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THE ADMINISTRATION OF CRIMINAL JUSTICE IN CANADA

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Much flattering comment has been made at different times respecting the Administration of Justice by the Canadian Government, particularly with regard to the speed with which criminal cases are handled. The system in operation there, while perhaps not entirely ideal, stands well in comparison with other systems of criminal procedure. This statement is based on my (necessarily limited) experience of Courts in England, Scotland and the United States and France, usually as a spectator, and on a large experience in the administration of criminal justice in the Province of Ontario, including the conduct of trials and argument of appeals.

CONSTITUTIONALITY

In order to understand the system of criminal procedure in force in the Canadian provinces it will be necessary to commence with a brief resume of the Canadian constitution as it affects the Criminal Law. By the Canadian constitution (known as the British North America Act, 1867) passed by the Imperial Parliament in England, the legislative powers are divided between the Canadian Parliament and the Legislatures of the Provinces. The Canadian Parliament is given exclusive jurisdiction with regard to criminal law and procedure in criminal matters, and the legislatures of the Provinces with regard to the administration of justice, including the constitution, maintenance and organization of the courts. While criminal law is thus enacted by the Parliament of Canada for the whole of Canada, the administration of justice, including the enforcement of criminal law, is in the hands of the Provinces. Substantive criminal law and criminal procedure, therefore, being under Federal control, are practically the same over the whole of Canada. In the year 1892 the criminal laws of the country were codified and now appear in relatively concise form in what is called the

Criminal Code of Canada. The Criminal Law of England, as it existed in September, 1792, and insofar as it has not been repealed or altered by Canadian law, is retained and remains the Criminal Law of Canada. By the Criminal Code the terms "misdemeanor" and "felony" have been abolished, and offenses are now either Summary Conviction offenses or Indictable offenses.

In the United States there is a true Federal system, that is, sovereign states which have surrendered some of their powers to a central government. Ours is not so, but has been described as a quasi-federal system. It is a federation of provinces formerly enjoying a large measure of independence, but the powers of the created central government and the created provincial governments are to be found in the Imperial statute, namely, The British North America Act previously mentioned.

One marked difference between the administration of justice in the United States and in Canada lies in the fact that, generally speaking, the Courts constituted and maintained by the Provinces try both Federal and Provincial matters. In other words, there is no system of Federal and Provincial or State Courts as in the United States.

The resulting effect of the Canadian distribution of legislative power has resulted in a simple yet comprehensive form of criminal jurisprudence, and its chief merit lies in the speed with which criminals are apprehended and with which they are tried and their cases disposed of upon appeal.

FRAMEWORK OF COURTS TO ADMINISTER THE CRIMINAL LAW

Coroners: In each Province of Canada a system of Coroners Courts are established, the function of which is to determine when, where, and by what means the deceased came to his death. It is not a Court of Record, and while it has no truly judicial function, if the Coroners Jury finds that an individual is responsible for the death of the deceased, the Coroner may issue his Warrant to apprehend the accused if the criminal law has been violated.

Justice of the Peace: The Justice of Peace is an official who has a real judicial function to perform in Canada. His is an important role in the administration of criminal justice, in that all charges, whether summary conviction or indictable in nature, usually originate in his office. He must exercise his judicial discretion to determine whether or not on the evidence, *prima facie*, an offense has been committed, and if he is so satisfied, he may then issue process either by warrant or summons to ensure the attendance of the accused person before a magistrate.

Magistrates: The judicial officer known as a Magistrate occupies a most important position in the administration of criminal law in Canada. He is invariably a member of the Bar and is appointed for life, and under the Canadian system of criminal law over 90 percent of the criminal cases are disposed of before this official. It must be noted, however, that a Magistrate's jurisdiction does not extend to such indictable offenses as treason, murder, manslaughter, rape, etc., which must be disposed of by a Supreme Court Judge of the Province and a Jury.

Magistrates are appointed by the Province and, while not Judges in the ordinary sense, they exercise, so far as criminal law is concerned, a most important judicial function.

County Court Judge: Generally speaking, each County or Union of Counties in each Province of Canada is presided over by a County Court Judge. He must be a member of the Bar of at least ten years standing, and he is appointed for life by the Federal Government and may only be removed by the Governor-General upon an Address of the House of Commons and the Senate.

A County Court Judge may try a criminal cause without a Jury with the consent of the accused in all cases triable by a Magistrate.

The Court of General Sessions of the Peace: The General Sessions of the Peace court follows to some extent the Quarter Sessions prevailing in England, and is held twice a year in most Counties, but in the larger urban centres four times a year. This court is presided over by a County Court Judge and a Jury, and its jurisdiction extends to those cases triable by County Court Judge without a Jury or Magistrate.

The Supreme Court: There is a Supreme Court established in each Province in Canada and it is presided over by a Supreme Court Judge who is also appointed for life by the Federal Government, and he also may only be removed by the Governor-General upon an Address of the House of Commons and the Senate. In criminal cases this court is composed of a judge and jury and has no power to try an accused, even with consent, without a jury.

This is a Court of General Gaol Delivery and its jurisdiction extends to cases triable by a Magistrate or County Court Judge or the General Sessions of the Peace where the accused is in custody, and has not been admitted to bail. It also has exclusive jurisdiction in cases of murder, manslaughter, rape and treason and other similar offenses.

The Court of Appeal: An Appellate Division of the Supreme Court is established in each Province, usually composed of at least five judges,

three of whom form a quorum. Their jurisdiction extends to the hearing of appeals in indictable offenses, and with leave, in summary conviction of offenses.

The Supreme Court of Canada: This is a statutory court composed of the Chief Justice of Canada and eight Puisne Judges exercising appellate jurisdiction both in civil and criminal cases where important points of law only are involved. There is no appeal as of right in criminal cases to this court except where there is dissent on a point of law, or where the accused has had his acquittal set aside by the Provincial Court of Appeal, or ordered to stand trial again after an appeal by the Prosecution from his acquittal at trial.

The Supreme Court maintains some of the glamour existing in the Court of Criminal Appeal in England in that in capital cases the full Court presides with robes of scarlet trimmed with ermine, and in its new surroundings, it presents an impressive sight.

LAW ENFORCEMENT OFFICIALS

The Municipal Police: Each municipality having a status of town or city has its own municipal police force, which is charged with the enforcement of laws of general application, including local by-laws or ordinances and the general criminal law.

Provincial Police: In Ontario and Quebec there is a provincial police force which is charged with the maintenance of law and order outside the municipalities.

Royal Canadian Mounted Police: This romantic force is established and maintained by the Federal Government. Its history has been perpetuated by fact and fiction. Its jurisdiction extends throughout Canada and, with the exception of Ontario and Quebec, by agreement with the Provinces, their police services are furnished to all areas within those Provinces not policed by municipal officers. In Ontario and Quebec they are charged specifically with the enforcement of narcotic drug cases, customs and excise, counterfeiting and matters dealing with Indian affairs.

ADMINISTRATIVE AND PROSECUTION OFFICIALS

Under the Canadian constitutional system an Attorney-General's Department is established in each Province and it is presided over by an Attorney-General. The Attorney-General is chosen by the elected Administration and holds office only during the life of the Government. All the officials of the Attorney-General's Department form part of

the Permanent Civil Service of the Province, and are appointed for life.

The Attorney-General is described as the Chief Law Officer of the Crown and he is responsible for the administration of criminal justice within the particular Province. His staff consists of a Deputy Attorney-General and Attorneys. Ontario, being the most populated Province in Canada has a Director of Public Prosecutions whose functions are similar to that official in Great Britain. In the more populated Provinces there is a Crown Attorney for each County or Union of Counties. He is a direct representative of the Attorney-General's Department and is responsible for law enforcement within his territorial jurisdiction.

In important criminal cases it is possible that a member of the Attorney-General's staff conducts the trial prosecution and follows the case through to the ultimate appeal. Generally speaking, however, and it is true of Ontario, the Crown Attorney appears at the trial, and if the case goes to appeal, Counsel from the Attorney-General's Department represents the Prosecution before the appellate tribunals.

PROSECUTIONS

Summary Conviction Offenses: These offenses are non-indictable and arise generally speaking for breaches of provincial statutes and municipal ordinances, such as motor and liquor offenses, parking by-laws, etc. Trial of these offenses is exclusively within the jurisdiction of the Magistrate.

Indictable Offenses: These offenses are those which were at common law indictable and which have been created as indictable offenses by the Criminal Code. They are instituted in the first instance generally speaking by an Information before the Justice of the Peace, and the offender is brought to trial either by a warrant issued by the Justice of the Peace or by summons.

Magistrate's Court: A Magistrate has absolute jurisdiction to try summary conviction offenses and also indictable offenses such as theft under \$25.00, keeping disorderly house, gambling, minor assault cases, etc.

In all other offenses save those triable by a Supreme Court Judge and jury he has jurisdiction to try an accused for any offense without jury but only with the consent of the accused. It is essential to his jurisdiction that the statutory election be given to the accused. If the accused does not wish to be tried by the Magistrate but by a higher court he so expresses himself. If the accused desires to be tried by the Magistrate alone, the Magistrate may proceed with the trial, and has all the jurisdiction of a Supreme Court and a jury. This extends to the

more serious crimes such as armed robbery, house breaking, embezzlement, theft over \$25.00, etc.

Preliminary Enquiry: If the accused person does not elect to be tried by the Magistrate he so expresses himself, and the Magistrate then proceeds to hold what is termed a "preliminary enquiry." Generally speaking only witnesses for the prosecution are heard in order to establish that a prima facie case has been made out before the Magistrate. The accused, however, has the right to call witnesses on the preliminary enquiry, but this is seldom done. If the Magistrate considers on the evidence before him that a prima facie case has been established by the Crown he then commits the accused to trial before the next court of competent jurisdiction; otherwise he dismisses the charge.

County Judges Criminal Court: This court, as explained before, is presided over by a County Court judge sitting alone without a jury, and he is competent to try any accused who has been committed for trial by a Magistrate of any offense with the exception of murder, treason, manslaughter, rape, etc., which are exclusively within the jurisdiction of the Supreme Court. The accused then has the right to elect to be tried by the County Court judge with a jury, but notwithstanding this he has a further right of election to be tried by a judge without a jury again if he changes his mind, so it will be seen that every possible consideration is given under Canadian law to enable an accused person to select his forum and mode of trial.

Supreme Court: If the offense is one which comes within the jurisdiction of the Supreme Court, i.e., treason, murder, manslaughter, rape, etc., he is committed to trial before this court, and has no right of election as to mode of trial, as his trial takes place before a Supreme Court judge and a jury. It will be noted that under our law the prosecution has no choice in the mode or forum of trial of an accused person, this right being established by statute solely for the accused. There are some minor exceptions to this principle.

THE GRAND JURY

A number of provinces in Canada have abolished the Grand Jury system. In Ontario the only indictments that go before the Grand Jury are those within the jurisdiction of the General Sessions of the Peace, and the Supreme Court, commonly called the Assizes. The Grand Jury is not permanent in nature and consists of thirteen men summoned by the Sheriff for the particular sittings, a majority of whom may return a "true bill."

In those provinces of Canada which have abolished the Grand Jury system, the Attorney-General or his agent may commence criminal proceedings by preferring a formal charge in writing, setting forth as an indictment the offense of which the accused is charged.

Much can be said for the retention of the Grand Jury system, as in Ontario. On the one hand it provides a forum in which to dispose of frivolous or weak prosecutions, and on the other hand it acts as a bulwark or shield to an accused person to ensure that his liberty and freedom is not lightly dealt with. Moreover a citizen of the community who acts as a grand juror undoubtedly feels that he plays a real part in the administration of criminal justice.

Like the preliminary hearing before the Magistrate only the evidence of the prosecution is heard by the Grand Jury. Counsel for the Crown may only be present at the Grand Jury's request. If the majority of the Grand Jury feel that the prosecution has established through its witnesses a prima facie case, a majority may return a "true bill" without hearing all the witnesses, but if a "no bill" is returned, all the prosecution witnesses appearing on the indictment must be heard.

Grand Juries generally only deal with cases which are to be subsequently tried by a Petit or Trial Jury. All proceedings before a Grand Jury are secret.

THE TRIAL

The trial of an accused before a petit jury in those cases where he so elects follows, essentially, the pattern obtaining in the various state and federal courts of the United States. Neither the accused, his wife nor her husband are compellable witnesses for the prosecution and furthermore if the accused, his wife or her husband fail to testify on his or her behalf, this fact must not be made subject of comment by the trial judge or the prosecutor. If this does occur it results in a mistrial, and the jury may be discharged or a new trial directed by the Court of Appeal in the event it reaches that jurisdiction. Strangely enough this rule does not exist in England.

APPEALS

In summary conviction cases, i.e., non-indictable cases, an appeal lies by the prosecution or the accused to a County Judge and on a point of law to the Court of Appeal for the province.

In the case of indictable offenses the accused has a general right of appeal to the Court of Appeal, and on a point of law to the Supreme

Court of Canada, with leave. Except where there is a dissenting judgment in the Court of Appeal, his appeal is one of right.

In the event of an acquittal at the trial the prosecution has an appeal to the Court of Appeal where a point of law only is involved, and also has an appeal to the Supreme Court of Canada by leave, or where there is dissent on a point of law, or where the Provincial Court of Appeal quashes the conviction or grants him a new trial. A right of appeal by the prosecution also exists from the refusal of the Provincial Court of Appeal to grant a new trial where it affirms the acquittal by the trial court.

In regard to sentences, an appeal lies to the Court of Appeal by an accused person with regard to the amount of the sentence. A similar right of appeal exists for the prosecution if it is felt that the sentence is inadequate. No appeal in regard to sentence either by the accused or the prosecution lies to the Supreme Court of Canada.

BAIL

The impression, either rightly or wrongly, seems to be abroad in Canada that the courts of the United States take an almost casual attitude in regard to bail as contrasted with the Canadian courts. In Canada there is no inherent right on the part of any person accused of a crime to be admitted to bail, the matter being one purely of discretion in the judicial officer to whom the application is made.

In murder cases there are only two cases to my knowledge where bail has been granted. Bail is quite often refused in serious cases such as rape, manslaughter (other than automobile manslaughter), sexual offenses and serious assaults, and especially where the accused has a criminal record. Bail pending the hearing and determination of an appeal is very rarely granted and most exceptional circumstances must be shown before the accused is entitled to any consideration. I might point out that in England bail after conviction is almost unheard of and there is a reported case where a member of the House of Lords after conviction on a charge arising out of a company fraud in relation to a false prospectus was refused bail pending his appeal. Professional bondsmen are not recognized in Canada; neither is a surety company's bond accepted.

FUGITIVE OFFENDERS—EXTRADITION

Although the problem of inter-state extradition plays an important role in the administration of criminal justice in the United States, this

problem is totally eliminated in Canada by reason of a simple provision in our Criminal Code. For example, if a person commits an indictable offense in the Province of Ontario, and before apprehension escapes to British Columbia, a magistrate in British Columbia, on proof to him that the signature of the magistrate who signed the warrant in Ontario is authentic, which is usually done by the officer having possession of the warrant, makes an endorsement on the warrant, which then is the authority for the officer possessing the warrant to arrest the accused in British Columbia and convey him forthwith without any further formality to Ontario. The prisoner then must be taken as soon as possible before the process issuing magistrate for his preliminary enquiry.

The Canadian procedure eliminates entirely any question of inter-provincial extradition, and is a great aid to an efficient and speedy administration of the criminal law where vast geographical factors might otherwise present a serious problem.

On the question of extradition as between the U.S.A. and Canada, the nucleus of the present treaty provisions between Great Britain and the United States is Article X of the Ashburton Treaty of 1842, which contains enumerated extraditable crimes. In 1922 a Supplementary Convention was held in London by which the crime of wilful desertion or wilful non-support of minor or dependent children was added and in 1925 narcotic offenses were also included. The original treaty, of course, was binding on what is now the provinces of Canada, and we now have full and plenary power to deal with the subject matter, by the addition or deletion of crimes.

STATUS OF PROSECUTIONS

Prosecutions in England and throughout Canada are brought in the name of the Queen (or King) in a similar manner that prosecutions in the United States are brought in the name of the People or the State. Theoretically, in Canada it is the Queen who prosecutes the accused person, hence the style of the case-name as The Queen versus John Doe or Reg. vs. John Doe. In England and Canada the prosecution is usually referred to as "the Crown."

CRIME DETECTION

Some of the provinces in Canada have crime detection laboratories, but the most complete is the laboratory maintained by the Royal Canadian Mounted Police at the capital city of Ottawa. The serv-

ices of this laboratory are available to all the provinces when necessity arises. It is a pleasure to report also that the services of the Federal Bureau of Investigation in Washington, D. C. have been utilized in some cases in our country, and the co-operation extended by the Bureau in a great number of instances has been most valuable.

PAUPER'S DEFENSES AND LEGAL AID

Legal aid for needy persons in criminal matters in Canada is somewhat in the embryo stage at the present time. However, great strides are being made and we are confident that within a comparatively short time legal aid in all the provinces in Canada will be firmly established. In fact it is functioning very well in some of the provinces at the present time. In the province of Ontario, a person charged with murder and who is indigent, is permitted to engage counsel of his own choice who receives a per diem fee from the Department of the Attorney General for days actually spent at trial. The defense counsel is also furnished with any material pertinent to the case, including a copy of the transcript of evidence taken at the Preliminary Enquiry.

In the event of an Appeal the Department disperses public funds for the transcript of evidence for use on appeal to the Provincial Court of Appeal and to the Supreme Court of Canada, and will pay out of pocket disbursements for defense counsel. This practice in capital cases, which has existed for some years, will be supplanted by the system of legal aid when finally established.

PAROLES, REMISSIONS AND PARDONS

From a constitutional standpoint the subject of paroles, remissions and pardons is somewhat involved and will not be discussed in any detail in the present paper. Suffice it to state here that in two provinces only a Board of Parole exists which has power to admit to parole a prisoner during the indeterminate portion of his sentence. In the other provinces, not having Boards of Parole, the matter is handled by the Remissions Branch of the Department of Justice, Ottawa, in a somewhat different manner. It is hoped that this whole question of parole will be standardized to ensure uniformity throughout Canada on this important matter.

CONCLUSION

A fair claim to speed may be made for the administration of criminal justice in Canada, and such claim has been admitted freely by writers,

speakers and others in the United States. While asserting nothing in favor of our system which has not been admitted, whatever merit in this respect it may possess is due to the following causes:

The criminal code is country-wide and criminals may be rapidly apprehended and brought to trial.

There is no delay in choosing juries.

No technical errors, which have little or no merit, are allowed to prevail in trials or appeals.

Politics have fortunately been entirely kept out of the administration of justice.

Judges are appointed for life, and have for years been trained in the habit of the speedy administration of criminal law as free as possible from unmeritorious technicalities.

A prisoner charged with an offense in Canada, wherever it may be, is given by our law every possible advantage over the prosecution. This is as it should be, when one considers that the entire resources of the state are behind the prosecution to ensure that offenders are firmly but justly dealt with.

In Canada, the accused usually knows the Crown's case from beginning to end, but the prosecution might not know before the trial what defense will be offered, and it must develop its strategy accordingly as the case proceeds.

In Canada we pride ourselves on the fact that every consideration and fairness is extended to an accused person to ensure that he receives a fair, just and legal trial. Counsel for the prosecution do not press unduly for a conviction but merely bring out impartially all the evidence in their possession (favorable or unfavorable to the prisoner), leaving it to the tribunal of trial to render its decision or verdict. It is felt that it is proper that ten guilty men should go free than one innocent man be convicted. The historical role of the prosecution both in England and Canada is—"*Numquam Rex Lucratur, Numquam Rex Spoliatur.*" "The Crown never wins; the Crown never loses."