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PAPER ON THE
"CUSTODY FOR TREATMENT UNDER THE NARCOTIC CONTROL ACT"

A. J. MAC LEOD

CANADIAN PENITENTIARY SERVICE

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Custody for Treatment Under the
Narcotic Control Act

A. J. MacLeod, Q. C.,
Commissioner of Penitentiaries,
Penitentiary Service,
Federal Department of Justice,
Ottawa, Ontario.

through criminal...
peddling narcotics to other addicts and, in the case of
females, in prostitution.
Dimensions of the problem

The Department of National Health and Welfare

The Narcotic Control Act, which repealed the
former Opium and Narcotic Drug Act, was passed by
Parliament in June, 1961. It defines a "narcotic addict"
to mean a "person who through the use of narcotics has
developed a desire or need to continue to take a narcotic
or has developed a psychological or physical dependence
upon the effects of a narcotic".

The nature of the narcotic addiction problem
in Canada is this: the legal use of narcotics is limited
by federal laws and regulations to certain approved
medical and scientific purposes. Any other use is illegal
and punishable. A person who is addicted to a narcotic
is ordinarily unable to support his habit by legal
purchases. In order to achieve his purpose he must resort
to illegal purchases. The cost of narcotics purchased
illegally is high. He is usually incapable of earning
by an legal means the money that he requires for his
illegal purchases. The addict, who usually must purchase
narcotics one or more times daily, therefore gets money

through criminal activities such as theft, shoplifting or peddling narcotics to other addicts and, in the case of females, in prostitution.

Dimensions of the problem

The Department of National Health and Welfare classifies narcotic drug addicts as follows:

- (a) Criminal addicts - those persons who, during the preceding 10-year period,
 - (i) have been convicted of illegal possession of narcotics,
 - (ii) have been convicted of any offence and are known to be narcotic addicts, or
 - (iii) are addicted and, although having no known criminal record, are suspected of having engaged in criminal activities or are known to associate with criminals;
- (b) Medical addicts - those persons who, having had administrations of narcotics by way of medical treatment, have become addicted as a result of that treatment; and
- (c) Professional addicts - those persons who, being members of the related medical professions, such as doctors, psychiatrists and nurses, have become addicted and have supported their addiction by the use of narcotics available in connection with their work.

The incidence of narcotic addiction in Canada since 1956 is shown by this table:

	<u>Criminal addicts</u>	<u>Medical addicts</u>	<u>Professional addicts</u>	<u>Total</u>
1956	2678	352	211	3241
1961	3048	224	123	3395

The distribution of criminal addicts by provinces and by sex in Canada in 1956 and 1961 was as follows:

	1956		1961	
	<u>M.</u>	<u>F.</u>	<u>M.</u>	<u>F.</u>
British Columbia	1195	375	1369	477
Alberta	62	35	63	36
Saskatchewan	27	4	28	2
Manitoba	57	23	61	19
Ontario	376	186	469	317
Quebec	231	101	153	48
New Brunswick	----	----	----	----
Nova Scotia	5	1	6	----
Prince Edward Island	----	----	----	----
Newfoundland	----	----	----	----
Total -	<u>1953</u>	<u>725</u>	<u>2149</u>	<u>899</u>

Between 1956 and 1961 the number of criminal addicts in Canada increased by 370 (or 13.7%), while the general population of the country increased from 16,080,791 to 18,238,247 (13.4%).

The ratio of criminal addicts to the general population, on a national basis and also in terms of four main metropolitan areas, in 1956 and 1961 was as follows:

Ratio of Criminal Addicts to General Population

	<u>1956</u>	<u>1961</u>
National Ratio	1:6004	1:5,983
Montreal	1:4881	1:10,495
Winnipeg	1:5114	1:5,949
Toronto	1:2416	1:2,321
Vancouver	1:423	1:428

Over the latest 5-year period for which statistics are available there has been no dramatic change in the number of addicts in Canada in relation to the population generally. Nevertheless, narcotic addiction is a national problem that finds its greatest concentration in British Columbia and more particularly in the city of Vancouver. It is therefore in the Vancouver area that there is the greatest immediate need for a solution, or at least an attempted solution, of the problem. It seems to be clear, however, that no proposed solution can hope to be effective unless it operates on a national scale, because the trafficker and the addict invariably tend to migrate to those jurisdictions where they can expect to find the least trouble with the law relating to narcotic drugs.

Legislative jurisdiction

It is well established that the jurisdiction of Parliament in relation to narcotic addiction is limited to the field of criminal law, that is, the creation of offences by the enactment of laws and the provision of

suitable punishment, to be imposed by the courts, for persons who offend against those laws. To the extent that narcotic addicts are ill people, who do not offend against the law but who require or could profit by medical treatment for their addiction, the problem is one to be dealt with by the provincial legislatures. This is not to say, however, that in the field of federal jurisdiction there is no place for appropriate treatment of persons, who, being addicted, come into contact with the criminal law on the subject.

Objectives of the federal system

Within the field of criminal law the national objectives in relation to narcotic addiction are threefold:

- (a) to reduce, as far as possible, the supply of narcotics available in Canada for illegal use;
- (b) to prevent, as far as possible, the creation of new narcotic addicts; and
- (c) to reduce and, if possible, eliminate the demand for narcotics by existing addicts.

Laws against trafficking and smuggling

The Narcotic Control Act attempts to reduce the supply of narcotics available for illegal use by providing punishment for the offences of trafficking and smuggling.

The traffic in narcotics is essentially a world-wide problem. It would not exist if the growth, manufacture

and distribution of narcotics could be strictly limited to the amounts known to be needed for legitimate medicinal and research purposes. The United Nations makes an effort in this direction. However, in each year the amounts required for legitimate purposes in all countries totals only about one-quarter of the world production. Extremely large quantities of narcotics are therefore available in the world for illegal purposes. It is not surprising that a proportion of these quantities of narcotics find their way to Canada to be distributed by illegal trafficking methods. What is required in order to reduce the quantities of narcotics available in Canada for illegal purposes is

- (a) continuing strict enforcement of the various federal statutes that are involved, particularly the Narcotic Control Act and the Customs Act;
- (b) continuing control by the Department of National Health and Welfare over the legitimate distribution of narcotics in Canada; and
- (c) constant vigilance and co-operation by federal, provincial and municipal police forces against the illegal possession and distribution of narcotics.

The following table shows the changes in punishment that were effected by the new Narcotic Control Act:

	<u>Opium and Narcotic Drug Act</u>	<u>Narcotic Control Act</u>
Illegal possession	6 mos. minimum 7 years maximum	no minimum 7 years maximum
Trafficking and possession for trafficking	no minimum 14 years maximum whipping	no minimum life imprisonment maximum no whipping

Illegal importation	nil	7 years minimum life imprisonment maximum
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Under the new Act the motivation of the trafficker is immaterial. The law and the enforcement of it is based on the view that the trafficker who peddles narcotics primarily to pay the cost of his own addiction is no less a menace to society, while at large, than the trafficker who peddles for some other purpose. The law relating to the suppression of trafficking is now, presumably, sufficient in terms of punishment reasonably to deter the would-be trafficker from engaging in that form of activity. If it does not do so it is adequate to protect society against him when he persists.

However, the law also takes into account that reform of the trafficker is possible, whether probable or not. Thus he has available to him the same opportunities of returning to society as a law-abiding citizen that are available to other classes of offenders who undergo imprisonment. The trafficker, whether addicted or not, is eligible for consideration for parole at appropriate times and under appropriate conditions to be determined by the National Parole Board.

The maximum sentence of life imprisonment for trafficking and smuggling ensures that an appropriate remedy

is available to the court where it is faced with the worst possible case. It is open to the court to impose it, in a proper case, even where the accused is a first offender.

Minimum sentences of imprisonment are no longer continued except for the offence of illegal importation of drugs into Canada. Presumably this exception exists because the act of deliberately smuggling or attempting to smuggle narcotics across an international border is one that involves a high degree of risk. If successful it earns for the smuggler a substantial profit or reward. It is an act that would not ordinarily be undertaken without great deliberation by the smuggler. The minimum punishment of 7 years was, therefore, established on this ground: that if illegal supplies of narcotics can be prevented from entering Canada the result will be a great decrease in the amount available for the purpose of illegal trafficking within Canada and, presumably, a lessening in the number of new addicts.

Part I of the Narcotic Control Act has therefore been enacted with these purposes in view:

- (a) to deter the would-be trafficker,
- (b) to teach a salutary lesson to the pedlar who may deal in many small transactions and also to the major distributor who may deal in only a few large ones,

- (c) to attempt to assist the convicted trafficker to live in society upon his release without engaging in this form of criminal activity, and
- (d) to remove from society, for substantial periods, those persons who have demonstrated that they are not likely to refrain from trafficking.

Preventing the creation
of new addicts

The prevention of the creation of new narcotic addicts would seem to be, for the most part, a provincial responsibility. Where Parliament enacts appropriate laws against the illegal supply of narcotics and those laws are strictly and continuously enforced, the supply will tend to diminish. This will assist in reducing the amounts of narcotics available for addicts or traffickers to dispose of to non-addicts.

However, the way in which the federal government can best aid in preventing new addiction is by segregating, in its penal system, those persons who are addicted from those who are not. This will avoid the kind of association that, in the past, has tended to promote new addiction by young delinquents. To this end the Penitentiary Service will commence construction, in 1963, of a new narcotic addict treatment institution in British Columbia to which will be transferred all of those inmates of British Columbia Penitentiary who are addicts.

A report entitled "Drug Addiction in British Columbia - a Research Survey, 1956", prepared under the auspices of the University of British Columbia by a research team headed by Dr. George H. Stevenson found, from its examination of the delinquency records of addicted and non-addicted prisoners who were studied that:

- (1) In the addicted subjects the common finding of maladjustment in the home and school as children was carried over into neighborhood maladjustments in juvenile delinquency.
- (2) Membership in juvenile delinquent gangs was common.
- (3) Contacts in childhood with the police because of unsatisfactory behaviour were frequent.
- (4) Between one-third and one-half of those who later became addicts spent some time as juveniles in correctional institutions.
- (5) The great majority of addicts had convictions in juvenile or adult courts before they began the use of narcotics.
- (6) Once addiction became established, the addicts, male and female, tended to engage in anti-social activities on a full-time basis, in addition to violations of the Opium and Narcotic Drug Act.
- (7) Addicts are a segment of the delinquent population.
- (8) Non-addicted delinquents have court records very similar to those of addicted delinquents, minus only violations of the Opium and Narcotic Drug Act.
- (9) Addicts usually prefer not to be involved in crimes associated with violence, their common crimes being theft, shoplifting and related activities for the men, and prostitution for the women.

It would seem, therefore, that the best means of preventing the creation of new addicts is by preventing juvenile delinquency. The prevention of juvenile delinquency is a matter that, in terms of the social, physical, mental and moral development of young persons, seems to fall exclusively within the jurisdiction of the provincial legislatures.

Reducing the illegal demand for
drugs by existing addicts

One proposal that has been made with the objective of reducing or eliminating the illegal demand for narcotics has been to segregate every addict for life upon conviction for the offence of being in possession. This would seem to be unsound in principle because it is inconsistent with the basic philosophy of corrections, i.e., the reform of the offender. It is a completely negative approach which should not be resorted to until all positive approaches have been tried and have been found to be inadequate.

Another proposal that has been made is to provide narcotics at cost to existing addicts according to their needs. This has been uniformly and unequivocally rejected in a number of reports: the Canadian Senate Report, a Special Report by a Committee of the United States Senate, a Report by the United Nations Narcotic Commission and the Report of the Joint Committee of the American Bar Association and the American Medical Association.

What, then, is the federal program in relation to the reformation and cure of the criminal addict?

The issue that is fundamental to the "cure" of the criminal addict is whether he can or cannot abstain from the commission of criminal acts and, simultaneously, abstain from the use of narcotics. The Canadian experience, thus far, has tended to show that usually he abstains from neither the one nor the other. Nevertheless, the clinical studies carried on by the Stevenson Committee satisfied its members that at least some criminal addicts can discontinue the use of narcotics and abstain from them under certain circumstances. They found that where there was any motivation for such discontinuance and abstention it was, generally speaking, an increasing dissatisfaction with the type of life the addict was living and a desire for a more normal, socially integrated life. Addicts who gave up the use of narcotics, they found, fell into two main groups:

- (a) those who became alcoholics, in which case they merely exchanged one chemical substance for another and may very well have been no better off than they were previously; and
- (b) those who gave up delinquency and narcotics concurrently to become reasonably well conducted socially integrated citizens.

The Committee found that the factors tending to aid avoidance of crime and abstention from the use of narcotics were:

- (a) a strong desire for social reintegration and a fair degree of courage and persistence in pursuing this objective;
- (b) avoidance of or minimal contacts with alcoholic or related substances;
- (c) avoidance of contacts with delinquents, addicts and narcotic traffickers;
- (d) acceptance and assistance by friends and relatives;
- (e) congenial domestic relationships;
- (f) satisfying work relationships;
- (g) a constructive religious environment; and
- (h) cultivation of socially approved recreation and hobbies.

These are the same factors that are usually present in the case of the reform and rehabilitation of the non-addict offender. The point would seem to be, therefore, that the criminal addict must be treated not only for his addiction but also for his fundamental delinquency. This means that the problem of reforming the narcotic addict is not necessarily a different correctional problem but rather an appreciably more difficult one.

The basic approach of the Narcotic Control Act to the problem of reducing and, if possible, eliminating the illegal demand for narcotics by existing addicts is (a) to provide for appropriate institutional treatment to remedy the fundamental delinquency of the addict, and (b) to provide suitable supervision and guidance to assist him to abstain from using drugs during substantial periods

of his life in the free community.

The federal government has jurisdiction to deal with the addict from only one aspect, i.e., as an offender against the criminal law. Only the provincial legislatures have jurisdiction to deal with him as a medical or health problem or, to put it another way, as a dangerous, possibly contagious element in the local community. The Narcotic Control Act contemplates co-operative action by Parliament and the Provincial Legislatures and by the Dominion and the respective Provincial Governments in order that there may be a comprehensive, concerted attack on the problem and reasonable hope of successfully dealing with it.

Part II of the Narcotic Control Act provides for the custody for treatment of narcotic addicts. It has not yet been brought into force. Presumably it will not be until the federal government is in a position to provide treatment for all addicts to whom it will apply.

The basis of the legislation is that both the federal law and provincial law should provide for committal to custody for treatment of persons who are addicts. The federal law will apply in relation to those persons who are convicted in criminal proceedings of illegal possession of narcotics or of trafficking or smuggling. If they are found to be addicts they will be committed to custody for treatment for an indefinite period.

The provincial law, it is expected, will apply in relation to persons who are not under charge for a narcotics offence. If they are found, in proceedings under appropriate provincial legislation, to be addicts they will be committed to custody for treatment accordingly under that legislation.

Part II of the Narcotic Control Act contemplates that committal to custody for treatment, whether under federal or provincial legislation, will involve the following basic steps:

- (a) confinement of the addict in a secure place until such time as it is determined, by competent authority, that it is in the interest of the addict and not contrary to the over-all interests of society for him to be released;
- (b) training and treatment of the addict, while he is in custody, by way of
 - (i) improving his educational standard,
 - (ii) helping him to develop vocational or working skills or, in any event, good working habits,
 - (iii) improving his medical condition, and
 - (iv) providing him with the psychiatric, psychological and social assistance that he requires;
- (c) development, while the addict is in custody, of an appropriate post-release program of employment, supervision and counselling;
- (d) release of the addict, at the appropriate time, under supervision for an indefinite period; and
- (e) return of the addict to custody for further training and treatment if, during the post-release period, it appears to be necessary.

When Part II of the Narcotic Control Act is brought into force it will work in the following way, in so far as the criminal law is concerned, to provide custody for treatment. Where a person is charged with illegal possession, or trafficking or smuggling of narcotics, the court will have authority to remand him for observation and examination for a period not exceeding seven days. Upon being returned to the court, if he is convicted of the offence charged, the court will be required to hear the evidence arising out of the observation and examination, including the evidence of at least one medical officer. The defendant will, of course, be able to call evidence on his own behalf. Where, after hearing all relevant evidence, the court is satisfied that the accused is an addict, the court will sentence him to custody for treatment. In the case of a first offender under federal narcotics legislation the period of custody cannot exceed ten years. For a person previously convicted under that legislation the committal will be for an indefinite period. No other sentence will be imposed.

A person so sentenced will be confined for treatment in an institution operated by the Penitentiary Service. The institutions to be built by the Penitentiary Service will not be prisons in the traditional sense. Rather they will be institutions providing reasonably secure

surroundings where a treatment and training program for addicts can be carried on with some hope of success. The first institution for males is designed for 300 addicts and the first female institution for 150. Addicts will be housed in individual rooms, with not more than twenty-five rooms in each wing. Each wing will have its own common room. Feeding will be cafeteria-style in an institutional dining-room.

Most criminal addicts, having been delinquents at an early age and addicts only later, have never achieved a satisfactory educational level nor have they developed useful trade or occupational skills. It is of little use to return to society a young man or woman who, even though able to abstain from the use of narcotics, is unable to qualify for employment in trade or industry. Therefore the narcotic addiction institutions will be equipped to train the addict to support himself, by lawful means, in the community,

Most addicts, during periods when they are using narcotics, fail to follow basic health rules. The majority of them, therefore, are in poor physical condition when sentenced by the court. Most female addicts have physical disorders of one kind or another. The institutions will be equipped to provide the medical attention that is necessary to restore the addict to the best possible state of health.

The institutions will also be able to provide professional treatment for addicts through the services of psychiatrists, psychologists and social workers. Such professional treatment will be essential as part of any comprehensive program of treatment and training for the addict. No narcotic addiction institution will be established at a location that is so far removed from a populated centre that it will be impossible to obtain the attendance of the professional staff that will be required.

The training program for addicts in the institution will be directed toward preparing him for the day when he can take his place in society as a law-abiding, self-supporting person who can abstain from the use of narcotics. Accordingly, at an early stage after he is committed to custody, work will begin on the development of the program of supervision, employment, shelter and assistance that will be available to him when he leaves the institution. In the development of such programs for individual addicts the Penitentiary Service expects that it will have the full co-operation of private after-care agencies, private and public agencies and interested citizens in the community.

The Narcotic Control Act contemplates that, when the institutional training program has had its full effect, the inmate will be released under supervision on conditions

to be fixed by the National Parole Board. To assist the addict during the transitional period between confinement in the institution and freedom in the community it is expected that most will have an opportunity to remain, for at least a few weeks, in hostels to be operated in the community by the Penitentiary Service or by private agencies.

During the period of supervision in the community the addict will continue to receive the counselling, professional or otherwise, that he may require. He will also be subject to examination, from time to time, to determine whether or not he has abstained from the use of narcotics. While he continues to live up to the conditions of his parole, including abstention from the use of narcotics, he can expect to continue to live in the free community. If he does not respond to the trust that has been placed in him and the assistance that he has received he may expect to be returned to the institution, on the order of the Parole Board, for further training and treatment.

The program contemplated by Part II of the Narcotic Control Act is, therefore, designed to fulfil these purposes:

- (a) to bring under social control those persons who are delinquent and are also addicted to the use of narcotics;

- (b) to bring to their assistance every incentive and every possible social resource with a view to assist the addict to abstain from crime and the use of narcotics while he lives in the free community; and
- (c) to protect society by keeping in custody, if necessary for an indefinite period, those addicts who demonstrate that, notwithstanding the assistance and support that they receive, they are unable to abstain from crime and narcotics.

Custody for treatment
under provincial legislation

Section 19 of the Narcotic Control Act contemplates agreements between the federal and provincial governments whereby, under appropriate provincial legislation, persons who are narcotic addicts but are not charged with any offence involving narcotics may nevertheless be committed to federal institutions for custody and treatment. Section 19, which is self-explanatory, provides as follows:

"19. (1) Where the legislature of a province enacts legislation that is designed to provide custody for treatment for persons who, although not charged with the offence of possession of a narcotic, are narcotic addicts, the Minister may enter into an agreement with the province, subject to the approval of the Governor in Council, for the confinement and treatment of such persons in institutions maintained and operated pursuant to the Penitentiary Act and for the release and supervision of such persons pursuant to the Parole Act.

(2) A narcotic addict who is committed to custody for treatment pursuant to an Act of the legislature of a province shall be deemed, for the purposes of the Penitentiary Act and the Parole Act, to have been sentenced to custody for treatment under this Act."

As of this writing no agreements have been entered into under section 19.

April 5,
1963.



(2) A narcotic addict who is committed to custody for treatment pursuant to an Act of the Legislature of a province shall be deemed, for the purposes of the Penitentiary Act and the Prisons Act, to have been sentenced to custody for treatment under this Act, as of this writing no agreements have been entered

into under section 19.

April 2, 1963

