

BACKGROUND PAPER

ON

COMMUNITY SERVICE ORDERS

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ACQUISITIONS

COMMUNITY SERVICE ORDERS

DEFINITION

A community service order is a non-custodial sentencing disposition whereby an offender serves his sentence by performing a prescribed number of hours of community service.

THE PROBLEM

On January 6, 1977, the Ontario Court of Appeal upheld the validity of community service orders. At present, there are approximately one hundred and fifty (150) such orders outstanding in the Province. In light of the Court of Appeal's decision however it is likely that this form of disposition will become more prevalent.

At present, the Criminal Code does not specifically provide for community service orders. Rather, this form of sentencing disposition has emerged as a corollary to existing Criminal Code probation order provisions and it seems clear that Parliament did not envision community service orders when it enacted these provisions. The result is that there is an absence of essential legislative guidelines as to the imposition of this type of sentencing disposition. This will undoubtedly lead to the disparity of their use in addition to serious administrative difficulties for the probation services in this Province.

THE ENGLISH EXPERIENCE

In England, community service by offenders originated with a recommendation in the Wooton Committee's report of 1970 which looked for ways of

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countering the rising prison population by new forms of non-custodial sentencing dispositions. The Committee proposed that courts should be granted a new sentencing alternative which would provide for offenders to carry out a specified number of hours of community service and that the probation and after care service should be responsible for administering the disposition. The recommendation was accepted and became law in the Criminal Justice Act, 1972, which introduced the community service order as a new sentencing disposition which was designed as an alternative to terms of incarceration.

Under the English legislation (now embodied in the Powers of Criminal Courts Act, 1973) a court must be satisfied that the following conditions exist before imposing a community service order:

- (1) the offender is aged seventeen (17) years or over;
- (2) he or she has been convicted of an offence for which a sentence of imprisonment can be given;
- (3) the offender consents;
- (4) the offender's home is in an area where arrangements exist for people to work under community service orders and the court has been notified of the arrangements by the Home Secretary;
- (5) the court has considered a report by a probation officer on the offender and his circumstances and is satisfied that he is suitable to carry out work under an order;
- (6) provision can be made under the arrangements which exist in the offender's home area for him to carry out work.

If the conditions are met, the court has then to decide how many hours' service to order. The work is to be completed within twelve (12) months of the order being made. Where more than one (1) offence is

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involved, the court may make separate community service orders and in doing so has to specify whether the hours are to be worked concurrently or consecutively.

Finally, before making the order, the court has to tell the offender what it entails in particular that he is duty bound to report to the officer administering the community service arrangements in the area named in the order, and to carry out work as the officer instructs. He must be warned that if he fails to do so he will be in breach of the order and may be taken back to court.

In addition, there are remedial provisions for breach of the order and other miscellaneous problems.

The probation service support system is responsible for the practical arrangements for organizing work for offenders. In setting up local schemes a probation and after-care committee is required to appoint a community service committee to oversee the arrangements and to appoint a community service organizer. The organizer is responsible for drawing up detailed plans for the scheme covering all aspects of organization and staffing. Once these proposals have been approved by the Home Secretary, the organizer's main function is to obtain work placements, match and allocate offenders to tasks, liaise with the courts, probation officers and the work-providing agencies, take action in the case of unco-operative offenders and initiate breach action when appropriate.

A court making a community service order has no say in the task the offender is to carry out nor where he is to do it; these are matters for the community service organizer. It may be expected, however, that the organizer will keep local courts fully in the picture about the sort of work available in the area and the way in which the arrangements are progressing.

The English legislation was initiated in six (6) areas on a pilot project basis in 1973. This was possible as the community service order was created by the enacting legislation. The utilization and degree of success of the pilot projects was carefully monitored and evaluated. The results were highly promising and the community service order was concluded to be a viable sentencing alternative. As a result, the community service order was extended to all probation areas as of April 1, 1975.

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The above brief survey of the English experience serves to point out the types of legislative detail necessary to adequately effect what amounts to a new form of sentencing disposition.

THE NECESSITY TO AMEND THE CRIMINAL CODE

There is a need to amend the Criminal Code in order that it specifically provides for the imposition of community service orders as an alternative sentencing disposition. Such an amendment is required for the following reasons:

- (a) community service orders should only be considered as an alternative to incarceration and not as a mere corollary to probation in general;
- (b) there ought to be statutory recognition of the need to require an offender's consent to a community service order;
- (c) the English experience points out the need to control the imposition of community service orders on a pilot project basis in the first instance in order that experience might be gained in this area while the necessary administrative machinery is developed. In addition, the amendments to the Criminal Code should give statutory recognition to that machinery. Such an amendment would overcome the existing situation wherein probation officers may be placed in a position of uncertainty as to their role in the pre-imposition, supervision and administration of community service orders;
- (d) in order to achieve the maximum benefit from the above-mentioned pilot project concept, it is necessary that the Criminal Code be amended to provide that community service orders be made available only in designated areas. Further the appropriate Provincial authority (e.g., in Ontario, the Ministry of Correctional Services or Ministry of the Attorney General) be responsible for such designations.

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THE NEED FOR ADMINISTRATIVE GUIDELINES AND
PROCEDURES FOR PROBATION OFFICERS

The English experience clearly indicates that administrative procedures must be created to deal with the following tasks.

(1) Community Liaison:

For the Community Service concept to prove successful in practice, it is essential, in the jurisdictions where they are used, that a heavy commitment be made by the community. The community must be agreeable to and support the concept of Community Service by offenders. Hence, the first step is one of community organization. Only then is it desirable and possible for the organizer to locate tasks. There must be a wide range of tasks available as adult offenders represent a broad cross-section of the public in terms of interest and skills they have to offer.

In addition there is a required interface with other organizations such as trade unions whose involvement and support may be critical to the success of community service programmes.

(2) Service Organization Liaison:

A local and central cataloguing of available and advisable community service organizations which would be willing to participate in a programme of community service orders.

(3) Assessment of Offenders:

The assessment of offenders both prior to sentencing as to his aptitude and fitness for particular types of community service and the assignment after sentence to a particular community service organization.

(4) The Role of the Probation Officer:

There is an absolute need to precisely define the role of the probation officer in the imposition, administration and supervision of community service orders.

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The abovementioned guidelines and procedures should be embodied in the Ontario Probation Act either as an amendment to the Act or a regulation made thereunder. It should be noted however that the Probation Act is not binding on the sentencing court but might well offer some assistance to a court in imposing a community service order.

THE NECESSITY OF PROVINCIAL CONTROL OVER FEDERAL INVOLVEMENT IN THE AREA OF COMMUNITY SERVICE PROJECTS

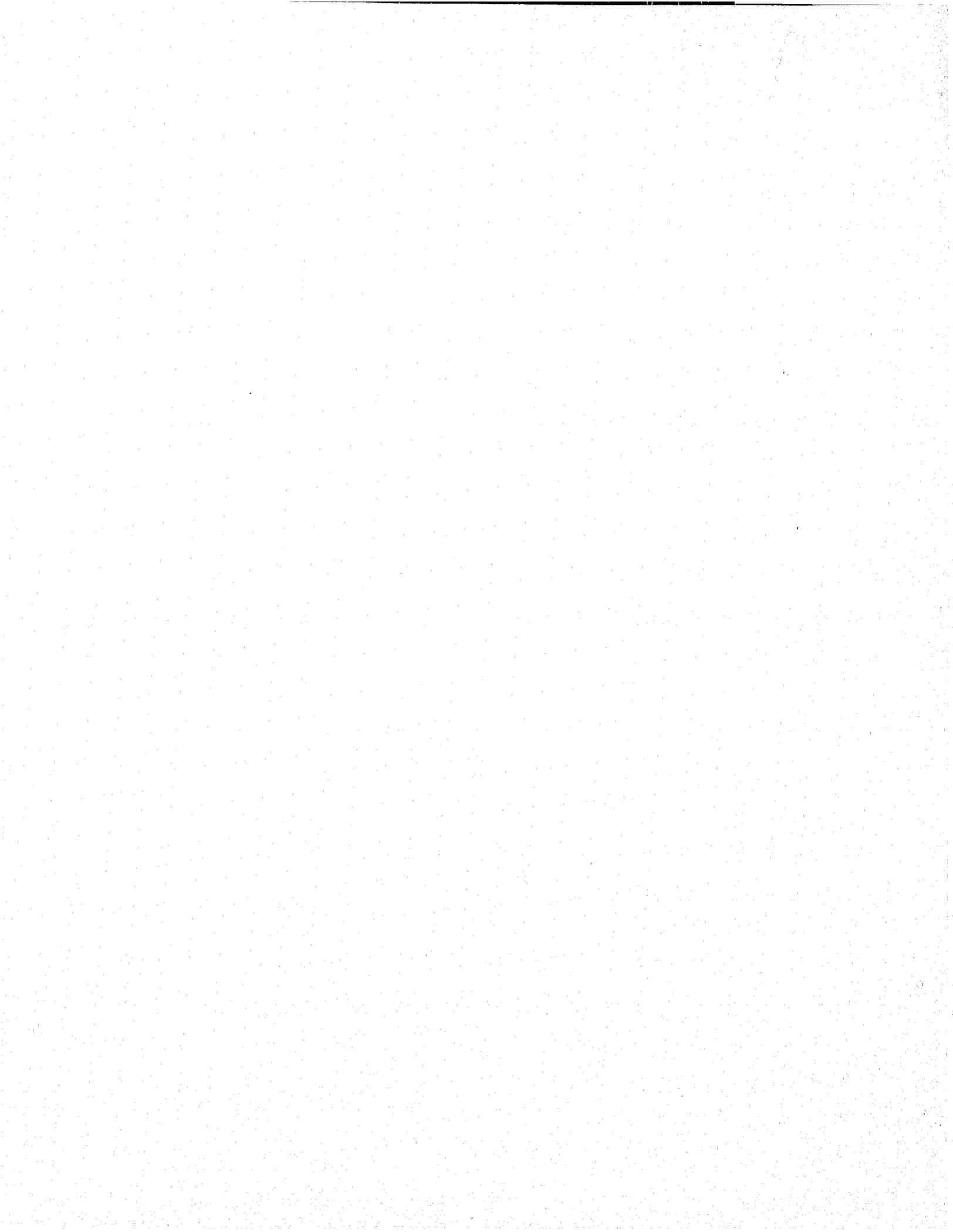
At present, the Federal Government has expressed an interest in initiating and funding community service projects. It is necessary that any such Federal involvement be limited to pilot project areas designated by the Province and that such involvement conform to Provincial standards.

GENERAL POLICY

1. THAT THE PROVINCE CONTINUE TO URGE THE FEDERAL GOVERNMENT TO AMEND THE CRIMINAL CODE TO SPECIFICALLY PROVIDE FOR COMMUNITY SERVICE ORDERS. THE AMENDMENTS SHOULD BE MODELLED ON THE ENGLISH LEGISLATION.
2. THAT THE MINISTRY OF THE ATTORNEY GENERAL AND THE MINISTRY OF CORRECTIONAL SERVICES DESIGNATE PILOT PROJECT AREAS, AND THAT THE MINISTRY OF CORRECTIONAL SERVICES ESTABLISH THROUGH THE PROBATION AND PAROLE SERVICE THE SUPPORT SERVICES NECESSARY TO THE ADMINISTRATION AND SUPERVISION OF COMMUNITY SERVICE ORDERS IN THE DESIGNATED AREAS.
3. THAT PENDING ANY AMENDMENTS TO THE CRIMINAL CODE, THE ONTARIO PROBATION ACT OUGHT TO PROVIDE GUIDELINES TO PROBATION OFFICERS AS TO THEIR ROLE IN THE IMPOSITION, ADMINISTRATION AND SUPERVISION OF COMMUNITY SERVICE ORDERS. THESE GUIDELINES SHOULD BE DEVELOPED EITHER AS AMENDMENTS TO THE ACT OR AS REGULATIONS MADE THEREUNDER AS SOON AS PRACTICABLE AND IN THE MEANTIME ADMINISTRATIVE GUIDELINES SHOULD BE DEVELOPED.

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4. THAT THE MINISTRY OF THE ATTORNEY GENERAL DEVELOP GUIDELINES FOR THE ASSISTANCE OF CROWN ATTORNEYS AS TO THE POSITION OF THE CROWN IN REGARD TO THE IMPOSITION OF COMMUNITY SERVICE ORDERS.
5. THAT THE PROVINCE INSIST THAT ANY INVOLVEMENT BY THE FEDERAL GOVERNMENT IN THE AREA OF FUNDING COMMUNITY SERVICE PILOT PROJECTS BE IN ACCORDANCE WITH PROVINCIAL STANDARDS AND IN AREAS DESIGNATED BY THE PROVINCE.



END