

REPORT
OF THE
ROYAL COMMISSION TO
INVESTIGATE
THE
PENAL SYSTEM OF CANADA



OTTAWA
J. O. PATENAUDE, I.S.O.
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.

TABLE OF CONTENTS

PART I

		PAGE
CHAPTER	I—OUTLINE OF INVESTIGATION.....	1
CHAPTER	II—GENERAL PRINCIPLES OF PENOLOGY AND CRIMINOLOGY.....	7
CHAPTER	III—PENAL INSTITUTIONS IN CANADA	
	Federal Institutions.....	12
	Provincial Institutions.....	16
	General Characteristics of Canadian Penitentiaries.....	22
CHAPTER	IV—PENITENTIARY BRANCH	
	Policies—	
	Central Authority.....	25
	Inspections of Penitentiaries.....	32
	Dismissal of Officers.....	33
	Accounting Policies.....	40
	Staff—	
	Superintendent.....	43
	Inspectors.....	52
CHAPTER	V—PRISON DISCIPLINE	
	Disciplinary Objectives.....	54
	Punishment for Prison Offences.....	58
	Corporal Punishment in Penitentiaries.....	60
	Trial for Prison Offences.....	61
	Segregation.....	65
	Other Rules and Regulations.....	66
CHAPTER	VI—RIOTS AND DISTURBANCES.....	69
CHAPTER	VII—USE OF FIREARMS IN PENITENTIARIES.....	74
CHAPTER	VIII—PRISON MANAGEMENT	
	Classification.....	100
	Grades and Merit System.....	106
	Depressing Effects of Confinement.....	109
	Recreation.....	109
	Education.....	114
	Medical Services.....	120
	Religious Services.....	121
CHAPTER	IX—PRISON EMPLOYMENT	
	Conditions of Labour.....	126
	Industrial Employment.....	130
	Farm Employment.....	136
	Prison Pay.....	139
CHAPTER	X—WOMEN PRISONERS.....	145
CHAPTER	XI—TREATMENT OF INSANE PRISONERS.....	149
CHAPTER	XII—TREATMENT OF DRUG ADDICTS.....	159
CHAPTER	XIII—INTERNATIONAL STANDARD MINIMUM RULES.....	162
CHAPTER	XIV—CRIMINAL LAW AMENDMENTS.....	167

ROYAL COMMISSION

PART II

CHAPTER	XV—PREVENTION OF CRIME	173
	Police Services.....	174
	Statistical Information.....	175
	Prevention of Juvenile Delinquency.....	
CHAPTER	XVI—JUVENILE COURTS, FAMILY COURTS, AND TRAINING SCHOOLS.....	182
	Juvenile Courts.....	190
	Family Courts.....	192
	Training Schools.....	
CHAPTER	XVII—YOUNG OFFENDERS.....	195
CHAPTER	XVIII—RECIDIVISM.....	211
CHAPTER	XIX—HABITUAL OFFENDERS.....	218
CHAPTER	XX—CONDITIONAL RELEASE	
	Adult Probation.....	225
	Remission.....	231
	Ticket-of-leave.....	236
	Indeterminate Sentences and Parole.....	243
CHAPTER	XXI—REHABILITATION ON RELEASE.....	249

PART III

Report on Penitentiaries

CHAPTER	XXII—DORCHESTER PENITENTIARY.....	265
CHAPTER	XXIII—ST. VINCENT DE PAUL PENITENTIARY.....	273
	Laval Buildings.....	283
CHAPTER	XXIV—KINGSTON PENITENTIARY.....	287
	Coal Shortages.....	298
CHAPTER	XXV—COLLIN'S BAY PENITENTIARY.....	302
CHAPTER	XXVI—WOMEN'S PRISON.....	312
CHAPTER	XXVII—MANITOBA PENITENTIARY.....	317
CHAPTER	XXVIII—SASKATCHEWAN PENITENTIARY.....	322
CHAPTER	XXIX—BRITISH COLUMBIA PENITENTIARY.....	331

PART IV

CHAPTER	XXX—REORGANIZATION OF THE PENAL SYSTEM OF CANADA	
	Centralization of Control of Provincial Jails, Reformatories, and Penitentiaries.....	339
	Appointment of a Prison Commission to Administer Canadian Prisons.....	342
	Board of Official Prison Visitors.....	344
	Reconstruction of Personnel and Training of Officers.....	344
CHAPTER	XXXI—SUMMARY OF RECOMMENDATIONS.....	354
CHAPTER	XXXII—CONCLUSION.....	362
APPENDIX	I—INSTITUTIONS VISITED BY THE COMMISSION.....	365
APPENDIX	II—REPORT ON THE FARMS AT ST. VINCENT DE PAUL, KINGSTON, COLLIN'S BAY, AND SASKATCHEWAN PENITENTIARIES.....	369
APPENDIX	III—A SPECIAL STATISTICAL STUDY OF RECIDIVISTS IN CANADIAN PENITENTIARIES WHO HAVE OVER TEN CONVICTIONS.....	387
BIBLIOGRAPHY.....		389
INDEX.....		409

TERMS OF REFERENCE AND APPOINTMENT OF PERSONNEL

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 after-care 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 sullied 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 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 characteristics 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:

1932

Dorchester ⁽¹⁾	St. Vincent ⁽¹⁾ de Paul	Kings- ⁽²⁾ ton	Man. ⁽¹⁾	Sask. ⁽¹⁾	B.C. ⁽¹⁾
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 vists 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 approved 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 regulations. 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 503a 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 503b 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 opportunity 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 account 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 budgetary 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 budgetary estimates with monthly trial balances is almost impossible, and the benefits of budgetary 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	2,287	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 censured 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 ricocheted 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 ricocheted 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 ricocheted. 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 ricocheted 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.