidance, the male nurses are being trained and soon will be up to a proper standard. When the alterations have been made to the hospital and the key room removed, it will be possible to segregate the

mental cases. This will be an improvement, in view of the fact that, at the time of our visit, the penitentiary contained sixty-nine mental cases, of which thirty-three were abnormals and thirty-six mental defectives. Of the first group, seven are considered by the doctor to be insane.

Your Commissioners found that, in this penitentiary as in others, malingering is quite common. The doctor stated that about fifty per cent of those who come to the hospital are malingerers, but, after inquiry, we decided that quite possibly this may be an exaggeration.

#### *Chapel*

There is no separate chapel for those of the Roman Catholic faith. At the present time, services are held in the Protestant chapel. This common chapel is not adequately furnished. The pews are so close together that there is no place to install kneeling stools, and, as a result, the inmates are compelled to kneel on the bare floors.

A few years ago it was decided to build a separate Roman Catholic chapel. Plans were made and authorized, and construction was started, but, due to the intervention of the Superintendent, it was never completed. Your Commissioners are of the opinion that construction of this chapel should be recommenced and brought to completion as soon as possible.

#### *Chaplains and Religious Services*

The Roman Catholic chaplain, who has been acting as such for ten years, impressed the Commission as being a man eminently fitted for his position. Active, interested in his work, sympathetic, humane, imbued with a missionary spirit, he has the confidence of all prisoners even when not of his faith. He holds numerous interviews with the inmates and devotes his entire time to his duties in the penitentiary. While your Commissioners were at Dorchester Penitentiary they saw him frequently in the mornings. He informed us that he would like to have more interviews with the prisoners and greater facilities for interviewing them in private. Under the present regulations he is only permitted to interview the inmates, either during an hour at noon, or in the corridor outside of their cells at night. He stated that he does not take full opportunity of the night interviews because, with barrier cells, such interviews, not having the necessary privacy, are practically useless. He has no office in which to interview the prisoners and is forced to depend upon the chapel, which is entirely inadequate for the purpose.

Unfortunately, your Commissioners were not as favourably impressed by the Protestant chaplain. He did not appear to have the missionary zeal, nor did he possess the confidence of the prisoners, and your Commissioners do not consider him a suitable officer for chaplain service.

#### *Education: School, Library, Teacher, and Librarian*

The school and library are located in the same room. The school is actually conducted in one large room called the assembly hall, which is not suited for class work, and its walls are badly in need of renovation.

A large proportion of the population is illiterate. According to circular letter 120/23, school is being conducted during the forenoon of each day from Monday to Friday inclusive, yet during these periods the several shops of the penitentiary remain in operation. Classes are not graded, but merely formed by groups, with one monitor for each group.

The school teacher does not teach any one group but depends entirely upon his monitors to do this. Your Commissioners do not approve of this course. The school teacher, himself, should teach a class.

No proper record is kept of the progress made by each prisoner attending school. Even the date on which he is admitted is not recorded. Discipline in the school is non-existent; prisoners talk and laugh freely among themselves; some of them chew tobacco, and neither the school teacher nor the guards on duty appear to take any notice of these infractions of the regulations. As a result the school is unsatisfactory. The teacher does not appear to be interested in his work and, although a well-educated man, he appears to attach more importance to theory than to practice. He is nervous, lacks initiative, and it is obvious that he does not understand how to maintain discipline. Moreover, he does not comply with regulation 397, which requires him to give cell instructions to the inmates, nor was he able to supply the Commission with any satisfactory explanation why he had not done so.

The school teacher also performs the duties of librarian. He is assisted in these duties by two prisoners in the morning and four inmate monitors in the afternoons. These latter are engaged in school work in the forenoon. The system of distributing the books is quite adequate but, although there are 2,000 volumes, only 1,500 of these are in circulation because of lack of space for them on the shelves. The rules permit each prisoner to draw out six volumes of fiction or six magazines each week in addition to any educational book he may ask for. The librarian complains that he is not given the necessary assistance and that at times he is compelled to accept the services of any inmate sent to him, even when the inmate is unfitted for library work. Although he is a member of the classification board and the library board, he admits that he has never complained about this situation, or even discussed the matter with the board.

The censorship of magazines is done by the librarian and the two chaplains. In the opinion of your Commissioners it is too stringent.

The censor officer who has charge of censoring letters does not understand the French language sufficiently to deal with letters written in that language and, when asked by the Commission to translate three lines of very simple French, he failed to do so. Your Commissioners are of the opinion that, in view of the number of French prisoners in this penitentiary, a censor understanding the French language should be appointed, either to replace the present one, or to assist him in his work.

## CHAPTER XXIII

## ST. VINCENT DE PAUL PENITENTIARY

*Buildings and Grounds*

The "Laval Buildings," while connected with St. Vincent de Paul Penitentiary, form a separate entity, and will be dealt with separately in this chapter.

The general comments, which your Commissioners have made regarding the buildings at Dorchester Penitentiary, apply equally to those at St. Vincent de Paul. Both are old, and the cell blocks are of the barrier type, which are no longer considered to be appropriate.

There are between 300 and 350 cells that are not provided with the necessary sanitary equipment and in which buckets are used. Your Commissioners are of the opinion that these cells should be condemned without qualification and that in future no prisoners should be confined in them. The abolition of these cells would involve, either the construction of new cell blocks, or the reduction of the population. The lights in the cells are insufficient and many cases of failing sight are attributed to this.

Otherwise, the buildings are kept in a good state of repair, and substantial improvements have been made to the administration building, the hospital in the old west wing, the north-west gate and stores, the keeper's hall, the powder magazine and cap house, the transformer room, the boiler house, the storage buildings, the main dome, the north wing cell block, the north-east cell block, and the old east wing cell block. The old Roman Catholic chapel wing has been altered to provide larger quarters for the library and school. A new two-story building has been built as a south wing extension, which provides space for the kitchen, the steward's office, and the new Roman Catholic chapel.

A new temporary cell block, now occupied by the young prisoners, was completed in 1930. It has 144 additional cells all equipped with toilets, sinks, and other hygienic facilities. Another new temporary cell block has been built with three rows providing 204 additional cells. The old building, which contained the kitchen, library, and school, has now been converted into a shoe and tailor shop, and the old wood shed into the present mail bag shop, with a tinsmith shop located below. Alterations have been made to the machine and blacksmith shops, the change room, and laundry. The shower baths have been removed from the first floor of the main shop building to the south workshop buildings. A new fire-proof garage and a new fire hall have been built. The old piggery has been remodelled, and a new piggery built. A duct 470 feet long has been constructed twenty feet below grade level between the main dome and the north-east boundary wall, and concrete ducts have been constructed from the boiler house to the new piggery and from the hospital to the main duct system. A heating pipe duct 370 feet long has been constructed from the south work-shops towards the new tank, as well as an

eight-inch intake pipe from the river-front to the pump-house, and a subway under the C.P.R. right of way. A parking space has been arranged, a protective wire fence, a new railway siding, a narrow gauge railway, a new macadam road, a segregation park, and a filter house extension have been built. A safety cage for guards has been installed in each trade shop. Inside and outside cages have also been erected, some with concrete bases, in the stone shed, and blacksmith shop, the machine shop, the mail bag shop, the change room, the bathroom, the tailor shop, the shoe shop, the carpenter shop, the Protestant chapel, the new kitchen, the library and school, and the new Roman Catholic chapel.

#### *General Discipline*

The principal characteristics of penitentiary discipline described in another chapter are to be found at St. Vincent de Paul Penitentiary. Members of the staff are neat in appearance and smart in bearing. Although there are a number of very good officers at this institution, their personalities have been stifled by the militaristic discipline in force. None has the temerity to make suggestions or to display initiative. A system of fear is in existence, applicable alike to staff and inmates.

As a maximum security escape-proof institution and a place of punishment, St. Vincent de Paul Penitentiary may be considered a success but, possibly due to the fact that a great number of professional criminals and unmanageable persistent offenders are confined within its walls, necessitating a very strict discipline, no real efforts at reformation or rehabilitation appear to have been made. A number of officers who are inclined to work to this end, not only lack encouragement in their attempts to help well-inclined prisoners toward rehabilitation, but are actually discouraged to the extent of causing them to fear that such endeavours would involve them in disciplinary measures.

Penitentiary regulation 139 provides that no prisoner shall speak to an officer except from necessity in the course of duty or in exchanging proper salutations when meeting or passing. Your Commissioners found, however, that a routine order (583) had been issued to officers by the warden making this regulation even more repressive. The order reads as follows:

“Recent incidents have revealed that certain officers take upon themselves to hold conversations with convicts. We wish to remind you all that convicts should not be talked to except from necessity in the course of duty. Those having contracted this bad habit will have to discontinue this practice immediately as anyone breaking a rule in this connection shall be liable to disciplinary sanction.”

The gist of the situation is that, while co-operation exists at St. Vincent de Paul, it exists only in regard to enforcing discipline and punishment.

Punishments for prison offences have been extremely severe and reports for infractions of the rules are numerous. Admonitions are seldom given by the officers because they feel that they would be reprimanded if it were known that they had given a warning instead of



making a report. The views of your Commissioners on the trial and punishment of prison offences are fully set forth in chapter V of this report.

In 1930-31, 1,961 offences were brought before the prison court at St. Vincent de Paul. All but seventeen of the inmates were found guilty. In 1931-32, 2,753 accusations were brought before the court and only thirteen of the inmates were acquitted. In 1932-33, out of 2,267 inmates charged with offences, only three were acquitted. In 1933-34, out of 1,615, only one was acquitted. In 1934-35, 1,967 offences were charged and in 1935-36, 1,537 offences were charged without a single acquittal in either year. From April 1 to December 31, 1936, out of 1,195 accusations made before the court, only three were dismissed.

The whole subject of corporal punishment has been fully dealt with in chapter V of this report. Corporal punishment used to be very frequently awarded in this penitentiary when the warden was empowered to inflict it without the authority of the Penitentiary Branch, and it is still awarded too frequently. The practice at this penitentiary of "padding" inmates in the presence of the entire staff, who are paraded and have to be present throughout the punishment, is strongly to be condemned. Several officers have expressed their opposition to this practice and your Commissioners are unable to find any justification for it. This practice, which is not far removed from sadism, intensifies the prisoner's desire for revenge, and this may still further be quickened when, as is unfortunately sometimes the case, officers who are cruel or brutal enjoy the spectacle and afterwards deride an inmate who has been unable to maintain stoicism under punishment.

No adequate classification is in effect. The reports of the members of the classification board are most perfunctory; no reclassification, such as is demanded by regulation 702, is made, and no minutes of the board's proceedings are kept.

Although, according to regulation 87, inmates are permitted to take courses from correspondence schools, this privilege is denied them at St. Vincent de Paul because the school teacher, with the approval of the warden, is opposed to the practice.

St. Vincent de Paul Penitentiary has the dubious distinction of being the only penitentiary in Canada, and, so far as your Commissioners are aware in the entire world, where cages have been installed in the chapels and are occupied by armed guards during service.

#### *Warden*

Lieutenant-Colonel P. A. Piuze was the warden at St. Vincent de Paul Penitentiary at the time of the visit of your Commissioners to that institution. He had been warden for over ten years but has since resigned from the penitentiary service.

Before proceeding to comment upon Warden Piuze's regime, it is only fair to state that the majority of the inmates of this penitentiary are quite different in type from those of Dorchester, British Columbia, Manitoba, and Saskatchewan Penitentiaries in Canada or most of the

British penal institutions, and more of the same type as those at Kingston Penitentiary or some of the large institutions of the United States of America. Being close to Montreal, the metropolis of Canada, and to the border of the United States of America, the population of St. Vincent de Paul is necessarily cosmopolitan and it includes a large number of incorrigible and habitual offenders, many of whom are desperate criminals of the "hold up" or "gunmen" type. Many of these men are difficult to control and constantly incite other prisoners to commit breaches of discipline. To illustrate the type of criminals to be dealt with in this institution, in 1936 and 1937, out of a population of 943, 120 inmates had been convicted of robbery while armed, seventeen convicted of conspiracy to rob while armed, four convicted of robbery with violence, seventeen convicted of murder, ten convicted of attempted murder, seven convicted of attempted robbery while armed, four convicted of bank robbery, three convicted of breaking and entering and discharging firearms with intent, one convicted of discharging a firearm with intent, thirty-four convicted of manslaughter, eleven convicted of rape, and about 100 convicted of other sex offences.

Without proper facilities for segregation, and with regulations and rules of conduct which apply indiscriminately to all inmates, whether vicious criminals and recidivists, or accidental and first offenders,—a policy which is admitted by the Superintendent in his letter of January 17, 1936, to be lacking in good common sense—it necessarily follows that discipline will be suited to the regiminal needs of the worst type of unmanageable inmates, and that such discipline will be far too rigid and severe for the more amenable and less anti-social prisoners and perhaps even destructive of their chances of reformation. In his evidence depicting this difficult situation, Lieutenant-Colonel Piuze, himself, stated that, if he could get rid of some forty or fifty inmates who were incorrigibles and disturbers of discipline, and if the remainder of the population were to be classified, the institution could be managed without any difficulty under a less rigid and severe discipline.

Probably because of this lack of facilities for proper classification and segregation and because of the indiscriminate nature of the regulations and rules of conduct, Lieutenant-Colonel Piuze appeared to be imbued with the sincere and honest conviction that, in order to insure discipline, obedience to the rules, and security in his institution, it was necessary for him to create an atmosphere of perpetual fear, applicable, not only to the inmates, but also to the officers. As a result of this mistaken conception of convict management, there has been at St. Vincent de Paul a more severe and rigid discipline, accompanied by more drastic punishments, than your Commissioners have found in any other institution they have visited in Canada.

Lieutenant-Colonel Piuze frankly stated, and your Commissioners were convinced that it was his sincere and conscientious belief, that under the existing conditions, kindness was but weakness. He appeared to have little faith in the possibility of reforming or rehabilitating any

but a very few of the inmates of the penitentiary. By his attitude, which he rigidly imposed upon his staff, and through a peculiar but sincere misconception of the duties of his position, he succeeded, however unwillingly, in developing amongst the prisoners under his charge such a sentiment of hate, and such a desire for revenge against the authorities of the institution, that there seems little likelihood this attitude would cease upon their discharge from the institution, but rather that it would persist even more intensively after their release and result in further anti-social outbreaks.

Your Commissioners have no doubt that Lieutenant-Colonel Piuze was convinced that, if he deviated from the line of conduct he had adopted, he would conscientiously believe himself to be in error and culpably remiss in the performance of his duty. He suffered from a security and control complex and, in striving for control and security, he lost sight of the necessity for humanitarianism, without which reformation is impossible and wholehearted co-operation cannot be obtained.

Following the resignation of Lieutenant-Colonel Piuze, Inspector Louis Sauvart took charge of St. Vincent de Paul Penitentiary as acting warden.

#### *Deputy Warden*

The deputy warden of St. Vincent de Paul Penitentiary appears to be an efficient officer and, if a little initiative and authority were permitted him, it is probable that he would fulfil the requirements of his position in a very effective manner.

#### *Industries*

Industries in Canadian penitentiaries are dealt with in chapter IX of this report, and the comments made therein apply to St. Vincent de Paul.

There are carpenter, machine, blacksmith, tinsmith, tailor, shoe, bindery and printing, and mail bag shops, but very little work is provided in these shops that would enable an inmate to learn a trade such as would fit him for employment on discharge. With the exception of the mail bag, binding, and blacksmith shops, the only work done in them is to provide supplies for the requirements of the penitentiary.

Fifty-seven men are employed in the carpenter shop, forty-two inside and fifteen on various jobs outside; thirty-six in the machine shop, mostly selected from long-term prisoners; twenty-four in the blacksmith shop, principally in the manufacture of cell gates and barriers for Collin's Bay Penitentiary; eight in the tinsmith shop; fifty-three in the tailor shop; fifty-two in the shoe shop, which is very crowded; eleven in the bindery and printing shop, where binding is done for the Department of Justice library as well as for the penitentiary library. More instruction is given in the art of bookbinding in expensive leathers for the instructor's personal collection, however, than for the ordinary trade of bookbinding. There is plenty of work in the mail bag department.

Apart from those employed in the shops, thirty inmates work in the change room, forty-two in the steward's department, three in the stores department, and forty in the library.

On the whole, shop instructors consider themselves to be foremen rather than tutors, and take more interest in their custodial duties and in the manufacture of articles for the penitentiary service than in teaching the inmates a trade that would be of service to them on leaving the institution.

#### *Farm*

A special report on the farm is contained in appendix II to this report, and farm management and employment are dealt with in chapter IX.

With the exception of physical instruction, which is very limited, the inmates at St. Vincent de Paul have no outdoor recreation. The warden of the institution was of the opinion that such games as volley-ball, quoits, and hand-ball, or even soft-ball, could be allowed in the penitentiary if a proper classification existed to permit the removal of incorrigible and unmanageable inmates to a separate institution. He believed that, until then, and with the present population, it would not be safe to permit such games, even though most of them are played in other federal penal institutions.

Radio is only permitted at Christmas or on such other rare occasions. Some concerts have been given by outside artists, and these were very popular with the inmates. No games, such as checkers or chess, are allowed because, when prisoners are not at work or on parade, they are at all times confined in their cells. Hobbies in the cells, as a general rule, are not permitted, but some inmates are allowed to possess crayons and to use them for drawing purposes. It is true that the inmates have conversation periods in the cells in the mornings and after meals, but the tone in which these conversations are conducted creates such bedlam, and the subjects discussed in them are so vile, that, in the opinion of the warden, as well as of your Commissioners, such conversation periods should be abolished in favour of conversation in the yard when the inmates are out of doors.

#### *Young Offenders*

At present young offenders are segregated in the new cell block, No. 1. It was the opinion of the warden, which is concurred in by your Commissioners, that the problem of rehabilitating young offenders will never be solved until they are segregated in an entirely separate institution.

The young offenders have no opportunity to learn a trade because they are debarred from the shops. This is due to the policy that, where there is only one set of shops, they shall be used by the adult inmates and the young offenders shall not be permitted to have any contact with the older men for fear of the detrimental effect of such contact. They now have the use of a stone-cutting shop on the grounds of

the Laval Buildings, where they are learning the stone-cutting trade, but your Commissioners fear that this will not be very useful to them after they have been discharged. In addition to employment in this shop, young prisoners have been employed in pick and shovel construction work and labour on the ornamental grounds. Those who are not occupied in this manner are employed in cleaning the cell block.

At the time of the visit of your Commissioners, no education whatsoever was being given to young offenders in spite of the obvious necessity of having all of them given as much schooling as possible in order to fit them for normal life after discharge in the outside world. The reason given to your Commissioners for this lack of education was that the teacher had no time to teach young offenders. The warden claimed that he had asked the Penitentiary Branch to provide him with an assistant teacher for this work, but without result. Very fine school rooms are provided in the cell block occupied by young offenders, but they are not being used. Sixty per cent of these boys are practically illiterate, which indicates the necessity of providing educational facilities for these prisoners.

The officer in charge of the young offenders, although humane and willing, has not the training necessary for that particular work. He was taken from the shoe shop and assigned to his duties without any proper instructions or any explanation of what was required of him. It is difficult to imagine wherein his training in the shoe shop would fit him for this highly specialized work. The situation is further aggravated by the rigid discipline, previously referred to, which exists at St. Vincent de Paul. This officer, in common with all others there, did not find it advisable to make suggestions to the warden, believing that he would get along much better if he kept his own counsel.

#### *Kitchen and Steward*

Forty-two prisoners are employed in the kitchen and commissary department. Conditions there, particularly with regard to the kitchen, the scullery floor, and the store-room, are not satisfactory. Proper cleanliness is lacking and the store-room is too damp. When the washing machine in the main kitchen is in operation a dense cloud of vapour envelops the whole kitchen, leaving the wall and ceilings in a very moist condition and making it exceedingly difficult to keep the kitchen bright. At this penitentiary, the food, especially the meat, is of very good quality but it is poorly cooked, probably because boilers are used instead of ranges. The bakery, cold storage, and store-room are well kept and clean. No valid complaint can be made with regard to the food, which is far better than that in the provincial jails or in British and European institutions. Many people who are in full possession of their liberty would be delighted to secure as good food as is furnished to the inmates of this penitentiary. Such complaints as have been made are equally applicable to any institution, whether a good hotel, a college, or a boarding house, where the cooking, in spite of the excellent quality of the food, will eventually become monotonous.

*Hospital*

Although extensive improvements and repairs have been made to the hospital in the old west wing, it is still inadequate for the large population of St. Vincent de Paul. The hospital is very clean and well-kept. It consists of the doctor's office, the doctor's operating room, the dentist's room, and twenty-three cells, of which six are kept for observation cases and five for tubercular cases. There is also a sunroom for the latter.

The new sterilizing equipment is adequate but there is need for a new operating table and an X-ray instalment. A clerk who is not an inmate should be added to the staff to handle the correspondence at the hospital. At present, an inmate is doing this work and, as a result, the subjects of correspondence are known to everybody in the penitentiary. This correspondence relates to many subjects which should be kept confidential.

*Doctor and Medical Services*

The medical service of St. Vincent de Paul Penitentiary is in many respects unsatisfactory. Your Commissioners attended the examination of an inmate on reception, and found that the examination was neither thorough, nor conducted in a sanitary manner. The same criticism applies to subsequent examinations made in accordance with regulation 313. In fact all medical examinations appear to be conducted in a very superficial manner at this penitentiary and, unless an inmate complains of some specific trouble, no stethoscopic examination of the lungs is made, the blood pressure is not taken, and no analysis of the urine is made.

Your Commissioners found the doctor to be a very nervous and excitable type, and evasive in his answers when before the Commission. On a number of occasions he began by giving a negative answer but, when questioned further and confronted with discrepancies, he came to admit that he had been wrong in his first statement.

Many inmates complained that at daily sick parade the doctor failed to give them proper attention and that he refused to investigate their ailments. It would appear that the doctor regards all inmates convicted of certain crimes as being on the border-line of insanity, and when these men complain of physical disabilities he refuses to take their complaints seriously. It is unfortunate that the doctor makes this use of the crime sheet of each prisoner: he should diagnose and prescribe entirely on medical grounds.

Your Commissioners found that those suffering from tuberculosis are confined to their cells during the forenoons and only permitted about two hours in the sunroom during the afternoons. This appears to be detrimental to their recovery. Examinations of tubercular inmates, as in other cases, are superficial. It has been brought to the attention of your Commissioners that men suffering from this serious disease have been declared fit for work and sent to the stone-shed where the most exacting physical labour in the penitentiary takes place. Tubercular inmates

who are subjected to this treatment rapidly become worse, and, in some cases, it is equivalent to a sentence of death.

Your Commissioners found that equally careless and callous treatment given to inmates suffering from other diseases has had this very effect. For instance, two men complained to the doctor that they were suffering from pains in their right sides. They were reported by the doctor as malingerers who were making false complaints. Unfortunately their complaints were all too true and both men died of appendicitis.

As stated in the analysis of the medical service at Dorchester, there is no doubt a great deal of malingering in the penitentiaries, but it is also true that some doctors, in order to guard themselves against such malingering, have developed so strong a complex of suspicion that they regard nearly every inmate who comes before them as a malingerer. Your Commissioners are of the opinion that the present physician at St. Vincent de Paul has reached this state of mind.

The dentist at St. Vincent de Paul is a part-time employee. No serious complaints have been made regarding him, and his work appears to be satisfactory. Your Commissioners suggest that, in view of the size of the population at St. Vincent de Paul, it might be an improvement to have the dentist employed on a full-time, instead of a part time, basis.

It seems to your Commissioners that the present system of dental treatment entails too much correspondence and that the warden should be empowered to authorize much of the work that now has to be approved by the Branch. The following complicated procedure is at present necessary: after examining the inmate, the dentist fills in a chart showing the treatment recommended and the cause. The physician then completes a form, concurring in the dentist's recommendations. The warden forwards this chart and the physician's endorsement to the Branch, with a covering letter outlining the treatment which is believed necessary, the cause, etc. These documents are copied at Branch Headquarters and, after having been checked by an inspector, copies are placed on file at the Branch. The chart is returned to the penitentiary with a covering letter authorizing the expenditure, and a copy of this letter is sent to the chief trade instructor. A simplification of this routine seems to be advisable.

### *Chapels*

The chapels at St. Vincent de Paul Penitentiary are better than the average, although the Roman Catholic chapel is somewhat small and the inmates are pressed against one another so that, notwithstanding the close watchfulness of the officers, regrettable and reprehensible incidents are bound to occur.

Your Commissioners recommend that a hall sufficiently large for concerts, physical drill, and walking exercises in bad weather should be constructed. At the present time such activities take place in the chapel. Your Commissioners are of the opinion that the chapels should not be used for these other purposes.

The Protestant chapel is suitable, but the organ in it is worn out and needs replacing. A synagogue is provided for those of the Jewish faith.

#### *Roman Catholic Chaplain*

The Roman Catholic chaplain who was in charge when your Commissioners visited St. Vincent de Paul Penitentiary has since resigned, and has been replaced.

#### *Protestant Chaplain*

The Protestant chaplain at St. Vincent de Paul greatly impressed your Commissioners as being the best type of clergyman for such a position. He has a great knowledge of human nature, he is imbued with a true missionary spirit, and he displays a humane attitude, which encourages the inmates toward reformation and rehabilitation. In his interview with your Commissioners he displayed a wide knowledge of penology. He has made a thorough study of the problems inherent in the penal system and he is giving much thought to the solution of these problems. It is noteworthy that your Commissioners did not receive any complaint against the Protestant chaplain from either inmates or officers.

#### *Jewish Chaplain*

In addition to the Roman Catholic and Protestant chaplains, a Jewish rabbi, on a part time basis, is taking care of the spiritual needs of those of the Jewish faith. The rabbi has been connected with the penitentiary for twenty-five years, and he appears to be quite competent in his duties and sincerely concerned with the reformation and rehabilitation of the inmates under his care.

#### *Education: School, Library, Teacher, and Librarian*

The educational department, both library and school, is conducted by teacher-librarian J. A. Fiset and assistant teacher-librarian Piuze. The schoolroom and library are quite adequate for their purposes.

Unfortunately, educational instruction is not conducted in a satisfactory manner at St. Vincent de Paul Penitentiary. The educational department, which should take so important a part in the reformation and rehabilitation of the inmates, seems, indeed, to be another failure. Teacher Fiset, who is of a very nervous and excitable type, lived in complete fear of the late warden, and, although well-learned, does not seem to have the necessary qualities for teaching. Actually, the teaching is done by inmate monitors and not by the teacher, and no teaching whatever is given to those who have attained the third grade. No instruction is given in the cells, as required by the regulations, and the teacher does not return in the evening to interview or teach the inmates. Although the penitentiary regulations provide for correspondence courses, they are not permitted at St. Vincent de Paul because the teacher does not approve of them, even when conducted by the universities. As a contrast, such courses are provided at Kingston Penitentiary by



professors of Queen's University. The teacher at St. Vincent de Paul does not allow the inmates to work for their diplomas because he maintains that the penitentiary is not a university and that if the inmates wish to get their diplomas they can get them outside.

The library department is also under teacher-librarian Fiset. There are 3,563 French books and 2,591 English books in the penitentiary library. According to regulations peculiar to this penitentiary the inmates are entitled to two books a week, one on Wednesday and one on Friday. After six months they are entitled to a third book per week. It is optional for them to have magazines instead of books. The library system is the most complicated one your Commissioners have ever seen, and there are 217 forms in use and forty-five inmates employed, whereas, even in vastly more extensive libraries in United States institutions and in those of other countries, two or three assistants are all that are required. The teacher had been working on a catalogue of books for three years and it was still in the course of preparation at the time of our visit. About half the books in the library have pages torn out of them and, if an inmate complains about this, a report is made against him and he is punished. Your Commissioners have seen books on which the following notice was inscribed: "The librarian knows that there are pages torn in this book and, if you complain about it, you will be punished." There are an average of 136 complaints a month, and the teacher, himself, admitted that about forty-nine of them were well founded. With respect to the remaining eighty-seven complaints, the teacher is in the habit of making reports in which he states that they are false, and, as the result of these reports, the inmates who have complained are punished. There are two causes of this abundance of complaints; first, a complicated and clumsy system, and, second, the excitability and custodial anxiety of the librarian. A great number of books are not in circulation. The explanation of this, as furnished to your Commissioners by the teacher, was that they had not yet been catalogued and that some of them had not yet been approved by the Protestant chaplain. When the Protestant chaplain was questioned concerning this, he stated that he had never been asked to approve these books and that he had never had them in his possession. Your Commissioners discovered that the librarian does not help the inmates in choosing their books, nor does he give them any reading guidance whatever.

Your Commissioners have concluded that education and the library management at St. Vincent de Paul Penitentiary are both entirely unsatisfactory and that the teacher-librarian does not possess the necessary qualifications for his position.

#### LAVAL BUILDINGS

The first step toward the erection of a "preferred class" penitentiary was made in Canada in 1895, when Parliament appropriated moneys to begin the erection of the first building of its kind in the world. After two years, however, work on the building was stopped and the project

definitely abandoned. The subject was revived by Superintendent W. S. Hughes, who recommended year after year that separate institutions should be provided to permit the segregation and classification of the penitentiary population. On April 4, 1929, Hon. Ernest Lapointe, Minister of Justice, announced in the House of Commons that the Government had under consideration making provision for the establishment of a special institution for the purpose of segregating young prisoners from hardened criminals. In his report of 1930, Superintendent Hughes was able to state that, after thirty-five years delay, Canada was to have two "preferred class" penitentiaries, one at Collin's Bay and one at St. Vincent de Paul, and that, in respect to the latter, property had been purchased immediately across the street, and only thirty feet from the administrative building of St. Vincent de Paul Penitentiary.

In 1930-31, preliminary work was commenced on the grounds of the "Laval Buildings," as it had been decided to name the new institution opposite St. Vincent de Paul Penitentiary. Buildings already on the grounds had been torn down and the grounds had been enclosed by a wire fence. Roads had been built, water had been laid on, and electricity and telephone installed. Fifty carloads of timber, cement, and other supplies had been unloaded and stored.

On July 27, 1931, Hon. Hugh Guthrie, then Minister of Justice, made a statement in the House of Commons endorsing the policy laid down by Hon. Ernest Lapointe as to the purpose of "preferred class" institutions. He stated that he hoped others would be established throughout Canada, and mentioned in passing that the term "preferred class" had not been consciously adopted but had more or less "grown up." He defined the purpose of the institution as being to segregate first from old and hardened offenders. He stated that the idea in this was to give the first offenders an opportunity to reform, unhampered by the bad influences of hardened criminals. He pointed to the reformatory at Guelph, where there were neither stone walls nor fences and where men worked in the open, as the example to be followed. The "preferred class penitentiary," he stated, "follows as closely as possible the model of the reformatory at Guelph."

Construction has been carried out entirely by prison labour, and this has delayed completion of the project because of the lack of skilled workmen incarcerated in the penitentiary.

The 1932 report of the Superintendent stated that progress had been made in the construction of the ducts and culvert. In the following year it was reported that the culvert had been extended, a main duct of 188 feet completed, excavation made for the duct of shop "H," excavation and foundation made for shop "J," and fifty per cent of the concrete foundation completed; shop "M" had been completed up to the erection of steel work, and excavation had been completed, and foundations laid, for two towers. In 1934, rearrangement of the wall was made because of the discovery of a spring at the northern corner of the grounds. In 1935 it was reported that the construction of the boundary wall and

towers was going forward, the main duct to connect St. Vincent de Paul with the Laval Buildings begun, and 1,000 feet of water pipe and sewage pipe built. In 1936, the duct between the two institutions was completed and construction of the walls was being continued. No specific mention is made of the work completed in the year 1936-37.

Your Commissioners have examined a blueprint, dated April 5, 1932, showing the proposed wall to be 950 by 1,200 feet. The north corner of the property was cut by a culvert, and it was proposed to fill in the depression of ground at this corner. On April 16, 1932, a second plan was approved to leave the culvert and depressed area outside the walls by shortening the north-east wall by 100 feet. This plan was not actually recommended until June 5, 1933. It was approved two days later. A blueprint, dated April 18, 1932, shows the proposed wall to be formed of a concrete base surmounted by a thirty-foot unclimable wire fence, with towers at each corner of the property. On January 13, 1933 the Superintendent suggested that the wall should be changed from this construction to a wall twenty-three feet high of stone facing throughout. This was approved on January 20, 1933. On July 2, 1935 the plan of the wall was changed again to provide for a masonry wall twelve feet high, surmounted by an unclimable wire fence ten feet high.

A blue print, dated November 10, 1936, marked "tentative scheme," shows the plan of the buildings. In the forefront is the administrative building. A corridor leads back from this, with wings opposite to each other at regular intervals. First is the hospital and receiving wing (left), and shop "M" (right). Next comes the Protestant chapel and the school (left), and the Roman Catholic chapel and the library (right). Then a pair of cell blocks containing 100 cells each is followed by another two cell blocks. Beyond this is a cross corridor leading to three shops on either side, and beyond the cross corridor is the laundry (left) and the kitchen (right). No indication is given as to whether barrier or outside type cells were to be constructed in the cell blocks, but inquiry reveals that the present intention is in favour of the outside cells. On December 3, 1937, an estimate of the cost of the Laval Buildings walls and towers was presented to your Commissioners, which showed a total cost of \$1,549,000 for building and \$839,531.44 for lands and miscellaneous items, or a total of \$2,380,931.44.

Only two plans have been prepared by the Chief Engineer's office, the one mentioned above and a previous one under date of June, 1930. Neither has been officially approved.

The foundation duct of shop "J" was begun and two-thirds of the foundation poured, when, on May 31, 1933, orders came from the Superintendent to cease construction for reasons of economy. The warden of St. Vincent de Paul reported on July 19 that the excavation already completed was being filled in by the action of rain and drainage and that, if left uncompleted, the work would have to be repeated. On August 9 the Superintendent authorized recommencement of the work.

The present state of the Laval Buildings and the work that has been completed to date is as follows:

L.C. Shop "M" . . . . .	78 per cent completed;
L.C. 2 Shop . . . . .	Foundations only;
L.C. 3 Shop . . . . .	Foundations only;
L.C. 15 Boiler House . . . . .	95 per cent building only;
Boundary Walls and Towers	60 per cent;
Main Underground Duct . . . . .	Completed;
Culvert . . . . .	Completed.

From the above it will be seen that no complete plan has ever been approved; that tentative plans have been approved and construction has been begun in a desultory and tentative manner; that it has been found necessary to change the plans because of the lack of proper preparatory work; that the construction of the wall has been changed, while actually in the course of construction, from part concrete and part wire to complete masonry, and back again to part concrete and part wire, and that the foundation work was commenced, and then suspended until partially filled in, and then recommenced. This haphazard and expensive method of construction appears to have been followed as a general course, and your Commissioners strongly recommend that, in future, proper preparatory survey work should be done and construction plans scientifically worked out and definitely decided upon before construction has been commenced, and that, when once commenced, the original plans should be adhered to unless some very serious error requires correction or some very important improvement can be effected.

Your Commissioners regret that the Laval Buildings should have been located so close to St. Vincent de Paul Penitentiary as to seem a part of the latter. The whole policy of the segregation and treatment of first offenders, as was originally intended, was to remove these first offenders from the penitentiary atmosphere and give them reformatory treatment with as little emphasis on punishment and custody as possible. To locate the new buildings thirty feet from St. Vincent de Paul Penitentiary and surround them by a high stone wall, is to recreate the very penitentiary atmosphere that already existed in St. Vincent de Paul Penitentiary. This is further emphasized by having the same warden as the penitentiary, and the staff interchangeable between the two and composed of the same personnel.

## CHAPTER XXIV

## KINGSTON PENITENTIARY

*Buildings and Grounds*

The process of rebuilding Kingston Penitentiary started in 1891 and is not yet completed. In recent years the women inmates have been moved out of the building in the main enclosure to an institution built especially for the purpose, and the building thus vacated, as well as the old "Prison of Isolation," are now used as cell blocks for male prisoners.

As has been stated elsewhere in this report, there is at present cell accommodation for 805 inmates at Kingston Penitentiary. The cells in the old "women's prison," now used for class "A" prisoners, are of the closed door type with outside windows. The cells in the "Prison of Isolation" building, numbering 204, are the back to back barrier type, but are twice the size of the cells in the main dome. The cells in the main cell block are all of the inside barrier type. Lighting and ventilation are poor. There is a great variation in temperature between the top and bottom tiers of cells. Many complaints were made of the dampness and lack of ventilation and light in the cells.

Opposite the north gate, across King Street and situated at the top of a number of terraces, is the old "Warden's Residence." In 1933-34, this building was converted into an administration building and the deputy-warden's residence was renovated and remodelled for the warden.

Residences for the Protestant chaplain and the deputy-warden were being built to the north of the present warden's residence at the time of the visit of the Commission. Other cottages are in the course of construction on penitentiary property in the vicinity.

North of the administration building is the new Women's Prison, which is dealt with in another part of this report,<sup>1</sup> and, across Union Street, the penitentiary property, including the farm and stone quarries, extends northward to the Bath Road near its junction with Highway No. 2. In addition to the two main streets that divide the main building from the farm, another public road crosses the penitentiary farm property, so that prisoners who work outside the walls must march to and from their work on the public streets and across public streets. In the opinion of your Commissioners, this is highly undesirable. We believe that, with the completion of Collin's Bay and the classification of Canadian penal institutions, some thought should be given to restricting Kingston Penitentiary to classes of prisoners who do not work outside the walls.

A wall is now being constructed to enclose a narrow strip of property to the east of the main enclosure. In order to add this narrow strip to the prison yard, a wall, to cost \$40,000, is being built to duplicate the present east wall, but a few yards further out. Short extensions will join this new wall to the penitentiary enclosure, and then the present east wall

<sup>1</sup> Chapter XXVI.

will be demolished. In the opinion of your Commissioners, this expensive adjustment of the wall is entirely unjustified by any advantage to be gained by adding this additional strip to the penitentiary enclosure.

Kingston Penitentiary can at best be but a remodelled institution. Many of the constructional faults persist and cannot be entirely overcome except by entire rebuilding. Improvements and additions are constantly being made, but without the necessary long-range planning calculated to make them effective. The present penitentiary does not lend itself to a proper system of classification and is more fitted to be itself a classified penitentiary. The workshops, which are located in the oldest buildings of the penitentiary, are dingy and dirty. Your Commissioners have seen in England and Philadelphia how buildings that are much older than the south dome at Kingston have been made quite cheerful and bright by constant painting and cleaning, and they see no reason why this should not be done at Kingston. The prison yard behind the south dome buildings, where the prisoners exercise, is dusty in dry weather, muddy in wet weather, and covered with snow and slush in winter.

While the hospital and kitchen in particular require immediate structural alterations, your Commissioners recommend that no other important or costly building operations be undertaken until considerable thought has been given to the use to which Kingston Penitentiary is to be put in the future. When the whole question of classification and the classification of institutions has been thoroughly examined, and the policy which is to be followed and the use to which the various penal institutions are to be put have been decided, plans of each institution should be drawn, which will eventually provide for the adaptation of the institution to the purpose for which it is to be used. When such plans have been made, any alterations, new construction, or rebuilding should conform to the basic plan.

#### *General Discipline*

Your Commissioners were at Kingston for a number of weeks and, in going about the penitentiary daily, were able to form a definite opinion of the normal discipline in the establishment. The general appearance and conduct of the staff was unsatisfactory. A general laxity appeared to exist, which, if so evident on the surface, must extend deeper into the conduct of everyday affairs and have a demoralizing effect upon the discipline and morale of officers and inmates alike. Guards on duty in charge of inmates could be seen lounging about the penitentiary grounds with tunics unbuttoned, occasionally waving a hand or passing colloquial greetings with fellow officers. While your Commissioners do not approve a militaristic discipline of unyielding rigour, they are of the opinion that neatness of appearance and alertness of mind and body should be indispensable characteristics of a penitentiary officer. Example more than precept will prove effective in influencing the inmates toward an improvement in their morale and a rebuilding of their self-respect. The

appearance and bearing of the officers should be an influence for betterment instead of an example of futility.

Three wardens have been in charge of the administration of Kingston Penitentiary during the past ten years. Warden Ponsford gave place to Warden Megloughlin, and he to Warden Allan, the present incumbent. Mr. Gilbert Smith was acting warden for a time just prior to the riots of 1932. Each one of these wardens had their own conception of discipline and enforced it, under the direction of the Superintendent, according to their different views. There was a time when musical instruments were permitted to be used by prisoners in their cells. This resulted in a bedlam of noise, with prisoners yelling, singing, swearing, and playing instruments for four or five hours a day. Eventually this was stopped. For a time softball was permitted during recreation periods. Justice in the warden's court has varied greatly with each warden's attitude toward men and officers.

If proper classification existed at Kingston Penitentiary and the "trouble-makers" were segregated there would be no necessity for the present large number of officers. Moreover, if such officers as were employed were selected because of their fitness for the work, and were then trained in their duties, better results would be secured with fewer officers, and there would not be the same justification for complaints of brutality, favouritism, nagging, and laxity of discipline. According to the present warden, about forty per cent of the prisoners are of subnormal mentality. It is very difficult to maintain a proper discipline when subnormal and sometimes psychopathic inmates are mixed with "trouble-makers" who will incite them to breaches of discipline. Apart from the laxity of discipline among officers and the psychological and educational unfitness of many of them for their positions, which inevitably results in laxity of discipline among the inmates, and, apart from the lack of classification which permits a few "trouble-makers" to incite unrest, idleness is the great enemy of discipline in Kingston Penitentiary. Men who are not employed, who have nothing to interest or occupy them, who have no emotional or mental outlet, and who are shut up long hours in their cells, become hag-ridden by monotony, until constantly repeated irritating trifles provoke them into flaring revolt or drive them into a state of mental instability.

#### *Warden*

Warden Allan has been in the penitentiary service since 1913 and has risen by promotion over a period of years to the appointment of warden of Kingston Penitentiary in 1934. He has had experience as carpenter and trade instructor at Saskatchewan Penitentiary and at British Columbia Penitentiary. He was for a time structural engineer at the Penitentiary Branch in Ottawa, and later warden at Collin's Bay before his transfer to Kingston Penitentiary.

In response to a request from the Commission, Warden Allan has furnished a very instructive report containing many constructive sugges-

tions on prison management, and he has prepared a commentary on the penitentiary regulations, which is based on his experience of their practical application. His conduct of warden's court has been as satisfactory as the limitations, pointed out in another chapter of this report, permit. The laxity of the discipline at Kingston Penitentiary cannot be attributed altogether to the warden in view of the type of guard employed, the more vicious type of criminal confined in Kingston Penitentiary, and the difficulties engendered by lack of classification and by inadequate facilities for employment. The lack of initiative permitted wardens by the Penitentiary Branch, the impracticability of many of the regulations, and the necessity of devoting so much of his time to voluminous correspondence with the Penitentiary Branch have, as in the case of other wardens, greatly handicapped the efficiency of his administration.

The majority of the complaints that were made against Warden Allan by inmates who appeared before the Commission may be traced to the difficulties and injustices of the present system of conducting warden's courts, as outlined in another chapter,<sup>1</sup> and to other regulations which bear most heavily upon the inmates and which the warden is powerless to alter.

The opinion of your Commissioners is that Warden Allan is conscientious and upright in the performance of his duties but that he would perhaps be more fittingly employed in connection with penitentiary industries and construction work. He has limitations of education and experience which in a more efficiently staffed penitentiary service would have prevented his rising to the position of warden. Within these limitations, however, he appears to be performing his duties as satisfactorily as possible.

#### *Deputy Warden*

George Sullivan, the deputy warden, is sixty-two years of age. He entered the penitentiary service as a guard in 1894. He was promoted to instructor in 1918, and to deputy warden in 1933. He is not the type of officer who should, in our opinion, be promoted to warden.

#### *Chief Keeper*

James Atkins, the chief keeper, entered the service in 1920. He was promoted chief keeper in 1933. Chief keeper Atkins did not avail himself of the invitation to appear before your Commission. He found it convenient to leave for his holidays without informing the Secretary or ascertaining the wishes of the Commissioners. We have not had the benefit of the views of this officer. Although unsatisfactory reports were made against him we were unable to determine their accuracy owing to the course adopted by him.

#### *Industries*

Another chapter of this report has been devoted to the general subject of prison employment and the inadequacy of the employment facilities

<sup>1</sup> Chapter V.



in Canadian penal institutions.<sup>1</sup> The views expressed in that chapter apply with full force to Kingston Penitentiary, where complaints regarding lack of employment were made by nearly all officers, and complaints regarding lack of trade instruction were made by many of the inmates.

The workshops are located in the oldest buildings of the penitentiary and their natural gloominess is accentuated by the grimy walls. No effort is made to improve the condition of these shops, which might so easily be made bright and clean by washing and painting. In a penitentiary where lack of employment is so keenly felt there would seem to be no justification or excuse for this state of affairs.

Prison industries, which once gave employment and instruction to prisoners and revenue to the penitentiaries, have been drastically curtailed or abolished by instructions from the Penitentiary Branch. Machinery is in many cases out of date or obsolete. The prisoners, many of whom enter the penitentiary without trades by which they could, if they wished, earn an honest livelihood, and many of whom have been sent to the penitentiary in preference to other institutions because the judge who sentenced them believed they would be taught a trade in the penitentiary, are discharged no better able to compete in the labour market than when they entered.

In the steamfitting shop, estimates are so carefully pared that the instructor dare not allow untrained men to work because of the fear of unavoidable spoilage of materials by inexperienced workers. This is also true of the tin and paint shop as well as others.

Some useful work is being done in the carpenter shop, but the number of inmates who can be employed there is limited, and the work is mostly manual and gives no training in machine work that is in general use outside. Here, too, materials are provided only for specific work about the penitentiary and not for training purposes or for revenue.

The assignment of men to the shops is not intelligently carried out. Young prisoners are barred entirely from the shops because of the present impractical method of segregating them.

Instructors who are competent workmen, and who would make capable instructors if given an opportunity, are not paid enough to attract them from outside employment. Many possibilities of employment and suggestions regarding possible industrial training and production were made at Kingston and, as your Commissioners have recommended elsewhere, this whole subject should be considered with a view to increasing facilities for instruction and production for revenue in the penitentiaries.

#### *Farm*

The farm at Kingston Penitentiary has been fully dealt with in another chapter.<sup>1</sup> In view of the necessity of marching prisoners through the streets to reach the farm property, and in view of the acreage available at Collin's Bay, it is doubtful if this farm should be maintained in connection with Kingston Penitentiary. If, at some future time, the present

<sup>1</sup>Chapter IX.

Women's Prison is devoted to other special use as a classified institution for men, the farm might better be worked by inmates of this penitentiary, which is only divided from the farm by one public thoroughfare.

### *Recreation*

As is pointed out in chapter VIII of this report, recreation, both indoors and out, is a necessary emotional outlet for inmates of penal institutions. It is generally recognized that without some interest of a recreational nature inmates will concentrate on undesirable subjects such as sex and crime.

After the riots in 1932 Warden Megloughlin introduced soft ball in Kingston Penitentiary. He started with medicine ball, and, finally, with the Superintendent's knowledge and when the Superintendent was present in Kingston, he supplied the equipment and permitted the inmates to play soft ball. The doctor and chaplain both agreed that the morale of the prisoners was raised by their interest in this game and that immoral and obscene language was noticeably less in evidence.

The Superintendent stated in his evidence that he, himself, was responsible for the playing of soft ball at Kingston Penitentiary and that later he had it stopped because abuses of the privilege were developing. He gave as his reasons for stopping soft ball: (a) prisoners made a practice of batting the ball toward the segregation cells in order to get into communication with prisoners segregated there, and (b) regularly organized schedules of teams and games had been organized. Warden Allan stated that he was not opposed to soft ball if the inmates were properly segregated and facilities for supervision, etc., were available, but that under present conditions it would not be advisable. Playing soft ball was, perhaps because of the lack of segregation facilities, too hastily instituted. This experiment and its results show the necessity of considering most carefully the institution of innovations before they are put into effect because of the violent reaction of prisoners when a privilege, once granted, is taken away from them.

### *Young Offenders*

The futility of the present method of segregating youthful offenders from older criminals is dealt with in another chapter. At Kingston Penitentiary the same complaints regarding the lack of trade instruction and exclusion from the workshops because of their segregation were offered to your Commissioners, but here the situation is further aggravated by the ignorant and profane type of guard placed in charge of the youths and by their being removed from school to do outdoor, manual, unskilled labour. Moreover, in spite of the disability imposed on the young offenders because of the claim that they must be segregated, your Commissioners found that they were not altogether segregated and that several "Y" class prisoners occupied cells adjacent to other prisoners not in that class. Thus, at Kingston Penitentiary, all the disadvantages of the present unsatisfactory method of segregation are experienced without segregation actually being accomplished.

The teacher stated in evidence that the young prisoners get only two to three hours schooling twice a week and that some of them are taken from school when their services as labourers are required. Only fourteen young prisoners are segregated as a class. He points out that segregation of youthful offenders cannot be accomplished on any satisfactory basis at Kingston Penitentiary. With this view your Commissioners are in close agreement.

The guard in charge of the "Y" class at Kingston Penitentiary was given no instruction as to how the young offenders were to be treated. He considered that his only duty toward them was to see that they were kept busy and obeyed the regulations. He stated that at one time he had been instructed to take them out of school for five months and put them to work on wharf construction. He stated that these youths were very hard to handle, forever talking of crime, using bad language, and that they seemed to take no interest in their work (unskilled manual labour); that they were employed on manual labour in connection with the building of the chaplain's house, sewer digging, and on construction work in connection with building the dock. For a short time they worked in the tailor's shop, but this was dismantled as soon as they were moved out of it.

The warden and deputy-warden stated that the method of segregating young offenders was a farce at Kingston Penitentiary and that there were no facilities for accomplishing it in a satisfactory manner. As the whole subject of classification and youthful and first offenders is dealt with in another part of this report,<sup>1</sup> your Commissioners believe that this indicates the highly unsatisfactory conditions at Kingston Penitentiary sufficiently to support the recommendations they have made elsewhere.

#### *Kitchen and Steward*

The kitchen has no dish-drying facilities, no sterilizing equipment, and dishes and cooking utensils are dirty and unsanitary. No towels are provided for drying dishes, and the same water is used in cleaning 1,400 dishes. There is no place for the prisoners who are employed in the kitchen to wash, and only one toilet for forty-three men. Both the kitchen and bakery are dirty. The butcher shop also is dirty and infested with flies. In the kitchen, due to lack of proper drainage, the floor is often covered with dirty water. An odour of garbage pervades the entire commissary department.

As in other penitentiaries, the food, though of excellent quality, is poorly cooked, and rendered flavourless by steaming. There is sufficient food, but it is poorly distributed in that every man is given practically the same quantity, which may prove too much for a man engaged in clerical work and too little for a man engaged in heavy outside labour. As a result of this uniform treatment much food is wasted and some men may go unsatisfied.

The steward is entirely untrained in his duties, being promoted to his present position from employment as a guard. He is slovenly and

<sup>1</sup> Chapters VIII and XXVII.

careless and has taken insufficient precautions to eliminate cockroaches or to prevent mice gaining access to food in storage. He is not particular as to whether the food served to the inmates is entirely fresh.

The suits worn by kitchen workers are not kept clean and the men selected for this work are generally untrained.

The entire situation in the kitchen is highly unsatisfactory and, in the opinion of your Commissioners, immediate steps should be taken to provide the necessary structural alterations, proper equipment, a trained steward, and the employment, if possible, of prisoners who have had previous experience as cooks.

### *Hospital*

The hospital, part of the original cell block built sometime in the 1850's, has a vault-like appearance. There are twenty-four cells on the main floor and twelve cells on the second floor. The hospital is dark; the cells are narrow and gloomy, and there are no outside windows in the cells. A wall shuts out the light which gains access through the barriers. There are no proper toilet or bathing facilities and no sun room. Facilities for segregating infectious, contagious, or mental cases are insufficient, and there is no dark room for eye examinations. The whole building is obsolete, lacking in cleanliness, fresh air, and light. The medical officer, Dr. G. Platt, whose father was a former warden of Kingston Penitentiary, stated in evidence that he knew the hospital thirty-seven years ago and that it was then unsatisfactory and obsolete.

Dr. Platt states in a brief, which he prepared at the request of the Commission, that the hospital has stood as it is for many years, untouched in its essentials by progress in the fields of medicine and surgery and only improved at all in its equipment. The defects he lists as follows:

- Absence of shower baths.
- Insufficient baths.
- Lack of toilet facilities in the cells.
- Small dark cells for the confinement of sick prisoners.
- Absence of means of segregation or isolation.
- Absence of any place for washing dishes.
- Absence of any place where venereal disease cases may be treated.
- Insufficient room for hospital services.
- Absence of sun room.
- Absence of place for segregation of mental cases.
- Lack of diet kitchen.

The lack of sufficient bathing facilities in a hospital is a danger so obvious as to require no comment. The use of buckets in the cells because only two toilets exist in the hospital is another feature which requires no comment. A wash basin and pitcher of water complete toilet arrangements, which are so primitive and unsanitary as almost to be beyond belief.

The cells throughout the hospital building are unfit for anyone who is sick; dark, and utterly cheerless. Instead of being the best in the institution, they are without doubt the worst. There are no facilities for proper segregation. Tubercular patients are confined in cells which are dark and gloomy and have no access to the sun or fresh air.

The conditions in the hospital were condemned in the report of the 1913 Commission, and, since then, year after year have been reported to the Superintendents of Penitentiaries, but yet no adequate action has been taken to remedy the situation, while money has been spent on construction, which, in the opinion of your Commissioners, was unnecessary and unjustified. Your Commissioners cannot recommend too strongly that immediate steps be taken to rectify these disgraceful conditions.

#### *Doctor and Medical Services*

Having regard to the conditions existing in the hospital at Kingston Penitentiary, it will be realized to what an extent medical services and the proper treatment of inmates are handicapped.

Dr. Platt has had a distinguished university training at Queen's University, Harvard, and Edinburgh, where he has obtained the degrees of M.A., M.D.C.M., L.R.C.P. & S., and F.R.C.S. (Edinburgh). He entered the penitentiary service in 1929. In the opinion of your Commissioners, Dr. Platt is kindly by nature but, due to criticism of the number of special diets and exemptions from heavy labour given by him during his first years at the penitentiary, and the discouraging conditions with which he has had to contend, he has now become too institutionalized.

Medical examination of prisoners on admission is not sufficiently thorough, and there is no regular check made on the health of the inmates. If a prisoner does not report sick he may never be examined again by the doctor during his entire sentence. The treatment of prisoners who have been injured in rioting has in many cases been brutal, and proper diagnosis and treatment have been refused.

As usual, many complaints were received from prisoners as to neglect, punishments for malingering, etc. and, while many of those complaints may have had some justification, the majority are the inevitable outcome of petty grievances and detected malingering.

The dentist at Kingston Penitentiary is on a part-time basis. He is fully qualified and, although the usual complaints of neglect were made by dissatisfied inmates, dental treatment appears to be quite adequate. The medical officer refers to the "amazing amount of dental work" done for the inmates. More strict attention should be given to the disposal of gold fillings extracted from prisoners' teeth. Complaints were received as to bridge work extracted by a former dentist and not replaced.

Both with regard to medical and dental attention, remarks made elsewhere, regarding the unnecessarily voluminous correspondence with the Penitentiary Branch regarding authorization for treatment, apply with full force to Kingston Penitentiary.

### *Chapels*

The chapels at Kingston Penitentiary are above the commissary and kitchen, with the school room sandwiched in between them. The Roman Catholic chapel was last painted in 1931, but there is no record of when the Protestant chapel was last painted—certainly not within the past fifteen years. It is dirty and unattractive. The mottoes on the walls of the Protestant chapel are an incentive to irony rather than to reform, and they should be removed. As there is no suitable recreation or concert hall, the chapels are used for this purpose. Both chaplains are opposed to this.

### *Chaplains and Religious Services*

Father Kingsley, the Roman Catholic chaplain, has a dynamic personality, and his influence extends far beyond the confines of his chapel. He is opposed to the chaplains being appointed as officers of the penitentiary, believing that they should be selected by the dioceses on a volunteer basis. Your Commissioners believe that Father Kingsley has the welfare of the prisoners under his care at heart and that he strives hard for their moral development.

Several complaints were made that the Protestant chaplain lacked the proper personality and approach to the men and that he was unable to gain their confidence. While your Commissioners believe that he is earnest in his work, we do not find the same evidence of results as we found in some other penitentiaries. It is very important that chaplains should possess the ability to secure the confidence of the inmates if they are to be able to influence them.

### *Education: School, Library, Teacher and Librarian*

The school room at Kingston Penitentiary, which is only forty-five feet by nineteen feet in area, is crowded by the average attendance of forty inmates and very much overcrowded by the occasional attendance of over fifty. The walls of the school room are unbelievably grimy. There is no record of their having been painted in the past fifteen years and they have not even been washed for a considerable period. In a room which should, above all, be bright and clean this negligence is inexcusable. The blackboard is in a poor state of repair. The room possesses only one window, and the lighting, supplied by a few 25 watt lamps, is very poor. The school teacher has repeatedly recommended larger and improved quarters but, as in the case of the hospital, no action has yet been taken.

As has already been stated, the young prisoners who, most of all, require education, are taken from school to do manual labour. Construction and production always seem to take precedence of education in our penitentiaries. Inmate after inmate appeared before your Commission to complain that they desired schooling but could not obtain it. It has been charged that the teachers have time only to instruct illiterates or to press the better educated inmates on to entrance and matricu-

lation examinations, and that those who can read and write, but have not sufficient education to equip them for life, are neglected.

The teacher, Mr. Patterson, informed your Commissioners that inmates who were attending school received about two hours schooling per day, and the young prisoners two or three hours twice a week. During the months of July and August no school is held. For part of this time the teacher takes his vacation and, during the remaining time, intensive work is undertaken in connection with the library.

The school teacher suggested that more time should be devoted to schooling and that evening classes might conveniently be arranged without raising any important custodial problem. He also suggested the advantage of co-operation between the school and workshops to enable inmates to learn theory as well as practice when trade instruction is made available. Your Commissioners believe that these suggestions should be given very careful consideration and, if found practicable, should be adopted.

The regulations provide for compulsory education, but in Kingston Penitentiary this might prove unsafe and impracticable in view of the lack of proper facilities for handling such a large number of prisoners. At present it is the practice to select the school list from those who are illiterate, or very nearly so, and who are yet teachable. The school teacher believes that in this institution about 300 of the inmates could not be educated. For some time inmate teachers were used at Kingston, but now that assistant teachers have been provided inmates are no longer employed in this work.

The teacher denied that he had neglected illiterates to push better educated prisoners through their entrance examination. He contended, however, that success in this examination might have a reformatory effect, both as encouragement to others, and because of the effect of such success on those who had never before experienced success.

The teacher, who is also librarian, has to divide his time between the school and library. He and his assistants have more than they can do to conduct the school if it is to be properly conducted. Your Commissioners are of the opinion that some use might be made of inmate teachers and that a special library-trained assistant should take charge of the library so that the teacher could devote his entire time to the important task of education.

The "General Library Catalogue" of Kingston Penitentiary, dated 1933, and the last one compiled, shows a division of the library into non-fiction, fiction in English, French, Italian, and Russian, bound volumes of magazines, and school books. There are 5,808 volumes in all, of which 3,890 are classed as fiction and 1,918 as non-fiction. A list of magazines, of which there may be several copies, shows subscription to fifty-nine English language magazines and five in the French language. The news bulletin is issued weekly by the library staff.

Many of the complaints received with regard to Kingston Penitentiary library had to do with lack of magazines and newspapers, lack of

technical and trade instruction books, and over-severity of censorship. The library has no provision for text books. Difficulties are experienced in getting orders through for new books and in securing subscriptions for particular magazines.

Inmates are permitted a new fiction book every day, a magazine every other day, and a reference book once a week, in addition to school books. Books which are bought by inmates during their stay in penitentiary must be left with the library when they are released.

The library itself is little more than an alcove over the entrance of the dome, awkward of access and unsuited for its purpose. More adequate accommodation should be provided when the chapel, school, kitchen, and hospital replanning and rebuilding are carried out.

Careful revision of the collection of books should be made periodically, and those books which are seriously mutilated or worn should be replaced. A careful examination of the frequency with which individual books are called for should be made. This would indicate the reading interests of the inmates so that their recreational reading might be directed in accordance with some definite plan, and the inmates encouraged to graduate from the lighter type of fiction into more educative and informative literature. The library should take its place in the general plan of the whole penitentiary and exert its share of influence in attaining the reformation and rehabilitation of the prisoners.

#### COAL SHORTAGES

In the course of their investigation, your Commissioners examined the records of two inquiries made into alleged coal shortages at Kingston Penitentiary and also questioned the members of the boards of inquiry held to investigate these shortages. The first inquiry was held in July, 1933, as a result of a statement by Engineer Nixon, of Kingston Penitentiary, that, on taking stock for the year ending March 31, 1933, he had found a coal shortage of 600 tons and 729 pounds, valued at \$3,303.95, and which he had written off this amount to "profit and loss." As a result of this statement, a board of inquiry, composed of W. H. Craig, now warden of Collin's Bay Penitentiary and at that time an inspector of penitentiaries, and G. A. Dillon, purchasing agent of the Department of Justice, sat at Kingston to investigate this matter, and subsequently made a report dated July 10, 1933. Although Mr. Dillon sat on the board, the investigation seems to have been in charge of Inspector Craig. He conducted the examination of the various witnesses, prepared the report, and, on its completion, had it signed by Mr. Dillon. The latter attended the inquiry on verbal instructions from the Superintendent of Penitentiaries and would appear to have acted more or less in an advisory capacity. The board's findings were as follows:

"The Board, after taking into consideration (a) the reliability and well-known integrity of the firm of contractors; (b) the loose method employed in checking the weights when the transfer is made



from the dock to the coal vault; (c) that only 98 tons are shown by the Engineer's records to have been issued in three months ending September 30, 1932, are of the opinion that there is no sound basis to assume that there existed an actual shortage of coal.

After careful consideration the Board are further of the opinion that all the coal paid for between July 1, 1932, and March 31, 1933, was delivered by the contractor and that all the coal received during that period was consumed at the Institution except a small percentage which may have disappeared in dust or on account of action of the weather."

Your Commissioners, after examining the evidence taken by the board and after hearing Messrs. Craig and Dillon, are of the opinion that there was not sufficient evidence adduced before the board to justify such findings. The coal supplied to the penitentiary was apparently hauled by rail to Oswego, New York. James Sowards & Co., the firm from whom the department had purchased the coal, transported it across lake Ontario and unloaded it on the dock at Kingston Penitentiary. The coal was not weighed by the penitentiary officials, who accepted the figures shown on the freight bill, customs entry, and bills of lading.

Paragraph 7, of the report of the board is as follows:

"The record of coal received and consumed from July 1, 1932, to March 31, 1933, shows the following:

Received .....	3,907 tons, 182 lbs.;
Consumed .....	3,306 tons, 1,452 lbs.;
Apparent shortage .....	600 tons, 729 lbs."

Inspector Craig was asked by the Commission to point out any evidence taken before the board showing that 3,907 tons and 182 pounds had actually been received at the penitentiary. His answers were to the effect that the only evidence adduced consisted of invoices given by the contractor to the storekeeper, whose duty it was to ascertain that the amount ordered was actually received. The storekeeper had appeared before the board and been asked, "What steps do you take to satisfy yourself that the weights of coal brought in by water are correct?" His answer was, "I take the freight bill and customs entry." Finally, Inspector Craig was asked by the Commission:

"Q. There is no evidence that actually there were 3,907 tons, 182 pounds delivered on the wharf?

A. No, other than the explanation of the storekeeper which is absurd. That was done apparently under the authority which he received from the Warden in 1921 to act as he did, and that is the reason for the recommendation in the 10th paragraph."

Inspector Craig was also asked the following questions:

"Q. Did you call anybody from the contractors, did you have anybody from them before you?

A. No.

Q. Did you have anybody from the people in charge of the boat or boats before you?

A. We had no person except those whose evidence was taken.

Q. Did you have anybody who had anything to do with the weighing before?

A. The weighing at Kingston?

Q. Any place?

A. The weighing was done at Oswego across the lake.

Q. Did you look into that?

A. We did not consider that. We had the bills of lading."

The finding of the board that they had taken into consideration "the reliability and well-known integrity of the firm of contractors" is also subject to criticism. No evidence to substantiate this was produced before the board, and Inspector Craig acknowledged before your Commission that this finding was based on his personal knowledge of the firm. The following evidence on this point is illuminative:

"Q. In making an inquiry like this, do you think you should draw conclusions from your own personal knowledge?

A. In the case of an inquiry of this kind, we have to take into consideration whether we are dealing with honest men or not.

Q. That may be so far as your opinion goes but do you think you should have put that in the report?

A. No, I should have left this out.

Q. You say that all the coal paid for between July 1, 1932, and March 31, 1933, was delivered by the contractor; on what evidence did you base that finding?

A. On our opinion. We had to make up our minds, did the penitentiary receive the coal or did it not? On the evidence and what we had heard that it had not been properly weighed and the integrity of the contractors and the accompanying weigh bills or freight bills showing the weights that went into the boat, and generally we formed our opinion."

In view of the fact that shortages in coal had been reported in previous years at Kingston Penitentiary, and in view of the considerable amount involved in the shortage under investigation, your Commissioners believe that the board of inquiry did not make the investigation the circumstances demanded. They should at least have endeavoured to obtain more substantial evidence and, not having done so, they were not justified in making such findings. Furthermore, the testimony of the witnesses appearing before the board was not taken under oath. Your Commissioners believe that in all such inquiries witnesses should be sworn. Inspector Craig's conduct in this inquiry is not creditable.

In July, 1936, Inspector J. D. Dawson conducted an inquiry at Kingston Penitentiary as a result of an allegation made by a prisoner regarding a shortage in the coal account. It would appear from the

records, that a contract was entered into with the Morris Coal Company for 250 tons of anthracite stove coal for delivery at Kingston Penitentiary about the end of May, 1936. The coal was shipped by boat. The vessel arrived at the penitentiary docks on June 10 and was unloaded there. Apparently, the shipment was only part of the boat's cargo and all the coal on the boat was not unloaded. After the freighter's crew had completed unloading an amount of coal, the mate of the vessel asked the assistant engineer of the penitentiary how much he thought was on the dock, and the latter replied, "about 175 or 180 tons." According to the assistant engineer's evidence at the inquiry, the mate's reply was, "Nonsense, there is 250 tons." During the next few days the coal was weighed by prisoners under instructions from the penitentiary officers, the figures of each load were checked against the weight shown on the penitentiary scales, and the records were subsequently given to the storekeeper. On checking these figures, it was discovered that the amount of coal actually received amounted to 217 tons and 1,400 pounds. As a result, the storekeeper wrote to the Morris Coal Company on June 15, advising them of this shortage, and on June 19 the Company delivered the balance by truck from their Kingston yards. The report of the inspector contained the following finding:

"This matter can be dealt with on the evidence adduced by stating that there is not one particle of evidence to show that there was a shortage in the true sense of the word or that there was intended to be a shortage."

Your Commissioners, after reviewing the evidence taken by the inspector and subsequently hearing his own evidence, do not believe that he was justified in so reporting.

The facts are that the contractors in carrying out the order for 250 tons dumped a certain amount of coal on the penitentiary dock. After this had been done, according to the evidence the mate of the vessel told assistant engineer Ramsay that there were 250 tons unloaded. When it was subsequently weighed by the penitentiary authorities it was found to be 32 tons short. It is perhaps significant that, although this weighing was done by a prisoner, the contractors, on being notified of this shortage, immediately made up the deficiency, apparently without any protest or without making any inquiry as to how the weighing had been done. There is the further evidence that, less than a month later when a further shipment was being made by the same firm, the same mate of the boat, after some words had taken place in regard to the previous shortage, threatened the prisoner who had weighed the previous shipment. At the hearing no officers of the contracting company were called, nor was the prisoner who did the weighing examined. In these circumstances, your Commissioners are of the opinion that the investigation was inefficient and inadequate, and that it is open to the grave suspicion that Inspector Dawson was not trying to make a thorough investigation.