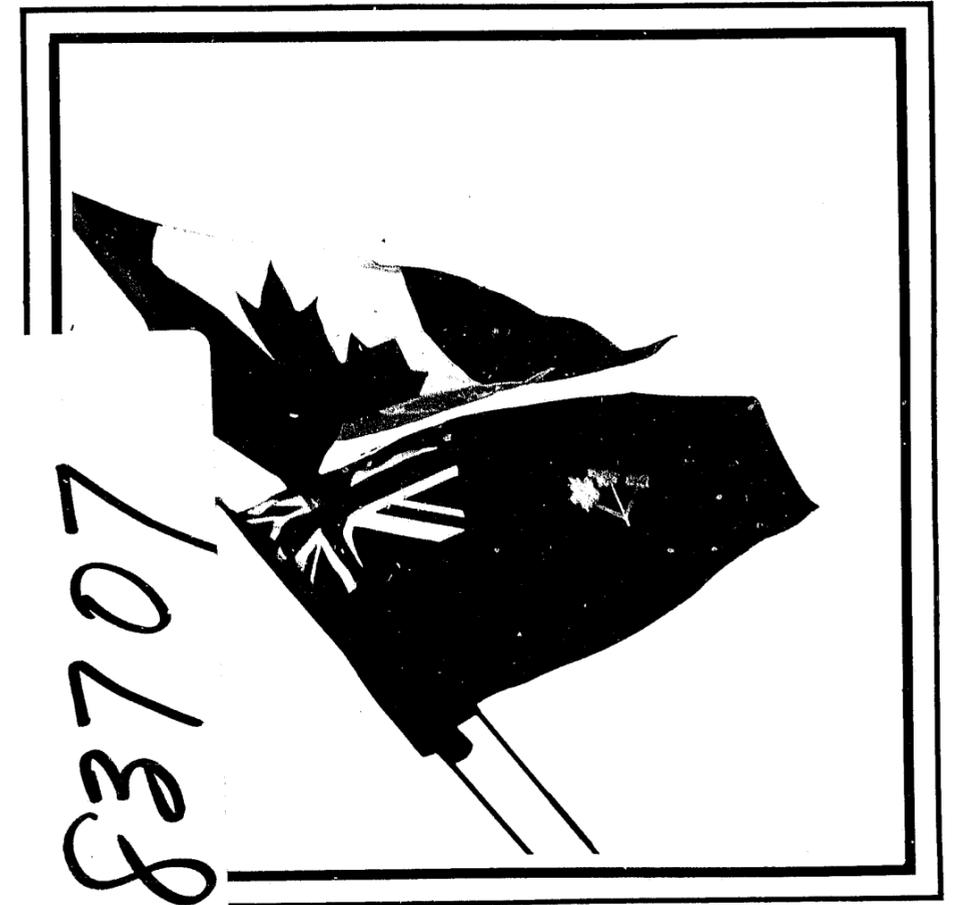


The Justice System in Ontario

The Justice System in Ontario



"When we speak of justice is it fair to ask, what is justice? Philosophers, writers, statesmen, orators and even babblers have spent volumes of words trying to define justice. Justice is beyond definition, but the humblest citizen travelling the highways of life has a fairly clear idea of what injustice is in any particular circumstance. He must look to the wise exercise of all powers conferred by the state and ultimately their control by the organized courts, to protect him from injustice in the application of law to his human affairs."

HON. J.C. McRUER

NCJRS

MAY 6 1982

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The Justice System in Ontario



THE HONOURABLE NORMAN W. STERLING, Q.C.
Provincial Secretary for Justice



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INTRODUCTION

The function of law is to allow individuals and groups to achieve their goals within the limits set by society. In a democratic society one of these limits is that citizens be treated fairly, not only by their fellow citizens, but also by the state. For that reason, law regulates the affairs of individuals and groups and also of government itself. A law, whether enacted by the Parliament of Canada or the Legislature of Ontario, is rarely very effective unless there are institutions and agencies to enforce it and to resolve controversies that may arise. These institutions and agencies – and the people who staff and supervise them – constitute the justice system.

Our justice system has two aspects: the civil and the criminal. Both represent society's formal arrangements to resolve, accommodate and prevent conflict, but there are clear and basic differences between them. The civil justice system is used to settle private disputes between individuals and other private parties, while the criminal system deals with conduct regarded as harmful to all or part of society rather than simply to another individual.

In the broadest sense the criminal justice system seeks to minimize the net social and economic costs of crime. In doing so, it seeks to 'keep the peace'; to protect all members of society, including the

offender; to interfere no more than is necessary with the freedom of individuals; to assure proper protection of the innocent; to define and deal with conduct requiring intervention by the system in a manner consistent with the seriousness of that conduct; and to provide a rational sequence in the law enforcement, judicial and correctional processes of the system.

There are four ministries in Ontario that have a major responsibility for justice policy: Solicitor General, Attorney General, Correctional Services and Consumer and Commercial Relations. These ministries deal with matters that relate to the police, the courts, the custody and rehabilitation of offenders and consumer protection, as the diagram shows.

Because the four ministries are closely connected, the aims, objectives, successes and even failures of each have an effect on the others. For example, a significant change in the law, such as changing the age of adult criminal responsibility, could have severe repercussions on other segments of the system. It is therefore essential that the members of the justice field work closely together.

To achieve this goal, a Cabinet Committee on Justice was established. It consists of the ministers of these four ministries and is chaired by the Provincial Secretary for Justice. This committee meets regularly to consider policy proposals brought forward

Justice Field

Solicitor General

Police
Public Safety

Attorney General

Courts
Prosecution
Tribunals, Commissions

Correctional Services

Prison
Probation
Parole

Consumer and Commercial Relations

Protection in the
Marketplace

by any one of the four ministries. It reviews the proposals of the member ministries to make sure that they are consistent with justice and with other government policies. Then it gives its advice on each proposal to the Cabinet.

The Cabinet Committee on Justice is supported by a small Secretariat. Its staff works with representatives of individual ministries on any proposals that concern more than one of the justice ministries. It also makes sure that any proposals are examined by relevant agencies outside of the ministry of origin. In this way, the Secretariat for Justice communicates with government and non-government organi-

zations, as well as with the public at large. Its role is to advise the government regarding the development of innovative, consistent and integrated policies.

This booklet has been written in cooperation with the four Ontario ministries in the justice policy field. While some reference has been made to federal agencies, the emphasis is on the administration of justice in Ontario. The purpose is to provide a general description of the justice system. Readers should note that this booklet is not meant to be used as a legal reference book. It is intended, instead, to improve public knowledge of the justice system in Ontario. Such knowledge is certainly one of the bulwarks of an effective and just system.

The Police and Public Safety

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The Police and Public Safety

Introduction

Police Responsibilities and Powers

Public Policing in Ontario

Ontario Police Commission

Police Boards

Other Law-Enforcement Officers

Other Public Safety Officials and Services

Introduction

The Ministry of the Solicitor General of Ontario is responsible for law enforcement and public safety in the province. In fulfilment of this responsibility, the Ministry provides the following services: supervision of police services and training throughout the province; a provincial police force with expertise in criminal and traffic law enforcement; specialized scientific criminal analysis; the maintenance of an adequate standard of fire safety services in the province; the determination of causes of death in unusual circumstances; forensic pathology services and the provision of anatomical materials to schools of anatomy in Ontario.

This section of the booklet examines all of these services, but focuses primarily on the police. It is the duty of the Solicitor General, on behalf of the Ontario government, to ensure that municipal police forces and the Ontario Provincial Police are effective in preventing and detecting crime and that they enforce the law in a fair and impartial manner. The Solicitor General is assisted in this supervisory role by the

Ontario Police Commission and also by local police governing bodies (boards of commissioners of police or committees of council).

Police Responsibilities and Powers

The chief functions of the police are to prevent crime, to apprehend offenders and to maintain order in the community. In many respects police officers have the same rights and responsibilities as ordinary citizens. However, both provincial and federal laws do give them certain important powers and protections in order to allow them to carry out their duties.

One of the most important of these is the power to arrest individuals, with or without a warrant, depending on the nature of the offence, in order to ensure that those arrested will be available to appear in court to answer to the charge; or to prevent those arrested from continuing to commit an offence or from committing further offences; or to secure individuals so that their identity and an offence or offences may be investigated. The police must use discretion and judgment in exercising a power of arrest and the law demands that they use this power in the public interest.

In order to make a 'lawful arrest', a police officer must inform the person arrested that he/she has been arrested. An arrested

person must accompany the police officer to the police station or face the possibility of being charged with resisting arrest as well. Generally speaking, a police officer is not permitted to detain an individual or to search that individual unless an arrest has been made. No arrest is necessary however where, under the Narcotic Control Act and the Food and Drugs Act, the object of the search is drugs. Once an arrest has been made, a police officer may search the person arrested and may confiscate and keep any object that the officer believes may be related to the offence in question or that could be used as evidence.

Once arrested, an individual must be brought before a justice of the peace within twenty-four hours of the arrest or as soon as a justice is available. The accused can be released before trial on the strength of a guarantee that he/she will appear in court. This guarantee or 'bail' ranges from a simple promise to appear to a deposit of a sum of money or other form of valuable property made by the individual or a friend on his/her behalf. The amount of the bail is decided by a justice and may be forfeited in whole or in part if the arrested individual fails to appear in court on the appointed day. In certain cases, bail may be denied and the accused person detained in custody.

In investigating offences, police officers can obtain the right to conduct searches of private property. In general, where something other than a firearm or other offensive weapon is involved, a search warrant is required. This warrant is issued by a justice of the peace, upon being satisfied by information, under oath, that its issue is proper and according to law. Searches can also be conducted under the authority of a writ of assistance issued by a Federal Court Justice to specific police officers. Writs of assistance are used by members of the Royal Canadian Mounted Police mainly in such criminal matters as drug trafficking and smuggling. They give the authority to search a private residence where there is reason to believe that illegal narcotics will be found on the premises.

Like other persons, police officers who abuse property rights and seize property without legal authority are subject to due process of law.

In addition to these legal safeguards, a uniform procedure has now been adopted by police forces in Ontario to deal with citizen complaints against the police. Under this system, complaints must first be made to the local chief of police, or his nominee. In large urban areas municipal complaint bureaus have been set up for this purpose. If satisfactory action does not result, a complaint can be taken to the local board of police commissioners or police committee or, if necessary, to the Ontario Police Commission. Complaints against Ontario Provincial Police officers can be taken to the local detachment, or to the OPP Complaints Bureau maintained in Toronto. Again, if the results are not satisfactory, recourse may be had to the Ontario Police Commission.

A three-year pilot project has been established in Metropolitan Toronto to improve the processing of complaints by the public concerning the conduct of police officers. The Metropolitan Police Force Complaints Project Act, 1981, sets out procedures for the making, recording, investigation, resolution and disposition of complaints. The Public Complaints Commissioner, an independent civilian authority, monitors and reviews the handling of complaints by the Metropolitan Toronto Police Force. In certain cases public hearings will be conducted by the new Police Complaints Board.

Public Policing in Ontario

Both the provincial and federal governments have the authority to create police forces. As a result, there are three types of police forces operating in Ontario, each of which has a distinct role and jurisdiction, although they may overlap. These forces are accountable to the appropriate level of government: municipal, provincial or federal.

In Ontario, the Police Act provides for the enforcement of laws within the province. It authorizes:

- the establishment of municipal police forces;
- the establishment of a provincial police force (the Ontario Provincial Police) to enforce federal and provincial statutes in those areas not maintaining their own municipal police departments;
- the OPP to take over municipal policing duties in certain circumstances;
- municipal policing contracts for OPP services;
- supportive services by the OPP in municipalities at times when their expertise is needed.

All villages, townships and parts of townships with a population and property assessment sufficient to justify the maintenance of a police force must provide adequate policing to maintain law and order in their municipalities. The OPP assumes the responsibility for policing those municipalities that are not required to provide their own police. Municipal and regional police forces account for about 72 per cent of the police in Ontario, while the OPP accounts for about 24 per cent.

The Royal Canadian Mounted Police (RCMP) is a federal police service that enforces certain federal statutes. It derives its power from the federal Royal Canadian Mounted Police Act. In all provinces except Ontario and Quebec, the RCMP provides provincial policing services on special contract.

$$\begin{array}{r} 5 - 3 = 2 \\ 1 + 1 = 2 \\ 3 + 4 = 7 \end{array}$$



Municipal and regional police forces.

These police forces have the responsibility of enforcing the Criminal Code of Canada, other federal statutes, provincial statutes and municipal by-laws. The ten regional police forces provide law enforcement and protection services to more than half of Ontario's population. The rest of the population is served by the OPP and by 117 municipal forces, ranging from one-man operations to city forces with staffs of several hundred.

Small police forces must concentrate on general law enforcement. However, large municipal and regional police forces offer a number of specialized programs and services. These can include the following:

- *youth bureaus*, which investigate all matters involving juvenile offenders and which provide liaison between police forces and the court system, schools and community agencies serving young people (see the section in this booklet on The Juvenile in the Justice System);
- *community service bureaus*, which concentrate on preventive and educational programs and keep the public informed of ways to lessen opportunities for crime. Community service bureaus emphasize the sharing of responsibility among all citizens for the protection of life and property and the apprehension of criminals. Their programs include the teaching of traffic safety in elementary schools and safety programs for the blind, the mentally retarded and crippled children;
- *police cadets*, who assist in uniformed police work. Cadets are younger than regular police officers and have limited police training. They may go on to become regular officers if they meet the specified requirements;
- *auxiliaries*, volunteer members of police forces who perform police functions in emergencies (e.g., an airplane crash) or on special occasions (e.g., visits of royalty or foreign dignitaries). Auxiliaries usually hold civilian jobs and perform their auxiliary police training and duties in their spare time. They often accompany police officers on cruiser patrols.

Ontario Provincial Police. It is the duty of the OPP to preserve the peace, prevent crime and offences against the laws of Ontario and the criminal laws of Canada and to apprehend criminals, offenders and others who may be lawfully taken into custody. Where required, the OPP may enter into contracts with municipalities to provide local policing. In 1981, twelve contracts of this type existed in Ontario. The Police Act also provides that the OPP may furnish policing assistance to a municipality at the request of the Ontario Police Commission, the local police board or committee or the Crown Attorney.

While the OPP assumes the responsibility for policing those parts of Ontario in which a municipal police force is not maintained, it also has province-wide jurisdiction in certain types of law enforcement. These include:

- laws governing traffic on major highways;
 - liquor laws relating to liquor licensing and the illegal sale of liquor;
 - anti-gambling and anti-rackets laws;
 - assistance to other police forces in the event of serious situations requiring co-operation and additional expertise.
- In order to carry out its responsibilities, the OPP maintains the following services:
- tactics and rescue units to counter acts of kidnapping, hostage-taking, hijacking, terrorism and sniping;
 - canine search-and-rescue teams to aid in locating missing and wanted persons and in detecting narcotics;
 - underwater search-and-recovery units to recover drowning victims and evidence;
 - the patrolling of Ontario waterways to make safety checks on small vessels, and air policing for the purpose of enforcing traffic laws and conducting search-and-rescue missions;
 - community services comprised of a variety of programs in co-operation with schools, youth groups and service clubs;

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- community services comprised of a variety of programs in co-operation with schools, youth groups and service clubs;

- the issuing of firearm permits in certain areas of the province;
- the licensing of all persons employed in Ontario as private investigators and security guards and the agencies that employ them;
- the maintenance of an auxiliary force of over 500 men and women who serve in local OPP districts;
- an Indian policing program, which serves reserves and settlements in Ontario. Resident band constables are recommended by local band councils and are trained by the OPP to provide a continuous policing service among Native people. This program began in 1975 and is under the sole supervision of the OPP. Band constables assist regular OPP personnel in policing on reserves.

With an authorized strength of 4175 uniformed members and 1200 civilian employees (December 1981), the OPP forms a significant part of the Ministry of the Solicitor General of Ontario. The Commissioner of the OPP, aided by two deputy commissioners and six assistant commissioners, oversees the functioning of the police force and its management.

Royal Canadian Mounted Police. The RCMP is responsible for enforcing certain federal statutes. In the main, this involves:

- the prevention and detection of offences against federal statutes such as the Food and Drugs Act, the Narcotic Control Act, the Immigration Act, the Customs Act, the Excise Act and statutes relating to revenue;
- the provision to federal government departments of such police services as airport and national park security;
- the maintenance of internal security.

In Ontario, the RCMP is active mainly in enforcing drug, taxation and customs and excise laws, and in the resolution of commercial (business) crime. It has jurisdiction where the national interest of Canada is involved. In this regard, it operates several national intelligence services including the National Police Ser-

vices, the National Criminal Intelligence Repository and the National Security Frauds Intelligence Repository. The RCMP also represents all Canadian police forces in their dealings with Interpol.

The RCMP operates under the direction of the Solicitor General of Canada, to whom the commissioner of the force is directly responsible. The senior officers of divisional headquarters in each province are responsible to the commissioner in Ottawa.

Co-operation among police forces.

Extensive co-operation among all police forces in Ontario is essential for efficient law enforcement. Without this co-operation, the justice system could not operate effectively. The OPP Criminal Investigation Branch is available to assist municipal police forces that have no experienced investigators in areas such as murder and bank robbery. All police forces co-operate in cases of commercial fraud, organized crime and violations of the federal Narcotic Control Act.

Ontario Police Commission

The Ontario Police Commission (OPC) consists of at least three commissioners appointed by the Lieutenant Governor of Ontario. The commission provides assistance in co-ordinating the work and training of police forces throughout the province and has regulatory and investigative powers across Ontario. OPC staff maintains a system of statistical records and conducts research studies of criminal activities and related law-enforcement matters. The commission also operates the Ontario Police College in Aylmer, Ontario, and a criminal intelligence service.

OPC staff consults with and advises boards of commissioners of police, police committees of municipal councils, other

police authorities and chiefs of police in all matters relating to policing. The OPC also acts as the final appellate body for determining whether breaches of a standard code of discipline have been committed by police officers.

The OPC can hold formal hearings, summon witnesses and require them to give evidence in matters within its jurisdiction. In addition, the OPC, upon the direction of the Lieutenant Governor in Council, may inquire into 'the extent, investigation and control of crime'. As such, the commissioners have quasi-judicial powers, although they exercise them outside of the traditional courtroom setting.

The OPC has general responsibility for determining whether a municipality is discharging its responsibility for maintaining law and order and whether a police force is adequate. If it considers that a municipality is not providing an adequate police force, the OPC can ultimately request the OPP to police the municipality at the municipality's expense.

Police Boards

Ontario municipalities have local civilian bodies known as boards of commissioners of police or, where there is no board, a police committee of council. The boards consist of three or five members and include, at the minimum, the head of local council together with other members appointed by the province. They have wide powers, which include:

- supervising police activities in maintaining law and order in the community;
- administering the police force;
- hiring and dismissing personnel;
- bargaining with police representatives;
- summoning and examining witnesses under oath in any matters related to their responsibilities;
- submitting to the municipal council annual financial estimates dealing with the operation of their police force.

Other Law-Enforcement Officers

In addition to regular police officers, the Criminal Code definition of 'peace officer' includes mayors, wardens, Reeves, sheriffs, justices of the peace, correctional officers, certain customs officials, pilots in command of aircraft while in flight and certain military personnel. The Police Act also provides that the Commissioner of the OPP, or a judge of the provincial, county or district courts may appoint special constables whose authority will be limited according to the terms of the appointment. The following are some other individuals who perform essential law enforcement functions in Ontario:

Railway police. The federal Railway Act provides for the appointment of constables, who have the police powers ascribed to them by that legislation.

By-law enforcement officers. By-laws passed by a local municipal council to regulate matters over which it has jurisdiction are normally enforced by the police of the municipality, or by civilian personnel who are hired to perform a variety of tasks. They might, for example, form a parking control unit with the authority to enforce municipal parking by-laws. When appointed under the Police Act, these civilian personnel have peace-officer powers while engaged in performing their duties.

Game officers. Although police officers have the authority to enforce such provincial laws as the Game and Fish Act, the Ministry of Natural Resources employs staff specifically to enforce such laws. These game officers, fisheries officers and conservation officers have the power of peace officers to carry out their duties under these laws.

Government investigators and inspectors. Various Ontario ministries and federal government departments employ people to assist in the enforcement of the laws that they administer. Such provincial laws include the Liquor Licence Act, the Health Disciplines Act, the Hotel Fire Safety Act, the Consumer Protection Act, the Securities Act and the Building Code Act. Examples of federal laws include the Aeronautics Act, the Immigration Act, the Family Allowance Act and the Unemployment Insurance Act.

Investigators and inspectors appointed under such legislation seldom have the powers of peace officers, but some of them have special powers under the statutes they help to enforce. For example, the federal Combines Investigation Act gives power to the director to authorize investigators to enter premises and examine and seize business documents. If other police functions are required, the investigators or inspectors obtain the services of the RCMP or the provincial or municipal police forces. However, as the number of these investigators and inspectors increases, they are performing investigative work formerly done by police officers.

Security guards. Property owners often hire security guards to protect their property. Persons authorized by property owners may arrest without warrant any person found committing a criminal offence on or in relation to that property. Individuals or companies may also hire private investigators to conduct investigations. If such guards or investigators are in the direct employ of the individual or company hiring them, they need not be licensed. However, contract security and investigative personnel and agencies must be licensed by the Ontario government. Security guards and private investigators have only the powers of an ordinary citizen to enforce the laws, and while they do not perform any public law enforcement function, they do perform some tasks similar to those of the police.

Other Public Safety Officials and Services

In addition to policing, there are a number of other services related to public safety for which the Ontario Ministry of the Solicitor General is responsible. This section explains the Office of the Chief Coroner, the Forensic Pathology Branch, the Centre of Forensic Sciences and the Office of the Fire Marshal.

The Office of the Chief Coroner. The coroner system is responsible for investigating and, if required, conducting public inquiries into the circumstances surrounding sudden, unexplained or unexpected deaths in order to determine in each case the identity of the deceased and the facts as to how, when, where and by what means the deceased died. The system, therefore, is a vital part of law enforcement in initially determining whether deaths are due to natural causes, accident, suicide or homicide. In Ontario, it is administered by the Chief Coroner assisted by an administrative staff and local coroners appointed from among qualified medical practitioners.

The coroner's investigation is the basic mechanism of the coroner system. If this investigation cannot establish with reasonable certainty all of the facts relating to a death, then a coroner's inquest may be initiated. At such an inquest, all the evidence relating to a death is presented for the consideration and verdict of a jury of five persons. Coroners' inquests serve three functions: they publicly establish the facts relating to deaths; they formally focus community attention on and initiate community response to preventable deaths; and they satisfy the community that the circumstances surrounding the death of any one of its members will not be overlooked, concealed or ignored.

The coroner system plays an important role in the area of public safety. Through the investigation of an individual's death, the coroner can uncover important information that can be used to prevent deaths and accidents in the future. Such findings

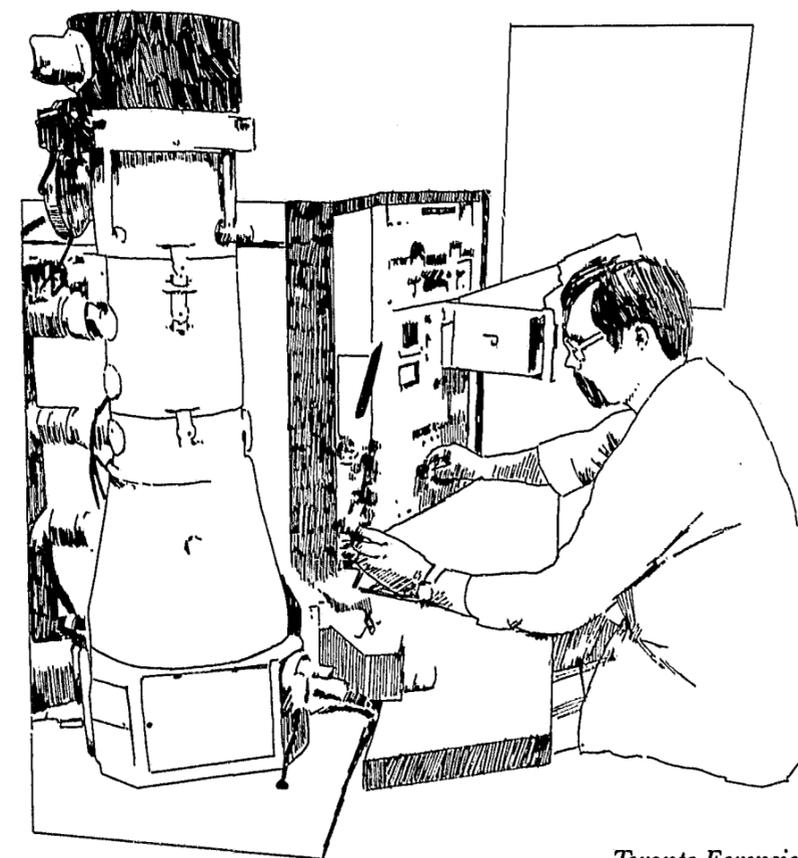
have been instrumental in changing unsafe industrial and other practices. Recommendations can also be made either by the coroner or the coroner's jury, and it is the responsibility of the Office of the Chief Coroner to bring such recommendations to the attention of the appropriate persons, agencies or ministries of the government. Although this office has no authority to force such organizations to implement recommendations, many recommendations are in fact implemented in some way.

Forensic Pathology Branch. The role of this agency is to assist in determining the reason for and the mechanism of death in unusual circumstances through the application of forensic pathology. It provides an advisory service to police, coroners and pathologists in the province; develops training programs in forensic pathology; and carries out forensic pathological examinations in difficult or complex cases.

The forensic pathologist's primary func-

tion is to evaluate the pathological findings and the results of any ancillary investigations in cases of sudden death. This can involve a post-mortem examination, which includes a medico-legal autopsy. In any inquiry into sudden death, whether it turns out to be from natural or unnatural causes, the forensic pathologist acts as a link between the coroner and the police, particularly in homicides and in cases of suspicious or unexplained deaths.

Centre of Forensic Sciences. The Centre carries out scientific investigations of cases involving injuries or deaths in unusual circumstances and in crimes against persons or property. It provides evidence to law-enforcement officers, Crown Attorneys, lawyers, coroners, pathologists and official investigative agencies. Its scientific examination, analysis, evaluation and interpretation of physical objects and materials are vital to the effective maintenance of law and order.



Toronto Forensic Laboratory

The province's forensic laboratory is located at the Centre in Toronto. Services are provided without charge to all official investigative bodies and to defence counsel in criminal cases. These services include toxicological, biological, chemical, mechanical and electrical analyses, as well as firearm, toolmark and document examinations and specialized photography. The Centre also provides educational programs and materials to persons and agencies using its services and encourages and conducts research to improve or expand forensic science services.

Office of the Fire Marshal. The function of this office is to assist in preventing or minimizing the loss of life and property from fire. The Fire Marshal of Ontario is responsible for co-ordinating, directing and advising on virtually every aspect of fire prevention, fire fighting and fire investigation as prescribed under the Fire Marshals Act and other provincial statutes. The Office of the Fire Marshal is involved in investigating the causes of fire. Its staff is also equipped with technical knowledge and the authority to assist and advise municipal councils, fire departments and government ministries in their responsibilities toward providing fire safety to the citizens of Ontario.

This office depends on the co-operation of all levels of government, of fire departments, industry, insurance companies, testing laboratories and a host of other organizations with interests allied to fire prevention and protection. In turn, it provides the following services to the public, to industry and to all levels of government:

- fire-training services through the Ontario Fire College and regional fire-prevention schools;
- technical services;
- fire-investigation services;
- fire-advisory services;
- hotel fire safety inspections;
- public information services;
- statistical services;
- consulting services; and
- administrative services.

The Courts - and other formal agencies for deciding disputes

The Courts

and other formal agencies for deciding disputes

Introduction

The Courts: Process

The Courts: Key Personnel and Services

Civil and Criminal Court Procedure

The Structure of the Courts

The Civil Court System

The Criminal Court System

Tribunals, Boards and Commissions

Introduction

Society has established several formal agencies to decide disputes between citizens and between citizen and state. The most well-known of these agencies is the courts, which have been in existence for a long time. In addition to the civil and criminal courts that will be described below, Ontario's justice system also has a number of tribunals, administrative boards and commissions set up by laws of the Parliament of Canada and the Legislature of Ontario. The criminal law is administered in the courts, while the administration of the civil law is divided among the courts and many decision-making boards and tribunals.

The Courts: Process

The function of courts is to decide disputes rationally and fairly with as little cost as possible to the parties and society. Over the course of time, the courts themselves and the Legislature have developed rules of procedure and of evidence so that the purpose for which courts exist will be met.

There are several methods by which the courts can achieve their goal of a rational decision following a fair and impartial proceeding. In Canada, we have an adversary system in the courts. In this system, the parties in a dispute are pitted against each

other. Each side is responsible for arguing its case and for presenting evidence to support its position. The judge acts as an impartial decision-maker, making rulings on trial procedure and on the admissibility of evidence, but taking no initiative in the presentation of evidence.

There are three characteristics of our courts that are important in helping ensure fairness (and the appearance of fairness) in the process: proceedings are open to the public; they are conducted in a restrained atmosphere; and they are controlled by judges who are independent of the government that appointed them.

The system of justice we inherited from England has taken the view that court proceedings should be open to the general public and to reporters. It was felt that examination of the workings of the courts by the public would help prevent any tampering with justice and that, as a result, the ordinary citizen would be confident of the honesty and decency of the legal system. For these reasons, as a general rule, trials are open to the public. However, in certain types of cases (e.g., cases involving juveniles) where society considers that public hearings would be harmful to the

parties, the public is excluded. In such cases the trial judge, has the power to hold *in camera* hearings.

A second important feature of the courts is the tradition that proceedings be conducted in an atmosphere that is in keeping with the seriousness and importance of their work – the attainment of justice.

A third feature of our courts is that judges are made as independent as possible. They are granted security of tenure, and special statutory constraints are imposed on them. For example, they hold office during 'good behaviour' and they cannot at the same time be members of Parliament or of the Legislative Assembly. These restrictions have been established to ensure a special integrity on the part of the judiciary as an institution in Ontario society.

The supervision of the court system in Ontario is the responsibility of the Attorney General. This responsibility includes the administration of courts; the appointment and supervision of the staff needed to administer justice; the supervision of Crown Attorneys, the Public Trustee, the Official Guardian and the Accountant of the Supreme Court; and all matters connected with judicial offices. In addition, the Attorney General is responsible for recommending to Cabinet the appointment of judges to the Provincial Courts (Family, Civil and Criminal Divisions) and to provincial Small Claims Courts, as well as the appointment of Justices of the Peace, Notaries Public and Commissioners for taking Affidavits. Other judges are appointed by the Federal Government.

The Courts:

Key Personnel and Services

Judges. The role of judges and justices of the peace is to decide in a fair manner disputes brought before them. Judges are appointed from the ranks of lawyers by either the federal or provincial government, depending on the level of the court. They have a secure tenure of office up to a fixed retirement age (sixty-five through seventy) and may be removed only for

severe misconduct or incapacity. This helps to ensure their independence and impartiality.

Justices of the peace are persons appointed by the Cabinet who, under the direction of a provincial judge, take informations, issue warrants or summonses, conduct bail hearings when appropriate, interview sureties, administer oaths, and affirmations and declarations. They ordinarily preside over the Provincial Offences Court under the general direction of the judges of the Provincial Court (Criminal Division).

Lawyers. Parties appearing before the courts in serious civil actions or criminal proceedings are usually represented by lawyers. In such situations the lawyers are referred to as 'counsel'. All lawyers practising in Ontario must belong to the Law Society of Upper Canada. The Law Society controls admission to the profession and is responsible for establishing standards of professional conduct. Admission to the Law Society today requires a minimum of an LL.B. degree, a year's service as an articling student working with a qualified lawyer and graduation from a six-month Bar Admission course.

Legal aid. Prior to the passing of the Legal Aid Act, studies indicated that at least 60 per cent of all persons charged with serious crimes in Ontario could not afford legal counsel. The number of lawyers who offered their services without fee was inadequate to meet the needs of the large number of citizens who required legal assistance but could not afford it.

In 1967 the Act came into force to help those who could not afford to retain a lawyer. The Act, which is administered by the Law Society, provides that legal aid be provided to applicants on the basis of their need. Approved applicants are issued a

legal aid certificate and may retain the legal counsel of their choice from a panel of lawyers who have agreed to participate in the plan. These lawyers are paid out-of-pocket expenses and 75 per cent of their fees, as outlined in a tariff of fees set out in the legislation. Applicants who are able to do so are required to repay all or part of the costs of legal aid.

In some situations the citizen may be unable to obtain adequate assistance because of language or cultural barriers or because of the nature of his/her problem. To meet these needs, community legal clinics have been established throughout the province. Legal services are provided by a combination of lawyers and trained legal workers. The types of legal assistance provided include the whole range of administrative law matters, such as workmen's compensation, unemployment insurance, immigration, employer-employee relations, welfare, pensions, debt-credit problems, landlord-tenant disputes and some family law and environmental matters. In addition, clinics provide services to people with problems in the juvenile justice and child welfare fields.

The Legal Aid Act also provides for the placement of a lawyer in each criminal court of first appearance. This lawyer, called the "duty counsel", is available to protect the rights of those who appear in that court unrepresented by counsel and who require legal assistance to enable them to understand their rights. Duty counsel, as opposed to lawyers retained by a legal aid certificate, are available to all accused who may need their services.

On hand in situations that are unfamiliar and bewildering to most defendants, duty counsel are mainly responsible for advising accused persons of their legal rights, such as their right to plead guilty or not guilty, and their right to apply for bail or for an adjournment; and to assist such persons to obtain legal aid, to obtain an adjournment, to apply for bail or interim release, and to make representations with respect to sentence where the accused wishes to plead guilty after the elements of the offence

have been explained. Where a matter may be quickly disposed of, duty counsel may proceed with the trial of a case, although this is not seen as their normal function.

The government has also developed services to assist two important groups, namely, French-speaking citizens of Ontario and native people.

French-language services in the courts.

Since December 31, 1974, any accused person in Ontario has had the right to be heard by a bilingual judge and bilingual jurors in trials with juries. French-language services are now available in the Provincial Court (Criminal and Family Divisions), in the Provincial Offences Court, and in the Small Claims Courts in designated communities in Ontario. Since April 1, 1981, French-language services have been available for civil cases in the Supreme Court, and in County and District Courts in specified areas of the province. The list of locations and the availability of services in the French language is being expanded as quickly as possible.

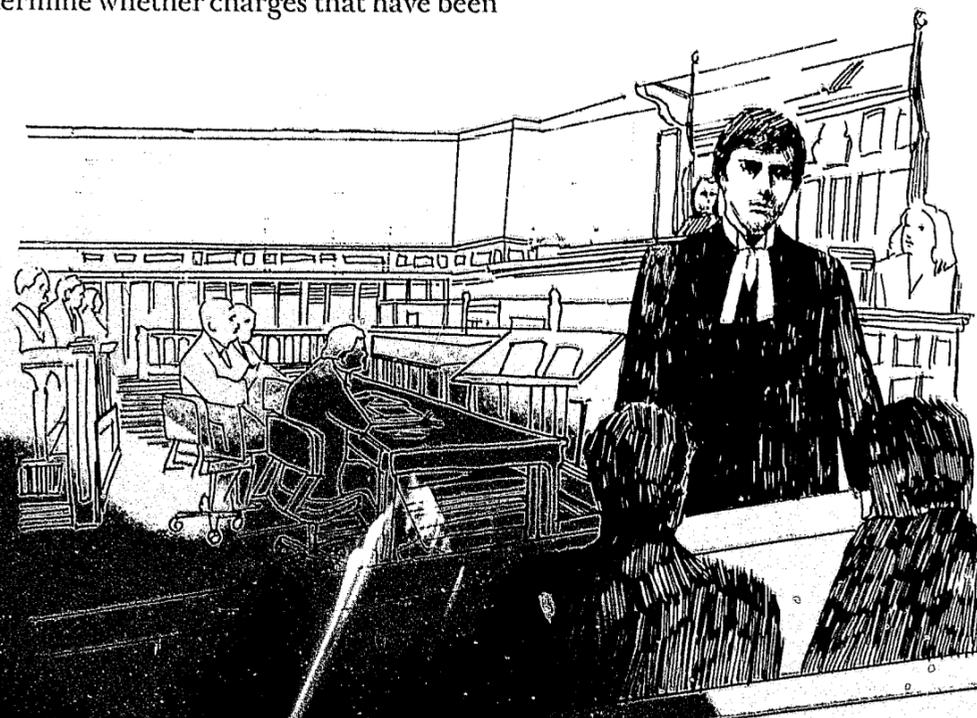
Ontario Native courtworkers. Ontario Native courtworkers attempt to ensure that all Native citizens in Ontario have access to legal and justice-related services prior to, during and following a court appearance. They assist Native people by providing an interpreting service where necessary, providing liaison with probation, parole, after-care and Children's Aid services, and ensuring that Native people are properly, efficiently and fairly served by the justice system. When problems in the justice system are identified, Native courtworkers are in a position to make the appropriate recommendations for improvements.

Native courtworkers play an important role in reducing the sense of alienation experienced by Native people who are in conflict with the law and in bridging the cultural and linguistic gap between Native people and the justice system. As well, they provide Native people with community legal education, counselling and referral in a number of areas, assistance with family problems, and delinquency-prevention programs in order to diminish the numbers of Native people who are charged with offences.

Crown Attorneys. The Attorney General is responsible for directing the prosecution of criminal cases. In practice, such prosecutions are conducted by agents of the Attorney General, whose duties are defined by law. The Crown Attorney system is composed of more than 220 lawyers who specialize in criminal law. In directing prosecutions in the name of the Attorney General, Crown Attorneys advise the police with respect to the law and the sufficiency of evidence for prosecutions, determine whether charges that have been

laid either by the police or private citizens should proceed, make submissions to the court with respect to the release or detention of prisoners pending trial, and conduct the prosecution of criminal cases at all levels of court.

Juries. A jury is a group of persons summoned by law and sworn to hear evidence and render a verdict on a case presented in court, whether it is a civil action or a criminal prosecution. The judge and the jury perform different functions. The judge determines admissibility of evidence and states the law that is relevant to the dispute before the court; the jury decides what the facts are (if they are in dispute) and applies the law stated by the judge to those facts to reach an ultimate decision—judgment for plaintiff or defendant in a civil case (including the amount of recovery), a verdict of acquittal or conviction in a criminal case. In a criminal case, however, if the jury convicts, the sentence (i.e., fine, imprisonment) is within the control of the judge.



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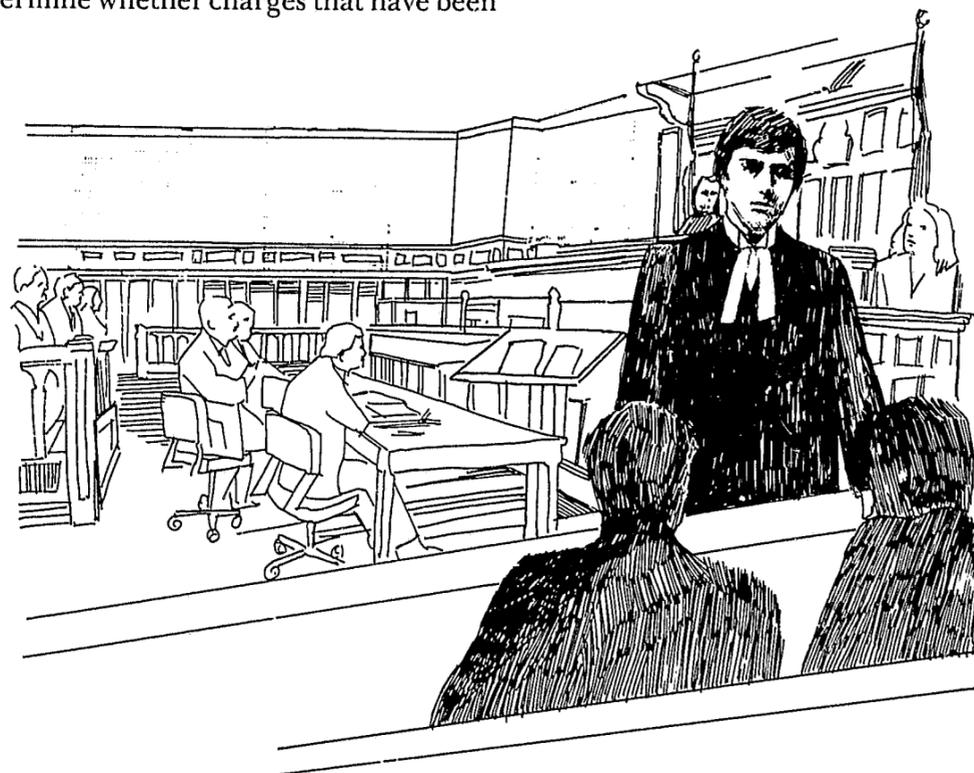
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The jurors—twelve in a criminal prosecution and six in a civil trial—thus have an important role in the justice system. This is in keeping with our society's philosophy of allowing the ordinary citizen to participate in the processes that affect him/her. This participation helps to ensure that the law and its administration will not be inconsistent with the ordinary person's ideas of what is fair and just.

Civil and Criminal Court Procedure

The law can be divided into civil law and criminal law. Civil law is that area of the law designed to regulate private matters such as financial transactions, property, contracts, private injury and civil rights. Criminal law relates to crimes or 'offences', which involve conduct that is considered harmful to society rather than simply to another individual. It is possible that the same conduct will be of concern to both the civil and criminal law. For example, if a drunk driver causes the death of another person, that driver may be subject to a criminal prosecution for his/her criminal activity; as well, the driver may be subject to a civil action for the loss caused by his/her wrongful conduct.

While some courts (e.g., County Court and Supreme Court) hear both civil and criminal cases, others, such as Provincial Court (Criminal Division) and Small Claims Court, are concerned with only one type of dispute.

Civil suits. When a dispute between individuals cannot be satisfactorily settled by the parties themselves, one or both of the parties may take action to have the conflict resolved by a judge. The person who takes such action or starts a law suit is called the 'plaintiff' and the other party is the 'defendant'. It should be noted, however, that most civil court cases initiated are never actually tried. As part of their role, lawyers attempt to settle disputes without having to incur the time and expense of full judicial proceedings. Indeed, much of the important and difficult work in a civil case

is done prior to the actual trial in an effort to avoid the necessity for a trial.

A case starts when the plaintiff has the court issue a 'writ of summons' in the County and Supreme Courts or enters a claim in Small Claims Court, commanding the defendant to appear in court. Usually a statement of claim is attached to the writ of summons. It sets out the plaintiff's version of the facts of the dispute and the decision that the plaintiff seeks from the court. These documents are usually delivered to the person being sued. In exceptional circumstances the court may grant special permission to make 'substituted service', for example, by registered mail or advertisement.

If the defendant thinks that the claim is not completely justified or has a related claim against the plaintiff (a counterclaim), a document known as an 'appearance' and a 'statement of defence' is submitted to the court within the time limit set out in the writ of summons. Failure to file an appearance on time may result in the court awarding judgment against the defendant by default.

After an appearance is entered, an exchange of documents called 'pleadings' takes place between the plaintiff and the defendant to set out the issues of fact and of law to be decided in the court action. Before the trial each party is entitled to examine any documents that the other side intends to produce in evidence and to question the other party in a procedure called an 'examination for discovery', which takes place before a court-appointed examiner.

If the case is tried, the burden is on the plaintiff to provide evidence that the facts

support his/her case on the balance of probabilities. In civil trials the lawyer for the plaintiff will normally make an opening statement of what he/she intends to prove and give an outline of how that proof will be presented. In some circumstances, facts will be proved by an agreed statement or other form of documentary evidence, but normally witnesses will be called to prove the case for each side. Counsel for the plaintiff will question the plaintiff's witnesses concerning the evidence that they have to offer. This is called a 'direct examination'.

After each witness for the plaintiff has testified, the lawyer for the defendant asks that witness questions. The purpose of this cross-examination is to test the accuracy and reliability of the evidence, to bring out or emphasize matters that were missed or only touched on lightly in direct examination, and to help the judge or jury determine whether the witness is telling the whole truth as accurately as it can be told.

When the plaintiff's case has been presented, the defence has the opportunity if it desires to call evidence, and the same procedure of examination and cross-examination is repeated. Sometimes the plaintiff is allowed to introduce reply evidence. After all testimony has been given, each lawyer sums up the case for the judge or jury. If there is a jury, the judge will then 'charge the jury', that is, explain to the jury precisely what law must be applied to the particular case. After some deliberation, the judge or the jury then returns the verdict in favour of either the plaintiff or the defendant. In a civil jury trial five of the six jurors must agree on the verdict. The judge will then adopt the verdict, making it the judgment of the court. The judge may also order the losing party to pay 'costs' to the winning party to compensate for court-related expenses. Such costs do not usually reimburse a party for all expenses, but will cover a large part of them. In most civil cases the losing party can appeal the verdict to a higher court.

Most judgments in civil cases concern money for damages. However, in certain

cases, a judgment might include an 'injunction' ordering a defendant to refrain from doing something that the court has decided should not be done (usually interfering with the plaintiff's property rights or the enjoyment of property in some way). A judgment might also be for 'specific performance', that is, ordering a defendant to carry out a legal obligation under a contract.

In the vast majority of cases an unsuccessful defendant will obey the judgment of the court. In those relatively few cases where he/she does not, the law provides the successful plaintiff with various remedies. For example, a plaintiff whose judgment for damages was not satisfied can have the defendant's property or salary seized through the legal process. If the plaintiff were successful in obtaining an injunction and the defendant failed to obey the terms of that injunction, the plaintiff could have the defendant brought before the court for contempt; in this case the ultimate possible penalty is imprisonment.

Criminal prosecutions. There are three main types of criminal offence: offences punishable on summary conviction, indictable offences, and offences that allow the prosecutor to choose whether to prosecute by summary conviction or indictment. All offences against the Criminal Code as well as offences against a few federal statutes such as the Narcotic Control Act and the Food and Drugs Act are criminal offences. The court in which a case will be heard and the length and formality of a trial will be determined in many circumstances on the basis of the type of offence.

Summary conviction offences under the Criminal Code, such as disorderly conduct and wilful damage to property not exceeding \$50.00 are heard by a Provincial Court (Criminal Division) judge without a jury and with the minimum amount of delay,

hence the term 'summary trial'. The maximum penalty that can be imposed is a fine of \$500 or six months imprisonment, or both. Provincial Summary Conviction cases such as most traffic and liquor offences are heard in the Provincial Offences court usually presided over by a justice of the peace. Indictable offences, such as murder, robbery, breaking and entering, theft, fraud and false pretences over \$200 and possession of a narcotic for the purpose of trafficking, are more serious crimes and are tried by a more complex and formal procedure than are summary conviction offences. For many indictable offences the accused has the right to choose the level of court in which he/she will be tried and whether he/she wants a jury trial.

Either a police officer or a citizen may start a prosecution by lodging a complaint before a justice of the peace, but the accused can only be required to come to court either as the result of an arrest, or by the issuance of a summons or an appearance notice ordering the accused to appear before the court. When an accused person is arrested, he/she will either be released, or be held in custody for a bail hearing. Bail is meant to ensure that the accused will appear in court when required. It can be a simple promise to appear or the deposit of a sum of money or form of valuable property made by the individual or a friend on his/her behalf. If the accused fails to appear, the bail may be forfeited, in whole or in part. At a bail hearing a justice decides whether bail will be allowed and, if so, what it will be.

In a criminal case there may be several court appearances before the actual trial. These initial appearances involve matters relating to bail, the setting of a trial date and obtaining defence counsel. Eventually, on the date set for trial, normally because of the time required to prepare a case, the charge will be formally read to the accused before a judge. If the accused pleads 'not guilty', the trial will proceed. If the accused pleads 'guilty', the judge will normally hear a statement of the facts sufficient to

establish that the plea of guilty is the correct plea and if so will then register a conviction against the accused. The judge may then sentence the accused immediately or may defer sentencing to obtain and consider information for an appropriate disposition.

In some cases the defence and the Crown may participate in what is known as a plea discussion. In this relatively informal discussion the defence may ask the Crown either to proceed on a lesser charge, where the evidence justifies doing so, or to make submissions on sentence which are confined to a slightly lower range than the accused might ordinarily expect the Crown would suggest was appropriate. In return for obtaining these advantages or concessions, the defence will agree to plead guilty thereby saving the public the considerable expense occasioned by a protracted trial. Any agreement by the Crown and defence as to the appropriate range of sentence is not binding on the judge who has complete discretion to impose sentence he/she considers appropriate in the circumstances.

Where an accused is going to be tried in either the County Court or the Supreme Court, there will usually be a preliminary hearing to determine to the satisfaction of a judge of the Provincial Court whether there is sufficient evidence against the accused to justify a trial. The judge will then either discharge the accused or order him/her to stand trial.

Criminal trials follow a similar procedure to that of civil trials. However, the rule in criminal cases is that the accused is presumed to be innocent until proven guilty. This means that the prosecution must prove every element of the offence beyond a reasonable doubt; there is no obligation as a matter of law for the accused to prove his/her innocence. As a further protection for those charged with criminal offences, the law gives an accused the right against self-incrimination, i.e., the accused has the right to refuse to give evidence. If the accused does give evidence, he/she will be subject to cross-examination.

The trial itself usually starts with a summary of the facts of the case presented by the Crown Attorney. The prosecution and the defence then have the opportunity to present evidence and cross-examine witnesses as in civil trials. After the presentation of evidence for the defence, the Crown Attorney may be given a further opportunity to call evidence in reply, and the accused may then be given an opportunity to call further evidence as well. Both sides then make their final arguments to the court.

If there is a jury, the judge summarizes the evidence and instructs the jury as to the various possible verdicts and the law that applies in the particular case. In a criminal trial, a verdict of guilty or not guilty can be brought in only if the jurors are unanimous. If the jurors cannot agree on a verdict, a new trial with a new jury may commence. If there is no jury, the judge will announce the verdict. If the defendant is found guilty, the judge will impose the sentence.

The Structure of the Courts

The Civil Court System

Civil cases may be heard in several courts. The decision as to which court has the power to hear a particular case is sometimes based upon the amount of money at issue, sometimes on the nature of the dispute. This will become clearer as the various courts are described. In Ontario, there are several levels of courts as well as two parallel systems, as the diagram illustrates. A decision given in a lower level court can generally be appealed to a court at a higher level.

It might be assumed from the diagram that a decision by a court can be appealed to a court on an immediately higher level. This will not always be true. The problem follows because of two important laws: some courts have both a trial and an appeal function; and some courts that are basically appeal tribunals have statutes that limit their right to hear appeals in some types of cases. To take one example from many, the

High Court of Justice, a court whose basic function is to hear trials, has the power to hear appeals in juvenile delinquency matters from the decisions of the Provincial Court, Family Division. On the other hand, the Supreme Court of Canada, a tribunal whose basic function is to hear appeals, is not allowed to hear certain types of appeals.

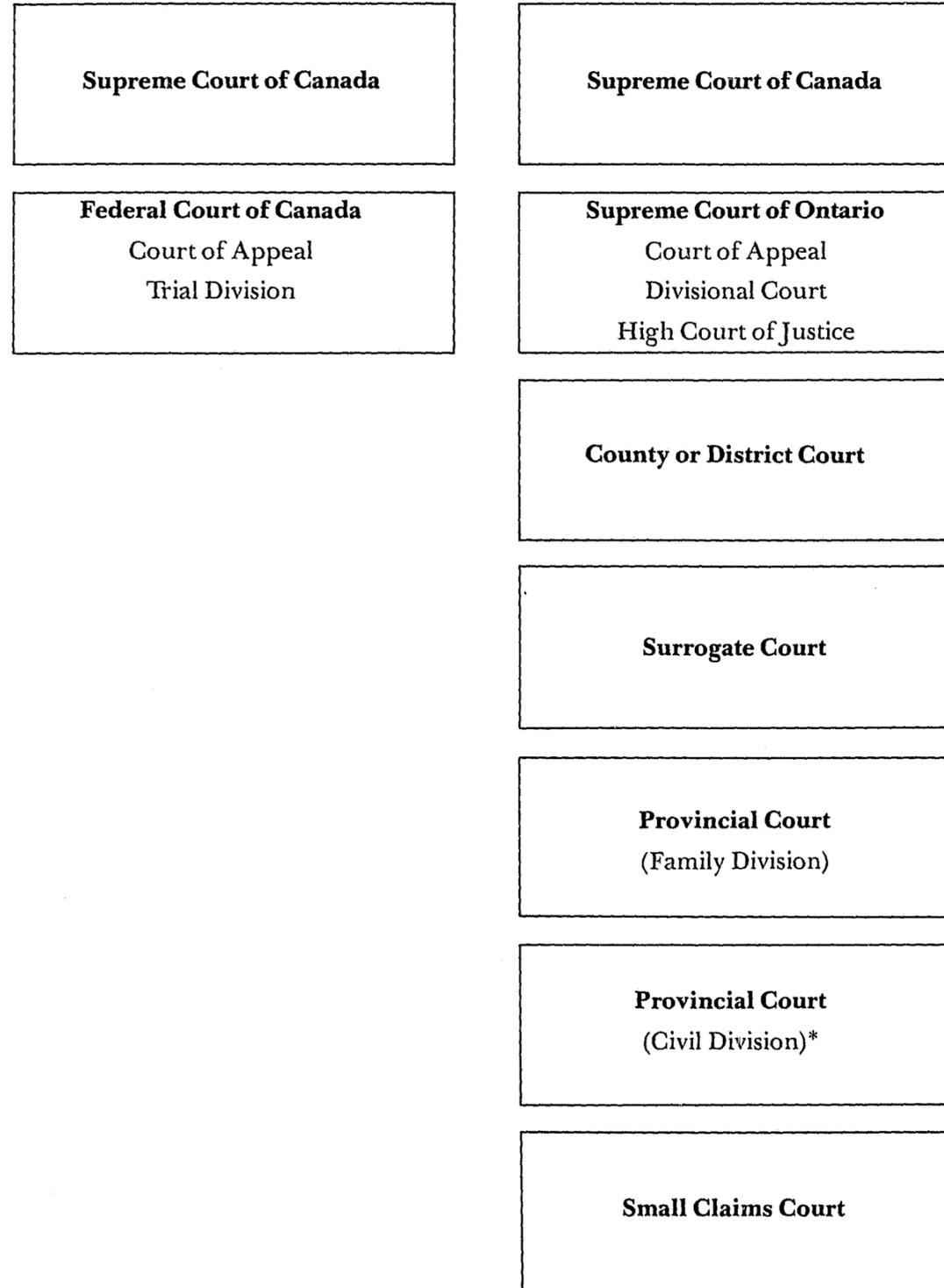
Small Claims Court. Because day-to-day living creates numerous claims for relatively small amounts of money, Small Claims Court was set up to settle monetary disputes quickly, informally and inexpensively. Parties frequently present their own cases without the services of lawyers. Trials are by judge alone without a jury, and a modest fee is charged to cover all the necessary court paperwork and the expense of collecting money from debtors. In 1978, these courts handled almost 70 per cent of all civil disputes in Ontario.

Each county or district in Ontario has at least one Small Claims Court to deal with claims for damages up to \$1000.* If a plaintiff's claim exceeds the maximum figure, the plaintiff may still choose to go to Small Claims Court because it is easier, cheaper and faster than other courts. However, the claim must be limited to \$1000, and the plaintiff then forfeits the right to sue for the excess in any court.

Regardless of the size of the claim, Small Claims Court has no jurisdiction over certain types of claims, such as wills, libels, recovery of land and defamation. In addition, it cannot grant certain remedies such as injunctions. Appeals of decisions in this court may be taken to the Divisional Court of the Supreme Court of Ontario in certain circumstances in cases involving \$500 or more, or on consent.

*On June 30, 1980, the Provincial Court (Civil Division) Project Act was proclaimed in force. This new court is limited to Metropolitan Toronto. It has taken over the jurisdiction of the Small Claims Court in this area and, in addition, has jurisdiction over most types of civil claims up to \$3000. If the new court is successful in this area, it may be extended to other parts of the province.

THE CIVIL COURT SYSTEM



*In Metropolitan Toronto only

Provincial Court (Family Division).

Provincial Courts (Family Division) exist in each area of Ontario (with the exception of Hamilton-Wentworth). They have two broad areas of jurisdiction: family matters other than divorce, and trials of juveniles. (In Ontario, persons under sixteen years of age are charged with being juvenile delinquents in relation to breaches of federal or provincial statutes or municipal by-laws. Trials of juveniles are dealt with further in this booklet in the section entitled The Juvenile in the Justice System.)

The family matters that are heard in family court include cases of neglected or abandoned children, spouse support, child support, spouse assault and other related incidents involving close family members. Counsellors are available in many of these courts to meet with couples who are in conflict to try to deal with the conflict and to supplement the court proceedings.

The atmosphere in these courts tends to be rather informal. However, because of the intimate and sometimes painful nature of the matters that must be discussed in family courts, the usual rule is that the public and the press are excluded and the identification of the parties is prohibited (except for support and custody cases or criminal cases). Often, because different courts have different areas of jurisdiction in family law matters, family members start proceedings in different courts and go through two or more trials before all the issues in their dispute are finally settled. The suggested solution to this problem: one court with the power to decide all issues in any family matter. Ontario has approved this solution by passing the Unified Family Court Act. A test project in Hamilton-Wentworth has proved successful, and the Ministry of the Attorney General is considering establishing Unified Family Courts in other areas of the province.

Surrogate Court. This court exists in each county or district in Ontario and has jurisdiction generally in matters relating to the estates of deceased persons. Matters relating to creditors and beneficiaries of the deceased are also considered here. In the case of intestacy (where a person dies without having made a will), the court supervises the partition of the estate among the next of kin.

County or District Court. This court is basically an intermediate trial court which handles disputes over larger sums of money than does Small Claims Court. Generally, it has the power to hear all matters in which the amount of the claim is less than \$15,000. However, if all parties consent, it can hear cases involving greater sums of money. In some cases, such as admiralty claims (disputes arising from carrying passengers or goods on a ship), the County Court has no jurisdiction regardless of the amount of money claimed.

Because of the greater sums of money involved, the County Court follows a more formal and costly procedure than that of the Small Claims Court. Most parties are represented by lawyers. In County Court parties can choose to have a case tried by a judge sitting with a jury of six members. In such trials the jury decides the facts of the case under the direction of the judge. Five of the six jurors must agree with the decision reached. However, most County Court cases are tried by a judge sitting without a jury because of the added length and cost of jury trials.

Supreme Court of Ontario. This court consists of the High Court of Justice, the Divisional Court and the Ontario Court of Appeal. The function of each of these courts is described below.

High Court of Justice. This court has trial jurisdiction over the most serious criminal and civil matters in Ontario. In civil cases it has jurisdiction over all money matters regardless of their value. However, a person who sues in the Supreme Court but is awarded less than \$15,000 (the limit of the County Court's jurisdiction) can be forced to pay some court costs to the defendant. As a result, almost all money claims in this court are for more than \$15,000.

The High Court also has the power to hear many disputes relating to family matters, such as divorce, annulment of marriage and custody of children. It also deals with bankruptcy. The High Court is the court of residual jurisdiction in Ontario. Thus, if the law does not specifically indicate the court in which a particular case should be heard, it will be heard in this court.

Cases in the High Court of Justice are heard by a single judge, with or without a jury.

Divisional Court. This court acts as an appeal court for certain courts and hears appeals from tribunals and proceedings for judicial review of administrative actions. Thus, one of its primary functions is to supervise and review the way in which Ontario administrative boards and tribunals do their work. Cases are heard by a panel of judges drawn from the High Court of Justice.

Court of Appeal. This court, which usually sits as a panel of three judges or, on occasion in important cases, five judges, hears appeals from the judgments of the High Court, the Divisional Court and the County Court. In certain cases the dissatisfied party can appeal from it to the Supreme Court of Canada.

Federal Court of Canada. The Federal Court consists of a Trial Division and a Court of Appeal. The Trial Division hears cases that involve claims against the federal government or any of its agencies as well as certain special federal matters such as admiralty cases. There is no provision for jury trial in this court. Appeals from the Federal Court Trial Division go to the Federal Court of Appeal and from there to the Supreme Court of Canada. In addition, the Federal Court of Canada has exclusive authority to review decisions of the federal administrative tribunals.

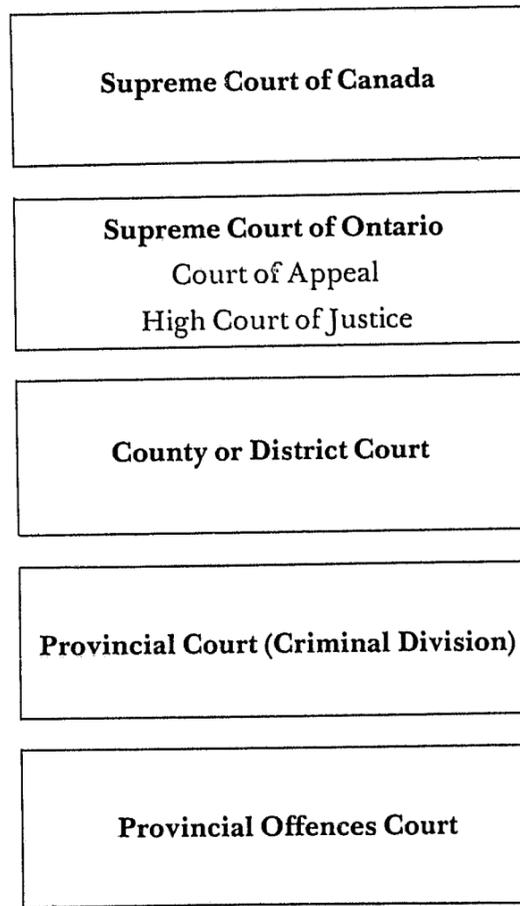
Supreme Court of Canada. This is the final court of appeal in Canada. It hears appeals from the Ontario Court of Appeal in both civil and criminal matters. It also hears appeals from the Federal Court.

However, it is more than just an appeal court, since it has a very special original jurisdiction in constitutional matters. The federal government may refer to it certain questions, such as whether a particular statute is in accordance with the Constitution. As well, if certain ordinary disputes between people raise constitutional difficulties, the conflict may be brought ultimately before the Supreme Court of Canada.

The Criminal Court System

As the diagram illustrates, there are several levels of criminal courts in Ontario. Cases tried in a lower court can generally be appealed to a higher level court. However, the reader should not assume from the diagram that an appeal will necessarily be from a court at one level to the court at a level immediately higher. For example, some appeals from the Provincial Court (Criminal Division) are heard by the County or District Court, others are heard by the High Court of Justice and still others may be heard by the Court of Appeal.

THE CRIMINAL COURT SYSTEM



Provincial Offences Court. Until recently, offences against provincial legislation were dealt with in Provincial Court (Criminal Division). Because it was felt that the relatively rigid and formal procedures of this court were inappropriate for the great majority of minor regulatory offences, a Provincial Offences Court was established under the Provincial Offences Act, 1979. The purpose of this act is to simplify the procedure for the prosecution of provincial offences and municipal by-laws such as housing standards. The former specialized courts of the Provincial Court (Criminal Division), colloquially designated as 'traffic court' and 'liquor court', have now been subsumed under the Provincial Offences Courts. Often a justice of the peace presides in these courts.

The Provincial Offences Act creates a procedure whereby the court deals with minor offences conveniently, efficiently and quickly. In addition, the legislation provides effective means for collecting fines, with such provisions as longer collection periods or periodic payments rather than jailing people who do not pay. However, if the court must sentence an offender to jail for defaulting on the payment of a fine, the jail terms for each default must be served consecutively.

One of the purposes of this new legislation has been to make the machinery of justice more accessible to individual citizens. The act stresses flexibility and simplicity.

Persons charged under the Provincial Offences Act may receive an 'offence notice', which sets out the procedures. They must, within fifteen days, exercise one of the following options:

- sign the plea of 'guilty' on the offence notice and forward it to the court office with the amount of the fine;
- sign the plea of 'not guilty' and the court will set a time and date for the trial;
- appear at a convenient time before a justice of the peace at the place named on the offence notice, not to dispute the charge, but to explain the circumstances surrounding the incident and/or to request more time to pay the fine.

Provincial Court (Criminal Division). These courts, presided over by judges appointed by the Ontario government, have jurisdiction to try persons charged with most offences created by the Criminal Code and other federal legislation, and all offences created by provincial legislation. Approximately 90 per cent of all criminal cases are processed here. The court also holds preliminary inquiries for cases proceeding to higher courts. Proceedings before the Provincial Court (Criminal Division) are before a judge alone, without a jury, and are usually summary in nature.

County or District Court. A person accused of an indictable offence that is not in the absolute jurisdiction of the provincial judge and is not one customarily tried before the High Court of Justice may elect to be tried before a County or District Court judge sitting either alone or with a jury. Where the judge sits alone, this court is known as the 'County or District Court Judges Criminal Court'. Where the judge sits with a jury, the court is known as the 'Court of General Sessions of the Peace'. Both courts exist for every county and district in Ontario.

Appeals on summary offences originally tried in Provincial Court (Criminal Division) may be heard in these courts. In certain circumstances appeals from the Provincial Offences Court will also be presided over by a judge of the County Court.

Supreme Court of Ontario. This court is made up of the High Court of Justice and the Ontario Court of Appeal. The function of each of these courts is described below.

High Court of Justice. This court has jurisdiction to try any indictable offence. All criminal trials in this court are heard by a justice of the High Court, sitting with or without a jury. The vast majority of offences tried in this court are the most serious offences such as murder, manslaughter, criminal negligence and rape.

Court of Appeal. This court has jurisdiction to hear appeals from convictions, sentences or acquittals of indictable offences and appeals from orders of the High Court of Justice, or County or District Court dismissing or allowing appeals from a conviction sentence, or acquittal in a summary conviction case.

Persons convicted of indictable offences can appeal to the Court of Appeal against the conviction as of right on a question of law and with leave of the court on a question of fact or against sentence. The Attorney General can appeal an acquittal on an indictable offence on a question of law as of right and a sentence with leave of the court.

Those persons convicted of summary conviction offences created by federal statutes may appeal either to the Supreme Court of Ontario or to the County or District Court. A further appeal to the Court of Appeal is available with the permission of that court, but only on a question of law. Those persons convicted of provincial offences can appeal to a judge of the Provincial Court (Criminal Division) if the offence was tried by a justice of the peace, or to a judge of the County Court if the offence was tried by a provincial court judge. A further appeal to the Court of Appeal is available with permission of that court, but only on a question of law. The Attorney General has similar narrow right of appeal in summary conviction offences created by Federal Statutes and with respect to provincial offences.

Supreme Court of Canada. This is the highest court of appeal in Canada. Appeals from the Ontario Court of Appeal are heard in this court. See the note on this court in the previous section on civil courts.

Tribunals, Boards and Commissions

In addition to the civil and criminal courts described above, Ontario's justice system also contains a number of tribunals, administrative boards and commissions. Among those set up by legislation in Ontario are the Workmen's Compensation Board, the Ontario Labour Relations Board, the Ontario Securities Commission, the Ontario Municipal Board and The Criminal Injuries Compensation Board. Federal tribunals include the Income Tax Appeal Board and the Immigration Appeal Board. The names of these boards and tribunals give an indication of the significance they have in our society. These bodies decrease the workload of the regular courts and provide specialized expertise in particular areas. They have the authority to make rulings and administer decisions on questions arising within their specific areas of jurisdiction. In certain circumstances, such decisions made by tribunals established by the law of Ontario can be appealed to the Divisional Court of the Supreme Court of Ontario.

Criminal Injuries Compensation Board.

The Criminal Injuries Compensation Board hears applications for awards of financial compensation to victims of crimes of personal violence. Financial compensation may be made where any person is injured or killed by any act or omission in Ontario of any other person occurring in or resulting from:

- the commission of a crime of violence (apart from motor vehicle offences) constituting an offence against the Criminal Code of Canada;
- lawfully arresting or attempting to arrest an offender or suspected offender;
- preventing or attempting to prevent the commission of an offence or a suspected offence;
- assisting peace officers in executing their law enforcement duties.

'Injuries' are broadly described in the legislation to mean actual bodily harm, including mental or nervous shock and pregnancy. Compensation may be awarded for a broad range of pecuniary losses and expenses, as well as for pain and suffering, or the maintenance of a child born as a result of rape.

Generally speaking, in the case of injuries, compensation may be made to the victim, or to the person responsible for his/her maintenance, and in the case of death to the victim's dependents or the person who was responsible for maintaining the victim.

Correctional Services for Adults

Correctional Services for Adults

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Correctional services that come into play after the sentence are part of the justice system, and as such they must be consistent with and supportive of the aims of the police and the courts. The primary function of correctional services is to carry out sentences handed down by the courts. Within this framework, correctional services must offer offenders the human and physical resources they need so that they can return to the community as contributing members of society.

Whenever possible, it is considered best to work with offenders in the community. Here family and social relationships can be maintained. Many resources are available, and offenders can productively discharge their responsibilities as citizens. These responsibilities include supporting themselves and their families, as well as making reasonable reparation to the victims of their crimes.

Corrections in the community offers many advantages over incarceration. It avoids exposing offenders to the negative influence of the criminal value system of the prison. It eliminates the stigma attached to having served a prison sentence, thus giving individuals a better chance of finding acceptance in society. Involving the public in corrections results in increased public understanding of crime and of those who commit crimes and

prepares the community for the return of offenders. As well, community corrections is much less expensive than incarceration and thus represents a considerable saving of public funds.

Correctional services are a responsibility of both federal and provincial authorities. In general, the federal government is responsible for adults (sixteen years of age and over in Ontario) sentenced to two years or more; the provincial government is responsible for adults sentenced to less than two years.

Provincial adult correctional services in Ontario are provided by the Ministry of Correctional Services. The federal services are provided by Correctional Services Canada.

The services to juveniles (under the age of sixteen) are provided by the Ministry of Community and Social Services (see *The Juvenile in the Justice System*).

Types of Institutions

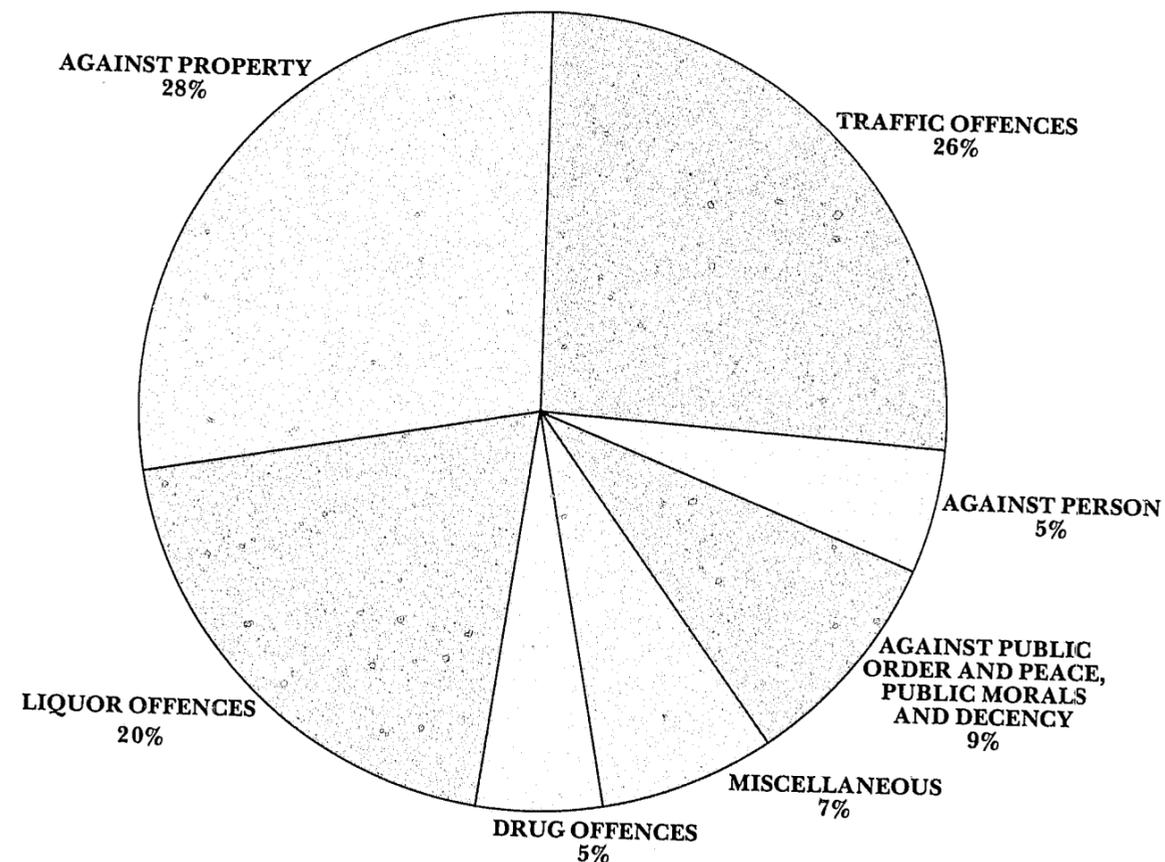
Provincial institutions. Ontario operates four basic types of correctional institutions: jails and detention centres, an adult training centre, correctional centres and treatment facilities.

Jails and detention centres are all maximum security institutions and range in capacity from 12 to 340 beds. In general, they house inmates awaiting trial or sentencing, those being held for immigration hearings or for deportation, those awaiting transfer to federal institutions and those serving very short sentences. The average length of stay in a jail or detention centre is three weeks.

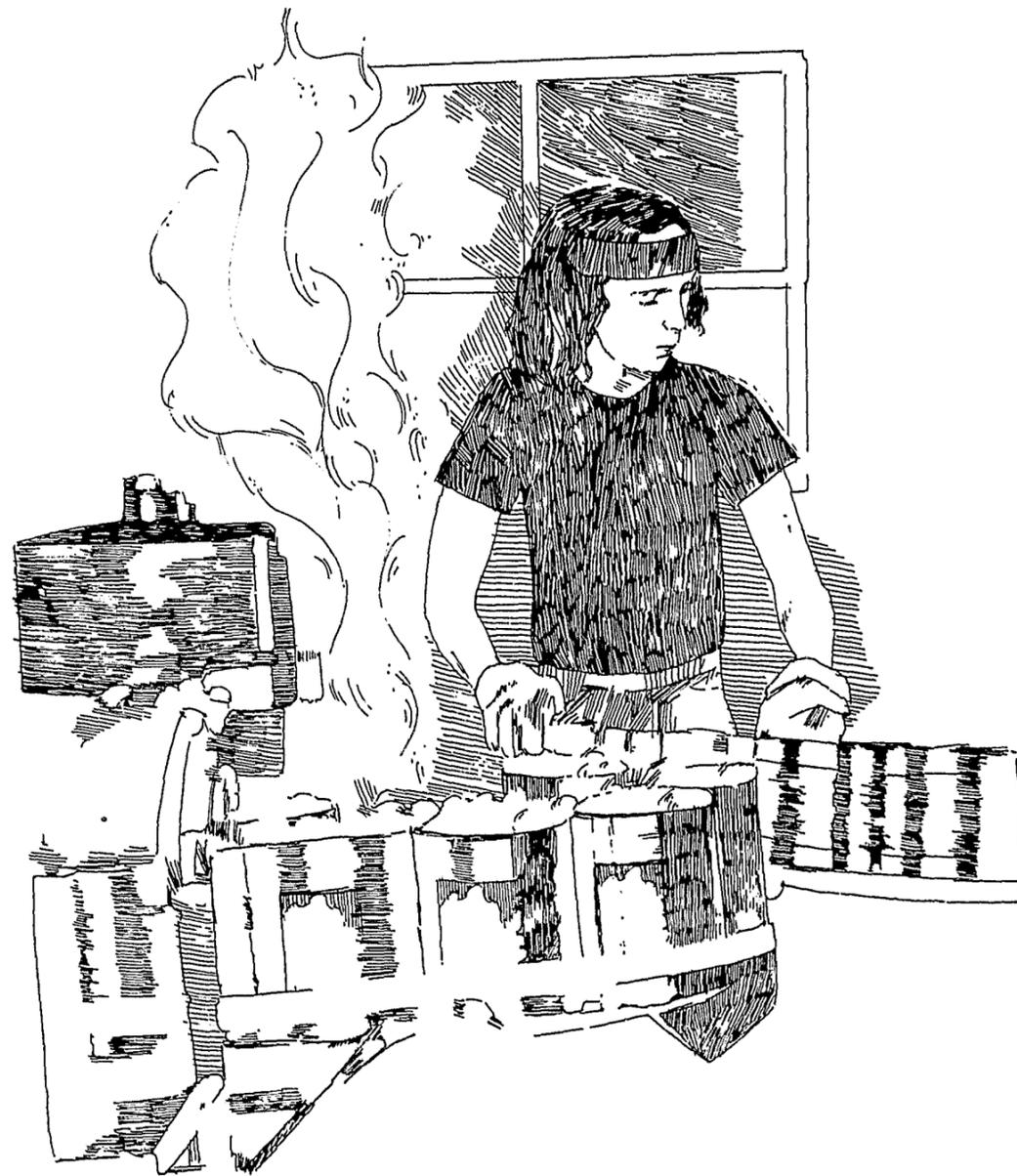
The diagram shows the proportion of offenders admitted to jails and detention centres according to the types of crimes committed.

The institution to which offenders are first assigned after leaving jails and detention centres is determined by a classification procedure which takes into account their age, previous criminal history, mental and physical health, educational background and work experience, the area of the province in which they reside, the factors contributing to their antisocial behaviour, their potential for rehabilitation and the accessibility for family visiting. The overriding consideration is, of course, the safety of the general public.

Types of Crimes Committed by Offenders Admitted to Ontario Jails and Detention Centres Fiscal Year 1980-81



SOURCE: Ministry of Correctional Services, 1982



The Cannery-Burtch Correctional Centre

The adult training centre offers academic upgrading and vocational training programs approved by the Ontario Ministry of Education for inmates classified as potentially able to benefit from them.

Correctional centres emphasize industrial and trade training and work experience. They provide some shop classes in areas such as sheetmetal work and motor mechanics, and useful work experiences through institution maintenance, such as drycleaning and laundering, painting and general care and clean-up of the buildings. A canning operation run by one of the correctional centres produces cans of fruit, vegetables, jams and juice for Ministry use, as well as for sale to other ministries. Further, inmates at some institutions earn regular wages by working for private companies that have leased space on institution property.

The centres offer academic and vocational training programs. Selected inmates may also attend such classes in the community.

The Vanier Centre for Women is the only provincial correctional centre for women. The emphasis here is placed on academic, vocational and life-skills programs. The centre receives all women sentenced to provincial terms except those from the far northern section of Ontario, who are generally housed in the Kenora jail. When maximum security is required, women are transferred to the Metropolitan Toronto West Detention Centre.

There are two *treatment facilities* in Ontario. The Guelph Assessment and Treatment Unit (GATU) provides psychiatric assessment for male offenders referred from any ministry facility. After assessment, inmates may be returned to the referring institution with recommendations for treatment, committed to an Ontario psychiatric facility, kept on as patients at GATU, or provided with outpatient care while staying in the Guelph Correctional Centre.

The Ontario Correctional Institute in Brampton consists of a classification unit and treatment units. Admission to a treatment unit may be directly from the classification unit, by referral from other correctional institutions or on admission under Section 38 of the Liquor Licence Act. Here teams of correctional workers, psychiatrists, psychologists, social workers, chaplains, medical staff and recreation specialists work together to design treatment programs for chronic alcoholism, drug abuse, sexual maladjustment and other problems.

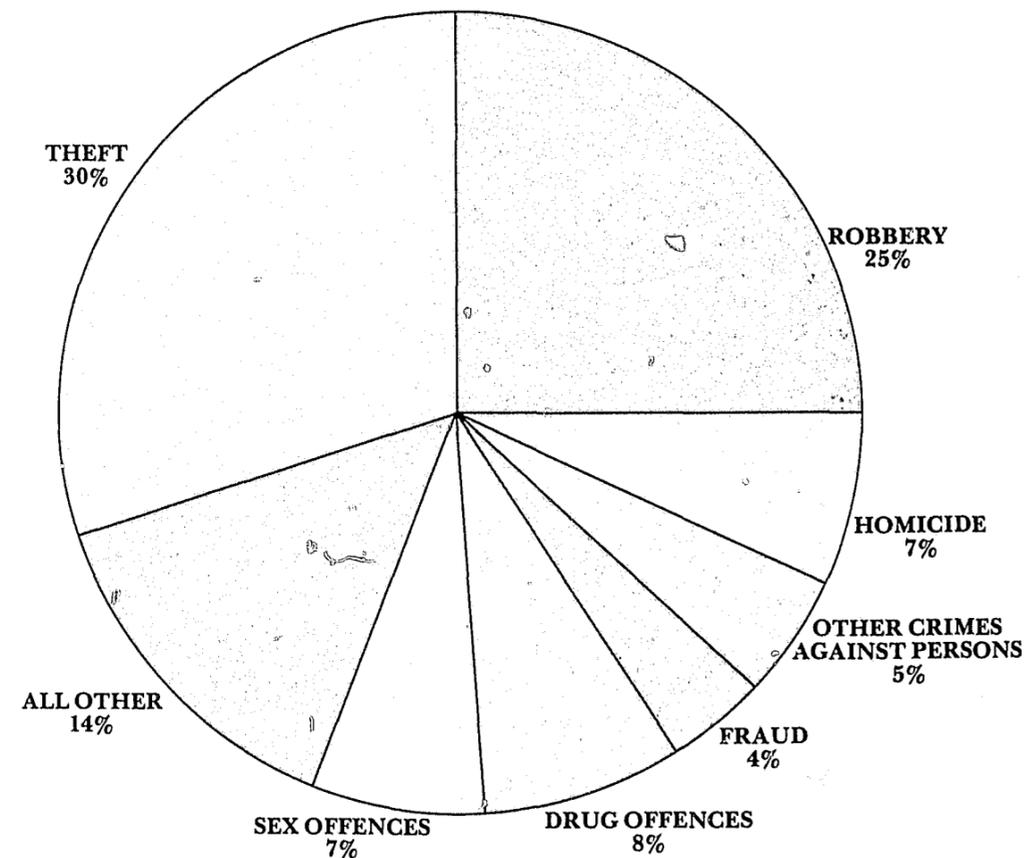
Federal institutions. There are three types of federal correctional institutions: maximum, medium and minimum security. Offenders are sent to a particular type of institution according to their needs and their potential danger to society.

Male offenders are observed and classified at maximum security institutions and regional reception centres. Offenders who appear likely to benefit from special occu-

pational or other training, or who need special medical treatment, are transferred to medium and minimum security institutions or to specialized institutions. Women offenders are sent directly to the Prison for Women in Kingston.

The diagram shows the major offence committed by offenders currently admitted to federal institutions.

Major Offence Committed by Offenders Admitted to Federal Institutions, Fiscal Year 1980-81



SOURCE: Correctional Services Canada, 1981

Bail Verification and Supervision

In certain cases the court may deny bail to the accused and order him/her to be held in detention until the trial. The court may do so either because of a fear that the accused will engage in dangerous and harmful acts before the trial, for example, or because of a belief that the accused will not appear at trial unless held in detention.

Many of those now held in detention could be released with some confidence that the public would not be endangered if there were other methods to control an accused pending trial. One that is now being used (on an experimental basis) in selected areas of the province is 'bail supervision'. This includes a monitoring of the individual's behaviour in the community to ensure that he/she complies with the conditions imposed by the judge in the release order. For example, an accused who is alleged to assault others when drunk may be released on condition that he/she abstains from alcohol. To ensure that the condition is obeyed, the court may order that the accused be supervised in the community by a responsible agency.

Again, many persons are held in detention pending trial because of a lack of reliable information about them that would satisfy the court that they are likely to appear at their trial. Projects are now being operated in selected areas of the province to see if the numbers of those detained for this reason can be reduced. In these projects of 'bail verification', an accused is interviewed prior to the first court appearance or bail hearing to confirm the person's residence, employment or educational status, family and community ties and the availability of potential sureties. A report is prepared of this verified information which is made available to the Crown, defence and judiciary.

Probation—An Alternative to Incarceration

Probation is court-ordered community supervision and is a major sentencing alternative to incarceration in Ontario. After taking into account the age and character of the accused and the nature and circumstances surrounding the offence, the court may place the offender on probation for a period of up to three years. In so doing, the court suspends the passing of the sentence and orders the offender released into the community under the supervision of a probation and parole officer.

A probationer must meet a number of conditions that are set out in the probation order. For example, a probationer must keep the peace and appear before the court as required. The court may also require the probationer to report to a probation officer, and possibly to find and maintain employment, to provide for the support of dependents, to abstain from the use of alcohol and drugs, to make restitution, to remain within the jurisdiction of the court, to give notice of any change of address and to comply with any other reasonable condition.

Probation officers identify the needs of individuals and refer probationers to agencies that provide services in such fields as mental health, welfare, training, education or job placement. In the case of individuals who have minimal skills and difficulty in maintaining jobs, probation officers refer offenders to appropriate community resources providing life skills, job or academic training (e.g., community colleges). Probation officers also maintain employment contacts and establish job pools so that they can match probationers with appropriate employment.

The court may specifically order probationers to participate in programs for alcohol-related offences, carry out community service or provide restitution as illustrated by the following.

Programs for alcohol-related driving offences. These programs, organized by probation staff, exist in a number of locations in Ontario and usually focus on second-time offenders. The probationer is required to attend a number of classes that emphasize the dangers involved with drinking and driving and aim to educate the drivers. Often lectures are given by local judges, Crown Attorneys, police, doctors and/or public health officials. Attendance is strictly enforced, and a missed class may mean a jail sentence.

Community service orders. Community service orders are a means of dealing with non-violent offenders in their own communities. They offer an alternative to incarceration when the court feels that the usual probation requirement is an insufficient penalty and that the offender will benefit in addition by performing some direct service to the community.



The judge specifies the number of work hours to be contributed, and the period within which the work must be completed. Offenders who receive community service orders have a chance to use their skills and abilities to repay their debt to society. An order may have no direct relationship to the particular crime, and the offender may be assigned a general social service type of activity which is of tangible benefit to the community. Working with the handicapped, coaching a sports team or cutting grass for an elderly person are some such activities. On the other hand, those committing acts of vandalism may find themselves cleaning up and repairing the damage that they have caused.

Since a major objective of the program is to encourage community participation, several community agencies with provincial funding sponsor projects. Community agencies also support the program by accepting offenders as volunteers into their regular volunteer programs.

Restitution. Restitution involves the personal payment of money or the doing of work by an offender for the purpose of making good the damage caused to the victim. In addition to being a condition of probation, restitution may also be ordered by the court if a victim applies directly.

The judge may order a specific amount of restitution to be paid or, through the efforts of a third party, an agreement will be reached as to the amount of restitution to be paid. This might be full or partial compensation for the victim's losses and might take the form of unpaid work for the victim in lieu of a cash settlement.

When a judge orders restitution, special emphasis may be placed on the reconciliation of the victim and the offender. Through such a reconciliation, with the help of a third party, the victim not only receives financial compensation, but also may become personally involved in helping the offender to become aware of the economic and emotional consequences of the offence, to come to terms with it and to make good on that account.

Moving Back into the Community

Temporary Absence program. Any inmate may apply for an absence from an institution in order to take part in humanitarian or rehabilitative programs operating within the community. Such an absence may be for as little as a few hours or may involve longer periods of time. Applicants are carefully screened for their suitability. In the case of a violation of the terms of the absence, the privilege can be revoked or withdrawn.

The Temporary Absence program allows inmates to continue employment, develop new work skills, further educational qualifications, and maintain contacts with their families and the community while completing a sentence of incarceration. It also encourages responsible attitudes toward family, victims and society in general. Society benefits as well because inmates are given an opportunity to provide financial support to their own families and to contribute toward the payment of room and board at an institution or Community Resource Centre. During the time that Ontario's Temporary Absence program has been in operation, about 98 per cent of the temporary absences have been completed successfully.

Community Resource Centres.

Community Resource Centres are halfway houses between provincial institutions and the community. They allow inmates to serve all or part of their sentences in a community residence. They provide an environment of co-operation and learning in which selected inmates may gradually

reintegrate into the community while holding jobs and learning life skills during their sentences. They also give inmates the opportunity to make restitution to their victims. In such cases the offender and the victim reach an agreement on the amount of restitution to be paid, and payments are made once the inmate has found employment.

The centres are operated across Ontario in both rural and urban communities by community agencies and groups that enter into agreements with and are paid by the Ministry. The centres are segregated by sex and usually house from seven to eighteen residents at a time. A number of centres have been established for, and are staffed by, Native persons. One centre exists to house women offenders.

All inmates are eligible to be considered for the Community Resource Centre program, but those who have committed crimes of violence will not normally be recommended. Once accepted by a centre, offenders agree to abide by the house rules and to share in the household chores. Wage earners pay a portion of their wages toward room and board as well as toward the support of their families where this is possible.

Offenders work or attend academic or vocational training programs in the community and return to the centre each evening. Counselling is available, and programs are designed to encourage the residents to develop a responsible attitude toward their own lives. However, residents who are unable to make purposeful and positive use of the program or who commit repeated infractions may be returned to the institutions.

Pre-release centres, called Community Correctional Centres and halfway houses, are used by the federal system to accelerate the adjustment of offenders to the community.

Parole. Parole is the early release of an inmate from either a provincial or federal institution so that a part of the sentence may be served in the community under certain conditions and under the supervision of a parole officer. Inmates who violate these conditions may be returned to prison.

Parole is designed as a logical step in the total correctional process and is aimed particularly at assisting offenders to reintegrate into the community as contributing and law-abiding citizens.

All inmates serving a term of six months or longer in a provincial institution are automatically considered for parole by the Ontario Board of Parole. Inmates must serve one-third of their sentences in the institution before parole can be granted. For sentences of less than six months, a written application for parole is required. Parole for inmates in federal institutions is considered by the National Parole Board.

When parole is considered, the inmate's case is reviewed, including such information as the inmate's proposed parole plan, details of the inmate's trial and any previous criminal record, relevant social history, the superintendent's assessment of the inmate, any medical reports, and representations from lawyers, family members and the inmate as well. The inmate is notified in writing of the parole board's decision.

Role of the Voluntary Sector and Volunteers

Effective correctional services require the involvement of the public and the participation of community organizations and volunteers. Voluntary agencies such as the Salvation Army and the Elizabeth Fry and John Howard societies provide direct services and programs both through staff and volunteers. They offer such support as living accommodation to offenders and help with family problems at various stages of the correctional process; provide probation services to the courts; supervise a substantial portion of the parolees released by the parole boards; provide a variety of

services to inmates, from supplying visitors on a friendship basis to providing reading or recreational material; help ex-inmates who are not on parole and who request assistance in getting re-established; and work with families to prepare them for the inmate's return.

In addition, voluntary agencies spend considerable time in developing the public's interest in correctional matters. The agencies recognize that direct involvement by volunteers in their programs is an excellent way for citizens to learn about the justice system. In this way, members of the public are involved in the planning of agency programs and in direct service to the offender.

A number of self-help groups, made up largely of ex-inmates, also assist in the corrections field. Organizations like the Fortune Society concentrate on the special problems ex-offenders have in finding employment. Others, like Operation Springboard, provide transportation services for family members visiting inmates in certain institutions, as well as offering counselling, job-finding, and family support services to those inmates who wish to make use of them.

Volunteers working within the provincial Probation and Parole Service have increasingly supplemented the range of services provided by officers. In addition to supervising probationers, they assist with presentence report preparation and participate, in certain locations, in victim-offender restitution and community service projects. They are also active in the courts and in research.

In institutions, individual Ministry volunteers also bring enrichment and diversification to programs. Their activities include teaching life skills, arts and crafts and remedial reading, tutoring, conducting recreation programs, doing psychological testing, escorting inmates into the community and finding jobs for them. Volunteers are in a special position to develop a relationship of trust inside an institution and to break down inmates' feelings of isolation.

Special Services for Native People

A special probation and parole program for Native people operates in Northern Ontario and in other areas of the province that have significant Native populations. The Ministry of Correctional Services employs Native workers and Native volunteers on a fee-for-service basis to supervise probationers or parolees. Volunteers oversee individuals on reserves and in settlements in the remote northeast and northwest areas of the province, which cover a physical area equal to more than one-half of Ontario's total area.

Native self-help organizations such as the National Association of Friendship

Centres are also involved in helping Native people cope with the correctional system. Native self-help groups operate in major institutions in which there is a significant Native population.

Investigation of Complaints

The Ontario Ombudsman investigates complaints from or on behalf of all offenders who are under the jurisdiction of the Ministry of Correctional Services.

Similarly, the Correctional Investigator of Canada investigates complaints from or on behalf of all offenders under the jurisdiction of the Correctional Services of Canada.



The Juvenile in the
Justice System

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The Juvenile in the Justice System

Introduction

Juveniles and the Police

Juveniles and the Courts

Services for Juveniles

New Legislative Proposals

Introduction

Children and young people who are in conflict with the law are dealt with differently than are adult offenders. Under the Criminal Code of Canada, the minimum age of criminal responsibility is seven years. However, children under fourteen years of age cannot be convicted of an offence if they are not competent to know the nature and consequences of their conduct and that it was wrong. The federal law that governs how children under a certain age shall be dealt with is the Juvenile Delinquents Act. This act states that a child shall be dealt with not as an offender, but as one in a condition of delinquency and therefore requiring help, guidance and proper supervision.

In Ontario, children under sixteen years of age are considered to be 'juvenile delinquents' if they commit a violation under the Criminal Code, any other federal or provincial statute or a municipal by-law, or if they are guilty of sexual immorality or any similar form of vice. The Ontario Education Act also provides that children who refuse to attend school or who are constantly absent may be considered juvenile delinquents and thus liable to the penalties provided for under the Juvenile Delinquents Act.

Juveniles and the Police

The police use considerable discretion in their dealings with juveniles. Often they try to influence behaviour by referring young people to community agencies or by discussing their behaviour with parents rather than laying a charge. The large municipal and regional police forces have specialized youth bureaus and specially trained officers who work with young people.

The Juvenile Delinquents Act provides that when young people are apprehended, they shall not be detained, pending a hearing, in a place where adult offenders are detained. There is a system of observation and detention homes throughout Ontario for this purpose.

In emergency or crisis cases, children may be temporarily placed in observation and detention homes by police officers. However, the matter of detention must come to court for a judicial decision within twenty-four hours or as soon thereafter as possible.

Once a young person has been charged with a delinquency, there may be a period of time before the trial can take place. Sometimes a trial may be postponed if there is a need to determine whether the juvenile is fit to proceed to trial. In such cases, the court may accept bail to ensure the child's appearance at the trial and to avoid having to detain the child in an institution. Alternatively, the court may call

for a written or verbal promise from the person responsible for the child's appearance in court.

In the event that the child may be a threat to public safety or if it is the only possible way of ensuring that the child will appear for trial, the judge will order the child placed in an observation and detention home. The Ministry of Community and Social Services maintains a number of homes for this purpose and has made agreements with private agencies for the establishment of others. While children are in the care of such homes, attention is paid to meeting their recreational and social needs. As well, the Ministry of Education provides teachers to work with students on an individual basis.

When the supervision of children in a residential setting is considered necessary, the following possibilities are available to meet different needs:

- open detention of the child in a group home or family setting staffed by house parents;
- semi-secure detention of the child in a residence where locked rooms are available for children who are temporarily uncontrollable;
- secure detention of the child in a residence in which the outer doors and windows are locked.

Juveniles and the Courts

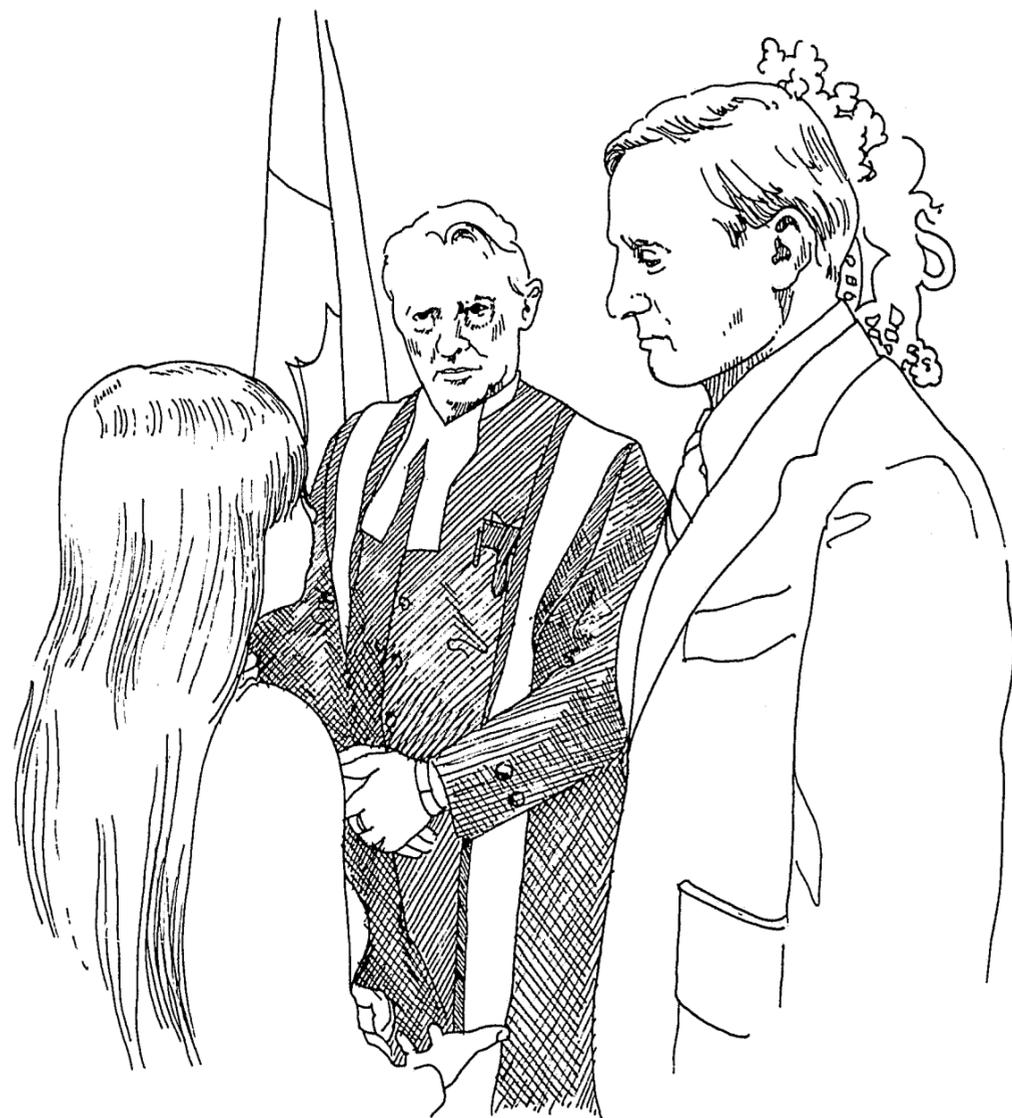
A young person charged under the Juvenile Delinquents Act will appear in a juvenile court. In Ontario, such trials take place in the Provincial Court (Family Division), which generally deals with such family matters as domestic assault, matters regarding family law and child protection, maintenance and support. This is a special kind of court because it emphasizes preventative and therapeutic measures, including treatment and family support services such as counselling.

Trials in this court take place without publicity. Only those people directly related to the hearing are present in the courtroom: the young person, a lawyer, if there is one, the prosecutor, parents, any caseworkers and an interpreter, if necessary. Information is received from all of these sources.

A juvenile who has committed an indictable offence may be transferred to adult court. In this case, the child must be over fourteen years of age, and the juvenile court must have decided that it is in the interests of the child and the community to prosecute in an ordinary adult court. The child must first appear in juvenile court, however, and it is here that the decision for transfer is made.

A Family Court judge has many more alternatives to consider in sentencing a juvenile and has more discretion than has a judge who is deciding an adult's case. If a young person is found to be delinquent, that is, guilty of an offence, the judge may do one or more of the following:

- **suspend final disposition.** In some situations, where the judge feels that a court appearance has made a strong enough impression on the child, he/she may then suspend the final decision and release the juvenile to the custody of the parents without making a specific disposition;
- **adjourn the case for an indefinite period of time.** The case may be reviewed from time to time and the child may be called back to court (e.g., if he/she gets into more trouble);
- **impose a fine.** The fine will not be greater than twenty-five dollars and may be paid in instalments;



- **place the child in the custody of a probation officer or any other suitable person.** The child's parents are denied custody of the child, who has to live elsewhere, for example in a group home, for a specified period of time. This disposition is not used very often in Ontario today;
 - **allow the child to remain in his/her home, subject to visits from a probation and aftercare officer.** This is one way of placing a child 'on probation'. The parents still have custody of their child, but the child is supervised by a probation and aftercare officer;
 - **place the child in a foster home, subject to visits from a probation and aftercare officer.** The child is placed in the custody of a foster family. A probation and aftercare officer is responsible for supervising the child;
 - **impose any other conditions.** This could include community service work (in churches, senior citizens' homes, hospitals, etc.), making restitution to the victim or making charitable donations, either as a condition of probation or as a disposition in its own right. Such a disposition is intended to provide alternative solutions to problems related to delinquency, to protect the community and individuals from further delinquency, to provide some kind of compensation for victims, and to instil in the juvenile delinquent values of good citizenship and responsibility;
 - **place the child in the charge of a Children's Aid Society.** Under this disposition the Children's Aid Society becomes involved with the problems of the child (and possibly the child's family). The child could be made a temporary ward of the Society or a ward of the Crown and sent to live in a group or foster home. Alternatively, the child could be returned home to his/her parents' custody, but a Society worker would provide family support or counselling services to the family;
 - **commit the child to a training school.** The child is made a ward of the Crown and has to spend a period of time in a training school or group home.
- In summary, there are three major types of disposition that may affect a child's status. In order of seriousness, they are:
- **wardship.** The child is made a ward of the Crown by placing him/her in a training school, or is made a ward of the Children's Aid Society. The Crown or the Children's Aid Society takes on all the rights and duties of the legal guardian, and the parental rights of the natural parent(s) are temporarily suspended;
 - **custody.** The child is not made a ward, but the parents are still denied custody and the child is placed in a foster or group home. The child may or may not be placed on probation;
 - **no change of status.** The child's parents continue to have custody of the child, but the child has to meet certain conditions (e.g., pay a fine or make restitution), which are supervised by a probation and aftercare officer.

Services for Juveniles

To provide an integrated service system for children with special needs, most children's services were consolidated under the Ministry of Community and Social Services in 1977. Through regions and local areas the Ministry's service system is designed to meet the needs of children and youth and particularly to provide for the co-ordination of services at the local level. Some services, including probation and aftercare, detention homes and training schools, are operated directly by the Ministry; others, such as Children's Aid Societies, foster homes and many group homes, are funded but not operated by the Ministry.

The Ministry of Community and Social Services in Ontario oversees children's services to ensure consistency and integration. It does this by supervising the services and by establishing standards for staff, facilities and the quality of care. It also approves budgets, monitors performance and conducts audits. Provincial standards are applied to the licensing of all children's residential care programs. This applies to any staff-model facility that provides a service to three or more children, and any parent-model facility for five or more children, including those facilities that provide services for children assigned from juvenile court.

Probation and aftercare service. The Ministry of Community and Social Services has several important roles to play within the juvenile justice system. At the predisposition stage, the Ministry's probation and aftercare officers prepare comprehensive social and family histories on juveniles who are appearing before a Family Court judge. These reports help the judge to arrive at a disposition that will be in the best interests of the child. Probation and aftercare officers also explain court procedure to the young person so that decisions will be understood. If a judge decides to place a young offender on probation, the juvenile may be supervised either in the child's own home or in a foster or group home.

Probation and aftercare officers also supervise juveniles on their return to the community after a stay in a training school or group home. During the time that a child is in one of the schools or group homes, an officer maintains a close relationship with the child's family to prepare for the child's return. Part of the aftercare role is to help the young person, who is still a ward of the Crown, to adjust to community life. The probation and aftercare officer is available to provide guidance both to the child and to the child's parents or foster parents, particularly during the first few weeks when problems are most likely to arise.

Group homes. The trend today is to avoid placing juveniles in large institutional settings and, wherever possible, to place children in community settings. Group homes have been developed for boys and girls who are able to benefit from the contact and support of caring adults and a small group of peers.

Group homes are available for children on probation, as well as for young offenders who are wards. In addition, group homes may be used for wards returning from training schools who are unable to live with their own families. In all cases, group homes are intended to provide as normal a setting as possible. The homes are small, generally containing between six and ten residents, and are under the guidance of trained staff members, who attempt to provide programs attuned to the specific needs of the young people in their care.

Children's Aid Societies. Children's Aid Societies generally deal with child-protection cases, such as cases of child abuse or neglect. However, under the Juvenile Delinquents Act a judge may commit a young offender to the charge of a Society. This may mean that the child is made a ward of the Society or removed from his/her parents' custody and placed in

New Legislative Proposals*

For several years, a number of federal government publications and reports have addressed the problem of juvenile delinquency in Canada and the inadequacies of the present law. As a result of the extensive study and consultation, the Solicitor General of Canada has introduced new legislation (a young offenders act) that would significantly change the Juvenile Delinquents Act. These changes would include a higher minimum age of criminal responsibility than seven years; a shift in basic philosophy from 'parens patriae' (the state assuming the role of a protective parent); and a shift from a social welfare and treatment oriented approach to juvenile delinquency to a responsibility model, whereby young persons, probably twelve years and over, would be held accountable for their own behaviour. Consistent with public protection, a reliance would be placed on social and community based solutions to problems of juvenile delinquency. A young person's right to due process and fair and equal treatment would be formally recognized and guaranteed by special safeguards.

a group or foster home. A Society worker continues to be involved in the case to ensure that the child's educational and social needs are met and to provide assistance to the foster parents or group home staff. If the juvenile is returned to his/her family's care and custody, a Society worker supervises the child and provides support and counselling to the whole family.

Training schools. A training school is a large residential facility that provides a supervised environment in which the following programs are offered where appropriate and necessary: academic, vocational and remedial education; medical, psychological and psychiatric assessment; job training; life-skills training; and human growth and development counselling.

The behaviour and progress of each ward in a training school is monitored by the Training School Advisory Board, whose members are appointed by the Minister of Community and Social Services. The board may recommend to the Minister that wardship be terminated and may make other recommendations regarding any placement while the child is a ward, whether or not the child was ever in a training school. Board members visit each training school once a year and may make recommendations to the Minister regarding any aspect of the school's programs.

Special groups of children. Services for Franco-Ontarian and Native children have been given a high priority for future development. A team of service investigators has been set up to deal with the problems facing Francophones in the province and to develop programs in response to their linguistic, religious and cultural needs. Several projects have already been implemented and funded. For example, a speech therapist has been provided for the Ottawa and Prescott-Russell regions, and a recruitment program for Francophone foster parents has begun in the Ottawa-Carleton region.

Native young people are served by programs that include delinquency-prevention projects such as Li'l Beavers.

*At the time of writing, February 1982, the Young Offenders Act has passed Second Reading in the House of Commons.

Justice in the Marketplace

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Justice in the Marketplace

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Every day Ontario residents are involved in buying and selling goods and services. Their transactions range from a visit to the local supermarket to purchase a litre of milk to complicated land deals involving millions of dollars. With so many buyers and sellers, there are bound to be some problems and disagreements. Thus, the federal and provincial governments must take an active role in making the marketplace fair and equitable for everyone. Laws control advertising, manufacturing, credit and selling practices, and various agencies regulate the actions of both buyers and sellers.

The responsibility for overseeing the marketplace is divided between the federal and provincial governments. The federal Department of Consumer and Corporate Affairs is concerned with regulating certain products that consumers buy. It establishes standards of quality and levels of safety through such acts as the Consumer Packaging and Labelling Act, which requires that most packaged products display certain basic information on labels; the

Hazardous Products Act, which prevents products with hidden hazards from reaching the consumer; the Textile Labelling Act, which ensures that articles made from fabrics are properly labelled with the fibre content and the manufacturer's identity; the Weights and Measures Act, which ensures the accuracy of all weighing and measuring devices used to establish a price to the consumer (e.g., gas pumps or butchers' scales); and the Combines Investigation Act, which focuses on maintaining a competitive market system and in certain instances regulates the form of advertising. The federal Department enforces these laws through its inspectors and through its regional offices, which employ consumer service officers to serve consumers across Canada. The Consumer Services Branch receives consumer complaints and inquiries that fall within its purview. The Department can take action on a complaint if the matter is within the scope of its legislation.

The Ontario Ministry of Consumer and Commercial Relations is concerned with promoting fairness in business transactions in the marketplace. It is one of the most diverse ministries of the Ontario government. In essence the Ministry serves two groups—consumers and the business community. The Ministry provides consumer protection through advice and

information on the one hand, and works to promote a high level of ethical business conduct on the other hand. This includes regulating certain practices that businesses can engage in; setting technical standards; dealing with all aspects of property ownership; registering and filing vital statistics; and liquor control and licensing. The Ministry administers such laws as the Consumer Reporting Act and the Consumer Protection Act to protect consumers from problems that may arise when they purchase goods and services or borrow money. It regulates business practices through such acts as the Business Practices Act and safety standards through acts such as the Elevating Devices Act. It licenses, approves and inspects theatres and examines and classifies films to be shown. It deals with the collecting and filing of evidence of births, deaths and marriages in Ontario.

This section examines the role played by both the Ontario laws and the Ministry of Consumer and Commercial Relations in providing justice in the marketplace.

Regulating the Sale of Goods

A contract for the sale of goods generally speaking is an agreement between a buyer and seller whereby the seller agrees to deliver and the buyer agrees to pay for the goods which are the subject matter of the contract. Various laws may apply to a sale depending on the nature of the particular transaction. Generally speaking, however, the duties and obligations of the respective parties are governed by the general law of contract as well as the Sale of Goods Act and the Consumer Protection Act.

The Sale of Goods Act sets out certain rules which will govern agreements or contracts for the sale of goods. It also sets out certain duties and responsibilities which the buyer and seller have respecting contracts for the sale of goods, and as well describes the remedies that the parties may have if the contract is breached. This act relates to contracts for the sale of goods having a value of forty dollars or more. It provides that such contracts are not enforceable unless certain conditions are met, (i.e. unless the buyer has accepted and received part of the goods sold or has given something in earnest to bind the contract or in part payment, or unless there is a written note or memorandum sufficient to evidence the agreement).

The Sale of Goods Act also sets out certain 'conditions' and 'warranties' which are implied in contracts for the sale of goods. Basically, a condition is a term of the contract which if breached will give rise to the right to treat the contract as repudiated. A warranty is a term which if breached will give rise to a claim for damages (but not the right to treat the contract as ended). For instance there is an implied condition on the part of the seller that he/she has a right to sell the goods in question. There is also an implied warranty that the buyer will receive quiet possession of the goods, i.e., that he/she will be able to have the use of the goods without being disturbed by others making a claim to them. The act also has certain provisions which relate to the quality or fitness of the goods which are being purchased.

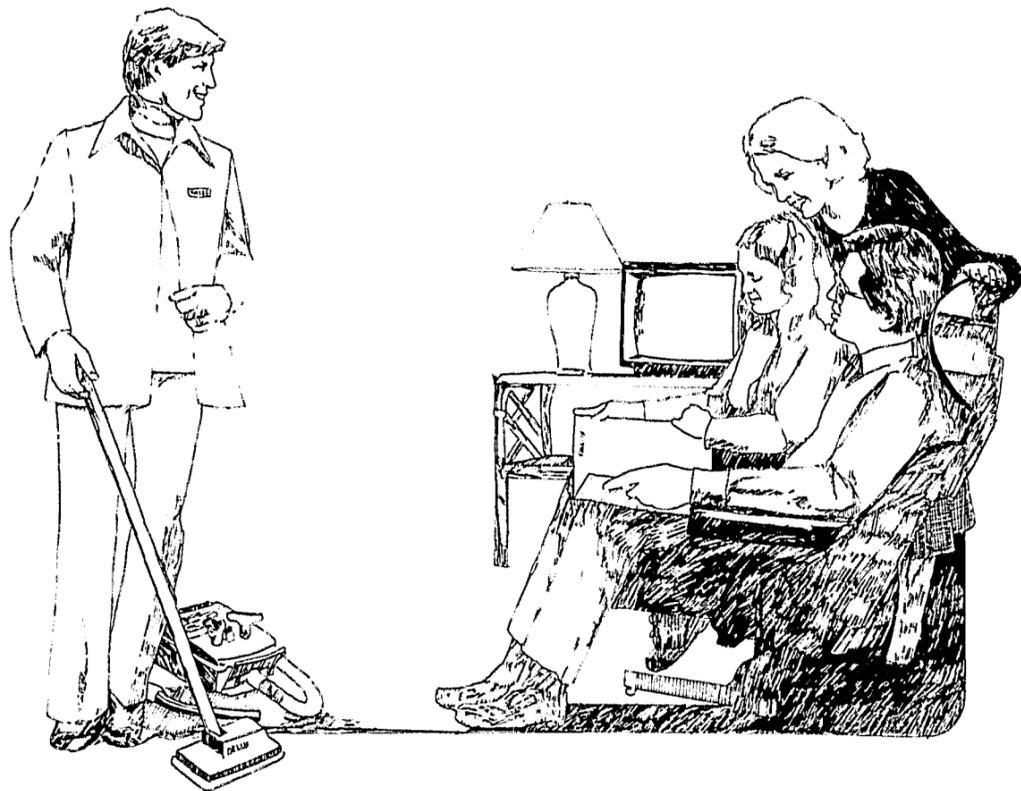
Consumer Protection

The sale of goods and 'services' are also governed by the Consumer Protection Act and the Business Practices Act which are both administered by the Ministry of Consumer and Commercial Relations. Generally speaking these statutes regulate 'consumer-type' transactions, i.e., purchases made by consumers as opposed to persons purchasing for use in the course of carrying on business. The Consumer Protection Act requires that an executory contract for goods or services which have a value of fifty dollars or more be in writing. An executory contract is one where delivery of the goods or performance of the service or payment in full is not made at the time that the agreement is entered into. The act requires that these written contracts shall contain certain information as specified in the act. For example, the contract must contain the name and address of the seller and the buyer; a sufficient description of the goods or services to identify them; an itemized price

list of the goods or services and a detailed statement of the terms of payment; and warranty or guarantee, and if there is none a statement to that effect.

An executory contract is not binding on the buyer if the contract is not made in accordance with the act. It must be signed by the parties and a duplicate of the original given to the purchaser.

The Consumer Protection Act also provides that in cases where an executory contract is not made at the seller's permanent place of business (i.e., such as in the case of a vacuum cleaner being sold in the home), the buyer may rescind the contract by giving written notice to the seller within two days of receiving a copy of the contract. In other words, the buyer is given a statutory right to cancel the contract without cause during this forty-eight hour 'cooling-off' period providing he/she does so in the manner set out in the act. Further, 'itinerant sellers' are required to be registered and bonded before carrying on their business.



Regulating Business Practices

The Consumer Protection Act deals with other matters such as full disclosure of credit terms and the legal position of a recipient of 'unsolicited goods'. A person cannot be held responsible for payment in respect of unsolicited goods (goods delivered but not requested) which he/she receives, and has no legal obligation respecting their use or disposal. For example, in the case of an unsolicited credit card, the person is not responsible for it unless he/she uses it. Unsolicited goods may be kept or thrown out unless an individual knows that the goods were intended for someone else.

The act also provides that in cases where a buyer has paid two-thirds or more of the purchase price, the seller cannot repossess the goods upon default in payment unless he first obtains a court order. It prohibits referral selling whereby a seller holds out to a prospective buyer an advantage, benefit or a gain in return for his/her doing anything to assist the seller in finding other prospective buyers.

The Business Practices Act makes it an offence to engage in the use of unfair practices in consumer-type transactions. The act specifies certain types of activities that are deemed to be unfair practices. For example, it is an unfair practice to represent that goods or services have sponsorship or approval which they do not have; to represent that the person supplying the goods or services has sponsorship, approval, status, affiliation or connection he/she does not have; to represent that the goods are of a particular standard, quality or grade if they are not; to represent that goods are new or unused, if they are not or are reconditioned; to represent that goods or services are available for a reason that does not exist; to represent that a service, part, replacement or repair is needed, if it is not; to represent that a specific price advantage exists, if it does not; or to use exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.

The act also refers to 'unconscionable consumer representations'. Examples of such representations would be where a consumer is not reasonably able to protect his/her interests because of physical infirmity, ignorance, illiteracy or inability to understand the language of an agreement; where the price grossly exceeds the price at which similar goods or services are readily available to like consumers; where a person makes a misleading statement of opinion on which the consumer is likely to rely to his/her detriment; or where a consumer is subjected to undue pressure to enter into a transaction. The executive director of the Business Practices Division of the Ministry of Consumer and Commercial Relations has authority under the act to issue a Cease and Desist Order in certain situations. A consumer may rescind an agreement where an unfair practice has been used and that practice induced him/her to enter into the agreement. The act sets out the procedure for exercising this right.

The principle of 'caveat emptor' (let the buyer beware) is modified to a certain extent by legislation of this nature and statutes such as these provide certain rights to consumers that they would not otherwise have.

Ontario Securities Commission

The activities of this Commission ensure that an investor in Ontario will have true, timely and full disclosure of all the facts related to stocks, bonds or other securities. The Commission also ensures that persons involved in the business of trading securities maintain ethical conduct and are qualified to offer advice and services to investors. The Commission is responsible for the registration of all dealers, salesmen and advisors in the Ontario securities business, and has the power to investigate, suspend or cancel registrations for improper conduct.



Pension Commission of Ontario

All pension plans for employees in Ontario must be registered with the Commission in accordance with the provisions of the Pension Benefits Act. As well, all changes to plans must be filed with and be acceptable to the Commission.

The purpose of the act is to add to the retirement security of employees by regulating and establishing ground rules for private pension plans. It requires that an employee who is a member of a pension plan shall be entitled to a vested pension under certain conditions. It also provides for adequate funding and proper investment of the pension funds to ensure, as far as possible, that there will be no defaults because of insolvency of the fund.

Consumer Credit

A consumer can obtain goods, services and money in exchange for the promise to pay in the future. A consumer's ability to obtain such credit, whether through a personal loan, a charge account or a credit card, may or will often depend on his/her credit record. Retailers and lending agencies can obtain an individual's credit record through a registered consumer reporting agency which collects data from various sources. Personal information about the consumer's lifestyle, and buying and credit habits, and public information such as court judgments, bankruptcies or writs, may be obtained by the consumer reporting agency. All of this information about the consumer is then made available to lending agencies that subscribe to the service, provided the lending agency has notified the person on whom they want to do the credit check.

The Consumer Reporting Act entitles everyone to know what information a credit reporting agency has compiled on him/her and designates how that information can be used. The act requires responsible conduct from businesses engaged in gathering and storing or using credit and personal information and gives the consumer the right to know what is being reported, to whom it is reported, and the source of the information. It also gives the consumer the right to correct any false information. The act requires that a credit grantor must notify the borrower or consumer, at the time that an application is made, that a credit report will be obtained. When credit is denied, the credit grantor must tell the consumer and, on request, supply the name of the reporting agency.

The Consumer Reporting Act prohibits reporting agencies from using inaccurate and outdated information; credit information based on evidence that is not the best evidence reasonably available; information regarding any criminal charges against the consumer where the charges have been dismissed, set aside or withdrawn; or any information as to race, creed, colour, sex, ancestry, ethnic origins or political affiliation. As well, reporting agencies must make a reasonable effort to confirm any unfavourable personal information in their reports. The consumer is legally entitled to know all the information contained in his/her file at a consumer reporting agency and the sources of the credit information. In addition, the act establishes a Registrar of the Consumer Reporting Act to whom inquiries may be directed. The registrar has the power to order changes or deletions in any file that is inaccurate or incomplete, or that does not comply with the act.

Other Areas of Consumer Protection

The Ministry of Consumer and Commercial Relations administers over seventy different Ontario laws. Some of the most important have already been discussed. A few of the others are examined here.

Rent review. The Residential Tenancies Act establishes the Residential Tenancy Commission for the purpose of administering the province's rent review legislation. The act applies to most residential (not business) rental units, whether in homes, apartments or mobile home parks. The act limits the frequency and amount of rent increases. Other types of landlord and tenant disputes, for example those involving evictions, security, deposits and repairs, are governed by the Landlord and Tenant Act, administered by the Ministry of the Attorney General.

The insurance industry. The insurance industry in Ontario is regulated by the Superintendent of Insurance of the Ministry of Consumer and Commercial Relations. The main duties of the superintendent are to establish that an insurance company is solvent and remains solvent in the future; to see that the company follows proper business practices and maintains ethical standards; and to maintain the rights of consumers by reviewing policy terms and premium rates, mediating disputes over claims and responding to consumers' complaints. These powers are set out in the Insurance Act. All insurance companies, agents, brokers and adjusters operating in Ontario are licensed and/or registered by the Ontario government.

Travel agencies. The Travel Industry Act protects the consumer by requiring that travel agencies and travel wholesalers be registered in order to carry on business in Ontario. The act also regulates the activities of registrants. They are required to make contributions into a travel compensation fund, which is available to pay the claims of clients if they qualify.

Alcoholic beverages. The Liquor Control Board of Ontario regulates the sale and transportation of liquor throughout the province, establishes stores for the sale of liquor to the public and controls and supervises the marketing methods of liquor manufacturers. Also, it purchases products for sale to the public and maintains product quality control over those products.

The Liquor Licence Board of Ontario provides identification cards for young people nineteen years of age and over who may be asked to show proof of their age in licensed establishments. The Board also regulates and sets standards for premises licensed to serve liquor, such as restaurants and bars. Establishments whose liquor licences have been refused, revoked or suspended may appeal to the Liquor Licence Appeal Tribunal.

Where to Go for Consumer Help

Consumers who cannot obtain satisfaction from sellers regarding goods purchased can seek assistance from several independent and government organizations. They may also obtain help through the courts.

Independent associations. Many groups of business people and manufacturers have formed business associations for the mutual aid and protection of their members and customers. These associations set great value on their reputation and try hard to preserve it. They act as mediators in disputes between business people and their customers, and they attempt to inform consumers and resolve complaints. While not every trade association responds directly to consumer complaints, a customer can often use these business and individual groups as a source of information regarding a particular problem. Then, armed with the accumulated facts, the consumer can go directly to a consumer-help group.

The Better Business Bureau operates as a self-regulatory agency to mediate in complaints of unfair trade practices. It was established as an independent and non-profit organization financed by the business community. It maintains files recording the number of complaints against any given firm and provides consumers with information as to the quality of service provided by particular businesses. This system relies upon input from the public, as it is based on the number of customer complaints received.

The Consumer Association of Canada (CAC) is the only nationwide consumer organization. It has a national office in Ottawa and provincial and local branches across the country. The CAC performs a variety of functions for concerned Canadian consumers at all levels of its organization. Local branch members work on research projects and advisory panels as well as operating the telephone service that gives out consumer information. The CAC also has a testing program which assesses the quality of products across the country. It publishes the results of the tests, thus helping the consumer to make purchasing decisions. For matters too big for a single consumer to tackle, the CAC gives strength of numbers to the consumer cause. Through its consultations and dialogues with government, industry and business people, the CAC has played a major role in the development of consumer protection laws and in preventing consumer problems.

The following are additional sources of information and aid for dissatisfied consumers:

- Community store-front legal and consumer-help offices work personally with clients and are particularly useful in mediating in disagreements. Some provide translation services in ethnic communities where language may be a problem.
- Self-help organizations have grown enormously in Canada in recent years. They take in a wide range of subjects, including welfare assistance, tenant problems, consumer problems and community action problems.
- Media sources such as TV, radio, newspapers and magazines offer services to consumers on a regular basis. These range from offering information assistance to pursuing consumer problems. The results of the investigation of individual problems can suggest ways in which other consumers can avoid similar situations.

Government sources. Through the Ministry of Consumer and Commercial Relations the Government of Ontario works to promote a high level of ethical business conduct. Consumers with complaints can obtain assistance and/or a referral from the various divisions within the Ministry, many of which have already been examined in this section of the booklet. Each division can be reached simply by writing to the Ministry in care of the particular department or branch. Most complaints and questions about consumer matters are dealt with by the Consumer Services Bureau, which provides information and mediates directly between the consumer and the seller.

The Ministry's Consumer Information Centre, located in Toronto, was designed to make consumer information more accessible to the public and to assist consumer educators. The centre offers free informational brochures, research reports, government studies, textbooks and multi-media kits and games, and has a free preview service for educators. The centre's bilingual staff accepts collect calls to provide information on Ministry programs and services. Consumer educators and social services agencies are also assisted through consultations, specialized resources and workshops. A high priority is given to meeting the needs of disadvantaged consumers.

Protecting Individual Rights

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Protecting Individual Rights

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The Canadian Charter of Rights and Freedoms

Canadian Human Rights Act

The Ontario Human Rights Code

The Ombudsman – Ontario

The Ontario Native Council on Justice

Conclusion

Introduction

One of the duties of government in a democratic society is to protect the individual's rights. This important duty is also a difficult one because our society's views of what rights deserve protection and how those rights should be protected inevitably change in the course of time. As a result, there has been much new legislation in this field – legislation that is the product of initiatives from government as well as from the public.

This final section considers some laws and institutions which have general application to the entire field of justice in Ontario.

The Canadian Charter of Rights and Freedoms

The description which follows is a very abridged version of the main provisions of the Canadian Charter of Rights and Freedoms, which is part of the Constitution Act, 1981. The complete text of the Act can be obtained from Publications Canada, Box 1986, Station B, Ottawa, Ontario, K1P 6G6.

In December of 1981, the federal Parliament of Canada approved an address to Her Majesty The Queen, in which the federal Parliament requested that the British Parliament give effect to the Constitution Act of 1981. This procedure was adopted in order to embed the provisions of that Act into our Constitution.

Amongst the provisions, the Constitution Act, 1981 incorporates a Canadian Charter of Rights and Freedoms. This Charter specifies certain rights and freedoms that are to be given constitutional protection. Constitutional protection means that the Rights and Freedoms contained in the Canadian Charter can only be changed in accordance with the procedures laid down in the Constitution itself.

As of the date of this writing (January 1982), the Constitution Act, 1981, has not yet been approved by the British Parliament or proclaimed in force, and so the provisions of the Act do not yet have the force of law in Canada.

The Canadian Charter of Rights and

Freedoms provides for legal rights, equality rights, fundamental freedoms, democratic rights, mobility rights, aboriginal rights, sexual equality rights, and minority language education rights.

The Charter provides that all of the above Rights and Freedoms are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". In addition, the Constitution Act, 1981 provides that a federal or provincial government can pass legislation that allows it to override some or all of the legal rights, equality rights and fundamental freedoms for periods of up to five years at a time.

Legal Rights are defined so as to include:

- the right to life, liberty and security of the person in accordance with the principles of fundamental justice;
- the right to be secure against unreasonable search or seizure;
- the right not to be arbitrarily detained or imprisoned;
- the right not to be subject to any cruel and unusual treatment or punishment;
- the right against self-incrimination;
- the right to an interpreter, in the appropriate circumstances;
- the right upon arrest to be told promptly the reasons why, to retain a lawyer without delay and to be informed of that right and the right upon arrest to have the validity of the detention determined by way of habeus corpus;
- the right upon being charged with an offence to be informed without unreasonable delay of the specific offence, to have the offence tried within a reasonable time, not to be a compellable witness in respect of that offence, to be presumed innocent until proven guilty, according to law in a fair and public hearing by an independent and impartial tribunal, not to be denied reasonable bail without just cause, to trial by jury for an offence where the potential maximum punishment is five years or more, not to be found guilty unless the act or omission committed was a criminal offence in

accordance with Canadian or International law at the time it was committed, not to be tried or punished for the same offence twice and the right upon being charged with an offence to benefit from any changes in the penalties provided by law between the time of commission of the offence and the sentencing for that offence.

Equality Rights are defined so as to include:

- the right to equal treatment, protection and benefit of the law for every individual without discrimination which includes the right to non-discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Equality rights do not preclude affirmative action programs designed to promote, for example, equal employment for women.

Fundamental Freedoms are defined in the Charter of Rights and Freedoms as being:

- freedom of conscience and religion;
- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly; and
- freedom of association.

Democratic Rights are defined so as to include:

- the right of every Canadian citizen to vote in federal and provincial elections;
- the right of every Canadian citizen to be qualified for membership in the provincial legislative assembly and the federal Parliament.

Mobility Rights are defined so as to include:

- the right of every Canadian citizen to enter, remain in and leave Canada;
- the right of every permanent resident and Canadian citizen to live and work in any province, subject to a province's right to favour their own economically and socially disadvantaged residents for jobs where the unemployment rate is above the national average.

Aboriginal Rights are recognized, but not defined in the Charter of Rights and Freedoms. However, Native peoples are guaranteed the right to participate in a constitutional conference, one of the purposes of which will include the definition of those rights that could be written into the Constitution.

In addition to the non-discrimination on the basis of sex provisions found in the equality rights section of the Charter, there is a specific separate provision guaranteeing men and women full equality to all the rights and freedoms provided in the Charter. This **Sexual Equality Right** cannot be overridden by a legislature or Parliament but is subject to affirmative action programs.

Minority Language Education Rights. The Charter sets out three criteria that will determine the rights of English and French speaking minorities to have their children educated in their own language.

- (i) Canadian citizens whose mother tongue is English or French have the right to have their children educated in that language.
- (ii) Canadian citizens who themselves received instruction in Canada in English or French have the right to have their children educated in the language in which the parent received instruction.
- (iii) Canadian citizens who have one child who has received instruction in Canada in English or French have the right to have all their other children educated in the same language.

All three of these criteria depend upon there being a sufficient number of children eligible for minority education to warrant establishing schools for them from public funds. The first criterion, relating to the mother tongue, will not apply to the province of Quebec until it is authorized by the legislative assembly or government of Quebec.

Canadian Human Rights Act

This is an act of the federal Parliament of Canada. It applies to federal government departments and agencies and Crown corporations, and to business and industry under federal jurisdiction such as banks, airline and railway companies – in relation to their employment policies as well as in their dealings with the public. The act forbids discrimination on the ground of race, national or ethnic origin, colour, religion, age, sex or marital status; or for conviction of an offence for which a pardon has been granted; or discriminatory employment practices based on physical handicap. Complaints of discrimination may be filed with the Canadian Human Rights Commission.

The act also protects the privacy of personal information stored in government files. It ensures that any person may find out if there is personal information on these files, check its accuracy and the use to which it is being put, and request that inaccurate information be corrected.

The Ontario Human Rights Code

The Ontario government provided protection for its citizens when it passed the Ontario Human Rights Code in 1962. In 1981, a new human rights act was passed which will be proclaimed some time in 1982. The new Ontario Human Rights Code forbids discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status and handicap in the areas of employment, housing, services and facilities and related advertising. It also protects people with records of offences in the area of employment and people in receipt of public assistance in the area of housing. People are also protected from harassment including sexual harassment in employment and housing.

The Ontario Human Rights Act also provides for the establishment of the Ontario Human Rights Commission. This commission promotes an understanding and acceptance of the principles of the act and develops educational programs to eliminate discriminatory practices. It accepts complaints of discrimination and tries to resolve matters through conciliation and when necessary, board-of-inquiry hearings. Either side in such a case may appeal the board's decision through the regular court of appeal process.

The Ombudsman – Ontario

Many government agencies are available in Ontario to help people with government related problems. However, when every route of complaint, appeal or objection has been tried without success, or if the stipulated time for appeals and objections has run out, there is still one course open to citizens. The Ombudsman, an official responsible to the Legislature of Ontario, can be asked to investigate citizens' complaints against administrative decisions of ministries, commissions, boards, agencies or administrative units of the provincial government.

When a complaint is received that falls within the Ombudsman's jurisdiction, that complaint is thoroughly investigated under the powers of the Ombudsman Act. The Ombudsman works independently of the government and gathers and weighs all the relevant facts impartially. If it is considered appropriate, the Ombudsman may make recommendations to the ministry involved. If the ministry ignores the recommendations, the matter may be taken to the Premier and, if necessary, to the Legislature.

There are certain kinds of problems that the Ombudsman cannot deal with. Federal matters, such as postal service or unemployment insurance cheques, and local government concerns, such as garbage collection, are not the responsibility of the provincial government and are thus beyond the Ombudsman's scope. As well, as the Ombudsman's mandate is to investigate complaints against governmental organizations, the Ombudsman cannot take up cases against private individuals or companies. Some provincial matters, such as courts and judges, Cabinet decisions, and actions taken by the Ontario government's legal advisers, are also outside of the Ombudsman's jurisdiction.

Ontario Native Council on Justice

The Ontario Native Council on Justice was established in March 1977, having evolved from the Ontario Native Advisory Committee which was established in 1975 pursuant to a commitment made by the Ontario government at the Edmonton Federal-Provincial Conference on Native People and the Criminal Justice System.

The Council's membership is comprised of representatives of the eight principal Native organizations in Ontario. The Council is funded by a provincial grant and is supported by an interministerial committee of civil servants.

The Native Council was established to provide a forum for on-going consultation between Native people and the Ontario government with respect to justice matters.

The objectives of the Council are as follows:

- to act in the development of justice policy pertaining to Native people and in so doing to identify problems and propose solutions;
- to encourage and facilitate the initiation, development and funding of justice-related programs which are designed and operated by and for Native people;
- to conduct and publish research on justice-related areas of concern to Native people;
- to make recommendations and presentations to individual ministries in the Justice Policy Field, the Cabinet Committee on Justice and any other provincial and federal ministries or departments or organizations on justice-related issues;
- to provide consultation on a regular and formal basis among the organizations representing Native people throughout Ontario and between those organizations and the ministries and agencies which form and control the justice system;
- to initiate and maintain contacts between the Native people and government representatives for the purpose of enabling two-way communication and sharing of information.

CONCLUSION

The law is not static. It has been evolving over many years in response to changing social conditions. Canadian governments have recently established law reform commissions to help adapt the law to meet new challenges. The Ontario Law Reform Commission was established in 1964 to further the reform of the law, legal procedures and legal institutions. The Commission considers matters relating to law reform regarding statute law, common law and court decisions, the administration of justice and judicial procedures. Many of the Commission's recommendations have been carried out and have formed the basis for both new provincial legislation and for amendments to existing provincial laws.

The Law Reform Commission of Canada was established in 1971 to study and keep under review the federal laws of Canada with a view to making recommendations for their improvement, modernization and reform. The Commission influences the shaping of law in four areas: legislative, judicial, administrative and general public receptiveness to reform.

All of the government agencies described in this booklet are part of the justice system that seeks to shape a society that is fair and equal. Each citizen can also play an important role in reaching this goal — both by upholding and obeying the law and by taking an interest in and understanding the different parts of our system of justice.

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