



# Solicitor General Canada

# Solliciteur général Canada

FILE NO. - DOSSIER N <sup>o</sup>	VOLUME
1140-257 INACTIVE	1

**SECRETARIAT**  
**SECRÉTARIAT**

FROM DU	TO AU
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SUBJECT  
SUJET

## ADMINISTRATION & ORGANIZATION

SUB-SUBJECT  
SUJET SEC

## COMMITTEES

TITLE   
TITRE

COMMISSION OF INQUIRY TO INQUIRE INTO DISTURBANCES OCCURRED  
AT KINGSTON PENITENTIARY DURING THE PERIOD APRIL 14-18, 1971

MS 35 (4-76)

**CONFIDENTIAL — CONFIDENTIEL**

[illegible]

MS 30 A (3-76)

1140-257 (Vol. 1)

INACTIVE

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# CLOSED VOLUME VOLUME COMPLET



DATED FROM  
À COMPTER DU

18/2/71

TO  
JUSQU' AU

11/12/72

**AFFIX TO TOP OF FILE — À METTRE SUR LE DOSSIER**

**DO NOT ADD ANY MORE PAPERS — NE PAS AJOUTER DE DOCUMENTS**

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FILE NO. — DOSSIER N°

1140-257

VOLUME

**Pages 3 to / à 6**  
**are withheld pursuant to section**  
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**23**

**of the Access to Information Act**  
**de la Loi sur l'accès à l'information**

APPENDIX "A"



CHAPTER S-8

An Act respecting the Senate and House of Commons

SHORT TITLE

Short title

1. This Act may be cited as the *Senate and House of Commons Act*. R.S., c. 249, s. 1.

DEMISE OF THE CROWN

Not to dissolve Parliament

2. No parliament of Canada shall determine or be dissolved by the demise of the Crown, but such parliament shall continue, and may meet, convene and sit, proceed and act, notwithstanding the demise of the Crown, in the same manner as if such demise had not happened. R.S., c. 249, s. 2.

Prerogative saved

3. Nothing in section 2 alters or abridges the power of the Crown to prorogue or dissolve the Parliament of Canada. R.S., c. 249, s. 3.

PRIVILEGES AND IMMUNITIES OF MEMBERS AND OFFICERS

Privileges, etc., of Senate and House of Commons

4. The Senate and the House of Commons respectively, and the members thereof respectively, hold, enjoy and exercise,

(a) such and the like privileges, immunities and powers as, at the time of the passing of the *British North America Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom, and by the members thereof, so far as the same are consistent with and not repugnant to that Act; and

(b) such privileges, immunities and powers as are from time to time defined by Act of

CHAPITRE S-8

Loi concernant le Sénat et la Chambre des communes

TITRE ABRÉGÉ

1. La présente loi peut être citée sous le titre: *Loi sur le Sénat et la Chambre des communes*. S.R., c. 249, art. 1.

TRANSMISSION DE LA COURONNE

2. Le Parlement du Canada ne cesse pas d'exister ni n'est dissous du fait de la transmission de la Couronne; mais ce Parlement subsiste et peut se réunir, s'assembler et siéger, délibérer et agir, nonobstant la transmission de la Couronne, comme si cette transmission n'eût pas eu lieu. S.R., c. 249, art. 2.

3. Rien à l'article 2 ne modifie ni ne restreint le pouvoir que possède la Couronne de proroger ou de dissoudre le Parlement du Canada. S.R., c. 249, art. 3.

PRIVILÈGES ET IMMUNITÉS DES MEMBRES ET FONCTIONNAIRES

4. Le Sénat et la Chambre des communes, respectivement, ainsi que leurs membres respectifs, possèdent et exercent

a) les mêmes privilèges, immunités et attributions que possédaient et exerçaient, lorsque a été voté l'*Acte de l'Amérique du Nord britannique, 1867*, la Chambre des communes du Parlement du Royaume-Uni, ainsi que ses membres, dans la mesure où ils ne sont pas incompatibles avec ladite loi; et

b) les privilèges, immunités et attributions qui sont de temps à autre définis par une



the Parliament of Canada, not exceeding those at the time of the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof respectively. R.S., c. 249, s. 4.

Privileges to be  
judicially noted

5. Such privileges, immunities and powers are part of the general and public law of Canada, and it is not necessary to plead the same, but the same shall, in all courts in Canada, and by and before all judges, be taken notice of judicially. R.S., c. 249, s. 5.

Printed copy of  
journals

6. Upon any inquiry concerning the privileges, immunities and powers of the Senate and of the House of Commons or of any member thereof respectively, any copy of the journals of the Senate or House of Commons, printed or purported to be printed by the order of the Senate or House of Commons, shall be admitted as evidence of such journals by all courts, justices and others, without any proof being given that such copies were so printed. R.S., c. 249, s. 6.

loi du Parlement du Canada, n'excédant pas ceux que possédaient et exerçaient, respectivement, à la date de cette loi, la Chambre des communes du Parlement du Royaume-Uni et ses membres. S.R., c. 249, art. 4.

5. Ces privilèges, immunités et attributions font partie de la loi générale et publique du Canada, et il n'est pas nécessaire de les alléguer spécialement, mais tous les tribunaux et tous les juges du Canada doivent en prendre judiciairement connaissance. S.R., c. 249, art. 5.

Connaissance  
judiciaire de ces  
privilèges

6. Lors de toute enquête tenue au sujet des privilèges, immunités et attributions du Sénat et de la Chambre des communes, ou de l'un de leurs membres respectivement, tout exemplaire des journaux du Sénat ou de la Chambre des communes, imprimé, ou paraissant l'être, par ordre du Sénat ou de la Chambre des communes, est recevable comme preuve de ces journaux devant tous les tribunaux, juges de paix et autres, sans qu'il soit besoin de prouver que cet exemplaire a été ainsi imprimé. S.R., c. 249, art. 6.

Un exemplaire  
imprimé des  
journaux en fait  
foi

#### REPORT AND PROCEEDINGS

Proceedings  
based on report,  
etc. published  
under authority

7. (1) Any person who is a defendant in any civil or criminal proceedings commenced and prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by or under the authority of the Senate or House of Commons, may bring before the court in which such proceedings are so commenced and prosecuted, or before any judge of the same, first giving twenty-four hours notice of his intention so to do to the prosecutor or plaintiff in such proceedings, or to his attorney or solicitor, a certificate under the hand of the Speaker or Clerk of the Senate or House of Commons, as the case may be, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such civil or criminal proceedings have been commenced and prosecuted, was or were published by such person or by his servant, by order or under the authority of the Senate or House of Commons, as the case may be, together with an affidavit verifying such certificate.

Stay of  
proceedings

(2) Such court or judge shall thereupon

#### RAPPORT ET PROCÉDURES

7. (1) Tout défendeur dans des procédures civiles ou criminelles intentées et poursuivies de quelque façon que ce soit, en raison ou en conséquence ou au sujet de la publication, par ce défendeur ou son préposé, d'un rapport, document ou procès-verbal, avec ou sous l'autorisation du Sénat ou de la Chambre des communes, peut produire devant la cour où ces procédures ont été ainsi intentées et poursuivies, ou devant un juge de cette cour, après avoir, au préalable, donné vingt-quatre heures d'avis de son intention de ce faire au demandeur ou poursuivant en cause, ou à son procureur ou avocat, un certificat, revêtu du seing du président ou du greffier du Sénat ou de l'Orateur ou du greffier de la Chambre des communes, selon le cas, portant que le rapport, document ou procès-verbal, selon le cas, à l'égard duquel les procédures civiles ou criminelles ont été intentées et poursuivies, a été publié par le défendeur ou son préposé, d'ordre et avec l'autorisation du Sénat ou de la Chambre des communes, selon le cas, ainsi qu'un affidavit attestant ce certificat.

Procédures  
fondées sur un  
rapport, etc.  
publié avec  
autorité de l'une  
ou l'autre  
Chambre

(2) La cour ou le juge doit alors arrêter

Arrêt des  
procédures

immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 249, s. 7.

immédiatement ces procédures civiles ou criminelles, et, en raison de la présente loi, ces dernières, ainsi que tout bref ou sommation émis en l'espèce, sont définitivement discontinuées, prennent fin et sont annulées et sont tenues et considérées comme étant discontinuées et annulées et comme ayant pris fin. S.R., c. 249, art. 7.

Proof of  
correctness of  
copy

8. (1) Where any civil or criminal proceedings are commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant, at any stage of the proceedings, may lay before the court or judge, such report, paper, votes or proceedings, and such copy with an affidavit verifying such report, paper, votes or proceedings, and the correctness of such copy.

8. (1) S'il est intenté ou poursuivi une procédure civile ou criminelle en raison ou en conséquence ou au sujet de la publication de quelque exemplaire de ce rapport, document ou procès-verbal, le défendeur peut, à toute phase de la procédure, produire ce rapport, document ou procès-verbal devant la cour ou le juge, ainsi que cet exemplaire accompagné d'un affidavit qui vérifie le rapport, document ou procès-verbal, et atteste que l'exemplaire en est une copie conforme.

Preuve de  
l'exemplaire

Stay of  
proceedings

(2) The court or judge shall thereupon immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein, shall be and shall be deemed to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 249, s. 8.

(2) La cour ou le juge doit alors arrêter immédiatement ces procédures civiles ou criminelles, et, en raison de la présente loi, ces dernières, ainsi que tout bref ou sommation émis en l'espèce, sont définitivement discontinuées, prennent fin et sont annulées et sont considérées comme étant discontinuées et annulées et comme ayant pris fin. S.R., c. 249, art. 8.

Arrêt des  
procédures

Proof in action  
for publishing  
extracts, etc.

9. In any civil or criminal proceedings commenced or prosecuted for printing any extract from or abstract of any such report, paper, votes or proceedings, such report, paper, votes or proceedings may be given in evidence, and it may be shown that such extract and abstract was published bona fide and without malice, and, if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. R.S., c. 249, s. 9.

9. Dans toute procédure civile ou criminelle intentée ou poursuivie en raison de l'impression de quelque extrait ou résumé d'un pareil rapport, document ou procès-verbal, ce rapport, document ou procès-verbal peut être produit à titre de preuve, et le défendeur peut démontrer que cet extrait et résumé a été publié de bonne foi et sans malice, et si le jury est de cet avis, un verdict de non-culpabilité est rendu en sa faveur. S.R., c. 249, art. 9.

Preuve dans une  
cause relative à  
la publication  
d'extraits, etc.

#### INDEPENDENCE OF PARLIAMENT

##### *Members of the House of Commons*

Persons  
ineligible to be  
members

10. Except as hereinafter specially provided, (a) no person accepting or holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada, to which any salary, fee, wages,

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2  
Chap. S-8

Sénat et Chambre des communes

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Stay of  
proceedings

(2) Such court or judge shall thereupon

loi du Parlement du Canada, n'excédant pas ceux que possédaient et exerçaient, respectivement, à la date de cette loi, la Chambre des communes du Parlement du Royaume-Uni et ses membres. S.R., c. 249, art. 4.

Connaissance  
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privileges

5. Ces privilèges, immunités et attributions font partie de la loi générale et publique du Canada, et il n'est pas nécessaire de les alléguer spécialement, mais tous les tribunaux et tous les juges du Canada doivent en prendre judiciairement connaissance. S.R., c. 249, art. 5.

Un exemplaire  
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RAPPORT ET PROCÉDURES

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Arrêt des  
procédures

(2) La cour ou le juge doit alors arrêter



immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 249, s. 7.

immédiatement ces procédures civiles ou criminelles, et, en raison de la présente loi, ces dernières, ainsi que tout bref ou sommation émis en l'espèce, sont définitivement discontinuées, prennent fin et sont annulées et sont tenues et considérées comme étant discontinuées et annulées et comme ayant pris fin. S.R., c. 249, art. 7.

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copy

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8. (1) S'il est intenté ou poursuivi une procédure civile ou criminelle en raison ou en conséquence ou au sujet de la publication de quelque exemplaire de ce rapport, document ou procès-verbal, le défendeur peut, à toute phase de la procédure, produire ce rapport, document ou procès-verbal devant la cour ou le juge, ainsi que cet exemplaire accompagné d'un affidavit qui vérifie le rapport, document ou procès-verbal, et atteste que l'exemplaire en est une copie conforme.

Preuve de  
l'exemplaire

Stay of  
proceedings

(2) The court or judge shall thereupon immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein, shall be and shall be deemed to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 249, s. 8.

(2) La cour ou le juge doit alors arrêter immédiatement ces procédures civiles ou criminelles, et, en raison de la présente loi, ces dernières, ainsi que tout bref ou sommation émis en l'espèce, sont définitivement discontinuées, prennent fin et sont annulées et sont considérées comme étant discontinuées et annulées et comme ayant pris fin. S.R., c. 249, art. 8.

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9. In any civil or criminal proceedings commenced or prosecuted for printing any extract from or abstract of any such report, paper, votes or proceedings, such report, paper, votes or proceedings may be given in evidence, and it may be shown that such extract and abstract was published *bona fide* and without malice, and, if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. R.S., c. 249, s. 9.

9. Dans toute procédure civile ou criminelle intentée ou poursuivie en raison de l'impression de quelque extrait ou résumé d'un pareil rapport, document ou procès-verbal, ce rapport, document ou procès-verbal peut être produit à titre de preuve, et le défendeur peut démontrer que cet extrait et résumé a été publié de bonne foi et sans malice, et si le jury est de cet avis, un verdict de non-culpabilité est rendu en sa faveur. S.R., c. 249, art. 9.

Preuve dans une  
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#### INDEPENDENCE OF PARLIAMENT

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#### INDÉPENDANCE DU PARLEMENT

##### *Députés de la Chambre des communes*

10. Sauf les dispositions spéciales qui suivent,

a) nulle personne qui, y ayant été nommée par la Couronne ou un fonctionnaire du gouvernement du Canada, accepte ou occupe une charge, une commission ou un emploi, d'une nature permanente ou temporaire, au service du gouvernement du Canada, comportant un traitement, des

Personnes  
ineligibles

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**23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

NETUPSKY et al. v. CRAIG et al.

*Supreme Court of Canada, Judson, Ritchie, Hall, Spence  
and Laskin, JJ. June 29, 1972.*

Libel and slander — Defences — Qualified privilege — Presumption  
of bona fides — Onus in respect of malice.

Where a reputable engineer who prepared the design drawings for a civic structure makes a serious charge in a telegram to the city against the supervising architects as to the safety of the structure while in the course of construction, the city's request to the architects for a report on the matter creates an occasion of qualified privilege in respect of the architect's reply. When words are spoken or written on an occasion of qualified privilege the *bona fides* of the defendant and his honesty of belief in the truth of his statements are presumed and the burden lies upon the plaintiff to rebut that presumption. Failure to so direct the jury constitutes serious non-direction amounting to misdirection. If there is evidence proving that the statements complained of are false to the knowledge of the person who makes them, they are taken to have been made maliciously but a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation on his privilege. He will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.

[*Adam v. Ward*, [1917] A.C. 309, *aprvd*]

APPEAL from the judgment of the Ontario Court of Appeal, 14 D.L.R. (3d) 387, [1971] 1 O.R. 51, allowing an appeal from a judgment of Haines, J., on the verdict of the jury in favour of the plaintiff in an action for damages for libel.

Boris Netupsky, appellant, in person.  
C. L. Dubin, Q.C., for respondents.

The judgment of the Court was delivered by

ITCHIE, J.:—This is an appeal from a judgment of the Court of Appeal of Ontario (Gale, C.J.O., dissenting in part) allowing an appeal from a judgment pronounced by Haines, J., whereby it was ordered that the present appellant recover the sum of \$250,000 and costs from the defendants for an alleged libel published by the defendants in a letter written to the Director of Property of the Corporation of the City of Ottawa on May 10, 1966.

The circumstances giving rise to this appeal have been fully and accurately set out in the reasons for judgment delivered by Schroeder, J.A., on behalf of the majority of the Court of Appeal and as these reasons for judgment have now been

reported in 14 D.L.R. (3d) 387 at p. 390, [1971] 1 O.R. 51, I consider it to be sufficient for the purposes of disposing of the present appeal that I should do no more than summarize the sequence of events which were the immediate cause prompting the respondents to publish the letter containing the alleged libel.

The appellant, Boris Netupsky, is a professional engineer residing in Vancouver, British Columbia, and is the president of the other appellant, Netupsky Engineering Co. Ltd., in which he held the controlling interest.

An architect named Gerald Hamilton, who practised in Vancouver, B.C., had devised a novel idea of a structure which could serve the dual purpose of an outdoor stadium and an indoor ice arena, the construction of which necessarily involved a high content of structural steel, and feeling that the realization of this concept required the advice of a structural engineer, he consulted Netupsky and they collaborated with a view to the erection of such a combined stadium and ice arena.

In May, 1965, the City of Ottawa instituted a design competition with a view to constructing a new outdoor stadium and indoor arena as a centennial project. Hamilton, in co-operation with Netupsky, decided to enter his plans in the design competition and in the month of July it was announced that he had won the competition and that Ottawa was ready to proceed with the project. In this regard, Hamilton became associated with the respondents as architects for the project and he requested Netupsky to prepare further structural steel drawings which were duly submitted and which formed the basis of the call for tenders with respect to the steel to be incorporated in the structure.

Dominion Bridge Company Limited was the successful bidder for the steel portion of the contract, but as time went on it appeared that the cost of steel was going to be very much higher than had been anticipated and that the total price for the project on the basis of the drawings submitted would be substantially higher than the city's budgetary limit. Modifications were accordingly made in the original drawings with a view to reducing the overall cost of the required steel and when Netupsky was asked to approve the suggested changes he refused to do so on the ground that they invalidated his original drawings and he stated that if the new design was proceeded with a new agreement would have to be made with him with respect to his fees. In this regard, he wrote to Gerald Hamilton on March 8, 1966, as follows:

Please be advised that we are not prepared to redesign or review the submitted redesign of the steel superstructure without coming to a mutually agreeable arrangement as to our fee for this work, as well as for the work of re-appraising the substructure and the prestressed concrete elements.

In the result no such "mutually agreeable arrangement" was reached with Netupsky and as time was a most important factor in view of the fact that the proposed structure was intended as a centennial project, the respondents felt compelled to engage the services of another structural engineer (Mr. Adjeleian) to prepare the drawings which Netupsky had refused to complete, and generally to act in the capacity of consulting engineer. When Hamilton advised the appellants that the Dominion Bridge Co. had proceeded with the erection of the superstructure in accordance with the altered design for which it, in company with Mr. Adjeleian had accepted full responsibility, Netupsky reacted violently as is evidenced by the highly provocative telegram which he sent to the "Director of Planning and Works, Corporation of the City of Ottawa, Ontario" on May 4, 1966, in the following terms:

Re Ottawa Civic Centre at Lansdowne Park STOP Due to information now made available to me by the architect relative to a proposed redesign of the steel superstructure by Dominion Bridge as well as evidence of noncompliance with certain other requirements called for on my firm's drawings I must bring to your immediate attention my statement to the architect that being the engineer retained by him under contract and licensed by the Ontario Professional Engineers Association to design the said structure, I consider this procedure not only invalidates the original design of the entire structure as detailed on my firm's drawings, but also places the whole project on an uneconomical and unsafe structural basis STOP Upon your request I will be pleased to go to Ottawa at my own expense to answer any queries you may have.

Separate telegrams in identical terms were sent to the Building Inspector of the city and to the Municipal Council. Immediately after receiving the telegram, the Director of Property for the City of Ottawa, who was directly concerned with the Civic Centre project, wrote a letter to the respondents which read, in part, as follows:

I attach copy of a telegram from Boris Netupsky, P. Eng., Netupsky Engineering Co. Ltd. your structural consultant for the Ottawa Civic Centre. Will you furnish a report on this matter within 48 hours with particular attention to the remarks concerning the safety of the structure.

It was in reply to this letter from the city and in light of the highly provocative and damaging language used by the appellants in criticism of the procedure for which the respondents were responsible that Kohler wrote the letter on behalf

of himself and his partner, the respondent Craig, which contained the alleged libel. The letter is reproduced in full in the reasons for judgment of Schroeder, J.A., in 14 D.L.R. (3d) at p. 398, and the following language contained in that letter constitutes the alleged libel complained of in the statement of claim.

*"Dominion Bridge during their checking of Netupsky's drawings, suggested certain changes to increase the safety of the building and to reduce the cost. We as architects, mindful of our responsibility for safety, chose to accept the advice of the very experienced engineers of Dominion Bridge rather than that of Boris Netupsky. This action was agreed to by Mr. John Adjeleian, the Ottawa structural engineer whom we have engaged to supervise the construction. We have, therefore ceased to consult with Mr. Netupsky since mid-February."*

*"He is disgruntled that we are no longer consulting with him and is trying to force us to pay him for work that he has not done to our satisfaction."*

*"We wish to give you a firm assurance that his allegations that the revisions we have made to the structure 'places the whole project on an uneconomical and unsafe structural basis' are completely false, groundless, untrue and libellous."*

In order to assess the meaning to be attached to this language, I think it desirable to reproduce the last paragraph of that letter which reads:

*"In support of this statement we enclose a letter from the Dominion Bridge Company dated May 9th. in which they certify in the name of the company that the design has been checked by them and is fully adequate, and a letter from John Adjeleian that he has checked and is continuing to check all matters concerning the safety of the concrete work. You have our assurance that this building has been designed and will be built conforming to all building by-laws and sound engineering principles and will be perfectly safe."*

The respondents relied on the defences of qualified privilege and fair comment, but the question raised by this appeal is concerned almost exclusively with the nature and effect of the defence of qualified privilege, in relation to which I adopt the following paragraphs contained in the reasons for judgment of Mr. Justice Schroeder at p. 407:

The defendant did not rely on justification as a defence but depended principally on the defence of qualified privilege. It was the duty of the trial Judge to decide and rule upon the question as to whether the allegedly libellous words were wholly unconnected with and irrelevant to the duty or interest by reason of which the occasion of qualified privilege arose. If the words were not wholly unconnected with or irrelevant to such duty or interest, they were presumed to have been published in good faith — a presumption

*which was entitled to prevail unless the plaintiff proved by extrinsic or intrinsic evidence that they had been published maliciously.*

It is common ground that the statements made by the defendant to the City authorities related to a subject-matter in which the defendants and the City had a legitimate and common interest and were on that ground protected as statements made on an occasion of qualified privilege. A more apposite and firmer basis for the privilege arises from the fact that the statements were made in the conduct of the defendants' own affairs in a manner in which their own interest was concerned. More specifically, they were replying to an unfair and unwarranted attack upon their professional integrity and competence which they were justified in repelling by a denial and explanation. This forms a more substantial and more relevant foundation for the privilege, and entitles the defendants to considerably wider latitude than does the basis upon which the learned trial Judge rested it.

(Italics are my own.) I agree also with the opinion expressed by Mr. Justice Schroeder where he said in the course of his reasons for judgment at p. 404:

In my respectful opinion, the failure to tell the jury that when words are spoken or written on an occasion of qualified privilege the *bona fides* of the defendant and his honesty of belief in the truth of his statements is presumed and that the burden then lies upon the plaintiff to rebut that presumption constitutes serious non-direction amounting to misdirection: . . . The manner in which this portion of the charge was submitted to the jury was a direction that the defendant had the burden of satisfying them upon that issue, and that if he failed to do so he was liable in damages. The circumstances of this case made it essential that the jury should have been correctly instructed upon this point, otherwise their whole approach to the determination of this highly material issue would rest upon an improper basis.

The determination of this appeal in my opinion, turns on the question of whether there was any extrinsic or intrinsic evidence that the respondents were motivated by malice in writing the letter which is complained of. There can be little doubt that if there is evidence proving that the statements complained of are false to the knowledge of the person who makes them, they are taken to have been made maliciously, but this statement must be read in light of the language used by Lord Atkinson in *Adam v. Ward*, [1917] A.C. 309 at p. 339, where he said:

... a person making a communication on a privileged occasion is not restricted to the use of such language merely as is reasonably necessary to protect the interest or discharge the duty which is the foundation of his privilege; but that, on the contrary, he will be protected, even though his language should be violent or excessively strong, if, having regard to all the circumstances of the case, he might have honestly and on reasonable grounds believed that what

he wrote or said was true and necessary for the purpose of his vindication, though in fact it was not so.

Mr. Justice Schroeder took the view that there was no evidence of malice to go to the jury and that the action should be dismissed on that ground, but Chief Justice Gale, in the course of his dissenting reasons for judgment, while agreeing in all other respects with Mr. Justice Schroeder, expressed the opinion that there was some intrinsic evidence upon which a jury might have found that two sentences in the letter complained of contained statements that were false to the knowledge of the respondent and he would therefore have directed a new trial so that another jury properly instructed would have an opportunity to determine this issue.

The sentences which gave rise to Chief Justice Gale's dissenting opinion read as follows [at p. 398]:

*"Dominion Bridge during their checking of Netupsky's drawings suggested certain changes to increase the safety of the building and to reduce the cost. We as architects, mindful of our responsibility for safety, chose to accept the advice of the very experienced engineers of Dominion Bridge rather than that of Boris Netupsky."*

The learned dissenting Judge expressed the view that the jury might reasonably interpret those two sentences as meaning and having been intended to mean, that Dominion Bridge Co. Ltd. suggested that changes to Netupsky's drawings were necessary to increase the safety of the building which might be unsafe without them and that the respondent had accepted these suggestions and decided to abandon or substantially improve upon Netupsky's design, all of which might be taken to mean that the Netupsky design evidenced his incompetence.

Any consideration of the language used by the respondent in the letter complained of must be assessed against the background of the appellant's telegram to the "Director of Planning and Works" of the City of Ottawa which highly provocative communication had been circulated in such fashion as to do the greatest possible damage to the respondents and which was, of course, the exciting cause which prompted Kohler to write the letter complained of. In this regard I find the language used by Lord Shaw in *Adam v. Ward*, *supra*, at p. 347 to be particularly apt:

Furthermore, it has to be borne in mind, with regard to the whole question of the repudiation of a false charge, that it has not to be weighed in nice scales.

The sentences cited by Chief Justice Gale must be read in their context which in my opinion includes the letters from Dominion Bridge Co. Ltd. and the structural engineer which



were enclosed with the respondents' letter and by which it was expressly stated to be supported.

In the course of its letter, Dominion Bridge Co. said:

For the past six months, we have been engaged in checking the structural steel design and requesting modifications thereto, wherever they appeared to be desirable with regard to structural safety and economics.

And the letter from Mr. Adjeleian (the structural engineer) read, in part, as follows:

We wish to confirm to you that my firm, as supervising structural engineers for the above project, have carried out a careful check, and are continuing to do so, on the concrete work, including foundations, for its structural adequacy, conformity on codes and safety. We have made certain recommendations to you for revisions which, in our opinion, will ensure the safety of the structure.

It is true that the words used in the letter complained of by the appellants cited by Chief Justice Gale were not a verbatim reproduction of the information furnished by Dominion Bridge Co. and the structural engineer, but it nevertheless appears to me that under the circumstances they did not constitute any evidence of malice but on the contrary were amply justified. The bridge company had said:

... we have been engaged in checking the structural steel design and requesting modifications thereto, wherever they appear to be desirable with regard to structural safety and economics.

and the letter complained of said:

Dominion Bridge during their checking of Netupsky's drawings suggested certain changes to increase the safety of the building and to reduce the cost.

The difference in language between the two statements does not, in my opinion, involve a change in meaning. In using the words contained in the cited paragraph of the letter, Kohler was not making any statement without having reasonable grounds for believing that what he said was true, namely that the changes suggested by Dominion Bridge were made for the purpose of increasing the safety of the building and reducing its cost. For this statement he had the authority of the steel company itself and of the supervising structural engineer, and with the greatest respect for the views of Chief Justice Gale, I do not think that the sentences which he cites could be reasonably interpreted so as to afford any evidence of intrinsic malice in the circumstances of this case.

For all these reasons, as well as for those stated by Mr. Justice Schroeder, I would dismiss this appeal with costs.

*Appeal dismissed.*

# RE SEWELL AND THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK

*New Brunswick Supreme Court, Appeal Division, Hughes, C.J.N.B., Limerick and Bugold, J.J.A. May 5, 1972.*

Schools — Educational leave — Requirement of approval from employer — Applicant taking leave before approval given — Approval subsequently refused — Whether applicant entitled to reimbursement of expenses — Whether employer under duty to give timely notice of approval or rejection.

On April 14, 1971, the respondent teacher applied for educational leave to permit him to take a summer course at New York University commencing on July 5, 1971. Respondent received no word of his approval and proceeded to enroll in and attend the course. On July 13th the Department of Education denied the application and communicated its decision to the respondent's principal. Respondent did not become aware of the refusal of his application until some weeks later and submitted a request for reimbursement of expenses incurred in attending the summer course which request was denied. A grievance protesting this denial was upheld by an adjudicator. *Held*, on an application to quash the decision of the adjudicator, the application should be granted. Article 20.1 of the collective agreement imposing an obligation on the employer to pay expenses in respect of educational leave was conditional on the applicant for leave obtaining the approval therefor from the employer and the decision of the adjudicator that such approval or rejection must be given a reasonable time before the employee was to take his leave amounted to an amendment of the collective agreement in so far as it imposed on the employer the additional duty to give timely notice of its rejection of any application which it did not approve.

[*Noranda Mines Ltd. v. The Queen et al.* (1969), 7 D.L.R. (3d) 1, [1969] S.C.R. 898, 69 W.W.R. 321; *R. v. Public Service Labour Relations Board, Ex p. N.B. Teachers' Federation* (1970), 17 D.L.R. (3d) 72, 3 N.B.R. (2d) 189, *referred to*]

APPLICATION for *certiorari* to quash a decision of an adjudicator under a collective agreement.

D. C. Stanley, for applicant.

Robert J. Arseneau, for respondent.

The judgment of the Court was delivered by

HUGHES, C.J.N.B.:—This is an application by Her Majesty The Queen in right of the Province of New Brunswick, as represented by the Treasury Board, herein referred to as "the employer", for an order of *certiorari* removing into this Court and quashing the award or decision of an adjudicator appointed under authority of s. 95 of the *Public Service Labour Relations Act*, 1968 (N.B.), c. 88, herein referred to as "the Act", in respect of a grievance of Edmund H. Sewell, herein referred to as "the grievor", who was an instructor employed at Teachers' College in the City of Fredericton.

SOLICITEUR GÉNÉRAL DU CANADA  
SOLICITOR GENERAL OF CANADA

Clippings : Wednesday , 6/12/72

Les coupures du : mercredi 6/12/72

for 6/14/72

## On prison programs

SIR, — Your editorial "Plus ça change . . ." (Nov. 29) says I indicated support for the basic policies of Jean Pierre Goyer and that I would try to win popular approval for them. This is true for some of the penal reform programs but it certainly doesn't follow that public relations is the remedy for prison breaks and the loose release of prisoners. I never said or intimated that. In fact, I think a lot has to be done to tighten the administration of several programs to prevent such incidents.

WARREN ALLMAND, M.P.,  
Solicitor General.

## Kingston report may never be public

KINGSTON (CP) — The public may never see the special report on the Kingston penitentiary riot in 1971, says a spokesman for the Canadian Penitentiary Service.

Ivan Roi, chief of public relations for the service,

said in an interview that although former solicitor-general Jean-Pierre Goyer promised to release the report by this week, Warren Allmand, now solicitor-general, is not obligated to carry out the commitment.

He said because the re-

port was not intended ever to be made public, Mr. Allmand might choose to keep it secret.

The four-day riot in April, 1971, left two prisoners dead, 11 injured, and large sections of the prison wrecked.

THE OTTAWA CITIZEN  
5.12.72

THE GAZETTE  
6.12.72

14 THE GLOBE AND MAIL, WEDNESDAY, DEC. 6, 1972

### AFTER A FASHION

## On reinstatement of death penalty

By ZENA CHERRY

The movement to stop capital punishment began in 1798 when one tiny country, Liechtenstein, became the first in the world to end it.

Over the years other European and South American countries followed.

In the 1960s it was abandoned by such as the United Kingdom, the Vatican, New Zealand and Canada (with exceptions).

On June 29, 1972, a Supreme Court decision emptied death rows in the United States.

Today the major holdouts are France, Spain, Greece, Chile, Guatemala and the USSR—but in the latter, voices for repeal are growing louder.

Canada's five-year moratorium on

000024

Le Devoir, mardi 5 décembre 1972 • 13

**emande que les livres de  
ce-chômage soient visés**

000025

14 ● Le Devoir, mardi 5 décembre 1972

*Festival western à Paul-Sauvé*

# Soirée en Presqu'Amérique

par Gisèle T.

000026

For Miss Hansh  
p.v.

## M. Ouellet s'attaque aux Postes

moderniser  
améliorer  
humaniser

par Pierre-L. O'Neill

Le nouveau ministre fédéral des postes, M. André Ouellet, s'engage dans la modernisation et l'amélioration des services postaux.

Nommé le 27 novembre dans le cabinet Trudeau, le député de Montréal-Papineau inaugurerait hier une tournée des bureaux régionaux de Montréal.

Dans les priorités du nouveau titulaire des postes figurent le climat du milieu et les conditions de travail des employés.

Quant aux négociations qui se poursuivent entre la direction des services postaux et le syndicat des employés, M. Ouellet entend respecter la consigne de la discrétion mais dit avoir de bonnes raisons d'être optimiste.

A moyen et à long terme, le ministre des postes trouve de la place pour de nombreuses améliorations. Dans un premier temps, il attache beaucoup d'importance à l'allègement des relations patronales-syndicales, à l'assainissement du climat. C'est pour lui une première condition essentielle pour obtenir un maximum de rendement.

D'autre part, le ministre des postes est d'avis que cette utilisation plus rationnelle des ressources humaines doit être complétée par des moyens matériels et techniques mieux adaptés aux circonstances, aux besoins.

Ainsi, dans la seule région de Montréal, M. Ouellet se propose d'accélérer la réalisation de construction de nouveaux établissements. Il s'agit essentiellement de l'installation de nouveaux bureaux régionaux à Dorval et à ville de Laval en plus de l'agrandissement des bureaux du centre ville de Montréal.

Enfin, le ministre des postes croit qu'il sera relativement facile d'obtenir une plus grande efficacité simplement à repenser et modifier cer-



M. André Ouellet

tains services. A titre d'exemple, il souligne que le courrier assuré de 24 heures constitue une initiative extrêmement valable mais mal exploitée. Il soutient que le ministère doit apporter les modifications qui s'imposent pour améliorer ce service et surtout le faire connaître à la population canadienne.

En prenant la charge du ministère des postes, M. André Ouellet est conscient de la mauvaise réputation des dossiers de la gestion et des relations patronales-syndicales.

Au cours de ce mandat, qui risque d'être bref, il s'efforcera d'apporter à son administration les grandes qualités de l'entreprise privée et favorisera une accélération dans les mécanismes et processus de négociations.

Avant d'accéder au cabinet de M. Trudeau, le député de Papineau avait été secrétaire parlementaire de M. Munro au bien-être social. Il est âgé de 33 ans, et a fait ses études aux universités de Sherbrooke et Ottawa. Il est licencié en droit.

## Un rapport resterait secret

KINGSTON (PC) — Le rapport spécial sur l'émeute de 1971 au pénitencier de Kingston ne sera peut-être jamais rendu public, a affirmé un porte-parole du Service canadien des pénitenciers.

M. Yvan Roy, chef du service des relations publiques, a déclaré au cours d'une interview que, même si l'ancien solliciteur général, M. Jean-Pierre Goyer, avait promis de dévoiler le rapport cette semaine, son successeur, M.

Warren Allmand, n'était pas tenu de respecter cet engagement.

M. Roy a déclaré en outre que le rapport n'ayant pas été conçu pour publication, M. Allmand peut décider de le garder secret.

Deux prisonniers sont morts et 11 ont été blessés au cours de l'émeute d'avril 1971 qui avait duré quatre jours. Il y avait eu aussi d'importants dommages matériels.

## Le PC de l'assurance

OTTAWA (PC) — Le leader parlementaire du parti progressiste-conservateur, M. G. W. Baldwin, a demandé hier que les livres d'assurance-chômage fassent l'objet d'un examen minutieux de la part de l'auditeur général, chargé de l'étude des dépenses du gouvernement.

M. Baldwin a précisé qu'un rapport de l'auditeur général Maxwell Henderson devrait être présenté au Parlement dès la reprise de ses travaux, en janvier.

"Les commentaires du gouvernement au sujet des fonds gigantesques dont dispose l'assurance-chômage n'ont pas réussi à inspirer confiance", a déclaré M. Baldwin dans un communiqué de presse.

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## Le CTC prie Paris à rend

OTTAWA (d'après CP) — Le Congrès du travail du Canada a demandé au premier ministre Pierre Elliot Trudeau d'intervenir directement auprès du gouvernement français afin que celui-ci mette fin à ses projets d'essais nucléaires dans le Pacifique sud.

M. Donald Macdonald, président du CTC, dans un télégramme adressé pendant la fin de semaine à M. Trudeau, dans les essais nucléaires un "danger manifeste pour la paix mondiale" et un "polluant dangereux" et suggère que tout gouvernement qui poursuit des essais atmosphériques malgré l'opposition mondiale doit être "mis au ban des pays civilisés du monde."

Les avantages scientifiques de l'énergie nucléaire doivent servir à la guerre contre la pauvreté, la maladie et la faim plutôt qu'à l'extermination du genre humain, ajoute le télégramme du CTC.

Le texte intégral du télégramme suit:

"Le Congrès du travail du Canada note avec satisfaction que votre gouvernement a voté en faveur de deux résolutions à l'ONU, l'une d'entre

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## arts et spectacles

### qui fait quoi

Le compositeur montréalais Gilles Tremblay sera l'invité des Musialogues, une activité de la Faculté de musique et du service d'animation de l'Université de Montréal, les 13 et 14 décembre à 20 heures, au centre communautaire de l'UM. Au cours de la première soirée, le compositeur évoquera les principaux aspects de sa carrière; lors de la deuxième soirée, il parlera de son récent voyage à Bali.

À la première remise de prix décernés aux réalisateurs de films d'animation à Hollywood, des statuettes Annie ont été attribuées à Dave Fleischer et, à titre posthume, à son frère le regretté Max Fleischer.

Les Fleischer, qui figurent parmi les premiers réalisateurs de cette catégorie de films, ont créé les personnages de Popeye et Betty Boop ainsi que le long métrage d'animation "Gulliver's Travels". Max Fleischer est décédé à Hollywood en septembre dernier. La remise des trophées Annie deviendra une présentation annuelle de la Société internationale du film d'animation, pour la section de la côte ouest.

M. Fernand Dumont, directeur de l'Institut des sciences humaines de l'Université Laval, présidera au lancement d'un ouvrage de Yvan Lamonde intitulé "Historiographie de la philosophie au Québec: 1853-1971", le 7 décembre prochain aux éditions HMH. Le même soir, aux éditions du Jour, on lancera un ouvrage intitulé "Relations des Jésuites", dans la collection Bibliothèque québécoise que dirige Victor-Lévy Beaulieu.

M. Alan Jarvis, 57 ans, ancien directeur de la National Art Gallery, est décédé à Toronto dimanche.

Né à Brantford, boursier Rhodes, sculpteur, critique, commentateur et chroniqueur, M. Jarvis a accepté le poste de directeur de la galerie en

1955. Il a quitté en 1959, lorsqu'on lui a demandé de donner sa démission à la suite d'une série de controverses portant sur les finances, et qui l'opposaient au cabinet conservateur alors dirigé par l'ancien ministre John Diefenbaker.

La direction du Festival Shaw de Niagara-on-the-Lake, Ontario, a choisi "The Philanderer", comédie de George Bernard Shaw, pour un engagement de deux semaines à compter du premier janvier au Centre Kennedy de Washington.

C'est la deuxième fois en moins d'un an que la compagnie du festival est invitée à se produire au Centre Kennedy.

Un film péruvien et un film britannique ont obtenu ex aequo le grand prix dans la catégorie long métrage au Festival international du film de Chicago.

Le jury a accordé le Hugo d'Or à "Mirage", d'Armando Godoy, du Pérou, et à "Bleak Moments", de Michael Leigh, de grande-Bretagne.

Un prix spécial a été accordé à Volker Schlöndorff, d'Allemagne occidentale, pour son film "Summer Lightning".

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**Annie Girardot** 14 ANS  
**Philippe Noiret**

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**denise fillatrault**  
DANS



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

*chig*

*Mr. Doucet 31-10.*

TO  
À

DEPUTY SOLICITOR GENERAL<sup>R</sup>

FROM  
DE

Inger Hansen,  
Legal Officer

SUBJECT  
OBJET

SWACKHAMER REPORT

SECURITY - CLASSIFICATION - DE SÉCURITÉ <i>Confidential</i>
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE December 4, 1972

Enclosed are two copies of memorandum of 4th of December 1972 from the Acting Director of Classification. May this please be inserted under "Classification" at the back of the two copies of the report.

*Inger Hansen*  
Inger Hansen

Encl.



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

Solicitor General

Attention: Miss In. Hansen  
Legal Officer

M.J. Nolan

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 6114
YOUR FILE - V/RÉFÉRENCE
DATE December 4, 1972

SUBJECT  
OBJET

CLASSIFICATION - Reception Process -

1. Classification (Duties) - collects all relevant information concerning the offender.
  - devises a programme for the individual based on this information.
  - assigns security risk, e.g. Maximum, Medium
  - keeps programme in line with individuals assessed requirements.
2. Time required to process at Reception Phase:
  - Ideal - 4-6 weeks for complete diagnosis for newcomers.
  - Actual - Direct placement exists in Alberta, Saskatchewan and the Maritimes. Good when option is small (2 or 3 alternatives).
    - negotiations for direct placement are taking place in Sask. & Man.
    - B.C. - 2 weeks
    - Ontario - 5 weeks (12 options available i.e. programme units & Inst.'s.
    - Quebec - New Reception Centre - up to 6 weeks, many options also.

Note: If Security rating was the only duty, all placement could be made within a week - the individual program takes the time. The more time taken in deciding on a program, the fewer re-classifications to be made later on and lesser individual and institutional turmoil.
3. If elaboration is required, Miss Clark will be in contact with me during my absence.

*M.J. Nolan*  
Acting Director  
Classification & Psychological  
Services



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
A  
Solicitor General  
Attention: Miss In. Hansen  
Legal Officer

FROM  
DE  
M.J. Nolan

SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE - N/RÉFÉRENCE 6114
YOUR FILE - V/RÉFÉRENCE
DATE December 4, 1972

SUBJECT  
OBJET

CLASSIFICATION - Reception Process -

1. Classification (Duties) - collects all relevant information concerning the offender.
  - devises a programme for the individual based on this information.
  - assigns security risk, e.g. Maximum, Medium
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3. If elaboration is required, Miss Clark will be in contact with me during my absence.

Acting Director  
Classification & Psychological  
Services

000031



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
À

DIRECTOR, FINANCIAL SERVICES

FROM  
DE

DEPARTMENTAL COUNSEL

SUBJECT  
OBJET

Payment of Accounts

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

119-2

YOUR FILE - V/RÉFÉRENCE

DATE

December 4, 1972


I have now received the opinion on behalf of the Department of Justice that the accounts attached to this letter are fair and reasonable. It will accordingly be in order to requisition cheques.

As you will recall, the maximum that may be paid is \$3000, including disbursements. The cheque in each case should be for this amount, i.e. \$3000 to Cunningham and Little, and \$3000 to Wilcox and McNeil.

The cheque to Wilcox and McNeil should be made out to the firm and to Howard Bell as joint payees. The cheque to Cunningham and Little, on the other hand, should be made out in the name of that firm only, in view of the death of Mr. McKegney.

Would you please have the cheques sent to me so that I may forward them to the firms explaining the reduced amount and obtaining certain understandings in the case of Cunningham and Little.

Att.

  
J.H. Hollies,  
Departmental Counsel

JHH/mab

000032





DEPARTMENT OF JUSTICE  
MINISTÈRE DE LA JUSTICE

Ottawa, Ontario  
K1A 0H8  
November 28, 1972

DM SM  
SOL GEN

DEC 1 12 03 PM '72

RECEIVED  
SOLICITOR GENERAL

228297

Re: Commission of Inquiry into certain  
disturbances at Kingston Penitentiary

Dear Sir:

I refer to your letter of November 24 enclosing the account submitted by Messrs. Wilcox and McNeil for legal services rendered on behalf of Mr. Bell and the account submitted by Messrs. Cunningham and Little for legal services rendered on behalf of Mr. McKegney.

Both accounts, which are returned herewith, appear to be fair and reasonable having regard to the services which were apparently carried out.

Yours truly,

*J. B. MacKay*  
for Director,  
Criminal Law Section.

Mr. J.H. Hollies,  
Departmental Counsel,  
Department of the Solicitor General,  
Ottawa, Ontario  
K1A 0P8

Ottawa K1A 0P8, November 24, 1972

Dear Mr. McKay:

I enclose with this letter statements of account submitted by Wilcox and McNeill, and Cunningham, Little, in respect of assistance afforded to Howard Bell and Patrick McKegney, before the Swackhammer Commission. Treasury Board authority exists for payment of such accounts up to a maximum of \$3,000 after they have been certified as fair and reasonable by the Department of Justice.

I would be most grateful if you could, as soon as may be convenient, let me have your opinion as to whether these accounts may be so certified or, in the alternative, the sum that may be considered is in fact fair and reasonable. These accounts have been outstanding for a considerable period of time because of certain administrative difficulties within this department. It is for this reason that I should value priority being given to them if your present workload permits.

Yours truly,



J.H. Hollies,  
Departmental Counsel

Encls.

JHH/mab

Mr. J.B. McKay,  
Law Clerk,  
Criminal Law Section,  
Department of Justice,  
Justice Building,  
Ottawa, Ontario

CANADIAN PENITENTIARY SERVICE

REGIONAL HEADQUARTERS  
ONTARIO REGION



SERVICE PENITENTIAIRE CANADIEN

BUREAU RÉGIONAL  
RÉGION D'ONTARIO

P.O. BOX 1174 KINGSTON.  
ONTARIO

The Commissioner of Penitentiaries

PLEASE QUOTE REFERENCE: 373  
VEUILLEZ MENTIONNER:

ATTENTION: D.F.S. (Chief, Accounting and  
Reporting)

November 23, 1972

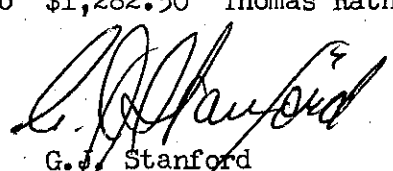
Legal Assistance for Officers  
- Commission of Inquiry  
- Kingston Penitentiary Disturbance (1971)

1. Reference our recent discussion on the above subject, the attached original accounts, as listed below, are submitted for your perusal and any further required action:

<u>Legal Firm</u>	<u>Amount</u>	<u>On Behalf Of</u>
Wilcox and McNeill, Kingston, Ontario	\$3,235.00	Howard Bell
Cunningham, Little, Kingston, Ontario	\$3,500.00	Patrick McKegney
Barrett, Lally and Girard, Belleville, Ontario	\$1,282.50	Thomas Rathwell

GJS:md

Attach.

  
G.J. Stanford  
Regional Finance Administrator  
for Regional Director (Ontario)

SOLICITOR GENERAL

MAY 24 1977

ACCOUNTS PAYABLE

D. G. CUNNINGHAM, Q.C.  
W. G. CUNNINGHAM, Q.C.  
R. LITTLE  
J. D. NINGHAM

KINGSTON, September 21, 1971

Mr. Patrick McKegney

R.R. #6

Kingston, Ontario

DR TO **CUNNINGHAM, LITTLE**  
BARRISTERS, SOLICITORS, ETC.

RE: COMMISSION OF INQUIRY INTO CERTAIN DISTURBANCES  
AT KINGSTON PENITENTIARY

TO PROFESSIONAL SERVICES rendered in receiving your instructions concerning various appearances before the Commission of Inquiry Into Certain Disturbances at Kingston Penitentiary.

TO conferring with you on various occasions as follows: August 18, 1971 - 1 hour; August 26, 1971 - 1 hour; August 30, 1971 - 1 hour; September 6, 1971 - 2 hours; September 7, 1971 - 1 hour; September 8, 1971 - 1 hour; September 20, 1971 -  $\frac{1}{2}$  hour.

TO counsel fee for appearances before the Commission of Inquiry on the following days: August 19, 1971, August 30, 1971, September 9, 1971, September 10, 1971; at which time the Commission was investigating the possibility of making an adverse report against you for being a person responsible for causing harm to inmates in that on April 19, 20, 21, 1971, and that you did authorize, direct, supervise or permit assaults to be made by Officers of the Penitentiary Service of Canada upon such inmates at Milhaven Correctional Institute, Bath, Ontario or that you did fail to take adequate or any steps to prevent such assaults.

Mr. Patrick McKegney

Page 2

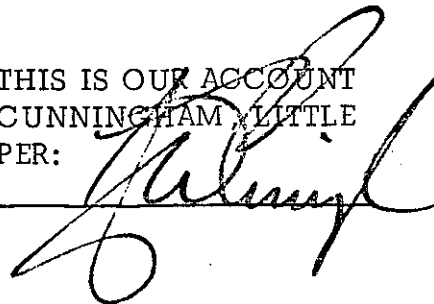
TO reviewing nine volumes of evidence previously taken by the Commission of Inquiry dealing specifically with the transfer of prisoners from Kingston Penitentiary to Milhaven Correctional Institute, Bath, Ontario; to carefully reviewing this material and to summarizing same in preparation for appearances before the Commission of Inquiry to being engaged 62 hours.

TO preparing submissions to be made before the Commission of Inquiry on your behalf and to preparation of brief after reviewing all available evidence including your own.

TO MY FEE in all

\$3,500.00

THIS IS OUR ACCOUNT  
CUNNINGHAM, LITTLE  
PER:

A large, stylized handwritten signature in dark ink, appearing to be 'E. & O. E.', is written over a horizontal line.

E. & O. E.

*Wilcox & McNeill*

*Barristers and Solicitors*

THOMAS R. WILCOX, Q.C.  
VINCENT J. MCNEILL, B.A., LL.B.

*Ninety-three Clarence Street*

*Kingston, Ontario*

*P.O. Box 604*

TELEPHONE 546-3188  
AREA CODE 613

September 17th, 1971

Howard Bell, Esq.,  
Deputy Warden,  
Millhaven Penitentiary,  
Millhaven, Ontario.

Dear Sir:

Re: Commission of Inquiry into  
certain disturbances at  
Kingston Penitentiary

We enclose herewith our account for services rendered  
which we understand you will forward to the Solicitor-General.

Yours faithfully,

WILCOX & MCNEILL

*T. R. Wilcox*  
*in ltr.*

T. R. Wilcox

TRW:1  
Encl.



Howard Bell, Esq.,  
Deputy Warden,  
Millhaven Penitentiary,  
Millhaven, Ontario.

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information

93 Clarence Street - P.O. Box 604  
Kingston Ontario  
September 16th, 1971

*In Account With*

*Wilcox & McNeill*

*Barristers and Solicitors*

*Telephone 546-3188*

Re: Commission of Inquiry  
into certain disturbances  
at Kingston Penitentiary

To Professional Services Rendered including counsel fee for appearances before Commission representing you on August 24th, August 30th, September 9th and September 10th, 1971 with respect to possible adverse report that you were a person responsible for causing harm to inmates in that on April 19th, 20th and 21st, 1971 you did authorize, direct, supervise or permit assaults to be made by officers of the Penitentiary Service of Canada upon such inmates at Millhaven Correctional Institute, Bath, Ontario or that you did fail to take adequate or any steps to prevent such assaults; conferring with you 2½ hours prior to first appearance; conferring with you 1 hour after second appearance; conferring with you 2½ hours prior to third appearance and subsequently another 2 hours prior to the third appearance and again conferring 1 hour prior to fourth appearance; engaged a total of 65½ hours reading nine volumes of evidence taken by the Commission during which neither you nor counsel representing you were able to be present, making notes summarizing evidence given and notes for submissions to the Commission or, in all, summarizing the above, preparation by way of perusal of evidence, making notes of evidence, making notes for submissions and conferences with you:

74½ hours @ \$30.00 per hour	\$2,235.00
Counsel fee for four days appearances before the Commission @ \$250.00 per day	<u>1,000.00</u>
TOTAL	\$3,235.00

This is my account herein September 16th 1971.

E & O E

Mr. Thomas Rathwell,  
795 Brock Street,  
Kingston, Ontario.

September 15th, 1971.

IN ACCOUNT WITH

*Barrett, Lally & Girard*

BARRISTERS, SOLICITORS  
NOTARIES PUBLIC

Re: Commission of Inquiry

For all services rendered on behalf of Thomas Rathwell in respect to acting on his behalf in respect to charges made against him on August 25th, 1971, that he was a person responsible for causing harm to inmates and that on April 19th, 20 and 21st, 1971 he did authorize, direct, supervise or permit assaults to be made by officers of the Penitentiary Service of Canada upon such inmates at Millhaven Correctional Institute, Bath, Ontario or that you did fail to take adequate or any steps to prevent such assaults.

In respect to these charges, we attended before the Commission of Inquiry on August 30th wherein certain submissions were made to the Board and we received transcripts of pertinent evidence.

We then prepared our case and read approximately 1500 pages of evidence given at the inquiry, prepared submissions, attended before the Inquiry on September 9th wherein submissions were made.

Counsel fee for attending in Kingston on August 30th before the Inquiry, speaking to the Commission, Commission counsel, other counsel involved, receiving evidence, procedural matters, etc., leaving Belleville at 9 a. m. and returning to Belleville at 6 p. m. - counsel fee

\$260.00

Time spent during the next week reviewing evidence, long discussion with Thomas Rathwell at our office on September 3rd with respect to evidence, reviewing evidence over the week-end.

- 2 -

Forwarded \$250.00

Dictating memo, preparing submissions  
total time spent 30 hours - fee at rate  
of \$25.00 per hour \$750.00

Attending before the Commission on  
September 9th, leaving Belleville at  
8:30 a. m. and returning to Belleville  
at 7 p. m. after having made submissions -  
being before the Inquiry a full day -  
counsel fee \$250.00

Expenses

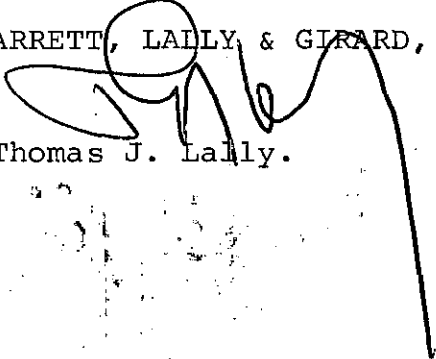
Mileage 200 miles at 15¢ per mile	\$30.00	
Meals	\$ 2.50	
	<hr/>	
	\$32.50	\$1,250.00
		32.50

---

\$1,282.50

---

BARRETT, LALLY & GIRARD,

  
Thomas J. Lally.

TJL/pd  
R-5989/71

CANADIAN PENITENTIARY SERVICE



SERVICE CANADIEN DES PÉNITENCIERS

REGIONAL HEADQUARTERS  
ONTARIO REGION

BUREAU RÉGIONAL  
RÉGION D'ONTARIO

P.O. BOX 1174, KINGSTON, ONTARIO

The Commissioner of Penitentiaries

373

ATTENTION: D.F.S. (Chief, Accounting and  
Reporting)

PLEASE QUOTE REFERENCE:  
NOVEMBER 23, 1972  
VEUILLEZ MENTIONNER:

Legal Assistance for Officers  
- Commission of Inquiry  
- Kingston Penitentiary Disturbance (1971)

1. Reference our recent discussion on the above subject, the attached original accounts, as listed below, are submitted for your perusal and any further required action:

<u>Legal Firm</u>	<u>Amount</u>	<u>On Behalf Of</u>
Wilcox and McNeill, Kingston, Ontario	\$3,235.00	Howard Bell
Cunningham, Little, Kingston, Ontario	\$3,500.00	Patrick McKegney
Barrett, Lally and Girard, Belleville, Ontario	\$1,282.50	Thomas Rathwell

Original Signed By  
G. J. STANFORD

GJS:md

Attach.

G.J. Stanford  
Regional Finance Administrator  
for Regional Director (Ontario)



Government  
of Canada

Gouvernement  
du Canada

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information

MEMORANDUM

NOTE DE SERVICE

DM SM  
SOL GEN

JUL 20 12 07 PM '72

FILE  
DOSSIER

TO  
A  
AU SOLLICITEUR GENERAL

FROM  
DE  
DU COMMISSAIRE DES PENITENCIERS

SUBJECT  
OBJET


Rapport Swackhamer.

1. Ci-attaché mes commentaires sur le rapport Swackhamer, après revue et discussion avec les personnes concernées.
2. Tel qu'entendu, je fais parvenir ces commentaires à vos officiers afin qu'ils puissent étudier ces notes avant votre retour au début du mois d'août.
3. En page 16, lorsque je déclare que certaines recommandations ne sont pas complétées, c'est que généralement la politique a été décidée selon les critères recommandés par la Commission mais elles sont en voie d'application à travers le pays, donc ne sont pas complétées dans chaque institution. Par exemple, lorsque nous parlons de structure d'organisation, nous avons décidé de refaire la structure mais il nous reste à prendre quelque action avant que la réorganisation de chaque institution soit complétée.
4. Il me fera plaisir de discuter ces commentaires sur votre demande.

Annexe

PAF/MBB

c.c. Mr. D. Hogarth  
Mr. D. Foley  
Mr. D. Matas  
Mr. E.A. Côté  
Mr. B.C. Hofley ←

  
P. A. Faguy,  
Commissaire.

SECURITY CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

185/12 (1)

YOUR FILE - V/RÉFÉRENCE

DATE

le 18 août 1972.

COMMENTS ON THE SWACKHAMER REPORT

I reviewed the report carefully in detail and sent my comments to those people within the Service who are concerned with the problems outlined, on a confidential basis. I have now received these comments and am in a position to review some statements made in the report and recommendations.

For practical purposes, I have divided my remarks in two parts:

1. Points of clarification;
2. Commission's recommendations.

POINTS OF CLARIFICATION

1. Allegations made against penitentiary officers (pages 114 to 128).

Senior officers against whom an adverse report was made were cross-examined extensively by counsel for the Commission but neither officers nor their counsels were present during the evidence given by inmate witnesses. These inmate witnesses called in respect to allegations concerning admission to Millhaven were not cross-examined by counsel for the Commission to any extent. Therefore, I am disappointed that the investigation for this most important part of the report was not done adequately, I believe, with full legal protection and done as normally as possible along judicial procedures for cross-examination.

In any case the Court has found these people not guilty.

In view of the above, the following action is recommended:

- (i) Mr. McKegney retired on the 8th of January, 1972 and died on the 11th of May, 1972;
- (ii) Mr. Bell should be admonished and transferred to another institution. Mr. Bell was proved efficient in the past in operating a minimum security institution for several years. The officers were found not guilty by the Court and, therefore, I would hesitate to take drastic action such as dismissal in this case;
- (iii) Mr. Clark. I do not believe there was any dereliction of duty on his part. I think he did everything he could under the circumstances existing on the days the inmates were received. I do not intend to take action against Mr. Clark.

-2-

2. Lack of a riot plan (pages 69, 70)

Although the Commission states this was a serious omission, I am informed that there were and still are Standing Orders covering a riot plan. However, we have felt at Headquarters that there was a need to review carefully our guide-lines for riot plans and they have been issued to the field over a year ago, assigning responsibilities and issuing better delegation.

3. Citizens Committee (page 90)

It was quite clear throughout the incident that the Citizens Committee was only an agent of the department. My comments in items 13, 14 and 15 will substantiate this.

4. Professor Morton (page 112)

I have no recollection that Professor Morton conducted some 200 inmates to the recreation hall. I remember clearly that I was asked if Professor Morton could go into the recreation hall to talk to some disturbed inmates, to which I readily agreed. This was done when penitentiary officers were supervising the hall.

5. Regional Director's authority (page 31)

There was and is no doubt in our mind as to the authority of Regional Directors. The job description is quite clear and states that the Regional Director has a responsibility for "directing institutional heads ...." and "by directing and supervising the general operation of ten institutions ...." and "by identifying problems and providing direction to solve them". Such authority was also discussed at Regional Directors' conferences and, in fact, the Ontario Regional Director states that there were complaints about the great degree of authority of Regional Directors and his staff over the heads of various divisions in institutions. He further states that he had a meeting with all Directors as early as May, 1970 to discuss authority and jurisdiction. Mr. Jarvis, Warden at Kingston Penitentiary at the time of the Inquiry, was questioned briefly on this matter and he stated that there was no confusion in his mind and he cannot understand that any of his statements could lead the Commission to conclude there was confusion. I do not understand how that statement can be made.

6. Letter from Warden Jarvis to the Commissioner (page 43)

It is stated that there was no written reply to a letter from Mr. Jarvis under date of 24 November 1970. Again we cannot understand that such a statement could be made when:

...3



-3-

- (a) on receipt of this letter, Deputy Commissioner Stone phoned the Regional Director and asked him to discuss the problems outlined and requesting to remind the Warden that such matters should have been taken with the regional office;
- (b) on January 16, 1971 the Deputy Commissioner wrote to the Regional Directors with reference to this letter and the appointment of a Deputy Warden;
- (c) Mr. Jarvis said he advised the Commission that the Regional Director had, in fact, discussed these letters with him and the alleged tension "on a number of occasions before he went on leave" and that the situation had abated to his satisfaction before he left;
- (d) I also personally had enquired about the state of affairs on more than one occasion.

I do not like the inference unnecessarily made in the report that no or insufficient action had been taken. In fact, I am most concerned about the incompleteness of this apparent damaging evidence and I am most surprised that the Commission did not see fit to check further carefully and to state in the report that action was taken by senior management. Furthermore, I am concerned that if the accuracy of the statement was not checked carefully with those immediately concerned, the same can well apply to other statements made in the report and which could be inaccurate because of the lack of checking with responsible sources.

7. Directives and Instructions should be consolidated (page 33)

We are the first ones to agree there is a need to cancel, reduce, amend and simplify regulations, directives, instructions and orders. This review has been initiated some months ago and a Director of Organization and Administration has been appointed. The regulations have been reviewed, have been submitted to the Privy Council office, and should be ready for signature by the Minister shortly. This is a monumental task but a great deal has been done already.

8. Staff training including professionals (page 35)

It is agreed that staff training is essential and action has been taken some months ago to review the total program for all classes of employees with regard to induction training, recycling of older employees, training of trainers, training of the living unit concept, etc.

...4

-4-

9. Inmate counts (page 39)

It is true there were 8 counts in Kingston every day and these have been reduced to 3 formal counts at the change of shifts. There is no noon count and no interference with the inmate programs. Naturally informal counts without disrupting inmate activities are required of instructors.

10. Time spent in cells (page 42)

There was an inordinate amount of time spent in the cells prior to the riot but this is no longer true. Inmates are now in their cells less than one hour at noon and then from 23.30 hours to 07.30 hours.

11. Staff should shout or yell to draw attention (page 60)

We are considering the issuance of a whistle to carry in officers' pockets. We know that a radio alarm system is used in the States but this may be relatively too expensive.

12. Grievances of inmates (page 85)

I have a clear recollection that we found it impossible for almost two days to obtain specific grievances against the Canadian Penitentiary Service. In fact, we invited grievances by asking what they might be.

13. Demands made by inmates through Mr. Martin (pages 90 to 92)

I was ready to agree to the requests made, except that no consideration could be given to an immunity. I discussed these requests with the Minister over the telephone and I suggested that we might consider agreeing to an individual investigation (which came to pass) but both of us were quite emphatic and completely negative on the demand for immunity. I so stated quite clearly to Mr. Martin and my notes so indicate. Other requests were acceptable to me because they were only conditions of observation for the transfer of inmates (which also came to pass) and they were not points of negotiation.

When meeting with the Citizens Committee, the Minister made it abundantly clear that there could be no negotiation whatsoever and that the Citizens Committee should only discuss ways and means to bring hostages and inmates out.

All through the incident no decision was ever made of any importance without full consultation with the Minister, so that all those present were all aware of the same events and the same decisions.

...5

-5-

14. Press release (page 102)

The press release proposed by the inmates through the Citizens Committee was not acceptable to the Minister but, after representation by the Commissioner, the Minister agreed to a modified one as shown in the report.

15. Setting of a deadline by the Minister (page 103)

It was important to the Minister that the situation within the penitentiary at Kingston be resolved and under control by noon on Monday, April 20. It is true that the Citizens Committee was not advised of what course of action was intended if a peaceful solution had not been achieved.

16. Negotiations (page 104)

I remember advising the Regional Director to remind the Citizens Committee that they were not to negotiate in any way, shape or form but that they were to discuss only ways and means.

17. Classification staff below establishment (page 154)

Action has been taken over the past year or so not only to fill vacancies but to increase the ratio of classification officers to a reasonable level.

18. Lack of communications in Kingston (pages 156, 171 to 177 and others)

Evidently grievances were not listened to prior to the riot as we do now through inmate committees. I believe this is much improved.

19. Ratio of custodial staff (page 163)

The statement made that the ratio of custodial staff to inmates is three times that prevailing in the larger prisons in the United States can be very misleading. That statement can be very inaccurate and far from objective since one cannot compare the very large United States institutions to our penitentiaries. As we know, the larger the institution the easier it is to have a smaller ratio of staff to inmates. From my experience in the States and in other countries wherever a suitable program is being implemented,

...6

-6-

the total ratio of staff to inmates is similar to ours. As we enlarge our program of living units, the ratio of custodial staff as such will decrease to be replaced by living unit officers. Too many factors are involved here to make an adequate comparison.

#### COMMISSION'S RECOMMENDATIONS

1. Alteration of administrative structure to create an environment for rehabilitation (page 159)

Already steps have been taken to reorganize the administrative structure and to give the responsibility for inmate training program to an Assistant Director directly responsible to the Director. Furthermore, we have instituted a program under the living unit concept in six institutions and we plan to complete this program as quickly as possible in all other institutions within the next three to four years.

2. Custody to be essentially charged with the maintenance of security (page 160)

We go further than the Commission in assessing the responsibilities of the department of custody, which, we think, should be intermingled with the programs, being very conscious at all times of the importance of dynamic security as opposed to static and the need for prevention.

3. The Director of the penitentiary should undertake an active supervisory role with respect to inmate training (page 161)

We agree that the Director of the penitentiary should undertake an active supervisory role with respect to the department of inmate training. The new organizational structure calls for inmate training to come directly under the Director and for four Assistant Directors to become the Management Committee for the institution, so that there will be proper coordination and cooperation between all aspects of the Service.

4. Regular case conferences should be held (page 164)

It is agreed that regular case conferences should be held on each inmate, where staff can exchange information on specific cases. Already this has been done in many institutions but others have not moved as readily in this area.

Three major steps have been taken already:

- (a) a new inmate information system and file have been researched and are being tested, calling for a monthly review;

...7

-7-

(b) the living unit concept now being implemented in six institutions calls for such conferences;

(c) the increase in the ratio of classification officers also calls for more individual and knowledgeable treatment of inmates on the basis of case conferences.

5. Group counselling should be undertaken (page 164)

We agree that group counselling should be undertaken and it is being done already in some institutions as part of the total correctional program as a complement to individual counselling, which is also important.

6. Inmate Advisory Committee (page 165)

These committees are operating very well in most institutions and we hope to move from the grievance type to committees which will make positive suggestions on programs and other aspects of prison administration.

7. Allocation of classification staff (page 165)

The allocation of professional classification staff is important. Since we have increased the ratio, this can now be done on a planned basis.

8. Institutional staff to participate in programs (page 165)

We agree that institutional staff must be encouraged to participate regularly and actively in the daily routine of prison life. However, there are problems here of staffing requirements, overtime, shift schedule, etc. The living unit concept will help greatly in fulfilling this requirement. However, there will always be a need for guards for maximum security perimeters and control centres.

9. Wearing of uniforms (page 166)

Staff personnel within the interior of the prison should not be uniformed except for strictly custodial people. This matter has been under review for some time and the only reason for the delay is that we are awaiting authority from Treasury Board on compensation of \$200. for those not required to wear uniforms. The Treasury Board submission has been sent for the Minister's signature.

10. Staff training to be treatment oriented (page 107)

I believe every effort is being made right now to improve staff training not only in quantity but also with regard to

-8-

the contents of the courses, so that all our personnel will be treatment oriented. The Minister is well aware of new training programs.

11. Refresher courses for all staff (page 168)

Plans have been made already for regular refresher courses for staff, based on the new treatment oriented programs and the need for some appreciation of human behaviour.

12. Staff meetings on a regular basis (page 168)

We have discussed for some time the need for staff meetings of all ranks, to be held on a regular basis at which full and frank discussion of the penitentiary program will be conducted and encouraged. The difficulty here again is the matter of arrangements of shifts and/or payment of overtime. However, the living unit concept will make this possible on a continuing basis.

13. Most junior staff to be able to rise to senior positions (page 169)

We agree that no limit, except demonstrable ability, should be imposed on the opportunity given to the most junior staff member to rise to senior positions of greater responsibility. With good sound training we believe that approximately 50% of correctional officers can qualify to perform duties of a newly expanded department of inmate training. New officers will be recruited with that in mind.

14. Classification to be much more directly related to the needs of the inmates (page 173)

It has been agreed for some time that classification must be much more directly related to the needs of the inmates rather than the security grading of the institution. I believe this is so at present but real improvements should be made in the new reception centres, with parole officers reviewing classification of inmates after court sentence and because it is now our policy. However, new institutions will be required in the Western region.

15. Improving the reception program (page 176)

Every effort is being made now to improve the reception program in the Ontario Region and for that matter in other regions, with approximately two weeks being given for review of cases of recidivists and up to six weeks for new cases. The first Director has just been appointed for the Ontario Reception Centre.

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16. Rules in institutions on certain characteristics (page 180)

We agree with the characteristics proposed for the general rules of the institution. I believe most institutions apply rules in this manner and the implementation of the living unit concept will help.

However, it is stated that archaic rules still exist in some institutions and this has been checked and brought up to date. I am thinking here, for instance, of rules for inmates placed on walls which were not amended for many years and were really not applicable today. Instructions were given months ago.

Also we have now made available in the library copies of Acts, Regulations and Directives through the institutional library.

17. Code of rules (page 186)

The code of rules appears in regulation 2.29 and there are only 15. One must remain practical to take care of day-to-day problems faced by staff from difficult and manipulating inmates. Naturally I agree that rules should be as close as possible "to accepted standards of conduct of the community at large". I would like to have the rights of inmates defined in regulations but one must be very cautious of all the implications, e.g., law suits by inmates.

18. Rules of conduct to be available to inmates (page 186)

Copies of the Canadian Penitentiary Act, Regulations and Directives are available to inmates in the libraries and to inmate committees.

In most institutions all necessary information is available to inmates but a check will be carried out to see how it is done in all institutions. It is doubtful, however, if it is possible or desirable to have in each cell, because of frequent amendments, "a precise and full summary of the opportunities and privileges available and the terms on which they are available ....".

19. A handbook for staff with standard applicable across the country (page 187)

I agree it is desirable to have such a handbook and there used to be one but, with all the many changes being made, it would be difficult to keep up to date. However, this will be reviewed carefully and reinstituted as soon as possible.

20. A code of punishment standards for relatively minor offences (page 187)

We think that our new code of discipline goes one better



-10-

than the proposal, in that it clearly establishes that cases must be dealt on an individual basis, with opportunities given for warning and counselling.

21. Segregation of inmate within his own cell (page 198)

This would be possible in institutions where there are doors on the cells but not so practical when there are only bars. The segregation of inmate within his own cell is done in some institutions already. However, a recent incident in Millhaven involving some 13 inmates showed that this is not always desirable. I do not like dissociation cells, but they are a necessary evil.

22. No corporal punishment (page 198)

It is well known that we do not allow corporal punishment in any of our penitentiaries.

23. Restricted diet and hard bed without a mattress to be discontinued (page 198)

The hard bed is no longer in effect. We think restricted diet can be a useful yet mild form of punishment.

24. Change of work or downgrading in pay not to be imposed unless connected directly with inmate's work (page 199)

This type of punishment is rarely given but instructions will be issued after consultation with the field staff.

25. Principal Keeper to apply punishments of admonishment, reprimand and forfeiture of privileges for one day only (page 200)

We have no objection to this proposal. Already a supervisor can award minor punishments.

26. A hearing to determine whether offence was committed (page 200)

This is already possible now.

27. Forfeiture of privileges by keeper not more than once a week for the same inmate (page 201)

This is already the general practice.

28. Correctional officers to use own discretion (page 208)

Already the new code of discipline for inmates states that correctional officers can use their own discretion in determining an offence, with the presentation of a formal

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-11-

complaint and the utilization of the inmate disciplinary board used only as a last resort.

29. No written report against inmates without consent of a senior keeper (page 209)

This is already foreseen in the guide-lines to discipline.

30. Chairman of disciplinary board to continue to refuse complaint if appropriate (page 209)

This is already being done.

31. Inmate to be notified in writing at least one clear day in advance (page 209)

This is already done, except that we do not specify one clear day.

32. No inmate to be dissociated unless he is in continuing physical danger or it is justified pending trial (page 210)

This is already the policy and we are checking the actual application in some institutions where there seems to be too many inmates in dissociation. National Headquarters representatives have visited these institutions and reports indicate that we can make a reduction in the number of inmates in dissociation.

33. Dissociated inmate awaiting trial to appear in front of board next business day (page 210)

This is normally done.

34. All evidence to be transcribed during hearing (page 210)

To have all evidence transcribed would be difficult and time consuming. We are advised by the Legal Division that this is not necessary and I would hope we do not have to institute such a procedure.

35. Cross-examination by inmates (page 212)

Rules now allow for cross-examination but I am informed that some Directors will insist this be done through the Chairman of the board. This is being corrected.

36. Inmate to be advised of his right (page 212)

The present procedure makes this quite clear. However, if all inmates were allowed to call any witness, one can easily

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-12-

imagine pressure being applied within the institution and on witnesses, whether existent or not. There has to be some limit, some control and some caution.

37. Establishment of a regional appeal board for inmates (page 215)

No objection to a regional appeal board for cases of loss of any statutory right or for punitive dissociation in excess of five days. Again, I am surprised that the Commission mentioned corporal punishment, which does not exist in penitentiaries.

38. Provision of a transcript during appeals (page 217)

To provide a transcript of the proceedings is very time consuming, expensive and is not essential. The Legal Division says it is not necessary and I do not intend to institute such a procedure.

39. Inmate to appear in person during appeal (page 217)

If there is an appeal, naturally the inmate will be allowed to appear in person.

40. Composition of a regional appeal board (page 217)

I do not agree that one member of the appeal board should be a judge or lawyer, as this would not be too practical if we are to hear cases promptly. I would propose, however, that at least one member of the board be from the regional office, e.g., Coordinator of Programs. I intend to check the experience on appeal boards and correctional services in other countries and to see how practical and successful they have been with the composition of such boards.

41. Powers of the appeal board (page 217)

I agree with the powers proposed for the appeal board as follows:

- (a) to quash the conviction;
- (b) to affirm the conviction but amend or increase the punishment;
- (c) to dismiss the appeal.

42. Inmates to be encouraged to decorate cells (page 228)

A great deal of individuality has been permitted in decorating cells in many institutions, but not in all of them.

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It has created, at times, fire hazards and security problems. However, we will endeavour to improve this situation, keeping in mind the two important factors of safety and security.

43. Time spent in cells to be reduced to a minimum (page 228)

This is done in most cases through programs of activities and recreation, including the evening hours, library, group discussions, meetings of societies, e.g., A.A.'s, Native Brotherhood, etc. Generally, I think we have gone as far as we can.

44. Choice of hobbies to be enlarged (page 229)

The choice of hobbies has been enlarged in the last year. Our review of recreational programs now under way should help with specific recommendations and instructions to institutions. Again one must keep in mind the limitation because of toxicity, fire hazards, smell, security, etc. Also we are endeavouring to find better qualified social and education supervisors.

45. Assignment of tools and materials on discharge (page 229)

There is a danger of coordination when making "gifts" but this assignment of tools could be handled through the Hobby Officer or such tools be given to the Hobby Officer for re-allocation where needed. A check will be made with the field on the implications of such a proposal.

46. Inmates to use own clothing when going on temporary absence (page 230)

This is done in many institutions where temporary absences are given. We will check to see if there are any problems in any institutions with regard to implementing this recommendation completely. I think it is desirable that an inmate should use his own clothing received from his family or friends when visiting in the community. This means a saving for the Service and a more suitable and acceptable way of dressing for the inmates.

47. Option to use evening hours (page 230)

No objection. Most institutions offer numerous opportunities during evening hours. However, there must be some control on the movement of inmates from one area to another. We agree that recreation is most important.

48. Recreation period to be greatly expanded (page 231)

I think we have stretched as far as facilities will permit. We have a study going on to improve recreation, which, I hope, will give us better direction for the future.

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49. Inmates to organize and to participate in recreational activities (page 232)

Opportunity is provided to inmates to organize and to participate, on a voluntary basis, in group counselling, music lessons, rehearsals, sports, etc. It may vary from different institutions and we will make a review to make sure it is done as completely as possible.

50. Organize a physical recreation program as extensive as possible and all embracing (page 237)

Inmates themselves are permitted to organize and supervise the administration of the sports programs in most institutions and they will be encouraged to do so.

51. Inmates themselves to organize and supervise sports (page 237)

This is done generally, except that I am told Kingston Penitentiary was an exception. We believe we have to provide even better but indirect leadership than we have provided so far in some cases.

52. Skilled assistance to an inmate oriented recreational program (page 238)

Agree. A study now under way will show how we can improve. If necessary, more staff will be allocated if the study so indicates.

53. Variety of physical recreation to be increased (page 241)

Again it is agreed and the current study will show in which areas this should be done.

54. Two-way communications (page 245)

In order to ensure a two-way communication re treatment and problems, it is recommended that committees be composed of equal numbers of senior representatives of the staff and inmate representatives elected by the inmate population, with real authority given to the inmates in some areas, such as recreation, community programs, academic programs and library and hobbycraft.

This is a very important aspect of our program where we see a need for improvement. However, we should move gradually into this type of participative management committee which, to my knowledge, has not worked well in many places. I would rather support strongly an inmate committee meeting with the

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-15-

management committee and together reviewing suggestions for improvements and delegating, whenever possible, to an inmate committee the responsibility to organize and administer certain activities. I believe this would meet the intent of the recommendation without, however, creating a situation which we may not be yet ready to cope with, either on a staff side or inmate side.

A great deal has been done to improve communications with and participation of inmates through inmate committees and group discussions. I feel that we are going as fast as we should while keeping in mind the need to increase more and more the actual participation of inmates, either directly or indirectly, in the decision-making process.

55. Visitors' committee (page 250)

I believe that visitors' committees are inevitable, in the long run. However, I must admit that I would prefer making greater progress within our institutions before suggesting the appointment of a five member visitors' committee as proposed. We have, in many of our institutions, citizens' committees but, unfortunately, we have the Director as Chairman. Instructions that the Director should only serve as an advisory member and that a reputable citizen should sit as Chairman are being issued. I would like here to know of experience of other countries in the use of visitors' committees, including the entitlement to visit the penitentiary and meet with inmates or staff in privacy, to visit at least once a month for at least one day, and to hear complaints.

We already have in existence citizen participation committees but they cannot be considered as being participative management committees. We are not ready for this as yet. Furthermore, our directives regarding citizen advisory committees have been under review and will improve and clarify our instructions.

CONCLUSIONS

I find the Swackhamer report rather disappointing after 5,000 pages of transcript, 23 volumes, 100 exhibits and 12 months of research. I feel that the Commission has gone beyond the terms of reference, which called for reporting "upon the immediate cause or causes of the disturbance".

There was no summary listing of all recommendations, but our own review identified 55 distinct recommendations, as the comments above will show. I hope none were missed.

...16

-16-

The staff and senior officers who appeared in front of the Commission complained that they felt under real pressure and they felt that if they denied a point strongly enough the matter was dropped very quickly. Certainly some statements are inaccurate or, at least, not researched well enough.

Most of the recommendations made are "taken out of our own book". Most are already in being or were, long before the report was ever received.

However, I am not suggesting that everything was right in Kingston Penitentiary before the riot. Quite the contrary, but nevertheless I think accuracy for such a Commission is most important. When one sees inaccuracy one tends to begin to question other statements made in the report.

I believe serious thoughts would have to be given before considering appointing such another Commission in the future, although I am the first to agree that it was a right and necessary decision at the time. In fact, this is what I was ready to agree to in my first discussion with Mr. Martin of the citizens' committee.

The total cost for the Commission was \$110,493.00 distributed as follows:

(i) fees	\$60,903.00
(ii) travel	14,246.00
(iii) secretariat, transcript, etc.	35,343.00.

The 55 separate recommendations are assessed as follows:

1. 19 have already been policy for some time and are fully implemented;
2. 27 have already been policy for some time and are being implemented in all institutions;
3. 2 are acceptable in part only, but are policy already;
4. 4 are acceptable but implications are being assessed;
5. 3 are not desirable.

The attached appendix identifies the recommendation numbers for each category shown above.

...17

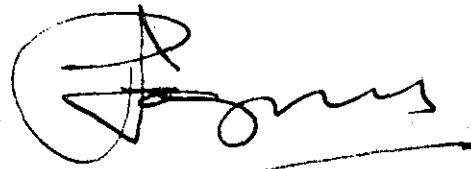


-17-

RECOMMENDATIONS

In the light of the above, I recommend:

1. that the report not be made public;
2. that a press release be prepared:
  - (a) outlining the highlights of the report: and
  - (b) commenting on the applicability of the 55 recommendations.

A handwritten signature in black ink, appearing to read 'P. A. Faguy', with a large circular flourish on the left side.

P. A. Faguy  
Commissioner.

APPENDIX

IDENTIFICATION OF RECOMMENDATIONS BY CATEGORIES

1. Have already been policy for some time and are fully implemented (19)  
2, 6, 7, 9, 13, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33,  
36, 43, 47.
2. Have already been policy for some time and are being implemented in all institutions (27)  
1, 3, 4, 5, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 24, 32, 35,  
42, 44, 45, 46, 48, 49, 50, 51, 52, 53.
3. Are acceptable in part only but are policy already (2)  
23, 54.
4. Are acceptable but implications are being assessed (4)  
37, 39, 40, 41.
5. Are not desirable (3)  
34, 38, 55.

119 - 2

Ottawa K1A 0P8

August 10, 1972.

ATTENTION: MR. THOMAS J. LALLY

Dear Sirs:

On July 4th last I wrote to you concerning your account for the services rendered by you to Mr. Thomas Rathwell. I am glad to be able to tell you that the requested authority from the Treasury Board has now been obtained and I take pleasure in enclosing Government of Canada cheque number 591-0019368 in the sum \$1,282.50. In accordance with our usual practice the cheque has been drawn payable jointly to you and to Mr. Thomas Rathwell.

Yours sincerely,

  
J.H. Hollies,  
Departmental Counsel.

Encl.

Barrett, Lally & Girard,  
Barristers & Solicitors,  
P.O. Box 445,  
Belleville, Ontario.

JHH/ed



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Document divulgué en vertu de la Loi sur l'accès à l'information

REQUISITION DE Paiement  
DEMANDE DE CHÈQUE

FOREIGN CURRENCY IDENTIFICATION -  
DESIGNATION DES DEVISES ÉTRANGÈRES

DATE

August 8, 1972

DEPARTMENT

MINISTÈRE

Solicitor General

NO.

BRANCH, DIVISION OR UNIT - DIRECTION, DIVISION OU SERVICE

NO.

Canadian Penitentiary  
Services

PAYEE'S NAME AND ADDRESS - NOM ET ADRESSE DU BÉNÉFICIAIRE

Barrett, Lally & Girard  
and Thomas Rathwell

SERIAL OR CONTROL NO. - N° DE SÉRIE OU DE CONTRÔLE

SOURCE

DATE OF CHEQUE - DATE DU CHÈQUE

FISCAL ACCTG. SERIAL NO. - COMPTABILITÉ FISCALE -  
N° DE SÉRIE

RATE OF EXCHANGE - COURS DE CHANGE

CORRESPONDENCE RELATING TO THIS REMITTANCE SHOULD BE DIRECTED TO THE DEPT. INDICATED ABOVE QUOTING THE CHEQUE NO.  
LA CORRESPONDANCE AFFÉRENTE À CETTE REMISE PEUT ÊTRE ADRESSÉE AU MINISTÈRE PRÉCITÉ;  
PRIÈRE D'INDIQUER LE N° DU CHÈQUE

PARTICULARS - DÉTAILS

FOREIGN AMOUNT  
MONTANT ÉTRANGER

EXCHANGE  
CHANGE

CANADIAN AMOUNT  
MONTANT CANADIEN

CHEQUE NUMBER  
N° DE CHÈQUE

Legal Counsel to represent  
Thomas Rathwell before  
Commission of Inquiry on  
Kingston riots.

T.Bd. 713456

1,282.50

FISCAL ACCTG. TITLE - TITRE DE COMPTE FIN.

ACCOUNT NO.  
N° DE COMPTE

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CONTRAT MAS

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REQUISITIONED FOR PAYMENT PURSUANT TO  
SECTION 31 OF THE FINANCIAL ADMINISTRA-  
TION ACT.

DEMANDE DE PAIEMENT EN VERTU DE L'ARTICLE  
31 DE LA LOI SUR L'ADMINISTRATION FIN-  
ANCIÈRE.

REQUISITIONED FOR PAYMENT PURSUANT TO SEC-  
TION 31 AND CERTIFIED PURSUANT TO SECTION 32  
OF THE FINANCIAL ADMINISTRATION ACT.

DEMANDE DE PAIEMENT EN VERTU DE L'ARTICLE  
31 ET CERTIFIÉ EN VERTU DE L'ARTICLE 32 DE  
LA LOI SUR L'ADMINISTRATION FINANCIÈRE.

1282

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TOTAL

CERTIFIED CORRECT - CERTIFIÉ CONFORME

AUTHORIZED OFFICER - FONCTIONNAIRE AUTORISÉ

AUTHORIZED OFFICER - FONCTIONNAIRE AUTORISÉ

SERVICES OFFICER - AGENT DES SERVICES



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE

Referred to: **DE SERVICE**

185/12(1)

Charged to:

TO  
A

COMMISSIONER OF PENITENTIARIES

Attention: N. Hembruff  
Director, Financial Services

FROM  
DE

DEPARTMENTAL COUNSEL

SUBJECT  
OBJET

Account Mr. T.J. Lally

SECURITY-CLASSIFICATION-DE SÉCURITÉ
OUR FILE-N/RÉFÉRENCE <b>119-2</b>
YOUR FILE-V/RÉFÉRENCE
DATE <b>August 3, 1972</b>

I enclose copies of a letter from T.J. Lally to the Department of Justice and the account forwarded with that letter. This account may now be paid under the authority of T.B. Minute 713456 of July 27th. As you will realize, the account must be certified as being fair and reasonable by a representative of the Department of Justice, and accordingly I so certify it.

The cheque should be made payable jointly to Barrett, Lally & Girard and to Thomas Rathwell. If you will let me have the cheque for transmission, I would forward it.

Encl.

  
J.H. Hollies,  
Departmental Counsel.

15 OCT 3 11:12

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C.P.S. H.Q.

72 JUL 13 11:15

the 1990s, the number of people in the United States who are 65 years of age or older is projected to increase from 20 million to 30 million, and the number of people 75 years of age or older is projected to increase from 10 million to 15 million (U.S. Census Bureau, 1996).

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 250 million to 450 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement or further action.

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*Journal of Management Education* 30(6)

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119-2  
137-2  
P.O. BOX 445  
25 CAMPBELL STREET  
Belleville, Ont.

*Barrett, Lally & Girard*

BARRISTERS, SOLICITORS  
NOTARIES PUBLIC

RICHARD E. BARRETT, B.A. THOMAS J. LALLY, B.A.  
A. PETER GIRARD, B.A., LL.B. JAMES F. O'BRIEN, B.A., LL.B.

RECEIVED

MAY 30 1972

DEPARTMENT OF  
JUSTICE - OTTAWA

Regional and Departmental  
Services Section R-5989/71

MAY 30 1972

Section des Services aux  
Bureaux régionaux et aux  
ministères

May 26th, 1972.

Attn: Mr. A. Garon, Q.C.

Dear Mr. Garon

Re: Thomas Rathwell

We acted on behalf of Thomas Rathwell before a Commission of Inquiry in the summer of 1971, said commission being known as The Swackhamer Commission inquiring into the penitentiary riots in April of 1971.

Mr. Rathwell was advised that his account would be paid by the Department of Justice but as yet he has received no payment.

We enclose herewith photocopy of the account and would be pleased to discuss this matter with you at any time.

Kindly advise.

Yours truly,

BARRETT, LALLY & GIRARD,

Thomas J. Lally.

pd  
encl

Mr. Thomas Rathwell,  
795 Brock Street,  
Kingston, Ontario.

September 15th, 1971.

Re: Commission of Inquiry

For all services rendered on behalf of Thomas Rathwell in respect to acting on his behalf in respect to charges made against him on August 25th, 1971, that he was a person responsible for causing harm to inmates and that on April 19th, 20 and 21st, 1971 he did authorize, direct, supervise or permit assaults to be made by officers of the Penitentiary Service of Canada upon such inmates at Millhaven Correctional Institute, Bath, Ontario or that you did fail to take adequate or any steps to prevent such assaults.

In respect to these charges, we attended before the Commission of Inquiry on August 30th wherein certain submissions were made to the Board and we received transcripts of pertinent evidence.

We then prepared our case and read approximately 1500 pages of evidence given at the inquiry, prepared submissions, attended before the Inquiry on September 9th wherein submissions were made.

Counsel fee for attending in Kingston on August 30th before the Inquiry, speaking to the Commission, Commission counsel, other counsel involved, receiving evidence, procedural matters, etc., leaving Belleville at 9 a. m. and returning to Belleville at 6 p. m. - counsel fee

\$280.00

Time spent during the next week reviewing evidence, long discussion with Thomas Rathwell at our office on September 3rd with respect to evidence, reviewing evidence over the week-end.



- 2 -

Forwarded \$250.00

Dictating memo, preparing submissions  
total time spent 30 hours - fee at rate  
of \$25.00 per hour \$750.00

Attending before the Commission on  
September 9th, leaving Belleville at  
8:30 a. m. and returning to Belleville  
at 7 p. m. after having made submissions -  
being before the Inquiry a full day -  
counsel fee \$250.00

Expenses

Mileage 200 miles at 15¢ per mile	\$30.00	
Meals	\$ 2.50	
	<hr/>	
	\$32.50	\$1,250.00
		32.50
		<hr/>
		\$1,282.50
		<hr/>

BARRETT, LALLY & GIRARD,

Thomas J. Lally.

TJL/pd  
R-5989/71

DEMANDE DE CHÈQUE

FOREIGN CURRENCY IDENTIFICATION

SECTION 31 OF THE FINANCIAL ADMINISTRATION ACT

SECTION 31 DE LA LOI SUR L'ADMINISTRATION FINANCIÈRE

DATE

August 8, 1972

DEPARTMENT MINISTÈRE

Solicitor General

NO.

BRANCH, DIVISION OR UNIT - DIRECTION, DIVISION OU SERVICE

NO.

Canadian Penitentiary  
Services

PAYEE'S NAME AND ADDRESS - NOM ET ADRESSE DU BÉNÉFICIAIRE

Barrett, Lally & Girard  
and Thomas Rathwell

SERIAL OR CONTROL NO. - N° DE SÉRIE OU DE CONTRÔLE

SOURCE

DATE OF CHEQUE - DATE DU CHÈQUE

FISCAL ACCTG. SERIAL NO. - COMPTABILITÉ FISCALE -  
N° DE SÉRIE

RATE OF EXCHANGE - COURS DE CHANGE

CORRESPONDENCE RELATING TO THIS REMITTANCE SHOULD BE DIRECTED TO THE DEPT. INDICATED ABOVE QUOTING THE CHEQUE NO.  
LA CORRESPONDANCE AFFÉRENTE À CETTE REMISE PEUT ÊTRE ADRESSÉE AU MINISTÈRE PRÉCITÉ;  
PRIÈRE D'INDIQUER LE N° DU CHÈQUE

PARTICULARS - DÉTAILS

FOREIGN AMOUNT  
MONTANT ÉTRANGEREXCHANGE  
CHANGECANADIAN AMOUNT  
MONTANT CANADIENCHEQUE NUMBER  
N° DE CHÈQUELegal Counsel to represent  
Thomas Rathwell before  
Commission of Inquiry on  
Kingston riots.

T.Bd. 713456

CHEQUE NO. 591-0019 368

FOR \$ 1,282.50 SENT BY

ON Aug 10/72 J.F.

1,282.50

FISCAL ACCTG. TITLE - TITRE DE COMPTE FIN.

ACCOUNT NO.  
N° DE COMPTEDEBIT  
DÉBITCREDIT  
CRÉDIT

CODING - CODAGE

306

\$ AMOUNT  
MONTANT

\$

CR  
CTDSS CONTRACT  
SERIAL NUMBER  
NUMÉRO DU  
CONTRAT MAS

2 - 410 - 31000 - 000 - 122 - 04580

1282

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REQUISITIONED FOR PAYMENT PURSUANT TO  
SECTION 31 OF THE FINANCIAL ADMINISTRATION ACT.OR  
OUDEMANDE DE PAIEMENT EN VERTU DE L'ARTICLE  
31 DE LA LOI SUR L'ADMINISTRATION FINANCIÈRE.REQUISITIONED FOR PAYMENT PURSUANT TO SECTION 31 AND CERTIFIED PURSUANT TO SECTION 32  
OF THE FINANCIAL ADMINISTRATION ACT.DEMANDE DE PAIEMENT EN VERTU DE L'ARTICLE  
31 ET CERTIFIÉ EN VERTU DE L'ARTICLE 32 DE  
LA LOI SUR L'ADMINISTRATION FINANCIÈRE.

1282

50

TOTAL

CERTIFIED CORRECT - CERTIFIÉ CONFORME

AUTHORIZED OFFICER - FONCTIONNAIRE AUTORISÉ

AUTHORIZED OFFICER - FONCTIONNAIRE AUTORISÉ

SERVICES OFFICER - AGENT DES SERVICES



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
À

**COMMISSIONER OF PENITENTIARIES**

**Attention: N. Hembruff**  
**Director, Financial Services**

FROM  
DE

**DEPARTMENTAL COUNSEL**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE <b>119-2</b>
YOUR FILE - V/RÉFÉRENCE
DATE <b>August 3, 1972</b>

SUBJECT  
OBJET

**Account Mr. T.J. Lally**

I enclose copies of a letter from T.J. Lally to the Department of Justice and the account forwarded with that letter. This account may now be paid under the authority of T.B. Minute 713456 of July 27th. As you will realize, the account must be certified as being fair and reasonable by a representative of the Department of Justice, and accordingly I so certify it.

The cheque should be made payable jointly to Barrett, Lally & Girard and to Thomas Rathwell. If you will let me have the cheque for transmission, I would forward it.

**JHH/lcf**  
**Encl.**

  
**J.H. Hollies,**  
**Departmental Counsel.**



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
À

**COMMISSIONER OF PENITENTIARIES**

FROM  
DE

**DEPARTMENTAL COUNSEL**

SUBJECT  
OBJET

**Payment of Legal Fees**

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

**119-2**

YOUR FILE - V/RÉFÉRENCE

DATE

**August 3, 1972**

As you know, Treasury Board has now approved the submission of June 12th on the above subject. I am taking action concerning the accounts that have been submitted in connection with the Swackhamer Inquiry. It occurs to me, however, that you might wish to give some publicity to the Treasury Board authority. If so, I suggest that you would want to draw attention to the fact that in future cases members of the Canadian Penitentiary Service must, if practical, obtain approval from Departmental Headquarters before retaining counsel in such cases. If such approval is not first obtained when it is practical to do so, payment of legal fees will not be forthcoming from public funds.

**JHH/lcf**

  
**J.R. Hollies,**  
**Departmental Counsel.**

OTTAWA, K1A 0P8  
August 2, 1972.

Dear Mr. Willoughby:

I would refer to your accounts in connection with attendances before the Swackhamer Committee as submitted with your letter of June 19th. I would also refer to this Department's letter of June 22nd signed by the Acting Deputy Solicitor General.

I am pleased to say that I have today been furnished with a Treasury Board Minute dated July 27th which authorizes the Solicitor General to pay accounts of this kind. There is, however, the requirement that no account shall be passed for payment unless it is first certified as being fair and reasonable by a representative of the Department of Justice. In the light of the comments of the Department of Justice upon sending other accounts submitted by you (as reflected in my letter of July 28th), I think it advisable to ask you to let me have a statement as to the time you spent in preparation and any time before the Swackhamer Inquiry in respect of each of the accounts, otherwise I am afraid that payment will merely be longer delayed by the transmission of your accounts to the Department of Justice and returned by that department for further information.

There is nothing on our files to indicate whether the members of the Canadian Penitentiary Service have paid any portion of the accounts. I would, therefore, propose to have cheques issued in the joint names of yourself and the person concerned. In the case of the late Mr. McKegney, I would suggest that I could have the eventual cheque made out in your name only but this would be subject to a statement from you that neither McKegney personally nor his estate has paid any part of your account.

. . . 2

Mr. Stuart Willoughby, Q.C.,  
Barrister and Solicitor,  
P.O. Box 951,  
295 Brock Street,  
KINGSTON, Ontario.

- 2 -

May I again say that I regret the delay in settling these matters. If you have any questions or comments on the procedure, please feel free to call me on the telephone at 996-5107.

Yours sincerely,



J.H. Hollies,  
Departmental Counsel.

JHH/lcf

P. A.

J.W. Swackhamer, Q.C.,  
Fusken & Calvin,  
Barristers and Solicitors,  
Box 30,  
Toronto Dominion Centre,  
Toronto 111, Canada.

August 2, 1972.

Dear Sir:

Re: William James Knight v. The Queen  
Dept. of Justice Ref: 228297

Reference your letter File: 4404 dated July 26,  
1972 please submit your account for the preparation of  
an affidavit for use on a recent Motion before Mr. Justice  
Gibson in regards to the above matter.

Yours very truly,

Original Signed By  
N. HEMBRUFF

N. Hembruff,  
Director, Financial Services,  
for Commissioner.

HM/lv

**DEPARTMENT OF THE SOLICITOR GENERAL**  
**MINISTÈRE DU SOLICITEUR GÉNÉRAL**

**MEMORANDUM**

August 1, 1972.

MR. HOLLIES:

FOR YOUR INFORMATION.

*J-M Thibault*  
Jean-Marie Thibault.

000076





The Honorable the Treasury Board  
L'honorable Conseil du Trésor

SOLICITOR GENERAL

Department - Ministère

373 (1)

File - Dossier

713456

T.B. Number - C.T. No

June 12, 1972

Date

SUBJECT: PAYMENT OF LEGAL FEES

- PROPOSAL:
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management or administration of a penitentiary.
  2. To authorize the Solicitor General to pay all or any of the legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, that have heretofore been incurred by those members of the Canadian Penitentiary Service required to appear as witnesses before J.W. Swackhamer Esq., Q.C., in connection with an inquiry into certain events alleged to have occurred at Kingston and Millhaven Penitentiaries in April, 1971.

CHARGEABLE TO: Department of the Solicitor General, Vote 5, Operation and Maintenance of Penitentiaries.

REMARKS: Treasury Board Minute 7050<sup>13</sup>1, dated May 20, 1971, authorized the Solicitor General to pay up to \$3,000 for the engagement of legal counsel for the purpose, inter alia, of defending members of



APPROVED BY THE TREASURY BOARD  
APPROUVÉ PAR LE CONSEIL DU TRÉSOR

Certified to be a true copy of a Minute of a Meeting of the Treasury Board on

27 VII 72

Date

Copie conforme d'un extrait du procès-verbal d'une réunion du Conseil du Trésor le

Secretary - Secrétaire

.....2

-2-

the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

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receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. Such inquiries are not likely to be frequent but rather exceptional.

If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.

# Fasken & Calvin

Barristers  
and  
Solicitors

30th Floor  
Toronto-Dominion Bank Tower

Box 30,  
Toronto-Dominion Centre,  
Toronto 111, Canada

Telephone 366-8381  
Area Code 416  
Telex 06-217765

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information

W. B. Williston, Q.C.  
J. D. Taylor, Q.C.  
Georgia M. Bentley  
R. D. Wilson  
R. L. Shirriff  
T. E. Brooks  
D. S. Affleck  
J. M. Robinson  
P. J. Green  
L. D. Roebuck  
Donna C. Allen  
W. R. Passi  
T. R. Lofchik  
A. C. Millward  
J. W. Swackhamer, Q.C.  
R. M. Sutherland, Q.C.  
A. D. T. Givens, Q.C.  
R. B. Tuer, Q.C.  
J. W. Huckle  
W. A. Kelly  
W. C. Graham  
R. B. Potter  
W. D. McCordic  
H. Lenore Roszell  
L. T. Beare  
Heather L. Henderson  
R. W. McDowell  
G. C. Glover  
Fraser M. Fell, Q.C.  
R. N. Robertson, Q.C.  
F. D. Gibson, Q.C.  
Ronald J. Rolfs, Q.C.  
John Sopinka  
K. J. C. Harries  
J. H. Hough  
D. G. Marwick  
Richard A. Bain  
Alan M. Schwartz  
J. I. Leskin  
P. C. Hart  
J. G. McPherson

Counsel - B. R. MacKenzie, Q. C.

DM SM  
SOL GEN

JUL 28 1 59 PM '72

FILE  
DOSSIER

July 26, 1972.  
File: 4404

J.H. Hollies, Esq., Q.C., .....  
Departmental Counsel,  
Department of the Solicitor General,  
Ottawa, Ontario. KIA OP8.

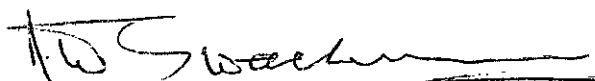
Dear Sir:

Re: William James Knight v. The Queen  
Dept. of Justice Ref: 228297

As you will recall, at the request of Miss Hansen of your office, I prepared an affidavit for use on a recent Motion before Mr. Justice Gibson in this matter.

Would it be in order for me to render my account for the preparation of that affidavit at this time?

Yours very truly,



J.W. Swackhamer.

JWS:H

② Mr. Hembrough

Can we bring this in under the accounts for the Swackhamer Inquiry?  
J.H. Hollies



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
A

MR. J.M. THIBAUT

FROM  
DE

DEPARTMENTAL COUNSEL

SUBJECT  
OBJET

Submission for Payment of  
Legal Fees

SECURITY-CLASSIFICATION-DE SÉCURITÉ
OUR FILE-N/RÉFÉRENCE
<u>119-2</u>
YOUR FILE-V/RÉFÉRENCE
DATE
July 24, 1972

Mrs. Ardley was good enough to check the progress with Treasury Board on the submission for payment of legal fees. She tells me she found out this is not yet on the Treasury Board Agenda. Is there anything you can do to hasten this through your channels with Treasury Board staff? It is over a month since the Minister signed it, and there are some accounts that we really should pay if we can get the authority.

JHH/mab

  
J.H. Hollies,  
Departmental Counsel

000081



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
À

**MR. J.M. THIBAUT**

FROM  
DE

**DEPARTMENTAL COUNSEL**

SUBJECT  
OBJET

**Submission for Payment of  
Legal Fees**

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE <b>119-2</b>
DATE <b>July 24, 1972</b>

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JHH/mab

  
**J.H. Hollies,  
Departmental Counsel**



Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

TO  
À

MEMORANDUM TO FILE

FROM  
DE

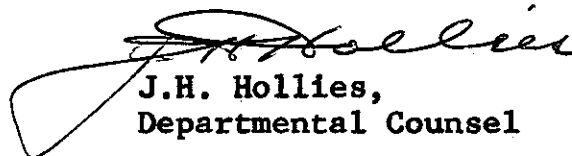
DEPARTMENTAL COUNSEL

SUBJECT  
OBJET

Accounts of Counsel - Defence  
of Members of the Penitentiary Service

SECURITY-CLASSIFICATION-DE SÉCURITÉ
OUR FILE-N/RÉFÉRENCE  119-2
YOUR FILE-V/RÉFÉRENCE
DATE  July 20, 1972

The mail from Mr. Willoughby dated July 17th, and charged out to this file on July 20th, has been removed with the concurrence of Central Registry to file 131-2.

  
J.H. Hollies,  
Departmental Counsel

000083



Government  
of Canada

Gouvernement  
du Canada

**MEMORANDUM**

**NOTE DE SERVICE**

TO  
À

**MEMORANDUM TO FILE**

FROM  
DE


**DEPARTMENTAL COUNSEL**

SUBJECT  
OBJET

**Accounts of Counsel - Defence  
of Members of the Penitentiary Service**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
<b>119-2</b>
YOUR FILE - V/RÉFÉRENCE
DATE
<b>July 20, 1972</b>

The mail from Mr. Willoughby dated July 17th, and charged out to this file on July 20th, has been removed with the concurrence of Central Registry to file 131-2.

  
**J.H. Hollies,**  
**Departmental Counsel**





The Honorable the Treasury Board  
L'honorable Conseil du Trésor

713456  
T.B. Number - C.T. No

SOLICITOR GENERAL

Department - Ministère

373 (1)

File - Dossier

June 12, 1972

Date

SUBJECT: PAYMENT OF LEGAL FEES

- PROPOSAL:
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management or administration of a penitentiary.
  2. To authorize the Solicitor General to pay all or any of the legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, that have heretofore been incurred by those members of the Canadian Penitentiary Service required to appear as witnesses before J.W. Swackhamer Esq., Q.C., in connection with an inquiry into certain events alleged to have occurred at Kingston and Millhaven Penitentiaries in April, 1971.

CHARGEABLE TO: Department of the Solicitor General, Vote 5, Operation and Maintenance of Penitentiaries.

REMARKS: Treasury Board Minute 705031, dated May 20, 1971, authorized the Solicitor General to pay up to \$3,000 for the engagement of legal counsel for the purpose, inter alia, of defending members of

.....2



APPROVED  
BY THE  
TREASURY BOARD

APPROUVÉ  
PAR LE  
CONSEIL DU TRÉSOR

Certified  
to be a true copy of a  
Minute of a Meeting of the  
Treasury Board on

27 VII 72

Date

Copie conforme  
d'un extrait du procès-verbal  
d'une réunion du Conseil du  
Trésor le

*[Signature]*  
Secretary - Secrétaire

-2-

the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

Eight members of the Canadian Penitentiary Service retained counsel to appear on their behalf before the inquiry into the Kingston disturbances. Four of these persons had received a notice from counsel for the Commission that an adverse report might be made against them on any one of a number of grounds, some of which, if substantiated, would indicate that the person had committed a criminal offence while in other instances civil liability might attach. In these circumstances, such persons very naturally sought the assistance of counsel. It would, however, be inequitable to discriminate against those not in

-3-

receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. Such inquiries are not likely to be frequent but rather exceptional.

If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.

The Honorable the Treasury Board  
L'honorable Conseil du Trésor

713456

T.B. Number - C.T. No

SOLICITOR GENERAL

Department - Ministère

373 (1)

File - Dossier

June 12, 1972

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Mrs Malouin

Could you forward a copy of the  
afforded submission to Mr. Hollis  
when it is received.

I noted  
JRM  
2/8/6/7 ✓

000091

DEPARTMENT OF THE SOLICITOR GENERAL  
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

①

Mr. Haller

To note & forward

to D. T. Thibault.

BM

② Mr. Thibault.

We have a number of accounts  
just in from Wilbrey. May I  
have them for certification please?  
Haller

000092

26 June 72





The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. No

**SOLICITOR GENERAL**

Department - Ministère

**373 (1)**

File - Dossier

**June 12, 1972**

Date

**SUBJECT:            PAYMENT OF LEGAL FEES**

- PROPOSAL:**
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management or administration of a penitentiary.
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.....2

Signed by Jean-Pierre Goyer  
and sent by hand to Treasury  
Board on June 23 at 10 a.m.

  
for J.M.T.

-2-

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Ottawa K1A 0P8, July 4, 1972

ATTENTION: MR. THOMAS J. LALLY

Dear Sirs:

May I refer to your letter of May 26th, addressed to the Department of Justice, for the attention of Mr. Geron, with which you enclosed a statement of account for the services rendered Mr. Thomas Rathwell.

I very much regret the inordinate delay in replying to your letter. It was promptly remitted to us for reply by the Department of Justice but, in some fashion, did not come to my attention until late last week. I do hope that the delay has not seriously inconvenienced you.

As matters now stand, there is no authority for the payment from public funds of the accounts submitted by you for the legal services performed on behalf of members of the Canadian Penitentiary Service. I may tell you, however, that this Department has sought the authority of the Treasury Board for the payment of accounts of this nature, subject to certain limits and conditions. While I can not, of course, forecast the decision that Treasury Board will make, I suggest that you may be willing to await that decision, which I believe will not be long delayed. In the event that the sought for authority is not forthcoming, which I hope will not be the case, responsibility for payment of these accounts must rest with the individual concerned.

Yours sincerely,

for   
E.A. Côté,  
Deputy Solicitor General

JHH/mab

Barrett, Lally & Girard,  
Barristers & Solicitors,  
P.O. Box 445,  
Belleville, Ontario

Ottawa K1A 0P8, June 22, 1972

Dear Mr. Willoughby:

May I acknowledge receipt of your letter of June 19th, addressed to Mr. Côté who is at the moment away from the office on duty.

As matters now stand, there is no authority for the payment from public funds of the accounts submitted by you for the legal services performed on behalf of members of the Canadian Penitentiary Service. I may tell you, however, that this Department has sought the authority of the Treasury Board for the payment of accounts of this nature, subject to certain limits and conditions. While I can not, of course, forecast the decision that Treasury Board will make, I suggest that you may be willing to await that decision, which I believe will not be long delayed. In the event that the sought for authority is not forthcoming, which I hope will not be the case, responsibility for payment of these accounts must rest with the individual concerned.

Yours sincerely,

BERNARD C. HOFLEY

J.H. HOLLIES/mab

B.C. Hofley,  
Acting Deputy Solicitor General

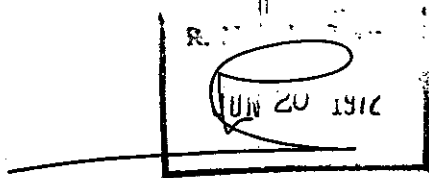
Mr. L.S. Willoughby, Q.C.,  
Barrister and Solicitor,  
295 Brock Street,  
Kingston, Ontario

**SOLICITOR GENERAL OF CANADA**  
**SOLLICITEUR GÉNÉRAL DU CANADA**

**MEMORANDUM**


*Joe*

*Mr. Côté has asked that this be  
referred to your secret submission has  
not yet been signed.*



TELEPHONE  
546-5523

1011 SM  
SOL GEN

  
P.O. BOX 951  
295 BROCK STREET  
KINGSTON, ONTARIO

June 19, 1972.

JUN 20 2 14 PM '72

FILE  
DOSSIER

Mr. Ernest Cote,  
Deputy Minister,  
The Department of the Solicitor General,  
340 Laurier Street West,  
OTTAWA, Ontario.


Re: Commission of Inquiry  
(Swackhamer Committee)

Dear Sir:

I now enclose herewith my accounts with respect  
to various attendances before the Commission of Inquiry.

I will forward my remaining accounts in due  
course.

Yours sincerely,

  
L.S. WILLOUGHBY, Q.C.

LSW/sg  
encs.





Government  
of Canada

Gouvernement  
du Canada

MEMORANDUM

NOTE DE SERVICE

119-2

TO  
À

**H.E. POPP**  
**DIRECTOR, SECURITY**  
**C.P.S.**

FROM  
DE

**INGER HANSEN**  
**LEGAL OFFICER**

SUBJECT  
OBJET

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE <b>June 16, 1972</b>

This will acknowledge that I have received  
from you Volumes II, III, IV and XIX of the evidence before  
the Swackhamer Commission.

Original Signed by  
**I. HANSEN**

**INGER HANSEN**





The Honorable the Treasury Board  
L'honorable Conseil du Trésor

*rescinded*  
7/16/72  
13/Jan 25/73  
*[Signature]*

713456

T.B. Number - C.T. N°

SOLICITOR GENERAL

Department - Ministère

373 (1)

File - Dossier

June 12, 1972

Date

SUBJECT: PAYMENT OF LEGAL FEES

- PROPOSAL:
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management or administration of a penitentiary.
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CHARGEABLE TO: Department of the Solicitor General, Vote 5, Operation and Maintenance of Penitentiaries.

REMARKS: Treasury Board Minute 705031, dated May 20, 1971, authorized the Solicitor General to pay up to \$3,000 for the engagement of legal counsel for the purpose, inter alia, of defending members of  
DM SM.  
SOL GEN  
.....2

AUG 1 12 01 PM '72

FILE  
DOSSIER



APPROVED  
BY THE  
TREASURY BOARD

APPROUVÉ  
PAR LE  
CONSEIL DU TRÉSOR

Certified  
to be a true copy of a  
Minute of a Meeting of the  
Treasury Board on

27 VII 72

Date

Copie conforme  
d'un extrait du procès-verbal  
d'une réunion du Conseil du  
Trésor le

*[Signature]*

Secretary - Secrétaire

000101

-2-

the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

Eight members of the Canadian Penitentiary Service retained counsel to appear on their behalf before the inquiry into the Kingston disturbances. Four of these persons had received a notice from counsel for the Commission that an adverse report might be made against them on any one of a number of grounds, some of which, if substantiated, would indicate that the person had committed a criminal offence while in other instances civil liability might attach. In these circumstances, such persons very naturally sought the assistance of counsel. It would, however, be inequitable to discriminate against those not in

-3-

receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. Such inquiries are not likely to be frequent but rather exceptional.

If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.

CANADA

Ministère du Solliciteur-

G 11

RECEIVED  
JUN 19 8 35 AM  
Department of the  
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

☐

POUR AUTORISATION  
FOR APPROVAL

☒

FOR SIGNATURE  
POUR SIGNATURE

☐

POUR INFORMATION  
FOR INFORMATION

☐

FOR DIRECTION  
POUR DIRECTIVE

☐

SUR SA DEMANDE  
AS REQUESTED

☐

TO NOTE AND RETURN  
PRENDRE NOTE ET  
RENOYER

DICTATED BY  
DICTÉ PAR

C.P.S.

12/6/72

DATE

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

J-M. Thibault 13/2/72

DATE

6/19 June 72

BC Hopley



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. No

**SOLICITOR GENERAL**

Department - Ministère

**373 (1)**

File - Dossier

**June 12, 1972**

Date

**SUBJECT:            PAYMENT OF LEGAL FEES**

- PROPOSAL:**
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management or administration of a penitentiary.
  2. To authorize the Solicitor General to pay all or any of the legal fees and disbursements, not to exceed an amount of \$3,000 in any one case, that have heretofore been incurred by those members of the Canadian Penitentiary Service required to appear as witnesses before J.W. Swackhamer Esq., Q.C., in connection with an inquiry into certain events alleged to have occurred at Kingston and Millhaven Penitentiaries in April, 1971.

**CHARGEABLE TO:** Department of the Solicitor General, Vote 5,  
Operation and Maintenance of Penitentiaries.

**REMARKS:** Treasury Board Minute 705031, dated May 20, 1971, authorized the Solicitor General to pay up to \$3,000 for the engagement of legal counsel for the purpose, inter alia, of defending members of

.....2

Signed by Jean-Pierre Goyer  
and sent by hand to Treasury  
Board on June 23 at 10 a.m.

  
for J.M.T.

-2-

the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

Eight members of the Canadian Penitentiary Service retained counsel to appear on their behalf before the inquiry into the Kingston disturbances. Four of these persons had received a notice from counsel for the Commission that an adverse report might be made against them on any one of a number of grounds, some of which, if substantiated, would indicate that the person had committed a criminal offence while in other instances civil liability might attach. In these circumstances, such persons very naturally sought the assistance of counsel. It would, however, be inequitable to discriminate against those not in

-3-

receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. Such inquiries are not likely to be frequent but rather exceptional.

If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



FROM  
DE

INGER HANSEN  
LEGAL OFFICER

TO  
À

DEPUTY SOLICITOR GENERAL

SUBJECT  
SUJET

CX8 Thomas RATHWELL  
Account for Legal Assistance

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 131-2 119-2
YOUR FILE - V/RÉFÉRENCE JUN 5 10:48 AM '72 RECEIVED OFFICE OF THE SOLICITOR GENERAL
DATE June

Thomas J. Lally, Barrister & Solicitor, represented Mr. Rathwell before the Swackhamer Commission Inquiry. Mr. Lally has forwarded his account to the Department of Justice with a letter in which he states inter alia: "Mr. Rathwell was advised that his account would be paid by the Department of Justice, but as yet he has received no payment.".

As of yesterday, the submission to Treasury Board concerning payment of legal fees for officers before the Swackhamer Commission had not yet been signed.

It appears there is some misunderstanding as to the assumption of responsibility of the Federal Government in this matter. If the submission is not to go forward to Treasury Board, may I respectfully suggest that a letter be forwarded to the individuals concerned so that they may clearly know where they stand as regards assistance for payment of legal fees.

*Inger Hansen*  
INGER HANSEN

*Deputy Solicitor General*  
*attention: Inger Hansen*

*Submission, paragraph 2 refers, signed and forwarded to Treasury Board 23 June 72.*

*J. L. Lally*  
23 June 000108



FROM  
DE**INGER HANSEN  
LEGAL OFFICER**TO  
A**DEPUTY SOLICITOR GENERAL**SUBJECT  
SUJET**CX8 Thomas RATHWELL  
Account for Legal Assistance**

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE — N/RÉFÉRENCE

**131-2**

YOUR FILE — V/RÉFÉRENCE

DATE

**June 2, 1972**

Thomas J. Lally, Barrister & Solicitor, represented Mr. Rathwell before the Swackhamer Commission Inquiry. Mr. Lally has forwarded his account to the Department of Justice with a letter in which he states inter alia: "Mr. Rathwell was advised that his account would be paid by the Department of Justice, but as yet he has received no payment."

As of yesterday, the submission to Treasury Board concerning payment of legal fees for officers before the Swackhamer Commission had not yet been signed.

It appears there is some misunderstanding as to the assumption of responsibility of the Federal Government in this matter. If the submission is not to go forward to Treasury Board, may I respectfully suggest that a letter be forwarded to the individuals concerned so that they may clearly know where they stand as regards assistance for payment of legal fees.

**IE/lcf**

Original Signed by

**INGER HANSEN**

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

RECEIVED  
OFFICE OF THE  
SOLICITOR GENERAL

119-2

FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
A

THE SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ

JUN 1 9 57 AM '72

OUR FILE - N<sup>o</sup> RÉFÉRENCE

119-2

YOUR FILE - V<sup>o</sup> RÉFÉRENCE

DATE

May 31, 1972

SUBJECT  
SUJET

Legal fees for counsel  
representing members of  
Penitentiary Service before  
Swackhammer Commission

The attached draft submission was forwarded to  
you by me on April 11, 1972. I should be pleased to have your  
direction as to whether you wish to proceed with this submission.

Att.

*E.A. Côté*  
E.A. Côté,  
Deputy Solicitor General

*Mrs. Hansen*

*Please have submission prepared for  
Minister's signature.*

*13 June 72*

*Submission re-typed  
on June 13th.  
P.A.*

DEPARTMENT OF JUSTICE

UM SM  
SOL GEN  
MEMORANDUM

JUN 2 11 10 AM

June 1, 1972.

FILE

BUSSIER

Mr. Hollies:

Legal -

I understand this is  
a matter which your  
Department has been  
dealing with.

*R. Barber*

Criminal Law Section

TELEPHONE 962-5337  
AREA CODE 613

*Barrett, Lally & Girard*

BARRISTERS, SOLICITORS  
NOTARIES PUBLIC

RICHARD E. BARRETT, B.A. THOMAS J. LALLY, B.A.  
A. PETER GIRARD, B.A., LL.B. JAMES F. O'BRIEN, B.A., LL.B.

RECEIVED

MAY 30 1972

DEPARTMENT OF  
JUSTICE - OTTAWA

119-2  
131-2  
*Mr. Jollies*

P.O. BOX 445  
25 CAMPBELL STREET

*Bellefleur, Ont.*

Regional and Departmental  
Services Section

PLEASE ADVISE R-5989/71

MAY 30 1972

Section des Services aux  
Bureaux régionaux et aux  
ministères

May 26th, 1972.

Department of Justice,  
Departmental & Regional Services,  
Parliament Buildings,  
Ottawa, Ontario.

Attn: Mr. A. Garon, Q.C.

Dear Mr. Garon

Re: Thomas Rathwell

We acted on behalf of Thomas Rathwell before a Commission of Inquiry in the summer of 1971, said commission being known as The Swackhamer Commission inquiring into the penitentiary riots in April of 1971.

Mr. Rathwell was advised that his account would be paid by the Department of Justice but as yet he has received no payment.

We enclose herewith photocopy of the account and would be pleased to discuss this matter with you at any time.

Kindly advise.

Yours truly,

BARRETT, LALLY & GIRARD,

Thomas J. Lally.

pd  
encl

Mr. Thomas Rathwell,  
795 Brock Street,  
Kingston, Ontario.

September 15th, 1971.

Re: Commission of Inquiry

For all services rendered on behalf of Thomas Rathwell in respect to acting on his behalf in respect to charges made against him on August 25th, 1971, that he was a person responsible for causing harm to inmates and that on April 19th, 20 and 21st, 1971 he did authorize, direct, supervise or permit assaults to be made by officers of the Penitentiary Service of Canada upon such inmates at Millhave Correctional Institute, Bath, Ontario or that you did fail to take adequate or any steps to prevent such assaults.

In respect to these charges, we attended before the Commission of Inquiry on August 30th wherein certain submissions were made to the Board and we received transcripts of pertinent evidence.

We then prepared our case and read approximately 1500 pages of evidence given at the inquiry, prepared submissions, attended before the Inquiry on September 9th wherein submissions were made.

Counsel fee for attending in Kingston on August 30th before the Inquiry, speaking to the Commission, Commission counsel, other counsel involved, receiving evidence, procedural matters, etc., leaving Belleville at 9 a. m. and returning to Belleville at 6 p. m. - counsel fee

\$280.00

Time spent during the next week reviewing evidence, long discussion with Thomas Rathwell at our office on September 3rd with respect to evidence, reviewing evidence over the week-end.

- 2 -

Forwarded \$250.00

Dictating memo, preparing submissions  
total time spent 30 hours - fee at rate  
of \$25.00 per hour \$750.00

Attending before the Commission on  
September 9th, leaving Belleville at  
8:30 a. m. and returning to Belleville  
at 7 p. m. after having made submissions -  
being before the Inquiry a full day -  
counsel fee \$250.00

Expenses

Mileage 200 miles at 15¢ per mile	\$30.00	
Meals	\$ 2.50	
	<hr/>	
	\$32.50	\$1,250.00
		32.50
		<hr/>
		\$1,282.50
		<hr/>

BARRETT, LALLY & GIRARD,

Thomas J. Lally.

TJL/pd  
R-5989/71



SOLICITOR GENERAL  
Department - Ministère

373 (1)  
File - Dossier

April 10, 1972  
Date

**SUBJECT:** PAYMENT OF LEGAL FEES

- PROPOSAL:**
1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management, or administration of a penitentiary.
  2. To authorize the Solicitor General to pay all or any of the legal fees and disbursements, not to exceed an amount of \$3000 in any one case, that have heretofore been incurred by those members of the Canadian Penitentiary Service required to appear as witnesses before J.W. Swackhamer Esq., Q.C., in connection with an inquiry into certain events alleged to have occurred at Kingston and Millhaven penitentiaries in April, 1971.

**CHARGEABLE TO:**

**REMARKS:** Treasury Board Minute 705031, dated May 20, 1971, authorized the Solicitor General to pay up to \$3000 for the engagement of legal counsel for the purpose, inter alia, of defending members of the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the

.....2

Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

Eight members of the Canadian Penitentiary Service retained counsel to appear on their behalf before the inquiry into the Kingston disturbances. Four of these persons had received a notice from counsel for the Commission that an adverse report might be made against them on any one of a number of grounds, some of which, if substantiated, would indicate that the person had committed a criminal offence while in other instances civil liability might attach. In these circumstances, such persons very naturally sought the assistance of counsel. It would, however, be inequitable to discriminate against those not in receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. It is thought unlikely that expenditures would average more than \$30,000 per year.



If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



*[Handwritten signature]*

FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
A

THE SOLICITOR GENERAL

SUBJECT  
SUJET

Legal fees for counsel  
representing members of  
Penitentiary Service before  
Swackhammer Commission

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE — N<sup>o</sup> RÉFÉRENCE

**119-2**

YOUR FILE — V<sup>o</sup> RÉFÉRENCE

DATE

**May 31, 1972**

The attached draft submission was forwarded to you by me on April 11, 1972. I should be pleased to have your direction as to whether you wish to proceed with this submission.

**E. A. CÔTÉ**

**E.A. Côté,  
Deputy Solicitor General**

Att.

IH/mab

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

*Handwritten signature/initials*

FROM  
DE

COMMISSIONER OF PENITENTIARIES

TO  
À

MR. E. A. COTE,  
DEPUTY SOLICITOR GENERAL.

SUBJECT  
SUJET

Expenses - Commission of Enquiry - Kingston.

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE 185/12(1)	FILE 24/5/72 Classer m.c.
YOUR FILE - V/RÉFÉRENCE	
DATE May 17, 1972	

1. In your memorandum of May 4, you suggest that I recognize that it will be necessary to establish appropriate controls to ensure that all agreements give the limit of the Crown's financial obligations. This relates to an increase from \$50,000. to \$120,000. for the cost of the Kingston enquiry.
2. On many occasions the delay in receiving the report was discussed with the Minister and we both agreed, at that time, as you know, that we should not do anything to appear to place a deadline for fear that we would give the wrong impression that we were trying to curtail the investigation. This is a most important point to remember.
3. Nevertheless, short of the above, I have personally and through my Director of Financial Services, on many occasions, made observations to the Chairman of the Commission about the delays, e.g., in reference to my letter of July 28, 1971 where I stated that both the Minister and I were anxious to receive the report, the Chairman explained reasons for the delay and this was as early as July 31, 1971. The Chairman then stated the report would be completed by the end of August, 1971. In the same letter I advised him of the limit of \$50,000. set by Treasury Board. At my request, the Director of Financial Services, between August, 1971 and March, 1972, called, on many occasions; to obtain figures on expenditures. On January 4, 1972 the Chairman stated that the report would be completed by the end of that week. It was received at the end of April, after more phone calls from me personally.
4. In fact, in July 1971 I asked that a progress report be submitted, summarizing action to date, giving the anticipated date of completion and asking for "a factual

...2

-2-

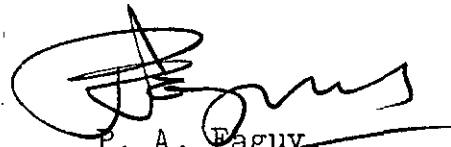
statement of costs to date and foreseen, so that Treasury Board can be advised accordingly".

5. I must say that we found it most difficult to obtain estimates of expenditures from Mr. Swackhamer.

6. I believe, therefore, that everything possible was done under the circumstances short of suggesting the Commission to stop investigating. I might say that comments were made also to other members of the Commission.

7. These facts should be available for record purposes and I have sent copy of this memorandum to Bev. Dewar of Treasury Board for his information.

PAF/MBB

  
P. A. Faguy,  
Commissioner.

Mr. Hallett

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA

FROM  
DE DEPUTY SOLICITOR GENERAL

TO  
À COMMISSIONER HIGGITT  
MR. T.G. STREET

SUBJECT  
SUJET

Expenses of the Commission of Enquiry  
Kingston Penitentiary Disturbance

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N° DE RÉFÉRENCE

119-2

YOUR FILE - N° DE RÉFÉRENCE

DATE

May 4, 1972

Treasury Board has recently remarked on the dangers and undesirability in any situation of open-ended agreements for services which do not set out a limit on the Crown's total financial obligations.

Treasury Board has asked that appropriate controls are established to ensure that in future all agreements for services clearly set out a limit on the Crown's total financial obligations, such a limit to be consistent with any limit established by the Board for any particular program or project.

Your cooperation in seeing that this is done in all cases will be appreciated.

E. A. CÔTÉ

RMJLABROSSE/ml

E.A. Côté,  
Deputy Solicitor General

c.c. Solicitor General  
Mr. Dewar  
All Principal Advisers

② Miss Hansen  
Mr. Dorel

To see, please, and to ensure any  
agreement submitted to you for scrutiny  
conforms.

Hallett  
5 May 72

*Mr. D. I. Brown*

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA

*PA*

*119-2*

FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
À

COMMISSIONER HIGGITT

MR. T.G. STREET

*File 30/5/72  
Classer 829*

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

119-2

YOUR FILE - V/RÉFÉRENCE

DATE

May 4, 1972

SUBJECT  
SUJET

Expenses of the Commission of Enquiry  
Kingston Penitentiary Disturbance

Treasury Board has recently remarked on the dangers and undesirability in any situation of open-ended agreements for services which do not set out a limit on the Crown's total financial obligations.

Treasury Board has asked that appropriate controls are established to ensure that in future all agreements for services clearly set out a limit on the Crown's total financial obligations, such a limit to be consistent with any limit established by the Board for any particular program or project.

Your cooperation in seeing that this is done in all cases will be appreciated.

E. A. CÔTÉ

E.A. Côté,  
Deputy Solicitor General

RMJLABROSSE/ml

c.c. Solicitor General  
Mr. Dewar  
All Principal Advisers

*Mr. Racasne - M 5-V.  
Mr. Baymwood - JLB 5/5  
Mrs. Stewart - JS  
Mr. Meade - WJM 1/5*

*To note & return  
for Mr. Brown to see.*

*WJM 5/5 R/S*

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
A

COMMISSIONER HIGGITT

MR. T.G. STREET

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N<sup>o</sup> RÉFÉRENCE

119-2

YOUR FILE - V<sup>o</sup> RÉFÉRENCE

DATE

May 4, 1972

SUBJECT  
SUJET

Expenses of the Commission of Enquiry  
Kingston Penitentiary Disturbance

Treasury Board has recently remarked on the dangers and undesirability in any situation of open-ended agreements for services which do not set out a limit on the Crown's total financial obligations.

Treasury Board has asked that appropriate controls are established to ensure that in future all agreements for services clearly set out a limit on the Crown's total financial obligations, such a limit to be consistent with any limit established by the Board for any particular program or project.

Your cooperation in seeing that this is done in all cases will be appreciated.

E. A. CÔTÉ

RMJLABROSSE/ml

E.A. Côté,  
Deputy Solicitor General

c.c. Solicitor General  
Mr. Dewar  
All Principal Advisers

PA M 2

MEMORANDUM  
GOVERNMENT OF CANADA



NOTE DE SERVICE  
GOUVERNEMENT DU CANADA

119-2

FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
A

COMMISSIONER OF PENITENTIARIES

SUBJECT  
SUJET

Expenses of the Commission of Inquiry  
Kingston Penitentiary Disturbance

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE  119-2
YOUR FILE - V/RÉFÉRENCE
DATE May 4, 1972

Attached for your information and guidance is a copy of a letter from Mr. D.B. Dewar, Deputy Secretary of the Program Branch of Treasury Board pertaining to the expenses of the Commission of Inquiry which enquired into the disturbances at Kingston Penitentiary last year.

I'm sure you recognize as I do that, in future, it will be necessary for you to establish appropriate controls to ensure that all agreements clearly establish the limit of the Crown's total financial obligations, consistent with any limit set out by Treasury Board for the particular program or project.

E. A. CÔTÉ

RMJLABROSSE/EACOTE/ml  
Att.  
c.c. Solicitor General

E.A. Côté,  
Deputy Solicitor General

PA mJ



MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
À

COMMISSIONER OF PENITENTIARIES

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

119-2

YOUR FILE - V/RÉFÉRENCE

DATE

May 4, 1972

SUBJECT  
SUJET

Expenses of the Commission of Inquiry  
Kingston Penitentiary Disturbance

Attached for your information and guidance is a copy of a letter from Mr. D.B. Dewar, Deputy Secretary of the Program Branch of Treasury Board pertaining to the expenses of the Commission of Inquiry which enquired into the disturbances at Kingston Penitentiary last year.

I'm sure you recognize as I do that ~~in this instance, insufficient control was exercised over the expenses of the Commission of Inquiry, which Treasury Board had originally authorized.~~

~~I should like to support Mr. Dewar's remarks by asking that appropriate controls be set up to ensure that in future all agreements clearly establish the limit of the Crown's total financial obligations, consistent with any limit set out by Treasury Board for the particular program or project.~~

*in future, it will  
be necessary for you to  
establish*

E.A. Côté,  
Deputy Solicitor General.

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



FROM  
DE

DEPUTY SOLICITOR GENERAL

TO  
A

COMMISSIONER OF PENITENTIARIES

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE — N/RÉFÉRENCE

119-2

YOUR FILE — V/RÉFÉRENCE

DATE

May 4, 1972

SUBJECT  
SUJET  
Expenses of the Commission of Inquiry  
Kingston Penitentiary Disturbance

Attached for your information and guidance is a copy of a letter from Mr. D.B. Dewar, Deputy Secretary of the Program Branch of Treasury Board pertaining to the expenses of the Commission of Inquiry which enquired into the disturbances at Kingston Penitentiary last year.

I'm sure you recognize as I do that, in this instance, insufficient control was exercised over the expenses of the Commission of Inquiry, which Treasury Board had originally authorized.

I should like to support Mr. Dewar's remarks by asking that appropriate controls be set up to ensure that in future all agreements clearly establish the limit of the Crown's total financial obligations, consistent with any limit set out by Treasury Board for the particular program or project.

RMJLABROSSE/ml

Solicitor General

E.A. Côté,  
Deputy Solicitor General.



CANADA

*Charged to Miss Hansen*  
T.B. 711373  
DM SM File: 8175-2/S686 1/5/72  
SOL GEN

Ottawa, Ontario  
K1A 0R5  
MAY 2 1 43 MAY 1, 1972

FILE  
DOSSIER

Mr. Ernest A. Côté,  
Deputy Solicitor General,  
Ottawa, Ontario, K1A 0P8.

Dear Mr. Côté:

Approval has been given to your Minister's proposal to increase from \$50,000 to \$120,000 the limit on the expenses of the Commission of Inquiry respecting the disturbances at Kingston Penitentiary last year. The number of the authority is T.B. 711373 and its date is April 20, 1972.

While the original limit of \$50,000 had to be set without a clear idea of the required size and scope of the inquiry, authority to increase it should nonetheless have been sought before expenditures were allowed to exceed this amount. We understand that the principal reason for not coming forward in time was that the Commissioners failed to keep the Penitentiary Service informed of their expenditures. It seems unlikely that this would have happened had limits, reflecting the \$50,000 maximum, been included in the agreements between the Commissioners and the Penitentiary Service. We would seriously doubt the desirability in any situation of open-ended agreements for services, but think that they are especially questionable when the Board has established a specific limit on expenditures in the particular area. We appreciate that the Penitentiary Service attempted to meet this problem through a letter to the Chairman of the Commission which referred to the \$50,000 limit; however, experience appears to have demonstrated that this was an insufficient control.

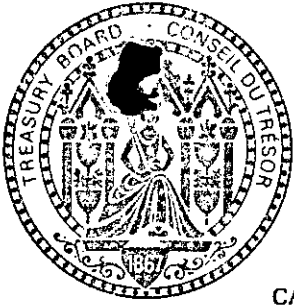
We would ask that in future all agreements for services set out a limit on the Crown's total financial obligations. Such a limit should of course be consistent with any limit established by the Board for the particular program or project.

Yours sincerely,

*D.B. Dewar*  
D.B. Dewar  
Deputy Secretary  
Program Branch.

*Copy sent to  
Mr. Thibault*

000127



CANADA

T.B. 711373  
File: 8175-2/S686

Ottawa, Ontario  
K1A 0R5  
May 1, 1972

DM SM  
SOL GEN

MAY 2 1 44 P  
FILE  
DOSSIER 119-2



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Deputy Solicitor General,  
Ottawa, Ontario, K1A 0P8.

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Yours sincerely,

*D.B. Dewar*  
D.B. Dewar  
Deputy Secretary  
Program Branch.

*Original sent to DM*

## MEMORANDUM

## NOTE DE SERVICE

GOVERNMENT OF CANADA



GOUVERNEMENT DU CANADA

FROM  
DE

DEPARTMENTAL COUNSEL

TO  
ADEPUTY SOLICITOR GENERALSUBJECT  
SUJETSwackhammer Inquiry -  
Legal Fees

SECURITY - CLASSIFICATION - DE SÉCURITÉ

**CONFIDENTIAL**

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

April 10, 1972

You will remember that we discussed my memorandum of April 7th, and that you asked me to make certain inquiries as to the parallel situation in the Department of Transport and the Department of National Defence, and also to consult with somebody at Treasury Board.

So far as the Department of National Defence is concerned, I know from personal experience that they have never paid the expenses of counsel privately retained to watch over the interests of an officer or man appearing before a Board of Inquiry. The situation is, of course, different at Courts Martial, but that is not in any way parallel. I have today confirmed with the Judge Advocate General that the procedures in National Defence are still as I remember them.

An inquiry directed to a legal officer in the Department of Transport reveals that when counsel is retained, for example, by a pilot in the case of an inquiry into an air crash, no reimbursement of counsel fees is ever approved. Similarly, inquiries under the Railway Act are attended by counsel representing individual or corporate interests, but payment of their fees is never undertaken by the Crown. Marine inquiries can provide an exception, since there is power in the court conducting the inquiry to order that the Crown pay the fees of counsel. Such an order is extremely infrequent.

I contacted the Director of Legal Services at Treasury Board to ask him for an unofficial opinion as to whether any precedent existed. He instanced a case approximately a year ago where two Ministers had made a statement on the C.B.C. that was the subject of a threatened suit for defamation. In these circumstances, counsel fees for the Ministers were provided by the Crown on the basis that they were acting within the general scope of their duties as Ministers. Payment was made from the Departmental Administrative Vote.

.....2

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I said to the Director of Legal Services that I had been going on the assumption that if we wished to pay legal fees in cases of this kind, it would have to be done by obtaining Treasury Board authority for an ex gratia payment. He did not seem to be at all sure that this was necessary, and suggested that we ask our programme officer to discuss the problem with Bruce MacDonald. I did not think it wise to take up that suggestion at this juncture and, indeed, I should much prefer having a standing Treasury Board authority with the conditions prescribed in it, than to treat these requests as something that could be decided within this department and paid for out of the Administrative Vote.

I attach a draft submission to Treasury Board for your consideration. I should note that I sent a copy of my memorandum of April 7th, to Commissioner Faguy, and that I am also providing him with a copy of this memorandum and the draft submission to Treasury Board.

Att.

  
J.H. Hollies,  
Departmental Counsel

JHH/mab



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. N°

SOLICITOR GENERAL  
Department - Ministère

373 (1)  
File - Dossier

April 10, 1972  
Date

**SUBJECT:** PAYMENT OF LEGAL FEES

**PROPOSAL:** 1. To authorize the Solicitor General to pay all or any of the costs of legal fees and disbursements, not to exceed an amount of \$3000 in any one case, for the engagement of legal counsel to represent members of the Canadian Penitentiary Service who are required to appear as witnesses before a person appointed to investigate and report pursuant to section 12 of the Penitentiary Act, or before a Commissioner appointed under Part II of the Inquiries Act to investigate and report upon any matter arising or alleged to arise from the operation, management, or administration of a penitentiary.

2. To authorize the Solicitor General to pay all or any of the legal fees and disbursements, not to exceed an amount of \$3000 in any one case, that have heretofore been incurred by those members of the Canadian Penitentiary Service required to appear as witnesses before J.W. Swackhamer Esq., Q.C., in connection with an inquiry into certain events alleged to have occurred at Kingston and Millhaven penitentiaries in April, 1971.

**CHARGEABLE TO:**

**REMARKS:** Treasury Board Minute 705031, dated May 20, 1971, authorized the Solicitor General to pay up to \$3000 for the engagement of legal counsel for the purpose, inter alia, of defending members of the Canadian Penitentiary Service for offences arising out of the performance of custodial duties. As was pointed out to Treasury Board at the time that authority was obtained, members of the Canadian Penitentiary Service are vulnerable to threats and pressures from inmates who may well make very serious and often baseless allegations against members of the

.....2

If this proposal is approved, reimbursement of legal fees for future cases will not be approved unless the member of the Canadian Penitentiary Service has, if practical, obtained approval from Departmental Headquarters before retaining counsel. No accounts would be passed for payment unless first certified as being fair and reasonable by a representative of the Department of Justice.



Service. Such allegations are particularly likely to be made before persons appointed to look into and report upon disturbances in penitentiaries. This has been particularly true in the case of the disturbances at Kingston Penitentiary in April, 1971, where allegations made by inmates concerning the transfer of persons from Kingston Penitentiary to Millhaven Penitentiary resulted in a number of criminal charges being laid against custodial officers. The same or similar allegations could reasonably be expected to be made before the formal inquiry investigating these events. In the result, a number of members of the Canadian Penitentiary Service retained counsel to represent them before the Inquiry.

It is considered that it is only equitable that some or all of the expenses incurred in circumstances such as these should be borne by the Crown. Failure to do so is very likely to result in a marked loss of morale in the Canadian Penitentiary Service and a feeling among its members that they are at the mercy of any inmate who can give the appearance before a Board of Inquiry of having been maltreated or otherwise inequitably dealt with.

Eight members of the Canadian Penitentiary Service retained counsel to appear on their behalf before the inquiry into the Kingston disturbances. Four of these persons had received a notice from counsel for the Commission that an adverse report might be made against them on any one of a number of grounds, some of which, if substantiated, would indicate that the person had committed a criminal offence while in other instances civil liability might attach. In these circumstances, such persons very naturally sought the assistance of counsel. It would, however, be inequitable to discriminate against those not in receipt of such a notice from counsel to the Commission, since presumably their alleged actions were looked upon by the Commission as less culpable if substantiated.

The cost of this proposal cannot be forecast with any degree of precision, but would amount to approximately \$18,000 in respect of those persons who retained counsel before the inquiry into the disturbances at Kingston. Costs for the future would be dependent upon the occasions arising for formal inquiries and upon the nature of such inquiries. It is thought unlikely that expenditures would average more than \$30,000 per year.

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



FROM  
DE

DEPARTMENTAL COUNSEL

TO  
A

DEPUTY SOLICITOR GENERAL

SUBJECT  
SUJET

Swackhammer Inquiry -  
Legal Fees

SECURITY - CLASSIFICATION - DE SÉCURITÉ

**CONFIDENTIAL**

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

April 7, 1972

*Mr. Hallis*

*We discussed. Please draft a Submission  
7/14/72 to T.B. & then let us discuss. Eddy*

This memorandum accompanies Penitentiary Service file 373(1) which was referred to me by Commissioner Faguy. As you will note, the point at issue is whether public funds should be made available to meet in whole or in part the expenses incurred by certain members of the Canadian Penitentiary Service in retaining counsel to represent them before the Swackhammer Committee. You will recall that we discussed this matter approximately a month ago and that you suggested to me I should convey the substance of our conversation to Mr. Clark. I did so, and the letter from Mr. Clark dated March 20th appears to be the result.

I find much of what Mr. Clark says in his letter to be completely irrelevant. I do not believe it is germane to consider at this stage whether the members of the Canadian Penitentiary Service were blameworthy or not. Indeed, to attempt to determine this point would be to pre-judge the substance and validity of the contents of the Swackhammer Report, which has not as yet been submitted to the Minister. It is true that those members of C.P.S. who were tried on criminal charges have been acquitted and that nolle prosequis have been entered for the remainder. This, however, is not determinative of whether blame may be attached to these men.

I should first point out that the letter from Mr. Clark makes reference to legal fees incurred by himself, Mr. Bell, Mr. McKegney and Mr. Rathwell. These persons are presumably the only ones who received a notice from the Commission counsel that an adverse report might be made against them. They are not, however, the only members of the Canadian Penitentiary Service who retained counsel. As you know, Miss Hansen has been examining the evidence taken by the Commission, but under instructions that she is not to disclose the substance to any person, except to the Department of Justice to the

.....2

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extent necessary to assist in defending against the suit initiated by Knight. However, in view of her special knowledge on this matter, I asked her to review a memorandum I had prepared to you and she felt that she should inform me of the appearances of counsel before the Commission and the sequence in which evidence was taken and counsel appeared. This has been useful as showing firstly that the impression left upon me by the material submitted by Mr. Clark and Mr. Moloney was erroneous. I had thought that the persons referred to in Mr. Clark's letter had actually not taken counsel until they had testified before the Commission and been recalled. (In Mr. Moloney's letter it is said ".....none of the officers concerned engaged counsel for their original appearance as witnesses at the inquiry"). The index prepared by the reporters shows that Rathwell first appeared on August 17th, and was represented by Willoughby, and that Clark first appeared on August 18th, apparently unrepresented, counsel first appeared for him on August 30th. Bell first gave testimony on August 23rd, and was represented by counsel at that time. McKegney testified first on August 19th, and counsel appeared with him.

The reporters' index shows that in addition to the persons named in Mr. Clark's letter, the following members of the Canadian Penitentiary Service retained counsel:

McConnell, Bell, McLaren, and Martineau.

I had originally come to the view that I would personally have favoured reimbursement in whole or in part of the legal fees incurred by the four persons referred to in Mr. Clark's letter (including himself). I was prepared to base that recommendation on the following factors:

- (a) There was what might be called a "shot gun" allegation of a variety of acts or omissions, which if substantiated would show that the person had committed a criminal offence or, in some instances, might have attracted civil liability. Faced with such allegations, and knowing that the report would be forwarded to the most senior officers of the Department and, indeed, to the Solicitor General, it would appear to be only reasonable to at once seek the assistance of counsel.
- (b) From paragraph 5 of the covering memorandum from Mr. Moloney, it appears that he himself had a markedly adverse reaction to the procedures adopted by counsel for the Inquiry. It appears probable that if Mr. Moloney, at his level, formed this impression, other and more junior members of the Canadian Penitentiary Service would believe that they had reasonable grounds for apprehension and would consider it advisable to seek the help of counsel.


Now that I have ascertained that counsel appeared for Rathwell and McKegney prior to the date given in Clark's letter as being the date notice was received under section 13 of the Inquiries Act, I would recommend that if we are to restrict payment of legal fees to those persons who were served such a notice we should not pay any portion of such fees attributable to the services of counsel before that notice was received.

I think the best argument that can logically be made to Treasury Board must be founded on the service of the notice. This would mean that only four persons would be wholly or partially reimbursed and that the others who retained counsel would be left to bear the whole of their expenses. To include these other persons would, in my view, necessarily weaken the argument that can be made to Treasury Board. Yet, to exclude them from any authority may well cause a major morale problem. One can imagine that such persons would think it most unfair that other members of the Canadian Penitentiary Service, whose apparent conduct was such as to cause the Commission to contemplate an adverse report, should be financially supported by the Crown, while those the Commission considered not to merit an adverse report should find themselves in a markedly worse financial situation.

It has been suggested that to pay any of the legal fees for any of these people would be to set an undesirable precedent. I suggest that to worry about setting a precedent is somewhat unrealistic, since I trust occurrences of this kind will be very few indeed. I think there is some merit in the suggestion that as we can pay legal fees for the defence of a member of the Canadian Penitentiary Service charged with a criminal offence - presumably regardless of his eventual conviction or acquittal - there is little or no extension of the principle involved if we make at least partial reimbursement of legal fees in the present case.

I believe the questions of policy entailed in considering the request made by Mr. Clark and supported by Mr. Moloney are sufficiently important and difficult to warrant your consideration and discussion with Commissioner Faguy. Should you be of the opinion that an approach to the Treasury Board is warranted, I take it you will likely want to discuss the matter with the Minister before the submission is prepared.

I think it will be realized from what I have said that I adhere to the opinion previously expressed by me that neither of the Treasury Board Minutes that have been referred to on this file provide any authority for the action sought in this case. It follows that any payment would be ex gratia and would require the approval of Treasury Board.

  
J.H. Hollies,  
Departmental Counsel

cc: Commissioner of Penitentiaries (for information)  
MEMORANDUM NOTE DE SERVICE

GOVERNMENT OF CANADA GOUVERNEMENT DU CANADA



FROM  
DE

DEPARTMENTAL COUNSEL

TO  
A

DEPUTY SOLICITOR GENERAL

SUBJECT  
SUJET

Swackhammer Inquiry -  
Legal Fees

SECURITY - CLASSIFICATION - DE SÉCURITÉ
<b>CONFIDENTIAL</b>
OUR FILE - VOTRE RÉFÉRENCE
YOUR FILE - VOTRE RÉFÉRENCE
DATE

April 7, 1972

This memorandum accompanies Penitentiary Service file 373(1) which was referred to me by Commissioner Faguy. As you will note, the point at issue is whether public funds should be made available to meet in whole or in part the expenses incurred by certain members of the Canadian Penitentiary Service in retaining counsel to represent them before the Swackhammer Committee. You will recall that we discussed this matter approximately a month ago and that you suggested to me I should convey the substance of our conversation to Mr. Clark. I did so, and the letter from Mr. Clark dated March 20th appears to be the result.

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extent necessary to assist in defending against the suit initiated by Knight. However, in view of her special knowledge on this matter, I asked her to review a memorandum I had prepared to you and she felt that she should inform me of the appearances of counsel before the Commission and the sequence in which evidence was taken and counsel appeared. This has been useful as showing firstly that the impression left upon me by the material submitted by Mr. Clark and Mr. Moloney was erroneous. I had thought that the persons referred to in Mr. Clark's letter had actually not taken counsel until they had testified before the Commission and been recalled. (In Mr. Moloney's letter it is said ".....none of the officers concerned engaged counsel for their original appearance as witnesses at the inquiry"). The index prepared by the reporters shows that Rathwell first appeared on August 17th, and was represented by Willoughby, and that Clark first appeared on August 18th, apparently unrepresented, counsel first appeared for him on August 30th. Bell first gave testimony on August 23rd, and was represented by counsel at that time. McKegney testified first on August 19th, and counsel appeared with him.

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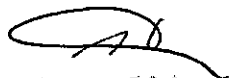
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J.R. Hollies,  
Departmental Counsel

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



FROM  
DE

INGER HANSEN  
LEGAL OFFICER

TO  
À

J.H. HOLLIES  
DEPARTMENTAL COUNSEL

SUBJECT  
SUJET

CORRECTIONAL OFFICERS

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE — N/RÉFÉRENCE

YOUR FILE — V/RÉFÉRENCE

DATE

April 7, 1972

For your further information I submit a list of the witnesses before the Swackhamer Commission. I have annotated the list and underlined those who directly or indirectly may be considered to have been involved in the Millhaven incident.

You will note that none of the officers who were charged were called. I also attach an excerpt from the statement of counsel before the Commission. (page 1576 line 16 to page 1578 line 29 incl.)

Atts.

INGER HANSEN

*Exhibits destroyed*



MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

*PA*

FROM  
DE

INGER HANSEN  
LEGAL OFFICER

TO  
À

J.H. HOLLIES  
DEPARTMENTAL COUNSEL

SUBJECT  
SUJET

CORRECTIONAL OFFICERS

SECURITY - CLASSIFICATION - DE SÉCURITÉ

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Atts.

*Inger Hansen*  
INGER HANSEN

*Swackhamer destroyed*

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Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information

CANADA

Ministère du Solliciteur  
Général

Department of the  
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

☐ POUR AUTORISATION  
FOR APPROVAL

☒ FOR  
POUR SIGNATURE

☐ POUR  
FOR INFORMATION

☐ FOR DIRECTION  
POUR DIRECTIVE

☐ SUR SA DEMANDE  
AS REQUESTED

☐ TO NOTE AND RETURN  
PRENDRE NOTE ET  
RENOYER

DICTATED BY  
DICTÉ PAR C.P.S.

23/3/72

DATE

DACTYLOGRAPHIÉ PAR  
~~XXXXXXXXXXXXXX~~

J-M. Thibault

23/3/72

DATE

*106 H. Cuy*  
*P.A.*  
*Em*

000142



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. N°

**SOLICITOR GENERAL**

**185/12(1)**

**March 23, 1972**

Department - Ministère

File - Dossier

Date

**SUBJECT:** TO INCREASE THE AUTHORITY TO PAY PERSONS ACTING  
AS MEMBERS OF A COMMISSION OF INQUIRY.

**PROPOSAL:** To approve an increase in the limit of \$50,000 set by T.B. 704568 dated June 3, 1971, for the expenses of the Commission of Inquiry to investigate and report upon disturbances at Kingston Penitentiary between April 14 and 18, 1971; the new limit not to exceed \$120,000.

**CHARGEABLE TO:** The Department of the Solicitor General,  
Vote 5, Operation and Maintenance of Penitentiaries.

**REMARKS:** The original limit, for expenditures of the Commission of Inquiry was set at \$50,000 because insufficient information was available at that time to provide a valid forecast of expenditure.

The Inquiry required a large number of interviews which were both complicated and time consuming. Approximately 340 Staff and 230 Inmates were interviewed. Notices to the public were published in 14 newspapers in both languages and 9 institutions were visited. Approximately 4,500 pages of transcript of evidence were required.

Invoices have been audited according to the rates set in T.B. 704568 and based on the total of invoices to hand or in transit, the cost of the Inquiry will be \$120,000.

It is recommended that the authority for expenses related to the Commission of Inquiry be increased from \$50,000 as approved by T.B. 704568 to an amount not to exceed \$120,000.

Signed by Jean-Pierre Goyer  
and sent by hand to Treasury Board  
on March 24 at 2.30 p.m.

  
for J.M.T.



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

425-7-2

T.B. Number - C.T. No

Solicitor General  
Department - Ministère

7231/1(840)  
File - Dossier

March 22, 1972  
Date

SUBJECT: REQUEST FOR AUTHORITY TO SETTLE A CLAIM

PROPOSAL: To compensate the District of Mission, B.C., in the amount of \$100,000 for increased costs in carrying out their water and sewage works.

CHARGEABLE TO: Vote 10, Penitentiary Service, Capital Construction

REMARKS: (1) TB 698505 dated August 26, 1970, approved a recommendation that an agreement be arranged with the District of Mission for the provision of water and sewage services for the proposed maximum security complex on a Crown-owned site. A study had shown that there was an economical basis for joint development of services with the Crown's share approximately \$693,960. The District of Mission was formally advised in October 1970 that the Canadian Penitentiary Service would participate in a shared program of water and sewage development.

(2) By January 1971 the detailed requirements for water and sewage systems were established and the District of Mission subsequently signed an agreement.

(3) The Canadian Penitentiary Service held off signing this agreement pending the results of a study by the Working Group on Federal Maximum Security Institutions Design appointed February 17, 1971.

Signed by Jean-Pierre Goyer  
and sent by hand to Treasury Board  
on March 24 at 2.30 p.m.

*[Signature]*  
for J.M.T.

Copy in 425-7-2

000144

REMARKS: (Cont'd)

- (4) Because of the urgent need to improve the town water and sewage service, the District advised that they would have to proceed with certain works without delay. The Penitentiary Service agreed that the District should proceed with their own work as it was not possible to decide if the Penitentiary site could be used as originally planned.
- (5) The District of Mission has claimed that their construction program of \$1,874,783 had escalated by \$424,403 by holding up implementation while waiting for the Penitentiary needs.
- (6) The Department of Public Works investigated this claim and does not find it acceptable since it reflected the cost of a scheme proposed at the time when initial studies were started during 1968 and 1969. Public Works, from the data that was made available by the District, has estimated that the cost of the District's scheme in July 1971 was \$1,617,600. Using the data issued by Statistics Canada for material and labour it was established that the District's scheme had increased in cost from October 1970 to July 1971 in the amount of \$110,728. In addition, the engineering design of work specifically related to the Penitentiary site needs and joint services were \$18,671.
- (7) Although the District of Mission could not implement any of their water and sewage works until engineering plans were ready and projects financed, it can be shown that the Penitentiary Service had been a key part of the District's planning and there was assurance in October of 1970 that cost sharing would be available. Had a cost sharing program not been found viable in July 1971, the District could have proceeded with their work program earlier.
- (8) The District of Mission has agreed to reduce their claim to \$100,000 and it is recommended that this amount be paid.

--cc: Miss Hansen

MEMORANDUM

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la loi sur l'accès à l'information

FROM  
DE

DEPARTMENTAL COUNSEL

TO  
A

DEPUTY SOLICITOR GENERAL

SUBJECT  
SUJET

Direction of Court -  
[REDACTED]

SECURITY - CLASSIFICATION - DE SÉCURITÉ

**CONFIDENTIAL**

OUR FILE - N° RÉFÉRENCE

YOUR FILE - N° RÉFÉRENCE

DATE

February 28, 1972

I was talking to Mr. Moloney on the telephone this morning on another matter and he mentioned to me a case of one [REDACTED]. This inmate was at Kingston Penitentiary during the riot there and alleged that he was taken out of Kingston at gun point with his hands on his head and instructed to leave most of his personal belongings behind. He said that he left behind a dictionary which had cost him \$7.50, that the dictionary disappeared, and that he holds the institution responsible.

Based on these facts, he applied for a writ of habeas corpus. The application came on before Mr. Justice Wilson and the Crown was represented by Mr. Vita of the Department of Justice. By letter dated February 10, 1972, Mr. Vita informed Mr. Moloney that Wilson, J. had adjourned the application sine die, but had also directed that the institutional authorities were to look into [REDACTED] allegations and return to him or replace his dictionary.

Mr. Moloney reminded me of Deputy Commissioner Stone's direction that claims of this nature were not to be paid. He asked what he should do, particularly in the light of the court "order" and the fact that the inmate is now in an institution in the Quebec Region.

I took the position that we simply could not afford to comply with Mr. Justice Wilson's "order" as it would tend to create a precedent for dealing with inmates' claims of this kind. I further said that the so-called "order" was clearly made without any jurisdiction and I proposed that it should be ignored.

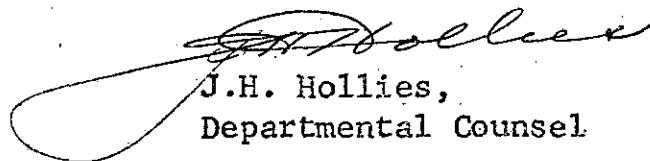
s.19(1)

.....2

From what Miss Hansen has been able to tell me from her perusal of the evidence in the Swackhammer hearings (and in accordance with my instructions she has told me practically nothing) this will be only one of a number of claims, many of which may well be quite valid in law. I thought you should know of this case and of the advice I have somewhat arbitrarily given to Mr. Moloney.

I have sent a copy of this memorandum to Mr. Faguy.

JHH/mab

  
J.H. Hollies,  
Departmental Counsel

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

119-2  
[Handwritten signature]

FROM  
DE

INGER HANSEN  
LEGAL OFFICER

TO  
A

MR. H.E. POPP  
DIRECTOR  
CUSTODY, C.P.S.

SUBJECT  
SUJET

Swackhamer Report

This will acknowledge receipt of volumes of the  
above report as follows:

Vol.            inclusive.

INGERHANSEN/ml

Original Signed by  
I. HANSEN

Inger Hansen.

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE — N/RÉFÉRENCE
YOUR FILE — V/RÉFÉRENCE
DATE November 25, 1971



DEPARTMENT OF THE SOLICITOR GENERAL  
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

22-11-71

MR. HOLMES

MR. Swackhamer has been ill for two weeks - he expects to be able to report at the end of this week (his report is 340 pages - he is trying to cut it down)

1/11

Also please note and P.A. attached

000149

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

119-2

FROM  
DE

INGER HANSEN  
LEGAL OFFICER

TO  
À

MR. H.E. POPP  
DIRECTOR  
CUSTODY, C.P.S.

SUBJECT  
SUJET

SWACKHAMER INQUIRY

This will confirm our telephone conversation in which I advised you that Mr. Swackhamer had given his consent to Mr. D.H. Aylen receiving the transcript of the evidence given at the enquiry.

I assured Mr. Swackhamer that the transcript would be given to Mr. Aylen on the understanding that no attention would be paid to the identification of the persons involved.

IH/ml

Inger Hansen.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE — N/RÉFÉRENCE
YOUR FILE — V/RÉFÉRENCE
DATE November 22, 1971

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

FROM  
DE

**M. PAUL FAGUY**

TO  
À

**M. E.A. COTE**

OUR FILE - N/RÉFÉRENCE	
119-2	176-11
YOUR FILE - V/RÉFÉRENCE	
DATE <b>le 8 juillet 1971</b>	
REFER REPLY TO ENVOYER LA RÉPONSE À	TEL. NO. TEL.

SUBJECT  
SUJET

**Requête du Solliciteur général du Canada en vue du paiement des frais des membres de la Commission d'Enquête sur les troubles de Kingston et du groupe d'experts constitué en vue de conseiller le Solliciteur général du Canada au sujet des institutions à sécurité maximale.**

Vous trouverez ci-joint les extraits nos 704,568 et 705,005 du procès verbal d'une réunion du Conseil du Trésor tenue à Ottawa le 3 juin, 1971.

Vous remarquerez que l'extrait no 704,568, si on le compare avec la requête du Ministre en date du 27 avril 1971, comporte une modification à l'effet qu'un plafond de \$50,000 a été établi en rapport avec cette enquête. Il va sans dire que vous devrez voir à établir un système de contrôle adéquat qui aura la responsabilité de veiller à ce que l'on n'aille pas au-delà de l'autorisation émise par le Conseil du Trésor.

En ce qui a trait à l'extrait no 705,005, vous prendrez note des modifications suivantes:

- a) Clarification de l'indemnité globale de \$30.00 pour remboursement des frais divers et d'hôtellerie.
- b) Substitution de l'autorisation de payer le prix du repas et les frais de transport lorsque les séances ont lieu à l'endroit de la résidence plutôt que de payer une somme de \$5.00.

.... 2

000151

- 2 -

- c) Autorisation de payer le repas du soir lorsque les séances ont lieu dans la localité où travaillent les employés du ministère qui contribueront aux travaux du groupe d'experts.

Le Solliciteur général adjoint,

E. A. CÔTÉ

JMTHIBAUT/ng

E.A. Côté

P.j.

c.c. Solliciteur général du Canada

Treasury Board

CONFEDERATION BLDG., OTTAWA 4



Conseil du Trésor

ÉDIFICE CONFÉDÉRATION, OTTAWA 4

K1A OR5

T.B. 704568

T.B. 705005

Our File No.  
Notre dossier

8175-2/S686

Date June 11, 1971

Refer Reply to

Adresser la  
réponse à

J. F. Ferguson

Telephone No.

Numéro de  
téléphone

6-6275

Your File No  
Votre dossier

To Mr. Ernest A. Côté,  
Deputy Solicitor-General,  
Ottawa, Ontario.  
K1A OP8

Subject  
Sujet

T.B. 704568 - Commission of Inquiry  
T.B. 705005 - Work Group on Maximum Security  
Design of Federal Correctional Institutions

At its meeting on June 3, 1971, the Treasury Board approved your submissions on the above subjects. Copies of the authority are attached.

You will note that the authority for the Commission of Inquiry provides for the rates proposed in your submission. However, there has been a limit placed on the total expenditures for the Commission. The ceiling was established to provide some control over the expenditures involved and was discussed with your departmental staff before being considered by the Board.

With regard to the second submission referred to above, there were several changes made to your original proposal. In lieu of the "\$30 allowance per actual working day" for members of the Work Group and the technical experts, the Board has approved a "\$30 daily comprehensive allowance". The Board also approved the payment of "meal expenses when the Work Group holds evening sessions within the city of residence and necessary local transportation costs" in place of the proposed "\$5 per day allowance" for members of the Work Group. For the technical experts, actual transportation costs may be paid while absent from their normal place of residence. Travel expenses for members of the Group who are employees of the Public Service are to be paid in accordance with the Treasury Board Travel Directive. Authority for meal expenses for the latter group when evening sessions are held in the vicinity of their worksite is also provided. These amendments have been made to bring the provisions of all concerned in line with the provisions applicable to Public Service employees.

Copy on 176-11

2  
R.M.J. La Brosse  
To see please copy to Mr. Thibault.

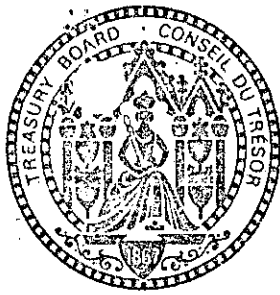
JUN 22 1971

- 2 -

You will note that authority has been given to enter into contracts with individuals rather than to pay fees, expenses and remuneration. This was necessary since the Work Group was established solely on the discretion of your Minister. The Board could not, therefore, authorize payment of fees to a Group not established under a particular authority. It will be necessary for your department to engage the above persons under contract in accordance with the Government Contracts Regulations.



C. C. Tuck,  
Director,  
Compensation and Classification Division.



CANADA

**EXTRACT** from the minutes of a meeting of the Honourable the  
Treasury Board, held at Ottawa, on JUNE 3, 1971

**EXTRAIT** du procès-verbal d'une réunion du Conseil du Trésor  
tenue à Ottawa le

T.B./C.T. 704568

SOLICITOR GENERAL  
Canadian Penitentiary Service

The Board, pursuant to section 7 of the Financial  
Administration Act, approves payment

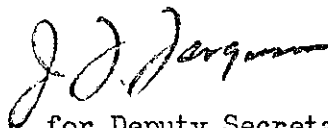
(1) to the following persons, who have been appointed pursuant to  
section 13 of the Penitentiary Act, as a Commission of Inquiry  
to investigate and report upon disturbances at Kingston Penitentiary  
between April 14 and 18, 1971, of allowances, as detailed hereunder,  
together with actual living and travelling expenses in accordance  
with the Treasury Board Travel Directive:

<u>Name</u>	<u>Allowance</u>
J.W. Swackhamer, Q.C. . . .	\$50 per hour for each hour the Commission serves.
W.T. McGrath	\$100 per day with a proportionate rate for a part of a day.
Ian Scott	\$35 per hour.

(2) of court reporters' fees at the regular rates of the Ontario Supreme  
Court for each day necessarily in attendance, also payment of trans-  
cripts of evidence;

- 2 -

(3) of such further sums as are necessary to defray expenditures for accommodation, witness fees, secretarial and clerical assistance, and other incidental expenses as may be approved by the Commissioner and for which the usual detailed accounts will be submitted; the total cost of the above expenditures not to exceed \$50,000.



for Deputy Secretary.

HJB/esw





CANADA

**EXTRACT** from the minutes of a meeting of the Honourable the  
Treasury Board, held at Ottawa, on JUNE 3, 1971

**EXTRAIT** du procès-verbal d'une réunion du Conseil du Trésor  
tenue à Ottawa le

T.B./C.T. 705005

SOLICITOR GENERAL

Canadian Penitentiary Service

The Board, effective April 21, 1971,

- (1) authorizes the Canadian Penitentiary Service to enter into contracts with the undermentioned persons to act as members of the Work Group on the Maximum Security Design of Federal Correctional Institutions and directs that they be paid as follows:

<u>Name</u>	<u>Title</u>	<u>Fees, Allowances and Expenses</u>
Dr. Hans Mohr, Toronto, Ont.	Chairman )	\$100 per day for each day they are engaged on the work of the Group plus a \$30 comprehensive daily allowance while absent from their normal place of residence plus actual transportation costs, and meal expenses when the Work Group holds evening sessions within the city of residence, and necessary local transportation costs.
Dr. L. Beliveau, Montreal, Quebec.	Member )	
A.M. Kirkpatrick, Toronto, Ont.	Member )	
W.T. McGrath, Ottawa, Ont.	Member and )	
	Secretary )	
-	Technical Experts (approx. 25)	\$100 per day for each day they are engaged on the work of the Group, plus a \$30 comprehensive daily allowance and actual transportation costs while absent from their normal place of residence.

- (2) approves payment to J. Braithwaite, H. Smith, G. Genest, M. Lecorre and J. Olson of travel expenses in accordance with the Treasury Board Travel Directive plus meal expenses when evening sessions of the Work Group are held in the vicinity of their worksite;

- 2 -

(3) approves payment of miscellaneous expenses for printing and stationery, conference room rentals, etc., the total cost not to exceed \$50,000.

  
for Deputy Secretary.

HJB/esw



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

Solicitor General  
Canadian Penitentiary Service  
Department - Ministère

1722

File - Dossier

*see attached*  
T.B. Number - C.T. N°

May 14, 1971.

Date

**SUBJECT:** PAYMENT OF A PER DIEM ALLOWANCE, LIVING ALLOWANCE AND  
TRANSPORTATION EXPENSES TO THE WORK GROUP ON FEDERAL  
MAXIMUM SECURITY CORRECTIONAL INSTITUTION DESIGN

**PROPOSAL:** (1) To authorize payment of fees, expenses and remuneration to members of the Work Group on the Maximum Security Design of Federal Correctional Institutions as follows, with effect from 21 April 1971:

<u>NAME</u>	<u>TITLE</u>	<u>FEES, EXPENSES, REMUNERATION</u>
Dr. Hans Mohr, Toronto, Ontario.	Chairman	\$100 per day for each day they are engaged on the work of the Group plus \$30 allowance per actual working day for living expenses while away from their normal place of residence plus actual transportation costs, plus \$5 per day allowance when sessions held at their place of residence.
Dr. L. Beliveau, Montreal, Quebec.	Member	
A.M. Kirkpatrick, Toronto, Ontario.	Member	
W.T. McGrath, Ottawa, Ontario.	Member and Secretary	
(2) -	Technical Experts (Approx. 25)	\$100 per day for each day they are engaged on the work of the Group, plus \$30 allowance per actual working day for living expenses while away from their normal place of residence plus actual transportation costs.

17 TB  
1 Mcintosh  
1 Cameron \*  
1 Peckett \*  
1 Henshuff \*  
1 CR - SY \*  
1 CR - CPS \*

*meant*

Signed by Jean-Pierre Goyer  
and sent by hand May 18/71  
to Treasury Board.

*J.P. Goyer*  
for J.M.T.

REGISTER No.	490	.../12
AGENCY	CPS.	
DATE RECEIVED	May 14	
FORWARDED FOR SIGNATURE	May 18/71	
FORWARDED TO T.B.	May 18/71	
RETURNED FROM T.B.	June 24/71	

	<u>NAME</u>	<u>TITLE</u>	<u>FEES, EXPENSES, REMUNERATION</u>
(3)	J. Braithwaite ) H. Smith ) G. Genest ) M. Lecorre )	Members of Group - Employed by the Department of the Solicitor General	Actual expenses when away from their Headquarters Area, plus actual expenses related to sessions of the Work Group held within their Headquarters Area.
	J. Olson	Employee of the Department	Same as above.
(4)	Miscellaneous expenses for printing and stationery, conference room rentals etc.		

COST: \$50,000 chargeable to the Department of the  
Solicitor General - Vote 5.

REMARKS: The Work Group is to commence a determination of the  
needs of inmates that the Committee define as maximum security;  
the programs necessary to satisfy these needs; and, the instit-  
utional design and location to facilitate implementation of these  
programs. These deliberations will include: consideration of  
size, location design and relationship of the maximum security  
institution to existing and proposed support services and  
institutions.

A 10-year construction program was initiated by the  
Canadian Penitentiary Service in 1963, that proposed a complex  
in each region comprising of a reception centre, a psychiatric  
centre, a minimum security institution, a maximum security  
institution, an administration building, a services and stores  
building and a boiler house, at an estimated total cost at that  
time of over \$18,000,000.

However, since the initiation of the 10-year plan,  
new factors have come to light:

- (a) The forecast increase of inmate  
population has not materialized and with  
the expected increase in the use of  
parole, it is not considered likely to  
materialize.

.... /3

- (b) The Joint Parliamentary Committee of the House and Senate on Justice and Legal Affairs recommended in 1967, that no further construction of maximum security institutions be undertaken until the design had been tested in Ontario and Quebec and consultations held with the Canadian Criminology and Corrections Association. This consultation was initiated and the Association objected to the present design not meeting the requirements of modern concepts.

The Work Group, composed of representatives of the Canadian Criminology and Corrections Association and Canadian Penitentiary Service, chaired by Dr. J.W. Mohr will study all aspects of a suitable design for maximum security institutions, having in mind the needs of the inmates, the programs to meet these needs and the acceptance of a sound principle that the chances of rehabilitation are enhanced if inmates are given an opportunity to socialize, work and participate in activities under conditions as close to normal as possible.

A report, defining maximum security type inmates, their needs and appropriate program, along with specific guidelines for architectural designs, will be produced by the Work Group by November 1, 1971.

In carrying out this assignment, it is necessary for the Work Group to consult with various experts, as well as local representatives of British Columbia, the Prairie and Atlantic Provinces, regions not currently served by new maximum security institutions.

The estimate of cost is determined from the following factors:

<u>PARTICIPANTS</u>		<u>NO. OF DAYS</u>	<u>ESTIMATED COST</u>
<u>Work Group Members:</u>			
Non-Public Servants	(4)	40	25,700
Public Servants	(5)		6,800
<u>Consultants:</u>			
Architectural	(1)	40	6,400
Provincial Correctional Services	(3)	3	200

-4-

<u>PARTICIPANTS</u>		<u>NO. OF DAYS</u>	<u>ESTIMATED COST</u>
<u>Consultants (Cont'd)</u>			
U.S.A. Correctional Services	(3)		2,000
University	(5)	7	1,400
Local Correctional Association			
Representatives	(7)	42	3,400
Miscellaneous Expenses			<u>4,100</u>
			<u>\$50,000</u>



**SOLICITOR GENERAL**  
**CANADIAN PENITENTIARY SERVICE** 185/12(1)  
Department - Ministère File - Dossier

**April 27, 1971.**  
Date

**SUBJECT:** PAYMENT OF AN ALLOWANCE TO PERSONS ACTING  
AS MEMBERS OF A COMMISSION OF INQUIRY

**PROPOSAL:** To pay allowances to the following persons appointed  
as a Commission of Inquiry pursuant to section 13  
of the Penitentiary Act at the rates shown:

J.W. Swackhamer, Q.C., an allowance of \$50 per hour,  
for each hour the Commission serves, plus actual  
living and travelling expenses;

W.T. McGrath, Esquire, an allowance of \$100 per day,  
with a proportionate rate for a part of a day, plus  
actual living and travelling expenses;

Ian Scott, Esquire an allowance of \$35 per hour ;  
plus actual living and travelling expenses;

At the regular rates of the Ontario Supreme Court,  
to pay court reporters fees for each day necessarily  
in attendance, also payment of transcripts of evidence;

To approve payment of such further sums as are  
necessary to defray expenditures for accommodation,  
witness fees, secretarial and clerical assistance,  
and other incidental expenses as may be approved by  
the Commissioner and for which the usual detailed  
accounts will be submitted.

**CHARGEABLE TO:** The Department of the Solicitor General, Vote 5,  
Operation and Maintenance of Penitentiaries.

../2

Signed by Jean-Pierre Goyer and  
sent by hand to Treasury Board  
on April 28, 1971.

  
for J.H.T.

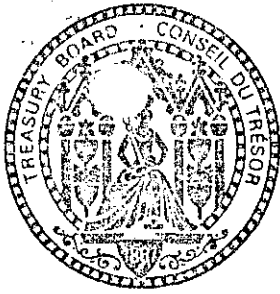
R LRS:

Pursuant to section 13 of the Penitentiary Act the Commissioner of Penitentiaries has appointed a Commission of Inquiry consisting of the persons listed above, plus H. Popp Esquire, Canadian Penitentiary Headquarters Staff, to investigate and report upon disturbances which occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971.

J.W. Swackhamer, Q.C., is appointed to exercise general direction of the Commission of Inquiry.

The proposed rate of \$35 per hour payable to Ian Scott, Esquire is based on the legal aid tariff.





CANADA

EXTRACT from the minutes of a meeting of the Honourable the  
Treasury Board, held at Ottawa, on JUNE 3, 1971

EXTRAIT du procès-verbal d'une réunion du Conseil du Trésor  
tenue à Ottawa le

T.B./C.T. 704568

SOLICITOR GENERAL  
Canadian Penitentiary Service

The Board, pursuant to section 7 of the Financial  
Administration Act, approves payment

(1) to the following persons, who have been appointed pursuant to  
section 13 of the Penitentiary Act, as a Commission of Inquiry  
to investigate and report upon disturbances at Kingston Penitentiary  
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Ian Scott	\$35 per hour.

(2) of court reporters' fees at the regular rates of the Ontario Supreme  
Court for each day necessarily in attendance, also payment of trans-  
cripts of evidence;

- 2 -

(3) of such further sums as are necessary to defray expenditures for accommodation, witness fees, secretarial and clerical assistance, and other incidental expenses as may be approved by the Commissioner and for which the usual detailed accounts will be submitted; the total cost of the above expenditures not to exceed \$50,000.



for Deputy Secretary.

HJB/esw

CANADIAN PENITENTIARY SERVICE

SERVICE PENITENTIAIRE CANADIEN



CANADA

OTTAWA 4, ONT.

119-2  
Ottawa K1A 0P8, May 10, 1971

P67  
Ian Scott, Esq.,  
Counsel to Commission of Inquiry,  
Kingston, Ontario

PLEASE QUOTE REFERENCE:  
VEUILLEZ MENTIONNER:

Dear Mr. Scott:

During a visit to Kingston Penitentiary on May 8th, by Mr. J.H. Hollies, Q.C., our Departmental Counsel, he was given certain information by one of the inmates.

The inmate in question is Claude JOLIN, penitentiary number 5282, who is now held in Kingston Penitentiary. Jolin wishes to appear as a witness before the Commission and the statements made by him to Mr. Hollies bear on matters which would be relevant to the inquiry. This information is passed to you for such action as the Commission of Inquiry may wish to take.

Yours sincerely,

Paul A. Faguy,  
Commissioner of Penitentiaries

*Copies on: # 5282 - Jolin, C*

DEPARTMENT OF THE SOLICITOR GENERAL  
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

Commissioner Tanguay

Recommended for signature,  
pls. We discussed.  
~~Attorney~~  
10 May.

PA

Mrs Boverstals,

I have kept the  
CPS file copy.

MBB

11.5.71

Ottawa KLA 0P8, May 10, 1971

s.19(1)

Ian Scott, Esq.,  
Counsel to Commission of Inquiry,  
Kingston, Ontario

Dear Mr. Scott:

During a visit to Kingston Penitentiary on May 8th, by Mr. J.H. Hollies, Q.C., our Departmental Counsel, he was given certain information by one of the inmates.

The inmate in question is [REDACTED], penitentiary [REDACTED], who is now held in Kingston Penitentiary. [REDACTED] wishes to appear as a witness before the Commission and the statements made by him to Mr. Hollies bear on matters which would be relevant to the inquiry. This information is passed to you for such action as the Commission of Inquiry may wish to take.

Yours sincerely,

Original Signed by  
P. A. FAGUY

Paul A. Faguy,  
Commissioner of Penitentiaries

J.H. HOLLIES/mab



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

Document disclosed under the Access to Information Act  
Document divulgué en vertu de la Loi sur l'accès à l'information

SOLICITOR GENERAL  
CANADIAN PENITENTIARY SERVICE 185/12(1)  
Department - Ministère File - Dossier

T.B. Number - C.T. N°

April 27, 1971.

Date

**SUBJECT:** PAYMENT OF AN ALLOWANCE TO PERSONS ACTING  
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**PROPOSAL:** To pay allowances to the following persons appointed  
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To approve payment of such further sums as are  
necessary to defray expenditures for accommodation,  
witness fees, secretarial and clerical assistance,  
and other incidental expenses as may be approved by  
the Commissioner and for which the usual detailed  
accounts will be submitted.

**CHARGEABLE TO:** The Department of the Solicitor General, Vote 5,  
Operation and Maintenance of Penitentiaries.

../2

Signed by Jean-Pierre Goyar and  
sent by hand to Treasury Board  
on April 28, 1971.

  
for J.H.T.

REMARKS:

Pursuant to section 13 of the Penitentiary Act the Commissioner of Penitentiaries has appointed a Commission of Inquiry consisting of the persons listed above, plus H. Popp Esquire, Canadian Penitentiary Headquarters Staff, to investigate and report upon disturbances which occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971.

J.W. Swackhamer, Q.C., is appointed to exercise general direction of the Commission of Inquiry.

The proposed rate of \$35 per hour payable to Ian Scott, Esquire is based on the legal aid tariff.



COMMISSION OF INQUIRY

WHEREAS certain disturbances have occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971;

AND WHEREAS it is expedient that the causes and certain other aspects of such disturbances should be investigated;

NOW THEREFORE I, Paul A. Faguy, the Commissioner of Penitentiaries, do hereby, pursuant to section 13 of the Penitentiary Act, appoint.....Esquire, (lawyer's name), .....(police) and Mr. H. Popp, Director of Custody, Canadian Penitentiary Service, under the general direction of the said .....(lawyer's name), to investigate and report upon:

- (a) the immediate cause or causes of the said disturbances;
- (b) the identity of those persons who fomented or acted as ring-leaders in the said disturbances;
- (c) whether the disturbances were spontaneous or were planned, and if the latter the extent and nature of the planning;
- (d) whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the Canadian Penitentiary Service or should have come to the attention of any such person;
- (e) whether, if any person in the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so what action;
- (f) what bodily harm was occasioned to persons, whether inmate or staff, during the course of the said disturbances, and the identity of the persons responsible for causing such harm;
- (g) the extent of damage to buildings and facilities caused in the course of the said disturbances;
- (h) the measures that might be taken to decrease the possibility of similar disturbances occurring in the future, either at Kingston Penitentiary or at other penitentiaries.

AND I DO DIRECT that in addition to the aforesaid matters the said persons shall investigate and report separately upon the circumstances in which penitentiary officers were taken hostage during the course of the said disturbances, and whether by the exercise of reasonable precautions on their part, or on the part of any other person, they or any of them could have avoided being taken as hostages.

AND I DO FURTHER DIRECT THAT:

- (a) .....Esquire, (junior lawyer's name) shall be engaged to act as secretary to the inquiry;
- (b) the services of such stenographic and clerical help as may be desirable in the interests of speedy and efficient completion of the inquiry shall be made available;
- (c) the reports required hereby shall be furnished to the Solicitor General in six copies as expeditiously as is possible.

Given under my hand )  
at the City of Ottawa, )  
in the Province of )  
Ontario, )  
this        day of April, )  
A.D., 1971. )

Commissioner of Penitentiaries

COMMISSION OF INQUIRY

WHEREAS certain disturbances have occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971;

AND WHEREAS it is expedient that the causes and certain other aspects of such disturbances should be investigated;

NOW THEREFORE I, Paul A. Faguy, the Commissioner of Penitentiaries, do hereby, pursuant to section 13 of the Penitentiary Act, appoint.....Esquire, (lawyer's name), .....(police) and Mr. H. Popp, Director of Custody, Canadian Penitentiary Service, under the general direction of the said .....(lawyer's name), to investigate and report upon:

- (a) the immediate cause or causes of the said disturbances;
- (b) the identity of those persons who fomented or acted as ring-leaders in the said disturbances;
- (c) whether the disturbances were spontaneous or were planned, and if the latter the extent and nature of the planning;
- (d) whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the Canadian Penitentiary Service or should have come to the attention of any such person;
- (e) whether, if any person in the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so what action;
- (f) what bodily harm was occasioned to persons, whether inmate or staff, during the course of the said disturbances, and the identity of the persons responsible for causing such harm;
- (g) the extent of damage to buildings and facilities caused in the course of the said disturbances;
- (h) the measures that might be taken to decrease the possibility of similar disturbances occurring in the future, either at Kingston Penitentiary or at other penitentiaries.

AND I DO DIRECT that in addition to the aforesaid matters the said persons shall investigate and report separately upon the circumstances in which penitentiary officers were taken hostage during the course of the said disturbances, and whether by the exercise of reasonable precautions on their part, or on the part of any other person, they or any of them could have avoided being taken as hostages.

AND I DO FURTHER DIRECT THAT:

- (a) .....Esquire, (junior lawyer's name) shall be engaged to act as secretary to the inquiry;
- (b) the services of such stenographic and clerical help as may be desirable in the interests of speedy and efficient completion of the inquiry shall be made available;
- (c) the reports required hereby shall be furnished to the Solicitor General in six copies as expeditiously as is possible.

Given under my hand )  
at the City of Ottawa, )  
in the Province of )  
Ontario, )  
this            day of April, )  
A.D., 1971. )

Commissioner of Penitentiaries

April 24, 1972

Paul A. Faguy, Esq.,  
Commissioner,  
Canadian Penitentiary Services,  
Solicitor General's Department,  
340 Laurier Avenue West,  
OTTAWA, Ontario.

Sir:

The Commission of Inquiry appointed to determine the immediate causes and certain other aspects of certain disturbances which occurred at Kingston Penitentiary between the 14th and 18th days of April, 1971, has the honour to submit the attached report of its findings and recommendations.

Respectfully yours,

(sgd.) J.W. Swackhamer, Q.C.  
Chairman

(sgd.) W.T. McGrath,  
Member

(sgd.) H.E. Popp,  
Member

Orig on - 117-1  
attach on - 119-7  
119-16  
Copy on 129-1

**"COMMISSION OF INQUIRY**

WHEREAS certain disturbances have occurred at Kingston Penitentiary between the fourteenth and eighteenth days of April, 1971;

AND WHEREAS it is expedient that the immediate causes and certain other aspects of such disturbances should be investigated;

NOW THEREFORE I, Paul A. Faguy, the Commissioner of Penitentiaries, do hereby, pursuant to section 13 of the Penitentiary Act, appoint J.W. Swackhamer, Q.C., W.T. McGrath, Esquire, and H. Popp, Esquire, under the general direction of the said J.W. Swackhamer, to investigate and report upon:

- (a) the immediate cause or causes of the said disturbances;
- (b) the identity of those persons who fomented or acted as leaders in the said disturbances;
- (c) whether the disturbances were spontaneous or were planned, and if the latter, the extent and nature of the planning;
- (d) whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the employ of the Canadian Penitentiary Service or should have come to the attention of any such person;
- (e) whether, if any person in the employ of the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so, what action;
- (f) what bodily harm was occasioned to persons, whether inmate or staff, during the course of the said disturbances or related thereto, and the identity of the persons responsible for causing such harm;
- (g) the extent of damage to buildings and facilities caused in the course of the said disturbances;
- (h) whether existing security measures are adequate, were they carried out and what additional security measures, if any, should have been taken to minimize the risk that persons in the employ of the Canadian Penitentiary Service might be taken and held hostage by inmates.

AND I DO DIRECT THAT the Commission of Inquiry may, if it considers it desirable so to do, submit a preliminary report on any or all of the above matters.

AND I DO FURTHER DIRECT THAT Ian Scott, Esquire, shall be engaged to act as counsel to the Commission of Inquiry.

AND I DO FURTHER DIRECT THAT the reports required hereby shall be furnished to the Solicitor General as expeditiously as is possible.

AND I DO FURTHER DIRECT THAT any two of the aforesaid members of the Commission of Inquiry shall constitute a quorum thereof with full power to act pursuant to these Terms of Reference. In the case of the absence of J.W. Swackhamer, Q.C., W.T. McGrath, Esq., shall act as Chairman of the Commission of Inquiry.

Given under my hand at the City of Ottawa, in the  
Province of Ontario,  
this 23rd day of April, A.D., 1971.

"P. A. Faguy"  
Commissioner of Penitentiaries"

## Summary of Conclusion with respect to the terms of reference

1. "the immediate cause or causes of the said disturbances;"

We are in agreement that the evidence adduced clearly establishes there was no single, immediate, triggering cause. As will be observed from the report which follows, it is clear that the sum of the conditions which existed at Kingston Penitentiary immediately prior to the April disturbances caused those disturbances. We would refer in that regard to pages 37 and following.

2. "the identity of those persons who fomented or acted as leaders in the said disturbances;"

Because charges were pending in the Courts against persons who apparently acted as leaders in the disturbances, and because convictions have been registered against all but one of the apparent ringleaders, we do not propose to report further with respect to this question.

3. "whether the disturbances were spontaneous or where planned, and if the latter, the extent and nature of the planning;"

We find on the evidence that the disturbances were planned by a few inmates. Although we conclude from the evidence that very few inmates were involved in the initial planning, it is clear that substantially all of the inmate population participated in the disturbances in varying degrees after the disturbances commenced. Inmates in the psychiatric section, and those held in dissociation, were not involved.

4. "whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the employ of the Canadian Penitentiary Service or should have come to the attention of any such person;"

There was no evidence to indicate that knowledge of the planning of the April disturbances came to the attention of any person in the employ of the Canadian Penitentiary Service, or should have come to the attention of any such person. We express concern, however, at the contents of two letters from the Warden, dated November 24 1970 and January 18, 1971, written to the Commissioner of Penitentiaries and the Regional Director of Ontario respectively. In those letters the Warden expressed grave concern with respect to conditions existing at Kingston Penitentiary. Although during the course of his evidence, the Warden testified that in his opinion tension at the Penitentiary eased considerably following his letter of January 18, 1971, the letters did graphically forecast the tragic events which in fact did occur in mid-April, 1971.

5. "whether, if any person in the employ of the Canadian Penitentiary Service had knowledge as aforesaid, he took any preventive or other action, and if so, what action;"

We find that because no person in the employ of the Penitentiary Service had prior knowledge of the plans for the April disturbance no preventive or other action was taken.

6. "what bodily harm was occasioned to persons, whether inmate or staff, during the course of the said disturbances or related thereto, and the identity of the persons responsible for causing such harm;"

(a) Bodily injury was occasioned to inmates during the course of the disturbances at Kingston Penitentiary which resulted in the death of two of those inmates. At the time of the hearing of this Commission charges were pending against certain inmates relating to those deaths. Since the conclusion of the hearing a number of inmates have been convicted by the Courts with respect to those charges.

(b) The evidence also establishes that bodily injury was occasioned to inmates during the course of the Kingston disturbances by fellow inmates. Particulars of those injured and the nature of their injuries are set out at page 30 of the report.

- c) With reference to the admission of inmates to Millhaven Institution at the conclusion of the Kingston disturbances, the evidence establishes that approximately 86 inmates suffered injuries of various degrees. We find that those injuries were caused by persons in the employ of the Canadian Penitentiary Service.

Because charges were pending against various members of the Penitentiary Service at the time this Commission of Inquiry concluded the taking of evidence, we did not deem it proper to attempt to determine the identity of those members of the Penitentiary Service who might have been responsible for inflicting such injuries. We did, however, conclude that certain persons, not charged, were responsible for permitting bodily harm to inmates. We have set out our findings in that regard in the section on Millhaven Institution.

7. "the extent of damage to buildings and facilities caused in the course of the said disturbances;"

The evidence established that that part of the institution which came under the control of the inmates during the disturbances was demolished and rendered totally unfit as a unit for the housing of inmates. As will appear from the narrative, that included Ranges A to H inclusive, the chapel areas, and the Dome. There was, in addition, extensive damage to the cell furniture and fixtures, locking devices, and interior walls and windows in the ranges and the Dome area. Because the damaged areas were not to be reconstructed we did not find it practical to endeavour to estimate the cost of the damage.

8. "whether existing security measures are adequate, were they carried out and what additional security measures, if any, should have been taken to minimize the risk that persons in the employ of the Canadian Penitentiary Service might be taken and held hostage by inmates."

We find that the security measures which were exercised were consistent with established practices of a maximum security institution. There was no evidence that the prescribed security measures were not carried out by the staff on duty at the time of the disturbance. It is our opinion, based on the evidence, that reasonable additional security measures would not have minimized the risk that persons in the employ of the Canadian Penitentiary Service might have been taken and held hostage.

We do, however, express concern that there was no adequate plan for dealing with the disturbance once it had occurred.

### Interpretation

In accordance with tradition established by Commissions of Inquiry and Committees which have preceded us, we determined it desirable and appropriate to give a liberal interpretation to the terms of reference provided by the Commissioner of Penitentiaries.

We are informed that this Commission of Inquiry is the first appointed pursuant to the provisions of The Penitentiary Act since the Biggar Commission of 1920, which has included in its membership persons outside the Public Service of Canada.

It became apparent early in the inquiry that the events under investigation could not reasonably be examined in isolation. It has therefore been our endeavour to render a report which deals not only with the precise questions posed in the Terms of Reference but which also will assist the Canadian Penitentiary Service in lessening the frequency and severity of penitentiary disturbances and devising techniques for management, control and settlement of such disturbances when they do arise. We have nonetheless approached our task within the perimeters established by the Terms of Reference.





The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. No

**SOLICITOR GENERAL**

Department - Ministère

File - Dossier

**April 20, 1971**

Date

**SUBJECT: APPOINTMENT OF COMMISSIONERS UNDER THE INQUIRIES ACT**

**PROPOSAL:** To recommend to the Governor in Council that commissioners be appointed under Part II of the Inquiries Act to inquire into disturbances at Kingston Penitentiary, to fix the remuneration of such commissioners, and to authorize the employment and fix the remuneration of clerical and other assistance.

**AUTHORITY:** Section 6 of the Inquiries Act.

- REMARKS:**
- (1) Disturbances occurred at Kingston Penitentiary during the period April 14-18, 1971, both days inclusive.
  - (2) During these disturbances members of the Penitentiary Service were taken hostage, death and injury to inmates occurred, and very substantial damage was done to the institution and its facilities.
  - (3) It is desirable that the cause of these disturbances be ascertained, and that certain other matters be investigated and reported upon, which may most conveniently be done by an inquiry under Part II of the Inquiries Act.
  - (4) A draft Order in Council is attached.



CANADA  
PRIVY COUNCIL

P.C.

(T.B. REC. )

His Excellency the Governor General in Council,  
on the recommendation of the Solicitor General and the Treasury  
Board, pursuant to section 6 of the Inquiries Act, is pleased  
hereby to authorize the Solicitor General to appoint.....Esquire,  
of the City of....., of the City of....., and  
H.....Popp, Director of Custody, Canadian Penitentiary Service,  
to be Commissioners under Part II of the said Act, under the  
general direction of the said .....Esquire, to investigate  
and report upon:

- (a) the cause or causes of the said disturbances;
- (b) the identity of those persons who fomented or acted as  
ring-leaders in the said disturbances;
- (c) whether the disturbances were spontaneous or were planned,  
and if the latter the extent and nature of the planning;
- (d) whether, if the disturbances were planned, knowledge of  
the planning came to the attention of any person in the  
Canadian Penitentiary Service or should have come to the  
attention of any such person;
- (e) whether, if any person in the Canadian Penitentiary Service  
had knowledge as aforesaid, he took any preventive or other  
action, and if so what action;
- (f) what bodily harm was occasioned to persons, whether inmate  
or staff, during the course of the said disturbances, and  
the identity of the persons responsible for causing such  
harm;
- (g) the extent of damage to buildings and facilities caused  
in the course of the said disturbances;
- (h) the measures that might be taken to decrease the possibility  
of similar disturbances occurring in the future, either at  
Kingston Penitentiary or at other penitentiaries;
- (i) the circumstances in which penitentiary officers were taken  
hostage during the course of the said disturbances, and  
whether by the exercise of reasonable precautions on their  
part, or on the part of any other person, they or any of  
them could have avoided being taken as hostages;

And His Excellency the Governor General in Council  
is further pleased:

- (a) to authorize payment in the sum of \$.....to the said .....Esquire, and \$.....to the said....., for each day or part of a day spent in carrying out their duties, together with reimbursement of actual and reasonable expenses incurred by each of them for transportation, accommodation and meals;
- (b) to direct that the said.....Esquire may engage the services of such experts and other persons as are referred to in section II of the Inquiries Act, and without limiting the generality of the foregoing may
  - (i) engage the services of a suitably qualified person to act as Secretary to the Inquiry, at a fee of \$..... per day for each day when the services of such Secretary are required, together with a mileage allowance at a rate of 12¢ per mile for each mile necessarily travelled from his place of residence to the place of sitting of the Commission; and
  - (ii) engage the services of reporters at a rate of \$25 per day for each day necessarily in attendance at the proceedings and at a rate of \$1.00 per page for each page of transcript furnished to the Commissioners.
- (c) to direct that the Commissioners shall furnish their report to the Solicitor General, in such form as he may request.



The Honorable the Treasury Board  
L'honorable Conseil du Trésor

T.B. Number - C.T. N°

**SOLICITOR GENERAL**

Department - Ministère

File - Dossier

**April 20, 1971**

Date

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**AUTHORITY:** Section 6 of the Inquiries Act.

**REMARKS:**

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- (2) During these disturbances members of the Penitentiary Service were taken hostage, death and injury to inmates occurred, and very substantial damage was done to the institution and its facilities.
- (3) It is desirable that the cause of these disturbances be ascertained, and that certain other matters be investigated and reported upon, which may most conveniently be done by an inquiry under Part II of the Inquiries Act.
- (4) A draft Order in Council is attached.



CANADA  
PRIVY COUNCIL

P.C.

(T.B. REC. )

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- (d) whether, if the disturbances were planned, knowledge of the planning came to the attention of any person in the Canadian Penitentiary Service or should have come to the attention of any such person;
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- (h) the measures that might be taken to decrease the possibility of similar disturbances occurring in the future, either at Kingston Penitentiary or at other penitentiaries;
- (i) the circumstances in which penitentiary officers were taken hostage during the course of the said disturbances, and whether by the exercise of reasonable precautions on their part, or on the part of any other person, they or any of them could have avoided being taken as hostages;

And His Excellency the Governor General in Council  
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- (b) to direct that the said.....Esquire may engage the services of such experts and other persons as are referred to in section II of the Inquiries Act, and without limiting the generality of the foregoing may
  - (i) engage the services of a suitably qualified person to act as Secretary to the Inquiry, at a fee of \$..... per day for each day when the services of such Secretary are required, together with a mileage allowance at a rate of 12¢ per mile for each mile necessarily travelled from his place of residence to the place of sitting of the Commission; and
  - (ii) engage the services of reporters at a rate of \$25 per day for each day necessarily in attendance at the proceedings and at a rate of \$1.00 per page for each page of transcript furnished to the Commissioners.
- (c) to direct that the Commissioners shall furnish their report to the Solicitor General, in such form as he may request.

D R A F T

April 20, 1971.

TO WHOM IT MAY CONCERN:

A Commission of Inquiry will be convened at Kingston, Ontario, to inquire into the circumstances of the disturbance at Kingston Penitentiary on April 14 - 18, 1971, inclusive.

The Commission will call and examine witnesses, view exhibits, examine and record all pertinent documents, including police and coroner's reports relating to the disturbance, fix responsibility, if any, assess damages, make findings and recommendations and report to the Commissioner of Penitentiaries, providing six copies of its report.

The Chairman is hereby appointed a Commissioner of Inquiries under Section 13, Penitentiary Act, and, as such, has all the powers of a Commissioner appointed under Part II of the Inquiries Act.

...../2

- 2 -

I hereby appoint the following to the  
Commissioners of Inquiry:

Chairman	-	Mr. W. Kelly, Ex-Deputy Commissioner, R.C.M.P.
Member	-	Mr. P. Desgroseilliers, Warden, LeClerc Institution.
Member	-	Mr. A. Trono, Warden, Joyceville Institution.

P. A. Faguy,  
Commissioner of Penitentiaries.

JRS/SR



D R A F T

April 20, 1971.

TO WHOM IT MAY CONCERN:

A Commission of Inquiry will be convened at Kingston, Ontario, to inquire into the circumstances of the disturbance at Kingston Penitentiary on April 14 - 18, 1971, inclusive.

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...../2

- 2 -

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Commissioners of Inquiry:

Chairman	-	Mr. W. Kelly, Ex-Deputy Commissioner, R.C.M.P.
Member	-	Mr. P. Desgroseilliers, Warden, LeClerc Institution.
Member	-	Mr. A. Trono, Warden, Joyceville Institution.

P. A. Faguy,  
Commissioner of Penitentiaries.

JRS/SR

April 20, 1971.

TO WHOM IT MAY CONCERN:

A Board of Inquiry will be convened at Kingston, Ontario, on April 26, 1971, to inquire into the circumstances in which six penitentiary officers were taken hostage in the dome of Kingston Penitentiary on the night of April 14, 1971.

The Board will examine exhibits, particularly Standing Orders and procedures relating to the operation of the dome, cell blocks and the recreation auditorium at Kingston Penitentiary, examine details of the recreational program with particular reference to the numbers of inmates taking part at any one time, examine witnesses, make findings including placing of responsibility, if any, and report to the Commissioner of Penitentiaries as soon as possible after the completion of the inquiry.

Mr. H. Popp, Director of Custody, Canadian Penitentiary Service, is hereby appointed Chairman and sole member of the Board.

P. A. Faguy,  
Commissioner of Penitentiaries.

JRS/SR

April 20, 1971.

TO WHOM IT MAY CONCERN:

A Board of Inquiry will be convened at Kingston, Ontario, on April 26, 1971, to inquire into the circumstances in which six penitentiary officers were taken hostage in the dome of Kingston Penitentiary on the night of April 14, 1971.

The Board will examine exhibits, particularly Standing Orders and procedures relating to the operation of the dome, cell blocks and the recreation auditorium at Kingston Penitentiary, examine details of the recreational program with particular reference to the numbers of inmates taking part at any one time, examine witnesses, make findings including placing of responsibility, if any, and report to the Commissioner of Penitentiaries as soon as possible after the completion of the inquiry.

Mr. H. Popp, Director of Custody, Canadian Penitentiary Service, is hereby appointed Chairman and sole member of the Board.

P. A. Faguy,  
Commissioner of Penitentiaries.

JRS/SR

MEMORANDUM

NOTE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA



131-2  
19/2/72

FROM  
DE

J.H. HOLLIES  
DEPARTMENTAL

TO  
A

MR. N. HEMBRUFF  
DIRECTOR, FINANCIAL SERVICES  
C.P.S.

SUBJECT  
SUJET

C.X.8 Thomas Rathwell  
Account for Legal Assistance

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N° RÉFÉRENCE
YOUR FILE - N° RÉFÉRENCE
185/12 (1)
DATE
18 February 1972

You have sent to me for my opinion a letter from the Director of Kingston Penitentiary dated February 11 concerning the above noted matter.

I must tell you that in my opinion it is quite clear that the expenses incurred by Mr. Rathwell are his own responsibility in the sense that they are not within the authority conferred by the Treasury Board Minute referred to in the Director's letter. Both the letter and the spirit of the Treasury Board Minute restrict the authority to pay legal fees and disbursements therein to instances in which members of the R.C.M. Police or members of the Canadian Penitentiary Service are being defended. It is apparent reading the Minute as a whole that there is no authority for provision of counsel at public expense when the character or conduct of a member of the Canadian Penitentiary Service is being called into question before a Commission of Inquiry. On the other hand, as I think you realise, the Treasury Board Minute will provide authority for payment of counsel should charges be laid in the civil courts.

I regret that I do not know what is meant by the last sentence of the Director's letter. There may be some confusion with the case of Knight v the Queen et al, but I should point out that in that particular civil action a special Treasury Board authority was obtained because of the financial interest of the Crown in the outcome of the action.

JHH/laf

  
J.H. HOLLIES



Solicitor General  
Canada

Solliciteur général  
Canada

FILE NO. - DOSSIER N°

1140-257

VOLUME

1

SECRETARIAT  
SECRÉTARIAT

*administration & Organization*

SUBJECT

SUJET

SUB-SUBJECT

SUJET SEC

TITLE

TITRE

~~SWACKHAMMER COMMISSION~~ *Committees*

COMMISSION OF INQUIRY TO INQUIRE INTO DISTURBANCES  
OCCURRED AT KINGSTON PENITENTIARY DURING THE PERIOD  
APRIL 14-18, 1971.

FROM - DU

TO - AU

MS 35 (4-76)

**CONFIDENTIAL - CONFIDENTIEL**

REFERRED TO - ENVOYÉ À	PURPOSE - OBJET	DATE	INITIALS INITIALES	P.R. DATE CLASSER LE	INITIALS INITIALES	B.F. DATE REPORTER LE

000194

DEPARTMENT OF THE SOLICITOR GENERAL - MINISTÈRE DU SOLICITEUR GÉNÉRAL

GENERAL ENTRIES CIRCULATION DU DOSSIER				B.F. AND P.A. ENTRIES INSTRUCTIONS AU CLASSIER				INSP
REFERRED TO DESTINATAIRE	PURPOSE OBJET	DATE	INIT.	DATE P.A. À CLASSER	INIT.	DATE B.F. À RENVoyer	CANC. B.F. RENV. ANN.	
Mr. Hollies	Request	20/6/72	JH			12/7/72		JH
Mr. Hollies	mail	10/7/72	SM		JHH	July 1972		SM
Mr. Hollies	Your B.F.	18/7/72	JH		JHH	26/7/72		JH
Mr. Hollies	mail	17/7/72	JH	20 Jul	16			
Mr. Hollies	B.F.	24/7/72	JH			31 Jul		
Mr. Thibault		24/7/72	P.B.	25/7				
Mr. Hollies	B.F.	28/7/72	JH			7 Aug		
Mr. Hembuff	min @ res.	31/7/72	JH	2/8	JH			
Mr. Hopley	Request	2/8/72	JH			10/8/72		SM
Mr. Hollies	Req	10/8/72	JH	10 Aug	16			
Mr. Hopley	B.F.	17/8/72	JH	18 Aug	16			
STAFF RELATIONS (C.P.S.)	Request	22/8/72	JH	22-8/72	JH			
Mrs. Baverstock	Request	13/10/72	JH	13/10/72	P.B.			
Mr. Doucet	req	31/10	JH	12/12/72	1/4			
Mr. Doucet	req	13/1/73	JH	24/73	CD			
Miss Hansen	Req	12/1/73	JH	15/1/73	P.B.			
Mr. Cobb	Mail	12/1/73	JH	24/1/73	77			
Mrs. Baverstock	B.F.	8/2/73	JH	8/2/73	P.B.			
Mr. Oudry	req	9/2	JH	26/2/73	ma			
Mr. Edwards	mail Jan 15	27/2	JR	28/2	JH			
Miss Hansen	req	28/2	JH	28/2	EX			
Mrs. Barkley	req	2/3/73	JH	1/3/73	HB			
Miss Hansen	Req	2-3-73	JH	2/3/73	EX			
DM	mail mar. 9	12/3	JR	14/3/73	ROL			
Miss Hansen		13/3	Am		1 & 2	20/3/73		JH
Miss Hansen	B.F.	30/3/73	JH		1 & 2	30/3/73		JH
Miss Hansen	B.F.	30/3/73	JH	8/4/73	EX			
Miss Hansen	request	9/5/73	JH	9-5-73	1/4			
Miss Hansen	Request	15/5/73	JH	16/5/73	16			