



**Solicitor General
Canada**

Solliciteur général Canada

FILE NO. - DOSSIER N° 1037-60-12	VOLUME 3
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SECRETARIAT
SECRÉTARIAT

FROM DU	TO AU
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MS 35 (4-76)

SUBJECT
SUJET

ADMINISTRATION & ORGANIZATION

SUB SUBJECT
SUJET SEC

ACTS & LEGISLATION - PROVINCIAL

TITLE
TITR

CRIMINAL CODE - CAPITAL PUNISHMENT

CONFIDENTIAL — CONFIDENTIEL

[illegible]

1037-60-12 (Vol. 3)

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

MEMORANDUM

Nov. 19/71

Memorandum to Cabinet
re: Capital Punishment

July 29/71

The above has been extracted from
File 141-206 Vol. 3, at the request
of the Departmental Secretary.

000650

CLOSED VOLUME VOLUME COMPLET



DATED FROM
À CONTER DU

JAN. 71

TO
JUSQU' AU

DEC. 71

AFFIX TO TOP OF FILE — À METTRE SUR LE DOSSIER

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

FOR SUBSEQUENT CORRESPONDENCE SEE — POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. — DOSSIER N°	1037-60-12	VOLUME
1037-10	141-206	4

MINISTRY OF THE SOLICITOR GENERAL

Subject: Average sentence served - Capital and Non Capital Murder
1961 through 1971

DEATH COMMUTED

<u>Time Served</u>	<u>1 Jan 61 to 3 Jan 68</u>	<u>4 Jan 68 to 31 Dec 71</u>
5 years & under 7	1	-
7 years & under 9	8	-
9 years & under 11	8	6
11 years & under 13	3	15
13 years & under 15	3	5
15 years & under 17	2	1
17 years & under 19	-	1
19 years & under 21	-	1
21 years & under 23	2	-
23 years & under 25	-	1
25 years & under 27	1	1
27 years & under 29	-	-
29 years & under 31	-	-
31 years & under 33	-	-
33 years & under 35	-	-

TOTAL 28 31*

Average time served
12 years

Average time served
13.5 years

* Not included - 1 man
who served 39 years,
10 months, 17 days.

LIFE (Non-Capital Murder)

<u>Time Served</u>	<u>1 Jan 61 to 3 Jan 68</u>	<u>4 Jan 68 to 31 Dec 71</u>
Under 5 years	3	3
5 years & under 7	1	15
7 years & under 9	-	30
9 years & under 11	-	3
11 years & under 13	-	-
13 years & under 15	1	-
15 years & under 17	-	-
17 years & under 19	-	1
19 years & under 21	-	-
21 years & under 23	-	1
23 years & under 25	-	-

TOTAL 5 53

Average time served
6.2 years

Average time served
7.8 years

SUMMARY

Capital Murder (Death - Commuted)

Periods prior and subsequent to amendment
to Parole Act Regulations - (4 January 1968)

<u>Time Served</u>	<u>1 Jan 61 to 3 Jan 68</u>	<u>4 Jan 68 to 31 Dec 71</u>
Minimum	5 years 5 months	10 years 3 months
Maximum	26 years 5 months	25 years 3 months
Average	12 years	13.5 years ¹

¹ not included - 1 man who
served 31 years, 10 months,
and 17 days.

- 2 -

Non-Capital Murder (Life)

Periods prior and subsequent to amendment
to Parole Act Regulations - (4 January 1968)

<u>Time Served</u>	<u>1 Jan 61 to 3 Jan 68</u>	<u>4 Jan 68 to 31 Dec 71</u>
Minimum	4 years 9 months	3 years 2 months
Maximum	14 years 1 month	22 years 4 months
Average	6.2 years	7.8 years ²

² average includes three juveniles sentenced to life for capital murder.

141-204

Ottawa, Ontario,
K1A 0P8

December 13, 1971

My dear Colleague:

The Canadian Committee on Corrections, in Chapter 11 of its 1969 Report, stated (p. 189) that it "sees the criminal justice system as existing to protect society and recognizes that the infliction of punishment is justified where necessary for that purpose. We accept that at the present time protection is secured by way of deterrence, segregation and rehabilitation. It is worth reiterating that the Committee believes that the ultimate rehabilitation of the individual offers the best long-term protection for society; since that ends the risk of a continuing criminal career".

The Committee noted that the Criminal Code does not contain a general definition of the words "sentence" and "sentencing", that it affords the sentencing authority a limited choice of dispositions, and provides no guidelines except in some few cases where a statutory minimum sentence does away partly with the discretionary power of the courts.

The Department of the Solicitor General is the federal government department that is primarily responsible for the "rehabilitation", in the broadest sense of that word, of the offender convicted under the criminal law. It seems to me, therefore, that this department should have a substantial voice in any discussions or studies that may take place concerning sentencing philosophy, procedures and practices under the criminal law. Certainly, from the point of view of the "rehabilitation" element in sentencing, this department is well equipped to assist any study or inquiry having, as it does, senior personnel who have been engaged in the practical aspects of correctional development in Canada in such fields as the administration of criminal law, the judiciary, probation, prisons (federal and provincial), parole and after-care.

One Ouimet recommendation (page 209) is that the federal and provincial governments should cooperate to prepare

The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario,
K1A 0H8

. . . 2

- 2 -

and issue a "Guide to Dispositions in Criminal Cases". I suggest that a study of sentencing philosophy, procedures and practices should now be commenced under the joint sponsorship of our respective departments. If you agree, it may be that you would wish to assign your departmental responsibility to the Law Reform Commission. If that were to be the case, I have no doubt that the appropriate officers of my department would be able to work closely and effectively with the Commission to achieve a result that would be of value in the fields of criminal law and corrections.

I should be glad if you would let me know your views in this matter.

Yours sincerely,

Jean-Pierre Goyer

AJMacLEOD/ROP

CONFIDENTIAL

141-206

SOLICITOR GENERAL

DEPUTY SOLICITOR GENERAL

Dec. 9, 1971

Capital Punishment

Mr. A. J. MacLeod informs me that Professor E. A. Fattah's research project entitled "A Study of the Deterrent Effect of Capital Punishment with Special Reference to the Canadian Situation" was delivered to him personally by Professor Fattah at noon today. A copy (of which 20 were produced in Montreal) is available for your perusal. It runs to 375 pages and is printed in English.

The purpose of the study is stated (page 3) as "to test scientifically the assertion that murder is increasing in Canada and that such an increase is attributable to the partial suspension of capital punishment. Such a study, we believe, would make recourse to speculation less justifiable."

The conclusions in the study are set out commencing at page 345. The Report states that:

"We have seen that there has been a slight increase in criminal homicide in Canada over the past eight years. Can this increase be attributed to the suspension of capital punishment? Now after having examined the different aspects of the problem we are able to answer this question and the answer is NO. The increase in criminal homicide in Canada during recent years cannot be attributed to the suspension of capital punishment for the following reasons:"

Professor Fattah sets out, in the ensuing four pages, some 10 respects in which this conclusion is supported, e.g.:

- (a) If the increase in homicide were solely due to the suspension of capital punishment then it should be limited to this offence, but it is not; indeed, the actual increase in criminal homicide is the lowest among all crimes of violence studied;
- (b) If the increase in criminal homicide were due to the suspension of capital punishment then it should show a clear and consistent trend by starting to rise when death sentences began to be commuted consistently in 1962, but this is not so;

- 2 -

- (c) The years during which capital punishment was administratively suspended (1962) did not (except for 1967) witness an increase in criminal homicide over 1962; and
- (d) If the increase in criminal homicide were due to the suspension of capital punishment, then the rate of increase should be identical or at least similar in the respective provinces, but this is not so, because the increase has varied from 5.1% in British Columbia to 82.4% in Alberta.

Mr. MacLeod is of the opinion - and I agree - that Professor Fattah's work - supported financially by this Department to the extent of \$5,000.00, appears to be a useful addition to Canadian studies on the subject of capital punishment in Canada. Certainly it does not duplicate anything that has been done before.

Professor Fattah's final conclusions (page 349) are that:

- (a) Canadian homicide rates are conditioned by factors other than the death penalty; and that the cause of homicide cannot be found in any single factor but in a total social situation in which a special law or a particular punishment can have little or no effect;
- (b) Nothing emerges from the study of trends in violent crimes in Canada that would support or even suggest the proposition that the suspension of capital punishment has caused an increase in the homicide rate;
- (c) There is, of course, nothing in the data that disproves the proposition that had capital punishment been retained as the punishment for murder, the number of homicides committed in 1968-70 might have been fewer;
- (d) A study of homicide statistics in Canada jointly with the statistics of other crimes of violence and comparisons between the provinces do not support the uniquely deterrent effect of the death penalty;
- (e) The belief of law enforcement officers that capital punishment offers them better protection is not supported by the data; and
- (f) Scientific studies on large numbers of murderers should be made if we want to know and understand why people kill.

- 3 -

I have instructed that this work is to be translated into French immediately. In the meantime the English version will be edited (for gramatical purposes only) and printed in 1,000 copies, hopefully to be available for distribution, if needed, by February 1 next. The French version will, of course, be sent to the Printer for reproduction (in 500 copies) as soon as possible.

You may wish to consider whether, in terms of production of the material, you would wish to say anything by way of a foreward.

I should add that, in the light of the conclusions that the Report reaches, the author, in a frontispiece, states that he "wishes to thank the Department of the Solicitor General of Canada for its subsidy".

E. A. CÔTÉ

E. A. Côté

AJMacLEOD/ROP

SOLICITOR GENERAL

141-206

DEPUTY SOLICITOR GENERAL

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E. A. CÔTÉ

E. A. Côté

AJMacLEOD/ROP

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

141-206

FROM
DE

SPECIAL ADVISER,
CORRECTIONAL POLICY

TO
A

DEPUTY SOLICITOR GENERAL

SUBJECT
SUJET

Capital Punishment

SECURITY - CLASSIFICATION - DE SÉCURITÉ

CONFIDENTIAL

OUR FILE — N/RÉFÉRENCE

YOUR FILE — V/RÉFÉRENCE

DATE

December 8, 1971

With reference to our telephone discussion, I have added a paragraph in relation to the National Defence Act to the draft letter designed to go from the Minister to the Minister of Justice.

I attach, for the Minister's information, photostatic copies of the relevant provisions of the National Defence Act.

[A. J. MacLeod]

Atts.

A. J. MacLeod.

ASJ:ECM

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

141-206

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CORRECTIONAL POLICY

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A. J. MacLeod
A. J. MacLeod.

PART V

SERVICE OFFENCES AND
PUNISHMENTS

Responsibility for Offences

Parties to
offences

62. (1) Every person is a party to and guilty of an offence who

- (a) actually commits it;
- (b) does or omits an act for the purpose of aiding any person to commit the offence;
- (c) abets any person in commission of the offence; or
- (d) counsels or procures any person to commit the offence.

Attempt to
commit offence

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not.

Parties to an
offence

(3) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to and guilty of that offence. R.S., c. 184, s. 63; 1956, c. 18, s. 7.

*Misconduct of Commanders in Presence of
Enemy*

Offences by
commanders
when in action

63. Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who

- (a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;
- (b) being in action, does not, during the action, in his own person and according to his rank, encourage his officers and men to fight courageously;
- (c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or

PARTIE V

INFRACTIONS MILITAIRES ET
PEINES

Responsabilité des infractions

Parties aux
infractions

62. (1) Participe à une infraction et en est coupable celui qui

- a) la commet en réalité;
- b) accomplit ou omet un acte en vue d'aider quelqu'un à commettre l'infraction;
- c) incite quelqu'un à la commettre; ou
- d) conseille à quelqu'un de la commettre ou l'y amène.

(2) Quiconque, ayant l'intention de commettre une infraction, accomplit ou omet un acte pour atteindre son but, est coupable de tentative de commettre l'infraction projetée, qu'il fût possible ou non, dans les circonstances, de la commettre.

Tentative de
commettre une
infraction

(3) Quand deux ou plusieurs personnes forment ensemble le projet de poursuivre une fin illégale et de s'y entraider et que l'une d'entre elles commet une infraction en réalisant cette fin commune, chacune d'elles qui savait ou devait savoir que la réalisation de l'intention commune aurait pour conséquence probable la perpétration de l'infraction, est partie à cette infraction et en est coupable. S.R., c. 184, art. 63; 1956, c. 18, art. 7.

Parties à une
infraction

*Inconduite des commandants en présence de
l'ennemi*

63. Tout officier ayant le commandement d'un navire, d'un aéronef, d'un établissement de défense, d'une unité ou d'un autre élément des Forces canadiennes, qui,

Infractions
commises par
des
commandants
au combat

- a) lorsqu'il a reçu l'ordre d'exécuter une opération de guerre ou en entrant en contact avec un ennemi contre lequel il a le devoir de s'engager, ne fait pas tout son possible pour engager dans le combat les officiers et hommes relevant de son commandement, ou son navire, aéronef ou autre matériel;
- b) étant au combat, néglige, pendant l'action, en propre personne et selon son grade, d'encourager ses officiers et hommes à se battre courageusement;
- c) lorsqu'il est capable d'offrir une défense avec succès, livre à l'ennemi son navire,

other element of the Canadian Forces to the enemy;

(d) being in action, improperly withdraws from the action;

(e) improperly fails to pursue an enemy or to consolidate a position gained;

(f) improperly fails to relieve or assist a known friend to the utmost of his power; or

(g) when in action, improperly forsakes his station;

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from Her Majesty's service or to less punishment. R.S., c. 184, s. 64.

Misconduct of any Person in Presence of Enemy

64. Every person who

(a) improperly delays or discourages any action against the enemy;

(b) goes over to the enemy;

(c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;

(d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard;

(e) assists the enemy with materiel;

(f) improperly casts away or abandons any materiel in the presence of the enemy;

(g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;

(h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;

(i) behaves before the enemy in such manner as to show cowardice; or

(j) does or omits to do anything with intent to imperil the success of any of Her Majesty's Forces or of any forces cooperating therewith;

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less

aéronef, établissement de défense, matériel, unité ou autre élément des Forces canadiennes;

d) étant au combat, s'en retire indûment;

e) omet indûment de poursuivre un ennemi ou de consolider une position conquise;

f) omet indûment de secourir ou d'aider jusqu'à la limite de son pouvoir un ami connu; ou

g) étant au combat, abandonne indûment son poste;

est coupable d'une infraction et, sur déclaration de culpabilité, doit, s'il s'est conduit en traître, subir la peine de mort; s'il a agi par lâcheté, il doit encourir la peine de mort ou une moindre peine et, dans tout autre cas, être passible de destitution ignominieuse du service de Sa Majesté ou d'une moindre peine. S.R., c. 184, art. 64.

Inconduite de toute personne en présence de l'ennemi

64. Quiconque

a) indûment retarde ou décourage une action contre l'ennemi;

b) passe à l'ennemi;

c) ayant reçu l'ordre d'effectuer une opération de guerre, ne fait pas tout son possible pour mettre cet ordre à exécution;

d) indûment abandonne ou livre un établissement de défense, une garnison, une place, du matériel, un poste, ou une garde;

e) aide de matériel l'ennemi;

f) indûment jette ou abandonne du matériel en présence de l'ennemi;

g) indûment commet un acte ou un manquement qui entraîne la capture de personnes par l'ennemi ou la capture ou la destruction de matériel par l'ennemi;

h) étant de garde en présence ou dans le voisinage de l'ennemi, quitte son poste avant d'être régulièrement relevé ou dort ou est ivre;

i) en présence de l'ennemi se conduit de manière à montrer de la lâcheté; ou

j) fait ou omet de faire quelque chose dans l'intention de compromettre le succès de l'une quelconque des forces de Sa Majesté ou de toutes forces qui coopèrent avec celles-ci;

est coupable d'une infraction et, sur déclaration de culpabilité, doit, s'il s'est conduit en

Infractions
commises par
qui que ce soit
en présence de
l'ennemi

punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment. R.S., c. 184, s. 65.

traître, subir la peine de mort et, dans tout autre cas, encourt, si l'infraction a été commise au combat, la peine de mort ou une moindre peine, ou, si l'infraction a été commise autrement qu'au combat, l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 65.

Security

Offences related
to security

65. Every person who

- (a) improperly holds communication with or gives intelligence to the enemy;
- (b) without authority discloses in any manner whatever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of Her Majesty's Forces or of any forces cooperating therewith;
- (c) without authority discloses in any manner whatever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of Her Majesty's Forces or of any forces cooperating therewith;
- (d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;
- (e) gives a parole, watchword, password, countersign or identification signal different from that which he received;
- (f) without authority alters or interferes with any identification or other signal;
- (g) improperly occasions false alarms;
- (h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) forces a safeguard or forces or strikes a sentinel; or
- (j) does or omits to do anything with intent to prejudice the security of any of Her Majesty's Forces or of any forces cooperating therewith;

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 66.

Sécurité

Infractions
relatives à la
sécurité

65. Quiconque

- a) indûment a des intelligences avec l'ennemi ou lui communique des renseignements;
- b) sans y être autorisé, révèle de quelque façon un renseignement sur le nombre, la position, le matériel, les mouvements ou préparatifs en vue de mouvements, les opérations ou préparatifs en vue d'opérations, de l'une des forces de Sa Majesté ou de l'une des forces qui coopèrent avec celles-ci;
- c) sans autorisation, révèle de quelque façon que ce soit un renseignement sur un système, accessoire, méthode, procédé, publication ou document cryptographique de l'une des forces de Sa Majesté ou de l'une des forces qui coopèrent avec celles-ci;
- d) révèle, à qui n'a pas le droit de le recevoir, le mot d'ordre, le mot de passe, la consigne ou le signal d'identité;
- e) donne un mot d'ordre, un mot de passe, une consigne ou un signal d'identité qui diffère de celui qu'il a reçu;
- f) sans y être autorisé, change tout signal d'identité ou autre, ou y met obstacle;
- g) occasionne indûment des fausses alertes;
- h) agissant comme sentinelle ou guetteur, quitte son poste avant d'être régulièrement relevé ou dort ou est ivre;
- i) force une escorte ou force ou frappe une sentinelle; ou
- j) fait ou omet de faire quelque chose dans l'intention de nuire à la sécurité de l'une des forces de Sa Majesté ou de l'une des forces qui coopèrent avec celles-ci;

est coupable d'une infraction et, sur déclaration de culpabilité, doit, s'il s'est conduit en traître, subir la peine de mort et, dans tout autre cas, encourt l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 66.

Prisoners of War

66. Every person who

- (a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
- (b) having been made a prisoner of war, fails to rejoin Her Majesty's service when able to do so; or
- (c) having been made a prisoner of war, serves with or aids the enemy;

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 67.

Miscellaneous Operational Offences

67. Every person who

- (a) does violence to any person bringing materiel to any of Her Majesty's Forces or to any forces cooperating therewith;
- (b) irregularly detains any materiel being conveyed to any unit or other element of Her Majesty's Forces or of any forces cooperating therewith;
- (c) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any materiel being conveyed to any other unit or element of Her Majesty's Forces or of any forces cooperating therewith;
- (d) without orders from his superior officer, improperly destroys or damages any property;
- (e) breaks into any house or other place in search of plunder;
- (f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving;
- (g) steals from, or with intent to steal searches, the person of any person killed or wounded, in the course of warlike operations;
- (h) steals any money or property that has been left exposed or unprotected in consequence of warlike operations; or
- (i) takes otherwise than for the public service any money or property abandoned

Prisonniers de guerre

66. Quiconque

- a) est fait prisonnier de guerre, faute de précautions suffisantes ou par suite de désobéissance aux ordres ou de négligence volontaire dans l'accomplissement de ses devoirs;
- b) ayant été fait prisonnier de guerre, ne rejoint pas le service de Sa Majesté quand il le peut; ou
- c) ayant été fait prisonnier de guerre, sert avec l'ennemi ou l'aide;

est coupable d'une infraction et, sur déclaration de culpabilité, doit, s'il s'est conduit en traître, subir la peine de mort et, dans tout autre cas, encourt l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 67.

Infractions
relatives aux
prisonniers de
guerre

Diverses infractions relatives aux opérations

67. Quiconque

- a) exerce des voies de fait sur toute personne qui apporte du matériel à l'une quelconque des forces de Sa Majesté ou à toutes forces coopérant avec celles-ci;
- b) irrégulièrement retient tout matériel en cours de transport à quelque unité ou autre élément des forces de Sa Majesté ou de toutes forces qui coopèrent avec celles-ci;
- c) irrégulièrement détourne au profit de l'unité ou autre élément des Forces canadiennes avec lequel il est de service, tout matériel en voie de transport à quelque autre unité ou élément des forces de Sa Majesté ou de l'une des forces qui coopèrent avec celles-ci;
- d) sans ordre de son officier supérieur, indûment détruit ou endommage quelque bien;
- e) pénètre avec effraction dans une maison ou autre endroit à la recherche de butin;
- f) commet quelque infraction contre les biens ou la personne d'un habitant ou résident d'un pays où il est de service;
- g) vole une personne tuée ou blessée ou, dans l'intention de voler, fouille une telle personne, au cours d'opérations de combat;
- h) vole de l'argent ou des biens qui ont été laissés exposés ou sans protection par suite d'opérations de combat; ou
- i) prend, autrement que pour le service

Infractions
relatives aux
opérations

by the enemy;
is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from Her Majesty's service or to less punishment. R.S., c. 184, s. 68; 1956, c. 18, s. 8.

Spies for the Enemy

Spies

68. Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment. R.S., c. 184, s. 69.

Mutiny

Mutiny with violence

69. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment. R.S., c. 184, s. 70.

Mutiny without violence

70. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment. R.S., c. 184, s. 71.

Offences related to mutiny

71. Every person who
(a) causes or conspires with any other person to cause a mutiny;
(b) endeavours to persuade any person to join in a mutiny;
(c) being present, does not use his utmost endeavours to suppress a mutiny; or
(d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof;

is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 72.

Seditious Offences

Advocating governmental change by force

72. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or

public, de l'argent ou des biens abandonnés par l'ennemi;

est coupable d'une infraction et, sur déclaration de culpabilité, encourt, s'il a commis une telle infraction en activité de service, l'emprisonnement à perpétuité ou une moindre peine, et est passible, dans tout autre cas, de destitution ignominieuse du service de Sa Majesté ou d'une moindre peine. S.R., c. 184, art. 68; 1956, c. 18, art. 8.

Espions au service de l'ennemi

Espions

68. Quiconque est un espion pour le compte de l'ennemi est coupable d'une infraction et encourt, sur déclaration de culpabilité, la peine de mort ou une moindre peine. S.R., c. 184, art. 69.

Mutinerie

Mutinerie accompagnée de violence

69. Quiconque prend part à une mutinerie accompagnée de violence est coupable d'infraction et encourt, sur déclaration de culpabilité, la peine de mort ou une moindre peine. S.R., c. 184, art. 70.

Mutinerie sans violence

70. Quiconque prend part à une mutinerie non accompagnée de violence est coupable d'infraction et encourt, sur déclaration de culpabilité, l'emprisonnement à perpétuité ou une moindre peine, et, dans le cas d'un meneur de la mutinerie, la peine de mort ou une moindre peine. S.R., c. 184, art. 71.

Infractions relatives à la mutinerie

71. Quiconque
a) cause, ou complotte avec une autre personne en vue de causer, une mutinerie;
b) s'efforce de persuader à une personne de prendre part à une mutinerie;
c) étant présent, ne fait pas tout en son pouvoir pour réprimer une mutinerie; ou
d) ayant connaissance d'une mutinerie réelle ou projetée, n'en informe pas sans délai son officier supérieur;

est coupable d'infraction et encourt, sur déclaration de culpabilité, l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 72.

Infractions séditieuses

Fait de préconiser la force pour réaliser un changement gouvernemental

72. Quiconque publie ou met en circulation un écrit, un imprimé ou un document préconisant l'emploi de la force, sans autori-

advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 73.

Insubordination

Disobedience of
lawful command

73. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 74.

Striking or
offering violence
to a superior
officer

74. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. R.S., c. 184, s. 75.

Insubordinate
behaviour

75. Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment. R.S., c. 184, s. 76.

Quarrels and
disturbances

76. Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. R.S., c. 184, s. 77.

Disorders

77. Every person who,
(a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;
(b) strikes or uses or offers violence to any other person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;

sation légale, comme moyen de réaliser quelque changement gouvernemental au Canada, ou en enseigne ou préconise un tel emploi, est coupable d'infraction et encourt, sur déclaration de culpabilité, l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 73.

Insobordination

Désobéissance à
un
commandement
licitement donné

73. Quiconque désobéit à un commandement licitement donné par un officier supérieur est coupable d'infraction et encourt, sur déclaration de culpabilité, l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 74.

Action de
frapper un
officier
supérieur ou
emploi de
violence envers
lui

74. Quiconque frappe ou tente de frapper un officier supérieur, ou sort ou lève une arme contre lui, ou emploie, tente d'employer ou montre de la violence envers lui, est coupable d'infraction et encourt, sur déclaration de culpabilité, l'emprisonnement à perpétuité ou une moindre peine. S.R., c. 184, art. 75.

Acte
d'insubordina-
tion

75. Quiconque menace ou insulte, par la parole, un officier supérieur, ou se conduit de façon méprisante à son endroit, est coupable d'infraction et encourt, sur déclaration de culpabilité, la destitution ignominieuse du service de Sa Majesté ou une moindre peine. S.R., c. 184, art. 76.

Querelles et
désordres

76. Quiconque se querelle ou se bat avec une autre personne assujettie au Code de discipline militaire, ou, à l'endroit d'une personne ainsi assujettie, tient des propos ou fait des gestes provocateurs tendant à créer une querelle ou du désordre, est coupable d'infraction et encourt, sur déclaration de culpabilité, un emprisonnement de moins de deux ans ou une moindre peine. S.R., c. 184, art. 77.

Désordres

77. Quiconque,
a) étant mêlé à une querelle, une bagarre ou du désordre, refuse d'obéir à un officier, bien que d'un grade inférieur, qui ordonne qu'il soit aux arrêts, ou frappe cet officier ou emploie ou montre de la violence envers lui;
b) frappe une autre personne, ou emploie ou montre de la violence envers une autre personne, à la garde de qui il est confié, que cette autre personne soit ou non son officier supérieur et qu'elle soit assujettie

Chap. N-4

Défense nationale

Partie V

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, station, camp, quarters or ship;

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. R.S., c. 184, s. 78.

ou non au Code de discipline militaire;

c) résiste à une escorte chargée de le saisir ou de l'avoir en charge; ou

d) s'évade d'une caserne, d'une station, d'un camp, d'un quartier, ou d'un navire;

est coupable d'infraction et encourt, sur déclaration de culpabilité, un emprisonnement de moins de deux ans ou une moindre peine. S.R., c. 184, art. 78.

Desertion

Offence

78. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

Definition

(2) A person deserts who,

(a) being on or having been warned for active service, duty during an emergency or other important service, is absent without authority with the intention of avoiding that service;

(b) having been warned that his vessel is under sailing orders, is absent without authority with the intention of missing that vessel;

(c) absents himself without authority from his place of duty with the intention of remaining absent from his place of duty;

(d) is absent without authority from his place of duty and at any time during such absence forms the intention of remaining absent from his place of duty; or

(e) while absent with authority from his place of duty, with the intention of remaining absent from his place of duty, does any act or omits to do anything the natural and probable consequence of which act or omission is to preclude his being at his place of duty at the time required.

Presumption of desertion

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of remaining absent from his place of duty. R.S., c. 184, s. 79; 1966-67, c. 96, s. 23.

Connivance at desertion

79. Every person who

Désertion

78. (1) Tout individu qui déserte ou tente de désérer est coupable d'infraction et encourt, sur déclaration de culpabilité, s'il a commis l'infraction en activité de service ou étant convoqué à l'activité de service, l'emprisonnement à perpétuité ou une moindre peine. Dans tout autre cas, cet individu est passible d'un emprisonnement d'au plus cinq ans ou d'une moindre peine.

Définition

(2) Déserte celui qui,

a) étant en activité de service, en service pendant une circonstance critique ou en service important d'une autre nature, ou ayant été prévenu pour l'un ou l'autre des services susdits, est absent sans autorisation avec l'intention de se soustraire à un pareil service;

b) ayant été prévenu que son vaisseau a reçu l'ordre d'appareiller, est absent sans autorisation avec l'intention de manquer ledit vaisseau;

c) s'absente de son poste, sans autorisation, avec l'intention d'en demeurer absent;

d) est absent de son poste, sans autorisation, et en tout temps au cours d'une telle absence, forme le dessein d'en demeurer absent; ou

e) étant muni d'une autorisation s'absente de son poste avec l'intention d'en demeurer absent et commet un acte ou omet d'accomplir une chose, lorsque cet acte ou cette omission a pour conséquence naturelle et probable de l'empêcher au moment requis de se trouver à son poste.

(3) Quiconque a été absent sans autorisation pendant une période continue de six mois ou plus, est, jusqu'à preuve du contraire, présumé avoir eu l'intention de demeurer absent de son poste. S.R., c. 184, art. 79; 1966-67, c. 96, art. 23.

Désertion présumée

79. Tout individu qui,

Connivance dans les actes de désertion

141-206

Ottawa, Ontario.
KIA OP8

December 8, 1971.

My dear Colleague:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

The Prime Minister, by a letter to me dated May 7, 1971, pointed out the importance of settling the Government's policy in this matter well before December, 1972.

The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
KIA OH8

..2

I attach for your consideration two copies of a draft Memorandum to Cabinet that sets out my current views on the matter. If you agree with this draft, I should appreciate it if you would indicate your concurrence on the last page and return it to me, so that I can cause it to be distributed to our colleagues. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

I should add that this Memorandum to Cabinet relates solely to the question of the imposition of death sentences under the Criminal Code, and is not concerned with death sentences that might be imposed under the National Defence Act. As you know, sections 63-66 and 68-69 of the latter Act authorize the death penalty for offences such as misconduct of commanders and other persons in the face of the enemy, offences relating to security and prisoners of war, spying for the enemy and mutiny with violence, where the convicted person acted "traitorously" or "from cowardice" or "in action", as the case may be. As I see it, the question of the use of the death penalty for the purposes of national defence is quite different from its use for purposes of social defence, and I do not think that the law in relation to national defence should be disturbed at this time.

In view of the importance that the Prime Minister - and I am sure our other colleagues - place upon this matter, I shall be glad if you can return to me a copy of the draft Memorandum, indicating your concurrence, or, otherwise, meet with me in the near future to discuss the issues involved.

Yours sincerely,

Original Signed by

JEAN - PIERRE GOYER

Jean-Pierre Goyer.

Encls.

c.c. Minister's Office
Deputy Solicitor General

SOLICITOR GENERAL



SOLICITEUR GÉNÉRAL

Ottawa, Ontario.
K1A 0P8

141-206

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Minister of Justice,
Ottawa, Ontario.
K1A 0H8

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-2-

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Yours sincerely,

Encls.

Jean-Pierre Goyer.

MEMORANDUM
GOVERNMENT OF CANADA



NOTE DE SERVICE
GOUVERNEMENT DU CANADA

141-206

Don

FROM
DE

Don Foley, Executive Assistant

TO
À

E.A. Côté, Deputy Solicitor General

SUBJECT
SUJET

Treason and Piracy

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

Le 6 décembre, 1971

Le Ministre suggère que l'information fournie par M. MacLeod au sujet de "Treason and Piracy" soit incluse dans l'aide-mémoire que vous êtes censé préparer sur la peine de mort.

DW 2W

DM SM
SOL GEN

DEC 7 11 12 AM '71

FILE
DOSSIER

Don Foley
Don Foley

② Mr. MacLeod

Présentation de: Aide-Mémoire

7/xii/71

Foley

③ Done - PA.
13. 12. 71

24

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

FROM
DE

SPECIAL ADVISER,
CORRECTIONAL POLICY

TO
À

MR. D. FOLEY,
EXECUTIVE ASSISTANT

SUBJECT
SUJET

Treason and Piracy

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE — N/RÉFÉRENCE

YOUR FILE — V/RÉFÉRENCE

DATE

December 3, 1971

Reference your phone call of December 1 last.

Louis Riel seems to be the only person who has been tried, convicted and executed for treason in Canada. This was in 1885.

Persons involved in the Gouzenko espionage proceedings in 1946 were charged under the Official Secrets Act.

In the U.S.A. the Rosenberg case involved six American subjects, all of whom were tried on a charge of "conspiracy to commit espionage." The Rosenbergs, man and wife, were convicted in 1951 and executed in 1953. Two others received 30 years' imprisonment and two others 15 years.

In the U.K. William Joyce (Lord Haw Haw) was tried in 1945 for treason and was executed in 1946.

There is not much to be learned on the subject of piracy. There are no annotations in the modern law digests. Some years ago, I recall, a Canadian magistrate convicted a young boy of piracy (apparently stealing a canoe somewhere in Western Canada) but the conviction was quashed on appeal.

A. J. MacLeod.

AJM*EGM

000676

OTTAWA, 15 DEC 1971, 10:00 AM

BEST AVAILABLE COPY

141-206

Dear Colleagues:

Re. Legislative Program for the 4th Session;
Criminal Code Amendments (Unsettled Report),
Penitentiary Act, Prisons and Reformatories
Act Amendment

May I refer to your letter of November 5, 1971, on the above-noted subject.

I have recently reviewed the legislation for which my department is responsible, particularly in the light of the legislative programme for the forthcoming session. I have reached the conclusion that what is most needed at this time is a comprehensive review of all aspects of correctional policies and procedures. Accordingly a piece-meal approach by way of introducing amendments to the Penitentiary Act and the Prisons and Reformatories Act or by substituting therefore complete revisions of these Acts now seems to me to be inappropriate. I have come to the conclusion that the Government should review all fundamental aspects on which it now bases itself in the process of making the total system of corrections with the provisions. To open these Acts for debate without having first evolved this philosophy would expose us to needless criticism that we would be ill-equipped to meet.

As you will appreciate, the problem is complicated by the interdependence of our legislation. To give one example, it may well be that the present statutory provision under the Penitentiary Act should be deleted, and the scale of earned remission considerably revised. If this is to be done, a parallel change should be made in the Prisons and Reformatories Act, so that prisoners in provincial institutions may be treated on the same footing as penitentiary inmates. Similarly, if parole jurisdiction is to become vested in the authority, provincial or federal that is responsible for custody, then any change in custodial responsibility must be reflected in the legislation dealing with parole.

....2

Respectfully,
Walter J. Macdonald, P.C., M.P.,
Minister of the Privy Council,
Ottawa, Ontario.
WJM

All the questions are of major importance to the provincial authorities. I am, therefore, contemplating the calling of a federal-provincial conference during 1972 at which a comprehensive exchange of views can take place. Thereafter, legislation can be devised.

So far as concerns the amendments to the Criminal Code arising from the Guinot Report recommendations, I understand that our Colleague, the Minister of Justice, is embodying in a proposed Bill certain provisions to give effect to a number of these recommendations and I would hope these will be proceeded with.

In sum, I do not now intend to proceed with the introduction of legislation to amend the Penitentiary Act, the Prisons and Reformatories or the Parole Act. On the other hand, Bill C-192, to enact the Young Offenders Act, will die with the end of the current session. I am considering whether this should be re-introduced at the next session, possibly in a modified form.

There is also the matter of legislation to deal with the question of capital punishment, now under intensive study within my department. This matter will be put to Cabinet before the end of December 1972 for decision and direction as to the drafting of legislation. As you appreciate, some legislation relating to capital punishment needs to be passed before December 22, 1972 otherwise the law will revert to the state at which it was prior to December 29, 1967.

Yours sincerely,

Jean-Pierre Coyer

JHMOLLES/SACOTE/MP

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CONFIDENTIAL

MEMORANDUM TO THE CABINET

December 1, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament as soon as possible after February 1, 1972, for the abolition of capital punishment for all offences, i.e., murder, piracy and treason, or such alternative method of dealing with the problem of capital punishment as Cabinet may approve.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

-2-

Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

On the motion for second reading (carried 114 to 87) all Cabinet members present (three were absent) except one (Miss LaMarsh) voted affirmatively. On the motion for third reading (carried 105 to 70) all Cabinet members present (again three were absent) except one (Mr. Laing) voted in favour.

-3-

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

COURSES OPEN TO THE GOVERNMENT

The proposals for Parliament that the government might choose from would appear to be as follows:

- (a) abolish capital punishment for all offences, i.e., murder, piracy and treason; thereafter no person could be sentenced to be hanged in Canada;
- (b) abolish capital punishment for all offences except treason by way of levying war against Canada or assisting an enemy at war with Canada; thereafter it would no longer be a capital offence to kill or attempt to kill the Queen, to use force or violence to overthrow the government, to spy on Canada, or to conspire to do any of the foregoing;
- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:
 - (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
 - (ii) the period 1961 to 1967, when murder was either capital or non-capital, and the penalty for non-capital murder was life imprisonment, and
 - (iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer;

such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;

- (d) let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder and punishable by death if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act;
- (e) submit a new bill attempting to develop further categories of capital and non-capital murder, recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is

-4-

impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

- (a) a precedent has been established by the free vote that was followed in respect of the government legislation introduced in 1961 and 1967; and
- (b) over the past decade the subject has been regarded in Parliament as being extremely controversial and also as being a very subjective issue that affects the conscience of every man and woman; accordingly, the decision has been that the matter should be left to a free vote rather than be dealt with by the ordinary legislative procedure that would be likely to bring about voting along Party lines; in the result, therefore, the law between 1961 and 1967, and the law since 1967 on the subject, has been reached by the free will of each individual Member of Parliament.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

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Statistics Canada reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

The question of timing, however, is dependent upon the Cabinet decision as to what course it wishes to follow in this matter.

If Cabinet decides that capital punishment should be abolished entirely and is willing to stake the life of the government on such a decision, it seems certain that the result would be a great public debate. On the other hand, a Cabinet proposal to abolish capital punishment entirely but to leave the matter to a free vote may cause difficulties in the House. One reason is that government members may well recall that at the last free vote on this issue, the Ministry voted almost solidly for the government measure then proposed.

The "safest" course of action, when faced with a fixed deadline of December 29, 1972, seems to be to follow course (c), i.e., to extend the 1967 legislation for a sufficient time to enable a true comparison of equal periods under different laws.

Adoption of any other course might well be interpreted either as a government move toward complete abolition or, alternatively, a government desire to restore capital punishment so that it will operate more widely than it has since 1967.

Having decided which of the six available courses should be proposed to Parliament for either a free vote or as a matter of government decision, the Cabinet can then decide whether such a matter should be debated in the House within eighteen months of a possible general election.

In the opinion of the undersigned it is undesirable that the issue of capital punishment should in any way be an issue at a general election. A government that has many other issues to deal with - issues that affect the citizen's economic and social security, in the broadest sense - should not stand or fall on the basis of the steps that should be taken, under the criminal law, to deal with murderers, traitors and pirates. The issue of capital punishment is compelling to the conscience of every thinking man and woman, but is not an issue that, in 1972, will be at the root of Canadian anxieties.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$200 a day and, of course, the cost of maintaining in penitentiary prisoners who are serving life sentences (about \$7,000 a year). However, this latter cost has been borne in every case of capital murder since 1962. The provinces would save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person while awaiting execution.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the government to discuss the merits of this proposed legislation with the provincial governments. There were no formal

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discussions, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

CAUCUS CONSULTATION

(To be completed by the Minister's office).

LIBERAL FEDERATION

(To be completed by the Minister's office).

RECOMMENDATION

The undersigned recommends that Cabinet determine:

- (a) which of the six courses of action it wishes to propose to the House of Commons;
- (b) whether or not the issue of capital punishment should be decided by Parliament by means of a free vote;
- (c) whether this issue is to be put to Parliament in 1972;
- (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
- (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

27112

000685

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

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BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
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1963, c. 8;
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cc. 22, 35, 53;
1965-67, cc.
23, 25, 96,
s. 64

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

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Capital
murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be 50 fixed by proclamation.

FOREWORD

Since December 29, 1967, the death penalty for capital murder has, by reason of Chapter 15 of the Statutes of Canada, 1967-68, been limited to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The Act prescribed that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

Parliament must, therefore, enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act".

This Paper attempts to make available to Members of Parliament and members of the public, material that has become available since the publication, in 1965, by the Department of Justice, of a Paper entitled "Capital Punishment - Material Relating to Its Purpose and Value". This Paper - prepared by Mr. Bernard Grenier, Barrister, of Montreal - is, like the 1965 Paper of the Department of Justice, intended to be informative and objective but not to take up a position.

The subject of the death penalty continues to be controversial in Canada and to be a subjective issue that affects the conscience of every man and woman. It is my profound hope that this Paper will be of some assistance to Canadians who are attempting to solve this extremely difficult social problem.

Solicitor General of Canada

OTTAWA, January 15, 1972.

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

December 1, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament as soon as possible after February 1, 1972, for the abolition of capital punishment for all offences, i.e., murder, piracy and treason, or such alternative method of dealing with the problem of capital punishment as Cabinet may approve.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

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Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

On the motion for second reading (carried 114 to 87) all Cabinet members present (three were absent) except one (Miss LaMarsh) voted affirmatively. On the motion for third reading (carried 105 to 70) all Cabinet members present (again three were absent) except one (Mr. Laing) voted in favour.

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Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

COURSES OPEN TO THE GOVERNMENT

The proposals for Parliament that the government might choose from would appear to be as follows:

- (a) abolish capital punishment for all offences, i.e., murder, piracy and treason; thereafter no person could be sentenced to be hanged in Canada;
- (b) abolish capital punishment for all offences except treason by way of levying war against Canada or assisting an enemy at war with Canada; thereafter it would no longer be a capital offence to kill or attempt to kill the Queen, to use force or violence to overthrow the government, to spy on Canada, or to conspire to do any of the foregoing;
- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:
 - (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
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 - (iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer;

such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;

- (d) let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder and punishable by death if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act;
- (e) submit a new bill attempting to develop further categories of capital and non-capital murder, recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is

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impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

- (a) a precedent has been established by the free vote that was followed in respect of the government legislation introduced in 1961 and 1967; and
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If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

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FINANCIAL CONSIDERATIONS

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FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the government to discuss the merits of this proposed legislation with the provincial governments. There were no formal

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discussions, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

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- (c) whether this issue is to be put to Parliament in 1972;
- (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
- (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

000695

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

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murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of 25 imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be fixed by proclamation. 50

File copy ✓

141-206

Ottawa, Ontario.
KIA OP8

December 8, 1971.

My dear Colleague:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

The Prime Minister, by a letter to me dated May 7, 1971, pointed out the importance of settling the Government's policy in this matter well before December, 1972.

The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
KIA OH8

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-2-

I attach for your consideration two copies of a draft Memorandum to Cabinet that sets out my current views on the matter. [If you agree with this draft, I should appreciate it if you would indicate your concurrence on the last page and return it to me, so that I can cause it to be distributed to our colleagues. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

I should add that this Memorandum to Cabinet relates solely to the question of the imposition of death sentences under the Criminal Code, and is not concerned with death sentences that might be imposed under the National Defence Act. As you know, sections 63-66 and 68-69 of the latter Act authorize the death penalty for offences such as misconduct of commanders and other persons in the face of the enemy, offences relating to security and prisoners of war, spying for the enemy and mutiny with violence, where the convicted person acted "traitorously" or "from cowardice" or "in action", as the case may be. As I see it, the question of the use of the death penalty for the purposes of national defence is quite different from its use for purposes of social defence, and I do not think that the law in relation to national defence should be disturbed at this time.

In view of the importance that the Prime Minister and I am sure our other colleagues - place upon this matter, I shall be glad if you can return to me a copy of the draft Memorandum, indicating your concurrence, or, otherwise, meet with me in the near future to discuss the issues involved.

Yours sincerely,

Original Signed by
JEAN - PIERRE GOYER

Jean-Pierre Goyer.

Encls.

AJMA/LEOD/EGM

c.c. Minister's Office
Deputy Solicitor General

000701

President of the Privy Council

Le Président du Conseil



Canada

Dec 1 11 00 AM '71

Ottawa
K1A 0A3

November 8, 1971

My Dear Colleague:

Re: Legislative Programme for the
4th Session; Criminal Code
Amendments (Ouimet Report),
Penitentiary Act, Prisons and
Reformatories Act Amendment.

The above-noted items of legislation listed as "essential first reading" on the legislative programme. As you know, the legislative programme established by Cabinet from legislative proposals submitted to the Secretary to the Cabinet in accordance with the provisions of Cabinet Directive number 1 was finally established on July 7, 1971, and circulated. It is based on the assumption of a session to June session.

My information at the present time is that the policy memoranda have not yet been submitted for consideration by the appropriate Cabinet Committee and are not likely to be ready before the end of the 4th Session. With respect to the Prisons and Reformatories Act Amendments, I understand that Cabinet has approved the policy memorandum and that you are to report on the results of the appropriate Cabinet Committee on the results of the Federal-Provincial discussions on this matter.

It would appear possible that these items to the legislative programme might not be met.

In view of the fact that these items have been given high priorities by the Cabinet and have

The Honourable Jean-Pierre Goyer, P.C., M.P.
Solicitor General
House of Commons
Ottawa, Ontario

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excluded other legislative proposals from the programme, may I urge you to ensure that all possible efforts in your department are taken to have detailed drafting instructions given to the Legislation Drafting Section of the Department of Justice in sufficient time to have these items introduced as soon as possible.

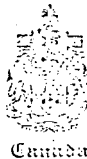
In order that I may be kept informed of developments in the legislative programme, I would request that you arrange that your officials advise Dr. Robert J. Jackson, of my staff, as to when the bill can be expected to be drafted. Perhaps, if you agree, this could be best done on a periodic basis.

I would, in closing, advise that, unless all commitments to the legislative programme are met, there is a possibility of having a lack of bills to put before Parliament.

Yours sincerely,


Allan J. MacEachen

President of the Privy Council



Le Président du Conseil

Ottawa
K1A 0A3

BEST AVAILABLE COPY

November 8, 1971

My Dear Colleague:

Re: Legislative Programme for the
4th Session; Criminal Code
Amendments (Ouimet Report),
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My information at the present time with respect to the Criminal Code Amendments and the Penitentiary Act is that the policy memoranda have not yet been submitted for consideration by the appropriate Cabinet Committee and are not likely to be ready before the end of the 4th Session. With respect to the Prisons and Reformatories Act Amendments, I understand that Cabinet has received the policy memorandum and that you are to report to the appropriate Cabinet Committee on the results of the Federal-Provincial discussions on this matter.

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The Honourable Jean-Pierre Goyer, P.C., M.P.
Solicitor General
House of Commons
Ottawa, Ontario

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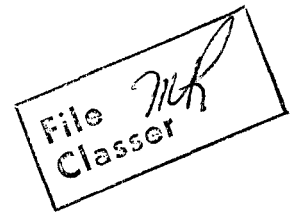
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I would, in closing, advise that, unless all commitments to the legislative programme are met, there is a possibility of having a lack of bills to put before Parliament.

Yours sincerely,


Allan J. MacEachen

CONFIDENTIAL



Ottawa, Ontario.
KLA OF8

December 2, 1971.

My dear Colleagues:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

The Prime Minister, by a letter to me dated May 7, 1971, pointed out the importance of settling the Government's policy in this matter well before December, 1972.

The Honourable John H. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
KLA OF8

..2

-2-

I attach for your consideration two copies of a draft Memorandum to Cabinet that sets out my current views on the matter. If you agree with this draft, I should appreciate it if you would indicate your concurrence on the last page and return it to me, so that I can cause it to be distributed to our colleagues. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

In view of the importance that the Prime Minister - and I am sure our other colleagues - place upon this matter, I shall be glad if you can return to me a copy of the draft Memorandum, indicating your concurrence, or, otherwise, meet with me in the near future to discuss the issues involved.

Yours sincerely,

Encls.

Jean-Pierre Goyer.

AJMACLEOD/EGM

c.c. Deputy Solicitor General

CONFIDENTIAL

141-206

Ottawa, Ontario.

KIA OP8

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Ottawa, Ontario.
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Yours sincerely,

Encls.

Joan-Pierre Goyer.

AJMACLEOD/EGM

c.c. Deputy Solicitor General

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOVERNEMENT DU CANADA

141-206

FROM
DE

SPECIAL ADVISER,
CORRECTIONAL POLICY

TO
A

DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ

CONFIDENTIAL

OUR FILE — N/RÉFÉRENCE

YOUR FILE — V/RÉFÉRENCE

DATE

December 2, 1971

SUBJECT
SUJET

Capital Punishment

Pursuant to our meeting with the Solicitor General on November 29 last, I attach a revised draft, dated December 1, 1971, of the memorandum of July 29 last that we discussed with the Minister.

I understand that you will be attempting to arrange for us to meet with the Minister on Monday morning next to discuss this new draft.

Att.

A. J. MacLeod
A. J. MacLeod.

I am sending the original to the S.G. today together with a revision of the letter of May 1971 for the S.G.'s signature to the Minister of Justice asking the
S G
a) either to sign & dispatch the letter, or
b) to discuss with Alan MacLeod & me Monday, December 6.

x/x ii/71

Edley

000710

MEMORANDUM

GOVERNMENT OF CANADA



NOTE DE SERVICE

GOUVERNEMENT DU CANADA

R.M.J. La Brosse

DEC 6 1971

FROM
DE

SPECIAL ADVISER,
CORRECTIONAL POLICY

TO
A

DEPUTY SOLICITOR GENERAL

SUBJECT
SUJET

Capital Punishment

SECURITY - CLASSIFICATION - DE SÉCURITÉ

CONFIDENTIAL

OUR FILE — N/RÉFÉRENCE

YOUR FILE — V/RÉFÉRENCE

DATE

December 2, 1971

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A. J. MacLeod

Att.

A. J. MacLeod.

AJM*EGM

000711

141-206

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

December 1, 1971

Re: Capital Punishment

sr.
Caley

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

before Dec. 29

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament as soon as possible after February 1, 1972, for the abolition of capital punishment for all offences, i.e., murder, piracy and treason, or such alternative method of dealing with the problem of capital punishment as Cabinet may approve.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

-2-

Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

On the motion for second reading (carried 114 to 87) all Cabinet members present (three were absent) except one (Miss LaMarsh) voted affirmatively. On the motion for third reading (carried 105 to 70) all Cabinet members present (again three were absent) except one (Mr. Laing) voted in favour.

-3-

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

COURSES OPEN TO THE GOVERNMENT

The proposals for Parliament that the government might choose from would appear to be as follows:

- (a) abolish capital punishment for all offences, i.e., murder, piracy and treason; thereafter no person could be sentenced to be hanged in Canada;
- (b) ☒ abolish capital punishment for all offences except treason by way of levying war against Canada or assisting an enemy at war with Canada; thereafter it would no longer be a capital offence to kill or attempt to kill the Queen, to use force or violence to overthrow the government, to spy on Canada, or to conspire to do any of the foregoing;
- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:
 - (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
 - (ii) the period 1961 to 1967, when murder was either capital or non-capital, and the penalty for non-capital murder was life imprisonment, and
 - (iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer;such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;
- (d) let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder and punishable by death if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act;
- (e) submit a new bill attempting to develop further categories of capital and non-capital murder, recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is ☒

Commencement (with no of comm)
Voting procedure
Timing

since '59, '62
'67

impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

- (a) a precedent has been established by the free vote that was followed in respect of the government legislation introduced in 1961 and 1967; and
- (b) over the past decade the subject has been regarded in Parliament as being extremely controversial and also as being a very subjective issue that affects the conscience of every man and woman; accordingly, the decision has been that the matter should be left to a free vote rather than be dealt with by the ordinary legislative procedure that would be likely to bring about voting along Party lines; in the result, therefore, the law between 1961 and 1967, and the law since 1967 on the subject, has been reached by the free will of each individual Member of Parliament.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

-5-

Nevertheless
Statistics Canada reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

The question of timing, however, is dependent upon the Cabinet decision as to what course it wishes to follow in this matter.

If Cabinet decides that capital punishment should be abolished entirely and is willing to stake the life of the government on such a decision, it seems certain that the result would be a great public debate. On the other hand, a Cabinet proposal to abolish capital punishment entirely but to leave the matter to a free vote may cause difficulties in the House. One reason is that government members may well recall that at the last free vote on this issue, the Ministry voted almost solidly for the government measure then proposed.

The "safest" course of action, when faced with a fixed deadline of December 29, 1972, seems to be to follow course (c), i.e., to extend the 1967 legislation for a sufficient time to enable a true comparison of equal periods under different laws.

Adoption of any other course might well be interpreted either as a government move toward complete abolition or, alternatively, a government desire to restore capital punishment so that it will operate more widely than it has since 1967.

Having decided which of the six available courses should be proposed to Parliament for either a free vote or as a matter of government decision, the Cabinet can then decide whether such a matter should be debated in the House within eighteen months of a possible general election.

In the opinion of the undersigned it is undesirable that the issue of capital punishment should in any way be an issue at a general election. A government that has many other issues to deal with - issues that affect the citizen's economic and social security, in the broadest sense - should not stand or fall on the basis of the steps that should be taken, under the criminal law, to deal with murderers, traitors and pirates. The issue of capital punishment is compelling to the conscience of every thinking man and woman, but is not an issue that, in 1972, will be at the root of Canadian anxieties.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. (X)
The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$200 a day and, of course, the cost of maintaining in penitentiary prisoners who are serving life sentences (about \$7,000 a year). However, this latter cost has been borne in every case of capital murder since 1962. The provinces would save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person while awaiting execution.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the government to discuss the merits of this proposed legislation with the provincial governments. There were no formal

-6-

discussions, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

most The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

CAUCUS CONSULTATION

(To be completed by the Minister's office).

LIBERAL FEDERATION

(To be completed by the Minister's office).

RECOMMENDATION

The undersigned recommends that Cabinet determine:

- (a) which of the six courses of action it wishes to propose to the House of Commons;
- (b) whether or not the issue of capital punishment should be decided by Parliament by means of a free vote;
- (c) whether this issue is to be put to Parliament in 1972;
- (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
- (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

141-206

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

27112

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
1958, c. 18;
1959, cc. 40,
41;
1960, cc. 37,
45;
1960-61,
cc. 21,
42, 43, 44;
1962-63, c. 4;
1963, c. 8;
1964-65,
cc. 22, 35, 53;
1966-67, cc.
23, 25, 96,
s. 64

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

5

Capital
murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) *it is planned and deliberate on the part of such person,*
(b) *it is within section 202 and such person*
 (i) *by his own act caused or assisted in causing the bodily harm from which the death ensued,*
 (ii) *by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued,*
 (iii) *by his own act stopped or assisted in the stopping of the breath from which the death ensued,*
 (iv) *himself used or had upon his person the weapon as a consequence of which the death ensued, or*
 (v) *counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or*
(c) *such person by his own act caused or assisted in causing the death of*
 (i) *a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or*
 (ii) *a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,*
 or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) *If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.*"

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be fixed by proclamation. 50

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

(DRAFT)

December 1, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament [as soon as possible after February 1, 1972, for the abolition of capital punishment for all offences, i.e., murder, piracy and treason, or such alternative method of dealing with the problem of capital punishment as Cabinet may approve.]

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

1) Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

-2-

c) Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

On the motion for second reading (carried 114 to 87) all Cabinet members present (three were absent) except one (~~Miss LaMarsh~~) voted affirmatively. On the motion for third reading (carried 105 to 70) all Cabinet members present (again three were absent) except one (~~Mr. Laing~~) voted in favour.

-3-

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

COURSES OPEN TO THE GOVERNMENT

The proposals for Parliament that the government might choose from would appear to be as follows:

- (a) abolish capital punishment for all offences, i.e., murder, piracy and treason; thereafter no person could be sentenced to be hanged in Canada;
- (b) abolish capital punishment for all offences except treason ~~by way of levying war against Canada or assisting an enemy at war with Canada~~; thereafter it would no longer be a capital offence to kill or attempt to kill the Queen, to use force or violence to overthrow the government, to spy on Canada, or to conspire to do any of the foregoing;
- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:
 - (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
 - (ii) the period 1961 to 1967, when murder was either capital or non-capital, and the penalty for non-capital murder was life imprisonment, and
 - (iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer;

such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;

- (d) let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder and punishable by death if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act;
- (e) submit a new bill attempting to develop further categories of capital and non-capital murder; recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is

-4-

Voting procedure
Timing
Committee

impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

- (a) a precedent has been established by the free vote that was followed in respect of the government legislation introduced in 1961 and 1967; and
- (b) over the past decade the subject has been regarded in Parliament as being extremely controversial and also as being a very subjective issue that affects the conscience of every man and woman; accordingly, the decision has been that the matter should be left to a free vote rather than be dealt with by the ordinary legislative procedure that would be likely to bring about voting along Party lines; in the result, therefore, the law between 1961 and 1967, and the law since 1967 on the subject, has been reached by the free will of each individual Member of Parliament.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

..5

a decision has to be taken whether the matter should be for a free vote. In favour

1) 2) 3) 4) 5) 6) 7) 8) 9) 10) 11) 12) 13) 14) 15) 16) 17) 18) 19) 20) 21) 22) 23) 24) 25) 26) 27) 28) 29) 30) 31) 32) 33) 34) 35) 36) 37) 38) 39) 40) 41) 42) 43) 44) 45) 46) 47) 48) 49) 50) 51) 52) 53) 54) 55) 56) 57) 58) 59) 60) 61) 62) 63) 64) 65) 66) 67) 68) 69) 70) 71) 72) 73) 74) 75) 76) 77) 78) 79) 80) 81) 82) 83) 84) 85) 86) 87) 88) 89) 90) 91) 92) 93) 94) 95) 96) 97) 98) 99) 100)

1967 - not for party times would be divisive and

1967 - 67

even if free vote

no consultation

noted in House for what was considered as a free vote

OK 1967 to see if it is carried

RC voted in House

OK Note

-5-

*Legislate before or after
abandon & des*

New statistics, Statistics Canada reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973. *check*

The question of timing, however, is dependent upon the Cabinet decision as to what course it wishes to follow in this matter.

*Possibilities
advantages
& disadvantages*

If Cabinet decides that capital punishment should be abolished entirely and is willing to stake the life of the government on such a decision, it seems certain that the result would be a great public debate. On the other hand, a Cabinet proposal to abolish capital punishment entirely but to leave the matter to a free vote may cause difficulties in the House. One reason is that government members may well recall that at the last free vote on this issue, the Ministry voted almost solidly for the government measure then proposed.

The "safest" course of action, when faced with a fixed deadline of December 29, 1972, seems to be to follow course (c), i.e., to extend the 1967 legislation for a sufficient time to enable a true comparison of equal periods under different laws.

*abolition
abolition
proposed
continued*

Adoption of any other course might well be interpreted either as a government move toward complete abolition or, alternatively, a government desire to restore capital punishment so that it will operate more widely than it has since 1967.

Having decided which of the six available courses should be proposed to Parliament for either a free vote or as a matter of government decision, the Cabinet can then decide whether such a matter should be debated in the House within eighteen months of a possible general election.

In the opinion of the undersigned it is undesirable that the issue of capital punishment should in any way be an issue at a general election. A government that has many other issues to deal with - issues that affect the citizen's economic and social security, in the broadest sense - should not stand or fall on the basis of the steps that should be taken, under the criminal law, to deal with murderers, traitors and pirates. The issue of capital punishment is compelling to the conscience of every thinking man and woman, but is not an issue that, in 1972, will be at the root of Canadian anxieties.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$200 a day and, of course, the cost of maintaining in penitentiary prisoners who are serving life sentences (about \$7,000 a year). However, this latter cost has been borne in every case of capital murder since 1962. The provinces would save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person while awaiting execution.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the government to discuss the merits of this proposed legislation with the provincial governments. There were no formal

-6-

discussions, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

*Mention
two studies*
The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which ~~most~~ ^{most} every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

*Define
public
on facts*
In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

CAUCUS CONSULTATION

Not determined
(To be completed by the Minister's office).

LIBERAL FEDERATION

*Decision taken and before final decision
Can say committed*
(To be completed by the Minister's office).

RECOMMENDATION

The undersigned recommends that Cabinet determine:

- 1) with decision before or after*
- (a) which of the six courses of action it wishes to propose to the House of Commons;
 - (b) whether or not the issue of capital punishment should be decided by Parliament by means of a free vote;
 - a when*
(c) whether this issue is to be put to Parliament in 1972;
 - (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
 - (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

*Amended consultation
in p. 2 covering*
I concur

Minister of Justice

000727

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

27112

000728

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
1958, c. 18;
1959, cc. 40,
41;
1960, cc. 37,
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HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

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murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

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2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
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"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be fixed by proclamation. 50

141-204
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

December 1, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament as soon as possible after February 1, 1972, for the abolition of capital punishment for all offences, i.e., murder, piracy and treason, or such alternative method of dealing with the problem of capital punishment as Cabinet may approve.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

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Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

On the motion for second reading (carried 114 to 87) all Cabinet members present (three were absent) except one (Miss LaMarsh) voted affirmatively. On the motion for third reading (carried 105 to 70) all Cabinet members present (again three were absent) except one (Mr. Laing) voted in favour.

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Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

COURSES OPEN TO THE GOVERNMENT

The proposals for Parliament that the government might choose from would appear to be as follows:

- (a) abolish capital punishment for all offences, i.e., murder, piracy and treason; thereafter no person could be sentenced to be hanged in Canada;
- (b) abolish capital punishment for all offences except treason by way of levying war against Canada or assisting an enemy at war with Canada; thereafter it would no longer be a capital offence to kill or attempt to kill the Queen, to use force or violence to overthrow the government, to spy on Canada, or to conspire to do any of the foregoing;
- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:
 - (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
 - (ii) the period 1961 to 1967, when murder was either capital or non-capital, and the penalty for non-capital murder was life imprisonment, and
 - (iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer;

such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;

- (d) let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder and punishable by death if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act;

*acting in the course
of duty*

- (e) submit a new bill attempting to develop further categories of capital and non-capital murder; recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is

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impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

- (a) a precedent has been established by the free vote that was followed in respect of the government legislation introduced in 1961 and 1967; and
- (b) over the past decade the subject has been regarded in Parliament as being extremely controversial and also as being a very subjective issue that affects the conscience of every man and woman; accordingly, the decision has been that the matter should be left to a free vote rather than be dealt with by the ordinary legislative procedure that would be likely to bring about voting along Party lines; in the result, therefore, the law between 1961 and 1967, and the law since 1967 on the subject, has been reached by the free will of each individual Member of Parliament.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967; when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

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Statistics Canada reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

The question of timing, however, is dependent upon the Cabinet decision as to what course it wishes to follow in this matter.

If Cabinet decides that capital punishment should be abolished entirely and is willing to stake the life of the government on such a decision, it seems certain that the result would be a great public debate. On the other hand, a Cabinet proposal to abolish capital punishment entirely but to leave the matter to a free vote may cause difficulties in the House. One reason is that government members may well recall that at the last free vote on this issue, the Ministry voted almost solidly for the government measure then proposed.

The "safest" course of action, when faced with a fixed deadline of December 29, 1972, seems to be to follow course (c), i.e., to extend the 1967 legislation for a sufficient time to enable a true comparison of equal periods under different laws.

Adoption of any other course might well be interpreted either as a government move toward complete abolition or, alternatively, a government desire to restore capital punishment so that it will operate more widely than it has since 1967.

Having decided which of the six available courses should be proposed to Parliament for either a free vote or as a matter of government decision, the Cabinet can then decide whether such a matter should be debated in the House within eighteen months of a possible general election.

In the opinion of the undersigned it is undesirable that the issue of capital punishment should in any way be an issue at a general election. A government that has many other issues to deal with - issues that affect the citizen's economic and social security, in the broadest sense - should not stand or fall on the basis of the steps that should be taken, under the criminal law, to deal with murderers, traitors and pirates. The issue of capital punishment is compelling to the conscience of every thinking man and woman, but is not an issue that, in 1972, will be at the root of Canadian anxieties.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$200 a day and, of course, the cost of maintaining in penitentiary prisoners who are serving life sentences (about \$7,000 a year). However, this latter cost has been borne in every case of capital murder since 1962. The provinces would save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person while awaiting execution.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the government to discuss the merits of this proposed legislation with the provincial governments. There were no formal

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discussions, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

CAUCUS CONSULTATION

(To be completed by the Minister's office).

LIBERAL FEDERATION

(To be completed by the Minister's office).

RECOMMENDATION

The undersigned recommends that Cabinet determine:

- (a) which of the six courses of action it wishes to propose to the House of Commons;
- (b) whether or not the issue of capital punishment should be decided by Parliament by means of a free vote;
- (c) whether this issue is to be put to Parliament in 1972;
- (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
- (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

27112

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
1958, c. 18;
1959, cc. 40,
41;
1960, cc. 37,
45;
1960-61,
cc. 21,
42, 43, 44;
1962-63, c. 4;
1963, c. 8;
1964-65,
cc. 22, 35, 53;
1966-67, cc.
23, 25, 96,
s. 64

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

5

Capital
murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of 25 imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
 or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be fixed by proclamation. 50

141-206

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CONFIDENTIAL

MEMORANDUM TO THE CABINET

December 1, 1971

Re: Capital Punishment

ex.
Bely

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The Act provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

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- (c) extend the life of the 1967 amendment by a period of time that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:

- (i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,
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such an extension should be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament;

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- (e) submit a new bill attempting to develop further categories of capital and non-capital murder, recognizing, however, that, as was said by the United Kingdom Royal Commission on Capital Punishment in 1953, it is probably impracticable to frame a statutory definition of murder which would effectively limit the scope of capital punishment and would not have overriding disadvantages in other respects and that it is

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impracticable to find a satisfactory method of limiting the scope of capital punishment by dividing murder into degrees; or

- (f) submit a new bill restoring the law to what it was prior to 1961, i.e., when all murder was capital, and death was the mandatory authorized punishment.

Whichever course is followed (other than letting the 1967 legislation expire) the undersigned is of opinion that it should be subject to a free vote in the House because

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TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. An opposition motion to the latter effect was defeated by a vote of 303-245, and the government's motion that the 1965 Act should not expire was approved 343-185.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on BILL C-163, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

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FINANCIAL CONSIDERATIONS

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The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament. Representations can be expected from police forces and other organizations across the country, as was the case prior to enactment of the relevant legislation in 1961 and 1967.

In any event, Members of Parliament and other interested persons should be given access to all available factual information and studies on capital punishment. If, however, Cabinet decides, as a matter of government policy, on a specific course of action, a White Paper might be prepared to focus public discussion on the various issues.

CAUCUS CONSULTATION

(To be completed by the Minister's office).

LIBERAL FEDERATION

(To be completed by the Minister's office).

RECOMMENDATION

The undersigned recommends that Cabinet determine:

- (a) which of the six courses of action it wishes to propose to the House of Commons;
- (b) whether or not the issue of capital punishment should be decided by Parliament by means of a free vote;
- (c) whether this issue is to be put to Parliament in 1972;
- (d) in the event that legislation is required, what legislation is to be drawn up by the Department of Justice; and
- (e) when the proposed legislation is to be presented to Parliament.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

000747

APPENDIX "A"

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

27112

000748

BEST AVAILABLE COPY

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
1958, c. 18;
1959, cc. 40,
41;
1960, cc. 37,
45;
1960-61,
cc. 21,
42, 43, 44;
1962-63, c. 4;
1963, c. 8;
1964-65,
cc. 22, 35, 53;
1965-67, cc.
23, 25, 95,
s. 64

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor: .5

Capital
murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other 10 person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent 15 employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of 25 imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, namely: 5

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

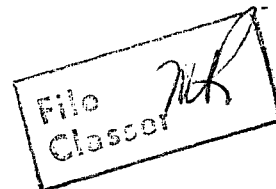
Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to be fixed by proclamation. 50

141-206



MR. A.J. MacLEOD, Q.C.,
SPECIAL ADVISOR ON
CORRECTIONAL POLICY

141-206

Nov. 30, 1971.

DEPUTY SOLICITOR GENERAL

Capital Punishment

This is to confirm that on November 29, 1971, the Solicitor General asked that there be prepared two memoranda for Cabinet on Capital punishment:

- a) the first memo would consider what should be done about the law and consider timing; this memo to be ready as soon as possible;
- b) the second memo (dependent upon the decision by the Minister as to the content of the first) would summarize the information on the subject of Capital punishment, would have attached Mr. Grenier's and Professor Fattah's reports and be available for distribution on or about December 17, 1971.

Apart from the discussion which we had with the Minister in the morning, you and I saw him from 1800 hrs. to 1730 hrs. on November 29 and discussed in much more detail how your draft of July 29, 1971 could be amended to meet the purposes of the draft described in (a).

You undertook to have it ready early next week. If at all possible, I think a version should be ready for the Solicitor General by Friday, December 3, 1971 and we should try to discuss the matter with the Solicitor General first thing on Monday, December 6.

As to the second memo to Cabinet, what will clearly be involved is

- a) a summary of the reports; and
- b) reproduction of the Reports in both languages (if possible)

This last job - which will be time consuming - should be put in hand as soon as possible.

[E. A. Côté]
E. A. Côté

EACOTE/MR

141-206

Ottawa, Ontario
K1A 0P8

le 9 novembre 1971

Re: Votre dossier 02.78-17092/71

Cher monsieur Saulnier,

Je vous remercie de votre lettre du 1^{er} octobre dernier relative aux meurtres de membres du service de la Police de Montréal survenus depuis 1964.

Les renseignements qu'elle contient sont très précis et nous seront d'une grande utilité pour mettre à jour le Livre Blanc de 1965 sur la peine de mort.

Je vous prie d'agréer, cher monsieur Saulnier, l'expression de mes sentiments les plus distingués.

Le Solliciteur général adjoint,

A. J. Macpherson
pour E. A. Côté

BGRENIER/hp

Monsieur le Directeur général
Service de la police de Montréal
Annexe de l'Hôtel de Ville
Montréal (Québec)

141-206

Ottawa, Ontario
KIA OP8

le 9 novembre 1971

Re: Votre dossier A-204-5

Cher monsieur St-Pierre,

Je vous remercie de votre lettre du 3 novembre dernier relative aux meurtres de policiers survenus dans la province de Québec depuis 1964.

Les renseignements qu'elle contient sont très précis et nous seront d'une grande utilité pour mettre à jour le Livre Blanc de 1965 sur la peine de mort.

Je vous prie d'agréer, cher monsieur St-Pierre, l'expression de mes sentiments les plus distingués.

Le Solliciteur général adjoint,

A. J. MacLeod
pour E. A. Côté

BGRENIER/hp

Monsieur le Directeur général
Sûreté du Québec
Boîte postale 1400, succursale "C"
Montréal 133 (Québec)



GOUVERNEMENT
DU QUEBEC
MINISTÈRE
DE LA JUSTICE
SÛRETÉ DU
QUEBEC

GRAND QUARTIER GÉNÉRAL

Boîte Postale 1400
Succursale "C"
Montréal 133, Qué.

141-206
Jm. Côté

Votre dossier

Notre dossier ...A-204-5.....

DM SM
SOL GEN

NOV 8 9 13A

s.19(1)

FILE 141-206
DOSSIER

Jm. Côté

Montréal, le 3 novembre 1971.

(1)

Monsieur E.A. Côté,
Solliciteur Général Adjoint,
KIA OP8,
Ottawa, Ont.

Monsieur,

Nous avons bien reçu votre demande de renseignements relativement à la mort des policiers et plus spécialement pour les cas que vous nous mentionnez.

1o 1964 - Caporal David CHENARD
Sûreté du Québec

141-206
Le 31 octobre 1964, le Caporal David Chenard, accompagné de deux autres policiers de la Sûreté du Québec, se rendait à la demeure de Albert Beaulieu, à Trois-Pistoles, province de Québec, pour lui remettre une sommation et ce dernier blessa mortellement le Caporal Chenard en tirant un coup de fusil.

Le 21 novembre 1964, l'accusé [REDACTED] a subi un procès pour meurtre, devant la Cour du Banc de la Reine, à Rivière du Loup et les jurés, après avoir entendu les témoignages, rendirent un verdict de non-culpabilité à cause d'aliénation mentale au moment du meurtre.

L'accusé [REDACTED] était âgé de 48 ans.

2o 1967 - Acton Vale - [REDACTED]

Dans la nuit du 28 au 29 juin 1967, Donald Martin, chef de la police municipale, a répondu à un appel d'assistance de la part d'un de ses policiers, pour intercepter Ghislain Simard qui avait conduit son véhicule d'une manière dangereuse dans les rues de la municipalité.

s.19(1)

2 / ...

Alors qu'il tentait d'intercepter le véhicule, il y eut échange de coups de feu et le policier Martin et Ghislain Simard se sont blessés mortellement.

A l'enquête du Coroner, un verdict a été rendu à l'effet que si Ghislain Simard était vivant, il serait tenu criminellement responsable de la mort du policier Martin.

L'accusé était âgé de [REDACTED] ans.

30 1968 - Greenfield Park - Prov. de Québec
Sergent-détective Charles JEARY

Le 5 janvier 1968, le Sergent-détective Charles Jeary, policier municipal de Greenfield Park, était à la succursale de la banque de Montréal, exerçant une surveillance à cet endroit, alors que quatre individus entraient à la banque pour commettre un vol à main armée.

Le policier Jeary s'identifia et il y eut un échange de coups de feu, un voleur fut blessé ainsi que le policier qui mourut quelques jours plus tard des suites de cette blessure.

[REDACTED] a été condamné à la prison à vie le 14 avril 1969, pour le meurtre du policier Jeary.

48 1969 - Montréal - Caporal Robert DUMAS
Sûreté du Québec

Le 7 octobre 1969, le Caporal Robert Dumas, policier à la Sûreté du Québec, se rendait sur les lieux d'une manifestation, au 1380 de la rue Barré à Montréal, vu que les policiers municipaux avaient décidé d'abandonner le travail. Au cours de cette manifestation, des coups de feu furent tirés et le Caporal Dumas était atteint mortellement.

Il fut impossible de retracer l'auteur de ce meurtre.

Nous comptons que ces renseignements répondront à votre demande et veuillez agréer, monsieur le Solliciteur Général Adjoint, l'expression de mes meilleurs sentiments.



Maurice St-Pierre,
Directeur général

JJG/nv

000756

To be returned to the
Deputy Solicitor General
as soon as possible, please.

Attendre
résultat de l'étude
Quel est l'impact
principal

MS

000757

Mr. B. C. Hofley
Mr. J. H. Hollies

To see and file.

E.A.C.

MR. A. J. MacLEOD, Q.C.,

141-206

DEPUTY SOLICITOR GENERAL

Nov. 4, 1971

Capital Punishment

Confirming what I said at the Principal Advisers' Meeting on Wednesday, November 3, 1971, I had a talk about this matter with the Solicitor General on Tuesday last, and reminded him of the draft letter to the Honourable Mr. John Turner which I had sent to him shortly after July 29. N.H.Y

When I read to him the draft letter of July 29, the Minister said he did NOT agree with the draft Memo to Cabinet which had been attached largely because, as I understand it, there was an insufficient melding of it in the political context. He thought that, now that the studies by Mr. Grenier and others were coming to an end, we should incorporate the results thereof in a new Memo to Cabinet and that the whole Memo should be incorporated in a political context.

I reminded the Minister that we could draft a Memo with the latest data and that we could do our best with it to bring forth the latest data but that the input on all political considerations would have to come from his office.

Would you accordingly redraft the Memo in the manner you think best calculated to have the Memo put to Cabinet say by early December?

E. A. CÔTÉ

E. A. Côté

EAC/ROP

141-206

PA

Ottawa, Ontario.
K1A 0P8

November 1, 1971.

141-206 ✓
Your File: H.Q. 800-10-06

Dear Mr. Silk:

I thank you very much for your letters of October 26 and 29 last containing information concerning the deaths of peace officers in Ontario since 1964.

This information is exactly what we need and will be very helpful to us in up-dating the Department of Justice White Paper of 1965.

Yours sincerely,

A. J. MacLeod
for E. A. Cote,
Deputy Solicitor General.

The Commissioner,
Ontario Provincial Police,
125 Lake Shore Blvd. East,
TORONTO 2, Ontario.

AJM*EGM

Ottawa, Ontario.
K1A 0P8

November 1, 1971.

Dear Mr. Adamson:

I thank you very much for your letter of October 22 last containing information concerning the deaths of peace officers in Ontario since 1964.

This information is exactly what we need and will be very helpful to us in up-dating the Department of Justice White Paper of 1965.

Yours sincerely,

A. J. MacLeod
for E. A. Cote,
Deputy Solicitor General.

The Chief of Police,
Metropolitan Toronto Police,
590 Jarvis Street,
TORONTO 285, Ontario.

AJM*EGM

141-206
vol. 3.

Ottawa, Ontario
KIA OP8
le 29 octobre 1971

Cher monsieur St-Pierre,

Dans une lettre datée du 17 septembre dernier, je vous priais de me faire parvenir certains renseignements relativement à la mort de quatre policiers qui, entre 1964 et 1969, furent tués au Québec alors qu'ils étaient dans l'exercice de leurs fonctions. Je vous y demandais un bref résumé des circonstances qui ont entouré ces décès tragiques, dans le but de mettre à jour le Livre Blanc publié par le ministère de la justice au mois de juin 1965 et intitulé "La peine capitale, documentation sur son objet et sa valeur".

Je vous serais très reconnaissant de me faire savoir s'il vous sera possible de me fournir les renseignements en question.

Le Solliciteur général adjoint,

A. J. MacLeod

pour E.-A. Côté

Monsieur Maurice St-Pierre
Directeur de la Sûreté du Québec
1701, rue Parthenais
Montréal (Québec)

ms. Cote

E. A. SILK, O.C.
COMMISSIONER



REFER TO FILE
H.Q. 800-10-06

ONTARIO PROVINCIAL POLICE

Central Records & Communications Branch
Telephone: 365-4456

125 LAKE SHORE BLVD. EAST
TORONTO 2, ONTARIO

Nov 1 8 53 E.

FILE
COSSIER

141-206

October 29, 1971.

Mr E.A. Cote,
Deputy Solicitor General,
Ottawa, Ontario,
K1A 0P8.

DM
chry
DM
21-10

Dear Mr Cote:

This is to acknowledge your letter of October 28, 1971, and to advise that our reply went forward to you on October 26. I expect you will have received it by this time. The delay in replying was caused by the necessity to obtain certain information from other police jurisdictions. I hope that you will find the information to be satisfactory, but please let us know if any clarification is needed, or if you require any additional details.

Yours truly,

E.A. Moss, Staff Superintendent
Director, Central Records &
Communications Branch.

EAM/jw

141-206 Vol. 3 ✓

Ottawa, Ontario.
K1A 0P8

October 28, 1971.

Dear Mr. Silk:

By letter of September 16 last I wrote to you seeking information concerning the cases of eight police officers who were killed on duty in Ontario between 1964 and 1969. I requested a brief statement concerning the circumstances of these deaths for the purpose of bringing up to date the White Paper entitled "Capital Punishment - Material Relating to Its Purpose and Value" that was produced by the Department of Justice in June, 1965.

I should appreciate it very much if you would let me know whether it will be possible for you to let me have the information in question.

Yours very truly,

A. J. MacLeod

E. A. Coto,
Deputy Solicitor General.

The Commissioner,
Ontario Provincial Police,
125 Lakeshore Boulevard East,
TORONTO, Ontario.

AJMF:EGH

ERIK SILK, O.C.
COMMISSIONER



141-206
Mr. Cote
REFER TO FILE
H.Q. 800-10-06

ONTARIO PROVINCIAL POLICE

Central Records & Communications Branch
Telephone: 365-4456

125 LAKE SHORE BLVD. EAST
TORONTO 2, ONTARIO

October 26, 1971

SOL GENI

OCT 29 2 45 PM '71

Mr. E.A. Cote
Deputy Solicitor General
Ottawa, Ontario
K1A 0P8

FILE
DOSSIER

141-206

Mr. Cote
replied to 7/21/10/71

Dear Mr. Cote:

I have for acknowledgement your letter of September 16, 1971 requesting the assistance of this force in providing back-ground information concerning the deaths of peace officers as listed on page 2 of your letter.

The information is as follows:

1964 - Guelph - 1 Officer

The killing took place in the city of Guelph, Ontario on April 5, 1964. The victim, an off-duty constable of Guelph Police Department observed a Guelph P.D. vehicle chasing another automobile. He gave chase in his own private vehicle. Car being chased was intercepted and stopped. Victim reached in through open window on drivers side of car to remove keys. As he attempted to do so, driver of car quickly rolled up window and accelerated car dragging victim for one city block slamming him into the rear of another vehicle. Victim died later that day in hospital. Driver charged with manslaughter - charge reduced to Criminal Negligence causing Death and sentenced to a term of imprisonment for 7 years.

1965 - Sudbury - 1 Officer

The killing took place in Sudbury, Ontario on October 14, 1965. The victim, a police sergeant, Sudbury Police Department, accompanied by a constable, had proceeded to a Sudbury residence to take into custody a mental hospital probationer for return to mental hospital.

As victim knocked on door, a single shot was fired through the door penetrating the victim's heart. He died instantly. Accused used a .300 calibre Savage rifle. Following a tear gas attack on the residence, police entered residence but found accused had suicided by shooting himself with the same weapon.

1966 - Toronto - 1 Officer

See letter attached from Metropolitan Police

1967 - Toronto - 1 Officer

See letter attached from Metropolitan Police

1968 - Hamilton - 1 Officer

25
This killing took place in the city of Hamilton, Ontario on December 22, 1968. The victim was a police sergeant, Hamilton Police Department. Victim was on a special patrol in company with other officers and was in the process of checking a residence to question suspects in a number of Break and Enterings when he and one other officer was attacked by five men who came out of the house. During the scuffle the victim was shot twice with a .38 calibre revolver, through the left chest and the left armpit and was severely kicked about the head. Death was almost instantaneous. Five persons were arrested and charged with capital murder, Section 206 C.C. Dispositions were as follows:

- 1st accused - age 27 years - convicted of Manslaughter, Sec. 207 - 14 years
- 2nd accused - age 28 years - convicted of Manslaughter, Sec. 207 - 14 years.
- 3rd accused - age 26 years - convicted of Manslaughter - Sec. 207 - 8 years.
- 4th accused - age 31 years - convicted of Manslaughter - Sec. 207 - 7 years.
- 5th accused - age 31 years - convicted of Assault Police, Sec. 232(2)a - 6 months def., 6 months indef.

1968 - Toronto - 2 officers

See letter attached from Metropolitan Toronto Police

1969 - Sandwich West - 1 officer

28 This killing took place in the town of Sandwich West, Ontario on August 23, 1969. The victim, a police constable, Sandwich West Police Department, was responding to a caller a domestic complaint. As he approached residence of accused, he was shot and killed. There were three shots fired into victim. Two other Sandwich West Police Constables who went to assistance were also shot by accused and wounded. One member lost sight of one eye and the second suffered the loss of a lung. The accused, age 24 was arrested and charged with Capital Murder. ~~Sec. 206-1 CC.~~ He was found guilty and sentenced to hang, ~~on January 20, 1970.~~ - ~~Sentence commuted to life imprisonment, on February 5, 1971.~~

1969 - Toronto - 1 officer

See letter attached from Metropolitan Toronto Police

You will note in letter from Metropolitan Toronto Police that they have no information regarding the killing of police officers in the Metropolitan area during the years, 1966, 1967 or 1968, as indicated in your list. This force, however, suffered casualties during these years but at locations other than that indicated by you. Perhaps it is these occurrences you refer to. In the event that this is so, the following additional information is provided.

1966 - Ottawa - 1 officer

28 16 C Supp The killing took place in the suburbs of the city of Ottawa On April 4, 1966. The victim, an Ontario Provincial Police constable, age 30 had escorted a mentally disturbed person for committal to a local Sanitorium when the patient broke free and ran out into the grounds of the institution. The victim gave chase, caught up to the patient and a scuffle ensued during which time the patient was able to take the police officers .38 calibre colt revolver and with it shot the victim several times. The accused, age 26, was arrested and subsequently charged with Capital Murder. A jury brought in a verdict of not guilty by reason of insanity and accused was ordered confined to the Ontario Hospital at Penetanguishene, Ontario.

1967 - Monkton, Perth County, Elma Twp., Ontario - 1 officer

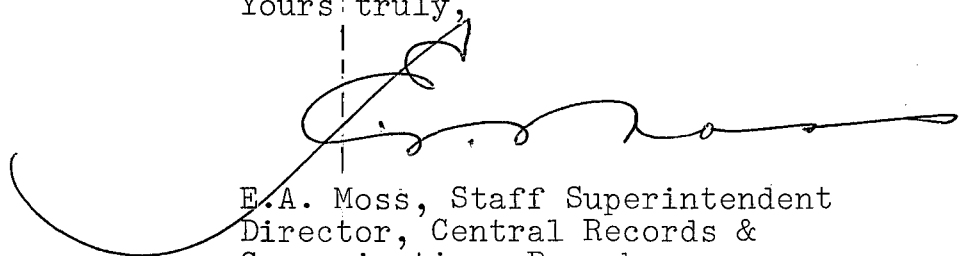
21 The killing took place in the rural area of Monkton, Ontario on August 19, 1967. The victim, an Ontario Provincial Police constable, age 38 had patrolled a farm in the area to investigate a family quarrel. Accompanying him was a local

Justice of the Peace. As the victim pulled to a stop in the farm yard, he was fired upon from within the farmhouse, one bullet entering his head, killing him instantly. The Justice of the Peace, age 78 in an effort to escape from the police vehicle was shot through the left shoulder, the resultant internal bleeding and shock brought on death. Re-inforcements arrived at the scene, and following a tear gas attack on the house, it was entered by officers, where they found the accused age 42, dead, having committed suicide by shooting himself. A Mauser 8m.m. rifle was used in this double murder and suicide.

1968 - Minden, Ontario - 2 officers

24
These killings took place in Minden, Ontario on December 11, 1968. The two victims, both members of the Ontario Provincial Police, one a Sergeant, age 38, and the other a Corporal, age 43, were part of a team of officers attempted to arrest the accused, age 35 who earlier had made threats to kill members of his own family. Both victims walked up to place of residence of accused in an effort to reason with him. He met them in the door-way of his home. Accused opened fire using a 44.40 calibre Winchester rifle on the victims, shooting the Sergeant twice and the Corporal once, both died instantly. Accused was over-powered by other officers and was later charged with two counts of Capital Murder. At his trial he was found not guilty by reason of insanity and committed to the Ontario Hospital at Penetanguishene.

Yours truly,



E.A. Moss, Staff Superintendent
Director, Central Records &
Communications Branch

/cvm

encl.

Murder appeal denied

By The Canadian Press

An appeal by Thomas Shand of Winnipeg against his conviction of capital murder has been dismissed in an 8-to-1 judgment by the Supreme Court of Canada.

The majority agreed that Shand, 30, was rightfully convicted by a judge and jury of the death by stabbing June 27, 1970 of Winnipeg city detective Robert Houston.

Mr. Justice Bora Laskin dissented, saying he would have ordered a new trial on ground of error in the charge.

The detective was staked out at the rear of a building when he engaged in a fight with Shand.

Shand argued at his trial he did not know the victim was a detective and the charge should have been reduced to non-capital murder.

Although Shand has been sentenced to be hanged, no date was set for his execution pending his appeal to the Supreme Court.



ACTION REQUEST - FICHE DE SERVICE

GOVERNMENT OF CANADA

GOUVERNEMENT DU CANADA

FILE NO.—DOSSIER N°

DATE

25.10.71

TO—À

Mr. Lagarias

FROM—DE

A. J. MacLeod

☐PLEASE CALL
PRIÈRE D'APPELER

TEL. NO.—N° TEL.

EXTENSION—POSTE

☐WANTS TO SEE YOU
DÉSIRE VOUS VOIR

DATE

TIME—HEURE

☐WILL CALL AGAIN
DOIT RAPPELER☐ACTION
DONNER SUITE☐APPROVAL
APPROBATION☐COMMENTS
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Please P. A. on Capital
Punishment file.

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THE GLOBE AND MAIL
October 25, 1971

141-206

Busiest year for homicide detectives

Murder in Metro: it's probably a family affair

By DONALD GRANT

If someone is going to kill you, he or she will probably be a close relative.

And psychiatrists are amazed there aren't more slayings, particularly within the family circle.

They're backed by world statistics on crime which show between 60 and 80 per cent of all murders occur among the family.

In this record-breaking year for killings in Metro Toronto, the family or domestic slayings, mixed with drinking, account for more than half the 29 murders.

According to Metro Police's busiest homicide team—Det. Sgt. James Majury and his partner, Det. Walter Tyrrell—there'll be at least 30 murders this year, four more than the last previous high of 26 in 1968.

Why?

To Dr. Elliott Barker of the Ontario Mental Health Centre in Penetang the answer is simple:

"There's a lot of murderous impulses in people and I'm surprised there aren't more murders.

"There's a tremendous amount of violence and suppression of violence in people.

"These forces are at work in a large number of people, but controlled in some way. But the forces are there in great magnitude."

This violence, Dr. Barker believes, has its beginning in childhood because "there's a lot of violence today in the rearing of children."

A Clarke Institute of Psychiatry doctor wasn't amazed at the number of domestic-oriented killings in Metro Toronto. In fact, he thought they were low.

"Murders within the family have always been predominant," he said, noting that in professional crime murder is the exception rather than the rule.

The Clarke Institute psychiatrist pointed out the "family is the greatest source of expectation, but also the greatest source of anger, hate and disappointment.

"One is continuously exposed at home with the family. It's immensely more over the year than at school or at work and increases the chances of hurting, disappointing, angering and hating each other."

He pointed out that the frequency of a husband killing his wife is much higher than the wife slaying the husband.

The psychiatrist said the husband, usually filled with undue suspicions and jealousies, generally plans a murder-suicide, but is interrupted by the first shock of the killing, like the sound of the first shot.

Less common in the male, he said, were murders of depression, where the family, the father believes, is doomed to poor existence even though he may be a good provider.

Wives, he said, kill only after long periods of provocation, and during periods of depression after childbirth, or during the change-of-life.

"Murder is much more male than female," he said. "Women often do not intend to kill."

Teen-age murders, like a son killing his mother, have their greatest frequency between 14 and 17 years old or much later when the sons are in their forties.

"These murders are usually the result of intolerable situations and they just can't see any alternative," he said.

Daughters killing either parent are very infrequent, he said, because they shy away from crimes of violence.

The Majury-Tyrrell team has investigated domestic murders this year which result from petty arguments like a children's argument developing into an adult fight.

"These domestic arguments are often nothing for adults to argue about," Det.-Sgt. Majury said. "If they could only sit down and talk sensibly with someone, there'd be fewer murders."

They've noted that most of the murders this year involve "people from the lower income bracket and in nine of 10 cases drinking.

"Perhaps these people without money feel more restricted, gradually build up their frustrations and finally something has to blow," Det.-Sgt. Majury said.

"It seems, too, that the less



Det. Sgt. James Majury

money people have, the more they drink, especially beer and wine.

"People in the suburbs lead a more affluent life and can escape the city on holidays. Their frustrations don't build up."

Both Det.-Sgt. Majury and Det. Tyrrell, who have investigated 13 of the 29 killings, blame slackening laws and slackening justice for the in-

crease this year.

"It's just our way of life now. People want to do their own thing. People just don't care about the punishment any more," Det. Tyrrell said.

"It's not a disrespect for the law, but they're so concerned with the rights of the individual, they've lost sight of all realism."

They also feel that "jurors often take the easy way out and they'll go for a manslaughter conviction."

"We agree that the courts should be fair to the accused. But who thinks about the deceased?" Det. Tyrrell asked.

Det.-Sgt. Majury thinks the changes in the laws on capital punishment are "part of the lessening of respect for the law."

"Fear is a naughty word," he said. "What is respect if it isn't a form of fear? Respectability grows out of fear and authority."

"There are no guidelines now. They've simply faded away and the majority of the public agrees."

But both detectives believe Toronto is the safest city in North America and note it's still "pretty safe to walk the streets here."

"Look at the record of similar cities and Toronto is the best," said Det.-Sgt. Majury, pointing out that Detroit will have more than 500 murders this year.

He believes that the respect for the police force and "our old British background with the attitude for law and order" will continue to keep Toronto safe, never approaching the high level of crime in U.S. cities.

The murder victims

The following is a list of people slain so far this year in the Metro area:

January—Mrs. Doris May Hardy, 43, of Kennedy Road, shot. Patrick Jordan, 51, of Prospect Street, kicked to death.

February—Mrs. Marilyn Meloche, 28, of Lemonwood Drive, shot.

March—Arthur Michael Maher, 54, of Sherbourne Street, slashed. Mrs. Shirley Ann Byron, 32, of Finch Avenue West, shot. Milton Leroy Ritter, 70, of Isabella Street, beaten. Robert James Gehrken, 4 months, of Dovercourt Road, smothered.

May—Alice Maengen Roth, 64, of Briar Hill Road, stabbed. Charles Bradley Fullerton, 28, of Hewitt Avenue, shot. Tracy Ann Brown, 2, of Kingston Road, kicked. Gary Vincent Dineen, 25, of Queen Street East, stabbed.

June—Archibald McDougall, 61, of Mason Boulevard, stabbed. Donald Gibbons, 33, of Queen Street East, stabbed.

July—Jose Berenguer, 36, of Manchester Street, shot.

Theresa Jamieson, 37, of Ellis Avenue, beaten.

August—Richard Roszczyk, 45, of no fixed address, beaten. Guy Bordeleau, 24, of no fixed address, beaten. Michael O'Leary, 49, of Sherbourne Street, beaten. Howard Robinson Ellis, 45, of Cawthra Avenue, beaten. Brigitte Jahn, 17, of Langley Avenue, shot. Kazimir Szary, 43, of Westminster Avenue, stabbed.

September—Joseph McKitterick, 58, of 25th Street, Long Branch, beaten. William Potter, 63, of Royal York Road, stabbed. Vincenzo Pasqualino, 33, of Rogers Road, shot.

October—Callum John Campbell, 17 months, of Greenholme Circuit, asphyxiated. Edward Borden, 27, of Victoria Park Avenue, shot. Mrs. Alice St. Cyr, 48, of Goodyear Crescent, shot. Kevin Kwan, 4 months, Huron Street, burns.

Unidentified woman Kennedy Road—slashed.

ADDRESS ALL CORRESPONDENCE TO THE CHIEF OF POLICE

Mr. Cote

HAROLD ADAMSON

CHIEF OF POLICE



PLEASE REPLY ATTENTION OF

FILE NO.

METROPOLITAN TORONTO POLICE

590 JARVIS STREET

TORONTO 285, ONTARIO, CANADA

TELEPHONE 362-1711

October 22, 1971. *DM SM SOL GEN**OCT 28 2 45 PM**141-206*
DOSSIER*Mr. Cote*
Chgd. to 7 2/10/71

Mr. E.A. Cote,
Deputy Solicitor General,
OTTAWA, Ontario,
KIA OP8

Dear Sir:

I am directed by the Chief of Police to forward the following information to you regarding the killing of Police Officers in the Metropolitan area since the year 1964.

October 5, 1969

P.C. 1967

years of age

The killing took place in Toronto, Ontario, on October 5th, 1969 and the victim was a Police Constable. Victim was on special patrol in a police vehicle when it is believed he stopped a person for investigation.

29 The Police Officers dead body was found several hours later, shot three times with his own weapon. The accused was 22 years of age. He was convicted of Non-capital murder and sentenced to life imprisonment.

We have no information regarding the killing of Police Officers in the Metropolitan area during the years, 1966, 1967 or 1968, as indicated in your letter.

Yours truly,

A.C. Dyce
A.C. Dyce, Inspector,
Director,
Records and Inquiry Bureau.

ACD/sm

147-206
File *EAC*
Classer

Ottawa, Ontario.
K1A 0P8

October 20, 1971.

Dear Mrs. O'Neill:

My colleague, the Honourable John Turner, Minister of Justice, has passed to me for reply your letter to him of October 8 last on the subject of capital punishment.

The question of the way in which murder should be defined and the extent to which it should be capital or non-capital is one that has been before Parliament twice in the past ten years, as a matter of official government business. On another occasion it was before the House of Commons for extensive debate in relation to a bill for abolition of the death penalty proposed by a number of private members. In the case of the two government bills, the subject was recognized as being extremely controversial and also as being a very subjective issue that affects the conscience of every man and woman. Accordingly, it was decided that the matter should be left to a free vote rather than be dealt with by the ordinary legislative procedure that would be likely to bring about voting along Party lines.

The current law on the subject has therefore been reached by the free will of each individual Member of Parliament. The current state of the law (limiting the death penalty to the convicted murderers of peace officers or prison officers) will only exist until December 29, 1972. The matter will, therefore, undoubtedly come up for parliamentary consideration before the end of 1972 and, at that time, Parliament will again be asked to make a decision.

Yours sincerely,

Original Signed by

JEAN-PIERRE GOYER

Jean-Pierre Goyer.

Mrs. Angela O'Neill,
330 Dixon Road (Apt. 2606),
WESTON, Ontario.



VILLE DE MONTRÉAL



CANADA

CITY OF MONTRÉAL

SERVICE DE LA POLICE
POLICE DEPARTMENT

CABINET DU DIRECTEUR
OFFICE OF THE DIRECTOR

DM SM
SOL GEN

OCT 7 9 05 AM '71

FILE 141-206
DOSSIER

ANNEXE DE L'HÔTEL DE VILLE
CITY HALL ANNEX,

le 1er octobre 1971

Votre référence: KIA OP8

La nôtre: 02.78-17092/71

Monsieur E.A. Côté
Solliciteur général adjoint
Ministère de la Justice
Ottawa, Ontario

Monsieur le Solliciteur général adjoint,

En réponse à votre demande du 17 septembre dernier, vous trouverez ci-après les renseignements désirés sur le meurtre de policiers de la Ville de Montréal, survenus respectivement en 1968 et 1969.

- To see please*
R.M.J. La Brosse
OCT 7 1971
- 1) L'assassinat se produisit à Montréal, Québec, le 8 mai 1968, et la victime était détective au Service de la Police de Montréal. La victime se présenta dans une maison de rapport pour opérer l'arrestation d'un évadé de prison. En ouvrant la porte de l'appartement, la victime fut atteinte en pleine poitrine par une balle d'un Luger, 9 mm., tirée par l'évadé, caché derrière un meuble et dans l'obscurité. Ce dernier tourna par la suite son arme contre lui et se suicida. Cet évadé était âgé de 23 ans.
 - 2) L'assassinat se produisit à Montréal, Québec, le 12 mai 1969, et la victime était constable au Service de la Police de Montréal. L'accusé venait de s'évader du pénitencier et avait été pris en chasse par plusieurs voitures de police. Rendu à une intersection où on lui avait dressé une barricade, il frappa l'auto des policiers, puis heurta le policier debout près du véhicule et l'écrasa avec les roues de son camion volé. L'accusé plaida coupable à l'accusation d'homicide involontaire et fut condamné à 15 ans de prison. L'accusé avait 30 ans.

Veuillez agréer, cher monsieur Côté, l'expression de mes meilleurs sentiments.

Le directeur

*Notes
10.10.71*

J. Saulnier
Jacques Saulnier

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLLICITEUR GÉNÉRAL

MEMORANDUM

Mr. Hollies

①

27/ix/71

When you have seen,
presumably Mr. MacLeod & Mr.
Gauthier ought to see.

Exley

② Mr. MacLeod

As per minute ①. I've
kept a copy.

Hollies

27 Sep 71

000775

M. GRENIER

PO 28.9.71

THE COMMISSIONER



LE COMMISSAIRE

REF. NO. G.C. 517-9

ROYAL CANADIAN MOUNTED POLICE
GENDARMERIE ROYALE DU CANADA

DM SM
SOL GEN
OTTAWA 7, CANADA

September 24, 1971

FILE
DOSSIER

Mr. E.A. Cote,
Deputy Solicitor General,
Room 323,
Sir Wilfrid Laurier Building,
340 Laurier Avenue,
Ottawa, Ontario.
K1A 0P8

Dear Mr. Cote:

I refer to your letter of September 16th requesting the updating of the list of police officers killed on duty between 1963 and 1970, together with the brief circumstances of each offence. The cases which come within the jurisdiction of this Force, are set out hereunder in the suggested format and in date order:

Case No.
December 17, 1964

1 victim

Supp. 13

This offence took place in Whitbourne, Newfoundland, and the victim was a Constable in the R.C.M.P. The accused and three accomplices escaped from St. John's Penitentiary and were located by two police officers at 8.20 AM on December 17, 1964. While endeavouring to arrest the four escapees, they attacked and disarmed one constable and used the police revolver to shoot the constable. The accused was 18 years old. He was convicted of capital murder and the sentence was subsequently commuted to life imprisonment.

Case No.
April 10, 1965

1 victim

Supp. 4

This offence occurred at Kelowna, British Columbia and the victim was a constable in the R.C.M.P. Two police officers attended at the cabin of the accused to investigate a report that he was holding a girl against her wishes. Upon approaching the cabin one constable was shot and killed with a .22 calibre rifle. The accused, age 59 years, committed suicide.

.....2

- 2 -

Case No.
October 26, 1966

1 victim

Supp 17

This offence took place at Willow Bunch, Saskatchewan. The victim was the Willow Bunch Town Constable. The constable answered a domestic complaint and was met at the door of the accused's residence by the accused, who was armed with a .22 calibre rifle. The constable retreated, however, the accused followed and shot him three times. The accused, age 28, was acquitted of capital murder by reason of insanity.

Case No.
November 22, 1966

1 victim

R

This offence occurred in the Stony Plain District of Alberta. The victim was a constable in the R.C.M.P. The accused was involved in a fight in a cafe after which he left the cafe, acquired a .303 calibre rifle and returned to the cafe. In the meantime, the police constable had arrived at the cafe to investigate the reported disturbance. The accused, upon entering the cafe, shot and killed the constable, wounded one of the men he had been fighting with, then shot and wounded one of the cafe patrons. The charge of capital murder against the accused was reduced to non-capital murder and he was sentenced to life imprisonment. He was 22 years old.

Case No.
June 23, 1967

1 victim

19

This offence occurred in Grande Prairie, Alberta, and the victim was a corporal in the R.C.M.P. The accused called the police office stating that he had killed his wife. Two policemen went to the address given and upon approaching the residence one of the policemen was shot from ambush with a .22 calibre rifle. The accused had strangled his common law wife prior to the arrival of the police. The accused was convicted of capital murder and the sentence was subsequently commuted to life imprisonment. He was 30 years old at the time of the offence.

.....3

- 3 -

Case No.
October 9, 1970

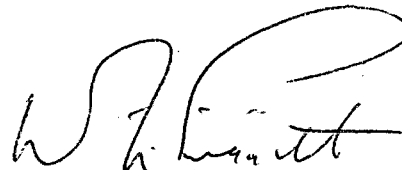
2 victims

32

This offence occurred in the MacDowall District of Saskatchewan. The victims were a sergeant and a constable in the R.C.M.P. The policemen went to the home of the accused to investigate a complaint of unlawfully discharging a firearm. The constable was shot as he stood in the doorway to the residence of the accused and the sergeant was shot a short distance from the dwelling. A .303 calibre rifle was used. The accused was 40 years of age and he committed suicide before he could be taken into custody.

The investigation into the death of the Willow Bunch Town Constable on October 26, 1966, was handled by this Force and has been included in the foregoing list for this reason.

Yours very truly,



W.L. Higgitt,
Commissioner.

YOUR FILE

OUR FILE



N. M. STEWART
CHIEF CONSTABLE



DEPARTMENT OF POLICE

P.O. BOX 1680
WINNIPEG 1, CANADA

DM SM
SOL GEN

SEP 27 1 26 PM

141-206

September 23rd, 1971

DM

Mr. E.A. Cote,
Deputy Solicitor General,
Government of Canada,
Ottawa, Ontario.
K1A 0P8

Dear Sir:

Re: Capital Punishment

I have for acknowledgement your letter dated
September 16th, 1971.

The brief outline on the death of a member of
our Department is outlined as follows:-

"June 27th, 1970,
2:10 a.m.

Two Detectives, from this Department, were on stake-out duty in search of a suspect responsible for several violent sexual offences. When attempting to apprehend a male suspect believed to be responsible for the offences, one of the Detectives was stabbed twice in the chest with a knife, one of the wounds penetrating the heart and being fatal. His partner was also severely stabbed in the chest, but survived the wounds. The suspect seized a revolver from one of the victims and fired two shots at the Detectives lying on the ground, but missed. The suspect, aged 35 years, was subsequently arrested and convicted on a charge of Capital Murder and sentenced to be hanged. However, his appeal is presently before the Supreme Court of Canada."

SEP 27 1971

R.M.J. La Brosse

- 2 -

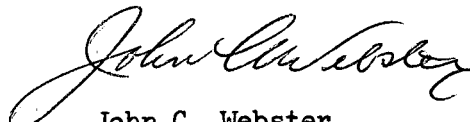
Mr. E.A. Cote,
Deputy Solicitor General,
Government of Canada,
Ottawa, Ontario.

September 23rd, 1971.

As you are aware, police officers throughout Canada are quite concerned about the penalties imposed by the Courts and Cabinet on persons responsible for slaying police officers. A number of suggestions have been forwarded by different organizations in an effort to provide a means of punishment, which will act as a deterrent, but the only solution appears to be to provide detention for a minimum of twenty years imprisonment or a maximum of natural life confinement.

I doubt very much if capital punishment will ever be accepted by our society and thoroughly realize the problem that is faced in resolving the matter.

Yours very truly,

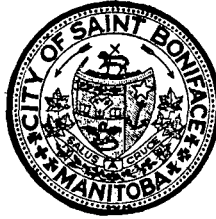


John C. Webster,
Acting Chief Constable.

JCW:rb



F. A. MULLER
CHIEF OF POLICE
TELEPHONE 947-1411



ST. BONIFACE POLICE DEPARTMENT

CIVIC PLAZA, PROVENCHER AVE.

141-206
OFFICE OF THE CHIEF OF POLICE
BUREAU DU CHEF DE POLICE

ADDRESS ALL COMMUNICATIONS TO THE
CHIEF OF POLICE

P.O. Box 85,

St. Boniface, Man. September 20th, 1971.

①
E. A. Cote, Esq.,
Deputy Solicitor General,
Ottawa, Ontario,
KIA OP8,

Dear Sir:

In reply to your letter of September 16th, the
following is a resumé of the fatal shooting of Cst. Len Shakespeare
on July 18, 1969:

②
Mr MacLeod
Len, please
R.M.J. La Brosse
SEP 22 1971
July 18, 1969

1 victim

27
The killing took place in St. Boniface, Manitoba,
on July 18, 1969, and the victim was a police
constable. Victim was responding to a burglar
alarm at a local store. When he stepped out of
the cruiser car he was shot by one of the
hold-up men. Four men were charged with capital
murder. Three men were convicted of non-capital
murder and sentenced to life imprisonment. The
fourth man was convicted of capital murder but
his sentence was commuted to life imprisonment.

I would refer you to the motion passed at the
Canadian Association of Chiefs of Police convention held in
Calgary, Aug 31 - Sept 3, dealing with Capital punishment.

Yours truly,


F.A. Muller,
Chief Constable.

FAM/es


Ottawa, Ontario.
K1A 0P8

September 22, 1971.

Dear Chief Muller:

I thank you very much for your promptness and courtesy in replying to my letter of September 20 last concerning the fatal shooting of Constable Len Shakespeare in 1969.

I have taken note of the motion recently passed by the Canadian Association of Chiefs of Police in connection with capital punishment.

Yours sincerely,

A. J. MacLean

for E. A. Cote,
Deputy Solicitor General.

The Chief of Police,
St. Boniface Police Department,
P. O. BOX 85,
ST. BONIFACE, Manitoba.

AJM:EGM

141-206

Ottawa, Ontario
KIA OP8
le 17 septembre 1971

Cher monsieur St-Pierre,

Comme vous le savez sans doute, le Parlement canadien devra se pencher sur le problème de la peine de mort à l'égard du meurtre et ce, d'ici au 29 décembre 1972, date à laquelle prendra fin la loi de 1967 qui a aboli la peine capitale au Canada pour une période d'essai de cinq ans, sauf pour le meurtre de policiers ou de membres de l'administration des prisons agissant dans l'exercice de leurs fonctions.

Le ministère du Solliciteur général tente présentement de mettre à jour le livre blanc publié en juin 1965 par le ministère de la Justice et intitulé La peine capitale, documentation sur son objet et sa valeur.

Le tableau G, qu'on trouve à la page 111 de ce document, énumère tous les incidents signalés par les forces de l'ordre entre 1961 et 1963, au cours desquels des agents de police ont été tués dans l'exercice de leurs fonctions. Cette liste donne une brève description des circonstances qui ont entouré la commission du crime et indique le dénouement de l'affaire, comme en fait foi l'exemple que voici:

"Cas n° 10
12 février 1962
1 victime

L'assassinat se produisit à Toronto (Ontario), le 12 février 1962, et la victime était agent de police. En cours de patrouille dans une voiture de police, la victime arrêta l'accusé, également dans une voiture automobile, qui était recherché pour interrogatoire au sujet d'un meurtre antérieur. L'accusé tira trois coups sur la victime. L'accusé avait 28 ans. Il fut déclaré coupable de meurtre qualifié et exécuté."

D'après les chiffres publiés par Statistiques-Canada, 23 policiers sont morts alors qu'ils étaient en service, victimes de la perpétration d'un acte criminel. Ce nombre exclut les décès survenus accidentellement.

M. le Directeur général
Sûreté du Québec
1701, rue Parthenais
Montréal (Québec)

... /2

- 2 -

Je me permets de solliciter votre concours en vous demandant de nous faire parvenir des renseignements analogues à ceux que donne l'exemple précédant, au sujet de la mort de certains agents de la paix, qu'ils aient appartenu ou non à la force policière dont vous êtes le directeur. Les meurtres qui nous intéressent sont les suivants:

1964 - Québec - 1 policier
1967 - Greenfield Park - 1 policier
1968 - Acton Vale - 1 policier
1969 - Montréal - 1 policier

Je demande à la Gendarmerie royale du Canada et à la Police provinciale de l'Ontario, de même qu'aux sûretés municipales de Montréal, Winnipeg et St-Boniface, de nous fournir des renseignements semblables au sujet d'incidents survenus dans le territoire soumis à leur juridiction.

Veuillez agréer, cher monsieur St-Pierre, l'expression de mes sentiments distingués.

A. J. MacLeod

pour E.A. Côté
Solliciteur général adjoint

PR

141-206

Ottawa, Ontario
KIA OP8
le 17 septembre 1971

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M. le Directeur général
Sûreté municipale de Montréal
750, rue Bonsecours
Montréal (Québec)

... /2

- 2 -

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1969 - 1 policier

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Veuillez agréer, cher monsieur Saulnier, l'expression de mes sentiments distingués.

A. J. MacLeod

pour E.A. Côté
Solliciteur général adjoint

141-206

Ottawa, Ontario.
KLA OP8

September 16, 1971.

Dear Mr. Silk:

The question of capital punishment for the offence of murder in Canada will presumably come up for consideration by Parliament before the expiration of the present moratorium (except for peace officers and prison officers) on December 29, 1972.

This Department is attempting to bring up to date the White Paper entitled "Capital Punishment - Material Relating to its Purpose and Value" that was produced by the Department of Justice in June, 1965.

In that publication, in Table G (p.106), there is a list of reported cases of police officers killed on duty between 1961 and 1963. The list contains a brief discussion of the circumstances of the offence and subsequent adjudication, as the following example will demonstrate:

"Case No. 10 February 12, 1962 1 victim	The killing took place in Toronto, Ontario on February 12, 1962 and the victim was a police constable. Victim was on patrol in a police vehicle when he stopped accused, also in a motor vehicle, who was wanted for questioning concerning a previous shooting. Accused shot victim three times. Accused was 28 years old. He was convicted of capital murder and executed."
---	---

Statistics Canada reports that between 1963 and 1970 some twenty-three police officers have been killed, while on duty, by criminal action. This number does not include those who were killed by accident.

The Commissioner,
Ontario Provincial Police,
125 Lakeshore Boulevard East,
TORONTO, Ontario.

..2

-2-

I should appreciate it very much if you could assist us by giving us brief information, along the lines of the example set out above, concerning the deaths of peace officers (whether or not members of your Force) in the following cases:

1964 - Guelph - 1 officer
1965 - Sudbury - 1 officer
1966 - Toronto - 1 officer
1967 - Toronto - 1 officer
1968 - Hamilton - 1 officer
1968 - Toronto - 2 officers
1969 - Sandwich West - 1 officer
1969 - Toronto - 1 officer

I am asking the Royal Canadian Mounted Police and the Quebec Provincial Police, as well as the City Police of Montreal, St. Boniface and Winnipeg, to let us have similar information concerning cases in their jurisdiction.

Yours very truly,

A. J. MacLennan

for E. A. Cote,
Deputy Solicitor General.

AJM*EGM

Ottawa, Ontario.
KIA OP8

September 16, 1971.

Dear Sir:

The question of capital punishment for the offence of murder in Canada will presumably come up for consideration by Parliament before the expiration of the present moratorium (except for peace officers and prison officers) on December 29, 1972.

This Department is attempting to bring up to date the White Paper entitled "Capital Punishment - Material Relating to its Purpose and Value" that was produced by the Department of Justice in June, 1965.

In that publication, in Table G (p.106), there is a list of reported cases of police officers killed on duty between 1961 and 1963. The list contains a brief discussion of the circumstances of the offence and subsequent adjudication, as the following example will demonstrate:

"Case No. 10
February 12, 1962

1 victim

The killing took place in Toronto, Ontario on February 1962 and the victim was a police constable. Victim was on patrol in a police vehicle when he stopped accused, also in a motor vehicle, who was wanted for questioning concerning a previous shooting. Accused shot victim three times. Accused was 28 years old. He was convicted of capital murder and executed."

Statistics Canada reports that between 1963 and 1970 some twenty-three police officers have been killed, while on duty, by criminal action. This number does not include those who were killed by accident.

The Chief of Police,
ST. BONIFACE,
Manitoba.

...2

-2-

I should appreciate it very much if you could assist us by giving us brief information, along the lines of the example set out above, concerning the death of one peace officer (whether or not a member of your Force) in 1969 in St. Boniface.

I am asking the Royal Canadian Mounted Police, the Quebec Provincial Police and the Ontario Provincial Police, as well as the City Police of Montreal and Winnipeg, to let us have similar information concerning cases in their jurisdiction.

Yours very truly,

A. J. MacLeod

for E. A. Cote,
Deputy Solicitor General.

AJL:EGH

141-206

Ottawa, Ontario.
KIA OP8

September 16, 1971.

Dear Sir:

The question of capital punishment for the offence of murder in Canada will presumably come up for consideration by Parliament before the expiration of the present moratorium (except for peace officers and prison officers) on December 29, 1972.

This Department is attempting to bring up to date the White Paper entitled "Capital Punishment - Material Relating to its Purpose and Value" that was produced by the Department of Justice in June, 1965.

In that publication, in Table G (p.106), there is a list of reported cases of police officers killed on duty between 1961 and 1963. The list contains a brief discussion of the circumstances of the offence and subsequent adjudication, as the following example will demonstrate:

"Case No. 10
February 12, 1962
1 victim

The killing took place in Toronto, Ontario on February 1962 and the victim was a police constable. Victim was on patrol in a police vehicle when he stopped accused, also in a motor vehicle, who was wanted for questioning concerning a previous shooting. Accused shot victim three times. Accused was 28 years old. He was convicted of capital murder and executed."

Statistics Canada reports that between 1963 and 1970 some twenty-three police officers have been killed, while on duty, by criminal action. This number does not include those who were killed by accident.

The Chief of Police,
WINNIPEG, Manitoba.

..2

-2-

I should appreciate it very much if you could assist us by giving us brief information, along the lines of the example set out above, concerning the death of one peace officer (whether or not a member of your Force) in 1970 in Winnipeg.

I am asking the Royal Canadian Mounted Police, the Quebec Provincial Police and the Ontario Provincial Police, as well as the City Police of Montreal and St. Boniface, to let us have similar information concerning cases in their jurisdiction.

Yours very truly,

A. J. MacLeod

fr E. A. Cote,
Deputy Solicitor General.

4-5-73

141-206

Ottawa, Ontario.
KIA OF8

September 16, 1971.

Dear Mr. Higgitt:

The question of capital punishment for the offence of murder in Canada will presumably come up for consideration by Parliament before the expiration of the present moratorium (except for peace officers and prison officers) on December 29, 1972.

This Department is attempting to bring up to date the White Paper entitled "Capital Punishment - Material Relating to its Purpose and Value" that was produced by the Department of Justice in June, 1965.

In that publication, in Table G (p.106), there is a list of reported cases of police officers killed on duty between 1961 and 1963. The list contains a brief discussion of the circumstances of the offence and subsequent adjudication, as the following example will demonstrate:

"Case No. 10
February 12, 1962

1 victim

The killing took place in Toronto, Ontario on February 12, 1962 and the victim was a police constable. Victim was on patrol in a police vehicle when he stopped accused, also in a motor vehicle, who was wanted for questioning concerning a previous shooting. Accused shot victim three times. Accused was 28 years old. He was convicted of capital murder and executed."

Statistics Canada reports that between 1963 and 1970 some twenty-three police officers have been killed, while on duty, by criminal action. This number does not include those who were killed by accident.

The Commissioner,
Royal Canadian Mounted Police,
1200 Alta Vista Drive,
Ottawa, Ontario.
KIA OR2

-2-

I should appreciate it very much if you could assist us by giving us brief information, along the lines of the example set out above, concerning the deaths of peace officers (whether or not members of your Force) in the following cases:

- 1964 - Newfoundland - 1 officer
- 1965 - Kelowna, B.C. - 1 officer
- 1966 - Saskatchewan - 1 officer
- 1967 - Alberta - 1 officer
- 1970 - Saskatchewan - 2 officers

I am asking the Quebec Provincial Police and the Ontario Provincial Police, as well as the City Police of Montreal, St. Boniface and Winnipeg, to let us have similar information concerning cases in their jurisdiction.

Yours very truly,

A. J. MacLeod

for E. A. Cote,
Deputy Solicitor General.

AJM*EGM



COPY FOR DEPUTY SOLICITOR GENERAL

000796

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

July 29, 1971.

THE DEPUTY SOLICITOR GENERAL:

I attach a revised Memorandum to the Cabinet in relation to capital punishment for the Minister's consideration, and a draft letter for his signature to the Minister of Justice.

I shall be glad to discuss this matter with you or the Minister at your convenience.

Atts.

A. J. MacLeod.

000797

BEST AVAILABLE COPY

CANADA

Ministère du Solliciteur-
Général

Department of the
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

30/vii/71

☒ POUR AUTORISATION
FOR APPROVAL

☒ FOR SIGNATURE
POUR SIGNATURE

☐ POUR INFORMATION
FOR

☐ FOR DIRECTION
POUR DIRECTIVE

☐ SUR SA DEMANDE
AS REQUESTED

☐ TO NOTE AND RETURN
PRENDRE NOTE ET
RENNVOYER

DICTATED BY
DICTÉ PAR

DATE

DACTYLOGRAPHIÉ PAR
TYPED BY

DATE

Voici : 1) un projet de minute
sur l'avis des ministres sur
la pièce copulée ; et
2) une lettre à l'attention
pour signature.
J'ai demandé à M. Marchand
de changer le nom dans la copie
qui sera en l'avis indiqué. Il me
semble qu'il faudrait le documenter à
cet égard.

000798

141-206

Ottawa, Ontario.
KLA OFG

July 29, 1971.

My dear Colleague:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

The Prime Minister, by a letter to me dated May 7, 1971, pointed out the importance of settling the Government's policy in this matter well before December, 1972.

The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
KLA OFG

-2-

I attach for your consideration copy of a draft Memorandum to Cabinet that sets out my current views on the matter. This draft might well form the basis of discussions between us to determine the substance and form of a memorandum that we might place jointly before our colleagues for consideration. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

In view of the importance that the Prime Minister - and I am sure our other colleagues - place upon this matter, I shall be glad if you can find it possible to meet with me in the near future to discuss the issues involved.

Yours sincerely,

Encl.

Jean-Pierre Goyer.

AJMACLEOD/EGM

c.c. Deputy Solicitor General

141-206

Ottawa, Ontario.
KLA OP8

July 29, 1971.

My dear Colleague:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

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The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
KLA OH8

..2

-2-

I attach for your consideration copy of a draft Memorandum to Cabinet that sets out my current views on the matter. This draft might well form the basis of discussions between us to determine the substance and form of a memorandum that we might place jointly before our colleagues for consideration. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

In view of the importance that the Prime Minister - and I am sure our other colleagues - place upon this matter, I shall be glad if you can find it possible to meet with me in the near future to discuss the issues involved.

Yours sincerely,

Encl.

Jean-Pierre Goyer.

AJMACLEOD/EGM

c.c. Deputy Solicitor General ✓

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

July 29, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The legislation in question provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament between October 1 and December 31, 1971, for the abolition of capital punishment for murder and piracy but not in respect of treason that is, under current law, punishable by death.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

-2-

Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

..3

-3-

After nine days of debate on second reading and in committee of the whole house, the bill was passed (114-87 on second reading and 105-70 on third reading).

ALTERNATIVES

The alternatives to the abolition of capital punishment, except for treason, would appear to be as follows:

1. To let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act.
2. To extend the life of the 1967 amendment by a period of time that would enable a comparison of three distinct periods, namely, the period prior to 1961, when all murder was capital; the period between 1961 and 1967, when murder was either capital or non-capital; and the period since 1967, when capital murder was limited to cases involving the death of a police or prison officer. Such an extension of the life of the 1967 amendment should be four years and four months - to April 30, 1976 - to permit comparison and evaluation of the effect of the law during the three distinctive periods.
3. To submit a new bill attempting to develop further categories of capital and non-capital murder. This, however, would seem to be a retrograde step. If capital punishment for murder (except when it constitutes treason, under Canadian law), is not to be abolished, the law of murder as it existed between 1961 and 1967 would seem to be appropriate for Canadian purposes.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

-4-

The Dominion Bureau of Statistics reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

It should be kept in mind that it is undesirable that the issue of capital punishment should in any way be an issue at a general election.

When the issue of the continuation of the Murder (Abolition of Death Penalty) Act, 1965, was brought before the United Kingdom House of Commons by the government in December, 1969, the opposition made a motion to the effect that the House "deplores Her Majesty's Government's action in asking Parliament to reach a conclusion on the question of the continuance of the Murder (Abolition of Death Penalty) Act, 1965, at an unnecessarily early stage, in disregard of the will and intention of Parliament as declared in that Act, and declines to come to a decision on it until after the publication of all available and relevant statistics covering the full year 1969."

This motion was defeated in the United Kingdom House of Commons by a vote of 303-245, and the Government's motion that the Murder (Abolition of Death Penalty) Act, 1965, should not expire, was approved 343-185.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$100 a day. The provinces would, of course, save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the Government to discuss the merits of this proposed legislation with the provincial governments. Presumably, if the proposed legislation is introduced, representations will be made to the federal government by police forces and other interested organizations across the country.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the Government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament.

CAUCUS CONSULTATION

(This section should be completed by the Minister's office).

-5-

RECOMMENDATION

The undersigned recommends that

- (a) the Department of Justice be authorized to prepare legislation for amendment of the Criminal Code to abolish capital punishment in respect of murder and piracy but not in respect of treason that is, under the existing law, punishable by death; and
- (b) the legislation be prepared for introduction in Parliament between October 1 and December 31, 1971.

Respectfully submitted,

Solicitor General

Minister of Justice

C-168

Second Session, Twenty-Seventh Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

First reading, October 19, 1967

THE SOLICITOR GENERAL OF CANADA

ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1967

2nd Session, 27th Parliament, 16 Elizabeth II, 1967

THE HOUSE OF COMMONS OF CANADA

BILL C-168

An Act to amend the Criminal Code

1953-54, c. 51;
1955, cc. 2, 45;
1956, c. 48;
1957-58, c. 28;
1958, c. 18;
1959, cc. 40,
41;
1960, cc. 37,
45;
1960-61,
cc. 21,
42, 43, 44;
1962-63, c. 4;
1963, c. 8;
1964-65,
cc. 22, 35, 53;
1966-67, cc.
23, 25, 96,
s. 64

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1960-61, c. 44,
s. 1

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor: 5

Capital
murder
defined

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

1960-61,
c. 44 s. 15

2. Subsection (3) of section 656 of the said Act 20 is repealed and the following substituted therefor:

Approval by
Governor in
Council of
release after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council." 25

000809

EXPLANATORY NOTE

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Clause 1: Section 202A at present reads as follows:

- "202A. (1) Murder is capital murder or non-capital murder.
(2) Murder is capital murder, in respect of any person, where
(a) it is planned and deliberate on the part of such person,
(b) it is within section 202 and such person
 (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,
 (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
(c) such person by his own act caused or assisted in causing the death of
 (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
 or counselled or procured another person to do any act causing or assisting in causing the death.
(3) All murder other than capital murder is non-capital murder."

Clause 2: Subsection (3) of section 656 at present reads as follows:

- "(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

Trans-
sitional

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, 5
namely:

- (a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and 10
- (b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court 15 before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after 20 the coming into force of this Act.

Idem

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence 25 shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed. 30

When
proceedings
deemed to
have
commenced

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

Duration
and expira-
tion of Act

4. (1) Subject to subsection (2), this Act shall 35 continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force. 40

Effect of
expiration

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, 45 a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

Coming into
force

5. This Act shall come into force on a day to b000811 fixed by proclamation.

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CONFIDENTIAL

MEMORANDUM TO THE CABINET

July 29, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The legislation in question provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament between October 1 and December 31, 1971, for the abolition of capital punishment for murder and piracy but not in respect of treason that is, under current law, punishable by death.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

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-2-

Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

..3

After nine days of debate on second reading and in committee of the whole house, the bill was passed (114-87 on second reading and 105-70 on third reading).

ALTERNATIVES

The alternatives to the abolition of capital punishment, except for treason, would appear to be as follows:

1. To let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act.
2. To extend the life of the 1967 amendment by a period of time that would enable a comparison of three distinct periods, namely, the period prior to 1961, when all murder was capital; the period between 1961 and 1967, when murder was either capital or non-capital; and the period since 1967, when capital murder was limited to cases involving the death of a police or prison officer. Such an extension of the life of the 1967 amendment should be four years and four months - to April 30, 1976 - to permit comparison and evaluation of the effect of the law during the three distinctive periods.
3. To submit a new bill attempting to develop further categories of capital and non-capital murder. This, however, would seem to be a retrograde step. If capital punishment for murder (except when it constitutes treason, under Canadian law), is not to be abolished, the law of murder as it existed between 1961 and 1967 would seem to be appropriate for Canadian purposes.

TIMING

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held?

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them.

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

-4-

The Dominion Bureau of Statistics reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

It should be kept in mind that it is undesirable that the issue of capital punishment should in any way be an issue at a general election.

When the issue of the continuation of the Murder (Abolition of Death Penalty) Act, 1965, was brought before the United Kingdom House of Commons by the government in December, 1969, the opposition made a motion to the effect that the House "deplores Her Majesty's Government's action in asking Parliament to reach a conclusion on the question of the continuance of the Murder (Abolition of Death Penalty) Act, 1965, at an unnecessarily early stage, in disregard of the will and intention of Parliament as declared in that Act, and declines to come to a decision on it until after the publication of all available and relevant statistics covering the full year 1969."

This motion was defeated in the United Kingdom House of Commons by a vote of 303-245, and the Government's motion that the Murder (Abolition of Death Penalty) Act, 1965, should not expire, was approved 343-185.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$100 a day. The provinces would, of course, save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the Government to discuss the merits of this proposed legislation with the provincial governments. Presumably, if the proposed legislation is introduced, representations will be made to the federal government by police forces and other interested organizations across the country.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the Government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament.

CAUCUS CONSULTATION

(This section should be completed by the Minister's office).

-5-

RECOMMENDATION

The undersigned recommends that

- (a) the Department of Justice be authorized to prepare legislation for amendment of the Criminal Code to abolish capital punishment in respect of murder and piracy but not in respect of treason that is, under the existing law, punishable by death; and
- (b) the legislation be prepared for introduction in Parliament between October 1 and December 31, 1971.

Respectfully submitted,

Solicitor General

Minister of Justice

Plse
return file
copy to
EAC

memo to M. MacLeod
re: Shannon
Nov 30/71
file 141-206

MR

000817

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 _____ DATE

Dactylographié par

Typed by _____ DATE

000818

141-206

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

MEMORANDUM TO THE CABINET

July 29, 1971

Re: Capital Punishment

PROBLEM

By Chapter 15 of the Statutes of Canada, 1967-68, Parliament amended the Criminal Code to limit the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

This legislation received Royal Assent on December 21, 1967, and was proclaimed in force as of December 29, 1967.

The legislation in question provided that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

By letter to the undersigned dated May 7, 1971, the Prime Minister pointed out the importance of settling the Government's policy in this matter well before December, 1972.

OBJECTIVES

*Feb 1/72
Jan 1, 1972 and*

This memorandum seeks the approval of Cabinet for the preparation of legislation to be introduced in Parliament between October 1 and December 31, 1971, for the abolition of capital punishment for murder and piracy but not in respect of treason that is, under current law, punishable by death.

FACTORS

Parliament must enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act."

Piracy is punishable by death where the accused does any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person. The death sentence is mandatory upon conviction for piracy.

*20 pages
submitted
Cabinet*

-2-

Treason, under existing law, is punishable by death where it involves

- (a) killing or attempting to kill Her Majesty, levying war against Canada or assisting an enemy at war with Canada (for all of which death is the only punishment), or
- (b) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment).

In 1966, the House of Commons devoted five sitting days to a discussion of a resolution standing in the names of Messrs. Byrne, Nugent, Scott and Stanbury for the abolition of the death penalty in respect of all offences under the Criminal Code and substituting a mandatory sentence of life imprisonment in those cases where the death penalty was then mandatory. On the last day of debate the motion was defeated 143 to 112.

In November, 1967, the House of Commons devoted nine days to Bill No. C-168 to amend the Criminal Code by defining capital murder, in section 202A, as follows:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

- (a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
- (b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

The bill was introduced by the Solicitor General (Mr. Pennell), who stated that "each member of the house, including the members of the ministry, will be free to exercise his or her own individual views on the merits of the bill." The Solicitor General noted the similarity of this legislation to the private members' bill that had been introduced in the previous session, but stated that, nevertheless, there was a substantial difference in principle between the two bills. Mr. Pennell said that his bill was a compromise, that the arguments that he proposed to offer in support of the principle of the bill could be applied with equal force and validity in support of total abolition of capital punishment, but that the bill was the most promising measure that could be introduced at that time.

Bill C-168, as introduced and ultimately passed, is attached as Appendix A.

After nine days of debate on second reading and in committee of the whole house, the bill was passed (114-87 on second reading and 105-70 on third reading).

ALTERNATIVES

The alternatives to the abolition of capital punishment, except for treason, would appear to be as follows:

1. To let the 1967 legislation expire, in which case the law would revert, on December 29, 1972, to what it was on December 28, 1967, namely, that murder would again be capital murder if it was planned and deliberate, was done by the murderer's own act or was the death of a police or prison officer caused by the murderer's own act. (2)
2. To extend the life of the 1967 amendment by a period of time that would enable a comparison of three distinct periods, namely, the period prior to 1961, when all murder was capital; the period between 1961 and 1967, when murder was either capital or non-capital; and the period since 1967, when capital murder was limited to cases involving the death of a police or prison officer. Such an extension of the life of the 1967 amendment should be four years and four months - to April 30, 1976 - to permit comparison and evaluation of the effect of the law during the three distinctive periods. (7)
3. To submit a new bill attempting to develop further categories of capital and non-capital murder. This, however, would seem to be a retrograde step. If capital punishment for murder (except when it constitutes treason, under Canadian law), is not to be abolished, the law of murder as it existed between 1961 and 1967 would seem to be appropriate for Canadian purposes. (4)

or extend
murder
5 yrs

TIMING

Restrict Royal Prorogation during

A fundamental question is: How close to December 29, 1972, should the next parliamentary debate on capital punishment be held? (5)

If the debate is held far in advance of December 29, 1972, the government must be prepared to meet the same kind of criticisms that were faced by the government of the United Kingdom in December, 1969, when it moved at that time to extend the life of the Murder (Abolition of Death Penalty) Act, 1965, which would not have expired until July 31, 1970. Those criticisms were, for example, that the government was trying to distract the attention of parliament and the public from other more immediate and pressing problems; and that the government, by moving at such an early stage, was making it impossible for members to have access to all of the statistical information that should be available to them. (6)

In the case of Canada, the government would have to face an allegation that it was not living up to the statement made by the Prime Minister (Mr. Pearson) in November, 1967, when, in the debate on Bill C-168, he said:

"The bill, Mr. Speaker, will dispose of this question for five years if it is carried. At the end of that time the decision can be reviewed in the light of the results that have occurred during that period."

-4-

The Dominion Bureau of Statistics reports on murder statistics for 1971 will not be available until September, 1972. Statistics of criminal and other offences for 1969 will not be available until April, 1972, and for 1970 will not be available until April, 1973.

It should be kept in mind that it is undesirable that the issue of capital punishment should in any way be an issue at a general election.

When the issue of the continuation of the Murder (Abolition of Death Penalty) Act, 1965, was brought before the United Kingdom House of Commons by the government in December, 1969, the opposition made a motion to the effect that the House "deplores Her Majesty's Government's action in asking Parliament to reach a conclusion on the question of the continuance of the Murder (Abolition of Death Penalty) Act, 1965, at an unnecessarily early stage, in disregard of the will and intention of Parliament as declared in that Act, and declines to come to a decision on it until after the publication of all available and relevant statistics covering the full year 1969."

This motion was defeated in the United Kingdom House of Commons by a vote of 303-245, and the Government's motion that the Murder (Abolition of Death Penalty) Act, 1965, should not expire, was approved 343-185.

FINANCIAL CONSIDERATIONS

There are no significant financial considerations. The major federal governmental expense is the fees that are paid to psychiatrists who examine the condemned person, at the rate of \$100 a day. The provinces would, of course, save the cost of the executioner's fee (probably about \$1,000) and the cost of 24-hour-a-day supervision of the condemned person.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

There would seem to be no obligation on the Government to discuss the merits of this proposed legislation with the provincial governments. Presumably, if the proposed legislation is introduced, representations will be made to the federal government by police forces and other interested organizations across the country.

INTERDEPARTMENTAL CONSULTATION

The undersigned has consulted with his colleague, the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

The subject of capital punishment is one that arouses strong emotions and is one, seemingly, upon which every adult Canadian has an opinion. If the legislation is left to a free vote, as the undersigned recommends, it would seem not to be appropriate for the Government to undertake a public information program emphasizing any particular aspect of the issue that is to be dealt with by Parliament.

CAUCUS CONSULTATION

(This section should be completed by the Minister's office).

Liberal Federation

-5-

RECOMMENDATION

The undersigned recommends that

- (a) the Department of Justice be authorized to prepare legislation for amendment of the Criminal Code to abolish capital punishment in respect of murder and piracy but not in respect of treason that is, under the existing law, punishable by death; and
- (b) the legislation be prepared for introduction in Parliament between October 1 and December 31, 1971. *in 30 days after Feb 1/72*

Respectfully submitted,

Solicitor General

9 cmur

Minister of Justice

- a) *Caucus consultation*
- b) *Pror agit*
- c) *Timing*
- d) *Justice to keep*

*Why Treason
reluctant*

Priming Free vote — any time

Election (1973)

enough time before Dec 19/72

1) Total absolute? before or after — part of platform
(free vote
before or after) unless it free vote

2) trial period or seven years extended after election
before election so as not to be
pressed to avoid commitment

3) Status pro-ante before or after — popular
/ popular

4) Extend prop — before or after

5) Restrict & remove before election
cause him after

5 A — Before or after — popular

3 yrs or more
or
5 yrs

MEMORANDUM

CLASSIFICATION

TO /
A
POUR LE MINISTRE

Vu par le SE.

l.

YOUR FILE No.
Votre dossier.

OUR FILE No.
Notre dossier

FROM
De

SOLLICITEUR GÉNÉRAL ADJOINT

DATE le 30 juin 1971.

FOLD

SUBJECT
Sujet

Décision du Conseil des Ministres
re: 6 détenus condamnés à vie

M. Hunter, au nom de M. Préfontaine, du Conseil privé, me dit qu'il n'était pas possible pour le Conseil des Ministres de revoir aujourd'hui la recommandation du Comité social du Cabinet là-dessus et que vous en avez été informé.

En plus, M. Hunter m'avise que le président du Comité (M. John Munro) demande que la question (dans l'optique du Mémoire que M. Street prépare) soit revue au Comité mardi le 6 juillet et que le Conseil des Ministres statue sur cette question jeudi le 8 juillet.

M. Hunter enverra aujourd'hui copie de la décision du Comité à M. LaBrosse à qui je demande de faire le nécessaire avec M. Street pour que le Mémoire soit soumis au Comité et distribué par le Secrétariat du Conseil privé avant mardi le 6 juillet.

E.A. Côté

(E.-A. Côté)

c.c. Mademoiselle A.-M. Hamon
M. LaBrosse
Monsieur T.G. Street



POUR LE MINISTRE

le 30 juin 1971.

SOLLICITEUR GENERAL ADJOINT

Décision du Conseil des Ministres
re: 6 détenus condamnés à vie

M. Hunter, au nom de M. Préfontaine, du Conseil privé, me dit qu'il n'était pas possible pour le Conseil des Ministres de revoir aujourd'hui la recommandation du Comité social du Cabinet là-dessus et que vous en avez été informé.

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(E.-A. Côté)

(COPY) EGM

CONFIDENTIAL

Ottawa, Ontario
K1A 0P8

May 31, 1971.

My dear Colleague:

In 1967 Parliament, by legislation that came into force on December 29 of that year, limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The legislation provided that it should continue in force for a period of five years and provided that it should then expire unless, before the end of that period, Parliament, by joint resolution of both Houses, directed that it should continue in force. The legislation provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

By Cabinet decision of February 4, 1971, it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

The Prime Minister, by a letter to me dated May 7, 1971, pointed out the importance of settling the Government's policy in this matter well before December, 1972.

I attach for your consideration copy of a draft Memorandum to Cabinet that sets out my current views on the matter. This draft might well form the basis of discussions between us to determine the substance and form of a memorandum that we might place

The Honourable John N. Turner, P.C., Q.C.,
Minister of Justice,
Ottawa, Ontario.
K1A 0P8

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-2-

jointly before our colleagues for consideration. In the meantime, for the purposes of the form of the document, I have indicated under the heading of "Interdepartmental Consultation" that I have consulted with you and that you agree with the memorandum.

In view of the importance that the Prime Minister - and I am sure our other colleagues - place upon this matter, I shall be glad if you can find it possible to meet with me in the near future to discuss the issues involved.

Yours sincerely,

Encl.

Jean-Pierre Goyer.

AJMACLEOD/EGM

c.c. Deputy Solicitor General

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

May 20, 1971.

File
Classer
PA
B.

MR. CAMERON:

I attach for the Minister's consideration a memorandum that I have prepared for the purposes of discussions relating to a memorandum that the Minister wishes to send to Cabinet in the very near future.

The Minister is attaching great importance to this project and I should appreciate it, therefore, if you could bring it immediately to his attention in hopes that we might be able to have a discussion early next week.

Encl.

A. J. MacLeod.

000829

MEMORANDUM

File *NA*
Classer

TO: THE MINISTER
FROM: SPECIAL ADVISER,
CORRECTIONAL POLICY
SUBJECT: Capital Punishment

File ~~62-6/6-15~~

141-206
May 20, 1971.

I suggest the following as the basis for discussion of a Memorandum to Cabinet concerning capital punishment.

Some possible alternatives in relation to capital punishment:

1. Let the 1967 legislation expire. The law will then revert to what it was immediately prior to Dec. 22, 1967, i.e., "capital" murder, the death being "planned and deliberate", or being done by the murderer's "own act", or being the death of a police or prison officer caused by the murderer's "own act." (see Appendix A for Criminal Code text)
2. Introduce legislation to abolish capital punishment
 - (a) for murder, without exception; all murder would then be "non-capital" and punishable by life imprisonment;
 - (b) for treason, with or without exception, treason being, generally speaking,
 - (i) killing or attempting to kill Her Majesty, levying war against Canada, or assisting an enemy at war with Canada (for all of which death is the only punishment), or
 - (ii) using force or violence to overthrow the government, spying, or conspiring to do any of the foregoing (for which the punishment is death or life imprisonment); (see Appendix B for Criminal Code text)
 - (c) for piracy, with or without exception, i.e., doing any act that, by the law of nations, is piracy, if the accused, in the process, murders or attempts to murder another person or does any act that is likely to endanger the life of another person, for which the death sentence is mandatory. (see Appendix C for Criminal Code text)

..2

Mr. Call
I wonder if we will be criticized for not having set up a system 5 years ago to monitor & evaluate the effect the moratorium.

Spoke to Mr. MacLeod who will be a draft memo to Cabinet. Letter to John Turner re the beginning of next week.

000830

-2-

3. Extend the 1967 amendment by 4 years and 4 months - to April 30, 1976 - to enable a comparison of three 6 year-4 month periods between

- (a) May 1, 1955 - Aug. 31, 1961 (involving some 100 cases, before there was a distinction between capital and non-capital murder, and all convictions for murder required a sentence of death);
- (b) Sept. 1, 1961 - Dec. 22, 1967 (the period of first distinction between capital and non-capital murder, which produced some 65 capital and 165 non-capital cases); and
- (c) Dec. 22, 1967 - April 30, 1974 (the period of greatest distinction between capital and non-capital murder, involving the sentence of death only where the victim was a police or prison officer, and which produced 4 capital and some 160 non-capital cases to May 15, 1971);

and providing the two-year period May 1, 1974 - April 30, 1976, for comparison and evaluation of the effect of the law during the respective periods.

4. Extend the 1967 amendment by 7 years - to Dec. 31, 1979 - to enable a comparison of two 10-year periods between

- (a) Sept. 1, 1951 - Aug. 31, 1961 (involving some 170 cases during the 10-year period immediately preceding the day when the distinction between capital and non-capital murder first became law and during which all convictions for murder required a sentence of death); and
- (b) Dec. 22, 1967 - Dec. 31, 1977 (the 10-year period during which the distinction between capital and non-capital murder will have been greatest and the death sentence will have been ordered only where the victim was a police or prison officer; there have been 4 capital and 160 non-capital cases in the last 3½ years);

and providing the two-year period Jan. 1, 1978 - Dec. 30, 1979, for comparison and evaluation of the effect of the law during the respective periods.

In so far as this proposal is concerned the period Sept. 1, 1961 - Dec. 30, 1967, would not be dealt with because, as a period of only 6 years 4 months, it could not reasonably be compared with 10-year periods.

..3

-3-

Factors

December 22, 1972, is the date by which Parliament must enact new legislation if the law is not, on that day, to revert to what it was immediately prior to December 22, 1967. The four periods in which Parliament might consider the issue, and the time left as of June 1, 1971, before those periods respectively, are as follows:

<u>PERIODS</u>	<u>TIME LEFT</u>
OCT - DEC '71	4 MOS
JAN - MAR '72	7 MOS
APR - JUNE '72	10 MOS
SEPT - NOV '72	15 MOS

There would seem not to be sufficient time remaining, prior to Oct. 1, 1971, for any kind of sophisticated research into

- (a) the sociological effect of the 1961 amendments introducing the concept of capital--non-capital murder; or
- (b) even more so, the effect of the more restrictive definition of 1967.

It would seem that, in terms of preparation of new material for consideration by Parliament during the periods mentioned above, the following is the most that can be done:

1. Oct.-Dec. '71

- (a) Up-date the "white paper" prepared in the Department of Justice in 1965, for the purposes of the parliamentary debates that took place in 1966 and 1967;
- (b) Summarize the Joint Parliamentary Committee Report of 1955 and the House of Commons and Senate Debates of 1966 and 1967;
- (c) Indicate the characteristics (age, sex, marital status, occupation, etc.) of persons convicted of murder in selected 3-year periods since 1957, i.e., 1958-1961; 1961-1964; 1964-1967; and 1967-1970;
- (d) Indicate the characteristics of persons convicted of capital murder (65) and non-capital murder (165) between 1961 and 1967; and
- (e) Prepare a monograph showing the extent, if any, to which capital punishment operates as a deterrent, by reference to studies that have been conducted heretofore in Canada and elsewhere and by an analysis of statistics that are already available in relation to Canada and elsewhere.

-4-

2. Jan.-Mar. '72

In addition to the material immediately above there could be available, by Jan. 1, 1972, the following:

- (a) the characteristics of all persons convicted of murder in Canada since 1867;
- (b) the views of a study group, to be established to consider the material that will, pursuant to the immediately preceding paragraph, be available by Oct. 1 next;
- (c) the views of selected individuals and organizations concerning the sociological effect of the 1967 amendments; such organizations might include the Chiefs of Police Association, the Canadian Criminology and Corrections Association, Schools of Criminology, Law Schools, Departments of the Attorney General, and the like. However, if the government's legislation is to be referred to the Standing Committee on Justice and Legal Affairs, presumably such organizations would make their representations to that committee.

3. April-June '72

A more sophisticated research operation could be carried out during the next 10 months by way of analysis of the characteristics of persons who have been convicted of murder during the past quarter of a century; such a study might well involve interviews with persons who have been convicted of capital murder (and commuted) and persons who have been convicted of non-capital murder.

4. Sept.-Nov. '72

It does not seem to be realistic to consider what more might be done, between now and Sept., 1972, that is not covered by the three paragraphs immediately preceding.

A. J. MacLeod

AJMACLEOD/EGM

A. J. MacLeod.

APPENDIX A

Definition of Murder Immediately
Prior to Dec. 22, 1967

202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

- (a) he means to cause bodily harm for the purpose of
 - (i) facilitating the commission of the offence, or
 - (ii) facilitating his flight after committing or attempting to commit the offence,and the death ensues from the bodily harm;
- (b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;
- (c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or
- (d) he uses a weapon or has it upon his person
 - (i) during or at the time he commits or attempts to commit the offence, or
 - (ii) during or at the time of his flight after committing or attempting to commit the offence,

and death ensues as a consequence.

202A. (1) Murder is capital murder or non-capital murder.

(2) Murder is capital murder, in respect of any person, where

- (a) it is planned and deliberate on the part of such person,
- (b) it is within section 202 and such person
 - (i) by his own act caused or assisted in causing the bodily harm from which the death ensued,
 - (ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued,

-2-

- (iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,
 - (iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or
 - (v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or
- (c) such person by his own act caused or assisted in causing the death of
- (i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or
 - (ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,
- or counselled or procured another person to do any act causing or assisting in causing the death.
- (3) All murder other than capital murder is non-capital murder.

206. (1) Every one who commits capital murder is guilty of an indictable offence and shall be sentenced to death.

(2) Every one who commits non-capital murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

(3) Notwithstanding subsection (1), a person who appears to the court to have been under the age of eighteen years at the time he committed a capital murder shall not be sentenced to death upon conviction therefor but shall be sentenced to imprisonment for life.

(4) For the purposes of Part XX, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

APPENDIX B

Definition of Treason in the Criminal Code

46. (1) Every one commits treason who, in Canada,

- (a) kills or attempts to kill Her Majesty, or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;
- (b) levies war against Canada or does any act preparatory thereto;
- (c) assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;
- (d) uses force or violence for the purpose of overthrowing the government of Canada or a province;
- (e) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;
- (f) conspires with any person to do anything mentioned in paragraphs (a) to (d);
- (g) forms an intention to do anything mentioned in paragraphs (a) to (d) and manifests that intention by an overt act; or
- (h) conspires with any person to do anything mentioned in paragraph (e) or forms an intention to do anything mentioned in paragraph (e) and manifests that intention by an overt act.

(2) Notwithstanding subsection (1), a Canadian citizen or a person who owes allegiance to Her Majesty in right of Canada commits treason if, while in or out of Canada, he does anything mentioned in subsection (1).

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

47. (1) Every one who commits treason is guilty of an indictable offence and is liable

- (a) to be sentenced to death if he is guilty of an offence under paragraph (a), (b) or (c) of subsection (1) of section 46;
- (b) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (d), (f) or (g) of subsection (1) of section 46;

-2-

- (c) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while a state of war exists between Canada and another country; or
 - (d) to be sentenced to imprisonment for fourteen years if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while no state of war exists between Canada and another country.
- (2) No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

APPENDIX C

Definition of Piracy in the Criminal Code

75. (1) Every one commits piracy who does any act that, by the law of nations, is piracy.

(2) Every one who commits piracy while in or out of Canada is guilty of an indictable offence and is liable to imprisonment for life, but if while committing or attempting to commit piracy he murders or attempts to murder another person or does any act that is likely to endanger the life of another person he shall be sentenced to death.

FILE

✓
~~62-6/5-10~~

May 17, 1971.

**SPECIAL ADVISER,
CORRECTIONAL POLICY**

**Notes concerning a meeting of the capital
punishment study group held with the Deputy
Solicitor General in his office on
Friday, May 14, 1971**

**In attendance: Deputy Solicitor General,
Assistant Deputy Solicitor General,
Mr. B. Grenier,
A. J. MacLeod.**

1. The Deputy Solicitor General said that it is the Minister's intention that the University of Ottawa should not, at this time, be given a contract to carry out a research project in relation to capital punishment, either the comprehensive study originally proposed by the University, or the limited study, involving "3-year periods", that has been considered.

2. Professor Fahta is to be invited to come to Ottawa to discuss with Mr. MacLeod and Mr. Grenier the contribution that he might be able to make to the work of the study group as a consultant.

3. The study group will cause to be prepared a paper showing the characteristics (age, sex, marital status, occupation, etc.) of persons convicted of murder in selected 3-year periods since 1957:

September 1, 1958 - September 1, 1961
(when the concept of capital and
non-capital murder first became law)

September 1, 1961 - December 22, 1964

December 22, 1964 - December 22, 1967
(when "capital murder" was more
narrowly defined and the 5-year
moratorium became effective)

December 22, 1967 - December 22, 1970.

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4. The study group will prepare a Memorandum to Cabinet during the period July 1-15 (after consultation with Mr. Christie of Justice) to indicate the progress that has been made in the study by the study group to that time and to recommend the timing that should be followed in connection with the study, and consideration of the issues involved, by the Cabinet, in the future.

5. It was agreed that, in order to avoid confusion, all matters in connection with the study that involve consultation between members of departmental headquarters should be brought to the attention of Mr. MacLeod in order that, so far as possible, working at cross purposes and duplication of effort will be avoided.

A. J. MacLeod

A. J. MacLeod.

AJM:ROM

confidentielle

PR. ME. MIN. P. EN. PR. ME. MIN. P. EN. PR. ME. MIN. P. EN.

Le 7 mai 1971

Mon cher collègue,

Un des problèmes qui me préoccupe le plus en ce moment est, comme vous le savez, celui de la position du gouvernement au sujet de la peine de mort au Canada. Bientôt sans doute, le Cabinet se verra encore une fois appeler à décider de la vie ou de la mort de l'un de nos concitoyens. En effet, la Cour suprême devant entendre sous peu l'appel d'une condamnation à mort prononcée par un tribunal de Terre-Neuve, il est probable que nous devrons agir plus tôt que nous ne l'aurions voulu.

Mise à part toute étude particulière de cas individuels, il importe que nous ayons arrêté notre politique, et qu'au besoin elle ait pris corps sous forme de loi, bien avant décembre 1972. Vous n'ignorez pas que le Comité du Cabinet chargé de l'établissement des priorités et la planification estime que la peine capitale constitue un problème nouveau, évidemment très important et

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L'honorable Jean-Pierre Goyer
Solliciteur général du Canada
O T T A W A

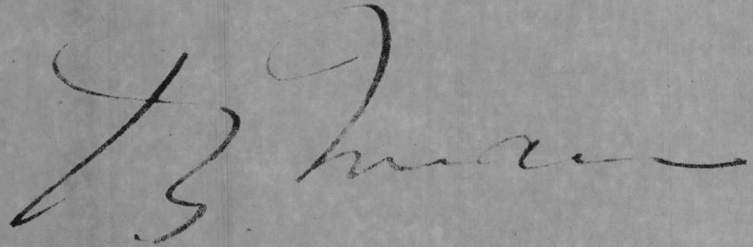
confidentielle

- 2 -

pressant, et que notre décision devra tenir compte du fait que, si le gouvernement semble être opposé à la peine capitale et peu disposé à permettre une exécution, le Parlement, lui, n'est peut-être pas prêt à supprimer complètement cette peine. Ces considérations se rattachent à une décision antérieure du Cabinet vous priant de rédiger, sur la peine de mort, un mémoire qui traiterait des modifications à apporter à la loi et en fixerait les délais d'application.

Ne nous leurrons pas: nous devons agir sans tarder. C'est pourquoi je vous saurais gré de soumettre votre mémoire à l'attention de nos collègues avant mon départ pour l'U.R.S.S. *plus d.*

En vous remerciant d'avance de votre diligence à cet égard, je vous prie, mon cher collègue, de recevoir mes cordiales salutations. *ami d.*





confidentielle

PRIME MINISTER / PREMIER MINISTRE

Le 7 mai 1971.

Mon cher collègue,

Un des problèmes qui me préoccupe le plus en ce moment est, comme vous le savez, celui de la position du gouvernement au sujet de la peine de mort au Canada. Bientôt sans doute, le Cabinet se verra encore une fois appeler à décider de la vie ou de la mort de l'un de nos concitoyens. En effet, la Cour suprême devant entendre sous peu l'appel d'une condamnation à mort prononcée par un tribunal de Terre-Neuve, il est probable que nous devrons agir plus tôt que nous ne l'aurions voulu.

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L'honorable Jean-Pierre Goyer
Solliciteur général du Canada
O T T A W A

confidentielle

- 2 -

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Ne nous leurrons pas: nous devons agir sans tarder. C'est pourquoi je vous saurais gré de soumettre votre mémoire à l'attention de nos collègues ~~avant mon départ pour l'U.R.S.S.~~ *le plus tôt possible*

En vous remerciant d'avance de votre diligence à cet égard, je vous prie, mon cher collègue, de recevoir mes cordiales salutations.

CANADA

Ministère du Solliciteur,

Gén

Department of the
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

☐ POUR AUTORISATION
FOR APPROVAL

☒ FOR
POUR SIGNATURE

☐ POUR INFORMATION

☐ FOR DIRECTION
POUR DIRECTIVE

☐ SUR SA DEMANDE
AS REQUESTED

☐ TO NOTE AND RETURN
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DICTÉ PAR

AJMACLEOD/BCHOFLEY 10-5-71

DATE _____

DACTYLOGRAPHIÉ PAR

TYPED BY

M. Labonté

11-5-71

DATE _____

000845

SOLICITOR GENERAL



SOLICITEUR GÉNÉRAL

OTTAWA, Ontario
K1A 0P8
le 13 mai 1971

*Not sent
See PM's
letter of
May 7/71. also
conversations
Mr. MacLeod
May 18/71*

Monsieur le Premier ministre,

Je vous écris au sujet d'une décision du Conseil des ministres en date du 4 février 1971, selon laquelle il a été convenu que le Solliciteur général, avec l'aide du ministre de la Justice, devrait rédiger un mémoire sur la peine de mort en vue de faire des recommandations au Conseil des ministres sur les mesures qui devraient être prises à l'égard de la loi elle-même ainsi que sur le moment le plus opportun où il faudrait prendre ces mesures. Ce n'est que tout récemment qu'on m'a rappelé qu'une telle décision avait été prise.

File *PA*
Classer

Dans l'intervalle, j'avais pris les dispositions requises pour faire mettre à jour le "Livre blanc" rédigé au ministère de la Justice en 1965 en vue des débats parlementaires qui ont eu lieu en 1966 et en 1967. Je prends également les dispositions nécessaires pour faire rédiger un résumé du Rapport du comité parlementaire mixte de 1955 et des débats de la Chambre des communes et du Sénat pour 1966 et 1967. De plus, j'ai mis en marche un programme selon lequel le travail d'un ordinateur nous fournira des statistiques en rapport avec toutes les personnes qui ont été déclarées coupables de meurtre au Canada depuis 1867. J'espère également qu'il sera possible de mettre en marche un projet de recherche en vue d'étudier et de comparer les taux d'homicide à Toronto avec ceux de Montréal au cours des trois années 1965-1967 (avant le moratoire) et des trois années 1968-1970 (après le moratoire).

. . . 2

Le très honorable Pierre E. Trudeau, C.P. député
Premier ministre du Canada
Ottawa (Ontario)
K1A 0A2

..2..

Quoique je n'aie pas encore eu l'occasion d'en discuter avec mon collègue, le ministre de la Justice, comme j'en ai l'intention, j'ai bon espoir, d'une manière générale, que ces travaux pourront être menés à bonne fin avant le mois de décembre de cette année.

Veillez agréer, Monsieur le Premier ministre, l'expression de mes sentiments les plus distingués.

Jean-Pierre Goyer

Ottawa, Ontario

K1A OP8

le 16 mai 1971

Monsieur le Premier ministre,

Je vous écris au sujet d'une décision du Conseil des ministres en date du 4 février 1971, selon laquelle il a été convenu que le Solliciteur général, avec l'aide du ministre de la Justice, devrait rédiger un mémoire sur la peine de mort en vue de faire des recommandations au Conseil des ministres sur les mesures qui devraient être prises à l'égard de la loi elle-même ainsi que sur le moment le plus opportun où il faudrait prendre ces mesures. Ce n'est que tout récemment qu'on m'a rappelé qu'une telle décision avait été prise.

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... 2

Le très honorable Pierre E. Trudeau, C.P., député
Premier ministre du Canada
Ottawa (Ontario)
K1A OA2

- 2 -

les taux d'homicide à Toronto avec ceux de Montréal au cours des trois années 1965-1967 (avant le moratoire) et des trois années 1968-1970 (après le moratoire).

Quoique je n'aie pas encore eu l'occasion d'en discuter avec mon collègue, le ministre de la Justice, comme j'en ai l'intention, j'ai bon espoir, d'une manière générale, que ces travaux pourront être menés à bonne fin avant le mois de décembre de cette année.

Veillez agréer, Monsieur le Premier ministre, l'expression de mes sentiments les plus distingués.

Jean-Pierre Goyer

(PG/hh/11/V/71)

SOLICITOR GENERAL



SOLICITEUR GÉNÉRAL

CANADA

May 10, 1971
OTTAWA, Ontario
K1A 0P8

My dear Prime Minister:

I am writing in connection with the Cabinet Decision of February 4, 1971, where it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be. *Can I was only recently reminded of this decision.*

In the meantime,
Accordingly, I have arranged to up-date the "white paper" prepared in the Department of Justice in 1965 for the purposes of the parliamentary debates that took place in 1966 and 1967. I am also arranging to have a summary made of the Joint Parliamentary Committee Report of 1955 and the House of Commons and Senate Debates of 1966 and 1967. In addition, I have initiated a computerized programme which will provide statistics relating to all persons who have been convicted of murder in Canada since 1867. I am also arranging for a research study to compare the rates of homicide in Toronto and Montreal as between years 1965-67 (before the moratorium) and the three years 1968-70 (after the moratorium).

which I have not yet discussed this matter with my colleague, the Minister of Justice, as I intend to do, my general aim is
~~It is my intention~~ that this information be completed by December next.

Yours sincerely,

Jean-Pierre Goyer

The Right Honourable
Pierre E. Trudeau, P.C., M.P.,
Prime Minister of Canada,
Ottawa, Ontario.
K1A 0A2

SOLICITOR GENERAL



SOLICITEUR GÉNÉRAL

Ottawa, Ontario
K1A 0P8

May 6, 1971.

My dear Prime Minister:

I am writing in connection with the Cabinet Decision of February 4, 1971, where it was agreed that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

Accordingly, I have arranged to up-date the "white paper" prepared in the Department of Justice in 1965 for the purposes of the parliamentary debates that took place in 1966 and 1967. I am also arranging to have a summary made of the Joint Parliamentary Committee Report of 1955 and the House of Commons and Senate Debates of 1966 and 1967. In addition, I have arranged to put into a computer pertinent statistics relating to all persons who have been convicted of murder in Canada since 1867. I am also hoping to arrange for a research study to compare the rates of homicide in Toronto and Montreal as between the three years 1965-67 (before the moratorium) and the three years 1968-70 (after the moratorium).

I am hopeful that these procedures can be completed by December next.

Yours sincerely,

Jean-Pierre Goyer.

The Right Honourable
Pierre E. Trudeau, P.C., M.P.,
Prime Minister of Canada,
Ottawa, Ontario.
K1A 0A2

s.19(1)

PRIVY COUNCIL OFFICE



BUREAU DU CONSEIL PRIVÉ

CONFIDENTIAL

RECORD OF CABINET DECISION

Meeting of February 4th, 1971

Sentence Of Death - [REDACTED]

The Cabinet agreed:

- (a) to commute the death sentence of [REDACTED]
- (b) that the Solicitor General should prepare a press release reviewing the circumstances of the case, and
- (c) that the Solicitor General, with the assistance of the Minister of Justice, should prepare a memorandum on the death penalty recommending to Cabinet what ought to be done about the law itself and what the timing ought to be.

An Order in Council in respect of paragraph (a) above was passed accordingly (P.C. 1971-229, February 4).


D.J. Leach,
Supervisor of Cabinet Documents.

February 9th, 1971.

Original on: C.C.#2
(Ros. K)

CANADA

Ministère du Solliciteur-
Général

Department of the
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

20/11/71

☐ 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 J. H. HOLMES 29 Mar 71
DICTÉ PAR _____ DATE

DACTYLOGRAPHIÉ PAR Mrs. Bawentock 30 Mar 71
TYPED BY _____ DATE

Erly

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ep 000853

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Ottawa 4, March 29, 1971

Dear Mr. Blair:

I am grateful to you for your letter of early February and your constructive comments concerning homicide rates and the death penalty. May I express my regrets that your letter was not dealt with earlier. I can only say that in the press of other matters it was not possible for me to reply to you as speedily as I would have wished.

You are quite right in your understanding that all capital sentences have been commuted since the amendment to the Criminal Code was effected in December, 1967. There were at that time a number of death sentences awaiting decision as to commutation or otherwise, but these were commuted en bloc since none of them would have been for capital murder under the Code as amended. While I was not at that time involved in the decision taken, I think it a fair assumption that it was considered it would be most unjust to execute a person for an offence which would not be capital under the amended law. There have been three cases which have come before Cabinet since the law was amended, in which the convicted person has been sentenced to death for the killing of a police officer. These were Borg in 1969, Lurvey at the end of 1970, and Rosik at the beginning of 1971. There may be one further case, conceivably towards the end of this year, but as the conviction is being appealed to the Supreme Court of Canada, there is no certainty that the question of commutation will arise in that instance. I am not aware of any further cases now before the courts in which the charge is capital murder.

.....

Mr. D. Gordon Blair, M.P.,
(Grenville-Carleton),
House of Commons,
Ottawa 4, Ontario

- 2 -

You asked for a comparison of the number of convictions for capital murder compared with convictions for murder involving the killing of policemen or penitentiary officers in a comparable period before the law was changed. Our files disclose that beginning with the notorious "Santa Claus" murderer Marcotte, there were three persons convicted from the 1st of March, 1963, and before December, 1967, for the slaying of a policeman or a penitentiary officer. I suggest that with such very small numbers involved, it is only possible to say that the rate of such offences does not seem to have been materially affected by changes in the law. On the other hand, we must recognize that changes in the rate for this type of offence could hardly be attributed to amendments to the Criminal Code, since the offence was a capital one both before and after the amendments made in December, 1967. I think when the issue comes to be debated in the House it may be more telling to use the data collected by the United Nations which is indicative of there being no increase in the rate of homicides in countries which have abolished the death penalty. Similarly, what to me is a cogent argument is that in certain of the American States a reintroduction of the death penalty has not materially affected the murder rate.

I quite agree that we must marshal all rational arguments that are available to us in order to counter over-emotional approach to the problem of whether the present law should be changed and, if so, in what fashion.

May I again express my appreciation of your most thoughtful letter.

Yours sincerely,

Original Signed by
JEAN - PIERRE GOYER

J.H. HOLLIES/mab

Jean-Pierre Goyer

MEMORANDUM
GOVERNMENT OF CANADA



NOTE DE SERVICE
GOUVERNEMENT DU CANADA

FROM
DE

ACTING EXECUTIVE ASSISTANT

TO
A

DEPUTY SOLICITOR GENERAL

ATTN: MR. HOLLIES ✓

SUBJECT
SUJET

Capital Punishment

I have been requested to ask that a letter be prepared in reply to the attached copy of a letter dated February 8, 1971 from Mr. D. Gordon Blair, M.P. for signature by the Minister.


J. R. Cameron

OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE March 29, 1971	
REFER REPLY TO ENVOYER LA RÉPONSE À	TEL. NO. TÉL.

DM SM
SOL GEN

MAR 29 1971
FILE 141-206
DOSSIER
Mr. Hollies..

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

MAR 25 4 29 PM '71
HOUSE OF COMMONS

CANADA

Ottawa.

February 8th, 1971.

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

FEB 12 8 55 AM '71

The Honourable Jean-Pierre Goyer, P.C., Q.C., M.P.,
Solicitor General of Canada,
House of Commons,
Ottawa, Ontario.

Dear Jean-Pierre:

I wish to thank you for your letter of February 1st. Perhaps I should have identified myself more clearly in my first letter. I was counsel to the Joint Committee of the Senate and the House of Commons which studied the subject of capital punishment during three sessions, 1954 to 1956.

I am quite sure that any statistical study you conduct will reach the result you forecast in your last paragraph. Homicide rates appear not to be affected by the presence or absence of the death penalty. Indeed the death penalty is substantially irrelevant to the proper administration of criminal justice. The Joint Committee with which I was associated, I am sure, would have recommended abolition of the death penalty had it not realized that this was not acceptable to public opinion at that time. The present capital/non-capital arrangement we have is hardly satisfactory from either a theoretical or practical standpoint.

I am well aware of the fact that it has not been the practice to disclose specific reasons for the exercise of clemency but it may become necessary to do so if each commutation is followed by irrational public uproar. Perhaps another method of approach would be an indication of how many persons have been convicted of capital murder since the law was changed. I understand all capital sentences since that time have been commuted. How would the number of convictions for capital murder compare with convictions for murder involving the killing of police or penitentiary officers in a comparable period before the law was changed.

.../2

-2-

I am distressed by the lack of understanding of the process of criminal justice and the pardoning power which has created quite a severe reaction. This is intensified by the public's belief that we live in a violent age and that violence has been encouraged by allegedly soft and permissive attitudes on the part of law makers, governments and law enforcement agencies.

Therefore, any rational arguments which we can advance to counter the upsurged feeling against the present law should be carefully considered.

Yours sincerely,



D. Gordon Blair, M.P.
Grenville-Carleton.

MEMORANDUM
GOVERNMENT OF CANADA



NOTE DE SERVICE
GOUVERNEMENT DU CANADA

FROM
DE

ACTING EXECUTIVE ASSISTANT

TO
A

DEPUTY SOLICITOR GENERAL

ATTN: MR. HOLLIES

SUBJECT
SUJET

Capital Punishment

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

15-3.

DATE

March 29, 1971

REFER REPLY TO
ENVOYER LA RÉPONSE À

TEL. NO.
TEL.

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J.R. Cameron

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

MAR 25 4 29 PM '71
HOUSE OF COMMONS

CANADA

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February 8th, 1971.

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House of Commons,
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.../2

-2-

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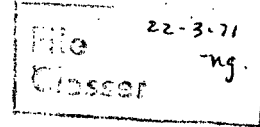
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Yours sincerely,



D. Gordon Blair, M.P.
Grenville-Carleton.

141-206



DEPUTY SOLICITOR GENERAL

ASSISTANT DEPUTY SOLICITOR GENERAL

March 22, 1971

Research into Murder Statistics
and Capital Punishment

I have read over Mr. MacLeod's memo to you of March 16th and note his statement to the effect that capital punishment is an emotional issue and therefore there is no point in carrying out research. With all due respect, it seems to me that almost everything in the criminal justice system is an emotional issue. It is precisely for this reason that research is required to cut through the emotionalism and to provide some empirical data on which sound decisions can be made.

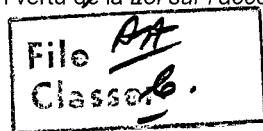
With reference to the proposed conference, I think it might be useful in establishing the parameters of the research required. With this in mind such conference, if it is to take place at all, should take place as soon as possible. I would think it too risky to wait until the matter comes up for debate in the House of Commons to hold such a conference. You can imagine our predicament if the leading experts came out in favour of a policy contrary to that held by the Government or our Minister.

Finally, as for the persons participating in any conference all the names proposed by Dr. Ciale are well known authorities in this field and are people who could make a valuable contribution. I would not exclude the possibility of adding others.

BERNARD C. HOFLEY

B.C. Hofley.

Copy in: 62-9



CONFIDENTIAL

March 1st, 1971

CAB. DOC.
No. 221-71

MEMORANDUM TO THE CABINET

"Priority Problems"
Report of the Cabinet Committee on
Priorities and Planning

Extract from p. 2, Other New Topics

Capital Punishment

Solicitor General with the
assistance of the Minister
of Justice

Suggested definitions of these problems are shown in Annex A.

Annex A, p. 2 -

Capital Punishment

Given the expiration of the five-year trial period on the abolition of capital punishment in December, 1972, the problem is that a decision will have to be taken which will take into account that the Government appears to be opposed to capital punishment and unwilling to allow an execution, while Parliament may not be ready to eliminate it altogether.

MISS A.M. HAMON,
OFFICE OF THE SOLICITOR GENERAL,
Room 235S


141-206

J.H. HOLLIES

Feb. 12, 1971

In accordance with your telephone request of today, I enclose a copy of "Capital Punishment" for the Minister's use. Dr. Ciale found this copy for me in the library and has charged it out to the Minister. I understand that Dr. Ciale has some further brochures on this general subject.

Encl.


J.H. Hollies,
Departmental Counsel

JHH/mab



TO
A

MISS A.M. HAMON,
OFFICE OF THE SOLICITOR GENERAL,
Room 235S

MEMORANDUM

CLASSIFICATION

141-206

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

J.H. HOLLIES

DATE Feb. 12, 1971

FOLD

SUBJECT
Sujet

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Encl.

J.H. Hollies,
Departmental Counsel

(2)
Many thanks.

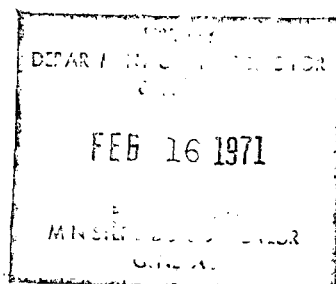
(3) Library.

Alu Hamon

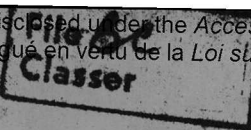
Returned, Thank you.

Hollies
11 Feb 71

15/2/71



Rec'd J Hamon



141-206

7

**CHIEF
CORRECTIONAL RESEARCH**

February 12, 1972

**Research into Murder Statistics
and Capital Punishment**

Please refer to your memorandum dated November 13, 1970 addressed to Mr. John Braithwaite regarding the above mentioned subject and Mr. Côté's note of February 11, 1971, requesting where we stand on this question.

Initially, there was some uncertainty whether or not we would undertake research in this area. You will recall that we rejected an earlier proposal submitted by Mr. T. Grygier, because it was felt that capital punishment was a Justice concern.

So far, only exploratory work has been done such as determining questions, sources of data, and the potential research team. Because of the importance of this issue, I would propose that this be handled in several stages in order to meet a proposed August 1972 deadline:

1) Set up an "ad-hoc" consultant committee whose task would be to examine the several issues connected with the abolition of capital punishment, namely, outline the philosophy, the legal aspects including the sentencing alternatives and its likely effects on society; outline the general goals of the study to ensure that the results be unequivocal in terms of developing a sound social defence policy with respect to the abolition or retention of capital punishment. Another vital issue to be examined, and as suggested by the Minister in his speech of April 4, 1966 in the House, would be the victim-aggressor relationship, that is, who are the victims, what happened to the relatives of the victim, etc. The proposed committee would meet for one or two days, possibly in Toronto, Montreal or Ottawa, preferably the latter. The suggested panel of consultants might be: D. Szabo, University of Montreal, T. Grygier, University of Ottawa, J.L. Edwards, University of Toronto, P.J. Giffen, University of Toronto, T. Sellin, Prof. Emeritus, University of Pennsylvania, M. Morris, University of Chicago, J. Hackler, University of Alberta, B. Boyd, Director, Penetang Hospital, M. Fréchette, University of Montreal.

... 2

Revised on 62-9

- 2 -

Mr. J. Hollies or Miss I. Hansen would participate in both the committee and in the study.

2) This consultation should normally lead to the development of a proposal outlining the terms of reference of the study.

3) We could request bids from several universities to decide which one should be awarded the contract: Alternatively, we could approach several universities, and decide on the basis of research capability, cost, desire to carry out the study within the time schedule, agreements as to the kind of report we desire, determination of publication rights and confidentiality.

The estimated cost of the Ad Hoc Consultant Committee meeting in Ottawa is about \$6,400, as follows:

Hotel Accommodation & Meals - 9X2X30-	\$ 700.
Consultant Fees - \$250. X 9 X 2 -	4,500.
Travel Expenses -	1,200.
	<hr/>
	\$6,400.

May I have your instructions, please.

ORIGINAL SIGNED BY
JUSTIN CIALE

J. Ciale

141-206

606

April 4, 1986

COMMONS DEBATES

3821

should adopt a trial period of abolition. Let us do so with our eyes open, feeling sure that we are doing the right thing in view of all the facts. Let us vote clearly and definitively to abolish the death penalty.

• (p.m.)

[Translation]

Mr. Jean-Pierre Goyer (Dollard): Mr. Speaker, after hearing or reading the various speeches made in this house, one is inclined to believe that all arguments have been used. It is easy to repeat them and I willingly share the idea or at least the attitude of those who believe that it is good that the same arguments be taken up again from various angles.

For instance, we have been told often about the progress made by our society not only with regard to the death penalty but also in the field of mental health. We have heard philosophical and theological arguments which find their roots in documents which have come to us through the ages from the Bible to essays by Camus or Koestler.

The personal experiences that many of us have lived or witnessed in our midst, experiences which have influenced more or less deeply our attitude and which are reflected today in the stand which we will have to take soon. All of us, not to win, because this is not a marathon or a competition, but rather to look for a truth, if that is still possible, at the end of this debate.

Of course, a line of reasoning that leads to a decision cannot be followed in prejudice, when looking for sensationalism or exploiting an electoral advantage which would not be to the credit of those who elected us.

Throughout this debate, I was struck by the effect produced by the words: death penalty. For some, it is related to barbarism and anti-humanitarianism. For others, it looks like a valid and necessary, even essential, weapon for society. And yet, taken in itself, the death penalty is a means to sentence a criminal and as such it must have a punitive and a preventive value. Thus the necessity, in order to deal with that matter objectively, to forget any prejudice which subsists in us, to go beyond what hides the true problem and to dwell instead on the objectives to be attained by the death penalty, just like we would do when studying any other type of sentence. After reading a great deal of literature, especially articles by Marc Ancel, Paul Gornil et Giuliano Vassalli, I have a theory which seems to me worthwhile, that of an alternate penalty. The objection which

I would then raise is as follows: Can death penalty be replaced by another penalty, which would retain the punitive aspect toward the convicted and the deterrent aspect toward society?

In fact, the alternate penalty is now accepted throughout the world, and is applied in Canada as elsewhere.

The latest amendments to the Criminal Code constitute a significant example of my argument. From now on, we differentiate between two kinds of murders: the capital murder and the non-capital murder, the first one involving hanging and the latter life imprisonment.

This theory of an alternate penalty is not new. Already, at the end of the 18th century, movement of penal reform brought about the abolition of corporal punishment to be replaced by loss of freedom only. In that respect, the loss of liberty was an alternate penalty to torture, since crime was punished by a different penalty.

Likewise, death penalty has this value of replacement when it ceases to have degrees, that is being accompanied by tortures more or less extended. For instance, in 1791, the French Criminal Code, decided that:

The death penalty will be a simple deprivation of life without any torture exerted against the convicted.

To use a well-known method, a proper death penalty is found and established. Going through the ages, we could multiply the examples proving the application of this theory, to reach the present situation where the death penalty has been completely replaced: it has been abolished or partially replaced.

In both cases, the substitute punishment took the form of a denial of freedom. In other words, we are all more or less abolitionists, for in some instances imprisonment is accepted as a substitute for the death penalty indeed, nobody can say that nowadays a killer must always be killed. Otherwise, one who commits a passionate crime would always be hanged, one who commits a political crime would be hanged and the mentally ill committing a crime would be hanged. Yet, it is readily accepted today that those three types of criminals should not be hanged, either because of the law or following the commutation of the penalty. Why? Because the death penalty is instinctively revolting, too severe and contrary to reason. The death penalty is thus being questioned as a punishment and a deterrent and we are

000868

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COMMONS DEBATES

April 4, 1966

said that life imprisonment has the same effect.

Basically, in the three examples given, the change takes place because of the personality of the offender. Consideration given not only to the crime committed but also to the offender and the circumstances under which the crime was committed. Why? Because the criminal is more sympathetic? Not necessarily, but it is felt that society must first of all consider him as an unbalanced or sick person or, as the case may be, merely deprive him of his freedom.

Are we aware that in those three cases we are relying, rightly or wrongly, on our penal system? In any case, unconsciously, we are. Unconsciously, because once again we concentrate on this one question: is it advisable to hang this particular criminal not? If the answer is no, then he goes to jail and we forget about him. We forget about him until special circumstances come up such as those which occurred in the past few years. Those past few years, it has dawned on the public that jails were actually schools for crime, which granted degrees in criminal science, instead of institutions devoted to the rehabilitation of the inmates. For too long—and such is the case even today—jails have been considered as places where murderers should be punished, when they are places where they should be rehabilitated.

Even today, much too few of our inmates are given rehabilitation courses. And what do they teach in our jails? Trades are still being taught that have just about vanished from our society. Handicrafts are taught, for instance shoemaking. I think such trades are things of the past. We should apply modern methods like they do in France, for example, where we find one out of five inmates taking courses that will lead him even to a diploma or a master's degree in law. Recent statistics show that inmates often are more successful than regular students.

At the present time, at St. Vincent de Paul, there are two psychologists for 1,700 inmates. That is asking two persons to perform miracles. It is putting them in an impossible situation where they cannot meet the needs and really achieve something lasting. There are still being built in our prisons maximum security cells, or holes, where a dog would not be sent to rot for fear it might become rabid.

[Mr. Goyer.]

• (7:30 p.m.)

Hundreds of thousands of dollars have been appropriated out of public funds to build such holes in St. Vincent de Paul.

In contrast with this amazing policy, a penitentiary meeting modern requirements is being built in Valleyfield.

What is the Canadian policy with regard to penitentiaries? The prisoner is no longer considered as an animal and subjected to conditions which society abhors today, but rather as a man who like any other, is entitled to respect in his sad plight. Guards are inadequately paid. It is acknowledged by our courts that guards connive at prisoners' rackets, supply them with goof balls and even help them to escape from the penitentiary. Is this acceptable?

There are outstanding experts today in the field of mental disease. Mental hospitals are staffed with all the required specialists; budgets have been increased. What is provided in our prisons? Less than nothing. As members of parliament, we are all responsible for this untenable situation. Academic speeches are in order, but the administration must also provide for required needs, so as to bring up to date our penitentiary system and explain to the people that Canada is lagging behind in this field more than any other country in the western world.

Does this mean, Mr. Speaker, that we should wait until reforms are carried out before substituting life imprisonment for the death penalty? No, and here is why.

(1) Abolition exists in fact or is recognized in practice for several types of crimes, whatever the present conditions of our penitentiaries, and the public accepts this.

(2) It is true that the public does not feel secure under the present system of probation. And, here again, I question the qualifications of the people in charge of the system of probation. And what is more, and this is more serious, they are not given the staff required to develop a coherent policy to follow up the person sent back to society, after his sentence is commuted. But, on the other hand, this is corrected by the resolution now before the house, which operates a drastic change by giving the right of parole to the governor in council in last resort.

(3) The conditions in our penitentiaries is not a danger for the safety of society, for once again, it is in all cases maximum security penitentiaries, but rather a serious barrier to the rehabilitation of the individual.

000869

April 4, 1966

COMMONS DEBATES

3823

I call your attention on my last point. A penitentiary system must be administered in such a way as to enable the offender to leave jail a better man than when he came in.

The criminal or the offender is not sentenced to prison to be submitted to further punishment, that is, to be ill-treated. Sir Alexander Paterson, who once fulfilled the duties of chairman of the British Jail Commission, stated:

[English]

Offenders are sent to prison as punishment, not for punishment.

[Translation]

The fact that a person is sent to jail, that is to say deprived of freedom, constitutes the penalty in itself, not the kind of life such person is required to lead in the penitentiary. On the contrary, for the time must be foreseen when the prisoner will recover his freedom—if every thing has not been done during his imprisonment to rehabilitate him, a potential criminal is then being released.

To deny our social and humane responsibility for the rehabilitation of prisoners is to agree, in the long run, to multiply the number of criminals and consequently to seriously endanger public security.

This does not solely apply to a murderer for this type makes up the smallest minority of prisoners—but to the majority of those who have been sentenced to penalties less than life imprisonment.

While other countries adopt systems of graduate detention, from total confinement through internment to half-detention, including even week-end or after business hour detention served outside the penitentiary, we are still discussing this antiquated question of capital punishment.

While parents and relatives of the victims of criminals are often burdened with economic and social problems, because for instance the victim was the head of a family which is henceforth left without means, instead of finding solutions to this situation, and of helping these people, through new legislation, we are concentrating our efforts in the search of a vendetta on the criminal. The criminal is involved in a human problem; those who are solely afflicted in economic and social problems. In 1966, these are the problems we, in parliament, should be concerned with.

In fact, the man who comes out of prison after serving a five-year sentence, even without having obtained a reduction of his term of prison, may present a greater danger to

society if he has not been rehabilitated during this period of time. He is more apt to relapse into crime and thus presents a danger to society. A rehabilitated criminal whose sentence is reduced, on the other hand, is of course much less liable to disturb society.

The abolition of capital punishment is no innovation. It exists in several countries since half a century. To innovate would mean more than that. It would, rather, mean improving methods of rehabilitation, and studying ways of compensating in part the parents and close relatives of the victim, which would surely be more effective and healthy than the brute satisfaction of executing the criminal. This is the course of action of a progressive Parliament.

We will show Canada whether we will deal, not with out-of-date problems such as capital punishment, but with the problems of our time, those of rehabilitation and of compensation of victims; this is where our work lies and further discussion on capital punishment is a waste of time and it is outdated.

[English]

Mr. D. Alkenbrack (Prince Edward-Lennox): I join in this debate this evening, Mr. Speaker, with reticence as I realize its meaning and consequences and its potential effect on the preservation of our nation and our society. I do so also with great respect for the history that has been mentioned by other hon. members here today. This respect for history is a quality that is not found in abolitionists alone but I am sure it is possessed by all members and particularly retentionists because we remember that our statutes are part of our history.

We are not back in the seventeenth and eighteenth centuries, and the ridiculous penalties for crimes other than capital crimes which have been related to us as applying in those years have nothing to do with the argument today. I claim that our functioning statutes, as they are now, are part of our history and society and should be respected and maintained as such.

I have listened with interest to the presentations of most hon. members. I have in fact read all the speeches to date. I congratulate my colleagues in all sections of the house upon the many cogent points that have been presented in this debate. I know that each one of us has and will put forward his or her argument without any personal acerbity to anyone, and according to his or her belief on this vital subject.

000870

s.19(1)

Ottawa, Ontario
February 2, 1971

Miss [REDACTED]
[REDACTED]

Dear Miss [REDACTED]

Your letter addressed to Mr. Turner, Minister of Justice, requesting information on Capital Punishment, has been referred to this department.

Unfortunately there is very little printed information available on this subject; however, we are forwarding a photostat copy of Bill C-168, An Act to amend the Criminal Code, and would also suggest you write to Information Canada, Ottawa, and ask them if they still have for sale the House of Commons Debates for November 14 - November 30, 1967 inclusive.

We are also enclosing a copy of our bibliography; many of the books listed should be available from your public library, and should provide you with a lot of interesting and valuable information.

Yours sincerely,

ORIGINAL SIGNED BY
N. RIDDIOUGH

Norman Riddiough
Director
Information Services



CANADA

Ministère du Solliciteur-

Department of the

Général

Solicitor-General

TO: SOLICITOR-GENERAL
AU: SOLLICITEUR-GÉNÉRAL

26/11/71

☐ POUR AUTORISATION
FOR APPROVAL

☐ FOR SIGNATURE
POUR

☐ POUR INFORMATION
FOR

☐ FOR DIRECTION
POUR DIRECTIVE

☐ SUR SA DEMANDE
AS REQUESTED

☐ TO NOTE AND RETURN
PRENDRE NOTE ET
RENOYER

DICTATED BY
DICTÉ PAR

M. Hollies

DATE

DACTYLOGRAPHIÉ PAR
TYPED BY

DATE

[Signature]

000872

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

①
Minister

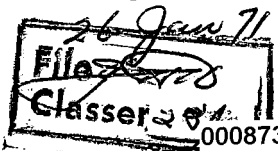
② Mr. Hobbie
Please note S.G.'s
comment. Colby
slightly

I had asked for the attached
statement as I was informed
the question of capital punishment
would probably be raised during
the conference of the Association
of Chiefs of Police.

22-1-71

Merci. Tristan
documents. 1. P. G.

J. P. Hamelin





TO
A

MEMORANDUM

CLASSIFICATION

141-206

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

THE SOLICITOR GENERAL

FROM
De

DEPUTY SOLICITOR GENERAL

DATE January 26, 1971

FOLD

SUBJECT
Sujet

I am informed that you wish to have some material suitable for use at your luncheon on January 27th, to deal with the question of capital punishment.

I have had a statement drafted that you might find suitable in speaking to the Chiefs of Police. I enclose the draft statement in question and as well a tabulation of the relationship of murder suspects to victims. This latter document has just been prepared and is relevant to the problem of whether murder during the commission of a criminal act has been increasing or not.

Encls.

E.A. Côté

141-206

[Handwritten signature]

THE SOLICITOR GENERAL

DEPUTY SOLICITOR GENERAL

January 26, 1971

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E. A. CÔTÉ

Encls.

E.A. Côté

J.H. HOLLIES/mab

DRAFT STATEMENT FOR USE BY SOLICITOR GENERAL

The problem of whether the death penalty should be retained in today's society and, if so, the type of case to which it should be applicable is among the most vexing and serious questions of the day. Canada has not been alone in seeking to determine the line that should be drawn between the protection of the public and the maintenance of law and order, on the one hand, and the growing trend toward amelioration of punitive sanctions, on the other hand.

As you know, the United Kingdom Parliament, during the course of last year, decided to abolish capital punishment and to terminate the "trial period" which was then in progress and which was instituted in order to ascertain whether the abolition of the death penalty would result in an increase in homicides. One can only conclude that the United Kingdom studies led the authorities of that country to believe that the reinstitution of the death penalty was unnecessary in order for them to deal with their criminal element.

Here in Canada, of course, Parliament amended the Criminal Code at the end of 1967 so that murder would no longer attract the death penalty except when the murder was of a policeman or prison guard who was acting in the course of his duty.

The legislation in question was passed by only a very narrow margin and in the same Act the Criminal Code was further amended by requiring the trial judge to inquire of the jury whether they recommended that clemency be granted. Further, a provision was inserted in the Criminal Code requiring the judge to allow sufficient

- 2 -

time between the date of sentence and its execution so that the question of clemency could be considered. Since the legislation was amended in this fashion, Cabinet has had only two occasions so far to decide whether the death sentence passed by the trial judge for the murder of a policeman should be commuted.

Since the commutation in the Lurvey case representations have been made from police associations and from other sources that the sentence should not have been commuted. You will understand that I am not at liberty to disclose to you, or indeed to anybody, the reasons that weighed with Cabinet and the deliberations engaged in by my colleagues and myself.

What I should like to deal with very briefly is what I consider to be the basic issue. Put in blunt and simple terms, it is the question of whether the commutation of a death sentence makes the onerous and difficult duties of police officers more dangerous to their lives and safety. Admittedly this is an issue upon which opinions may differ very radically. Nonetheless, I should like to suggest to you that our statistics and the experience in other countries has shown that there is no correlation between the carrying out of the death sentence and the rate of homicides.

The United Nations commissioned a study some eight years ago. The result of that study was that in all the countries examined there appeared to be no conclusion that could be drawn showing that the imposition of the death penalty acted as a deterrent to murder. A later study by this same person showed that those States in the

- 3 -

United States of America that had the death penalty retained had more violence, such as assaults on and murders of prison guards, than those States where capital punishment had been abolished. A further source of information is the tables contained in a paper published by the Department of Justice in conjunction with the debates in Parliament that occurred in 1967 on the death penalty. The data contained in that paper included studies of certain States in the United States of America where the death penalty had been abolished for a period of years and then had been reintroduced. There appeared to be no significant change in the murder rate either during the period of abolition or subsequent to the death penalty being brought into force once more.

I have with me a table showing the figures in Canada for the years 1961 to 1969 pertaining, among other things, to the number of murders that were committed during the commission of a criminal act. These figures naturally fluctuate to some extent and must as well be read with the understanding that they in no way relate solely to the murder of a police officer. For example, where a store keeper was killed during the course of a robbery that murder would be included in these figures. The average number of incidents for the past nine years is twenty-three per year. In 1963 the figure was twenty-seven, in 1966 it was thirteen, and in 1967 it was twenty. For the last year for which we have statistics, i.e., 1969, the figure was twenty-eight. I venture to suggest that on the basis of these figures it is impossible to say that the presence or absence

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of the death penalty for any particular kind of murder has had an effect upon the rate.

The available data is extensive, not only for Canada but in foreign jurisdictions. Extensive as this data is, however, we are not satisfied that further research would not shed additional light upon this problem. Accordingly, the Department of the Solicitor General is initiating in cooperation with the Dominion Bureau of Statistics a research project seeking once more to ascertain any possible effect of the death penalty upon the murder rate.

141-206

Ottawa 4, January 26, 1971

Dear Mr. Harding:

In your letter of December 8th addressed to the Minister of Justice you asked for statistics concerning the impact of the lack of the death penalty upon the murder rate in Canada or elsewhere. My colleague referred this letter to me for a reply since it is my Department that is responsible for laying before Cabinet the problem of whether a death sentence should be commuted in each individual case. I much regret the long delay in letting you have an answer, but as you will appreciate this is a very difficult matter upon which to provide meaningful comment.

You are probably aware of the information on murder rates in Canada as compiled by the Dominion Bureau of Statistics. These figures are complete only up until the end of 1969. They show that the rate of murder per 100,000 population varied between 1.2 and 1.5 in the years 1961 to 1965 inclusive. In 1966 the rate was 1.3 and in 1967 it had risen to 1.6. The amendments to the Criminal Code that restricted the circumstances in which murder is capital to the killing of policemen and prison guards while in the course of their duty became effective at the end of 1967. In 1968 the rate per 100,000 was 1.8 and in 1969 the rate was 1.9.

I do not believe that it is possible to draw any conclusion from the figures I have given in the immediately preceding paragraph. For example, a mass murder involving seven victims but only one offender (as has been the case) would have a disproportionate effect upon the rate because of the relatively low total number of murders. Further, it is by no means clear whether a change from 1.6 to 1.9 in a space of two years is statistically significant. Fluctuations similar to this have previously occurred without any cause for such fluctuations being assignable.

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Mr. Randolph Harding, M.P.,
House of Commons,
Ottawa 4, Ontario

- 2 -

The statistics published in England and Wales are in a form which does not give the rate per 100,000 of population, but rather gives an over-all figure of "total known murderers or suspects". The figures might be assessed in light of the fact that the death penalty for any murder was abolished in November 1965 for a five year trial period. In the five preceding years, i.e., 1960 to 1964 inclusive, the over-all figures are given as 135, 116, 129, 106 and 129 respectively. In 1965 the total was 124 and for the subsequent three years the reported figures are 1966 - 125; 1967 - 146; and 1968 - 164. I think I should point out that in spite of this apparent increase in the total figure, the Parliament of the United Kingdom decided in 1970 that the "trial period" should be terminated and that the death penalty should be permanently abolished. I can only conclude that the authorities had formed the opinion that the reinstitution of the death penalty was not a measure which would be useful as a deterrent to potential murderers.

There was a study carried out by the United Nations which indicated that the variation in homicide rates from one country to another is not related to the exercise of capital punishment. (The study, entitled "Capital Punishment", was carried out about eight years ago and was produced by Thorsten Sellin.) A later study by the same person showed that those States in the U.S.A. that retained the death penalty had more violence, including assaults on and murders of prison guards, than did those States where capital punishment has been abolished.

One interesting fact that is apparent from figures published by the Dominion Bureau of Statistics ("Murder Statistics" 1969, page 9) is that the number of unsolved murders has tended to increase. It has risen from twelve in 1965 to sixty-four in 1969. Since the statistics were published at the end of 1969, it may well be that the last figure is misleading as a percentage of these cases would likely have been solved in the following year. Nonetheless, the figures do suggest that a greater percentage of homicides are remaining unsolved. If this is so, I would think it might have a bearing on the murder rates, since it has long been considered that the speedy detection of criminals is the best deterrent to crime.

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- 3 -

A further consideration to be taken into account is the likelihood of a defence of insanity being raised. When a murder would result in a sentence of death being imposed, it was often in the interest of the accused person to try to establish that he was insane when the alleged offence was committed. It was - perhaps arguably - believed to be preferable that the accused person should be confined as insane rather than to run the risk of being hanged. Now that the sentences of death are not passed except in very limited cases, I would suggest that the defence of insanity is much less likely to be raised. In the result there may be convictions registered now where previously a finding of "not guilty by reason of insanity" could have taken place.

I hope that this letter will contain enough information to be of assistance to you in replying to your constituents. I would just add that my Department is much concerned with the problem that you have raised, and that a research project is to be initiated in cooperation with the Dominion Bureau of Statistics so that we may obtain further data upon the whole question of the relationship between capital punishment and the murder rate.

Yours sincerely,

Original Signed by
JEAN-PIERRE GOYER

Jean-Pierre Goyer

MEMORANDUM

CLASSIFICATION



TO
A

MISS I. HANSEN
LEGAL OFFICER

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

CHIEF
CORRECTIONAL RESEARCH

DATE
January 4, 1971

FOLD

SUBJECT
Sujet

REPLY TO RANDOLPH HARDING, M.P.

Please refer to Mr. J. Hollies' memorandum of November 22, 1970 requesting assistance in preparing a reply to Mr. Randolph Harding, M.P. I have not in my possession at this time any recent comparative murder statistics. However, a United Nations' study entitled "Capital Punishment" (carried out about eight years ago) by Thorsten Sellin, showed that homicide rates varied from one country to another and they are not related to the exercise of capital punishment. For example, homicide rates vary between Italy and England with the former having a higher homicide rate, particularly in the South, yet it abolished the death penalty over 100 years ago (except when it was reactivated by Mussolini's regime prior to the Second World War). Scandinavian countries also have a much lower homicide rate contrasted to their suicide rate which is twice and three times higher than Italy. The study showed that the same may be said for South American countries and various states in the U.S.A. Homicide rates are not related to capital punishment.

A later study by T. Sellin showed that those states in the U.S.A. which had the death penalty also had more violence (assaults on and murders of prison guards) than those states where capital punishment had been abolished. Consequently, murder and homicide would seem to be associated with complex psycho-sociological events in the culture.

With respect to the Canadian scene, I refer you to a copy of page 9 of "Murder Statistics" 1969 published by the Dominion Bureau of Statistics which I attach for your information. You will note that the absolute number of unsolved murders has tended to increase - from 12 in 1965 to 64 in 1969. The inference I would make here is not that capital punishment is not a deterrent so much as that, owing to social conditions, there is now an increased risk of escaping detection. In other words, a murderer is more likely to escape detection. Becarria, the classical criminologist, long ago pointed out that repression of crime is the best deterrent. Some of the factors which may be responsible for this increase in unsolved crime may be due to overworked police systems, lower community cohesiveness, alienation of youth, etc. A greater number of younger people are involved in violent crime (over 100 under the age of 16 in the past ten years).

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- 2 -

Another hypothesis that should be explored is the intensity with which lawyers will defend their clients now that capital punishment has been abolished. This aspect should be examined to assess to what extent lawyers in the past presented a stiff defense from the beginning of the trial right through to the sentencing process, compared to the past five years. A lawyer, knowing that his client will not be handed a capital punishment sentence, might not fight with the same psychological determination. In addition, the abolition of capital punishment coincides with the provision of Legal Aid services across Canada. I refer you to the Ontario plan.

I would also like to point out that the whole question of murder statistics and capital punishment will be reviewed as soon as possible, and a research project will be initiated in cooperation with D.B.S. and a suitable research team.



J. Ciale

Attachment

Of the 85 persons convicted, 61 or 71.8 per cent were convicted of manslaughter or a lesser offence.

Sur les 85 personnes reconnues coupables, 61 (71.8 p. 100) ont été condamnées pour homicide involontaire ou pour une infraction de moindre gravité.

The following three tables show the number of murders reported each year and their status as of December 31, 1968 and 1969. Although the clearance of offences and court decisions regarding each case need not have occurred in the same year the murder was known to the police and reported to DBS, data in the tables for such clearances, court decisions, or any subsequent actions have been updated in that year.

Les trois prochains tableaux indiquent le nombre d'homicides signalés chaque année et les décisions qui avaient été prises à leur égard le 31 décembre 1968 et 1969. Bien qu'il ne soit pas nécessaire que le classement des infractions et les décisions des tribunaux concernant chaque cas se soient produits la même année que l'homicide a été porté à la connaissance des sûretés et signalé au B.F.S., les données relatives au classement, aux décisions des tribunaux ou à toutes dispositions ultérieures à l'égard de ces cas ont été rapportées à l'année en cause.

In Table 2 it will be noted that the number of persons charged is lower than the number of murders reported (victims). This is due to the fact that some suspects commit suicide and some murders are unsolved. In addition, an incident or act of murder may have more than one victim or more than one suspect.

Dans le Tableau 2, on remarquera que le nombre de personnes accusées est inférieur au nombre d'homicides signalés (victimes). Ceci provient du fait que certains suspects se suicident et que certains meurtres ne sont pas éclaircis. De plus, il se peut qu'il y ait plus d'une victime ou plus d'un suspect en cause dans un incident ou un acte criminel.

Tables 2, 3 and 4 are designed to show the year's activity regarding murders and court proceedings. By showing these activities as of December 31, 1968 and 1969, information regarding murders reported in the years 1965-1968 is up-dated by one year and can be compared with the status of cases reported in 1969.

Les Tableaux 2, 3 et 4 ont pour objet de montrer l'activité de l'année en ce qui concerne les homicides et les poursuites judiciaires. Comme les statistiques se rapportent au 31 décembre 1968 et 1969, l'information sur les homicides signalés au cours des années 1965-1968 est d'une année plus récente et peut être comparée à la situation des cas signalés en 1969.

TABLE 2. Number of Murders reported by the Police and their Disposition at December 31, 1968 and 1969 as reported to DBS, Canada 1965-1969 (Classified according to year offence became known to police)

TABLEAU 2. Nombre d'homicides signalés par les sûretés et décisions au 31 décembre 1968 et 1969 selon les rapports au B.F.S., Canada, 1965-1969 (Les crimes sont classés selon l'année où ils ont été communiqués à la police)

	1965		1966		1967		1968		1969
	Disposition Décision		Disposition Décision		Disposition Décision		Disposition Décision		Dispo- sition Décision
	Dec. 1968	Dec. 1969	Dec. 1968	Dec. 1969	Dec. 1968	Dec. 1969	Dec. 1968	Dec. 1969	Dec. 1969
Number of murders reported to DBS - Nombre d'homicides signalés au B.F.S.	243	243	220	220	281	281	314	314	342
Offences cleared by charge as of December 31, 1968 and 1969 - Crimes classés par mise en accusation, 31 décembre 1968 et 1969	198	197	182	182	194	195	247	248	256
Offences cleared by suicide - Crimes classés suicides	33	33	20	20	59	59	23	23	20
Offences cleared otherwise as of December 31, 1968 and 1969 - Crimes classés autrement, 31 décembre 1968 et 1969	-	1	4	4	1	1	-	-	2
Unsolved offences as of December 31, 1968 and 1969 - Cas d'homicide non jugés, 31 décembre 1968 et 1969	12	12	14	14	27	26	44	43	64
Persons charged as reported by police as of December 31, 1968 and 1969 - Personnes inculpées, selon les rapports des sûretés, 31 décembre 1968 et 1969	200	199	204	204	195	196	270	271	277
Persons not sent to trial as of December 31, 1968 and 1969 - Personnes non mises en jugement, 31 décembre 1968 et 1969	45	43	50	47	34	30	183	77	156
Persons sent to trial as of December 31, 1968 and 1969 - Personnes mises en jugement, 31 décembre 1968 et 1969	155	156	154	157	161	166	87	194	121

MR. HOLLIES,

I know I should
have -

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Classer

MISS I. HANSEN
LEGAL OFFICER

CHIEF
CORRECTIONAL RESEARCH

January 4, 1971

REPLY TO RANDOLPH HARDING, M.P.

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- 2 -

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I would also like to point out that the whole question of murder statistics and capital punishment will be reviewed as soon as possible, and a research project will be initiated in cooperation with D.B.S. and a suitable research team.

ORIGINAL SIGNED BY
JUSTIN CIALE

J. Ciale

Attachment

141-206

Ottawa 4, January 21, 1971

Dear Mr. Telfer:

May I acknowledge your letter of December 24th in which you expressed your views as to the commutation of death sentences for those found guilty of murdering policemen.

In every instance where this type of case is considered by Cabinet there is a great deal of material examined, much of which (such as confidential psychiatric reports) cannot be made available to the public. I can only assure you that the most careful and anxious consideration is given to each case on an individual basis, and that the collective decision of Cabinet is not lightly arrived at.

You speak of the Cabinet making "commitments they have no intention to keep". Perhaps you will allow me to point out to you that at no time has there been a commitment made that all death sentences will be carried out, rather than be commuted. As the law now stands, the Judge has no option where a policeman has been murdered in the course of his duty but to impose the death sentence. At the same time, it is equally true to say that the Criminal Code empowers the Governor in Council to commute any death sentence imposed by the courts. It is only proper that when the Code vests such a power in the Governor in Council each case should be examined to see whether that power should be exercised.

The whole problem of capital punishment is one upon which there are marked differences of opinion and, no doubt, whatever course of action is determined upon can not satisfy all segments of our society.

Thank you for having taken the trouble to let me know your own views on this very serious question.

Yours sincerely,

JEAN - PIERRE GOYER

J.H. HOLLIES/mab

Jean-Pierre Goyer

Mr. Allan Telfer,
P.O. Box 504,
Kanata, Ontario

CANADA

Ministère du Solliciteur-

Général

17 Jan 71
Department of the
Solicitor-General

TO: SOLICITOR-GENERAL

AU: SOLLICITEUR-GÉNÉRAL

4/1/71

☐ POUR AUTORISATION
FOR APPROVAL

☒ FOR SIGNATURE
POUR

☐ POUR INFORMATION
FOR

☐ FOR DIRECTION
POUR DIRECTIVE

☐ SUR SA DEMANDE
AS REQUESTED

☐ TO NOTE AND RETURN
PRENDRE NOTE ET
RENOYER

DICTATED BY
DICTÉ PAR

J. H. HOLLIES

3. Dec 70

DATE

DACTYLOGRAPHIÉ PAR
TYPED BY

M. Baverstock

DATE

Erly

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

Mr Mosley

Please have reply prepared
for Minister's signature.

JL Hammon
30 Dec 70

BF 4 Jan 71

s.19(1)

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

Dec 30 9 05 AM '70

Box 504, Kanata, Ont.
Dec. 28-1970.

Dear Mr. Boyer: Your government has made a mockery of its word, and a travesty of justice in this country by refusing to execute cold blooded killers of policemen.

It has also betrayed the policemen of this country, and put their lives in further jeopardy. It has encouraged the incidence of violent crimes by not dealing with it in the proper manner.

As the new solicitor general, you might possibly rectify this pathetic weakness in our administration of justice, and advise the cabinet in the future not to make commitments they have no intention to keep.

Yours truly;

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLICITEUR GÉNÉRAL

MEMORANDUM

Mr. Mosley ①

For direct reply per

Cy
26 Jan 71

② Mr. Redding

For reply direct please.
Is ~~Do~~ Hansen not connected
from the Queens Hotel?

Justly
27 Jan 71

MINISTER OF JUSTICE - MINISTRE DE LA JUSTICE

Date January 21, 1971.

Forward to Mr. John R. Cameron,
Faire suivre

ACTION REQUEST - FICHE DE SERVICE:

Reply for signature of
Réponse pour la signature du

Please see me re this
S.V.P. me voir à ce sujet

Attention XXX - not acknowledged.
Attention

Information
Renseignement

Note and return
Noter et retourner

Note and return with comments
Noter et retourner avec commentaires

Return with file
Retourner avec dossier

Approval or revision before mailing
Approbation ou revision avant de poster

Other instructions:
Directives supplémentaires:



..... Michael W. Hunter 000894
Executive Assistan

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

JAN 26 9 03 AM '71

DM SM
SOL GEN

JAN 27 9 59 AM '71

FILE
DOSSIER

141-206

Mrs. Mosley

Minister's Office
Bureau du Ministre

JAN 21 1971

MIN.
Ex. Asst.
SP. Asst.
SP. Asst.
Pri. - Sec.
Const. Sec.

Jan. 18th. 1971,
Box 55,
Capreol,
Ont.

Mr. Turner,
Minister of Justice,
Parliament Buildings,
Ottawa, Ontario.

Dear Sir:

I am presenting one side of a debate on Capital Punishment. I am debating 'against the re-establishment of Capital Punishment.' So far I have found very little material to support my argument. If it is possible would you please send me a copy of the Hansard Report and any other information you might have on the topic. If you have some would you please send it as soon as possible. Your help will be most appreciated.
Thankyou.

Sincerely

Marsha Legault

PARTMENT OF THE SOLICITOR GENERAL - MINISTÈRE DU SOLLICITEUR GÉNÉRAL

GENERAL ENTRIES CIRCULATION DU DOSSIER				B. F. AND P. A. ENTRIES INSTRUCTIONS AU CLASSIER				INSP
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Mr. Hollies	Reg.	28/11/72	DR	28 Nov				

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Solicitor General
Canada

Solliciteur général
Canada

FILE NO. - DOSSIER N°

VOLUME

~~141-206~~ 1037-60-12

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SECRETARIAT
SECRÉTARIAT

FROM - DE MS 35 (4-78)	TO - À
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SUBJECT
SUJET

SUB-SUBJECT
SUJET SEC.

TITLE
TITRE

~~CRIMINAL CODE~~

~~CAPITAL PUNISHMENT~~

Administration et Organisation
Acts & Legislation - FEDERAL

Criminal Code - Capital Punishment

CONFIDENTIAL - CONFIDENTIEL

FORWARDED TO - ENVOYÉ À

PURPOSE - OBJET

DATE

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B.F. DATE
REPORTER

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