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FINE OPTION
AN ALTERNATIVE TO IMPRISONMENT

The Law Reform Commission of Canada has repeatedly recommended that a wider use be made of alternatives to imprisonment particularly for offenders who are not meant to be imprisoned in the first place. Such alternatives are currently being considered for adaptation in the N.W.T. This discussion paper gives background information on one of these alternatives, the Fine Option, which has proven both rehabilitative and cost efficient when utilized in other parts of Canada.

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FINE OPTION PROGRAM

DEFINITION

A Fine Option is an alternative to incarceration for failure to pay a fine that a person has been ordered to pay by a court of competent jurisdiction. This alternative involves the opportunity to work off a fine through volunteer work on a project designed to benefit the community or any portion of that community.

PROBLEM

As portrayed in Tables 1 to 3 a significant percent of admissions to N.W.T. correctional facilities have been admitted due to failure to pay fines. During the 4 years between 1978 and 1981 an average of 16.07% of the admissions to the Northwest Territories Correctional Institutions were for fine default, as per Table 1. This percentage does not take into consideration those persons who serve short sentences in local RCMP lockups for the same purpose.

Of those incarcerated in N.W.T. institutions for fine default, some offenders paid the remainder of their fines during incarceration. As indicated in Table 11 an average of 33 inmates have for the past 4 years been in this category and have served an average of 14 days each. In addition a substantial number of admissions have included those individuals who were awarded sentences which included a fine as well as a prison term. See Table 111.

TABLE 1
ADMISSIONS TO N.W.T. CORRECTIONAL INSTITUTIONS
FOR FAILURE TO PAY FINES

YEAR	ADMISSIONS	% OF ADMISSIONS
1978	136	19.8%
1979	96	15.9%
1980	106	15.4%
1981	91	13.1%

TABLE II
FINES PAID WHILE IN N.W.T.
CORRECTIONAL INSTITUTIONS

YEAR	ADMISSIONS	AVERAGE NUMBER OF DAYS SERVED
1978	37	17
1979	26	8
1980	28	13
1981	40	19
OVERALL AVERAGE	32.75	14.25

TABLE III
ADMISSIONS TO N.W.T. CORRECTIONAL INSTITUTIONS
WITH SENTENCES INCLUDING FINES PLUS JAIL

YEAR	ADMISSIONS	% OF ADMISSIONS
1978	60	8.7
1979	49	8.1
1980	67	9.7
1981	71	10.2

In the north it is not only the unemployed who encounter difficulties in paying fines. Seasonal hunters and trappers are frequently in the position where they cannot readily obtain cash. Those on marginal income due to an intermittent employment pattern or the demands of a large family encounter considerable difficulty when an unexpected expense such as a fine arises. While the Fine Option Program does mean that there is an alternative to prison for the poor nevertheless it might be said that a condition of discrimination still remains as the poor have to do extra work to eliminate the fine while the rich pay from their abundance.

A default sentence does not only speak of discrimination between the rich and the poor but also tends to defeat the intent of the adjudication. The intent of a fine sentence is not to imprison but on the contrary to provide a deterrence which will enable the offender to continue to function in the community. Imprisoning an individual for his inability to pay a fine has been described as analagous to imprisonment for debt.

A significant number of persons awarded fines in the Northwest Territories have been between the ages of 16 to 21. According to the Criminal Code Section 646 (10) and 722 (9) before persons in this age category can be imprisoned a conduct means test must be done. ¹.

1. Martin's Criminal Code Section 722 (9)

722 (9)

"Where a person who has been allowed time for payment appears to the court to be not less than 16 nor more 21 years of age, the court shall before issuing a warrant committing the person to prison for default of payment, obtain and consider a report concerning the conduct and means to pay of the accused."

As there is no present alternative to prison for those who do not pay fines in the N.W.T. all defaulters in this age category must first be subject to a means and conduct test. This is time consuming for staff. Prison experience can have a negative influence on these young adults whose attitudes and lifestyles may be in the informative stages.

The availability of a Fine Option Program can reduce the negative aspects of this situation. These young adults can be introduced to the Fine Option Program when they cannot otherwise pay their fine. The means test would only then apply to those individuals who show an attitude of non-cooperation; who do not avail themselves of the work option, and therefore would require incarceration.

THE COMMUNITY SERVICE ORDER

Although the Fine Option and the Community Service Orders have a number of things in common they are separate and distinct programs. The Community Service Order is a non-custodial penalty requiring an offender to work unpaid for a prescribed

number of hours. The Community Service Order is a sentence alternative actually prescribed by the judge. It is often ordered as a condition of probation and in fact is frequently included as a recommendation in the pre-sentence report. A cash equivalency factor is not usually considered as an inherent part of the Community Service Order unless the judge determines it to be a manner of repaying the victim for damages incurred as a result of the offense.

Prior to the issuance of a Community Service Order the court usually makes inquiries as to the availability of opportunities for meaningful work in the community. Unlike the Fine Option Program the Community Service Order is usually not looked upon by the offender as a voluntary alternative but an order imposed by the judge.

OTHER JURISDICTIONS

Fine Option Programs have been operating for sometime in several of the Canadian provinces. Programs providing alternatives to imprisonment for fine default have however, not been confined to Canada. Since 1932 Sweden has operated a system of day fine designed to make monetary penalties for criminal offences more equitable between the poor and the rich. A formula has been developed to relate the amount of the fine directly to both the seriousness of the offense and to the offender's ability to pay. Incorporated in this formula there is also a provision for the payment of the fine according to the offender's liabilities. The Swiss Code includes the provision for payment of fines

on the instalment basis. It also provides an opportunity for the offender to work the debt off by volunteer labour. The Swiss Code states that if a convicted person neither pays a fine within the fixed period or works it out, the proper official shall order his goods seized and sold to satisfy the fine, provided there is a probability of realizing the fine by such action.

The Fine Option approach within the Canadian provinces varies considerably. Saskatchewan has chosen the strategy of service contracts with community agencies. These agencies include Indian Bands as well as agencies within larger centres. The Fine Option Agencies are responsible for registering the offender, selection of a suitable work placement, accurate completion of forms and ensuring that the Fine Option Program documentation is sent to the court on time. The Fine Option Agency is paid a fee for each offender placed in a work assignment.

Alberta has largely confined itself to an approach whereby government staff members working out of community correctional centres administer the Fine Option Program. These Correctional Community Centres in Alberta have largely the same responsibility for administering the Fine Option Program as do the Fine Option Agencies in Saskatchewan.

Both Alberta and Saskatchewan report that their Fine Option Programs are a success. For example, Alberta reports indicate that in the 1975 survey period fine default in the Lethbridge

area amounted to 73% of total institutional admissions. The 1980 survey indicated that this figure was reduced to 41.7%. Reports claim that these results can be directly linked to the level of program activity achieved in the pre-institutional phase of the Fine Option Program. ^{1.}

Saskatchewan reports that during 1980-81, 5,596 offenders participated in the Fine Option Program throughout the province. This eliminated 224 inmate years and the necessity of another institution. Saskatchewan's Corrections Division also reports that admissions to provincial correctional centres for fine default decreased from 38.8% in 1975-76 to 24.5% in 1980-81. The Fine Option Program in that province has been in operation during those years. ^{2.}

The Yukon Fine Option Program has recently been temporarily terminated following a judgement brought down in the Supreme Court of the Yukon Territory March 5, 1982. Mr. Justice H. C. B. Matheson stated in his judgement explanation that "the substitution of work for a fine is not simply a matter of a form of payment, it is an alteration of the sentence... It follows that an act reporting to propose a different sentence in its place must be a judicial act... I conclude that the process was a judicial process. That being so, authority must be found to have been granted by a statute." ^{3.} There is presently no such legislative authority in the Yukon.

1. Page 15, 17 Report, Fine Option Program - Alberta

2. Statistics compiled by Corrections Division, Saskatchewan Social Services June 25, 1981

3. Queen VS Victor Chymczuk, His Worship Justice of the Peace, John McCormick and M. K. Zapf, Chief Probation Officer and Paper Entitled Reasons for Judgement of the Court (over)

OBEJECTIVES OF A FINE OPTION PROGRAM

The major objectives of a Fine Option Program are as follows:

- a) reduction of the number of short term prison sentences which are of questionable value
- b) reduce the cost of the administration of justice in areas of demands upon prison facilities, transportation of offenders to and from prisons and processing admissions to prisons
- c) provision of a practical alternative to incarcerations for fine defaulters thereby reducing the disparities between those that have money and those who do not
- d) encouragement of responsibility on the part of the offender towards his community
- e) maintenance of the volunteer aspect in that the key to the program's success is the willingness of the offender to take advantage of the option as it is offered.

FEDERAL OFFENCES

A Fine Options Ordinance established by a province or territory in Canada can only legally provide a legislative base for Fine Options to be applied to offenses under the Provincial Ordinance or Territorial Law. At present there exists no Federal Legislation making Fine Option Programs available to persons convicted under Federal offences. A number of attempts have been made to bring such legislation before Parliament. The following omnibus bill was one such attempt.

To amend Section 650 of the Code to provide that payment of a fine may be made by earning credits for work performed in a program established for that purpose by the Lieutenant Governor in Council of the province. The program would determine the rate at which credits would be earned either before or after imprisonment for default in payment of a fine.

As these bills have not passed some provinces have elected to handle this matter by other means. Some have obtained letters of cooperation from the Federal Justice Department. These letters guarantee the cooperation of the Federal authorities with the Provincial Fine Option Programs and give permission for those charged under Federal offences to take part in the Provincial Fine Option Program. Recently the Minister of Justice and Attorney General of Canada has indicated his intention to pursue amendments to the Criminal Code facilitating the use of sentencing alternatives. It is expected that Fine Option Programs will receive attention in this amendment.

PROGRAM DESCRIPTION

A Fine Option Program allowing for a flexible delivery system is advisable to handle such varied situations as are present in the N.W.T. The legislation, Fine Options Ordinance and accompanying Regulations can be designed with this flexibility in mind. This will allow for the utilization of service contracts in some communities and the assistance of probation officers in others.

A. PROGRAM PUBLICITY

The potential user as well as the community at large must be aware of the Fine Option Program once it has been developed. In some jurisdictions the notice of fine form which is presented to each offender who is awarded a fine has printed on it a description of the Fine Option Program. Information leaflets as well as posters too have been effective.

Other jurisdictions have noted the value of effective publicity in this Fine Option Program. The 1980 review of fine defaulters in Saskatchewan recommends "that the Fine Option Program dramatically increase public visibility through improved information strategies - posters, media advertising --- which increases the pool of community based work placements for the program.¹

The successful operation of the Fine Option Program requires the support of private agencies, community groups and the community at large. Not only will specific assistance be required from community groups, as for example in the area of administering the local program, but volunteer work placements will be required. Effective publicity can also create a positive and accepting community climate required for the efficient operation of such a program.

1. Review of Fine Defaulters, November, December, 1980 by Marjory Heath, Director, Fine Option Program, Page 30

The operation of the program requires also cooperation from officials in the justice field such as police officers, justices of the peace, court clerks, judges, and crown prosecutors. During the planning states as well as on an ongoing basis it is important to maintain a communications link between these court officials and the staff administering the Fine Option Program. This type of publicity can be most effective when the personal relationship approach is taken in concert with more formal strategies.

B. PROGRAM PROCEDURE

A clear understanding of the Fine Option Program may be obtained by examining the procedures which can be followed in both aspects of the Fine Option Program; that is the community based and the institutional based programs.

I. Community Based Program

1. After an individual is convicted of an offence and awarded a fine with a default clause he is provided with Notice of Fine Form.
2. If the offender wishes to apply for consideration under the Fine Option Program he presents this Notice of Fine Form to the Fine Option Agency or probation officer in his community. An interview is scheduled to assess his suitability.
3. If the applicant is found to be a suitable candidate for the program he is accepted and a notice sent to the court.

4. On the basis of the offender's skills and personal qualifications he is referred to a work project and suitable supervision arranged.
5. Following the successful completion of the work project notification is sent to the court and work credits applied to the balance of the fine. The number of hours of required volunteer work is calculated by dividing the total fine by the amount credited per hour.

The availability of the offender must be taken into consideration when calculating the expected completion date. For example, if the offender is receiving Unemployment Insurance he must meet his obligations to that program such as in a job search and follow through area. If he is presently taking a course the number of hours for the Fine Option Work Program may be limited to certain times.

C. WORK PLACEMENTS

It is the responsibility of the Fine Option Agency or probation officer to develop work placements in the community. These work placements are developed with the assistance of field workers and approved by the Coordinator of the program. In the process of matching a fine defaulter with a Fine Option Work Project the following factors will be considered:

- type of offence
- dangerousity of the individual
- employment history
- personal suitability

If the offender is accepted into the program then he signs a waiver "waiving any legal right of action." This resolves the agency or government of any responsibilities for injury or death while he is working on the program.

Work placements should have the following characteristics:

- 1) will consist of meaningful work
- 2) this work will have a value to community agency and thereby to the community
- 3) this work will ordinarily not be done other than through volunteer labour
- 4) the work will therefore not take the place of paid employment

D. SUPERVISION

It is expected that most of the work placements utilized by a Fine Option Program will be with non-profit agency organizations or with government. The organizations are expected to supply the direct supervision with responsibilities to report to Fine Option Agency or probation officer depending on which administrative approach is being followed in a specific community.

The supervisor has the responsibility of keeping track of the hours which the offender works. These and the description of the nature of the employment are recorded on forms provided for that purpose. These forms are signed by the supervisor and countersigned by the Fine Option Agency or the probation officer. A copy of this form is then forwarded to the Clerk

of the Court who credits the appropriate amount against the fine payment.

Should problems develop as to the quality or quantity of the offender's work so that the work option is not completed the Fine Option Agency or probation officer is contacted by the supervisor and attempts made at rectifying the situation. A change in work placement may be necessary at this time or a request to the court for an extension of time to pay. On the other hand if a continual attitude of non-cooperation by the offender prevails time may run out making imprisonment inevitable. The reasons for termination should be given to the offender and noted on the work record form.

II. INSTITUTIONAL BASED PROGRAM

All fine defaulters committed to correctional institutions should be screened in order to determine their eligibility for involvement in a Fine Option Program. This initial screening can be immediately followed by an interview to determine eligibility and a willingness to work off the fine. If the inmate is contacted about his interest in the Fine Option Program as soon as possible following commitment the average 14.25 days served as reported in Table 11 can be considerably reduced.

Depending upon the inmate's individual circumstances he can

participate in the institutional phase of the Fine Option Program in one of the four following ways:

- 1) released on temporary absence from the correctional institution to a community residential centre
- 2) released on temporary absence to his or her permanent residence in the community
- 3) continue to remain in the correctional institution but released each day to work in a Fine Option assignment
- 4) if denied temporary absence the inmate may engage in credited work on special projects under the supervision of a supervisor

Temporary absence provides a vehicle by means of which the institutionalized inmate can be involved in a Fine Option Program. Providing the application and acceptance procedures of the temporary absence have been followed it is advantageous for the inmate to reside in a community based residence such as a Halfway House rather than to be housed in the correctional institution. A temporary absence can be issued for the purpose of either a temporary release or a day release depending upon the circumstances of the offender and the availability of community residential facilities.

A minority of fine defaulters, however, may not meet the eligibility criteria for the Fine Option Program external to the institution. They may, for example, have a history of violence or of serious offences, a history of escaping custody

or being unlawfully at large. In addition no community living facility may be currently available. For these individuals the fine can be worked off through involvement in the internal component of the program.

The work service available within the internal component of the institutional portion of the Fine Option Program will consist of special projects, for example, landscaping, or cleaning brush. All fine defaulters participating in the institutional phase receive earned remission on their sentences as well as a standard fine option hourly rate which is credited towards the fine. Consequently the number of days of incarceration for fine defaulters is reduced considerably.

Individuals who do not handle their responsibilities within the Fine Option Program can find that its opportunities are closed to them and they can be reinserted into the regular institutional program. Given the above fine option opportunities a fine defaulter may, however, be incarcerated less than a day while a process is completed to involve him in Fine Option Program. This institutional phase of the program can thereby result in considerable savings to the tax pay and reduce substantially the difficulties encountered by the fine defaulter and his family.

PROGRAM EVALUATION

With any program using public resources it is important to

build into its design methods for the collection of relevant data so that ongoing evaluation can take place. The method of data collection should be as simple as possible yet systematic and comprehensive enough to provide answers to all reasonable questions. The data collected can become part of the corrections segment of the Management Information Services.

The main data collection form is filled in by the Fine Option Agency or the probation officer who locally administers the program. It is also completed by institutional staff where the fine option is worked off through projects within the institution. This statistical form is then forwarded to the Coordinator of the Fine Option Program at the conclusion of every month. Accompanying this form are copies of the Fine Settlement Form which is also used to communicate with the court. This form includes specific information about the fine option applicant. Data from these two forms will serve as a base for the Coordinator's Monthly Report to the Chief of Corrections. It will also serve as a data base for ongoing evaluation and control.

CONCLUSION

As an alternative to incarceration the Fine Option Program appears to have potential. A statistically significant number of expensive inmate days in N.W.T. correctional institutions are utilized by those who are serving time in prison in lieu of paying their fines. Northern communities have available

opportunities for volunteer work. Well established non-profit organizations capable of handling service contracts are present in many of these communities as are probation officers with the capacity of administering a Fine Option Program. To combine these resources into a viable Fine Option Program will require developmental and coordinative-management skills.

May 6, 1982

MAEERS/dc

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LEGISLATIVE PROPOSAL

N.W.T. FINE OPTION PROGRAM

PURPOSE OF LEGISLATION

The purpose of this legislation is to enact the legislative base for a Fine Option Program to be established in the N.W.T. The major objective of this Fine Option Program is to provide an alternative to imprisonment for those offenders who are unable to pay a fine; a sentence imposed by the court for a summary conviction. This alternative to prison consists of voluntary work with non-profit organizations for which the offender is credited with a predetermined amount of money per hour to be applied towards the fine payment. Consequently the expensive and sometimes highly disruptive prison alternative to the non-payment of fines is avoided.

ORIGIN OF REQUEST FOR LEGISLATION

This request originated with the Corrections Service Division Department of Social Services which is responsible for both Institutional and Community Corrections Programs in the N.W.T. There exists a continual situation of overcrowding within the N.W.T. correctional facilities. Other than expanding these facilities, an expensive proposition, alternatives to imprisonment must be found in order to maintain a viable correctional program. Statistics indicate that during the past three years an average of 16% of the admissions to N.W.T. correctional institutions were for failures to pay fines. These prison terms not intended by the sentencing judge, are felt to be of limited deterrent value. In addition, they often interject a serious counter-productive factor into both the offender's family and work situation.

PROBLEMS TO OVERCOME

A number of provinces including Manitoba, Saskatchewan and Alberta have well established Fine Option Programs. Information on these programs is available and is being utilized to avoid some of the problems inherent in the establishment of a new program.

The N.W.T. Fine Options Legislation will pertain to fines imposed for offenses covered by N.W.T. Ordinances, not by Federal Law. There presently exists no legislative base under the Criminal Code for a court to provide an alternative to fines, although in the past years several bills have been introduced into Parliament regarding this area of law. Alberta and Saskatchewan have obtained letters of co-operation from the federal Department of Justice. These have established that offenders awarded fines for offenses against Federal Legislation such as the Narcotic Control Act are free to participate in Provincial Fine Option Programs. A clarification of these matters are required for the N.W.T.

RECOMMENDED POLICY:

- A. Policy underlying major items to be covered in the proposed legislation.
1. The Fine Option alternative is only available where the sentence of a fine includes time to pay and where the penalty for non-payment is incarceration.
 2. This fine option alternative is to be available to the offender both before and after imprisonment.
 3. The alternative offered is the opportunity to work off the fine by volunteer service in the community.
 4. Contracts can be entered into with various community-based organizations to act as Fine Option Agencies to provide the services of the Fine Option Program locally.
 5. When it is not possible for the offender to satisfy the extent of the fine via the Fine Option Program within the time limit as established by the court, he may appeal to the court for an extension of time.
 6. Within the time limit, as imposed by the court, as long as the convicted person continues to comply with and observes the terms and conditions of the Fine Option Program, no action should be taken to execute any warrant for the arrest of the person for failure to pay the fine or likewise to suspend his drivers licence or withdraw the registration of a vehicle owned by the person.
- B. Matters on which the Commissioner would be authorized to issue regulations.
1. The amount or rate of credits to be applied against fines for unpaid community work performed by convicted persons under the program.
 2. Provisions for dealing with convicted persons on whom fines are imposed and who because of physical, mental or other handicaps are unable to elect to perform unpaid community service or pay the fines.
 3. Regulation respecting the establishment and administration of a Fine Option Program in the whole or any part of the N.W.T.
 4. General guidelines for a Fine Option Agency.

C. Administrative Implications of the Proposed Legislation

A coordinative and monitoring staff function will be required for the Fine Option Program once it is established in the N.W.T. If the program is to be delivered via service contracts with community agencies then staff will not only be required to negotiate these contracts but to monitor continual performance. If on the other hand, the main thrust of the service delivery is through the utilization of social service field staff a staff training and supervisory function will be introduced through already existing structures.

An important ingredient in the efficient operation of a Fine Option Program is the maintenance of a precise and accurate communications channel between the Placement Agency or the service staff and the court. The close monitoring of regulations covering this and other administration areas of the Fine Option Program are of paramount importance.

It is estimated that the Fine Option Program coordinative and monitoring functions will require 50% of the time of a Corrections Program Officer located at Headquarters, Yellowknife.

PARTIES AFFECTED:

The following parties will be affected in varying degrees by the proposed Fine Option Legislation:

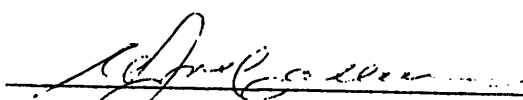
1. Judiciary - re sentencing considerations.
2. Justices of the Peace - re sentencing considerations.
3. Superintendents of Correctional Institutions - re option available following incarceration for fine default.
4. Court Clerks - re administrative concerns.
5. Legal Profession - re instructions to clients and speaking to sentence.

CONSULTATION WITH AFFECTED PARTIES:

Discussions have been held with Chief Territorial Judge Slaven, with Ray James, Chief Justice of the Peace, with the Territorial Clerk and with various representatives of the legal profession. A presentation will be made to the Correctional Superintendents at the end of April.

SCHEDULING OF LEGISLATION:

Fall Session 1982


Minister of Health and Social Services

April 20, 1982

Date

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