Parole and the Habitual Criminal

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Since the coming into effect of Section 660 of the Criminal Code in 1947, 116 persons have been convicted as habitual criminals and sentenced to an indeterminate sentence of preventive detention. Of this number five have died in prison, 90 are in penitentiary and 42 have been released on parole. Of this latter group six have died on parole, ten have been returned to penitentiary on revocation or forfeiture and 26 are still on parole. The first habitual criminal was released on parole in February 1948.

I think it is unfortunate that there has not been any consistency or established pattern across Canada as regards the application and imposition of the indeterminate sentence. It is consistently applied in the Province of British Columbia and particularly in the City of Vancouver where the City Prosecutor, Stewart McMorran, Q.C., has made, and is making, a determined, concerted effort to get convictions under Section 660.

Very wide publicity has been given to Mr. McMorran's all-out effort to rid Vancouver of the professional criminal and also the persistent offender. It is not difficult to understand Mr. McMorran's serious concern because Vancouver, in addition to being a city in which there are many drug addicts, has also been for many years a mecca for criminals from other parts of Canada and the United States and he is determined to put a stop to this.

The official view in Vancouver appears to be that people who persistently break the law should be put away whereas in the rest of Canada there is a feeling that the habitual criminal proceeding is an unwarranted interference with the life and liberty of persistent offenders. If one agrees with what is being done in Vancouver it must be admitted that the habitual criminal prosecutions there appear to have had an important effect on the crime rate in that a large number of bad criminals, from the point of view of their propensity to commit crimes, are no longer on the street. Many others have left Vancouver while a third group have come to the conclusion that they will not become involved in crime in the future.

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At the present time many inmates with long criminal records are making it clear to prison officials that upon their release they are going to obey the law in the future since they do not want to be prosecuted as habitual criminals.

The public reaction to what is being done in Vancouver has been most accepting and the consensus of opinion seems to be that the law enforcement agencies are doing something tangible for the benefit and protection of the general public. The critics of the Vancouver approach question the desirability of putting these people in prison for life and wonder if it actually does improve conditions for society at large, particularly since most of these inadequate people do not actually present a dangerous threat to society. The majority of them have reached the unfortunate situation in which they find themselves often through no fault of their own but because society has failed them when they were children or young adults.

The proponents of what is being done in Vancouver and other parts of British Columbia feel that the only way to treat the problem is in a consistent fashion and since it is consistent it is also fair. As a result every person going through the courts is considered to determine whether or not he is a proper person against whom proceedings should be commenced.

Many contemplated proceedings have been abandoned after a careful study of the individual's record. As a result of this procedure, even though an application for a finding is not automatic just because an offender might qualify for it, nevertheless the result has been that proceedings have been taken in a great number of cases.

The procedure is handled by people who do nothing else. There is one prosecutor, a secretary, and a policeman who do nothing else except these cases. Each case is considered by the prosecutor, the secretary does the necessary checking, and the policeman does the background checking. Their individual reports are then all put together for the final checking and decision. These same three people arrange for interviews with policemen and others who are in a position to give the background and history of the individual. As a result each case is done consistently and not on a hit-or-miss basis.

Another objection of those who are opposed to the system is their feeling that it is not getting at the big-time criminals or organized crime but that it gives society a feeling of vindictiveness. These people say that the big criminals are being passed over and the findings are being made in the cases of petty thieves with long but not serious records who have spent most of their lives serving

short sentences in our penal institutions. The habitual criminal finding contemplates a programme geared to reform these people while in prison and then putting them under parole supervision for a lengthy period. The hoped-for result is that these people will not commit further crimes in the fear that if they do so they will go back into the institution and perhaps stay there for life.

I think it is fair to say that that is the result which is hoped for in Vancouver since the authorities there do not want to see people going to jail forever. They believe that by having persistent offenders found to be habitual criminals these people will stop committing crimes. They also would like to see a similar approach to the problem consistently applied right across the country.

Many people feel, and it has been said, that Mr. McMorran is one of the few people who really appreciates and understands Section 660 and the philosophy behind it. It has been argued that his policy of vigorously prosecuting the habitual criminal would appear to be effective in that the crime rate in Vancouver has not increased to the same level as elsewhere in Canada, the United States or the rest of the English-speaking world and, in fact, in 1964 the crime rate in Vancouver was actually reduced somewhat in connection with major crime.

Mr. McMorran has the full cooperation of the Attorney General of British Columbia and also the Supreme Court of that Province. As a result of this he has been most successful in having a large percentage of persistent offenders found to be habitual criminals under Section 660 and many of these convictions have been upheld by the Supreme Court of British Columbia and some also by the Supreme Court of Canada.

As a result we have a situation in British Columbia which is quite different from that in the other nine provinces where convictions under Section 660 are rarely sought and even more rarely obtained.

During the past few years I have asked Magistrates, County and Supreme Court Juges in the other Canadian Provinces for their reaction to what is being done in British Columbia and in Vancouver in particular, in an effort to discover why they are so reluctant to make a finding under Section 660 that a person is an habitual criminal.

The consensus of opinion seems to be that Magistrates and Judges in the other nine provinces consider that an application under Section 660 is a very serious matter in that, if successful, it deprives a man of his right to freedom after serving his sentence

and substitutes a dependence on the exercise of executive or administrative discretion. These Judges feel that a prisoner is entitled to the benefit of any reasonable doubt in proving to the satisfaction of the Court the essential facts set out in Section 660.

The majority of Judges with whom I have discussed Section 660 have approved of the idea of imposing a lengthy sentence on a persistent offender but are quite ambivalent about the indeterminate factor.

Several of them have stated that if the sentence of preventive detention had a definite minimum and maximum or a provision that it would be lifted after a paroled habitual criminal had lived a crime free life for a prescribed period they would be much more ready to make a favourable finding under Section 660. One of them in particular pointed out to me that he had the greatest confidence in and respect for the judgment of the present Members of the National Parole Board and he was convinced that the Board's philosophy was sound, humane and rehabilitative. Nevertheless the membership of the Board will change from time to time and he had no guarantee that future Board Members will have the same philosophy. This was a factor in his great reluctance to make a finding under Section 660.

A recent New Brunswick case is of interest, arising out of an application in the Westmorland County Court pursuant to Section 660 of the Criminal Code for the imposition of a sentence of preventive detention upon Benjamin W. Pyburn before His Honour C. J. A. Hughes, Q.C., Judge of the Court.

The Judge first disposed of certain technicalities concerning an error in the first application under Section 660, which was withdrawn by the Crown, and then decided that he had jurisdiction to proceed with a hearing of the second application.

It was established to the Judge's satisfaction that since Pyburn had attained the age of eighteen years he was on three separate occasions convicted of indictable offences for each of which he was liable to a term of imprisonment of five years or more. Pyburn was present during the hearing and conducted his own defence most capably without the assistance of legal counsel.

The facts of the case are as follows: Pyburn was released from Dorchester Penitentiary on April 7, 1965, at the expiry of a three year sentence imposed upon him in 1963. He immediately proceeded to Moncton and within a few hours made contact with two friends, who also had criminal records, and together they planned a break-and-entry into a supermarket. In order to carry out this latter

project they broke and entered a Canadian National Railways tool shed where they stole some crowbars. They gained entrance to the supermarket, breaking open a safe from which they stole a large sum of money. They broke into the adjoining premises too where they obtained $70 by breaking another safe. All three were apprehended within a few hours of the burglaries and the stolen property recovered. For these offences Pyburn was convicted and sentenced to a total of six years in Dorchester Penitentiary.

From April 17 to May 8 he was kept in a small, dark, security cell in the Westmorland County Jail at Dorchester in which no light was provided. He was kept in close confinement and was permitted to leave the cell for exercise only 30 to 45 minutes each day. On May 8 Pyburn escaped and was recaptured May 12. In its application the Crown stated its intention to prove that Pyburn, while at large from May 8 to 12, committed certain offences. While this was not definitely established there was strong evidence that Pyburn did commit certain offences during this period.

On June 24, 1965, Pyburn again escaped from the jail and for this he was convicted and sentenced to a further term of eighteen months and this escape is the substantive offence in regard to which the application under Section 660 was made.

Once again the Crown alleged that during the period between his escape and apprehension July 31, 1965, he committed further offences. The evidence of Pyburn's implication in certain offences between May 8 and 12 and again between June 24 and July 30, 1965, during which time Pyburn was unlawfully at large, was introduced by Counsel for the Crown without objection by Pyburn and without particular consideration by the Judge as to its admissibility. Pyburn, at the application under Section 660, challenged the admissibility of this evidence in support of the allegations on the ground that he had never been charged with any of the offences and that it was prejudicial to him to have such evidence introduced at the proceedings.

It was the opinion of the Judge that illegal or criminal acts not specifically charged might be used as evidence to determine the issue as to whether or not the accused was leading persistently a criminal life and therefore ruled that the evidence of implication in the crimes committed during the time that the prisoner was unlawfully at large was not excluded from consideration merely because the accused had not been charged with, nor convicted of, his complicity. He stated there was no doubt that the Crown must prove beyond reasonable doubt that the accused was leading persistently a criminal life. He also came to the conclusion that

in view of the fact that the substantive offence in respect of which the application for preventive detention was made was committed on June 24, 1965 it appeared to him that he must decide the issue as to whether Pyburn was an habitual criminal on the basis of evidence of facts occurring not later than that date.

The Judge pointed out that the preponderance of judicial opinion as regards preventive detention is that it ought to be kept for prisoners who have shown by their conduct and previous history that they cannot be trusted to abstain from crime even though there may be periods of honest work and lawful living between convictions. He stated that the object of preventive detention is to protect the public from men and women who have shown they are a menace to society while at large, that punishment has had no effect and it has become a matter of putting a man where he can no longer prey upon society even though his offences may be comparatively minor as in the case of habitual purse snatchers, etc. The Judge also stated that most Judges view a sentence of preventive detention as a most serious step in the administration of the criminal law and proceed on the assumption that not only must it be shown that punishment for past offences has not been a deterrent but it must also be shown that it is expedient for the protection of the public that the sentence of preventive detention be imposed.

The Judge found that Pyburn had a lengthy criminal record dating from his first conviction at the age of nineteen for robbery with violence for which he was sentenced to three months definite and three months indefinite but that since he did not commit any further crimes of violence it was very difficult to uphold successfully the contention that the protection of society demanded that he be given the indeterminate sentence. The Judge also found that the evidence of his complicity while he was unlawfully at large did not necessarily imply that Pyburn intended to live persistently a criminal life since he was most likely without any means of existence during those weeks and while punishment for them was certainly due, nevertheless it was difficult to find that he was, in the circumstances, a free agent to decide whether to live a life of crime or whether to rehabilitate himself.

The Judge also questioned the propriety of imposing sentence of preventive detention on a prisoner who had to serve more than 7½ years on sentences already imposed. He concluded by saying that a sentence of preventive detention is one that accomplishes the object of either keeping an habitual criminal imprisoned indefinitely or keeping him subject to the control of the National Parole Board if he is released from imprisonment.

He found that no such sentence was necessary to keep Pyburn imprisoned since he was already serving a 7½ year term. He also found insufficient evidence that the protection of the public is not sufficiently safeguarded by the conventional methods of punishment prescribed for the substantive offence and therefore denied the application for the imposition of a sentence of preventive detention.

An appeal was taken from this judgment by the Crown and the New Brunswick Court of Appeal dismissed the appeal without reasons. If the Crown should appeal to the Supreme Court of Canada, the decision of the latter Court will be awaited with great interest since the Supreme Court of Canada has not always upheld appealed findings under Section 660 of the Criminal Code. I recall the case of one inmate who had been convicted under Section 660 and who stated that his successful appeal to the Supreme Court of Canada was financed by the Law Society of Nova Scotia.

As a general rule, persons serving an indeterminable sentence as habitual criminals are not dangerous. A great many of them are drug addicts, others are persons who have persistently committed minor "nuisance" type offences such as burglary, shoplifting, etc. There are far more sneak thieves than armed robbers in the group. The dangerous persistent sexual offenders are not included among habitual criminals since they are serving sentences of preventive detention as dangerous sexual offenders and have not been considered in this study.

As a Member of the National Parole Board it is my opinion that the indeterminate sentence, or the prospect of it, acts as a very real deterrent to the persistent offender. It is not unusual when studying an inmate's file, particularly in cases of the older offender and most especially if he happens to live in the Province of British Columbia, to find him stating that while he has never before applied for parole he is doing so now because he greatly fears that if he doesn't "pull up his socks" and get to work on his problems, he will find himself facing an application to have him declared an habitual criminal, the "bitch" as it is known in criminal jargon.

I recall a case of a man in his mid-thirties who had served many terms in jails and penitentiaries and who, at the time he applied for parole, was serving a 5-year sentence. In his case an application was before the Court to have him declared an habitual criminal and he told our field officer who was interviewing him that the possibility that this application might be upheld had really done the trick for him. This man's life history was a particularly sad one in that he had been battered about from pillar to post practically from infancy and had never known any security, he had never had any acceptance

or affection nor had he been subjected to any discipline or training. His life had been just one rejection after another. When referring to the application to have him declared an habitual criminal he said, "And this is the final rejection — the end of the road."

In this particular case the application was dismissed but the fact remains that he had come to grips with himself only when threatened with preventive detention and decided to settle down and do something about leading a law-abiding life. Even after the application was dismissed, he persisted in his good efforts and as a result was released on parole.

At this stage I would like to mention briefly two habitual criminals who have been paroled and are doing very well and a third one who is manfully struggling along and remaining out of trouble even though he has had many problems and setbacks.

All these men are over forty-five years of age. I know the two successful parolees and have been very much interested in their progress. One of them had a very serious criminal record involving practically every offence with the exception of capital offences and sex offences. He was also a drug addict. He served more than eight years in penitentiary on the indeterminate sentence before being released on parole. He has been on parole for almost ten years and during that time has established himself successfully in a white collar occupation and has had steady promotions. He is now a respected citizen and has had the support of his good non-criminal wife and children. During the time that he has been on parole he has not committed even the slightest violation of his parole conditions and it is highly improbable that he will ever be in trouble again.

The other successful parolee whom I also know did not have as serious a record as the first man and is not a drug addict. There was no violence in his criminal pattern. He has been on parole for over five years and has steadily progressed from a small one man business to a quite large enterprise which he is conducting most successfully. He is highly regarded in his community and takes part in all local activities and is particularly interested in organizing and assisting with sports for teenagers. This man is single and spends much of his time running his business to which he devotes long hours each day.

The third man has not had such clear sailing. He was seriously addicted to drugs and had marital problems since his wife is also a drug addict. They were divorced a few years ago and he later married a woman who did not have a criminal record and things have been better since that time although he has certainly had his ups and downs. He has not returned to drugs but unfortunately turned to alcohol as a crutch and this was a serious problem for him for some

time although it now seems to be pretty well under control. This man will no doubt have problems for some time to come and in his case parole supervision was, and will continue to be, very important and supportive. If he had not had the benefit of parole supervision I doubt very much that he would still be living in free society.

The chief aim of both the Parole Board and the Parole Service is to release under supervision just as many inmates as possible provided such prison inmates have given a clear indication that they intend to reform and lead law abiding lives, keeping in mind at all times the protection of the public.

As a result of this philosophy we have always been deeply concerned with those inmates who are serving a sentence of preventive detention and the matter has become particularly urgent in the light of what is happening in British Columbia where there is every prospect that about seventy persons per year will be serving such sentences. Consequently, a special project has been instituted in the British Columbia Penitentiary, the purpose of which is to prepare these men for release on parole.

Towards the end of December 1964 there were almost fifty men serving sentences in British Columbia Penitentiary as habitual criminals and/or in the process of being proceeded against or appealing convictions. In addition to this there were almost twenty men in the same position at Oakalla Prison Farm. Just at that time the Vancouver City Prosecutor stated his intention to continue such proceedings against other men at the rate of five per month. As a result the prospect was of at least 125 inmates serving sentences as habitual criminals in British Columbia Penitentiary by the end of 1965. In the spring of 1966 the habitual criminals who were drug addicts were transferred to the new Matsqui Institution where the emphasis is on treatment for the inmates' drug problems. However, half of the habitual criminal population remained in Britsh Columbia Penitentiary.

As a result of a meeting held early in March 1965, a pilot project was formed to prepare the habitual criminals in custody in British Columbia Penitentiary for eventual parole. The planning was carried out by our regional representative in Vancouver and members of his staff, the classification staff of the Penitentiary, the Warden, Deputy Warden, and other penitentiary officers, in addition to officials of the John Howard Society of Vancouver. It was suggested that twelve to fifteen habitual criminals should be selected after screening and that there would be no volunteers. Education was to be kept up to the grade 10 level since it is the basic requirement for vocational training on the street and academic classes would be conducted on a full time basis or on a half day basis of half a day

of school and half a day of work. It was hoped that the labour training would be geared to the skills demanded by the labour market in addition to the practical training. The selected inmates would attend group therapy sessions and would also have psychotherapy for developing intellectual insight. They would be encouraged to follow Dale Carnegie courses and to join A.A. if they had an alcoholic problem. The emphasis was to be on adequate pre-release preparation and supervision.

Hope was expressed that the project could be completed in four months and that the men should be kept together in a hut with officers. The prison population was to be informed of the project in order that the men would not be subjected to pressure because of their special position. It was considered desirable that the project should not start until the programme was fully set up. As each group successfully completed the three stages another group would be started. The men would be chosen from those who had served three years on the habitual criminal sentence.

Further meetings were held and the National Parole Board gave its full support to the project although at no time was there any promise given that a person who successfully completed the project would be automatically paroled.

After the preliminary difficulties were dealt with, the first group consisted of twelve inmates who were selected for special therapy and treatment. One official of the Penitentiary was especially assigned to the project and it also became the prime responsibility of one of the field officers in our Vancouver office.

A close examination of the individual characteristics of the group revealed that they were of various ages, backgrounds, types of offences, etc. This presented certain difficulties in making proposals for their release since treatment and planning that might work for one individual might not be suitable at all for another. It was nevertheless possible to formulate a generalized scheme for the group bearing in mind the need to remain flexible. If the usual criteria for evaluating parole potential were adhered to the group would rate very poorly since a study of their criminal records, employment history, skills, family background, etc. would not lead to much optimism about their future adjustment in society. Any changes in them could only come about as a result of their exposure to the special programme set up for them and unless they were able to take advantage of the educational, training, and counselling programmes they would continue to be very poor parole prospects.

If the usual criteria for parole were applied to habitual criminals they would very easily be disqualified because they are persistent

offenders and therefore in considering them for parole emphasis must be placed on their present and future potential rather than their past. The treatment team, the Parole Service, the Parole Board, and the community in general must maintain a firm conviction that each of these men has the capability to change his pattern of behaviour if he avails himself of the special institutional programme and derives benefit from his participation. Once this has been done and the man does come to grips with himself and his problems and prepares himself academically and vocationally for a law-abiding life in a free society, then the inmate should be paroled in spite of the many negatives in his background provided that a well-structured community plan is available for him.

In addition to its therapeutic value, the group counselling sessions in the institution will enable the Parole Service and the institutional staff to learn more about the individual's motivation, attitudes, and other psychological mechanisms. The training, whether academic or vocational, should be aimed at qualifying the man for some type of employment. The psychological assessment which will be made about each man in the group by the Penitentiary psychologist and psychiatrist will also divulge useful information about him. Another very important step in the rehabilitation of these men is making contacts for them in the community and lining up suitable living accommodation as well as employment.

Recently three of the men in the group were released on parole. These men will have consistent and understanding supervision, particularly during the first few months after their release and their progress will be followed with great interest.

To date this project has been restricted to the British Columbia Penitentiary since it is not such a pressing matter at other penitentiaries where there are very few persons serving the preventive detention sentence. However, at least one other institution has instituted special meetings for the few habitual criminals in the prison and this type of approach to the problem will certainly be extended to all the other institutions in due course.

It is interesting to note that to date no females have been sentenced to preventive detention although applications were contemplated against five women in Vancouver. It was decided not to proceed against three of them and the two applications that were made were dismissed.

There is a popular belief that persons serving a sentence of preventive detention are not released on parole until they have served at least seven years. The reason for this is no doubt because the majority of habitual offenders have served at least seven years in

the penitentiary before being released on parole and many people feel that in order to be effective that period of time should be served. In spite of that, however, habitual criminals have been released on parole before serving seven years. The philosophy followed in those cases is that the man had demonstrated that he was ready for parole and it was felt by all concerned that nothing was to be gained by continuing his incarceration. In fact, on the contrary, there was a preponderance of opinion that to do so might lead to his deterioration.

Contrary to public belief, the safest and most successful parolees are those who have been paroled from a death sentence which was commuted to life imprisonment. The failure rate of this group of parolees is less than 1%. I am referring, of course, to the capital offender who is designated as an accidental offender and not the cold, calculated killer. We have not had to deal with the latter category since up until 1958 the majority of these people were hanged. The only two criminals of this type whose cases I have studied were two criminals whose carefully plotted crimes were not successful and the would-be killers are serving lengthy terms for attempt to commit murder.

The commuted death sentences with which we have dealt were those of people who committed crimes of passion motivated by jealousy, who killed when drunk, as a result of spur-of-the-moment panic, etc., and while they were found guilty of murder the jury recommended mercy and the sentences were commuted. In 1968 and subsequent years we will have to deal with the capital offender for whom mercy has not been recommended and who in former years would have been executed. It is quite possible that some of these inmates may reform and be rehabilitated and therefore released on parole. It will be interesting to see whether or not the parole of such inmates will affect our statistics as regards capital offenders.

We are often asked the question as to why these people are successful on parole and it is impossible to give a definite answer. According to one school of thought these people do not commit further offences because while they have committed an extremely grave offence they do not have criminal records and therefore do not have a pattern of criminal behaviour and consequently it is quite logical for these people to become law abiding citizens in spite of the fact that their one criminal offence was so serious.

The other view is that these people obey the law because they have the constant threat of a life parole hanging over their heads since, of course, they can be returned to prison to serve the balance of their life term if they commit even a minor further offence or if their behaviour causes concern even though they may not actually

commit another offence. To illustrate: if a man on parole, who committed his capital offence while under the influence of alcohol and has been forbidden to drink as one of his parole conditions, is found to be drinking again his parole could be suspended or revoked for the protection of society since in the past he has shown that he cannot handle liquor and that under the influence of alcohol a very grave offence could, and in fact did, occur.

If we have a similar high rate of success with our paroled habitual criminals as we have had with our paroled capital offenders we will no doubt have further insight into this matter since the paroled habitual offender not only has the life parole hanging over his head but he also has a criminal pattern. At the moment it would appear that it is the life parole that is keeping him on the straight and narrow.

I have been dealing with the inmate who is a *de jure* habitual criminal and not one who is a *de facto* habitual criminal. However, in Canada we appear to have a system whereby persistent offenders in British Columbia are *de jure* habitual criminals while those in other provinces are *de facto*. As a result of the large number of findings under Section 660 in British Columbia, it is reasonable to expect that prisoners with lengthy records in the other provinces will make some effort towards reform and rehabilitation. They will do so because they very much fear that the British Columbia experiment will be tried in the other provinces and that they would be well advised to work on their problems before they too are facing the indeterminate sentence.

In conclusion, I would like to make certain observations about habitual criminals in general. In the first place many people agree, and I support them, that the very term "habitual criminal" was an unfortunate choice since I realize from questions put to me during speeches which I have made in all the provinces of Canada that the public image of an habitual criminal is that of a ruthless, desperate person and one whose chief and most common crime is that of blowing a safe or holding up a bank or supermarket with a loaded gun.

However, when we study the cases of the majority of persons convicted under Section 660 we do not find very many inmates who fit this picture. On the contrary, most of them are unfortunate, inadequate people who have never had a chance in life and who are either drug addicts or men with a serious drinking problem. The armed bank robber is rare and out-numbered by the type of criminal who has many convictions for shoplifting, petty theft, or false pretences, usually on quite a small scale. While it is true that these people are a nuisance and a constant source of trouble to the police

and law enforcement bodies, nevertheless they do not present a serious threat to the public. The critics of Section 660 are no doubt justified in questioning the wisdom or necessity of putting them in prison for an indeterminate period which could very well be for life.

Also in Canada we have two distinct approaches to convictions under Section 660 in that in British Columbia there is a vigorous, determined effort to have large numbers of offenders who qualify under the Act convicted by the Court whereas in the other nine provinces there is a great reluctance to proceed with convictions under the Act.

The National Parole Board is encouraged by the satisfactory performance of many of the paroled habitual criminals and its aim is to release on parole as many of them as have demonstrated that they have come to grips with their problems and are determined to lead a law abiding life in the future bearing in mind, of course, the protection of the public.

Because of this concern, a special project, the purpose of which is to prepare habitual criminals for eventual release into free society, has been set up at British Columbia Penitentiary where there is such a large concentration of these inmates. This project will be extended to the other provinces if, as, and when the need arises.

In addition to helping these men to readjust to free society, a great deal of money will also be saved by releasing them on parole since it costs approximately $3,000 per year to keep a man in a Federal penitentiary and when he is on parole he can work and support himself and his family. A survey was made recently in one of our large Canadian cities and it was found that 88% of the parolees in that area were working regularly and that their average monthly income was $329. This is a very conservative figure and, of course, many of the parolees were earning monthly incomes in excess of that figure.

A few months ago we were considering the case of a 37-year old inmate who was serving his fourth penitentiary term. This man had the usual criminal background of convictions as a juvenile, probation, suspended sentence and two terms in jail prior to his penitentiary experience. He had never applied for parole before but had suddenly come to the realization that he had to do something about his situation. When he was being interviewed by our field officer he told him that he wished he had been sentenced to the penitentiary on his first adult offence. In his view even the first offender should be sent to penitentiary for a term of not less than five years since he did not feel that a jail sentence was sufficient shock to a young offender. He advocated a stiff penitentiary sentence for the young

offender because he felt that he needed such a shock and he also felt that the sentence should be served in a maximum security institution with rigid and strict discipline plus hard work. He did not feel that the first offender should serve too long a portion of his sentence but that he should be paroled after a reasonably short time. He suggested nine months if he demonstrated that he had benefited from incarceration and showed an improved attitude and intention to lead a crime free life. He pointed out that since this man would be on parole for a long period he would in effect be sentencing himself back to penitentiary if he committed another offence while on parole and that this would give him a sense of being master of his own fate.

This struck me as being rather a novel idea and I was very interested to learn recently that there has been a significant decrease in recent months in the number of men being sentenced to preventive detention as habitual criminals in British Columbia due to a recent trend to convict these men as habitual criminals but not to pass the indeterminate sentence on them. This would appear to be a positive step since it gives the person so convicted a further chance to rehabilitate himself in the community plus the knowledge that if he does commit another crime he will, in effect, be sentencing himself to the indeterminate sentence.

I think that this is a most significant and important development and it is one which might very well be followed in the other provinces. The effect should be very much the same as that which is expected to result from convicting persistent offenders as habitual criminals.

There has been a great deal of discussion recently about the use made of criminal records. Many people feel that when a man has served a term of imprisonment and satisfied his debt to society there should be safeguards against his criminal record being used against him in the future.

I remember an incident in which a man in his early fifties was promoted to a most important position with his international company in the United States. This created a real problem for him since he had served ten days in jail in his freshman year at university when a group of students were engaged in a fight with a referee at a hockey game. As a result he had a criminal record and had to obtain a pardon before he could take up his position in the United States. There is also the recent case in Nova Scotia where a municipal councillor was obliged to resign his office due to a conviction against him when he was a teenager. This whole problem has been discussed in the House of Commons in recent weeks and the Hon. Lawrence Pennell, Solicitor General, has stated that it is his intention to study the problem very carefully.

It has been suggested that the criminal records of all offenders should be expunged after five or ten years free of crime. The solution of this problem presents certain administrative difficulties which no doubt can be overcome and if this plan is adopted I would hope that it would also be applied to habitual criminals with each case being studied on its individual merits.

In my view this would be preferable to following the system which was used in England of a minimum and maximum sentence since the majority of habitual criminals would warrant and greatly appreciate having their records expunged after ten crime free years whereas there would certainly be others who should be under control for a longer period. This has been illustrated earlier in this article where I discussed three specific cases of paroled habitual criminals. In due course I would be in favour of giving serious consideration to expunging the records of the two men who have done so well but the third man definitely needs to be under control and supervision for a much longer period.

In my opinion the indeterminate sentence for habitual criminals is a good thing. I would prefer to see them described as persistent offenders. I am not convinced of the desirability of proceeding under Section 660 in cases such as those involving an offender in his twenties who qualifies under the Act but who does not present a serious threat to society even though he is a nuisance and a constant source of trouble to the police and the Courts.

Some of my readers may think that this is too soft an approach towards the criminal element of our society and conclude that I am in favour of "molly-coddling" the inmates. I hasten to make it clear that nothing could be farther from the truth.

I believe that laws should be strictly enforced and offenders tried and sentenced with the least possible delay. Prisons are necessary because punishment for wrongdoing is a very necessary element of rehabilitation. However, it must not end there.

Under a good system of justice every effort must be made in jails and penitentiaries to rehabilitate the inmates. When they have reached the stage where they have the proper attitude and a determination to lead law-abiding lives in future they should be released on parole in order to benefit from supervision and control which are so necessary, particularly during the first few months of their release.

The success of a penal system is judged not by jamming the prisons with inmates but by releasing on parole ever-increasing numbers of rehabilitated offenders. This is our objective and the goal towards which we are constantly striving.