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**BI-LATERAL DISCUSSIONS
ON THE DIVISION OF
CORRECTIONAL RESPONSIBILITIES**

**Between the
FEDERAL GOVERNMENT AND THE
GOVERNMENT OF BRITISH COLUMBIA**

APRIL 29, 1976

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EXECUTIVE SUMMARY

BI-LATERAL DISCUSSIONS ON THE DIVISION
OF CORRECTIONAL RESPONSIBILITIES

BETWEEN THE

FEDERAL GOVERNMENT AND THE

GOVERNMENT OF B.C.

29 April, 1976

PROBLEM STATEMENT

The following statement of problem was developed for, and approved by, the Deputy Ministers of the Federal Ministry of the Solicitor General and the Provincial Department of the Attorney-General in British Columbia.

"In contemporary corrections, the Federal/ Provincial division of responsibility, (essentially embodied in the BNA Act and the Criminal Code of Canada) appears to have little rational basis. This has resulted in duality in a number of areas of corrections including institutions, paroling authority, community supervision, and administrative/ managerial processes.

It is clear that corrections is characterized by isolation, duplication, inconsistencies, gaps, lacks of continuity, and limitations in terms of relative efficiency and effectiveness. The existence of different perspectives on Canadian corrections complicates the evaluation of these characteristics since that which may appear detrimental from one perspective may be viewed positively from another. Thus, the assessment of value of these characteristics is most difficult.

Additionally, confusion exists concerning respective correctional responsibilities in the public eye, political forums, offender clientele and among administrators of the criminal justice system.

For these reasons, alternative possibilities for the future division of correctional responsibilities must be examined in order to assess how this situation can be improved."

INTRODUCTION

In May, 1975, agreement was reached for officials of the Ministry of the Solicitor General and the Provincial Department of the Attorney-General in British Columbia, to enter into bi-lateral discussions to examine alternatives to the current division of responsibility.

IDENTIFICATION OF OPTIONS

A series of twelve options were initially identified, four of which were subsequently chosen for more detailed examination.

Option V -

The delivery of all correctional services within the Province of British Columbia would become a provincial responsibility, while the Federal Government and the Provincial Government would share co-operatively responsibility for policy formulation, priority setting, standard setting, planning, research and evaluation, information systems, staff development, etc.

Option IX -

Generally, the current division of responsibility would be maintained but the "two-year rule" would be altered to a "six-month rule", i.e. sentences of imprisonment of six months and less would become a provincial

responsibility, while sentences of more than six months, would become a federal responsibility.

Option X -

The formation of a joint federal/provincial "crown" corporation, charged with the responsibility for all functions related to the delivery of all correctional services within the Province of British Columbia. Each level of Government would delegate jurisdictional responsibility to this Agency. A jointly appointed Board of Directors would head the corporation and would be accountable to both Parliaments through the respective Ministers concerned, i.e. the Solicitor General of Canada and the Attorney-General of British Columbia.

Option XI -

Generally, the current division of responsibility would be maintained, but the two-year rule would be altered to a division of responsibility based on the purpose of sentence of imprisonment as suggested by the Law Reform Commission: i.e. non-compliance sentences (six-months or maximum twelve months) would become a provincial responsibility; separation sentences (maximum twenty years) would become a federal responsibility; and denunciatory sentences (three years or maximum six years) would be either all federal responsibility or would be split between the federal and provincial authorities

either on a length of sentence or at the discretion of the court.

CENTRAL CONCEPTS

Unification:

The degree to which responsibility for all functions related to the delivery of correctional services rests under one authority within the Province of British Columbia. Advantages of unification include:

- a) elimination of duality and consequent duplication of programs and services;
- b) larger, more integrated and potentially more effective management of delivery of correctional services within the Province of British Columbia;
- c) facilitates better matching of available to the specific needs of individual offenders;
- d) encourages uniform standards within the Province of British Columbia; and
- e) reduces confusion in the public eye regarding responsibility for the delivery of correctional services.

The singular disadvantage of unification, from a national perspective, may be a potential lack of uniformity of correctional services across Canada unless provincial correctional services are subject to appropriate national standards.

Decentralization:

The degree to which responsibility for all functions related to the delivery of correctional services within the Province of British Columbia is "potentially close" to the public, the decision-making process thus reflecting local/regional values, concerns and needs. However, this is not to be confused with the closeness and sensitivity of service delivery to the community, which may depend more on the administrative style and the structure of an organization than the level of the government which deliver the service. The advantages of decentralization appear to be:

- a) better ability to relate community concerns to corrections; and
- b) better co-ordination and communication with the provincial criminal justice system and social service system agencies.

The singular disadvantage appears to be that decentralization control risks the possibility of unstable or extreme provincial action being out of harmony with national standards, values or priorities.

Option X appears to have the highest degree of unification, with greater decentralization than the present situation. Option V appears more unified than the present situation with the highest degree of decentralization. Option IX offers a low degree of unification (i.e. the present situation), with a low degree of decentralization (possibly less than the present

situation). Option XI presents a low degree of unification (i.e. the present situation) with a low degree of decentralization (i.e. the present situation).

ANALYSIS OF OPTIONS

Although a large number of criteria were identified by the Task Force, the following seven were used for initial analysis.

A. Philosophy, Objectives and Values

All options seem equally consistent with the overall aim of criminal justice as defined by the Task Force. Two major criminal justice strategies were identified: the reactive strategy, i.e. to mediate certain social conflicts defined by law as criminal, and the preventive strategy, i.e. to restrict the number of persons whose social conflict is mediated within the bounds of the criminal justice system. All options appear equally viable in assisting in reactive strategy while options V and X appear to be potentially more effective in the preventive strategy.

Generally speaking, all options seem equally consistent with the overall goal of Corrections as defined by the Task Force. However, options V and X appear potentially more effective in dealing with correctional trends identified.

B. Service Delivery

Options V and X appear potentially more effective and efficient in the delivery of all correctional services within the Province of British Columbia. Option IX

suggests an increase in the federal workload and may permit the Province of British Columbia to move away from the operation of secure custodial facilities (except for remand). Options V and X suggest greater federal influence in standards of correctional service delivery within the Province of British Columbia.

C. Administrative Structure

Options IX and XI suggest the least revision in current administrative structures, procedures and style. Option V would require maintenance of the provincial structure with transference of federal service delivery staff to the provincial correctional authority while establishing appropriate mechanisms for federal involvement in policy, priority and standard setting, etc.

Option X requires the creation of a separate "crown" organization, transference of both federal and provincial correctional staff, the establishment of a Board of Directors.

D. Financial Impact

Options V and X appear most economical in the long run, however, implementation suggests additional short-run costs, as well as the development of appropriate funding arrangements. Due to the forecasted increase in

federal workload in Option IX, some increase in federal expenditures can be anticipated.

E. Constitutional and Legislative Impact

There appears to be no constitutional obstacles to implementing any option. Appropriate legislative amendments for each option have been identified.

F. Effect on Justice System

Options V and X suggest a greater opportunity for increased co-ordination and communication with other provincial components of the criminal justice system. Option X, providing a different focus of authority, i.e. a crown corporation, may cause some difficulties in relating to other criminal justice agencies, inter-provincially and nationally.

G. Effect on Social System

Options V and X suggest greater opportunity for increased co-ordination and communication with other provincial social service delivery systems. Option X providing a different focus of authority, i.e. a crown corporation, may cause some difficulties in relating to other social system agencies, interprovincially and nationally.

PHILOSOPHIC ISSUES CONCERNING THE DIVISION OF
RESPONSIBILITY IN A FEDERATED STATE

This section concerns the question of the appropriate division of powers on the subject of corrections in a federated state. Review of the British North America Act reveals little rational basis for the current division of responsibility, not only for corrections but for other service delivery components of criminal justice such as police, prosecution, courts. Provincial and federal roles in social service delivery generally appear more rationally defined, i.e. service delivery, a provincial responsibility with federal involvement in terms of national priorities, standards and funding. The argument for placing correctional services under provincial jurisdiction rests in part on an analogy between such services and social services generally. While there are some similarities between corrections and health and welfare services, there are also obvious differences. Such literature as examined to date on the division of powers as to social services, provides no clear direction as to the division of correctional responsibilities. In the last analysis, the placement of responsibility for corrections will likely depend on the type of goals it seeks to achieve and the methods required.

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THE ORGANIZATION OF CORRECTIONAL SERVICES
IN BRITISH COLUMBIA :

*

REPORT

of the

FEDERAL/PROVINCIAL TASK FORCE



May, 1976

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addition to the Task Force members, those attending were:
On behalf of the Federal Government: Mr. Tasse; Mr. Andre Therrien, Director of the Canadian Penitentiary Service; Mr. Lloyd Pisapio, Executive-Director of the National Parole Service; and Mr. W.R. Outerbridge, Chairman of the National Parole Board. For the Government of British Columbia: Mr. Vickers, Mr. Ekstedt; and Mr. S. Rocksborough Smith, Chairman of the Provincial Parole Board.

As a result, the Task Force was asked to prepare a final report on the four options, for consideration by the Attorney-General of the Province of British Columbia and the Solicitor-General of Canada.

* * * * *

This Report is composed of two parts:

Part One contains a summary and overview of the Task Force's work and is composed of several sections - an account of the present organization, criticisms of it, and solutions proposed in the past. The four options are then described, followed by an analysis of each in terms of several critical or central issues - legal, correctional and administrative. Finally, a few remarks are made on the philosophy of the division of responsibility in a federated state.

Part Two consists of a series of background and working papers which examine specific issues, provide selected excerpts from relevant documents, and give detailed accounts of each selected option.

PART ONE

SUMMARY AND OVERVIEW

I. INTRODUCTION

Current division of responsibility. At present, the responsibility for the administration of penal institutions is subject to what is called "the two-year rule". The federal government is charged with the custody of those offenders receiving a sentence of (or sentences totalling) two years or more, and the province with those offenders receiving a sentence of (or sentences totalling) less than two years. This is provided for by Sections 658 and 659 of the Criminal Code (see Part Two, Appendix 3 for photocopy of the relevant sections).

It is important to note that the B.N.A. Act does not impose the two-year rule. It makes a distinction between "penitentiaries" and "public and reformatory prisons" (see Part Two, Appendix 2 for a photocopy of Sections 91 and 92 of the British North America Act). The Criminal Code, a federal statute, establishes the division point as to responsibility at the two-year term.

There are several exceptions to the two-year rule. Definite-indeterminate sentences for young offenders, for example, which can extend to four years less two days in length, are administered by the province. Conversely, the federal government, up to the present at least, has responsibility for parole supervision for offenders serving definite sentences of any

length, i.e., including those serving less than two years.

Moreover, all levels of government, in fact, operate custodial facilities to the level of maximum security for one purpose or another. Thus, the provinces provide long-term custodial facilities for the dangerously insane; and municipalities operate lock-up facilities for offenders appearing in the courts. (See Report of the Canadian Committee on Corrections: Toward Unity, Criminal Justice and Corrections, 1969 Ouimet Report, pp. 275-6).

Two further points should be made here: first, the investments of both the federal and provincial governments in correctinal facilities are now very extensive; secondly, with the rapid development in the corrections field over the past few decades, each level of government now operates a wide range of services.

Table 1 presents data which we hope will give a rough idea of the size and diversity of the current investment of each government. While an attempt was made to obtain comparable figures in each category, this often proved difficult. The reader is therefore advised to pay careful attention to the sub-scripts of the Table, which indicate how some of the figures were obtained.

SUMMARY OF FEDERAL AND PROVINCIAL CORRECTIONAL SERVICES IN
BRITISH COLUMBIA - FOR THE FISCAL YEAR 1974-75

	<u>Federal (B.C.)</u>	<u>Provincial</u>
1. TOTAL BUDGET ⁽¹⁾		
Penal Institutions	\$24,233,255	15,249,479
Community Residences	196,300	254,967
Probation/Parole Services ⁽²⁾	1,825,000 ⁽³⁾	3,714,588 ⁽⁴⁾
Correctional Support Services ⁽⁵⁾	---	1,865,315
National ⁽⁶⁾ /Provincial Parole Board	88,000	94,038
(Salary adjustments, all categories)	---	(4,266,326)
TOTAL	<u>\$26,342,555</u>	<u>25,444,713</u>
2. AVERAGE PER-DIEM CASELOAD		
Penal Institutions ⁽⁷⁾	1,430	1,850
Community Residences	52 ⁽⁸⁾	---
Probation Services	n/a	13,000 ⁽⁹⁾
Parole Services	<u>773⁽¹⁰⁾</u>	<u>---</u>
TOTAL	2,255	14,850
3. INSTITUTIONAL PLANT		
Penal Institutions (all types) Number	4	11
Capacity	1,485 ⁽¹¹⁾	2,728
Community Residences (all types ⁽¹²⁾) No.	21	6
Cap.	<u>396</u>	<u>---</u>
TOTAL	No. 25	17
	Cap. 1,881	2,728 +

	<u>Federal (B.C.)</u>	<u>Provincial</u>
4. STAFF COMPLEMENT (all categories)		
Penal Institutions	1,190	1,107
Community Residences	contract	contract
Probation/Parole Services	79 ⁽¹³⁾	267 ⁽¹⁴⁾
National/Provincial Parole Board & Staff	15 ⁽¹⁵⁾	7
Head Office	---	<u>48</u>
TOTAL	<u>1,284</u>	<u>1,429</u>

NOTES:

- 1) Includes all management and capital costs to the top level within each category, unless indicated otherwise.
- 2) Probation and parole services are combined since they are difficult to separate at the provincial level. See per-diem caseload for probation. The federal government, of course, provides only parole services. This category also includes any fee-for-service costs.
- 3) This is an estimated breakdown of Parole Service and Parole Board expenditures for 1975/76. (Source: Financial Services NPS-NPB.)
- 4) Includes Deputy-Minister's office.
- 5) Includes the cost (or estimated cost) of all Corrections-related planning, research and development services, community development services, corrections central office services, etc. Ottawa-based services and National Parole Board services are, however, not included. Costs of the Deputy-Ministers' offices are also excluded.
- 6) National Parole Board and staff costs are not pro-rated.
- 7) Includes offenders under all forms of Temporary Absences. Federal figures taken from the Annual Report of the Solicitor-General.
- 8) From the total day bed use by CPS and NPS of contracted CRC, January 1 to December 31, 1975.
- 9) Includes provincial parole cases and those in community residences.
- 10) Number of persons on federal parole (day, mandatory and full), as of December 31, 1975 (NPS statistics).
- 11) From CPS Inmate Record System as of March 31, 1975. (There are also 312 dissociation cells.)
- 12) Includes facilities used under contract.
- 13) Estimated by National Parole Service, 1975-76.
- 14) Includes temporary employees.
- 15) Figures for B.C., for 1975-76.

Origin of the division of responsibility and the two-year rule.

Our investigation revealed that, prior to Confederation, (a) penitentiaries were administered by the "provinces", and (b) no clear distinction was made between penitentiaries, prisons and reformatories. (see Part Two, Appendix 4).

Further, at the Charlottetown and Quebec Conferences of 1864, the management of penitentiaries, along with other penal institutions, was in fact proposed to remain with the provinces. Even at the London Conference of December 5, 1866, the Resolution concerning the placement of penitentiaries under provincial jurisdiction was duly passed. The last minute change, which placed penitentiaries under the federal parliament in the B.N.A. Act, thus appears to be inexplicable. We could note only that the Colonial Secretary, Lord Carnarvon, who presented and guided the B.N.A. Act through the British Parliament in 1867, had, six months before the London Conference, written the following in a letter to his predecessor, Edward Cardwell:

"If, with the acquiescence of the Delegates, I could see my way to any reduction of the general powers granted to the Local Legislatures, I should be glad to do so with the view of adding strength to the central government..."

It would seem evident from this that political considerations played an appreciable part in the division of powers with respect to corrections. In this regard,

the remarks of the Quimet Report are of interest:

"The British North America Act places responsibility for all services that have a treatment connotation with the provinces. Involved are medical services (including mental health, welfare and education). This may explain what prompted the present division of responsibility between the levels of government. Those prisoners who received a sentence of less than two years were probably regarded as ordinary people who needed a lesson, while those who received longer sentences were seen as criminals whom it was necessary to separate from ordinary people. This assumption is supported by the terminology used in the British North America Act where the federal institutions are called 'penitentiaries' while the provincial institutions are called 'reformatory prisons'."

It is also commonly asserted that practical or economic considerations may well have played a part. The federal government may have been considered the only government with the resources available to establish long-term institutions, or there may have been insufficient numbers of long-term offenders in some regions of the country to justify an institution for them in each province.

With specific reference to the choice of the two-year point as a criterion for the division of responsibility, such a decision would seem in accord with several statutes or practices in Britain and in Canada preceding Confederation. For example, the Criminal Law of England in 1792 authorized the committing of offenders "to the House of Correction for any time not less than six months or exceeding two years". Also, in the Statutes of the Province of Canada, 6 Vic., 1842, c.5, ss. 3 & 4, we read that "the offender may on conviction be punished by imprisonment for such a term as the Court shall award ... if awarded for a longer term than two years, the /^{sentence} shall be in the Provincial Penitentiary." (see Part Two, Appendix 4; see also Report of the Royal Commission to Investigate the Penal System of Canada, 1938 [Archambault Report] pps. 339-342)

Criticisms of the Split Responsibility for Corrections and Solutions Proposed in the Past. The Task Force was advised that virtually since its inception, the splitting of responsibility for corrections between the two levels of government has been roundly criticized. A collection of statements from various sources over the years is given in Part Two, Appendix 5.

The criticisms are captured in the following brief "Problem Statement" agreed upon by the Task Force:

"In contemporary corrections, the federal/provincial division of responsibility (essentially embodied in the B.N.A. Act and in the Criminal Code of Canada) appears to have little rational basis. This has resulted in duality in a number of areas of corrections, including institutions, paroling authority, community supervision and administrative and managerial processes.

"It is clear that corrections is characterized by isolation, duplication, inconsistencies, gaps, lack of continuity and limitations in terms of relative efficiency and effectiveness. The existence of different perspectives on Canadian corrections complicates the evaluation of these characteristics, since that which may appear detrimental from one perspective may be viewed positively from another. Thus the assessment of value of these characteristics is very difficult.

"Additionally, confusion exists concerning respective correctional responsibilities in the public eye, political forums, offender clientele and among administrators of the criminal justice system.

"For these reasons, alternative possibilities for the future division of correctional responsibilities must be examined in order to assess how this situation can be improved. "

Despite the common consensus as to the existence of serious problems in the administrative organization of corrections in Canada, agreement as to the solutions by no means follows. Brief excerpts from the reports of three major inquiries into aspects of the criminal justice system in Canada over the last forty years are

given below. We will let the reports speak for themselves and then comment.

- a) The Report of the Royal Commission to Investigate the Penal System in Canada, 1938 (Archambault Report) states that:

"There is no doubt in the minds of your commissioners that uniformity of administration and the application of scientific principles to such administration, if made applicable to all those who are incarcerated in penal institutions in the Dominion of Canada, would provide a better penal system and one to which the recommendations of your commissioners would be most fittingly applied. It is obvious, for example, that if different treatment than that recommended by your commissioners is given to the prisoners in provincial institutions, if classification and segregation are not uniformly instituted, if a different discipline is in effect, and the administration is not supervised by the same authorities, the success of the system recommended by your commissioners would be jeopardized, and the evils discerned in the antiquated treatment at present in existence would be permanently extended. The federal authorities would be handicapped in the proper treatment of those who came to federal institutions already stamped with the imprints of multiple provincial institutions. (p.340)

"During recent years, public interest in penology has developed rapidly and, as stated previously, it has been more generally recognized that prisons are not merely places of custody and punishment but also places of reformation and rehabilitation. The many important questions involved in a scientific administration of the penal system cannot be solved as well by several independent administrations, working from different angles and with different points of view, as by one central administration following a definite scientific program with a continuity of policy. (p.341)

" Classification is the basis of success in penal administration and it cannot function properly unless it is an integral part of a definite program undertaken by a single administrative authority. ... Your commissioners are well aware of the difficulties to be overcome in such a consolidation ... (but) are emphatically of the opinion that without this centralized control of penal institutions, the best efforts in prison administration will be gravely handicapped and, in many cases, defeated. "

b) Report of a Committee Appointed to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada, 1956 (Fauteux Report):

"Representations have been made that there would be much advantage to be gained in Canadian prison administration if the maximum term for detention in the provincial institution were considerably reduced. One view is that the provincial government should be responsible only for the care and treatment of persons confined for a maximum term of six months, and that the responsibility for all persons sentenced to periods longer than six months should be the responsibility of the federal government. Such a change, if effected, would result in greater uniformity of treatment of offenders throughout Canada, and should ultimately result in the establishment of a greater number of types of institutions for prisoners who are sentenced to terms in excess of six months. We recommend accordingly. (p.50) "

This reasoning was followed and reinforced by a slightly different split recommended by the Federal/Provincial Conference in 1958:

"Although there were some discussions and initial disagreement at the Conference, a recommendation was made for sentences of less than six months to be placed under provincial administration, and those greater than one year to be administered by the federal government, with no sentences between six months and a year. According to the Minutes of the meeting, it was stated, 'Our reason for putting forward this proposal (as above) is that, upon consideration of the Fauteux Committee's recommendation, we came to the conclusion that it is impractical to undertake reformatory treatment in the case of a person sentenced to less than one year.' "

c) Report of the Canadian Committee on Corrections: Toward Unity, Criminal Justice and Corrections, 1969 (Ouimet Report):

This report presented arguments for and against each of the three major alternatives:

- (i) to leave the present arrangement unchanged;
- (ii) to apply the one-year formula recommended by the 1958 Conference mentioned above; or
- (iii) to place responsibility for all services with the provincial governments.

The Committee then concluded as follows:

"... considerable time has elapsed since the Fauteux Committee completed its work and there has been considerable growth in provincial correctional services, including prisons. These developments, along with those in the federal system, have increased the problems associated with a major transfer of responsibility ... these difficulties have impressed the Committee as has the lack of consensus among the many people across the country with whom the Committee has discussed this problem. The Committee has therefore concluded that insufficient reasons exist to recommend any major transfer of responsibility for prisons.

"The Committee recommends that the federal government retain responsibility for prisoners sentenced to incarceration for a period of two years or longer and that the provinces retain responsibility for those receiving a sentence of less than two years; that anomalies that run counter to this provision be removed; and that there be provision for the federal government to contract for prison service from a province and for a province to contract for prison service from the federal government." (italics in the original)

The Committee did go on to recommend, however:

"... that the federal government retain responsibility for parole as it affects all inmates of federal penitentiaries and that the provinces assume responsibility for parole as it affects all inmates of provincial institutions."
(italics in the original)

Several observations may be made:

- 1) Apart from brief and speculative remarks in the Ouimet Report as to the possible reasons for the division of powers with respect to correctional services stated in the B.N.A. Act, none of these studies attempts a critical discussion of the roles of the two governments in terms of constitutional theory or philosophy. The reports tend to concentrate on the problems of correctional management with a view to providing a more efficient, economical, and effective service.
- 2) With respect to correctional theory, it would seem evident that the committees all had considerable faith in rehabilitation as a correctional technique and the application of "scientific principles". In fact, it would appear, from this brief examination, that the earlier the report the more enthusiastic the reliance on such principles. Be that as it may, one trend is evident in the reports: the extent of recommended federal involvement steadily decreases with the passage of time - the Archambault Report recommends complete nationalization of correctional services, the Fauteux Report suggests increased federal involvement, and the Ouimet Report opts for relatively minor reforms in the present system. The emphatic and

optimistic proposals of the Archambault Commission would seem to give way to the rather guarded pragmatism of the Ouimet Committee.

- 3) Finally, it is interesting to note that while the Fathers of Confederation may have regarded the reformation of offenders as properly a provincial function, the Archambault and Fauteux Reports stress the possibility of reforming offenders as a justification for federal administration.

It was apparent to the Task Force from all this that a variety of rather complex issues bears upon the question of the organization of corrections. There is clearly an interplay of political and constitutional issues, matters relating to correctional theory, and administrative or economic issues.

The studies of the past only too clearly proceeded under the assumptions of their times in the selection of issues and the appraisal of arguments. They seemed of more help to us in framing the right questions and warning of pitfalls than in pointing to obvious solutions.

Yet it was also apparent to virtually everyone, both within and outside of the correctional system, that the present organization entailed significant problems on many counts. It is in this context that the Task Force attempted to assess in a systematic way each of the organizational options selected by the Deputy-Ministers.

II. DESCRIPTION OF THE SELECTED OPTIONS

This section is confined to a straightforward description of each option in terms of its basic structure and chief characteristics. The options are numbered V, IX, X, and IX, retaining the numbers these options were given in the original list of options considered by the the Deputy Ministers.

Option V. Under this Option, the provincial government would provide a total range of correctional services (or contract for same) from preventive and pre-trial services through to maximum security institutions and all parole or other community supervision procedures. The federal government would share responsibility for, and collaborate in, policy formation, priority-setting, planning, research and development, information systems, staff development, and the like. (see Part Two, Appendix 6 for a detailed description and analysis of this Option).

A discussion on the constitutional issues which follows in this paper suggests that the jurisdiction over corrections is one of concurrency between both levels of government. Assuming that to be the case this Option would result in the whole of the corrections service delivery system being delivered by the province.

If however, one does not share the view that correctional responsibilities are concurrent but divided, then this Option could only be implemented by a transfer of authority from the federal to the provincial government for those functions now under federal control. Such a transfer could be affected by way of delegation to a provincial agency or alternatively by means of contract

for service delivery between the Attorney-General of British Columbia and the Solicitor General of Canada. In the latter case the Solicitor General of Canada would retain ultimate responsibility for those operations currently under federal control, and thus, the provincial authorities would be required to report periodically as to performance under the terms of the contract.

Option IX. This Option is based on the recommendations of the Fauteux Report of 1956 and the Federal/Provincial Conference of 1958, as outlined earlier. It would continue the principle of split responsibility between federal and provincial governments on the basis of length of prison sentence but would change the division point.

The provinces would retain responsibility for all community correctional procedures and all prison sentences six months and under with attendant release procedures, and all related support services.

The federal government would assume responsibility for all prison sentences of more than six months, again along with all related release and parole supervision services in the community and all management, research and planning services.

A variation of this structure would call for the provinces to be responsible for all prison sentences of six months or less, and the federal government to administer all sentences of one year or more, with sentences between six months and one year being abolished.

In short, we would have, in effect, a 'six-month rule' or, possibly, a 'six-month/one-year rule' replacing the current two-year rule. (see Part Two, Appendix 7 for a detailed description of this Option)

Option X. Under this Option, all correctional services and support functions in the province would be the responsibility of a joint federal/provincial corrections agency.

The agency would be a Crown corporation or commission with ultimate political authority and responsibility for funding shared equally between the two levels of government. Final administrative authority would be vested in a jointly appointed board of directors responsible to both the Attorney-General of British Columbia and the Solicitor-General of Canada. Political accountability and, thus, accountability to the public would be achieved. (see Part Two, Appendix 8 for a detailed description of this Option)

Option XI. This Option stems from the recommendations of the recently published report of the Law Reform Commission of Canada entitled, A Report on Dispositions and Sentences in the Criminal Process: Guidelines, 1976.

It is important to note at the outset that one of the commissioners (Dr. J.W. Mohr) informed the Task Force informally that the Commission would in fact favour provincial administration of all correctional institutions.

The recommendations in the Commission's report were based on the assumption that some form of split responsibility would continue and that the problem was therefore to divide responsibility on as rational a basis as possible. Given this assumption, the Commission's recommendations as to the organization

of corrections follow closely upon its recommendations with regard to sentencing.

In this area, the Commission suggests a functional approach, i.e., that the length of a prison sentence should be determined, within certain maximum limits, by its (explicitly stated) purpose. The Commission asserts that there are only three justifications for prison sentences: enforcement of community orders; denunciation of the offence; and separation of offenders considered, at least at the time of the sentence, to be sufficiently dangerous to necessitate imprisonment.

Accordingly, the Commission recommends that administrative authority in corrections be divided as follows:

- (a) Sentences for wilful default of community orders (maximum six months or, in the case of consecutive sentences, twelve months) should be under provincial jurisdiction since they are closely linked to community-based sentences and constitute a last resort in those sentences.
- (b) Sentences of separation (maximum twenty years), because of their special conditions and their length, should be under federal jurisdiction.
- (c) Sentences of denunciation (maximum six months or, in the case of consecutive sentences, twelve months) may be split on a time basis if the present situation prevails, or may be left to the discretion of the judge, or may be placed under federal jurisdiction since this sentence would apply to offences which seriously undermine core values even though dangerousness may not be a factor. (pp. 78-9; bracketed portions added.) See Part Two, Appendix 9, for detailed description of this Option.

III. ESSENTIAL CONCEPTS DEFINING THE OPTIONS

The Task Force identified two main concepts with respect to which the various options for the division of jurisdiction in corrections could be defined and from which it would seem easy to identify certain advantages and disadvantages.

The first of these concepts is that of unification of the corrections system within the province. It was felt by the Task Force that there were certain advantages and disadvantages, specific to a unified corrections system under one authority within the province of British Columbia, that is, single agency delivery of corrections services in B. C. The valuation of the options would be different when viewed from the perspective of a national versus provincial unification.

The second concept which the Task Force identified was that of the degree of centralization of the different options. It is important here to identify two different types of centralization, that of political closeness in the sense of a government being close to its public (wherein municipal government is the closest to the community, provincial slightly more distant and federal government presumably the most distant). However, this is not to be confused with the closeness and sensitivity of service delivery to the community, which may depend more on the administrative style and the structure of an organization than the level of the government which delivers the service. However, the Task Force felt that several

advantages and disadvantages of the different options could also be identified with respect to the degree of centralization i.e. the level of government involved in the administration in the options.

In presenting a general definition or comparison of the options with respect to unification and centralization, the Task Force identified certain advantages and disadvantages for each option. It should be noted that some of these advantages and disadvantages apply to several options where the degree of unification and centralization is similar. Where this occurs the report identifies the overlap.

Option V would unify all correctional services and development in one agency at the provincial level. There are a number of advantages which are identified for such a unified structure.

A unified structure minimizes the costly duplication of programs and services and thus promises the inmate the greatest range of program opportunities, particularly in incapacitation sentences. It also enables a larger and more integrated operation and this may mean that the system can afford to operate more specialized units or services tailored to the needs of specific groups of offenders. Thus, the unified or integrated service provides the necessary management control for efficient and flexible transfer of offenders between programs.

A unified system would seem to avoid one of the points which the Ouimet Report (page 279) calls "artificial

barriers to good sentencing" in that the court is freed of the necessity to consider which authority (and thus what type of institution) an offender will be placed in, when deciding upon length of sentence.

Unification would seem to ensure more uniformity of standards in material or social terms within the province of British Columbia (i.e., in terms of facilities and programs or opportunities). Thus this system would seem to be more equitable than a non-unified one (similar points can be made with conditions of work, training, and pay for staff, but that is not relevant here).

The Task Force also felt that several disadvantages should be identified with respect to unification within the province of British Columbia in the delivery of correctional services.

Thus a non-unified system, particularly one divided as at present on the basis of sentence length, affords the opportunity for a concentration in the federal system on the serious or dangerous offender and on his secure confinement; and an emphasis in the provincial system on community sentencing and community programs. In either system however, it is necessary to have both community and institutional facilities; offenders with long sentences are eventually released to the community, and in a community system institutions are often necessary as a last resort. The argument for specialization may thus be more appealing in theory than in practise.

Within a unified or integrated service delivery system

there is a greater potential for consistency, continuity and increased control in case management. This may be perceived, however, by some as having negative implications. It can be viewed as containing a greater threat to the violation of the rights of offenders by subjecting them to the intervention of one agency.

The second option which the Task Force considered with respect to the concepts of unification was Option X. This Option is similar to Option V in that it is unified and provides a single structure whereby all correctional services are placed in one agency, the joint Federal/Provincial Crown Corporation. As such, the advantages and disadvantages of unification above would apply to this option.

Option IX (split authority under a six-month rule or six-month/one-year rule) is not unified (with both federal and provincial governments involved in the administration of corrections). It would seem to provide a focus on security at the federal level versus community programs at the provincial level with presumably less danger of too much control of the offender. Because it is not unified, however, there would be less consistency and fewer program opportunities for dealing with the sentenced offender; there would be no realization of the economies in administrative and support services or as high and consistent standards in the administration of corrections within the province of British Columbia.

The Law Reform Commission proposals (Option XI) are not inconsistent with Option IX. Sentences of six months

or less would be under provincial jurisdiction and since they are designed to enforce community orders, would be closely integrated with provincial responsibility for corrections in the community. Sentences of more than six months would reflect the aims of denunciation or separation and be under federal control. As such, the advantages and disadvantages outlined above for Option IX would seem to apply to the Law Reform Commission proposals with respect to the concepts of both unity and centralization.

The Task Force then identified advantages and disadvantages with respect to the degree of centralization of each option. Option V (provincial administration) is a decentralized option in that the provincial government, rather than the federal government, has total responsibility for the delivery of correctional services. A number of advantages of such decentralization were identified.

A provincial government may be assumed to be politically closer to its public and to the community and thus better able to reflect the diversity of community concerns and needs. As such, it may be better able to relate the community to corrections and to integrate the offender back into the community. This would appear to be true both in terms of how we do things (for example, more informal processing of cases with maximum involvement of offenders, victims and citizens) and what policies we follow (for example, ease of administration of sentences in the community, settlement of conflict, and community control methods). It can be argued,

however, that such closeness to the community is more a function of service delivery, and as such depends on administrative style and the particular local organization rather than the level of government delivering the service.

A decentralized system would seem to ensure better communication and co-ordination of corrections with other components of the criminal justice system, and with other social services, since the majority of these agencies are administered by the province. On the other hand, the case can be made that these agencies are already fragmented, and in any case are functionally different; thus the same level of government delivering the service will not necessarily ensure better communication between them.

The Task Force also identified a number of disadvantages of decentralization. Perhaps the strongest argument against decentralization is that it hinders development and compliance with national standards, both in terms of delivery of programs and standards of operation (facilities, programs, staffing, etc.) across the country. At a time of acute concern for the protection of civil rights, the aim of equity also demands attention. Corrections is often an emotional and even an explosive issue, and it can be argued that decentralized control risks unstable and extreme reactions against offenders, out of harmony with national standards. It may be argued, however, that within the larger provinces the systems are big enough to provide reasonably stable and uniform standards and ample protection of individual rights.

Another argument is that, with its greater financial resources, the federal government can provide, not simply more uniform standards, but higher standards and that the involvement of the federal government in actually operating its own system lends realism and credibility to its leadership. However, it may be argued that this would only be true for some provinces. In fact, in a number of areas of standards, provinces such as British Columbia have taken leadership, such as in the development of forest camps and special programs for young offenders.

Option X (the joint crown corporation), is more centralized than Option V, since it has the advantage of equal participation by the federal government. As such, it would appear that it has the advantage of encouraging national standards and the possibility of higher standards with the federal involvement while not totally removing the advantages of decentralization; e.g. political closeness to the community.

There are, however, a number of potential disadvantages. Although a joint Board of Directors may be feasible in certain areas of government, correctional policy is notoriously controversial and the clear danger would be that such a board may provide fluctuating and unstable guidance for any administrator. Despite all good will, the dual political accountability would seem inevitably to result in even more conflict and instability than is at present the case.

A further concern would be the political sensitivity of such a Board. Its structural independence might allow it

to operate somewhat independently of constantly fluctuating, and potentially dysfunctional, public opinion. On the other hand, it needs to be accountable to public criticism. It would be in the interest of both governments to ensure that, while it remains sensitive and responsive to public opinion, it does not become immobilized because of the fear of public response.

Although correctional services would be decentralized and unified, corrections would work for a different authority than do the police, pre-trial and court services. That is, this option would appear to violate the ideal of unifying the criminal justice system. Similarly, under this option, corrections would work for a differently constituted authority than do most other social services with which it must communicate and cooperate.

Option IX (the six-month or six-month/one year split) represents an increase in federal responsibility and, thus, a greater centralizing of authority. It would, presumably, allow the opportunity for better development and implementation of national standards and, indeed, because of the federal government's greater resources, the possibility of higher standards in corrections. However, because of its centralized characteristic, this option would not seem (a) to put corrections politically close to the community, or (b) in close coordination with other criminal justice agencies or social services, most of which are administered by the province.

IV. ANALYSIS OF OPTIONS

The working papers (see Part Two, Appendices 6 to 9) developed by the Task Force present detailed evaluations of each Option with respect to the criteria which the Deputy-Ministers and the Task Force identified.

For this summary, we are simply highlighting the areas where the Options differ with respect to each of the criteria. Thus, each of the criteria will be taken in turn and the Options will be compared with respect to it. Where possible, we identify only those arguments for or against the different Options which are different from those presented in the previous section dealing with concepts of unification and centralization.

A. Philosophy, Objectives and Values

The essential question here is to what extent each Option promises to be effective in achieving correctional aims, i.e., which Option is the most desirable from a theoretical point-of-view (see Part Two, Appendices 10 & 11).

This requires postulating a reasonably acceptable statement as to the aims and trends in corrections so that it can be used as a tool to evaluate each of the Options in turn. The controversial nature of this effort is readily acknowledged, and if the reader rejects certain aims, then the force of the later arguments concerning the Options is weakened, but this ad hoc approach is considered the most practical in the space available.

Since the corrections system forms a component of the larger criminal justice system, it seemed reasonable to begin with a few statements concerning our assumptions as to the aims of the criminal justice system as a whole. It was first observed that within society there is a range of social conflict, and the system has a limited role in the settling or control of social conflicts; that is, it is restricted to determining responsibility and enforcing legal sanctions only in relation to those acts defined by law as criminal.

Inconsistent with this overall aim, the criminal justice system employs two major strategies:

- a) A 'preventive' one, where the goal is to restrict the number of persons who enter the system. Within this aim, Options V and X, which are politically closer to the community, would seem to be more effective and more able to reflect community concerns. The decentralized nature of Option V would imply better communication with other criminal justice agencies and social service agencies at the provincial level, increasing its effectiveness here as well. A possible drawback for Option X is that it may be too sensitive, as suggested in the previous section, to local concerns.

Because Options IX and XI would seem, through their split jurisdiction, to involve a greater emphasis on retribution, denunciation or general deterrence, these options would seem to be more effective in the denunciation of the offence.

This denunciation would contribute, presumably, to greater prevention of offences in the future. However, the case can be made that these sentences eventually become shorter and there is a need for community release for even these offenders.

- b) A 'reactive' one, where the goal is to mediate disputes or deal with offenders by means of a range of correctional procedures. Once again, the decentralized nature of Option V and, to some extent, Option X would seem to imply greater closeness to the community and greater ability to administer the 'reactive' or 'curative' aim of corrections. In addition, Option V, with better communication with other parts of the justice system and social services, would seem to be even more effective here. Perhaps more importantly, Options V and X, because of their unified nature, would provide more program opportunities, and thus make the 'reactive' goal more effective. On the other hand, Options IX and XI, because of their encouragement of higher standards, particularly at a national level, would seem to ensure a greater 'curative' contribution in this respect.

In less general terms, the aim of corrections is to

- i) administer the sentences handed down by the court, and
- ii) provide as wide a range as possible of sentencing alternatives for the court. These sentencing alternatives or programs are designed either to control the behaviour of an offender, to punish

him, to assist him in some way, or to require that he repay in some manner the cost, or part of the cost, resulting from his offence. In common with other governmental services, these aims are to be administered as economically as possible and within the limits of other social values, specifically within the limits of humanitarian principles, the principle of justice or fairness, and the protection of basic political freedoms.

Of significant interest to the Task Force were the recommendations of the national Law Reform Commission report on sentencing with respect to philosophy and objectives. In general, the Commission urges such things as restraint in invoking the criminal justice system machinery in the first place as a means of settling conflicts, informality of procedure wherever possible ('diversion'), settlement of disputes at the community level, expansion of discretionary guidelines to make these procedures possible, reparative sentencing, community control facilities, and so on. The Commission acknowledges the fact that the present split in administrative structure presents problems, and stresses the role of local (municipal) governments in responding to crime, while encouraging the role of provincial and federal governments in providing assistance, setting standards, conducting development projects, and the like. As such, the Task Force felt that Option V and, to some extent, Option X were in line with the informal recommendations of the Commission, which favours provincial administration or, at least unification of corrections under one authority.

Options IX and XI, where the purpose of sentence could be divided cleanly between the provincial and federal administrations of corrections, were in line with the formal recommendations of the Commission.

The Task Force also considered it useful to indicate some recent general trends affecting the criminal justice system and, specifically, corrections, since some of these can be expected to have differing implications for the options.

The following were deemed to be most important:

- a) An emphasis on the prevention of crime, both by improvement of various social services and by greater attention to preventive work within the criminal justice system itself. Obviously, those options having an advantage in prevention, particularly Option V and, to some extent, Option X, would be more effective here.
- b) A trend toward more informal processing of cases, with a view to rendering criminal justice procedures more visible, understandable, democratic and, perhaps, less "alienating" for offenders, for the victim, and for the public at large. In this case, those options, particularly V and X, which are politically closer to the community, would afford the opportunity to involve the offender, victim and citizen together and encourage such informal processing.
- c) An emphasis on decentralizing procedures in an effort to conduct them as close to the community and even the neighborhood or street level, as is feasible, and thus attempt

to involve the victim and the public in criminal justice matters.

As indicated in Section III, because Option V and, to some extent, Option X are more decentralized, they would seem to be more effective here.

- d) A tendency to reject the effort to rehabilitate or deter offenders as a justifying aim of intervention in their lives. There are still efforts to treat offenders humanely, to assist them and to offer them opportunities for achievement or growth, but the justification of a sentence is sought on other grounds. Once again, the unified Options V and X, would seem to provide greater correctional opportunities for offenders.
- e) There appears to be greater emphasis on simple control of offenders considered "dangerous", and a commensurately greater emphasis on public protection. In this case, Options IX and XI, with a greater focus on security in federal institutions, may provide more effectiveness. However, the argument could be made that, under unified systems (Options V and X), the greater number and wider diversity of offenders permits the more efficient allocation of resources, including the provision of appropriately secure facilities for the dangerous or violent offender.
- f) There appears to be a trend to restore retribution, not necessarily in the sense to return to arbitrary or inhumane punishment, but in a sense of an emphasis on the offender's moral accountability for his acts and the right of the

community to denounce such acts or react in some manner. Once again, Options IX and XI would seem to be more effective here, but the argument can be made that the province or a unified system could provide this same effectiveness.

- g) With the greater emphasis on moral responsibility, there appears to be a growth of interest in reparative sentencing in its various forms, e.g., compensation, restitution, and service to the community or to the victim. Option V particularly, with greater opportunity for communication with other agencies, would seem to be especially effective here.

In summary, as to how the criminal justice system proceeds, the trends appear on the one hand to be toward emphasis on due process and protection of individual rights and, on the other hand, toward informality and involvement of all concerned.

In terms of what the system does, it appears that on the one hand there is an interest in responding to the offence and its meaning as a violation of the moral values of the community; and, on the other hand, an effort to respond in a firm way to the offender by ensuring he is under reasonable control.

As to where procedures are carried out, the trend is clearly to keep the offender in the community whenever it is safe to do so, rather than resort to isolating him in an institution.

It will be noted that the trends and the effective options relating to them are by no means necessarily compatible with each other with respect to philosophy.

B. Service Delivery

A brief review will be made of the important implications of unification and centralization for service delivery.

Option V, resulting in a unified service delivery system, would bring a reduction in duplication, particularly in operational programs and support services. It would also offer greater range and consistency of programs within the province and provide the opportunity for greater continuity of case management.

Also, because Option V is decentralized, it would allow corrections to be politically closer in integrating the offender with the community and thus providing better service delivery.

At the most general level, a decentralized option would seem to be within the recommendation of several royal commissions (including the Glassco Commission of 1962) which support the principle that direct services to citizens be administered at the provincial level.

Because of the decentralized nature of Option V, attention must be given to mechanisms for insuring the development and implementation of national standards within the province.

Since Option X is more centralized, but unified, it would include many of Option V's advantages, as well as possibly providing greater opportunity for national and even higher standards in the delivery of correctional services within the province of British Columbia.

Options IX and XI, because of their centralized nature, provide national standards in federal corrections. These standards may

not be consistent, sufficient, or of an adequately high level within the province.

There may, further, be difficulties in that there might be a smaller range of programs and less consistency in service delivery within the province, because of the lack of unification in delivery of correctional services.

Both Options IX and XI would see a substantial increase in federal workload (see Part Two, Appendix 12), but the Task Force felt that a commensurate decrease in provincial workload would not necessarily occur.

Option IX does suggest that the province may be able to move out of the administration of secure institutions, with the exception of remand. Where secure facilities are required, exchange of service agreements could be used.

One last argument should be presented for Option XI with respect to service delivery. For the planner, the administrator and the researcher, because of the explicit description of the purposes of sentence, there is the possibility of greater discipline in their efforts. In general, clarity of goals would seem essential if the various criminal justice services are to be integrated in a system.

Further, such explicit stating of the aims of sentence would give much clearer direction to prison authorities in the designing of facilities and the administration of programs. Logically, these should be consistent with the aims of the sentences of the offenders received. This would result in a more coherent and efficient, if

not also more effective, response to such offenders, reducing the pervasive ambiguity that is at the root of so much inefficiency, conflict and injustice in such institutions at present.

The sentence would no longer be so vulnerable to the various interpretations of it which occur as the offender proceeds through the sentence and which are so confusing and frustrating to the public, to the courts, to criminal justice personnel at all stages and, particularly, to offenders.

Because a judge, however, must select a single aim for the purposes of determining who shall administer the sentence, he will likely be able to state only his predominant purpose, other aims being also present.

This means that institutional facilities and programs must then be designed for only an emphasis in one direction or another so far as aims are concerned. The question then arises as to how much real difference this change may result in over the present situation.

C. Implications for Administrative Structure

This topic is considered with reference to each option in appendices 6 to 9 under headings Organization and Administrative Structure. A tentative organizational chart is also provided for Options 5, 9 and 10. We will attempt here to summarize briefly some of the issues.

The split options (9 and 11) would seem to entail the smallest revision of present structures, although with both there would be expected a significant increase in size of the federal organization to handle the increased workload.

If the split was made at the six-month point, the provinces would likely have no need for parole services or a Board of Parole, and would have less need for the more highly secure facilities for sentenced offenders. (There would continue to be a need, of course, for secure facilities for purposes of remand.) Apart from this, both governments would maintain a full range of institutional and community facilities and services, along with all support services. However, the split jurisdiction, contained in both Options IX and XI, would seem to imply less harmony and efficiency in operations and to incur costly duplication of support and operational services. This problem would appear to be overcome with the two unified Options V and X.

Depending upon trends as to length of sentence, these options would involve a greater or lesser increase in federal government responsibilities. Assuming the increased federal intake serves between four months and eight months in custody, the increase

in federal workload could range from 35% to 77%. (A split at the twelve-month level would involve a change only of a few percentage points, since rather few offenders are sentenced to terms ranging from seven to twelve months.

For Option XI, the proposed Sentence Supervision Board raises considerable complexity in terms of administrative reorganization. This Board would replace the present National and Provincial Parole Boards, and would also assume a number of responsibilities now under provincial jurisdiction (e.g., Temporary Absence, gradual release to the community, and internal prison discipline). The Sentence Supervision Board appears to have significant implications regarding administrative structure.

Option V would require the transfer of federal staff serving in both institutions and the community into the provincial services. This would require an integrating of all positions and some re-structuring of the provincial organization to accommodate federal staff. The exception to this, at least as the option is envisaged at the moment, would be the research, development and planning staff where some form of cooperative or joint arrangement would be planned. (The structure and functioning of joint participation in planning has not yet been developed.)

Option X would seem to involve the greatest amount of administrative re-structuring since it requires the establishment of an entirely new agency and the integration of both services. It would also require the establishment of a new board of directors and the development of its responsibilities for that agency.

D. Financial Impact

The unified options (V and X) would appear to be the most economical to operate, since they provide economies of scale and involve less duplication of administrative and support services. Option X, however, entails the additional costs of the proposed Board of Directors and staff.

The two split options (IX and XI) require only relatively small change from the present structure and thus, little saving in costs.

Because of the increased federal workload with both of these options, the federal share of costs of corrections would increase significantly. It may be pointed out that this may not be accompanied by a commensurate decrease in provincial costs of corrections.

E. Constitutional and Legislative Impact

As mentioned earlier, the B.N.A. Act placed "penitentiaries" under federal control and "public and reformatory prisons"

under provincial authority. In an effort to determine what distinctions, if any, exist in constitutional terms between these institutions, a search has been made into the history of penitentiaries prior to Confederation (see Part Two, Appendix 4). As stated previously, there was no clear distinction in constitutional terms between penitentiaries and public and reformatory prisons, and the terms were used interchangeably.

Our conclusion was that, insofar as the establishment, maintenance and management of correctional institutions are concerned, the division of responsibility under the B.N.A. Act as between Parliament and the Provincial Legislatures is one of concurrent jurisdiction (see Part Two, Appendix 13, for a fuller discussion of these issues).

The relinquishment by one government of the authority it presently exercises thus does not, in any way, amount either to an abdication of its responsibility or a usurpation of authority by the other government. But further, even if one does not concede that the constitutional jurisdiction over corrections is concurrent but urges that it is a truly divided area of jurisdiction, either contract for service or statutory delegation to a provincial agency would skirt constitutional difficulties.

Applying the latter interpretation (i.e. divided jurisdiction) to several options, Option V (provincial administration) could be accomplished, either by contract or by formal delegation. The contract arrangement would require a reporting relationship between the Province and the Solicitor General of Canada, while

a formal delegation of authority would mean that the Attorney-General of British Columbia would become the sole political head of the organization.

Under Option IX (split authority under a six-month rule or a six-month/one-year rule), transfer could be accomplished by a simple amendment to the Criminal Code in substitution for the present section 659 which expresses the two-year rule.

Option X (the joint Federal/Provincial Crown corporation) represents a tangible expression of the concept of jurisdictional concurrency. Concurrency means, of course, that each level of government has full jurisdiction over the subject matter, and this option would thus clothe in real terms the concurrency concept. But even if the constitutional jurisdiction over corrections is interpreted as being truly divided in constitutional terms, then the division can likewise be melded into the form of a joint federal-provincial agency by the technique of delegation of authority from one level of government to the agency of another.

As to Option XI (splitting of authority according to the purpose of the sentence), in constitutional terms, this was considered very little different from Option IX and would simply require appropriate statutory provision with no constitutional implications.

F. Effect on Justice System

The decentralized options (V and, to an extent, X) would appear to offer a greater opportunity for corrections to relate to other parts of the criminal justice system which are, in large part, administered by the province as well. However, an argument can be

made that these other agencies are already fragmented from corrections and that, indeed, particularly the police and courts, are functionally different from corrections; and the administration of corrections by a provincial or local agency (in the case of the Crown corporation) would not go any further in facilitating communication with them.

Option X has some peculiar difficulties because it provides a different locus of authority, i.e., a Crown corporation. Due to its increased independence, ^{this Option} may raise difficulties in coordinating development of policy with other criminal justice agencies within the province of British Columbia or with correctional agencies across the country.

Since Option XI would establish a functional split between different kinds of custodial sentences, this split would hopefully provide a rational framework within which other components of the justice system could relate to correctional programs.

Similarly, the development of consistent guidelines and policies by the Sentence Supervision Board may improve the capacity for cross-divisional coordination in certain areas. (For example, liaison with police around temporary absence.)

G. Effect on Social Service System

Because Options V and, to an extent, Option X are decentralized, they would seem to afford a greater opportunity to relate corrections to other social services which are typically administered by the province. However, once again, as with the effect on other justice agencies, the argument can be made that jurisdiction with

these social services is already fragmented and, since they are functionally different, this would not encourage any greater communication with them.

Once again, Option X, because it provides a different locus of authority, i.e., a Crown corporation, due to its increased independence, would presumably encounter greater difficulty in coordinating policy development with social services within the province.

As to Option XI, the exposition of clear and consistent policies based on the stated objectives of sentencing would provide agencies and the general community with an understandable and reasonable framework within which they might become interested and involved in corrections activities.

With this Option, there is also the implication that social agencies involved in such areas as education, manpower training and placement, counselling, etc., would be expected to provide many services currently provided by corrections.

V. PHILOSOPHY OF THE DIVISION OF RESPONSIBILITIES IN A
FEDERATED STATE

In the previous section, under the heading Constitutional and Legislative Impact, we were concerned with the interpretation of the B.N.A. Act with respect to the division of powers between the federal and provincial governments. We turn here to the more philosophic question raised in the Introduction: i.e., should the federal government have a role in the administration of correctional services?

It may be argued that the custody of correction of offenders, at least those offenders who violate federal law, should be the responsibility of a federal government. We may note in passing that this indeed is the arrangement across the border, but to date the Task Force has not examined American practice in detail. This comparison may have limited usefulness. For one thing, the individual states have greater legislative power in the criminal law area than do the provinces in Canada.

It may be pointed out that the federal government has rather extensive administrative responsibilities in several areas of the criminal justice system in which the provinces have predominant jurisdiction. Thus, the central government, despite varying degrees of objections from the provinces, provides prosecutorial staff for various non-Criminal Code statutes, such as the Income Tax Act, Food and Drug Act, Narcotics Control Act, Admiralty Act, etc. The federal government also furnishes the police services required to enforce certain federal statutes.

It may be suggested that the question of federal involvement in the administration of a sentence should be related to such things as its severity for the offender, its purpose, and the nature of the offence.

It may be observed that (a) the criminal law represents the basic moral standards of the nation and thus has profound national significance as an integrating force and, (b) sentences for criminal law violations frequently involve serious inroads on the freedoms of offenders.

Hence, it may be argued that the uniform application of the law requires that both legislative and administrative authority be vested in the hands of the Federal Government.

The short answer to such a position would seem to be that, if the Fathers of Confederation had intended extensive federal involvement in the administration of the criminal justice system, its responsibilities would have been vastly expanded from the beginning. The central government may have been charged not only with legislating the criminal law but also with its enforcement and interpretation by all criminal justice services - the police, the courts, and all correctional services.

In contrast, the B.N.A. Act clearly allots to the federal government for the most part only the legislative function in criminal matters. Interpretation and enforcement of the law for the great mass of cases is left in provincial hands. It appears to have been recognized that the interpretation and enforcement of the law is closely dependent upon regional and local problems or

patterns of values. Anything less than this would fail to respond to the plurality and diversity which characterizes the Nation and which is highly valued. In this light, the removal of penitentiaries from provincial administration which existed before Confederation and their placement under the federal government was the nationalist exception that proved the rule.

Finally, with respect to the federal government's role in the expression and maintenance of national standards, it may be argued that the central government can achieve this in several ways: firstly, it has the legislative power and, with this, can provide minimum and maximum penalties for violations of the law; secondly, it appoints Superior Court judges and administers the ultimate Appeal Court. Lastly, with its greater financial resources, the central government may have considerable influence on the development and maintenance of standards by funding procedures of various types.

The long answer to the question of the extent of federal involvement in correctional service delivery would require an examination of corrections in terms of some of the fundamental issues pertaining to the division of powers. In the time available, the Task Force briefly examined two pertinent documents:

The Report of the Royal Commission on Government Organization, 1962 (Glassco Commission Report); and the Government of Canada Working Paper on the Constitution: Income Security and Social Services, 1969.

Neither of these reports, of course, is concerned directly with the administration of correctional services, but both make significant general remarks concerning the division of powers between the federal and provincial levels of government.

A brief summary is given here. The reports are discussed more extensively in Part Two, Appendix 14.

In the most general terms, the Glassco Commission Report supports the principle that direct service to citizens be administered at a provincial level. It observes that in recent decades there has been a general tendency for central governments in many countries to increase their involvement in social services. In some cases in Canada, such responsibilities were assumed by the federal government at a time when organization at such a level seemed necessary in view of the limited resources available to the provinces.

The Commissioners argue that:

"...Other things being equal, your commissioners favour those modes which assign to other agencies the actual provision of a service to the public, leaving to the Federal Government the definition of goals and standards and the provision of financial support or other incentives. In this way, the day to day control of the service can be brought closer to the beneficiaries and made more responsive to their needs. At the same time, the operational burdens of the Federal Government can be minimized, leaving it free to concentrate on tasks which only it can discharge. (page 123)

"...In this growing range of matters in which federal and provincial governments have joint or allied interest, the development of provincial machinery cannot be ignored. The existence today of energetic and competent public services in the provinces enlarges the opportunities for administrative cooperation between the two senior echelons of government and requires a re-examination of many federal services to determine whether adequate account has been taken of provincial developments." (page 124)

The report on income security and social services is one of several prepared by the federal government during the constitutional review occurring between 1968 and 1971. It argues for a federal role in the administration of broadly conceived income support programs but for provincial administration of social services. It points out that these:

"... necessarily involve the operation of clinics and hospitals, the regulation of these and other institutions, the regulation, training and employment of professional personnel, and the provision of care and counselling (case work) services to individuals and families. It is this distinction which has brought the Government of Canada to propose a different distribution of powers in respect of income security on the one hand and social services on the other. (pages 93-94)

"... It is the view of the Government of Canada that this adaption of health and welfare services to the needs of the local community is more readily achieved by smaller, or regional governments than by larger, national ones." (page 94)

At the same time, the report observes that there are "national dimensions" involved in the administration of social services, but that:

"This is not a matter ... of transferring whole programs into federal jurisdiction: there will always be programs which are largely of provincial concern, but in respect of which there is an element of national interest. Rather it is a matter of determining when there is a legitimate Canada-wide concern in respect of measures which are and ought to remain within provincial jurisdiction, and of deciding how provincial governments ought to be compensated for the cost, in terms either of priorities or of financial outlays, of adapting their programs to meet the agreed national objective. " (page 98)

Both of these reports, therefore, would seem to imply that corrections, along with other social services, properly belongs under provincial authority. However, the Task Force believed that, to pursue this subject further, a much more detailed analysis would be necessary.

For one thing, the reports are concerned with the administration of "social services"; and the writers appear, for the most part, to be thinking of direct and voluntary services to citizens which are 'humanitarian' in aim. Corrections, of course, exercises compulsion over offenders; as a component of the criminal justice system, it aims primarily to serve the interests of the state - to reduce crime among the public in general, or to support basic social values.

In short, the term service is used very broadly in the literature. All types of service are, in fact, offered by all levels of government.

The papers examined to date, therefore, would not seem to provide any clear direction as to the proper placement of responsibility for corrections. The reports are, however, of considerable interest for our purposes.

In the last analysis, the placement of responsibility for corrections will likely depend not simply on its surface characteristics - e.g., whether or not it is a direct service to individuals - but upon the goals it seeks to achieve and the generality or national significance of such goals. This, in turn, will involve the complex interplay of constitutional and correctional theory.

PART TWO

APPENDICES (Working Papers)

1. List of Original Options
2. Sections 91 and 92 of the B.N.A. Act
3. Sections 658 and 659 of the Criminal Code
4. A Brief Legislative History of Penitentiaries
Prior to Confederation
5. Review of Literature
6. Option V - detailed description and analysis
7. Option IX- detailed description and analysis
8. Option X - detailed description and analysis
9. Option XI- detailed description and analysis
10. Task Force Statement on Correctional Philosophy
11. Correctional Theory and the Organization of
Correctional Services
12. A Brief Institutional Analysis: Disposition
and Time Served
13. Constitutional and Legislative Issues
14. Notes on constitutional philosophy

SUMMARY OF OPTIONS

1. Current situation with improvements
2. All Federal Corrections System
3. Federal Correctional Service Delivery
4. All Provincial Corrections System
5. Provincial Correctional Service Delivery
6. Community-Institution Split
7. Program Split
8. Minor/Serious Offender/Offenses Split
9. Sentence Length
10. Federal/Provincial Corrections Agency
11. Law Reform Commission Proposals
12. Program/Re-Entry Split

THE BRITISH NORTH AMERICA ACT, 1867 / 563

4 NOVA SCOTIA AND NEW BRUNSWICK

- 88 The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.³⁷ Constitutions of Legislatures of Nova Scotia and New Brunswick
- 89 Repealed.³⁸

6 THE FOUR PROVINCES

- 90 The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada. Application to Legislatures of Provisions respecting Money Votes, etc.

VI Distribution of Legislative Powers

POWERS OF THE PARLIAMENT

- 91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act Legislative Authority of Parliament of Canada

.....

37. Partially repealed by the *Statute Law Revision Act, 1893*, 56–57 Vict., c. 14 (U.K.) which deleted the following concluding words of the original enactment:

and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected.

A similar provision was included in each of the instruments admitting British Columbia, Prince Edward Island, and Newfoundland. The Legislatures of Manitoba, Alberta and Saskatchewan were established by the statutes creating those provinces. See the footnotes to section 5, *supra*.

38. Repealed by the *Statute Law Revision Act, 1893*, 56–57 Vict., c. 14 (U.K.). The section read as follows:

5 *Ontario, Quebec, and Nova Scotia.* 89. Each of the Lieutenant Governors of Ontario, Quebec and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District. First Elections

assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

Amended

1 The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards right or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no

(S) House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.³⁹

1a The Public Debt and Property.⁴⁰

2 The Regulation of Trade and Commerce.

2a Unemployment insurance.⁴¹

3 The raising of Money by any Mode or System of Taxation.

4 The borrowing of Money on the Public Credit.

5 Postal Service.

6 The Census and Statistics.

7 Militia, Military and Naval Service, and Defence.

8 The fixing of and providing for the Salaries and Allowances of Civil and other Offices of the Government of Canada.

9 Beacons, Buoys, Lighthouses, and Sable Island.

10 Navigation and Shipping.

11 Quarantine and the Establishment and Maintenance of Marine Hospitals.

12 Sea Coast and Inland Fisheries.

13 Ferries between a Province and any British or Foreign Country or between Two Provinces.

14 Currency and Coinage.

15 Banking, Incorporation of Banks, and the Issue of Paper Money.

.....
39. Added by the *British North America (No. 2) Act, 1949*, 13 Geo. vi, c. 81 (U.K.).

40. Re-numbered by the *British North America (No. 2) Act, 1949*.

41. Added by the *British North America Act, 1940*, 3-4 Geo. vi, c. 36 (U.K.).

- 16 Savings Banks.
- 17 Weights and Measures.
- 18 Bills of Exchange and Promissory Notes.
- 19 Interest.
- 20 Legal Tender.
- 21 Bankruptcy and Insolvency.
- 22 Patents of Invention and Discovery.
- 23 Copyrights.
- 24 Indians, and Lands reserved for the Indians.
- 25 Naturalization and Aliens.
- 26 Marriage and Divorce.
- 27 The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
- 28 The Establishment, Maintenance, and Management of Penitentiaries.
- 29 Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

92(12 e)

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.⁴²

.....

42. Legislative authority has been conferred on Parliament by other Acts as follows:

- 1. The *British North America Act, 1871*, 34-35 Vict., c. 28 (U.K.).
- 2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.
- 3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.
- 4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.
- 5. The following Acts passed by the said Parliament of Canada, and instituted respectively,—“An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada”; and “An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of “the Province of Manitoba,” shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.”
- 6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said

Parliament of Canada may establish new Provinces and provide for the constitution etc., thereof

Alteration of limits of Provinces

Parliament of Canada may legislate for any territory not included in a Province

Confirmation of Acts of Parliament of Canada, 32 & 33 Vict. (Canadian) cap. 3; 33 Vict., (Canadian) cap 3

Limitation of powers of

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

- 92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—
- 1 The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
 - 2 Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
 - 3 The borrowing of Money on the sole Credit of the Province.
 - 4 The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
 - 5 The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
 - 6 The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
 - 7 The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
 - 8 Municipal Institutions in the Province.
 - 9 Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
 - 10 Local Works and Undertakings other than such as are of the following Classes: (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province; (b) Lines of Steam Ships between the Province and any British or Foreign Country;

Subjects of
exclusive
Provincial
Legislation

.....

Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

Parliament
of Canada to
legislate for
an established
Province

The *Rupert's Land Act, 1868*, 31-32 Vict., c. 105 (U.K.) (repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.)) had previously conferred similar authority in relation to Rupert's Land and the North-Western Territory upon admission of those areas.

2. The *British North America Act, 1886*, 49-50 Vict., c. 35, (U.K.).

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

Provision by
Parliament
of Canada
for repre-
sentation of
territories

3. The *Statute of Westminster, 1931*, 22 Geo. v. c. 4, (U.K.).

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Power of
Parliament of
a Dominion
to legislate
extra-
territorially

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11 The Incorporation of Companies with Provincial Objects.

12 The Solemnization of Marriage in the Province.

13 Property and Civil Rights in the Province. *... of the Province*

14 The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15 The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16 Generally all Matters of a merely local or private Nature in the Province.

EDUCATION

93 In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:— Legislation respecting Education

1 Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

2 All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

3 Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

4 In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of

CRIMINAL CODE — PART XX

[S. 659]

Kushner v. Williams, 46 Man. R. 139, [1938] 2 W.W.R. 247, 70 C.C.C. 260, [1938] 3 D.L.R. 196 (C.A.). In the absence of such proof and of an application for compensation, the money is properly returnable to accused: *Hargraves* (1959), 31 C.R. 182, 28 W.W.R. 592, 124 C.C.C. 167 (B.C. S.C.).

As to the proper procedure to be followed, see *Leitman v. Mackey*, 39 C.R. 238, [1963] 2 C.C.C. 356 (Ont. S.C.), and the cases set out in the practice note there.

Costs to successful party in case of libel.

656. The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

The case of *Blackley* (1904), 13 Que. K.B. 472, 8 C.C.C. 405, is an example.

How recovered.

657. Where costs that are fixed under section 656 are not paid forthwith the party in whose favour judgment is given may enter judgment for the amount of the costs by filing the order in the superior court of the province in which the trial was held, and that judgment is enforceable against the opposite party in the same manner as if it were a judgment rendered against him in that court in civil proceedings.

IMPRISONMENT.

Imprisonment when no other provision.

658. Every one who is convicted of an indictable offence for which no punishment is specially provided is liable to imprisonment for five years.

Imprisonment for life or more than two years—Subsequent term less than two years—Imprisonment for term less than two years—Sentence to penitentiary of person serving sentence elsewhere—Transfer to penitentiary—Only definite portion of certain sentences to be counted—Exceptions.

659. (1) Except where otherwise provided, a person who is sentenced to imprisonment for

(a) life,

(b) a term of two years or more, or

(c) two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more,

shall be sentenced to imprisonment in a penitentiary.

(2) Where a person who is sentenced to imprisonment in a penitentiary is, before the expiration of that sentence, sentenced to imprisonment for a term of less than two years, he shall be sentenced to serve that term in a penitentiary, but if the previous sentence of imprisonment in a penitentiary is set aside, he shall serve that term in accordance with subsection (3).

(3) A person who is sentenced to imprisonment and who is not required to be sentenced as provided in subsection (1) or (2) shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or other place of confinement within the province in which he is convicted, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

(4) Where a person is sentenced to imprisonment in a penitentiary while he is lawfully imprisoned in a place other than a penitentiary he shall, except where otherwise provided, be sent immediately to the penitentiary and shall serve in the penitentiary the unexpired portion of the term of imprisonment that he was serving when he was sentenced to the penitentiary as well as the term of imprisonment for which he was sentenced to the penitentiary.

(5) Where, at any time, a person who is imprisoned in a prison or place of confinement other than a penitentiary is subject to two or more terms of imprisonment, each of which is for less than two years, that are to be served one after the other, and the aggregate of the unexpired portions of those terms at that time amounts to two years or more, he shall be transferred to a penitentiary to serve those terms; but if any one or more of such terms is set aside and the unexpired portions of the remaining term or terms on the day on which he was transferred under this section amounted to less than two years, he shall serve that term or terms in accordance with subsection (3).

(6) For the purposes of this section, where a person is sentenced to imprisonment for a definite term and an indeterminate period thereafter, such sentence shall be deemed to be for a term of less than two years and only the definite term thereof shall be taken into account in determining whether he is required to be sentenced to imprisonment in a penitentiary or to be transferred to a penitentiary under subsection (5); and where any such person is so sentenced or transferred, the indeterminate portion of his sentence shall, for all purposes, be deemed not to have been imposed.

(7) For the purposes of subsection (3) "penitentiary" does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 82 of the *Penitentiary Act*, chapter 206 of the Revised Statutes of Canada, 1952.

See s. 137. For a discussion on subss. (5) and (6), see *Ex parte Simoneau*, [1971] 2 O.R. 561, 3 C.C.C. (2d) 213 (C.A.).

Sentence served according to regulations—Hard labour improperly ordered.

660. (1) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced, and a reference to hard labour in a conviction or sentence shall be deemed to be a reference to the employment of prisoners that is provided for in the enactments or rules.

A Brief Legislative History of
Penitentiaries Prior to Confederation

“Penitentiary Houses” came into being in England by virtue of 19 Geo. III, 1779, c. 74, s. 5, as an optional alternative to “punishment by transportation beyond the Seas”.

In 1800 the Province of Upper Canada declared the criminal law of England as it stood on 17 September 1792 as the criminal law of that Province, and inter alia authorized the committing of offenders “to the House of Correction, for any time not less than six months, or exceeding two years”. As this same enactment provided for punishment by banishment from the Province, it can be assumed that at this time those who committed more serious crimes were either sentenced to death or banished: (Statutes of Upper-Canada, 40 Geo. III, 1800; c. 1, ss. 1, 4, and 5).

In 1832, a Commission was established to gather information “respecting the management of Penitentiaries” as it was deemed “expedient to Erect a Penitentiary within the Province [of Upper-Canada] . . . for the more effectual punishment of Crime”: (Statutes of Upper-Canada, 2 Will. IV, 1832, c. 30) and in 1834 the “Provincial Penitentiary” was established near Kingston. By virtue of An Act for better proportioning the punishment to the offence, (Statutes of the Province of Canada, 6 Vic., 1842, c. 5, ss. 3 and 4) it was made clear “that for each and every offence, for which . . . , the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary”, and instead of being punished “by transportation”, offenders could “be punished by imprisonment in the

Provincial Penitentiary for any term for which he might have been transported beyond Seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life.''.

It is interesting to note that in Nova Scotia judges could direct imprisonment in Nova Scotia's "provincial penitentiary or, in the common jail of the county, at their discretion" (Of the Administration of Criminal Justice, R.S.N.S., 1864, c. 171, s. 95), while in New Brunswick "any vagabond, suspicious, or disorderly person" arrested in Saint John could be committed to their Provincial Penitentiary "for any term not exceeding forty days, with hard labour": (Of The Provincial Penitentiary, R.S.N.B., 1854, c. 91, s. 12).

At the Charlottetown Conference in September 1864, it was resolved that the "local legislatures be entrusted with the care of Prisons" (apparently no distinction was made between prisons and penitentiaries at that meeting): (Browne, G.P., Ed., Documents on the Confederation of British North America, Toronto: McClelland and Stewart, 1969, (Document No. 23, Colonial Office 188/141) p. 48).

Among the Resolutions adopted at the conclusion of the Conference held at Quebec in October 1864, it was made clear in the 9th subsection of Resolution 43 that "the Local Legislatures shall have power to make Laws Respecting . . . 9. The establishment, maintenance and management of Penitentiaries, and of Public and Reformatory Prisons": ("Minutes of the Proceedings in Conference of the Delegates from the Provinces of British North America, Quebec, October 1864," Joseph Pope, Ed., Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act, Toronto: Carswell, 1895, p. 47).

This, along with the other Quebec Resolutions, was debated in the Legislative Council and Assembly of the Province of Canada in 1865, and a motion was adopted:

“That an humble Address be presented to Her Majesty, praying that She may be graciously pleased to cause a measure to be submitted to the Imperial Parliament for the purpose of uniting the Colonies of Canada . . . in one Government, with provisions based on the accompanying resolutions which were adopted at a Conference of Delegates from the said Colonies, held at the city of Quebec on the tenth of October, 1864”

(Confederation Debates, Quebec: Hunter Rose & Co., Parliamentary Printers, 1865, pp. 2 and 1030).

In April of 1866, the Legislative Council of New Brunswick addressed the Queen for an Imperial Act based on the Quebec Resolutions, and both Nova Scotia and New Brunswick passed a Resolution for the appointment of delegates “to arrange a scheme of Union with the Imperial Government”: (Browne, G.P., Ed., Documents on the Confederation of British North America, Document No. 58, (Public Record Office, London 30/6/166) p. 185).

In December of 1866 the delegates from the colonies arrived in London at what became known as “the London Conference”, and on Wednesday, December 5, 1866, considered and passed among others, Resolution 43(9):

- “No. 43. (1) Stand over.
(2) Passed.
(3) Passed.
(4) Passed.
(5) Passed.
(6) Passed with Mr. Galt's amendment.
(7) Considered.
(8) Stand.
(9) Passed. (Penitentiary.)
(10) Passed (except Marine Hospitals). . . .”

(Notes on the London Conference, made by Lt.-Col. Hewitt Bernard, Secretary of the Conference, Browne, G.P., Ed., Documents supra., Document No. 69, p. 206).

However, at the conclusion of the Conference, for some inexplicable reason, the "establishment, maintenance and management of Penitentiaries" was placed under the General Parliament's "power to make laws" while the Local Legislatures were assigned power to make laws respecting the "establishment, maintenance, and management of public and reformatory prisons": (Resolutions 28(31) and 41(9), 24 December 1866, Browne, G.P., Ed., Documents supra., Document No. 74, pp. 222 and 224). It is interesting to note that the Colonial Secretary, Lord Carnarvon, who presented and guided the British North America Act through the British Parliament in 1867 had, six months before the London Conference, written the following in a letter to his predecessor, Edward Cardwell:

"If with the acquiescence of the Delegates I could see my way to any reduction of the general powers granted to the Local Legislatures I should be glad to do so with the view of adding strength to the central Government"

The "London Resolutions" were forwarded to the Colonial Secretary for the preparation of a Bill, and in the first draft prepared by F.S. Reilly, the Imperial draftsman, the words "in and for the Province" were added to what is now section 92 (6).

What is now section 141 of the British North America Act, 1867, was added in a later draft and provided:

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Although this provision is now spent it is significant to note that the penitentiary in Newfoundland is operated, managed, and maintained by that Province, and provision is made in the Penitentiary Act, R.S.C., c. P-6, s. 13 (5) and (6) for "an agreement with the Province of Newfoundland providing for the payment to the Province of the cost of maintaining the persons who are or have been sentenced or committed to penitentiary".

REVIEW OF LITERATURE PERTAINING
TO THE DIVISION OF CORRECTIONAL RESPONSIBILITY
BETWEEN FEDERAL AND PROVINCIAL CORRECTIONAL AGENCIES

Little Rational Basis

"... But we are most concerned, and it is here that I wish to focus my remarks, with the duplication, overlapping, lack of communication, inefficiency, ineffectiveness, and lack of rational basis characterizing the existence of two separate systems of corrections at the federal and provincial levels of jurisdiction, each system developing (and still expanding) a broad range of alternative correctional responses to those persons convicted and sentenced by the court to serve periods of confinement."

- Federal/Provincial Conference (May 22,23, 1975)
Macdonald, page 3

"... Our general conclusion concerning the legislative authority for the operation of Canadian penal institutions is that there is much confusion, if not actual contradiction, in the law. We consider that much could be done to achieve greater unity of purpose and treatment in the various provinces."

- Fauteux (1956) page 50

"... the two year rule ... little rational or logical basis in contemporary criminological or penalogical theory."

- Federal and Provincial Responsibility for
the imprisonment of Offenders, With Impli-
cations for Funding (April 18, 1975)
Attorney-General's Department of British
Columbia

Isolation - Lack of Communication - Resistance to Change

"... Development of innovative programs may not be introduced or extended to the degree that they should in that they are apparently in breach of existing federal laws."

- Federal/Provincial Conference (May 22,23, 1975)
'Long Term Objectives in Corrections,'
Ontario Ministry of Corrections, page 6

"... It is obvious, for example, that if different than that recommended by your commissioners is given to the prisoners in provincial institutions, if classification and segregation are not uniformly instituted, if a different discipline is in effect, and the administration is not supervised by the same authorities, the success of the system recommended by your commissioners would be jeopardized, and the evils discerned in the antiquated treatment at present in existence would be permanently extended."

- Archambault (1938) page 340

Duplication - Overlap

"... The duality of correctional systems at the federal and provincial levels is characterized by duplication, overlapping and lack of cross systems communication resulting in the inefficient and frequently ineffective deployment of already limited correctional resources."

- Federal and Provincial Responsibility for the Imprisonment of Offenders, With Implication for Funding (April 18, 1975) Attorney-General's Department of British Columbia

"... The provinces would be relieved of the need for such long term prison programs as trades training. At present, many such programs are duplicated in federal and provincial prisons."

- Ouimet (1969) page 281

"... Unfortunately, analysis of the structure will indicate costly duplication of program and effort which, far too often, results in confusion on the part of those intended to be served, delay and administrative concern in those who attempt to serve."

- Federal/Provincial Corrections Conference, Victoria (May 1975) Preliminary Draft of a Discussion Paper, Ontario Ministry of Correctional Services (1975) page 4

"... We have read with interest the brief presented by the British Columbia Board of Parole and have noted that the Board, despite the success achieved to date, is not completely satisfied with the situation. They are concerned with the confusion caused by the indeterminate sentence and the overlapping of jurisdictions between the remission service and the Provincial Parole Board."

- Fauteux (1958) page 25

Inconsistency - Gaps - Confusion

"... A further complication is the confusion that arises in the mind of the offender as a result of his exposure to a multiplicity of correctional systems operated by different authorities and with standards of treatment. The resulting inconsistencies, delays, duplications of effort and lack of continuity in the treatment often tend to increase the hostility of the offender towards authority rather than the reverse."

- Long Term Objectives for Corrections,
Ministry of Correctional Services, Ontario
(May 1975) page 5

"... One of the problems facing the corrections field in Canada today is the conflict as to aims in dealing with convicted offenders. This is paralleled by disagreement over the purpose of the criminal law itself."

- Ouimet (1969) page 274

Referring to the inconsistency of adult age definition -
"In British Columbia, Manitoba and Quebec the age has been set at 18; in Alberta at 18 for girls but 16 for boys; in Saskatchewan, Ontario New Brunswick, Prince Edward Island and Nova Scotia at 16. It has been set at 16 in the Yukon and Northwest Territories."

- Ouimet (1969) page 273

"... Placing more responsibility with the federal government would tend to greater uniformity in prison services across the country; in particular arresting the gap between richer and poorer provinces."

- Ouimet (1969) page 281

"... The correctional services must be seen as an integral part of the total system of criminal justice and their aims should be consistent with and supportive of the aims of the law enforcement agencies and courts."

- Ouimet (1969) page 277

"... The type and quality of provincial prisons vary considerably."

- Ouimet (1969) page 276

"... For example, a prisoner sentenced to imprisonment for two years less a day in a provincial institution actually earns less remission and will be discharged at a later date than another prisoner sentenced at the same time to two years in a penitentiary."

- Fauteux (1958) page 60

"... Our general conclusion concerning the legislative authority for the operation of Canadian penal institutions is that there is much confusion, if not actual contradiction, in the law. We consider that much could be done to achieve greater unity of purpose and treatment in the various provinces."

- Fauteux (1958) page 50

"... The administration of juvenile justice in Canada is characterized by the fact that the twelve provincial and territorial systems that have responsibility for dealing with young persons in conflict with the law, function on different levels of sophistication and availability of resources. There is little co-ordination of activities between provincial juvenile justice processes and, except for the Act, which is federal legislation, there is no satisfactory mechanism that has the capacity to unify and help co-ordinate the future development of the field on a national basis."

- Young Persons in Conflict with the Law
- (1975) page 6

"... The existing system with regard to parole jurisdiction seems to me to lack consistency."

- Federal/Provincial Conference, Ottawa
(December 1973), remarks by the Honourable
W.H. Henley, Alberta

"... The Canadian Federated System is therefore at least in part responsible for the slowness in establishing a single philosophy throughout the entire corrections system."

- Prevost (1968) page 52

"... and so, although certain problems would be resolved if each of the jurisdictions (Quebec and Ottawa) would formulate in clear terms, the policy which it intended to follow in the administration of justice in criminal and penal matters, other problems would remain as long as the two jurisdictions continued to share this domain."

- Prevost (1968) page 53

"... Frequent changes in jurisdictions, back and forth between federal and provincial bodies, are often experienced, permitting less consistency of case management, ongoing treatment and training programs."

- Federal and Provincial Responsibility for the Imprisonment of Offenders, with Implications for Funding (April 18, 1975)
Attorney-General's Department of British Columbia

Lack of Continuity - Fragmentation

"... The Corrections field is further fragmented by the division of responsibility between federal and provincial governments and by different administrative patterns in various jurisdictions."

- Ouimet (1969) page 275

"... A lack of continuity in treatment will also continue for those individuals who find themselves overtime, incarcerated in facilities operated by different authorities."

- Long Term Objectives for Corrections,
Ministry of Correctional Services, Ontario
(May 1975) page 5

"... The criminal justice system is fragmented not only between jurisdictions but within jurisdictions."

- Federal/Provincial Conference, Victoria
(May 1975) Remarks by Solicitor General of
Canada, page 3

"... The division of responsibility creates a basic weakness inherent in Canadian Corrections. The concept of continuity in treatment and proper programming which is so necessary for the offender be he young or old is ignored. The bulkinization of the correctional process is the necessary result of the two year rule."

- Discussion Paper, Ontario Ministry of
Corrections, Federal/Provincial Conference
(May 1975)

"... The many important questions involved in a scientific administration of the penal system cannot be solved as well by several independent administrations working from different angles and with different points of view, as by one central administration following a definite scientific program under a continuity of policy."

- Archambault (1938) page 341

Inefficiency

"... Treatment also demands a co-ordination of knowledge about the individual offender. It is inefficient for an inmate to be the responsibility of one government until the question of parole arises and for him then to pass under the control of another level of government."

- Ouimet (1969) page 283

"... Costly duplication of program and effort will continue, however, because of the continued existence of the two year rule."

- Long Term Objectives for Corrections,
Ministry of Correctional Services, Ontario
(May 1975) page 5

"... Costly Duplication of services and lack of continuity and inconsistencies in treatment must somehow be avoided and I would suggest to you that this will never really be accomplished until the responsibility for the total correctional process in any area is placed under one authority."

- Ministry of Correctional Services, Ontario
(May 1975) page 7

"... Members of the public ... suspicious that the present duality is inefficient and more importantly ineffective."

- Federal and Provincial Responsibility for
the Imprisonment of Offenders, with Implications
for Funding (April 18, 1975) page 3
Attorney-General's Department of British
Columbia

Ineffectiveness of Programs and Confusion in Offender

"... Two parallel systems within a province sometimes mean that neither is large enough to provide a sufficiently wide range of institutional services."

- Ouimet (1969) page 282

"... Ministers noted that the duplication of facilities, resources and services necessitated by the provision of the criminal code that requires sentences of under two years to be served in a provincial prison or reformatory and sentences of over two years in a federal penitentiary, and efficiency in administration of sentences."

- Federal/Provincial Conference, Victoria
(May 1975) Joint Press Release, page 2

"... The federal authorities would be handicapped in the proper treatment of those who come to federal institutions already stamped with the imprints of the multiple provincial institutions."

- Archambault (1938) page 340

"... Correctional officials have frequently expressed reasons for doubt about the efficiency of this divided responsibility. The court should have open to it as many choices as possible in determining the sentence given any offender. When the length of sentence restricts the choices available to the court it raises an artificial barrier to good sentencing."

- Ouimet (1969) page 279

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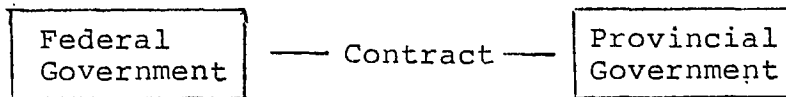
Young Persons in Conflict with the Law, Ministry of the Solicitor General, 1975.

OPTION V - PROVINCIAL CORRECTION SERVICE DELIVERY

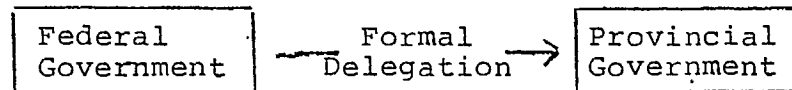
In this option the province would assume the responsibility for the delivery of services, with the Federal Government working jointly in the determination of needs, goals, priorities, standards, planning, research and staff development.

The task team felt that this option could be broken down into the following two sub-options, and it decided to examine the implications of both:

Sub-option (a): Both parties to continue to respect the current legislative division of responsibility and the Federal Government to "contract" with the province for the provision of services which it and the province have jointly identified as being required.



Sub-option (b): The Federal Government would formally delegate its responsibilities to the province by changes in legislation.



A Division of Responsibility

Figure I presents a breakdown of the division of responsibility for the delivery of correctional services under both sub-option (a) and sub-option (b). It does not, however, indicate that under sub-option (a), some form of reporting relationship will be required between the Federal Government and the Provincial Government. (please see page 3)

Figure I shows the Provincial Government assuming control of all correctional institutions and all community correctional facilities and related services. The Provincial Government will also be solely responsible for the administering of the management structure, the personnel and financial services, and it will be the only parole granting authority in the province. Under both sub-options, the Federal Government will

be involved in planning, information services, research and staff development. It has to be recognized that problems must arise, when one level of government, that has virtually no say in the delivery of services, is involved in the planning and evaluation end of the operation. However, these problems can be contained, to some extent, if the terms of reference of the required federal/provincial body allow for a realistic level of flexibility, while keeping in mind that there will be times when fiscal implications will play a major part in negotiations.

So that, in essence, under sub-option (b), the Attorney General of British Columbia would become the political head of the organization, and would have full authority and accountability for the delivery of all correctional services in the province of British Columbia. Under sub-option (a), mechanism can be developed by which the necessary reporting relationship between the province and the Solicitor General of Canada can take place.

Figure I DELIVERY OF CORRECTIONAL SERVICE - OPTION V

	MEN		WOMEN	
	Federal Involvement	Provincial Involvement	Federal Involvement	Provincial Involvement
stitutional - maximum		✓		✓
- medium		✓		✓
- minimum		✓		✓
- psych.		✓		✓
- C.C.C.		✓		✓
- F.C.		✓		✓
- remand		✓		✓
- T.A.		✓		✓

	MEN & WOMEN	
	Federal Involvement	Provincial Involvement
Parole Granting Authority		✓
Community - parole super.		✓
- probation		✓
- C.R.C.		✓
- C.S.O.		✓
- Bail Super- vision		✓
Support - planning	✓	✓
- information	✓	✓
- research	✓	✓
- management -structure & respon.		✓
- staff devel.	✓	✓
- personnel		✓
- finance		✓

B Delivery of Correctional Services

The agency would provide the total range of correctional services and would, theoretically, have a capability for co-ordinating the use of resources and eliminating the likelihood of duplication and waste.

The areas in which the Federal Government would have input (planning, information services, research and staff development) may help to ensure that standards and expectations of the province will be somewhat consistent with those of the Federal Government in other provinces.

C Organization

Under sub-option (a), the existing Organization Chart of the British Columbia Corrections Branch may be amended to show the reporting relationship with the Federal Government, as well as the extension of the authority of the British Columbia Parole Board and the Federal Government's input into the areas of planning, information services, research and staff development (See. Figures 2 and 3 following).

Under sub-option (b), the existing Organization Chart of the British Columbia Corrections Branch is amended to show only the extension of the authority of the British Columbia Parole Board and the Federal Government's input into planning, information services, research and staff development (see Figure 4).

D Reporting Relationship

As indicated earlier, under sub-option (a), there will be some form of reporting relationship between the Federal and Provincial Governments, involving the Solicitor General of Canada and the Attorney General of British Columbia.

Under sub-option (b), there would be no reporting relationship between the two levels of government. The Attorney General of British Columbia would have full authority and accountability.

E Co-Ordination

Under both sub-option (a) and sub-option (b), there will be co-ordination within the agency and there will be co-ordination between the Federal and Provincial Governments in the areas of planning, information services, research and staff development. There will also be co-ordination between the

correctional services system and other systems (including the public). Further, there will have to be co-ordination between the British Columbia Parole Board, the National Parole Board and other provincial parole boards.

In sub-option (a), there will be the need for machinery to co-ordinate the reporting relationship between the Province of British Columbia and the Federal Government.

Figure 2.

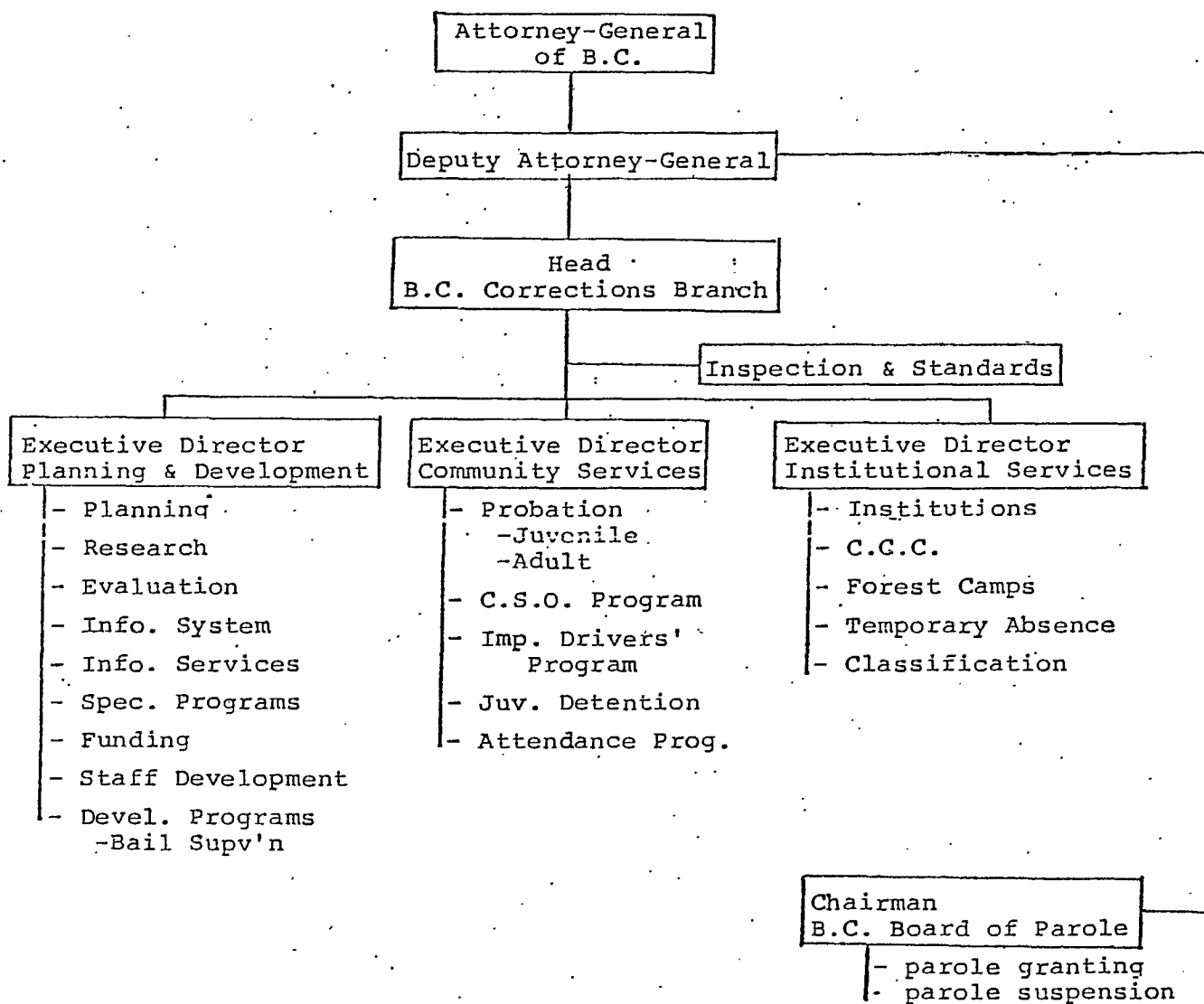
ORGANIZATIONAL/FUNCTIONAL CHARTB.C. CORRECTIONS BRANCH23 OCT/75

Figure 3. ORGANIZATIONAL/FUNCTIONAL CHART

B.C. CORRECTIONS BRANCH

(amended - sub-option (a))

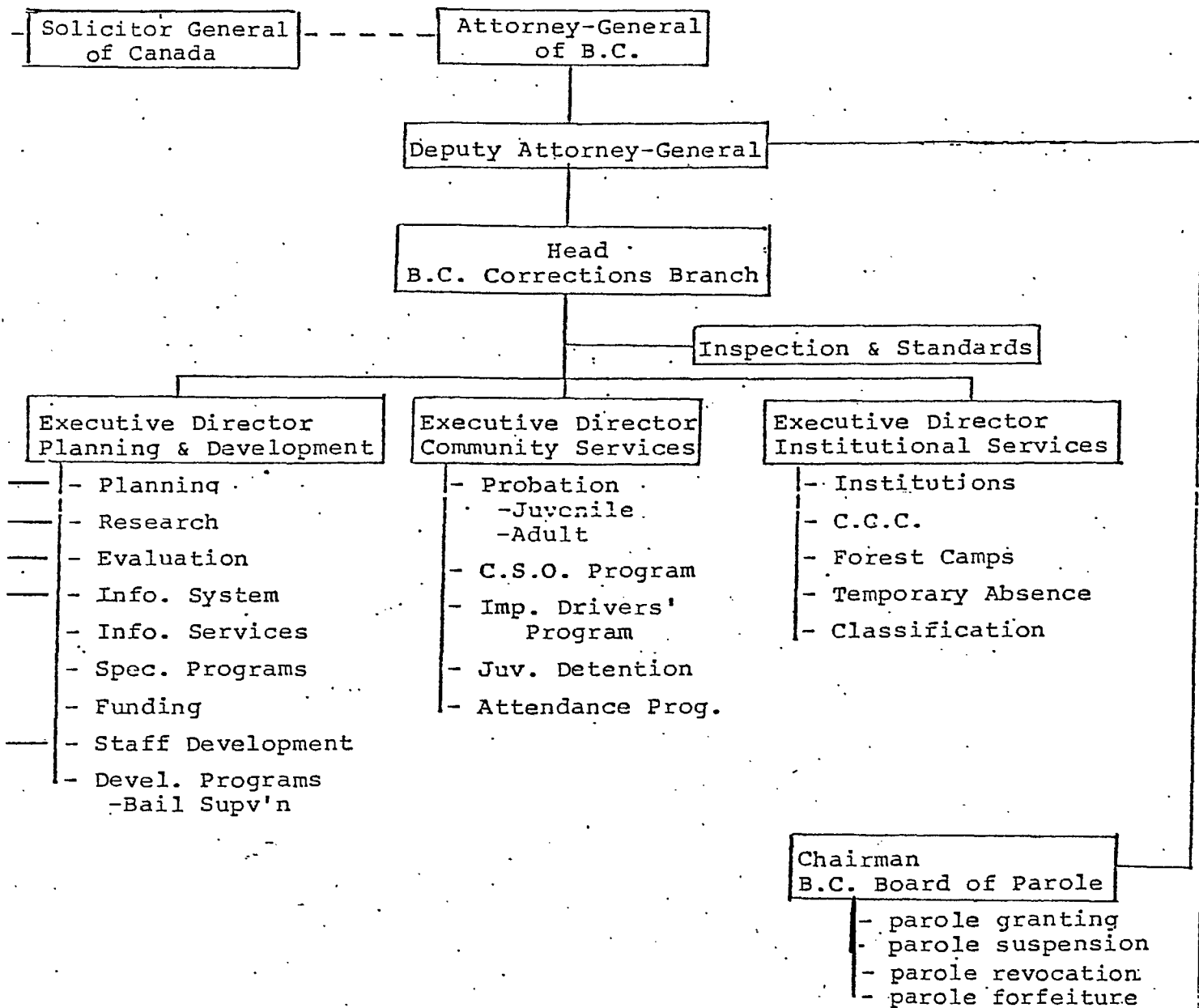
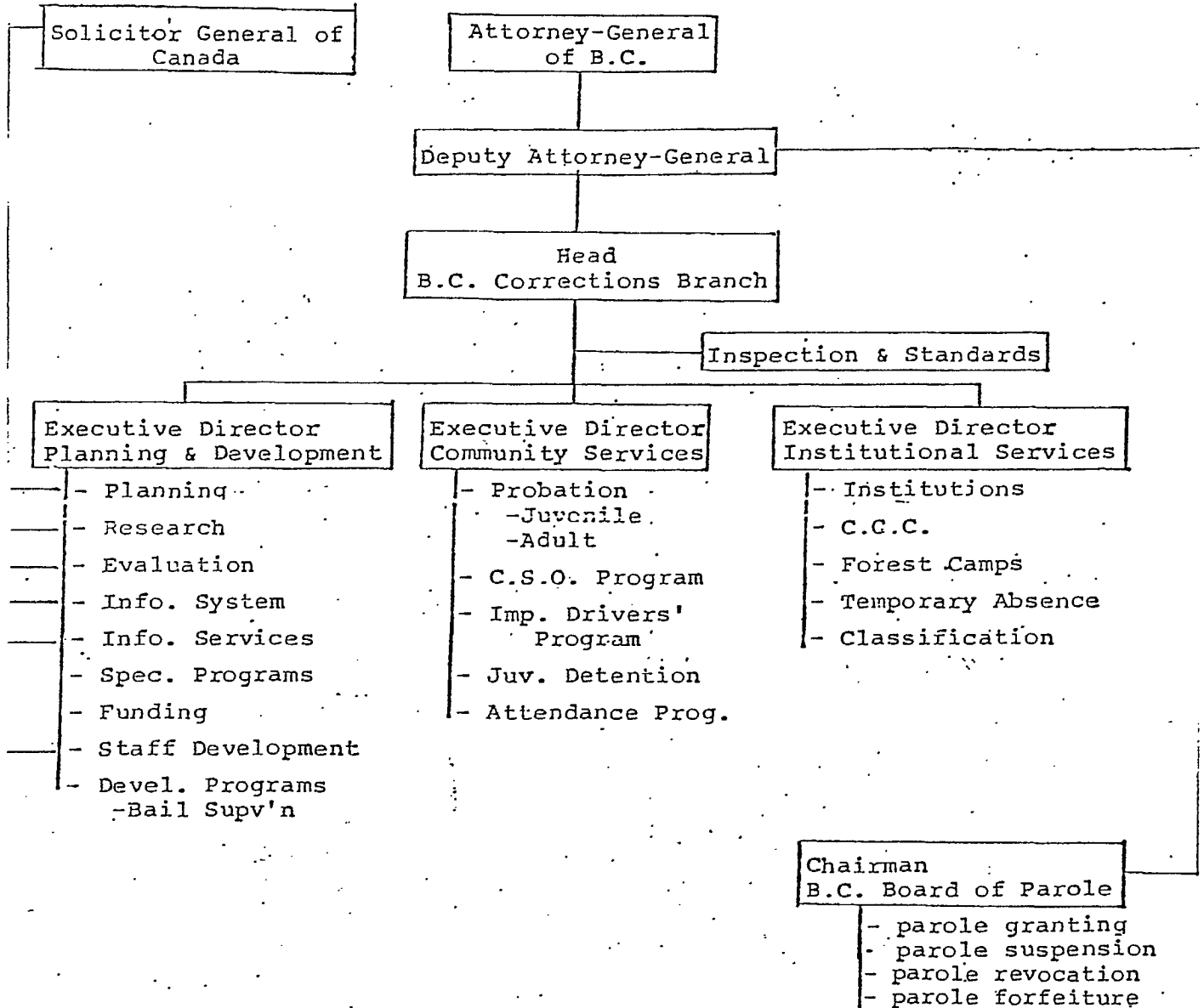


Figure 4. ORGANIZATIONAL/FUNCTIONAL CHARTB.C. CORRECTIONS BRANCH

(Amended = sub-option (b))



OPTION VDiscussion of Critical Factors1. Philosophy

See statement prepared by the Task Team on Philosophy.

This Task Team feels that the basis of the philosophical statement should not create serious areas of conflict, where Option V is concerned. The Team recognizes, though, that problems may arise at the level of implementation.

2. Service Delivery

As indicated earlier, the Task Team felt under Option V there was at least a theoretical basis for the development of a more streamlined and better rationalized corrections agency in the province. It also felt that the agency would be in a good position to respond appropriately to locally generated stimuli and to make communication easier between the different arms of the criminal justice system.

This option would not only help to eradicate duplication of services but it would also facilitate the continuity of case management and the transfer of clients between programmes within the province. It was felt that difficulties in continuity and case management would arise as clients came from or went to areas in which traditional federal/provincial arrangements obtained. However, the Task Team felt that the existing federal/provincial agreement on the sharing of services would suggest that the difficulties would not be insurmountable.

Finally, the Task Team thought that the retention of federal input in the areas of planning, research, information services and staff development would tend to retard any movement away from objectivity.

3. Administrative Structure

While the administrative structure proposed under Option V would bring all of the correctional employees in the province under one administration, thereby suggesting tidiness and efficiency, our Task Team felt that this was an area with numerous difficulties. There would be differences in classification and related salary scales, as well as rights and privileges. Certain jobs would disappear and with them certain career lines.

Union-management relationships may also pose some difficulties, and ways of compensating the federal union for the loss of members will have to be examined. Again, some accommodation will have to be reached on areas like red circling, green circling, lay-offs and demotions.

The Task Team felt that the problems encountered in this area would be difficult but not insurmountable.

4. Financial Impact

Two funding formulae were proposed. Formula #1 would cover operational funding, while Formula #2 would cover capital costs funding.

Funding Formula #1 (Operational Costs Funding)

Proportionate funding based on comparison of each jurisdiction (Federal and Provincial) in the past 5 years.

This Formula should mean reductions in the levels of spending to both governments, if the agency were to continue to provide the existing level of services. This means that in the long run the elimination of areas of duplication should bring about considerable savings, although costs may appear to increase during the transition period.

Formula #1 does have a weakness, however, and that is that it, in effect, commits each government to levels of spending that may have been based on past inefficiency and ill-advised planning. It also offers no guidelines for the future, and it certainly seems desirable to explore the development of a new formula. A further problem exists in that this formula can very quickly become a precedent setting formula, which could bring about reactions from other provinces. This can further lead to complications, since the spending over the preceding five year period may not have been all that representative.

Funding Formula #2 (Capital Costs Funding)

Apportionment of costs according to traditional division of responsibility.

Funding Formula #2, in the absence of a more sophisticated device, does appear to present a reasonable compromise for the sharing of capital costs. Again, both governments should be able to effect savings in the long run, because of the anticipated elimination of duplication in certain areas.

The Task Team was not all that comfortable with either funding formula but was unable to come up with better ones.

6. Legislative Impact (Taken from material prepared by Messrs. Smith and Hollies)

OPTION V1. Constitutional Implications

This option contemplates that within the Province of British Columbia responsibility for the delivery of correctional services would be the exclusive responsibility of the Province. The federal government would continue to share jointly the province's responsibility in the area of the determination of correctional needs, the setting of goals, objectives, priorities and standards and communications with community agencies and citizens.

Based on the footing that the constitutional jurisdiction over corrections is concurrent it follows that the relinquishment by the federal government of authority it presently exercises in the direct delivery of correctional services does not in any way amount either to an abdication of federal responsibility or a usurpation by the province of authority that it does not otherwise have. In short there are no constitutional obstacles standing in the way of the option to the same extent that there are no constitutional difficulties caused by the fact that there is no federal penitentiary in the Province of Prince Edward Island nor by the fact that in respect to all provinces there presently exists an Exchange of Services Agreement which provides that federal prisoners may be housed in provincial institutions and vice versa.

Presumably, the implementation of this option would be accomplished either through a contract for services between the two governments (i.e. an expansion of the present E.S.A. agreement) or by a statutory delegation of responsibility at the federal level to a provincial correctional agency. Even if one does not concede that the constitutional jurisdiction over

corrections is concurrent, but urges that it is a truly divided area of jurisdiction, either contract for service or statutory delegation to a provincial agency would skirt constitutional difficulties.

2. Legislative Implications

(a) Federal Legislation Affected

Penitentiary Act

1. Amend the definition of "penitentiary" so that it includes an institution operated "on behalf of" the Canadian Penitentiary Service.
2. If sub-option (b) is adopted, enact a new section to enable the Lieutenant-Governor in Council to constitute a Board, Agency, or other body charged with responsibility, subject to the Penitentiary Act, Penitentiary Service Regulations, and Commissioner's Directives, for the staffing of penitentiaries and their administration.
3. If sub-option (a) is adopted, enact a new section enabling the Solicitor General, with the approval of the Governor in Council, to enter into an agreement with the Province of British Columbia for the staffing and administration of penitentiaries.

in that province. Again this would be subject to the continuing effect of the Penitentiary Act, the Penitentiary Service Regulations, and Commissioner's Directives.

Parole Act

1. Amend the present Parole Act to enable parole jurisdiction to be exercised over penitentiary inmates in British Columbia either by
 - (a) the present provincial board of parole constituted pursuant to section 151 of the Prisons and Reformatories Act; or
 - (b) by a new provincial board of parole to be constituted by the Lieutenant-Governor in Council.
2. Provide for jurisdiction to be exercised by the National Parole Board or by another provincial parole board where an inmate paroled in British Columbia moves to another province.
3. Enable the British Columbia Board of Parole to exercise jurisdiction over a parolee who has moved to British Columbia from out of the province, e.g. by revocation or suspension of parole and committal to a penitentiary in the Province of British Columbia.

(b) Provincial Legislation Affected

Attorney-General Act - Add a new duty and power

(a) to implement any contractual agreement - if sub-option (a) is adopted, or

(b) to supervise and be responsible for administration of the provincial body - if sub-option (b) is adopted.

8. Effect on the Justice System

Our team thought that there were certainly no negative implications here. In fact, it was felt that the presence of a single correctional agency could help to create more effective lines of communication within the criminal-justice system.

9. Effect on Social Service System

Here, the presence of the single agency could simplify any necessary co-ordination, but there were really no negative implications.

General Comments

As indicated above, there is nothing theoretically wrong with the concept of a unified corrections system. That is not to say that, in practice, this approach would mean an automatic solution to the various continuing problems in the field. In fact, there is no available evidence to show conclusively that a particular approach to the organization of correctional resources has led to totally better results. In the sort run, at least, drastic improvements in the handling of patterns of crime seem to have much more to do with political and ideological atmosphere than with correctional trends. So that, the proper handling of costs of correctional services may be as worthwhile an aim of the system as any other, at any given time.

However, in dealing with this option, we have specifically stayed away from the political social and personal implications, because we did not want to cloud ~~the~~ issue. In spite of this, a word should be said about these very implications.

Whatever the original reason for this particular division of jurisdiction, traditions have developed around it over the years. These traditions manifest themselves in the personal, political and social attitudes of the people involved and tend to create the biggest base of resistance to the type of change contemplated by this option. So that, any serious study of this option must come to terms with everyday things like staff reaction, and political and social consequences, because these are also costs.

OPTION IX - SPLIT OF JURISDICTION BASED ON SENTENCE LENGTH
Six Months/Six Months, or Six Months/One Year

PART I - OVERVIEW OF OPTION

The Task Team first described in more detail this option and its background.

A. Division of Responsibility

The Federal/Provincial Task Force on Corrections in British Columbia agreed that one of the options which would be considered for division of jurisdiction would be recommendations arising out of the Fauteux report of 1956 and the Federal/Provincial Conference of 1958. This option would base the division of jurisdiction on sentence length and relate it, where possible, to recent proposals by the Law Reform Commission of Canada.

In order to give a background description of this option, we shall quote from the Fauteux report and the 1958 conference to show the original motivation for this split. On page 50 of the Fauteux report, it reads:

"Representations have been made that there would be much advantage to be gained in Canadian prison administration if the maximum term for detention in the provincial institution were considerably reduced. One view is that the provincial government should be responsible only for the care and treatment of persons

confined for a maximum term of six months, and that the responsibility for all persons sentenced to periods longer than six months should be the responsibility of the federal government. Such a change, if effected, would result in greater uniformity of treatment of offenders throughout Canada, and should ultimately result in the establishment of a greater number of types of institutions for prisoners who are sentenced to terms in excess of six months. We recommend accordingly."

As can be seen, the division based on six months rather than two years, was done on the motivation that more time was needed for treatment. This was followed up and reinforced by a slightly different split recommended by the Federal/Provincial Conference of 1958. Although there was some discussion and initial disagreement at the conference, a recommendation was made for sentences of less than six months to go to provincial institutions, and greater than one year to go to federal institutions, with no sentence between six months and a year. Although the report from the conference is discursive and simply reports the discussion between members, we have taken a section from the minutes, the opening statement to the conference (p.15).

"That item deals with the proposal we are putting forward that the Criminal Code be amended to preclude the courts from imposing terms of imprisonment of more than six months and less than one year. Our reason for putting forward this proposal is that, upon consideration of the Fauteux Committee's recommendation, we came to the conclusion that it is impractical to undertake reformatory treatment in the case of a person sentenced to less than one year."

For the purpose of this option we have assumed that the first split in jurisdiction is sentences of six months and less, provincial, and over six months, federal.

Since the second option which we have described, that of the six month/one year split, has implications for the sentencing practices of judges, it is here that the recommendations of the Law Reform Commission with respect to sentencing becomes particularly germane*. The Law Reform Commission basically feels there are three different rationales for sentence length or type. These are - incapacitation, non-compliance, and denunciation. As can be seen, none of these include reformation, rehabilitation, or treatment. The Task Force discarded this option for several reasons. First, it would not be legitimate within the sentencing principles as

*The Law Reform Commission proposals will be examined in detail in Option XI. These considerations are presented here for information and to examine proposals relative to this option.

outlined by the Law Reform Commission or as a legitimate objective of sentencing (versus sentence administration) within current correctional values and realities. Second, the six months/one year split would also present difficulties in determining jurisdiction for corrective sentences totalling between six months and a year.

From the foregoing discussion, the question of why "six months" could indeed be questioned if treatment or training are not considered purposes of sentencing. Indeed, the Task Force felt that this partition point was somewhat arbitrary and that another split such as three months might be rationalized. However, even with a six month split, it would seem that the province's involvement in institutions would be minimal, with a small amount for remand and some minimum security. This option would appear to permit the province to become more involved in community programs with the short term offender to the extent that the only institutions which it maintained, would be small community based ones.

B. Delivery of Correctional Services

From the above discussion we can see that really the only matter for negotiation between the province and the federal government is sentences of imprisonment, since the province, by definition, handles community service orders, restitution, probation and fine administration (as well as remands). However, the question as to who should have control of parole authority, parole decision-making authority and parole supervision, is open.

There would seem to be no need in the long term for provincial parole authority or supervision, since we assume that sentences of six months and less would probably, not need parolling (however, as will be noted, this is still in question). For this reason, we see parole being only a federal concern. However, because there will also be community releases from federal institutions, there will be a need for community release at the federal level.

There was substantial discussion by the Task Team on the split of support functions; it was agreed that good co-ordination was needed on planning, information, research, standard-setting, priority-setting and goal-setting, with each individual jurisdiction having responsibility for its own management structure and responsibilities, staff

development, personnel and finance, with co-ordination where necessary (such as in the national manpower advisory network). Table 1 provides a summary of this split in delivery of service.

With respect to the split in terms of institutional confinement, it was felt that there was a need for at least minimum and possibly medium security institutions at the provincial level for sentences of six months and less to institutions and for remands (since the Task Force felt such persons should not be incarcerated with convicted offenders). There was also some question raised by the Task Team as to whether remands should continue to be a provincial responsibility or become a federal responsibility. The end consensus of the Task Team was that it should remain provincial since it is a service to the courts (a provincial responsibility). A brief summary of the delivery of institutional services is shown in Table 2.

C. Organization

It would appear to the Task Team that the existing federal corrections organization could essentially remain unchanged, although to the extent necessary, because of the shift in workload and services, there might be larger administrative components. There would also appear to be no need in the long term for a separate parole granting authority or supervision at the provincial level (although in the interim

TABLE 1

DELIVERY OF COMMUNITY SERVICES

MEN & WOMEN

	Federal Involvement	Provincial Involvement
Parole Granting Authority	X	?
Case preparation and parole supervision	X	?
Presentence reports and probation supervision		X
C.R.C.	X	X
Fine supervision		X
Bail supervision		X
Community Service Orders		X
Restitution Orders		X
Attendance Centres		X
Pre-court Intervention		X
Planning	X	X
Information	X	X
Research	X	X
Management Structure and responsibility	X	X
Staff development	X	X
Personnel	X	X
Finance	X	X
Standard setting	X	X
Priority setting	X	X
Goal setting	X	X

TABLE 2

DELIVERY OF INSTITUTIONAL SERVICES

	<u>M E N</u>		<u>W O M E N</u>	
	Federal Involvement	Provincial Involvement	Federal Involvement	Provincial Involvement
Maximum	X		X	
Medium	X	?	X	?
Minimum	X	X	X	X
Psychiatric	X		X	
Drug/alcohol treatment	X	X	X	X
C.C.C.	X	X	X	X
Forest Camps	X	X	X	X
Remand	?	X	?	X
Temporary absences	X	X	X	X

and in a stepped procedure leading to that goal, it may be necessary to have some provincial supervision, because of the increased workload to the National Parole Board).

D. Reporting Relationships

This option seems to suggest a continuation of the current situation, i.e., the existence of dual political heads, agencies, authority and accountability.

E. Co-ordination

The same need for improved mechanisms for the co-ordination between federal and provincial governments would seem to apply here, as they do for some of the other options being considered. In addition, there is a need for joint involvement in policy formulation.

PART II - DISCUSSION OF CRITICAL FACTORS

The Task Team then attempted to make some preliminary evaluation of the impact of this division of jurisdiction on the various criteria which were suggested by the Task Force at its last meeting. We will attempt to deal with each of the issues separately.

A. Philosophy, Objectives and Values

In attempting to evaluate this option with respect to current correctional philosophy, objectives and values, obviously many different criteria and dimensions could be

considered. The Task Force felt that there were two main criteria, not totally disjoint, which might be considered in the evaluation of this option. The first of these is the question of unification: as to whether a more unified corrections system within British Columbia would be more positive than the present split in jurisdiction. The second is the advantages and disadvantages of having at least part of the corrections system in British Columbia centralized.

This option obviously proposes a continuation of the present non-unified (i.e., split jurisdiction) administration of corrections in British Columbia. It also proposes a continuation of the present combination of centralized (federal) and decentralized (provincial) administrations of corrections. We will now identify some of the advantages and disadvantages of this option within the theoretical criteria identified.

Advantages of this option

A.1 This particular option would appear to fit within the guidelines for purpose of sentence of non-compliance, incapacitation and denunciation as outlined by the Law Reform Commission (see Option XI for a better description of these purposes of sentence).

A.2 Perhaps the strongest argument for this option is that it provides an obvious vehicle for the promotion of national standards both in terms of delivery of programs and standards of operation (facilities, programs, staffing, etc), federally, across the country. At a time of acute concern for the protection of civil rights the aim of equity also demands attention here. Corrections is often an emotional and even an explosive issue and it can be argued that decentralized control risks unstable and extreme reactions against defenders being out of harmony with national standards. However, it may be argued that within the larger provinces the systems are big enough to provide reasonably stable and uniform standards and thus ample protection of individual rights.

A.3 Another argument is that with its greater financial resources the federal government can provide not simply more uniform standards, but higher standards and that the involvement of the federal government in actually operating its own system lends realism and credibility to its leadership. However, it may be argued that this would only be true for some provinces. In fact, in a number of areas of standards, provinces such as British Columbia have taken leadership such as in the development of forest camps and special programs for young offenders.

A.4 As has been suggested by Fauteux in 1958 conference reports, there would seem to be better homogeneity in the six months split than in the two year split - again for purposes of treatment if this is assumed to be a valid objective for sentence administration (rather than sentencing itself).

A.5 This option would seem to satisfy the priority of reconciliation in corrections much better than the current split since it would allow the provinces to concentrate on this area, thus realizing economies of scale with a better focus for their activity. In addition, the role of corrections in the prevention of crime would also be enhanced since once again the provinces would be able to deal with most of the direct community liaison strategies because of the shorter sentence length in that jurisdiction.

A.6 With respect to the individual freedom, particularly of the inmate, it would seem that the six month split would give better opportunity for the federal jurisdiction to concentrate on the freedoms of the incarcerated inmate and in the provincial system for the supervised offender. This would enable better definition and consistency across Canada for the more serious sentences (i.e., longer). In addition, the opportunities model which is being proposed by the Federal Corrections Agency Task Force would seem to have easier implementation if all sentences over six months were in one jurisdiction. This would enhance the ability of the institutions to provide programs and other opportunities for the "correction of the offender".

Disadvantages of this option

D.1 The lack of unification would not seem to ensure as much uniformity of standards in material or social terms within the province of British Columbia (i.e. in terms of facilities and programs or opportunities). Thus this system might be less equitable than a unified one (a similar point can be made with conditions of work, training and pay, but it is not relevant here) since the inmate will receive different treatment and particularly different sentence lengths (due to the different way of calculating remission and parole eligibility) in the different jurisdictions. Thus, once again, the lack of consistency at a local level could generate substantial problems.

D.2 There does not appear to be any other reliable method (than the two year rule) for a split in jurisdiction, as pointed out by the report of the Canadian Committee on Corrections (Ouimet Report) which recommended the present division of responsibility be retained with minor improvements. These were based on pragmatic considerations mainly, and it was noted that "the lack of consensus among the many people across the country with whom the Committee has discussed this problem" made any new division of jurisdiction artificial. However, it might be pointed out that this would not eliminate the possibility of the province taking over the total administration of corrections.

D.3 It could be argued that, particularly with respect to federal offenders, it would seem that this option is against decentralization and bringing criminal justice services as close to

the community as possible, consistent with uniform protection of basic civil rights. This assumes that the provincial government is politically closer to the public, and can therefore reflect the diversity of community concerns within the province. This option then would not seem to make the system as responsive and accountable to citizen opinion as possible, and capable of communicating or expressing core values of the community as efficiently and directly as possible. This point receives added significance in a culturally heterogeneous nation such as Canada.

Such a return to the community level would seem reasonable both in terms of how we do things (i.e., more informal processing with maximum involvement of offenders, victims and citizens) and what policies we follow. In a context of such trends in correctional theories, centralized administrative structures appear increasingly anachronistic.

However, the counter argument may be made here that decentralization or closeness to the community, particularly in terms of services, (versus that reflected by the government itself) is a function of any administrative style or organization and not of the level of government delivering the service. In this context it may be quite possible for the federal government to deliver its services as close to the community as the province in corrections.

D.4 The ability of corrections to separate and provide security for the dangerous offender might in fact be decreased in this option because of the increasing number of less serious

offenders/offences sentenced to federal institutions. This would imply that further institutions would be necessary for the special offender.

B. Service Delivery

Naturally, the change in service delivery depends implicitly on the change in population size at the federal and provincial levels. Appendix A presents information on distribution of inmates by disposition and time served prepared for the Task Force. Tables 1, 2 and 3 in Appendix B present, in summary, the statistics which were available at the time of the Task Team meeting.

An analysis of the increase of workload which might be expected at the federal level is given in Appendix B. From that analysis we see that the expected increase in federal workload (inmate years) would be between 35% and 77%, depending on how long inmates actually serve. However, this analysis is static in the sense that it assumes there will be no adaptation in the other parts of the justice system. If such adaptation occurred (e.g., judges sentenced fewer persons between six months and two years) the results would have to changed appropriately.

Advantages of this Option

A.1 It may be argued that, by assuming responsibility of security for most "expensive" and "difficult" offenders, the federal government frees the provinces to develop appropriate (community or local) programs for the greater number of less serious offenders. It is pointed out that this may even be more

true in the future in view of the trend towards development of front-end programs whereby institutions are increasingly required to cope only with the more serious offender.

However, the argument against this particular point is that clearly with appropriate resources the provinces could cope with the serious group just as well as the federal government and without the possibilities of rigidities and extra cost of the two administrations. Further, as we have pointed out, long term sentences become short-term with the passage of time and there is then the requirement for the same community resources.

Disadvantages of this Option

D.1 This particular split does not necessarily mean, from the Task Force's evaluation, a substantial decrease in programs at the provincial level, or necessarily a substantial increase at the federal level. Although participation in programs at the provincial level might be expected to decrease, it would be expected that the same range of programs would probably have to be offered to provincial inmates, and that there would therefore not be any great saving in programs.

D.2 A lack of unification means that specialized units which might be used in a unified system do not get formed. Thus there is not the range of diversity of programs which might be available to the individual offender and there is not the efficiency and flexibility in transferring between programs. While this argument is usually made with "treatment" in mind (see Guimet Report, pages 279-280), it would seem to apply equally to

the provision of specialized control units or programs designed to offer the widest possible range of opportunities for offenders. Thus, this option would not seem to provide as equitable an environment for offenders as possible.

D.3 At the most general level this option appears not to be within the recommendations of the Royal Commission on Government Organization (Glassco Commission 1962) which appears to support the principle that direct services to citizens be administered at a provincial level. The report points out that the administration of many social services was assumed by the federal government at a time when such a level of organization seemed necessary in view of the limited resources available in the provinces. It recommends, in view of the growth of the provinces and the resources, such arrangements should be reviewed and provisions for continued review be established.

C. Administrative Impact

Because of the increased size of the federal jurisdiction (from 35% to 77%) there may be substantially greater management and administrative problems in the delivery of correctional services within the province of British Columbia. In addition, the higher variance of sentence length (instead of being two years and greater, it would be six months and greater) may mean that more problems are faced by the correctional administrator in running institutions. Thus, there would seem to be some administrative impact simply because of the increase in federal workload within this option.

The lack of unification is most obviously and commonly held to give less harmony and less efficiency in operations and it appears to incur costly duplication of support and operational services as well as of facilities which is so apparent in the present split system in the eyes of the taxpayer, the theorist and the administrator alike. In short, this lack of unification appears to have less economy of administrative structure than a unified system.

D. The Financial Impact

It might also be assumed that the types of inmates which would now be sentenced to federal institutions would be substantially less of a security problem and therefore the costs which would be used to estimate the impact could be those for minimum security.

Estimated average costs for minimum security penitentiaries in 1970-71 was slightly over \$5,000 and can be expected to have risen to approximately \$6,000 or \$7,000 in the intervening period. This means that the impact, in terms of resource allocation (assuming that average costs can be used as an estimate) could be¹ anywhere from \$3,150,000 (when there is only a 35% increase) to \$7,038,000 (when there is a 77% increase) with the expected impact being approximately \$5,520,000. Since the provincial estimates for the same year for average inmate costs are approximately \$6,243, it is assumed that the same kind of transfer out of the provincial system would be effected, in terms of dollars. Thus, the impact from three to seven million dollars would seem to be quite significant. (It is even more significant if 35%-77% of the present federal budget in B.C. is used as an estimate).

It may be stated that this option provides for more economical delivery of services since there are economies to be delivered in the centralized administration of the longer term offender. In these cases, security requirements, programs and experience with the longer term offender can be centralized and economies of scale taken advantage of. However, an argument can be made counter to this that there are no real economies in the administration of corrections and that as such should be dealt with on a provincial basis.

¹As we suggested earlier, this is based on no other changes occurring either with, or as a result of, these changes - clearly a simplification.

E. Constitutional and Legislative Impact

1. Constitutional Implications

This option, first suggested in the Fauteux Report, would require that all sentences of six months or less would be a provincial responsibility, that all sentences of one year or more would be a federal responsibility, and that all sentences of more than six months and less than one year would be eliminated.

This option could be accomplished by a simple amendment to the Criminal Code in substitution for the present Section 659 which presently divides responsibility on the basis of whether the sentence is greater or less than two years less a day.

There are no particular constitutional problems likely to be raised by "tinkering with the figures". These are purely statutory adjustments and have no particular constitutional implications.

2. Legislative Implications

Federal Legislation Affected

Criminal Code - Section.659 would require amendment, since this section controls the flow of sentenced prisoners, directing the place of incarceration. If sentences between six months and one year are to be eliminated, a section would need to be added to the Code specifying that the courts in

British Columbia have no power to award such sentences. Note, however, that where multiple offences are charged, consecutive sentences might be imposed, e.g., three sentences of six months each.

F. Effect on Justice System

This would appear to remain much the same, because of a basic split in jurisdiction as we now have.

G. Effect on Social Service System

This would also appear to be the same, with the provinces and the federal government liaising directly with community service agencies.

Because of less involvement of the provinces in the administration of institutions and greater involvement of the federal government, there may be a tendency to polarize institution vis-a-vis community programs. In this case it would be more difficult to integrate institutional sentences back into the community (particularly as the offender's sentence comes to an end). For this reason, better co-ordination must be emphasized very strongly as being a real need in the future in this area.

This option would seem to imply less unity with other parts of the criminal justice system and with other social services, since most of these social services are administered

by the province. Perhaps the strongest point here is that not all of these services would then report to the same cabinet and different policies could well exist in the field at the same time, thus providing less effectiveness in the delivery of correctional services.

However, a counter to this argument is there is need for checks and balances and competition in the delivery of these services at the provincial level and that methods may be devised to achieve close working relationships with police and court services. It could be pointed out that in any event the system is often already fragmented at the provincial level. Responsibility for some groups of offenders is often placed with welfare or child care departments, reflecting the continuing controversy over the role of correctional services and its proper administrative structure.

This then is a preliminary evaluation of the impact of this option on the federal and provincial jurisdictions over the long term.

31/3/76

A BRIEF INSTITUTIONAL ANALYSIS:

Disposition and Time Served

January 1976

submitted by: Cornerstone Planning Group Limited
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A BRIEF INSTITUTIONAL ANALYSIS

- A. Problem Statement: to review sentence length (disposition received) and actual time served for the population sentenced to provincial institutions during a specified time period. (For sample description and sources, see Appendix A.)
- B. Area of Concern: the distribution of disposition and time served for three groupings:
1. six months and under;
 2. greater than six months but less than one year; and
 3. one year and greater.
- C. Observations on Disposition:
(See Table 1)
1. The most reliable information available on disposition received concerns definite sentences of time or time in default of paying a fine. It seems that corrections data does not adequately record indeterminate or probation terms in combination with definite sentences. Therefore, definite sentences were considered in this report.
 2. Six months and under, sentenced admissions in 1974 to provincial institutions in the north and interior regions:
 - a) half (49.8%) were received with definite sentences of 6 months or less;
 - b) another 36.9% were sentenced to less than 6 months in default of fine;
 - c) therefore, 86.7% were received with dispositions of 6 months or under.
 3. Six months and under, male sentenced admissions to LMRCC in 1974: (Table not included)
 - a) approximately 43% were serving definite sentences of 6 months and under;
 - b) the majority of persons serving time in default of fine usually are sentenced to under 6 months;
 - c) in this sample, 36.1% were serving time in default;
 - d) therefore, a total of approximately 79% of the sample may have received dispositions of 6 months or under.

4. Greater than six months but less than one year:
 - a) 4.3% were received with dispositions of 7 to 11 months.
5. One year and greater:
 - a) 8.4% were received with definite dispositions of one year and greater. This included some who were sent to the Federal Penitentiary.

TABLE 1. DISTRIBUTION OF DISPOSITION*

Sentence Length	1974 Average: North and Interior Regions			
	Total Distribution	6 Months and Under	7-11 Months	12 Months & Greater
Definite:				
6 mos. and under	49.8%	49.8%		
7-11 months	2.7		2.7%	
12 mos. & greater	8.4			8.4%
In default of fine:				
Under 6 mos.	36.9	36.9		
6-12 mos.	1.6		1.6	
Other:	1.6			
TOTAL	100.0%	86.7%	@ 4.3%	8.4%

*Definite sentence length received by persons sentenced to provincial institutions in the north and interior regions of B.C. in 1974 as recorded by the Corrections Branch (N=1483)

D. Observations on Time Served:
(See Tables 2 and 3)

1. Although drawn from the same sample, the distribution of figures in this variable cannot be directly related to those considered under disposition.
2. Obviously, actual time served could be considered only for those who completed their sentences and were released in the study period. These persons made up about 70% of the total sentenced sample.
3. Another 30% of the sample were recorded as still serving sentences at the end of 1974, the study period. This proportion appears high if related to the percentage who received sentences of over one year. However, it must be remembered that we have considered admissions throughout the study period, which means that all those received late in the year with sentences of 6 months and under to 7-11 months would also still be serving time at the end of 1974.

This means, as well, that there is a bias for the shorter sentences in the time actually served in the study period.

4. An exact breakdown of the 6 months and under, and other categories, were not available.
5. Actual time served as recorded for those who were admitted with a disposition, completed sentence, and were discharged in 1974 at institutions in the north and interior regions of the province (see Table 2).
 - a) under 6 months (under 161 days): 96.5% of those who were sentenced and discharged in 1974 actually served less than 161 days (or 5½ months).
 - b) less than 2% served 161-200 days.
 - c) 1.6% served over 200 days.
6. Actual time served as recorded for those who were admitted, served time, and discharged in 1974 from LMRCC (see Table 3).
 - a) more serious sentences appear to be served at LMRCC with a greater proportion of longer actual lengths of stay.
 - b) under 6 months (under 161 days): 61.7% actually served less than 161 days or 5½ months.
 - c) 2.6% served 161-200 days.
 - d) 31.4% were recorded as having served over 200 days.

4. Greater than six months but less than one year:
 - a) 4.3% were received with dispositions of 7 to 11 months.
5. One year and greater:
 - a) 8.4% were received with definite dispositions of one year and greater. This included some who were sent to the Federal Penitentiary.

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12 mos. & greater	8.4			8.4%
In default of fine:				
Under 6 mos.	36.9	36.9		
6-12 mos.	1.6		1.6	
Other:	1.6			
TOTAL	100.0%	86.7%	@ 4.3%	8.4%

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 - b) under 6 months (under 161 days): 61.7% actually served less than 161 days or 5½ months.
 - c) 2.6% served 161-200 days.
 - d) 31.4% were recorded as having served over 200 days.

7. In order to properly consider actual time served, the sample must be followed until all sentenced persons have been discharged.

TABLE 2. ACTUAL TIME SERVED*

Days Served	Institutions		1974 Average: North & Interior Regions
	PGRCC	KRCC	
Under 15	42.2%	46.0%	
15- 21	20.5	21.6	
22- 28	3.2	2.6	
29- 35	3.9	3.4	
36- 55	6.7	9.4	
56- 76	10.8	8.3	
77-100	2.8	1.1	
101-130	6.0	3.4	
131-160	0.6	0.5	
Subtotal	96.7%	96.3%	96.5%
161-200	1.3	2.4	1.9
Subtotal	98.0%	98.7%	98.4%
Over 200	2.0	1.3	1.6
TOTAL	100.0%	100.0%	100.0%

*For those persons sentenced in 1974 to provincial institutions in the north and interior regions of B.C. (N=997) as recorded by the Corrections Branch.

TABLE 3. ACTUAL TIME SERVED*

Days Served	LMRCC
Under 15	29.8%
15- 21	10.1
22- 28	1.6
29- 35	2.2
36- 55	4.9
56- 76	7.5
77-100	1.7
101-130	5.3
131-160	1.1
Subtotal	61.7%
161-200	2.6
Subtotal	64.3%
Over 200	31.4
	95.7%
Not Known	4.3
TOTAL	100.0%

*For a sample of men admitted sentenced in 1974 to Oakalla, the Lower Mainland Regional Correctional Centre (N=1833) as recorded by the Corrections Branch.

APPENDICES

A. DESCRIPTION AND SOURCE OF INFORMATION

1. PGRCC and KRCC Samples

These samples were withdrawn by the consultants from Corrections computer data during the spring and summer months of 1975. They include sentenced persons admitted in 1974 to PGRCC and KRCC (N=1483). These were: those persons who were admitted and completed a sentence during the study period or who had a sentence but no discharge date, that is, were still serving time. The remand sample was not analyzed. For computing actual length of stay in days, of course, only those who were discharged could be assessed. In light of this, the variable length of stay was considered separately from disposition.

2. LMRCC Sample

Some first run data obtained from the Justice Computer Centre on males sentenced to LMRCC in 1974 (N=1925) was reviewed as well. However, disposition categories for this sample were not consistent with those in the others, and reliable definition of the sample itself was not available.

B. TIME FRAME

Because of the time constraints on preparing this material, the data requested from the Justice Computer Centre could not be provided to the consultants who feel it would be beneficial to develop the relationship between disposition received and actual time served for sentenced admissions in the time period.

OPTION X - A FEDERAL/PROVINCIAL CORRECTIONS AGENCY

This option provides for the delivery of all required correctional services within the Province of B.C. by a single organization, a federal/provincial corrections agency. The agency would be a crown corporation or commission with funding from two sources, the federal government of Canada and the provincial government of the Province of B.C.

PART I - Description of Option

A. Division of Responsibility

While responsibility for delivery of correctional services rests with the agency itself, this section will discuss the respective roles of the agency's board of directors, the agency head and the division of responsibilities between the two parliaments concerned.

It is suggested that a board of directors be appointed to be responsible for the overall direction of the federal/provincial corrections agency. Specifically, the board would have delegated to it, by the respective parliaments, the following duties:

- formulation of overall policies;
- setting of broad objectives or goals;
- provision of advice to both houses on legislative matters;
- appointment of head of agency;
- submit annual budget and establishment to parliaments for their approval;
- approve standards and regulations;
- prepare and submit annual report to the parliaments concerned;
- authorize purchase of land, construction of facilities, etc.;
- the possession and control of assets;
- approve overall programs and activities of agency;
- ensure adequate performance of support functions, e.g. planning, research, information systems, monitoring/evaluation systems, staffing/personnel

functions and financial management functions;

- formally liaise with other justice and social systems policy making bodies;
- appoint boards or commissions to assist in the provision of correctional services, e.g. parole granting authority - the board of directors could appoint the National Parole Board as the releasing authority in the Province of B.C.;
- report directly to ministers named by their respective parliaments; and
- delegate an appropriate operational authority to the head of the agency for the performance of certain of these duties.

Although each of these functions is undoubtedly important and vital to the successful functioning of a crown corporation such as a federal/provincial corrections agency, certain of these functions should be highlighted. The policy formulation function of the agency is clearly a critical factor. The board must frame policies which respect existent legislation, political realities, national priorities, public values and correctional philosophy as it exists nationally and internationally. Thus, policies formulated by the board would reflect positions of the respective parliaments concerned the position of the public and the stance suggested by contemporary correctional philosophy. Similarly, the standard setting and priority setting functions of the board would reflect the beliefs, values, attitudes and current practices of the public, the parliaments concerned, existent legislation, etc. And the board of directors would be clearly accountable to the cabinets of the two parliaments concerned.

The membership of the board of directors would consist of eleven persons. The two parliaments would each be responsible for selecting and appointing four private citizens; a total of eight members. In addition, the federal and provincial ministers responsible for communication between the agency and their respective parliaments would be members of the board. The eleventh member of the board, the chairman, would be selected and appointed jointly by both governments. With the participation of the respective ministers on the board, accountability to the two cabinets would be enhanced. The appointment of private citizens would enhance the public responsiveness of the agency. The chairman of the board would be ultimately responsible for public accountability and responses

to questions raised by the public. Overlapping tenure of members would ensure a degree of continuity in board membership, a tenure of five to ten years considered reasonable.

As mentioned previously, the responsiveness of the board of directors to the explicit and implicit values and concerns of the public would be achieved partially through the appointment of private citizens to the board with whom members of the public might communicate as appropriate, partially through the presence of ministers responsible for the various pieces of legislation and their responsiveness to their parliaments which in turn are responsive to public concerns and partially through the decentralized nature of the board of directors placing them closer to locally and provincially identified needs and goals.

The head of the agency would be responsible for the performance of those duties delegated and assigned to the head by the agency's board of directors. These duties might include:

- policy advice to board of directors;
- line management and administration of agency operations;
- liaison with other justice and social systems operations; and
- provision of administrative support to board of directors.

Responsibilities of the federal parliament of Canada would include:

- enactment of legislation currently within its purview,
 - e.g. Criminal Code of Canada
 - Penitentiaries Act
 - Parole Act
 - Prisons and Reformatories Act;
- enactment of appropriate legislation establishing the federal/provincial corrections agency and commissioning the agency to act on its behalf in matters under its current jurisdiction;
- designation of one minister to be responsible for formal communication between the agency and the federal parliament;

- appointment of representatives to the agency's board of directors (see previous comments for further elaboration on membership of board of directors);
- approval of annual budget and establishment of agency; and
- provision of a portion of required funds.

Responsibilities of the provincial legislature of British Columbia would parallel those of the federal parliament and would include:

- enactment of legislation currently within its purview,
 - e.g. B.C. Corrections Act
 - Provincial Court Act
 - Administration of Justice Act;
- enactment of appropriate legislation establishing the federal/provincial corrections agency and commissioning the agency to act on its behalf in matters under its current jurisdiction;
- designation of one minister to be responsible for formal communications between the agency and the provincial legislature;
- appointment of representatives to the agency's board of directors;
- approval of annual budget and establishment of agency; and
- provision of a portion of the required funds.

B. Delivery of Correctional Services

In principle, the agency would provide a range or continuum of correctional services as wide and diversified as possible within the constraints of available resources. The continuum, with varying degrees of security, supervision, control and direction, would enable the courts and agency personnel to match as closely as possible the needs of individual offenders with services available. Thus a continuum of correctional services may include those contained in the attached chart.

A CONTINUUM OF CORRECTIONAL SERVICES

SERVICES

POSSIBLE INVOLVEMENT OF AGENCY

Institutional Programs

- maximum
- medium
- minimum
- psychiatric treatment
- drug/alcohol treatment }
- C.C.C.
- Forest Camps
- Remand
- Temporary Absences

Direct provision of service.
Direct provision of service.
Direct provision of service.
Direct provision of service OR
use of community programs.
Direct provision of service.
Direct provision of service.
Direct provision of service.
Direct provision of service.

Parole Granting Authority

Appoint board to act.

Community-based Programs

- Case preparation and parole supervision
- Pre-sentence reports and probation supervision
- C.R.C.
- Bail Supervision

- Fine Supervision
- Community Service Orders
- Restitution Orders
- Attendance Centres
- Pre-court Intervention

Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.
Contract with private agencies.
Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.
Direct provision or jointly with private agencies.

Support Programs

- planning
- information
- research
- management structure
- staff development
- personnel
- finance
- standard setting
- priority setting }
- goal setting

Internal provision of service.
Internal provision of service.
Internal provision of service.
Internal provision of service.
Internal provision of service.
Internal provision of service.
Internal provision of service.
Internal provision of service consistent with a national standards, priorities and goals.

Within the framework of policies set by the board of directors, the agency head would be responsible for new program development. Wherever feasible, existing community resources (e.g. educational, employment, counselling, religious, psychiatric and medical programs) would be used rather than duplicating those services. Wherever feasible, community-oriented correctional services would be developed and maintained as alternatives to conventional forms of incarceration.

The delivery of correctional services would, subject to the need to minimize social cost of providing such services, reflect a coherent, explicitly stated philosophy.

C. Organization

On the following page, an organization chart depicts the structure of the agency. It is anticipated that the organization would be integrated and "regionalized" at a level below the provincial level to permit the integration of correctional services at a level closer to the community and enable flexibility and responsiveness to local variations and differences.

D. Reporting Relationships

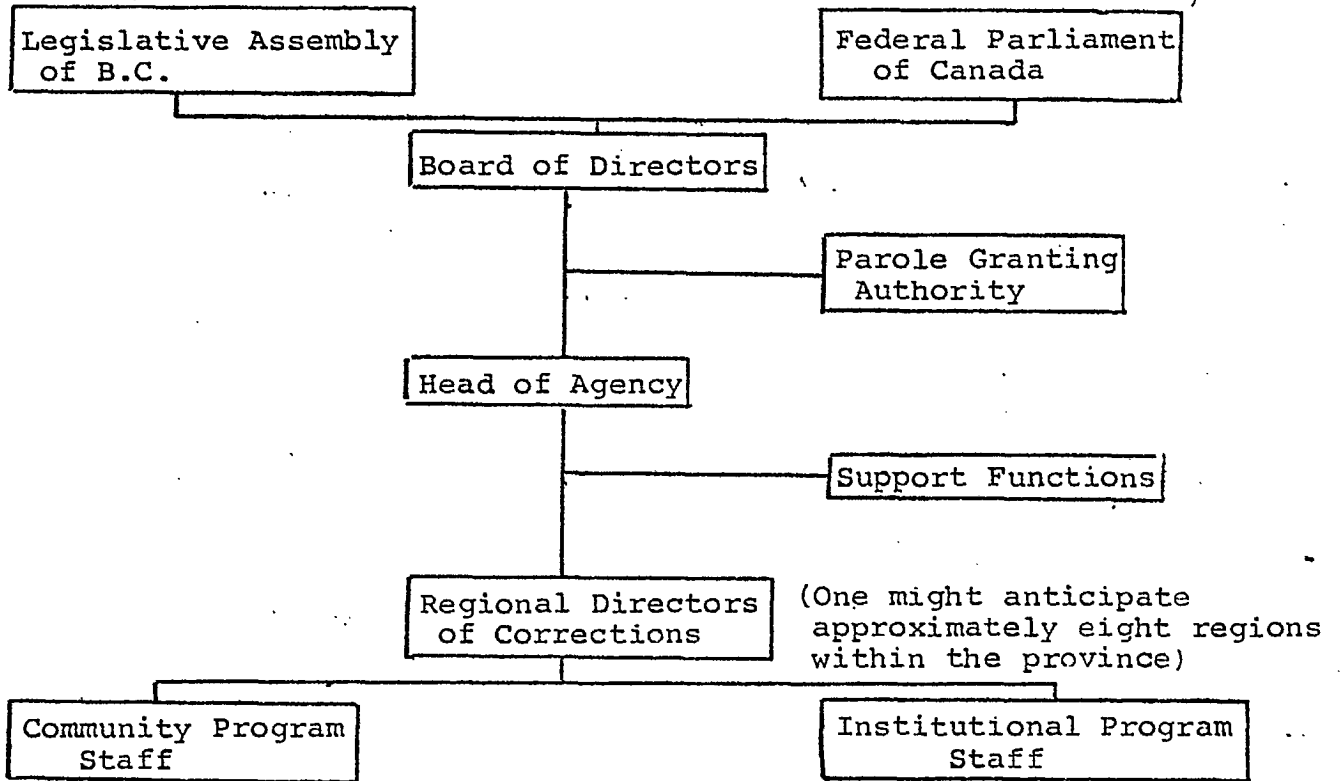
This option suggests that the head of the agency would report directly to a board of directors and be accountable to the chairman of the board of directors. In turn, the board of directors would report directly to the two parliaments concerned through the ministers identified by each parliament as the minister responsible for correctional legislation. As suggested in the role of the board of directors, the board would report to the two parliaments by submitting an annual budget and establishment for approval, by submitting an annual report and by providing advice to both houses on legislative matters.

E. Co-ordination

Internal co-ordination would be essential within the agency, as with any organization. Co-ordination between the correctional services delivery system in the province and other correctional systems would be achieved partially through both ministers acting as members of the board and partially through the negotiation of contractual arrangements with other provinces. In addition, co-ordination with other provincial criminal justice and social service agencies would be achieved through existing co-ordinative mechanisms at the provincial levels.

FEDERAL/PROVINCIAL CORRECTIONS AGENCY

ORGANIZATION CHART



PART II - Discussion of Critical Factors

A. Philosophy, Objectives, Values

This option is not inconsistent with the content of the philosophical statement drafted by the Task Team. Operations could be informed and given direction by the philosophical position taken by the Task Team.

In relation to a management philosophy emphasizing decentralization and local autonomy to the highest degree possible, the option has some disadvantages. The involvement of the federal government through the agency board introduces a highly centralized component into the management system. This introduction of the federal government into management system, by definition, entails a more centralized and less decentralized management structure than some of the other options.

The fact that the agency is accountable to the provincial and federal governments is suggestive of potential problems. Conflicts could emerge where the position of the governments regarding a specific issue differ and mechanisms for conflict resolution would have to be developed. Such situations are not uncommon in federal/provincial relations, generally, and the mechanism of ministerial meetings to deal with issues where conflicting direction is being given the board by the two governments could be utilized to resolve such conflicts.

However, it is suggested that the difficulties of the dual system of accountability are more imagined than real. As described above, the agency would be accountable to each government for the performance of those functions which that government has delegated to it. These functions are defined by the respective pieces of legislation of the Parliament of Canada, on one hand, and the Province of British Columbia on the other. Legislation defines the proper areas of interest of both governments. It is only in those areas of mutual involvement and interest that the possibility of conflict occurs. It would be improper to develop a system which assumes that areas of mutual interest will inevitably lead irresolvable conflicts.

An agency with the responsibility for the operation of correctional programs within the Province of British Columbia would experience both the benefit and possible disadvantage of ready public access. From a philosophical point of view the opportunity for increased public access to any public agency must be identified as an advantage. However,

a potential disadvantage exists if the agency became so vulnerable to public criticism and attack that it failed to provide adequate leadership in the development of correctional programs. However, this latter response would clearly represent a failure of the agency. It would be in the interests of both governments to ensure that the agency, while sensitive and responsive to public opinion did not become mobilized because of a fear of public response. This is a burden which all correctional agencies must bear because of the peculiarities of correctional operations. It is not one that is of necessity intensified by the creation of an integrated agency.

B. Service Delivery

Option X accommodates all existing services and, therefore, could be implemented without a radical break in service delivery. This is identified as a significant asset in relation to the transition from the present to the proposed service delivery system.

Further, Option X enhances the capacity of the corrections system to develop new services in an integrated manner. Within the model proposed this integration would include the focusing of those interests which are currently the domain of the federal and provincial systems as well as of the institutional corrections and community corrections groups on common problem solving. Within the regionalized and decentralized administrative structure proposed the focusing of interests would occur within as "local" a context as possible in order to promote problem solving at the closest possible level to the source of the problem.

The continuum of case management which the option allows would provide a major advantage to Option X over the present system. It affords an opportunity to develop a more humane, efficient, and focused response to the needs of the offender within the system. These advantages exist currently within the provincial system, with regard, for example, to the young offender who moves from probation, to an institutional program, to temporary absence and to parole, while remaining on the case load of the probation officer who initiated work with the case. In this way the needs of the offender can quickly be brought to the attention of the services involved with the case and the offender assisted in making use of those services.

Similarly, an integrated service delivery network would serve to focus the range of resources for the police,

the courts, and the community, as well as the offenders. Such a focusing would simplify the problem of interpretation of correctional roles and programs to the police, courts, and the community, and would give them increased access to correctional services.

Moreover, it would appear that Option X provides an opportunity for both the reduction or elimination of duplication while at the same time an opportunity for the enhancement of quality of service delivery. Specifically, it is expected that some reduction could occur, or at least duplication eliminated, in support services. These would include, for example, staff training, research, planning, and information systems. The quality of the service delivery system would be enhanced by making the expertise of the separated systems available to the whole system. It may be assumed that both systems do not have equal competence in all areas, at the present time. The strengths that each would bring to an integrated service delivery system could enhance the quality of services over all.

Since Option X provides for integrated single service delivery system and, thereby, a potential for consistency continuity and increased control in case management it may be perceived, to some, as having negative implications. A potential does exist for increased control of cases in an integrated system. Such a potential for control in a service delivery system can be viewed as overly inhibiting the freedom of clients by subjecting them to the intervention of one agency. This is not perceived as a disadvantage by the Task Team. The issue of control is an issue for every correctional agency regardless of its administrative structure. The issue of potential for over-control versus too little control must always be dealt with, taking into account the needs and interests of the client and the needs and interests of the community at large.

C. Administrative Structure

The administrative structure proposed would allow for the amalgamation of the entire staff of the Parole Service, the Penitentiary Service, and the Corrections Branch within one administrative framework with no necessary job loss except by attrition.

The proposal does afford a possibility for reduction, or at least increased efficiency at supervisory and managerial levels.

Initial examination suggests that while there are differences between the current systems in salary scales and classification levels that these differences are relatively minor and could be overcome. An intensive examination of these issues would need to be undertaken but it is appropriate to assume that analogous levels exist within each service, at the present time.

Each system involves a separate union, at the present time. We are advised that precedents exist for the integration of separate unions through the negotiations of a "melding formula" between the unions involved. It is suggested that under the legislation of the province and the federal government respectively that both unions would have a claim to represent the membership of the integrated system. It is anticipated, however, that this issue could be resolved through negotiation between the unions involved and an appropriate "melding formula" concluded.

Option X as detailed above suggests a management style that is decentralized and regionalized at the lowest level of administration possible. This approach has been taken in order to ensure that the possibilities for a manageable system that minimizes centralized bureaucracy are enhanced.

The involvement, in this option, of the federal government does imply a more centralized administrative structure than some other options being considered. It will necessitate a more complex and, perhaps, a more cumbersome structure in order to ensure that liaison with the federal government is maintained and that the interests of the federal government are met. These issues will limit the degree of decentralization which will occur.

D. Financial Impact

It is proposed that two separate funding formulas be established, one with respect to operation funding and the second with respect to capital cost funding.

It is proposed that operational funding be based on a premise of each jurisdiction contributing the same relative proportion of the total cost of corrections operations in the Province of British Columbia that has been contributed over the past five years. While precise figures are not available at the time of writing, it is expected that each contribution would, in effect, be approximately 50% of total operational costs.

It is proposed that the funding formula relative to capital costs be based on the traditional division of responsibility. This proposal would allow for a continuing of the present level of expenditure. It is based on the fact that relatively little has been spent by either jurisdiction on capital construction within recent years and a rather massive need for capital construction exists in relation to the need for expensive capital construction which exists. For federal prisoners currently in the Province of British Columbia approximately 1400 security beds are provided and, presumably required. For provincial prisoners, including remand, approximately 900 security beds are provided and required. The apportionment of costs of capital construction according to the traditional division of responsibility would take into account this imbalance.

E. Constitutional and Legislative Impact

(a) Constitutional Implications

Option X contemplates the delivery of all correctional services within the Province of B.C. to be done by a joint federal/provincial correctional agency perhaps a crown corporation with funding from both levels of government.

If the constitutional jurisdiction over corrections is concurrent then the kind of mechanism which this option contemplates is really the tangible expression of what constitutes concurrency. Concurrency means that each level of government has full jurisdiction over the subject matter. The establishment of a truly joint federal/provincial agency to administer corrections is to clothe in real terms the concurrency concept.

On the other hand, if the constitutional jurisdiction over corrections is truly a divided one in constitutional terms, then that division can likewise be melded into one in the form of the joint federal/provincial agency by the technique of delegation of authority from one level of government to the agency of another. Such a delegation of authority exists now in several areas. For example, the Motor Vehicle Transport Act (Canada) R.S.C. 1970 M-14, vests in the provincial transport board of each of the provinces jurisdiction to issue licences to persons operating "extra-provincial undertakings" which but for the legislation would be clearly within federal jurisdiction. The efficacy of such a technique has been favourably passed upon by the Supreme Court of Canada in Coughlin v. Ontario Highway Transport Board (1968) S.C.R. 569 and P.E.I. Potato Marketing Board v. H.B. Willis Inc. (1952) 2 S.C.R. 392.

(b) Legislative Implications

In order to implement this option it would be necessary for the federal parliament and the provincial legislature to each pass legislation (almost in identical terms) setting up the joint federal/provincial corrections agency. In addition to setting up the agency each piece of legislation would assign to the agency the responsibility for administering the various pieces of legislation of that respective jurisdiction which relates to corrections and any subsequent similar legislation that might be passed by the jurisdiction.

Each Act would have to provide that the budget of the agency would either have to be submitted to the Minister designated in the Act as being responsible for administering the agency so established or provide that the budget is to be approved by the legislature or the Parliament of Canada whichever the case may be.

The Act would provide for the establishment of a board of directors which would have the duties and powers set out in the Act including policy formulation, preparation of budget, approving establishment, setting objectives, delegating operational authority, approving standards and a great many other functions. The Act would provide for the size of the board and also provide how many would be appointed by each government to the board. An equal number could be appointed to the Board by each government and the chairman of the board appointed by both governments as the odd member of the board.

Each Act would also have to make provision for exchange of prisoners with other provinces or the federal government in respect of persons incarcerated outside British Columbia.

Under the board of directors would be the actual operational head of the agency who would be responsible for the line management and could also perform those functions delegated by the board of directors which might include planning, research, data systems, personnel, finance and liaison with other justice and social system operations.

F. Effect on Justice System

Under Option X, a potential positive effect does exist in providing a more cohesive and coherent system with which the other components of the justice system could relate.

A negative effect with serious implications does exist in that Option X creates a different locus of authority for the operation of Corrections than exists for the other components of the justice system. At the moment, the locus of authority is either federal, or provincial, or municipal. Within this option, a fourth locus of authority would be created which would necessarily increase complexity and confusion. That is to say, for example, that discussions regarding the relationship between the provincial courts and the correctional system would not be "internal" discussions within the Attorney-General's Department of the Province of British Columbia but would entail discussions between that department and the joint federal/provincial agency. A similar complexity is introduced for each component of the justice system.

Similarly, some additional complexities are introduced by this model regarding the relationships between corrections agencies across the country. A federal/provincial agency would be required to relate for purposes of co-ordination and the exchange of information to other agencies within the country which would in all likelihood continue to be agencies of one level of government or another, rather than both. This increased complexity could create additional difficulties in developing national co-ordination of correctional programs. However, that disadvantage must be weighed against the advantage of an increased potential for co-ordination within the Province of British Columbia.

G. Effect on Social Service System

Again, no major negative effects on relationships with the components of the social service system is perceived. In areas where social service delivery is the responsibility of the province such as health care and education, some advantage may be realized. For example, the Matsqui Regional Medical Centre could, potentially, relate more easily to the Forensic Psychiatric Services Commission and the Department of Health of the Province as a component of the system proposed under Option X rather than as a federal facility.

As suggested previously, an integrated system as proposed would minimize the need for duplication in approaching the related systems and thereby increase efficiency.

As above, some increased complexity in dealing with other social service systems may be experienced. This could arise due to the federal/provincial agency having to relate

to agencies that are simply provincial or federal who might, therefore, view the correctional agency with suspicion and identify it as "belonging" to neither the federal or provincial service delivery systems.

OPTION XI: LAW REFORM COMMISSION PROPOSALS

PART 1: Description of Option

This option takes the principles and recommendations put forward by the Law Reform Commission and applies them to the question of federal and provincial responsibilities for corrections in B:C. Although the Law Reform Commission itself gives only brief attention to the specific question of federal/provincial jurisdictions over corrections, the present discussion will explore in greater detail the implications of the Commission's proposals.

A. Division of Responsibility

It is important to point out at the outset that among all sentencing options, only the sentence of imprisonment is at issue in relation to federal and provincial jurisdictions. The Law Reform Commission recommends that a wide range of sentencing options be made available to the court, including Good Conduct Order, Reporting Order, Community Service Order, Restitution Order, Fines, and Imprisonment.

Most of the sentencing options specified in the report require the court to continue its jurisdiction until completion of the sentence. The court should be assisted in this function by administrative staff and a service such as the present probation service. (p. 76)¹

The major sentencing option which requires more than "administrative staff and a service such as the present probation service" to

¹This and all other page references are to A Report on Dispositions and Sentences in the Criminal Process: Guidelines (Final Copy), prepared by the Law Reform Commission of Canada.

assist the court is the option of imprisonment. Thus, in the ensuing discussion of Option XI, it will be assumed that

the administration of all non-custodial sentences will remain the responsibility of the Province.

B. Delivery of Correctional Services

Direct reference in the Law Reform Commission report to the two-year rule is short and rather non-committal:

We recommend. . . that the two-year split in sentences of imprisonment between federal and provincial authorities be reconsidered. (This recommendation has been a consistent feature of any report of this nature in the past). (p. 78, parentheses in text.)

Dr. Hans Mohr, speaking on behalf of the Law Reform Commission², stated that the first preference of the Commission is for all correctional services to be delivered by one agency (thus, Option V or Option X would be preferred). The Commission does, however, address itself to a more effective split: "The division between federal and provincial custodial institutions, if maintained, should be along functional lines. . ." (p. 78). A functional split, according to the Law Reform Commission, would be in relation to the purpose of the sentence. There are only three purposes which the Law Reform Commission accepts as justifying a sentence of imprisonment:

- a) to protect society by separating offenders who are a serious threat to the lives and personal security of members of the community; or
- b) to denounce behavior that society considers to be highly reprehensible, and which constitutes a serious violation of basic values; or

² meeting held with Task Force members in Ottawa, December 16, 1975

- c) to impose imprisonment as a measure of coercion against offenders who wilfully refuse to submit to other sanctions. (p. 29)

The split of jurisdiction regarding "wilful default" sentences and "separation" sentences is stated clearly and simply in the Commission's Report:

- i) sentences for wilful default should be under provincial jurisdiction since they are closely linked to community based sentences and constitute a last resort in those sentences;
- ii) sentences of separation because of the special conditions and their lengths should be under federal jurisdiction. (p. 78)

Responsibility for sentences of denunciation is somewhat more complicated:

- iii) sentences of denunciation [a] may be split on a time basis if the present situation prevails or [b] may be left to discretion of the judge, or [c] placed under federal jurisdiction since this sentence would apply to offences which seriously undermine core values even though dangerousness may not be a factor. (p. 79)

Under alternatives [a] and [b] , the federal and provincial governments would both provide for sentences of denunciation. Under alternative [c] , only the federal government would provide these services.

A further proposal contained in the Law Reform Commission Report which bears upon the question of federal and provincial jurisdictions is the establishment of the Sentence Supervision Board. This Board would be under federal jurisdiction ("Members should be appointed. . . at the pleasure of the Governor-General. (p. 58)), and would be authorized "to make decisions necessary for meeting the purpose of the sentence" (p. 58). Among other responsibilities, the Sentence Supervision Board would be

empowered to

formulate and publish policies and criteria affecting conditions of imprisonment and release; ...review important decisions relating to conditions of imprisonment and release;...and hear serious charges and determine the process for such charges against prisoners arising under prison regulations...." (p. 59)

The chart on the next page illustrates the services which would be delivered by the federal and provincial governments.

C. Organization

This option suggests the continuation of a provincial organization capable of providing all court-related and community-based correctional services, as well as services related to imprisonment in cases of wilful default and (perhaps) denunciation..

A federal organization would be required to provide services related to imprisonment in cases of separation and denunciation. In addition, the federal organization would be responsible for the Sentence Supervision Board.

It is assumed that both the provincial and federal organizations will maintain their capacities for planning, information, research, etc. in regard to the correctional services which they deliver.

D. Reporting Relationships

The head of the provincial corrections organization would report to the Attorney-General of British Columbia; the head of the federal corrections organization and the head of the Sentence Supervision Board would each report to the Solicitor-General of Canada.

DELIVERY OF CORRECTIONAL SERVICES

<u>TYPE</u>	<u>FEDERAL</u>	<u>PROVINCIAL</u>
Maximum security institutions	✓	
Medium security institutions	✓	?
Minimum security institutions	?	✓
C.C.C.	?	✓
F.C.	?	✓
Remand		✓
Bail Supervision		✓
Parole Supervision	?	✓
C.R.C.	?	✓
Community Service Order		✓
Reporting Order		✓
Restitution Order		✓
Other Community-based Sanctions		✓
Planning	✓	✓
Information	✓	✓
Research	✓	✓
Staff Development	✓	✓
Personnel	✓	✓
Finance	✓	✓

E. Co-ordination

Federal/provincial co-ordination of institutional services would continue along informal lines, as at present. Such co-ordination would be a determining factor in the ability of the Sentence Supervision Board to effectively carry out its duties.

OPTION XI: LAW REFORM COMMISSION PROPOSALS

PART 2: Discussion of Critical Factors

1. Philosophy, Objectives, Values

The principles underlying the Law Reform Commission's proposals are consistent with the principles put forward by the Task Team on Philosophy, Principles, and Priorities. The first fundamental aim of the criminal justice system identified by the Task Team is "to restrict the number of persons who come within the boundaries of social conflict relating to the criminal justice system.". The Law Reform Commission is in strong agreement with this notion, as can be demonstrated by a few references to the Report:

the coercive power of the criminal law and its agents and processes have to be used with restraint or they may further injure the social fabric (p. ii).... Whenever negative sanctions have to be applied they should be used with restraint and justification (p. 7).... Dealing with trouble and resolving conflict without resort to the criminal process or other formal processes should continue to be the norm (p. 9).

The Law Reform Commission also demonstrates strong support for the second fundamental aim discussed by the Task Team, that is, "to mediate the social conflict which comes within the scope of the criminal justice system."

The proposed range of dispositions and sentences is directed primarily towards a resolution of problems caused by an offence (p. iii).... In arriving at a disposition other means of dispute settlement such as mediation and arbitration should be used wherever possible (p. 6).... Reconciliation of the offender and victim within society is an important goal of the criminal process (p. 6)

The Law Reform Commission suggest that their work be used as "the basis for the formation of a coherent policy of dispositions and sentences in the criminal process" (p. v). The philosophy and principles underlying such a coherent policy are consistent with the principles articulated by the present Task Force.

2. Service Delivery

As has been pointed out earlier, there would be no effect on court-related services and the administration of community-based sentences. A wide range of non-custodial sentencing options would continue to be developed and administered by the province.

Sentences of imprisonment imposed for "wilful default" would also be the province's responsibility. This would re-inforce the notion that these sentences are closely linked to community-based sanctions and that they represent a last resort in cases which require them.

Sentences of "denunciation" and "separation" would be administered by the federal government. This might serve to re-inforce the notion that these sentences represent a "banishment" from the community, because the offender is a threat to persons' lives and security, or because the offender has seriously violated basic societal values.

The proposed Sentence Supervision Board would affect the delivery of services related to parole granting, temporary absence, prison discipline, and other matters affecting conditions of imprisonment and release. The Commission claims that "a great deal of uncertainty has developed concerning the nature of a prison sentence and the authority for specifying conditions" (p. 57).

The establishment of the Sentence Supervision Board is an attempt to develop and maintain clear and consistent policies and criteria affecting decisions in this area.

3. Administrative Structure

Federal and provincial administrative structures supporting institutional services would not be substantially affected: both governments would continue to require administrative structures capable of supporting a variety of institutional services, as well as appropriate planning, research, and management functions.

The proposed Sentence Supervision Board raises considerable complexity in terms of administrative reorganization. This Board would replace the present National and Provincial Parole Boards, and would also assume a number of responsibilities now under provincial jurisdiction (e.g. Temporary Absence, gradual release to the community, and internal prison discipline). The Sentence Supervision Board appears to have significant implications regarding administrative structure.

4. Constitutional and Legislative Impact

In constitutional terms, this option is not significantly different from Option IX which, as has been stated earlier, is essentially a juggling of numbers based on term of sentence. While it would require appropriate statutory provision there are no particular constitutional implications that arise from this option.

While there are some legislative changes which would be necessary, it is important to note that "many aspects of the Report do not depend on legislative changes but on changes in

attitudes and practices" (p. 80). The Commission's detailed description of required legislative changes will not be reproduced here: relevant discussion can be found on pages 85, 86, 88, 89 and 92 of the Report.

5. Effect on the Justice System

Included in the Law Reform Commission's Report are proposals addressed to all aspects of the justice system, with the overriding aim of forming a clear, coherent, and consistent policy for all justice processes and services.

The major effect of the proposals regarding imprisonment would be to establish a functional split between different kinds of custodial sentences. Sanctions of imprisonment resulting from "wilful default" would be regarded primarily as court-related activities, seen in the same light as community-based, non-custodial sanctions. Sentences based on "denunciation" and "separation" would emphasize the "banishment" aspect of incarceration. This functional split would hopefully provide a rational framework within which other components of the justice system could relate to correctional programs.

Similarly, the development of consistent guidelines and policies by the Sentence Supervision Board may improve the capacity for cross-divisional co-ordination in certain areas (e.g. liaison with police around temporary absence).

6. Effect on the Social Service System

The major effect of the Commission's proposals on the social service system would be to encourage the use of other, less formal mechanisms to resolve trouble and conflict, without resort to the criminal process. This would shift a major share

of the responsibility for responding to conflict away from the criminal justice system itself, towards other aspects of the social service system.

Further to this notion of shifting responsibility, agencies outside the criminal justice system would be required to exercise greater responsibility to individuals who are under sentence, particularly in institutions. "So far as possible, offenders in prison should have ... access to needed social, health and other services as those available to citizens not under restraints" (p. 33). The implication here is that social agencies involved in such areas as education, manpower training and placement, counselling, etc. would be expected to provide many services currently provided by corrections.

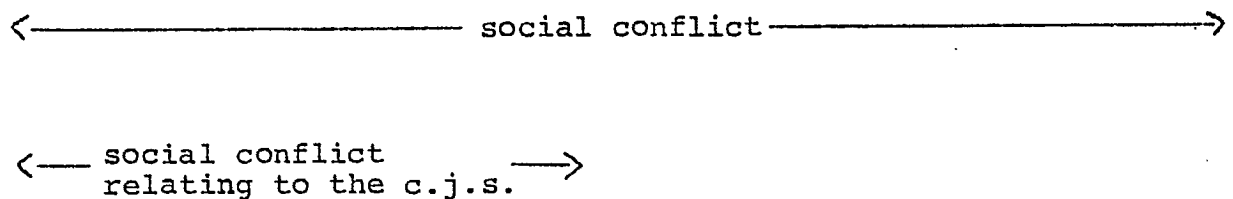
A final implication of the Law Reform Commission's proposals is the likelihood of better communication and co-ordination among the corrections system, community agencies, and the public at large. Clear and consistent policies, based on stated objectives of sentencing, would provide agencies and the general community with an understandable and reasonable framework within which they might become interested and involved in corrections activities. Implementation of the Commission's proposals would encourage and support community participation in the criminal justice process, including corrections.

FEDERAL/PROVINCIAL TASK FORCE
TO EXAMINE CORRECTIONS IN B.C.

Philosophy/Principles/Priorities Task

The following report is the result of a meeting held in Ottawa on 15 December 1975. In attendance were Task Force members Mr. Harrison, Mr. Thorvaldsen, Mr. Shpizner, Mr. Wakabayashi, and Mr. Cassidy.

The principles, aims, and priorities of Corrections can best be defined within the context of the broader criminal justice system. The criminal justice system, in turn, is to be seen within the context of all social agencies and institutions which respond to social conflict. Out of all cases of social conflict, only some are referred to the criminal justice system. This can be illustrated, as follows:



A functional definition of the criminal justice system is needed, to distinguish it from other methods of dealing with social conflict. The following statement is offered:

The function of the criminal justice system is to determine and enforce appropriate legal sanctions in relation to acts defined by law as criminal.

With the preceeding discussion as background, it is necessary to identify the fundamental areas of the criminal justice system, and the major strategies used to meet these aims. It is suggested that those strategies which are appropriate to Corrections comprise the basic objectives and priorities to be considered by the Task Force.

Two fundamental aims of the criminal justice system are identified:

1. to restrict the number of persons who come within the boundaries of social conflict relating to the criminal justice system, and
2. to mediate the social conflict which does come within the scope of the criminal justice system.

MAJOR STRATEGIES:

In relation to AIM #1

- decriminalization
- pre-arrest diversion
- prevention
- feedback to other social systems and to the public.

In relation to AIM #2

- (Police)
 - determine if crime exists
 - diversion
 - investigate
 - apprehend
 - informal conflict resolution
 - charge
- (Crown Counsel)
 - diversion
 - informal conflict resolution
 - prosecute

- (Courts)

- informal conflict resolution
- diversion
- determine guilt or innocence
- sentence

The particular strategies which relate to Corrections will be examined in closer detail:

AIM #1: To restrict the number of persons who come within the boundaries of social conflict relating to the criminal justice system.

Strategies:

A. Prevention

1. provide program activities*
2. control and monitor for gradual release to the community

B. Feedback to other social systems and to the public

1. as a result of decriminalization and diversion, encourage mobilization of compensatory community resources
2. encourage other social agencies to provide alternative responses to some types of social conflict which might be interpreted in the legal context if these mechanisms were not available
3. act as advocate in the community for the offender: insuring that agencies provide basic services.

*there was some disagreement at the meeting as to whether or not prevention programs properly belong under Corrections administration.

AIM #2: to mediate the social conflict which comes within the scope of the criminal justice system.

Strategies:

- A. Identification and development of alternative sentencing options: making available mechanisms for
 - community service
 - victim service
 - restitution
 - compensation
 - fine supervision
 - special treatment facilities (not administered by Corrections)

- B. Administration of certain sentencing options
 - incarceration (facilities and custodial/maintenance staff for Community Correctional Centers, forest camps, minimum, medium and maximum, and "dangerous offender" institutions)
 - community supervision (information and surveillance)
 - restitution
 - community service

- C. Provision and receipt of information re other criminal justice system agencies
 - provide to:
 - courts (P.S.R.)
 - police (information re community releases)
 - community resources (information re clients)

 - receive from:
 - courts (purpose of sentence)
 - police (reports)

APPENDIX 11CORRECTIONAL THEORY AND THE ORGANIZATION
OF CORRECTIONAL SERVICES

Introduction

Purpose and Limits of the Paper. This paper is intended as a brief and preliminary discussion of the strengths and weaknesses of each selected option in terms of correctional aims or principles. The essential question is to what extent each option promises to be effective in achieving correctional aims, i.e., which option is the most desirable. It should be added that there are, of course, many factors which may affect the decision as to organizational structure: administrative efficiency, financial resources available, constitutional, legal and political considerations, cost of changing structures, etc.; but we will try to focus as strictly as possible on theoretical issues.

Theoretical Assumptions. No attempt will be made here to provide a definitive statement as to the aims of corrections, but it does seem necessary to state explicitly what basic assumptions are made, in the hope that these will encounter a reasonable level of agreement. If the reader rejects certain assumed aims, then the force of later arguments concerning the organization of correctional services will be weakened, but this ad hoc approach is considered the most practical in the space available.

Essentially then, the aim of corrections, conceived very broadly, may be defined briefly. It is to administer a series of programs designed either to control the offender's behaviour, to punish him, to assist him in some way, or to require he re-pay in some manner the cost, or part of the cost, resulting from his offence. In common with other governmental services, correctional services are to be administered as economically as possible and within the limits of other social values; specifically, humanitarian principles, the principle of justice or fairness, and the protection of basic political freedoms.

It is also considered useful to indicate some general trends in recent years affecting the criminal justice system as a whole and, specifically, corrections, since some of these

trends have a bearing on the organization of correctional services. The following is a brief list:

- a) There has been an emphasis on the prevention of crime, both by improvement of various social services and by greater attention to preventive work within the criminal justice system itself.
- b) There appears to be a trend toward more informal processing of cases, with a view to rendering criminal justice procedures more visible, understandable, democratic and, perhaps, less 'alienating' for offenders, for the victim, and for the public at large.
- c) There has been an emphasis on the decentralizing of procedures in an effort to conduct them as close to the community, and even the neighborhood or street level, as is feasible, and thus attempt to involve the victim and the public in criminal justice matters.
- d) There appears to be a tendency to reject rehabilitation and deterrence as justifying aims of sentencing. There are still efforts to treat offenders humanely, to assist them and offer opportunities for achievement or growth, but the justification of a sentence is sought on other grounds.
- e) Thus there appears to be a greater emphasis on simple control of offenders considered 'dangerous', a greater stress on protection of the public.
- f) There also appears to be a trend to restore retribution, not necessarily in the sense of a return to arbitrary or inhumane punishment, but in the sense of an emphasis on the offender's moral accountability for his acts and the right of the community to denounce such acts or react in some manner.
- g) With the greater emphasis on moral responsibility, there appears to have been a growth of interest in reparative sentencing in its various forms; e.g., compensation, restitution, and service to the community or the victim.

In summary, as to HOW the criminal justice system proceeds, there appears to be a trend, on the one hand, toward an emphasis on due process and protection of individual rights and, on the other, toward informality and involvement of all concerned. In terms of WHAT the system does, it appears again that, on the one hand, there is an interest in responding to the offence and its meaning as a violation of the moral values of the community and, on the other, an effort to respond in a firm way to the offender by ensuring that he is under reasonable control. And as to WHERE procedures are carried out, the trend is clearly to keep the offender in the community whenever it is safe to do so rather than resort to isolating him in an institution.

Such an account is bound to be controversial, and the aims and trends are clearly not necessarily compatible with each other. Indeed, the list is rife with familiar conflicts. Further, not all of the aims or trends are relevant to the question of the proper organization of services. It is hoped, in any event, that the account will provide a not unreasonable reference point when we consider the merits of the selected options in terms of correctional theory.

Plan of the Paper. The various options will not be described here since this is available in other reports. It is useful to observe, however, that the four options differ along certain major dimensions:

- a) In Options 5 and 10, the administration of correctional services is unified under one administrative structure, while in Options 9 and 11 the responsibility is split between the federal and provincial governments.
- b) Option 5, in turn, differs from Option 10 in the degree of centralization of ultimate authority. Since Option 5 places the authority in provincial hands, it is more decentralized than Option 10, in which the federal government shares authority on an equal basis with the province.
- c) Options 9 and 11 differ as to the basis upon which responsibility is split between the two governments - Option 9 by sentence length and Option 11 by the purpose of the sentence.

The options thus differ in complexity on several dimensions - the degree of unification of operations, the degree of centralization of authority, and the rationale underlying the splitting of authority. The best plan, therefore, is to discuss them in order of their complexity, taking the simplest first: Option 5 (unified and decentralized); then, Option 10 (unified and relatively centralized as to locus of ultimate authority); next, Option 9 (split according to the objective fact of the length of sentence); and finally, Option 11 (split according to the subjective intent of the sentence).

There is bound to be a fair degree of overlap in the arguments concerning each of the options, since a point in favour of one is often a point against another. An attempt will be made to avoid repetition of arguments, but this means that the discussion of each option does not necessarily stand on its own, and the lot should be taken together.

Analysis of the Options

OPTION 5

Several advantages stem from the fact that, under this option, the administration of corrections is unified in one agency:

a) The most obvious and commonly heard argument for unification is that it means a greater possibility of integrating the various parts of the correctional service bringing, hopefully, greater harmony and greater efficiency in operations. It avoids the costly duplication of support and operational structure which is so apparent in the present split system in the eyes of the taxpayer, the theorist and the administrator alike. In short, unification of services promises the greatest level of economy.

b) Unification may also mean that the system has sufficient numbers of offenders under its authority to be able to afford a larger variety of specialized units. While this argument is usually made with 'treatment' in mind (see Ouimet Report, pages 279-280), it would seem to apply equally to the provision of specialized control units or programs designed to offer the widest possible range of opportunities for offenders. Unification is thus consistent with the effort simply to provide, if not more effective service, at least the most humane and fair environment possible. An integrated

service can also be more efficient in tailoring programs to the requirements of the individual offender and providing for efficient and flexible transfer between programs - again, if not in the interests of effective 'treatment', then in the interests of humane and equitable control. (See Ouimet Report, pages 279-280)

c) Any splitting of administrative responsibility for carrying out a sentence involves the adoption of criteria of some sort by which to divide offenders between the two authorities. This clearly produces added complications at the point of sentence. As the Ouimet Report puts it:

"The Court should have open to it as many choices as possible in determining the sentence given any offender. When the length of sentence restricts the choices available to the Court, it raises an artificial barrier to good sentencing. Under the situation prevailing in Canada, the Court may think in a particular case that the seriousness of an offence demands a sentence longer than two years, but the personality of the offender suggests that he be grouped with minor offenders at the provincial level. The Court faces this dilemma - either to ignore the potential deterrent effect of the longer sentence and give the shorter sentence which the personality of the offender suggests, or risk the future of the offender by sending him to a penitentiary where his fellow-inmates will include more difficult criminals." (page 279)

d) A unified system can more easily ensure, at least within the province, uniform standards in both material and social or psychological terms, i.e., in terms of facilities and in terms of programs or opportunities available to offenders. The system may thus be a fairer one. (A similar point can be made in connection with the conditions of work, training, pay, etc., for staff, but that is not relevant here.)

A series of arguments in favour of this option arises from the fact that it is not only unified but relatively decentralized at the provincial level:

(i) In the most general terms, this option appears in keeping with the recommendations of the Royal Commission on Government Organization (Glassco Commission 1962), which appears to support the principle that direct services to citizens be administered at a provincial level. The report points out that the administration of many social services was assumed by the federal government at a time when such a level of organization seemed necessary in view of the limited resources available in the provinces. It recommends that in view of the growth of the provinces and their resources, such arrangements should be reviewed and provisions for continual review established.

(ii) Probably the most cogent single argument for decentralization of correctional administration is that it is in keeping with, indeed, a concrete expression of, the trend to bring the criminal justice services as close to the community as possible, consistent with the uniform protection of basic civil rights. The aim is to make the system both as responsive and accountable to citizen opinion as possible and capable of communicating or expressing the 'core values' of the community as efficiently and directly as possible. This point receives added significance in a culturally heterogeneous nation such as Canada. As indicated earlier, such a return to the community level would seem true both in terms of how we do things (i.e., more informal processing with maximum involvement of offenders, victims and citizens) and what policies we follow (i.e., an emphasis on reparation or settlement of conflict and upon residential, supervisory, or other community control methods). In the context of such trends in correctional theory, centralized administrative structures appear increasingly anachronistic.

(iii) A decentralized structure can claim also that it is more economical, avoiding the administrative superstructure that centralized administrations require (see Ouimet Report, p. 282).

(iv) Decentralization at the provincial level has several specific advantages; e.g., 1) it is in keeping with efforts to bring unity to the various components of the criminal justice system. Police, pre-trial, court and, of course, most correctional services are all administered by the provinces. In this context, it is simply anomalous that a relatively small part of corrections is administered federally. 2) Further, whatever the emphasis as to aims - assistance, control, reparative programs, etc. - and whether these occur in institutions or in the community, it would seem clear that there is a need for easy communication between criminal justice and the various social services in the community. Most of such services are, of course, administered by the provinces. Unification of correctional services at the provincial level thus means that all work for one master, and that mutually acceptable policy decisions can ultimately be thrashed out in one cabinet.

Option 10

(a) The unified structure proposed in this option has many of the advantages outlined earlier in this respect under Option 5, i.e., economy of total operation, uniformity of standards, integration of services, and at least a promise of greater effectiveness. It would, however, in comparison with Option 5, appear to have certain disadvantages: 1) It may be less economical to the extent that both federal and provincial houses of parliament must concern themselves on occasion with specific operational issues, and it also involves the cost of operating the proposed joint board of directors. 2) It may be less efficient due to the fact that the proposed system works ultimately for two masters, a notoriously difficult, if not impossible, situation for any administrator. Although such boards may be feasible in

certain areas of government, correctional policy is highly controversial. The danger would be that such a board would provide fluctuating and unstable guidance for any senior administrator and add layers of complexity to his job. In any event, the political and administrative implications of such an arrangement would have to be thoroughly explored.

3) Although correctional services are unified, such services work for a different authority than do the police, pre-trial, and court services. This would appear to violate, on an administrative level, the principle that criminal justice should be a unified system. 4) Similarly, under this option, corrections would work for a differently constituted authority than do most other social services with which it must communicate and co-operate. As pointed out earlier, most such services are organized at the provincial level.

(b) An advantage of the relatively centralized nature of this option is the fact that equal participation by the federal government would ensure that standards of operation (facilities, program, staffing, et cetera) would be more uniform across the country than would otherwise be the case. At a time of acute concern for the protection of civil rights, the aim of fairness demands attention. Corrections is often an emotional and even an explosive issue, and it can be argued that decentralized control risks unstable and extreme local or regional reactions against offenders, out of harmony with national standards. The difficulty with this argument is that correctional administration inevitably involves a trade-off among several aims. We want a fair system but also one that is visible, accessible, economical, responsive to local needs, one which enables ready contact between the offender and the community, and so on. It can be suggested that at least the larger provinces are now easily big enough to provide reasonably stable and uniform standards and thus ample protection for individual rights. Further, as recent court cases show, the individual may resort to the courts under federal legislation and ultimately appeal to federal courts to protect his rights. In this respect it can be argued that Option 5, with policy-making and operational authority at the provincial level but with federal involvement in standard setting and development, provides the optimum balance in the selection of aims.

(c) This option may argue that it also can provide for extensive decentralization of authority and thus achieve the benefits thereof; witness the efforts of the federal government in corrections in recent years in this regard. Such a policy, in terms of current correctional theory, is commendable and, with adequate resources and vigorous pursuit, it may in fact achieve greater decentralization than would a cautious provincial administration. No matter how far such a policy goes, however, to the extent that the federal govern-

ment has ultimate authority in correctional administration, this option would by definition represent a centralization of control relative to the provinces. Inevitably, to some degree in day-to-day decision-making and certainly over the long haul, the crucial question is where the ultimate responsibility for policy lies. And it may be noted here that since this option shares ultimate authority on an equal basis with the federal government, it markedly expands the present authority of the federal government in terms of numbers of offenders involved. To this extent it represents an increase in centralization of control and a relinquishing of control by the province.

Option 9

It may be observed at the outset that the principle of dividing correctional responsibility between the provincial and federal governments appears originally to have been accepted on political, financial or administrative grounds. Evidently there was a desire to strengthen the powers of the federal government, or the federal government was the only one with the resources available to establish long-term institutions, or there were insufficient numbers of long-term offenders in some regions of the country to justify institutions for them, and so on. We understand further that virtually since its inception the present arrangement has been criticized. The most recent report on the topic appears to be the Report of the Canadian Committee on Corrections (Ouimet Report), 1969 which recommends that the present division of responsibility be retained with minor improvements. It is interesting to note that after reviewing the advantages and disadvantages of other alternatives, the committee appears to have made its recommendations on practical rather than theoretical grounds. Thus, it saw major problems associated with any transfer of responsibility in view of the size of the investment at both the federal and provincial levels, and it noted the "lack of consensus among the many people across the country with whom the committee has discussed this problem." Several arguments, of a theoretical nature however, in defense of a splitting of responsibility between the governments have been raised; these will be discussed briefly below.

(a) It has been argued that the federal government is able to provide uniform standards across the country for that group of offenders (those imprisoned for relatively long periods) for whom such uniformity matters most, i.e., those where the intervention by the state is the greatest. This applies both to standards relating to quality of opportunities for education or achievement offered to offenders (physical facilities, programs, staff, etc.) and to standards of humanity, fairness, protection of basic civil rights, and the like. It is said to apply with particular force when one considers

the differing resources and size of offender populations between the provinces, and the mobility of some types of offenders across the country.

As the Quimet Report (1969) puts it, however:

"The suggestion that prison services be uniform across the country may not be viable when police services, court services, welfare services and health services are not."

Specifically, it may be noted that the decision most crucial to the offender's rights is the sentence, and this, of course, remains in provincial hands. Further, other avenues are open to the federal government whereby it may influence standards in this as in other fields of social service. First, as mentioned above, it of course has supreme legislative powers in criminal justice. Secondly, it can wield great power over standards by financial means. Federal equalization grants are a clear case of such endeavour by the central government. Thirdly provincial administration, such as outlined in Option 5 above, would provide for the participation of the federal government in the development of uniform standards. Finally, as discussed earlier, the principle of fairness arising out of the fact of uniform treatment must compete with other aims, such as efficiency, economy, contact with the community, and the like. Strictly adhered to, uniformity might indeed hold back development in those areas of the country where there was more imaginative leadership or greater material resources.

(b) Another argument is that with its greater financial resources the federal government can provide not simply more uniform standards but higher standards, and that the involvement of the federal government in actually operating its own system lends realism and credibility to its leadership. The additional argument that a dual administration of correctional services provides a competitive situation in which both systems are given incentive to improve programs may, ^{also} be mentioned here.

The assumption that federal administration would necessarily provide standards to be emulated by the provinces is controversial at best and, in any event, probably true for only some of the provinces. The establishment of the definite - indeterminate sentence, special programs for young offenders, extensive development of forest camps, the vast expansion of probation services and the like, would seem to serve as examples of leadership, particularly by the Province of British Columbia in recent decades, in accord with the theoretical lights of the time. With reference specifically to the 'competition' argument, it may be observed that the provinces already compete with each other and with

standards in other countries; provincial administration of the longer term offenders would in fact introduce a competitive element across the country for such offenders. Further, the argument has only so much force; criminal justice hardly operates in a free market situation where customers or 'clients' make demands. Finally, if such an argument were tenable it would imply that the federal government should also offer competitive service in other areas of social service, e.g., welfare and education.

(c) It may be suggested that, by assuming responsibility for the most 'expensive' and 'difficult' offenders, the federal government frees the provinces to develop appropriate (community or local institutional) programs for the greater number of less serious offenders. It is pointed out that this may be even more true in the future in view of the trend toward the development of 'front-end' programs whereby institutions are increasingly required to cope only with the more serious offender. The argument acknowledges that sentence length is a very rough criterion by which to classify offenders, but suggests that it is the most important factor in the eyes of administrators, the public, and the offender himself, and that all things considered it is the most practical criterion.

The difficulty with this argument is that it clearly more relevant to the question of how responsibility should be divided rather than to the principle of division of responsibility itself. If there is to be a split administration, then it may make sense to develop criteria whereby the federal government would handle the more serious offender. In short, the argument assumes the status quo and attempts to rationalize it. Clearly, with appropriate resources, the provinces could cope with the serious group just as well as the federal government, and without the rigidities and extra costs of two administrations. Further, long-term sentences obviously become short-term sentences with the passage of time and offenders then require easy transfer to virtually the same community and/or decentralized or open resources that short-termers require. The two groups do not in fact differ in any reliable or appreciable way, and for the most part require similar resources once the custody factor, arising for the most part out of length of sentence, is removed.

(d) It may be suggested that the longer institutional sentences involve a greater emphasis on retribution, denunciation or general deterrence in response to the offence, and incapacitation of the offender. These aims imply imprisonment for its dramatic (punitive) impact or for the purpose of close custody of an offender for a relatively lengthy period of time. As such, these aims, it might be argued, are less dependent on close community contact and less affected by the development of community methods than would be the case

for other aims such as reformation or reparation. Hence, there would at least be nothing lost in centralizing the administration of such sentences in federal hands.

This again would appear more a rationalization of the present arrangement than a positive reason for federal government involvement. It argues not that there are any great benefits to federal administration but that there are no great losses. In any event, incapacitation per se, except for maximum security facilities for offenders considered dangerous over a long term, itself requires flexible if very gradual transference of offenders to open institutions or community-based facilities tailored to the level of control the offender requires, if elementary standards of humanity and economy, if not effectiveness, are to be observed. Even for long-term offenders, as the sentence expiry date approaches, the use of less secure facilities becomes indicated.

Turning to the retributive aim, barring any radical changes in sentencing philosophy, it may be observed that even for sentences which are at the outset rather purely retributive, a change of emphasis as to aim tends to occur as the sentence proceeds. Later in the sentence a stress on simple control of the offender and/or on his reformation or humanitarian treatment and hence again on community re-entry programs comes to the fore. But further, and of more profound significance here, is the fact that both retributive and incapacitative sentences appear to be coming less dependent on imprisonment as a vehicle or method for their achievement. If our assumptions outlined earlier as to trends are accurate, retribution - with respect to its requirement that the moral balance disturbed by the offence be restored or settled in some way - may be increasingly achieved, not so much by inflicting suffering on the wrongdoer, but by demanding reparation in some form; by settling the account, as it were, on a material level. As for incapacitation, the possibilities of control of greater numbers of offenders in the community are now under development, leaving fewer offenders in the category of long-term maximum security. The point, in short, is that to the extent that the trends are true, even incapacitative and retributive sentences will increasingly require close contact between administrators and community resources.

(e) Finally, it may be argued that, although split administrative responsibility violates the concept of a unified or integrated criminal justice system, methods may be devised to achieve close working relationships with police and court services. It is pointed out that in any event the system is often already fragmented at the provincial level. Responsibility for some groups of offenders is often placed with welfare or child care departments, reflecting the continuing controversy over the role of correctional services and its proper administrative structure.

Suffice it to say here that, despite (unfortunate) continuing controversy as to the proper placement of administrative responsibility for the administration of juvenile correctional services, the systems concept is now generally accepted for adult services (see President's Commission on Law Enforcement & the Administration of Justice, 1967; Report of the Canadian Committee on Corrections, 1969; and B.C. Task Force on Correctional Services & Facilities, 1973).

Option 11

The recommendations of the Law Reform Commission as to organization of correctional services follow closely upon its recommendations as to sentencing. In this area, it suggests that the length of a prison sentence should be determined, within certain maximum limits, by its purpose. It proposes that there are only three justifications for prison sentences - enforcement of community orders, denunciation of the offence, and separation of offenders considered, at least at the time of the sentence, to be sufficiently dangerous to necessitate such a level of control. The sentence limits suggested, respectively, are six months (12 months in the case of consecutive sentences), three years (six years in the case of consecutive sentences), and 20 years. Punitive retribution, deterrence, and rehabilitation are specifically rejected, at least as justifying aims of imprisonment.

In keeping with these sentence guidelines the Commission recommends: a) that enforcement sentences be administered by the provinces, since these are considered to be closely linked to the community; b) that denunciatory sentences be split between jurisdictions according to the length of the sentence, or be administered by either jurisdiction at the discretion of the court, or be placed under federal jurisdiction; and c) that separation sentences be administered by the federal government. A Sentence Supervision Board is proposed to administer, for the most part, separation sentences. Its jurisdiction is, however, rather severely limited; the court is to retain control over enforcement and denunciatory sentences and, at its own option, separation sentences for up to three years (presumably six years in the case of consecutive sentences).

Although this functional approach can be reconciled to some extent with the split on the basis of sentence length in Option 9, it was considered to represent a fundamentally different principle and to deserve consideration in its own right. Before proceeding, however, it should be pointed out that the LRC recommended such a rationale for splitting jurisdiction only on the assumption that some form of split would continue and that the problem was to make the decision on as rational a basis as possible. Of the four options considered here, the commission would in fact favour Option 5. Such a choice in favour of the most structurally de-centralized of these options is clearly consistent with the total thrust of the LRC's work. In general, the commission urges such things as restraint in invoking the criminal justice system machinery in the first place as a means of settling conflict, informality of procedure wherever possible ('diversion'), settlement of disputes at the community level, expansion of

discretionary guidelines to make these procedures possible, reparative sentencing, community control facilities, and so on. It acknowledges the fact that the present split in administrative structure presents problems and stresses the role of local (municipal) governments in responding to crime, while encouraging the role of provincial and federal governments in providing assistance, setting standards, conducting development projects, and the like.

Assuming, however, that a split is to be made, the LRC recommendations may be considered. In general, the proposals would force the court to be explicit about what the aims of a sentence are, at least the predominant aims of a sentence. This is in keeping with the Commission's drive to render the criminal justice process at once more understandable, humane, and accountable. It lets the offender know where he stands and confronts the public with how its values work in practice. For the planner, the administrator, and the researcher there is a possibility of greater discipline in their work. Quite apart from the question of agreement as to the specific aims the Commission advocates, clarity of goals is essential if the various criminal justice services are to be integrated in a system.

But specifically, and more relevant here, is the fact that such explicit stating of the aims of a prison sentence would give much clearer direction to the prison authorities in the designing and administering of facilities and programs. Logically these must be consistent with the aims of the sentences of the offenders received. This should result in a more coherent and efficient, if not also more effective, response to such offenders, reducing the pervasive ambiguity that is at the root of so much inefficiency, conflict and even injustice in such institutions. (See, for example, American Friends Service Committee, Struggle for Justice, 1970). The sentence would no longer be so vulnerable to the various interpretations of a sentence which occur as the offender proceeds through his sentence, and which are so confusing and frustrating to the public, to the courts, to criminal justice personnel at all stages, and to offenders particularly.

The approach of the Commission is open, however, to criticism on several grounds. First, its utility depends upon the broad acceptance of the Commission's sentencing theory. It is a vast understatement to say that sentences are ambiguous mostly because we tend not to agree as to sentencing aims. With reference to the Commission's sentencing proposals, many a judge may wonder, for example, whether denunciation is so different from retribution; whether denouncing an offence to reflect the community's "core values" is not similar in its moral impact to giving an offender 'what he deserves' according to the community's notions of justice; whether

'separation' is not similar to what has usually been called 'protection of society' or 'incapacitation'; whether enforcement is not essentially deterrence after a chance at community alternatives; and whether the rehabilitation of offenders does not indeed enter into the determination of a separation sentence at least when release is being considered. The sentencing theorist may object that the rejection of rehabilitation as a justifying aim in fact assumes too much about the significance of this aim in the past in actual practice, at least for imprisoned offenders. Some argue that retribution, incapacitation, and deterrence have always been the chief determinants of prison sentences in any event, despite the assumptions of liberal theorists and planners.

Turning to a few practical issues, the proposals of the Commission also appear to assume that courts can reasonably be asked to choose a sentencing aim from among the multiple aims of most sentences. Such 'multiplicity of aim' is particularly true of imprisonment; this sentence is undoubtedly the most 'ambiguous' we have, since it can be put to so many purposes simultaneously. If a judge is to select a single aim for purposes of determining who shall administer the sentence, he will likely be able to state only his predominant purpose, and other aims will also be present. Institutional facilities and programs must then be designed for only an emphasis in one direction or another so far as aims are concerned. How much real difference will this then result in, in practice, over what we presently do?

A further practical problem would appear to arise from the fact that the court retains control over most sentences, including, to a fair degree, separation sentences. Sentence Supervision Boards have limited powers. Since the courts are, of course, provincially administered, we appear to have the spectacle of at least some federally administered sentences remaining under the ultimate supervision of a provincial authority.

Clearly it has not been possible here to do justice to the theory and potential utility of the LRC recommendations on the question of dividing administrative authority in corrections. The LRC's work is sweeping in concept and the Commission may well argue (and does) that it is promoting a different approach, such that the above concerns are irrelevant or mere debating points. But a basic change of approach, as the Commission is the first to acknowledge, takes time. From a practical point of view, however, the theory as to sentencing aims involves some distinctions that are both subtle and controversial, and the attempt to divide offenders between jurisdictions on the basis of explicitly stated sentencing aims may run into some rather serious practical problems. In the meantime, the Commission's recommendations would likely collapse into a policy very like that represented in Option 9 where the various aims are given 'operational' definitions based upon sentence length.

REMARKS

This paper is based on a limited armchair appraisal of some of the theoretical issues considered the most relevant to the organization of correctional services, there being no known empirical studies on the question available, and limited time. It is intended not as a definitive statement but as a discussion paper.

The paper suggests that, in terms at least of correctional theory, the overwhelming weight of argument favours a unified and decentralized system. Option 5 clearly represents the closest approximation of this, with provision for as much decentralization to regions within a province as possible and with the requirement that the federal government here, as in other areas of social service, provide various forms of assistance and fill a leadership or at least a coordinating role. As one moves towards more complex forms of organization, theoretical problems would seem to mount and, logically, the potential effectiveness of the system would be jeopardized.

January, 1976

SAT/jr

A BRIEF INSTITUTIONAL ANALYSIS:

Disposition and Time Served

January 1976

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A BRIEF INSTITUTIONAL ANALYSIS

- A. Problem Statement: to review sentence length (disposition received) and actual time served for the population sentenced to provincial institutions during a specified time period. (For sample description and sources, see Appendix A.)
- B. Area of Concern: the distribution of disposition and time served for three groupings:
1. six months and under;
 2. greater than six months but less than one year; and
 3. one year and greater.
- C. Observations on Disposition:
(See Table 1)
1. The most reliable information available on disposition received concerns definite sentences of time or time in default of paying a fine. It seems that corrections data does not adequately record indeterminate or probation terms in combination with definite sentences. Therefore, definite sentences were considered in this report.
 2. Six months and under, sentenced admissions in 1974 to provincial institutions in the north and interior regions:
 - a) half (49.8%) were received with definite sentences of 6 months or less;
 - b) another 36.9% were sentenced to less than 6 months in default of fine;
 - c) therefore, 86.7% were received with dispositions of 6 months or under.
 3. Six months and under, male sentenced admissions to LMRCC in 1974: (Table not included)
 - a) approximately 43% were serving definite sentences of 6 months and under;
 - b) the majority of persons serving time in default of fine usually are sentenced to under 6 months;
 - c) in this sample, 36.1% were serving time in default;
 - d) therefore, a total of approximately 79% of the sample may have received dispositions of 6 months or under.

4. Greater than six months but less than one year:
 - a) 4.3% were received with dispositions of 7 to 11 months.
5. One year and greater:
 - a) 8.4% were received with definite dispositions of one year and greater. This included some who were sent to the Federal Penitentiary.

TABLE 1. DISTRIBUTION OF DISPOSITION*

Sentence Length	1974 Average: North and Interior Regions			
	Total Distribution	6 Months and Under	7-11 Months	12 Months & Greater
Definite:				
6 mos. and under	49.8%	49.8%		
7-11 months	2.7		2.7%	
12 mos. & greater	8.4			8.4%
In default of fine:				
Under 6 mos.	36.9	36.9		
6-12 mos.	1.6		1.6	
Other:	1.6			
TOTAL	100.0%	86.7%	@ 4.3%	8.4%

*Definite sentence length received by persons sentenced to provincial institutions in the north and interior regions of B.C. in 1974 as recorded by the Corrections Branch (N=1483)

D. Observations on Time Served:
(See Tables 2 and 3)

1. Although drawn from the same sample, the distribution of figures in this variable cannot be directly related to those considered under disposition.
2. Obviously, actual time served could be considered only for those who completed their sentences and were released in the study period. These persons made up about 70% of the total sentenced sample.
3. Another 30% of the sample were recorded as still serving sentences at the end of 1974, the study period. This proportion appears high if related to the percentage who received sentences of over one year. However, it must be remembered that we have considered admissions throughout the study period, which means that all those received late in the year with sentences of 6 months and under to 7-11 months would also still be serving time at the end of 1974.

This means, as well, that there is a bias for the shorter sentences in the time actually served in the study period.

4. An exact breakdown of the 6 months and under, and other categories, were not available.
5. Actual time served as recorded for those who were admitted with a disposition, completed sentence, and were discharged in 1974 at institutions in the north and interior regions of the province (see Table 2).
 - a) under 6 months (under 161 days): 96.5% of those who were sentenced and discharged in 1974 actually served less than 161 days (or 5½ months).
 - b) less than 2% served 161-200 days.
 - c) 1.6% served over 200 days.
6. Actual time served as recorded for those who were admitted, served time, and discharged in 1974 from LMRCC (see Table 3).
 - a) more serious sentences appear to be served at LMRCC with a greater proportion of longer actual lengths of stay.
 - b) under 6 months (under 161 days): 61.7% actually served less than 161 days or 5½ months.
 - c) 2.6% served 161-200 days.
 - d) 31.4% were recorded as having served over 200 days.

7. In order to properly consider actual time served, the sample must be followed until all sentenced persons have been discharged.

TABLE 2. ACTUAL TIME SERVED*

Days Served	Institutions		1974 Average: North & Interior Regions
	PGRCC	KRCC	
Under 15	42.2%	46.0%	
15- 21	20.5	21.6	
22- 28	3.2	2.6	
29- 35	3.9	3.4	
36- 55	6.7	9.4	
56- 76	10.8	8.3	
77-100	2.8	1.1	
101-130	6.0	3.4	
131-160	0.6	0.5	
Subtotal	96.7%	96.3%	96.5%
161-200	1.3	2.4	1.9
Subtotal	98.0%	98.7%	98.4%
Over 200	2.0	1.3	1.6
TOTAL	100.0%	100.0%	100.0%

*For those persons sentenced in 1974 to provincial institutions in the north and interior regions of B.C. (N=997) as recorded by the Corrections Branch.

TABLE 3. ACTUAL TIME SERVED*

Days Served	LMRCC
Under 15	29.8%
15- 21	10.1
22- 28	1.6
29- 35	2.2
36- 55	4.9
56- 76	7.5
77-100	1.7
101-130	5.3
131-160	1.1
Subtotal	61.7%
161-200	2.6
Subtotal	64.3%
Over 200	31.4
	95.7%
Not Known	4.3
TOTAL	100.0%

*For a sample of men admitted sentenced in 1974 to Oakalla, the Lower Mainland Regional Correctional Centre (N=1833) as recorded by the Corrections Branch.

APPENDICES

A. DESCRIPTION AND SOURCE OF INFORMATION

1. PGRCC and KRCC Samples

These samples were withdrawn by the consultants from Corrections computer data during the spring and summer months of 1975. They include sentenced persons admitted in 1974 to PGRCC and KRCC (N=1483). These were: those persons who were admitted and completed a sentence during the study period or who had a sentence but no discharge date, that is, were still serving time. The remand sample was not analyzed. For computing actual length of stay in days, of course, only those who were discharged could be assessed. In light of this, the variable length of stay was considered separately from disposition.

2. LMRCC Sample

Some first run data obtained from the Justice Computer Centre on males sentenced to LMRCC in 1974 (N=1925) was reviewed as well. However, disposition categories for this sample were not consistent with those in the others, and reliable definition of the sample itself was not available.

B. TIME FRAME

Because of the time constraints on preparing this material, the data requested from the Justice Computer Centre could not be provided to the consultants who feel it would be beneficial to develop the relationship between disposition received and actual time served for sentenced admissions in the time period.

APPENDIX B.

ANALYSIS OF INCREASED WORKLOAD
DUE TO SIX MONTH SPLIT

A substantial proportion (79% for LMRCC* and 86.7% for the remainder of the institutions) of the populations in provincial institutions would appear to be in for sentences of less than six months. Almost all inmates served less than six months, as can be seen from Appendix A (approximately 64% for LMRCC and 97% for the remainder of the institutions).

As can be seen from Tables 1 and 2, the admissions to and from federal and provincial institutions in 1973 in British Columbia were quite substantial. In order to calculate the likely effect of a change in split based on sentence length, it was necessary to make the following calculation:

1. Assume 21% sentenced to more than six months at LMRCC and 13.3% sentenced to more than six months for the remainder of institutions.
2. Assume that average stay for those sentenced over six months at LMRCC is four, six or eight months (from Appendix A it appears it is approximately 7.6 months) and that average stay for those sentenced over six months elsewhere is two, four or six months (from Appendix A it appears the average was 3.68 months).

* Lower Mainland Regional Correctional Centre.

TABLE 1

POPULATION MOVEMENT IN AND OUT OF FEDERAL CORRECTIONAL
INSTITUTIONS, 1973 IN BRITISH COLUMBIA

Institution	Population at December 31, 1972		Movement In		Movement Out		Population at December 31, 1973		Standard Capacity
	Male	Female	Male	Female	Male	Female	Male	Female	
British Columbia	616		1,114		1,064		666		570
Matsqui, B.C.	586		772		703		655		705
William Head, B.C.	143		193		172		164		150
West Georgia Centre, B.C.	24		93		85		32		17
TOTAL	1369		2,172		2,024		1,517		1,442

TABLE 2

POPULATION MOVEMENT IN AND OUT OF PROVINCIAL CORRECTIONAL
INSTITUTIONS, 1973 IN BRITISH COLUMBIA

Institution	Population at December 31, 1972		Movement In		Movement Out		Population at December 31, 1973		Standard Capacity
	Male	Female	Male	Female	Male	Female	Male	Female	
British Columbia	1,827	124	12,470	1,317	12,518	1,294	1,779	147	2,582
Prisons:									
Alouette River and Twin Maples	117	39	603	197	597	205	123	31	213
Chilliwak Forest Camp	120	-	518	-	517	-	121	-	210
Haney	463	-	1,277	-	1,399	-	341	-	508
Kamloops	155	-	1,304	-	1,327	-	132	-	210
Lower Mainland R.C.C.	631	85	5,702	1119	5,673	1088	660	116	933
New Haven	42	-	103	-	68	-	77	-	48
Prince George	144	-	1,201	-	1,174	-	171	-	200
Sayward	54	-	232	-	246	-	40	-	130
Victoria	101	-	1,530	1	1,517	1	114	-	130

3. Assume movement in in 1973 is to be for custodial facilities (not camps). The movement in for 1973 provincial institutions was then:

Haney	1,277
Kamloops	1,304
LMRCC	5,702
New Haven	103
Prince George	1,201
Saywad	232
Wilkinson Rd.	<u>1,530</u>
TOTAL	11,349

As can be seen from Table 3, the expected impact on the federal workload could be quite significant (if our assumptions from Appendix A are correct) with a 35% - 77% increase in federal workload. With this percentage increase in federal workload, the impact on service delivery could be expected to be quite substantial.

TABLE 3

Estimated Input of New Division
of Jurisdiction on Federal Workload

Assumptions

LMRCC Average Stay	Remainder of Institutions Average Stay	Absolute Increased Federal Workload	% Increase in Federal Workload (of 1517 from tables)
4 months	2 months	525	35%
4 months	4 months	650	43%
4 months	6 months	775	51%
6 months	2 months	723	48%
6 months	4 months*	848	56%
6 months	6 months	973	64%
8 months	2 months	923	61%
8 months	4 months*	1048	69%
8 months	6 months	1173	77%

*These would appear to be the most likely changes from Appendix B data.

CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

Constitutional Position Generally Re Corrections

An examination of the division of powers contained in the B.N.A. Act which relate to the subject of corrections (within the meaning assigned to the term for the purpose of the task force study) shows that in respect to the powers of the Parliament of Canada heads 27 and 28 of section 91 and, in respect of the Provincial Legislatures heads 6, 14 and 15 are relevant.

In respect to the federal powers, section 91 empowers the Parliament of Canada to make laws in relation to:-

"27. The Criminal Law, except the Constitution of Court of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries."

The Provinces' powers extend to passing legislation in relation to:-

"6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

14. The Administration of Justice in the Province....

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section."

Of the heads of jurisdiction set out above, it appears that head 27 of section 91, i.e. the criminal law, does not have a direct bearing on any of the four options being considered since none of the options contemplate the Province passing what might be considered to be "criminal law".

On the other hand, a careful consideration of the federal power to establish, maintain and manage penitentiaries (section 91(28)) and the provincial power to establish, maintain and manage public and reformatory prisons (section 92(6)) is warranted. Questions arise as to what is a "penitentiary" as distinct from a "public and reformatory prison" in the pure constitutional law sense of the word? It is not a sufficient answer to say that a penitentiary is a penal institution wherein persons are incarcerated who have been convicted of offences sentenced for a period of two years or more whereas a "public and reformatory prison" is a penal institution where persons are incarcerated who have been convicted and sentenced to less than two years. Such a distinction has developed because the Criminal Code (not a constitutional document) has drawn that distinction but in terms of answering the question in a constitutional sense the distinction drawn in the Criminal Code begs the question.

In an effort to determine what distinctions, if any, exist in constitutional terms, between penitentiaries and public and reformatory prisons a search has been made into the history of penitentiaries prior to Confederation and attached as an appendix to this report is a paper entitled "A Brief Legislative History of Penitentiaries Prior to Confederation" which embodies that research. It indicates that there is no clear distinction in constitutional terms between penitentiaries and public and reformatory prisons and that the terms were used interchangeably.

The result is that insofar as the establishment, maintenance and management of correctional institutions are concerned, including matters ancillary and incidental thereto, the jurisdiction under the B.N.A. Act as between Parliament and the Provincial Legislatures is one of concurrent jurisdiction.

Concurrent jurisdiction is expressly set out in section 95 of the B.N.A. Act in respect to laws in relation to agriculture and immigration. The fact that the suggested concurrency jurisdiction in the field of corrections is not contained expressly in section 95 of the B.N.A. Act does not undermine in any way the proposition that the powers in this area are concurrent although not expressly said to be so in the B.N.A. Act.¹ Indeed, the constitutional cases are replete with the applied existence of concurrent powers and the consequential development of legal doctrines relating thereto such as "double aspect", "paramountcy", "repugnancy", etc.

Having discussed briefly the constitutional position generally in respect of corrections, it is now appropriate to discuss the constitutional implications that arise in respect of each of the four options being considered.

¹See generally, W.R. Lederman, "The Concurrent Operation of Federation and Provincial Laws in Canada", (1963) 9 McGill Law Journal 185.

OPTION V

1. Constitutional Implications

This option contemplates that within the Province of British Columbia responsibility for the delivery of correctional services would be the exclusive responsibility of the Province. The federal government would continue to share jointly the province's responsibility in the area of the determination of correctional needs, the setting of goals, objectives, priorities and standards and communications with community agencies and citizens.

Based on the footing that the constitutional jurisdiction over corrections is concurrent it follows that the relinquishment by the federal government of authority it presently exercises in the direct delivery of correctional services does not in any way amount either to an abdication of federal responsibility or a usurpation by the province of authority that it does not otherwise have. In short there are no constitutional obstacles standing in the way of the option to the same extent that there are no constitutional difficulties caused by the fact that there is no federal penitentiary in the Province of Prince Edward Island nor by the fact that in respect to all provinces there presently exists an Exchange of Services Agreement which provides that federal prisoners may be housed in provincial institutions and vice versa.

Presumably, the implementation of this option would be accomplished either through a contract for services between the two governments (i.e. an expansion of the present E.S.A. agreement) or by a statutory delegation of responsibility at the federal level to a provincial correctional agency. Even if one does not concede that the constitutional jurisdiction over

corrections is concurrent, but urges that it is a truly divided area of jurisdiction, either contract for service or statutory delegation to a provincial agency would skirt constitutional difficulties.

2. Legislative Implications

(a) Federal Legislation Affected

Penitentiary Act

1. Amend the definition of "penitentiary" so that it includes an institution operated "on behalf of" the Canadian Penitentiary Service.
2. If sub-option (a) is adopted, enact a new section to enable the Lieutenant-Governor in Council to constitute a Board, Agency, or other body charged with responsibility, subject to the Penitentiary Act, Penitentiary Service Regulations, and Commissioner's Directives, for the staffing of penitentiaries and their administration.
3. If sub-option (b) is adopted, enact a new section enabling the Solicitor General, with the approval of the Governor in Council, to enter into an agreement with the Province of British Columbia for the staffing and administration of penitentiaries.

in that province. Again this would be subject to the continuing effect of the Penitentiary Act, the Penitentiary Service Regulations, and Commissioner's Directives.

Parole Act

1. Amend the present Parole Act to enable parole jurisdiction to be exercised over penitentiary inmates in British Columbia either by
 - (a) the present provincial board of parole constituted pursuant to section 151 of the Prisons and Reformatories Act; or
 - (b) by a new provincial board of parole to be constituted by the Lieutenant-Governor in Council.
2. Provide for jurisdiction to be exercised by the National Parole Board or by another provincial parole board where an inmate paroled in British Columbia moves to another province.
3. Enable the British Columbia Board of Parole to exercise jurisdiction over a parolee who has moved to British Columbia from out of the province, e.g. by revocation or suspension of parole and committal to a penitentiary in the Province of British Columbia.

(b) Provincial Legislation Affected

Attorney-General Act - Add a new duty and power

- (a) to supervise and be responsible for administration of the provincial body - if sub-option (a) is adopted; or
- (b) to implement any contractual agreement - if sub-option (b) is adopted.

OPTION IX

1. Constitutional Implications

This option, first suggested in the Fauteaux Report would require that all sentences of six months or less would be a provincial responsibility, that all sentences of two years or more would be a federal responsibility, and that all sentences of more than six months and less than two years would be eliminated.

This option could be accomplished by a simple amendment to the Criminal Code in substitution for the present section 659 which presently divides responsibility on the basis of whether the sentence is greater or less than two years less a day.

There are no particular constitutional problems likely to be raised by "tinkering with the figures". These are purely statutory adjustments and have no particular constitutional implications.

2. Legislative Implications

(a) Federal Legislation Affected

Criminal Code - Section 659 would require amendment, since this section controls the flow of sentences prisoners, directing the place of incarceration. If sentences between 6 months and 2 years are to be eliminated), a section would need to be added to the Code specifying that the courts in British Columbia have no power to award such sentences. Note, however, that where multiple offences are charged, consecutive sentences might be imposed, e.g. three sentences of 6 months each.

OPTION X

1. Constitutional Implications

Option X contemplates the delivery of all correctional services within the Province of B.C. to be done by a joint federal-provincial correctional agency perhaps a Crown Corporation with funding from both levels of government.

If the constitutional jurisdiction over corrections is concurrent then the kind of mechanism which this option contemplates is really the tangible expression of what constitutes concurrency. Concurrency means that each level of government has full jurisdiction over the subject matter. The establishment of a truly joint federal-provincial agency to administer corrections is to clothe in real terms the concurrency concept.

On the other hand, if the constitutional jurisdiction over corrections is a truly divided one in constitutional terms, then that division can likewise be melded into one in the form of the joint federal-provincial agency by the technique of delegation of authority from one level of government to the agency of another. Such a delegation of authority exists now in several areas. For example, the Motor Vehicle Transport Act (Canada) R.S.C. 1970 M-14, vests in the provincial transport board of each of the provinces jurisdiction to issue licences to persons operating "extra-provincial undertakings" which but for the legislation would be clearly within federal jurisdiction. The efficacy of such a technique has been favourably passed upon by the Supreme Court of Canada in Coughlin v. Ontario Highway Transport Board [1968] S.C.R. 569 and P.E.I. Potato Marketing Board v. H.B. Willis Inc. [1952] 2 S.C.R. 392.

2. Legislative Implications

(a) Federal Legislation Affected

Penitentiary Act

1. Amend the definition of "penitentiary" so that it includes an institution operated "on behalf of" the Canadian Penitentiary Service.

2. Provide that in British Columbia all functions devolving upon the Canadian Penitentiary Service shall be performed by the proposed organization.

(Note: It is for discussion whether the Commissioner's Directives would be binding on the new organization so far as delivery of services to penitentiaries would be involved. Presumably the organization would be subject to the Penitentiary Act and to Penitentiary Service Regulations, although some of the regulations such as the organization of the Service would have to be made inapplicable.)

Parole Act

As for option V, but with the additional power conferred upon the organization to authorize its jurisdiction to be exercised by the National Parole Board, by the Provincial Board of Parole, or by any other organization constituted for that purpose.

Discrepancies between Penitentiary Act and Prisons and Reformatories Act

If this option is adopted, the agency would, unless further legislation were passed, be confronted with variations in authority for temporary absences. Thus, under section 36 of the Prisons and Reformatories Act temporary absences for up to 15 days can be given for rehabilitative or humanitarian purposes by the institutional head if he has been designated by the Lieutenant-Governor. Under section 26 of the Penitentiary Act the limit for these purposes is three days by an institutional head. To achieve uniformity, either 36 of the Prisons and Reformatories Act or 26 of the Penitentiary Act would have to be amended.

(b) Provincial Legislation Affected - Nil

(c) Legislation Establishing Joint Agency.

In order to implement this option it would be necessary for the federal parliament and the provincial legislature to each pass legislation (almost in identical terms) setting up the joint federal-provincial corrections agency. In addition to setting up the agency each piece of legislation would assign to the agency the responsibility for administering the various pieces of legislation of that respective jurisdiction which relates to corrections and any subsequent similar legislation that might be passed by that jurisdiction.

Each Act would have to provide that the budget of the agency would either have to be submitted to the Minister designated in the Act as being responsible for administering the agency so established or provide that the budget is to be approved by the legislature or the Parliament of Canada whichever the case may be.

The Act would provide for the establishment of a Board of Directors which would have the duties and powers set out in the Act including policy formulation, preparation of budget, approving establishment, setting objectives, delegating operational authority, approving standards and a great many other functions. The Act would provide for the size of the Board and also provide how many would be appointed by each government to the Board. An equal number could be appointed to the Board by each government and the chairman of the Board appointed by both governments as the odd member on the Board.

Under the Board of Directors would be the actual operational head of the agency who would be responsible for the line management and could also perform those functions delegated by the Board of Directors which might include planning, research, data systems, personnel, finance and liaison with other justice and social system operations.

OPTION XI

1. Constitutional Implications

This option would divide the responsibility for correctional services on the basis of the purposes of the sentence imposed. Any one of three types of incarceration might be imposed by a Judge. If the sentence purpose was to be incapacitation then the sentence would be over three years and it would be a federal responsibility. If the sentence purpose was to be denunciatory it would be over six months but not longer than three years and the responsibility would either be federal or a split responsibility but not provincial. Finally, if the sentence purpose was for non-compliance, of say a probation order or a failure to pay a fine, then the sentence imposed would not be greater than six months and it would be a provincial responsibility.

In constitutional terms, this option is very little different from Option IX which as has been stated above is essentially a juggling of numbers based on term of sentence. While it would require appropriate statutory provision there are no particular constitutional implications that arise from this option.

2. Legislative Implications

(a) Federal Legislation Affected

Criminal Code - Section 659 would require amendment, since this section controls the flow of sentenced prisoners, directing the place of incarceration. If sentences between

6 months and 2 years are to be eliminated, (or if any other range of sentences is to be eliminated), a section would need to be added to the Code specifying that the courts in British Columbia have no power to award such sentences. Note, however, that where multiple offences are charged, consecutive sentences might be imposed, e.g. three sentences of 6 months each.

APPENDIX

A Brief Legislative History of Penitentiaries Prior to Confederation

“Penitentiary Houses” came into being in England by virtue of 19 Geo. III, 1779, c. 74, s. 5, as an optional alternative to “punishment by transportation beyond the Seas”.

In 1800 the Province of Upper Canada declared the criminal law of England as it stood on 17 September 1792 as the criminal law of that Province, and inter alia authorized the committing of offenders “to the House of Correction, for any time not less than six months, or exceeding two years”. As this same enactment provided for punishment by banishment from the Province, it can be assumed that at this time those who committed more serious crimes were either sentenced to death or banished: (Statutes of Upper-Canada, 40 Geo. III, 1800, c. 1, ss. 1, 4, and 5).

In 1832, a Commission was established to gather information “respecting the management of Penitentiaries” as it was deemed “expedient to Erect a Penitentiary within the Province [of Upper-Canada] . . . for the more effectual punishment of Crime”: (Statutes of Upper-Canada, 2 Will. IV, 1832, c. 30) and in 1834 the “Provincial Penitentiary” was established near Kingston. By virtue of An Act for better proportioning the punishment to the offence, (Statutes of the Province of Canada, 6 Vic., 1842, c. 5, ss. 3 and 4) it was made clear “that for each and every offence, for which . . ., the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary”, and instead of being punished “by transportation”, offenders could “be punished by imprisonment in the

Provincial Penitentiary for any term for which he might have been transported beyond Seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life.''.

It is interesting to note that in Nova Scotia judges could direct imprisonment in Nova Scotia's "provincial penitentiary or, in the common jail of the county, at their discretion" (Of the Administration of Criminal Justice, R.S.N.S., 1864, c. 171, s. 95), while in New Brunswick "any vagabond, suspicious, or disorderly person" arrested in Saint John could be committed to their Provincial Penitentiary "for any term not exceeding forty days, with hard labour": (Of The Provincial Penitentiary, R.S.N.B., 1854, c. 91, s. 12).

At the Charlottetown Conference in September 1864, it was resolved that the "local legislatures be entrusted with the care of Prisons" (apparently no distinction was made between prisons and penitentiaries at that meeting): (Browne, G.P., Ed., Documents on the Confederation of British North America, Toronto: McClelland and Stewart, 1969, (Document No. 23, Colonial Office 188/141) p. 48).

Among the Resolutions adopted at the conclusion of the Conference held at Quebec in October 1864, it was made clear in the 9th subsection of Resolution 43 that "the Local Legislatures shall have power to make Laws Respecting . . . 9. The establishment, maintenance and management of Penitentiaries, and of Public and Reformatory Prisons": ("Minutes of the Proceedings in Conference of the Delegates from the Provinces of British North America, Quebec, October 1864," Joseph Pope, Ed., Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act, Toronto: Carswell, 1895, p. 47).

This, along with the other Quebec Resolutions, was debated in the Legislative Council and Assembly of the Province of Canada in 1865, and a motion was adopted:

“That an humble Address be presented to Her Majesty, praying that She may be graciously pleased to cause a measure to be submitted to the Imperial Parliament for the purpose of uniting the Colonies of Canada . . . in one Government, with provisions based on the accompanying resolutions which were adopted at a Conference of Delegates from the said Colonies, held at the city of Quebec on the tenth of October, 1864”

(Confederation Debates, Quebec: Hunter Rose & Co., Parliamentary Printers, 1865, pp. 2 and 1030).

In April of 1866, the Legislative Council of New Brunswick addressed the Queen for an Imperial Act based on the Quebec Resolutions, and both Nova Scotia and New Brunswick passed a Resolution for the appointment of delegates “to arrange a scheme of Union with the Imperial Government”: (Browne, G.P., Ed., Documents on the Confederation of British North America, Document No. 58, (Public Record Office, London 30/6/166) p. 185).

In December of 1866 the delegates from the colonies arrived in London at what became known as “the London Conference”, and on Wednesday, December 5, 1866, considered and passed among others, Resolution 43(9):

- “No. 43. (1) Stand over.
(2) Passed.
(3) Passed.
(4) Passed.
(5) Passed.
(6) Passed with Mr. Galt's amendment.
(7) Considered.
(8) Stand.
(9) Passed. (Penitentiary.)
(10) Passed (except Marine Hospitals). . . .”

(Notes on the London Conference, made by Lt.-Col. Hewitt Bernard, Secretary of the Conference, Browne, G.P., Ed., Documents supra., Document No. 69, p. 206).

However, at the conclusion of the Conference, for some inexplicable reason, the "establishment, maintenance and management of Penitentiaries" was placed under the General Parliament's "power to make laws" while the Local Legislatures were assigned power to make laws respecting the "establishment, maintenance, and management of public and reformatory prisons": (Resolutions 28(31) and 41(9), 24 December 1866, Browne, G.P., Ed., Documents supra., Document No. 74, pp. 222 and 224). It is interesting to note that the Colonial Secretary, Lord Carnarvon, who presented and guided the British North America Act through the British Parliament in 1867 had, six months before the London Conference, written the following in a letter to his predecessor, Edward Cardwell:

"If with the acquiescence of the Delegates I could see my way to any reduction of the general powers granted to the Local Legislatures I should be glad to do so with the view of adding strength to the central Government"

The "London Resolutions" were forwarded to the Colonial Secretary for the preparation of a Bill, and in the first draft prepared by F.S. Reilly, the Imperial draftsman, the words "in and for the Province" were added to what is now section 92 (6).

What is now section 141 of the British North America Act, 1867, was added in a later draft and provided:

141. The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Although this provision is now spent it is significant to note that the penitentiary in Newfoundland is operated, managed, and maintained by that Province, and provision is made in the Penitentiary Act, R.S.C., c. P-6, s. 13 (5) and (6) for "an agreement with the Province of Newfoundland providing for the payment to the Province of the cost of maintaining the persons who are or have been sentenced or committed to penitentiary".

APPENDIX 14

NOTES ON PHILOSOPHIC ISSUES UNDERLYING DIVISION OF RESPONSIBILITY
IN A FEDERATED STATE

This provides a short discussion of two federal government papers bearing on the issue of the proper division of powers with respect to correctional services.

The reports are: The Report of the Royal Commission on Government Organization, 1962 (Glassco Commission Report); and the Government of Canada Working Paper on the Constitution: Income Security and Social Services, 1969.

Neither of these reports of course is concerned directly with the administration of correctional services, but certain remarks therein are relevant. The Glassco Commission Report supports the principle that direct service to citizens be administered at a provincial level. It observes (even at that time) that in recent decades there has been a general tendency for central governments in many countries to increase their involvement in social services. In some cases in Canada, such responsibilities were assumed by the federal government at a time when organization at such a level seemed necessary in view of the limited resources available to the provinces. The Report points out, however, that:

"In addition to reducing the burden of administration imposed on the Federal Government, the less direct means of providing services may often provide a greater measure of flexibility in federal programs. Programs involving only the payment of grants and subsidies can be more readily modified or terminated at fairly short notice than can those for which special facilities and organizations have been created by the Federal Government. Grants and subsidies should not be varied capriciously, and changes must be planned and executed in a manner which permits necessary adjustments in the external machinery which will be affected - a need which appears to be inadequately recognized in some of the programs examined. But the problem of modification or adaptation is unquestionably greater in federal organization designed to provide a specific service directly to the public or to a particular group. (page 122)

" ...Other things being equal, your commissioners favour those modes which assign to other agencies the actual provision of a service to the public, leaving to the Federal Government the definition of goals and standards and the provision of financial support or other incentives. In this way, the day to day control of the service can be brought closer to the beneficiaries and made more responsive to their needs. At the same time, the operational burdens of the Federal Government can be minimized, leaving it free to concentrate on tasks which only it can discharge....Your commissioners recognize that, in proposing greater devolution of the service function by the Federal Government, they are pre-supposing the existence of honest, competent and responsive organizations to which the administration of services may be entrusted. However, as the Federal Government becomes increasingly involved in the definition of economic and social goals and standards, no other assumption seems tenable. (page 123)

" ...In this growing range of matters in which federal and provincial governments have joint or allied interest, the development of provincial machinery cannot be ignored. The existence today of energetic and competent public services in the provinces enlarges the opportunities for administrative co-operation between the two senior echelons of government and requires a re-examination of many federal services to determine whether adequate account has been taken of provincial developments....It is important to recognize that the basic relationship between the federal and provincial governments cannot be one of principle and agent. Constitutionally, the two are of equal status, and each is accountable to its own electorate. Subsequently, the relationship between them must be one of equality, based on mutual recognition of the authority and responsibility proper to each and mutual respect for each other's administrative competence. (Page 124 - 125)

" In addition, systematic attention should be given to the avoidance of processes of control and review which pointlessly duplicate provincial activity. "

Turning to the federal government report on Income Security and Social Services, as a result of the Constitutional Conferences extending from February, 1968 to June, 1971, the federal government published a series of working papers on the Constitution.

It is the last of these papers that is most pertinent here, insofar as it states the federal government position on the division of responsibility for "social services". The paper first repeats the statement of a previous document, the Constitution and the People of Canada, that "the Constitution should divide the powers to govern in such a way as to enable the Parliament of Canada to contribute to the social and cultural development of the country". It was held that the provincial governments in turn must "have the capacity for providing those services which contribute most intimately to the direct development of their provinces".

The difficulty in this area lies in the fact that social and economic well-being are intimately related, and programs of assistance necessarily range from the most broadly applied income support or employment maintenance measures to very narrowly defined direct welfare services for fairly specific groups of citizens. It is at once apparent that both levels of

government participate in all types of service.

The question is not the fact of participation but the type of service or manner in which each level of government assumes responsibility. In very general terms, the paper argues that income support or insurance measures designed to assist broad classes of citizens and protect them from economic vicissitudes affecting the nation, are rightfully the responsibility of the federal government.

Income support or insurance measures designed more narrowly to assist individuals or families (e.g., welfare assistance or Workmen's Compensation) should, they suggest, remain under provincial jurisdiction. What is of interest here is the stress the writers place, not upon the specific form the support may take, but upon the rationale which defines its purpose.

Turning from income support to social services, the Report defines these in terms of health and welfare measures, and notes that these:

"... necessarily involve the operation of clinics and hospitals, the regulation of these and other institutions, the regulation, training and employment of professional personnel, and the provision of care and counselling (case work) services to individuals and families. It is this distinction

which has brought the Government of Canada to propose a different distribution of powers in respect of income security on the one hand and social services on the other (page 93 - 94).

" What is involved in providing the services is, first, the determination of what services are required in the community; secondly, a decision as to how the services ought to be provided, given the customs and traditions of the particular social milieu; thirdly, the provision and operation of institutional, clinical or custodial facilities where they are required; and fourthly, the employment and direction of professional personnel and supporting staff. In all of this a knowledge of the local communities and their needs, and a capacity to adapt public programs to these needs, are fundamental. It is the view of the Government of Canada that this adaptation of health and welfare services to the needs of the local community is more readily achieved by smaller, or regional governments than by larger, national ones. (page 94)...The Government of Canada would have no wish to become engaged in the regulation of such institutions and professions. (Italics in the original) (page 96)

" ...At the same time, there are national dimensions in many aspects of social services. Large elements of the work of the health and welfare professions and institutions, for example, are based upon national and even international research and technology. The functioning of these institutions and professions should be such as to facilitate the inter-provincial transmission and use of such information. Professional personnel are highly mobile: they may seek over their working lives to practise their profession in more than one province, (page 96).

" The national interest in certain social services can also be seen from the vantage point of the beneficiary. If social services are to be equalized across Canada this means, for the individual Canadian, for example, that hospitals everywhere ought to meet certain minimum standards. ...Moreover, the mobility of Canadians as between provinces is affected by the standards of social services - as of other public services - offered by the several provinces....For if the social

services of any province are inadequate the numbers of people remaining on social aid roles will increase, and the Canadian community as a whole will eventually be called upon to pay the economic cost. (page 98)

" It is because there can be a national interest in provincial government programs that the Government of Canada argued...that there ought to be some mechanism for achieving the adaptation of such programs to recognize national needs. This is not a matter...of transferring whole programs into federal jurisdiction: there will always be programs which are largely of provincial concern, but in respect of which there is an element of national interest. Rather it is a matter of determining when there is a legitimate Canada-wide concern in respect of measures which are and ought to remain within provincial jurisdiction, and of deciding how provincial governments ought to be compensated for the cost, in terms either of priorities or of financial outlays, of adapting their programs to meet the agreed national objective. Our proposal, in short, was that in such situations the Parliament of Canada ought to employ its power to make conditional grants to the provinces. (page 98) "

The paper thus concludes that, although the Parliament of Canada and the provincial legislatures ought to have equal or concurrent powers, with some exceptions, in the income support area and although it has a role to play in the development of social services, the provincial legislatures ought to have exclusive jurisdiction over the actual operation of the social services.

What are the implications then, if any, of the two papers discussed above as to the organization of correctional services? It might be argued simply that, by definition, corrections is a social service and, thus, according to the Federal Government's own interpretation of the constitutional division of powers in this area, should fall under provincial jurisdiction. Corrections clearly requires the provision of individual and family services,

close knowledge of local needs, regulation of professional standards, and provision of institutional facilities.

The federal papers were concerned, however, primarily with health and welfare services, and defined a "social service" as one "provided by the state to individuals and families, or paid by the state in their behalf, to ensure their health and social welfare". (see Income Security and Social Services, page 12)

Now, the above argument for placement of correctional services under provincial jurisdiction rests, in part at least, on an analogy between such services and a corrections service.

While there are some similarities between corrections and health and welfare services, there are also obvious differences: Health and welfare services are manifestly designed to serve the interests of the individual citizen in need (and of course, indirectly, the interests of the state) and are voluntary in nature; on the other hand, the corrections 'service' exercises compulsion over the offender and, as a component of the criminal justice system, it aims primarily and directly to serve the interests of the state (in this case, the public at large, victims and potential victims).

An argument based on an analogy between corrections and social services must therefore be examined rather carefully.

The fact is that the term service is used very broadly in the literature. Some agencies are clearly regulatory, serving the common good (i.e., the state), and have powers to compel

citizens (e.g., police, pollution control, forest services and, of course, corrections); others, for the most part, are 'humanitarian' in aim, serving the interests of individual citizens, and are voluntary; still other agencies offer both a voluntary service and have powers to compel citizens under certain conditions (e.g., public health and mental health services).

Services also vary in how direct the contact is with citizens. Thus, some regulatory services have close contact with the individual citizen (e.g., the police) while others do not (e.g., forest management).

The point of all this is that every type of service, voluntary or compulsory, direct or indirect, would seem to be offered by each level of government. The National Employment Service is an example of a voluntary, direct service provided by the federal government; the Pound is a regulatory service provided by municipal governments.

In this light, it would seem that the federal government papers to date on the division of powers as to social services provide no clear direction as to the organization of corrections. And yet this work is manifestly of considerable interest in the present context. As mentioned earlier, for example, the analysis of income support programs draws distinctions between types of schemes according to the goals they are to achieve and the generality or national significance of such goals. Similar distinctions may assist in the analysis of federal and provincial roles in the administration of justice. The

federal papers would seem to point toward interpretation of criminal justice operations in terms of constitutional philosophy in comparable detail.

In the last analysis, the placement of responsibility for corrections will likely depend, not simply on defining it in terms of its surface characteristics (e.g., whether or not it is a direct service to individuals), but rest upon an analysis of both the type of goals it seeks to achieve and the methods required. This, in turn, will involve the interplay of constitutional and correctional theory.



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