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Third Session - Twenty-Second Parliament

REPORTS

of The Joint Committee of The
Senate and House of Commons on

CAPITAL PUNISHMENT

June 27, 1956

CORPORAL PUNISHMENT

July 11, 1956

LOTTERIES

July 31, 1956

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*Served temporarily:—The Honourable Senators Beauregard, Bishop, Connolly (*Ottawa West*), Tremblay, Wilson, and the following Members of the House of Commons: Miss Aitken, M.P., Mr. Decore, M.P., Mr. Dupuis M.P., Mr. Fulton, M.P., Mr. Johnston, M.P. (*Bow River*), and Mr. Shaw, M.P.

SECRETARIAT

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FINAL REPORT ON CAPITAL PUNISHMENT

to

THE SENATE AND THE HOUSE OF COMMONS PRESENTED ON WEDNESDAY, JUNE 27, 1956.

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present herewith its

SECOND REPORT*

of the current session, being the Committee's final report upon the question whether the criminal law of Canada relating to capital punishment should be amended in any respect and, if so, in what manner and to what extent.

The Minutes of Proceedings and Evidence tabled on June 29, 1955, by the preceding Committee were referred to this Committee and, at this time, the Committee is returning only that portion applicable to the question of capital punishment. At the current session, no further evidence was printed and all proceedings were conducted *in camera*.

The sources of the evidence taken and witnesses heard on capital punishment during the first two sessions are listed alphabetically in Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence, and a chronological schedule of the sittings of the Committee for the same period appears at page 830 of the same number.

The Committee proposes to report later on the questions of corporal punishment and lotteries, as well as to report generally on its activities, procedure, and matters relating thereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON F. BROWN,
Joint Chairman representing the House of Commons.

**The First Report of the Committee was a recommendation concerning its quorum made on March 21, 1956.*

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FINAL REPORT ON CAPITAL PUNISHMENT

CHAPTER I—SCOPE OF INQUIRY

1. The Committee endeavoured to give consideration to all aspects of the question of capital punishment. In addition to its study of the principal issue of abolition or retention, it considered proposals for limiting or modifying capital punishment by changes in law or procedure and gave special consideration to methods of executing the sentence of capital punishment. The Committee, however, expressly excluded from its inquiry any consideration of the defence of insanity and related problems arising from mental abnormality of accused persons because these questions were being investigated concurrently by a Royal Commission specially appointed for that purpose.

CHAPTER II—EXISTING LAW AND PRACTICE

Section 1: Present Provisions for Capital Punishment

2. Treason, piracy, and murder are the only capital offences prescribed in the present Canadian Criminal Code. The revised Criminal Code, which was enacted in 1954 and came into force in 1955, abolished capital punishment for rape. In practice, capital punishment has significance only as the punishment for murder. There was no recent example of its use as punishment for other crimes.

3. The sections of the Criminal Code defining the crime of murder and related homicidal offences are set forth in Appendix "A". Canadian law differs in some important respects from the common-law definition of murder. It is based on Stephen's draft Criminal Code of 1879 which was not adopted in the United Kingdom and, consequently, some of the detailed proposals for the change of the law recently made in the United Kingdom are not relevant to Canada.

4. Capital punishment is mandatory as the penalty upon conviction for murder and there is no discretion to impose any lesser sentence. Hanging is the only method prescribed for execution (Section 642).

Section 2: Trial and Procedure

(1) Trial

5. The responsibility for the investigation and prosecution of criminal offences is vested in the provinces. A charge of murder is first heard by a magistrate at a preliminary hearing and is proceeded with if the magistrate commits the accused for trial. In provinces retaining the grand jury, a true bill must also be found by the grand jury before the accused is tried. The charge is dealt with under the law and procedure governing indictable offences.

6. Jury trial is mandatory for murder charges except in the Province of Alberta where the accused may elect to be tried by a superior court judge without a jury. Upon a charge of murder the jury may convict, acquit, or convict for a lesser offence such as manslaughter or infanticide. In some cases, juries attach a recommendation to mercy to a murder verdict but it is not the practice for judges to instruct them that this course is open. On rare occasions a person convicted of murder has insisted on entering a plea of guilty. In these cases the courts have insisted on the production of sufficient crown evidence to assure that the charge was well founded.

7. It was apparent to the Committee that special importance is attached to murder trials because of the gravity of the sentence. In particular, arrangements appear to exist in most provinces, either through provincial governments or Law Societies, for the provision of counsel for the accused and, in some instances, for other assistance in the preparation of the defence against a charge of murder.

(2) Appeals to Provincial Courts of Appeal

8. The evidence indicated that most convictions of murder are appealed to provincial courts of appeal. The procedure is the same as for other indictable offences and an appeal lies as of right on a question of law and, with leave of the court appealed to, on a mixed question of law and fact or any other ground. The detailed rules governing appeals, including the time within which an appeal or application for leave may be brought, are established by the court of appeal rules of the different provinces. The Criminal Code, however, expressly prohibits the courts from granting any extension of time for appeal or leave to appeal in capital cases, although this right exists for all other convictions.

(3) Appeals to the Supreme Court of Canada

9. A person whose conviction is upheld by a provincial court of appeal may appeal as of right to the Supreme Court of Canada where there is a dissent on a question of law in the lower court. Otherwise, a convicted person may apply to a single judge of the Supreme Court of Canada for leave to appeal on a question of law.

(4) The Royal Prerogative of Mercy

10. The Criminal Code specifically preserves the Royal Prerogative of Mercy (Section 658). In addition, the Minister of Justice may direct a new trial or refer the whole of the case to a provincial appeal court or refer any question upon which he desires assistance to a provincial appeal court for opinion (Section 596). These latter provisions have been used infrequently. Nine new trials have been ordered since 1892 of which five have resulted in acquittals, three in convictions and one where the accused was found unfit to stand trial because of insanity. Five appeals have been referred to provincial courts of appeal of which four were dismissed and one resulted in a new trial.

11. The procedure governing commutation is based partly on statute but principally on established practice. The Governor in Council is authorized to commute the death sentence to life imprisonment or any lesser sentence. The same procedure applies to every capital case whether or not the convicted person applies for commutation. As soon as practicable after trial, the judge is required to send a complete transcript of the trial together with his own report to the Remission Service of the Department of Justice. As is the practice in the United Kingdom, the Canadian Remission Service is not confined to the record of trial and appeal. Accordingly, it seeks additional evidence and information about the convicted person's background, character, personality, conduct in prison, and other relevant matters from police, custodial officers and other responsible sources. Where there is the slightest question of mental abnormality, special psychiatric reports are obtained from consulting psychiatrists employed by the Remission Service. In addition, careful consideration is given to the representations of defence counsel and friends and all points of fact and detail raised are carefully investigated to ensure that no factor favouring clemency is overlooked. In the conduct of their investigation, officers of the Remission Service and the responsible Minister, now the

Solicitor General, make themselves freely available to hear oral representations on behalf of the convicted person. The officers of the Remission Service make their recommendation to the responsible Minister who, in turn, will present the case to Cabinet, indicating whether he concurs in or disagrees with their recommendation. Each capital case is considered by Cabinet which has the final decision whether the sentence of death should be carried out or commuted.

12. Since each case is judged on its own merits, the practice governing remission cannot be reduced to a statement of settled principles. The decision in many cases necessitates a review of varying circumstances and, not infrequently, the weighing of conflicting considerations. It would defeat the purpose of the exercise of the prerogative of mercy to attempt to codify the instances in which it might be invoked. The only safe and fair generalization that can be made is that commutation occurs in all cases where extenuating circumstances of a substantial nature exist or the degree of moral culpability is not sufficient to warrant the supreme penalty.

13. The prerogative is not to be exercised where the circumstances show design and premeditation unqualified by any extenuating feature or where a murder is deliberately committed either to facilitate the commission of another crime or to avoid arrest following another crime. In general, it seemed that the same grounds are urged in requests for commutation as are urged as defences at trial. The executive, however, is not bound by the same strict rules as a court and jury in giving effect to them.

14. It appeared that certain considerations have substantial weight in relation to commutation. Unlike the United Kingdom, where the law prohibits the execution of a person who commits murder while under 18, no minimum age limit is prescribed in Canada. In practice, it appeared that youth is always taken into account. Only three persons, under the age of 18 when the offence was committed, have been executed in Canada. Since 1947, only one person under the age of 20 when the offence was committed has been executed and he was 19 years and 11 months of age. Prior to 1947, the preponderance of convicted murderers under 20 had their sentences commuted.

15. Mental abnormality falling short of the legal defence of insanity is a frequent factor in commutation, and to a lesser extent drunkenness falling short of the legal defence. There is some reluctance to override a jury's finding on a specific defence such as provocation. However, provocation carries more weight if it is coupled with factors like youth, instability, intoxication, or if the provocation itself has persisted over a long period. Mercy killings and genuine suicide pacts generally result in commutation. Where a murder conviction results from a killing committed in the course of another crime, consideration is given to the degree of moral culpability of an accomplice who did not actually commit the killing but who, in law, is equally guilty of the crime of murder.

16. Careful consideration is given to every recommendation to mercy by a jury. In many instances such recommendations will cover the various circumstances outlined in preceding paragraphs; but such recommendations occur also in a general residue of cases not falling in the above categories. In the 30-year period 1920-49, such recommendations were added in 135 out of a total of 597 sentences. Subsequently, 42 of these cases were disposed of by courts of appeal and of the balance, 69 or virtually 75 percent were commuted. On the other hand, less than 25 percent of the cases were commuted where no

recommendation to mercy occurred. A recommendation to mercy is not automatically accepted as grounds for commutation because it is regarded as only one of the important factors affecting the final decision on commutation and may be outweighed by other considerations.

17. Convictions of murder against women are not common. Most homicide convictions against women are for the reduced offences of manslaughter, infanticide, or concealment of birth. Where women are convicted of murder, there is usually a lesser degree of moral culpability. In the 30-year period 1920-49, only 14 convictions of females were considered by the Cabinet and 9 or 64·3 percent were commuted. In the same period, 456 male cases were considered of which only 32·5 percent or 148 were commuted. In all, 157 or 33·4 percent of the 470 cases considered in this period were commuted.

18. The figures referred to in the preceding paragraph indicate the disposition of cases which actually reach Cabinet. They do not take account of murder convictions which are set aside on appeal either by acquittal, order of a new trial, or substitution of a conviction for a lesser offence. The overall disposition of murder convictions by 10-year groupings in the period 1920-49 is indicated by the following table:

M—Male
F—Female
T—Total

* DISPOSITION OF CAPITAL CASES (** 1920-1949)

Period	(1) Sentenced to Death			(2) Disposed of by Court of Appeal or otherwise.			(3) Considered by Governor in Council			(4) Commuted			(5) Executed		
	M.	F.	T.	M.	F.	T.	M.	F.	T.	M.	F.	T.	M.	F.	T.
1920-29	184	6	190	27	1	28	157	5	162	65	4	69	92	1	93
1930-39	198	10	208	38	3	41	160	7	167	38	4	42	122	3	125
1940-49	191	8	199	52	6	58	139	2	141	45	1	46	94	1	95
Totals	573	24	597	117	10	127	456	14	470	148	9	157	308	5	313

* From statistical data presented to the Committee by the Remission Service of the Department of Justice. (See Appendix "B", which is an extract from and extension of the Committee's Minutes of Proceedings and Evidence No. 12 of 1954 and No. 20 of 1955).

** A complete record of the disposition of capital cases from 1867 to 1954 appears as Table A in Appendix "B". This record indicates that prior to 1920 commutation occurred in a higher proportion of cases than in the 30-year period 1920 to 1949 covered by the above Table. The Committee considered that the record for the years 1920 to 1949 gives a more accurate picture of the present extent of commutation and that the inclusion of the earlier years would create a misleading impression of the proportion of cases in which commutation has occurred and is likely to occur.

19. In this 30-year period, the sentences of 25·8 percent of the males and 37·5 percent of the females or 26·3 percent of the total sentenced to death were commuted. This may be compared with the 50-year period 1900-49 in the United Kingdom where, out of a total of 1,210 capital sentences (1,080 male and 130 female), 45·7 percent were commuted representing 40·3 percent of the males and 90·8 percent of the females. After allowance is made for 20·4 percent of the males, 41·7 percent of the females or 21·3 percent of the total whose sentences were reversed by courts of appeal as indicated in paragraph 17, 33·4 percent of all sentences actually reviewed by Cabinet were commuted. The percentage of commutations in cases considered by Cabinet was considerably higher in the 1920's (42·5%) than in the 1930's (25·2%) rising substantially in the 1940's to a point (32·6%) approximating the 30-year average.

20. On the whole, no serious criticism was offered against present remission procedures and policies. Later paragraphs of this report will indicate

the Committee's view that the exercise of the prerogative of mercy is a necessary and indispensable feature of the mandatory sentence of capital punishment for murder and that, by its use, the severity of the punishment can be mitigated in appropriate cases.

Section 3: Statistics on Incidence of Murder and Homicide

21. The Committee considered carefully, during the course of its inquiry, statistical material relating to the incidence of murder and homicide in Canada and other countries. The Committee concluded that there are gaps in Canadian statistics which cannot be filled and, from the evidence presented to it, assumes that, apart from the United Kingdom and a few other jurisdictions, this lack of complete statistical data is common to most countries.

22. The most reliable Canadian figures are those relating to the disposition of sentences of capital punishment referred to in paragraph 18. They do not give the whole story. A complete picture would include the number of suspected murders, the number solved by arrest or otherwise and the disposition of charges whether by conviction, acquittal or conviction for a lesser offence such as manslaughter. The interim recommendation made by the Committee in 1954 suggesting a revision of statistical method had been anticipated by the Dominion Bureau of Statistics but the revised and improved statistical tables now being developed did not provide sufficient perspective to assist the Committee in its decision.

23. A general impression of the incidence of murder in Canada and the disposition of charges of murder is given by the following table:

STATISTICAL DATA RELATING TO HOMICIDAL DEATHS AND CAPITAL CASES REPORTED BY THE POLICE, COURTS AND SECRETARY OF STATE DEPARTMENT, 1930-1954[1], CANADA

Year	Number of homicidal deaths A	Number of murders known to police (2) B	Number of murders solved by police (2) C	Number of charges of murder (3) D	Number of convictions E	Number of acquittals (5) F	Number of detentions for insanity G	Number of charges reduced to manslaughter		Appeals (7)			No. of commutations (8) M	No. of executions (8) N
								conviction (6) H	acquittal I	Sentence varied J	Convictions Quashed K	New Trials L		
1930	214			54	17	30	7						5	10
1931	172			49	25	14	10						2	22
1932	158			47	23	18	6						6	16
1933	147			43	24	11	8						4	16
1934	142			46	19	24	3						1	12
1935	153			46	15	22	9						5	17
1936	137			48	22	18	8						3	8
1937	138			35	13	16	6						4	12
1938	127			45	22	19	4			—	2	2	7	7
1939	124			37	14	20	3			—	1	3	5	7
1940	148			40	17	18	5			—	1	6	6	8
1941	130			40	13	19	8			—	—	1	6	9
1942	113			41	15	17	9			—	1	5	4	6
1943	125			23	9	10	4			—	1	—	—	7
1944	106			33	11	20	2			1	1	2	3	6
1945	152			35	17	10	8			1	—	2	3	6
1946	146			66	32	29	5			2	2	4	8	14
1947	146			61	18	30	13			1	—	6	6	10
1948	155			56	19	33	4			2	—	4	4	12
1949	172			55	26	27	2			2	1	6	4	13
1950	118			29	19	9	1			1	2	9	6	13
1951	140	100	89	52	15	30	7			1	—	6	2	6
1952	138	105	94	50	18 (4)	32	—			—	—	9	3	12
1953	155	119	87	36	10	18	8	29	2	2	4	3	10	11
1954	160	116	96	35	15	16	4	40	—	4	—	4	1	4

(1) Figures from 1930 to 1950 inclusive respecting charges, convictions, acquittals, commutations and executions are for the judicial year. All other figures are for the calendar year.

(2) Figures prior to 1951 are not available.

(3) Figures include charges which resulted in conviction, acquittal, jury disagreement, stay of proceedings, no bill and *nolle prosequi;* but do not include charges resulting in convictions for lesser offence of manslaughter (See footnote (6)) (Columns H and I).

(4) The figure for 1952 includes one sentence of death commuted to life imprisonment.

(5) Includes acquittals, jury disagreements, stay of proceedings, no bill and *nolle prosequi*.

(6) Figures prior to 1953 are not available. The murder charges resulting in convictions for the lesser offence of manslaughter are additional to the number of charges of murder listed under the column "Number of Charges of Murder" (See footnote (3)) (Column D).

(7) Figures prior to 1938 are not available. The figures shown cover the calendar year.

(8) Figures represent commutations and executions that took place the year mentioned regardless of the year sentences of death were imposed.

24. The statistics summarized in the preceding table are incomplete and the figures appearing under different heads were gathered by different agencies and are not related to each other. Because statistics were referred to extensively in presentations made to the Committee, it seemed desirable to set forth available Canadian statistics and to indicate their limitations.

25. The United Kingdom Royal Commission on Capital Punishment concluded that the most accurate assessment of the incidence of murder was given by a count of murders known to the police. Figures under this head have been published in Canadian Police Statistics only since 1951 and are set forth in the preceding table in column "B". Insufficient data are available to indicate any trend, but the figures do suggest that murder is not a common crime. The figures included in the column of murders known to the police include reports from the Royal Canadian Mounted Police, the Ontario Provincial Police, and all large municipal police forces in Canada. They do not include reports from the Quebec Provincial Police or police forces in municipalities under 4,000 population.

26. Another method of statistical comparison used before the Committee was based on the number of charges of murder, tracing the disposition of those charges by conviction, acquittal or otherwise. Under the best of circumstances, an analysis of the incidence of murder based only on the number of murder charges would necessarily be incomplete because it would deal only with murders which result in prosecutions and would not include unsolved murders or cases where the suspected murderer never comes to trial because of suicide or mental incapacity. In addition, in Canada, the statistics reporting the number of charges of murder did not, until 1953, include murder charges which resulted in conviction for the lesser offence of manslaughter. The preceding table indicates that in the years 1953 and 1954 the number of charges of murder reduced to manslaughter (columns "H" and "I") approximates the number of charges of murder dealt with as such (column "D"). This means that over the years there must have been a much higher ratio of convictions in murder charges either for murder or for the reduced offence of manslaughter than is indicated by an analysis of the available statistics relating to the charges of murder only and their disposition. It should also be mentioned that, because of differences in reporting procedures, the number of convictions for murder shown in the preceding table does not coincide with the figures based on the actual cases disposed of by the Remission Service and referred to in paragraph 18.

27. The only other method of statistical comparison available is that provided by the record of homicides in ordinary vital statistics. These are open to question because they are based on the cause of death immediately recorded; frequently before the police have determined whether or not death was due to murder. These statistics are set forth in column "A" of the preceding table. They include all cases where intentional homicide was suspected as the cause of death but do not include cases where death resulted from negligence and more particularly from motor accidents. A similar reporting procedure is used in most other countries. When allowance is made for the incompleteness of vital statistics on homicides, a further complication is introduced because homicide is a broader term than murder. Professor Sellin, in presenting statistical material to the Committee, pointed out these difficulties and indicated that the validity of comparisons, based upon statistical records of killings or homicides, depended upon the number of murders in relation to total homicides remaining constant over a period of years. It seemed to the Committee as well, that an assumption has to be made that inaccuracies and omissions in statistical reporting would also balance out.

28. The Committee considered that it is necessary to emphasize the lack of complete statistical information on the crime of murder in Canada if only to indicate that other countries are in somewhat the same position. The Committee shared the view expressed by representatives of the police that any consideration of the problems of murder and the death penalty, now or in the future, would be greatly facilitated by more and better statistical information. The Committee concluded, as a result of its consideration of the problems created by incomplete statistical information in Canada and elsewhere, that caution has to be used in interpreting statistical information from most other countries. This caution is added to that ordinarily required in comparing nations with different traditions and standards of law enforcement and becomes more significant because of the markedly different definitions of murder and related offences used by various countries.

CHAPTER III—RETENTION OR ABOLITION

Section 1: Arguments for Retention

(1) Deterrence

29. The Committee was impressed by the support of the death penalty by those having responsibility for law enforcement including all provincial attorneys general except the attorney general of Saskatchewan. The experience of the officials supporting this view indicated it was an effective deterrent to murder. They considered that it was particularly effective in deterring professional criminals from carrying weapons and committing crimes of violence. In addition, it was contended that abolition would endanger police because a criminal seeking to avoid arrest would have much less fear of the consequences of the use of firearms or violence. Capital punishment was also said to be an integral part of Canada's respected structure of law enforcement which probably deters a substantial number of professional criminals from entering Canada.

(2) Retribution

30. Capital punishment was said to be a just and appropriate punishment for murder. It was claimed that, above all other punishment, it marks society's detestation and abhorrence of the taking of life and its revulsion against the "crime of crimes". In the retributive sense, capital punishment was supported not because of a desire for revenge but rather as society's reprobation of the grave crime of murder. It was also argued that, as a result of capital punishment, there had developed over a long period of time, in the words of the United Kingdom Royal Commission, "a deep feeling of peculiar abhorrence for the crime of murder".

(3) Public Opinion

31. It was contended that public opinion in Canada remained substantially in favour of capital punishment and that it would be unwise for the Canadian Parliament to abolish capital punishment contrary to the wishes of a majority of the Canadian citizens.

(4) Prison Administration

32. It was claimed that additional administrative problems would arise in penitentiaries if all convicted murderers were imprisoned. The conduct in prison of murderers, whose death penalties had for extenuating reasons been commuted to life imprisonment, was said to be no reliable guide to the conduct of persons in respect of whose capital offences there had been no sufficiently extenuating circumstances to warrant commutation.

33. The Commissioner of Penitentiaries, who expressed no view on the principle of abolition of capital punishment, suggested that consideration should be given to the retention of capital punishment for the convicted murderer who commits a subsequent murder in prison or in the course of an escape. He said that, if this existing deterrent were removed, apprehension would exist concerning the safety of the prison staff and the general public from prisoners for whom, because they were already serving life sentences, a further sentence of imprisonment could have no deterrent effect.

34. One related argument, which has been made in other jurisdictions to the effect that capital punishment in a painless and humane form is less cruel than punishment by life-long imprisonment, was not put to this Committee.

(5) Propensity to Crimes of Violence

35. It was also suggested that care should be used in making comparisons with the experiences of the United Kingdom and other countries in Western Europe which have been longer established and are more homogeneous as regards the racial origin, the language, the religion and outlook of their citizens than Canada. In a young and growing country like Canada, with a mixed population representing many nationalities, there was a greater need for the deterrent control provided by capital punishment. The murder rate, however it was measured, was said to be appreciably higher in both the United States and Canada than in Western Europe, as was the proportion of deliberately-planned homicides. Hence, it was argued, that greater danger exists on this continent of an increase in violent crime if capital punishment were abandoned. Moreover, it was contended that professional criminals were more likely to resort to violence. To this class of criminal, capital punishment was a more effective deterrent than mere imprisonment to which they were already hardened and which they tended to regard as an occupational hazard.

Section 2: Arguments for Abolition

(1) Not an Effective Deterrent

36. Capital punishment was said to have no unique deterrent effect which would not be accomplished by imprisonment. It was claimed that a considerable proportion of murders are committed in circumstances of sudden passion and such murderers cannot be deterred by threat of the consequences. In contrast, those who carefully plan a murder or a crime like robbery from which murder results, were alleged to plan deliberately to avoid detection and are not influenced by the threat of the death penalty. In effect it was claimed that the only person who might be deterred is the normal law-abiding citizen, who would not murder in any case. In substance, the argument was that certainty of detection and apprehension is a more effective deterrent than severe punishment. This argument was reinforced by reference to some theories of the behaviour sciences which indicate that capital punishment has no special deterrent effect against those who expose themselves to it. Apart from those who can meet the test of the legal defence of insanity, it was also contended that a considerable proportion of murderers are not fully responsible and cannot be restrained by the threat of a particular punishment. The argument denying any effective deterrent influence of capital punishment was supported by statistical references which were said to prove that capital punishment exercises no deterrent effect and that variations in the incidence of murder are not affected by the presence or absence of capital punishment. These statistics are discussed more fully in the next section of this chapter.

(2) Morally Wrong

37. It was contended that it is morally wrong for the state, as well as an individual, to take human life. The punishment was said to be at variance not only with the principles of Christianity but also with the humanitarian and social developments which characterize the modern world. It was alleged to be an obsolete, barbarous punishment which has been successfully dispensed with in most civilized countries and that it is out of step with modern morality and thought. It was also claimed that the public is revolted by the barbarous nature of the punishment.

(3) Based on Revenge

38. It was alleged that the death penalty is not justified as a deterrent and is retained only as a retributive punishment in the worst sense of expressing society's revenge against the murderer. It was contended that revenge should not be part of any just punishment and that the death penalty fails completely to afford any special protection to society.

(4) Morbid Aspects

39. It was contended that capital punishment is not only unjust to the murderer and ineffective as a deterrent, but is brutalizing in that it has a bad effect, not only upon prisoners and staff of the institutions where it takes place, but on society at large. It was said that the disproportionate publicity which surrounds a murder trial and an execution reflects the morbid instincts aroused by the death penalty. The shocking scenes which have accompanied some executions were cited in proof of these assertions as to the degenerative influence of capital punishment.

(5) Risk of Error

40. The punishment is irrevocable and the risk of executing an innocent person was alleged to justify abolition.

(6) Adverse Effect upon Administration of Justice

41. On the other hand, it was argued that guilty persons sometimes go free because juries are unduly swayed in their verdicts by fear of the death penalty. The punishment was criticized as unequal because the accused person who is able to employ competent counsel is much less likely to be exposed to it than the indigent person.

(7) Prison Administration

42. Opponents of the death penalty alleged that the incarceration of all convicted murderers will pose no special problems for prison administration and argued that, as a class, murderers have a superior record to other types of prisoners. Some also urged that, even if the housing of all convicted murderers presented difficulties, it would be improper to permit mere administrative considerations to stand in the way of abolition which was justified on broad grounds of public policy.

Section 3: Statistics relating to Deterrence

43. Throughout the literature on this subject and in many of its early hearings, the Committee noted references to the statistical studies of Professor Thorsten Sellin and the Committee was fortunate in arranging for his attendance. His evidence presented statistical surveys comparing homicide rates (as defined in paragraph 27) in various jurisdictions in relation to the use of capital punishment.

44. Professor Sellin's oral evidence fell into three categories and was later supplemented by written evidence on a fourth matter. First, he compared homicide rates in several groups of states in the United States having similar social and economic characteristics, including in each group both states which have abolished and states which have retained capital punishment. In this way he sought to avoid the danger of comparing homicide rates in states with different traditions and social conditions. These comparisons indicate that homicide rates are similar in the various groups of states in which traditions and social conditions are substantially the same regardless of whether these states have retained or abolished the death penalty.

45. Professor Sellin's second group of comparisons traced the pattern of homicide rates, before and after abolition, in jurisdictions which have abolished the death penalty and included information on jurisdictions where capital punishment was restored after a period of abolition. These statistics also indicate that the trend of homicide rates does not appear to be affected appreciably by the presence or absence of capital punishment, and that no significant change in the rates followed abolition or re-imposition of the death penalty.

46. His third group of statistics related to the incidence of homicide in Philadelphia before and after well-publicized executions and indicated that the executions appear to have had no appreciable effect on the number of homicides reported.

47. Finally, Professor Sellin and the Reverend Father Donald J. Campion submitted written studies of police killings in certain United States jurisdictions including both abolition and retention states. These studies, while comprehensive for the jurisdictions covered, did not contain data from some important states and municipalities. They indicated that the rate of police killings does not appear to be affected appreciably by the presence or absence of capital punishment.

48. The interpretation of this statistical data involves difficulty because the figures cannot express the differences in tradition, standards of law enforcement, social conditions and other factors in various countries or even regions within a country. It seems impossible to determine to what extent the movement of homicide rates may have been influenced by causes other than abolition or by a combination of abolition and other causes. However, the figures from other countries indicate that homicide rates are influenced by factors other than the death penalty, which are not easily measured or assessed, and this makes it difficult to deduce from the statistics available that abolition in Canada would not influence the homicide rate.

49. The Committee noted that Professor Sellin went farther in his presentation to it than in his presentation to the United Kingdom Royal Commission on Capital Punishment.[1] In his evidence before the Royal Commission he stated in answer to a question that it could not be concluded from his statistical studies that capital punishment had no deterrent effect. In his evidence to this Committee he stated[2]: "What the statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty".

50. While the Committee recognized that this statistical information assists in an understanding of this subject, it shared the opinion of the United Kingdom Royal Commission that too much should not be read into the failure to find a

(1) Report of U. K. Royal Commission on Capital Punishment, 1949-53 (Cmd. 8932) H.M.S.O. London.
(2) 1954 Minutes of Proceedings and Evidence, No. 17, p. 671 (Queen's Printer, Ottawa).

correlation between the death penalty and homicide rates in these statistical surveys. The Royal Commission concluded its survey of these statistics as follows: "The negative conclusion we draw from the figures does not of course imply a conclusion that the deterrent effect of the death penalty cannot be greater than that of any other punishment. It means only that the figures afford no reliable evidence one way or the other. It would no doubt be equally difficult to find statistical evidence of any direct relationship between the severity of any other punishment and the rise or fall of the crime to which it relates. Too many other factors come into the question. All we can say is that the deterrent value of punishment in general is probably liable to be exaggerated, and the effect of capital punishment specially so because of its drastic and sensational character".

Section 4: Conclusions

51. Abolition of capital punishment would involve a major change in the law and the Committee considered that it must approach this question on the basis of whether or not such a change would prejudice the safety and well-being of the public.

52. In considering the arguments for and against abolition, the Committee was conscious of the view of the provincial attorneys-general and other officials responsible for law enforcement from whom it received evidence that capital punishment is an important and necessary deterrent to murder. As indicated in paragraph 50, the Committee did not consider that this opinion is displaced by other evidence based upon statistical comparisons, and the Committee has concluded that capital punishment does exercise a deterrent effect, which would not result from imprisonment or other forms of punishment.

53. The failures of capital punishment as a deterrent are obvious from the number of murders still committed. Its successes are unknown because it is impossible to determine the number of persons it has deterred from murder. One measure of its deterrent effect was afforded by an analysis of murders which indicated that a considerable proportion, probably in excess of half, are committed under the compulsion of overwhelming passion or anger where no deterrent could have been effective. This would seem to demonstrate that the death penalty, coupled with the excellent standards of law enforcement prevailing in Canada, has been successful in deterring the commission of deliberate, premeditated murders and reducing their incidence to minimum proportions. The deterrent effect may also be indicated by the widespread association of the crime of murder with the death penalty which is undoubtedly one reason why murder is regarded as such a grave and abhorrent crime.

54. The Committee has already indicated in paragraph 28 that comparisons between different countries on the basis of available statistics must, of necessity, be made with reservations. However, the Committee considered that criminals in North America appear more prone to the use of firearms and violence than European criminals. The Committee does not attempt to explain why this should be so, although it appears likely that it results from the comparative youthfulness of North American society and the variegated nature of its population. Whatever the reason may be, the Committee is of the opinion that it is obviously more imperative to retain the stern penalty of capital punishment as a continuing restraint against the use of violence by professional criminals.

55. The Committee also noted a difference in the types of murder committed in Canada and the United Kingdom. In the United Kingdom, murders of the familial-passion type which are not subject to control by the death

penalty, or any other penalty, constitute an appreciably higher proportion. In contrast, it seems that, proportionately, twice as many Canadian murders are committed in connection with robbery which indicates that, on the whole, Canadian murders are committed more frequently by professional criminals. The Committee has concluded that the death penalty is most likely to operate as a restraint and a deterrent to professional criminals who are obviously not deterred from crime by the risk of imprisonment alone, and that it is necessary to retain capital punishment to minimize the tendency of Canadian criminals to use violence in the commission of other crimes.

56. The Committee, while recognizing the substantial support given by many persons to the abolition of capital punishment, considered there is a still wider group who support and accept capital punishment. This support reflects the public's revulsion against murder, the "crime of crimes". Equally, the Committee considered that the public abhorrence of murder reflects a traditional attitude built up by the reservation of capital punishment for this particular crime. The abolition of a penalty traditionally accepted as a just and effective deterrent could only be recommended if the evidence clearly established that the ordinary citizen's view of its efficacy was demonstrably wrong. The experience of other jurisdictions shows that abolition, in the face of strong public support of capital punishment, might lead to confusion and doubt which adversely affect the administration of justice.

57. The Committee, in reaching the conclusion that it is in the public interest to retain capital punishment, took into account additional considerations relating to the apprehension, trial, and custody of accused persons upon which it desired to record its views.

58. The Committee was of the opinion that capital punishment does protect the police to a greater extent than imprisonment alone would do by deterring criminals from using firearms or violence to facilitate the commission of crimes, or escapes from arrest or attempted apprehension.

59. Some witnesses suggested that juries might be swayed by fear of the death sentence, and refuse to render murder verdicts in appropriate cases with the result that the guilty are not punished. The Committee, however, accepted the view of most law-enforcement authorities appearing before it that the great majority of jurors do not shrink from their duty because of fear of accepting responsibility for a sentence of capital punishment. While there is ample evidence that court and jury alike insist on the highest standards of proof in murder trials, the Committee did not consider that the existence of the death sentence interferes with the administration of justice. There are undoubtedly cases where the verdicts of juries, either acquitting or convicting for a lesser offence, are not easily reconciled with the evidence, but the Committee considered that, in these instances, juries may have been moved by their sympathy with the accused rather than by any reluctance to impose capital punishment.

60. Considerable emphasis was put on the risk of irrevocable error in capital convictions. The fact that there was no known Canadian instance of the execution of an innocent person indicated the effectiveness of present procedures by way of trial and executive review and this suggests that the risk of error does not present a reasonable argument for abolition in Canada.

61. The Committee considered that the proper management of prisons and executions can and does prevent adverse effects on prisoners and the public generally, and there was no evidence that properly trained and selected personnel, charged with the duty of superintending all details of executions, are left with any lasting ill effects.

62. The Committee took note of both the report of the United Kingdom Royal Commission on Capital Punishment, 1949-53, and the subsequent debates in the United Kingdom Parliament. Recently the British House of Commons approved the abolition of capital punishment. The Committee did not consider that the recent decisions of the United Kingdom House of Commons afford any compelling reason for it to reconsider its decision. There are obvious differences between the two countries which may indicate that capital punishment is necessary and more effective in Canada. Moreover, the Committee noted that the votes in favour of abolition were carried by small majorities and that public opinion in the United Kingdom appears divided on the question. If the United Kingdom Parliament abolishes capital punishment, the experience of that country after abolition may be of assistance to Canada in the event that this question is studied again, as this Committee considers it should be, within the next decade.

63. While the Committee considered that capital punishment should be subjected to periodic review by Parliament, it recommends that the death penalty should be retained as the mandatory punishment for the crime of murder.

CHAPTER IV—SPECIFIC PROPOSALS FOR LIMITATION OF CAPITAL PUNISHMENT

Section 1: Crimes other than Murder

64. The Committee is of the opinion that capital punishment should not be extended to cover any crimes for which it is not at present a penalty. Specifically, the Committee approved of the deletion in the new Criminal Code of capital punishment as a penalty for rape.

65. The Committee believed that capital punishment should be retained as a punishment for treason and piracy. The latter offence is virtually obsolete but the retention of the grave penalty conforms to the general practice of common-law jurisdictions. The penalties for treason were carefully considered by Parliament during the enactment of the new Criminal Code and the use of capital punishment was suitably restricted to the most serious types of treasonable activity.

Section 2: Redefinition of the Crime of Murder

66. No specific proposal was put forward to the Committee for the redefinition of the crime of murder. Some witnesses, however, expressed the opinion that the crime might be redefined so that it would be limited to cases involving the greatest degree of moral culpability. The Committee recognized that murder is a many-sided crime. Many murders arise in circumstances where no premeditation is possible and where the killing follows suddenly from the passions of the moment. Other murders are premeditated, but not ignobly motivated, an example being what is called a "mercy killing". Some are not premeditated in the sense of representing the combination of a long and deliberately-planned scheme of killing but nonetheless are reprehensible because they arise from a wanton disregard of human life, an example being the killing committed in the course of an armed robbery. These examples are mentioned simply to show that any attempt to redefine murder rigidly in terms of specific premeditation or intent is not likely to accomplish fully the purpose of excluding killings involving little moral culpability and including only killings involving grave moral culpability. In this connection the Committee noted the many proposals considered in the United Kingdom in the past 80 years. It shares the conclusion

of the United Kingdom Royal Commission on Capital Punishment that the various proposals for the redefinition of the crime of murder are not wholly satisfactory and cannot recommend any for the favourable consideration of Parliament.

67. The Canadian law of murder is not altogether comparable with that of the United Kingdom because, as mentioned in the opening sections of this report, the Canadian Criminal Code incorporates the codification proposed by Stephen in 1879 which was never accepted by the Parliament of the United Kingdom. This results, in practice, in two substantial differences between the Canadian and United Kingdom law of murder which did not appear to be appreciated by all witnesses who appeared before the Committee. In the first place, the defence of provocation has a wider ambit in Canada, and includes provocation by words as well as by deeds. Secondly, the concept of constructive murder is narrower in Canada than in the United Kingdom and, in general, is limited to killings arising in the commission or attempted commission of specified crimes of violence or in the course of escape from apprehension following such crimes or attempted crimes.

68. The Committee was of the opinion that no useful purpose would be served in attempting to specify, to any greater degree than at present, the responsibility of accomplices in crimes from which killing results. Since the type of murder which presents a peculiar problem in Canada is that arising in the course of a robbery, the Committee considers that the present law serves a useful purpose in making it clear that all those, who knowingly participate in an armed robbery in which it is clearly contemplated that violence will be used if necessary, should know hat they are all equally liable to be charged with murder if killing results.

69. In practice, the Committee considered that any redefinition of the crime of murder should conform closely to the present practice in commuting sentences of capital punishment. Having concluded that it is not practicable to achieve a satisfactory redefinition of murder, the Committee also decided that differences between murders can only be recognized by granting commutation in suitable circumstances. Since differentiation in the crime of murder depends to a considerable extent upon the assessment of moral culpability of a crime, the Committee is of the opinion that the ends of justice are best served by the continuation of the present practice of mitigating the rigour of the law in appropriate cases by the exercise of executive clemency.

Section 3: Degrees of Murder

70. Several witnesses suggested that consideration might be given to the creation of degrees of murder which would take into account the difference in moral culpability between different types of homicides. All witnesses representing law-enforcement authorities opposed the establishment of degrees of murder. The Committee shares the conclusions of the United Kingdom Royal Commission on this question. The Committee is of the opinion that the present distinction between murder and manslaughter is quite clear and straightforward. It considers that any attempt to break murder down into degrees may lead to the creation of technical and confusing distinctions without, at the same time, creating any precise delineation between murders of differing degrees of moral culpability.

71. The experience of the United States seemed to suggest that, in the last analysis, the selection between the different degrees of murder is made by juries for reasons which are not too clear and which, in the words of the late

Mr. Justice Cardozo, are shrouded in a cloud of words. In fact, in most jurisdictions in the United States the creation of degrees of murder has been accompanied in late years by the conferring of a discretion on the judge or jury to dispense with capital punishment for first-degree murder. Some reference was also made to the practice in some American jurisdictions of trafficking in the degrees of murder and accepting pleas of guilty for the lesser degree in place of prosecuting first-degree murder charges in serious cases. While this result might not occur in Canada, it suggests an added reason for caution in creating degrees of murder.

Section 4: Discretion as to Sentence

72. The Committee considered, as another method of limiting the rigour of capital punishment, the possibility of reposing discretion as to sentence in either the judge or the jury. The Committee noted that the United Kingdom Royal Commission on Capital Punishment concluded that permitting the jury to exercise discretion as to whether or not capital punishment should be imposed was the only practicable method of limiting the operation of capital punishment aside from complete reliance on executive clemency.

73. The Committee considers that it would be inappropriate and inadvisable to leave any discretion as to sentence to the judge. Apart from the difficulty of placing such an onerous responsibility upon one judge, there is the danger that inconsistency and lack of certainty might develop in practice as a result of differing policies followed by different judges.

74. The Committee does not favour the granting of discretion as to sentence to the jury because it does not conform to the traditional function of the jury which is to decide whether a person is guilty or innocent as charged. The Committee also considers that the exercise of a jury's discretion on the question of sentence would result in inconsistency and uncertainty in the administration of the law.

Section 5: Limitation in respect of Women and Young Persons

75. The commission of murder by women is rare and usually occurs in circumstances which warrant the exercise of the Royal Prerogative of Mercy. In the few cases where commutation of the death sentence was not warranted, the Committee can see no justification for treating women any differently from men.

76. The Committee noticed that the invariable practice has been to commute the sentence of all persons under 18 and that, since 1945, the sentence has rarely been executed against a person 20 years and under. The Committee balanced the consideration, that youth must always be a mitigating factor, against the fact that some of the most callous crimes are committed by young offenders showing a total disrespect for life or property. The Committee noted that the United Kingdom Royal Commission on Capital Punishment unanimously favoured the retention of the present United Kingdom law prohibiting the execution of offenders under 18 but was almost equally divided in considering whether the exemption should be raised to 21. The Committee concluded that it would be proper to amend the law to provide that the death penalty should not apply to a person of the age of 18 years or less at the time of the commission of the offence and recommends strongly that, except in extraordinary cases, the present practice of commuting most death sentences passed on persons under 21 years be continued.

CHAPTER V—PROPOSALS AFFECTING TRIAL AND APPEAL

Section 1: Trial

77. The Committee gave consideration to all aspects of the procedure in capital cases at trial and on appeal and concluded that certain procedural changes are desirable if capital punishment is retained.

78. The Committee considered that two essential conditions should be met in all murder trials. First, the accused should be fully advised of the facts upon which the prosecution will base its case. Secondly, the accused should have the benefit of the advice and defence of competent, experienced counsel at all stages including the preliminary hearing, trial, and appeal and should have facilities and funds to procure evidence and witnesses essential to a proper defence.

79. The Committee has already mentioned the differences of opinion expressed about the efficiency of present procedures in ensuring that the defence is given proper notice of the essentials of the case for the prosecution. The Committee considers that no room for doubt should exist in capital cases and that the Criminal Code should be amended to provide that all facts upon which the prosecution proposes to base its case are disclosed to the defence in advance of trial.

80. The view was expressed by some witnesses that an accused person, who is able to employ competent counsel, has a better chance of acquittal than an indigent person. While the Committee was aware of no specific instance where an accused may have suffered because of an inadequate defence, it concluded that the present system of providing assistance to the defence in capital cases is based too much on the charity and spirit of public service of the bar and prosecuting authorities. The Committee recognized that the provision of counsel and other aids to the accused is the responsibility of provincial authorities but nevertheless respectfully recommends that existing arrangements should be reviewed. Specifically, the Committee recommends, for the consideration of provincial authorities, that arrangements be made for the employment and payment of competent counsel at all stages in a capital case and that funds and facilities be made available, where necessary, to assist the defence in procuring evidence and otherwise preparing its case for trial.

81. The Committee has already noted that it is possible for an accused to plead guilty in a capital case. The Committee believes that it is extremely undesirable to admit pleas of guilty in capital cases because the capacity of the accused must always be taken as doubtful and the acceptance of the plea almost makes the court privy to a scheme for self-destruction. Thus, the Committee recommends that the law be amended to provide that all murder trials proceed as if a plea of not guilty were entered.

Section 2: Appeals to Provincial Courts of Appeal

82. There was evidence that the present law, which prohibits the extension of the time prescribed for bringing an appeal in applications for leave to appeal in capital cases, may cause both injustice and embarrassment. The possibility exists that a technical slip may deprive an accused of his right to appeal. Extraordinary devices, such as the reference of a case to a provincial appeal court by the Minister of Justice, have been employed to circumvent this strict rule. The Committee considered that no technical barrier should prevent the review of every capital conviction by a provincial Court

of Appeal. Equally, the Committee recognized the desirability of avoiding unnecessary delay in the disposition of capital cases and noted the experience of other jurisdictions where technical procedural delaying actions have frustrated the course of justice.

83. In the Committee's opinion, it is necessary to provide for an appeal procedure open to all, but which will not be prolonged or rendered uncertain in its effectiveness by procedural technicalities. The Committee concluded that this purpose can best be achieved by providing for an automatic appeal to a provincial appellate court after every capital conviction. The Committee contemplates that after conviction the record will be transmitted to the appelate court which will then be able to govern the conduct of the appeal by its own rules. Under this procedure, the Committee would expect provincial authorities, in all necessary cases, to arrange for the provision of competent counsel and the preparation of all materials and documents required for the appeal. The Committee recommends that the Criminal Code be amended to provide for an automatic appeal to a provincial Court of Appeal in capital cases and respectfully commends, for the consideration of provincial authorities, its views on the provision of assistance to an accused in the conduct of his appeal.

Section 3: Appeals to the Supreme Court of Canada

84. At present, appeals to the Supreme Court of Canada are limited to appeals as of right where there is a dissent on a question of law in the provincial Court of Appeal. Otherwise an appeal may be taken only on a question of law if leave is obtained from one judge of the Supreme Court of Canada. Because of the gravity of the crime and sentence, the Committee considered it proper that an opportunity to be heard by the court of last resort should be open to every person subject to a capital sentence and recommends that the law be amended to provide for an appeal as of right in such event to the Supreme Court of Canada.

CHAPTER VI—METHOD OF EXECUTION

Section 1: Present Practice

85. Executions are now carried out by hanging. In Quebec and the four Western Provinces, hangings take place at central prisons, while in Ontario and New Brunswick they take place in county jails. Where centralized facilities are available they appear to be satisfactory, but there was considerable criticism of the temporary facilities which have to be erected in county jails. These are objectionable from several standpoints. The erection of the facilities naturally disturbs the condemned man and other prisoners. The occurrence of a hanging in the smaller centre, usually in a jail which is centrally located, awakens the morbid instincts of a section of the public. The fact that the facilities have to be hastily constructed frequently means that the condemned person must walk a considerable distance from his cell to the gallows. There was also the suggestion that personnel are not necessarily so well trained as in the centralized locations, and this may affect not only the conduct of the execution itself but the aftermath caused by the reaction left with officials present at the execution.

86. Generally speaking, in all provinces the same rules seem to govern the custody of the condemned man and the events immediately preceding execution. The condemned person is kept in a cell segregated from the rest of the prison, is afforded more privileges than the ordinary prisoner and is kept under extremely close surveillance. Under the authority of regulations issued by the Governor in Council, hangings now take place immediately after midnight on

the day fixed for execution and are conducted as much as possible to avoid disturbance to other prisoners and to eliminate undue public attention. The conduct of executions is the responsibility of provincial officials. Two provinces had official hangmen who are available to serve in other jurisdictions when required.

87. Because it was not the practice to conduct post-mortems after executions by hanging, there appeared to be some uncertainty as to the exact causes of death in all cases, although the general presumption was that it occurred because of a fracture of the spinal column and injury to the spinal cord. The Committee recommends that, if hanging is retained, the law be amended to provide for post-mortems to ascertain the precise cause of death.

Section 2: Place of Execution

88. The Committee considers that the responsibility for providing facilities for execution should remain with the provinces and that all executions should be held in central locations in each province. The Criminal Code at present permits provincial authorities to designate central places of execution. The Committee is of the opinion that executions in central locations would be conducted with greater despatch and efficiency and in an atmosphere of greater decency and dignity than is the case with executions in local jails.

Section 3: Method of Execution

89. The Committee considered the merits of four different methods of execution, namely, hanging, electrocution, the gas chamber and lethal injection. Evidence on hanging was received from several prison officials and medical officers who had witnessed hangings in Canada as well as from the executioner who had officiated at most recent Canadian hangings. The Warden of Illinois State Penitentiary described the process of electrocution carried on in his institution and a description of execution by gas chamber was given by the former Warden of San Quentin Penitentiary in California. In addition, independent expert evidence on the effects and implications of the various methods of execution was presented by two leaders in the field of pharmacology and neurology who had been invited to appear before the Committee.

90. It was apparent that serious practical difficulties would arise if lethal injection by hypodermic needle were adopted as the method of execution and because of this the Committee gave less consideration to this method than the other three. The virtue alleged for execution by lethal injection was that it ensured instantaneous and painless death free from the fears aroused by other methods of execution. The Committee ascertained that this could only be accomplished by intravenous injection and that skill was required to give such an injection. The Committee considered that it was not reasonable to expect a medical doctor to perform a task so repugnant to the tradition of the medical profession. Moreover, an intravenous injection is a delicate operation requiring the subject to keep absolutely still, and even if other skilled personnel were trained for the task, there would be substantial risk of mishap unless the condemned person was entirely acquiescent. The Committee thus concluded that lethal injection was not a practical method of execution.

91. The Committee considered that one of the principal objections to hanging was that so much depended upon the personal competence of the hangman, leaving a greater margin for error than in the case of execution by electrocution or the gas chamber. It may be that a hanging, conducted efficiently and with proper facilities, may be accomplished more quickly and with less anguish to the condemned person than the other two methods of execution. The

Committee noted that, for this reason, the United Kingdom Royal Commission concluded that hanging should be retained. The evidence of medical witnesses and others, however, indicated that hangings in Canada were not conducted with the same degree of precision as in the United Kingdom and that there was no way of knowing, in some cases, how death was caused and whether loss of consciousness had been instantaneous. Examples of bungled hangings were brought to the Committee's attention. Moreover, the Committee sensed from the evidence given by experienced officials and others, that hanging was regarded generally as being an obsolete, if not a barbaric method of execution. The Committee has concluded, after weighing these considerations, that hanging is not the most satisfactory method of execution which might be employed and, accordingly, recommends its abolition.

92. The advantage of both electrocution and the gas chamber is that they avoid the worst psychological associations connected with hanging and are also proof, to a much greater extent, against human frailty and error. The criticisms made of electrocution were that in some United States jurisdictions it had resulted in burning and mutilation of the body of the condemned person. No such problems arose from execution by the inhalation of lethal gas and the former warden of San Quentin Penitentiary contended that it was the least objectionable method of execution from the standpoint of both the condemned person and officials. On the other hand the gas chamber was criticized because of the danger to which it exposed the prison staff and because of the final strain it put on the condemned person. It was said that after lethal gas was released into the gas chamber the condemned person would be tempted to hold his breath for as long as possible.

93. In considering the merits of the two methods of execution, the Committee was influenced, to a substantial degree, by the evidence of the independent medical experts who both recommended electrocution as the most satisfactory method. Their recommendation was based on the extensive experience resulting from the use of electric shock treatments for mental diseases. This experience indicated that the application of even a small charge of electricity would produce instantaneous unconsciousness. It is the only method of execution where it could be established that unconsciousness was produced instantaneously and that death was painless. Moreover, the experts maintained that if properly conducted an electrocution would not result in any burning or mutilation of the body. Scientific knowledge indicated that life could be terminated by a series of shocks of alternating low and high voltages and that the massive shocks which might result in burning were not necessary. The evidence of the warden of Illinois Penitentiary supported this view and his experience was that the application of carefully regulated alternating shocks resulted in instantaneous unconsciousness and speedy termination of life without any burning or mutilation. The medical experts suggested that electrocution need not be carried out in an electric chair and that simpler and less repulsive facilities might be employed.

94. The Committee concluded that the most satisfactory method of execution is by electrocution and, accordingly, recommends that the law be amended to replace hanging by electrocution This recommendation, however, is premised on the evidence that modern methods of electrocution can produce instantaneous unconsciousness and painless death without any of the evil effects traditionally associated with the electric chair. If further investigation should create doubt as to the possibility of employing electrocution in this manner then the Committee considers it would be preferable to substitute the gas chamber as the method of execution.

CHAPTER VII—SUMMARY OF RECOMMENDATIONS

95. A summary of the Committee's recommendations is as follows:

(1) Retention of Capital Punishment as Mandatory Penalty for Murder (paragraph 63).

(2) Retention of Capital Punishment for Treason and Piracy (paragraph 65).

(3) No Change in Definition of Murder (paragraph 69).

(4) No "degrees of murder" (paragraphs 70-71).

(5) No Special Provision for Women (paragraph 75).

(6) Abolition of Capital Punishment for Offenders under 18 and Restriction for Offenders under 21 (paragraph 76).

(7) Full Disclosure of Crown's Case to Accused (paragraph 79).

(8) Provision of Competent Counsel and Assistance in Producing Evidence (paragraph 80).

(9) Mandatory Plea of "not guilty" in Capital Cases (paragraph 81).

(10) Automatic Appeal to Provincial Court of Appeal in all Capital Cases (paragraph 83).

(11) Appeal as of Right by a Convicted Person to Supreme Court of Canada (paragraph 84).

(12) Centralized Places of Execution in each Province (paragraph 88).

(13) Abolition of Hanging—Replacement by Electrocution with alternative of the Gas Chamber (paragraphs 91-94).

96. Appendices "A" and "B" are annexed hereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.

APPENDIX "A"

CRIMINAL CODE SECTIONS DEFINING THE CRIME OF MURDER AND RELATED HOMICIDAL OFFENCES

MURDER, MANSLAUGHTER AND INFANTICIDE

Murder

201. Culpable homicide is murder

(*a*) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(*b*) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

Murder in commission of offences

202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

Intention to cause bodily harm

(*a*) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence.

and the death ensues from the bodily harm;

Administering overpowering thing

(*b*) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (*a*), and the death ensues therefrom;

Stopping the breath

(*c*) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (*a*), and the death ensues therefrom; or

Using weapon

(*d*) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

Murder reduced to manslaughter

203. (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

What is provocation

(2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted upon it on the sudden and before there was time for his passion to cool.

Questions of fact

(3) For the purposes of this section the questions

(*a*) whether a particular wrongful act or insult amounted to provocation, and

(*b*) whether the accused was deprived of the power of self-control by the provocation that he alleges he received,

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

Death during illegal arrest

(4) Culpable homicide that otherwise would be murder is not necessarily manslaughter by reason only that it was committed by a person who was being arrested illegally, but the fact that the illegality of the arrest was known to the accused may be evidence of provocation for the purpose of this section.

Infanticide

204. A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

Manslaughter

205. Culpable homicide that is not murder or infanticide is manslaughter.

Punishment for murder

206. Every one who commits murder is guilty of an indictable offence and shall be sentenced to death.

Punishment for manslaughter

207. Every one who commits manslaughter is guilty of an indictable offence and is liable to imprisonment for life.

Punishment for infanticide

208. Every female person who commits infanticide is guilty of an indictable offence and is liable to imprisonment for five years.

Killing unborn child

209. (1) Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

Saving

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

Attempt to commit murder

210. Every one who attempts by any means to commit murder is guilty of an indictable offence and is liable to imprisonment for life.

Accessory after fact to murder

211. Every one who is an accessory after the fact to murder is guilty of an indictable offence and is liable to imprisonment for life.

SUICIDE

212. Every one who

Counselling or aiding suicide

(*a*) counsels or procures a person to commit suicide, or

(*b*) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Attempt to commit suicide

213. Every one who attempts to commit suicide is guilty of an offence punishable on summary conviction.

POWERS OF MINISTER OF JUSTICE

Powers of Minister of Justice

598. The Minister of Justice may, upon an application for the mercy of the Crown by or on behalf of a person who has been convicted in proceedings by indictment,

(*a*) direct, by order in writing, a new trial before any court that he thinks proper, if after inquiry he is satisfied that in the circumstances a new trial should be directed;

(*b*) refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person; or

(*c*) refer to the court of appeal at any time, for its opinion, any question upon which he desires the assistance of that court, and the court shall furnish its opinion accordingly.

CAPITAL PUNISHMENT

Form of sentence

642. The sentence to be pronounced against a person who is sentenced to death shall be that he shall be hanged by the neck until he is dead.

Royal prerogative

658. Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.

APPENDIX "B"—CAPITAL CASE STATISTICS

TABLE A: DISPOSITION OF CAPITAL CASES, 1867-1954

This Table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report on Capital Punishment, 1949-53 at pages 298-301. "Otherwise" means "otherwise disposed of by the court of appeal", i.e., by quashing the conviction and entering a verdict of not guilty or ordering a new trial or substituting a verdict for a lesser offence.

M.—Male
F.—Female

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1867	7	1	2	0	5	1	0	0
1868	11	0	4	0	7	0	0	0
1869	8	0	6	0	1	0	1	0
3 years	26	1	12	0	13	1	1	0
1870	6	0	0	0	6	0	0	0
1871	12	1	2	0	9	1	1	0
1872	16	1	3	1	13	0	0	0
1873	10	1	6	1	4	0	0	0
1874	13	0	3	0	10	0	0	0
1875	14	1	3	0	11	1	0	0
1876	15	0	4	0	11	0	0	0
1877	3	0	2	0	1	0	0	0
1878	12	1	4	0	8	1	0	0
1879	8	1	4	0	4	1	0	0
10 years	109	6	31	2	77	4	1	0
1880	6	0	5*	0	1	0	0	0
1881	12	1	8	0	4	1	0	0
1882	8	0	3	0	5	0	0	0
1883	8	1	5	0	3	1	0	0
1884	10	1	9	0	1	1	0	0
1885	20	0	11	0	9	0	0	0
1886	8	0	4	0	4	0	0	0
1887	6	0	3	0	3	0	0	0
1888	12	0	7	0	5	0	0	0
1889	2	0	2*	0	0	0	0	0
10 years	92	3	57	0	35	3	0	0
1890	12	0	10	0	2	0	0	0
1891	4	0	2	0	2	0	0	0
1892	6	0	2	0	4	0	0	0
1893	7	0	2	0	5	0	0	0
1894	8	0	5	0	3	0	0	0
1895	5	0	3	0	2	0	0	0
1896	5	0	1	0	4	0	0	0
1897	6	1	4	0	1	0	1	1
1898	14	0	7*	0	6	0	1†	0
1899	11	3	8	3	3	0	0	0
10 years	78	4	44	3	32	0	2	1
1900	8	0	6	0	2	0	0	0
1901	7	0	3	0	4	0	0	0
1902	13	0	9	0	4	0	0	0
1903	12	0	5	0	7	0	0	0
1904	12	0	6	0	4	0	2	0
1905	9	1	5	0	3	0	1††	1
1906	6	0	2	0	3	0	1	0
1907	12	0	7	0	5	0	0	0
1908	16	0	8	0	7	0	1	0
1909	17	1	12	0	3	1	2	0
10 years	112	2	63	0	42	1	7	1

* Includes one condemned person who committed suicide.
† Includes one condemned person who died in police hospital.
†† Condemned person who died before consideration of case by Governor in Council.

TABLE A: DISPOSITION OF CAPITAL CASES, 1867-1954—*Concluded*

This Table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report on Capital Punishment, 1949-53 at pages 298-301. "Otherwise" means "otherwise disposed of by the court of appeal", i.e., by quashing the conviction and entering a verdict of not guilty or ordering a new trial or substituting a verdict for a lesser offence—*Concluded.*

M.—Male
F.—Female

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1910	16	1	12	0	3	1	1	0
1911	13	1	7	0	4	1	2	0
1912	29	1	8	0	20	1	1	0
1913	25	1	9	0	14	0	2	1
1914	29	1	15	0	13	1	1	0
1915	28	2	14	0	12	2	2	0
1916	19	1	9*	0	9	0	1	1
1917	16	2	6	1	10	0	0	1
1918	15	0	6	0	8	0	1	0
1919	35	2	20*	0	13	1	2†	1
10 years	225	12	106	1	106	7	13	4
1920	21	2	7	0	11	2	3	0
1921	16	0	7	0	6	0	3	0
1922	24	1	11	1	8	0	5	0
1923	15	1	11	0	3	0	1	1
1924	23	1	10	0	9	1	4	0
1925	19	0	9	0	9	0	1	0
1926	10	0	6	0	2	0	2	0
1927	16	1	11	0	4	1	1	0
1928	18	0	6	0	7	0	5	0
1929	22	0	14	0	6	0	2	0
10 years	184	6	92	1	65	4	27	1
1930	23	0	13	0	5	0	5	0
1931	32	0	25	0	3	0	4	0
1932	22	1	13	0	5	0	4	1
1933	21	0	16	0	3	0	2	0
1934	23	3	11	1	4	1	8	1
1935	14	3	11	1	2	1	1	1
1936	21	1	14	0	3	1	4	0
1937	14	0	7	0	2	0	5	0
1938	18	1	8	1	8	0	2	0
1939	10	1	4	0	3	1	3	0
10 years	198	10	122	3	38	4	38	3
1940	19	2	9	0	6	0	4	2
1941	15	0	7	0	7	0	1	0
1942	12	1	6	0	1	0	5	1
1943	10	0	7	0	1	0	2	0
1944	18	0	9	0	4	0	5	0
1945	19	0	10	0	5	0	4	0
1946	24	5	12	1	7	1	5	3
1947	19	0	10	0	3	0	6	0
1948	26	0	13*	0	5	0	8	0
1949	29	0	11	0	6	0	12	0
10 years	191	8	94	1	45	1	52	6
1950	20	1	10	0	3	0	7	1
1951	17	2	10	1	2	1	5	0
1952	26	0	10	0	8	0	8	0
1953	22	0	8	0	6	0	8	0
1954	25	0	10	0	4	0	11††	0
5 years	110	3	48	1	23	1	39	1

* Includes one condemned person who committed suicide.
† Includes one condemned person who died before date fixed for execution.
†† Includes three condemned persons whose cases were still before Appeal Courts.

TABLE B.

PROPORTION OF EXECUTIONS (1920–1949)

This table shows the number of persons who, during the relevant period, were executed as a result of the imposition of sentence of death upon them. The number of cases disposed of by appeal courts and by commutation will be found in Tables C, D and E.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Executed			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1920–1929	184	6	190	92	1	93	50·0	16·6	47·7
1930–1939	198	10	208	122	3	125	61·6	30·0	60·1
1940–1949	191	8	199	94*	1	95	49·2	12·5	47·7
Total	573	24	597	308	5	313	53·9	20·8	52·4

* Includes one condemned person who committed suicide.

TABLE C.

PROPORTION DISPOSED OF BY APPEAL COURTS (1920–1949)

This table shows the number of persons who, during the relevant period, had their convictions quashed by appeal courts and in respect of whom a verdict of not guilty was entered, a new trial ordered or another verdict substituted.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Disposal by Court of Appeal			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1920–1929	184	6	190	27	1	28	14·6	16·6	14·7
1930–1939	198	10	208	38	3	41	19·2	30·0	19·7
1940–1949	191	8	199	52	6	58	27·2	75·0	29·2
Total	573	24	597	117	10	127	20·4	41·7	21·3

TABLE D.

PROPORTION OF COMMUTATIONS (1920-1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment. It is the counterpart of Table III of the United Kingdom Royal Commission Report, at page 13. This table is to be distinguished from Table E which deals not with all sentences of death imposed during the relevant period, but only with those that came before the Governor in Council for decision on the question of commutation.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1920-1929	184	6	190	65	4	69	35·3	66·6	36·3
1930-1939	198	10	208	38	4	42	19·2	40·0	20·2
1940-1949	191	8	199	45	1	46	23·6	12·5	23·1
Total	573	24	597	148	9	157	25·8	37·5	26·3

TABLE E.

PROPORTION OF COMMUTATIONS (1920-1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment by the exercise of the royal prerogative. It is to be noted that the figures in this table do not take into account cases disposed of by appeal courts. This table relates only to cases that were dealt with by the Governor in Council.

M.—Male
F.—Female
T.—Total

Period	(1) Considered by Governor in Council			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1920-1929	157	5	162	65	4	69	41·4	80·0	42·5
1930-1939	160	7	167	38	4	42	23·7	57·1	25·2
1940-1949	139	2	141	45	1	46	32·4	50·0	32·6
Total	456	14	470	148	9	157	32·5	64·3	33·4

TABLE F.

RECOMMENDATIONS AS TO MERCY (1920–1949)

This table is the counterpart of Table I of the United Kingdom Royal Commission Report, at page 9.

M.—Male
F.—Female

Year	Convicted and sentenced to death		Recommended to Mercy								Not Recommended to Mercy							
			Total		Commuted		Executed		Disposed of by appeal court		Total		Commuted		Executed		Disposed of by appeal court	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1920 to 1929...	184	6	35	4	17	2	5	0	14	1	149	2	49	1	87	1	13	0
1930 to 1939...	198	10	38	4	23	3	11	0	4	1	160	6	15	1	111	3	34	2
1940 to 1949...	191	8	49	5	24	0	8	0	17	5	142	3	21	1	86	1	35	1
Total.....	573	24	122	13	64	5	24	0	35	7	451	11	85	3	284	5	82	3

M.—Male
F.—Female
C.—Commutation
E.—Execution

TABLE G

ANALYSIS RE VICTIMS OF CONVICTED MURDERERS (1920-1952)

THIS TABLE IS THE COUNTERPART OF TABLE 4 IN APPENDIX 3 OF THE UNITED KINGDOM ROYAL COMMISSION REPORT, AT PAGES 304-306

	For murder of wife		For murder of husband		For murder of parent				For murder of sweetheart				For murder of mistress				For murder of children				Sexual assault				Robbery				Revenge or Jealousy				Escaping custody or arrest				For murder of policeman				Miscellaneous				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1920	1	1	1										1					1							2	4			2					1							6				20
1921	1	1															1								2	5				1											2				13
1922																	1					1				2			1	4		1								6	4			20
1923	1	1																								5				3											2	2			14
1924	1		1							1							1								7	6				1				1								1			20
1925													1												5	7				1											3	1			18
1926									1					3												2															1	1			8
1927	1	3				1																2			3	2	1			3														16
1928	1												1								1				2	1				1											2	4			13
1929				1	1								1	2								1				4				3											4	3			20
Total 10 yrs	6	6	2	1	1	1			1	1			3	6			3		1		1	4			21	38	1		3	17		1		2							26	16			162
1930		1																							3	6			2	3												2			18
1931	1	2				2								1												8			1	5											1	5			28
1932														3												6															5	3			18
1933	1				1	1								1			1									7				6											1				19
1934	1	1	1																							4			1	2											2	3		1	17
1935		1	1	1		2											1									1				1											1	1			15
1936		2	1																			1			1	4				2			1							1	4			18
1937		1																				1			1	1				1											1	1			9
1938	2	1		1																					1	4			1											4	3			17
1939	1								1					2								1				1			1													1			8
Total 10 yrs	6	9	3	2	1	5			1				7				2				3				6	42			6	20			1				1	12			16	22	1	1	167

M.—Male
F.—Female
C.—Commutation
E.—Execution

TABLE G—*Concluded*

ANALYSIS RE VICTIMS OF CONVICTED MURDERERS (1920-1952)

THIS TABLE IS THE COUNTERPART OF TABLE 4 IN APPENDIX 3 OF THE UNITED KINGDOM ROYAL COMMISSION REPORT, AT PAGES 304-306

	For murder of wife		For murder of husband		For murder of parent				For murder of sweetheart				For murder of mistress				For murder of children				Sexual assault				Robbery				Revenge or Jealousy				Escaping custody or arrest				For murder of policeman				Miscellaneous				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1940		1												1											4	3			1	1								1			1	2			15
1941	1	2							1				2									1			1	4							1								1				14
1942		1				1																2				1															1	1			7
1943									1																	7																			8
1944	1	1												1								1			1	5			1	1			1											13
1945					2	1			1												1	2			1	3				1														15
1946	1												1				1					2			1	2		1	1	1								1			2	6	1		21
1947													2									5			1	4				1														13
1948		1												1*								1			4	3			1	3				1								3			18
1949		1																							3	7			3	2											3	1			17
Total 10 yrs	3	7			2	2			3				5	3			1				1	14			13	39		1	7	10			2	1			2			8	16	1		141
Total 20 yrs	9	16	3	2	3	7			4				6	10			1	2			1	17			19	81		1	13	30			3	1			1	14			24	38	2	1	308
Total 30 yrs	15	22	5	3	4	8			5	1			8	16			4	2	1		2	21			40	119	1	1	16	47		1	3	3			1	14			50	54	2	1	470
1950		1												1								1			3	4												1				2			13
1951																		1	1		1	2				5												1			1	1		1	14
1952	2	3																							2	2			3	2								2			1	1			18

* This condemned person committed suicide.

TABLE H.

AGES OF PERSONS CONVICTED OF MURDER (1920-1952)

This table is the counterpart of Table 6 of Appendix 3 of the United Kingdom Royal Commission Report, at pages 308-9.

Year	20 yrs. and under				21-30 yrs.				31-40 yrs.				41-50 yrs.				51-60 yrs.				Over 60 yrs.				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1920	...	1	...	...	4	1	1	...	4	1	1	...	1	...	...	...	1	...	...	...	...	...	...	...	15
1921	...	...	...	...	5	3	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	9
1922	2	1	...	...	...	1	...	1	1	1	...	...	...	2	...	...	...	1	...	...	1	...	...	1	12
1923	...	3	...	...	...	3	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	7
1924	...	...	...	...	...	3	...	...	...	2	...	...	1	...	...	...	1	...	...	...	...	...	...	...	7
1925	1	1	...	...	2	3	...	...	1	1	...	...	...	1	...	...	...	...	...	...	...	...	...	...	10
1926	...	...	...	...	...	1	...	...	1	1	...	...	...	4	...	...	1	...	...	...	...	...	...	...	8
1927	4	...	...	...	...	4	...	...	1	2	...	...	...	3	...	...	...	...	...	...	...	1	...	...	15
1928	1	...	...	...	2	1	...	...	3	2	...	...	...	2	...	...	1	...	...	...	...	...	...	...	12
1929	1	1	...	...	...	6	...	...	3	4	...	...	1	2	...	1	...	...	...	...	1	...	...	...	20
Total	9	7	...	...	13	26	1	1	15	14	1	...	3	14	...	1	5	1	...	...	2	1	...	1	115**
1930	1	...	...	...	2	7	...	...	1	2	...	...	...	3	...	...	1	1	...	...	...	...	...	...	18
1931	...	...	...	...	2	9	...	...	...	8	...	...	1	4	...	...	...	4	...	...	...	...	...	...	28
1932	...	1	...	...	3	5	...	...	1	3	...	...	...	2	...	...	1	2	...	...	...	...	...	...	18
1933	...	3	...	...	1	8	...	...	2	2	...	...	...	2	...	...	...	1	...	...	...	...	...	...	19
1934	1	1	...	...	2	5	...	...	...	2	1	...	...	2	...	1	1	1	...	...	...	...	...	...	17
1935	1	...	...	...	1	4	1	...	...	2	...	...	...	4	...	1	...	1	...	...	...	...	...	...	15
1936	2	1	...	...	...	6	...	...	...	4	1	...	...	2	...	...	1	1	...	...	...	...	...	...	18
1937	1	1	...	...	1	1	...	...	...	4	...	...	...	1	...	...	...	...	...	...	...	...	...	...	9
1938	1	...	...	...	3	2	...	...	1	4	...	1	2	2	...	...	1	...	...	...	...	...	...	...	17
1939	...	...	...	...	1	3	...	...	2	...	...	...	...	...	...	...	...	...	1	...	...	1	...	...	8
Total	7	7	0	0	16	50	1	0	7	31	2	1	3	22	0	2	5	11	1	0	0	1	0	0	167
1940	2	...	...	...	2	3	...	...	2	3	...	...	...	3	...	...	...	...	...	...	...	...	...	...	15
1941	...	1	...	...	2	4	...	...	1	1	...	...	3	1	...	...	1	...	...	...	...	...	...	...	14
1942	...	...	...	...	...	4	...	...	...	...	...	...	...	1	...	...	1	...	...	...	...	1	...	...	7
1943	1	1	...	...	...	6	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	8
1944	2	...	...	...	1	7	...	...	...	...	...	...	...	2	...	...	1	...	...	...	...	...	...	...	13
1945	3	2	...	...	...	3	...	...	1	...	...	...	...	4	...	...	1	1	...	...	...	...	...	...	15
1946	1	1	...	...	3	8	...	...	1	2	1	1	1	1	...	...	...	...	...	...	1	...	...	...	21
1947	1	2	...	...	1	4	...	...	...	3	...	...	...	1	...	...	1	...	...	...	...	...	...	...	13
1948	4	...	...	...	...	7	...	...	1	4*	...	...	...	1	...	...	...	1	...	...	...	...	...	...	18
1949	2	...	...	...	2	5	...	...	...	3	...	...	1	2	...	...	1	1	...	...	...	...	...	...	17
Total	16	7	0	0	11	51	0	0	6	16	1	1	5	16	0	0	6	3	0	0	1	1	0	0	141
Total 20 yrs.	23	14	0	0	27	101	1	0	13	47	3	2	8	38	0	2	11	14	1	0	1	2	0	0	308
Total 30 yrs.	32	21	0	0	40	127	2	1	28	61	4	2	11	52	0	3	16	15	1	0	3	3	0	1	423
1950	2	...	...	...	1	2	...	...	...	6	...	...	...	1	...	...	...	1	...	...	...	...	...	...	13
1951	1	...	...	...	...	5	1	...	...	2	...	...	...	3	...	1	...	...	...	...	1	...	...	...	14
1952	1	...	...	...	3	4	...	...	1	4	...	...	...	1	...	...	2	...	...	...	1	1	...	...	18

*Includes one condemned person who committed suicide.
**For period 1920-1929, ages of 47 persons are not known.

M.—Male.
F.—Female.
C.—Commutation.
E.—Execution.

TABLE I

CAPITAL CASES BY PROVINCES

(1920-1949)

Province		1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	Total 10 yrs.
Alberta	C.	1	2			2	1	1		1		8
	E.	1		2	2			1			1	7
British Columbia	C.	2	1			1	3	1	3		1	12
	E.		1	1		1	2	2	2		1	10
Manitoba	C.			1		1					1	3
	E.						3	2	1			6
New Brunswick	C.						1			1		2
	E.			1			1					2
Nova Scotia	C.			1								1
	E.		1	1		1			1			4
Ontario	C.	4	1	5	2	1	2			3	2	20
	E.	2	3	4	1	4	1	1	1	2	2	21
Prince Edward Island	C.											
	E.											
Quebec	C.	3	2	1		4	2		2	1		15
	E.	2	1	3	3	4	2		5	2	6	28
Saskatchewan	C.	3			1	1				1	2	8
	E.	2			3				1	2	4	12
Yukon Territories	C.											
	E.		1		2							3
Total		20	13	20	14	20	18	8	16	13	20	162

C.—Commutation.
E.—Execution.

TABLE J

LENGTH OF DETENTION WHERE DEATH SENTENCE COMMUTED (1920-1939)

Year sentence commenced	Number of prisoners serving commuted sentences for life whose release was authorized on a Ticket of leave or for deportation		Number of years served																																		Total
			1 yr.		3 yrs.		4 yrs.		5 yrs.		8 yrs.		9 yrs.		10 yrs.		11 yrs.		12 yrs.		13 yrs.		14 yrs.		15 yrs.		16 yrs.		17 yrs.		18 yrs.		20 yrs.		21 yrs.		22 yrs.		
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	
1920	5	2					1[a]		1[a]														2[b]		1	2												7
1921	2	—	1[a]																		1				3						1							2
1922	6	—													1[a]										1[a]				1									6
1923	1	—																						1	2[b]													1
1924	4	1									1						1						1				1						1					5
1925	6	—																	2[a]																			6
1926	1	—																											1									1
1927	3	1													1[a]		1								2													4
1928	5	—																			1										2		1		1			5
1929	4	—			1[a]						1[a]															1[a]												4
Total 10 yrs	37	4	1		1		1		1		2				1	1	2		2		2		4	1	9	2	2		2		1		3		2		1		41
1930	3	—																	1				1						1									3
1931	2	—																	1						1													2
1932	2	—																					1								1							2
1933	2	—											1																1									2
1934	2	—															1										1											2
1935	1	—																									1											1
1936	4	1																	1				1	1	2													5
1937	1	—																							1													1
1938	3	—													1										2													3
1939	2	1																	1	1			1															
Total 10 yrs	22	2											1		1		1		4	1			4	1	6		2		2		1							24
Total 20 yrs	59	6	1		1		1		1		2		1		2	1	3		6	1	2		8	2	15	2	4		4		2		3		2		1		65

M.—Male
F.—Female
[a]—Deportation
[b]—1 for Deportation

TABLE J

LENGTH OF DETENTION WHERE DEATH SENTENCE COMMUTED (1920-1939)

Year sentence commenced	Number of prisoners serving commuted sentences for life whose release was authorized on a Ticket of leave or for deportation		Number of years served																																		Total
			1 yr.		3 yrs.		4 yrs.		5 yrs.		8 yrs.		9 yrs.		10 yrs.		11 yrs.		12 yrs.		13 yrs.		14 yrs.		15 yrs.		16 yrs.		17 yrs.		18 yrs.		20 yrs.		21 yrs.		22 yrs.		
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	
1920	5	2					1[a]		1[a]														2[b]		1	2												7
1921	2	—	1[a]																		1				3						1							2
1922	6	—													1[a]										1[a]				1									6
1923	1	—																						1	2[b]													1
1924	4	1									1						1						1				1						1					5
1925	6	—																	2[a]																			6
1926	1	—																											1									1
1927	3	1													1[a]		1								2													4
1928	5	—																			1										2		1		1			5
1929	4	—			1[a]						1[a]															1[a]												4
Total 10 yrs	37	4	1		1		1		1		2				1	1	2		2		2		4	1	9	2	2		2		1		3		2		1		41
1930	3	—																	1				1						1									3
1931	2	—																	1						1													2
1932	2	—																					1								1							2
1933	2	—											1																1									2
1934	2	—															1										1											2
1935	1	—																									1											1
1936	4	1																	1				1	1	2													5
1937	1	—																							1													1
1938	3	—													1										2													3
1939	2	1																	1	1			1															
Total 10 yrs	22	2											1		1		1		4	1			4	1	6		2		2		1							24
Total 20 yrs	59	6	1		1		1		1		2		1		2	1	3		6	1	2		8	2	15	2	4		4		2		3		2		1		65

M.—Male
F.—Female
[a]—Deportation
[b]—1 for Deportation

FINAL REPORT ON CORPORAL PUNISHMENT

to

THE SENATE AND THE HOUSE OF COMMONS PRESENTED ON WEDNESDAY, JULY 11, 1956.

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present its

THIRD REPORT*

of the current session, being the Committee's final report upon the question whether the criminal law of Canada relating to corporal punishment should be amended in any respect and, if so, in what manner and to what extent.

The Minutes of Proceedings and Evidence tabled on June 29, 1955, by the preceding Committee were referred to this Committee; and, at this time, the Committee is returning only that portion applicable to the question of corporal punishment. At the current session, no further evidence was printed and all proceedings were conducted *in camera*.

The sources of evidence taken and witnesses heard on corporal punishment during the first two sessions are listed alphabetically in Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence, and a chronological schedule of the sittings of the Committee for the same period appears in the same Number.

The Committee proposes to report later on the question of lotteries, as well as to report generally on its activities, procedure and matters relating thereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.

**The First Report of the Committee was a recommendation concerning its quorum presented on March 21, 1596. The Second Report was the Final Report on Capital Punishment presented on June 27, 1956.*

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FINAL REPORT ON CORPORAL PUNISHMENT

FINAL REPORT ON CORPORAL PUNISHMENT

CHAPTER I—SCOPE OF INQUIRY

1. The Committee considered that it was authorized to inquire into corporal punishment both as a sentence imposed by the courts and as a penalty for breaches of disciplinary rules in federal and provincial penal institutions. This report will deal in turn with these two aspects of corporal punishment.

CHAPTER II—CORPORAL PUNISHMENT AS A COURT SENTENCE

Section 1: Existing Law

2. The Canadian Criminal Code provides for punishment by whipping for the following offences:

1. rape and attempted rape (Sections 136 and 137)
2. sexual intercourse with female under fourteen (Section 138)
3. indecent assault on female (Section 141)
4. incest (Section 142)
5. indecent assault on male (Section 148)
6. overcoming resistance to commission of offence by choking, drugs, etc. (Section 218)
7. robbery (Section 289)
8. armed burglary (Section 292(3))

3. The revised Criminal Code, which was enacted in 1954 and came into force in 1955, abolished corporal punishment for the following offences:

1. assault on sovereign (Section 49)
2. acts of gross indecency (Section 149)
3. assaults on wife or other female.

The special section of the previous Criminal Code which dealt with assaults on wives or females was deleted and these offences are now governed by the general prohibitions against common or aggravated assaults for which corporal punishment is not a penalty.

4. Juvenile offenders under the age of 16 and females are not subject to corporal punishment.

Section 2: Procedure

(1) Time

5. The sentence may direct whipping on one, two, or three occasions during imprisonment, but the time of execution is left to the discretion of the prison authorities. The present practice in penitentiaries is to administer corporal punishment early in a sentence. It appeared that provincial prison authorities are less inclined to disregard court sentences ordering part of the whipping late in the sentence, although this practice was almost universaly condemned as being destructive of the success achieved in reform and rehabilitation during imprisonment.

(2) Method

6. A whipping is administered by the "cat-o'-nine-tails", commonly called the lash, unless otherwise specified. In practice, most courts order strapping or paddling which is administered by a leather strap across the buttocks. No specifications for the size or use of either instrument are provided in the Criminal Code. It appeared, however, that there is substantial similarity in the instruments, methods, and routine employed in the different federal penitentiaries and provincial institutions. Although no evidence of cutting or any other type of disfiguration or injury from corporal punishment was presented to the Committee, conflicting views were offered on the best method of avoiding a break in the skin. A perforated strap is employed in the penitentiaries because it is considered the perforations will prevent the strap from turning and cutting. A contrary view is held by the provincial institutions, where a plain strap is used, because it is feared the perforations might cause injury.

7. The whipping or strapping is always preceded by a medical examination and, in the penitentiaries and many provincial institutions, a doctor is in attendance during execution of the sentence. Where the medical examination reveals physical or mental incapacity, the sentence is not administered, and in most cases an application is made for remission of the sentence of corporal punishment.

8. Some witnesses considered there might be more fear of the lash than the strap and it was agreed that most courts regarded the strap as a lesser punishment. The evidence suggested, however, that, in fact, a strapping is a more severe punishment than whipping and is so regarded by experienced criminals.

Section 3: Use of Corporal Punishment

9. There has been a substantial decrease in the use of corporal punishment as a court sentence in the past generation. As the following table shows, in the peak year, 1931, corporal punishment was imposed in 165 cases or 12·1 percent of the 1,360 sentences for offences for which it might have been awarded; and in 1932, 1933, and 1934 the number and rate of sentences of corporal punishment were respectively 116 (9·7%), 118 (9·6%), and 84 (8·2%). By 1954, the number of sentences of corporal punishment had declined to 14, representing only 0·6 per cent of the 2,344 sentences for which it might have been imposed. The decline in the use of corporal punishment has been persistent over the past twenty years, subject to some variation in particular years, and, since 1950, it has been applied in only 1·5 per cent of the sentences where its use might have been authorized.

*TABLE OF CONVICTIONS UNDER CANADIAN CRIMINAL CODE SECTIONS FOR WHICH CORPORAL PUNISHMENT MIGHT HAVE BEEN AWARDED AS COMPARED WITH CONVICTIONS WHERE CORPORAL PUNISHMENT WAS ACTUALLY AWARDED, 1930-1954.

Year	(a) No. of Convictions where corporal punishment might have been awarded	(b) No. of Convictions where corporal punishment was actually awarded	(c) Percentage of Convictions in which corporal punishment awarded (b as % of a)
1930	1,143	95	8·3
1931	1,360	165	12·1
1932	1,200	116	9·7
1933	1,226	118	9·6
1934	1,022	84	8·2
1930–34 (5-year average)	1,190	115·6	9·7
1935	1,183	71	6·0
1936	1,146	77	6·7
1937	1,193	73	6·1
1938	1,307	78	6·0
1939	1,401	40	2·9
1935–39 (5-year average)	1,246	67·8	5·4
1940	1,501	43	2·9
1941	1,390	23	1·7
1942	1,228	21	1·7
1943	1,445	7	0·5
1944	1,399	25	1·8
1940–44 (5-year average)	1,393	23·8	1·7
1945	1,378	29	2·1
1946	1,884	41	2·2
1947	1,741	46	2·6
1948	1,756	39	2·2
1949	1,773	63	3·6
1945–49 (5-year average)	1,706	43·6	2·6
1950	1,814	39	2·1
1951	1,883	35	1·9
1952	1,939	35	1·8
1953	1,999	27	1·4
1954	2,344	14	0·6
1950–54 (5-year average)	1,996	30·0	1·5

*This table is based on the statistics appearing in the Appendix to this Report prepared by the Dominion Bureau of Statistics.

10. Corporal punishment is used as part of a court sentence in relatively few other jurisdictions. Since abolition in the United Kingdom in 1948, its use has been restricted to the State of Delaware, Canada, The Union of South Africa, Egypt, and certain colonial territories. In other jurisdictions it appears to have been abolished after an extended period of decreasing use.

Section 4: Summary of Arguments Advanced by Witnesses for Retention of Corporal Punishment

11. The attorneys general of most provinces, the police, and other law-enforcement agencies favoured the retention of corporal punishment. Their experience indicated that it operates as a deterrent to serious crime by imposing a lesson on the particular offenders subjected to it and by the fear it creates in the criminal class. Apart from its deterrent effect, there appeared

to be some support for corporal punishment as a just punishment for serious crime. It was regarded by some as a proper retribution, a mark of the community's revulsion against vicious offences; and a grave punishment, the justice of which would be recognized alike by the community and the offender.

12. Those favouring retention of corporal punishment stated discrimination and care should be used in its administration. There was general agreement with the view expressed by representatives of the police that it was not effective against the recidivist, the hardened criminal, or the sexual criminal. It is not, for example, uncommon for an experienced criminal to request a sentence with corporal punishment instead of a long term of imprisonment. The present Criminal Code provisions for indefinite detention of habitual criminals and criminal sexual psychopaths appeared to be a more realistic method of dealing with these offenders because experience indicated they are not likely to be influenced by corporal punishment.

13. It was considered that corporal punishment could be used to best advantage against young offenders. There was little support for its use against first-offenders but it was suggested that it might be used against young offenders who had not been influenced by reasonable efforts at rehabilitation by means of probation and other methods but who could not be considered to be hardened criminals. Particular concern was expressed about offenders showing a persistent disregard for the safety and property of others: members of street gangs, whether called "zoot-suiters" or "leather jackets", whose conduct was described by one witness as "hooliganism". Several witnesses suggested corporal punishment might be particularly effective against this type of offender because it would humiliate him in the eyes of his companions and take away the false glamour attached to a person who had been unaffected by lesser punishments.

14. The danger of doing more harm than good to particular offenders was recognized by those who favoured retention, particularly for young offenders. Some form of pre-sentence investigation and report was suggested which would take into account physical, mental, emotional, environmental, and other relevant factors in the background of the offender. This was considered to be necessary, particularly in the case of young offenders who had not proven amenable to other methods of correction and who might be so constituted as to suffer grave harm from the infliction of corporal punishment.

Section 5: Summary of Arguments Advanced by Witnesses for Abolition of Corporal Punishment

15. Those opposing corporal punishment contended that it had no unique deterrent influence. In view of the importance of this consideration, it is discussed in the next section of this report. It was contended that corporal punishment was not reformative and the Committee was impressed by the evidence of the Commissioner of Penitentiaries and others who stated that it counteracted the attempts made at reform and rehabilitation during imprisonment. Because of this, it was suggested that some penal officials were reluctant to carry out sentences of corporal punishment awarded by the courts and, in the words of one witness, "only went through the motions" in administering this punishment. The opinion was also expressed that, in addition to impeding reform, it did positive harm by embittering some offenders. Some, who considered corporal punishment might be helpful if administered immediately after the offence, contended that the delay, imposed by the necessity of allowing time for trial and appeal, destroyed the value which the punishment might otherwise have achieved. Those favouring abolition, in general, considered that corporal punishment could only be justified as a punitive, retributive

measure which was considered to be out of step with modern penal theory. Considerable emphasis was placed by some on the fact that Canada was one of very few countries in the democratic world still using corporal punishment.

16. The special considerations affecting young offenders are discussed in a subsequent section. Generally, in relation to all types of offenders, those favouring abolition argued that corporal punishment could produce no quick cure and was apt to do positive harm. The rarity of the sentence in Canada meant that its imposition was inconsistent and inequitable, a factor recognized by representatives of the police. Its imposition, under present conditions, depended upon the views of particular judges and, perhaps, also the swings of public opinion; and sometimes bore little relation to the nature of offences or offenders. It was considered a degrading punishment; and, since it was more likely to arouse feelings of resentment and revenge, it was urged that public humiliation of offenders could not be a proper foundation for their reform. To bring out the best in young offenders, better methods of treatment could be employed and, to protect society from recividists and sexual offenders, isolation and segregation could be used to greater effect. Although no specific evidence was produced, the opinion was expressed that corporal punishment might adversely affect prison officials either by bringing out sadistic impulses or discouraging the application of positive reformative measures.

Section 6: Considerations Relating to Deterrence

17. There are two aspects of deterrence: First, the prevention of the repetition of a similar or other offence by the person punished; and, secondly, its effect on the conduct of the public in general. All punishments are designed to deter and the proper approach, therefore, is to determine, if possible, whether there is any unique deterrent quality in corporal punishment which is not possessed by imprisonment, probation, or other methods of punishment and treatment.

18. Conflicting opinions were offered to the Committee by those experienced in dealing with offenders. The police and prosecuting authorities were of the opinion that corporal punishment was an important deterrent. Some prison authorities, prison psychiatrists, prisoners-aid officials and others in close contact with offenders were firmly convinced that it had no special deterrent effect. The ordinary citizen might expect that criminals would carefully consider the painful effect of corporal punishment before committing a crime for which it can be imposed. The evidence indicated, however, that, in general, the concern of offenders is to avoid arrest and imprisonment, and that they do not delicately balance their intended crimes against the prospect of corporal punishment.

19. Apart from these expressions of opinion based on contact with offenders and knowledge of the behaviour sciences, there is some factual evidence available for consideration. The deterrent quality of corporal punishment in relation to the subsequent conduct of an individual offender can only be measured by relating his conduct to that of similarly-placed persons who have not experienced corporal punishment. In considering the deterrent effect of corporal punishment on individual offenders, it is not possible to form any judgment based solely on the subsequent careers of persons who have experienced it. The Committee was aware of the existence of two studies based on statistics from the United Kingdom and the State of Delaware comparing the subsequent conduct of persons sentenced to corporal punishment for robbery with those not sentenced to corporal punishment for the same offence. No comparable studies have been made in Canada and the available Canadian statistical material, in the opinion of the Committee, is not sufficient to provide a basis

for similar surveys in this country. The results of these studies, which are included in the evidence[1], indicated that there is an appreciably higher proportion of recidivism among those who have been sentenced to corporal punishment. When allowance is made for the fact that those sentenced to corporal punishment may have included some of the worst offenders (as well as a surprising proportion of first-offenders), it appeared from this evidence that no unique deterrent effect was exercised by corporal punishment.

20. The second aspect of deterrence, that of restraining the commission of particular offences by the general public, likewise has received little objective investigation. The Committe was impressed with the results of a study of the incidence of robbery with violence in the United Kingdom for the period 1864 to 1936[2]. This study was offered as an indication that the incidence of robbery with violence was little influenced by the proportion of cases in which corporal punishment was awarded as a penalty. Evidence was given also about the recent experience of the United Kingdom where, prior to the abolition of corporal punishment in 1948[3], there had been a substantial increase in robberies with violence during the war and immediate post-war years notwithstanding the greatly increased use of corporal punishment by the courts. Since 1948, there has been a substantial decrease in the number of robberies with violence. The Committee considered that the evidence referred to in this paragraph and in the preceding paragraph must be interpreted carefully because statistics cannot describe all the factors shaping individual conduct or the developments in society at large which affect the incidence of particular crimes. Nevertheless, the Committee was of the opinion this evidence suggests that the incidence of robbery with violence in the United Kingdom was not appreciably influenced by the presence or absence of corporal punishment.

21. The evidence also suggested that the crime rate in other democratic countries of the Western World, as in the United Kingdom, has not been affected by the presence or absence of corporal punishment.

22. The Committee concluded, after consideration of evidence and opinion on deterrence, that corporal punishment does not exercise any unique deterrent effect in addition to that provided by other methods of punishment.

Section 7: Corporal Punishment of Young Offenders

23. The Committee gave special consideration to the problem of young offenders. Some of the arguments for extending the use of corporal punishment to young offenders as an effective deterrent against subsequent offences are reviewed in paragraph 13. The only suggestions made for increased use of corporal punishment were made by those who favoured its use for particular types of young offenders. The view was expressed that youths who had persisted, despite reasonable efforts at reform by probation and other methods, in offences against the person, property or public order, most commonly associated with street-corner gangs, might be brought to their senses by the administration of corporal punishment. In this way, it was contended, they might be saved from a prison sentence which would probably lead to a confirmed criminal career.

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[1] Prof. S. K. Jaffary at pp. 279-288 of Committee's 1955 Evidence, No. 9, quoting from U.K. Departmental (Cadogan) Committee Report on Corporal Punishment, 1938 (H.M.S.O. Cmd. 5684); Prof. T. Sellin at p. 709 of Committee's 1954 Evidence, No. 17, quoting from R. G. Caldwell's "Red Hannah—Delaware's Whipping Post" (University of Pennsylvania Press, 1947).

[2] Prof. T. Sellin at pp. 711-713 of Committee's 1954 Evidence, No. 17, quoting from E. Lewis-Faning, "Statistics relating to the deterrent element in flogging." (Jour. Royal Statistical Society 102, (1939); p. 565-78).

[3] Mr. J. A. Edmison at page 201 of Committee's 1955 Evidence, No. 7.

24. The Committee cannot accept these views. The evidence presented to the Committe indicated that the special provisions formerly made in the United Kingdom for the caning or birching of young offenders were not effective and were gradually abandoned, in practice, in favour of probation and other methods of treatment which were found to be much more effective. The United Kingdom Departmental Committee on Corporal Punishment (1938) recommended abolition of caning young offenders. This recommendation was carried into effect in 1948, by which time caning had become virtually obsolete as a method of treatment or punishment.

25. Medical and psychiatric evidence presented to the Committee suggested that little, if any, advantage would come from increased use of corporal punishment against young offenders. It was stated that such punishment would create an attitude of aggressive hostility in many cases which would militate against reform; and the experience of the Juvenile and Family Court of Toronto with corporal punishment of juveniles supported this contention. The danger exists that any increased use of corporal punishment for young offenders might undermine and destroy the positive attempts made towards their reform and rehabilitation. It was also considered that the delay resulting from the necessity of allowing for a proper trial and appeal would destroy any good which an immediate application of corporal punishment might accomplish.

26. The Committee does not believe that any convincing case was made for extending the use of corporal punishment to young offenders.

Section 8: Conclusions and Recommendations

27. The Committee kept two considerations in mind throughout its inquiry into corporal punishment as a part of the sentence of the court. The first was whether it deters those subjected to it from further crime and, secondly, whether it deters the public generally to a greater extent than other methods of punishment. The evidence did not justify the view that it will exercise any special reformative or deterrent influence on individuals upon whom it is administered and, on the whole, it appears to have the contrary effect. The Committee concluded that the existence of corporal punishment affords no unique deterrence to crime. Accordingly, the Committee recommends that corporal punishment be abolished for any of the offences for which it is presently prescribed in the Criminal Code.

28. The Committee considered that a change can be more readily recommended because the courts in recent years have made little use of corporal punishment as part of a sentence. In this respect, Canada would appear to be in line with other democratic countries which abandoned corporal punishment after its use had steadily decreased over a considerable period of time.

Section 9: Alternative Recommendations

29. In the event that the recommendation of this Committee is not accepted, the Committee makes the following alternative recommendations. First, that the law be amended to provide that corporal punishment should be imposed only after courts receive and consider full reports on the background of offenders which would indicate its suitability as a punishment in each case. Secondly, the Committee considers that corporal punishment should be administered early in each sentence and that it is inappropriate to couple it with a long sentence. Thirdly, since the strap is the instrument most commonly used, that it should be used exclusively and that uniform specifications for the construction and use of the strap should be made and enforced.

CHAPTER III—CORPORAL PUNISHMENT FOR PENITENTIARY AND PRISON OFFENCES

Section 1: Law and Offences

(1) General

30. Offenders sentenced to less than two years' imprisonment for offences under the Criminal Code or other federal statutes serve their sentences in provincial prisons and those sentenced to two years or more serve their sentences in federal penitentiaries. The Penitentiaries Act confers power on the Commissioner of Penitentiaries to make rules for the administration, management, and discipline of the penitentiaries. The Prisons and Reformatories Act provides that any person sentenced to a provincial prison is subject to all lawful rules and regulations governing its operation. Under the authority of these statutes, offenders are liable to receive corporal punishment for violation of penitentiary or prison regulations.

(2) Penitentiaries

31. The penitentiary regulations prescribe flogging or strapping, in addition to any other punishment, for the following offences:

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.

(3) Provincial Prisons

32. Corporal punishment is not used as disciplinary measure in provincial prisons in Alberta, Saskatchewan, New Brunswick, and Newfoundland. No particulars were available concerning its use in Quebec, Nova Scotia, or Prince Edward Island.

33. In Manitoba its use is confined to an assault on an officer, mutiny, or incitement to mutiny. In British Columbia it may be awarded for any of the offences specified in the regulations, namely:

1. Disobedience of the rules and regulations of the gaol;
2. Common assault by one prisoner upon another;
3. Cursing or using profane language;
4. Indecent behaviour or language toward another prisoner, toward any officer of the gaol, or toward a visitor;
5. Idleness or negligence at work;
6. Wilfully destroying or defacing gaol property;
7. Insubordination of any sort.

In Ontario it may be awarded for the following offences:

1. Assault with violence on officers;
2. Assault with violence on other inmates;
3. Continued course of bad conduct;
4. Escape or attempted escape;
5. Malicious destruction of or injury to machinery or other property;
6. Malingering to evade work;
7. Mutinous conduct;
8. Repeated fighting after warning;
9. Refusal to work after warning;
10. Repeated insolence to officers;
11. Riotous conduct in dormitories, cells, working gang or elsewhere;
12. Attempting to commit sodomy and other unmentionable crimes of like character.

Section 2: Procedure

(1) Penitentiaries

34. In penitentiaries, an inmate charged with an offence is tried in the Warden's Court. Evidence is taken on oath from the officers, and the inmate is given a fair opportunity to present his own side of the case. A summary of evidence is taken and is forwarded to the Commissioner of Penitentiaries with the warden's recommendation. It is not uncommon for the commissioner to direct the withholding of all or part of the sentence during good behaviour.

35. Before administration of the sentence, the inmate is examined by the institution's physician and psychiatrist. The sentence is carried out with a physician in attendance.

(2) Provincial Prisons

36. In none of the provinces using corporal punishment for prison offences is it necessary for the head of the institution to obtain approval of higher authority before the sentence is administered. Before administration in British Columbia, Manitoba, and Ontario, the medical officer must certify the fitness of the prisoner to endure punishment, and in Manitoba and Ontario the regulations require the medical officer to be present during execution of the punishment.

(3) General

37. Basically, the same procedure is employed in the administration of corporal punishment for prison offences and court sentences. The standard practice is to use the strap. As indicated in paragraph 15, some witnesses testified that, in their opinion, the administration of corporal punishment as a court sentence was less severe than when it was administered for a prison offence.

Section 3: Extent of Use

(1) Penitentiaries

38. In the Federal penitentiaries, the use of corporal punishment has varied considerably. It declined from a rate in excess of 50 per year in the early 1930's to under 30 per year in the late 1930's and war years. After

the war it rose to 63 in 1949 and then it declined in 1951 and 1952 to 8 and 7 respectively, rising again in 1953 and 1954 to 23 and 26 respectively. The decline in the post-war years was attributed to the new penal policies introduced after the delayed implementation of the Archambault Report[1] of 1938, which brought about a more relaxed feeling in the institutions. The rise in the last two years is attributed to the general unrest prevalent in the United States prisons which communicated itself to Canadian institutions.

39. In practice, corporal punishment is not awarded for all the offences listed in the penitentiary regulation 165 quoted in paragraph 31. Corporal punishment is limited and is used as a penalty of last resort in cases of mutiny, incitement to mutiny, and gross personal violence to a penitentiary officer or servant or to another inmate.

(2) Provincial Prisons

40. In Manitoba, corporal punishment is restricted to the serious offences outlined in the Archambault Report and has only been imposed once in the last eight years. In British Columbia, it was until recently used to a considerable extent as a method of control at Oakalla prison. No statistics were available but it is understood that because of improved conditions in the prison it has been virtually eliminated. According to information supplied by Ontario, approximately 250 prisoners received corporal punishment in each of the years 1949 and 1950; the number dropped to 200 in 1951 and 105 in 1952 but rose to 250 in 1953. In this period, those punished represented from 0·2 per cent to 0·5 per cent of all prisoners in custody.

Section 4: Conclusions and Recommendations

(1) Retention in Penitentiaries

41. The Committee considered that different considerations apply to corporal punishment for prison offences than to corporal punishment as a court sentence. Several witnesses, including the Commissioner of Penitentiaries and other experienced prison administrators who advocated the abolition of corporal punishment as a penalty under the Criminal Code, insisted that it was a necessary disciplinary measure in penal institutions.

42. The Committee considered, as the previous paragraphs of this report indicate, that the greatest deterrent to crime is the fear of apprehension and imprisonment. These deterrents are not effective against a person undergoing sentence and must be replaced by others. The Committee also considered that, because of the knowledge which prison authorities should possess about each prisoner, there is much less danger of corporal punishment for prison offences being applied in circumstances where it is either unsuitable or even dangerous to the offender. While the Committee did not think that corporal punishment is likely to be reformative, it considered that a prisoner rendering himself liable to such punishment has failed to take advantage of the reformative influences afforded by the prison. Accordingly, the punishment will not run entirely counter to the reformative policies of the institution.

43. The Committee does not favour indiscriminate use of corporal punishment. Too frequent use of this drastic punishment is likely to reduce its significance and render it less effective than it is if reserved for only the most serious offences. It should be regarded, as it is now in most Canadian penal institutions, as a punishment to be applied only as a last resort when all other penalties are judged to be ineffective.

[1] Report of the Royal Commission to investigate the Penal System of Canada (1938), Queen's Printer, Ottawa.

44. The Committee was impressed by the evidence of the effects of the post-war changes in penal policy. The emphasis on the positive elements of reform and education and the elimination of some of the stricter features of the former discipline appear to have produced a much more relaxed attitude in the penitentiaries. In this atmosphere, it appears effective in many cases to use punishment in the positive sense of encouraging good behaviour by withdrawing various privileges, such as smoking, reading, hobbies, and other amenities, as the penalty for disciplinary offences. Other types of punishment are available in more serious cases. The loss of earned remission, although not particularly effective at the start of a long sentence, becomes a grave punishment towards the end of sentence. Deprivation of diet and various types of detention and restriction of movement in the institution, including segregation and isolation in serious cases, are traditional punishments which are extremely effective. There was evidence that some offenders are more likely to be restrained and deterred by solitary confinement than by corporal punishment, and its use is to be preferred in all proper cases because it does not arouse the same degree of resentment and anger as corporal punishment which might provoke further outbursts against the regulations.

45. Effective as these other punishments are, the Committee was impressed by the argument that the ultimate threat of corporal punishment must be held in reserve as a deterrent to serious outbursts in the institution. It is also necessary that prison officers be assured that any attack on their person will be met by stern and appropriate punishment extending even to corporal punishment. In this sense it is an important part of prison administration.

46. Opinions differed as to the deterrent effect of the punishment on the offender and this Committee noted the conclusion of the United Kingdom Committee on Corporal Punishment (1938) that it does not prevent further rule-breaking. There was evidence that a prisoner, after corporal punishment is more discreet and prison-wise in his non-conformity, if any, and less prone to open acts of defiance. Moreover, the evidence established that the present penitentiary system of withholding all or part of a disciplinary sentence of corporal punishment during good behaviour has considerable deterrent value.

47. As indicated above, the significance of this punishment is lost if it is applied too frequently and without proper deliberation. The Committee agrees that sentences of corporal punishment should continue to be reviewed by higher authority in Canadian Penitentiaries as in the United Kingdom. This not only eliminates some of the danger of impulsive action or rashness, but also emphasizes to the offender and the prison population the importance of the punishment.

48. Subject to the exception hereinafter stated, the Committee considers that the recommendations of the Archambault Report prescribe reasonable limits in the application of corporal punishment in penitentiaries and that its use should be limited to mutiny, incitement to mutiny, and to serious assaults on penitentiary officers and servants. Further, however, the Committee considers that corporal punishment should be available for punishment of those persons who are guilty of acts of violence against fellow prisoners or causing or attempting serious damage to penitentiary property.

(2) Provincial Prisons

49. The Committee recognized that the administration of provincial prisons and the punishment for breaches of their regulations remain a provincial responsibility. Nevertheless, it considers that the considerations affecting the

application of corporal punishment for penitentiary offences apply with equal force to provincial institutions. Particularly, the Committee commends to the consideration of provincial governments its report and recommendations on the subject of the use of corporal punishment for prison offences.

50. The Appendix to this Report is annexed hereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.

APPENDIX TO

FINAL REPORT ON CORPORAL PUNISHMENT

(Prepared by the Dominion Bureau of Statistics)

The data included in the tables show, for each year from 1930 to 1954, the total number of convictions under certain sections of the Canadian Criminal Code (Table 1) and, separately, the number of these convictions where there was an extra sentence of corporal punishment (Table 2). In Table 3, the number of convictions with extra sentence of corporal punishment, for each year, is expressed as a percentage of the total number of convictions. For example, in 1930 there were 45 convictions under Section 204 of the Criminal Code; of these, 6, or 13·3 per cent, were convictions with extra sentence of corporal punishment. In 1952, under the same Section, there were 31 convictions; and, of these, 1, or 3·2 per cent, was a conviction with extra sentence. In Tables 4, 5 and 6, the data of the preceding tables have been grouped into five-year intervals, thus permitting the calculation of an annual average for each of the five groups shown. Tables 7 and 8 show the number of remissions of corporal punishment by years and five-year groups respectively.

Data were requested under specified sections of the Canadian Criminal Code. For statistical purposes, certain of these sections are classified as distinct and separate categories; others are included in broad groups embracing several sections of the code. Sections 80, 204 and 300 are shown separately; the remainder are included in groups which are indicated in the footnotes to Table 1.

No offences have been reported under Section 80 for the years shown. As pointed out in Table 1, Section 276 is included in the general category "wounding and shooting", together with Sections 273, 274 and 275. No conviction with extra sentence of corporal punishment has been recorded under this heading from 1930 to 1954. The data on the total number of convictions under this heading have, therefore, been omitted from Table 1.

**This Appendix revises and brings up-to-date the statistical data contained in the Committee's 1954 Evidence, No. 18, pp. 793-799.*

TABLE 1.—TOTAL* NUMBER OF CONVICTIONS UNDER CERTAIN SECTIONS OF THE CANADIAN CRIMINAL CODE, BY YEAR, 1930-1954

SECTION OF THE CRIMINAL CODE OF CANADA

	Assault on Sovereign	Incest	Gross indecency	Strangling, etc.	Assault on wife and other female	Rape	Attempted rape	Carnal knowledge	Robbery	Total
Old Code:	80[1]	204	206[2]	276[3]	292[4]	299[5]	300	301[6]	447[7]	
New Code:	49**	142	149**	218	141(1) and 231(2)**	136	137	138	289	
1930	—	45	100	—	458	16	14	99	411	1,143
1931	—	39	81	—	433	30	6	124	647	1,360
1932	—	51	101	—	507	23	13	85	420	1,200
1933	—	31	146	—	528	16	6	101	398	1,226
1934	—	41	75	—	400	24	10	92	380	1,022
1935	—	51	85	—	496	14	8	108	421	1,183
1936	—	69	136	—	442	9	12	128	350	1,146
1937	—	40	134	—	474	14	7	141	383	1,193
1938	—	64	137	—	540	27	10	108	421	1,307
1939	—	59	92	—	546	16	12	116	560	1,401
1940	—	52	168	—	606	23	17	118	517	1,501
1941	—	37	138	—	645	26	9	91	444	1,390
1942	—	42	161	—	581	25	6	83	330	1,228
1943	—	42	178	—	623	18	16	119	449	1,445
1944	—	37	192	—	579	22	8	82	479	1,399
1945	—	44	189	—	607	12	11	83	432	1,378
1946	—	40	228	—	754	38	5	84	734	1,884
1947	—	49	229	—	717	22	17	100	607	1,741
1948	—	47	238	—	667	24	12	86	682	1,756
1949	—	58	193	—	677	38	24	68	715	1,773
1950	—	28	267	—	639	37	17	77	749	1,814
1951	—	48	245	—	602	42	14	90	842	1,883
1952	—	81	292	—	712	42	15	81	766	1,939
1953	—	38	322	—	764	44	10	100	721	1,999
1954	—	56	545	—	745	27	21	89	861	2,344

* All convictions under the Sections specified, including those with extra sentence of corporal punishment.

** Corporal Punishment deleted.

[1] No offences reported under Section 80.

[2] Includes convictions under Sections 206, 202, 203 and 293, but from 1950 to 1952 inclusive, convictions under Section 293 are excluded.

Section 276 is coded under the general heading "wounding and shooting", which also includes Sections 273, 274 and 275. No conviction with extra sentence of corporal punishment has been recorded under this heading from 1930 to 1954 and therefore the total number of convictions have not been shown.

[4] Includes convictions under Sections 292 *(a)*, *(b)* and *(c)*, 294 and 773 *(d)*, and from 1950 to 1952 inclusive, Section 293. (*See* footnote (2)).

[5] Includes convictions under Section 299.

[6] Includes convictions under Sections 301 and 302.

[7] Includes convictions under Sections 445, 446 *(a)*, *(b)* and *(c)*, 447, 448 and 449.

TABLE 2.—NUMBER OF CONVICTIONS WITH EXTRA SENTENCE OF CORPORAL PUNISHMENT UNDER CERTAIN SECTIONS[1] OF THE CANADIAN CRIMINAL CODE, BY YEAR, 1930-1954

	SECTION OF THE CRIMINAL CODE OF CANADA									
	Assault on Sovereign	Incest	Gross indecency	Strangling, etc.	Assault on wife and other female	Rape	Attempted rape	Carnal knowledge	Robbery	Total
Old Code:	80[1]	204	206[1]	276[1]	292[1]	299[1]	300	301[1]	447[1]	
New Code:	49*	142	149*	218	141(1) and 231(2)*	136	137	138	289	
1930	—	6	4	—	30	7	2	10	36	95
1931	—	11	4	—	26	6	—	11	107	165
1932	—	7	2	—	35	3	—	8	61	116
1933	—	2	6	—	38	4	2	4	62	118
1934	—	11	5	—	19	12	—	3	34	84
1935	—	6	—	—	16	1	1	14	33	71
1936	—	7	4	—	21	1	2	23	19	77
1937	—	4	6	—	18	3	2	10	30	73
1938	—	7	3	—	23	5	2	6	32	78
1939	—	6	2	—	7	2	—	7	16	40
1940	—	4	6	—	8	6	1	4	14	43
1941	—	—	1	—	8	3	—	4	7	23
1942	—	—	1	—	7	3	1	3	6	21
1943	—	1	1	—	—	1	—	1	3	7
1944	—	1	4	—	6	—	—	—	14	25
1945	—	2	1	—	8	1	—	2	15	29
1946	—	2	1	—	7	8	—	1	22	41
1947	—	1	4	—	13	1	—	4	23	46
1948	—	4	3	—	4	3	1	—	24	39
1949	—	1	3	—	9	12	1	2	35	63
1950	—	—	1	—	6	7	2	1	22	39
1951	—	3	1	—	8	2	—	7	14	35
1952	—	1	2	—	12	4	1	2	13	35
1953	—	1	1	—	8	7	2	—	8	27
1954	—	2	1	—	6	2	—	—	3	14

[1] *See* footnotes, Table 1.
* Corporal punishment deleted.

TABLE 3.—Convictions With Extra Sentence of Corporal Punishment Expressed as a Percentage of Total Convictions for Certain Sections[1] of the Canadian Criminal Code, by Year, 1930-1954

Section of the Criminal Code of Canada

	Assault on Sovereign	Incest	Gross indecency	Strangling, etc.	Assault on wife and other female	Rape	Attempted rape	Carnal knowledge	Robbery	Total
Old Code:	80[1]	204	206[1]	276[1]	292[1]	299[1]	300	301[1]	447[1]	
New Code:	49*	142	149*	218	141(1) and 231(2)*	136	137	138	289	
	%	%	%	%	%	%	%	%	%	%
1930	—	13·3	3·8	—	6·6	43·8	14·3	10·1	8·8	8·3
1931	—	28·2	4·9	—	6·0	20·0	—	8·9	16·6	12·1
1932	—	13·7	2·0	—	6·9	13·0	—	9·4	14·5	9·7
1933	—	6·8	4·1	—	7·2	25·0	33·3	4·0	15·8	9·6
1934	—	26·8	6·7	—	4·8	50·0	—	3·3	8·9	8·2
1935	—	11·8	—	—	3·2	7·1	12·5	13·0	7·8	6·0
1936	—	10·1	2·9	—	4·6	11·1	16·7	18·0	5·4	6·7
1937	—	10·0	4·5	—	3·8	21·4	28·6	7·1	7·8	6·1
1938	—	10·9	2·2	—	4·3	18·5	20·0	5·6	7·6	6·0
1939	—	10·2	3·2	—	1·3	12·5	—	6·0	2·9	2·9
1940	—	7·7	3·6	—	1·3	26·1	5·9	3·4	2·7	2·9
1941	—	—	0·8	—	1·2	11·5	—	4·4	1·6	1·7
1942	—	—	0·6	—	1·2	12·0	16·7	3·6	1·8	1·7
1943	—	2·4	0·6	—	—	5·5	—	1·0	0·7	0·5
1944	—	2·7	2·1	—	1·0	—	—	—	2·9	1·8
1945	—	4·5	0·5	—	1·3	8·3	—	2·4	3·5	2·1
1946	—	5·0	0·4	—	0·9	31·1	—	1·2	3·0	2·2
1947	—	2·0	1·7	—	1·8	4·5	—	4·0	3·8	2·6
1948	—	8·5	1·3	—	0·6	12·5	8·3	—	3·5	2·2
1949	—	1·7	0·5	—	1·3	31·6	4·2	2·9	4·9	3·6
1950	—	—	0·4	—	0·9	18·9	11·8	1·3	2·9	2·1
1951	—	6·3	0·4	—	1·3	4·8	—	7·8	1·7	1·9
1952	—	3·2	0·3	—	1·7	9·5	6·7	2·5	1·7	1·8
1953	—	2·6	0·3	—	1·0	15·9	20·0	—	1·1	1·4
1954	—	3·8	0·2	—	0·8	7·4	—	—	0·3	0·6

[1] *See* footnotes, Table 1.
* Corporal punishment deleted.

TABLE 4.—Total* Number of Convictions under Certain Sections(1) of the Canadian Criminal Code, Showing Annual Averages for Five-Year Groups, 1930-1954

Section of Criminal Code of Canada		Annual Average				
		1930-1934	1935-1939	1940-1944	1945-1949	1950-1954
Old	*(New)*					
	Total:	1,190	1,246	1,393	1,706	1,996
80(1)	49**.....					
204	142.....	41	57	42	48	40
206(1)	149**.....	101	117	167	215	334
276(1)	218.....					
292(1)	141(1) and 231(2)**.....	465	500	607	684	692
299(1)	136.....	22	16	23	27	38
300	137.....	10	10	11	14	15
301(1)	138.....	100	120	99	84	87
447(1)	289.....	451	427	444	634	788

(1) See footnotes, Table 1.
* All convictions under the sentences specified, including those with extra sentence of corporal punishment.
** Corporal punishment deleted.

TABLE 5.—Convictions with Extra Sentence of Corporal Punishment under Certain Sections(1) of the Canadian Criminal Code, Showing Annual Averages for Five-Year Groups, 1930-1954

Section of Criminal Code of Canada		Annual Average				
		1930-1934	1935-1939	1940-1944	1945-1949	1950-1954
	Total:	115·6	67·8	23·8	43·6	30·0
Old	*(New)*					
80(1)	49*.....					
204	142.....	7·4	6·0	1·2	2·0	1·4
206(1)	149*.....	4·2	3·0	2·6	2·4	1·2
276(1)	218.....					
292(1)	141(1) and 231(2)*.....	29·6	17·0	5·8	8·2	8·0
299(1)	136.....	6·4	2·4	2·6	5·0	4·4
300	137.....	0·8	1·4	0·4	0·4	1·0
301(1)	138.....	7·2	12·0	2·4	1·8	2·0
447(1)	289.....	60·0	26·0	8·8	23·8	12·0

(1) See footnotes, Table 1.
* Corporal punishment deleted.

TABLE 6.—Convictions with Extra Sentence of Corporal Punishment Expressed as a Percentage of Total Convictions for Certain Sections(1) of the Canadian Criminal Code based on Annual Averages for Five-Year Groups, 1930-1954

Section of Criminal Code of Canada		Annual Average				
		1930-1934	1935-1939	1940-1944	1945-1949	1950-1954
	Total:	9·7	5·4	1·7	2·6	1·5
Old	*(New)*					
80(1)	49*.....					
204	142.....	18·0	10·5	2·9	4·2	3·5
206(1)	149*.....	4·2	2·6	1·6	1·1	0·4
276(1)	218.....					
292(1)	141(1) and 231(2)*.....	6·4	3·4	1·0	1·2	1·2
299(1)	136.....	29·1	15·0	11·3	18·5	11·6
300	137.....	8·0	14·0	3·6	2·9	6·7
301(1)	138.....	7·2	10·0	2·4	2·1	2·3
447(1)	289.....	13·3	6·1	2·0	3·8	1·5

(1) See footnotes, Table 1.
* Corporal punishment deleted.

TABLE 7.—Remission of Corporal Punishment Awarded Under Certain Sections [1] of the Canadian Criminal Code, by Year, 1930–1954

Year	Convictions under these sections [1] with extra sentence of corporal punishment			Remissions of corporal punishment	
	Total	Number	Percent of total convictions (b as % of a)	Number	Percent of the number with extra sentence of corporal punishment (d as % of b)
	(a)	*(b)*	*(c)*	*(d)*	*(e)*
1930	1,143	95	8·3	3	3·2
1931	1,360	165	12·1	7	4·2
1932	1,200	116	9·7	6	5·2
1933	1,226	118	9·6	9	7·6
1934	1,022	84	8·2	5	6·0
1935	1,183	71	6·0	2	2·8
1936	1,146	77	6·7	7	9·1
1937	1,193	73	6·1	2	2·7
1938	1,307	78	6·0	1	1·3
1939	1,401	40	2·9	5	12·5
1940	1,501	43	2·9	3	7·0
1941	1,390	23	1·7	1	4·3
1942	1,228	21	1·7	2	9·5
1943	1,445	7	0·5	—	—
1944	1,399	25	1·8	2	8·0
1945	1,378	29	2·1	—	—
1946	1,884	41	2·2	3	7·3
1947	1,741	46	2·6	1	2·2
1948	1,756	39	2·2	2	5·1
1949	1,773	63	3·6	2	3·2
1950	1,814	39	2·1	—	—
1951	1,883	35	1·9	1	2·9
1952	1,939	35	1·8	1	2·9
1953	1,999	27	1·4	1	3·7
1954	2,344	14	0·6	2	14·3

[1] Sections 80, 202, 203, 204, 206, 273, 274, 275, 276, 292 *(a)*, *(b)* and *(c)*, 293, 294, 298, 299, 300, 301, 302, 445, 446 *(a)*, *(b)* and *(c)*, 447, 448, 449 and 773 *(d)*.

TABLE 8.—Remissions of Corporal Punishment Awarded Under Certain Sections [1] of the Canadian Criminal Code by Five-Year Groups, 1930–1954

Years	Convictions under these sections [1]			Remissions of corporal punishment	
		with extra sentence of corporal punishment			
	Annual average	Annual average	Percent of annual average (b as % of a)	Annual average	Percent of the annual average with extra sentence of corporal punishment (d as % of b)
	(a)	*(b)*	*(c)*	*(d)*	*(e)*
1930–1934	1,190	115·6	9·7	6·0	5·2
1935–1939	1,246	67·8	5·4	3·4	5·0
1940–1944	1,393	23·8	1·7	1·6	6·7
1945–1949	1,706	43·6	2·6	1·6	3·7
1950–1954	1,996	30·0	1·5	1·0	3·3

[1] Sections 80, 202, 203, 204, 206, 273, 274, 275, 276, 292 *(a)*, *(b)* and *(c)*, 293, 294, 298, 299, 300, 301, 302, 445, 446 *(a)*, *(b)* and *(c)*, 447, 448, 449, and 773 *(d)*.

FINAL REPORT ON LOTTERIES

to

THE SENATE AND THE HOUSE OF COMMONS PRESENTED ON
TUESDAY, JULY 31, 1956.

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present its

FOURTH REPORT

of the current session, being the Committee's final report upon the question whether the criminal law of Canada relating to lotteries should be amended in any respect and, if so, in what manner and to what extent. The First Report of the Committee was a recommendation concerning its quorum presented on March 21, 1956. The Second and Third Reports were, in that order, the Final Reports on Capital and Corporal Punishment and were presented on June 27, 1956, and July 11, 1956, respectively.

The Minutes of Proceedings and Evidence tabled in both Houses on June 29, 1955, by the preceding Committee were referred to this Committee; and, at this time, the Committee is returning the remaining portion which is applicable to the question of lotteries. At the current session, no further evidence was printed and all proceedings were conducted *in camera*.

The sources of evidence taken and witnesses heard on the lotteries question during the first two sessions are listed alphabetically in Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence, and a chronological schedule of the sittings of the Committee for the same period appears in the same Number.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.

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FINAL REPORT ON LOTTERIES

CHAPTER I—SCOPE OF INQUIRY

1. The Committee confined itself to a study of the operation of the laws governing lotteries in Canada and other jurisdictions. Other aspects of gambling were beyond its terms of reference. It considered, however, that the game of "Bingo" and similar games were within its terms of reference even though, legally, such games are regarded as games of chance and not as lotteries. They were included because they are not dissimilar to lotteries in operation and, moreover, they are games usually arranged and played by organizations having similar purposes to those organizing lotteries for benevolent purposes, which have been the main concern of the Committee's inquiry.

CHAPTER II—PRESENT LAW

2. The English Statutes prohibiting lotteries, enacted in the early part of the nineteenth century, were extended to Canada and these prohibitions were codified in 1886 in a general act relating to lotteries. This statute was substantially re-enacted in the first Criminal Code of 1892. The section of the present Criminal Code dealing with lotteries is section 179. It prohibits lotteries in general and exempts certain types of lotteries from this general prohibition. The section is basically the same as the corresponding section in the 1892 Code, but contains many additions and changes made in the intervening years. The section has always been dealt with piecemeal and has never had a thorough overall revision.

3. It is clear that the federal Parliament has power to enact laws prohibiting and regulating lotteries by virtue of its jurisdiction over criminal law. The courts have held that provincial Legislatures have no jurisdiction to permit the operation of lotteries forbidden by the Criminal Code.

4. The governing provisions of the Criminal Code are set forth as an appendix. The effect of the main section dealing with lotteries, namely section 179, may be summarized as follows:

(1) Offences Relating to Lotteries:

(*a*) Publishing, advertising or printing lottery scheme; source, 1892 Code; Criminal Code, s. 179(1)(a).

(*b*) Selling or otherwise disposing of lottery tickets; source, 1892 Code; Criminal Code, s. 179(1)(b).

(*c*) Sending, transmitting or otherwise delivering or knowingly accepting for conveyance any tickets or articles connected with a lottery; source, 1932, c. 8, s. 1, to supplement the prohibitions contained in the Post Office Act by covering other modes of transmission such as express; Criminal Code, s. 179(1)(c).

(*d*) Conducting or managing a lottery; source, 1895, c. 40, s. 1; revised 1943-44, c. 23, s. 8; Criminal Code, s. 179(1)(d).

(*e*) Conducting any scheme for disposing of property under which one contributor may receive a larger amount than paid in because others have contributed to the scheme even though the outcome depends on skill; source, 1935, c. 56, s. 3; Criminal Code, s. 179(1)(e).

(*f*) Disposing of goods, wares or merchandise by any mode of chance or mixed chance and skill, where the competitor pays valuable consideration; source, 1922, c. 16, s. 11; Criminal Code, s. 179(1)(f).

(*g*) Inducing the staking of money on gambling devices such as punch board, shell games or wheels of fortune, and playing three-card monte; source, 1922, c. 16, s. 11; Criminal Code, s. 179(1)(g-j).

(*h*) Buying lottery tickets; source, 1892 Code; Criminal Code, s. 179(4).

(*i*) Foreign lotteries prohibited; source, 1892 Code; Criminal Code s. 179(7).

(2) Exemptions:

(*a*) Games and contests prohibited by s. 179(1)(f) and (g) are permitted at agricultural fairs, (except dice and other specified games); proviso enacted 1925, c. 38, s. 4; Criminal Code, s. 179(3).

(*b*) Small raffles at bazaars, held for religious or charitable objects, where permission to hold the same has been granted by the municipality and the prize is first offered for sale and does not exceed $50.00; source, 1892 Code; Criminal Code, s. 179(8)(b).

(*c*) The division of property by lot by joint tenants; recalling securities by lot and other lesser exemptions; source, 1892 Code; Criminal Code, s. 179(8).

(3) Other Penalties:

(*a*) Apart from fine and imprisonment, property (including money) connected with a lottery is subject to forfeiture; Criminal Code, s. 179(5).

(*b*) Search warrants may be obtained when an offence is suspected and persons and property may be detained thereunder. If not claimed, the property is subject to forfeiture. Telephone and Telegraph equipment may not be interfered with; Criminal Code, s. 171.

5. The game of bingo, which the courts have declared to be a game of chance, falls under the prohibition of section 176 of the Criminal Code which makes the keeping of a common gaming house an offence. A common gaming house is defined in section 168. This definition is subject to an important proviso which specifies that a place is not a common gaming house while used "occasionally" by charitable or religious organizations for the purpose of playing games for which a direct fee is charged if the proceeds are used for charitable or religious objects. The interpretation of the word "occasional" has been a source of continual difficulty and it appears to have justified, in some areas, the holding of bingos with a remarkable degree of regularity. While, ordinarily, bingo games, for which a fee is paid and for which prizes are offered, would fall within the prohibition of the Gaming Section of the Criminal Code, they are usually held in circumstances which bring them within the indefinite scope of the exemption covering games played "occasionally" for charitable or religious purposes.

CHAPTER III—OPERATION AND ENFORCEMENT OF LOTTERY LAWS

Section 1: Lotteries in Canada

6. There appeared to be widespread support for lotteries organized for charitable and benevolent purposes. These lotteries, although usually of doubtful legality, take many forms in Canada and are relatively common in

their occurrence. The purpose may be to support some community project, such as the building of a rink or a hall or some charity of general benefit to the community. Not infrequently a lottery of this type is based upon the award of an automobile as the first prize and sometimes lesser prizes consisting of television sets, refrigerators, and other valuable durable goods. Many of these lotteries are run by churches, service clubs, and other reputable voluntary organizations and receive widespread support from the community in general. Fund-raising schemes based on lotteries of this kind are frequently parallelled by large bingo games operated by charitable or religious organizations for worthy purposes. In some parts of Canada the prizes awarded at bingo games are very substantial. Particulars were obtained from organizations regularly sponsoring bingo games in one larger Canadian city indicating that it was not uncommon for two or more automobiles to be awarded during the night's play together with a wide range of valuable and less expensive prizes. The widespread occurrence of lotteries and bingos of this type poses the most acute problem of control. There was evidence that sales-promotion contests, in the nature of lotteries, carried on by press, radio and other means were increasing in volume and created an equally difficult problem of control under the present law.

Section 2: Results of Inconsistencies and Anomalies in Present Law

7. There was general agreement that the lack of clarity in the present lotteries provisions made efficient enforcement impossible. This defect arises from the lack of integration of the present provisions referred to in paragraph 2 and from the contradictions and uncertainties resulting from judicial interpretation. The Committee is of the opinion that the present law ought to be carefully redrafted to eliminate the ambiguities and inconsistencies which have militated against proper enforcement. The main problems created by the unsatisfactory wording of the present law are set forth in Chapter VI which contains the Committee's proposals for amendment.

Section 3: Lack of Public Support for Lottery Laws

8. The Committee is of the opinion that the enforcement of the present provisions is a matter of concern in all parts of Canada. It appears that the standards of enforcement vary from province to province and that considerable variations occur within provinces reflecting to some extent the differing opinions of various communities on lotteries. Whatever the variations in standards of enforcement, the Committee notes that there is widespread difficulty in enforcement and it is disposed to accept the statement of the Commissioner of the Royal Canadian Mounted Police that there is lack of support for the present prohibitory laws and that they cannot be enforced in the face of adverse public opinion.

9. The effect of this lack of public support for the present lotteries law is observable in many parts of Canada. There is a fairly widespread violation, not only of the spirit but the letter of the lotteries law, frequently by organizations representative of the community in general and motivated by worthy purposes of community improvement or charity. The Committee has little doubt that the results of this evasion of the lotteries law are serious in that the law and law enforcement in general are thus brought into contempt.

Section 4: Fraudulent Lotteries

10. An unsatisfactory by-product of the present situation is the existence of fraudulent lotteries which law-enforcement agencies are unable or unwilling to control. This being so, it is difficult to protect the public from fraudulent

lottery schemes where all or the major portions of the proceeds are taken by promoters operating under the guise of charity. Several types of fraud were brought to the Committee's attention. There was evidence of widespread sales of counterfeit Irish Sweepstakes tickets. Lotteries had been promoted by professional operators, hidden by some spurious charitable organization or purpose, all the proceeds of which were taken by the promoters. Some lotteries, organized by reputable organizations for worthy purposes, had been entrusted to the management of professional promoters who had retained most of the proceeds. There was evidence that professional operators had conspired to manipulate and cheat at bingo games and thereby gain valuable prizes. It is difficult to control these frauds under the existing laws.

Section 5: Conclusions

11. The Committee recognized that there are many differences of opinion on lotteries in Canada. Nevertheless, the Committee received sufficiently clear indications of opinion from most law-enforcement agencies to indicate their dissatisfaction with the present situation and their view that some substantial changes in the law are required in order to correct it. In particular, the Committee is under the impression that most law-enforcement agencies consider that clarification of the existing lotteries provisions will not, of itself, solve the difficulty and that some new departure in policy is required to bring order into the administration of the lotteries law.

CHAPTER IV—GENERAL CONSIDERATIONS AFFECTING LOTTERY LAWS

Section 1: Introduction

12. The Committee received expressions of opinion from law-enforcement agencies and organizations representative of all sections of Canada, and, in addition, heard evidence on the history and effect of lottery laws in the United States and other countries from Virgil W. Peterson of the Chicago Crime Commission. Through the co-operation of the Department of External Affairs, it obtained particulars of the lottery laws of seventeen foreign countries and a special presentation on Australian lottery laws made by Miss Isobel Atkinson and was later commented on by the Australian government. The presentations covered all aspects of the lottery problem and it is only possible to summarize their effect in general terms.

Section 2: Submissions and Arguments favouring Relaxation of Existing Prohibitions

13. The Attorneys General of most provinces, the Canadian Association of Chiefs of Police and the Commissioner of the Royal Canadian Mounted Police, all representing the preponderant view of law-enforcement agencies, favoured clarification and some relaxation of the present prohibitions against lotteries. They were supported by the Canadian Legion, the Trades and Labour Congress, and to a lesser extent by the Canadian Association of Exhibitions and allied organizations who sought an extension and clarification of the existing exemptions in favour of agricultural fairs.

14. The considerations mentioned in Chapter III were urged as the principal reasons for relaxing existing prohibitions against lotteries. It was contended that lack of public support for existing prohibitions had resulted in inability to enforce the law and this in turn had tended to bring the law into disrepute. Relaxation, which would bring the law into step with public opinion, was urged as the solution for the present difficulty. Those favouring this course

drew a parallel with the attempted prohibition of the sale of alcoholic beverages. Prohibition had failed and had been replaced by licensing and control laws which were said to be relatively more enforceable. A new system of control based on these premises would enable the authorities to control promoters of lotteries and prevent individuals from profiteering from charitable lotteries. It was also contended that charitable and worthy causes would benefit from amendment which would legalize the holding of lotteries for these purposes.

Section 3: Submissions and Arguments favouring Maintenance or Extension of Existing Prohibitions

15. Relaxation of the existing prohibitions was opposed by the Canadian Council of Churches, representing the principal Protestant churches in Canada and also, in separate submissions by the United Church of Canada and the Anglican Church. The Canadian Welfare Council, which was supported in its representation by the Assistant Director of Police for the City of Montreal and the Police Chief of Hull, opposed relaxation and proposed further restrictions, as did the Retail Merchants' Association of Canada. The presentation of Virgil W. Peterson favoured maintenance of strict prohibitory laws because, in his view, history indicated that attempts to control the problem by regulating legalized lotteries or other forms or gambling would fail.

16. Those opposed to lotteries raised both moral and practical arguments against relaxing existing prohibitions. From the standpoint of moral principle it was urged that lotteries were inherently wrong because they were based on chance. They had adverse effects on both the individual and the nation because they fostered a desire "to obtain something for nothing" and were disruptive in their social and economic consequences. They set a poor example for young people. It was alleged that lotteries had been abolished in the United States and the United Kingdom in the nineteenth century for practical and not moral or religious reasons because experience had shown that they produced disastrous economic and social consequences.

17. It was also contended that experience in other jurisdictions had demonstrated that any attempt to achieve better control through licensing or other similar devices was not likely to succeed and that the only effective way of dealing with lotteries was by strict enforcement of prohibitory provisions. Organized gambling in any form was a focus of criminal activity in the community and the extension of lotteries would create new opportunities for exploitation by the criminal element. The door would be opened to profiteering and professional promoters. Further, it was maintained that the creation of new opportunities for legalized gambling through lotteries would not stop illegal sales of foreign sweepstakes tickets or fraudulent lotteries.

18. Lotteries were also condemned as an unsatisfactory and inefficient method of raising money for charity. Under the best of circumstances, an unduly high proportion of the money raised was devoted to prizes and expenses. Experience indicated that, where competition existed between lotteries, expenditures for prizes to attract patronage were increased and the balance available for charity tended to decrease. There was also the danger that charitable lotteries would undermine charitable giving generally because purchasers of lottery tickets would refrain from making substantial donations to worthy causes. It was claimed that lotteries preyed on the poor, that they were patronized by persons least able to afford them; and that some families had suffered because of over-indulgence in lotteries and bingo.

19. Contests, in the nature of lotteries designed to promote sales of merchandise, were condemned because they diverted attention from normal values,

led to higher prices, and placed small independent merchants, who were in no position to offer elaborate prizes, at a disadvantage. The widespread occurrence of this type of contest fostered a gambling spirit and made enforcement of the ordinary lottery laws more difficult.

Section 4: Conclusions

20. The Committee is impressed, above all else, by the unsatisfactory condition which now exists and which tended to worsen during the time the Committee had the subject under study. It is the Committee's belief that the principal aim of new legislation should be to provide workable laws which will receive public support and which can be effectively enforced.

21. The Committee does not wish in any way to give countenance to or encourage widespread organized gambling through lotteries or other means. It recognizes that unrestrained gambling would produce grave moral, social and economic effects in the community and it is of the opinion that the duty of the state is to ensure that lotteries and other forms of gambling are kept within limited bounds. This desirable result has not been achieved and, in the Committee's opinion, cannot be achieved within the framework of the present law.

22. The Committee, therefore, considers that the law should be amended with three purposes in view. First, the prohibitions against lotteries must be clearly stated; second, the inconsistencies in the present law must be eliminated; and third, the types of lotteries to be permitted must be clearly defined and subjected to effective supervision and control. The implementation of this policy will result in the effective prohibition and restriction of several types of lotteries now carried on in spite of their dubious legality. It will also result in some relaxation of existing prohibitions to permit adequate and workable control. It is precisely because the Committee has concluded that the present prohibitory laws do not protect the public that it is disposed to recommend some relaxation in line with the same reforms introduced with respect to the control, sale, and consumption of alcoholic beverages. Prohibition proved unworkable and led to many serious abuses; but the present system of licensing and control, which is supported by the main body of public opinion, has worked satisfactorily and on the whole appears to have contributed to efficient law enforcement.

CHAPTER V—STATE LOTTERIES

23. Only one representation was received by the Committee favouring state lotteries. The Committee considers that there is no widespread support or demand for state-operated lotteries in Canada. It, accordingly, does not recommend any state lotteries.

24. The Committee noted that state lotteries are operated in many countries of radically different racial origins and traditions. Where state lotteries occur, they are usually acknowledged to be a facility created by the state for the purpose of directing the gambling instincts of the public into a controlled channel. It should be noted that the common impression, that state lotteries provide substantial revenues and significantly relieve the burden of taxation in countries where they are held, is not supported by the evidence received by the Committee. In countries holding state lotteries, the revenue derived from such lotteries is generally very small in comparison with total government expenditure. Only a few nations attempt to justify the existence of state lotteries on the ground of their relatively insignificant contribution either to the total national revenue or to specific purposes such as health, education or

charity. The organization which advocated a state lottery in Canada frankly intended that it should be set up for the purpose of providing facilities for gambling and not as a means of raising revenue for any purpose.

25. The Committee has concluded that no useful purpose could be achieved by the institution of a state lottery in Canada. It considers that the proper role of the state is to control and regulate such gambling activity as is permitted to private citizens by the general law, and that it is not appropriate for the state to provide facilities for gambling to the public. The Committee includes, in the prohibition of state lotteries in Canada, those which might be operated by provincial and municipal governments as well as the federal government.

CHAPTER VI—CONCLUSIONS AND RECOMMENDATIONS

Section 1: Lotteries Prohibited Subject to Clearly-defined Exceptions

26. The Committee considers that all lotteries should be prohibited except to the extent that their operation is authorized by clearly limited and defined exceptions contained in the Criminal Code. The exceptions which the Committee recommends are described in Section 4 of this Chapter.

Section 2: Specific Proposals to make Prohibition Effective

(*a*) Repeal and Re-enactment of all Lottery Provisions

27. In order to carry into effect the proposal contained in paragraph 25, the Committee considers that the anomalies, ambiguities and inconsistencies in the present law will have to be eliminated. No further patching of the numerous paragraphs enumerated in paragraph 4 can accomplish any useful purpose and the Committee recommends that the present lottery provisions be repealed in their entirety and replaced by completely new provisions carrying into effect the policies recommended in this Chapter. In particular, to avoid some of the major causes of uncertainty and confusion arising from the present provisions, the Committee recommends that the detailed changes discussed in the following paragraphs be incorporated in the new lotteries law.

(*b*) "Consideration" not an Element in Lottery

28. Doubt exists whether the paying of consideration by a participant in a lottery is an essential element of the offence. Because of this uncertainty, various types of contests in the nature of lotteries, where consideration is not specifically paid by the participant, have been upheld; while, in other cases, courts have either stated that consideration is not an element or have held that consideration of an intangible kind has in fact been given. The Committee considers that the hallmark of a lottery is the disposal of prizes of goods or money by any mode of chance and that the presence or absence of consideration is an irrelevant consideration. Accordingly, it recommends that the law be clarified by clearly specifying that consideration is not an essential element of a lottery.

(*c*) Prohibition of Pools and Sweepstakes

29. The law at present prohibits pools, sweepstakes and similar schemes where the award of prizes is dependent upon the result of a horse race, sports contest or other uncertain event. The Committee considers that the law prohibiting lotteries should continue to apply to such schemes regardless of whether the award of the prize is dependent upon chance, skill or a mixture of chance and skill. The Committee further considers that such pools, sweepstakes and similar schemes should not be included within the category of permitted lotteries described in Section 3.

(*d*) Lotteries to include Bingo

30. The Committee has already noted that at least one important judicial decision has held that bingo is a game of chance and falls under the Gaming Section of the Criminal Code. Other decisions have held that bingo is a lottery. The Committee considers that in its essence bingo is more accurately described as a lottery in which prizes are distributed by means of chance rather than as a game in which players pit their skill and luck against each other. In addition, it appeared to the Committee that in practice voluntary organizations regarded bingos and lotteries as alternative methods of raising funds for worthy purposes. The Committee recommends that the law be clarified to insure that bingo and similar games be subjected to the same prohibitions and controls as apply to lotteries.

(*e*) Advertising Contests

31. The Committee noted the prevalence of a great variety of advertising and promotion contests in the nature of lotteries. These contests are conducted on business premises and by means of press, radio and television. Because the present provisions are so uncertain in their effect, difficulty has been experienced in controlling such contests. Several problems may be mentioned. The present section prohibits the disposal of goods by any game of mixed chance and skill, but does not prohibit the award of money prizes. In most commercial contests, doubt exists as to whether consideration is given by the contestant and, for the reasons outlined in paragraph 28, it is difficult to secure a conviction in such circumstances. In other cases doubt exists where the final award of the prize is made dependent upon some alleged exercise of skill although in fact the winner is selected by chance; an obvious example being where a name is drawn and the person is required to answer an extremely simple question to obtain the prize. There are other contests in which skill ostensibly plays a part but which in fact are conducted like lotteries with the award depending almost solely on chance. An example is the completion of an advertising slogan where the winner is chosen by casual selection from among thousands of contestants. Still other contests depend for their apparent legality on the completion of some fictitious or nominal purchase or sale when in fact a winner is selected by lot. An example is afforded by the "photo-nite contests" in vogue in some motion-picture theatres.

32. The Committee considers that the prevalence of this type of advertising contest is not beneficial to the community. These contests are purely commercial in their inspiration and confer no social benefit. They appeal to the gambling instinct and, because they are so widespread, undoubtedly stimulate it. While commercial lotteries of this type are operated, it is and will continue to be extremely difficult to enforce prohibitions and restrictions against lotteries organized by reputable groups for charitable and community purposes. Moreover, the Committee is impressed by the evidence that the operation of such commercial contests distorts the community's sense of values, diverts attention from prices and quality of merchandise, and may enhance the cost of goods. In addition, the Committee considers that such contests place the small, independent merchant at a disadvantage in relation to large stores which can absorb more easily the cost of prizes and the extra overhead expense which such promotions inevitably create.

33. The Committee recommends that the laws prohibiting lotteries should apply equally to advertising and promotion contests which involve any element of chance.

(*f*) Games Played "occasionally" for Charitable Purposes

34. One of the most confusing provisions in the existing law is the proviso excepting, from the definition of a common gaming house in section 168(2)(b), a place used "occasionally" by charitable or religious organizations for games for which a direct fee is charged when the proceeds are used for charitable or religious objects. The Committee noted that the uncertainty of the meaning of the word "occasionally" made it difficult for law-enforcement authorities or the courts to establish any standards by which the propriety of bingo games conducted for charitable purposes could be judged. It was the general conclusion that the unsatisfactory nature of this exempting provision made effective enforcement difficult. In view of the recommendations contained in Section 3 of this Chapter, which clearly specify the conditions under which lotteries, including bingo games, can be lawfully held, the Committee recommends that this proviso be deleted and be replaced by one which states that the holding of such authorized lotteries would not bring premises within the definition of a common gaming house.

Section 3: Proposals in Aid of Enforcement

(*a*) Prosecution of Winners and Confiscation of Prizes

35. Some witnesses drew the Committee's attention to the fact that winners of large lotteries and sweepstakes receive considerable publicity and are apparently never prosecuted for participation in illegal activities. The present law prohibits the possession of illegal lottery tickets and also provides for the confiscation and forfeiture of property, including prizes, connected with a lottery. The Committee is of the opinion that the apparent immunity from prosecution enjoyed by winners of large illegal lotteries and sweepstakes militates against effective enforcement. Accordingly, it recommends that the provisions prohibiting the acquisition and possession of lottery tickets and authorizing the confiscation of prizes and other property connected with lotteries be more consistently enforced by the responsible law-enforcement authorities, and that the provisions be clarified to the extent necessary to facilitate effective enforcement.

(*b*) Importation of Foreign Lottery Tickets

36. Although foreign lotteries, including sweepstakes, are prohibited in Canada, the Committee noted that no specific prohibition existed against the importation of foreign lottery tickets. The Committee recommends that appropriate amendments be made to the customs laws to prohibit the importation of foreign lottery tickets and any advertising and other material connected with such lotteries.

Section 4: Exemptions

(*a*) Lotteries in Aid of Charitable, Religious, and Community Purposes

37. The Committee considers that the present exemption which authorizes the holding of raffles at bazaars with the consent of municipal authorities is no longer workable. Prizes, although not limited in number, cannot exceed $50.00 in value and must first be offered for sale. The limitation on the value of prizes is unrealistic in terms of today's values and the restriction of permitted lotteries to bazaars where the prizes are first offered for sale does not reflect the present habits of the Canadian people.

38. The Committee considers that some adequate provision should be made for the holding of lotteries in support of charitable, religious, and other community purposes. Such lotteries appear to command widespread support among the Canadian public and the present law, to a considerable extent, has been rendered unenforceable because of this public sentiment.

39. Certain general observations apply to such lotteries. Experience shows that any attempt to draft unduly severe laws restraining lotteries and other indulgences tends to create disrespect for the law in general. It is equally true that failure to impose proper restraints on such lotteries will make them attractive to professional promoters. Prizes, although sufficient to attract patronage, should not be permitted to become so valuable as to create large lotteries because large lotteries inevitably attract professional operators. Essential expenses for printing and other necessities must be met but expenses for advertising should be curtailed and no payment by way of wages, commission or otherwise should be permitted for services of individuals in the promotion or conduct of the lottery. It is essential to provide for some type of supervision and auditing. This involves licensing and inspection, two functions not traditionally associated with criminal law but which appear essential to effective enforcement.

40. The Committee, with the above principles in view, recommends that the law be amended to provide that lotteries organized and conducted under the conditions set forth in the following paragraphs be exempted from the general prohibition against lotteries.

(i) Licence

41. Each lottery must be licensed by competent provincial authority or by such municipal authority as the province may designate. The licence must be conditional on the observance of the conditions recommended in the following paragraphs and the licensing authority, after proper investigation, having satisfied itself of the qualifications of the applicant. In the preparation of legislation, some consideration should be given to provision for an appeal from or review of decisions of licensing authorities.

(ii) Eligible Organizations and Purposes

42. Only organizations having charitable, religious or other purposes beneficial to the community at large should be eligible for licences. Such organizations need not be incorporated. Specifically, it should be a condition of each licence that the net proceeds of the lottery should be devoted to charity, religion or community welfare.

(iii) Restrictions on Licence

43. No organization should be permitted to conduct concurrent lotteries. No subsequent licence should be issued to any organization unless and until all reports and requirements connected with its previous lottery are completed to the satisfaction of the licensing authority. Any organization which violated the terms of its licence would be ineligible for a subsequent licence for a period of five years.

(iv) Prize Limits

44. The Committee gave careful consideration to the best method of limiting lotteries. It recognized that in some areas regular lotteries or bingos for small prizes were held for worthy purposes while in other parts of Canada large lotteries were held at less frequent intervals. The Committee reached the conclusion that it would not be realistic to attempt to limit the number of

lotteries which any organization might hold in a year because such an arbitrary limitation would invite evasion by small groups which would be no easier to prevent than the present violation of the lottery laws. The Committee considered that it would be more realistic to limit the total value of prizes which any organization could dispose of by lotteries in any calendar year to $5,000. This limit would permit the award of an automobile, a most popular type of prize for the larger type of raffle, or, alternatively, the holding of a considerable number of lotteries for more modest prizes. Prizes, whether purchased or donated, would be valued at their retail list price at the time the lottery was conducted.

45. It is necessary to prohibit the holding of joint lotteries by two or more organizations or any similar practice designed to pyramid the value of prizes awarded on one occasion above the maximum of $5,000 prescribed for a single organization.

46. For the purpose of computing prize limits, the value of prizes awarded by a group of organizations connected with or part of the same institution would have to be added together so that no institution could evade the prize limit by the conduct of numerous yearly lotteries by subsidiary or affiliated organizations.

(v) Expenses Limited

47. Limitation of expense is necessary to prevent the incursion of professional operators by making permitted lotteries unprofitable and unattractive to them. Likewise, limitation of expense is essential to ensure that a reasonable proportion of the proceeds is devoted to the purposes for which it is organized. For example, the evidence presented with reference to large bingo games operated by service clubs in one larger Canadian city indicated that an increasing proportion of the proceeds was devoted to prizes and other expenses as a result of competition to attract patronage. The result was that less than one-fifth of the gross proceeds on the average was ultimately available for charitable and other worthy purposes.

48. The Committee gave careful consideration to the possibility of limiting expenses, apart from prizes, by specifying a fixed dollar-limit or a ceiling based on a percentage of prizes or gross receipts. The Committee recognized that the percentage or absolute levels of expense appropriated for a small lottery would not be suitable for a larger lottery. Moreover, it considered that any percentage limitation based on gross proceeds could not be met if patronage were limited by circumstances beyond the control of the organization. Because of this, fixed expense limits did not appear realistic and the Committee considered they would not be enforceable.

49. The Committee concluded that the most realistic method of controlling expense was by the prohibition or limitation of certain types of disbursement. In reaching this conclusion, the Committee also was influenced by the consideration that the ceiling on prizes would effectively limit the gross proceeds and provide a practical limit to indiscriminate expense.

50. The Committee recommends that no fee, commission, salary or any other type of remuneration be paid to any individual in cash or in kind or in free lottery tickets or in any other manner for any services performed in promoting, organizing, or conducting the lottery. This prohibition would not extend to *bona fide* tradesmen's accounts for the supply of essential services and supplies, janitor service, or auditing service. The prohibition is intended to eliminate the professional promoter. It is also intended to ensure that

lotteries promoted by organizations for the benefit of the community are in fact operated by the voluntary effort of members of those organizations and are not turned over to the management of outside parties.

51. Special restrictions are necessary to ensure that the proceeds are not appropriated under the guise of rent either for equipment or premises. The experience of other jurisdictions indicates that rental of lottery equipment should be prohibited because the operation of such rental services attracts an undesirable element who would acquire a vested interest in the continuance of lotteries. Likewise, it is essential to limit the payment of rent for premises to a fixed sum and to prohibit any rent based on a percentage of the proceeds. The rent should be the fair economic rent ordinarily charged for such premises. Consideration should be given in framing any legislation to the prevention of holding lotteries in premises which may have been acquired, as has happened in other jurisdictions, by professional operators with the intent of obtaining an undue percentage of lottery proceeds.

52. The Committee considers that the size of a lottery can be effectively limited if advertising is restricted. Restriction on advertising will also avoid the dissipation of proceeds in costly competition for patronage. The Committee recommends that advertising be restricted to posters attached to the premises occupied by the organization conducting the lottery, the place where the lottery is to be held, and the place where the prizes are displayed. The display of prizes outside the area covered by the licence should be prohibited. Advertising through the mails, or by the distribution of handbills, or by sound truck should be prohibited. Advertising by radio, television, or newspaper should be restricted to three newspaper advertisements of not more than one-eighth page each and three spot advertisements by radio or television prior to the holding of the lottery.

(vi) Area of Operation

53. The licensing authority must specify the area within which lottery tickets may be offered for sale by the licensee. The restrictions on prizes and expense recommended above will assist in confining lotteries to their prescribed areas.

(vii) Report

54. Within a specified period after the holding of the lottery, the licensee must submit to the licensing authority a report, verified to the satisfaction of the authority, indicating, in detail, gross receipts, disbursements for prizes and other expenses, net proceeds available for charitable, religious or community purposes. Such reports must be kept available for inspection and publication. An annual summary of the results of such lotteries should be submitted by each licensing authority to the Minister of Justice to facilitate the compilation of statistics.

(viii) Enforcement

55. The violation of any of the conditions outlined above, as well as any conditions attaching to small lotteries and agricultural fairs, would be an offence for which the chief officers of the organization would be held responsible.

(*b*) Small Lotteries

56. The Committee noted that it was not uncommon for organizations holding meetings, bazaars, or social gatherings to have incidental raffles. Frequently, a small door prize is raffled and sometimes food and other small articles are raffled as a means of disposing of them at the end of the gathering. The Committee considered that it is not practicable to subject raffles of this

type to the licensing provisions outlined in the preceding paragraphs. Accordingly, it recommends that small raffles be exempted from such licensing provisions and be authorized as exceptions to the general prohibition against lotteries if they meet the following conditions:

(i) The raffle is not the main purpose of the meeting or gathering and is merely incidental thereto.

(ii) Only goods may be raffled and the total value of such goods should not exceed $50.00; cash may not be given in place of goods.

(iii) The meeting or gathering must be held for non-commercial purposes.

(c) Agricultural Fairs

57. At present, agricultural fairs are dealt with under the Lotteries Section and are exempted from the provisions of both the Lotteries and Gaming Sections. With the exception of certain notorious games, all the usual games of chance found on the midway of an exhibition are legalized. In recent years, doubt has arisen as to whether the pre-sale of admission tickets off the exhibition premises, upon which draws for valuable prizes are based, is authorized by the exemption. It has been strongly represented to the Committee that such pre-sale is essential to some exhibitions as a form of rain insurance and as a means of guaranteeing a satisfactory crowd at such exhibitions.

58. The Committee has concluded that it is desirable to clarify the law by specifying that the pre-sale of exhibition tickets to which a lottery is attached is lawful. Such pre-sale can only be undertaken by an agricultural exhibition association recognized as such by the federal or a provincial government. The association must obtain a licence from the licensing authority vested with responsibility for licensing the lotteries referred to in Section 1 of this Chapter. The restrictions and conditions governing such lotteries would apply to any lottery scheme attached to the pre-sale of exhibition admission tickets with the exception that the licensing authority may permit expenditures to cover the cost of ticket sales on such scale as it may deem appropriate and also may authorize expenditures for prizes of a value not exceeding $10,000.

CHAPTER VII—SUMMARY OF RECOMMENDATIONS

59. The Committee's recommendations may be summarized as follows:

(1) All lotteries should be prohibited except those which are clearly and definitely exempted. The recommended exemptions are set forth in item (5) below.—(*See paragraph 26*)

(2) To give effect to the above principal recommendation of the Committee, the following specific proposals are made:

(a) The existing lottery provisions in the Criminal Code should be repealed in their entirety and re-enacted to eliminate ambiguities and inconsistencies.—(*See paragraph 27*)

(b) It should be made clear that "consideration" is not to be an essential element of lotteries.—(*See paragraph 28*)

(c) The existing prohibition against sweepstakes, pools, and similar schemes should be continued, strengthened, and enforced.—(*See paragraph 29*)

(d) Bingo and similar games should be dealt with on the same basis as lotteries.—(*See paragraph 30*)

(e) All types of advertising contests in which chance plays any part should be clearly prohibited.—(*See paragraph 33*)

(f) The existing exemption of games of chance played "occasionally" for charitable purposes should be replaced by the exemption set forth in item (5) below.—(*See paragraph 34*)

(3) The importation of foreign lottery tickets should be prohibited.—(*See paragraph 36*)

(4) State lotteries should be prohibited as at present.—(*See paragraphs 23-25*)

(5) Exemption of three types of lotteries is recommended, as follows:

(a) Lotteries licensed by provincial or delegated authority in aid of charitable, religious, and community purposes if they meet the following conditions:

(i) Retail value of prizes offered by any one organization not to exceed $5,000 in any year.—(*See paragraphs 37-55*)

(ii) Expense to be limited by prohibition against payments to promoters or any other persons for services performed in connection with the lottery; by the limitation of rent and similar charges; and the restriction of advertising.—(*See paragraphs 47-52*)

(iii) Properly audited reports on the operation of each such lottery to be submitted to the licensing authority prior to the issue of a subsequent licence.—(*See paragraph 54*)

(b) Small raffles of goods only may be held without licence in connection with non-commercial gatherings provided that the raffle is merely incidental to the gathering and the prizes do not exceed $50.00 in total value.—(*See paragraph 56*)

(c) The present exemption permitting the operation of midways at agricultural fairs to be continued, and agricultural fair associations to be permitted, if licensed, to hold lotteries for prizes not exceeding a total of $10,000 yearly in connection with the pre-sale of admission tickets.—(*See paragraphs 57-58*)

60. The Appendix to this Report is annexed hereto.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons

APPENDIX

CRIMINAL CODE PROVISIONS GOVERNING LOTTERIES

(2-3 Eliz. II, Chapter 51, 1953-54)

INTERPRETATION

168. (1) In this Part,

(a) "bet" means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada; "Bet".

(b) "common bawdy-house" means a place that is "Common bawdy-house."
(i) kept or occupied, or
(ii) resorted to by one or more persons
for the purpose of prostitution or the practice of acts of indecency;

(c) "common betting house" means a place that is opened, kept or used for the purpose of "Common betting house."
(i) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or
(ii) enabling any person to receive, record, register, transmit or pay bets or to announce the results of betting;

(d) "common gaming house" means a place that is "Common gaming house."
(i) kept for gain to which persons resort for the purpose of playing games; or
(ii) kept or used for the purpose of playing games
(A) in which a bank is kept by one or more but not all of the players,
(B) in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,
(C) in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or
(D) in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game;

(e) "disorderly house" means a common bawdy-house, a common betting house or a common gaming house; "Disorderly house."

(f) "game" means a game of chance or mixed chance and skill; "Game."

(g) "gaming equipment" means anything that is or may be used for the purpose of playing games or for betting; "Gaming equipment."

(h) "keeper" includes a person who "Keeper."
(i) is an owner or occupier of a place,

(ii) assists or acts on behalf of an owner or occupier of a place,

(iii) appears to be, or to assist or act on behalf of an owner or occupier of a place,

(iv) has the care or management of a place, or

(v) uses a place permanently or temporarily, with or without the consent of the owner or occupier; and

"Place." (i) "place" includes any place, whether or not

(i) it is covered or enclosed,

(ii) it is used permanently or temporarily, or

(iii) any person has an exclusive right of user with respect to it.

Exception. (2) A place is not a common gaming house within the meaning of subparagraph (i) or clause (B) or (C) of subparagraph (ii) of paragraph (d) of subsection (1)

(a) while it is occupied and used by an incorporated *bona fide* social club or branch thereof if

(i) the whole or any portion of the bets on or proceeds from games played therein is not directly or indirectly paid to the keeper thereof, and

(ii) no fee in excess of ten cents an hour or fifty cents a day is charged to persons for the right or privilege of participating in the games played therein; or

Charitable organizations. (b) while occasionally it is used by charitable or religious organizations for the purpose of playing games for which a direct fee is charged to persons for the right or privilege of playing, if the proceeds from the games are to be used for a charitable or religious object.

Onus. (3) The onus of proving that, by virtue of subsection (2), a place is not a common gaming house is on the accused.

(4) A place may be a common gaming house notwithstanding that

Effect when game partly played on premises. (a) it is used for the purpose of playing part of a game and another part of the game is played elsewhere; or

(b) the stake that is played for is in some other place.

SEARCH

Warrant to search. **171.** (1) A justice who receives from a peace officer a report in writing that he has reasonable ground to believe and does believe that an offence under section 176, 177, 179 or 182 is being committed at any place within the jurisdiction of the justice, may issue a warrant under his hand authorizing a peace officer to enter and search the place by day or night and seize anything found therein that may be evidence that an offence under section 176, 177, 179 or 182, as the case may be, is being committed at that place, and to take into custody all persons who are found in or at that place and requiring those persons and things to be brought before him or before another justice having jurisdiction, to be dealt with according to law.

Search without warrant, seizure and arrest.

(2) A peace officer may, whether or not he is acting under a warrant issued pursuant to this section, take into custody any person whom he finds keeping a common gaming house and any person whom he finds therein, and may seize anything that may be evidence that such an offence is being committed and shall bring those persons and things before a justice having jurisdiction, to be dealt with according to law.

Disposal of property seized.

(3) Except where otherwise expressly provided by law, a court, judge, justice or magistrate before whom anything that is seized under this section is brought may

(a) declare that any money or security for money so seized is forfeited, and

(b) direct that anything so seized, other than money or security for money, shall be destroyed,

if no person shows sufficient cause why it should not be forfeited or destroyed, as the case may be.

When declaration or direction may be made.

(4) No declaration or direction shall be made pursuant to subsection (3) in respect of anything seized under this section until

(a) it is no longer required as evidence in any proceedings that are instituted pursuant to the seizure, or

(b) the expiration of thirty days from the time of seizure where it is not required as evidence in any proceedings.

Converting security into money.

(5) Where any security for money is forfeited under this section, the Attorney General may, for the purpose of converting the security into money, deal with the security in all respects as if he were the person entitled to the proceeds thereof.

Telephones exempt from seizure.

(6) Nothing in this section or in section 431 authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment that may be evidence of or that may have been used in the commission of an offence under section 176, 177, 179 or 182 and that is owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

Lotteries.

179. (1) Every one is guilty of an indictable offence and is liable to imprisonment for two years who

Publishing lottery scheme.

(a) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever;

Disposing of lottery tickets.

(b) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever;

Conveyance of material for lottery.

(c) knowingly sends, transmits, mails, ships, delivers or allows to be sent, transmitted, mailed, shipped or delivered, or knowingly accepts for carriage or transport or conveys any

article that is used or intended for use in carrying out any device, proposal, scheme or plan for advancing, lending, giving, selling or otherwise disposing of any property by any mode of chance whatsoever;

Conducting lottery scheme.

(*d*) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of;

Conducting scheme for disposal of property.

(*e*) conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, upon payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under the scheme, contrivance or operation, to receive from the person conducting or managing the scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given, or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under the scheme, contrivance or operation;

Disposal of goods by game of chance.

(*f*) disposes of any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant or competitor pays money or other valuable consideration;

Inducing persons to stake money.

(*g*) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, three-card monte, punch board, coin table or on the operation of a wheel of fortune;

Playing three-card monte.

(*h*) for valuable consideration carries on or plays or offers to carry on or to play, or employs any person to carry on or play in a public place or a place to which the public have access, the game of three-card monte;

Receiving bets on three-card monte.

(*i*) receives bets of any kind on the outcome of a game of three-card monte; or

Permitting three-card monte.

(*j*) being the owner of a place, permits any person to play the game of three-card monte therein.

"Three-card monte."

(2) In this section "three-card monte" means the game commonly known as three-card monte and includes any other game that is similar to it, whether or not the game is played with cards and notwithstanding the number of cards or other things that are used for the purpose of playing.

Exemption of Agricultural fairs.

(3) Paragraphs (*f*) and (*g*) of subsection (1), in so far as they do not relate to a dice game, three-card monte, punch board or coin table, do not apply to an agricultural fair or exhibition, or to any operator of a concession leased by an agricultural fair or exhibition board within its own grounds and operated during the period of the annual fair on those grounds.

Offence.

(4) Every one who buys, takes or receives a lot, ticket or other device mentioned in subsection (1) is guilty of an offence punishable on summary conviction.

Lottery sale void.

(5) Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, is forfeited to Her Majesty.

Bona fide purchase.

(6) Subsection (5) does not affect any right or title to property acquired by any *bona fide* purchaser for valuable consideration without notice.

Foreign lottery included.

(7) This section applies to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, change or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

Saving.

(8) This section does not apply to

Dividing property by lot.

(*a*) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests in any such property;

Raffles at church bazaars.

(*b*) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them has a value exceeding fifty dollars;

Rewards to promote thrift.

(*c*) the distribution by lot of premiums given as rewards to promote thrift by punctuality in making periodical deposits of weekly savings in any chartered saving bank; or

Recalling securities by lot.

(*d*) bonds, debentures, debenture stock or other securities recallable by drawing of lots and redeemable with interest and providing for payment of premiums upon redemption or otherwise.

FIFTH AND FINAL REPORT

to

THE SENATE AND THE HOUSE OF COMMONS PRESENTED ON TUESDAY, JULY 31, 1956.

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as its

FINAL REPORT

being the Fifth Report of the current session. This report contains no further recommendations on the three questions referred to the Committee but is limited to an account of its organization, activities, procedure, and certain observations thereon. The First Report, presented on March 21, 1956, was a recommendation concerning the Committee's quorum. The Second, Third, and Fourth Reports, presented on June 27, July 11, and July 31, 1956, were, in that order, the Final Reports on Capital Punishment, Corporal Punishment, and Lotteries.

Establishment of Committee

1. The establishment of the Joint Committee on the three questions of capital punishment, corporal punishment, and lotteries stems from a recommendation of the Special Committee on the Criminal Law made to the House of Commons on May 4, 1953.

2. On January 12, 1954, during the First Session of the present Parliament, the House of Commons initiated the resolution to constitute the Committee, and in this proposal the Senate concurred on February 10, 1954. The Committee's report on its organization and activities during its first year was presented to both Houses on June 16, 1954.

3. At the Second Session of this Parliament, the Committee was reconstituted to resume these inquiries. This action was initiated by the House of Commons on January 14, 1955, with which the Senate united on January 25, 1955. The report of the Committee on its reorganization and second year of activity was presented to both Houses on June 29, 1955.

4. During the present session, the Committee was reconstituted for the purpose of completing its final reports to Parliament. The reconstitution of the Committee was initiated by the House of Commons on March 7, 1956, and this action was confirmed by the Senate on March 14, 1956.

Terms of Reference and Membership

5. The Orders of Reference from both Houses, here consolidated as of the present session, were as follows:

"That a Joint Committee of both Houses of Parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent;

"That Miss Bennett, Messrs. Boisvert, Brown (*Essex West*), Brown (*Brantford*), Cameron (*High Park*), Castleden, Fairey, Garson, Leduc (*Verdun*), Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Mrs. Shipley, and Messrs. Thatcher, Thomas, Valois, and Winch

be members of the Joint Committee on the part of the House of Commons; that the quorum of the said Committee be 9 members thereof; and that Standing Order 67 of the House of Commons be suspended in relation thereto;

"That the following Senators be appointed to act on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators Aseltine, Bouffard, Farris, Fergusson, Hayden, Hodges, McDonald, Roebuck, Veniot and Vien;

"That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary; to call for persons, papers and records; to sit while both Houses are sitting and during adjournments of the Senate, and to report from time to time;

"That the minutes of proceedings and evidence of the Special Committees appointed at the last two sessions to inquire into and report upon the foregoing questions, together with all papers and records laid before them, be referred to the said Committee;

"That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament and that Standing Order 66 of the House of Commons and Rule 100 of the Senate be suspended in relation thereto; and

"That the Committee have power to engage the services of Counsel."

Other members who served temporarily on this Committee during the three-year period were: The Honourable Senators Beauregard, Bishop, Connolly (*Ottawa West*), Tremblay, Wilson, and the following Members of Parliament: Miss Aitken, Messrs. Decore, Dupuis, Fulton, Johnston (*Bow River*), and Shaw.

Summary of Activities

6. At the present session of Parliament, the Committee held its first sitting for preliminary reorganization on March 20, 1956, when the Honourable Senator Salter A. Hayden and Mr. Don. F. Brown, M.P., were re-elected Joint Chairmen for the third consecutive session. At that meeting, the Subcommittee on Agenda and Procedure was again re-appointed and the services of Mr. D. Gordon Blair, Barrister and Solicitor of Ottawa, were again retained as Counsel to the Committee.

7. The activities of the Committees during the first two sessions have been summarized in greater detail in Reports to both Houses on June 16, 1954, and on June 29, 1955. Excluding 14 sittings during the present session (which were devoted entirely to deliberations on the final reports), 59 meetings were held during the previous two sessions at which the question of capital punishment was considered on 45 occasions; the question of corporal punishment on 35 occasions; and the lotteries question on 37 occasions. During the first two sessions, the Subcommittee on Agenda and Procedure met on 31 occasions; and at the present session, in connection entirely with the procedure and preparation of the final reports, it met on 28 occasions.

8. A schedule of the meetings of the Committees of the first and second sessions of Parliament appears in Appendix D of Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence.

9. The printed evidence, upon which the final reports were mainly based, was all taken during the first two sessions and consists of over 1,500 pages. The sources of the evidence taken at both sessions are listed alphabetically for each subject in Appendix E of Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence.

10. In addition to the printed evidence, a large number of miscellaneous representations in the form of briefs, letters, resolutions and petitions were received relating to one or more of the three questions under study. These were examined and analyzed for further sources of information.

11. The Committee obtained reference lists and assistance from the Parliamentary Library and also ordered certain publications for the use of Committee members, such as United Kingdom *Hansard* and proposed legislation, Departmental and Royal Commission Reports, etc., relating to the three questions under review.

12. Prior to the current session, the External Affairs Department, on request of the Committee, gathered material on foreign lotteries through its missions abroad in respect of the following countries: Argentina, Austria, Belgium, Chile, Denmark, France, Ireland, Italy, Mexico, The Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, Switzerland, Uruguay, and the U.S.S.R. This material has not been printed with the evidence.

13. The approach to and method of inquiry followed was reported to both Houses on June 29, 1955. At that time, reconstitution of the Committee was recommended for the current session, with substantially the same powers and membership, to complete the final reports on the three questions. At this session, the Committee at its first meeting instructed the Subcommittee on Agenda and Procedure to perform the preparatory work relating to the final reports and submit recommendations to the Committee for consideration after the Easter recess of Parliament.

Appreciation of Assistance

14. The Committee records its gratitude to individuals, organizations, agencies and departments of federal and provincial governments, including foreign contributors, for their oral or written representations, or assistance rendered in other ways, to the Committee. The principal contributors are listed in the schedule of sittings and also alphabetically in Appendices D and E respectively of Number 21 of the Committee's 1955 printed Minutes of Proceedings and Evidence.

15. The Committee wishes to record its gratitude for the painstaking and efficient service rendered to it by its Counsel, Mr. D. Gordon Blair, during its three years of sittings. It also wishes to commend the faithful and untiring service rendered by the Committee's Clerk, Mr. Alexander Small, and the other members of the staffs of both Houses.

16. The Committee noted the extensive and fair coverage given its proceedings by the press, radio, and television across Canada. The Committee recognized the importance of a well-informed public opinion on these questions and credits this objective to these agencies.

Observations on Joint Committee's Procedure

17. The Committee observed, from time to time during the course of its three-year inquiry, that the Rules, Standing Orders, procedures and practices

of both Houses relating to Special Joint Committees are in need of re-examination and revision to effect greater efficiency, uniformity and clarity. As this subject is beyond the scope of your Committee's powers, no recommendations are being submitted other than to draw these observations to the attention of both Houses.

Printing of Final Reports

18. The Final Reports on Capital Punishment, Corporal Punishment, and Lotteries presented on June 27, July 11 and 31, 1956, respectively, have been printed in both languages as an Appendix to the *Debates of the Senate,* the *Minutes of the Proceedings of the Senate,* and in the *Votes and Proceedings of* the House of Commons; and this final report will be available in the corresponding printed records of both Houses for this day. The Committee, as authorized by its Orders of Reference, has ordered that 2,000 copies of these final reports, after being re-edited against original transcripts for accuracy and elimination of printing errors, be re-published as a single bilingual publication in blue-book form for the use of Parliament.

Minutes of Proceedings and Evidence

19. The Minutes of Proceedings and Evidence for 1954 and 1955, tabled in both Houses on June 29, 1955, and referred to this Committee, were returned to both Houses at this session on presentation of the Final Reports on Capital Punishment, Corporal Punishment, and Lotteries; namely, the Second, Third, and Fourth Reports respectively. At the current session, no evidence was printed and, as all proceedings were held *in camera,* the minutes thereof have been filed with the Committee's papers and records.

Respectfully submitted,

SALTER A. HAYDEN,
Joint Chairman representing the Senate.

DON. F. BROWN,
Joint Chairman representing the House of Commons.