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Chairmen

TO R. W. Paisley, Q.C.
Deputy Attorney General

OUR FILE REFERENCE

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DATE January 13, 1983

SUBJECT FINAL REPORT
CHARTER COMMITTEE
JUDICIAL INTERIM RELEASE (URBAN/RURAL)

TELEPHONE 427-5050 - referred
This is the Exhibit marked to in the Affidavit of
KEN HAWRELECHKO
sworn before me this 16th day
November 19 98

A Commissioner for Oaths.

L. CHRISTINE ENNS
BARRISTER & SOLICITOR

The Committee conducted a 3 month survey of judicial interim release hearings conducted in Alberta outside of Edmonton and Calgary. Four sub-committees were struck to monitor the results. Justices of the Peace were requested to complete forms in relation to each hearing. Court administrators were requested to observe staff Justices of the Peace conducting hearings and to prepare evaluation reports. The forms used were similar to those employed by Mr. Rannostay during the Edmonton-Calgary project. Crown Counsel were requested to complete forms in relation to hearings conducted before Provincial Court Judges. Court Administrators were requested to interview a representative number of fee Justices in their respective areas.

At the conclusion of the survey the Chairman of each sub-committee was requested to prepare a final report. Each member of this Committee was assigned one of the final reports and prepared an analysis of same as follows:

- Mr. Rannostay - Edmonton Rural, Westaskiwin/
Vegreville and Fort McMurray
- Mr. Zyla - Lethbridge, Medicine Hat and
Fort MacLeod
- Mr. Lipman - Grande Prairie, Peace River
- Mr. Teasdale - Red Deer, Drumheller/Hanna

Those analysis are attached.

Subsequently the Committee identified a number of areas of concern throughout the province and prepared summaries of the problems and recommendations. Summaries have been prepared and are attached for the following topics:

Control and Management of Justices of the Peace
Role of the Justice of the Peace
Role of the Police
Location of Hearing
Right to Counsel
Recording of Proceedings
Dissemination of Information

General Findings and Comments

It was found for the most part that the forms by themselves did not provide a great deal of insight into the judicial interim release process. Of much greater value were the on-site observations of the Court Administrators and the interviews with the fee Justices of the Peace.

The Chairmen of the Sub-committees reported the following figures for the total number of hearings conducted by Justices during the survey period:

| | |
|--|-------|
| Edmonton Rural, Wetaskiwin/Vegreville and Fort McMurray | 2,492 |
| Lethbridge, Medicine Hat and Fort MacLeod | 756 |
| Grande Prairie, Peace River | 324 |
| Red Deer, Drumheller/Hanna | 749 |
| TOTAL | 4,321 |

During the course of the survey the Chairmen of the Sub-committees frequently commented that the greatest majority, in their estimation over 90% of the hearings were conducted following arrest on an outstanding warrant for a provincial offence. It was suggested that the number of hearings could be dramatically reduced if warrants were not issued following failures to appear on provincial offences or if amendments were made to the relevant legislation to allow peace officers to

PROBLEM:

The Judicial Interim Release Survey revealed that the Court Administrators do not have control and management of the fee Justices of the Peace in their area of responsibility or in the alternative if they have such control the fee Justices of the Peace are still in somewhat of a quandary as to their relationships with the Administrators and J.P. Administration in Head Office.

There appears to have been a lack of direct supervision over the function of Judicial Interim Release and other J.P. duties as a result of which procedural deficiencies are being experienced.

RECOMMENDATION:

The shortcomings and deficiencies can only be corrected and kept on line when there are adequate administrative mechanisms and ongoing controls in place.

It is evident that proper supervision, direction and advice can be established through the fostering of close employer-employee type of relationship between the Court Administrator and fee J.P. The Court Administrator is the most logical person to supervise fee Justices of the Peace as he/she can best monitor the J.P. activities through examination of documents submitted.

The reporting and communication lines must be clear as a result of which all ties with J.P. Administration in Head Office must be severed.

Specifically the committee recommends the following:

- 1) That all fee J.P.s be advised by the Executive Manager of Court Services that they report to the local Court Administrator and not J.P. Administration.
- 2) That the following procedures be performed by the Court Administrator instead of J.P. Administration:
 - (a) Advising J.P.s of appointment and delivering commission.
 - (b) Providing all required supplies including manuals and other instructional material.
 - (c) Obtaining yearly returns as required by statute.
 - (d) Distributing any type of communication whatsoever.
- 3) That the Court Administrators promote active communication and close relationships with their fee J.P.s through regular visits, meetings and discussions.
- 4) That administrative mechanisms and controls be established and audited to maintain minimum standards.
- 5) That the amounts of remuneration for J.P. services be reviewed as soon as possible.

ROLE OF THE JUSTICE OF THE PEACE.

1. IDENTIFICATION OF PROBLEM.

Throughout the survey one of the most difficult recurring problems has been the role of the J.P. within the context of the judicial process. In effect this has resulted in a sort of "identity crisis."

This difficulty occurs in many areas but is most evident with the issues of judicial independence and the show cause hearings. For the most part the J.P.'s fail to see themselves as judicial officers and therefore the first step within the criminal justice system outlined in the Criminal Code. The root cause of this is difficult to identify but the reasons may be historical to a great extent.

While all of the J.P.'s had a fair to good comprehension of the definition of the term "show cause hearing" most of them were unable to understand it from a practical sense. In most serious (read criminal) matters the J.P. is unsure of how to conduct a hearing and as a result these cases are frequently adjourned to be dealt with by a provincial judge. It is only in provincial matters that the J.P. seems to have a basic understanding of what is required and even here the issue of judicial independence dominates.

The survey points out quite clearly that the police have a significant role in "influencing" the J.P. even though most of those surveyed felt either that they were not influenced or that the level of influence was not a problem. In too many cases however the J.P. was presented with completed release forms and the hearing was a "fait accompli". Perhaps an even greater part of the problem is that the J.P.'s do not recognize this police influence as a difficulty. If the judicial process is that closely identified with the police there is no judicial independence and to paraphrase the adage, "justice is not done, nor is it seen to be done."

The solutions to this problem are numerous and varied. They cover such areas as training, control and management, procedures, supervision and direction to name a few.

2. RECOMMENDATIONS.

- i) Ensure that the selection process for J.P.'s is more controlled and uniform throughout the province. Need should be clearly established and only those individuals who pass through a clearly identified screening process should be appointed. Care should be taken to avoid persons who might be too readily identified with the police.
- ii) Proper reporting relationships and lines of communication should be established to provide the J.P.'s with adequate resources for the performance of their duties.
- iii) Special care should be taken in training to provide an outline of how the J.P. performs his duties within the context of the Criminal Code and the criminal justice system.
- iv) Require all J.P.'s to complete release forms personally and not to accept prepared forms from the police.
- v) Provide regular in-service training to inform J.P.'s of amendments to the Criminal Code and to ensure that clearly identified performance standards are met. Regular spot audits by court services staff might be useful.

While many of these recommendations overlap with other areas of concern they can only be viewed as a start. So much of this problem must be viewed as attitudinal and as a result change will only take place over a period of time. Certainly the elimination of criminal release procedures for provincial offenders would be a very positive step and would result in a significant reduction in the number of J.P.'s required throughout the province.

ROLE OF THE POLICE

Identification of the Problem

In general terms it is apparent that Justices of the Peace and more particularly fee Justices of the Peace do not appear to function independently of the police. Equally apparent is the fact that Justices of the Peace for the most part do not recognize that this represents a problem.

Symptoms of the problem include:

- many fee Justices are uncertain as to correct procedures and rely heavily on guidance from the police
- many out-of-office-hours hearings are conducted over the counter at police detachments
- in almost all cases the police prepare the release forms leaving the Justices to fill in only the date of the court appearance and the amount of any recognizance
- in some cases Justices use the RCMP receipt book for cash received rather than the official Attorney General receipt book, and the cash and receipt are left with the detachment to be forwarded to the Court Administrator
- many Justices simply comply with police requests. There is indication in one or two cases that police avoid Justices who do not simply comply with their requests.

Recommendations

Justices of the Peace must be made to appreciate that they exercise a judicial function and that they must not only act independently from the police but they must appear to act independently from the police. Through training the nature of the role of the Justice must be emphasized.

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In addition the appointment of Justices in the future could be limited to persons who demonstrate an appreciation of the role of the Justice.

The police should be requested to assist in standardizing the physical surroundings of the hearings and in the form the hearing takes. At present there appears to be no uniformity in the information presented to the Justice. In many cases, especially those involving arrests on provincial statute warrants the Justice receives no facts, background or information pertaining to criminal record.

LOCATION OF HEARING

1. IDENTIFICATION OF PROBLEM:

As a result of the interviews it became obvious that while most of the hearings take place in the R.C.M.P. detachment the facilities within the police detachment were frequently inadequate or inappropriate. In addition, while not a frequent complaint, some J.P.'s were concerned that security regarding the prisoner at hearings was lacking.

With few exceptions bail hearings take place at the R.C.M.P. detachments. There is no doubt however that the space provided for the conduct of these hearings is not proper. Many of the J.P.'s indicated that the hearings were conducted in a very informal manner at the public counter. As a result they experienced considerable noise and distraction. There is no recognition of the significance of this judicial proceeding. In larger detachments the amount of noise and interference can be significant. This often gives rise to the feeling on the part of the accused that he is being dealt with by the police rather than a judicial officer. While these conditions are undesirable some hearings are conducted at other locations including the home or work location of the J.P., a police car and a golf course. Needless to say this is totally unacceptable.

While security was not generally considered a major problem the accused is under arrest and in custody until dealt with and released by the J.P. There have been situations where the accused was left alone with the J.P. when police were required elsewhere. This should not occur.

2. RECOMMENDATIONS:

- 1) If the police detachment is to remain the location where hearings are conducted, a private office should be designated for that use. The office should be quiet and

away from the general office activity while allowing access to those parties who may be involved with the hearing. Consultation should be undertaken with the R.C.M.P. at various locations to ensure that such space is provided. In turn J.P.'s should be instructed to conduct hearings in a proper and fitting atmosphere. Hearings should not be held in locations which are undignified.

- ii) Consultation with the R.C.M.P. is required to ensure proper prisoner security at hearings. Under no circumstances should a hearing take place when the accused is not under proper guard.

RIGHT TO COUNSEL

Identification of Problem

Justices of the Peace appear to be confused as to their responsibility to advise the accused that he has a right to counsel. Some of this confusion may have arisen as a result of the Charter provisions. The figures contained in Mr. Zyla's analysis of the survey conducted in Lethbridge, Medicine Hat and Fort McLeod indicates a number of discrepancies in this area. I conclude from this finding that there is not a uniform practice being followed.

Recommendations

Justices of the Peace should receive direct instruction as to what they are to say to the accused in regard to counsel, so that a uniform practice will develop.

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RECORDING OF PROCEEDINGS

IDENTIFICATION OF PROBLEM

Present Situation. J.P.'s do not record the proceedings as required by the Criminal Code, and considering the other deficiencies with respect to Court document preparation and completion, presents serious flaws in the Judicial process. In a Show Cause Hearing, the Justice can require sworn testimony and this testimony should be in the record. The lack of sufficient records made it difficult to evaluate and monitor the proceedings for the purpose of the survey.

Requirements of the Code. The Criminal Code requires that the evidence of each witness shall be taken by a stenographer appointed by the Justice or in legible writing in the form of a disposition or on sound recording equipment.

The Information. The J.P.'s are not aware of the requirements to endorse the Information as required under Section 457(5)1 of the Criminal Code, therefore, there are serious flaws in this area of the process. A stamp is often used for endorsements, however, this does not provide for proper endorsements.

Particulars To A Justice. There is a lack of understanding as to the purpose of the form. Many were unfamiliar with the form and those that were familiar with it, had a general lack of understanding of its purpose. The J.P. is not to accept any other type of form or documentation from the Police in place of the Particulars To A Justice, however, it is common practice to use the C.P.I.C. message instead. This can be considered to be a serious flaw in the proceedings.

Hearing Logs. J.P.'s do not use logs to keep a record of the hearings conducted. Court Administrators do not receive such management information as to the number of hearings conducted, charges laid, options used for disposition and bail money paid, etc.

This lack of control over the J.P. function results in J.P.'s proceeding from case to case the best way they know how. Court Administrators do not get fully involved in the conduct of these proceedings in their area of responsibility.

This lack of record keeping allows the J.P.'s to carry on in a somewhat haphazard way, without having to be very concerned about the results of their actions.

Tape Recorders. These are not used by J.P.'s for recording proceedings. There is some concern as to the utilization of recording equipment in outlying areas, particularly where the volumes of hearings are low. The range of equipment available which could be suitable for this function should be given serious consideration, particularly when this is the most efficient and effective method of recording the proceedings.

The lack of record keeping for the proceedings should be cause for concern.

Supplementary Endorsements. This form is to be used by the J.P.'s when an order for the release of an accused has been made and involves a cash deposit of money and/or surety (sureties) with a cash deposit or real property but where the accused is unable to comply with the order. Most of the J.P.'s do not understand the purpose of the form and in addition, do not prepare the form correctly.

Supplementary Endorsements Continued. It is concluded that this lack of understanding in the field with respect to the Supplementary Endorsement causes many serious flaws in the judicial process.

RECOMMENDATIONS

1. Consideration be given to provide the necessary recording equipment in order to provide for recording of proceedings.
2. All J.P.'s to be fully informed regarding the proper completion of all documents; particularly the Particulars To A Justice and Supplementary Endorsement.
3. Hearing Logs be completed and submitted to the Court Administrator.
4. J.P.'s be given clear instructions regarding the requirements for endorsements.
5. An on-going operational audit system to ensure the minimum requirements of the Criminal Code are met.

ON-GOING DEVELOPMENTS (EDMONTON/CALGARY)

1. The recording requirements are defined and detailed in:
 - A. Cue Card.
 - B. Information Guide.
 - C. J.P. Manual.

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DISSEMINATION OF INFORMATION

IDENTIFICATION OF PROBLEM

Present Situation. The majority of Fee J.P.'s are uncertain as to the correct procedures for Judicial Interim Release proceedings and rely heavily upon direction from the police. Most have taken some form of training, however, the standard of professionalism varies from one to another, depending as to when, where and what was taught.

Most Fee J.P.'s surveyed responded with a request for additional training, particularly in the form of a Videotape presentation which would present a clear picture as to what goes on at a bail hearing and how they are to carry out their function.

Therefore, it is concluded that the present situation leaves a great deal to be desired with respect to the information or misinformation J.P.'s have in the field. The effect of deficiencies in the dissemination of proper information results in serious and fatal flaws in the Judicial process.

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Sources of Information. Many of the J.P.'s are not familiar with Judicial Interim Release proceedings, therefore, depending on the advice from various sources for information. There is no policy in place to direct the J.P.'s as to where they should proceed for information so it varies from one to another. The following list is an indication of the variety of the sources of information:

- A. Police (generally).
- B. Judges (sometimes).
- C. Court Administrators (sometimes).
- D. Other J.P.'s (occasionally).
- E. Court Services Head Office (sometimes).
- F. Reference to J.P. Manual (sometimes).

It is concluded that J.P.'s will generally go to some source in the local area for guidance and information, however, this does not mean that the source provides information or misinformation.

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Courses. J.P.'s have had a variety of training programs which have covered to various degrees the Judicial Interim Release proceedings.

At the present time, Fee J.P. training is being held in abeyance, consequently, the standard of expertise is rapidly deteriorating. A refresher course which is available from Court Services has also been held back for the past year.

It is concluded that the lack of a formalized training program and the effect of holding back training has a serious effect on the level of professionalism in the field, particularly when considering that some J.P.'s are conducting bail hearings without the benefit of formal training.

Manuals. J.P.'s indicated that they have a copy of the J.P. Manual and most feel that the information contained in the manual was adequate and helpful. Notwithstanding the general satisfaction with their training and the J.P. Manual, their responses to the survey questions showed that the standard of knowledge regarding the Judicial Interim Release was well below average, and this has a negative effect on the conduct of hearings. The following list outlines some of the serious discrepancies in information:

- . What is a Show Cause Hearing?
- . Particulars To A Justice.
- . Supplementary Endorsements.
- . Sureties.
- . Endorsements.
- . Steps in the hearing.
- . Right to proceed with or without counsel.
- . Recording of proceedings.

The J.P.'s do not carry the J.P. Manual with them to conduct hearings, however, some indicate that occasionally they go back to their home to refer to it. Its value to J.P.'s is, therefore, negligible when not available for reference at the hearings.

Therefore, it is concluded that the J.P. Manual is not fully serving the purpose it was intended to be. The information, or lack of information in the manual is considered to be detrimental to the judicial process.

Levels of Expertise. The standards throughout the province vary dramatically with respect to the professionalism available for conducting Judicial Interim Release proceedings.

- A. Fee J.P.'s generally appear to be below standard in knowledge and application.
- B. Staff J.P.'s did not report any serious difficulties, however, this should be taken with some caution when considering that a number of areas reported no concerns of problems with any phase of Judicial Interim Release process. Considering that J.P.'s have not been able to define what a "Show Cause Hearing" is would make this difficult to accept as a firm conclusion. It is quite unlikely that any area, particularly the smaller locations, could have such a high level of expertise.
- C. Court Administrators vary as to the degree of knowledge and information. Most Court Administrators are J.P.'s, however, there are some who are not. The level of training attained by Court Administrators varies from one to another.
- D. Police generally appear to control bail hearings and direct most of the Fee J.P.'s, including the preparation of the court documents; e.g. orders for release or detention. The survey revealed that there are serious problems in these actions of the Police. The following are some of the discrepancies:
 - A. Proceeding with a C.P.I.C. message.
 - B. Proceeding without accurate information.
 - C. Directing the J.P. as to conduct of the proceeding and the option to be taken.
 - D. Proceeding without Particulars To A Justice.

Levels of Experties Continued. It is concluded that each different group has a different level and standard of information and expertise. In most cases, the lack of proper information and training causes serious defects in the judicial process.

Established Standards. Standards have not been determined or defined for the Judicial Interim Release process, consequently, there is a wide range of service; from very poor to good. The lack of a co-ordinated and controlled function results in an application of the Criminal Code which is less than desirable.

It is concluded that training and information must be developed and disseminated in an effective system which can be used effectively by J.P.'s. A level of service must be maintained which meets the criteria of the Criminal Code and this can be accomplished by establishing minimum standards.

RECOMMENDATIONS

1. A comprehensive training program be developed which will support the information requirements of each group.
 - A. Fee J.P.'s.
 - B. Staff J.P.'s.
 - C. Court Administrators.
 - D. Police.
2. The training program to establish clearly defined standards and levels of service to comply with the requirements of the Criminal Code.
3. An operational audit system be initiated on an on-going basis in order to ensure minimum standards are being attained.
4. Establish a controlled and co-ordinated information distribution system to ensure the dissemination of proper information and to eliminate misinformation.
5. Establish training files on all personnel taking J.P. training and to ensure these files are brought forward for consideration of refresher training when due.
6. Develop new forms of training aids for province-wide use:
 - A. Police Checklist.
 - B. J.P. Cue Card.
 - C. J.P. Information Guide.
 - D. Videotape training aid for J.P.'s and Police.

ON-GOING DEVELOPMENTS (EDMONTON/CALGARY)

1. Particulars To A Justice will be a two part form: A. Court copy.
B. Police copy.
2. Cue Card has been developed outlining the procedure steps of a bail hearing.
3. An Information Guide has been developed for reference by J.P.'s.
4. The J.P. Manual has been revised to include the new subject matter.
5. A Police Presenters' Checklist has been developed outlining the terms of reference for the Crown.