

INTRODUCTION

ABSENCE OF A GLOBAL CONCEPT

(1-2)

1. In this first part of its report, the Commission sets forth the fundamental principles which should guide the legislator and the administrator in the reform of the administration of justice on criminal and penal matters in the Province of Quebec. In other sections of the report, the Commission will endeavour to indicate the specific solutions and remedies ; this introduction is limited to an overall examination of the problems. A detailed study of our system of justice has convinced this Commission of the need to formulate a general policy which, woven into the entire system, would guide the various services with a uniform philosophy.

In developing this policy the Commission is motivated by one basic thought: the respect of the fundamental rights of the individual, without losing sight of the need to intensify the fight against crime.

Thus, the Commission has worked within the mandate given by the Lieutenant-Governor-in-Council, which seeks « recommendations for measures to be taken to assure a greater protection for citizens and their property as well as a greater efficiency in the fight against crime, with all due respect to the fundamental rights of human beings ».

2. Reference should be made here to « The Report on Prison Escapes » completed by the Commission September 5, 1968 and published October 25, 1968. The enquiry was carried out at the request of the Minister of Justice following the spectacular escapes, which took place during April and May of that year. That report which should be considered as an annex to the final report of the Commission dealt with a specific problem, and the recommendations made, were related entirely to the security measures and procedures to be observed in the transfer of dangerous criminals. The Commission also pointed out the need to reorganize certain sections of the Department of Justice to minimize the possibility of dangerous criminals escaping in the future. This special report should not be considered as a study of our entire prison policy.

From now on the Commission is not dealing with special or exceptional cases requiring individual treatment; the effort will be concentrated on the global problem of the Province of Quebec administration of criminal and penal justice.

In the course of its work, the Commission has frequently noted that in the Province of Quebec the administration of criminal and penal justice is marking time in its fight against crime, and meanwhile, the need to respect individual and social rights is frequently overlooked.

Various elements concerned with the administration of justice function and act as though there were no reason for any of them to consider themselves as part of a unified and coordinated system.

These are some of the factors which call for an overall basic philosophy.

1 — DISPARITIES OF INTENTION

(3)

3. In the absence of a general policy, many of those who form part of our system of justice arbitrarily assume the authority to determine the objectives and the procedures to be followed ; e.g., the Crown prosecutor who believes that it is his duty to win cases ; the policeman who is not satisfied unless the judge hands down lengthy prison sentences ; the judge who believes it necessary to give exemplary sentences. Similarly, one Minister of Justice, may encourage punitive measures by budgeting large sums for the construction of maximum security institutions, while negligible amounts are made available for the development of other institutions and of probation services, and a succeeding Minister may decide to follow an entirely different policy. It is not surprising that there is such a lack coordination in the administration of justice ; without a conscious orientation adapted to the needs of our society, different attitudes and interpretations exist within the same framework; and changing perspectives can succeed each other according to expediency or the pressures of the moment.

It is understandable, that a system can be modified following a serious evaluation, and that the changes made, reflect the wishes of society. For one philosophy to replace another, as a result of a true assessment of the needs of individuals and society, makes sense. But if an administration allows itself to be permeated by internal conflicts, and instinctive and uncoordinated thinking, therein lies serious danger.

The establishment of a sound correctional policy does not require all the sectors of the administration of justice to play the same role. It is essentially a matter of having the various elements, thinking and acting in a coordinated manner, with definite basic purposes in mind, to achieve a coherent system.

4. Through its system of administering justice a society endeavours to find the point of balance between, respect of individual rights, and the protection of the public. In the absence of an overall philosophy, the possibility of balancing the two are diminished because each of the various sectors has a different understanding of, and attitude to, the relationship between the individual and society. Differences of this kind are only one step removed from antagonisms.

A judicial system must show itself to be quick, efficient, humane and without bias or prejudice. Above all, it must give the citizen full enjoyment of his liberty, and the certainty of obtaining justice without regard to language, colour, creed or fortune.

Unfortunately, our system has a deep-rooted bias towards repression, rather than rehabilitation ; favouring preventive arrest rather than the freedom of the citizen ; emphasizing procedure rather than rights. In our country, very few, other than the defence lawyers, some judges, and organizations devoted to the protection of civil rights in the domain of prevention, support and rehabilitation have taken the trouble to question the traditional image of the criminal ; and to realize that a guilty person is also a citizen, who sooner or later must be remotivated or rehabilitated.

Not only are there clashes between individuals, but antagonisms between professional groups have been noticed. Lawyers for the defence, and Crown prosecutors frequently deal with a case as though personal triumph is of greater importance than the acquittal of the innocent, or the rehabilitation of the guilty person. Similarly, the police have come to consider the propagandists of civil rights, as more dangerous than criminals. At the level of judges, certain of them appear to believe that prison sentences are the best deterrents, while others have confidence in probationary measures.

Such antagonisms are explained to some extent by the differences in the temperament and training of the individuals. On the other hand, justice is poorly served if the public notices inexplicable disparities, in the penalties imposed, and in the reasons for arrest, imprisonment and release.

5. All too often the police, Crown prosecutors and judges make decisions which are irrational and purely emotional, and unrelated to a human evaluation of the delinquent ; often ready to justify them by specious arguments, weighing the interest of the individual against the security of society.

Other societies taking the opposite view have, for some time, endeavoured to evaluate in a rational manner, the effectiveness of decisions made

by the police, the courts and prison authorities. They have ceased to believe implicitly in the value of punishment, in the deterrent effect of long sentences, and in rehabilitation through intimidation. They have compared the cost and effect of arrests, imprisonment, probation and parole ; and their studies and evaluations have resulted in the development of a different judicial policy and a new correctional system. Fortunately, the science of evaluation has justified humanitarian solutions and invalidated purely repressive techniques.

In brief, most modern societies, faced with criminal behaviour, now ask themselves where they have gone wrong, and resolutely set themselves the task of offering delinquents better opportunities, and more substantial hope, for reintegration into society.

6. In the absence of a defined philosophy, instinct and emotional reactions are dominant. The lack of an overall concept results in thousands of employees in the system of justice often finding themselves without guidelines or directives ; with resulting insecurity and on occasion, even panic. Under such conditions it is evident that the most conservative decisions are taken, and the trend is to a continuation of repressive, rather than humanitarian, treatment.

The essential therefore, is not only to recommend formulæ and remedies, but to give the system of criminal and penal justice a new concept. Judicial procedures can be speeded up, and this would be a considerable improvement, but it is more important to instill in the citizens the feeling that everything is operating with the purpose of giving each person the consideration to which he is entitled. Each of the elements participating in the system should act in accordance with an overall policy in such a manner that antagonisms and hostilities will cease, and that impulsive decisions no longer will be the rule of the day.

It is not a simple matter to establish a general policy with regard to justice. However, visits to other countries, and many interviews with specialists, have convinced the Commission that it is possible to establish a number of fundamental objectives which each of the various elements should endeavour to attain.

7. If Quebec, which strives for international recognition wants to play the part of a developed nation, at least in the realm of justice, it must put an end to the antagonisms between the Crown prosecutor and the defence lawyer ; between the police forces and the organizations devoted to the defence of civil rights ; between the judges who believe in exemplary sentences, and those who place the emphasis on the rehabilitation of the accused. These antagonisms cannot be eliminated by merely issuing an order to do so, but rather by fully evaluating our present system, and by comparing it with other

systems, so as to establish our administration of justice on the basis of reason, and of effective social action.

8. Disparities of purpose, artificial antagonisms and compulsive or emotional decisions show quite clearly that Quebec does not have a general policy in the matter of justice. If the Province ever had one, it has become so confused, vague and inadequate, that each person can interpret it in his own manner and determine for himself, in an individual and unpredictable manner, his role in the administration of justice.

By way of clarification : the establishment of a general correctional policy does not mean that any one element of the administration of justice will play a role similar to that of another; nor that all delinquents will receive the same treatment.

It is not a question of substituting for the present disparity of sentences and treatment, a standardization of such a nature, that two different delinquents will be treated in exactly the same manner.

The Commission's hope is that the entire judicial and correctional system will be permeated with the same ideals and purpose, and that all will work towards the same goal, ready to modify their attitudes for exceptional cases. It is not inconsistent for a policeman, Crown prosecutor or a judge to make decisions adapted to the individuals concerned, but it is inadmissible that any official should constantly make decisions which are unduly severe, while a confrere, charged with similar functions, shows himself to be consistently tolerant. In short, eliminate the emotional reaction without substituting a mechanical procedure.