

# CHAPTER XI

## THE ADMINISTRATION OF JUSTICE

### I. *The Basis for Provincial Government Concern*

1. In an age when so much attention is focused on defining the universal rights of man, it is an anachronism that municipal governments still have major responsibilities for the administration of justice in New Brunswick. Years ago, when transportation was less adequate and commerce more localized, it was perhaps in the interest of efficiency that local government maintain such services as court rooms and gaols. But this is no longer the case, and in such vital areas as the rehabilitation of first offenders municipalities have been unable to provide the kind of effective approach which is required. Through the years there has been increasing concern with the inconsistencies and unevenness which seem to be inevitable under municipal administration of justice, and gradually the provincial government has assumed greater control over this service. Most knowledgeable observers, including all those who appeared before this Commission, agree that the province should now assume complete responsibility for the administration of justice. We concur in this view.

2. Apart from concluding: that justice is most effectively administered by provincial rather than municipal authorities, we could find no sound basis for assessing municipalities for the cost of this particular service. Certainly the benefits from courts and gaols cannot fairly be construed as flowing solely to the residents or property of a particular municipality. Generally speaking crimes are committed against the sovereign or state rather than against a municipality, and legislative responsibility for criminal law in Canada has been placed in the federal Parliament. It cannot even be said that persons incarcerated in county gaols on criminal charges, mainly at municipal expense, are invariably residents of the municipality concerned. In a recent murder case, for instance, neither the victim nor the accused was a resident of the municipality in which the crime occurred. Yet the trial had to be held within this municipality and a very substantial part of the cost, amounting to many thousands of dollars, became the obligation of its ratepayers.

3. Similarly, civil matters are not always peculiar to a single municipality. As a general rule the right of maintaining a civil action assures to the plaintiff (the party seeking relief or redress). Plaintiffs may reside anywhere and not necessarily in the municipality where the action is tried. Neither must the defendant (the party

against whom the action is maintained) reside or have property in the municipality where the trial takes place. Yet for all civil actions within its boundaries a county must provide facilities for the hearing and bear certain of the other costs entailed.

### II. *Present Arrangements and the Need for Changes*

4. The present organization for administering justice is the cumulative result of applying ad hoc solutions to widely varied problems which arose over a long period of time. There has as yet been no overall rationalizing of procedures in this important area of public activity. In some matters municipalities still have sole responsibility, for example, the provision of county gaols. In others the province is responsible for initiating an administrative procedure which must be paid for partly or completely by the municipality, as in the case of a coroner's inquest. In discussing the recommendation that the province assume complete responsibility for the administration of justice, it will be necessary to examine present municipal responsibilities in some detail under the following headings: (a) court rooms, (b) gaols, (c) lock-ups, (d) court reporters, (e) sheriffs, (f) coroners, (g) registry offices, (h) clerks of the peace and crown prosecutors, (i) county magistrates and juvenile court judges, (j) cost of criminal prosecutions, (k) cost of supreme and county court proceedings, (l) probate courts, and (m) court of divorce and matrimonial causes. This is followed by a summary of the financial implications of the various changes which we feel should take place.

#### (a) *Court Rooms*

Section 135 of the Counties Act (Chapter 44, Revised Statutes of New Brunswick, 1952) makes a County entirely responsible for the provision and maintenance of court houses or court room facilities. Over the years the province has assumed some responsibility for providing court rooms, but only in a few areas. In the Cities of Moncton and Saint John, the province has augmented the facilities maintained by the Counties of Saint John and Westmorland by providing court rooms, space for libraries and chambers. In the City of Fredericton the facilities for the Supreme Court, the (Court Room for Appeals and Chancery, and space for the Law Library are provided by the province.

At the same time, the County of York provides court facilities in Fredericton similar to those provided by other counties. In none of these three cases would it be fair to say that there is duplication or discrimination; the province is merely supplying necessary additional court facilities.

On May 22 1958, the then Attorney-General, now Mr. Justice W. J. West, appointed a committee to inquire into and report upon the administration of justice in the Province of New Brunswick. In its report of December 16, 1958, the committee consisting of Messrs. Gordon F. Nicholson, Q.C., C. J. A. Hughes, Q.C., Albany M. Robichaud, Q.C. (now Mr. Justice Albany M. Robichaud), Stuart G. Stratton and John P. Palmer, stated:

"The Committee is of the opinion that the physical facilities required for the administration of justice throughout the province have not, for several decades, been accorded the attention they deserve. Court facilities have not kept pace with the rising standard of facilities for medical treatment and for education nor of the standard of public works generally . . . It is recommended that the provision of court room facilities and chambers for Judges and Magistrates in all Courts including the Supreme Court, the Divorce Court, County Courts, Probate Courts and Magistrates' Courts, be removed from the jurisdiction of County Councils and made the responsibility of the provincial government. It is noted that this is the practice in all provinces of Canada with the exception of Ontario and the Maritime Provinces. As an interim measure certain courthouses could be rented from the municipalities until proper facilities could be built. The Committee further recommends that court room facilities be commensurate with the needs of the proper administration of justice in the province; that future courthouses be modern in construction and design, spacious, air conditioned and with adequate Chambers for the Judges and their staff; that they have adequate barristers' rooms, consulting rooms and space for libraries. In particular, the Committee recommends that immediate steps be taken to provide a suitable courthouse in the City of Moncton, which is . . . the busiest trial centre in the province.

"While not disposed to make such a definite recommendation, the Committee is of the opinion that immediate consideration should be given to the construction of a building in the City of Fredericton to house the Supreme Court, the Law Library, Judges' Chambers, the Registrar and the Records of the Courts. "The Committee notes with appreciation the attention paid to provision of Court facilities in the New Provincial Building in the City

of Saint John and the recent renovation in the City of Moncton."

The implementation of our major recommendations in their entirety would have the incidental effect of placing ownership of all county buildings with the province. It follows that, except for necessary renovations and improvements, no capital cost would be involved in having the province 'assume responsibility for county court facilities.

### **(b) Gaols**

We are told, and agree most emphatically, that "the purpose of a good system of correction is to provide those facilities in which the reformation and rehabilitation of the offender can be accomplished". Yet neither the gaol facilities now provided by the counties nor the system of administering them seems conducive "to the effective reformation or rehabilitation of prisoners.

Our information is that the average daily occupancy of county gaols and related facilities operated by the province is more than 300. Section 135 of the Counties Act gives the counties main responsibility for the provision and maintenance of gaols. Nevertheless, the province has assumed certain responsibility for gaol facilities. New Brunswick in co-operation with other provinces provides for certain female offenders through the Maritime Home for Girls and other institutions. The Boys' Industrial Home is another departure from county responsibility and is operated by the Province. Municipalities contribute \$550 per year to the cost of maintaining each of their residents in these homes. (Prior to December 1962, the charge for boys' was \$200 per year or approximately 55 cents a day. The total cost during 1962 was estimated to be \$7 per day per boy.) In recent years the province has also provided a central reformatory, with a capacity of 60 inmates at Kingsclear and room for 20 more at a satellite camp in Charlotte County. Various municipalities have requested that more inmates be transferred to this institution, but the number who can be accepted is limited by available space.

There are twelve county gaols in the province. The Counties of Victoria, Queens and Albert, which no longer provide gaols, have made provision for their prisoners with other municipalities.

The Attorney General has some responsibility for the correctional program in the province, including the regulation and inspection of county gaols and the standardization of gaols. However, the actual upkeep and maintenance of county gaols and, for the most part, the board and lodging of prisoners in these gaols, remain the responsibility of the Counties. Towards the latter item the Province contributed approximately \$35,000 in 1961. This provincial subsidy was paid on the

basis of 75 cents per day for each inmate convicted of offences under provincial liquor control legislation and 50 cents a day for all other prisoners, except those under sentence for breaking municipal by-laws.

His Honour County Court Judge J. Bacon Dickson, in reporting for the Commission on the Gaol System of New Brunswick on March 30, 1951, recommended, in part:

- "(1) That the province proceed with the establishment and development of a prisoner system aimed at reformation and rehabilitation, as well as punishment, of prisoners.
- "(2) That such prison system be developed under the direction of an official of the Department of Attorney General to be appointed for that purpose. Such official should have a good education and a practical knowledge of prison administration. He should be responsible for the administration of all prisons and should have supervision of all lock-ups.
- "(3) That the first step toward such prison system should be the establishment of a prison farm to be located in the central part of the province. This prison should be established with a view of adding other employment as the system is developed. The prisoners should be provided with work; they should be properly clothed and fed; educational facilities and religious instruction should be provided; and classification and segregation, so far as practicable, in a single institution, should be carried out.
- "(4) That the province assume, as soon as practicable, full responsibility for providing, maintaining and administering all prisons, except the local lock-up. The county gaols should be abolished and the province maintain a number of local prisons for the detention of prisoners awaiting trial and prisoners sentenced for short terms. It is suggested that such local prisons be located at Dorchester, Saint John, Fredericton, Bathurst and Edmundston. As the system is developed such local prisons should be abolished and all prisoners detained in the central prison."

It is now more than a decade since Judge Dickson submitted his report. There has been

partial implementation of his recommendations: for example, passage of the 1954 Act Respecting Penal Institutions and appointment of an Inspector of Penal Institutions. Other developments in recent years have included the opening of the central reformatory at Kingsclear, creation of new facilities for the Boys' Industrial Home, and the establishment of a probation system. These have been substantial strides forward. Yet there has been little progress in achieving Judge Dickson's main objective of replacing the county gaols with a provincial prison system aimed at the reformation and rehabilitation, as well as the punishment, of prisoners, despite the fact that this approach was endorsed by the Report of the Committee on the Administration of Justice in 1958.

We have had the benefit of an expert study of the province's prison requirements at the present time. While the proposals presented to us differ in some details from those made by Judge Dickson in 1951 the approach is basically the same. It is for the provincial government to replace the county gaols with its own permanent network of six district gaols designed to accommodate those prisoners on remand or serving short sentences.

Our advice is that it will be cheaper in the long run to provide the district gaols by new construction rather than by attempting to revitalize the existing county structures. Most of the existing county gaols do not have sufficient space to handle the number of prisoners now sentenced to them, nor are they large enough to permit even minimal segregation of prisoners. If new facilities are constructed, it has been recommended that (a) they be outside built-up areas, with sufficient land for agricultural employment in the summer and woods work in the winter; (b) they provide both minimum security and maximum security accommodation, and (c) they be located so as to minimize the distances over which prisoners must be transported. The following is a brief summary of the new facilities which have been recommended for each district:

1. Fredericton -- located within easy distance of the City of Fredericton, with a minimum capacity of 50. The present structure is unsuitable because of location and physical plant. This gaol would provide accommodation for York, Queens, Sunbury and Carleton Counties.
2. Moncton -- located near the city of Moncton. (Presently the police of Moncton make a daily trip to Dorchester, a distance of 44 miles). Its minimum capacity should be 75. The present structure is unsuitable and probably should be demolished. This gaol would provide accommodation for Albert, Kent and Westmorland Counties.

3. Bathurst -- located near Bathurst. Its minimum capacity should be 50. The present gaol should be abandoned as it is a portion of the County Court House. It could be used as a municipal lock-up. This gaol would provide accommodation for Restigouche and Gloucester Counties.
4. Edmundston -- located near Edmundston or St. Leonard, with a minimum capacity of 35. The present gaol should be abandoned as it is a portion of the Court House. This gaol would provide accommodation for Madawaska and Victoria Counties.
5. Newcastle -- with a minimum capacity of 35, located in the Newcastle-Chatham area to provide accommodation for Northumberland County. The present structure is beyond repair for a gaol.
6. Saint John -- located near the city of Saint John and with a minimum capacity of 100. It would serve Saint John, Charlotte and Kings Counties. The present structure might be used as a security prison in conjunction with the Central Reformatory, or with some renovation might be used for a diagnostic clinic or treatment centre for alcoholics.

However, new facilities are not the only benefit which would flow from provincial government operation of district gaols. Such a programme would eliminate the need for municipal planning for the gaols, as well as the committee work and administration involved in day to day operation. It would permit the selection and training of proper staff, with the assurance that good principles of penology, emphasizing reformation, would be the axiom of operation. Presently there are differing procedures and philosophies in each gaol. Gaol regulations do provide some standardization, yet the degree of efficiency is often dependent upon the co-operation and efficiency of the gaoler and the municipal gaol committee. In most cases, there is a harmonious relationship, but the provincial authorities seem loath to make recommendations involving expenditures for renovation and repair where the municipality must bear the financial burden, and where such expenditures become a matter of spending money on outmoded and worn out facilities.

Under the proposed system, all gaol staff except relief personnel and part-time matrons would be members of the civil service. Presently, the majority of gaols require long hours of work by staff who vary in degree of efficiency, initiative and interest. The majority are quite interested in their work and will make good employees. Others should be replaced.

Most county gaols are understaffed. In nine of the twelve gaols, only one gaoler and one

matron are provided. These people are on duty 24 hours a day, seven days a week. Naturally, with these hours, there is bound to be laxity in the operation of the gaols. It also results in considerable turnover of staff. With the system of district gaols, it would not be necessary to increase staff greatly, but a system of relief personnel could be utilized to give staff some free time.

Under the proposed system, two gaols would be closed immediately. These would be the gaols in Kent and Sunbury Counties. Kent County averaged 4.0 prisoners per day for 1961 while Sunbury averaged 5.6 prisoners per day for the same period. The remaining gaols would be maintained until the system came into full operation and new physical plants were constructed, designed to provide sufficient space for several counties.

We estimate that it would cost in the order of \$2 million to construct the proposed new gaol facilities, and that this would increase the province's annual debt service charges by approximately \$160,000. The provincial takeover would also involve higher personnel costs of from \$30,000 to \$40,000 a year. Similarly, it may prove somewhat more costly to transport prisoners to district gaols, although it is expected that such an increase in cost could be kept to a minimum by making use of the facilities already maintained by the Royal Canadian Mounted Police under their contract with the province and by calling upon the sheriffs, who, under our recommendations, will be employed under a salary system.

The prospective increase in over-all gaol costs of roughly \$200,000 annually must be considered in relation to the value which would be received. For the most part the present county gaol system represents only a charge on our ratepayers. The proposed centralized system aimed at rehabilitation as well as punishment would produce better results and in the long run possibly even lower correction costs.

#### (c) **Lock-Ups**

This type of facility is provided by urban municipalities, i.e., cities and towns, for the temporary or over-night incarceration of persons charged with non-indictable or minor offences. Judge Dickson recommended that they remain the responsibility of the municipality, but subject to provincial supervision. We agree completely with the recommendation of Judge-Dickson:

#### (d) **Court Reporters**

The Shorthand Reporters Act (Chapter 209, Revised Statutes of New Brunswick, 1952) provides for court reporters and establishes their functions and duties.

The province now appoints all three categories of reporters: Official Shorthand Reporters, Special Court Shorthand Reporters and Official County Court Shorthand Reporters. The Official Shorthand Reporters are on the staff of the Attorney General and are paid a salary and travel allowance. They also receive other remuneration, such as per folio fees for transcripts of evidence prepared for litigants. The other two categories of reporters are paid by the municipalities for their services while attending courts. Nominal charges are also assessed and made against civil litigants for court stenographic services.

Investigation by the Commission suggests that assumption of the complete cost of stenographic services for all courts and judges in the province would not add to provincial government costs if, in addition to the cost of transcripts, civil litigants were charged a realistic fee for stenographic services provided. The recently proposed extension of the jurisdiction of county and magistrate's courts also makes it more important than ever that these courts have competent stenographic services, a situation which is most likely to be brought about under the exclusive supervision of the provincial government. If centralized and improved, the cost of stenographic services for county and magistrate's courts would be roughly \$25,000, compared to the actual cost of \$8,000 paid by municipalities in 1961.

#### (e) **Sheriffs**

They are provided for by the Sheriffs Act (Chapter 208, Revised Statutes of New Brunswick, 1952). The appointment is made annually by the Lieutenant-Governor in Council. With the exception of a few cases in comparatively recent years, the appointments have been considered by all parties to be part of the political patronage system. This has not been conducive to efficient administration of this most important office.

As of 1957 the earnings of sheriffs were estimated by the Committee on the Administration of Justice in New Brunswick to be: (see page XI: 13).

Prior to 1961 the municipalities paid the entire salary. In that year the Province undertook to pay to each municipality concerned the sum of \$500 toward such salaries.

The Report of the Committee on Administration of Justice in New Brunswick had this to say in dealing with the office of sheriffs:

#### "(a) *Appointment*

In the opinion of the Committee the sheriff is one of the most important officers concerned with the administration of justice and it is essential that proper appointments be made to this position.

#### "(b) *Salary*

Since the appointment is made by the province it is the view of the Committee that in this case as in all others the authority making the appointment should pay the salary. It is also the view of the Committee that the salaries paid to sheriffs at the present time are not, in most cases, sufficient to attract men with the qualities and character required for the office . . . The Committee recommends that the minimum basic salary of the office under present conditions should not be less than \$3,000 which should include all statutory duties such as court attendances, escort of prisoners, duties under the Jurors Act, and generally all duties other than those rendered in connection with the service and execution of civil process.

#### "(c) *Supervision*

The Committee recommends that the Attorney General assume responsibility for supervision of the performance of their duties by the sheriffs. The Committee suggests that their duties be defined in a book of instructions, and that the sheriffs should attend an annual school of instruction, similar to the school for assessors. This school operated under the supervision of the Attorney General, would provide a medium for discussion and solution of problems and for standardization of procedure.

#### "(d) *Office*

It is further recommended that all sheriffs be provided with an office, telephone, stationery and supplies at the expense of the province.

#### "(e) *Combining Counties*

It is the view of the Committee that in the interests of economy one sheriff could, under present conditions and in some locations, cover two or more counties by using strategically located deputies.

#### "(f) *Deputies*

The Committee recommends that a sheriff should continue to appoint his own deputy or deputies subject to

**Table 11: 1**

## REMUNERATION OF SHERIFFS, NEW BRUNSWICK 1957

County	Salary	Other Earnings From Municipality	Fees and Mileage re writs and Process	Other Income	Total	Total Mileage
Albert .....	1200	46.50	269.55	425.00	1940.85	13,756
Carleton .....	1000	1350.00	2390.00	320.00	5060.00	26,000
Charlotte .....	1200					
Gloucester .....	1000	735.02	2418.60	434.54	4588.16	20,000
Kent .....	500		1000.00	500.00	2000.00	10,000 (est)
Kings .....	1400	341.90	1253.05		2994.94	6,000
Madawaska .....	2400	486.70	5644.26	100.00	8630.96	25,000
Northumberland .....	1500	621.00	860.00		2981.00	14,000
Queens .....	500	300.00	950.00	150.00	1900.00	10,000 (est)
Restigouche .....	500	1471.60	3370.38	1113.88	6455.86	20,000
Saint John .....	5200	1150.70	5296.89	50.00	11697.59	30,000
Sunbury .....	900	667.84	1831.35	613.00	4012.19	18,106
Victoria .....	500	1586.05	4243.50	304.46	6634.01	28,762
Westmorland .....	2000	586.53	6407.80	888.43	9882.76	40,000
York .....	1700	117.00	1695.55		3512.55	10,000

**Table 11: 1**

## REMUNERATION OF SHERIFFS, NEW BRUNSWICK 1957 (concluded)

County	Mileage cost @ 10c	Net Income	Writs Received	Writs Served	Executions Received	Seizures	Sales of Land
Albert .....	1375.60	565.25	124	110	220	11	4
Carleton .....	2600.00	2460.00		225	103	2	4
Charlotte .....							
Gloucester .....	2000.00	2588.16		227	113	2	6
Kent .....	1000.00	1000.00	130	102	227	32	0
Kings .....	600.00	2394.95	135	90	114		10
Madawaska .....	2500.00	6130.96	744		152	15	8
Northumberland .....	1400.00	1581.00	198	158	82	7	3
Queens .....	1000.00	900.00		87	40	5	23
Restigouche .....	2000.00	4455.86		298	261	22	19
Saint John .....	3000.00	8697.59		786	346	30	
Sunbury .....	1810.60	2201.59	719	508	467	51	7
Victoria .....	2876.20	3757.81		423	136	22	0
Westmorland .....	4000.00	5882.76	286	286	325	10	28
York .....	1000.00	2512.55		517	155	3	8

Source: Data supplied by sheriffs and included in the Report of the Committee on Administration of Justice in New Brunswick, 1958, Schedule "H"

confirmation by the province. The Committee feels that it should not be too difficult to find part-time deputies who would be prepared to carry out most of the duties relating to civil process for the prescribed fee.

**"(g) Mileage**

The Committee recommends that the language of Schedule "B" to order 65 be amended as regards item 4 "Sheriffs Fees" so that the mileage will in no

case exceed the distance from the nearest of the county or district courthouse, the residence of the sheriff or, in the counties where Supreme Court Chambers are maintained, from the location of such Chambers to the place of service.

“(h) *Seizures under Execution*

The Committee recommends that there should be a flat fee of \$7.50 allowed for actual seizure of chattel property in addition to present poundage.

“(i) *Poundage*

The Committee recommends that there be one scale of poundage applicable where the sheriff recovers without sale, such scale to be one-half the amount of the present scale and that the present scale should be applicable only where the sheriff conducts a sale.”

The recommendation of the Committee provides for a minimum salary without any maximum, and when this is coupled with the recommendation of combining some counties, we are in agreement. It would seem, however, that a combination of counties would not reduce the number of sheriffs to less than twelve. An average salary of \$6,000 would represent an increased cost to the provincial government of \$64,500 (12 x \$6,000 -- \$7,500 now being paid). To this should be added the average cost of office facilities for each sheriff of approximately \$1,200 per annum or \$14,400 for a total cost to the Province of \$78,900 -- \$80,000 in round figures.

We differ, however, with the Committee's recommendation that in addition to a minimum salary sheriffs be allowed to retain fees from duties “rendered in connection with the service and execution of civil process.” We do not feel that any person on salary and under the civil service should in addition to his salary be allowed to keep for his own benefit the emoluments of his office. All such fees and charges should accrue to the province if the office of the sheriff becomes the responsibility of the province. If such were the case, the Commission feels that there would be no net income to the province, because the fees, mileage and expenses of deputies acting under the supervision and responsibility of trained and efficient sheriffs would at least equal the revenue received from fees and charges. Such a system would, however, tend to the more efficient discharge and satisfaction of civil processes -- something which now seems to be badly needed.

(f) *Coroners*

The Coroners Act (Chapter 41, Revised Statutes of New Brunswick, 1952) makes provision for these officers. Except for the Chief Coroner, the fees and expenses of all coroners and inquests, including medical services for autopsies, witnesses, etc., are borne by the municipality concerned. The 1961 cost of coroners is estimated to be \$30,000 of which the province paid \$2,000. We recommend that the province assume complete responsibility for this service.

(g) *Registry Offices*

Since the establishment of this Commission, the offices of County Registrars have all been centralized under the supervision of the Attorney General. The fees and charges have been increased to realistic amounts and this Commission is informed that such fees should make the centralized plan at least self-supporting and provide uniformly efficient service, which was hardly the case when these offices were municipally operated.

By Section 70A of the Registry Act (Chapter 195, Revised Statutes of New Brunswick, 1952, as amended), it is provided that:

“Ten per centum of the sum received by the Provincial Secretary-Treasurer from the registrar of the county, or such greater amount as may be fixed by the Lieutenant-Governor in Council, shall be remitted to the treasurer of the county and be applied by him as county funds and the balance thereof shall be paid into the Consolidated Revenue Fund.”

If the major recommendations of this Commission are put into effect, the need for county administrative units will disappear. Such being the case, the province will no longer be required to pay the stipulated 10 per cent “or such greater amount” to these municipalities. However, as the new system for registry offices became effective only on July 1, 1962, no figures for a full year of operation were available to the Commission. Because of this and the upward revision in charges which took place, we are unable to estimate the amount which the province would thereby save.

It is suggested that consideration be given to the inclusion of all records of Probate Courts and of sheriffs in the offices of the Registrars of Deeds.

(h) *Clerks of the Peace (Crown Prosecutors)*

The office of Clerk of the Peace is provided for by the Clerks of the Peace Act (Chapter 30, Revised Statutes of New Brunswick, 1952). Again the filling of these appointments has, for the most part, always been considered part of the spoils for a victorious political party.

The emoluments of the offices of the Clerks of the Peace are provided in part by the municipality and in part by the province. Depending on classification of the service rendered, they are paid in whole by the province or the county, or jointly, either directly or with the provincial share taking the form of a refund of part of the cost incurred by the municipality. This system is a patchwork, to say the least.

Under the heading 'Criminal Justice', the Committee on Administration of Justice in New Brunswick, said:

"It is observed by the Committee that the Judges of the Supreme Court, the County Magistrates (with one exception) and many other judicial officers, favour the appointment of a Crown Prosecutor in each county or group of counties. The Committee recommends that such prosecutors be appointed. In those counties or districts where the volume of prosecutions would justify a full time appointment the appointee should be required to forego other law practice and should be a salaried official. In other districts where practicable, competent counsel should be retained on a retainer and fee basis for the same purpose. Such prosecutors should be entrusted with responsibility of conducting the prosecution of all offences under the Criminal Code and provincial penal statutes.

They should be the legal advisers of the various police forces as regards these matters."

Although the Committee Report does not specifically say so, we assume that its recommendation also means that:

- (a) the appointment of Crown Prosecutors would be in lieu of and not additional to Clerks of the Peace,
- (b) full-time appointees at least would be within the Civil Service,
- (c) full-time and part-time prosecutors would be supervised by the Attorney General and be compensated as to salary, retainer or fees out of the provincial treasury,
- (d) the Crown Prosecutor would also assume the duties of Clerk of the County Court and Clerk of the Circuit Court, as is presently generally performed by the Clerk of the Peace under separate appointments.

Based upon these assumptions we are in full agreement. We understand that under such conditions the annual gross operating cost of a system of provincial crown prosecutors would have been roughly \$146,000 in 1961 (apart from an additional but non-recurring expense of \$8,100 for furnishing offices). The estimates include the following:

Table 11:2

PROPOSED SYSTEM OF "PROVINCIAL PROSECUTORS"

<i>Locality of Office</i>	<i>Jurisdiction</i>	<i>Prosecuting Staff</i>
Moncton	Westmorland, Albert and Kent	1 Prov. Pros., 1 Assistant
Saint John	Saint John, Kings and Charlotte	1 Prov. Pros., 1 Assistant
Fredericton	York, Sunbury and Queens	1 Prov. Pros., 1 Assistant
Newcastle	Northumberland	1 Prov. Pros.
Bathurst	Gloucester	1 Prov. Pros.
Campbellton	Restigouche	1 Prov. Pros.
Edmundston	Madawaska and part of Victoria	1 Prov. Pros.
Woodstock	Carleton and part of Victoria	1 Prov. Pros.
<b>TOTAL REQUIREMENTS:</b>	<b>8 Provincial Prosecutors, 3 Assistant Provincial Prosecutors, 8 Stenographers, 8 Offices</b>	

From the gross cost of \$146,000 it is necessary to deduct total savings of \$62,000, representing the present municipal contributions of \$25,000 toward the cost of Clerks of the Peace and \$37,000 which the province pays toward maintaining Clerks of the Peace, criminal prosecutions and prosecutions under the liquor act. The net additional cost to the taxpayers would therefore be \$84,000.

(i) *County Magistrates and Juvenile Court Judges*

Since our Commission was established, the county magistrates system has been extended to the entire province through the inclusion of the Counties of Saint John and Kings. County magistrates have also been assigned the additional responsibility of serving as juvenile court judges.

The province now pays the complete salaries of county magistrates. This has relieved the municipalities of a significant cost, since under the prior arrangements municipalities had to pay the salaries of juvenile court judges and contribute to the salaries of county magistrates.

(j) *Cost of Criminal Prosecutions*

The cost of criminal prosecutions is now shared by the province and the municipalities. If, however, the Crown Prosecutor system is adopted as we have proposed, then the municipalities shall be relieved of the entire cost of such prosecutions. This does not mean, however, that cities and towns should be relieved of the cost of prosecuting offences under their own local by-laws, since it is also our view that these urban municipalities should retain all revenue from fines imposed under these by-laws.

(k) *Cost of Supreme and County Court Proceedings*

Such items as jury and witness fees and Court Clerks, etc., which vary from year to year and over which there is no control are also shared by the province and the municipalities, at an average of 25 per cent by the Province and 75 per cent by the municipalities. The total estimate of such costs in 1962 was \$48,000, of which the Province was then responsible for \$12,000 and the municipalities \$36,000. The cost of secretaries to judges, \$9,150 in 1962, is entirely borne by the province, as are court office expenses, which amounted to \$2,000 in 1962.

(1) *Probate Courts*

Except for the provision of facilities, municipalities bear no share of the cost of Probate Courts.

The salaries of all judges and registrars are paid by the province and the province retains all amounts derived from the sale of probate stamps.

The Report of the Committee on Administration of Justice in New Brunswick stated:

" (a) *Qualification of Judges*

The Committee recommends that the Probate Courts Act be amended to provide that no person may be appointed Judge of Probate unless he is a member of the Bar. The Committee suggests that where this is not practicable the County Magistrate might be appointed.

"(b) *Consolidation of Courts*

As in the case of County Courts and Supreme Courts, the Committee is of the opinion that owing to developments in transportation, certain Probate Courts should now, or in the early future, be consolidated. This could well be adopted as a policy to be carried out as vacancies occur among the Judges of Probate. Groups of counties such as York-Sunbury-Queens, Westmorland - Albert - Kent, Saint John-Kings and Carleton-Victoria could usefully be consolidated into one territorial jurisdiction with one Probate Court.

"(c) *Registrars*

The Committee recommends that the Registrar of each Probate Court be a member of the Bar.

"(d) *Records*

Records of Probate Courts, except for the current seven years, should be placed in the custody of the Registrar of Deeds for the county or counties where no other provision is made for safekeeping, at public expense."

By way of further refinement of the recommendations of the Committee, but without differing in the principle of improvement, we suggest that consideration be given to a new Probate Courts Act, so as to provide amongst other things,

- (a) for the Clerk of the Peace (or Crown Prosecutor) occupying the position of Registrar, with or without extra salary, with sole jurisdiction to deal with all uncontested matters, and

Table 11:3

ESTIMATED CHANGE IN PROVINCIAL AND MUNICIPAL GOVERNMENT  
COSTS FROM CENTRALIZING ADMINISTRATION OF JUSTICE,  
INCLUDING SUGGESTED IMPROVEMENTS, NEW BRUNSWICK, 1961 BASIS

	Paid by Province 1961	Paid by Municipalities 1961	Estimated cost to Province of Central Administration with Suggested Improvements
1. Coroners Courts .....	2,000	28,000	30,000
2. County Magistrates .....	220,000	40,150 <sup>a</sup>	275,000
3. Crown Prosecutors to replace present Clerks of the Peace .....	37,000	25,000	146,500
4. Court Rooms .....	—	25,000	25,000
5. Gaols .....	34,700	207,000	445,000
6. Juvenile Courts:			
i) City of Saint John .....	—	30,000 <sup>b</sup>	30,000
ii) Other municipalities .....	—	11,000 <sup>c</sup>	—
iii) Miscellaneous .....	—	7,000	7,000
7. Sheriffs .....	7,500	20,000 <sup>d</sup>	80,000
8. Supreme, County and Magistrates Court Proceedings:			
i) Jury and Witness fees, court clerks, etc. ....	12,000	36,000 <sup>d</sup>	48,000
ii) Miscellaneous Services .....	11,150	8,000	41,150
<b>TOTALS</b> .....	<b>324,350</b>	<b>437,150</b>	<b>1,127,650</b>

Recapitulation

Estimated cost of centralized adminis- tration with suggested improvements in 1961 .....		1,127,650
Less: Amounts paid by Province, 1961	324,350	
Amounts paid by Municipalities, 1961 .....	437,150	761,500
Estimated cost of suggested improve- ments .....		366,150

a) Assumed by province on November 1, 1962

b) Province assumed part of the cost in 1963

c) Assumed by province on December 15, 1962, and included in county magistrates courts under central administration above.

d) Plus offices and other facilities.

Source: Commission research

(b) the elimination of the officers of Judge of Probate and the vesting of jurisdiction for all contested probate matters in the County Court Judges, with direct appeal after prima facie findings instead of the present unnecessarily protracted procedures for proof of wills in solemn form.

(m) *Court of Divorce and Matrimonial Causes*

The entire cost of this Court, less the fees paid by petitioners and litigants, is met by the province. One Supreme Court Judge is assigned to deal with all such matters and the sittings of the Court are held only in the City of Fredericton to deal with cases stemming from all over the

province and other areas. This system substantially adds to the costs of all parties residing outside the community of Fredericton.

The Committee on Administration of Justice in New Brunswick reported as follows:

“The Committee sees no need for change in the date of sittings in this Court. The Committee does not recommend that sittings be held elsewhere than at the City of Fredericton as the present system is satisfactory.”

It is suggested that both in the interests of the parties concerned, which annually number in the hundreds, and for the sake of economy that the Court be abolished and jurisdiction vested in either or both the Queens Bench Division of the Supreme Court and County Courts, as is the case in Nova Scotia. Such a move would also release a badly needed judge for other duties.

### III. *Summary of Costs*

5. The Committee on Administration of Justice in New Brunswick noted that over recent years the province has paid an increasing share of the costs of the administration of justice. The same Committee recommended that the province assume the entire cost of the administration of justice throughout the Province. From information supplied by the Department of the Attorney General at our request -and from other sources, we have prepared the following estimates of what the total cost of centralizing the administration of justice would have been in 1961:

### IV. *Recommendation*

6. We recommend that the Department of the Attorney General assume complete responsibility for the administration of justice in New Brunswick, with the cost to be met from general provincial revenues.

7. Our recommendation envisages the following major changes in the kind of services provided:

- (1) establishment of a system of crown

prosecutors, consisting as far as possible of full-time provincial civil service personnel, to conduct all prosecutions under the criminal code and provincial penal statutes, and to take over those tasks now performed by clerks of the peace,

- (2) replacement of existing county gaols with a system of six district gaols staffed with competent personnel devoted to rehabilitating persons within their custody.
- (3) replacement of the present system of part-time sheriffs with full - time sheriffs employed on a salary - only basis within the provincial civil service.

8. Under our recommendation, cities and towns would retain responsibility for local police services, providing lock-ups and enforcing municipal by-laws.

9. Were the province merely to assume the complete cost of administering justice as presently organized, there would be no net increase in cost to the taxpayers generally, since the province would only be absorbing that contribution (approximately \$437,000 in 1961) now made at the municipal level. In fact, the proposed centralization of present services would likely lead to lower costs through the elimination of the unnecessary duplication of overhead which now exists.

10. However, we have not been content merely to recommend that the administration of justice be centralized. Although it is not strictly within our terms of reference, we have also appreciated the urgent need to raise the standards of the various services which are provided. Had the improvements which we suggest been in effect during 1961, they would have increased the cost of administering justice by approximately \$366,000. We believe, however, that such an amount represents a necessary investment in the future well-being of our province, an investment which is long overdue.