REPORT

OF THE

ROYAL COMMISSION TO INVESTIGATE

THE

PENAL SYSTEM OF CANADA

OTTAWA
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

ROYAL COMMISSION TO INVESTIGATE THE PENAL SYSTEM OF CANADA

Hon. Mr. Justice Joseph Archambault, *Chairman*

R. W. Craig, K.C.

J. C. McRuer, K.C.

Allan J. Fraser, Esq.,
Secretary.

John L. Kent, Esq.,
Assistant Secretary.

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P.C. 483

"10.

PRIVY COUNCIL
CANADA

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 27th February, 1936.

The Committee of the Privy Council have had before them a report, dated February 25, 1936, from the Minister of Justice, recommending that the Honourable Joseph Archambault, a Judge of the Superior Court of Quebec, R. W. Craig, Esquire, K.C., Winnipeg, Manitoba, and Harry W. Anderson, Esquire, Journalist, of Toronto, Ontario, be appointed Commissioners under Part I of the Inquiries Act to inquire into and report upon the penal system of Canada, including, but not so as to restrict the generality of the foregoing, the following matters:

1. The treatment of convicted persons in the penitentiaries, covering the investigation and examination of the classification of the institutions;
   The classification of offenders;
   The construction of penal institutions;
   The organization of penal departments;
   The appointment of staffs;
   The treatment to be accorded to the different classes of offenders, including corporal and other punishment;
   The protection of society;
   Reformative and rehabilitative treatment;
   Employment of prisoners;
   Prison labour;
   Remuneration;
   The study of international standard minimum rules, and other subjects cognate to the above.
2. The administration, management, discipline and police of penitentiaries.
3. Co-operation between governmental and social agencies in the prevention of crime, including juvenile delinquency, and the furnishing of aid to prisoners upon release from imprisonment.
4. The conditional release of prisoners, including parole or release on probation, conditional release under the Ticket of Leave Act, and remission generally.

The Minister further recommends that the said Honourable Joseph Archambault be Chairman of the Commissioners, and that the Commis-

sioners be authorized to engage the services of such technical advisers or other experts, clerks, reporters and assistants as they may deem necessary or advisable.

The Committee concur in the foregoing recommendations and submit the same for approval.

(Signed) E. J. LEMAIRE,
Clerk of the Privy Council."

P.C. 2424

"12.

PRIVY COUNCIL
CANADA

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 17th September, 1936.

The Committee of the Privy Council have had before them a report, dated 15th September, 1936, from the Minister of Justice, stating:

That by Order in Council, P.C. 483, of the 27th February, 1936, the Honourable Mr. Justice Joseph Archambault, a Judge of the Superior Court of the Province of Quebec, R. W. Craig, Esquire, K.C., of Winnipeg, Manitoba, and Harry W. Anderson, Esquire, Journalist, of Toronto, Ontario, were appointed Commissioners under Part I of the Inquiries Act to inquire into and report upon the penal system of Canada, as more particularly set out in the said Order.

That since the date of the said Order Commissioner Anderson has died.

The Minister, therefore, recommends that J. C. McRuer, Esquire, K.C., of Toronto, Ontario, be appointed a member of the said Commission in the room, place and stead of the late Harry W. Anderson.

The Committee concur in the foregoing recommendation and submit same for approval.

(Signed) E. J. LEMAIRE,
Clerk of the Privy Council.

The Honourable,
The MINISTER OF JUSTICE."

REPORT

OTTAWA, April 4, 1938.

The Right Honourable ERNEST LAPOINTE, K.C., M.P., P.C., Minister of Justice, Ottawa.

SIR, We have the honour to present you with the Report of the Royal Commission to Investigate the Penal System of Canada.

CHAPTER I

OUTLINE OF INVESTIGATION

About the time the Order in Council of February 27, 1936, was passed, the Chairman of the Commission, Mr. Justice Joseph Archambault, met with two serious accidents, which incapacitated him for several months. On the 28th of April, 1936, the Commission sustained a severe loss by the sudden death, at Toronto, of Commissioner Harry W. Anderson. Mr. Anderson, who was former managing editor of the Toronto *Globe*, had for years been a keen student of criminology and penal reform, and his untimely death was a great blow to his fellow Commissioners. On the 17th of September, 1936, the second Order in Council was passed, appointing J. C. McRuer, K.C., of Toronto, as Commissioner in place of Mr. Anderson. After holding several preliminary meetings in Ottawa, the Commission began its investigations of penal institutions and penal systems early in October, 1936. This continued until December 15, 1937, when the Commission held its last sitting for the purpose of taking evidence.

A number of commissions have been appointed in connection with Canadian penitentiaries. In 1832, a commission was appointed by the Legislature of Upper Canada, which recommended the construction of what is now known as Kingston Penitentiary. In 1848, a commission was appointed to investigate certain complaints at Kingston Penitentiary with a view to making constructive recommendations concerning that institution. In 1876, a commission was appointed by the federal Government to report on prison labour and the remuneration of officers in Canadian penal institutions. In 1913, a commission, composed of George M. MacDonnell, K.C., of Kingston, Frederick Etherington, M.D., of Kingston, and Joseph Patrick Downey, of Orillia, was appointed to investigate, and report upon, the conduct and administration of penitentiaries, and particularly the conduct of the officers of Kingston Penitentiary.[1] In 1920, a committee, composed of O. M. Biggar, K.C., of Ottawa, W. F. Nickle, K.C., of Kingston, and P. M. Draper, Esquire, of Ottawa, was appointed by the Minister of Justice, under the Penitentiary Act, to consider and advise in regard to a general revision of the penitentiary regulations.[2]

[1] This Commission will be referred to in the present report as "The 1913 Commission."
[2] This Commission will be referred to in the present report as "The 1920 Committee."

The 1913 Commission and the 1920 Committee brought in number of valuable recommendations and suggestions, which the present Commissioners have studied with care.

The work entrusted to the present Commission was twofold: first, to investigate the operations of Canadian penitentiaries; second, to make a thorough study of the problems mentioned in the reference. To carry out this latter task it was necessary for the Commission to visit all the Canadian provinces, and other countries, in order to study their penal systems and discuss various problems with their prison officials and penologists.

The subject of capital punishment and methods of execution have not been dealt with in this report because they were not mentioned in the terms of the reference. During the sessions of 1937, a parliamentary committee was appointed by the federal Government to inquire into the different methods of carrying out the sentence of death. This Committee, after having examined witnesses and studied the various methods now in use, brought in a report recommending that no change should be made in the present method. Reference has been made to this matter only because, at different times, it has been stated in the press and elsewhere that the Commission would report on it.

Investigation of Canadian Penitentiaries

At the outset, your Commissioners decided to give all the inmates and officers of the various penitentiaries the fullest opportunity to make any representations they wished, pertaining either to their own welfare or to conditions existing in the different institutions, and, in order to ensure this by removing any fear as to the consequences which might result from freedom in expressing their views, the Commission decided not to engage outside counsel, that the sittings should be held *in camera*, and that, while inmates were giving evidence, no penitentiary officer would be permitted to attend. At each institution visited by the Commission a notice was posted inviting every officer and inmate to appear before the Commission under these conditions. By adopting this method, your Commissioners believe that the confidence of both officers and inmates was gained, and that, as a result, information, which otherwise might have been withheld, has been obtained. This method has also deterred witnesses from seeking publicity, and has prevented the publication of distorted reports that would have conveyed erroneous impressions.

Your Commissioners have visited all the federal penitentiaries: Dorchester, St. Vincent de Paul, "The Laval Buildings," Kingston, the Women's Prison, Collin's Bay, Manitoba, Saskatchewan, and British Columbia. At each institution a thorough inspection was made of all the buildings and the various departments therein, and your Commissioners were able to observe the daily routine of the penitentiaries in all its phases.

The Commission held numerous private hearings outside the penitentiaries, at which many judges, magistrates, ex-officers, police officers, ex-inmates, and others conversant with, or interested in, the problems

confronting the Commission appeared. From all these sources much valuable information was obtained.

In each province of the Dominion public meetings were held, and notice of these appeared in the local newspapers. Societies and associations were invited to send representatives to express their views on any of the subjects mentioned in the reference. Such meetings were held at Charlottetown, Halifax, Saint John, Montreal, Toronto, Kingston, Ottawa, Winnipeg, Regina, Edmonton, and Vancouver. These meetings were well attended, particularly by representatives of the various churches, prisoners' aid societies, and other social organizations.

In the fall of 1937, after the penitentiaries had been inspected, and public and private sittings had been held in the above mentioned cities, the Commission met at Ottawa to hear the evidence of the Superintendent of Penitentiaries, the three inspectors, the chief engineer, and the head of the Remission Branch. The Deputy Minister of Justice, W. Stuart Edwards, K.C., and the Under-Secretary of State, E. H. Coleman, K.C., also appeared before the Commission.

Study of Provincial Prison Systems

The Commission, having been appointed by the federal Government, had no jurisdiction to investigate or report upon provincial institutions. However, a number of the subjects included in the reference, such as juvenile delinquency and the protection of society, were obviously subject to both federal and provincial jurisdiction. Moreover, the factor that determines whether a prisoner shall be confined in a federal or provincial institution is nothing more than the length of his sentence. Both systems, therefore, are inextricably linked together, and your Commission could only arrive at definite conclusions regarding such matters by examining the methods of detention and reformation in the provinces, and by discussing common problems with the provincial authorities. Accordingly, the Commission held conferences with the respective attorneys-general, or other ministers, of all the provincial governments, and with the officers of their departments. The Commission visited and inspected many provincial jails, reformatories, and prison farms. A list appears in Appendix I, showing the provincial institutions visited in each province. At each institution the buildings and other offices were inspected, and conferences were held with the wardens and other officers. Memoranda of such visits and conferences have been prepared for the files of the Commission. About fifty provincial institutions were inspected and, in every province, the Commission was received by the responsible ministers, departmental heads, and officers in charge of the various institutions, with the greatest of courtesy, and every facility was granted to enable your Commissioners to obtain the fullest information.

Visits to England and Other Countries

In July, 1937, the Commission proceeded to Europe to study the prison systems of England and Western Europe, particularly the "Borstal System" of England. Shortly after arrival, your Commissioners had the

opportunity of attending the annual Conference of Prison Commissioners of the British Empire, which had been convened by the Home Office, hearing addresses by such outstanding penological authorities as Mr. Harold Scott, C.B., Chairman of the Prison Commission for England and Wales, Alexander Paterson, M.C., Prison Commissioner, and others, and participating in round table discussions with overseas delegates on matters of common interest. Subsequently, your Commissioners had further conferences with Messrs. Scott and Paterson, and with other officers at the Home Office. In addition to inspecting the prisons in the London Metropolitan Area, your Commissioners examined other prisons and Borstal institutions in different parts of England. Nineteen institutions were visited, and, at each, conferences were held with the governors and members of their staffs.

After completing these visits in England, your Commissioners separated, and proceeded individually, or in some cases together, to Scotland, Holland, Belgium, Germany, Switzerland, and France. In all these countries, conferences were held with government officials in charge of the respective prison systems, and visits of inspection were made to the principal penal institutions.

While crossing Canada, the Commission deviated to visit two United States prisons on the Pacific Coast, and three in Minnesota and Illinois, and, in October, 1937, a comprehensive survey was made of a number of institutions in the Eastern United States. In New York City and in Washington, conferences were held with leading prison authorities of the United States, including Sanford Bates (former Director of the United States Federal Bureau of Prisons), his successor, James V. Bennett, Austin H. McCormick, Commissioner of Correction for New York City, officials of the Osborne Association, and other prison officers. In Washington, the Commission conferred with Mr. Stanley Reed, Solicitor General of the United States, Mr. Bryan McMahon, Assistant Attorney General, Mr. Justice Justin Miller, of the District of Columbia Court of Appeal, Judge Arthur D. Wood, Chairman of the Federal Parole Board, and other officials in the Departments of Justice and Labor. Altogether, nineteen institutions were visited and inspected in the United States. Memoranda concerning these are on file in the offices of the Commission.

The above summary indicates the study given to the prison systems of various countries. Your Commissioners have concluded that it would not be wise to include, in the limited space of this report, any detailed description of these systems, but rather that the experiences of other countries should be drawn upon in dealing with the different subjects specified in the order of reference. During the course of its investigation, the Commission visited 113 institutions in 9 different countries. It spent 108 days in the seven Canadian penitentiaries, and there took the evidence of over 1,840 inmates and 200 officers, who appeared and gave evidence under oath. In addition, a large number of inmates in other institutions were interviewed, and over 1,200 letters, briefs, manuscripts, reports, text books, and other documents, were collected. By holding

public and private meetings throughout Canada, your Commissioners have afforded every person or organization in the Dominion an opportunity to appear before the Commission and express their views on any of the subjects mentioned in the reference. In addition to the large number who appeared at these meetings, many more made valuable contributions in writing. Conferences were held with the Governments of each province to discuss matters of common interest, and with judges of the Superior Courts, Juvenile Court judges, police magistrates, and chiefs of police. Your Commissioners believe that, only by making this thorough inquiry, could they properly execute the important task entrusted to them by the terms of the reference.

Appendix I contains a list of institutions visited by the Commission. A bibliography is appended, which lists the books and other records of a non-confidential character in the possession of the Secretary.

Your Commissioners desire to place on record their deep appreciation of the valuable assistance received from private individuals and those occupying official positions, both in Canada, and in other countries visited by them.

In England, Mr. Harold Scott, C.B., Chairman of His Majesty's Prison Commission for England and Wales, and Mr. Alexander Paterson, M.C., one of His Majesty's Prison Commissioners, spared no effort to enable your Commissioners to obtain full information. Mr. Paterson, particularly, who is recognized as one of the world's foremost penologists and the outstanding authority on the "Borstal System," despite his own heavy official duties, spent generously of his time conferring with the Commission and arranging the necessary details of tours of inspection through England, Scotland, and on the continent of Europe. In Holland, Dr. W. P. Caudri, of the Department of Justice, conferred with visiting members of the Commission and arranged for visits to the various Dutch institutions. In Belgium, Maurice Poll, Directeur du Cabinet, and Dr. Paul Cornil, Inspector General of Prisons, accompanied members of the Commission on visits to the various institutions and contributed much to assist the Commission. In France, the Chairman of your Commission had conferences with Mr. Rene Andrieux, Director of the French Penitentiary Service, and Mr. Breton, Inspector General of Prisons, both of whom rendered the greatest assistance. A member of the Commission, who visited Germany, was received by M. Emil Muller, Director of the High Court of Justice, and had the privilege of discussing different matters in Switzerland with Dr. J. Simon Van der Aa, Secretary General of the International Penal and Penitentiary Commission. On their final visit to the United States, your Commissioners were given the fullest co-operation and assistance by Mr. Sanford Bates, former Director of the Federal Bureau of Prisons, and his successor, Mr. James V. Bennett. In New York, Mr. Bates, who is now Executive Director of the Boys' Clubs of America, Inc., not only arranged the itinerary of your Commissioners and indicated the institutions to be visited, but also arranged conferences with many of the leading prison authorities in the United

States, including Austin H. McCormick, Commissioner of Prisons for New York City, F. Lovell Bixby and William J. Cox, of the Osborne Association, and E. R. Cass, Secretary of the American Penal Congress. These all made valuable contributions, based on their long experience in prison work in the United States. In Washington, Mr. Bennett arranged conferences with his departmental officers, and with other officials and citizens, and gave generously of his own time in conferring with the Commission. In Trenton, New Jersey, your Commissioners had the privilege of meeting Dr. William J. Ellis, Director of the Department of Institutions and Agencies for the State of New Jersey, and his assistants, who left nothing undone to make our visit most profitable.

CHAPTER II

GENERAL PRINCIPLES OF CRIMINOLOGY AND PENOLOGY

Introduction

Your Commission, having been appointed to inquire into the penal system of Canada, and to make a report of its findings and recommendations, found it imperative, that, in order to estimate thoroughly the value of the present system, and to draw from the systems of other countries such policies as would tend to the betterment of our own, a study of the principles of penology and criminology should be made. It is obvious that, within the narrow scope of a preamble, these principles cannot be discussed in a complete or adequate manner, and that the information gathered from numerous visits to penal institutions, conferences with lifelong students of the matter, and the reading of many books and articles, which have built up a foundation for our investigations and conclusions, cannot be recited here. At the same time, a very brief statement of these principles, or a general outline of them, is necessary for the understanding of the following chapters.

Criminology

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, of breaking laws, and of reacting towards the breaking of laws. The objective of criminology is the development of a body of general and verified principles, and of other types of knowledge, regarding this process of law, crime, and treatment.[1]

Crime, from the point of view of social psychology, is an action which is antagonistic to the solidarity of the group that the individual considers as his own. The legal definition of crime is a violation of the criminal laws, or of a usage which gives rise to the exercise of a penal sanction.[2] The criminal law is a body of specific rules regarding human conduct towards the state and the individual, which has been promulgated by the authorities, and which applies uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state.

Penology

Penology is the science dealing, first, with potential criminals, second with the treatment of criminals in prisons, and, third, with the aftercare of those who have been released from prisons. The difficulty in laying down principles on penology is increased by the fact that it is still the subject of profound and scientific inquiry, and of much controversy, and that, at the present time, many of its problems appear to be prac-

[1] Sutherland—Principles of Criminology, Lippincott, Chicago (1924).
[2] Thomas—The Polish Peasant, N.Y., 1927.

tically insoluble. We believe, however, that we are on safe ground in stating that no system can be of any value if it does not contain, as its fundamental basis, *the protection of society.*

Protection of Society

In seeking this fundamental basis, the following principles should be observed:

I. Means should be devised, and adequate policies adopted, which would tend to prevent crimes from being committed;

II. A system should be evolved, and put into force, which would prevent the repetition of crime, bring about the reformation and rehabilitation of those who have committed crimes, and take care of those who have been released from prisons;

III. Measures should be enacted that would debar habitual criminals from the opportunity to continue the commission of crimes.

I. *Prevention of Crime*

(*a*) It is of the utmost importance that preventive action should be taken to keep children and adolescents from their first steps in a criminal life. This can best be accomplished through the influence of the home, by means of church and school education, through the agencies of clubs, children's aid societies, etc., by the judicious use of probation, the work of the Juvenile Courts, and the maintenance of separate training schools, which would prevent contamination of the young by association with experienced criminals. The system must start at the source, and fight the cause before the effect. It is admitted that, once a child or youth has had experience of prison, his subsequent reformation is extremely doubtful.

(*b*) For those who have infringed the law there should be swift detection and sure apprehension through the operation of an honest and well-trained police force. This should be followed by speedy trials, debarred of unnecessary legal technicalities, presided over by impartial and fearless judges who are immune from political influences. Swift and sure punishment is a powerful deterrent for those who have never been arrested (about 96 per cent of the population) and, although to a less extent, for the remaining 4 per cent.

In spite of the theory advanced by those who contend that punishment, as a deterrent, has been a failure—a theory which might be true in a certain sense if punishment were not accompanied by real efforts at reformation—it is a fact that the fear of being swiftly caught and surely punished has prevented, and will prevent, the commission of crime by those who would be, or are, tempted to become criminals. Statistics demonstrate that, where there has been a relaxation in the swift detection, apprehension, and punishment of the criminals, crime has increased.

II. *Prevention of the repetition of crime, the reformation of those who have committed crime, and the after-care of those who have been released from prisons*

(*a*) It is a matter of common knowledge that, in early days, the punishment of criminals was a matter of personal revenge. Later, the state became responsible for its administration, and it was used as a deterrent, and as atonement to society. In England, as late as 1865, Sir Godfrey Lushington, who was for nine years permanent Under-Secretary of State at the Home Office, expressed the opinion that, in its nature, a prison could not be a reformatory, that it was not possible to introduce reformatory influences into it, and, therefore, that the prison system should have for its object punishment and deterrence alone. Now, however, it is admitted by all the foremost students of penology that the revengeful or retributive character of punishment should be completely *eliminated,* and that the deterrent effect of punishment alone, while still of some value to prevent those who have never been arrested from committing crime, is practically valueless in so far as it concerns those who have been before, or who are now, confined in prisons or penitentiaries.

(*b*) There are three classes of prison inmates: the accidental or occasional criminal, the reformable criminal, and the habitual or persistent offender. Those included in the first two categories always return to freedom, those of the last category, with few exceptions, should never be set at liberty. The great majority of prisoners will be called upon at some time to live again the ordinary life of a free man. Therefore, entirely apart from humanitarian grounds, and from a purely economic point of view,[1] and for the eventual benefit of society, the task of the prison should be, not merely the temporary protection of society through the incarceration of captured offenders, but the *transformation* of reformable criminals into law-abiding citizens, and the prevention of those who are accidental or occasional criminals from becoming habitual offenders.

The accidental or occasional criminal does not necessarily need to be reformed. Even though unusual circumstances may have caused this type of offender, who had always been a law-abiding citizen before he committed this crime, to be guilty of infringing the law, it is necessary that he should be punished. After the expiration of his sentence, however, he will return to normal life as a law-abiding citizen, unless the effect of his sojourn in jail has embittered him against society, or his contact with confirmed criminals has stained his soul and conscience.

The reformable criminal, the youthful offender, the first offender, or even the second or third offender will not be reformed if, during his term in prison, his spirit has been broken, his habit of industry (if it ever

[1] Report of the Superintendent of Penitentiaries, 1937, gives the cost of maintenance per prisoner as $744.

existed) suppressed, and his morals corrupted by prison associations. He has been guilty of a crime, and it is inevitable and just that he should suffer, but society should not weaken its structure, nor incur large and excessive expenditure, by turning him out no better, or even worse, than when he entered a penal institution.

The process of penal treatment for the two first named categories of criminals, and to a certain, but less, extent for the last, must be directed unceasingly to the advancement of the individual's personal and emotional rehabilitation. In future chapters of this report, your Commissioners will endeavour to indicate, what, in their opinion, is necessary for the successful application of this treatment. Here, it is noted only that, without proper *classification and segregation*, without education, without effective means of understanding the offender, the motivation of his offence, and his basic capacity for effective citizenship, without physical and mental exercise, moderate recreation, and above all, without *humane approach*, any treatment is bound to fail.

(*c*) Even when the treatment has been successful, and the prisoner has been discharged, completely or reasonably reformed, eager to obey the law, to live a respectable life, and never to return to jail, if he is simply turned adrift outside the prison gate in a world that has changed, and in which he is fearful of bearing the recognizable signs of his stay in prison, if no one comes to his rescue, if he is unsuccessful in finding work to provide for himself and his family, there will be but one inevitable result; all the painstaking efforts of a sound and proved system will have been of no avail, and hunger and desperation will drive him back to a penal institution. It has often been said that an offender's punishment begins, not when he goes into prison, but when he comes out of it. The duty, and the undoubted interest, of the state is to provide for the discharged man, whether directly, or through the channel of subsidized prisoners' aid societies, and, if the state does not fulfil that duty, all the expenditures, and all that has been accomplished towards the rehabilitation and reformation of the prisoners within the institutions, will go for naught.

The public, too, must be humanized. It is a truism that the best system of rehabilitation, and the most energetic endeavours of the state, or of associations designed to aid the reformed prisoner on discharge, can be thwarted by the reception meted out to him by the public. The responsibility for recidivism rests as much upon the shoulders of the public as upon legislation or the failure of the state to furnish aid. A very large number of those in prisons are not much worse than many outside who have succeeded in remaining just within the law, or have broken it though undetected, or who have had their freedom purchased at the price of restitution made by friends or relatives.

III. *A system which will debar habitual criminals from opportunities to continue the commission of crimes*

The Departmental Committee on Persistent Offenders, which was appointed by Great Britain in 1932, reports that habitual offenders cannot effectively be dealt with by sentences imposed only for their specific offences. This principle was also recognized by the Gladstone Committee on Prisons, as long ago as 1895: "To punish the persistent offenders for the particular offences in which they are detected is almost useless and 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. . . ." These criminals will run the risk of comparatively short sentences almost with indifference. They should not be given further opportunity to commit crime. They should not be allowed to contaminate other prisoners who have not yet embraced a life of crime. Habitual offenders, who have definitely given themselves to careers of serious crime, should have a special maximum security institution provided for them.

As stated at the outset, this preamble is but a very short outline of what your Commissioners believe to be the outstanding principles and policies of an ideal, yet practical, penal system. The principles here outlined will be developed in future chapters, and in the recommendations of the Commission.

CHAPTER III

PENAL INSTITUTIONS IN CANADA

FEDERAL INSTITUTIONS

At the present time there are seven federal penitentiaries, namely:

Dorchester Penitentiary, serving the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and the Magdalen Islands;

St. Vincent de Paul Penitentiary, including Laval, serving the province of Quebec, excepting the Magdalen Islands;

Kingston Penitentiary, including the women's prison, both of which are situated at Portsmouth, serving the province of Ontario, excepting that part lying west of the meridian of 85 degrees 20 minutes west longitude;

Collin's Bay Penitentiary, situated near Kingston, also serving the province of Ontario, excepting that part lying west of the meridian of 85 degrees 20 minutes west longitude;

Manitoba Penitentiary, serving the province of Manitoba, that portion of the province of Ontario lying west of the meridian of 85 degrees 20 minutes west longitude, and all that part of the territories of Canada situated east of the province of Saskatchewan and the one hundred and second west meridian;

Saskatchewan Penitentiary, serving the provinces of Alberta and Saskatchewan, and all that part of the territories of Canada, except the Yukon Territory, situated west of the one hundred and second west meridian;

British Columbia Penitentiary, serving the province of British Columbia.

Each of these institutions is maintained as a prison for the confinement and reformation of persons lawfully convicted of crime before the courts of criminal jurisdiction in the province, territory, or district served by it, when the convicted person has been sentenced to confinement for life, or for any term not less than two years.

Dorchester Penitentiary

This institution is situated near the village of Dorchester, New Brunswick, about twenty-eight miles from the city of Moncton. The land was purchased in 1875, and the institution was opened about 1880.

The prison property consists of 1,209 acres. Much of this is bush land, but the balance is used for farming purposes. The area of the present prison yard is now 10·5 acres, but, when the wall extensions now being made are completed, will be 15·8 acres.

In addition to the cell blocks, buildings inside the wall include store-rooms, an ice house, the dome, workshops, a garage, a boiler room, four towers, a carriage and harness shed, and an implement shed. At the present time a new cell block is under construction, which, when completed,

will have cell accommodation for 232 inmates. Outside the wall, there is an administration building, storage buildings, pump-houses and tanks, water reservoirs, and a number of barns and out-houses for use in connection with farming activities. In addition to the residences of the warden and the deputy wardens there are a large number of other houses for the officers and guards.

At present, the cell accommodation consists of 476 ordinary cells, 18 segregation cells, and 31 hospital cells. The average population for the past six years has been 421, and, on November 30, 1937, there was a staff of 107.

St. Vincent de Paul Penitentiary

This institution is situated on the north bank of the Back river, in the village of St. Vincent de Paul, Quebec, about eleven miles from the city of Montreal. Prior to 1873, when it became a federal prison, it was used as a provincial reformatory for boys. Since then, numerous new buildings have been constructed, and additions made to old ones. The penitentiary grounds have also been greatly enlarged.

About 1929, it was decided to build a separate institution for youthful and first offenders and, between 1929 and 1932, land for this purpose was purchased, immediately east of the present buildings. Excavation was started in 1930 and, at the present time, in addition to certain temporary buildings, a stone shed, boiler house, and two other permanent buildings, as well as four towers and a wall are under construction.

The grounds of St. Vincent de Paul Penitentiary contain 779 acres, of which 12 acres are within the present walls. A total of 24·8 acres will be enclosed within the walls of the Laval institution when it is completed. The remaining acreage consists principally of farm lands and stone quarries.

The buildings inside the walls, about 35 in number, include the dome, eight cell blocks, store-house, a hospital, a keeper's hall, workshops, a library, school, kitchen, chapels, boiler room, barber shop, stone crusher plant, five towers, a stable, and a shed. The buildings outside the walls include the administration building, the warden's residence, houses for officers, store-rooms, an officer's clubhouse, a garage, septic tank, piggery, water tank, pump and filtration plant, barns, and other outhouses.

The cell accommodation at St. Vincent de Paul is composed of 1,100 ordinary cells, 39 segregation cells, and 23 hospital cells. The new segregation cell block, when completed, will contain 24 additional cells. The average prison population for the past six years has been 1,011, and, on November 30, 1937, there was a staff of 210.

Kingston Penitentiary

Kingston Penitentiary is situated on the north shore of Lake Ontario near the city of Kingston, Ontario.

In 1832, money was voted by the Legislative Assembly of Upper Canada for the establishment of a penitentiary near Kingston. Land was purchased in the following year, and the construction of the first building,

the original south wing, was commenced. In 1840, after the passing of the Act of Union, this institution became a penitentiary for both Upper Canada and Lower Canada. When the British North America Act was passed, in 1867, all penitentiaries were placed under the jurisdiction of the federal Government, and Kingston Penitentiary became a federal institution administered by the Department of Justice.

From time to time since its inception, new buildings have been constructed, and old buildings altered and remodelled to meet changing conditions. One important addition was made in 1925, when it was decided to build a separate prison for females, outside the walls of the older institution. The new prison, which is adjacent to Kingston Penitentiary, was completed and opened in 1934. All females sentenced to a penitentiary term in Canada are confined in this institution. At present, it is administered as a branch of Kingston Penitentiary, under the direction and supervision of the warden of that penitentiary, but it is in charge of matrons and a female staff.

A new wall is now under construction at Kingston Penitentiary, which, when finished, will add about three acres to the enclosure. The grounds of the institution comprise 375·8 acres, of which 13·3 acres are inside the present main walls. Six acres are inside the walls of the Women's Prison, and the balance include the farm, quarries, dockyard, and residential grounds.

There are about thirty-seven buildings within the walls of the institution. The principal ones are the dome, six cell blocks, a keeper's hall, a hospital, a kitchen, six workshop buildings, five towers, two gates, a boiler house, pump house, and different offices. Included in one or other of these buildings, are the chapels, library, and schoolroom. The principal buildings outside the walls are the administration building, the warden's residence, the residences of the deputy warden, chaplains, and other officers, a pump house and filtration plant, a water tower, and a storage building. There are also a number of buildings in connection with the farm and quarries, and on the dock.

All the buildings in the Women's Prison are within its walls. The two main structures are the administration building, which contains the matrons' living quarters, the hospital, the chapels, and the cell block, which includes the laundry and sewing rooms.

Kingston Penitentiary has cell accommodation for 805 inmates. The average population for the past six years has been 857, and, on November 30, 1937, there was a staff of 180. The Women's Prison has cell accommodation for 100. Its average population since its construction has been about 40, and the staff consists of 6 female officers.

Collin's Bay Penitentiary

Collin's Bay Penitentiary is situated on the north shore of Lake Ontario, a few miles west of the city of Kingston. The land was purchased about 1930, and comprises 880·8 acres. When the walls now under construction are completed, the enclosed area will be 27·6 acres.

At first a number of temporary buildings were erected to house the prisoners employed on construction work. Two permanent cell blocks have now been completed, and the administration building, kitchen, four towers, and wall, all of a permanent nature, are under construction. There are also permanent residences for the warden, deputy warden, chief keeper, and farm instructor, as well as a number of buildings for use in connection with the farm and quarries.

Collin's Bay Penitentiary now has 260 ordinary cells, 6 segregation cells, and 20 hospital cells. These last are located in a temporary building.

The average population for the past five years has been 184, and, on November 30, 1937, there was a staff of 97.

Manitoba Penitentiary

Manitoba Penitentiary was opened about 1875. It is situated 16 miles north of the city of Winnipeg, Manitoba. The property consists of 1,100 acres, of which 8 acres are now inside the walls. When the new wall extension has been completed, this will be increased to 24 acres.

The buildings inside the walls include the main dome and central hall, four cell blocks, a main shop, the dome, workshops, a boiler room, garage, power house, four towers, and a gate. There are also a school, chapels, and a library. A new fresh water tank and wells are in course of construction. The buildings outside the walls are the administration buildings, still under construction, a septic tank, elevated tank, stable, barns, a green house, piggery and slaughter house, a root house, and several other smaller buildings. There is also a warden's residence, and about thirty houses for officers and guards.

The cell accommodation consists of 464 ordinary cells, 32 segregation cells, and 8 hospital cells. The average population for the last six years has been 377, and, on November 30, 1937, there was a staff of 100.

Saskatchewan Penitentiary

Saskatchewan Penitentiary is situated on the outskirts of the city of Prince Albert, Saskatchewan. The prison was opened in May, 1911. Unlike other Canadian penitentiaries, all buildings at the Saskatchewan Penitentiary are constructed of brick instead of stone.

The main buildings within the walls of the institution are the main dome, the north wing, four cell blocks, a hospital, workshops (including two under construction), storage buildings, a boiler house, four towers, two gates, an underground water reservoir, a stable, and a granary. The buildings outside the walls include the administration building, a piggery, sheds and root houses in connection with the farm, green house, and the residences of the warden and the deputy warden,

There are 1,826·7 acres of land attached to the institution, of which 24·8 acres are inside the walls. Practically all the rest of the land, with the exception of the portion attached to the residences of the warden and the deputy warden, is available for farming purposes.

The cell accommodation consists of 618 ordinary cells, 13 segregation cells, and 26 hospital cells. On the completion of the new west wing, 29

more cells will be available. The average prison population for the past six years has been 466, and, on November 30, 1937, there was a staff of 105.

British Columbia Penitentiary

British Columbia Penitentiary is situated on the north bank of the Fraser river in the city of New Westminster, B.C., and was first opened in September, 1878.

The land comprises 132·9 acres, of which 10·3 acres are enclosed within the walls. The remaining acreage is available for farming purposes.

The present buildings inside the walls are the dome, a central tower, five cell blocks (including one under construction), the north wing expansion, containing the kitchen and chapel, staff workshops, a boiler room and incinerator, five towers, a storage tank, a green house, and farm buildings. Outside the walls the administration building, water tanks, piggeries, and barn, and the residences of the warden and deputy warden and houses for the officers, are located.

The present cell accommodation consists of 466 ordinary cells, 18 segregation cells, and 6 hospital cells. When the present cell blocks, which are under construction, are completed, an additional 135 cells will be available. The average population for the last six years has been 390, and, on November 30, 1937, there was a staff of 100.

Provincial Institutions

Prisoners, sentenced by the courts to imprisonment for less than two years, must serve their terms in jails or reformatories under the jurisdiction of provincial, county, or municipal authorities. An exception to this will be found in the province of Ontario, where indeterminate sentences enable the courts to send prisoners to such institutions for determinate sentence, up to two years, plus indeterminate sentence, which also may amount to two years. Some of the provinces still retain the old system of city, county, or municipal jails, while others, although still retaining their old jails for prisoners serving comparatively short sentences, have established large centrally located reformatories and prison farms, where the majority of adult prisoners are sent.

Practically all the city, county, and municipal jails were erected many years ago and, from the point of view of reformation, classification, segregation, or providing useful employment, they are entirely inadequate. With very few exceptions, no provision has been made for school-rooms, workshops, libraries, chapels, or other departments which might assist in the reformation of the prisoners, or keep them employed at useful occupations during their imprisonment. In too many of them prisoners are forced to spend all their waking hours in idleness, and young prisoners, in many cases between sixteen and twenty-one years of age, who are perhaps first offenders, must serve their sentences under these conditions, and in company with older prisoners who have have served numerous terms of imprisonment in other penitentiaries and jails for more serious crimes. Many of these old buildings are very poorly ventilated and are

without proper sanitary facilities, which makes imprisonment in them detrimental to the health of the inmates.

In other provinces, where reformatories and prison farms have been established, the prisoners serve their sentences under much more satisfactory conditions. The buildings of such institutions are usually of more modern construction, with larger cell accommodation, adequate fresh air and sunshine, and are equipped with modern ventilation and lighting systems. Some of them have modern workshops, where the prisoners are not only kept busy, but often learn useful trades during their terms of imprisonment.

Some institutions possess facilities which enable prisoners to attend school and church, and to obtain healthful physical recreation. Nearly all these have large farms attached to them, on which many of the prisoners are employed for a considerable portion of their terms, and thereby are afforded an opportunity to improve their health and to become acquainted with agricultural methods. Prisoners incarcerated in such institutions have thus some opportunity to better themselves, both mentally and physically, and, when their sentences have been completed, they are better equipped to obtain employment and find a place for themselves in the social system. A large number of county or municipal jails are still in use in the Maritime Provinces, Quebec, and Ontario.

Your Commissioners visited and inspected four of such jails in Nova Scotia, three in New Brunswick, one in Prince Edward Island, one in Quebec, and one in Ontario. Interviews were held with representatives of the Governments, jail officials, judges, and other public officers and representatives of different welfare organizations, the Salvation Army, and the churches. In addition, a study was made of the report of the provincial commission to investigate the jails of Nova Scotia in 1933. From their studies and observations, your Commissioners have concluded that the jail system in the Maritime Provinces is entirely inadequate, and that the manner in which prisoners are treated in those jails can only result in degrading them morally and physically. Generally speaking, the jails are overcrowded, unsanitary, poorly lighted and ventilated, and provide very limited opportunity for outside exercise. There are no facilities for classification or segregation, and no workshops to provide useful employment. There is no government supervision over the jails in New Brunswick, and only a limited supervision in the other two Maritime Provinces. Young offenders and first offenders must spend their sentences under these conditions, indiscriminately mixed with older and hardened criminals, many of whom have long prison records.

Your Commissioners are strongly of the opinion that a central prison farm for the three Maritime Provinces should be established without further delay. Such an institution, if properly organized, would eradicate many of the evils pertaining to the present system. Until this can be done, however, the respective provincial Governments should exercise a more strict supervision and control over the present jails.

In the provinces of Ontario and Quebec, jails are either under the direct control of the provincial Governments, or under their strict super-

vision and regulation. Very few prisoners are kept for long in such institutions. Those serving sentences of more than a few months are sent to the larger reformatory-type prisons. Many of the jails lack the necessary facilities for any proper treatment of prisoners, and should be limited more and more to prisoners awaiting trial, and those serving light sentences.

Provision made for the detention and reformation of juvenile offenders, i.e., those under sixteen years (except in the province of Manitoba where the age limit is eighteen years), varies in different parts of Canada. Generally speaking, however, there is more uniform treatment in the different provinces for this class of prisoner than for adults.

The following is an account of the existing institutions in the various provinces:

Prince Edward Island

This province has three common jails. There are no industrial schools or juvenile institutions. Convicted juvenile delinquents are sent to institutions in Nova Scotia or New Brunswick.

Nova Scotia

There are no provincial reformatories or prison farms, but there are twenty-one common jails in the province, all owned and under the direct supervision of the various municipalities, but under some government supervision. There are four juvenile institutions under government supervision. These are:

(*a*) The Halifax Industrial School (for Protestant boys), Halifax, N.S.
(*b*) The Maritime Home for Girls (Protestant), Truro, N.S.
(*c*) St. Patrick's Home (for Roman Catholic boys), Halifax. N.S.
(*d*) The Monastery of The Good Shepherd (for Roman Catholic girls), Halifax, N.S.

New Brunswick

There are no provincial reformatories or prison farms, but there are fifteen common jails, owned by, and under the direct supervision of, the district municipalities, but without any government supervision. There are also two provincial juvenile institutions:

(*a*) The Boys' Industrial Home of the Province of New Brunswick, East Saint John, N.B.
(*b*) The Monastery of The Good Shepherd (for Roman Catholic girls), Saint John, N.B.

There is also an institution situated at Coverdale, near Moncton, which is known as The Interprovincial Home for Women. It is owned and operated by a board of governors, and supported financially by the different Protestant churches. It serves as a detention home for Protestant women over sixteen years of age, sentenced in any of the Maritime Provinces. The province and the municipality concerned each contribute toward the support of inmates sent from them.

Quebec

There are no provincial reformatories or prison farms in the province of Quebec. There are about thirty jails, all of which are under the direct control of the provincial Government. The principal ones are:

Bordeaux Jail, Montreal, which is the largest provincial institution in the province, with accommodation for over 500 inmates. It is of modern construction, and is the only major prison in Canada with all its cells of the closed outside type. It is well equipped for industrial work. The clothing, except underwear, provided to the prisoners in all the provincial jails in Quebec is manufactured in the tailoring shop. In the modern machine shop aluminum hollow-ware is made, not only for all jails, but also for other provincial institutions. It contains a Roman Catholic chapel and Protestant chapel, a library, and a hospital. The grounds outside the prison, though small in area, are highly cultivated, and produce a large quantity of vegetables used in the prison. The hospital for the criminal insane is located in a wing of this institution.

The Quebec jail for men, in Quebec city, is of heavy stone construction. It was erected over ninety years ago, and has accommodation for 185 inmates. No workshops or grounds are attached to the institution, and there are few facilities for employment.

The Quebec jail for women, situated near Quebec city, is a very fine building, just recently completed. It has accommodation for twenty-five inmates, and the average population is about fifteen. It is modern in every respect. The cells are clean and comfortable. Inmates are employed in the laundry and are also engaged in sewing and knitting.

The Montreal jail for women is divided into two parts; one for Roman Catholic women, and the other for Protestant women. The Roman Catholic prison is efficiently managed by the Congregation of the Sisters of the Good Shepherd. While the buildings are old, they are in good repair and have considerable grounds attached to them, in which the inmates take exercise. There is accommodation for sixty inmates. The Protestant prison is much smaller and there is only accommodation for twenty-two inmates. There is an average population of about fifteen. It is well managed, but is handicapped by the lack of proper facilities for the treatment of the inmates. The building is very old, and not suited for its present purpose. Both jails come under the general supervision of the governor of Bordeaux Jail.

The following juvenile institutions, reformatories, and industrial schools are located in the province of Quebec:

(*a*) Montreal Reformatory School, Montreal.
(*b*) Boys' Farm and Training School, Shawbridge.
(*c*) Lorette School (for girls), Laval des Rapides.
(*d*) Girls' Cottage and Industrial School, Sweetsburg.
(*e*) Ste. Domitilde School, Laval des Rapides.
(*f*) St. Charles Institution, Quebec.
(*g*) St. Joseph de la Délivrance Institution, Lévis.
(*h*) Montfort Orphanage, Montfort.
(*i*) Huberdeau Orphanage, Huberdeau.

Ontario

The following reformatories, industrial schools, etc., are located in Ontario:

The Ontario Reformatory (for males), at Guelph, has accommodation for 700 inmates. Buildings are of modern construction, and include an administration building, school, chapel, hospital, and dental clinic. The industrial buildings include kitchen, bakeshop, tailoring shop, carpenter shop, laundry, motor licence plate shop, knitting mill, canning plant, machine and blacksmith shop, and iron bed factory. The grounds around the buildings are very well kept. The property consists of 945 acres, most of which is devoted to farming. Buildings on the farm include a dairy, barn, piggery, and slaughterhouse. There is a fine herd of dairy cattle, and the institution supplies beef to other reformatories, hospitals, etc.

The reformatory (for males), at Mimico, has an area of 208 acres and accommodation for 200 inmates. It has a large industrial plant, principally devoted to the manufacture of brick, which is used in the erection of provincial buildings throughout the province. It also has a machine shop, up-to-date farm buildings, and a registered dairy herd, poultry, and hogs.

The Industrial Farm (for males), at Burwash, is a new prison farm, of about 35,000 acres, located near Sudbury. As yet, most of the buildings are temporary. It has accommodation for 600 inmates. One permanent cell block has been completed and another is under construction. This building will include a chapel, auditorium, and segregation ward. The inmates are employed cutting wood for timber and fuel, raising farm crops, and in construction work. It has modern farm buildings, fifty cows, and a large number of sheep and hogs. Prisoners, with previous records and not susceptible to reformation, are sent here.

The Toronto Municipal Farm (for males), at Langstaff, receives short term prisoners from the city of Toronto. There is accommodation for 350 inmates. A farm of 940 acres is attached to this institution, on which there is a dairy herd that supplies milk to different institutions in the city of Toronto. There is also a tailoring shop.

The Mercer Reformatory (for females), at Toronto, in addition to training inmates in regular housework and cooking, has a factory where large quantities of towels, quilts, sheets, dresses, shirts, aprons, and prison gowns are manufactured. There is also a large laundry. The grounds comprise nine acres. Accommodation is provided for 200 inmates in this institution.

The Industrial Refuge (for females), at Toronto, has accommodation for seventy-five inmates, and the Home of the Good Shepherd (for females), at Toronto, has accommodation for thirty-five inmates.

In addition to the above, there are ten district jails, situated in Northern Ontario, owned and operated by the Ontario Government, and there are forty-seven city, county, and municipal common jails.

The following juvenile institutions, all administered by the provincial authorities, are located in Ontario:

(*a*) The Ontario Training School for Boys, Bowmanville.
(*b*) The Ontario Training School for Girls, Galt.
(*c*) St. Joseph Industrial School, Alfred.
(*d*) St. John's Industrial School, Toronto.
(*e*) St. Mary's Industrial School, Toronto.

Manitoba

The Provincial Jail and Prison Farm (for males), at Headingly, Manitoba, is located about twelve miles from Winnipeg. It is of very modern construction, and was opened in 1929. Maximum accommodation is for 306. Buildings include a chapel, gymnasium, and library. There is a farm of 500 acres, which provides employment for a large proportion of the inmates. There is also a provincial jail for women at Portage la Prairie, and three provincial jails for men, at Portage la Prairie, Brandon and Dauphin.

The following juvenile institutions are located in Manitoba:

(*a*) The Manitoba Home for Boys, Portage la Prairie.
(*b*) The Manitoba Home for Girls, West Kildonan.
(*c*) The Home of the Good Shepherd, West Kildonan.

Saskatchewan

The Provincial Jail (for males), at Prince Albert, is a fine brick structure erected in 1921. There is a farm of 1,200 acres, which produces large crops of grain and vegetables, and supports a large dairy herd. There is a library and chapel connected with the institution, which has accommodation for 200 inmates.

The Provincial Jail (for males), Regina, is situated about four miles from that city. It was built in 1913. The total area of the grounds is 960 acres, of which 320 are rented. It has a maximum accommodation for 250. The buildings include a hospital, chapel, and library. The main employment of prisoners is farm work. The farm is under the supervision of the provincial Department of Agriculture, and is well equipped with a barn, stables, and other buildings. There is a first class herd of cattle, a large number of hogs, and some pedigreed horses. Buildings include cottages for members of the staff. There is also a provincial jail for males under twenty-one years, at Moosomin, and provincial jail for women at Battleford.

The only juvenile institution in Saskatchewan is the Industrial School for Boys at Regina.

Alberta

The Provincial Jail (for males and females), at Fort Saskatchewan, is situated thirty miles from Edmonton. Buildings include a new and very modern building for females, which is separate from the others. There is a library, and church service is held regularly. A large farm of about 1,000 acres, well equipped with buildings, provides work for the inmates.

The Provincial Jail (for males), at Lethbridge, has a farm of 1,200 acres, which provides work for most of the inmates. Other work is provided in the kitchen, laundry, press room, clothing room, and the shoe shop. A considerable amount of live stock is raised on the farm.

There are no institutions for juvenile delinquents in Alberta. Under the probation system, juveniles are sent to selected farms or homes, under the supervision of the Department of Child Welfare.

British Columbia

The Oakalla Prison Farm, at Burnaby, was erected in 1910. It has maximum accommodation for 462 inmates. There is a farm of 170 acres. The buildings include a library, tailor shop, and machine shop.

There is a provincial jail at Kootenay. The following juvenile institutions are located in this province:

(*a*) Provincial Industrial School for Girls, Vancouver.

(*b*) Provincial Industrial School for Boys, Port Coquitlam.

General Characteristics of Canadian Penitentiaries

A complete report on each Canadian penitentiary, including management and discipline, is made in Part III of this report. The following is a brief summary of the principal caracteristics common to all Canadian penitentiaries.

Apart from Saskatchewan Penitentiary, Collin's Bay, the Laval Buildings (now in construction adjacent to St. Vincent de Paul) the Women's Prison at Kingston, and new wings at one or another of the penitentiaries, all of them are very old buildings. They are kept clean, but the ventilation and heating systems are inadequate, and they are all surrounded by thick high walls.

Although such walls are necessary for a maximum security penitentiary, your Commissioners regret that they have been constructed at the Women's Prison, and are now under construction at Collin's Bay and Laval, which were originally intended for the more reformable class of inmates.

The cellular system is in use throughout. There are no dormitories. In general, the cells are adequate, and their equipment modern and sanitary, but, in all penitentiaries, except the former women's prison building in Kingston Penitentiary, and some cells now under construction at Dorchester and St. Vincent de Paul, the cells are of the barrier inside type, which, in the opinion of your Commissioners, should be altered, if possible, to closed outside cells, and, in future buildings, only cells of the latter type should be constructed.[1] Your Commissioners are definitely opposed to the use of dormitories, or the confinement of more than one prisoner in a cell.

The punishment cells are very little different from the ordinary ones, and are not the dark dungeons some misinformed people would have the public believe. They are not, of course, provided with the comforts of

[1] The reasons for this opinion are fully set out in Chapter XXII of this report, which deals with Dorchester Penitentiary.

the ordinary cells, but it is not to be expected that inmates undergoing punishment should have the same accommodation as the others.

The food is of excellent quality, wholesome and plentiful, although, perhaps, a more substantial breakfast might be given to those who are engaged in heavy outside work. The food is not extravagant, but your Commissioners are of the opinion that it is quite ample, and they have found it to be much better than that provided in the prisons of the European countries or in England. While the food supplied in the Canadian penitentiaries is good, the preparation is often open to criticism, largely because it is cooked in boilers instead of ranges, and because some of the stewards lack experience or are not sufficiently efficient. There are no dining rooms. The prisoners eat in their cells. While your Commissioners do not favour dining rooms as a general practice, after proper classification, eating in association might very well be permitted in some of the institutions.

Discipline for the inmates is uniform and rather severe. Regulations and punishable offences are too numerous, and corporal punishment, although not often inflicted, is yet awarded too frequently, and for too many prison offences. The courts that deal with prison offences are necessary, but, as at present constituted, and under the present system, are not conducted in a satisfactory manner because there are no practical means of avoiding the possibility of injustice.

The rule of silence is in force except during certain designated periods. Smoking is permitted at certain times.

Classification, in so far as it exists, is unscientific and without practical effect. Old recidivists and incorrigibles are in daily contact with the more reformable prisoners, and, as repeatedly admitted by officers of the institutions, no real attempt is made at reformation.

Education is neither satisfactory, nor in accordance with the regulations. Libraries are fairly well provided with books and magazines, but the censorship is often inadequate or puerile. Sometimes it is too stringent. No newspapers are permitted in the penitentiaries. An issue of weekly news is made by the prison authorities, but this is not sufficiently comprehensive to keep the inmates aware of what is going on in the outside world.

Work is insufficient, and, generally, trades are not taught because of the lack of industries and the dual role of the instructors, who are also custodial officers. The farms are not exploited or cultivated to the extent of their possibilities. If adequately utilized, these farms could provide all the produce required by the penitentiaries. The prisoners are paid a remuneration of five cents per day.

There is not sufficient physical exercise, especially on Sundays and holidays, and, as a rule, competitive games are prohibited. In some institutions, and for a few inmates only, volley ball and quoits are authorized. A few concerts are given by outside artists, but the inmates are not allowed to take part in these. In some penitentiaries radios with loud speakers, paid for by contributions from the inmates, have been

installed. No hobbies are permitted in the cells and, except for a few privileged inmates, there is no inside recreation.

Writing and visiting privileges are too restricted, and the visiting cages are gruesome and humiliating relics of the past.

Personal sanitation is inadequate, the prisoners being permitted but one bath and one shave per week.

Medical care is good in some institutions, but bad in others, according to the character and qualifications of the medical officers. Some of the penitentiary hospitals are modern, while others are antiquated and unsatisfactory.

The personnel of the penitentiaries is not properly trained. Approximately 95 per cent of the guards had no knowledge or training in penology when they first entered the service and, although a slight attempt has been made to train them after they were engaged, such training has been neither adequate nor satisfactory.

Attendance at religious services is obligatory. Some chaplains are well qualified and do much good, while others are unqualified, uninterested, and do very little good.

The accounting system is good, but perhaps too complicated, and it involves much unnecessary correspondence.

Discharge clothes are badly fitted, and often made of poor materials, so that they are a decided handicap to reformed prisoners in their search for employment.

CHAPTER IV

PENITENTIARY BRANCH

POLICIES

Central Authority

The Penitentiary Branch is the headquarters of the penitentiary system of Canada. According to section 3 of the Penitentiary Act, the penitentiaries are under the authority of the Minister of Justice, who is given complete administrative control over the persons confined therein, and the power to make rules and regulations for the management, discipline, and policing of the institutions, and for such other purposes as may be necessary or expedient for the carrying into effect of the provisions of the Act. Sections 14 and 15 deal with the duties and powers of the Superintendent. They provide that, under the authority of the Minister, he shall direct and superintend the administration of the penitentiaries, and perform such other duties as may, from time to time, be assigned to him by the Minister. He is also authorized, subject to the approval of the Minister, to make rules and regulations,

"(*a*) for the administration, management, discipline and police of the penitentiaries, and the wardens of the penitentiaries, and every other officer employed in or about the same, as well as the convicts confined therein, shall be bound to obey such rules and regulations,

(*b*) for the establishment and carrying on of any work or industry at any penitentiary as may be thought desirable for the useful employment or training of the convicts, for the employment of the convicts therein, for the disposal of the products thereof and as well for allowing subject to such conditions as may be prescribed and payable in the manner and to such persons as may be designated by the regulations, remuneration for the labour of convicts. 1918, c. 36, s. 3."

According to sections 20 and 21 of the Act, there may be no more than three inspectors of penitentiaries. These inspectors shall perform such of the duties required by the Act as the Minister may assign to them respectively. They shall, under the direction of the Superintendent, visit, examine, and report upon the state and management of the penitentiaries, and give consideration to the suggestions that the wardens or officers in charge thereof make for the improvement of the same.

According to section 24 of the Act, wardens and deputy wardens shall be appointed for the penitentiaries generally. The powers of a warden are defined in section 26, as follows:

"He shall be the chief executive officer of the penitentiary; and as such shall have the *entire executive control and management of all its concerns,* subject to the rules and regulations duly established,

and the written instructions of the Superintendent or the Minister; and he shall be responsible for the faithful and efficient administration of the affairs of every department of the penitentiary."

The law is clearly expressed, and there need be no speculation regarding its true interpretation, yet, after a very thorough examination of the administration of the Canadian penitentiary system, your Commissioners have come to the conclusion that, since 1932, extreme dictatorial methods have been followed in the Penitentiary Branch. Instead of responsible resident management by the wardens, as the law contemplates and a successful penal system requires, a centralized control of minor and even trivial matters of administration in individual penitentiaries has been set up, destroying the authority, the power of initiative, and the effectiveness of the wardens and inspectors.

This control by the Superintendent has been established, and is exercised, in an arrogant manner, without the conferences with the wardens and inspectors one would ordinarily expect. Contrary to the letter and spirit of section 26 of the Act, the authority of the wardens in dealing with matters pertaining to the administration of their institutions has been almost entirely nullified.

Undoubtedly, for the sake of uniformity and in order to ensure a well-balanced and effective penal system, basic principles should be laid down by a central authority, but the local management and the conduct of the affairs of each institution should be the responsibility of the warden and his assisting officers, in consultation and co-operation with the central authority. If the wardens are to be held responsible for the administration of their institutions, they must retain some authority, and be permitted some initiative. They should be encouraged to express their views, and permitted to determine, to a large extent, what, in their opinion, which is based on long experience, is best for the security and reformation of the prisoners. It is not proper that, without being consulted, they should be compelled to employ methods to which they cannot at times subscribe, and which their experience may lead them to believe would, in fact, be detrimental to the best interests of the service. It must be assumed that, having been selected for such important posts, they will be fully qualified for their positions.

In order to establish efficient administrative control over the penitentiaries, co-operation between the wardens, the inspectors, and the Superintendent is essential. The wardens, who are constantly in touch with the staff and the inmates of the institutions, acquire a first-hand knowledge of what is required in their administration. The inspectors, who visit, examine, and report upon the management of the penitentiaries, and who receive suggestions made by the wardens and other officers as to possible improvements, are in a position to give valuable advice to the Superintendent, and are worthy of consultation. Notwithstanding this, however, since 1932, the Superintendent has not seen fit to call any conference with the wardens and inspectors at which an exchange of views beneficial to the administration could be made. Moreover,

between 1932 and the present time, the Superintendent has seldom availed himself of the opportunity to visit the penitentiaries, where he might have familiarized himself with the situation existing in them and the difficulties of their wardens. Through this neglect he has deprived himself of an essential means of acquiring a first-hand knowledge of conditions in the institutions. Particulars of the visits paid by the Superintendent to each institution during these years is as follows:

Dorchester(1)	St. Vincent(1) de Paul	Kingston(2)	Man.(1)	Sask.(1)	B.C.(1)
1932					
Aug. 31 (a few days)	Aug. 18	10 vists during 1932-3. C.B. 1	None	None	None
1933					
None	Oct. 18 Dec. 5	7 visits in 1933-4	Mar. 6 and 9	Feb. 19-28	In Feb.
1934					
Sept. 2-6	Jan. 19 Jan. 29 Aug. 31	4 vists in 1934-5	Sept. 26-29	Oct. 30 Nov. 7	In Nov.
1935					
None	Feb. 20 June 13 July 17 July 31 Sept. 21 Oct. 17	None in 1935-6	None	None	None
1936					
None	Feb. 10	One visit in 1936-7	None	None	None

(1) Taken from records kept by penitentiaries.
(2) Taken from record submitted by Penitentiary Branch. Latter shows:
1932-3: Dor. 1, S.V.P. 2, Kingston and C.B. 11, Man. 1, Sask. 1, B.C. 1.
1933-4: Dor. 3, S.V.P. 7, Kingston 7, Man. 1, Sask. 1, B.C. 1.
1934-5: Dor. 1, S.V.P. 1, Kingston 4, Man. 1, Sask. 1, B.C. 1.
1935-6: Dor. 0, S.V.P. 5, Kingston 0, Man. 0, Sask. 0, B.C. 0.
1936-7: Dor. 1, S.V.P. 0, Kingston 0, Man. 0, Sask. 0, B.C. 0.
1937-8: Dor. 1, S.V.P. 0, Kingston 0, Man. 0, Sask. 0, B.C. 0.

It will be noted that, during the fiscal year, 1932-1933, the Superintendent made ten visits to Kingston. These visits, however, were made at the time of, or in connection with, the riots which occurred in that institution. Many excuses were offered to your Commission by the Superintendent for failing to make more frequent visits to these institutions, but we cannot find that these excuses are valid. We believe the

true reason is that the Superintendent was so engaged with small matters of administration, which should have been delegated to others, that he did not have the time to perform this important duty.

After the Superintendent had been six months in the service, he was responsible for drafting the penitentiary regulations. There are 724 of these, as well as ten appendices. They deal in great detail with all matters concerning the administration, discipline, and policing of the penitentiaries. The Superintendent not only drafted these regulations, but put them into force, without consulting, or getting the advice of, the wardens in charge of the various penitentiaries. Moreover, when one of these wardens ventured to offer his advice regarding the new regulations—advice which was most courteously submitted—the Superintendent abruptly informed him that, if he was not satisfied, he was at liberty to resign.

The Superintendent was asked by your Commissioners if it was not a fact that, when the book of regulation was sent to the wardens, a certain warden had asked for a delay of five or ten days before putting them into force because he wished to examine them and submit comments and suggestions regarding them, and that his proposal had been answered by an invitation to resign. The Superintendent emphatically denied that this was the case, repeating twice, "That is not true," "No, sir, that is not true."[1] The letter from the warden referred to is dated February 19, 1934. In it he acknowledged receipt of the new regulations, and respectfully suggested that, in the interests of the entire service, they should not become effective until March 1, 1934. The delay was requested in order that the warden and his senior officers, at each institution, might have an opportunity of becoming familiar with the regulations and so be in a better position to enforce them efficiently. The Superintendent's reply to that letter is dated February 22. It is, in part, as follows:

"1. Reference File S/186, letter of 19th instant, paragraph 1, your observation of circular letter 13, paragraph 2 is invited. Further comment would appear to be unnecessary for we all realize that wardens of penitentiaries are selected in the belief that they are honest, responsible, prepared to work under authority and to enforce the law and regulations brought into effect by the government. When it has been found that officers do not live up to this standard, they have been removed from office and have been replaced by persons who, it is believed, will carry on in the desired manner and who will investigate or know the reason for each one of his acts or recommendations which must naturally be founded upon authority.

2. Reference to paragraph 3,[2] see paragraph 1 of this letter. If at any time you feel that you are not prepared to enforce same (regulations wholeheartedly), it is presumed that you will forward appropriate communication to this office."

[1] General Ormond's evidence, Vol. I, pp. 22-23, inclusive.
[2] This refers to the warden's request that there be a delay to March 1, 1934, before the new regulations should become effective.

Confronted with this correspondence, the Superintendent admitted that he had erred in denying that this was the truth of the matter.

The evidence conclusively satisfies us that the co-operation of the wardens in drafting the regulations was entirely disregarded.

Control of Expenditure

Your Commissioners believe that there is an unnecessarily restrictive control of expenditures, which involves unnecessary correspondence and delay in providing for the needs of the penitentiaries. For example, when a warden has submitted a requisition to the Branch for the replacement of stocks or consumable materials, and when the requisition has been approved by the Branch and the materials delivered, it would seem that this should be the end of the procedure and that the materials or stock should be put into use without the necessity of further authorization or further correspondence. Under the present unnecessarily restrictive control, even after the requisition has been approved and the materials or stock delivered, permission must again be obtained from the Branch before they can be put into use. An instance of this procedure is contained in a letter from the Superintendent, dated December 30, 1935, dealing with a requisition (A 458) for water-glass washers. The purchase of these water-glass washers, costing but a few cents each, had been authorized, and they had been delivered at Kingston Penitentiary, yet, although the requisition had been aproved for this specific purpose, the washers could not be used until further permission had been obtained from the Branch. Such procedure is not only aggravating but expensive.

Circular Letters

Since 1932, the Superintendent has issued 858 circular letters commenting on, and interpreting, the various regulaitons. Some of these circulars have been to amend, and some to rescind, preceding circulars. Some contain as many as fifty-six paragraphs. In addition, the Superintendent has issued numerous brochures regarding the management of the penitentiaries. These, together with an enormous correspondence, often on trivial matters of detail, have taken fifty per cent of the time of the wardens and other officers—time which could usefully have been employed in the management of the penitentiaries. The extent to which the initiative and authority of the wardens have been curtailed may be gauged from the following examples of centralized control of minutia:

1. In order that the sum of twelve cents, the price of a broken toothbrush, may be charged to an inmate's account, the warden is compelled to secure the authority of the Superintendent.
2. It is necessary for the warden to secure the Superintendent's authority to replace a five cent scribbler when it has been destroyed.
3. Any repairs to typewriters, which involve an expenditure of over one dollar, may not be made without the authority of the Superintendent.

4. Whenever it becomes necessary to supply a prisoner suffering from fallen arches with a support costing twenty-five cents, even when such a support has been authorized by the doctor of the institution, the warden must obtain the authority of the Superintendent.
5. When a prisoner requests permission from the warden to write a business letter, the warden cannot give such permission without first obtaining the authority of the Superintendent.
6. If an inmate has money to his credit and wishes to transfer part of it to his relatives who are in need, the warden has no authority to grant permission until he has obtained the authority of the Superintendent.
7. In one instance, the warden wished to paint the benches of the mail bag department, but could not do so without first securing the authority of the Superintendent.
8. If a warden requires the replacement of a pail that has been condemned by a survey board, he cannot do so without the authority of the Superintendent. He must first obtain an estimate as to the cost of a new pail. The estimate, accompanied by a request for authority to buy or make a new pail, must then be submitted to the Superintendent. Even then, before a new pail can be made, the warden must also submit a requisition for galvanized iron, and explain to the Superintendent the purpose for which it is intended.
9. If a prisoner requires a special pair of shoes and the doctor is prepared to recommend them, the warden must forward a request to the chief trade instructor and the shoemaker, get an estimate of what it will cost, and forward this estimate to Ottawa for the authority of the Superintendent before the prisoner can be supplied with the necessary shoes.
10. In one case, where hinges worth sixteen cents were required to be put on storm windows, they could not be bought without first having the authority of the Superintendent.
11. The Superintendent's authority is necessary for painting the walls or varnishing the floor of the hospital.
12. In the summer of 1935, the farm at Dorchester Penitentiary became overstocked with young pigs. The farm instructor found it necessary, because of the lack of facilities, to keep about 85 in one pen where, in a few weeks, many of them became lame and it appeared that a large number would be lost. However, some wire, which had been purchased for a line fence, was available because it was not yet required for that use. In order to save the pigs, the farm instructor utilized this wire to divide the pigs into a number of pens and, as a result, saved the entire number. Immediately the emergency had been met he submitted a requisition for more wire. When the Superintendent learned

that the farm instructor had saved a considerable loss of penitentiary property by utilizing the wire, however, he wrote severely censuring both the warden and the farm instructor because they had not first written to him for permission to use it for another purpose than that for which it had been purchased. If the farm instructor had been as punctilious as the Superintendent in observing strict formalities, $700 worth of pigs would have sickened, and a great majority of them would have died. Correspondence on the subject was maintained for an entire year before the incident was closed.

13. On one occasion, the officers and guards of a penitentiary were prevented from buying a wreath for the deceased wife of a fellow officer because it would have been necessary to secure the authority of the Superintendent to make subscriptions, and such authority could not be obtained in time.

14. Every article in each penitentiary is required by instructions of the Superintendent to be marked and numbered, and much of the valuable time of the staff is consumed in performing this task.

15. Circular 85 regarding employment of prisoners, issued on May 15, 1934, enumerates the class of inmates, according to the type of crime committed, who must not at any time be employed outside the penitentiary walls without permission from the Penitentiary Branch. It does not state, however, whether a man who has been committed for one of the enumerated crimes on a previous occasion, but who is now serving a term for another type of crime, should be permitted to work outside the walls. A prisoner, whose previous record may show him to be a most dangerous criminal, when by chance serving a sentence for a non-enumerated crime, is not, therefore, prohibited from employment outside the walls, while some occasional or accidental offender, who is serving a term for an enumerated crime, is required to be confined within the walls, irrespective of the opinion of the warden.

As stated above, approximately half the time of the officers and wardens is taken up with correspondence and the signing of papers, and it follows that at least an equal amount of time must be devoted to the same task by the inspectors and the Superintendent. The waste of time and effort devoted to unnecessary details is evident.

One of the essential features of a successful penal system is a sympathetic understanding between the central authority and the local personnel. This can only be achieved through the co-operation of both. Your Commissioners are of the opinion that, under the policies of the present administration, such co-operation is conspicuously lacking in the Canadian penitentiary service.

Inspection of Penitentiaries

Under section 18 of the Penitentiary Act, the Superintendent is given free access to every part of any penitentiary for the purpose of making inspections, and he may examine all the records of any kind belonging thereto.

As already stated, sections 20 and 21 provide for the appointment and outline the duties of three inspectors, who are charged, under the direction of the Superintendent, to visit, examine, and report upon the state and management of the penitentiaries. In practice, the duties of the inspectors have been limited by the application of section 21, which calls for the direction of the Superintendent to the inspectors in carrying out the duties imposed under section 14.

The powers given to the wardens by section 26 have been outlined above, and it has been pointed out to what an extent these powers have been limited by the highly centralized control of the Superintendent. It has been established as a departmental practice that the inspectors are to act only under the direction of the Superintendent, and, as a result of this practice, the inspectors have no authority over the wardens, and have no right or duty to give instructions, or make suggestions in the nature of instructions, to the wardens or other officers in the penitentiaries. Any suggestions the inspectors may think fit to make may be acted upon, or not, in the discretion of the wardens, who are not subject to any direction or control by any penitentiary officer except the Superintendent. The inspectors are in fact junior to the wardens.

As indicated, your Commissioners have found that the direction and superintendence of the penitentiaries, which is provided for by section 14, have been conducted far too much by voluminous and detailed correspondence from Ottawa, and without the necessary direct personal supervision of the Superintendent or his inspectors, and that their visits have been too few, their examinations incomplete, and their reports irregular and inadequate.[1]

Your Commissioners are of the opinion that frequent and thorough inspections, not so much with a view to criticism as for the purpose of supervision, helpful co-operation, and consultation are essential. These inspections should also afford opportunities for the interchange of views. Superintendence by correspondence leads to misunderstandings on both sides, engenders distrust, and creates an atmosphere of criticism, which is greatly to be deplored. In England and Wales, although it is recognized that there are not the same geographical difficulties, the thirty-nine prisons are each visited at least twice a year by members of the Prison Commission, and two or three times a year by one of the assistant Prison Commissioners. In addition, special attention may be given to any one institution when peculiar conditions require it. One of the three Canadian inspectors, whose duties began April 1, 1935, had, up to November, 1937, spent only 49 days in the institutions.

(1) VISITS TO PENITENTIARIES BY INSPECTORS

(Taken from Report by Penitentiary Branch)

1932-3

Dorchester	St. Vincent de Paul	Kingston and C.B.	Man.	Sask.	B.C.
None	2	1	1	1	1
		1933-4			
5	3	11	2	2	2
		1934-5			
1 2	3 10	5 2	None None	None None	None None
		1935-6			
None	4	1	2	2	2
		1936-7			
2	1	1	None	None	None

Apart from the infrequency and inadequacy of inspections, another consideration has been overlooked. Penitentiary regulation 53 reads as follows:

> "A convict may be permitted to see the Superintendent, or one of the Inspectors, on the occasion of the visit of any such officers to the penitentiary, upon making a request to that effect."

It will be seen that this permission has not been of much value to the inmates of Canadian penitentiaries. Even when visits are to be made by inspecting officers, the inmates are not advised, and, in practice, interviews are not encouraged or facilitated. Two of the inspectors have never held any interviews with inmates, and the total number of such interviews could be regarded as negligible.

Your Commissioners are of the opinion that an inspector should not be junior in rank and pay to a warden, and that it is highly undesirable that a warden should be subject to inspection by an officer who hopes to be promoted to his rank.

Dismissal of Officers

Many complaints were made to the Commission by those who had been summarily dismissed from the penitentiary service since the present Superintendent assumed office. Your Commissioners explained to all those who came before them that such cases would not be reviewed for

the purpose of determining whether or not there had been good cause for dispensing with the services of any particular officer, because we did not believe that we had, in any sense, been created as a board of review to deal with particular cases. To deal with particular cases would have required a complete investigation of all the circumstances bearing on the service of each individual, and it would have been necessary to permit both sides to adduce evidence for, and against, their respective contentions.

Nevertheless, your Commissioners consider that the practice that has prevailed in dispensing with the services of officers is of manifest importance in the administration of the penitentiaries as a whole. Until 1933, appointments were made to the penitentiary service by the Civil Service Commission. Since that date, the Superintendent, inspectors, wardens, deputy wardens, and such other administrative or executive officers as are required, have been appointed by order in council, and the subordinate officers, such as guards, trade instructors, etc., by the Superintendent, on the recommendation of particular wardens. Although officers were appointed by the Civil Service Commission prior to 1933, they were dismissed or released by the Minister, on the recommendation of the Superintendent.

The Superintendent was requested to furnish the Commission with a statement showing the names of the officers who have been released from the service since he took office, together with the reasons for such releases. In dealing with the matter, we have not taken into consideration the cases of those officers who were released from the penitentiary service due to the closing of the special institution that existed for a short time at Piers Island, British Columbia.

When the Superintendent assumed office, there were 767 officers engaged in the penitentiary service, and, on the 30th of November, 1937, there were 899. Of the 767 officers in the service on the 1st of August, 1932, 303 were released between that date and the 30th of November, 1937; 224 prior to the 8th of October, 1935, and 79 since that date.

On the record furnished to us, the reasons shown for the release of many of the officers are indefinite, and denoted only in the following manner: "Services dispensed with"; "Dismissed"; "Retired to promote efficiency"; "Let out"; "Ceased to be employed"; "Unsuitable." Others are denoted in a definite manner; ill health, old age, etc. Of the 224 previously mentioned as having been released prior to the 8th of October, 1935, 49 were released on account of age, ill health, etc., and 178 for other, and indefinite, reasons. Of the 79 released since the 8th of October, 1935, 30 were released on account of age, ill health, etc., and the remainder for indefinite reasons.

At Kingston Penitentiary, 152 officers were employed on the staff at the beginning of the period. Of these, 76 were released between the 1st of August, 1932, and the 30th of November, 1937; 62 prior to the 8th of October, 1935, and 14 since that date. Of the 62 previously mentioned, only 3 were released on account of age, ill health, or for a stated specific cause, and the remainder for other, and indefinite, reasons. Of the 14

released since the 8th of October, 1935, 5 were released on account of age, ill health, etc., and the remainder for indefinite reasons.

At St. Vincent de Paul Penitentiary, 177 officers were employed on the staff at the beginning of the period. Of these, 50 were released between the 1st of August, 1932 and the 30th of November, 1937; 28 prior to the 8th of October, 1935, and 22 since that date. Of the 28 previously mentioned, 3 were released on account of age, ill health, etc., and the others for indefinite reasons. Of the 22 released since the 8th of October, 1935, 5 were released on account of ill health, age, etc.; the remainder for other, and indefinite, reasons.

At Dorchester Penitentiary, 75 officers were employed on the staff at the beginning of the period. Of these, 23 were released between the 1st of August, 1932, and the 30th of November, 1937; 13 prior to October, 1935, and 10 since that date. Of the 13 released prior to October, 1935, 7 were released on account of age, ill health, etc., and 4 for other, and indefinite, reasons. Of the 10 released since October, 1935, 6 have been released on account of age, ill health, etc., and the others for indefinite reasons.

At Manitoba Penitentiary, 87 officers were employed on the staff at the beginning of the period. Of these, 18 were released between the 1st of August, 1932, and the 30th of November, 1937; 16 prior to October, 1935, and 2 since that date. Of the 16 released prior to October, 1935, 12 were released on account of age, ill health, etc., and 4 for other, and indefinite, reasons. The 2 released since October, 1935, were released for indefinite reasons.

At British Columbia Penitentiary, 92 officers were employed on the staff at the beginning of the period. Of these, 62 were released between the 1st of October, 1932, and the 30th of November, 1937; 56 prior to October, 1935, and 6 since that date. Of the 56 released prior to October, 1935, 11 were released on account of age, ill health, etc., and the remainder for other, and indefinite, reasons. Of the 6 released since October, 1935, 3 were released on account of age, ill health, etc., and 3 for indefinite reasons.

At Saskatchewan Penitentiary, 110 members were employed on the staff at the beginning of the period. Of these, 41 were released between August 1, 1932, and the 30th of November, 1937; 31 prior to the 1st of October, 1935, and 10 since that date. Of the 31 released prior to the 1st of October, 1935, 6 were released on account of age, ill health, etc., the remainder for other, and indefinite, reasons. Of the 10 released since October, 1935, 5 were released on account of age, ill health, etc., and 5 for indefinite reasons.

At Collin's Bay Penitentiary, 74 officers were employed on the staff at the beginning of the period. Of these, 33 were released between the 1st of August, 1932, and the 30th of November, 1937; 18 prior to October, 1935, and 15 since that date. Of the 18 released prior to October, 1935, 2 were released on account of age, ill health, etc., and 16 for other, and

indefinite, reasons. Of the 15 released since October, 1935, 2 were released on account of age, ill health, etc., 6 on account of reduction of staff, and 7 for indefinite reasons.

Having regard to the number employed on the staff of each of these penitentiaries, it will be observed that at Kingston, St. Vincent de Paul, British Columbia, Saskatchewan, and Collin's Bay penitentiaries, an unusual number were released between August 1, 1932, and October, 1935. The Superintendent has explained to us that this course was taken in an effort to improve the efficiency of the penitentiary staff.

Following the disturbances at Kingston Penitentiary in 1932, the Superintendent, who then had been about four months in the penitentiary service, made a special investigation in regard to the penitentiary staff there. Officers were called before him and questioned, and a report was subsequently made regarding them. These interviews were of short duration, and could afford the Superintendent little opportunity to appraise the officers' ability fairly. On the 12th of December, 1932, the Superintendent made a report to the Minister of Justice, recommending the immediate retirement of 36 officers, and submitting a further list of the names of 28 officers, who were stated to be unsatisfactory, and who were to be specially reported on by the warden of the penitentiary. These lists were subsequently reviewed by the Superintendent, the warden, and the Minister of Justice, with the result that 29 officers were recommended for immediate retirement " to promote the efficiency of the service." Others, whose names appeared on the above list, are still on the staff.

As has been stated, it is not considered part of our duty, and, in fact, it would be quite impossible for us adequately to investigate the merits of each of these particular cases with a view to deciding whether or not the conclusions of the Superintendent were correct, but it is relevant for us to deal with the method adopted in handling such cases.

Without having received any previous warning that their dismissal was contemplated, the officers were peremptorily notified that they had been retired " to promote efficiency of the service." No further explanation was given. The officers were not informed as to why they were being retired. In some cases which have been drawn to our attention, the report to the Minister shows charges of neglect of duty, based on evidence " taken behind the officer's back," without opportunity being given him for explanation or defence. The warden remonstrated with the Superintendent on this method of dealing with these officers, but he was overruled in such a manner that it almost precipitated the warden's resignation. Naturally, these officers feel that a great injustice has been done them. They believe that they have been peremptorily and arbitrarily deprived of their living. They are suspicious of what has taken place, and they feel that they ought to have been advised of the reasons why it was considered that their retirement was necessary to promote the efficiency of the service.

In one case that was drawn to our attention, the Superintendent reported to the Minister that a particular officer had been guilty of a

specific neglect of duty, and this was given as the reason for recommending his retirement. No other complaint was made as to his efficiency, no charge was laid against the officer, and at no time was he given any opportunity of explaining the neglect of duty that has been given as the reason for his release. The course adopted by the Superintendent in these cases appears to be against the spirit, if not the letter, of the regulations for which he himself has been responsible. Rule 503*a* reads as follows:

"The Warden may suspend any penitentiary officer or employee who is guilty of misconduct, inefficiency or neglect in the performance of his duties, and remove such suspension; but the dismissal of any such officer or employee, if recommended, shall not take effect until the recommendation of the Warden in that behalf has been approved by the Minister of Justice."

Rule 503*b* reads as follows:

"The Warden shall, upon suspending any such officer or employee, inform him of the reason or cause for such suspension, and report the same to the Superintendent."

In dealing with the matter before your Commission the Superintendent gave evidence as follows:

"Q. In connection with officers. The practice has been that when you discharge an officer he is given notice that his discharge or retirement is to promote efficiency in the service, or in the interests of efficiency in the service. He is given no other explanation as to why he is being dismissed. That is correct?

A. That is the practice.

Q. What do you think of that?

A. I think it is decidedly unfair.

* * * *

Q. You say it is unfair?

A. In my opinion.

Q. Then why is it done?

A. That is something to which I do not know the answer.

* * * *

Q. I asked you if you got instructions to that effect, that is, that you should remove some officers without giving any other reason than simply saying it was to promote efficiency. Did you get instructions to that effect? If not, why is it done?

A. It is following the practice of the service.

Q. You say it is absolutely unfair?

A. In my opinion."

Referring to the regulations, the witness was questioned;

"Q. You made the amendments?

A. I did. It is my opinion that if a man is suspended or anything

else he should be given at that time the reason for it, or as soon thereafter as possible. As far as I know, since this regulation came into effect that has been done in every instance.

* * * *

Q. We have seen recommendations from you for the retirement of an officer to promote efficiency, and that was the only reason given. Now, you say that that is unfair?

A. Yes, sir.

Q. Why do you do it?

A. I submit the report to the department and the decision comes from the department.

* * * *

Q. Do the regulations prevent you from giving a reason to the officer who is retired?

A. No, I don't think so.

* * * *

Q. You passed this on and . . . is found guilty of these things and is given no opportunity of even defending himself.

A. Yes, sir.

Q. That is a most unfair procedure to be applied to any officer. You have admitted it is unfair, so I say: Why was it done?

A. I cannot answer; I am unable to answer.

* * * *

Q. May we take it that these men mentioned in this list were treated in the same way?

A. You mean, according to the regulation?

Q. No, that they were dismissed without the opportunity of being heard in their own defence?

A. I think that is correct, as far as I remember."

Without discussing the merits of individual cases, it is evident that this course of dealing with officers is bound to destroy the morale of the staff. Officers in a department of justice—or in fact any other department of Government—should not be subject to dismissal on the word of gossiping tale-bearers. We quite recognize that inefficient officers should not be retained on the penitentiary staff. We also recognize that it is not in the interests of the administration of the staff that each officer should be entitled, in all cases, to show cause why he should not be dismissed. On the other hand, common justice demands that, when an officer is found inefficient, he should be entitled to learn the reason for his release, and, when he has been released on account of any special neglect of duty or misconduct, he should not be found guilty of that neglect or misconduct and a report made against him without his being given an opporunity to explain his conduct.

Having regard to the great number of officers released in so short a period (in some penitentiaries a very heavy percentage of the staff) and

the manner in which they were released, your Commissioners recommend that the officers who have been summarily retired from the staff without special cause should be given an opportunity to qualify for re-engagement under the conditions for the engagement of penitentiary officers provided in this report. We are of the opinion that, if these officers can meet the requirements demanded, according to the principles that are herein laid down for the engagement of penitentiary officers, the fact that they have previously been released from the service should not militate against their subsequent engagement. In the event of there being specific cause for retirement, however, no officer should be re-engaged whose record is such as would indicate the improbability of his becoming a good penitentiary officer.

In order to strengthen the morale and security of the staff in the future, your Commissioners recommend that rules be adopted governing the termination of services of officers similar to those in force in England. The relevant rules, not dissimilar to those governing many police forces, are as follows:

"667. An officer who is in danger of dismissal shall have the right of a personal hearing, if he so desires, by the Commissioners, or one of them, before a decision on his case is formed. This will not, of course, apply to the case of a conviction of a serious offence before a Court of Law."

"670 (1) (*a*) When an officer is charged with an offence he will be reported to the Governor, and will be called upon to write his reply on the report, but he will first be allowed to see all the information against him, so that he may know exactly what he is accused of, either by the reporting officer or by the officers who have made statements in support of the charge. The report will be carefully investigated by the Governor and settled by him, if the case is within his powers.

(*b*) No adjudication will be made until the officer has been interviewed.

(*c*) Reports for being late should be dealt with on their merits, in the same manner as a report for any other dereliction of duty.

(*d*) In cases where an award is not made under Order 669, the reasons will be briefly recorded on the report sheet.

(2) If the Governor on consideration of the reports, and after interviewing the officer is satisfied that the offence has been committed, and that it is one which his powers of punishment cannot sufficiently meet, he will report the officer to the Commissioners, suspending him if, in his opinion, the offence is of such a grave nature that the officer should not continue to perform duty. In transmitting the report and the evidence with the officer's defence and "record of service," the Governor will set forth the facts upon which the charge is based in such manner as will put the Commissioners in full possession of the main features of the case which the

information enclosed is intended to support in detail. The Governor will also report as to the general character, trustworthiness and efficiency of the officer, as such knowledge is essential to the Commissioners for a proper adjudication of the case. When the decision of the Commissioners has been received it will be communicated to the officer by the Governor, either verbally or in some other manner not open to general inspection. The Governor will, if desired, allow the officer to have a copy of the actual words of the Commissioners conveying the decision, and to see the report which was made to him. (337, 338, 296, 582.)

(3) Where an officer has been suspended from duty, the Governor will, on the report to the Commissioners (338) request the instructions of the Commissioners as to payment of salary to the officer in respect of the period of suspension and pending receipt of such instructions no payment will be made in respect of such period.

(4) Reports against officers will be filed in the Governor's office and will accompany the record of service on transfer. They will be destroyed when seven years old.

(5) All awards by the Governor or by the Commissioners will be recorded by the Governor in the officer's record of service."

Accounting Policies

The present accounting system was inaugurated in 1934. The Penitentiary Branch receives a duplicate form covering all entries, with the exception of those between the different store accounts, which are recorded in the books of account at each penitentiary. In addition, a summary of all transactions is forwarded each month, and duplicate sets of accounts for each penitentiary are kept in the Branch by a representative of the Treasury. By virtue of this arrangement, a verification, or audit, of the transactions in the individual penitentiaries is practically reduced to an audit of the stores on hand. A periodical inspection is made to ensure that the procedure is being carried out in accordance with standing instructions sent out by the Branch. These appear to be comprehensive and complete.

All cash received on acount of the penitentiaries is immediately deposited to the credit of the Receiver-General. These receipts come mainly from the sale of custom work, farm products, and work done for Government departments, such as mail bags, etc.

Disbursements made through petty cash are carried on the imprest system, and a nominal limit is fixed which, however, may be exceeded when a number of prisoners are being released and disbursements are necessitated which exceed the limits of the fund.

There is also the "Convicts' Trust Fund," but this is kept in a special trust account in the bank, and withdrawals can only be made on the applications of prisoners, when approved by the warden, the Superintendent, or the Minister, or Deputy Minister of Justice.

The accounts provide a proper classification covering expenditures as follows:

Capital investment;
Capital disbursements;
Fixed assets covering land, buildings, and equipment;
Stores account;
Cash account;
Maintenance charges for buildings and equipment;
Convicts' maintenance;
Shop activities;
Executive and administrative expenses;
Revenue.

These divisions are all classified under a complete series of accounts whereby analysis and comparison may be made when and where necessary.

All stores and supplies for each penitentiary are requisitioned through the Branch on a calendar basis, which provides a classification of the items normally handled throughout the year. This makes it necessary for the store-keeper to requisition his requirements of standard specified items in each month by the year.

Under this system, the responsibility of placing orders, settling prices, etc., rests with the purchasing agent at Ottawa, who is responsible to the Minister and his deputy. The general store-keeper in each penitentiary receives a copy of the order placed for his particular institution, and must see that the goods delivered are in accordance with it in quality and price.

In each penitentiary there is a general store-keeper and assistants in charge of the general stores. Records are provided to keep a constant check on, and running inventory of these. Probably due to lack of proper facilities, and also for the purpose of convenience, stores are released by the store-keeper to the different shop instructors, the steward, and the officers in charge of the change room, hospital, engineering department, etc., who are provided with similar records to account for the stores and supplies passed through their hands, or still in their custody, and these officers are required to take a monthly inventory, which is checked against the stores ledgers kept by them. It has been found that this routine is not followed, and your Commissioners believe that it is not practicable to do so under present conditions. It would be much better if proper stores facilities were provided, preferably outside the walls of the prison, under the complete charge and control of the penitentiary store-keepers. Releases could then be made as necessary, and the stocks in the miscellaneous stores depot would be reduced to an absolute minimum, or entirely eliminated.

In the general books of account kept by the accountant, stores control accounts covering each stores depot are maintained. Your Commissioners recommend that a periodical physical check of each stores depot be made by, or in the presence of, the accountant or his assistant, in order to verify balances carried by him in his ledger. In Kingston and St. Vincent de Paul penitentiaries, when a new inventory is taken, all store inventories,

with the exception of the penitentiary stores, are checked by the accounting department. The penitentiary stores are not physically verified by the accountant at any time. In Collin's Bay Penitentiary the general storekeeper maintains, under his own custody, a separate store-room in the steward's department, and he is present, and checks the receipt of those stores, such as meat, bread, etc., which are actually going into immediate consumption, and which are at once released to the steward. Your Commissioners strongly recommend that such a procedure be established in all other penitentiaries.

As already noted, the purchase of stores and supplies is based on requisitions emanating from the individual penitentiaries. As their consumption represents a very large part of the expense of operating the penitentiaries, they should be under complete control as to proper use and the prevention of unnecessary accumulations. Proper facilities for storage and handling are also essential, and this matter has been given much attention by the Branch. Circular 48, of June 24, 1937, outlined an improved system, which, it was stated, would provide a more complete record and analysis of the consumption of foodstuffs, and so ensure a better control of this important item of expense.

The instructions provide for control of repair shops, capital additions, and purchase of equipment, by making it necessary to apply to Ottawa for everything. This procedure is quite correct, but, in view of the unnecessary correspondence it would entail, it should not be applied to minor repairs. All construction work is carried out by the prisoners under the immediate direction of the technical staff and the supervision of the chief engineer of the Branch. Some of these projects, such as at Collin's Bay and St. Vincent de Paul, are very extensive and run into substantial sums. Careful planning and co-operation between all officials is therefore necessary to prevent a waste of time and money and, as pointed out in another chapter, a plan, and "set-up" specifications, covering all other necessary details, should be made at the inception of such work. Unfortunately, this has not been done, and avoidable delays in the completion of construction projects, which were due to the absence of a complete initial plan and proper organization of the work, have been brought to the attention of your Commissioners. Another reason why this has not been done may be that the chief engineer's staff does not include the necessary number of technical assistants required. This condition should be rectified.

Service charges, covering such items as electric light and power, maintenance of prisoners in outside institutions, medical fees, etc., are verified and recorded in the account books. Three times each month these items are listed, with duplicate invoices, and are forwarded to the Branch for payment.

The industrial and farming operations carried on at the penitentiaries are well covered by the records and books provided by the system now in use. In the opinion of your Commissioners, however, the records for all these activities should be maintained in a central office in charge of a

competent accountant. To a certain extent, this is carried out in Kingston and St. Vincent de Paul, and there is no reason why records covering all such activities should not be similarly centralized in every penitentiary. Such centralization would release the instructors from this extraneous responsibility and allow them to devote more time to the instruction of the men under their charge.

Your Commissioners believe that, by eliminating duplication of accounting, the work could be made less complicated and burdensome. This suggestion would also apply to the local control of expenditures and the book-keeping work involved, which would be greatly lessened by the elimination of duplicate records.

Estimates are made on the basis of purchases, rather than on that of requirements for consumption; thereby implying that, whereas the accounting records are kept on a revenue and expenditure basis, the budget is prepared on a cash basis. Your Commissioners are of the opinion that the budget and the accounting records should be on the same basis—that of revenue and expenditure. Otherwise, the whole object of budgetry control is not obtained.

Your Commissioners found that there is a lack of uniformity in the classification of the estimates for maintenance expenditures. Instead of being classified according to category of expenditure, as shown in the book of accounts, the estimates of maintenance expenditures are classified by shops, giving the details for material to be used during the next twelve months. Consequently, the comparison of budgetry estimates with monthly trial balances is almost impossible, and the benefits of budgetry control are diminished accordingly.

Your Commissioners recommend a standard procedure for all shops. Lack of uniformity in procedure affects the degree of control that can be exercised over materials in stock in the various stores and the accuracy of the charges.

Your Commissioners believe that proper accounting records should be kept to show the complete cost of maintenance of prisoners, including supplies, custody, interest on investment in plants and buildings, etc., so that accurate information in this regard may always be available to the public.

Further details of the accounting system, and recommendations for its improvement, will be found in two reports made by experienced chartered accountants who, on the instructions of the Commission, conducted a survey. These reports, from which most of the above data has been taken, are filed in the offices of the Commission.

STAFF

Superintendent

The office of Superintendent of Penitentiaries has been held by General D. M. Ormond since August 1, 1932. Prior to his appointment, he was District Officer commanding Military District Number 13, performing the duties and holding the rank of colonel, with the honorary

rank of brigadier-general. From February 3, 1920, to August 1, of the same year, he was Superintendent commanding "A" Division of the Royal Canadian Mounted Police. Prior to that appointment, he had been on active service with the overseas forces during the Great War. He is a member of the Manitoba Bar, to which he was called in 1909.

When the Superintendent assumed office he introduced into the penitentiary system a more drastic policy of militaristic control than had prevailed during the previous administrations. The character of this policy has already been dealt with. The action taken to divest experienced wardens of authority, even in the most trivial and inconsequential matters, and to subject them to a minute direction in detail, and the profusive issue from day to day of new regulations and lengthy circulars, explaining, countermanding, and amending previous ones, soon threw the whole penitentiary system into a state of confusion. We regret to find that it has continued in the same state ever since.

The Superintendent, who was without experience, has since made no effort to call the wardens into consultation or to hold annual wardens' conferences, such as had been the custom under previous administrations. Within a year of his appointment, such friction developed that it resulted in the retirement of two of the three inspectors.

Early in 1934, the revised regulations, which had been hastily compiled and ill-considered, were issued. The number of regulations was increased from 194 to 724; they were drafted without the assistance or advice of experienced officers, and, although only seven or eight copies were immediately available at even the largest penitentiaries, they were issued with peremptory instructions to put them into force. The result was that officers throughout the penitentiary service were required to enforce a voluminous, and in many cases obscure, code of rules governing their own conduct and the conduct of the prisoners, without even having had an opportunity to read them. As has been pointed out, when one warden asked that the enforcement of the new regulations be postponed, he was immediately threatened with dismissal.

In the interpretation of these regulations, the Superintendent has in many cases put an unduly severe construction upon them, and, in some instances, he has deliberately violated their terms, with consequent unwarranted hardship to the prisoners.

In Kingston Penitentiary, a number of prisoners were placed, on the direction of the Superintendent, in what was called "segregation." This did not amount to mere isolation of the prisoners from the rest of the population, but was, in fact, although not so called, a form of punishment. Many were not allowed normal employment, and were deprived of some of the ordinary penitentiary privileges. We can find no authority for this course in the penitentiary regulations, nor was the Superintendent able to justify it, to our satisfaction, in his evidence before the Commission. Many of these prisoners were kept in, what might almost be termed, solitary confinement (although not in punishment cells)—some for a period of over two years.

Regulations 66 and 67, which provide for what is called "Disassociation," are as follows:

"66. If at any time it appears to the Warden that it is necessary or desirable for the maintenance of good order or discipline, or in the interests of the convict, that he should not be employed in association, the Warden may arrange for him to work temporarily in a cell or other place, and not in association. The Warden may take action but shall report any such case to the Superintendent for approval and direction.

67. It shall be in the discretion of the Warden to arrange for such dissociated convicts to be again employed in association when he considers it desirable, and he shall in any case so arrange at the expiration of one month from the commencement of the period of dissociated employment, unless further authority is given from month to month by the Superintendent."

The object of these regulations is to remove from the penitentiary population prisoners who may be agitators, or of an incorrigible type, and a disturbing element to the maintenance of discipline in the institution. We quite recognize the necessity of these regulations, but regulation 67 is important, and it is necessary that it should be observed. In the cases above referred to, this regulation was not observed, and the prisoners were kept segregated for long periods without any steps being taken to obtain the necessary authority.

The Superintendent contended before the Commission that these regulations did not apply to the prisoners in question, and maintained that the object of these regulations was to permit the wardens to give solitary confinement without a trial. We do not agree that this is a correct interpretation, and, if it is, we are of the opinion that such drastic power ought not to be in the hands of the wardens, because it is contrary both to the spirit and the letter of regulations otherwise dealt with in this report.

The Superintendent submitted to the Commission that the manner of dealing with these prisoners was covered by the power vested in the classification boards. The fact is that the Superintendent did not leave the matter to the classification boards, but overrode them and the regulations in regard thereto by issuing orders that certain prisoners should be placed in "permanent segregation," and that others should be "indefinitely segregated." The matter was taken out of the hands of the classification boards, and they were given no opportunity to review the cases of these prisoners, or to consider when they should be removed from the so-called "segregation" and restored to the ordinary penitentiary population.

The expressions contained in correspondence affecting many of these prisoners indicate an unduly vindictive attitude of mind. In one letter, addressed to a warden, the Superintendent used the following language:

"Undoubtedly you will receive many complaints from these convicts wishing to know why they should be placed in the east

cell block. It is not necessary for you to give them any information. If any information is given nothing more is necessary than to say that that is a part of the penitentiary in which it has been decided to confine them."

In regard to these prisoners, the Superintendent was asked whether the classification board should not meet regularly to consider these men and determine whether or not they should be kept in segregation. He agreed that it should be done, but that it had not been done to his knowledge. The direction to keep prisoners in permanent segregation does not indicate that he expected such a course to be taken. The Superintendent did not, from the year 1935 to September, 1937, visit the part of Kingston Penitentiary where these prisoners were confined. In our opinion, this shows a callous attitude and a clear neglect of duty.

The regulations governing the trial and punishment of prison offences were drawn up by the Superintendent, and were the object of a detailed brochure of instructions. Regulation 162 is as follows:

> " 162. A convict shall not be punished until he has had an opportunity of hearing the charge and evidence against him and of making his defence."

Notwithstanding the explicit provision of these regulations, we found it gravely violated, under the direct authority of the Superintendent, in a serious case involving corporal punishment at Kingston Penitentiary.

The warden had tried one, Price, a prisoner, on a charge of " attempting to incite trouble," and had found him guilty of two other offences mentioned in the regulations but not included in the description of the offence in the charge. He was sentenced to be flogged with 20 strokes of the leather strap. The warden reported the matter fully, as he was required to do, and forwarded a copy of the evidence to the Superintendent for confirmation of the sentence before it was executed.

We have perused the evidence and, in our opinion, it was not such as would have supported a conviction in a court of appeal, even for the offences of which, although he was not charged with these offences, the prisoner was found guilty. Notwithstanding this, the Superintendent, in a long letter to the warden, reviewed the evidence in detail, the manner in which it had been given, and suggested the form of answers the guards should have given. He pointed out that the offences for which the prisoner had been found guilty were not covered by the charge. Notwithstanding this, his letter states:

> "A perusal of the evidence would appear to indicate that Price was guilty of the following, under Regulation 165,"

and sets out four separate offences. This was followed by the following statement:

> " Copy of the evidence is returned herewith, and would appear to support the charges as redrawn."

The letter concludes:

"It is considered that Price has been sufficiently put on his trial under the charges as now re-drawn, and that he is guilty of gross misconduct requiring to be suppressed by extraordinary means. Your award of:

(1) Twenty strokes of the leather strap, ten (10) strokes to be administered immediately, and ten (10) strokes suspended, under the provisions of Regulation 231; and

(2) Twenty-one (21) days No. 2 diet; is approved.

It is presumed that this convict will be kept segregated indefinitely."

When the Superintendent appeared before your Commission, he was asked to explain the course taken in this matter. The following are relevant extracts from the evidence:

"Q. Now General, how do you expect the wardens to carry out the instructions contained in the brochures or lectures or anything else, when the Superintendent convicts a man and authorizes his punishment on charges upon which he has never been tried?

A. I see your point in that.

Q. It is not a question of seeing the point. Can you expect the wardens to deal with things regularly in the face of that? What was your justification for authorizing punishment for a man on a charge he had never been tried on?

A. With that letter as it stands, obviously your point of view is correct.

* * * *

Q. Frankly, I expected another answer than that, General. Do you realize the seriousness of this matter? Here is a man who is found guilty on what I think might be termed an indictment. You write a letter to the warden telling him that that is not the way the man should have been tried, and you find him guilty on something else, on a more serious charge?

A. I agree.

Q. And then you agree with the judgment that corporal punishment should be inflicted?

A. Yes, sir. The only explanation I have to offer is that the words used in the paragraph which says what you say it says—I admit the letter as it stands is wrong in every way."

Regulation 162 has the force of law. Your Commissioners cannot come to any other conclusion than that this prisoner was illegally flogged at the direction of the Superintendent, whose duty it was to review the findings of the warden but who had no legal right to substitute the new charge and to pass a finding on that charge without giving the prisoner an opportunity to defend himself. It is an elementary principle in the administration of criminal justice, which has prevailed in British countries for centuries, that no person shall be found guilty or punished for an

offence without being properly charged and convicted at a trial where he has had an opportunity of hearing the charge and presenting a defence.

The same prisoner involved in this incident had previously complained to the Superintendent, on an occasion of his visit to Kingston Penitentiary, that he had been badly manhandled by a guard. Notes on file, made by the Superintendent at the time, are:

> "Case investigated. This man 'faker,' was perhaps badly handled by guard—but not hurt.
>
> D. M. O."

There is no suggestion that the guard was ever reprimanded for badly manhandling the prisoner, and the investigation apparently closed without further consideration of the matter.

This is the same prisoner who was shot during the disturbance in 1932. His case is fully dealt with in Chapter VII of this report. He is a young man who has several times been convicted for crime and, for the purpose of this report, may be assumed to be an incorrigible offender, but, nevertheless, there is no place in our administration of justice for the treatment he has received at the hands of the prison authorities. He was shot without legal justification, flogged illegally on charges on which he had never been tried, assaulted by a guard, and kept indefinitely in segregation. All these matters came directly to the attention of the Superintendent, and he was directly responsible for the irregularity of the flogging and indefinite segregation. He failed to treat the other matters with the justice appropriate to his important position.

In the opinion of your Commissioners, it is incumbent on those engaged in the administration of justice to see that its officers are ever vigilant in obeying the law. No place is this vigilance more necessary than in the administration of a prison system. Prison officials must necessarily be vested with great authority, and this authority must always be exercised with wisdom and restraint. Its unlawful use can never be tolerated. Prisoners are as much entitled to the protection of the law as any other members of society. Our system of administration of law depends on public respect for those who administer it. Wanton and unlawful acts by prison officials toward prisoners are degrading, and bring the law into disrepute. They also tend to develop violent and incorrigible prisoners.

The Superintendent has been required by the provisions of the Penitentiary Act to make an annual report to the Minister of Justice:

> "The Superintendent shall make an annual report to the Minister on or before the first day of September in each year, *which shall contain a full and accurate statement of the state, condition and management of the penitentiaries* under his control and supervision for the preceding fiscal year, together with such suggestions for the improvement of the same as he may deem necessary or expedient, accompanied by such reports of the officers of the penitentiaries, and financial and statistical statements and tables as he deems useful or as the Minister directs."

This report is printed, and laid before both Houses of Parliament. It is circulated widely. Your Commissioners regret to find that many of these reports have been gravely misleading in important matters affecting penitentiary management. Recent reports have been so drawn as to indicate that prisoners are effectively classified, that a complete system of training of young offenders, comparable to the Borstal system in England, is in effect in the penitentiaries, that the prisoners receive competent vocational training, and that a comprehensive system of education is in effect. The annual report of 1935 states:

> "During the first month that a convict is in a penitentiary, he is classified, his educational standing being one of the principal points ascertained from the examination held and tests applied."

The annual report of 1936 states:

> "The Classification Board in each penitentiary has been functioning satisfactorily.
>
> Following the policy advocated for many years, the actual segregation of convicts under twenty-one years of age was brought into effect. This segregation included all "A" Class convicts and "C" Class convicts under twenty-one years of age."

The report of 1935 contains an elaborate report of the Superintendent on his study of the "Borstal System" of England, and a statement of "the arrangements presently being put into effect" in regard to the treatment of young offenders. The report states:

> "The type and nature of treatment for young convicts will follow as closely as possible that presently existing in the Borstal institution of England."

In reference to the officers to be in charge of young prisoners, the following statement is made:

> "Each supervisor will be called upon to have an intimate knowledge of the history, character, disposition and capabilities of approximately thirty young convicts.
>
> It will also be necessary for him to carry on correspondence with their relatives and other persons who may be in a position to give useful information considered to be essential in the treatment to be applied to each individual."

In the report of March 31, 1936, the segregation of the young prisoners is detailed, and the following statement is made:

> "This segregation has necessitated the detailing of specially selected officers to supervise the young convicts, this being one of the reasons for the retention of officers in excess of the minimum authorized establishments."

In the report of 1937, the following statement is made:

> "The segregation of young convicts is now accepted by the penitentiary staffs as an ordinary and routine practice, the results of which are reported to be beneficial."

As indicated in our report, such statements as these are entirely misleading in form and substance, and convey erroneous impressions to the public in respect to the treatment of young prisoners.

The report of 1935 contains the following statement:

> "Vocational training is carried on throughout the whole year, and includes agriculture, carpentry, metal-work, motor mechanics, plumbing, painting, plastering, and all kindred building trades, tailoring, shoemaking, laundry work, cooking, catering, steam power plant management, water supply and sewage disposal. Vocational training is augmented by well equipped libraries for extensive research work, advanced and intensive studies."

In the opinion of your Commissioners, it was unfair to the Minister and to the public, and unjust to those who might be sentenced to serve terms in the penitentiaries, that the Superintendent should so describe the work carried on in the shops of Canadian penitentiaries.

In the report of 1935 the Superintendent states:

> "Changes and expansions have been made from time to time, until to-day each penitentiary has a program which covers every subject taught in the public schools, plus correspondence courses. Extra-mural university courses have been arranged in three penitentiaries. . . .
>
> Students following correspondence and extra-mural university courses are guided and aided in their studies outside of the hours that they are employed in the shops or at other work."

In the report of 1937, under the heading of individual penitentiaries, it is stated that "the school functioned in accordance with the regulations and instructions." A cursory inspection of the institutions and a perusal of wardens' reports show conclusively that this is not a correct statement.[1]

In January, 1936, in the case of *Rex* vs. *Carter and Goodwin*, the members of the Court of Appeal of the Province of Alberta had some doubts as to whether young prisoners in the Saskatchewan Penitentiary were afforded an opportunity of learning a trade, and, as a result, a telegram was sent to the warden, requesting information as to whether these young men would be enabled to learn a trade if they were to be confined in that penitentiary. The warden telegraphed to the Superintendent, quoting the telegram from the Court of Appeal, and the Superintendent wired directly to the Assistant Deputy Attorney General of Alberta as follows:

> "*Re* Appeal Court cases William Carter and Harold Goodwin stop Convicts under twenty-one years completely segregated in separate corridor with separate exercise yard stop Youths employed manual labour not less than six months after which assigned to agriculture construction building trade or shop depending upon capability and conduct stop Institution not overcrowded."

[1] See Chapter VIII for details.

On receipt of this telegram, the Court of Appeal confirmed sentence of two years' imprisonment in the penitentiary. Your Commissioners do not believe that the above telegram correctly answered the inquiry of the Court of Appeal. It is quite apparent that, under conditions as they are at the present time in the Saskatchewan Penitentiary, young prisoners are not given an opportunity to learn any trade whatever. They have the opportunity of taking part in any construction work that happens to be in progress, but they are not assigned to shops and the instruction they receive in particular trades is practically negligible. Your Commissioners consider that the telegram to the Assistant Deputy Attorney General is seriously misleading.

It has not been uncommon to read in the press that judges and magistrates, in sending young prisoners to penitentiary, have declared that they are sending them "where they will learn a trade." The gravity of publishing reports that mislead the public in this manner requires no further comment.

The evidence of the Superintendent before the Commission occupied eight days. He was given every opportunity to go into all phases of prison administration, and has since supplied the Commission with voluminous memoranda on matters discussed during his evidence and concerning which he was of the opinion that further information ought to be supplied. We have had ample opportunity to discuss with him the many matters drawn to our attention affecting his administration of the penitentiaries, and to consider his knowledge of penology, his disciplinary methods, his personality, and his general fitness for the office he holds. His evidence before your Commission was not satisfactory. It was characterized by long, irrelevant, and often evasive answers to simple questions.

He has displayed an irritating manner of exercising authority which, we are convinced, has been reflected, not only in the discipline of the penitentiary staff, but in that of the inmates, and, in our opinion, this was one of the major contributing causes of the sixteen riots or disturbances which have taken place since the Superintendent assumed office.

The Superintendent's particular part in the unsatisfactory aspects of the administration of the penitentiaries is referred to in detail throughout this report. His record since he took office has not been a success. He has displayed great diligence in exhaustive attention to a multitude of details, but he has, in the opinion of your Commissioners, failed to grasp fundamental principles so essential in the performance of the important executive duties connected with the office of Superintendent. He has completely lost the confidence of the staffs of all the penitentiaries and, without this, no administration can succeed. Your Commissioners are of the opinion that it is necessary to the good management of the penitentiary service that the Superintendent should immediately be retired, and they recommend accordingly.

Inspectors

Of the three inspectors now in the penitentiary service, J. D. Dawson, G. L. Sauvant, and E. L. O'Leary, neither Inspector Dawson nor Inspector O'Leary was possessed of any experience in a penal institution prior to appointment.

Inspector Dawson was a chartered accountant at the time of his appointment in July, 1933. He served overseas with the Canadian Expeditionary Forces. He has seldom been engaged in examining or reporting upon the state and management of the penitentiaries. In 1936, in company with Inspector O'Leary, he held a hearing to receive the complaints of about twenty prisoners, but he made no report on the subject to the Superintendent; the only report being made to the warden. He has never inspected the operation of any classification board, and his duties have been almost altogether confined to accounting work at the Branch and the supervision of accounting practices in the various institutions. Inspector Dawson was co-signer with ex-Inspector Craig of the discreditable report,[1] which was made as the result of an investigation into the alleged shooting into the cell of Timothy Buck, and was also responsible for a very unsatisfactory report on the shortage of coal at Kingston Penitentiary.[2]

Inspector J. L. Sauvant entered the penitentiary service in 1928, as teacher and librarian at St. Vincent de Paul Penitentiary. He was warden's clerk there in 1929, and appointed an inspector in July, 1934. He has been acting warden at St. Vincent de Paul Penitentiary since September, 1937. Inspector Sauvant is a university graduate, and, previous to his appointment as teacher and librarian at St. Vincent de Paul, had been instructor in the French language and other subjects at the Royal Military College at Kingston, Ontario. He also served in the French army from 1915 to 1919. He has made inspections only as, and when, instructed by the Superintendent. He has never interviewed any prisoners, and has made but two general inspections of the state and management of the penitentiaries (Dorchester and St. Vincent de Paul), and he has not inquired into the operation of any classification board. Inspector Sauvant prepared a brief for your Commission which contained some very valuable suggestions.

Inspector E. L. O'Leary had no experience in the penitentiary service before he was appointed inspector in April, 1933. He served with the Canadian Expeditionary Force, and, after his demobilization and before entering the penitentiary service, he was engaged in accounting work. He was specially assigned to the supervision of penitentiary industries. In January, 1936, he made a very thorough inspection of St. Vincent de Paul Penitentiary, reporting on the general conditions, discipline, and the functioning of the different departments of the penitentiary. He reported that the discipline at this penitentiary was too rigid in its application to the relations between the warden and the officers under him, and that the warden had not the requisite human

[1] See Chapter VII.
[2] See Chapter XXIV.

attitude toward staff or inmates. For this opinion he was sharply criticized—we think unjustly—by the Superintendent. Inspector O'Leary prepared a brief for the Commission, in which he dealt with different phases of the penal system and made some useful suggestions.

In all fairness to the inspectors it should be stated that they have only acted on specific instructions from the Superintendent and, although Inspectors O'Leary and Sauvant would have preferred to make more thorough inspections, as required by the Penitentiary Act, they were not given the opportunity to do so. They had no time to study such matters as they would have liked to study, and most of their time has been taken up with voluminous correspondence. They have not been invited by the Superintendent to confer with him on matters of policy or on questions relating to the betterment of the Canadian penitentiary service.

The work of the three inspectors leaves much to be desired. Inspectors O'Leary and Sauvant have been so limited and restricted in authority, and so largely confined to clerical work in the Penitentiary Branch, that it is difficult to judge their capabilities. Inspector Sauvant will have full scope to demonstrate his ability as acting warden at St. Vincent de Paul Penitentiary. We believe that Inspector O'Leary has not had an opportunity for development.

Inspector Dawson is the senior inspector. He has always worked in closer co-operation with the Superintendent than any of the other inspectors. While he may have qualifications as an accountant, we do not believe that he has proved himself a good penitentiary officer. He has had greater opportunity to show his ability than the other inspectors, and he has failed to do so. When assigned the duty of making important inquiries, he failed to perform his duty in a creditable manner, as otherwise indicated in this report.[1] He appears to have little knowledge of penology or practical penitentiary management. We do not believe that he has the capacity or temperament to fulfil the important office of inspector. Your Commissioners are of the opinion that he should be transferred to some other department of the Government service, where his accounting experience could be made full use of.

[1] See Chapter VII.

CHAPTER V

PRISON DISCIPLINE

DISCIPLINARY OBJECTIVES

Discipline should never be confused with punishment. It is a system of training, with the object of inculcating obedience to rules and respect for authority, and its intended effect is orderly conduct. Punishment, on the other hand, is the treatment given to those who infringe the rules.

In a penal institution, discipline applies to the staff as well as to the inmates. Two sets of rules are enacted by the authorities, one for the staff, and one for the inmates. These rules should be based on the principles of modern penology, as interpreted by our Penitentiary Act: first, the detention of prisoners in safe custody and, second, their reformation and rehabilitation. In enacting these rules, and in putting them into practice, this dual objective must constantly be kept in mind, and, in this connection, classification is of the utmost importance because the same supervision and custodial care are not required for all inmates, and the chances of success in reforming them vary widely.

It necessarily follows that one set of regulations for all penitentiaries, applying indiscriminately to all institutions and to all offenders, whether young offenders, accidental offenders, first offenders, recidivists, or incorrigibles, is bound to be unsatisfactory. When there are 724 regulations, which are by no means easily understood, and these are further supplemented, and at times confused, by more than 800 circulars and numerous brochures, the unsatisfactory nature of this set of regulations may well be understood. Comments on some of the present regulations will be made later in this report, but, at present, it is sufficient to state that they should be simplified, and that they should apply more particularly to the peculiar conditions existing in each institution. Your Commissioners trust that the treatment that is eventually prescribed will be based upon a sound and beneficial system of classification and segregation, such as is hereinafter recommended.

The regulations provide so many trivial offences that may be punished in a drastic manner that it is almost impossible for prisoners to avoid committing some punishable breach of the rules. It is, therefore, necessary for them to exercise constant vigilance and to evolve methods of avoiding punishment. They soon become expert in the practice and, on release from prison, carry with them a habit of concealment. Dealing only for the moment with those who are reformable, as opposed to incorrigible and habitual offenders, the present prison system is bound to result in a gradual demoralization of those subjected to it. They become spiritually, as well as physically, anaemic, lazy, and shiftless, physically and mentally torpid, and generally ineffective and unreliable. The maze of offences through which the prisoner must thread his way, and the

extent and variety of the punishments which may be inflicted upon him, are apparent from the following list of regulations:

"No. 163

A convict shall be guilty of an offence against Penitentiary Regulations if he:

1. Assault any Penitentiary officer, employee, or servant;
2. Disobeys any order of the Warden, or any other officer, or any Penitentiary rule;
3. Treats with disrespect any officer of the Penitentiary, or any visitor, or any person employed in connection with the Penitentiary;
4. Is idle, careless, or negligent at work, or refuses to work;
5. Is absent without leave from chapel or school;
6. Behaves irreverently in chapel;
7. Swears, curses, or uses any abusive, insolent, threatening, or other improper language;
8. Is indecent in language, act or gesture;
9. Commits a common assault upon another convict;
10. Converses or holds intercourse with another convict except during the times and periods permitted, or makes signs or motions to him;
11. Sings, whistles, or makes any unnecessary noise, or gives any unnecessary trouble;
12. Leaves his cell or other appointed location, or his place of work, without permission;
13. Leaves the gang to which he has been attached without permission;
14. Enters the cell of another convict, unless by permission and in the presence of an officer; or looks into cells, or loiters on galleries when passing to or from work;
15. In any way disfigures or damages any part of the penitentiary, or any article to which he may have access, or upon which he has been ordered to perform work, or which has been issued to him;
16. Commits any nuisance;
17. Has in his cell or possession, or takes into or out of his cell, any money, or any article or articles whatsoever other than such as are permitted;
18. Gives to or receives from any convict or any other person any article whatsoever without the permission of an officer;
19. Speaks to or communicates with any visitor except with the permission of an officer;
20. Converses or holds intercourse with an officer on any matter not connected with his work, the duties of the Penitentiary, or a proper request regarding his treatment;

21. Neglects to keep his person, clothing, bedding, and cell clean and neat;
22. Is at any time in any place where he ought not to be, or has not received permission to be;
23. Offers to an officer a bribe of any kind whatsoever;
24. Neglects to shut the gate of his cell after entering;
25. Neglects to rise promptly on the ringing of the first bell in the morning;
26. Neglects to go to bed at the ringing of the retiring bell;
27. Gives another convict any offence;
28. In any way offends against good order and discipline;
29. Attempts to do any of the foregoing things."

To these must be added a further twenty-five "Rules of Conduct and Prison Offences," contained in appendix I of the penitentiary regulations, and listed in a notice supplied to each inmate, making fifty-four offences in all, some of which appear to be repetitions of those listed in regulation 163. These are as follows:

"1. All privileges are dependent upon conduct and industry.
2. A convict shall not converse or hold intercourse with another convict except during the times and periods permitted.
3. He shall promptly and unhesitatingly obey the orders of the Warden or any other officer.
4. He shall treat with respect all officers, all visitors, and all persons employed in connection with the Penitentiary.
5. He shall not speak to or communicate with any visitor, nor give to or receive from such visitor any article whatsoever, except with the permission of an officer.
6. He shall not leave his cell or other appointed location, or his place of work, without permission.
7. He shall keep his person, clothing, bedding, and cell clean and neat.
8. He shall not waste, damage, or destroy, nor attempt to waste, damage or destroy any material upon which he is employed, and shall keep in good order all tools and implements entrusted to him.
9. He shall not give to, or receive from, nor attempt to give to or receive from, another convict, or any other person, any article whatsoever without permission.
10. He shall not commit any nuisance.
11. He shall in no way disfigure or damage, or attempt to disfigure or damage, any part of the Penitentiary.
12. He shall not refuse to work, nor be idle, careless, or negligent at work.
13. He shall not be absent without leave from chapel or school.

14. He shall behave reverently in chapel.
15. He shall not offer to an officer a bribe of any kind whatsoever.
16. He shall not swear, curse, or use any abusive, indecent, insolent, threatening, or other improper language, nor be indecent in act or gesture.
17. He shall not sing, whistle, or make any unnecessary noise, or give any unnecessary trouble.
18. He shall not have in his cell or possession, nor take into or out of his cell, any unauthorized money, or any article or articles whatsoever other than such as are permitted, and any unauthorized money, or any article other than an article the property of the Penitentiary, discovered in his cell or possession shall be forfeited to the officer discovering the same.
19. He shall not at any time be in any place where he ought not to be or has not received permission to be, and shall not enter the cell of another convict unless accompanied by an officer.
20. He shall hold communication with the officer in charge of him only on matters connected with his work, with the Physician only on matters connected with health, and the Chaplain only on spiritual matters.
21. He shall approach an officer in a respectful manner, and if desiring to speak to him, he shall address the officer as "Sir," and stand at attention while speaking to him.
22. He shall not look into cells, nor loiter on galleries while passing to or from work.
23. He shall exercise great care in the use of books, periodicals, papers, playing cards, or other articles permitted to him for cellular diversion, and shall not write in, destroy, mar, deface, nor disfigure them or any of them.
24. He shall shut the gate upon entering his cell.
25. He shall rise promptly on the ringing of the first bell, make up his bed, and clean and put his cell in order. He shall retire to bed promptly on the signal being given for that purpose."

These are considerably in excess of the number of offences provided by the rules of England, which number seventeen:

"1. Disobeys any order of the Governor or of any other officer of the prison, or any prison rule.
2. Treats with disrespect any officer or servant of the prison, or any person authorized to visit the prison.
3. Is idle, careless, or negligent at work, or refuses to work.
4. Swears, curses, or uses any abusive, insolent, threatening or other improper language.

5. Is indecent in language, act, or gesture.
6. Commits any assault.
7. Communicates with another prisoner without authority.
8. Leaves his cell or place of work or other appointed place without permission.
9. Wilfully disfigures or damages any part of the prison or any property which is not his own.
10. Commits any nuisance.
11. Has in his cell or possession any unauthorised article, or attempts to obtain such article.
12. Gives to or receives from any person any unauthorised article.
13. Escapes from prison or from legal custody.
14. Mutinies or incites other prisoners to mutiny.
15. Commits gross personal violence against any officer or servant of the prison.
16. In any way offends against good order and discipline.
17. Attempts to do any of the foregoing things."

Punishment for Prison Offences

Punishment for prison offences are contained in regulation 164:

"1. Forfeiture of tobacco and smoking privileges;
2. Forfeiture of conversational privileges;
3. Forfeiture of library privileges;
4. Forfeiture of privileges of seeing visitors;
5. Forfeiture of letter-writing privileges;
6. Forfeiture of remission of sentence, for a period not exceeding thirty days;
7. Extension of Probation Period, for a period not exceeding three months;
8. Hard bed, with blanket or blankets, according to the season, for a period not exceeding one month;
9. No. 1 Diet for not more than nine consecutive meals in accordance with Appendix III (1);
10. No. 2 Diet for a period of not more than twenty-one consecutive days in accordance with Appendix III (2);
11. Confinement in an isolated cell for a period not exceeding three days."

No. 164 A:

"For the offences described in Regulation 163 (15), the Warden may, in addition to any other punishment, sentence a convict to a deduction from any remuneration allowance which has been, or may be, allowed to the said convict, or the assessed value of the damage done by the convict, or the value of any article damaged or destroyed by him."

No. 165:

"If a convict is charged with and found guilty of any offence or repeated offence for which the punishments aforementioned are deemed insufficient, or is charged with and found guilty of any offence mentioned in this Regulation, the Warden may award that the convict shall be flogged or strapped in addition to any other punishment. The offences lastly referred to are:—

1. Personal violence to a fellow convict;
2. Grossly offensive or abusive language to any officer;
3. Wilfully or wantonly breaking or otherwise destroying any Penitentiary property;
4. When undergoing punishment, wilfully making a disturbance tending to interrupt the good order and discipline of the Penitentiary;
5. Any act of gross misconduct or insubordination requiring to be suppressed by extraordinary means;
6. Escaping, or attempting or plotting to escape from the Penitentiary;
7. Gross personal violence to any officer;
8. Revolt, insurrection, or mutiny, or incitement to the same;
9. Attempts to do any of the foregoing things."

No. 171:

"After six months' imprisonment in the Penitentiary, convicts may be awarded remission of sentence, as provided by statute, dependent upon their industry and the strictness with which they observe the prison rules. The number of days to be remitted for every month, within the statutory limits, shall be as the Warden may determine."

No. 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."

No. 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."

No. 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."

No. 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."

The English prison rules do not permit forfeiture, as punishment, in the case of conversational privileges, library privileges, privilege of receiving visitors, or the privilege of letter-writing. Smoking not being permitted, and remuneration not being paid, the English rules cannot provide forfeiture of tobacco and smoking privileges or deduction from remuneration allowance. The punishments they do provide are: forfeiture of remission of sentence, forfeiture or postponement of privileges, exclusion from associated work, cellular confinement, restricted diet, and deprivation of a mattress. When a prisoner is reported for having escaped, or attempted to escape, or for gross physical violence to a fellow prisoner, or for any other serious or repeated offence against prison discipline, the governor may report the offence directly to the Prison Commission, or to the visiting committee, which is given power to deal with such offences.

Your Commissioners do not agree with the Canadian provisions for punishment by deprivation of library privileges or the privilege of seeing visitors and writing letters, because such privileges are essential to prevent prisoners losing all contact with normal life. Your Commissioners do not believe, however, that it would be advisable, except with respect to the right of appeal, to follow the English provision that breaches of prison discipline should be referred to the official Board of Visitors or the Prison Commission.

Corporal Punishment for Prison Offences

The subject of corporal punishment is highly controversial. Corporal punishment for prison offences has been completely abolished in the United States, France, Belgium, and most of the European countries. In England, where an outstanding feature of the prison service is the absence of brutality, and a rigid enforcement of the rule prohibiting it even in cases of violent attack, corporal punishment, although retained for a special purpose, is rarely inflicted.[1] Individual retaliation is forbidden to English officers, but it is recognized that, in the interests of discipline rather than for the safety of the officers, flogging must be retained as a deterrent against violence.[2]

The only two offences mentioned in the English regulations for which prisoners may be condemned to corporal punishment are mutiny or

[1] See Report of the Departmental Committee on Corporal Punishment, Lond., 1938, pp. 141, 152 *et seq.*

[2] Benson & Glover—Corporal Punishment and Indictment.

incitement to mutiny, and gross personal violence to an officer or servant of the prison, and, even then, it may only be awarded by the visiting committee. This committee is composed of at least three members, two of which must be justices of the peace. Finally, corporal punishment thus awarded cannot be inflicted until a report, accompanied by a copy of the notes of the evidence and the grounds on which the sentence has been based, has been made by the visiting committee for transmission to the Secretary of State.

Canadian penitentiary regulations provide that corporal punishment may be inflicted for any of the prison offences mentioned in the regulations. The frequency with which it has been applied, however, has diminished in recent years.

Your Commissioners do not approve the present strap used for inflicting corporal punishment for prison offences because of the holes punched in this instrument. We have not been satisfied that these holes serve any useful purpose, but rather that they add to the severity of the strap. We recommend that in future no straps in which holes have been made should be used in Canadian penitentiaries.

Regulation 165 provides that, with the approval of the Superintendent, the warden may, whenever he shall decide that other punishments would prove ineffectual, inflict corporal punishment for any of the offences mentioned in regulations 163 and 165. In addition to the approval of the Superintendent, however, a certificate must be obtained from the medical officer before corporal punishment may be administered, and it may only be administered in the presence of the medical officer.

Having in mind that there are in the Canadian penitentiaries a large number of vicious and incorrigible criminals, your Commissioners are of the opinion that, in the interests of the maintenance of discipline, it is advisable to retain the right to administer corporal punishment, but that the English policy should be put into effect in Canada so that corporal punishment may only be inflicted, with the authorization of the Prison Commission, for mutiny, or incitement to mutiny, and gross personal violence to any officer or servant of the prison.

Trial for Prison Offences

Trials for prison offences constitute a most perplexing problem in the administration of penal institutions. They have important consequences, both for those who are in the institutions, and those who have been discharged from them.

If a normal prisoner believes that he and his fellow inmates are justly treated and only punished when guilty, he will be amenable to prison authority, and much disciplinary trouble will disappear. If, on the other hand, he feels that he is unjustly punished without a fair chance to defend himself, he will become anti-social, embittered, and uncontrollable. This state of mind is contagious, and will be aroused even when he,

himself, is not the victim of the injustice. It is a major contributing cause of breaches of discipline, conspiracies, assaults, and riots in the penitentiaries.

The second consequence of injustice in dealing with prison reports is that, instead of instilling faith in human justice into the heart of the prisoner, which is an essential part of reformation, it will create in his mind a disbelief in justice and an unbreakable creed of scepticism and contempt, which cannot be eradicated, and which the prisoner will carry with him from the penitentiary. This scepticism and contempt is not only aroused by unjust treatment in the prison court, or by false and malicious reports made by hot-tempered, cruel, or merely untrained officers, but also by favouritism, whether it is prompted by ignorance or prejudice.

Unfortunately, under present conditions, which provide no proper or effective outlet for the complaints of the inmates, or any machinery for correcting mistakes in the enforcement of discipline, this feeling of injustice is quite prevalent in our penitentiaries. This is a situation which calls for immediate correction, although it should not involve any impairment of discipline. Discipline must be sternly enforced, authority must be fully respected, and infringement of the rules must be justly punished, otherwise the situation would be rendered chaotic and dangerous, and proper management could not be maintained.

Bearing all this in mind, it is necessary to examine the actual practice at present in force in our penal institutions with regard to trials for prison offences, and to consider what remedies, if any, will tend to eradicate defects which may exist.

When an officer or guard on duty makes a written report against an inmate the case comes before the warden's court the following day at noon. The inmate is brought before the warden or deputy warden, the charge is read to him, and he is asked to plead "guilty" or "not guilty." If he pleads "guilty," he is sentenced at once, and, if he pleads "not guilty," he is remanded. In most of our institutions a remanded inmate is sent to await trial in the isolation cells, where he is deprived of tobacco, given a hard bed and no seating accommodation. He also loses marks for remission of sentence because he is not permitted to work. During his appearance at court for the reading of the complaint, the prisoner must stand at attention, and is reminded of the regulations if he fails to do so. He is halted, and sometimes punished, if he dares to offer an explanation before being asked. If a prisoner has pleaded "not guilty," he has the right to "cross-examine" the complaining officer through the warden. This is done by the prisoner stating his questions to the warden, who, in turn, providing he believes them to be in order, questions the complainant.

One of the Superintendent's brochures outlines the procedure to be observed at these trials. It is copied from the procedure in force at regular court trials, even to mentioning well-established principles of

British criminal justice, such as that a person accused is to be presumed innocent until he is found guilty, and that the benefit of the doubt must always be given to the accused. Unfortunately, however, these principles are not generally followed in the warden's courts. Some wardens undoubtedly endeavour to observe them, but find that, in practice, it is almost impossible to do so.

Your Commissioners have been present at prison court trials where these principles have not been followed. A typical case was tried before us in one of the penitentiaries. An inmate, accused of smoking while travelling in the small tramway which runs to a quarry two miles from the prison, emphatically denied having done so. When cross-examined through the warden, the complaining officer was not prepared to swear that he had actually seen the inmate with a cigarette or pipe, or even that he had seen smoke coming out of his mouth. His evidence was to the effect that he had seen smoke coming from the side, or behind the head, of the accused inmate, who was sitting in company with five others on one of the tram benches. In spite of the insufficiency of this evidence the inmate was found guilty and punished. One of your Commissioners remarked to the warden that there was at least a doubt in that case, and that certainly the inmate would not have been convicted on such evidence in a court of law. The warden replied that he believed in his officer, knew the inmate, and, from this, considered the latter to be guilty. A few minutes afterwards, at the hour for hearing requests, and after the trials were over, another inmate came forward and stated that he had come to take the punishment inflicted upon the first inmate because it was he who had been smoking and not the man convicted. The confession was coldly received by the warden, who later informed your Commissioners that he did not believe it, and, although sentence was suspended on the first inmate and punishment inflicted on the second, your Commissioners came to the conclusion that a prisoner had little chance of fair or impartial treatment in that prison court.

Undoubtedly a prisoner usually finds it advisable to plead "guilty" because of the fear that, if he does not do so and yet is found guilty, the punishment inflicted will be much more severe than if he had pleaded "guilty" in the first instance. Your Commissioners realize that little else can be expected under the system at present in force. Whatever the guard reports the warden must believe, unless the whole system of discipline within the prison is to be undermined. Even if a warden suspects, or even knows, that the guard is lying, he has no choice but to take the guard's word against that of the prisoner.

The following statement gives the total number of offences tried in wardens' courts, and the number of acquittals and suspended sentences in each penitentiary, from April 1, 1930, to December 31, 1936:

—	1930-1	1931-2	1932-3	1933-4	1934-5	1935-6	April 1 to Dec. 31, 1936
KINGSTON							
Total Offences	1,834	2,012	1,581	1,871	1,745	857	584
Acquittals	15	13	110	156	147	48	27
Suspended Sentences	15	4	8	49	8	4	9
ST. VINCENT DE PAUL							
Total Offences	1,961	2,753	2,267	1,615	1,967	1,537	1,195
Acquittals	17	13	3	1	.....	.....	3
Suspended Sentences	38	19	46	17	44	24	.....
DORCHESTER							
Total Offences	874	1,032	1,205	954	572	499	379
Acquittals	17	28	40	20	1	1	.....
Suspended Sentences	101	55	27	3	2	2	.....
MANITOBA							
Total Offences	747	684	631	334	286	271	118
Acquittals	.....	.....	1	.....	1	1	.....
Suspended Sentences	1	1	.....	.....	.....	.....	.....
BRITISH COLUMBIA							
Total Offences	343	477	371	257	846	180	176
Acquittals	.....	.....	.....	.....	4	1	.....
Suspended Sentences	2	6	7	1	31	.....	1
SASKATCHEWAN							
Total Offences	738	468	338	169	97	529	292
Acquittals	.....	.....	.....	8	4	18	18
Suspended Sentences	.....	.....	.....	.....	.....	41	5

The serious defect in the present prison court system is that the inmate has no opportunity for redress or outlet by appeal. He is entitled to submit his name for an interview with the Superintendent or one of the inspectors when they come to make a visit to the institution, but, as has been pointed out, such visits are rare, and such officers do not deal with sentences given by the prison court.

Your Commissioners suggest the following remedies as being likely to remove in part, if not altogether, the serious defects they have found in the present system: first, officers and guards should be instructed to use their own judgment and discretion in making their reports. They should not be under obligation to report immediately against an inmate for a trivial offence when, in their judgment, a warning would be sufficient; second, officers and guards who nag and goad an inmate in order to provoke insolence should be discharged; third, when the warden has received a written complaint from an officer or guard, and before

bringing the accused inmate to the prison court, he should interview the guard and question him closely. If the warden is of the right type, and if he has the necessary knowledge of human nature, which wardens should possess, he will often find that the charge is exaggerated or incorrect and, in many cases, he will find it unnecessary to bring the inmate into court; fourth, trials should not be held before the wardens alone, but rather before a tribunal of three, composed of the warden, deputy warden or chief keeper, and the physician. This would tend to ensure that the trial would be impartial and the decision just; fifth, and the most important of the recommendations of your Commissioners with respect to this problem, an appeal should lie from prison court sentences to the board of visitors, which your Commissioners recommend in chapter XXX of this report as being necessary to a proper reorganization of the penal system. This is in accordance with the practice in Great Britain, where the inmates have a right of appeal to the visiting committee or the official Board of Visitors. The results obtained by this provision are that the prisoners feel they have full access to a fair administration of justice, false and exaggerated accusations are discouraged, and unfair punishments eliminated. In England, where this right of appeal is permitted, it has been found that sentences given by the prison court are very seldom reversed. The officers, the guards, and even the governors, are held in check by the supervision of the Board of Visitors. The consensus of opinion there, including that of the governors, is overwhelmingly in favour of this right of appeal. One of the governors told your Commissioners that he regarded this right of appeal as essential to the administration of discipline, and that he felt it supported his authority rather than diminished it.

The right of appeal to such a board would also give the inmate an outlet for grievances and a vent for emotions, which is necessary in any penal institution, because it is important that the prisoner should not feel that he is absolutely removed from the protection of his fellow men in the outside world, and utterly secluded from them

Segregation

Penitentiary regulations 66 and 67 relate to the "isolation" of prisoners who, in the opinion of the warden, should be segregated from the rest of the population. The object of these rules is to isolate certain prisoners who are agitators, or of such incorrigibility that they are a disturbing element in the maintenance of discipline in the institution. Your Commissioners are of the opinion that wardens should not be permitted recourse to these provisions except in most unusual cases, and, while they realize the necessity of this type of segregation, they believe that it should only be used in strict compliance with the rules and regulations, and that great care should be taken to prevent injustice through imposition of segregation based upon insufficient evidence given by spiteful or malicious tale-bearers.

Other Rules and Regulations

There are 724 penitentiary regulations in Canada. In England there are only 214, and, of the latter, twenty-eight refer to the visiting committee and official Board of Visitors, which are not in existence in Canada. A more equable comparison, therefore, would be 724 to 186. The rules and regulations are repeatedly referred to throughout this report. The necessity for a complete revision is obvious. Particular revisions will also be required in order to make provision for specific recommendations, and to embody the principles and policy of the report.

Without in any way limiting the field to be covered by those chosen to carry out the revision, your Commissioners desire to direct attention to certain regulations, which have been the subject of special criticism during their investigations, and which have not been dealt with in other parts of this report.

Regulation 41.—Sanitation; Bathing, Washing, and Shaving

All penitentiary regulations should be designed to reform and rehabilitate wherever possible. An inmate who has acquired the habit of keeping clean and neat before he entered the penitentiary should not be discouraged from continuing it, and those who have not acquired the habit should be encouraged to cultivate it. To this end, bathing should be allowed at least twice a week instead of once a week, and inmates should be allowed the use of safety razors to shave themselves every morning instead of being shaved once a week. This wider latitude is permitted in many institutions visited by your Commissioners, and we do not see any objection to it. It is an encouragement to cleanliness. Where safety razors have been found in use, precautions have been taken to prevent the inmates from using the blades as weapons. This is done by having the inmates shave in their cells and surrender the blades to an officer before they come out of them. The blades are then held until the following morning, when they are reissued and recollected. Metal mirrors should be issued to the prisoners for use in shaving.

Regulation 139.—Conversations between Inmates and Officers

An inmate is forbidden by this regulation to speak to an officer, except from necessity in the course of duty, or in exchanging proper salutations when meeting or passing. Your Commissioners are opposed to any kind of familiarity between the officers and the inmates, but believe that less restriction should be placed on their conversation, because sometimes a word or two passed by an officer to an inmate may prove to have a very favourable influence in the latter's reformation, as well as in the promotion of better relations between the inmates and the officers in charge of them.

Regulations 146 to 153.—Smoking Privileges

While your Commissioners are in favour of the cancellation of the rest periods during which the inmates are allowed to smoke, they believe that some of the better class of inmates should be entitled to the privilege of smoking during recreation periods.

Regulation 155.—Flint Boxes

By this regulation, an inmate is permitted to have box, flint, and tinder, under arrangements to be made by the warden. It is stipulated, however, that this shall be permitted only without expense to the penitentiary for other than the materials actually required. Your Commissioners see no objection to permitting the inmates to have lighters at their own expense, or to permitting them to be provided by the penitentiary with a box, flint, and tinder. This regulation is another example of the illogical provisions made for the management of prisoners. If an inmate cannot get anything else but the materials provided by the penitentiary, and is allowed to have a box, flint, and tinder, but no "punk," he cannot procure the latter without violating the rules of the penitentiary. He can only do so by the use of contraband goods, which is thus, by implication, connived at by the authorities.

Regulations 158 and 443.—Forfeiture of Contraband

In the opinion of your Commissioners, these regulations should be abolished. They give rise to persecution, annoyance and other abuses. These two regulations are to the effect that, if any money, book, or other article, not the property of the penitentiary, should be found in the possession of a prisoner at any time after his reception, they shall be forfeited to the officer who makes the discovery.

Regulations 163, 164, and 165.—Prison Offences

These regulations relate to prison offences and punishment, and are dealt with earlier in this chapter. The word "wilfully" should be inserted after the words "In any way," in the first line of paragraph 15, so that an inmate will not be punished when damage is done accidentally.

Regulation 236.—Lighting

This regulation provides that lights in the cells should be 40 watts, and in the dormitories, 60 watts. Your Commissioners are of the opinion that adequate illumination should be provided in the cells to prevent undue eye-strain. A great number of inmates have been found to be suffering from defective eyesight, which may be attributed to insufficient light in the cells. A 60 watt light attached to the ceiling or a 40 watt light close to the reading position of the inmate should be installed. A rather remarkable situation exists in the penitentiaries because, although the regulation clearly states 40 watt lights are to be used in the cells and 60 watt lights in the dormitories, circulars 9-1933 and 31-1935 state that the standard size lamp for use in the cells is to be 25 watts, and in some cases 40 watts.

Regulation 248.—Removal of Writings, etc.

As amended, this regulation does not permit a prisoner to take away with him on discharge any writings, paintings, sketches, drawings, models, or other works of art that he may have made during his imprisonment

until they have first been subjected to examination and censorship. Your Commissioners cannot discover any necessity for such a regulation. All these writings and other works have already been approved by the censor. If not approved, the inmate would not be permitted to possess them.

Canteens

Your Commissioners are not in favour of canteens or commissaries in the penitentiaries. There is no justification for pampering prisoners by allowing them to buy sweets and gum as they do in some of the large institutions in the United States. In Europe the situation is different, because there the food provided is barely sufficient to sustain the inmate, and, as he earns a fair sum of money, it is reasonable that he should be allowed to supplement his meagre rations with goods purchased from the commissary.

Fountain Pens

Your Commissioners believe that fountain pens should be allowed to those inmates who wish to provide them at their own expense.

There are a number of additional rules and regulations which concern the officers rather than the inmates. Your Commissioners will deal with these in chapter XXX.

CHAPTER VI

RIOTS AND DISTURBANCES

The records of the Penitentiary Branch show that during the last 11 years there have been twenty disturbances of a more or less serious character in Canadian penitentiaries. Of these, sixteen have taken place since the present Superintendent assumed office. During these disturbances, two prisoners have been killed, and several prisoners and officers injured. The reports show that the damage to property amounted to $123,350.

For the purposes of this report it is considered sufficient to deal with these disturbances in summary only.

Dorchester Penitentiary

A disturbance occurred at this penitentiary on January 7, 1933, and the damage done to the cells and shops amounted to $3,300. Five prisoners were wounded by rifle fire and two officers were slightly injured. Nineteen prisoners were prosecuted in the criminal courts and received sentences of from two to six years, in addition to the sentences they were serving at the time of the disturbance. No further punishment was given by the penitentiary authorities.

St. Vincent de Paul Penitentiary

On November 4, 1932, a fire, followed by a general riot, occurred in the tailor shop of this penitentiary. Several prisoners and guards are reported to have been injured. There were no fatalities. Eleven prisoners were prosecuted in the criminal courts. Nine of those were sentenced to terms of from two to nine years, in addition to the sentences they were serving in the penitentiary, and two were sentenced to life imprisonment. Damage amounting to $70,900 was done by fire that occurred during the disturbance. A minor disturbance followed on November 7, and damage was done to the institution amounting to $200, but no one was injured.

Kingston Penitentiary

On January 22, 1927, a minor disturbance occurred, as a result of which two prisoners received corporal punishment. No damage to property was reported.

On October 17, 1932, a very serious disturbance occurred. This is further and more extensively dealt with in chapter VII. Twenty-seven prisoners were tried in the criminal courts. Twenty-two were convicted, and additional sentences were imposed of from four months to two years, in addition to the terms they were serving.

On October 20, 1932, another disturbance occurred, which is also dealt with in chapter VII. No prisoners were prosecuted or punished

as a result of this disturbance. The total damage in both the above disturbances amounted to $3,810.74, the greater part of which occurred on the latter date.

On May 3, 1934, a disturbance occurred, as a result of which twenty prisoners were summarily taken from their cells and given corporal punishment.

On May 15, 1934, a serious fire broke out in the change room, which resulted in a total damage to the buildings of $35,284.22. Responsibility for this was not fixed, and no punishments were awarded.

March 21, 1935, a fire occurred in the west shop block, which occasioned damage amounting to $3,494.33. This appears to have been the result of a disturbance that developed as a protest by the prisoners against the curtailment of recreation that had been permitted in the past. No charges were laid in the criminal courts. Fifty-seven prisoners were charged before the warden with breaches of penitentiary regulations, and twenty-three of these were found guilty and awarded punishment as follows:

> Nineteen were given corporal punishment consisting of ten to thirty strokes of the strap. In all cases ten strokes were administered immediately and the remainder withheld pending future good behaviour. Of these, seventeen were sentenced to additional punishments consisting of loss of remission, number two diet, and loss of privileges. One prisoner was sentenced to number two diet and loss of privileges only, and one to loss of remission and privileges.

Collin's Bay Penitentiary

Minor disturbances occurred at this penitentiary in July and September, 1937. The officers referred to these as "strikes." On two occasions the prisoners refused to go to work. Minor punishments were inflicted, and the prisoners were eventually returned to work.

Manitoba Penitentiary

On April 15, 1932, a disturbance occurred at this penitentiary arising out of a violent attack by an inmate on an officer. During the disturbance, one of the prisoners, who was not participating in any violence, was killed by a bullet fired at another prisoner by a guard stationed on the wall. Two other prisoners were wounded. These two were later tried in the criminal courts and sentenced to nine months in prison, in addition to the sentences they were serving.

A report dated April 8, 1932, from the warden to the Superintendent, indicates that, by arrangement with the crown prosecutor, the charges were reduced to "aggravated assault," to which charge the prisoners' counsel was willing to plead "guilty."

The report indicates that the warden feared that, if the cases went to trial in a public court, the trial judge, one of the Supreme Court judges of the province of Manitoba, would permit evidence to be brought out which would show that, for periods of a week, ten days or thirty days,

as the case might be, inmates had been shackled to the cell gates during work hours, and that, if this were to be brought out, prominence might be given to it in the press. Your Commissioners are of the opinion that there is no good reason why charges against prisoners should be reduced in order to avoid the publicity that might be given to the details in a regular trial in the criminal courts.

What appears to have taken place in this case is that, by agreement, the prisoners in question pleaded "guilty" to aggravated assault and that, pursuant to this arrangement, they were not charged with the charge which should have been laid against them, and that consequently they did not receive the punishment they probably otherwise would have received for the murderous assault they had committed, and, finally, that this course was taken because the penitentiary officials were unwilling that publicity should be given to their methods of inflicting prison punishment; methods which have since been greatly modified.

The course followed in this case is illustrative of the secrecy that prevails, and has prevailed, in the administration of Canadian penitentiaries. It creates public distrust in the administration, where public confidence ought to exist. The public and the press well know that penitentiary authorities have a hard task to perform, and that they have many violent and undisciplined characters to deal with, and the public will support the authorities in dealing with such characters with a firm, and if necessary hard, hand. Our administration of justice is founded on the principle that secrecy in regard to methods of punishment is to be viewed with profound disapproval.

We are of the opinion that the course followed in this case was not creditable to the penitentiary officials involved.

On April 3, 1935, a small disturbance took place in this penitentiary. It was for the purpose of voicing certain complaints regarding the distribution of books, purchases of magazines, fitting of boots, and other small matters. The circumstances of this disturbance were fully reported to the Superintendent and, although the warden stated that he did not consider the disturbance to be of a vicious type, the Superintendent disagreed with him, and insisted that the matter was serious.

Unrest continued in the penitentiary until April 27, when there was a more violent disturbance. In this disturbance knives were passed out from the kitchen, and an inmate was shot and fatally wounded by a guard who fired in order to protect the life of another officer who was about to be attacked. Seven prisoners were each sentenced to fifteen strokes of the strap, twenty-one days number two diet, three months loss of privileges, and three months in segregation. One prisoner was sentenced to twenty strokes of the strap and the same additional punishments.

Following this disturbance, the warden wrote to the Superintendent stating that he would appreciate any help that might be afforded by having an inspector or other senior officer come to the penitentiary,

because he believed the situation to be complicated and unsatisfactory. When this request was received in Ottawa, the Superintendent was abroad, but, on his return, he wrote as follows:

> "The local condition surrounding each Penitentiary requires consideration by itself. There would appear to be a situation existing in the Province of Manitoba which might make it of advantage to have some of these convicts tried in the Civil Courts, on charges that might be brought under the provisions of the Criminal Code.
>
> From the reports to hand, it does not appear essential to have an officer from the Department proceed to Manitoba Penitentiary to carry out an investigation. On the other hand, to clear the atmosphere, it might be of advantage to have this step taken."

We are of the opinion that a disturbance that had involved the loss of life in the circumstances noted demanded an immediate and personal investigation by a senior officer from the Penitentiary Branch.

Saskatchewan Penitentiary

On November 23, 1936, a mild riot occurred in this penitentiary. Eight prisoners received corporal punishment. No damage was done to property and no injury was inflicted.

On May 27, 1935, the warden received confidential information that a disturbance was about to occur. When 175 men refused to go to work, the warden caused twenty-six prisoners to be segregated. Mechanical restraint was applied for short periods to nine of these. No damage to property resulted.

On July 26, 1937, two officers were assaulted by three prisoners. As a result, the three prisoners were prosecuted in the criminal courts, and one of them was sentenced to three years additional imprisonment. The other two were sentenced to two and one-half years, in addition to the sentences that they were serving. Subsequently they were tried by the warden on charges involving breaches of the penitentiary regulations, and sentenced to twelve strokes of the strap, forty-two days dissociation, number two diet, hard bed, and three months loss of remission.

British Columbia Penitentiary

On February 6, 1933, a minor disturbance occurred in which twenty-nine prisoners participated. No damage resulted, and no injuries were sustained. Six prisoners received corporal punishment.

On March 7, 1933, another minor disturbance occurred from which no damage or injurious resulted.

Between September 10 and September 13, 1934, a somewhat serious disturbance occurred. It was intended as a demonstration to draw attention to the death of two prisoners and injuries to another, sustained on September 7, when they had fallen from a scaffold. Thirty-three prisoners were punished for participating in the demonstration, and thirty-two of these received corporal punishment. The damage to property was $236.19.

A review of the conditions disclosed in connection with these disturbances indicates that during the past five years the penitentiaries in Canada have been in a state of unrest. Prisoners have been demonstrating and rioting in order to gain privileges that have subsequently been granted to them.

It is unnecessary to state that this method of prison discipline is highly undesirable. Good prison management should have recognized injustices existing in the prisons before being driven to recognize them by riotous conduct resulting in the destruction of life and property. Amelioration of the rigours of prison life following these demonstrations indicates a weakness in the prison administration. If prisoners were entitled to the amelioration of these conditions, the administration is gravely to be censored for allowing such conditions to prevail. On the other hand, if the prisoners were not entitled to the amelioration of these conditions, they ought not to have been granted concessions because of their mutinous behaviour. Nothing is more destructive of discipline than to grant privileges that are not in the interests of the administration of justice, merely for the purpose of preserving contentment among the prisoners. On the other hand, it is equally destructive of discipline to drive prisoners to violence in order to draw attention to injustices that ought to have been promptly recognized.

CHAPTER VII

USE OF FIREARMS IN PENITENTIARIES

The International Standard Minimum Rules, drawn up in 1929 by the International Penal and Penitentiary Commission, contain the following rule:

> "Officials should never use their arms nor force against a prisoner except in self-defence, or in cases of attempted escape when this cannot be prevented in any other way. The use of force should always be strictly limited to what is necessary."

Complaints were made to your Commission in regard to the reckless use of firearms during disturbances at Kingston Penitentiary on the night of October 20, 1932. Two of these were of a very definite character, and appeared to us sufficiently serious to merit a thorough investigation and appear to us sufficiently serious to merit a thorough investigation

The Disturbances

One, Price, who was a prisoner at Kingston Penitentiary during the sittings of the Commission but who had since been released, complained that he was wounded by a bullet which entered his right shoulder above the upper tip of the lung.

Timothy Buck, a former prisoner, gave evidence at a public hearing of the Commission, held in the city of Toronto, to the effect that several rifle bullets and a volley of gun shot were discharged into his cell while he occupied it during the night in question.

To understand the circumstances surrounding these incidents it is necessary to review some of the events which led up to them. For the facts we rely on statements contained in the judgment of His Honour Judge Deroche, delivered following the trial of one, Kirkland, who was tried before him on certain criminal charges arising out of the disturbances, and on a report of the Superintendent made to the Minister of Justice on the 23rd of January, 1933.

An outbreak had taken place in the penitentiary on the afternoon of October 17. Of this outbreak his Honour Judge Deroche gives the following account:

> "Strange to say, there is no contradictory evidence of any consequence. The warden at the time of the riot, and the inmates, all agree practically in their evidence as to just what happened that day. The history of the riot seems to be as follows:
>
> The men (meaning the inmates) had for months and possibly years been asking for the removal of certain grievances which were in their minds, with little or no response. They now decided that on October 17, at three p.m., they would walk out of the shops and make a peaceful demonstration to impress upon the warden and through him upon Ottawa the demands for redress of their supposed

wrongs. I use the word 'peaceful' in the sense that there was no intention on the part of the men to do violence to either person or property, and no intention to escape.

Unfortunately for the men, the warden had heard of the suggested demonstration, and so each shop at three o'clock found its doors locked. Now that they had decided upon the demonstration they were not to be balked, and so the men in the mail-bag department, which included Kirkland, the accused in this trial, threw a hose out of the window and went down the hose, an acetylene torch was taken from the blacksmith's shop, and the locks of the doors of the shops were burned loose, and the doors opened to free the men, who then gathered in the shop dome. The warden came in and asked what they wanted. They mentioned cigarette papers and recreation and the warden was asked to telephone Ottawa for authority to meet their requests. The warden spoke to the men, telling them of the foolishness of their action, and two of the inmates, Behan and Garceau, also addressed the men, warning them that there was to be no violence to anyone or damage to property. The warden went to the telephone but instead of telephoning Ottawa he telephoned for the soldiers.

In the meantime a number of men started out to bring in some other men, when the watchman fired a shot, just landing in front of the leader. The warden instructed the watchman to continue firing. Two or three more shots were fired, causing the men to return to the dome. The warden says he feared the men were going to try to liberate one, O'Brien, who has been in solitary confinement for over a year. This the men deny.

When it was announced that the soldiers were coming, one of the men, Tim Buck, advised the men that the soldiers could not or would not hurt them so long as they did no damage to property or violence to anyone, and instructed the men to gather pails of water and barricade the door, expecting to stand siege.

The officers or guards or soldiers, or some of them, backed a heavy truck loaded with stone into the dome door, and broke it in, some of them following in, and one officer fired some shots over the heads of the men.

The men had ordered the officers up the stairs from the dome floor to the mail-bag department, being one of the shops opening off a gallery running around the dome. The men followed or went along, until practically the whole body had shifted from the dome floor to the mail-bag department. The men barricaded the door and window in the mail-bag department to prevent the soldiers entering. Admittance, however, was gained by another window, and the same officer fired several shots into the room. The men had ordered the officers and guards to the front of the room to receive the shots if any were fired into the crowd.

About this time some of the officers did not move fast enough to suit the men and were pushed, and a wooden cuspidor was thrown,

which hit an officer on the head. Likewise some sewing machines were broken by some of the men. One of the men protested to his fellow-man who was breaking a machine. The reply was ' this is the machine I work at. I have been punished often enough because of this machine, and now I am getting even with it.'

A conference was later held between the warden, some of the officers, and some of the men, and a satisfactory agreement reached for the time being. The warden was to make representations to Ottawa as to the grievances of the men, no one was to be punished for the riot until after a fair trial, and the men were to be allowed to go to work the next day. The men then filed off peacefully to their cells.

This is the extent of the riot.

The crime of which I find Kirkland guilty is punishable with seven years' imprisonment. I do not intend to give him seven years. The riot itself was not as serious as it might have been. The men were in full charge that afternoon for some length of time. The warden and staff had lost control completely. The men could have destroyed property at will, and could have done personal violence to the warden, officers and guards. They might, I think, practically all have escaped if they had desired but, generally speaking, no attempt was made to do any of these things, as such. More than that, the leaders, or perhaps, I should say the speakers, as they deny being leaders, the speakers at least restrained the men from doing any violence in injury, and so far as Kirkland is concerned, he obeyed that order, possibly gave the order himself, not by way of speech, but by way of conversation. I find no evidence that Kirkland personally attempted to injure any person or damage any property. I think the witness Earl was mistaken as to the identity of Kirkland, and with two or three hundred men milling around, as they express it, in the dome, he might easily have been mistaken. I free Kirkland entirely from the suggestion that he had anything to do with the torch, or that he injured any property or injured any person, or that he carried any weapons that afternoon. There was damage to doors, but this was done to free the men for the purpose of demonstration, and not with a desire to damage property as such. Doors were barricaded by some of the men, but this was done after shots were fired and the announcement made that the soldiers were coming. It was an act of self-defence as the men saw it, rather than with an evil purpose. The officers and guards were ordered to move to the front to receive the shots, and this also was for self-defence or protection rather than a deliberate attempt to injure anyone. Two men, Garceau and Behan, addressed the crowd, and told them to do no violence or injury to property. Buck told them that the soldiers would not hurt them if they did no violence or injury to property. Parkes, an inmate, says he told another man to desist from breaking

sewing machines. All these things have a tendency to lessen the degree of rioting, and Kirkland's part in it should count in his favour as to the length of sentence.

Then to go back to the cause of the riot. This peaceful demonstration which developed into a riot was for the purpose of emphasizing the demands of the men for redress of certain grievances which had been long and repeatedly denied them. Many of the grievances for which this demonstration was staged have already been granted to the men, proving conclusively to my mind that those demands have been reasonable. I do not think I need labour the question in detail as to inhuman treatment. I am satisfied from evidence produced that the men had some reason to believe, that Kirkland had himself some reason to believe, that there was inhuman treatment as he saw it, and a number of the rules permitting many of the things of which Kirkland and the men complained have since the riot been ameliorated by certain amendments. This convinces me also that there must have been some merit in the demands of Kirkland and the men as to inhuman treatment."

At the usual hour of release for work on the following morning, October 18, the deputy warden gave instructions that the agreement with the prisoners was to be respected. Inspector Smith interviewed one of the prisoners who had taken a leading part in the outbreak, and was informed that the prisoners had appointed delegates in every shop, and that there was no fear of the machinery being wrecked because they were satisfied that every effort would be made to have their complaints investigated. At the same time, this prisoner advised Inspector Smith not to delay action because the delegates feared that they might not be able to restrain the other prisoners indefinitely. Inspector Smith, being satisfied that nothing to affect the security of the penitentiary would occur for three or four days, authorized the prisoners to be sent back to the shops. On their return to work they cleaned up the debris and returned the tools to their proper places. Work continued through the afternoon of the 18th until the closing hour of the penitentiary and Inspector Smith recommended that the prisoners be allowed to resume work on the following day.

Between 9 and 10 o'clock on the following day, it was reported that the prisoners were becoming restless and were making insistent demands to see the Superintendent. Their delegates proposed an interview with him at 11 o'clock in the Protestant chapel. The Superintendent refused this interview because he felt that he would be placing himself in jeopardy of capture, and he informed Inspector Smith that the prisoners would be interviewed, instead, at the court hour in the keeper's hall.

The Superintendent reports that there was a serious lack of discipline in the blacksmith shop. One of the guards, without having secured authority from a superior officer, had given permission to the prisoners to go to the toilet and to smoke there.

The Superintendent evidently concluded that if the prisoners were allowed to go into the shops again without being under armed control they would destroy the machinery and set the place on fire. The prisoners were returned to their cells at 11.30, their regular hour for lunch, and the Superintendent prepared to hear their complaints. It was reported to him that they desired a meeting or conference and that they would not present themselves singly, but the Superintendent insisted on seeing prisoners singly and refused to recognize delegates. He insisted that each prisoner should present his own complaints without reference to the complaints of the others, and he informed them that if they were not willing to do this they would not be heard at all and no investigation would take place. Inspector Smith reported that three prisoners were willing to come before the Superintendent but that they would not come singly. They were informed that if they would not come singly they would not be permitted to come at all. Three prisoners were interviewed and put forward certain complaints, the details of which are unnecessary for the purposes of this report.

During the afternoon the prisoners had not been permitted to return to work, and one of them asked the Superintendent when they were to be permitted to do so. When told that this was a matter to be decided by the penitentiary authorities, the prisoner gave evidence of irritation, and stated his opinion that, under the conditions outlined by Inspector Smith, they should be permitted to return to the shops.

The Superintendent arrived at the institution at 9.30 on the morning of the 20th to conduct an inquiry into the prisoners' grievances. Both Inspector Smith and the deputy warden recommended that the prisoners should be permitted to return to the shops to work. The deputy warden pressed strongly for the prisoners to be given cigarette papers. This is a privilege which has since been given to them, but, at that time, tobacco only was permitted. The cigarette papers, which were packed with the tobacco, were removed from the packages, and the prisoners were forced to rely upon their own ingenuity to fashion their cigarettes. The Superintendent states in his report that he gave no consideration to the protest that the prisoners were being punished by being confined to their cells.

When the Superintendent was about to proceed with his examination of the prisoners, and before any of them had arrived, he received word that they were refusing to appear singly and were demanding, instead, that a delegation should be heard in the Protestant chapel. Inspector Smith and the deputy warden urged the Superintendent to accept this proposal to receive a delegation, but he refused to do so. In his report the Superintendent states:

> "Finally about 3.30 three convicts presented themselves. The first two were quickly disposed of, but it was immediately evident that they were giving their complaints in a pre-arranged manner. It was explained to them that each man could only make complaints for himself without reference to others."

At this point, it became evident that the prisoners were becoming increasingly restless, and an outburst appeared imminent.

The prisoners contended that, in not allowing them out for exercise, the Superintendent had broken the agreement made with them by Inspector Smith, and they commenced a demonstration in their cells. The Superintendent moved from the keeper's hall to the office at the north gate and took charge of operations. Instructions were given to call out the militia. Troops arrived in ten or twelve minutes and took up their positions on the penitentiary grounds. Six unarmed officers, who were in the dome at the time of the final outburst, locked the dome barrier gates. In his report the Superintendent stated, "*from that time to the present there has been no danger of convicts escaping from cells or from the penitentiary.*"

The militia were armed, and the penitentiary officers were issued with rifles, revolvers, and shot guns. During the night considerable shooting took place.

On a perusal of all the evidence available to us, it is quite evident that the use of firearms was very much more general than indicated in the Superintendent's report. In the evidence taken by the Superintendent, fourteen officers admitted shooting, and one admitted firing as many as twelve shots. Officers were sent into ducts in "E" and "F" corridors and fired through the peep-holes into the cells occupied by the prisoners. In his report the Superintendent stated that the militia, being under proper control, did not fire a single shot, but in his evidence before the Commission he indicated that his investigation had not been conclusive, and that he had since been given information leading him to believe that the militia, as well as the penitentiary officers, had engaged in firing.

During the night, particularly in "F" block, there was considerable destruction of property. It is important to bear in mind that, although a large number of prisoners were prosecuted as a result of disturbances on the 17th, no prisoners were prosecuted as a result of the disturbances on the 20th when the shooting took place.

The Superintendent admitted to the Commission that during the time in question he was in charge of operations at the penitentiary, and, being in charge, he was responsible for what took place.

Price Case

We will deal with the Price case first: Price was a prisoner in cell No. 3, 2 B, P. of I. This cell was located in the cell block used as a prison of isolation, and there had been serious disturbance there during the night. Because of the over-crowded condition of the penitentiary at the time it had been necessary to confine two prisoners in one cell, separating them only by a wooden partition. During the disturbance the prisoners had broken down these wooden partitions and had thrown the broken boards and other detachable material through the cell bars into the corridor. In spite of this demonstration and destruction of

government property, the prisoners were quite secure in their cells, and there is no suggestion that in this cell block there was any danger of escape or injury to life.

The evidence taken by the Superintendent during his investigation of the disturbances has been examined by your Commissioners, and it discloses that, at some time between seven and eight o'clock in the evening of October 20, Price was shot in the right shoulder by a rifle bullet. The identity of the man who fired this shot has never been ascertained.

Immediately after the shooting, one of the prisoners called to a guard that a prisoner had been hit and was dying. While this prediction of death later proved to be inaccurate, it was the information communicated to the guard, yet none of the guards rendered any assistance to the wounded man. One of them did report the matter at the keeper's hall and, as he stated in evidence, he was told to " look after him."

During the Superintendent's examination of witnesses this matter was not taken up with the deputy warden, and he was given no opportunity either to explain or deny these statements.

The wounded prisoner remained in his cell for twenty-two hours after being hit, and during that time he received no medical attention or food. He was finally removed from his cell late in the afternoon of October 21, and X-ray, authorized on October 22, revealed that the bullet had lodged in front of the right clavicle with no serious complications. The bullet was removed on October 23 by Dr. Austin, of Kingston, and the prisoner was confined to the hospital until December 1.

Your Commissioners have perused all the evidence relevant to this matter in the testimony taken by the Superintendent during his investigation. The evidence fails to disclose any definite effort to ascertain the identity of the officer who fired the shot which wounded Price, or to fix the responsibility for permitting him to remain twenty-two hours in his cell without medical attention, or for the subsequent delay in having an X-ray taken and the bullet removed. The whole matter of the shooting that took place on this night seems to have been treated as of minor consequence. In the opinion of your Commissioners, the evidence does not disclose any justification whatever for shooting at Price or into his cell.

In his report to the Minister of Justice following his investigation, the Superintendent made the following reference to this matter:

> " One convict in the Prison of Isolation was struck in the shoulder by a bullet which ricochetted from the barrier. It was ascertained that he was not seriously injured."

This reference would indicate to the Minister that the shooting was accidental. The only suggestion contained in the evidence taken by the Superintendent that the bullet ricochetted was the evidence of one guard, as follows:

> " Q. Do you know how he was wounded?
>
> A. No Sir, I do not, but I think it was probably a ricochet from the steel."

The Commission cannot discover any evidence on which to base a finding that the bullet ricochetted. The circumstances indicate that the prisoner was wounded as a result of a reckless misuse of firearms by someone whose identity has not been ascertained. In the opinion of your Commissioners, the investigation conducted by the Superintendent was entirely inadequate.

This brings us to the treatment of the prisoner after he had been wounded:

As has been stated, the Superintendent was in charge of operations at the prison on the night of the firing. The wounding of the prisoner had been promptly reported at the keeper's hall, and the Superintendent was in communication with those in charge there. He stated to us, however, that he could not recollect having learned of the wounding of this prisoner until the next day. One of the guards who gave evidence before the Superintendent stated with regard to the wounded man that, had it not been for orders received, "I would have had him out in a minute." He placed the responsibility for the orders that prevented him going to the assistance of Price on the deputy warden. However, as has been stated, during the Superintendent's investigation, the deputy warden was not questioned about this matter and, in fact, the transcript of the investigation does not disclose that the Superintendent then regarded the matter as one of any consequence.

The Commission find that the treatment accorded to this prisoner after he was wounded was brutal and inhuman. In addition to being allowed to remain in his cell for twenty-two hours without medical attention, he was given no surgical treatment until the third day after the shooting. In our opinion, the circumstances called for the most searching and careful investigation in order to fix responsibility, both for the shooting and the subsequent neglect, as well as for strict disciplinary action when the responsibility had been fixed. The Superintendent failed to do this and, instead, issued a report to the Minister, which eventually was made public, indicating that the wounding was of a trifling and accidental nature.

Buck Case

We now deal with the Buck case: Buck was a participant in the demonstration that took place on the 17th of October. Mention should be made of the part he took in this demonstration in order that all the circumstances surrounding the shooting into his cell on the night of October 20 may be fully appreciated.

Buck was tried for his participation in the disturbance of October 17 before His Honour Judge Deroche, who delivered judgment on the 6th of July, 1933, in part as follows:

> "Then I think I had better say this before I start my judgment proper. You presented to me a most unusual request in your argument this morning. Your request in so many words said 'I hope Your Honour can find me not guilty, but if you feel you must find

me guilty, then there is something I prize even more than the question of guilt, and that is that my name may be cleared of having done or said some things which I deny, and which would stamp me in my own opinion as a blackguard.' I am very glad to say to you that I can clear you of these things. I do not believe you shut off the motor in your shop; I do not believe you spoke in the mail bag department stating that you would kill the screws unless you got what you wanted. I do not think you made a speech in the dome, or influenced any men to fight in the stone shed on that day; that was a personal fight between two men, I am satisfied, a personal grudge. I do not believe you ordered the men from the stone shed to go in the mail bag department. *There is no evidence that you were an instigator of the assembly which developed into this riot.* I think this covers all the things that were worrying you, and therefore, I have been able to do what you asked me to do. Having said this, may I proceed with my formal judgment.

The evidence in this case has not changed my opinion, but rather confirmed it, as to the history of the events of the afternoon of the 17th of October, as expressed by me in the Kirkland trial. My opinion in this regard is, I think, well-known, so I need not repeat it here. I think these things constituted a riot; more than three men were engaged in it; there was a common purpose in the minds of the men; the tranquillity of the neighbourhood was disturbed for various reasons; the assembly, although peacefully intended in its inception, soon became tumultuous; there was a promiscuous, noisy commotion which was aggravated by some men carrying hammers, iron bars and sticks; machines were broken, and locks were burned off doors. The Warden himself was prevented from leaving, even when he desired to do so. Officers and guards were ordered to the mail bag department, and ordered to the front when shots were fired, and they felt they had to obey and did obey. Different witnesses have testified to being alarmed, to being in real fear, and these events constituted a riot.

I think I should say here, however, that the riot was not nearly so serious a matter as it was thought to have been at the time it occurred. From newspaper reports at that time, and general conversation amongst the public, it was deemed to have been an exceedingly serious matter, but I think the evidence as developed in these cases thus far has shown something different. Certainly it has convinced me that the riot was not intended to be a riot at the outset. *I believe you, Buck, and the other witnesses, that the intention was a peaceful assembly, unlawful perhaps, at least breaking prison rules to do it, and the men knew they were breaking prison rules; nevertheless, I am satisfied that in the minds of the leaders anyway there was no desire that there should be a riot."*

His Honour then went on to find that there was, nevertheless, a breach of the law, that Buck had participated in it, and that therefore he was

guilty as charged. In dwelling with the subject of sentence, His Honour stated as follows:

"While I do not intend to sentence you, Buck, to-day, I think at this juncture I might give some reasons which will move me in sentencing you when that day comes. While I am satisfied that you formed part of this riot I am also satisfied that you had an honest desire that no one should be injured and no property damaged; that is damage itself for the sake of damaging property. I am satisfied it was your desire to have the assembly of men make a demonstration merely for the purpose of emphasizing your demands for redress of grievances, and that is all to your credit. From the evidence produced in the Kirkland case I know of many of those grievances, and I know that since the riot they have been largely remedied, which makes your demands look reasonable; and that helps me somewhat in reaching a conclusion as to what sentence I shall impose.

While you did not personally injure any property I feel bound to hold you responsible in law, and, as I have said therefore, you are found guilty of an offence punishable with seven years, but I do not intend to give you seven years. The officer in charge of your shop says that you are the best machinist they have ever had in that shop; that your work and conduct have been commendable, and this is also very much to your credit. Then you exercised some restraint over the men, you and two or three others at certain points in this riot, and that is very much to their credit and yours."

And in another place His Honour stated:

"First, the riot itself was not of a very serious type. I would like the public to get that, because I am satisfied the public had the wrong idea of this riot at the time it occurred. The intention of the men at the outset was only to break a prison rule for the sake of assembling to make a protest, but it developed into a real riot, although not of an intensely serious nature. There have been many riots in many prisons of a much more serious nature than this one. As riots go, I would say this was a very mild riot, but it was a riot, and I had to find you guilty of participating in it.

Then, secondly, I do not believe you instigated the riot, and that, I think, is one of the things you wanted me to find. *I believe that you had an honest desire that no harm should come to either person or property.* But, as I said before, being a part of the unlawful assembly which developed into a riot, you are responsible for the consequences of the riot, and I must sentence you to some term of imprisonment.

In so far as Buck is concerned, the above findings of fact by the trial judge judicially dispose of the evidence leading up to the night of October 20.

At the time of the disturbance, Buck was a prisoner in cell No. 16, on range "4D." This cell is located on the fourth tier, and the floor of it

is approximately thirty feet from the ground. It is not in the vicinity of cell block "E" in which Price was located.

When Buck was examined after the disturbance, he stated that, while he was in his cell, several rifle bullets and at least one round of gun shot were fired into it some time between 6 p.m. and 8 p.m. on the evening of October 20. When giving evidence before the Commission, the Superintendent stated that Buck was under examination before him for about six hours continuously, that he had appeared on the 18th of October and again subsequent to the shooting, and that Buck did make a statement to him regarding this shooting.

A subsequent investigation, which will be referred to hereafter in greater detail, was conducted in the month of August, 1933 by Inspectors Craig and Dawson. At this investigation Buck submitted to the inspectors a written statement of the facts regarding the shooting into his cell. This statement of fact was accepted by the Superintendent when giving evidence before us, and it does not appear to be seriously disputed in any detail. In regard to this statement, the Superintendent's evidence is as follows:

> "I am ready to accept Buck's statement, and I am discounting all other evidence. I am prepared to accept what Buck said in his written statement."

Inspector Dawson, in giving evidence before the Commission, stated:

> "I believe Buck in practically every respect, what he said.
>
> Q. Do you mean you believe it now or you believed it when you signed this report?
>
> A. I believed his evidence.
>
> Q. Will you look at paragraphs 9, 10, and 11 of the report?
>
> A. Do not tie my statement down meticulously. I believed him generally."

In addition to the above evidence, which no doubt is based on the various official investigations into the occurrence, the evidence before this Commission confirms Buck's statement of the circumstances, and the Commission is therefore prepared to accept it as a truthful account of what took place. The statement is as follows:

> "On the above mentioned date (October 20, 1932) I was confined in cell No. 16 on Range 4 D Block, of the main dome, Kingston Penitentiary. Block D is on the west side of the wing, running south from the dome; the cells, therefore, facing west. The library is at the south end of this wing and the last cell is No. 18. My cell was therefore the third from the end.
>
> During the afternoon of the 20th, resentment developed in the institution over breach of a promise of daily exercise, and there was considerable noise. The noise emanated mainly from parts of the institution other than D Block, although during the early part of the afternoon some shouting had started there also. About 3 o'clock

in the afternoon the shouting was reinforced by rattling of cups and dishes. None of this was in D Block. Sometime after (probably about four or four-thirty), reports were heard, followed by a smell of gas. A rumour flew around that the place was on fire, the north wing being named as the centre. For a short time there was again some shouting on D block, but it quietened down quickly; and except for calling backward and forward for information, there was no more disturbance on that block. The noise in other parts of the building, however, became a terrific din.

A short time after smelling gas, I heard shooting. For some time it seemed to be confined to the north side of the building, but later, other men on the block said they could see guards firing into E block. At about this time men on C block (east side of south wing) shouted over that guards were firing into the prison of isolation. By this time shooting could be heard intermittently on all sides. The noise in the building was still considerable, large numbers of men throwing trays and other movable (and removable) articles out of their cells to the floor.

None of this occurred on D block. No cell furnishings were damaged, no furniture or utensils broken, and no trays or rule boards were thrown from the cells of this block.

Some time after dark the shooting into E block was resumed. A large number of shots were fired, and suddenly an inmate shouted from the north end of the block that they (the guards) were coming over to D. One man yelled, 'duck boys, they're going to shoot in here.' I have no means of judging the time, except that it had been dark for some time. We had no supper that evening. It is therefore impossible to establish the time by its relation to supper hour. I estimate, however, that it was about 8 o'clock in the evening.

I was making up my bed. I heard the shouts and heard somebody yell 'they won't shoot in here, we're not trying to escape' and almost simultaneously I felt a sharp rush of air in my hair and the zip of a bullet. I looked out the window, saw a group of men dressed in penitentiary oilskins (it was raining slightly), standing on the lawn, and the gleam of light on rifle barrels. I ducked for cover immediately behind the wall beside the gate of my cell. No more shots were fired at the moment and the shouts of 'don't shoot in here we're not trying to escape' were superseded by shouts that they were only firing blanks.

Fearing that somebody would expose himself unnecessarily I put my face to the gate of my cell and yelled 'blanks nothing. You should see the inside of my cell.' Almost before the words were out of my mouth, a bullet whizzed by my head, seemingly just below my left ear. I withdrew my head and went back on the bed to extinguish the light. As I did so other shots were fired. One of them struck a bar on the window with a resounding 'whang,' another hit the wall between the doorway of my cell and the doorway of

cell No. 17. A third which was apparently a charge of small shot spattered the wall at the back of my cell.

No other shots were fired into D block during that evening. I took the first opportunity of drawing the attention of officers to the marks and to the fact that nothing was disturbed in my cell. A day or so later an officer entered the cell, examined the marks, and apparently filled out a report sheet concerning same.

(Signed) TIMOTHY BUCK, No. 2524."

When giving evidence before the Commission, Buck stated that he had reported the matter to the first officer who had come to his cell the following day, and that he had demanded that it be reported to the Superintendent. He stated that he had said, "a deliberate attempt was made to murder me," and that the officer had replied, "All right Buck, I will report it." A few hours later, an officer came to his cell with a pencil, paper, and ruler, and counted the number of holes, measured the distance between them, and asked Buck if he had any statement to make. Buck said that he replied, "Yes, I have plenty of statements to make, but I would be foolish to make it to you. I want to make it to some competent body." He says he heard nothing more until he was called upon to give evidence on general matters before the Superintendent. Buck states that, at the conclusion of the general questioning, the following conversation took place:

"But, General Ormond, there is another matter about the shooting and he said 'Oh yes, I understand a bullet came in your cell.' 'No' I said, 'none of them have legs. They were fired into my cell, and there was not one bullet,' and he said, 'perhaps you would care to make a statement on that.' I said, 'No, I would prefer to make my statement to a competent body,' and he said, 'All right, we will deal with that later.'"

Buck's evidence is that he heard no more of the matter until he repeated his statement in open court before Judge Madden during the trial of Michael McDonald, one of the prisoners who was tried in the courts on a criminal charge arising out of the disturbances of October 17. Until this time the matter does not appear to have attracted serious consideration.

The following important details are amply corroborated by the evidence and are not seriously disputed: No disturbance took place in "D" block, nothing was damaged in the cells, and no trays or rule boards were thrown from them. Buck was neither leading a demonstration nor inciting anyone to violence. There is evidence, which will be referred to hereafter, that his actions were to the opposite effect, and that, as on other occasions, he counselled the inmates against violence. Evidence was given before the Superintendent that Buck's only participation was to call out, when he heard the shooting into the other blocks, that no one was trying to escape and that all they desired was public investigation.

Notwithstanding these circumstances, in spite of Buck's complaint to the Superintendent, and although the matter was one of serious import

in a branch of the administration of justice, the files disclose that no real attempt was made to investigate the facts. Indeed, until Buck made his statement in open court, no reference was made to the firing of shots into his cell.

Following the publication of Buck's evidence in the newspapers, J. W. Buckley, Secretary of the Toronto District Labour Council, wrote to the Minister of Justice on August 5, 1933, as follows:

"August 5, 1933.

MINISTER OF JUSTICE,
Parliament Buildings,
Ottawa, Ont.

DEAR SIR,—The Toronto Trades Council, at its last meeting discussed the statement, made in the courts of the trials at the Kingston Penitentiary by Mr. Tim Buck, that without provocation he had been shot at by a guard or guards, in his cell, and unable to defend himself.

I have on file your letter of the 17th of June in reply to a protest from this Trades Council as of the 3rd of June, and in section 5 of your reply you state that the political prisoners have not been subjected to any brutal treatment. While we do not question your good faith, in making this statement, nevertheless as Tim Buck was a member of our movement in the past and a delegate to our Council for a number of years, previous to the expulsion of his party from our Trades Council, we have every reason to know him personally, and know that he would not make statements of that character without there was some justification, as physically he is inoffensive, and a gentleman in all his social intercourse.

Therefore, we would request that before the trial is finally disposed of, that your Department will hold a public investigation, as to the accuracy of that statement, and to place the responsibility on the guilty official, as I cannot assume that the head of any department of government can justify its paid officers who assume the right to use their office to settle a personal grudge. Awaiting your reply,

I remain,

Yours very truly,

J. W. BUCKLEY, *Secretary,*
Toronto District Labour Council."

On receipt of this letter, the Minister addressed a communication to the Superintendent, dated the 8th of August, 1933, as follows:

"August 8, 1933.

The SUPERINTENDENT OF PENITENTIARIES,
Ottawa, Ont.

DEAR GENERAL ORMOND,—I enclose a letter from J. W. Buckley of the Toronto District Labour Council in regard to the allegation

of Tim Buck that the guards in the Penitentiary attempted to shoot him. Please let me have a statement of facts in connection with this charge and oblige."

A. H. Downs, Jr., Secretary of the Toronto Regional Labor Council of the Co-Operative Commonwealth Federation, wrote to the Minister of Justice on August 15, 1933, as follows:

"DEAR SIR,—It has been brought to the attention of this Council, which is the Central Council of more than thirty Workers' Organizations in the City of Toronto, through a press item in the *Mail and Empire* of this city that five shots were fired into the cell of convict Tim Buck, in Kingston Penitentiary on October 20, 1932, by some person or persons as yet unknown.

The information was elicited from Buck while he was under oath during the trial of convict M. McDonald in connection with the recent riots in Kingston Penitentiary, and would therefore be reliable.

This Council deplores the fact that a thing of this nature could happen to anyone, and especially a helpless convict while incarcerated in a prison cell, without a thorough investigation of the alleged incident.

Further, it is the demand of this Council, and we consider it a reasonable demand, that the charges of convict Buck in this regard be thoroughly investigated and if substantiated the responsible parties be brought before the Courts and dealt with in the proper manner. We use the word parties in this case as we do not believe that an individual would take it upon himself to attempt such a heinous crime.

All of which is submitted for your careful consideration.

Yours very truly,

A. H. DOWNS, Jr.,
Secretary."

On the 16th of August, 1933, the Superintendent wrote to Inspector W. H. Craig, who was apparently at Kingston Penitentiary at that time, as follows:

"August 16, 1933.

Inspector W. H. CRAIG,
c/o The Warden,
The Penitentiary,
Kingston, Ontario.

Re 2524, Buck—Kingston Penitentiary

1. The above-named convict is reported to have made a statement, while giving evidence, that during the disturbance following the riot in Kingston Penitentiary in October, 1932, some Guard or Guards on the staff of the Penitentiary deliberately shot at him while he was in his cell.

2. Please proceed to investigate this matter at once.

3. *This convict made a similar statement to me in October or November, 1932, but there was no substantial evidence to bear out his statement.* It is possible that he may produce witnesses, either convict or guard, that will prove or disprove his allegation.

4. Inspector Dawson should sit on the investigation with you. If a stenographer can be made available, the evidence should be taken down verbatim. If not, a synopsis of the evidence should be taken down by you in longhand.

5. Please treat this matter as urgent.

D. M. ORMOND,
Superintendent."

It is quite obvious from a statement of the facts that Buck was in a most perilous position. In giving evidence before us, the Superintendent appeared to take a more serious view of the matter than he had previously taken. He stated as follows:

"Q. Do you think a guard is justified in firing a shotgun into a cell where there is a convict and where the convict is not trying to escape and is not breaking anything? Do you think a guard is justified in doing that?

A. I think it is a most *damnable and wrong* and improper thing."

On receipt of the above instructions, Inspectors Craig and Dawson conducted an investigation, in which they examined seven prisoners and nine guards. The examination of these witnesses was neither comprehensive nor thorough. The manner in which the questions were put and the carelessness exhibited in failing to follow them up have convinced your Commissioners that, either these officers were trying to avoid making a thorough investigation, or they were utterly incompetent to conduct it.

The report made as a result of this investigation was as follows:

"1. Close examination of the interior of cell 16-4-D, which is located on the fourth and top tier of D block, was made by the undersigned and it was found that there had been a bullet imbedded in the wall about six feet in height from the floor and two feet down from the ceiling, and approximately midway between the side walls, this mark (No. 1) was in the form of a round hole as deep as the forefinger. No. 2 bullet mark was in approximately the centre of the ceiling, a few inches to one side—this bullet had evidently ricochetted and had imbedded itself in the back wall, a little to one side of centre. No. 3, apparently, was the discharge of shot gun as ten marks as if made with shot; splattered on the back wall were found around but mostly above No. 1 and No. 2 marks. No. 4 bullet mark was found on the iron bar of the window directly in front of cell 16-4-D. These four bullet and shot marks were the only marks that could be found that would indicate firing on that part of the prison known as D block.

2. Convict No. 2524, Timothy Buck, was confined in cell 16-4-D on October 20, 1932.

3. The marks above mentioned prove conclusively that shots were fired into D block, three of them landing in Buck's cell, and one directly in front of the bar of the window.

4. The evidence indicates that all these shots were fired between the hours of five p.m. and eight p.m. Buck states that the firing started at eight o'clock, other convicts state at an earlier time, but it is considered that the earlier hour is mentioned in an endeavour to show that it was light enough for them to recognize who did the shooting.

5. None of the evidence taken gives information as to who actually did the shooting. One convict mentioned three officers' names but one of them was home sick on that day and the other two deny that they shot into D block, although at the time, they state they were in that vicinity.

6. At about five o'clock that evening, it was ascertained that convicts in F block were digging through the partitions of their cells in an endeavour to congregate in the Chapel and to effect an escape.

7. The cells of F block were examined by the undersigned and it was found that holes had been dug in several cells, large enough for a man to crawl through.

8. To prevent further digging and an escape, numerous shots were fired into the air and into the ceiling of F block; great noise and damage was going on in E block and a number of shots were fired similar to those into F block. These shots had the desired effect.

9. Buck admits, and other evidence shows, that he made numerous speeches to the convicts that afternoon and evening. The nature of the speeches early in the afternoon may have been to quiet them but it is evident, towards evening especially when the firing commenced into the other blocks, that he succeeded in working the convicts up by having them shout in unison to the troops to coerce them and also in chorus voicing their demands.

10. This shouting by Buck was undoubtedly done at the gate of his cell in a gesticulatory manner and would be seen by the officers and militia patrolling and on duty in the yard. His actions and shouts would indicate clearly that he was leading and inciting the convicts.

11. It is considered that the opinion was then formed by those on duty in the yard that action had to be taken to suppress Buck and the tumult he was the instigator of.

12. The same action as taken with E and F blocks, was then evidently taken in regard to D block, by firing four or five shots high up in D block. These shots were fired at a moderately sharp angle from the yard but instead of hitting the ceiling as in the other blocks,

entered Cell 16 on the fourth or top tier of D block. The evidence shows these shots had the desired effect.

13. Whether aim was taken at Buck's cell, the evidence does not show, but it is apparent that from the high location of the marks those who fired the shots endeavoured to scare the convicts only, which evidently they did and the agitation was suppressed.

14. It is the opinion of the undersigned that the shots fired into D block were not aimed deliberately at Buck or any other convict and that D block was treated similar to the other two blocks into which firing occurred.

15. The shots were evidently fired in the direction of the agitator's (Buck's) cell which was on the top tier next the roof. This indicates that they were fired at a sharp angle possibly in an endeavour to hit the ceiling.

16. It is pointed out that in the opinion of the undersigned, firing was the only reasonable means possible to suppress what was taking place at this stage. It was impossible at this time to take Buck out of his cell without precipitating a worse riot and possibly the loss of lives.

17. It is the opinion of the undersigned that the firing into D block on the evening of October 20, 1932, was done by a member or members of the staff of the Penitentiary or of the permanent militia, both of which were on duty in the vicinity from which the shots evidently came at that time.

18. The undersigned are further of the opinion that the man or men when firing the shots into D block considered that they were fully justified in taking that action in the circumstances that then existed.

Respectfully submitted,

W. H. CRAIG,
Inspector.

J. D. Dawson,
Inspector."

The findings in the above report are subject to the following comments:

The references, in paragraphs 6, 7, and 8, to the nature of the disturbance in "F" and "E" blocks are irrelevant to the matter under investigation. Buck was in no way connected with any disturbances that may have taken place in these other cell blocks.

The finding in paragraph 9, that, "toward evening, especially when the firing into the other blocks commenced, he succeeded in working the convicts up, by having them shout in unison to the troops to coerce them, and also in chorus voicing their demands," is absurd. The troops were located outside the walls of the cell block.

The prisoners were all locked in their cells. It is difficult to conceive how any shouting by Buck could have had the effect of "coercing" the armed troops in the yard. Careful perusal of the evidence does not justify such a conclusion.

The inferences drawn in paragraph 10 are unsupported by the evidence. The inspectors undertake to surmise what Buck would have done and what the officers might have seen and, on this basis, they make the statement: "His actions and shouts would indicate clearly that he was leading and inciting the convicts." There is no evidence of such actions or shouts, and Inspector Dawson, when examined before the Commission, expressed quite a different view from the above. He stated:

> "I asked him (Buck) if his action might be interpreted as inciting rather than trying to quieten them, and he said 'Yes.' That more or less satisfied me on that point. This may be poor language."

The evidence Buck gave was as follows:

> "Q. Is it possible that anyone in the distance would have thought that you were inciting rather than remonstrating?
>
> A. Yes, it is possible owing to the noise and general excitement."

Later, in giving evidence before the Commission, Inspector Dawson expressed the opinion that Buck was not inciting the inmates, and, upon being questioned on the subject, answered as follows:

> "Q. Don't you think in full justice, you should have stated that he was not inciting?
>
> A. I don't think the language was strong enough in view of the interpretation I gave it."

The finding contained in paragraph 11 is unsupported by evidence and merely a matter of conjecture on the part of the inspectors. There is no evidence by any officer to the effect that it was concluded that "action had to be taken to suppress Buck."

The conclusion in paragraph 13, that "it is apparent that from the high location of the marks those who fired the shots endeavoured to scare the convicts only, which evidently they did, and the agitation was suppressed," is another conjecture unsupported by the evidence. Your Commission made an examination of the marks on the cell wall and, from this examination, concluded that the firing of shots into the rear wall, instead of into the ceiling of the cell or outside the cell, could not be taken as an indication of the exercise of care to avoid hitting the inmate.

We entirely disagree with the opinion expressed in paragraph 14, "that the shots fired into 'D' block were not aimed deliberately at Buck or any other convict." There is nothing to justify a finding of this character. On the evidence, the contrary view, that they were fired deliberately at Buck, is a much more reasonable conclusion.

Inspector Dawson stated in evidence before the Commission that, in his opinion, shots were fired into Buck's cell, and he is now unable to explain how the conclusion to which he previously subscribed, that the round of gun shot was not deliberately aimed at Buck, could be substantiated.

The finding in paragraph 15, that "the shots were evidently fired in the direction of the agitator's (Buck's) cell which was on the top tier next the roof . . . indicates that they were fired at a sharp angle possibly in an endeavour to hit the ceiling," is another finding unsupported by the facts.

The findings in paragraphs 16 and 18, "that firing was the only reasonable means possible to suppress what was taking place at this stage," and "that the man, or men, when firing the shots into 'D' block, considered that they were fully justified in taking that action," is entirely without the foundation of evidence. Inspector Craig and the Superintendent appeared to realize this when they were giving evidence before your Commission:

The Superintendent testified as follows:

"Q. It would be just as fair a deduction that he was going to deliberately kill Buck as the deduction they draw?

A. Right."

Inspector Craig, on his examination, stated as follows:

"Q. All the men who were issued with guns would be known?

A. They should be.

Q. Wouldn't you consider it a very serious matter to discharge into the convict's cell when they knew that the convict was in it?

A. I consider it was very serious to shoot into a convict's cell.

Q. And the charge of ten pellets of shot went through the door and you came to the conclusion in para. 18 that the man was justified who made that shot?

Q. I said 'They considered they were justified.'

Q. Why?

A. Because it was a very dangerous thing to do and no sane man would do that unless he considered that he was justified.

Q. You were trying to consider if they were justified?

Q. You admit that it is very dangerous?

A. Yes, and especially a shot gun.

Q. And you say that they considered they were 'justified.' On what evidence do you make that assertion? They did not testify that they were justified?

A. No.

Q. On what ground then?

A. If a man does a thing, he must have considered himself that he was justified.

Q. Why was the shooting confined to that particular cell?

A. That is what I could not express an opinion on, whether it is a coincidence—it is a pretty big coincidence that it all happened to go into his cell.

Q. You do not believe that it is a coincidence.

A. No, I do not.

* * * *

Q. . . . There was no damage done to anything in the cells, apparently, and you did not find anything like that?

A. No, I don't defend the shooting.

* * * *

Q. He shot into the cell when the man was in there. Do you consider that he was justified in doing it?

A. I say absolutely 'No,' if that is what he had in mind. I will qualify that by saying if the uproar was such in the opinion of the officer or officers that shooting was required into the ceiling. I would say it was not justified.

Q. Would you say that he was justified in using a shot gun?

A. I would say it was bad judgment—an error in judgment.

Q. Was he justified in using a shot gun?

A. For the purpose I would say a shot gun was not suitable.

* * * *

Q. We have the spread of these things and I would like to get the number of feet from the cell to the lawn. It looked to be 150 feet anyway, and at twenty yards the spread is twenty-four inches, and at forty yards forty-four inches, and it seems to me that there must have been two shots by the shot gun. The 150-foot spread is forty-eight inches. Those are the ballistic conditions.

A. It apparently was shot at an acute angle in order to enable that many shots to get into the cell. If it was further out it would have spread into the other cells.

Q. There must have been a deliberate attempt to get as many bullets in the cells as possible?

A. Yes.

* * * *

Q. Under the conditions obtained at D block was there any justification whatever for either the rifle or shot gun shooting into D block?

A. To my mind, no.

Q. That is the weakness of your report. In para. 18, you attempt there to excuse the men and to establish certain justification for what they did and on the following day you added to it by supplementing it with some other statements made before Superintendent Ormond to indicate what was in the mind of the men.

A. I think the man who would shoot under those conditions was insane or contemplated murder.

Q. Or had orders from his officers?

A. Yes.

* * * *

Q. Do you think if a shot gun was in that position, that shots could be carefully aimed into the wall and directed to miss him?

A. I do not think so."

The extent to which the inspectors were willing to rely upon mere opinions and conjectures in arriving at the conclusions set out in their report is indicated by the following evidence, given before the Commission by Inspector Craig:

"Q. Why do you say in para. 10 that the shouting by Buck was undoubtedly done at the gate of his cell in a gesticulatory manner and would be seen by the officers of the militia patrolling and on duty in the yard. His actions and shouts would indicate clearly that he was leading and inciting the convicts? Where is the evidence to show that?

A. I had seen him and sized him up as a man who made speeches which would be considered rather a rousing speech and considered that he would be a leader and from his own statements.

Q. Just by sizing him up?

A. Apparently."

Upon receipt of this report from the inspectors, the Superintendent prepared a memorandum for the Minister of Justice, in which he stated:

"I concur in the report, but make somewhat different deductions from the evidence of convict Buck and others from those contained in paras. 14 and 15, of the report.

(*a*) I am of the opinion that Buck was the principal spokesman and agitator in D block;

(*d*) That the officers not only did not shoot at Buck, but deliberately aimed the shots to miss him, but to warn him that he must desist from his actions of making speeches and inciting the other convicts;

(*c*) I am of the opinion that the shots were carefully aimed and well-directed;

(*d*) I am of the opinion that the first shot was fired from a rifle by a Penitentiary Guard, when Buck was standing at the cell gate, and was fired over his head, as being the safest place to direct it, but close enough to show him that he could be hit should it be considered necessary to do so, and he did not desist from his offensive action;

(*e*) I am of the opinion that the second shot fired near Buck, when he was at the cell gate, was from a revolver, the shot being carefully aimed at, and hitting in the ceiling of the

cell. This shot apparently showed Buck that he could be hit if it was the desire of the officers to do so. He desisted from his offensive action;

(*f*) I am of the opinion that the other shots fired into Buck's cell were so directed because of the continuance of shouting by the convicts in the adjacent cells.

(3) If considered desirable, the Toronto Regional Labour Council might be informed that no shot was deliberately fired *at* Buck, but that shots were fired in proximity to him that he must desist from his speech-making and inciting of the other convicts.

(4) Buck was known as a ring-leader from the part he played on October 17th, for which he has since been tried and convicted.

(5) That attached report confirms the Report of the Superintendent, dated January 23, 1933, at page 26, which contains the statement:—

No convict was singled out, or fired at, by any officer.

Respectfully submitted,

D. M. ORMOND,
Superintendent."

This report that was made to the Minister of Justice is, to a great extent, composed of conjectures presented as conclusions of fact. It appears to your Commissioners to be the result of an effort on the part of the Superintendent to place the incident in an even more favourable light than the inspectors had been willing to place it. Notwithstanding his concurrence in the report of the inspectors, however, and, in spite of the fact that he had added his own comments thereto, as noted above, when giving evidence before your Commissioners the Superintendent emphatically stated:

" I contend there was no reason for firing a single shot during that affair."

It is very difficult to reconcile this evidence with the views expressed in his memorandum to the Minister.

The Superintendent stated in his memorandum to the Minister of Justice on August 28:

" (*b*) That the officers not only did not shoot at Buck, but deliberately aimed the shots to miss him, but to warn him that he must desist from his action of making speeches and inciting the other convicts;

(*c*) I am of the opinion that the shots were carefully aimed and well-directed;"

This statement has not in any way been supported before your Commissioners. It is difficult to understand how it could be possible to aim a round of gun shot, such as was fired into this cell from a

distance of at least 150 feet, in such a manner that it could be stated it was not shot deliberately to hit Buck, or that it was "carefully aimed and well-directed."

The statement, that "Buck was known as a ring-leader from the part he played on October 17, for which he has since been tried and convicted," is unfair in view of the previously quoted findings of the trial judge. At the time the Superintendent made this statement, a definite judicial finding had been made to the effect that there was "no evidence that Buck was an instigator of the assembly which developed into the riot." The trial judge, in addressing Buck, had stated: "I do not believe that you instigated the riot, and that, I think, is one of the things you wanted me to find. I believe that you had an honest desire that no harm should come to either person or property." With these findings on record, it would not appear that the Superintendent was putting an unbiased view before the Minister.

After a careful examination of all the evidence, your Commissioners have reached the following conclusions:

(1) At least three rifle bullets and ten pellets of buck shot were fired into Buck's cell by someone who knew that Buck was in the cell at the time.
(2) The shots were deliberately aimed at Buck's cell.
(3) The shots were fired, either with the deliberate intention of injuring Buck, or wilfully, reckless as to whether they did or not.
(4) When the Superintendent had become acquainted with these circumstances he ought to have instigated an immediate and thorough investigation to determine the names of the men who had fired the shots, and this investigation should have been pursued with as much diligence as the investigation of any other crime.
(5) When Mr. Buckley's complaint was received, in August, 1933, the inspectors were instructed to conduct an investigation because there was no record of any appropriate investigation having taken place.
(6) The investigation by Inspectors Craig and Dawson was not carried out with the efficiency the circumstances warranted.
(7) In view of the evidence before them, Inspectors Craig and Dawson did not prepare an honest report for the Minister, but rather sought to place the responsibility where it did not justly lie, on Buck, and this with a view to justifying the shooting, which they knew at the time to be unjustified.
(8) The memorandum prepared by the Superintendent for the Minister of Justice was prepared in an unwarranted effort to justify what had taken place, and the Superintendent wrongfully omitted therein to report to the Minister all the facts that were within his knowledge, or to give the Minister an honest opinion in regard thereto.

St. Vincent de Paul Case

Our attention has been directed to another instance of the careless use of firearms, which occurred at St. Vincent de Paul Penitentiary since the sittings of your Commission at that institution.

On June 27, 1937, a prisoner was shot and killed by guard "A," in the following circumstances:

The prisoner was engaged with a gang of men at work on the penitentiary property under the supervision of guard "B." He had apparently refused to proceed with his work, and guard "A," who was occupying a tower about sixty-five or seventy feet away, told guard "B" to tell the prisoner to go to work. The prisoner did not resume work, and the instructions were repeated.

Guard "A" has stated, in the evidence given before the coroner's jury, that he saw the prisoner raise his shovel to strike at guard "B" who tried to parry the blow with a stick. Because the prisoner continued his attempts to strike the guard, guard "A," thinking the prisoner was going to kill his fellow officer, called on him to stop. He states that it was possible that, due to the noise being made by a mechanical shovel, the prisoner might not have heard his warning, but, as the prisoner continued to aim blows at the guard, he shot at him with the twelve calibre shot gun with which he was armed. Four pellets, or slugs, entered the skull of the prisoner and were found in his brain.

Guard "A" has stated in evidence that his idea was to protect the life of guard "B" by shooting the prisoner in the legs. He states that it was not his intention to shoot the prisoner in the head. The evidence of guard "B" is:

> "The prisoner was not working. I sent an officer to tell him to work. He did not obey; I went to him. He was on the bench and I said to him, 'bring the bench back to the place from which you took it, and if you do not do it you will lose some pay.' I told him that he would have to do his share of the work. I spoke very politely to him. He said, 'Christ, you still have the idea of taking notes away from me.' I must say that I had taken notes away from him the year before. He had his shovel in his hand and he tried to hit me. I had a loaded revolver but he did not give me a chance to draw it. I had a stick in my hand and I tried to parry the blows. I did not have time to avoid him."

It is unnecessary for our purpose to go into the other evidence beyond stating that it substantially corroborates the evidence of the two guards already referred to.

In his report to the Superintendent, dated July 8, 1937, the warden stated that, according to the evidence, guard "A" was justified in acting the way he had done in order to protect the life of guard "B" and to help guard "B" control the prisoner.

Two other guards were on duty in the tower on the wall about 225 feet away and were armed with rifles.

We are of the opinion that the evidence given in this case, accepted in its most favourable light to the guard in question, demonstrates either carelessness or incompetence in the use of firearms. If the officer's evidence is to be accepted, that he discharged a shot gun at a distance of from sixty to seventy feet from the prisoner aiming at his legs and hitting his head, it convinces us that the officer was most incompetent in the use of firearms. Not only was his incompetence fatal to the prisoner, but it might also have been fatal to the guard who was being attacked.

On the other hand, if the officer was not incompetent in the use of firearms, he must have shot deliberately to kill the prisoner. We do not think that, in view of the fact that the officer being attacked was armed with a revolver and that there does not appear to have been anything to prevent his escaping from the immediate attack of the prisoner, there was any occasion for deliberately shooting to kill.

We are of the opinion that the regulations affecting the use of firearms in prisons require careful review by the penitentiary authorities, having in mind the following principles:

1. The custody of the prisoners is essential.
2. The protection of the lives of the officers is imperative.
3. Inefficiency in handling firearms is dangerous, not only to prisoners, but to officers engaged in the service.
4. Unnecessary injury to human life by those engaged in the administration of justice brings the administration of justice into disrepute and tends to render more difficult the enforcement of law.
5. Wilful misuse, or reckless use, of firearms by members of the prison staff should be dealt with in the same manner as the commission of any other crime.

In considering these principles, your Commissioners emphasize the fact that it must always be borne in mind that, although prisoners are in custody, they are entitled to the same protection of law as is given to citizens at large. Officers and guards are appointed to administer the law, and they should receive no immunity from just punishment if they recklessly or unlawfully violate its provisions.

Chapter VIII

PRISON MANAGEMENT

Classification

In the second chapter of this report it was pointed out that classification and segregation form a fundamental basis of all reformative treatment. As has already been stated, prisoners may be divided into three main classes; accidental or occasional criminals, reformable criminals, and habitual criminals.

The first step in the classification of the prison population is to segregate the incorrigible criminal in an institution specially designed for the treatment of this class of offender. It is hopeless to strive to effect the reformation of a prisoner while, at the same time, exposing him to the destructive association of depraved criminals who have no determination to live anything but degenerate lives of crime. With the incorrigible criminal removed from the ordinary prison population, the classification and treatment of the remainder may be approached with a greater degree of confidence.

The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they were taken in charge. This responsibility has been officially recognized in Canada for nearly a century but, although recognized, it has not been discharged. The evidence before this Commission convinces us that there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them. This is a severe, but in our opinion, just indictment of the present and past administrations.

The reformative purpose of prisons was first given statutory definition in Canada in 1851, when the duties of the warden were stated to be, in part:

> "To have in charge the health, conduct and safe keeping of the prisoners; *to examine into and seek the success of the religious, moral and industrial appliances used for the reformation of the convicts,* and to exercise for the whole establishment a close supervision of personal direction."

In 1869, the same principle was recognized in other words, and it remains in substantially the same form in the present Penitentiary Act. The statute reads as follows:

> "Each of the penitentiaries in Canada shall be maintained as a prison for the confinement and reformation of persons male and female, lawfully convicted of crime, before the courts of criminal jurisdiction. . . . . ."

In its report, the Gladstone Commission[1] emphasized the necessity of a reformative influence in prisons. The following quotations from the report express the views of that Commission:

> "Sir Godfrey Lushington thus impressively summed up the influences under the present system unfavourable to reformation: 'I regard as unfavourable to reformation the status of a prisoner throughout his whole career, the crushing of self-respect, the starving of all moral instincts he may possess, the absence of all opportunity to do or receive a kindness, the continual association with none but criminals, and that only as a separate item amongst other items also separate; the forced labour, and the denial of all liberty. I believe the true mode of reforming a man or restoring him to society is exactly in the opposite direction of all these, but, of course, this is a mere idea. It is quite impracticable in a prison. In fact the unfavourable features I have mentioned are inseparable from prison life.' As a broad description of prison life we think this description is accurate; we do not agree that all of these unfavourable features are irremovable.
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> Upon what does the reformatory influence which we desire to bring to bear more fully on the prison population depend? We answer (i) the administrative authority, (ii) individual effort, (iii) a proper classification of prisoners.
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> (iii) The probabilities of success would be largely increased by a careful classification of prisoners. At present a large prison contains almost every type of offender. They are mixed up in hopeless confusion. In hospitals patients are classified and kept separate according to their ailments and requirements. The work of the doctor is simplified, time and effort are saved. The work of a prison chaplain in a large prison is inconceivably difficult, and his diagnosis has to be made under serious disadvantages. The smooth-tongued old offender occupies his time with meaningless professions of penitence; the prisoner who is reticent, because he feels his position, may have to be passed by for lack of time to penetrate his reserve. Old and young, good and bad, men convicted of atrocious crimes, and those convicted of non-criminal civil offences, are all to be found in the same prison. The chaplain and the governor have to attune their minds as best they can to each individual case as they pass from cell to cell. Under these circumstances their best efforts can only reach a portion of the prisoners. A sound and wise system of classification would make it more possible to deal with prisoners collectively by reason of their circumstances being at any rate to some extent of a like nature. Efforts could then be concentrated on the individuals who were contumacious, and with better chances of ultimate success."

[1] Report of the Departmental Committee on Prisons, Lond., 1895.

That classification is an elmentary condition precedent to reformation was first recognized in the report of a Royal Commission appointed to investigate the conditions at Kingston Penitentiary in 1848. This Commission recommended that:

1. Juvenile be segregated from older offenders;
2. A separate cellular system must be used in place of a congregated system;
3. New arrivals should be kept in solitary cells;
4. Other prisoners should be classified; every gang should be secluded from the other.

By the Prisons Act of 1877 provision was made in England whereby the Secretary of State might, from time to time, by any general or special rule, appropriate either, wholly or partially, particular prisons within his jurisdiction to particular classes of convicted criminals. The Gladstone Committee reported that this power had been very sparingly used. The report states:

> "First offenders are usually kept as far as possible apart from habituals and juveniles under 16, and similarly treated and further are not allowed to associate either in chapel or at work with other prisoners. We lay the greatest stress on the fact that no adequate attempt has yet been made to secure a sound basis of classification in local prisons."

Since 1889, the Canadian penitentiary regulations have made provision for the classification of prisoners.

In 1909, the Hon. Mr. Monk introduced a resolution in the House of Commons of Canada, which was unanimously carried. The resolution read as follows:

> ". . . to ascertain what means could be adopted in Canada to insure a judicious classification and segregation of the convicts in our penal institutions and reformatories."

The annual report on penitentiaries for the year 1909-1910 shows that the wardens and chaplains of the penitentiaries, with one exception, urged on the Government the necessity of the classification of prisoners.

The 1913 Commission called attention to the recommendations that had already been made in Canada for the classification of prisoners. Its report stated:

> "The inspectors who called for these reports in pursuance of Mr. Monk's remarks, made a recommendation to the Minister of Justice to take no action regarding them. They dismissed the proposal to classify prisoners and segregate first offenders in separate prisons or reformatories on the ground of expense and they reported that the classification of prisoners should be left to the judicial criminologist."

The Commissioners further state in their report:

> "It is solely with the object of classifying prisoners that separate prisoners are advocated. It has been urged that to make any attempt

at classification is to discriminate and discrimination is an evil that must at all costs be barred from our penitentiaries. Why should the natural law of discrimination between the good and the bad not be operative in a prison? The scientific treatment of moral delinquents means differentiation and discrimination at every turn. Possibly some day there may be a prison in which each inmate will have his particular case analysed by experts, with a view to special treatment, aiming at his readjustment to the proper standard of living. Such a development may seem visionary and impracticable. But surely we can, with reason and justice, move a little in advance of our present policy, which may be expressed in the words; 'All is grist that comes to our punishment mill'—the old and the young, the bad and the well-disposed, the hopeless and the hopeful, all treated as so much human waste in a common heap."

The 1920 Committee also recommended that steps be taken toward effective classification of prisoners.

In 1933, the Superintendent issued regulations making provision for such classification but, in his circular of instructions, he appears to have proceeded on a fundamentally erroneous assumption. He commenced by assuming:

"That when an accused person is placed on trial, the judge has made available to him the social history of such person and also information concerning his mental and physical state."

We know of no justification for his making this assumption, or for his basing any system of classification on the impression that, before sentence, a social, physical, and mental study must be made of the prisoner, and that his incarceration must be ordered according to information which has been furnished to the judicial authority.

It is recommended elsewhere in this report that such information should be made available to the court, but, until this is done, it will be necessary for the classification boards to gather their own information.

The regulations issued by the Superintendent provide for a classification board in each penitentiary to consist of the warden, who is to act as chairman, the deputy warden, chief keeper, chief trade instructor, physician, chaplain, and teacher, with such other officer or officers as the Superintendent or warden may direct. The duties of the members of the classification board are specifically stated. If these regulations were to be carried out they would form some basis for a proper classification. The regulations provide that the classification board shall meet on the second Tuesday of each month, and on such other occasions as shall be directed by the warden, that each prisoner shall be reclassified at the end of six months (the first six months being known as a probationary period), and that the proceedings of the classification board and the reports of the members shall be available to the chief of the Remission Branch, or his representative, when visiting the penitentiary.

The classification that has taken place pursuant to these regulations appears to have been designed, more for the greater security of the prisoners and the suppression of agitation, than to promote the reformation of the prisoners. As an example, Collin's Bay Penitentiary was created by the appropriation of money from the public funds to provide for special treatment of the most reformable prisoners. It now houses the most physically fit, regardless of character or reformability. On the list of prisoners "classified" for transfer to Collin's Bay during the sitting of this Commission at Kingston, one was a prisoner with twenty-six previous convictions. According to the evidence of the wardens of Kingston Penitentiary and Collin's Bay Penitentiary, the physical fitness of the prisoners is the prime consideration in selecting men for transfer to Collin's Bay Penitentiary. The reason for this method of selection is that the prisoners are required to do a great amount of heavy manual labour.

The inefficiency of the classification boards in the respective penitentiaries is the subject of comment elsewhere in this report.

Although there have been nearly one hundred years of legislation and agitation on the subject of classification, we regret to state that throughout Canada, both in the penitentiaries and the reformatories, there is very little intelligent or effective classification of the prisoners. As has been stated in another part of this report, one of the wardens referred to the classification board as a farce. This appears to have been the attitude of the officials toward the whole subject throughout the penitentiary. Some effort has been made toward a measure of segregation, but in most instances the work of the classification board has been directed only to determining to what employment the prisoner should be sent, rather than to what group he should be detailed for the purpose of receiving the best reformative treatment.

The difficulty in making constructive suggestions concerning classification in Canada is increased by the dual authority over prisoners and other penal institutions, and the geographical distribution of the population. It is obvious that it is not practical in Canada to provide the same variety of institutions to house the various classes of prisoners as may be provided in thickly populated countries. In addition to this, the division of prison population between federal and provincial authority, which is dealt with in another chapter,[1] greatly accentuates the difficulties of proper classification.

It is of little value to develop modern methods for the treatment of prisoners in our penitentiaries if youthful and reformable offenders are to be given an elementary and secondary education in crime by association with experienced criminals in the reformatories and provincial jails. On the other hand, if the reformatories and provincial jails, which are now located at several points in the provinces, were under the same jurisdiction as the penitentiaries, it would be a comparatively simple task to develop a co-ordinated scheme of classification and treatment for all offenders, except those serving short sentences in the county jails.

[1] Chapter XXX.

Many of these provincial institutions are admirably located for the treatment of youthful, or what is called in England "Star" class offenders, without the contaminating influence of the dissipated and confirmed criminal.

No categorical rules can be laid down which will be applicable in detail to the classification of all prisoners. Those whose duty it is to perform this task must apply a large measure of discretion and wisdom in carrying out the task. It is suggested, however, that the following general principles should be followed:

1. The insane should be entirely removed from the prison population.
2. The habitual offender should be segregated in a separate institution.
3. Of the remaining population, young prisoners, that is those not over twenty-three years of age, should be set apart for special treatment.
4. The mentally deficient ought to be segregated under the guidance of a trained psychiatrist.[1]
5. Provision should be made for the segregation in one institution of intractable and incorrigible prisoners.
6. The remaining prison population should be considered from the following points of view:
   (*a*) Previous record;
   (*b*) Social habits and training;
   (*c*) Physical condition;
   (*d*) Educational attainments;
   (*e*) Training for future employment.

It is recommended that, with consideration being given to these general principles, the method of classification followed in England should be adopted. There the prisoners are divided into three classes, "Star," "Special," and "Ordinary." The names given to these classes are of little consequence, but, in no case, should the name "Preferred" be used. This was an unfortunate term improperly applied to the prisoners sent to Collin's Bay Penitentiary.

1. The "Star" class consists of those who should be separated from others because they have not been previously convicted, or not previously convicted of serious offences, and are not of criminal or corrupt habits.
2. The "Special" class is for men under the age of thirty who are serving first sentence of penal servitude, have previous convictions or records which show that they are not suitable for the "Star" class, and are not of poor physique or mentality. The object is to separate the younger men of criminal habits and

[1] It is idle to attempt to maintain prison discipline when there is a fair sprinkling of mentally deficient prisoners in the general population. These prisoners have not the mental capacity to respond to discipline, nor have they the regenerative capacity to profit by reformative treatment. Their instruction should be essentially vocational, and with proper segregation, discipline might well be less rigorous. It is, in our opinion, little short of cruelty to punish a mentally deficient prisoner for insubordination when he has not the capacity to respect authority.

tendencies who are vigorous in body and mind from those who are older, or are of poor physique or mentality, with a view to subjecting the young and fit men to forms of employment and training appropriate to their age and character.

3. The "Ordinary" class consists of persons who are unsuited for either the "Star" or the "Special" class.

The "Star" class prisoners are sent either to Maidstone Prison or Wakefield Prison. The population of Wakefield Prison consists mostly of prisoners who have substantial terms to serve but who are not of criminal habits. The "Special" class prisoners are sent to Chelmsford, and the "Ordinary" class to Dartmoor and Parkhurst. The type of employment, the educational facilities, and training and recreation are necessarily designed to suit the particular class of prisoners at each penitentiary.

We are of the opinion that, with the centralization of authority over penitentiaries, reformatories, and provincial jails, the principle that has been adopted in England, and which is working with satisfaction, might be applied to Canada with substantial benefit.

These suggestions are intended to form the basis of a system to be developed gradually, in the light of the results of similar systems in other countries, and with constant regard to the cardinal principle of all such classification—the reduction to a minimum of contaminating or deteriorating influences in prison life.

Grades and Merit System

After provision has been made for the proper classification of prisoners, it remains for the prison administration to decide upon the principles of discipline that are to be applied to each class. It is obvious that the same principles will not equally apply to all classes of prisoners. The same treatment cannot be applied to the incorrigible recidivist as to the youthful first offender, nor should the same treatment be applied to the youthful recidivist as to the mature and habitual criminal.

> "The underlying principle is that discipline should be maintained by constructive rather than by merely repressive measures by encouraging the prisoner to maintain a standard rather than by holding out physical punishment in terrorem."[1]

We believe that, with the recognition that in Canadian prisons there are a greater number of brutal criminals who have committed crimes of violence than there are in English prisons, this principle is as applicable in Canada as in England. Its limitations in dealing with such brutal and ruthless prisoners must be fully recognized, but, if this is done, it will prove a safe guide for prison authorities, and one which should be given a much wider application in Canada than has been the case in the past.

Marks for good conduct and industry that entitle a prisoner to earn a remission of sentence are effective in promoting prison discipline,

[1] Modern English Prisons, L. W. Fox, page 78.

but, in the opinion of your Commissioners, the prison routine may be adjusted to embody a greater measure of the philosophy of ordinary life. Good conduct and industry should be allowed to win for the prisoner, not only the reward of a shorter sentence, but increasing privileges and some mitigation of the rigours of prison life. This may be accomplished by a stage system within the classes of prisoners that have been created. It is emphasized that this stage system must be within the classes and not, except in rare occasions, from one class to another, because it is a well known fact that the old and experienced criminals are often the best behaved prisoners. They realize that good conduct, industry, and diligent attention to prison rules and routine win the most comfortable passage through the period of detention. To transfer this prisoner from one class to another because of good conduct in prison would be to destroy the efficacy of classification.

In England, three stages have been established in many prisons, and four in others. Formerly, four stages, each lasting for a month, existed in the local prisons.

> "It was not until the fourth stage had been reached that the privileges counted for anything, and as the long sentence prisoner earned all he could in three months it was thereafter of no value in living in hopes of better times to come."[1]

The new system does not make any attempt to provide a system of increasing privileges for a short-sentence prisoner. Three stages are ordinarily provided, the first stage lasts for three months, the second stage for six months, and the third stage for the balance of the sentence. The privileges extended are as follows:

First Stage—Educational books and standard works of good fiction are allowed. Except in the "Star" class, visits are allowed every two months and a letter once every two months.

Second Stage—Prisoners are eligible for concerts and lectures. Greater privileges and chosen fiction books are allowed. Prisoners are allowed a letter and a visit once a month. The period of the visit, as in the first stage, is twenty minutes.

Third Stage—The period of the visit is extended from twenty to thirty minutes, and in addition to the privileges already allowed, prisoners are permitted certain recreations in their cells in the form of crossword puzzles, chess, drafts, jig-saw puzzles, etc.

This stage system is applied with variations. For example, when your Commissioners visited Wakefield Prison they found about forty prisoners allowed to work in a camp under conditions very similar to a military or logging camp in Canada. Custody was at a minimum, and the prisoners were permitted to conduct themselves as nearly as possible under conditions but narrowly differing from those of liberty. This

[1] The Modern English Prison, L. W. Fox, page 80.

privilege was extended only to specially meritorious prisoners whose term of imprisonment was shortly to expire. The treatment is designed to diminish the gulf that always exists between liberation from prison and assimilation into ordinary society.

Long term prisoners in other prisons are eligible to be admitted after four years (women, three years) to a special stage. In this stage, in some prisons, they have greater freedom of association, some evening recreation, the possibility of earning gratuities that may be spent on articles of comfort, and relaxation such as use of newspapers, tobacco, etc. During the visit of your Commissioners to Maidstone and Dartmoor Prisons, we studied the privileges extended to these long term prisoners, and were particularly impressed with the treatment accorded to those serving life sentences at Maidstone, where they are provided with special quarters in which they may associate and enjoy a considerable measure of recreation.

We are of the opinion that the confinement of a prisoner for life is a sufficient deterrent to others without accompanying the confinement with all the punishment that is ordinarily incidental to a prison sentence. The sentence, itself, is, of course, a complete deterrent to the prisoner. There remains no object in subjecting a tractable prisoner who is serving a life sentence to further severity.

It is always a serious problem for those engaged in the conduct of prisons to determine how far privileges should be extended to all prisoners irrespective of character or class. After careful consideration of the whole subject, and after observing the different methods applied in various countries, we are of the opinion that a middle course should be adopted in respect to Canadian prisons. In the first place, all prison privileges should not be extended to the entire prison population. On the other hand, no part of the prison population should be entirely deprived of all privileges. A certain minimum should be established below which the prison authorities should not be allowed to go. This minimum ought to include library books, educational facilities, letters, and visits. These may be extended to a maximum, according to conduct and class, to include eating in association, games, newspapers, radio, and concerts. Any individual might be deprived of the latter class of privilege at any time as punishment for breach of prison discipline.

The prisoners should always be made to understand that these latter ameliorations are *privileges,* to be earned by good conduct and not to be possessed as a right. If stress is not laid upon this, the extension of these privileges will become but a concession to the agitator and an incentive to further agitation.

If the recommendations of this report are adopted, we are of the opinion that, with the proper classification and grading of prisoners, the reward for good conduct may be made an effective means, not only of discipline, but of reformation.

Depressing Effects of Confinement

The following factors have an undermining influence on the morale of prisoners and interfere with their reformation in our penal institutions. They have only half an hour of daily exercise in the open air, spend sixteen out of twenty-four hours in a poorly ventilated cell, and, in winter, a large portion of their remaining time in stuffy and overheated shops, so that they are practically deprived of exercise, sunshine, and fresh air, which are so essential to their physical and mental development. The prisoners have no choice of associates, but are compelled to converse with neighbours, who, in most cases, are unsympathetic or worse. They do not receive any newspapers and are therefore not aware of what is going on in the world. They have no varied social or mental contacts to keep their minds active, and so are thrown almost entirely into retrospection and brooding, subject to a constant craving for freedom, a furious hatred of all restraints, and a hunger for bodily and spiritual necessities. They have an utter lack of responsibility, with no need to care about food, clothing, shelter, a job, or planning a day's work, but are given orders and a daily task to perform, until finally they lose all initiative, physical and mental alertness, and are left with senses atrophied from disuse. They have an over-abundance of leisure and no necessity for hurrying about anything. Anything that can be put off until tomorrow is put off until tomorrow, and they become adepts at procrastination. The guards often treat them with apathy, or even brutality, and do not try to help or encourage them, believing that an officer's duty is merely to see that the prisoners obey the rules and that they do not try to escape.

The result of all this is that, when a prisoner comes out of prison, after the first thrill of freedom, he relapses into habitual lethargy and becomes enveloped in a thick shell of apathy. He is badly handicapped in his efforts at rehabilitation. He wanders aimlessly in the midst of the sharp rivalry and feverish activity of the free world.

Recreation

A properly planned program of recreation is a most essential part of prison life. It should be regarded, not as entertainment, but as part of the treatment necessary to strengthen soul, mind, and body. It should absorb time that would otherwise be spent in idleness or brooding, and should be an important factor in reformation. These objects can only be attained by keeping a prisoner physically fit by adequate outdoor exercise, and by keeping his mind occupied by labour and recreation. When the grades and merit system is put into effect, the better class of inmates should be allowed to congregate in the corridors of the closed ranges to converse and to engage in games of cards, checkers, etc.

Recreation is divided into two parts: physical activities—including physical training, drill, gymnastics, and games such as football, volley-

ball, handball, quoits, etc., and mental activities, such as reading, the pursuit of hobbies, concerts, radios, lectures, and games not requiring any physical effort.

Physical Activities

The regulations dealing with this subject are as follows:

"46. All convicts employed in shops, clerical work or any confined work, shall receive exercise in the fresh air, weather permitting, for not less than one-half hour per day during the winter, and forty minutes per day during the summer, such time to be exclusive of the time required to go to or from cells or work.

47. The exercise shall be, as far as possible, of a varied nature; not less than one-half of the exercise period shall consist of exercises of a rhythmic or systematic nature such as followed in the Public and High Schools of Canada.

48. Not more than half of any exercise period may be used for free movement exercise, but no exercise shall be permitted which calls for competition between groups of convicts or permits or calls for personal contact of convicts.

50. All convicts shall be given not less than one-half hour exercise in the fresh air on each Sunday and such holidays as may be designated by the Minister of Justice."

Many representations were made to the Commission concerning these regulations. Some of the main grievances are as follows:

1. The time allowed each day, thirty minutes in winter and forty minutes in summer, is not sufficient, and the type of exercise given is not a form of recreation, but in many cases more of a hardship and punishment;
2. Those employed on outside work are not granted this period on weekdays, and are therefore prevented from participating in any free movement exercise, including games;
3. If weather conditions are bad, the prisoners are deprived of this period, perhaps for some days;
4. The nature of the exercise is too limited. Prisoners should be allowed part of the time to relax and converse with each other;
5. Softball, handball, quoits, and other outdoor games should be permitted where proper facilities are available;
6. On Saturdays, Sundays, and holidays, the prisoners should be given much longer recreation periods in the yard.

On the whole, your Commissioners are of the opinion that the criticisms contained in these representations are justified, and that the present regulations are too stringent to allow prisoners to obtain sufficient outdoor recreation and exercise. In Great Britain and the United States, much more latitude is given, both as to time and variety. The English rules provide for one hour per day, generally equally divided between the

morning and the afternoon, to allow an additional break in the prisoner's daily labour. Further time is often given on Saturdays, Sundays, and on holidays. At Dartmoor, in England, where many of the worst criminals are confined, they are yet allowed out in the grounds on Sunday for three separate periods of about an hour each.

All prisoners, and not only those doing indoor work, should be allowed to participate in exercise periods. While, perhaps, those employed at heavy manual labour in the open air should be excused from physical training exercises, there appears to be no reason why they should not participate in games or other free movement exercises.

Your Commissioners believe that accommodation should be provided for indoor exercises when weather conditions are sufficiently bad to prevent the prisoners from taking their exercise out of doors.

Under regulations 47 and 48, one half of the period *must* be given to physical training or drill, and not more than one-half may be used for free movement exercises. In most penitentiaries, free movement exercises consist of walking in a ring, with no conversation allowed. Volleyball and horseshoes are played by some prisoners in some penitentiaries, but, in other places, no games of any kind are allowed.

Regulation 48, which prohibits exercise calling for competition between groups of prisoners or exercise permitting personal contact, is too drastic, and bars the introduction of many games that could be played without prejudice to discipline and with some beneficial result. At many institutions in Great Britain your Commissioners saw competitive games being played by the prisoners, and they were informed that there had been less trouble arising from fighting or other disputes amongst the players than would be the case in similar games played outside the prisons. The principal reason is that the permission to play games is a privilege, and the knowledge that misbehaviour on the field will result in its cancellation acts as an effective check.

From evidence given before the Commission, it was shown that, when softball was played at Kingston Penitentiary, the officers had no trouble with the players, and some of the officers stated that it raised the morale of the prisoners and resulted in less obscene language.

Such games undoubtedly teach the prisoners a number of highly desirable features, including self-control, and, with the proper classification of inmates, much greater latitude might be permitted them. The scope and character of the games permitted should be left to the good judgment of the Prison Commission herein recommended. Obviously, relaxation of this kind will be beneficial to those who are in a position to participate in the games, and, perhaps, even to others, who, while unable to participate, might be permitted to watch them. Great care must be exercised in the granting of such privileges, however, and no abuses should be permitted. In Scotland and England, many outdoor games are permitted, which are generally admitted to be beneficial to the health and morale of the inmates. Your Commissioners are impressed with the necessity of providing more recreational time outside the cells, particularly on Saturdays, Sundays, and holidays.

Most prison officers and nearly all prisoners have informed your Commissioners that the most trying period is that when the inmate is alone in his cell. On weekdays this is usually for about sixteen hours per day. On Saturday afternoons, Sundays, and holidays (which often follow Sundays) the prisoner spends his entire time in a cell. One officer stated to the Commission that after this period the depressing and antagonistic attitude of the prisoners was quite apparent. In most institutions outside Canada that were visited by your Commissioners, they found considerably more latitude in the way of recreation, and they are convinced that necessary changes should be made in the penitentiary regulations to bring Canadian institutions into line with those of other countries in this respect. Staffs in Canadian penitentiaries are as large as, if not larger than, in most other countries, and your Commissioners do not believe that any increase of staff would be required to provide for this.

In the report of the 1920 Committee it was recommended that, "On any day, whether a Sunday, public holiday or other day upon which a full half day's labour is not performed by a convict . . . such convict shall be permitted to be out of his cell during such day for at least three hours, of which at least one and one-half hours shall, weather permitting, be passed in the open air. . . ." Your Commissioners believe that this recommendation should long ago have been put into effect.

Concerts

Regulations 711 to 718, inclusive, set out the conditions under which wardens may arrange for concerts. These may be held monthly during the winter. Such concerts must be held during working hours, without expense to the public, and no prisoner is permitted to take part as an artist or performer. Community singing, however, may be permitted at the discretion of the warden. Concerts create a useful diversion for the inmates, and should be encouraged, whereas, in Canadian penitentiaries they have seldom been held the maximum number of times permitted by the regulations. While it is realized that it may have been difficult to hold concerts more often because of the situation of some of the institutions, your Commissioners believe that special efforts should be made to provide them more frequently. Your Commissioners also believe that, if proper classification were provided, the best class of inmates might be permitted to participate in such concerts.

Your Commissioners also suggest that lecturers should be encouraged to come to the penitentiaries from time to time to give lectures on approved subjects. These would be of advantage to the prisoners from an educational as well as a recreational point of view.

Radios

The question of providing radios in the penitentiaries has been under consideration by the Superintendent and, in some of these, radios with loud speakers have already been installed. The present practice of purchasing radio equipment by contributions from the prisoners does not

meet with the approval of your Commissioners because it leads the inmates to regard the radio as their own property, and, when they have left the institution, they regard their contributions as having been placed to the improvement of Government property. Neither are your Commissioners in favour of radios with loud speakers, because dissension and turmoil are created when certain inmates object to programs that may please others, and it is impossible to please them all. Some of the inmates, too, would rather read in quiet. Unless ear phones are provided for individual prisoners, so that they would not be compelled to listen to the programs if they did not wish to do so and they could be deprived of the privilege if their conduct was not satisfactory, your Commissioners would recommend that radio entertainment be abolished.

Newspapers, Books, and Magazines

At the present time no newspapers are allowed in the penitentiaries. The only source of obtaining news of important current world events is by means of a bulletin prepared by the teacher, chaplain, or other qualified officer. These are usually distributed weekly to the inmates. They are very abbreviated, and leave much to be desired in the way of keeping the inmates apprised of what is going on in the world outside the penitentiary. If prisoners are entirely shut off from obtaining news of the world for a long period, they will be ignorant of it when they are released, and will be under a real handicap in their search for work. Your Commissioners believe that a properly selected weekly newspaper, judiciously selected by the Prison Commission, should be provided at public expense to prisoners in our penitentiaries. This might be some weekly newspaper published in a large city of the district in which the penitentiary is situated.

The present regulations provide that an inmate shall not be permitted to have the use of books and magazines for some time after admission to the penitentiary. Your Commissioners believe that, as this is a crucial period in his term of imprisonment, he should be permitted reading materials from the day of his entrance to the penitentiary.

Hobbies

Painting, sketching, or drawing, by prisoners in their cells, as mentioned in regulation 719 to 721, should be encouraged, and every assistance afforded by the prison officials to those prisoners desiring to do this work. Regulation 721 stipulates that the subject of any proposed painting, sketch, or drawing must have the approval of the warden. No drawing can be done in the cells until the matter has been submitted to the warden. If an inmate is given the privilege of drawing, it seems entirely unnecessary that the subject he wishes to draw should have to be approved. After his sketch or drawing has been made, if it is objectionable, the drawing could be taken away from him, and, in more serious cases, the inmate could be punished, but to submit what he intends to

draw before he commences it, and to be forced to adhere to the approved subject without deviation afterward, appears ridiculous. This regulation should be deleted.

Your Commissioners suggest that the Prison Commission should make a very careful study of the whole subject of hobbies and other cellular occupation for inmates. It has been demonstrated to your Commission that cellular occupation provides a beneficial relaxation for prisoners, and it would appear that regulation 722, which permits a prisoner to engage in cellular employment and diversion, has never been properly observed in Canadian penitentiaries.

Education

Existing penitentiary regulations establish certain requirements for the education of prisoners, including the provision of a library and the appointment of a teacher who is also to perform the duties of librarian and act as a member of the classification board in the institution where he is employed. Regulation 81 is as follows:

"There shall be compulsory school attendance for:—

(*a*) All illiterate convicts who are capable of being taught, and

(*b*) Such convicts as have not attained the standard of education of the average public school pupil at the maximum age of compulsory school attendance for the Province in which the Penitentiary is situated."

The first of these provisions is generally observed but, making due allowance for exemptions on the ground of unteachability and ill-health, applies only to one or two per cent of the penitentiary population.

Your Commissioners found that the second provision has not been carried out, and that, in some instances, there was complete ignorance of its existence or requirements. The application of regulation 86, providing that prisoners may pursue their studies in their cells, has been almost entirely disregarded. The usual explanation offered for this disregard is that the teacher has not had sufficient time to render such assistance. Provision that permission may be given to a prisoner to take up more advanced studies, including correspondence courses, is of little value in practice because the prisoners have seldom the necessary funds for the purchase of books and materials.

Regulations 396 and 397 provide that the teacher shall conduct the school as directed by the warden, and that he shall be under the direction of the warden in visiting prisoners who desire his assistance in educational matters. As a member of the classification board, it is the duty of the teacher to examine the prisoners with a view to determining their literacy, general knowledge, and teachability, and to determine their suitability for compulsory school education.

The observance of these regulations is largely perfunctory, and individual examination and schooling of the prisoners is almost entirely lacking. The teacher, himself, is not given the recognition to which the

importance of his work entitles him. Even his uniform as an officer is of a lower grade than that of the other members of the staff who form the classification board. This inferiority of status not only reacts upon the teachers themselves, but has a tendency to lessen their standing in the eyes of the prison population.

There has been little opportunity of co-operation between the teachers and the trade instructors, even though both often desire it, and, as a result, academic instruction and vocational training have had no complementary relation to each other.

The regulations provide that books and periodicals shall be selected by a library board composed of the warden, chaplain, and teacher, and that such selections shall be submitted to the Superintendent for approval. This library is under the management of the teacher, who is also the librarian.

Chaplains are permitted to maintain a library of religious books, tracts, or magazines, provided it does not entail expense to the public. These are usually kept locked up, apart from the general library, in the chaplain's office. No religious book may be issued to a prisoner without the written recommendation of the chaplain, and the latter cannot recommend the issue of any such book to a prisoner unless such prisoner has been placed under that chaplain's spiritual charge. Your Commissioners are of the opinion that the religious influence is most important and that, consequently, a modest grant should be given to each chaplain for the maintenance of such a library.

Education has been largely neglected in all Canadian penitentiaries, and no real interest has been taken in this important feature of reformative treatment. The attitude of most executive officers is one of tolerence and grudging acceptance, without care to see that even the minimum requirements are observed. There has been no indication at any Canadian penitentiary of the necessary interest in the school, its work, and its possibilities. This attitude is discouraging to the teachers and detrimental from every point of view. Some of the teachers lack experience, training, and aptitude, and have not the proper personality to make a success of their task. Others have become discouraged by reason of their inferior status and the indifference of higher officials. The schoolrooms are all poorly equipped and most of them lack proper lighting and ventilation. The accommodation is meagre and unsuitable—frequently in a remote location in the institution—and the rooms are left untidy and unclean.

Education should be regarded as an essential part of any program of rehabilitation, and it should embrace religious, academic, vocational, health, cultural, and social training. The problem is fundamentally one of adult education, and not merely the correction of illiteracy and the provision of correspondence courses as contemplated by present regulations. To achieve any worth-while result, individual treatment is required. The principle of compulsion is unimportant, and mass treatment is unsatisfactory. The prisoner should be regarded as an adult in

need of education, as well as a criminal in need of reform. Prisoners, at present, have many monotonous hours of leisure, which, under guidance and direction, could be utilized for their betterment.

Your Commissioners were unable to find in any penitentiary that any attempt had been made to institute a satisfactory or well-rounded educational program. There is no vocational education worthy of the name. Any such training is largely incidental to carrying on the prison industries. There is little use of the library as an agency of education. It is true that recreational reading is indirectly educational, but reading can, and should, be used for direct education. At present there is no stimulation or guidance, and little attempt to utilize any but text books in the education of the prisoners.

The libraries in all our penitentiaries are located in cramped and inconvenient quarters. Catalogues are not complete or readily available. No surveys have been made to discover reading tastes or habits; no records have been kept to find out which books are most often in demand, and, as a result, books are ordered in a haphazard manner without any attempt to apply the library appropriation to its most advantageous use or to shape the library to any definite end. The inevitable outcome is that the libraries are mere collections of odds and ends of the publishing trade, and that the number of volumes has no relation to the effectiveness or utility of the collection. All libraries in Canadian penitentiaries require a drastic weeding out of old and useless books and the installation of a definite system of book selection, cataloguing, and record keeping.

No doubt much of this disorder and inefficiency is due to the fact that no trained librarians are employed in the penitentiary service. A teacher is not necessarily a librarian, and a poor teacher will generally be a poor librarian. Teacher-librarians in penitentiaries should be trained in pedagogy, and trained in librarianship, and should possess the proper personality and competence to impart information to those in their charge.

There should be close co-operation in health education between the medical and educational staff, and such education should include the fundamental principles of personal and community hygiene. Greater attention should also be devoted to cultural development, particularly in cellular activities.

In penitentiaries that are located close to established universities there appears to be no reason why prisoners should not be permitted to take university instruction courses and lectures when they are far enough advanced to profit by them. Visual aids to education, such as lantern slides, still pictures, and educational films, might also be made available.

Proper facilities in the way of class rooms and elementary equipment, such as desks, chairs, and black boards, should be provided. This could be done at comparatively little expense to the public because practically all necessary work could be done in the institutions and only the materials should need to be provided.

Greater use could be made of the services of intelligent and well-educated inmates acting under the instruction and guidance of staff teachers.

Use should also be made of the voluntary assistance of individuals and agencies outside the institutions. This is done with great effect in England, where an adult education scheme, with the advice and co-operation of the Adult Education Committee of the Board of Education, was put into effect in 1923. The primary aim of this scheme is, not so much to improve the standard of education of imperfectly educated prisoners, as to counteract the mental deterioration inevitably attendant on prison life, and to increase the prisoner's fitness for citizenship by stimulating his mind and furnishing it with material for healthy activity while in confinement, with a view to the projection of such education in the prisoner's life after discharge. Evening classes are held in the prison after working hours, and the subjects are chosen to include, not only school subjects, such as history, mathematics, or modern languages, but vocational subjects, such as shorthand, gardening, technical trade courses, handicrafts, and subjects of general interest, such as first-aid, literature, or drama—in fact, any subject which is, in the widest sense, educational, and for which qualified persons can be secured. The scheme depends entirely on the willing help of voluntary teachers from outside the prison, although many prison and Borstal officers also give their evenings to this work. The English Commissioners, in their report for the year 1935, state that in that year there were 383 voluntary teachers and 682 unofficial visitors.

To assist governors of prisons in framing their educational schemes, and in enlisting the services of suitable teachers, those in the locality who have suitable qualifications are appointed as "educational advisers" to each prison. In 1935, there were thirty-six of these educational advisers, most of whom were directors of education or university professors. The educational advisers and teachers are, from time to time, invited to confer with the Prison Commissioners for a full discussion of the principles and problems of the work and its relation to the work done by other voluntary workers and the prison staff. The opinion of the English Commissioners as to the value of these conferences is given in their 1935 report:

> "All these conferences were well attended and afforded a valuable opportunity for the discussion of many subjects in connection with the administration and development of our Penal System. They are valuable, too, as a means of making better acquainted, all those who are interested in prison work. Personal knowledge of one another is the best solvent of difficulties and misunderstandings and the surest basis on which voluntary and official effort can co-operate."[1]

The English educational scheme includes other activities of a more recreational nature that have been found by experience to make a useful contribution to the mental well-being of the prisoners. Periodical

[1] Report of the Commissioners of Prisons and the Directors of Convict Prisons, Lond., 1935.

lectures covering a wide range of subjects are given by outside lecturers and, in some prisons, occasional evening debates and concerts are permitted. There is no intent in the English scheme to *amuse* the prisoners. The sole object of such recreational activities is to provide a therapeutic mental stimulus and to counteract "prison psychosis."

The attention of your Commissioners has been drawn to the annual report of the Superintendent of Penitentiaries for the fiscal year ended March 31, 1937. This report "includes a résumé" of warden's reports from the various Canadian penitentiaries and, with the single exception of Dorchester Penitentiary, contains the stereotyped phrase, "The school functioned in accordance with regulations and instructions." This language is not used in any report made by any warden or teacher, and it is an entirely unwarranted assumption from them. In some instances the reports of wardens and teachers are directly to the contrary effect. The situation brought to light by the investigations of your Commissioners is also at variance with such a statement.

While it is true that regulation 81 does not specifically state the extent of the school attendance, under other regulations the teacher is required to conduct the school as directed by the warden, to determine the number of classes he can form and teach, and the numbers of prisoners to be included in each class. Exemption from school attendance is provided only for those prisoners who are classed by the physician and teacher as unteachable or as having such a low standard of mentality as to render it probable that they would receive no benefit. Such prisoners may be removed from the school, or exempted from attending, upon the certificate of the physician and teacher. Prisoners may also be exempted from school attendance on the ground of ill health when a certificate has been provided by the physician.

The spirit and intent of these requirements is clear. Nevertheless, they have not been observed in practice. At Collin's Bay Penitentiary the enrolment was twenty-one out of an average population of nearly 200, approximately five per cent, and the average school attendance 9·4. The warden's explanation was that they could not put too many in school or they would not have sufficient work gangs—that the observance of the regulations would disorganize the construction work. At Kingston Penitentiary, it was stated that it was impossible to follow the regulations because there was not sufficient accommodation for the number that would be involved. At St. Vincent de Paul Penitentiary, the prisoners under twenty-one years, about fifty in number, received practically no schooling because they were not permitted, after April 22, 1936, to attend school with adults. Some provision was made for teaching these boys after representations had been made to the warden by your Commissioners, but this was not until March 20, 1937. Since then they have attended school one half day per week. Lack of accommodation and teachers is the reason assigned for the large "waiting list" of adults in this institution. At Dorchester Penitentiary, the reason given was lack of

facilities, and prisoners of grade 4 and upwards were refused education. At British Columbia Penitentiary the class for young prisoners was abandoned in May, 1936, although a few were permitted to continue studying with adults. At Manitoba Penitentiary, out of a population of 275 to 300, the average number enrolled at school was about seventy-five, with an average daily attendance of twenty-four. At Saskatchewan Penitentiary education ended at grade 6. Out of a population of 350 to 400, the enrolment ranged from fifty-five in April, 1936, to seventy-three on March 31, 1937, with an average daily attendance of 23·6. The requirements of penitentiary regulations as to the provision of an exemption certificate by the physician and teacher were not observed at any of the penitentiaries.

Your Commissioners deplore that a report from the Superintendent of Penitentiaries to the Minister of Justice should include a statement, such as that quoted above, which conveys to Parliament and to the general public an impression so at variance with the facts.

Your Commissioners recommend that the entire educational system in Canadian penitentiaries, including school, library, and vocational training, should be revised and remodelled to ensure that:

(*a*) Teachers and librarians who are selected should have training in pedagogy and in librarianship, and have the necessary personality and zeal to carry out the important task these officers are called upon to perform;

(*b*) When suitable and properly trained teachers and librarians are secured, they should be paid an adequate remuneration and given an adequate status in the official personnel;

(*c*) Co-operation should exist between the teacher and the trade instructors, chaplains, and doctors, with a view to providing a more complete and co-ordinated system of education;

(*d*) School rooms and library quarters should be modern, clean, accessible, and kept clean and bright, with proper ventilation and lighting;

(*e*) Individual treatment should be given prisoners as far as practicable, and they should be encouraged to extend their education by guided reading and study, lectures, and other cultural influences in their leisure hours;

(*f*) A properly selected, properly catalogued, and properly utilized collection of books and magazines should be provided and used to the fullest extent in promoting the general educational scheme;

(*g*) A grant should be given to provide a small library of religious books, under the care of the chaplains of the penitentiary service, for the use of prisoners of their faith;

(*h*) The English educational scheme should be studied by the Prison Commissioners, and adopted as a model for the establishment of a wider educational program in Canadian institutions, which will include the services of voluntary educational workers and

lecturers approved by the Prison Commission, and will incorporate many other of the admirable features of the English system;

(*i*) Educational facilities, in their widest scope, should be extended to all the prison population capable of benefiting by them, and particularly to youths and younger men.

Medical Services

Medical care in a penitentiary includes the treatment of both the physical and mental condition of the inmates. It is necessary that an efficient medical staff should be retained in order to correct, as far as possible, any physical or mental defects of the prisoners. For this purpose, the services of a physician, a psychologist or psychiatrist, and a dentist, should be available at each institution. We already have a physician and a dentist in attendance at each Canadian penitentiary but, although it is now generally recognized that the services of a psychiatrist are also essential if a thorough examination is to be made and proper treatment is to be given to each individual prisoner, provision has not yet been made for the regular attendance of a psychiatrist or psychologist.

Segregation of all mental, contagious, and infectious diseases should also be made.

Physical defects are often the cause of irascibility and of a propensity for criminal conduct. The removal of such defects will often result in the successful reformation of prisoners who have been afflicted with them. Defective eyesight, infected teeth, infected tonsils, adenoids, deviation of the nasal wall, flat feet, and improper functioning of the digestive and intestinal organs, when properly treated and corrected, will often bring an amazing transformation in the attitude of the sufferer. Hysteria and epilepsy are often the cause of criminal conduct. An interesting study of the role of the ductless glands in criminology has been made by Dr. John Harding,[1] of the staff of the New York State Reformatory at Elmira. He points out the great influence on human characteristics and conduct of the thyroid, pituitary, adrenal, and thymus glands, and notes that pathology is giving place to endocrinology to such an extent that no up-to-date physician can now fulfil his proper duties without some knowledge of the functions and treatment of these glands.

Nothing should be omitted which might improve the character of the prisoner. Thorough mental and medical examinations, complemented by a knowledge of his personal history, background, and family history, should be made of every prisoner by an expert psychiatrist and physician. Proper treatment should follow in an effort to remove the causes of his criminal tendencies. Quite apart from humanitarian considerations, the question of greater economy is involved because, as stated in another chapter, the cost of maintaining a prisoner in the penitentiary is high, and, if he can be cured, he ceases to be a charge on the state and becomes, instead, an asset. From any point of view it is necessary that a full-

[1] Extracts from Penological Reports by members of the management and staff of the New York State Reformatory, Elmira, Summary Press, 1926.

time physician and a full-time psychiatrist should be provided for the larger institutions, and, at least, a part-time physician and part-time psychiatrist for the smaller ones.

A sanitary hospital, with modern equipment and with wards instead of the cells, which already exist in most Canadian penitentiaries, must be maintained. Only a few cells should be retained, and these only for the use of unmanageable patients. There should be separate wards for tuberculosis and venereal disease patients and for those under observation because of mental abnormalities.

Your Commissioners believe that a physician who attends to the daily routine in a penitentiary for a long term of service often develops a skeptical attitude toward complaints of prisoners. In view of the fact that a great number of prisoners are habitually endeavouring, and occasionally succeeding, in deceiving the doctor, he is apt to believe that there are more malingerers than actually exist. A solution might be found in the interchange of physicians from one institution to another, so that, even though still in an institution, there would be a change of environment, personnel, and patients.

In the federal institutions in the United States, the medical service is entirely divorced from the penitentiary management and the administration of the Department of Justice, and placed under the Department of Health. While opinions were expressed to the effect that this system has been a success in the United States, your Commissioners are hesitant in making any recommendation on the subject. The Prison Commission, which we hope will replace the present one-man control of Canadian penitentiaries, should make a careful study of this question and decide whether it is preferable to have medical services under the prison authorities or under the Department of Health. If the Prison Commission should decide that the medical services ought to be transferred to the Department of Health, there will be no further necessity for the stipulation that a medical doctor should be one of the members of the Prison Commission.

Dietary arrangements in the penitentiaries are most important. The food provided should be wholesome and properly cooked. Uniform diets should be applied in all institutions. They should be based on the recommendations of experts, and carefully arranged to provide, without undue monotony, for a proper balance of necessary dietetic elements. Special diets should be provided for vegetarians and sick prisoners.

Religious Services

Provision is made in the penitentiary regulations for the services of a Protestant and a Roman Catholic chaplain at each of the Canadian penitentiaries. There is also a Jewish chaplain at St. Vincent de Paul. Five Protestant chaplains are engaged on a full time, and two on a part time, basis; six Roman Catholic chaplains are engaged on a full time, and one on a part time, basis. The chaplains have the rank of senior

officers and, if they desire to wear uniforms, they are supplied with them. The duties of the chaplains are set out in the regulations, and may be summarized as follows:

They shall be responsible for the religious instruction of all prisoners who are reported to the warden as being adherents respectively of the Protestant or Roman Catholic faiths;

They are to be diligent in visiting and conversing with the prisoners, subject to the direction of the warden;

They are responsible for seeing that the prisoners are furnished with the Scriptures and recognized religious literature;

They are forbidden to proselytize, and must not write letters for the prisoners, except by leave of the warden;

They are members of the classification board;

They are subject to the general penitentiary rules and regulations respecting communication with those outside the penitentiary service.

The printed "Rules of Conduct and Prison Offences," supplied by the Penitentiary Branch for the guidance of prisoners, contains the following rule:

"He (the prisoner) shall hold communication with the officer in charge of him only on matters connected with his work, with the Physician only on matters connected with health, and the Chaplain only on spiritual matters."

This rule is an amplification of regulation 139, which is as follows:

"No convict shall speak to an Officer, except from necessity in the course of duty, or in exchanging proper salutations when meeting or passing."

All chaplains hold religious services in the penitentiaries at least once a week. Attendance at these services is compulsory unless a prisoner is exempted by the written order of the warden. The rules provide that exemption shall be granted in the case of any prisoner,

"declaring that he cannot consistently with his conscientious convictions attend the services of either the Protestant or Roman Catholic Chapels."

The warden may also exempt prisoners from attendance at chapel service on the advice of the physician or because they are of non-Christian faith. Provision is made for the latter to hold their own services and, in some of the penitentiaries, regular services are held for those of the Hebrew faith.

In addition to the services conducted by the regular chaplains, the warden may permit the Salvation Army, including its band or orchestra, to conduct one service in each month, but the members of such a party are not permitted any personal communication with the prisoners unless with the special permission of the warden, and attendance at such services is voluntary. Outside clergymen may visit the prisoners when given permission by the warden, and periodic missions are allowed.

Chaplains are permitted to distribute religious literature to prisoners of the same faith and, in addition to the regular weekly services, many chaplains conduct classes of instruction and personally supervise the religious training of prisoners in their charge.

Your Commissioners are of the opinion that the religious services, taken as a whole throughout the penitentiaries, are unsatisfactory. There are some exceptions, where the particular type of chaplain appointed to the penitentiary service is peculiarly fitted for the work he has to perform. For the work of these chaplains we have nothing but commendation.

There is probably no more difficult task in the missionary enterprises of any church than the evangelization of the penitentiary population, but this is no justification for neglecting the task or treating it with indifference. It appears to your Commissioners that it has been regarded officially that a chaplain is performing his duties satisfactorily so long as he can show that he has been holding the required religious services and going through the form of his pastoral functions, albeit with a minimum of inconvenience to himself. In the opinion of your Commissioners, the mere holding of religious services, important as this is, when without diligent and constant personal service, is of little avail in accomplishing any measure of reformation.

It is essential that the chaplain should gain and hold the confidence of the prisoners. Experienced prison officers are unanimously of the opinion that there are few prisoners who are without some good in them. The task of the chaplain is to find that good and develop it, and the task cannot be accomplished merely by the preaching of sermons. It may be accomplished by rendering small personal kindnesses (e.g., communication with the prisoner's wife and children) or by assisting the prisoner, through personal contact, to find employment on release, or even by advice and encouragement during his incarceration. Works, not words, make a good prison chaplain.

Your Commissioners encountered a few prison officers whose attitude towards the chaplain service was one of indifference or cynicism. We are of the opinion that such officers are not the best type to be employed in an institution that is designed for reformation. Where we found good chaplains of the true frontier missionary type, whose experience had given them a broad knowledge of human nature and human frailties, we found abundant evidence of respect, confidence, and honour on the part of the prisoners, which could not but help to assist in rebuilding their moral stability, so requisite to reformation.

Your Commissioners are of the opinion that, in Canada, at present, the great religious denominations are displaying too little interest in the prison population, both while in prison and after discharge. The Salvation Army and some organizations of the Roman Catholic Church are giving creditable and commendable service, and it is all the more regretable that there seems to be no organized effort among the Protestant Churches to co-ordinate their services in rendering this much-needed assistance to these unfortunate members of society.

Mr. Neelands, Superintendent of Jails and Reformatories in Ontario, informed us that, for some years, he has been sending a monthly list of prisoners admitted to the reformatories to the churches of their affiliation. His motive has been to establish a point of contact between the prisoner and the church in the prisoner's locality, so that the church and its organizations might have an opportunity of taking an interest in the prisoner and assisting him eventually to become an honoured member of society. Mr. Neelands advised us that some of the Protestant Church organizations have shown no co-operation with his department and, as far as he knows, have not taken advantage of the information supplied to establish any organized method of assistance. We think the course taken by Mr. Neelands was commendable, and we trust that, in the future, some definite plan of closer co-operation may be evolved. We do not believe that, where there was a lack of co-operation, it was due to any widespread indifference on the part of the church organizations, but rather that, probably in the urgent pressure experienced by all religious institutions in these trying times, the opportunity and need have been overlooked.

Your Commissioners are of the opinion that religious services have a very definite and important place in the program of any penal system, and unreservedly endorse the following statement:

> "Religion touches the deepest springs of human conduct, for it can furnish to the weak and unstable the highest ideals and the sternest inhibitions. It should therefore be awarded the first place among all forms of character training. The Chaplains and the visiting Priests, Ministers, and Rabbis will be colleagues not merely welcome, but indispensable. Allowances will be made to meet their requirements in the matter of service, class or interview. Their contribution towards the common task is not a make-weight, and men extra demanded by law or convention, but a vital service striking deep at the heart of the problem of each individual.
>
> While the regular instruction must necessarily be a part of the Chaplain's duty, it will be very unfortunate if the lad comes to associate the profession of religion with the clergy alone. Officers of every rank should be encouraged to take an actual part in the services. The fact that they have faith, and live in accordance with their faith, may well have more influence with the lad then anything else. He does not find it easy to believe what he is told or what he reads, but he will believe what he sees.
>
> Religion is so deep and personal a thing that no rules can compass it, and no Order of Service can entirely meet the need of the individual."[1]

Chaplain services can only be performed adequately by men of devoted missionary zeal. These should be selected by co-operation with the religious bodies of Canada with a view to obtaining the most suitable men, and, where possible, they should have special training. They should

[1] Principles of the Borstal System, English Prison Commission (p. 48), Lond., 1932.

not be regarded as prison officers, nor be hampered by a multitude of petty regulations, but should be left free to meet and talk with prisoners at their will and to render kindly services without the necessity of securing permission to do so. They should not wear uniforms but, instead, be provided with a reasonable clothing allowance in lieu of the uniform at present provided.

Your Commissioners heard much difference of opinion as to whether the attendance at religious services should be compulsory or voluntary, and, after giving the matter their most careful consideration, have reached the opinion that the regulations ought not to be dogmatic on this point. If a chaplain believes that he can render the most effective service by having attendance at chapel made compulsory, there need be no objection to this. On the other hand, if a chaplain believes, as several have declared to the Commission they believe, that more is accomplished when the congregation attends voluntarily, the attendance should be voluntary. Compulsory attendance should not be thrust on a chaplain who does not believe in it.

The present rules regarding exemption from attendance at religious services should be discontinued. A prisoner who does not wish to attend religious services should not be compelled to declare himself an atheist or that "he cannot consistently with his conscientious convictions attend the services of either the Protestant or Roman Catholic Chapels." If compulsory attendance is continued, prisoners who desire exemption should be granted it without the necessity of resorting to an anti-religious declaration, and exemption, when granted, should not amount, as it does at present, to an exclusion from services. A prisoner who has been exempted, and who later wishes to resume attendance, should be allowed to do so without question.

Your Commissioners are of the opinion that the Protestant and Roman Catholic Churches should be encouraged to supply religious books and religious literature through the respective chaplains of those faiths. In several instances, chaplains complained to the Commission that church magazines were not available to the inmates unless they, themselves, had the funds to subscribe for them. The organized churches will no doubt be glad to see that this condition is corrected.

Chapter IX

PRISON EMPLOYMENT

Conditions of Labour

It is axiomatic to say that the employment of prisoners is of prime and elementary importance in the operation of any penal system. Throughout our investigations this axiom has been emphasized repeatedly. Wardens and other officers of Canadian penitentiaries have consistently deplored the lack of employment for the prisoners.

Notwithstanding the recognized importance of the employment of prisoners, your Commissioners found that in Canadian penitentiaries the number of prisoners employed on productive labour is extremely low. Because the hours of labour are short an undue proportion of the prisoners' time is spent in idleness.

Little of the employment provided in Canadian penitentiaries gives the prisoner any sense of accomplishment in the perfection of his task, or, in fact, any inducement to finish the task that is immediately before him. The result is that those who *are* employed perform their daily duties with a monotonous indifference.

During recent years, the Penitentiary Branch has afforded little co-operation or assistance to penitentiary trade instructors in the promotion of prison employment. On the other hand, a multitude of restrictive rules and petty regulations have definitely handicapped them in the performance of their duties and have made it increasingly difficult for them to accomplish any training of the prisoners.

One instructor furnished the Commission with a chart of his time. It showed that, during a fifty-five hour week, one-half hour remained for the promotion of trade training after all his other duties had been performed. Another instructor, in referring to his duties as "trade instructor," stated:

> "I would say that it was something of a misnomer. The duties are spread over such a wide field that there is no trade instruction."

While this statement is to be taken with reservations, your Commissioners are convinced that, although the penitentiary regulations provide that certain officers shall be trade instructors, and although an appropriation is made from the public funds to pay their salaries as trade instructors, a very substantial proportion of their time is taken up in the performance of other duties that do not involve the instruction of prisoners in particular trades.

These remarks are equally applicable to the penitentiary farm instructors. One of them informed us that he is able to give very little time to the instruction of the prisoners in farming. Ninety-four per cent of his time is now taken up in office work. He stated:

> "Everything is done on paper. You don't do things with your hands any more. Before 1932 or 1933, I could keep all my corre-

spondence in my pocket, and to-day I could show you a filing system that high. (Indicated.)

Q. Is that correspondence between you and Ottawa?

A. Yes.

Q. About what?

A. Any little matter, the smallest trifle, and previous to that if I went in and asked the warden about anything he would say, 'yes' or 'no,' or 'I will look into it.' But to-day that is not the thing to do. He would tell me to write a letter . . . and sends it to Ottawa."

A serious decline in industrial production in the penitentiaries appears to have taken place during the administration of the present Superintendent. The following comparative tables show the total revenue from production in the respective penitentiaries for the four year period prior to the appointment of the present Superintendent and the four year period following his appointment:

COMPARATIVE STATEMENT SHOWING THE REVENUE DERIVED FROM PRODUCTION AT THE RESPECTIVE PENITENTIARIES DURING FOUR FISCAL YEARS

MARCH 31, 1929 TO MARCH 31, 1932

Penitentiary	Fiscal Year Ending March 31, 1929	Fiscal Year Ending March 31, 1930	Fiscal Year Ending March 31, 1931	Fiscal Year Ending March 31, 1932	Totals
	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
Kingston	90,723 99	102,250 62	100,094 45	82,606 23	375,675 29
St. Vincent de Paul	28,982 24	20,766 02	29,557 55	32,825 62	112,131 43
Dorchester	20,711 08	22,081 16	18,647 65	20,763 46	82,203 35
Manitoba	18,935 52	19,249 31	19,419 67	16,010 59	73,615 09
Alberta	4,088 15	2,442 25	.....	.....	6,530 40
British Columbia	7,685 80	7,650 44	10,296 25	10,616 60	36,249 09
Saskatchewan	15,096 01	12,183 52	12,121 81	10,341 20	49,742 54
Collin's Bay	.....	.....	141 82	2,327 96	2,469 78
Totals	186,222 79	186,623 32	190,279 20	175,491 66	738,616 97

COMPARATIVE STATEMENT SHOWING THE REVENUE DERIVED FROM PRODUCTION AT THE RESPECTIVE PENITENTIARIES DURING FOUR FISCAL YEARS

MARCH 31, 1932 TO MARCH 31, 1936

Penitentiary	Fiscal Year Ending March 31, 1933	Fiscal Year Ending March 31, 1934	Fiscal Year Ending March 31, 1935	Fiscal Year Ending March 31, 1936	Totals
	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
Kingston	50,176 89	34,768 41	30,028 72	22,606 83	137,580 85
St. Vincent de Paul	21,250 65	19,124 96	18,008 84	22,237 76	80,622 21
Dorchester	19,073 27	19,569 61	9,848 08	7,763 75	56,254 71
Manitoba	15,368 32	14,515 65	11,955 63	10,611 76	52,451 36
Alberta	.....	.....	.....	.....	.....
British Columbia	7,782 80	7,173 47	3,449 51	2,549 60	20,955 38
Saskatchewan	9,907 03	4,672 88	1,613 11	452 19	16,645 21
Collin's Bay	3,070 73	1,309 76	961 21	1,460 80	6,802 50
Totals	126,629 69	101,134 74	75,865 10	67,682 69	371,312 22

SUMMARY

SHOWING REDUCTION IN REVENUE DERIVED FROM THE RESPECTIVE PENITENTIARIES FOR THE TWO FOUR YEAR PERIODS

FISCAL YEARS ENDING MARCH 31, 1929 TO MARCH 31, 1932 AND FISCAL YEARS ENDING MARCH 31, 1933 TO MARCH 31, 1936

Penitentiary	Total for Four Year Period Ending March 31, 1929 to March 31, 1932	Total for Four Year Period Ending March 31, 1933 to March 31, 1936	Reduction
	$ cts.	$ cts.	$ cts.
Kingston	375,675 29	137,580 85	238,094 44
St. Vincent de Paul	112,131 43	80,622 21	31,509 22
Dorchester	82,203 35	56,254 71	25,948 64
Manitoba	73,615 09	52,451 36	21,163 73
Alberta	(2) 6,530 40	.....	.....
British Columbia	36,249 09	20,955 38	15,293 71
Saskatchewan	449,742 54	16,645 21	33,097 33
Collin's Bay	(1) 2,469 78	6,802 50	4,332 72 (3)
Totals	738,616 97	371,312 22	367,304 75

In the two four year periods compared a reduction of $367,304.75.
(1) This penitentiary operated from 1931 only.
(2) This penitentiary operated only until 1930.
(3) Surplus.

We have surveyed the revenue derived from production in the penitentiaries for the years 1919 to 1936, inclusive, and we find that this revenue for the year 1936 was, not only the lowest point throughout the whole period, but less than half the amount received in any one year between 1919 and 1932.

Since 1932, an aggressive, costly, and, in many cases, needless, program of construction has been pushed forward without any considered plan. This has been done with a view to providing employment for the prisoners. At the same time, however, the revenue from productive labour has been cut in half, with the result that there has been a corresponding loss of useful employment for the prisoners.

The haphazard manner in which construction has been conducted and the lack of any definite or co-ordinated planning of such construction have made it both unsatisfactory and expensive. Prisoners and staff alike recognize evidence of incompetence in this, and it creates disrespect for the whole administration.

The problem of providing prison employment is not an easy one to solve, and it is particularly difficult in prisons where the sentences are of short duration. This major difficulty is not present in Canadian penitentiaries because the minimum sentence to be served in them is a period of two years. No matter how difficult the problem may be, it is imperative that it should be solved. Idleness in Canadian prisons cannot be tolerated. It is destructive to the physical and moral fabric of the prisoners, and it renders ineffective any provision for their reformation.

In determining the principles to be applied in making provisions for employment in the penitentiaries, your Commissioners unreservedly endorse the views expressed by the Committee appointed by the Home Secretary of Great Britain in 1932,

"To review the methods of employing prisoners and of assisting them to find employment on discharge, and to report what improvements are desirable and practicable."

The report reads in part as follows:

"*Principles of Employment*

128. As regards the principles which should underlie all prison employment we cannot do better than quote the late Chairman of Prison Commission (Mr. A. Maxwell): 'Prisoners should be usefully employed and the choice of employment should not be limited by the old 'hard labour' conception, i.e., the conception that prison labour should have an intentionally punitive character. Useful occupations should not be excluded from consideration merely because they are irksome—but irksomeness should not be regarded as a desirable characteristic of prison occupations. If work is treated as a form of punishment, the inevitable consequence is that as little as possible will be done and interest and effort will be discouraged. The spirit in which work is regarded both by the prison officer and by the prisoner is more important than the nature of the work. However laborious or disagreeable a task may be, if the worker feels that he has been set to do it because its accomplishment serves a useful purpose and performs it in a spirit of stoicism or service, he will profit from the experience. On the other hand, if the prisoner feels that the task is of an artificial character invented by the Prison Authorities either for the purpose of punishing him or merely for the purpose of keeping him occupied, he will perform it in a resentful or in a listless spirit, and the effect both on his character and on his usefulness as an industrial worker will be bad.'

With this view we are in agreement. Continuous and useful employment must be regarded not as a punishment but as an instrument of discipline and reformation. In order that this idea may be achieved, the first requirement is that useful and suitable work should be provided *and that there should be plenty of it.*

If work has to be spun out or invented much of its value is lost. It serves to inculcate bad habits in Instructors and prisoners and it cannot be made economic."

The employment available in prisons may be divided into the following classes:

1. Service, i.e., cooking, laundry, barbering, library;
2. Maintenance, i.e., cleaning, heating, repairing, etc.;
3. Necessary construction;
4. Production of penitentiary requirements, i.e., uniforms, shoes, furniture, discharge clothes, farm produce, etc.;

5. Production of goods in excess of penitentiary requirements for use outside the prison system.

The first two of the above classes are of a more or less constant quantity and require little discussion. The third class is extremely variable and should only be undertaken or promoted (and then always in an orderly manner) to meet the requirements of the penitentiary system—not merely for the purpose of providing employment. The fifth class is the most difficult, and the most necessary, because the administration must depend upon it to provide the bulk of useful employment and a means of training the prisoners in industrial habits that will equip them to earn a living after they leave the prison. It is only necessary for us to mention the first, second, and third classes. The fourth and fifth classes require more careful consideration.

Industrial Employment

Shops

One of the basic difficulties involved in the development of industrial employment in prisons is the objection to competition with outside labour. This difficulty arises in the production of goods for use within the penitentiary service as well as those for use outside it.

If, for example, prisoners are engaged in making prison uniforms, they are producing articles that would otherwise have to be bought in the open market, and to that degree they are competing with outside labour. It has never been suggested to us, however, that, in so far as it is economically possible, there is any objection to the production of prison requirements by prison labour.

Articles which may be produced for use outside the prison service may be divided into two classes:

(*a*) Industrial products;
(*b*) Farm products.

The operation of prison farms and the disposition of surplus farm products are dealt with in another part of this chapter.

The disposition of the industrial products of prison labour has been the subject of extensive study, both in Canada and other countries. Two main systems prevail in different parts of the world:

(*a*) Prison labour is confined to production for state use;
(*b*) Prison labour is employed in the production of merchandise for sale in the open market.

This merchandise may either be produced for sale by the state or it may be produced by private contract entered into between the state and the contractor who undertakes to pay an agreed sum of money in return for the use of prison labour. These contracts may have a wide variation in terms. The contractor may, or may not, agree to supply machinery and supervisors who act as instructors. The terms of the contract in some cases provide for payment of wages, a substantial portion of which,

after a deduction has been made for maintenance, goes to the prisoners. The prisoner may be paid, either according to a per diem rate, or by piece work.

The following is a summary of the different systems in use in the various countries visited by members of the Commission:

Great Britain

All products of the industries in British prisons are consumed either within the prison system or by other government agencies. Supplies are manufactured for the Navy, the Army, and the Royal Air Force. These include woven goods, uniforms, mail bags, tin boxes, petrol cans, furniture, etc.

Following the recommendations of the 1933 report on prison employment,[1] a special effort was made to increase the purchases made by government agencies from the prisons. This effort resulted in increasing them, in 1935, by forty-two per cent over the previous year.

Belgium

A central committee of the prison administration is charged with duty of securing orders from the various departments of the Government for articles which can be produced in the prisons. This committee buys and supplies the raw materials. If orders cannot be secured from the departments of the Government for sufficient articles to keep the prisoners employed in their production, contracts are entered into with private firms whereby the firms have the right to supply material and instructors. These firms pay an agreed sum for the use of prison labour. The types of articles produced under such contracts are, as far as possible, those which would not come into competition with private industry in Belgium. In the prisons where the confinement is entirely cellular, the industries must necessarily be of such a character as can be carried on within the cells, such as the manufacture of fishing tackle, shoes, printing, etc.

Holland

The administration of prison industries in Holland is similar to that in Belgium, with the exception that production is confined to supplying departments of the Government. Only one prison has shops where the prisoners work in association.

Germany

Production for state use and by contract labour exist side by side. The preference is given to production for state use.

France

Production for state use is carried out on a very broad scale, consisting of the production of clothing, boots, printing, book binding, stationery, office furniture, etc. A certain type of contract work is still permitted, but this is being gradually reduced.

[1] Report of the Departmental Committee on the Employment of Prisoners, Part I, Employment of Prisoners, Lond., 1933.

United States of America

The methods of production in the United States of America vary between the federal system and those of the respective states. Some states still produce articles for sale in the open market. This, however, is the exception rather than the rule.

The most ambitious and successful prison industry that has been drawn to the attention of your Commission is the state manufacture of binder twine in the Minnesota State Prison. This prison, with a population of less than 1,500 inmates in the year 1935-36, produced in the prison factory, and sold, binder twine to the value of $1,797,654.42. Since 1901, the total sales have amounted to over $67,000,000.

Industries in penal institutions under federal jurisdiction are operated by "Federal Prison Industries, Inc.," a corporation authorized by an Act of Congress, "For the purpose of providing useful and stimulating employment to the inmates of federal penal institutions in such diversified forms as will reduce to a minimum competition with private industry and free labour." The products of industries operated by this corporation are furnished to government agencies exclusively. The following is a list of the industries operated:

At the Atlanta Penitentiary

1. Cotton Textile Mill
2. Clothing Factory
3. Canvas Goods Shop
4. Mattress Factory

At Leavenworth Kansas Penitentiary

5. Shoe Factory
6. Broom Factory
7. Brush Factory
8. Clothing Factory
9. Furniture Factory

At the Northeastern Penitentiary, Lewisburg, Pa.

10. Clothing Factory
11. Metal Furniture Factory

At the United States Federal Jail, New Orleans, La.

12. Rubber Mat Factory

At the United States Industrial Reformatory, Chillicothe, Ohio

13. Foundry

At the Federal Industrial Institution for Women, Alderson, West Va.

14. Cotton Garment Factory

At the United States Southwestern Reformatory, El Reno, Okla.

15. Brooms
16. Homespun Woollens

At the Alcatraz Island Penitentiary, California

17. Clothing
18. Rubber Mats
19. Laundry

The catalogue of products issued by the Federal Prison Industries, Inc., contains forty-seven pages and shows a wide range of products, including brooms, brushes, canvas goods, mattress covers, tarpaulins, tents, castings, clothes, uniforms, overcoats, suits, overalls, pyjamas, cotton textiles, furniture, filing cabinets, shoes (including army and navy shoes), and wood furniture. An Act of Congress, passed in May, 1930, makes it mandatory for all government agencies to secure all available requirements from the prison industries.

In Canada, the subject of prison industries and prison employment has repeatedly been under consideration. The 1913 Commission made the following recommendations:

"*Industrial Employment*

(8) That what is known as the State-use or Public-use system of prison labour be adopted throughout the penitentiaries and that industries be established to supply the requirements of the Government, its institutions and services, with all goods that can be made in prison.

(9) That outside labour be developed to the fullest possible extent at each prison, in farming operations and, where raw material can be conveniently obtained, in quarrying stone, making brick, etc."

We interpret the words "public-use system" to mean the same thing as "state-use."

The 1920 Committee made the following recommendations:

"The Committee, therefore, most emphatically recommends statutory provision to provide productive labour for all convicts. Such provision need not extend to any work except for what is known as "state use" and can, in Canada, not extend any compulsion beyond the federal service, but the evidence taken by the Committee has satisfied it that manufactures within this limitation will afford much more than ample scope for all the industry and activity which the penitentiaries can put forth. The provision might be in the following term:—

65A. The public money of Canada shall not be expended in the purchase of any goods which can conveniently be manufactured or produced at a penitentiary and delivered where they are required for the public service with economy to Canada, having regard to the provisions of subsection 2 of this section and to the provisions of this Act on the subject of the remuneration of convicts for their labour.

(2) No charge shall be made by the Department of Justice (Penitentiary Branch) against any department of the Government

of Canada for the labour of any convicts or penitentiary officers entering into the manufacture or production of any goods in the penitentiaries."

Mr. P. M. Draper, president of the Trades and Labour Congress of Canada, was a member of the 1920 Committee, and, on request, appeared before your Commission. In his evidence he stated that, while conditions have changed in Canada since that report was written, he emphatically agreed that prisoners should be kept employed in productive labour, and that we were on safe ground so long as the merchandise produced is kept out of the open market.

The Committee[1] appointed by the Home Secretary of Great Britain in 1932 made the following recommendations:

"(1) The root of all evil in the employment of prisoners is the definite shortage of work. Occupation for prisoners is essential to their physical and moral needs. More work, preferably requiring no considerable skill in actual performance, must be obtained; it may with advantage be work which is physically hard. (Paras. 122, 128, 149.)

(3) A definite policy regarding prison industries must be formulated and carried out, including a continuance of the policy of segregating suitable types of prisoners in selected prisons, and the allocation to those prisons of suitable industries. (Paras. 151-153, 202.)

(4) The organization and layout of prison workshops should be overhauled and modernized. (Paras. 150-152, 173, 174, 202.)

(6) Speed and efficiency of work in prison workshops must be improved in order to guard against deterioration of the physical and moral power of instructors and prisoners. More, and better qualified, instructors are needed. Industrial Managers should be appointed at the larger prisons. A system of payment to prisoners who reach a minimum output of adequate quality should be introduced. Rate fixing, both as regards quantitative output and rate of payment, should be done scientifically. A measure of psychological training should be given to selected Borstal Housemasters. (Paras. 130, 167, 169-172, 178-188, 200).

(7) The machinery for seeking manufacturing orders from Government Departments, Local Authorities and other sources, and for the purchase of materials must be improved. (Paras. 132-140.)

(9) An additional Commissioner should be appointed to the Prison Commission, England and Wales, charged specially with the duty of reorganizing and supervising prison industries in England and Wales. He should also act as adviser to the Scottish Prison Department. (Paras. 189-193.)

(10) Governors should take a greater interest in industrial work. (Para. 194.)"

[1] Departmental Committee on Employment of Prisoners. (See "Part I, Employment of Prisoners," previously referred to.)

The Prison Administration of the province of Ontario has attained a considerable degree of success in industrial production in the reformatories. The Guelph Reformatory is an institution with a capacity for 700 prisoners serving terms of from three months to two years. Some prisoners serving indeterminate sentences may serve the full period of four years less two days. The average daily population between the years 1931 and 1937 was as follows:

1931	1932	1933	1934	1935	1936
768	874	756	606	601	568

The following is a table showing total revenue at this prison during this period:

Year ending October 31, 1931	$627,775 25
" " " " 1932	521,929 82
" " " " 1933	490,664 59
" " " " 1934	527,232 05
[1]Five months ending March 31, 1935	170,199 13
Year ending March 31, 1936	467,844 57
" " " " 1937	459,279 96

[1]The return made for the period of five months was in consequence of a change in the date of the fiscal year.

The products of these prison industries were all supplied for consumption in provincial institutions, and do not include any charge for prison labour.

A comparison of this statement with the total revenue in Canadian penitentiaries, which have an approximate population from 3,500 to 5,000, (and where a charge for labour, now amounting to $1.50 per day, or 15 cents per hour, for custom work and other industrial productions, with the exception of mail bags, is included in the statistical figures) emphasizes the need for a more efficient administration in the operation of industries in Canadian penitentiaries.

A successful industry has been built up in the Bordeaux Jail, in Montreal, in the manufacture of aluminum hollow-ware for use in that institution and in other institutions in the province. This is an industry that is well adapted to prison conditions.

We recommend that; (*a*) a complete survey be instituted to determine what requirements of the various government departments can be supplied by properly equipped prison industries; (b) the penitentiary shops be equipped with the necessary machinery to produce such merchandise as will give ample productive employment to all the employable prisoners; (*c*) the trade instructors be relieved of all custodial duties so that they may devote their whole time to carrying out their instructional duties; (*d*) only such trade instructors be engaged as are equipped by training and experience to teach trades.

Garage

At several penitentiaries, complaints were made to your Commission with regard to the ruling of the Penitentiary Branch forbidding officers

to have their automobiles repaired in a penitentiary garage. This, of course, removed much of the opportunity for teaching automobile mechanics to the inmates. Up to this time, in addition to repairs on cars belonging to the penitentiary, it had been the custom for officers to have their private motor cars repaired in the penitentiary garage upon payment of the cost of the parts and the usual charge made for prison labour.

Your Commissioners are of the opinion that, if the officers are willing to risk having their automobiles repaired by inmate labour in the penitentiary garage, it would provide additional work for the inmates and enable the instructor to qualify some as expert garage mechanics.

Use of Waste Materials for Demonstration

The instructional staff and many of the inmates complained to the Commission that they were not allowed to use waste materials for experimental purposes. Several practical suggestions were offered to the Commission as to how instructional work might be carried on through the demonstrational use of waste materials. Until December, 1933, it had been the practice to use such materials for this purpose, but, on the 5th of December, 1933, circular 217 was issued forbidding the use of governmental materials without authority from Ottawa. The interpretation completely restricted the use of any material except for specific works that had been expressly authorized.

Farm Employment

The principle of providing employment on prison farms was adopted in Canada before Confederation. Each penitentiary in Canada, except the Women's Prison, has a farm connected with it. From evidence taken your Commissioners are of the opinion that these farms are inefficiently operated and that there is no one connected with the Penitentiary Branch who has the required experience properly to direct the operation of seven farms which have a total acreage of 6,049 acres, 3,127 of which are at present under cultivation. We do not consider that the operation of the penitentiary farms compares favourably with the farms operated in connection with the provincial jails and reformatories. The following table illustrates the comparative value of the production of the penitentiaries and provincial prison farms, respectively, for the year ending March 31, 1936:

COMPARATIVE STATEMENT OF FARM PRODUCTION

YEAR ENDING MARCH 31, 1936

Penitentiary or Reformatory	Average Population	Total Acreage	Farm Acreage in Actual Cultivation	Value of Farm Production
				$ cts.
PENITENTIARY FARMS				
Dorchester	370	1,191	532	(1) 15,565 34
St. Vincent de Paul	936	725	593	11,721 99
Kingston	737	365	115	12,214 65
Collin's Bay	189	876	350	3,527 35
Manitoba	288	1,095	680	(1) 6,344 16
Saskatchewan	349	1,668	828	(1) 13,357 71
British Columbia	279	129	29	(1) 5,501 00
PROVINCIAL PRISON FARMS				
Guelph Reformatory	568	945	614	35,055 78
Mimico Reformatory	130	208	125	13,653 63
Burwash Industrial Farm	461	35,000	845	70,145 63
Langstaff Municipal Jail Farm	270	940	825	27,253 34
Headingly Jail Prison Farm	345	560	500	8,392 24
Prison Farm at Fort Saskatchewan	220	1,406	1,144	15,066 36
Provincial Jail at Lethbridge	133	1,141	625	18,342 89
Provincial Jail at Prince Albert	179	1,200	.....	5,193 09
Provincial Jail at Regina	.....	940	.....	5,248 81
Oakalla Prison Farm	419	1851	103	5,909 80

(1) Figures furnished by Penitentiary Branch. These are higher than figures furnished by farm experts who reported on St. Vincent de Paul, Kingston, and Collin's Bay.

Early in the sittings of the Commission, we were convinced that the subject of the operation of the penitentiary farms required expert study and, through the co-operation of the Minister of Agriculture, the Commission secured the services of Dr. E. S. Hopkins and G. W. Muir, of the Experimental Farms Branch at Ottawa, to make a survey of the farms operated in connection with the penitentiaries at Kingston, Collin's Bay, and St. Vincent de Paul.[1]

Through the courtesy of the Department of Agriculture of the province of Saskatchewan, the Commission secured the services of C. M. Learmouth, Superintendent of Institutional Farms of the province of Saskatchewan, to undertake a similar task in respect to the Saskatchewan Penitentiary farm.

The reports made by these experts on the four farms in question have convinced your Commissioners that a heavy annual loss is incurred through the lack of proper management of the farms owned and operated as part of the penitentiary system. In our opinion, this is mainly due to two causes:

(*a*) Lack of a qualified official in the Penitentiary Branch at Ottawa to supervise the operation of these farms;

(*b*) Vexatious and needless regulations restricting the warden's authority, and particularly in regard to the selection of the prisoners who may be permitted to work outside the walls of the penitentiary.

[1] See Appendix II.

In regard to the former, it is evident that large-scale farming operations cannot successfully be directed by those who have no experience of farming. In regard to the latter, successful operation of the farms will depend in the future on intelligent co-operation and assistance from the Penitentiary Branch, instead of the restrictive measures heretofore enforced. The regulation limiting the warden's discretion in permitting prisoners who are serving sentences for certain types of crime to work outside the walls is unnecessarily restrictive. The wardens should be able to judge, from the character of the prisoner, the length of the term he has yet to serve, and the manner in which he has conducted himself in the prison in the past, whether he is a suitable prisoner for farm work. He is in a much better position to make this decision than any one at the Penitentiary Branch. This regulation has been referred to elsewhere in this report and requires no further comment here.

Your Commissioners recommend that the following principles in respect to the operation of the penitentiary farms be adopted:

1. In view of the fact that there are seven large farms operated by the Penitentiary Branch throughout Canada, a highly qualified official should be required to devote his entire time to the management of this important part of the penitentiary service.

If this recommendation is adopted, we are convinced that the expense incurred will be more than justified by greater efficiency in production. To this will be added the incidental advantage of the increased employment that will be afforded the prisoners.

2. A survey should be made of each farm, showing the elevations in contour, form and location, size, and per cent grade of a proper system of surface and tile underdrainage. This system of drainage could be installed throughout a period of years as time permits. It would increase the crop yields, improve the value of the land, and would reclaim some of the areas now regarded as waste land.
3. Future appointments to the position of farm instructor should be made only of men who are graduates of an agricultural college and have sufficient practical experience to qualify them as farm instructors.
4. A study should be made of the possibility of establishing a canning factory at one or more penitentiaries. Peas, beans, corn, rhubarb, tomatoes, and certain fruits should be canned and the surplus product shipped to other penitentiaries. Guelph Reformatory has successfully carried out this policy for years.
5. Suitable buildings, of sufficient size to store the potatoes and other vegetables, should be constructed on the farms. This would greatly reduce the loss suffered in storage.
6. Dairy herds should be established at all penitentiaries for the purpose of supplying their dairy requirements.

7. All vegetables required in the penitentiary service should be produced on the penitentiary farms. Where the production on any one farm is in excess of the requirements of that penitentiary, provision should be made to supply other penitentiaries within reasonable distance with their requirements of these products. Where the products are in excess of the penitentiary requirements, or are unsuitable for consumption within the penitentiary service, they should be sold on the open market.[1]
8. Custodial officers employed on the farms should, as far as possible, be men with previous experience in agriculture.

Prison Pay

The problem of pay for prisoners is as difficult as that of prison employment, but its difficulty does not diminish its importance. The Gladstone Committee expressed the opinion that:

> "He (the prisoner) should be enabled to earn something continuously during his sentence, provided that the money is not all given to him on discharge, but subsequently through a prisoners' aid society, or in such way as the prisoners' aid society or the visiting justices may determine."

If it is accepted that training in industry is a fundamental principle in a good prison system, it is essential that the prisoner should be taught to apply himself industriously to the tasks provided for him. It is simple to punish a prisoner for definite idleness, but the indolent and indifferent performance of duties assigned to him is almost as destructive of the prisoner's moral fibre, and more difficult to deal with by disciplinary measures. It is necessary, therefore, to find some other expedient than punishment to encourage and promote industrious habits.

The system of giving marks for industry and good conduct, to be taken into consideration in granting a remission of the sentence, is designed to encourage industry, but it is not a general panacea, and some form of pay is desirable as an encouragement to the prisoners. It has, in addition, a distinct reformative influence. It enables the prisoner to provide himself with some small comforts during his imprisonment, and to have a modest sum of money at his disposal upon liberation.

Pay for prisoners was recommended by the 1913 Commission. In their report, the Commissioners stated:

> "An incentive to labour and good conduct is invaluable. Men work with much more heart when they know they will be sharers, even to a small degree, in the product of the labour. In fact, their increased output, under such a stimulus, it has been shown goes a long way toward covering the wages fund."

They have placed their recommendation for payment of prisoners on the basis of charity rather than administration because of the lack of

[1] Having regard to the export markets for the agricultural products of Canada and the small quantity that may be produced on 6,049 acres as compared with the total agricultural acreage of Canada, we are of the opinion that no valid objection can be raised to this suggestion.

productive industry in the penitentiaries. The 1920 Committee not only recommended the payment of prisoners, but suggested regulations providing for classification of all employment in the penitentiaries into five grades,

> "According to the results of an intensive study of the degree of actual capacity and physical dexterity which every employment involves and that convicts who show a greater or smaller capacity for industry than the average, of the class to which they are regularly assigned, should be promoted or demoted accordingly."

An example of what the Committee had in mind is set out in the report, as follows:

> "A stupid man without manual dexterity might be fit for no better employment than the scrubbing of floors or the cleaning of brass; he would be in Class 3. At the other extreme a man of high type employed at a machine the control of which called for good brains and high manual dexterity would be in Class 7. When at the end of the quarter the convicts' share of the total value of their labour was ascertained, the reward of the first man would to that of the second be as 3 is to 7 or, if the first man's reward was, e.g., $15, that of the second would be $35.

The difficulties of such a system are obvious. Quite apart from the multitude of charges of favouritism that would arise among the prisoners, is the more formidable objection of its manifest injustice. Reward is based on the ability of the prisoner, rather than on his application and industry. The stupid man who enters the penitentiary should not be punished for his stupidity by being compelled to pass through prison earning a lower rate of pay than the dexterous and clever criminal who may have learned his dext ity by means of oft-repeated instruction and experience in prison industries.

The basis of payment for prisoners was considered by the British Departmental Committee on the Employment of Prisoners, in 1932. Their recommendations are summed up in the following paragraphs of their report:

> " But whatever method may be adopted it is essential that payment should not become automatic and that it should be rigidly based either on actual measurement of output or on a careful assessment of the prioners' activity. It should only be made if a minimum standard of performance has been reached. Any case of failure to reach the standard output should be brought to the notice of the Governor.
>
> In any such scheme we think it is essential to have an unpaid party, the members of which receive no payment and can only obtain payment when by industry and conduct they have shown themselves fit for promotion to a paid party. Relegation to the party would form a useful form of punishment for the idle and ill-conducted.

The moral effect of such a system of measurement or assessment of work on prisoners and instructors alike would, we are convinced, be of the greatest importance and the establishment of the system would also have the added advantage of enabling comparisons to be made between the work and efficiency of different prisons, a comparison which should be a useful lever in bringing the less efficient establishments up to the level of the more efficient."

In December, 1934, the principle of pay for prisoners was adopted in Canada by a circular issued by the Superintendent of Penitentiaries, which announced that, from January 1, 1935, prisoners would be awarded pay at the rate of five cents for each day on which they worked. The allowance of pay is dependent on satisfactory conduct and diligence, and it is not given during time that the prisoner is undergoing the punishment of deprivation of privileges because of offences against the regulations. The prisoner is not paid during any time he spends in the hospital, nor is he permitted by extra diligence to earn more than the sum of five cents per day.

The following is a summary of the rules issued by the Superintendent on this subject:

1. A prisoner is allowed pay for each day of remission earned, and something to his credit at the date of his release over and above seventy-two days;
2. A prisoner having more than $50 to his credit is permitted, on the recommendation of the warden and with the approval of the Superintendent, to divert the amount in excess of $50 to his dependent next of kin;
3. One-half of the remuneration allowed for any one day, plus the whole of the remuneration allowance for the days of remission earned, must remain to the credit of a prisoner until his release, except any sum authorized to his next of kin;
4. A prisoner is permitted one package of tobacco and cigarette papers, or the equivalent, per week, which may be charged against the one-half of the remuneration which is not under the above restriction;
5. The Minister of Justice has power to order the forfeiture of all remuneration standing to the credit of the prisoner;
6. A prisoner who has $10 or more standing to his credit is not entitled to be furnished with any sum of money as provided by section 72, subsection 6, of the Penitentiary Act;
7. If a prisoner does not smoke or use tobacco, he is not permitted to purchase sweets instead of tobacco, but he is permitted to divert any balance there might be in, what might be called, the spendable half of his remuneration to purchase magazines or books. These, however, become the property of the penitentiary after the prisoner has finished with them.

While this system of pay for prisoners is only in its experimental stages, it is evident that, in a measure, it has been successful. Its weakness is that the amount of pay is not measured by the industry of the prisoner.

The following is a brief summary of the different systems prevailing in regard to the payment of prisoners in the different countries visited by the members of your Commission:

Great Britain

For a number of years the British Prison Commission has been experimenting in different prisons with the subject of pay for prisoners. No uniform system has been adopted. The Prison Commissioners, in their annual report for 1929, state:

> "To devise a system of payments whereby the sums paid shall be accurately adjusted to the work done by the prisoner is by no means easy. Much of the work done in prisons does not lend itself to measurement, and the proper measurement of other work requires a large expenditure of time and clerical labour, while any system which resulted in the automatic award of a weekly payment to every prisoner who had done a passable week's work would be no improvement on the existing situation."

Since this was written, the matter has been investigated by the Committee of 1932, and other experiments have been tried. At Maidstone prison, the following "Earning Scheme" is in effect:

> This scheme was introduced in April, 1935, and has proved beneficial both as a stimulus to industry and as an aid to discipline. Earnings may be expended on the purchase of tobacco or sweets, or may be "banked" with the steward.
>
> Three parties at present, viz., tailors, carpenters and tinsmiths, work on a piece rate basis. Each prisoner has to show a minimum of forty hours per week output for which he is paid 3d. Time gained over and above this minimum is paid at the rate of ½d. per hour. Maximum wage is limited to 1/-.
>
> The remaining parties are paid at flat rates, each party being subdivided into three grades varying from 3d. to 7d.
>
> All men receiving wages pay 1d. each week into a common fund, which is utilized at the governor's discretion for expenditure calculated to benefit the earners.
>
> No man is placed on the earning stage until he has completed nine months of his sentence and has been recommended by his party officer and approved by a special board presided over by the governor.

The Home Secretary for Great Britain has recently announced that, at Wakefield Prison, a system of paying wages according to work done has been introduced and that this has resulted in the output being increased. These experiments are continuing, and are being extended.

Belgium

Wages for prisoners vary in the different institutions. They average from one to three and a half cents per hour, depending on the work and the classification of the inmate as to his industrial ability. From this "peculium" the state retains a proportion, varying with the nature of the sentence:

(*a*) Jail Sentence
(*b*) Preventive Detention
(*c*) Hard Labour

The remainder, or "residuum," is divided into two equal parts, and the prisoner is permitted to spend one-half of this in the canteen, or send a portion of it to his family.

The food furnished to the prisoner is not as plentiful as that provided in Canadian penitentiaries, and a considerable stimulus is thus provided by the privilege of making purchases from the canteen.

Holland

The system of paying prisoners in Holland is similar to that in force in Belgium. They are permitted to earn the equivalent of from four to sixteen Canadian cents per day, one-half of which may be spent in the canteen, while the remainder is retained to provide for the prisoner on his discharge. This restriction does not apply to life prisoners, who are permitted to spend the whole of their earnings in the canteen or to send them out to their relatives.

France

Prisoners are paid on a per diem basis. The pay is at piece work rates, and is worked out on an involved basis of classification and sentence. Some prisoners earn quite a high rate of pay, but charges are made against earnings for their maintenance.

Germany

The prisoner is credited with remuneration for his work, graduated according to diligence, skill, and the amount of work. The sum granted as remuneration amounts to between one-fifth and one-quarter of the yield of the prisoner's work. Part of the remuneration may be used by the prisoner for obtaining additional food stuffs, books, magazines, and other articles for his use during leisure hours, or for the support of his relatives. As a rule, the other part is kept intact until the prisoner's release, when it is paid to him or remitted, in whole or in part, to an official body or welfare association. Sometimes it may be remitted to an individual (helper or supervisor) for gradual payment to the prisoner, or to relations who are entitled to his support.

United States of America

In the federal prison system some prisoners are paid and some are not. Those engaged in industry receive remuneration. Preference in

assignment to industry is given to the prisoners who have needy families, and the major part of their earnings must be sent to relieve distress at home.

The principles applied to the payment of inmates of the state prisons vary according to the various states of the Union. It is unnecessary for the purpose of this report to go into the details of these principles.

It will be observed that, in all countries visited by your Commission, an attempt has been made to measure the tasks and the rewards according to the prisoner's application to his work, thus producing "a positive stimulus to exertion," rather than the mere "negative check on idleness" as provided by the Canadian system. In the prisons visited by your Commission in other countries, the prisoners appeared to be applying themselves with a diligence comparable to that to be found in ordinary factories. On the other hand, in the Canadian institutions the tedium and evident lethargy of the prisoners appeared to produce a pronounced atmosphere of idle indifference throughout the shops.

Your Commissioners recommend that:

(*a*) The pay now provided for the prisoners should form a basis for future experiments based on the experience of other countries;

(*b*) These experiments should be directed to give greater reward for industry, and this should be measured more by application and diligence than by volume of production. A prisoner who has become highly skilled in prison industry by frequent imprisonment ought not to have the opportunity of earning more remuneration than the novice in crime whose previous training may have been inadequate or of a different character;

(*c*) Every precaution should be taken to safeguard the prisoners against favouritism or special assignments which would give one prisoner an advantage over another.

CHAPTER X

WOMEN PRISONERS

Fortunately, the problem of female delinquency is not as serious in Canada as in some other countries. However, the fundamental principles of reformation apply equally to both sexes, and, therefore, the principles of classification, training, and education for men prisoners recommended in other chapters should be applied as far as possible to women. It might be noted, however, that, when the sick have been deducted, the number of trainable women is very small, and the women prisoners apart from young prisoners who are capable of deriving benefit from continued education would constitute a small class. Some classification is essential, however, to prevent contamination.

The provincial jails and reformatories for women visited by your Commissioners are, with a few exceptions, well built, and very well kept, and they provide accommodation for many more inmates than the number actually confined in them.

All the women in Canada sentenced for more than two years are confined in the Women's Prison at Kingston. Another chapter of this report, devoted to the Women's Prison, recommends that the women confined there should be removed to other institutions. If this were to be done, the present building would be available for other purposes.

Your Commissioners believe that it is especially important to avoid committing girls to institutions except in extreme cases, and that the policy of probation, as recommended for men, should be applied even more generously to female offenders.

With reference to female offenders, the report of the Young Offenders Committee in England[1] emphasizes this principle in the following words:

> "Both in the public interest and the welfare of the young offender concerned, it appears to us to be the duty of the legislature and of the courts to see that so far, at any rate, as persons under twenty-one are concerned, imprisonment is abandoned as far as practicable and is only used when no other means can suitably be applied."

The development of girls' clubs should be encouraged to the utmost, and they should be subsidized by the state as well as by private contributions. A thorough study of the influence of environment on female delinquents and the importance of their mental, physical, and psychological make-up in causing their criminal conduct should be made as early as possible, and at the first sign of delinquency.

[1] Report of the Departmental Committee on the treatment of Young Offenders, Lond., 1927.

The following figures illustrate the comparatively unimportant part played by women in crime in this country:

Statistics regarding women prisoners, as distinct from others, are very limited. The following information, however, is available (Percentage of women to total figures for males and females given).

I.—WOMEN CONVICTED OF INDICTABLE OFFENCES, 1932-1936

1932	1933	1934	1935	1936
3,202	3,477	3,145	3,336	3,370
10·2%	10·5%	9·9%	9·9%	9·3%

II.—WOMEN CONVICTED OF NON-INDICTABLE OFFENCES, 1932-1936

1932	1933	1934	1935	1936
16,591	17,444	17,202	23,148	21,934
5·5%	5·9%	5·2%	6·3%	5·8%

III.—TOTAL WOMEN CONVICTED, 1932-1936

1932	1933	1934	1935	1936
19,793	20,921	20,347	26,484	25,304
6%	6·4%	5·6%	6·6%	6·1%

IV.—WOMEN IN CANADIAN REFORMATORIES, 1932-1936

1932	1933	1934	1935	1936
852	764	734	722	640
19·4%	19·6%	19·7%	20%	16·9%

V.—WOMEN IN CANADIAN JAILS AND REFORMATORIES, 1932-1936

(Except P.E.I., N.B. and Manitoba)

1932	1933	1934	1935	1936
2,384	2,484	2,027	1,672	2,053
6%	6·7%	5·6%	5·6%	6·5%

VI.—WOMEN IN CANADIAN PENITENTIARIES, 1932-1936, MARCH, 1937

52	48[1]	46[1]	40[1]	31[2]	27

VII.—WOMEN ADMITTED TO REFORMATORIES, 1932-1936

1932	1933	1934	1935	1936
594	652	515	573	487
6·5%	8·6%	7·5%	8·2%	6·5%

[1] These figures do not include the women at Piers Island Penitentiary in British Columbia, which was a purely temporary arrangement.

[2] This figure is affected by remission granted at time of the King's Jubilee.

These figures, incomplete as they are, demonstrate three very definite facts: (1) Women are a very minor portion of the criminal population; (2) a greater percentage of women are sent to reformatories and a smaller percentage to penitentiaries than their crime percentage would indicate, and (3) the percentage of women is higher for indictable than non-indictable offences.

The percentage of women to total convictions is approximately 6 per cent, and the percentage to the total sent to jails and reformatories is approximately 6 per cent. Of the population of penitentiaries, the percentage of women drops to approximately 1 per cent, and, in reformatories, rises to approximately 19 per cent. Finally, although the percentage of women to total convictions is approximately 6 per cent, their percentage of convictions for indictable offences rises to approximately 10 per cent.

An examination of the types of crimes for which women are sent to penitentiaries shows the following:

Offences against public order and peace	2
Abortion and attempted abortion	3
Bodily harm	1
Manslaughter	8
Murder	0
Attempted murder	1
Other offences against the person	1
Arson	3
Breaking, entering and theft	1
Forgery	1
Retaining stolen property	1
Theft	4
Total	32

It will be noted that murder, attempted murder, and manslaughter, account for approximately 47 per cent, or nearly half. These women are not a crime problem but are of the occasional or accidental offender class, who have been carried away by the overmastering impulse of the moment, often the outbreak of long pent up emotion. They are not a custodial problem, and could be cared for as well in a reformatory as in a penitentiary. The same is true of the other seventeen female penitentiary inmates.

An examination of the crimes for which women have been sent to the provincial reformatories and jails reveals that women in these institutions, in 1936, were convicted of the following classes of crimes:

CLASS I

Abduction	2
Abortion	5
Assault	39
Attempted suicide	5
Manslaughter	3
Murder and attempted murder	7
Others	2
Total	63

CLASS II

Arson and incendiarism	2
Breaking, entering and theft	25
Damage to property	0
Forgery	8
Fraud and false pretences	43
Theft	202
Receiving stolen goods	19
Trespass	4
Total	309

CLASS III

Abusive and obscene language	2
Bigamy	5
Incest	4
Indecent exposure, etc	3
Juvenile delinquency	9
Keeping houses of ill-fame, inmates, etc	173
Perjury	8
Total	204

CLASS IV

Breach of By-Laws	13
Breach of Customs Act	4
Breach of Excise Act	31
Breach of Liquor Laws	220
Breach of Narcotic Act	6
Breach of peace	33
Drunk and disorderly	206
Escaping and obstructing police	5
Lunatics and persons unsafe to be at large	45
Prostitution	12
Selling or giving liquor to Indians	46
Vagrancy	412
Other offences of this class	446
Total	1,477
Total of all classes	2,053

An analysis of these figures shows the following percentages per class:

Class I.—Offences against the person	63, or	3%
Class II.—Offences against property	309, or	15%
Class III.—Offences against decency and morals	204, or	10%
Class IV.—Offences against public order, etc	1,477, or	72%

The general conclusion to be drawn from women's relative place in crime is that, as a separate problem, it is comparatively unimportant, and that the custodial care and reformative treatment of women should be delegated to properly constituted and properly managed reformatories, and that no women should need to be confined in penitentiaries. There is no justification for the erection and maintenance of a costly penitentiary for women alone, nor is it desirable that they should be confined, either in the same institution as men, or in one central institution far from their place of residence and their friends and relations.

CHAPTER XI

TREATMENT OF INSANE PRISONERS

It is not the intention of your Commissioners to prescribe treatment for insane prisoners. This is necessarily a task for specialized medical authority, and the subject does not come within the scope of the reference of this Commission. Our duty is to consider the manner in which insane prisoners are dealt with under the law as it is, and to make recommendations in this regard for the future.

The provisions of the Criminal Code governing the trial and custody of insane persons may be summarized as follows:

1. If evidence is given upon the trial of an accused person charged with an indictable offence that such person was insane at the time of the commission of the offence, the jury shall, if they acquit such person, declare whether he is acquitted on the ground of insanity;
2. If at any time after indictment, and before verdict is given, it appears to the court that there is any reason to doubt whether the accused is capable of conducting his defence or is unfit to stand his trial on account of insanity, an issue must be directed to determine whether he is fit to stand his trial or not;
3. If an accused person is found to be insane, the court must order that he be kept in close custody until the pleasure of the Lieutenant Governor of the province be known;
4. The Lieutenant Governor of the province may make an order for the safe custody of those found insane. In practice, these prisoners are confined in one of the provincial mental hospitals;
5. The Lieutenant Governor may, upon evidence satisfactory to him showing that any person that is imprisoned in a prison other than a penitentiary is insane, mentally ill, or mentally deficient, order the removal of such person to a place of safe-keeping until his complete or partial recovery is certified, when he may be returned to the prison. When such person is confined in a mental hospital or other provincial institution, he is subject to the direction of the Minister of Health of the province;
6. The Lieutenant Governor may, upon evidence showing that a person imprisoned in a reformatory prison, reformatory school or industrial school for feeble minded is mentally ill or mentally deficient, order the removal of such person to a place of safe-keeping until his complete or partial recovery is certified. During the period he is so confined the prisoner shall be under the direction of the Minister of Health.

These provisions do not deal with the treatment of prisoners who have been found to be insane after having been sentenced to serve terms in the penitentiary.

The following provisions of the Penitentiary Act relate to such cases:

Section 53 provides that, if at any time within three months after the receipt of a prisoner at the penitentiary it is established to the satisfaction of the Minister by a written certificate of the penitentiary surgeon or otherwise that the prisoner is *insane or imbecile and was insane or imbecile* at the time he was received at the penitentiary, the prisoner may be returned to the place of confinement from whence he came.

The procedure involved is irrelevant for the present purposes.

Section 56 provides, when the surgeon of a penitentiary reports in writing to the warden that a prisoner is insane and should be removed to an asylum for the insane, the warden shall report the facts to the Superintendent. If an arrangement exists with the Lieutenant Governor of any province for the maintenance of such a prisoner in an asylum for the insane of the province, the Minister may direct the removal of the prisoner to the custody of the keeper or person in charge of such an asylum for the unexpired portion of the sentence. If, before the expiration of the sentence, the prisoner recovers and his recovery is certified by the surgeon or medical officer of the asylum in which he is in custody, he may be returned to the penitentiary, where he shall be kept until the expiry of his sentence.

Section 54 provides that the Minister may direct the warden to set apart a portion of a penitentiary for the reception, confinement, and treatment of insane prisoners. If a prisoner is kept in a penitentiary notwithstanding that he is insane, and he is insane at the expiry of his sentence, it is the duty of the surgeon to certify accordingly, and the warden shall report the fact to the Superintendent, and the Minister shall thereupon communicate the fact to the Lieutenant Governor of the province so that the prisoner may be removed from the penitentiary to a place of safe-keeping within the province.

Other provisions, with which it is unnecessary to deal for the purposes of this report, are made for procedure in carrying out the terms of the Act.

Until the 15th of June, 1915, a ward was maintained at Kingston Penitentiary for the care of prisoners who became insane during their confinement in the penitentiaries. The 1913 Commission reported on the unsatisfactory condition of this insane ward in Kingston Penitentiary and suggested two plans for the future:

"(*a*) The consummation of an arrangement with the provinces for the care of all criminally insane in the mental institutions of the provinces. (Such an arrangement existed at that time with the western provinces.)

(*b*) The erection and equipment of an institution by the Government of Canada for the care of the insane in the penitentiaries."

We think the penitentiary administration was wise in adopting the former suggestion and discarding the latter. Agreements with all the provinces for the care in provincial institutions of those who become insane during their incarceration in the penitentiaries are now in existence. The general plan of these is that the provincial authorities agree to care for all inmates of the penitentiaries who become insane after they have been received into the penitenitaries. In consideration for this undertaking, the federal authorities agree to pay a per diem allowance during the unexpired portion of the prisoners' sentences.

We think this system is preferable to the erection of a special institution to be owned and operated by the Government of Canada. Objections to the latter course are as follows:

(*a*) The expense would be out of proportion to the number of inmates. The average number committed to mental hospitals or asylums from the penitentiaries in the last five years has been thirty-seven prisoners per annum. For the previous period of five years it was twelve prisoners per annum;

(*b*) The period of treatment would be broken, because the responsibility of the Government of Canada to maintain the prisoners would terminate with their sentences;

(*c*) In order to secure proper treatment for the different types of insane, per capita cost of equipment and personnel would be prohibitive, and hence the quality of treatment would be inferior to that which is given in the provincial institutions;

(*d*) The transportation of insane prisoners from different parts of Canada to such an institution would be costly and dangerous;

(*e*) It is not advisable to extend the duplication of public services of this character between the federal and provincial authorities.

Some serious difficulties have arisen in the past because of the refusal of the penitentiary authorities,, acting under section 53 of the Act, to accept convicted persons into the penitentiaries, on the ground that they were insane at the time of their reception. Further difficulty has arisen in determining whether or not a prisoner is insane and so subject to transfer under the provisions of section 56 of the Act.

The following cases have been brought to the attention of your Commissioners and serve to illustrate the importance of establishing a better working arrangement between the provincial and federal authorities:

Prisoner "A" came before your Commissioners in Manitoba Penitentiary. His file shows that he was convicted of murder in Edmonton in 1912 and that his sentence was commuted to life imprisonment. On the closing of Alberta Penitentiary in 1920 he was transferred to Manitoba Penitentiary. On November 25, 1936, the penitentiary medical officer reported to the warden:

"In the case of the above named, it is quite definitely one of mental disease, i.e., insanity, as has been reported before, and he has

from his history been insane from the time of his crime, which was committed twenty-four years ago, and during all that time he has been in confinement.

His symptoms of insanity are delusions and hallucinations, mainly auditory, i.e., he is continually hearing noises where none exist, although he complains of the noise made by the talking of convicts in neighbouring cells.

He has several times asked to be 'dispatched' as he expresses it, meaning thereby, killed. His latest wish was for death by shooting.

As he is quite unable to do any useful work here, or in fact anywhere, he would be unable to earn his living anywhere, and is, therefore, likely to be a public charge for the rest of his life.

On account of his past history he may, at any time, attempt suicide or even attempt to kill other persons for little or no cause whatever.

As, in my opinion, the prison hospital is not the proper place for him, I would advise that, if possible, he be removed to a regular mental hospital, although a complete cure is not to be expected there or in fact anywhere else.

In support of my opinion, I would recommend that opinion of another medical practitioner be obtained as to his mental condition. This is necessary before he can be admitted to a provincial mental asylum."

Following the receipt of the medical officer's report, the warden was authorized to have the prisoner examined by an eminent psychiatrist from one of the mental hospitals of Manitoba. The psychiatrist made a detailed report, concluding:

"The inmate is insane and has been insane for a long time. His insanity is of a depressive type and requires institutional care."

Following this report, on January 20, 1937, the Deputy Minister of Justice wrote to the Attorney-General of Alberta, stating:

"It is desired to remove the above named convict, under the provisions of section 56 of the Penitentiary Act, to a mental disease institution where his care and maintenance will be paid for under agreement with your Government until the expiration of his sentence."

On receipt of this communication, the Deputy Attorney General replied:

"I would urge upon you the absolute necessity of some provision being made for the care of the so-called criminally insane in an institution under the control of the Dominion Government. Our Provincial Mental Hospitals at Ponoka and Oliver are crowded to their utmost capacity, but apart from this consideration I do not think it should be expected that a Provincial Mental institution should have facilities for the care and treatment of the criminally insane."

On June 1, 1937, the acting Deputy Minister of Justice wrote to the Attorney General of Manitoba requesting leave to have the prisoner transferred to a mental hospital in Manitoba pending arrangements with the province of Alberta. Nothing came of his suggestion.

On July 2, 1937, the Deputy Minister of Justice wrote to the Deputy Attorney General of Alberta explaining the attitude of the Government of Canada on the matter and pointing out that it was the obligation of the province to care for insane persons irrespective of whether they were of criminal tendency or otherwise, and that the province's responsibility in this regard was unquestioned whether before or after the prisoner had served his sentence. The view of the Deputy Minister of Justice was that the Deputy Attorney General's contention that the institutions in Alberta were overcrowded and had no facilities for caring for insane criminals was not relevant to the question of responsibility. No reply appears to have been received to this letter.

When your Commissioners saw this prisoner in June, 1937, it was obvious that he was not a proper case for confinement in a prison where it is necessary to maintain discipline and conform to routine. His presence there was a hardship to himself and an injustice to the prison authorities and the other prisoners.

On the visit of your Commissioners to Saskatchewan Penitentiary in May, 1937, our attention was directed to prisoner "B," who was confined in a cell in the hospital among other prisoners, some of whom were seriously ill. This prisoner was convicted at Edmonton on November 5, 1936 on a charge of contributing to juvenile delinquency. He was sentenced to two years in the penitentiary and admitted to Saskatchewan Penitentiary on November 10, 1936.

On December 19, 1936, the penitentiary medical officer certified that he considered the prisoner to be insane and that he had been insane at the time of his admission, and he recommended that the prisoner be given treatment in a mental hospital. This was reported to the Superintendent on December 19. On December 23, the Deputy Minister of Justice wrote to the Attorney General of Alberta advising him of the circumstances and stating that he wished the Attorney General to designate the institution to which the prisoner should be removed. No reply appears to have been received to this letter.

On February 23, 1937, the acting Superintendent wrote to the Attorney General of Alberta requesting a reply. On March 3, the Deputy Attorney General replied advancing substantially the same contentions as were put forward in the case of prisoner "A." On May 22, 1937, the penitentiary medical officer reported to the warden:

> "At times this convict becomes disturbed and is noisy with fits of violent yelling and screaming. He becomes very abusive at times.
>
> This is very disturbing in the hospital and I recommended his removal to a Mental Hospital as soon as possible."

On August 28, 1937, the Deputy Minister of Justice wrote to the Deputy Attorney General of Alberta, emphasizing the importance of

immediate action. On September 1, the Deputy Attorney General of Alberta replied setting forth his former contentions, and concluded:

> "I can only repeat what I have said in my letter to the Superintendent of Penitentiaries—that there is no accommodation available in our Mental Hospital for any patients of the criminal insane class."

On December 22, 1937, the penitentiary medical officer reported to the warden:

> "The above noted convict is insane and was insane when admitted to the Penitentiary.
>
> He becomes very noisy at times with violent fits of temper.
>
> His mental condition is gradually becoming worse and I urgently recommend his transfer to a Mental Hospital for care and treatment."

Prisoner "C" was convicted of murder in the Alberta courts in 1928, and his sentence was later commuted to life imprisonment. At his trial a defence of insanity was set up without success.

Upin being received into the penitentiary he was examined by the penitentiary medical officer and found to be insane. Considerable correspondence ensued between the Department of Justice and the Attorney General's Department of the province of Alberta. The Deputy Attorney General of Alberta contended that, in view of the fact that the defence of insanity had been set up at the trial without success, it was not proper for the penitentiary medical officer to decide under the provisions of section 53 of the Penitentiary Act that the prisoner was insane. He repeated the contention that,

> "There are no facilities in this Province for the care of the class known as the Criminally Insane."

The Department of Justice authorized the superintendent of one of the provincial mental hospitals of the province of Saskatchewan to examine the prisoner and report on his mental condition. The report was as follows:

> "This boy is an embecile with an intelligence not equal to that of the average child of six years of age.
>
> There is no doubt in my mind that this man is not responsible for his actions in any way, shape or form.
>
> That this simple irresponsible creature should be in the position in which I find him to-day in this civilized country is amazing to me."

Upon receipt of this report, the Department of Justice communicated the contents to the Deputy Attorney General of the province of Alberta, and the Minister gave instructions that the powers vested in him under section 53 of the Penitentiary Act should be exercised and the prisoner should be returned to the Alberta jail from whence he came.

A penitentiary officer holding a warrant under the provisions of this section conveyed the prisoner to the provincial jail at Fort Saskatchewan,

Alberta. Here the Alberta authorities refused to receive him, and the prisoner was left on the steps of the jail. With neither authority prepared to accept him, the prisoner walked away into the village and was at liberty until the local police apprehended him on a charge of being unlawfully at large. He was held in jail on this charge for about eighteen months, during which time correspondence was carried on between the Attorney General's Department of the province of Alberta and the Department of Justice. Finally, in order to close the case the Department of Justice agreed that if the Attorney General of Alberta was determined to contend that the man was sane, the prisoner would be accepted by the penitentiary. This was done, and the prisoner is still confined there.

These cases serve to illustrate the difficulties that arise in administering sections 53 and 56 of the Penitentiary Act. They are not confined to any one province. The illustrations taken refer only to cases from the province of Alberta but other provinces have put forward similar contentions. The difficulty appears to your Commissioners to be one which should be adjusted by friendly negotiations between the respective authorities, rather than by a strict determination of constitutional rights.

The contentions of the provinces under dispute may be summarized as follows:

1. The provisions of section 53 of the Penitentiary Act are *ultra vires* of the powers of the Parliament of Canada.
2. The provisions of section 53 of the Penitentiary Act are arbitrary and drastic. In law the decision rests solely with the penitentiary medical officer as to whether the prisoner was insane on his admission to the penitentiary.
3. If the penitentiary medical officer decides that the prisoner is insane on reception into the penitentiary, the prisoner then becomes a charge of the province to be maintained at provincial expense during the term of the prisoner's sentence.
4. If the sanity of a prisoner has been put in issue at a criminal trial and the jury has refused to find the prisoner "not guilty on the ground of insanity," he should not be certified to be insane by the penitentiary medical officer unless it can be shown that his mental condition has changed between the time of his trial and his reception into the penitentiary.
5. The provinces ought not to be asked to maintain mental institutions for insane criminals; also the mental institutions in the provinces are in the nature of hospitals to which law abiding citizens are sent for treatment, and it is unfair to these citizens to be confined in the same institution with dangerous criminals who have committed serious crimes.

It is in order for your Commissioners to deal with these contentions because they have been raised by the provinces.

1. Under the provisions of the British North America Act the Parliament of Canada is given power to make laws concerning the following classes of subjects, among others:

(*a*) The criminal law, except the constitution of courts of criminal jurisdiction, but including procedure in criminal matters.

(*b*) The establishment, maintenance and management of penitentiaries (Penitentiaries are not defined.)

The legislatures of the provinces are given power to make laws in relation to matters coming within the following classes of subjects:

(*a*) The establishment, maintenance, and management of public and reformatory prisons in and for the province.

(*b*) The establishment, maintenance, and management of hospitals, asylums, charities, eleemosynary institutions in and for the province, other than marine hospitals.

The power given to the respective bodies implies a legislative responsibility to make such provision in regard to the subject matter as the public interest may require. The Parliament of Canada has defined the purposes and functions of a penitentiary as follows:

> "As a prison for the confinement and reformation of persons lawfully convicted of crime before the Courts of Criminal Jurisdiction of the Province .... and sentenced to confinement for life or for any term not less than two years."

It has been suggested to us that the power to legislate in respect to criminal law confers on the Government of Canada a responsibility to legislate in regard to that class of the king's subject which is spoken of as "the criminally insane." Your Commissioners are of the opinion that there is no class of persons who can be termed "criminally insane." Those who have committed, or are likely to commit, violent or unlawful acts by reason of their insanity are essentially a medical problem and not a legal one. They are, in no sense, criminals, because their violent tendencies are due to mental disease. As diseased persons they are necessarily a responsibility of the province.

Your Commissioners do not think it can be seriously contended that the provisions of section 53 of the Penitentiary Act are *ultra vires* the Parliament of Canada. The Parliament of Canada has power to pass laws relating to the establishment, maintenance, and management of penitentiaries. Parliament has declared that the purpose of a penitentiary is for the punishment and reformation of prisoners sentenced to serve terms of two years or more. Parliament has further provided that a prisoner will not be received into a penitentiary if the penitentiary medical officer certifies that he is suffering from a dangerously infectious or contagious disease, or if, within three months after his reception of the penitentiary, the prisoner has been found to have been insane at the time he was received into the penitentiary and to be still insane.

Your Commissioners are of the opinion that this is legislation that lies strictly within the subject relating to "the establishment, maintenance

and management of prisons," and that the Parliament of Canada has power to exclude from the penitentiaries prisoners who are not proper subjects for incarceration in an institution designed for the purposes of a penitentiary.

2. Your Commissioners are also of the opinion that, under the provisions of section 53 of the Penitentiary Act, the penitentiary doctors are given powers which are too wide. We have not, however, seen any evidence that the penitentiary authorities have sought to use this power in any arbitrary manner. In all cases which have been brought to our attention where there has been any question as to the prisoner's sanity independent alienists of wide experience have been called in to examine the prisoner and make a report on his mental condition. As a guarantee, the section might well be amended to make provision in law for the practice that is now in effect.

3. Although your Commissioners have no doubt as to the power of the Parliament of Canada to enact the provisions of section 53 of the Act, they are of the opinion that, when a prisoner has been duly tried by a court of competent jurisdiction and sentenced to a term of imprisonment of two years or more, the cost of his maintenance during the term of his sentence ought to be provided by the Parliament of Canada, even though he may be certified by competent medical authority to have been insane at the time he was received into the penitentiary.

4. Your Commissioners do not agree with the contention of the provincial authorities that the determination of the issue of the prisoner's sanity during a criminal trial settles the matter as to whether the prisoner is sane or insane within the meaning of the Penitentiary Act or whether the prisoner is a proper subject to be confined in a penitentiary where the object is punishment and reformation. The defence of insanity at a criminal trial turns on narrow and controversial legal grounds, and the verdict of a jury on a trial of this issue can by no means be taken as a guide in determining the proper subsequent treatment to be given to the prisoners with a view to his own welfare and the welfare of those with whom he must come in contact during his confinement.

5. Your Commissioners are of the opinion that the contention of the provinces, that they ought not to be compelled to maintain mental institutions for the treatment of convicted criminals and that their responsibility is limited to the maintenance of institutions for the mental treatment of "law abiding citizens," is not well founded. The powers given to the provinces under the British North America Act, to pass laws relating to "the establishment, maintenance, and management of hospitals, asylums...", carries with it the responsibility to make provision for the treatment of all the king's subjects in the province who may require treatment in such institutions. This responsibility is not limited to any class of subjects. It extends as well to the subject who may have been convicted of a criminal offence as to the subject who may not at any time have been guilty of any infraction of the laws of the country. It may be

pointed out that, with a few exceptions, all prisoners are eventually released from prison. These individuals cannot be refused proper hospital treatment because they have served terms in prison. It may also be pointed out that if prisoners become insane while serving terms in provincial institutions they must be transferred to provincial mental hospitals. It is therefore evident that no case can be made out on the ground that it is unfair to other patients in these mental hospitals for the province to be compelled to treat "convicted criminals."

Having regard to all the circumstances, and considering the welfare of the patients as well as the interests of the tax payer, your Commissioners are of the opinion that the most efficient method of caring for insane prisoners in the penitentiaries is by continuing and expanding the present friendly arrangements that are in effect between the federal and provincial authorities in respect to transferring insane prisoners from the penitentiaries to the provincial hospitals under the provisions of section 56 of the Penitentiary Act. We are also of the opinion that similar arrangements should be made in respect to prisoners who are dealt with under the provisions of section 53 of the Act.

All transfers of insane prisoners ought to be effected promptly. It is a grave reflection on our penal system that several insane prisoners should be confined in our penitentiaries, caged like wild beasts, where there is neither means for proper treatment nor personnel with experience to deal with them. If satisfactory arrangements cannot be effected along the lines suggested in this report, your Commissioners recommend that the matter of jurisdiction be referred to the courts without delay so that the ultimate responsibility may definitely be determined.

CHAPTER XII

TREATMENT OF DRUG ADDICTS

In prison the drug addict is a constant source of irritation and difficulty. He is usually clever, irrational, and undisciplined. He is cunning and irresponsible. The drug addict is not merely confined in the prison for crimes involving drugs, but usually for crimes that he has committed in order to secure drugs. The offences are often of a petty nature for which the prisoner receives a short term in the provincial jail or reformatory, where, during his sentence, he is a constant trouble maker.

It is simple to give these prisoners all the medical treatment they require. They are "weaned" from the drug in a short time, and almost invariably gain in weight and general physical condition during the period of their confinement. Although they are "weaned" as long as they are confined in prison and cannot get access to drugs, *we can find no evidence that they are ever cured.* We have enquired from prison doctors and prison authorities throughout Canada and in other countries visited by your Commissioners, and we have not found anyone who contends that a drug addict is ever cured. As one warden put it, the use of the drug "has killed the will to be cured," and, without the will to be cured, no cure is possible. We believe that it is in the public interest that the widest possible publicity should be given to this fact. We are also of the opinion that the most insistent and relentless efforts should be put forth by all law enforcement bodies to suppress the unlawful traffic in narcotic drugs. Rigorous punishment should be meted out to those found guilty of participating in this traffic and, on repeated conviction, they should be entirely segregated from society so that they may have no opportunity of carrying on their illicit trade.

The treatment of the prisoner who is serving a term for traffic in drugs, and the treatment of the drug addict, are two different problems. The problem that the drug addict creates in prison management was ably put before the Commission in a brief presented by the Attorney General of Manitoba. The following is a passage taken from this brief:

> "This memorandum will now proceed to deal with certain subjects which are not specifically covered by the 'memorandum of subjects to be investigated' by this Commission.
>
> *The Opium and Narcotic Drug Act, 1929*
>
> The Government of Manitoba desires to make special mention of breaches of The Opium and Narcotic Drug Act, 1929 and subjects collateral thereto.
>
> Those who are in a position to know state that Winnipeg is the third largest drug-trafficking point in Canada.

The treatment of the addict confined in the provincial gaols in Manitoba has been found to be and is a problem of great magnitude.

During recent months the public press has had many items therein relative to this 'drug traffic' and cases thereunder in the various criminal courts.

A vigorous prosecution and the imposition of severe penalties on those who traffic illicitly in drugs are necessary, but it is reasonable to say that that is only half the problem.

It is also necessary to destroy the market of the illicit dealers by the care of those persons termed addicts who have an overpowering impulse for the drugs defined in The Opium and Narcotic Drug Act, 1929.

One of the worst class of offenders that we have to deal with in our penal institutions is the drug addict.

He is not amenable to discipline. He is a constant source of irritation. He is unreliable and generally a danger to the orderliness and general good conduct of an institution.

Not only is he a danger to the discipline of the institution but he also is a danger to the other inmates of the institution.

Seldom are these offenders committed for an offence under The Opium and Narcotic Drug Act. The usual charge is theft or vagrancy and they have to be treated as other inmates.

There are two institutions in Manitoba where drug addicts are incarcerated. The male addicts are incarcerated in Headingly gaol and the female addicts in the gaol for women at Portage la Prairie.

A medical authority who has given considerable attention to the treatment of drug addicts recently expressed the following opinion:

> 'Once an individual becomes addicted to narcotic drugs he or she very seldom does anything of a constructive nature, and never helps to build but always destroys. They have no gainful way of making a livelihood, so prey upon society. Their chief aim in life is to get enough narcotics to satisfy their inward desire for the drug. Economically they must be placed on the debit side of the ledger. They procure the money to buy drugs by begging, borrowing or stealing. Consequently, society keeps them whether in gaol or out.'

The experience of Manitoba would bear out the statement that drug addicts cannot be cured. A reference to the records of the gaol for women at Portage la Prairie where women addicts are confined shows several cases where in a period of six years repeated offences resulting in imprisonment for periods of from two to six months have been committed by women. They were charged with being inmates of bawdy houses, vagrancy, etc. In all cases they were drug addicts. In each case death has resulted.

There is only one way to handle this type of offender and that is to confine him or her in an institution separate and apart from all other inmates. They should not be allowed any means of communication with others and their period of incarceration should be for an indeterminate term.

As asylums exist for the care of the mentally afflicted so should some institutions be established for the drug addicts. Prison is no place for them. They suffer from a disease which makes criminals out of them.

The problem is a national one and there should be a branch of the national service devoted to the care of these unfortunate persons who have become so addicted."

While your Commissioners agree with much that is said in the above brief, the geographical distribution of the population of Canada renders it impossible to provide a separate institution for prisoners addicted to the use of drugs.

Your Commissioners are of the opinion that, if the recommendations of this report are adopted in regard to the establishment of a prison for habitual offenders and a prison for incorrigibles, many of the most troublesome drug addicts might be removed from the prison population and segregated in such places. If a recidivist criminal is addicted to the use of narcotic drugs the hope of his reformation by confinement in a penitentiary is indeed a small one. In the opinion of your Commissioners, this type of criminal is a menace to society whether in or out of prison, and should, as far as possible, be segregated in an institution of the character otherwise recommended in this report, where the evils of his contaminating influence will be reduced to a minimum.

CHAPTER XIII

INTERNATIONAL STANDARD MINIMUM RULES

One of the subjects mentioned in the order of reference was a study of the "International Standard Minimum Rules." These rules are contained in a pamphlet entitled "Extrait du Recueil de documents en matière Pénale et Pénitentiaire."[1] They were drawn up by the International Penal and Penitentiary Commission in 1929, and forwarded to the League of Nations in 1930. The League of Nations submitted them to the Governments of its state members, as well as to non-members of the League. They were also submitted to certain institutions or commissions, attached to the League, dealing with penal and penitentiary law. In 1931, the Assembly of the League of Nations forwarded to the International Penal and Penitentiary Commission the replies and observations that had been collected and, in 1932, a committee at Geneva carefully examined all the documents filed with the secretary. At its sessions in 1933, the Commission finally adopted the revised text of the rules for the treatment of prisoners and, in September, 1934, the fifth committee of the Assembly of the League of Nations endorsed them as "International Standard Minimum Rules," and recommended that the Governments involved should accept them as such, and apply them to the treatment of all prisoners.

Your Commissioners have made a careful study of these rules, compared them with the present rules and regulations in force in Canadian penitentiaries, and have considered them in making the recommendations contained in this report. As a general observation, it may be stated that some of these rules are embodied in the Canadian penitentiary regulations, that some of them are observed and others not, that some Canadian penitentiary rules set a higher standard than the international rules, and that, while some conditions in the Canadian penitentiaries are below the standard, others are above those established in the international code.

A brief analysis of the "International Standard Minimum Rules" follows:

Article 1 deals with "distribution and separation," or what we term, classification. Unfortunately, in Canadian penitentiaries no real classification has been made. The matter is dealt with in another part of this report.

Article 2 recommends separate cells instead of dormitories. This rule is in force in our federal institutions but is not in force in many provincial jails and reformatories.

Article 3 deals with other phases of classification, and comments made regarding article 1 also apply to this article.

[1] Bulletin de la Commission Internationale Pénale et Pénitentiaire, vol. IV (special), Staempfli & Cie, Berne, 1935. (This is on file in the offices of the Commission, No. 678.)

Article 4 deals with rehabilitation and reformation. The principle herein stated is not observed in our penitentiaries, although it is contained in the Penitentiary Act. This matter is also dealt with elsewhere in the report.

Article 5 deals with prisoners awaiting trial and persons in prison for debt, and recommends that they should not be subjected to any greater restriction of liberty than is necessary. This is observed in our prisons.

Article 6 deals with the care of valuables taken from prisoners, and recommends that such valuables should be kept in a safe place in order to be returned to the prisoners at the time of their release. This is observed in our prisons.

Articles 7 and 8 deal with clothing and food, and are observed in our penal institutions. The prisoners in the Canadian penal institutions, in fact, have better food and better clothing than the established standard. Article 8 recommends that the medical officer should supervise diets. In our institutions this officer has confined himself largely to the diet of sick prisoners and those under restricted diet, and has not supervised the feeding of the prisoners in general.

Articles 9, 10, 11, and 12 deal with employment in the penal institutions. The principles embodied are generally observed in our institutions. This matter, and the question of leisure time employment mentioned in article 12, have been dealt with extensively in this report.

Article 13 deals with remuneration for prison labour. The Canadian regulations provide for the payment of five cents a day, but this is given, rather as a gratuity based on conduct and industry, than for work accomplished. This matter has also been dealt with in this report.

Articles 14, 15, 16, 17, 18, 19, 20, and 21 deal with cells and clothing. The cell accommodation and the clothing of the prisoners in Canadian institutions are above the standard set up by these rules. The only qualification to be made in this connection is that the lighting in cells of Canadian penitentiaries is unsatisfactory at present, but this subject is dealt with elsewhere in this report.

Articles 22, 23, 24, 26, and 48 deal with medical care, and consist only of elementary considerations regarding it. This question has been dealt with extensively in different parts of this report and, apart from the examination on arrival, which seems to be superficial, conditions in our penitentiaries are up to the standard set by these rules. Article 48 recommends that a psychiatrist should be connected with each penal institution. At present there are no psychiatrists attached to our institutions, but their appointment has been recommended in this report.

Article 25 deals with outdoor and indoor physical exercise. The standard set up by this article is generally followed in our institutions, and

your Commissioners have recommended in this report that more physical exercise and more recreation should be permitted than is the case at the present time.

Articles 27 and 47 deal with the religious services, which, in Canadian institutions, are above the standard set by these rules.

Article 28 deals with intellectual instruction. Our institutions at present are below the standard set up by this rule, and your Commissioners have recommended elsewhere that better facilities be provided for educational instruction.

Article 29 deals with libraries, and recommends that prisoners should be allowed the use of books from the commencement of their sentences. The libraries in the Canadian penitentiaries are dealt with elsewhere in this report, and recommendation is made that books should be given to the prisoners at the commencement of their sentences.

Article 30 deals with the necessity of furnishing prisoners with the means of keeping in touch with the important events which take place in the world. At the present time there is a weekly bulletin issued in the Canadian penitentiaries, but this is not sufficient. Your Commissioners have recommended that a weekly newspaper should be supplied.

Article 31 deals with visits and correspondence. The facilities in Canadian institutions are above the standard set by this article, and a further extension of these facilities is recommended in the report.

Article 32 deals with permission given to prisoners belonging to a foreign nation to hold communication with the consuls of the state to which they belong. This rule is contained in the Canadian penitentiary regulations and is observed in Canadian penitentiaries.

Articles 33, 34, and 35 deal with discipline. It is recommended that no punishment should be given other than is countenanced by the provisions of the law, and that a thorough medical examination should be given before the punishment is inflicted. This rule is covered in the penitentiary regulations, but, as indicated in this report, is not always observed.

Article 35 deals with trials for prison offences. The principle recommended is that the accused should be given an opportunity to defend himself. This principle is embodied in our regulations but it has not been adequately observed in our institutions. Your Commissioners deal extensively with this matter in another part of their report.

Article 36 deals with corporal punishment, and a hope is expressed that corporal punishment will no longer be resorted to except in exceptional cases. There have been grave abuses in the infliction of corporal punishment in our institutions, and, in the chapter dealing with this subject, your Commissioners have recommended that many limitations should be imposed.

Article 37 deals with placing prisoners in dark cells. There have also been abuses in connection with this mater in our institutions, but, in the last few years, condemnation of prisoners to cells without light has only been resorted to in exceptional cases, and is now practically abolished.

Article 38 deals with the necessity for supervision by the medical officer in cases where food is reduced below the ordinary standard. We have a similar regulation in our penitentiary rules, which is generally well observed.

Article 39 deals with instruments of restraint, such as handcuffs and strait-jackets, and the principle is stated that they should never be applied as punishment but only for restraint. Punishment of this nature is not provided for in the penitentiary regulations.

Article 40 deals with chains, which are not used in our penal institutions.

Article 41 recommends that every prisoner should have the opportunity to make requests or complaints to the warden. We have a similar enactment in our regulations.

Article 42 recommends that prisoners should have an opportunity to make complaints to superior authorities outside the prison. At the present time such opportunity in Canadian penitentiaries is extremely limited in practice, and your Commissioners have recommended adequate facilities for making such complaints through the formation of a Board of Visitors.

Articles 43, 44, 52, and 53 deal with the personnel. The personnel of Canadian institutions is not up to the standard set by the international rules. Your Commissioners have made recommendations regarding the selection and training of personnel in chapter XXX of this report.

Articles 45 and 46 deal with wardens, who, it is recommended, should live on the prison premises and speak the language of prisoners native to the country in which the prison is located. It also deals with qualifications of deputy wardens. The provisions of these articles are observed in our penal system.

Article 49 deals with education. Observations have been made on this matter in dealing with article 28.

Article 50 deals with the supervision of female prisoners. It is observed in our penal system.

Article 51 deals with the use of firearms and the application of force. The provisions contained in this article have been grossly violated in Canadian penitentiaries in several instances. These have been made the subject of extensive observations in another part of this report.

Articles 54 and 55 deal with assistance to liberated prisoners. Up to the present time this most important phase of the penal system has only

been taken care of by private and charitable associations, and the recommendations contained in these articles have not been followed by our authorities. Your Commissioners have devoted a special chapter to the subject,[1] and have recommended that the state should henceforth take an active part in this work.

As previously mentioned, a copy of these rules is included in the documentary evidence possessed by the Commission and will be placed at the disposal of those who are to be entrusted with the supervision and management of our penal system for their reference and study.[2]

[1] Chapter XXI.
[2] Exhibit 671A.

Chapter XIV

CRIMINAL LAW AMENDMENTS

The Canadian Bar Association has repeatedly expressed its views as to the necessity of a complete and thorough revision of the Criminal Code. The following extract, taken from one of the reports of the proceedings of the association, concisely states the case for such a revision:

> "Since 1892, the Code has been amended year after year, here and there, something added to one section, something taken from another, with many entirely new sections and even new statutes of a criminal nature added. One is reminded of an ancient edifice to which additions have been made, planned by many architects and carried out with little regard to the appearance of the completed structure. The so-called revision of 1906 was a consolidation rather than a revision. We therefore recommend that representations be made to the Minister of Justice urging upon him the necessity of a complete revision. . . ."

In a special report regarding the Revised Statutes of 1927, the commission appointed to revise the public general statutes of Canada dealt at length with the Criminal Code, its history, and its provisions. The committee made special comment on the extensive jurisdiction conferred upon the police and stipendiary magistrates, and expressed the desirability of having all indictable offences tried by judges or magistrates having a trained knowledge of legal principles, legal procedure, and the rules respecting the adaptability of evidence in courts of justice. Your Commissioners have not considered themselves required by the terms of the reference to make any examination of matters involved in a general revision of the Criminal Code or amendments to the criminal law. It is too vast a subject to be attempted here, but the criminal law will have to be amended to provide for the recommendations of this report. Certain matters, however, have been drawn specifically to our attention and, we believe, come directly within the scope of the reference.

Vagrancy

The definition of vagrancy contained in section 238 of the Criminal Code is derived from the English Vagrancy Act of 1824. Difficulty arises under the present statute in interpreting the words "no visible means of support." We suggest that consideration be given to the adoption of the provisions of the Vagrancy Act introduced in England in 1935.

Time for payment of fines, and imprisonment for non-payment

The attention of your Commissioners has frequently been drawn to the large number of persons who are annually committed to jail for non-payment of fines. The number shown by the Canadian Criminal

Statistics for 1936 to have been sentenced to jail with the option of a fine was 9,593, but statistics are not available to show how many of these served sentences in jail.

Under the provisions of the Criminal Justice Administration Act, passed in England in 1914, the court is obliged to allow time for payment of fines and for investigation of inability to pay.

During the five years ending in 1913, the average number of persons in England and Wales sent to prison annually for default in payment of fines was 83,187. For a similar five year period ending in the year 1930 the average number of persons admitted to prison for non-payment of fines was 12,497. While the difference may not be entirely accounted for by the operation of the statute, it is no doubt largely responsible for the results. The matter was the subject of an extensive investigation and report by a departmental committee in England in 1934. The report resulted in the enactment of the Money Payments Act (Justices Procedure Act) of 1935. The Act makes further provision for the investigation of the means of the defaulter before imprisonment and the supervision of the defaulters when time is allowed for payment. Supervision of defaulters under 21 years of age is made obligatory, except where the court is satisfied that it is undesirable or impracticable. The statute provides that no one is to be sent to jail for non-payment of a fine unless it can be shown that he might reasonably be expected to pay such fine. This Act came into force on January 1, 1936, and the results of its first year of operation are shown by a substantial reduction in imprisonments for non-payment.

The following statement was made by the Home Secretary, Sir John Simon, in the English House of Commons, on February 4, 1937:

"The number of committals to prison in default of payment of moneys during 1935, as compared with 1936, were as follows:

Number of persons imprisoned—	1935	1936
(1) In default of payment of fines	10,825	7,424
(2) For failure to pay sums due under wife maintenance orders	2,324	1,876
(3) For failure to pay sums due under affiliations orders	1,300	859
(4) In default of payment of rates	2,118	1,464
	16,567	11,623"

Your Commissioners recommend that the principle embodied in these English statutes should be introduced into Canada.

Imprisonment for non-payment, when the convicted person has not the means or ability to pay, is, in fact, imprisonment for poverty. The injustice of such a law is patent. The poverty-stricken man is punished more severely for the commission of the same offence than the man with means. Your Commissioners are of the opinion that many recidivist criminals often receive their first education in crime upon being committed to prison for non-payment of fines.

Sale of offensive weapons

The sale of fire-arms and other offensive weapons is much more freely permitted here than it is in England or many of the European

countries. Your Commissioners are of the opinion that the sale and possession of offensive weapons should be drastically restricted by law and placed under the direct supervision of the Government. The penalties provided by the Criminal Code, especially those for breaches of section 116, should be made more severe.

Appeals in criminal cases

It has been pointed out to your Commission that indigent accused persons who have been found guilty have no means of access to the Court of Appeal because they are unable to provide funds to pay for the transcription of the evidence. Although no fees are exacted for criminal appeals, except in the province of Quebec where an inscription and factum fee is charged, the cost of providing a copy of the evidence is often prohibitive. Your Commissioners are of the opinion that provision should be made for some form of application for leave to appeal to the Court of Appeal *in forma pauperis*.

Public defenders

The question of appointing public defenders in criminal cases has repeatedly been brought to the attention of your Commissioners by social welfare and other societies. It has also been the subject of serious study by a special committee of the Canadian Bar Association, although this committee did not make any resulting recommendations. It may be added that the appointment of public defenders, being a matter respecting the administration of justice in the provinces, is one of provincial concern.

The question of public defenders was given consideration in England in 1921, and a bill was introduced into the House of Commons to deal with it, but the measure was not enacted. According to information received by a committee of the Canadian Bar Association, the English Poor Prisoners' Defence Act of 1923, which does not apply to magistrates' courts, has not been found satisfactory in application.

In six of the states of the United States of America, provision has been made for the appointment of public defenders, and in 16 states other provision has been made for the defence of indigent accused persons.

This matter is one for those charged with the responsibility of the administration of justice in the provinces to consider. Whatever action may be taken, your Commissioners are strongly of the opinion that no course should be adopted that will divest, or tend to divest, crown prosecutors of their duty to the accused as well as to the state. In British countries the crown prosecutor is regarded as a semi-judicial officer of the court, who is not called upon to "win a case," but merely to present to the court the revelant elements affecting the charge against the accused.

Anomalies of punishment

Frequent representations were made to your Commission, both within and without the institutions, in all parts of Canada, as to the lack of uniformity in judicial sentences for the same or similar offences. There

is undoubtedly some ground for this prevalent complaint, due in part to idiosyncracies of many magistrates and judges in respect of certain criminal offences, and in part to differences in knowledge, experience and judgment of those administering the criminal law. Your Commission is of the opinion that discretion in the imposition of punishment in individual cases should not be lightly interfered with, and that the adoption of suggestions made in this report as to inquiry before sentence, probation, conditional release, etc., will tend to minimize the number of well-founded complaints.

Your Commission is of the opinion also that provisions in the criminal law imposing minimum penalties for certain offences, thus fettering the judicial discretion of the trial judge or magistrate in individual treatment of special circumstances, is inadvisable. For example, a minimum one-year term of imprisonment is imposed as punishment for stealing an automobile, and three years for theft of a postal letter.

Fingerprinting and photographs

The right to take fingerprints and photographs of accused persons is a very necessary provision of the law and is of manifest assistance to the authorities in the detection of crime. Strict care should be taken to prevent any abuse of the provisions of the statutes affecting this matter.

An accused person who has been honourably acquitted in the courts should not be compelled to suffer the lifelong indignity of having his, or her, fingerprints or photographs filed in the police records of the city in which arrested, as well as with the Royal Canadian Mounted Police at Ottawa. It may often happen, however, that, although acquitted on a specific charge, the accused may yet be a dangerous character entitled only to the type of verdict that is to be found in Scotland, but not in our law, "not proven." In these cases the fingerprint records and the photographs should remain in the possession of the authorities, but there are cases where the acquittal has been a complete exoneration, both as to facts and law, and the accused is, in the opinion of the presiding judge, innocent beyond all doubt. There are also cases where the arrest has been the result of malice.

All police officials do not take fingerprints and photographs of all persons arrested, even when for indictable offences. Others do so in the most trivial cases. At the present time, the records of the Identification Bureau are never destroyed. Your Commissioners recommend that an amendment be made to the Identification of Criminals Act to give to the presiding judge the power to direct destruction of the fingerprint records and photographs in cases where he finds the accused not guilty, and when he believes that it is proper that the fingerprints and photographs should not be retained.

Whipping

During the visits of the Commission to the different prisons in Canada they found that the instrument used in executing the sentence

of the court was not uniform. In the penitentiaries it is a standard whip of nine hard cords of twine. In two jails, Headingly Jail, Manitoba and Fort Saskatchewan Jail, Alberta, the whip was composed of nine thongs of leather, which, in Headingly Jail, was knotted. Your Commissioners believe that the instrument used in the execution of this sentence, which is provided by the Criminal Code, should be standard throughout Canada. The instrument used for corporal punishment in the penitentiaries is, in our opinion, sufficiently severe.

Place of execution

Representations have repeatedly been made to the Commission by municipal and provincial officials to the effect that one central place of execution should be provided in each province. Your Commissioners agree with this suggestion. It is highly undesirable that sheriffs and prison officials, who must come in contact with prisoners from day to day, should be charged with the duty of officiating at these executions, or that the execution should be carried out at a prison where equipment has to be installed from time to time as required.