



**Solicitor General
Canada**

Solliciteur général Canada

FILE NO. - DOSSIER N°	VOLUME
1037-60-12	8

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MS 35 (4-76)

SUBJECT
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ADMINISTRATION & ORGANIZATION

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ACTS & LEGISLATION - FEDERAL

CRIMINAL CODE

TITLE
TITRE

CAPITAL PUNISHMENT

[illegible]

1037-60-12 (Vol. 8)

CLOSED VOLUME VOLUME COMPLET



DATED FROM
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TO
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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

~~141-206~~

VOLUME

9



Solicitor General
Canada

Solliciteur général
Canada

1037-60-12

18/11/77

Dear Mr. Tobin:

You will note that the material from External Affairs, mentioned in the attached letter, is not included.

As soon as we receive it from them, we will forward you a copy.

Trusting this is satisfactory.

B.C. Hofley's Secretary
Assistant Deputy Minister
Research and Systems Development

7530-21-029-8633

Copy of letter only sent Jack MacDonald.
Copy of letter to Mr. Tobin with copy of speech,
without the covering memo from Jack MacDonald sent
Mr. Claude Morin, for information.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

MR. B. C. HOFLEY
Assistant Deputy Solicitor General
(Research and Systems Development)

FROM
DE

Jack MacDonald
Policy Analyst

SUBJECT
OBJET

DRAFT SPEECH ON CAPITAL PUNISHMENT FOR MR. ALLMAND

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE 8 November 1977

Further to our discussion last week, and to the request from Mr. Fox's office, here is a first, very rough, draft of some speaking notes designed for use before the Amnesty International meeting in Stockholm next month.

Since it was not entirely clear exactly what forum, or in what context, Mr. Allmand would be addressing the conference, it is obvious that adjustments will have to be made as details come in.

Also, it might be useful to consult External Affairs concerning the degree of effusiveness which is appropriate in congratulating Amnesty on their Nobel Prize, as well as on the specific point of whether Mr. Allmand can, or should, say he is offering those congratulations in his individual capacity or on behalf of the government of Canada. But perhaps this consultation could be handled by Dave Tobin or someone else in Mr. Allmand's office.

Does the general content and tone strike you as appropriate? How would you like to handle any changes which should be made, and who should coordinate the transmission of a draft to Dave? I understand from him that Mr. Allmand would appreciate receiving a draft as early as possible.

Please let me know if there is anything further I can do.

Jack MacDonald
cc. Dr. R.G. Cassidy



Solicitor General
Canada

Solliciteur général
Canada

340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

November 17, 1977

Mr. David Tobin
Executive Assistant to the
Minister of Consumer and Corporate Affairs
Place du Portage
Hull, Quebec
K1A 0C9

Dear Mr. *David* Tobin:

Re: Mr. Allmand's Address to Amnesty International
December 10, 1977

Attached herewith is a draft speech prepared by Jack MacDonald for Mr. Allmand, on the subject of Capital Punishment. I think it is good, but the Minister may wish to fill it out in places, if he feels it is not long enough.

I am also enclosing a copy of the Questions and Answers used at the time of the debate, a Statistics Canada Bulletin on the latest crime statistics, and a recent U.N. resolution on Capital Punishment which Canada supports.

I have also been in touch with the Department of External Affairs and I am sending you some notes used by Mr. Jamieson, and Mr. Jeff Pearson, Head of the U.N. section which I understand were used in a meeting with Amnesty International. It is possible the Minister might be questioned on Canada's position relating to prisoners of conscience, and he would find these notes useful.

Finally, the Minister may wish to know that other Canadians have been invited to the meeting in Sweden and I believe Ezzat Fattah, among others, plans to be there. You will recall he did some work for us on Deterrence.

If I can be of any further help, please let me know.

Yours sincerely,

Ben

B.C. Hofley
Assistant Deputy Minister
Research and Systems Development

First Draft

SPEAKING NOTES FOR THE HONOURABLE WARREN ALLMAND

Stockholm, Sweden - December 10, 1977

At the outset, I would like both to thank you for the honour of the invitation you extended to address this distinguished group and, secondly, to congratulate Amnesty International on behalf of the government and people of Canada for the important work it is doing throughout the world, and for the recognition of that work symbolized by the Nobel Peace Prize.

I have been invited to describe to you the recent Canadian experience which resulted in the abolition of capital punishment for all offences under the Criminal Code, in July of 1976. As Solicitor General of Canada between 1972 and 1976, I was the Federal Minister responsible for the development and presentation of that law in the Canadian House of Commons.

Perhaps I should begin by briefly describing the historical background to that event.

As in the United Kingdom, the subject of capital punishment has been the subject of considerable study and public discussion since the end of World War II. As in many countries, the extent to which capital punishment was employed in Canada was successively restricted, both in law and in fact.

In law, a 1960 Act drew a distinction between capital and non-capital murder, much as was done a few years before in Britain. In 1966, a debate was held on a resolution calling for complete abolition, and this resolution was defeated on a free vote. The year following, another Bill calling for

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- 2 -

abolition of the death penalty except in cases of the murderers of prison guards and police officers was instituted for a five-year trial period. This ban was extended for a further five years in 1973, again by a free vote in Parliament.

During this same period, the carrying out of executions which were provided for by law dwindled, by virtue of the exercise of clemency powers by successive Cabinets, as provided by law. By the end of the 1950s, approximately 4 of 5 scheduled executions were commuted under this procedure, and, in fact, the last executions in Canada were carried out in December 1962. All scheduled executions since then were commuted, again by virtue of the commutation power given the Cabinet by the Criminal Code.

By 1976, however, the Federal Cabinet was confronted with the necessity of deciding to commute or not to commute three cases which had exhausted all levels of appeal, and a further eight individuals had been convicted of capital murder under the 1973 Act and were awaiting final disposition of their appeals.

Faced with this situation, the Cabinet had to choose between dealing with each case individually, as had been the practice of every Cabinet for many years, or confronting the issue squarely and presenting a Bill which would abolish capital punishment for all criminal offences.

The latter course was chosen for two principal reasons: 1) the Cabinet, and I as Solicitor General, believed that the real issue was abolition itself,

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- 3 -

and that it should be faced squarely, rather than by dealing with decisions on commutations on a case by case basis--a practice which had resulted in considerable public criticism and charges that the government was abolishing capital punishment "through the back door", and 2) we further believed that the proper forum to resolve the abolition question was Parliament itself, that the decision should be taken by the people's elected representatives, and on the basis of the traditional way of dealing with the issue--that of a free vote of Parliamentarians.

This proposed law was debated between May and July of 1976 and engendered much public, and parliamentary, discussion. In fact, almost half of the 264 Members of Parliament contributed to the debate, despite the fact that this was the fourth full-scale debate on the issue since 1966.

I am confident that no one here will be unfamiliar with the arguments presented by proponents of abolition and retention of capital punishment during the course of that debate. A great deal of discussion took place on the need to protect society from violent crime; the growing crime rate in Canada, and indeed, throughout the western democracies; over the actual effectiveness of capital punishment in protecting society through specific or general deterrents; over the timing of proposal to abolish the death penalty; and over questions of morality, of justice, and of the need to have a sanction which will adequately express society's moral outrage against both the act of murder itself and the perpetrator of that act individually.

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The case for the abolitionists---a case which convinced me many years ago, and which resulted in the Cabinet decision to present the abolition bill--centered on two fundamental propositions.

Firstly, we argued that there was no proof that capital punishment acted as a greater deterrent than other, less severe and less error-prone sanctions. For that empirical reason, the burden of proof in the debate was that of the retentionists who had to make the case that, despite this lack of proof of effectiveness, society ought still to maintain the sanction of judicially ordered death, a punishment qualitatively different in its severity and its irreversibility from any other sanction. We argued that that burden of proof could not be successfully discharged by the retentionists and that capital punishment must therefore be abolished.

Secondly, abolitionists dealt with the argument that capital punishment was the only possible just or fitting response which society could make to the morally outrageous crime of murder. In rebuttal, we maintained that retentionists could not meet objections that this supposedly just and therefore morally endorsed sanction carried with it the seeds of severe injustice--through its unequal application to the poor, the ignorant, the uneducated, and through the irreducible possibility that it might be applied in error. These seeds of injustice could not be eliminated despite the elaborate safeguards and guarantees which we had build into our system of criminal justice. Therefore, we argued a punishment which carries with it such possibilities of injustice in actual application, cannot possibly be defended on grounds of justice and morality.

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- 5 -

On July 14, 1976, the bill to abolish capital punishment for all offences under the Criminal Code was approved by the Canadian House of Commons by a margin of only 6 votes, 130 to 124.

The closeness of that vote indicates, I believe, the emotional and dramatic nature of the issue in the hearts and minds of Parliamentarians, and of their constituents.

I think the courage demonstrated by the Members of Parliament who spoke and voted on both sides of the question, and who attempted to come to grips with an issue of such importance, is eloquent testimony concerning the possibility of elected officials--politicians--performing the duty entrusted to them by their electors, that of making public policy decisions on the basis of the higher interest of all Canadians, and in ways which reflect the deeply held, fundamental aspirations and values of society as a whole.

What I and other abolitionists argued throughout the debate was that, for far too long, the death penalty as an issue had done great harm in Canada--not so much in terms of the actual executions carried out (for there had not been many), but rather in terms of the effect this emotional issue had had in distracting the attention of policy makers and the public at large from the real issue: that of coming up with realistic, effective means of protecting our citizens from violent crime.

Whenever the subject of crime came up in Canada--which was unfortunately often--debate focused on the question of capital punishment. Its use was advocated

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- 6 -

as a magic panacea to rising crime rates, its harshness and brutality as a sanction polarized that debate. We argued that capital punishment was in a sense serving as a "lightning rod" issue, and that its presence on the national agenda got in the way of a realistic and objective consideration of the situation, and of possible options for solutions.

From the distance of the seventeen months which have passed since the vote was taken in Canada, it is really impossible to assess the effect abolition has had.

Public opinion polls taken since the abolition decision and asking the same simplistic questions as before, have received, not surprisingly, just about the same simplistic responses.

Preliminary statistics for 1976 show a slight drop in the murder rate over 1975. I cite this figure not because I attribute the drop in a causal way to abolition, but because I think it demonstrates the point made by serious researchers on the question: the presence or absence of the death penalty has no perceptible effect on the murder rate, or at least, it has no greater effect as a general deterrent than do other, less severe sanctions.

Whether or not our continuing Canadian debate on criminal justice questions is any the "better" since the abolition decision in the sense that it is focusing on real, effective options, is a question I cannot offer you much guidance on.

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- 7 -

Only time will tell. In democracies such as ours, issues of such persistence and intensity rarely disappear completely from the public agenda.

The conclusion I would draw for you from our experience in Canada, then, is that capital punishment is not a useful weapon in the arsenal society must keep for protection of its citizens against violent crime; nor is it a just sanction against the morally despicable crime of murder.

The lesson I would draw for you mixes optimism with realism. Optimism, in that effective action can be taken to rid society of that useless, unjust sanction. And realism, in that the emotional history of the debate is likely to haunt us for some years yet, and will likely make its presence felt in cries for the return of capital punishment whenever we are confronted with criminal justice problems in our countries.

(Where soc does not wish to accept its responsibility)

And, finally, the message I would leave you with is one of hope and mission. Capital punishment, simply because it is immoral and useless, must be fought and defeated if we are to become a world society in which our descendants can live in peace and justice.

I congratulate Amnesty International on its world-wide efforts to bring about this goal. I welcome recognition of those efforts by the Nobel Committee. And I urge people everywhere to join with Amnesty International in pursuit of those objectives of peace and justice, since, if people throughout the world do not work together toward those goals, our world will simply not be a fit place to live.

Thank you.



Government
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MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

MR. P. O'TOOLE,
DIRECTOR,
COMMUNICATION DIVISION

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Article for Liaison

SECURITY - CLASSIFICATION -- DE SÉCURITÉ
OUR FILE -- N/RÉFÉRENCE
YOUR FILE -- V/RÉFÉRENCE
DATE

January 31, 1975

In my memorandum of January 20th to Messrs. Therrien and Outerbridge, of which I furnished you a copy, I asked for comments on the draft article I had prepared. Mr. Therrien has agreed with my draft, but I have just been furnished by Mr. Outerbridge with some rather substantial comments.

I attach a copy of a memorandum from Mr. Outerbridge to me dated January 29. Perhaps you would be good enough to incorporate his material in the article. Since this will be a major input into the article, I do not think when it appears in Liaison that authorship of the article should be attributed to me. Perhaps it might be indicated only that the article has been concurred in by the Chairman of the National Parole Board and the Commissioner of Penitentiaries, leaving the authorship as anonymous.

Encl.

J.H. Hollies,
Departmental Counsel

JHH/mab

cc: Chairman, National Parole Board

Copy on 165-59



Government
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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

Mr. J. H. Hollies,
Departmental Counsel.

FROM
DE

W. R. Outerbridge,
Chairman,
National Parole Board.

SUBJECT
OBJET

ARTICLE FOR LIAISON

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 29, 1975

Further to your memorandum of January 20, I have had a chance to go over your draft of the article trying to distinguish between Temporary Absence, Day Parole and Parole.

I believe that there should be some additions, particularly on Page 2 that would help to clarify the technical differences which often can be confusing to the uninitiated. As this article is going to at least the semi-initiated, it would be incumbent upon us to offer some of the technical distinctions in a little greater detail than you have so far.

My concerns apply particularly to your descriptions of Day Parole on Page 2 of your paper in the second paragraph.

Firstly, I should say that your definition of Day Parole is quite correct, and yet Day Parole operates in two relatively distinct ways that should be distinguished. The first is the straight Day Parole which is a flexible tool used by the Parole Board to aid in the re-integration of inmates as they come towards the end of their sentence or come towards their date of release on parole. Day Paroles are not usually granted for a period of more than four months prior to the parole eligibility date, although in certain circumstances with persons serving longer sentences, they may be increased up to a period of one year prior to the parole eligibility date. In the case of those who are serving ten years or more, such as lifers, it is possible for them to begin a gradual release program by way of Day Parole up to three years prior to their parole eligibility date. Nevertheless, this is a procedure that is used very infrequently so far in advance of their parole eligibility date. Usually the Day Parole program is done by way of a graduated program which includes a one-day release with return to the institution and, on successful completion of this, a further graduated program with increasing freedom to the inmate, but also with the necessity of his reporting at prescribed times to his parole officer and to the institutional authorities.

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- 2 -

With regard to Day Parole, we are making increasing use of Community-based Residential Centres where Day Parolees will live in the centres and will report each night to them. As their behaviour becomes tested and proven satisfactory, they are from time to time granted weekend passes and other forms of further release from the strictures of the centre. The granting of Day Parole is a carefully considered discretionary decision which is made with the eventual release of the offender in mind. Therefore, when an offender is released by way of Day Parole, it is felt that he is a suitable candidate for an eventual parole, subject to his continuing good behaviour.

The second form of Day Parole, which we call Day Parole (Temporary) is a procedure which is equally flexible, but which differs from Day Parole in the fact that there is no implicit promise that a Full Parole will follow. Normally, Day Parole (Temporary) is granted to permit selected inmates to undertake specific projects. These might be either individual projects such as the attendance at a course on a once-a-week basis, or it can be by way of a Day Parole which allows groups of inmates to undertake specific community service projects under supervision. These may range all the way from undertaking to work for a farmer under surveillance during the tobacco picking or fruit picking season to being released to bush camps in the interior of British Columbia to cut fire trails or to plant trees. As the inmates granted a Day Parole (Temporary) are not being seriously considered for parole at the point of their temporary release, the issue of surveillance and supervision is more strict and the selection process more stringent.

There is sometimes a confusion that arises between a Temporary Absence on the one hand and a Day Parole (Temporary) on the other. It is understandable that some confusion should exist among those who are not dealing day-by-day with the differentiation. It is at this point, of course, that the authority of the Penitentiary Service and of the National Parole Board does tend to overlap from time to time. As you quite rightly pointed out in your memorandum, the co-ordination between these two agencies is now very close and the issues of public protection are kept paramount.



W. R. Outerbridge.

WRO/mp

(Article for "LIAISON")

Parole, Temporary Absence, and the Death Penalty

Why should any article intermingle parole and temporary absence with the death penalty when there is little obvious connection between these subjects? The reason is that these matters often cause public criticism of our Ministry. Perhaps some of the criticism to which the Ministry as a whole, or a particular agency, has been subjected can be attributed to misunderstandings as to our role and the law within which we work. The purpose of this article is, then, to seek to explain the meaning of certain terms and the processes involved in these matters. It is not designed to present any considerations as to the usefulness or general merits of either parole or temporary absence, nor is it directed to examining whether death sentences should be commuted.

Temporary absence is permission given by the penitentiary authorities for an inmate to be absent from penitentiary for specific limited periods. The length of absence that may be authorized depends upon whether it is granted by the Commissioner or by the officer in charge of the penitentiary. Further limitations apply depending upon the reason for which the absence is granted. Thus the officer in charge of a penitentiary may not grant permission to be absent for more than three days if the absence is for humanitarian reasons or to assist in the rehabilitation of the inmate. If, however, the absence is necessitated by medical reasons the officer in charge of the institution may permit the inmate to be absent for up to fifteen days. The Commissioner, on the other hand, may approve absence for an unlimited period for medical reasons and for up to fifteen days for humanitarian reasons or to assist in the inmate's rehabilitation.

The power to grant temporary absence does not extend to a grant of "back-to-back" absences. For example, perhaps an inmate would benefit from a course given by an educational institution, which would require his attendance one or two days in each week. Absence cannot be authorized under the Penitentiary Act for this purpose, since the program is a continuing one. Accordingly, the only way the inmate can be permitted to leave the penitentiary to attend the course is by granting parole to him.

Parole is, of course, under the jurisdiction of the National Parole Board. There are two types of parole that may be granted. "Full parole" means parole that will continue, unless it is revoked or forfeited, until the expiration of the person's sentence. "Day parole" is a parole which requires the inmate to return at specified intervals to the institution, or is granted with a fixed date upon which it will end and on that date the inmate must return to resume his sentence unless a further grant of parole is made. In the example previously given, of an inmate who is to attend a continuing course, his absence would require the grant of a day parole.

Although temporary absences are granted by penitentiary authorities and full parole or day parole by the National Parole Board, it should not be thought that these mechanisms are completely independent of one another. Consultation between representatives of the National Parole Board and members of the Canadian Penitentiary Service will normally take place so that the character and needs of the inmate may be fully assessed. In addition, the Commissioner of Penitentiaries has issued a directive specifying limitations on the grant of temporary absence where the Parole Board has suspended parole or denied or deferred parole, and also in cases

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Where full parole has been revoked. For example, an inmate whose parole has been suspended may not be granted temporary absence during the time of that suspension. To take a further example, if full parole has been revoked the inmate can not be given temporary absence until six months after his re-admission to penitentiary, and in certain cases, such as those serving a life sentence, he is not eligible for temporary absence until three years have passed since his re-admission. Provision is made, however, for absences with-escort in exceptional cases, such as an apparently fatal illness contracted by the wife of the inmate.

To deal now with what are usually called "capital cases", it will be convenient at the outset to define precisely what is included in this term. The Criminal Code provides that a sentence of death shall be passed upon conviction for murder if, but only if, the victim was a police officer or prison guard, etc., who at the time of the murder was acting in the course of his duties. Confusion has arisen in the minds of some who, in the light of this provision, believe that the commutation of a death sentence, (i.e. the changing of the sentence to one of life imprisonment,) is in some fashion contrary to the law. This is not so. The Criminal Code gives clear authority to the Governor in Council to commute a death sentence.

When a person has been convicted of murder punishable by death the judge is required to ask the jury whether or not they recommend clemency. The jury need not be unanimous, and if some vote for clemency while others do not the judge ascertains how many voted in each way. The jury may, however, refuse to make a recommendation either for or against clemency. The judge makes a report of the trial to the Solicitor General and from that report,

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and also from the transcript of proceedings, the Solicitor General is aware of any recommendation for clemency.

Officials in the Ministry keep an eye on developments in the case beginning with the date of conviction. The Ministry has, however, no immediate responsibility at this stage. It is only when all appeals have been completed and the original death sentence remains unaffected that the Ministry is required to take action. This may be a very considerable time after the convicted person has been sentenced to death. An appeal to the Provincial Court of Appeal is automatic, without any action being necessary by the man. The execution of the death sentence is, under the Criminal Code, automatically postponed until such time as the result of the appeal is known. Also, any judge who had the power to try the murder case can grant a stay of execution by setting the date for the hanging later than the date set by the trial judge. Our Ministry is not responsible for asking for stays of execution, which are usually requested by defence counsel, although Crown counsel may in some cases make the request himself as, for example, where the defence counsel is not readily available.

If the appeal to the Provincial Court of Appeal is unsuccessful, that is not usually the end of the appeal process. Because he has been sentenced to death, the convicted person has a right to appeal his conviction to the Supreme Court of Canada, and in recent cases this has invariably been done. Again his defence counsel will, as necessary, see to it that the date of hanging is further postponed until the decision of the Supreme Court is known.

If all appeals have been unsuccessful, the Solicitor General becomes involved in preparing the case for a

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- 5 -

submission to Cabinet to determine whether the sentence of the court shall be carried out or whether it shall be changed to a sentence of life imprisonment. As previously noted, he will have immediately available to him the transcript of evidence given at the trial and the report of the trial judge, and will know whether the jury recommended mercy. Although not required to do so by law, the Ministry always has the convicted person examined by two psychiatrists, neither of whom has previously been connected with the case in any way. The psychiatrists' reports are for the confidential information of the Solicitor General and his colleagues in Cabinet, and are never made available to anyone else.

A Memorandum to the Cabinet is prepared, setting out the circumstances in which the offence was committed, and all other factors that can be discovered that will be relevant to the decision to commute or not to commute. When Cabinet's decision is known, an Order in Council is submitted to the Governor General for his approval. If the decision is to commute the sentence, the institution where the man is held is at once informed as are the Attorney General of the Province and defence counsel. If the decision is to carry out the hanging, this is not normally communicated until very shortly before the execution.

Until the decision of Cabinet is known the convicted man is kept in provincial custody. He is, of course, at once transferred to penitentiary if Cabinet has decided to commute. If Cabinet decides not to commute, the execution is carried out in a provincial institution and the province is responsible for obtaining the services of a hangman.

JAN 29 1975

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Government of Canada
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

s.19(1)

TO
À

THE SOLICITOR GENERAL
(Through Mr. Tassé)

FROM
DE

HOWARD EPSTEIN

SUBJECT
OBJET

Current Capital Cases

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 141-206
YOUR FILE - V/RÉFÉRENCE
DATE January 29, 1975

File
Classer

There are now five persons in Canada under sentence of death.
Their current status is as follows.

1. Date of execution is set as 25 April, 1975.
2. An appeal to the Quebec Court of Appeal was dismissed by a vote of 3 - 2 on 10 December, 1974. The minority would have ordered a new trial. The case will be appealed to the Supreme Court of Canada by Conneaney.
3. [REDACTED], age [REDACTED] was found guilty on 21 December, 1973, of the murder on 14 June, 1973 of Officer Richard Larente of the Lasalle, Quebec police force. Conneaney, an American escaped convict, was stopped by the police for driving in an erratic fashion. The police found he had been drinking and advised him to continue by taxi. Conneaney was attempton to dispose of a revolver he was carrying when he panicked and, in an exchange of gunfire, killed Officer Larente.

[REDACTED] and [REDACTED]

1. Date of execution is set as 15 April, 1975.
2. Appeals are being taken to the British Columbia Court of Appeal in March, 1975. Defence counsel intends to argue, inter alia, that the death penalty violates the provision of s. 2(b) of the Bill of Rights respecting "cruel and unusual treatment or punishment".

.../2

To Sol. Gen. 30/1

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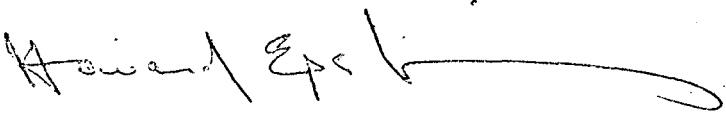
s.19(1)

- 2 -

3. [REDACTED] age [REDACTED] and [REDACTED] age [REDACTED] were tried jointly and were both found guilty on 15 November, 1974 of the murder on 29 March, 1974 of Constable Richard Pierlet of the Surrey, British Columbia detachment of the R.C.M. Police. Miller's younger brother had been killed some two years earlier in the course of a car chase by police, and Miller and Cockriell agreed in the course of a drinking party to kill a policeman. They attracted the attention of Constable Pierlet and shot him once through the chest with a 30-30 rifle as he approached their car.

- [REDACTED]
1. Date of execution is set as 12 March, 1975.
 2. An appeal has been set down to be heard by the Supreme Court of Canada.
 3. [REDACTED] age [REDACTED] was found guilty on 1 October, 1973 of the murder on 1 February, 1973 of Constable Leslie Maitland of the Toronto, Ontario city police. Vaillancourt, armed with a gun, robbed a bank and fled. He was later spotted by Constable Maitland who attempted to make an arrest. Vaillancourt shot Maitland and was then quickly apprehended by other officers. At trial, the unsuccessful defence was insanity.

- [REDACTED]
1. Date of execution is set as 29 April, 1975.
 2. An appeal is pending before the Supreme Court of Canada.
 3. [REDACTED] age [REDACTED] was found guilty on 20 November, 1972 of the murder on 12 October, 1972 of Constable Gabriel Labelle of the Ste-Thérèse, Quebec police. Chartrand, armed with a gun, robbed a bank and fled. He was spotted by Constable Labelle who attempted to make an arrest. Chartrand shot Labelle and later surrendered himself to police. At trial, the unsuccessful defence was insanity.


H. Epstein,
Legal Adviser.

HE/db

001876



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

s.19(1)

TO
A

THE SOLICITOR GENERAL
(Through Mr. Tassé)

FROM
DE

HOWARD EPSTEIN

SUBJECT
OBJET

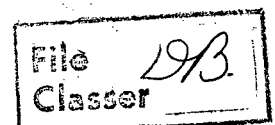
Current Capital Cases

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 29, 1975

There are now five persons in Canada under sentence of death.
Their current status is as follows.

- [REDACTED]
1. Date of execution is set as 25 April, 1975.
 2. An appeal to the Quebec Court of Appeal was dismissed by a vote of 3 - 2 on 10 December, 1974. The minority would have ordered a new trial. The case will be appealed to the Supreme Court of Canada by Connearney.
 3. [REDACTED], age [REDACTED] was found guilty on 21 December, 1973, of the murder on 14 June, 1973 of Officer Richard Larente of the Lasalle, Quebec police force. Connearney, an American escaped convict, was stopped by the police for driving in an erratic fashion. The police found he had been drinking and advised him to continue by taxi. Connearney was attempting to dispose of a revolver he was carrying when he panicked and, in an exchange of gunfire, killed Officer Larente.

- [REDACTED] and [REDACTED]
1. Date of execution is set as 15 April, 1975.
 2. Appeals are being taken to the British Columbia Court of Appeal in March, 1975. Defence counsel intends to argue, inter alia, that the death penalty violates the provision of s. 2(b) of the Bill of Rights respecting "cruel and unusual treatment or punishment".



.../2

s.19(1)

- 2 -

3. [redacted] age [redacted] and [redacted] age [redacted], were tried jointly and were both found guilty on 15 November, 1974 of the murder on 29 March, 1974 of Constable Richard Pierlet of the Surrey, British Columbia detachment of the R.C.M. Police. Miller's younger brother had been killed some two years earlier in the course of a car chase by police, and Miller and Cockriell agreed in the course of a drinking party to kill a policeman. They attracted the attention of Constable Pierlet and shot him once through the chest with a 30-30 rifle as he approached their car.

- [redacted]
1. Date of execution is set as 12 March, 1975.
 2. An appeal has been set down to be heard by the Supreme Court of Canada.
 3. [redacted] age [redacted] was found guilty on 1 October, 1973 of the murder on 1 February, 1973 of Constable Leslie Maitland of the Toronto, Ontario city police. Vaillancourt, armed with a gun, robbed a bank and fled. He was later spotted by Constable Maitland who attempted to make an arrest. Vaillancourt shot Maitland and was then quickly apprehended by other officers. At trial, the unsuccessful defence was insanity.

- [redacted]
1. Date of execution is set as 29 April, 1975.
 2. An appeal is pending before the Supreme Court of Canada.
 3. [redacted] age [redacted], was found guilty on 20 November, 1972 of the murder on 12 October, 1972 of Constable Gabriel Labelle of the Ste-Thérèse, Quebec police. Chartrand, armed with a gun, robbed a bank and fled. He was spotted by Constable Labelle who attempted to make an arrest. Chartrand shot Labelle and later surrendered himself to police. At trial, the unsuccessful defence was insanity.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
Howard M. Epstein

H. Epstein,
Legal Adviser.

HE/db

001878



s.19(1)

MEMORANDUM

NOTE DE SERVICE

JAN 21 1975

2300

TO
A

THE SOLICITOR GENERAL
(Through Mr. Tassé)

FROM
DE

HOWARD EPSTEIN

SUBJECT
OBJET Current Capital Cases

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE

File Classifier

January 21, 1975

There are now five persons in Canada under sentence of death. Their current status is as follows:

- 1. An appeal is pending before the Supreme Court of Canada.
- 2. Date of execution is set as 29 April, 1975.
- 1. An appeal is pending before the Supreme Court of Canada.
- 2. Date of execution is set as 12 March, 1975.
- 1. An appeal has been heard by the Quebec Court of Appeal, but judgment has not yet been rendered.
- 2. Date of execution is set as 25 April, 1975.
- 1. An appeal is being taken to the British Columbia Court of Appeal.
- 2. Date of execution is set as 15 April, 1975.
- 1. An appeal is being taken to the British Columbia Court of Appeal.
- 2. Date of execution is set as 15 April, 1975.

Howard Epstein
H. Epstein,
Legal Officer

HE/mab

70 184 27/1/75
Jm

141-226



Government of Canada
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

DR. I. WALLER
DIRECTOR OF RESEARCH

FROM
DE

ADM - RESEARCH & SYSTEMS DEVELOPMENT

SUBJECT
OBJET

Capital Punishment

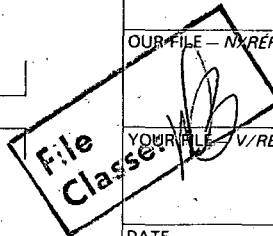
SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N^o RÉFÉRENCE

YOUR FILE - N^o RÉFÉRENCE

DATE

Jan. 24th, 1975



In a recent discussion with the Deputy on Capital Punishment, he felt that the point made by Mr. Townesend relating to the appointment of a coordinator was a good one.

The Deputy further felt that this matter related, at this stage in any event, primarily to research and the coordinator should be someone in the Branch. Possibly we should discuss this one to see whether there is anyone who would have the time to take this on.

Handwritten initials

B.C. Hofley.

B.F. 30/1/75
3/2



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-286
P.A.

TO
À

DR. I. WALLER
DIRECTOR OF RESEARCH

FROM
DE

ADM - RESEARCH & SYSTEMS DEVELOPMENT

SUBJECT
OBJET

Analysis of Death Penalty Legislation in Canada

I would appreciate receiving a suggested reply
for the Minister's signature.

At the same time please note the Minister would
like this paper returned. I would suggest we might have copies
made so the original can be returned and one copy sent to
Mr. Tassé, as he requests.

B.C. Hofley

B.C. Hofley.

Attach.

B.F. ~~29/1/75~~
~~4/2/75~~

File Classé	SECURITY CLASSIFICATION - DE SÉCURITÉ
	OUR FILE - N/RÉFÉRENCE
	YOUR FILE - V/RÉFÉRENCE
	DATE Jan. 20/75

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE

ADM - RESEARCH & SYSTEMS DEVELOPMENT

SUBJECT
OBJET

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/REFERENCE
YOUR FILE - N/REFERENCE
DATE Jan. 14th, 1975

Some time ago I brought to your attention that a Professor Walter Burns at the University of Toronto was appointed a member of an Advisory Committee to I.E.A.A.

Dr. Waller has contacted Professor Burns and attached herewith is his memorandum to me together with an article written by Burns on Capital Punishment.

B.C. Hofley

B.C. Hofley.

Attach.

pyou: Burns, Walter F

001882

Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

Mr. B.C. Hofley
ADM (R. & S.D.)

FROM
DE

Director General
Research Division

SUBJECT
OBJET

Walter F. Berns, Professor of Political Science at the University of
Toronto, Member of Committee to NILECJ

SECURITY CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

January 9, 1974

On January 6, 1975 I spoke to Professor Berns at the University of Toronto. He is an American, who has made Toronto his new home. He is a specialist in political science and American Public Law. It is only recently that he has taken any interest in criminal matters. About two years ago he prepared a paper on the Supreme Court's handling of the capital punishment issue. Gerry Caplan, Director of NILECJ, heard the paper and invited him to join their advisory committee. The paper has apparently been republished in two journals and in three major daily newspapers. I am expecting to get a copy of the paper in the mail.

He hopes to get funds from LEAA to spend a year in Canada developing his Capital Punishment ideas. As LEAA generally does not fund outside the U.S.A., he is having difficulties getting funds. Once we have reviewed his article and get to know more about him, we might perhaps try to get him to spend his time in the Ministry..

I have undertaken to try to get together with him the next time I am in Toronto. In the meantime, I am sending him a copy of the Guide and have undertaken to put him on the list if we go ahead with the research workshop on monitoring the capital punishment moratorium.

Irvin Waller

Irvin Waller

IW/ed

001883

IMPRIMIS

Hillsdale College, Hillsdale, Michigan 49742 Vol. 3, No. 6
June 1974

JUSTIFIED ANGER: JUST RETRIBUTION

by Dr. Walter Berns

Dr. Berns is a professor of political science at the University of Toronto. A graduate of the University of Iowa, he later studied at Reed College and the London School of Economics before receiving a Ph. D. from the University of Chicago. He delivered this presentation during the most recent seminar of the Center for Constructive Alternatives at Hillsdale College, which examined the topic "Crime and Punishment: the American System of Justice."

Between 1966 and 1971 the U. S. murder rate increased by 52%, and the crime rate as a whole by 74%, as reported in *Crime in the United States: Uniform Crime Reports, 1971*. Crimes of violence (murder, forcible rape, robbery and aggravated assault) went up 80%. In 1971 there were 5,995,200 index crimes (crimes catalogued by the FBI) reported to the police, and everyone knows that a large number of crimes are never reported to the police. The proportion of arrests to crimes reported was only 19%, persons charged 17%, persons convicted as charged 5%, and persons convicted of lesser offenses .9%. All of which means that punishment was meted out in only 5.7% of the known cases of crime.

The conclusion is inescapable: *crime pays*. Moreover, some authorities insist that most crimes are not reported to the police and that only 1 1/2% of all crimes are unpunished, which is to say that 98 1/2% of the crimes committed go unpunished. There is good reason to believe that something is wrong; there is no reason yet to believe by which I mean, there is no reason in these statistics to believe that what is wrong could be put right by the imposition of more severe punishments, although there is reason to believe that it might be put right by *more* punishments, or by a greater rate of punishments, a rate sufficient to allow us to say that crime does not pay, or does not pay so well.

Prevent or Punish?

Such a judgment, however, rests on an assumption: that crime is deterred by punishment. This is rejected by a powerful group of reformers, led, perhaps, by a former Attorney General of the United States, Ramsey Clark. He says that we "can prevent nearly all of the crime now suffered in America if we care,"¹ and the evidence of our caring would consist not in trying to deter crime by punishing it more efficiently, but by rehabilitating those who commit it. "Rehabilitation," he writes, "must be the goal of modern corrections. Every other consideration should be subordinated to it." In its most exaggerated form—as it appears in the work of psychiatrist Karl Menninger, for example—the only criminals are those who would inflict punishment on those who commit what society now calls crimes. *The Crime of Punishment*, he entitles his book. "Scientific studies have shown that most punishment does not accomplish any of the purposes by which it is justified, but neither the law nor the public cares anything about that. The real justification for punishment is none of these rational 'purposes,' but an irrational zeal for inflicting pain upon one who has inflicted pain (or harm or loss)."² I quote another passage:

And there is one crime we all keep committing, over and over. I accuse the reader of this and myself, too—and all the nonreaders. We commit the crime of damning some of

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our fellow citizens with the label "criminal." And having done this, we force them through an experience that is soul-searing and dehumanizing. In this way we exculpate ourselves from the guilt we feel and tell ourselves that we do it to "correct" the "criminal" and make us all safer from crime. We commit this crime every day that we retain our present stupid, futile, abominable practices against detected offenders.³

Can We "Cure" Criminals?

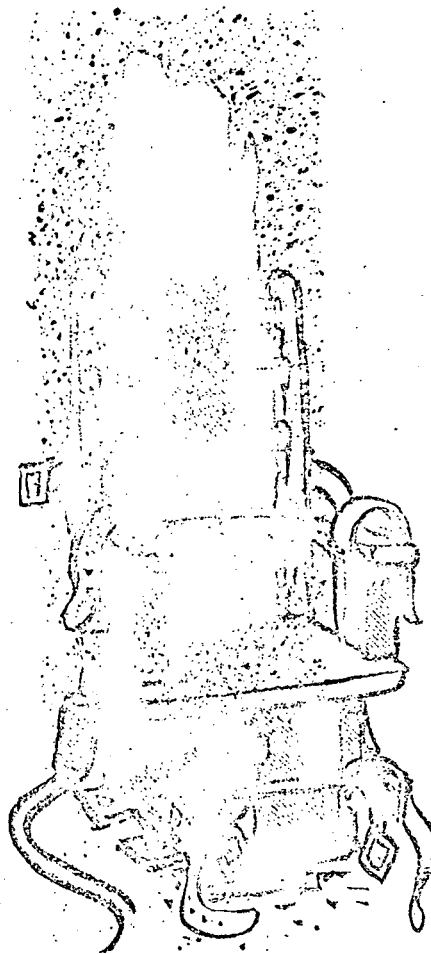
Rehabilitation is the solution: treatment will cure most of the so-called criminals, he says in a chapter entitled "Love against Hate." We must love those we call criminals, and out of this love will come treatment and the solution to the problem. One is reminded of Nietzsche's words written almost a century ago:

There is a point in the history of society when it becomes so pathologically soft and tender that among other things it sides even with those who harm it, criminals, and does this quite seriously and honestly. Punishing somehow seems unfair to it, and it is certain that imagining "punishment" and "being supposed to punish" hurts it, arouses fear in it. "Is it not enough to render him *undangerous*? Why still punish? Punishing itself is terrible."⁴

Be that as it may, what, in fact, is the evidence as to rehabilitation?

The President's Commission on Law Enforcement and the Administration of Justice, in one of its task force reports, tried to convince us that rehabilitation works and can be made to work better, and one is inclined to think that this must be so. After all, we have to a great extent been led to think that crime is somehow in some way an illness, and we have lots of doctors around. The Commission directs our attention to the California Youth Authority Community Treatment Project which is well known in the field of corrections as the best of the rehabilitation programs. Prisoners are paroled and are counseled, individually and in groups, and are tutored in school subjects, and so on. The effectiveness of the program is then evaluated by comparing the recidivism rate among these persons and the rate among those who are not paroled. According to the Task Force, the difference is marked and altogether in favor of the effectiveness of the rehabilitation program. Unfortunately, this is simply not true. The Task Force did not take into consideration the proclivity of those who administer and evaluate these programs, especially at state budget time, to exaggerate the efficacy of their own work. An independent re-analysis of the

evidence shows "that the positive results in favor of the experimental group over the control group reflected not differences in the delinquent behavior of the boys, but differences in the parole-revoking behavior of the parole agents."⁵ One researcher, after assessing a variety of "correctional programs," concluded that, "Post-release outcome was not significantly different irrespective of exposure to any type of group counseling program. . ."⁶ This altogether discouraging, but not altogether unexpected, conclusion is confirmed now by the most thorough-going study of parole ever com-



pleted. A comparison was made of the recidivism rate among those paroled from Ontario prisons and those who served their full time, and the different rate was accounted for by the fact that better risks are selected for parole. "When one allows for the fact that better risks are selected for parole, parolees are no less likely to be re-arrested than those who are discharged [after serving a full term in prison]."⁷

Is Death Penalty a Deterrent?

So much for rehabilitation. What about the extent to which crime is deterred by punishment, and especially the crime of murder by capital punishment? Dr. Menninger, you will recall, claims that "scientific studies" have shown

that "most punishment" does not accomplish "any of the purposes by which it is justified," and since it is usually justified on the ground of deterrence, this would mean that punishment does not deter. This is probably not the case; in fact, a number of recent studies, some of them dealing specifically with homicide rates, show an inverse relation between punishment and the rate of crime. This confirms what our common sense tells us, and these studies have also been confirmed by the most sophisticated analysis yet undertaken. Using a simultaneous equation model for a regression analysis involving some fourteen discrete variables, only three of them having anything to do with punishment, and a mass of crime statistics from most of the states over a period of time (1940, 1950, 1960), Isaac Ehrlich was able to show that the "rate of specific felonies is . . . positively related to estimates of relative gains [the more money to be gained by stealing, the more attempts made to steal it] and negatively related to estimates of costs associated with criminal activity." Hence, the "rate of specific crime categories, with virtually no exceptions, varies inversely with estimates of the probability of apprehension and punishment by imprisonment. . . and with the average length of time served in state prisons. . . ." These findings suggest that big-city mayors are not wrong to argue for larger police forces and longer sentences for the criminals caught by these police forces.

Since Ehrlich dealt with time in prison—that is to say, the range of punishments did not include the death penalty—we are not entitled to say that he proved the deterrence value of the death penalty. We can say, however, that if the death penalty is regarded as the most dreadful penalty—and the abolitionists so regard it—his findings do suggest the deterrence value of it. This is so because the greater the penalty, the "higher the costs associated with criminal activity," and the higher these costs, the fewer crimes committed. The abolitionists are not inclined to accept these findings. They have insisted that murder especially is a crime of passion, a crime committed in the heat of passion, or under the influence of alcohol, and, therefore, by persons least able and least likely to calculate costs, or the "incentives and disincentives," to use Ehrlich's formulation. If this argument proves anything, however, it proves the opposite of what the abolitionists contend. It suggests that because of the high costs, murders tend to be committed *only* by those unable to calculate those costs, and that those able to calculate those costs are less likely to commit murders.

Justification of Punishment

But does the death penalty act as a deterrent? Does it deter the commission of homicides, for

example? Thorsten Sellin says the evidence shows clearly that it does not, and his findings have been cited around the world. H.L.A. Hart, in a more guarded statement, says there is no evidence that it does deter. Mostly it has been chiefs of police who have disagreed and who have insisted that the death penalty is necessary because it does deter. What is of particular interest to me is that in modern times almost the entire argument concerning the death penalty has taken place within the limits of this aspect of the subject. This assumes that deterrence is the only possible justification for the death penalty and for punishment in general, that we employ police to prevent the commission of crimes, if possible, but that we employ prosecutors and criminal trials and prisons and executioners to prevent further offenses by those we catch up in this system and to deter others *pour décourager les autres*, to paraphrase Voltaire. It seems to me that this is patently not sufficient.

When we say make the punishment fit the crime, we are plainly not talking about deterrence. When the abolitionists advocate life imprisonment, instead of the death penalty for murderers, they are quite plainly not concerned with deterrence, because these same abolitionists insist that murderers, in addition to being model prisoners, are, of all criminals, the least likely to repeat their crimes. If the death penalty does not deter, and if they are unlikely to repeat their crimes anyway, why bother to put them in prison at all? Why bother to arrest them? And if deterrence is the only purpose of punishment, why a life sentence for a murderer and a couple of months for a prostitute, who *is* likely to repeat her offense? And why do we continue to resist the arguments of the so-called reformers, usually the psychiatrists, who would remodel the entire system in order to make the punishment (or the treatment) fit the criminal, according to which rule it is entirely possible that the prostitute and the shoplifter will remain in custody longer than the murderer?

Penalties Reflect Principles

It is quite clear, I think, that the schedule of penalties to be found in any criminal code reflects some principle other than deterrence. We punish murder more severely than shoplifting because we regard murder as a much more serious crime. We punish murder more severely than conspiracies to obstruct justice because we regard murder as a much more serious crime. We punish murder more severely than larceny, even grand larceny, because we regard the taking of a human life as a much more grave offense than the taking of property, in whatever amount. I insist that we take a life-after due process of law precisely because we

value life, although the abolitionists have heaped so much ridicule on this proposition that it has become unfashionable in our day to say so. The result is that we find the retentionists disputing Professor Sellin's deterrence statistics, as if the whole question of capital punishment turned on its power to deter. Our schedule of punishments reflects what we have been made ashamed to admit now, namely, that in addition to the effort to deter crime, we punish in order *to pay back*, to retribute. Retribution constitutes a justification for



punishment; and, I shall argue, it is altogether proper to pay back a murderer in kind. Our schedules of punishment are an effort to make punishment fit the crime; to agree with this principle is to agree that retribution should play a role in punishment.

What should we do with John Wilkes Booth and Lee Harvey Oswald, killers of presidents? Karl Menninger would have us treat Booth after all, it is a crime to punish him; and suppose we are successful in this treatment, and after a year, say, we pronounce him cured, and he returns to the community promising never to do it again. But Abraham Lincoln is dead. There is such a

gross disproportion between Booth's deed and Menninger's response to it; and I submit that in that disproportion there is embodied an implicit disrespect for Lincoln's life, for human life. For the dignity of human life is displayed in Lincoln's life, and in our punishing of Booth (as we would not punish a dog or a horse); but the dignity of human life is not displayed in Booth's life or in Lee Harvey Oswald's life. Something of this is contained in the principle that the punishment should fit the crime. Would it have been proper to put Lee Harvey Oswald in a minimum security prison, even for life? Or not put him in prison at all--after all, do we not know from statistics that murderers are the least likely of criminals to repeat their crime? Why is it that we cannot accept that conclusion?

Crime Is the Guide

Menninger and his colleagues say to make the punishment fit the criminal, not the crime; they are guided by the criminal; they are not guided by the crime. And because they are not guided by the crime, they minimize the crime; they ignore the difference in the magnitude of crimes; in their response, they ignore the enormity of some crimes and the pettiness of others. By making the punishment fit the criminal instead of the crime, they would do away with the schedule of punishments whereby the more serious crimes are punished more severely. But in that schedule is reflected our idea of what is important to man, and what it is to be a man. To do away with it, to obliterate it from the law, is to depreciate the importance and the significance of human actions and, thereby, of human life. To remove it from the law is to reveal a disrespect for human life. It is not by chance that the argument against the death penalty is a modern argument, and only a modern argument; it is not by chance that no political philosopher argued against the death penalty; it is not by chance that the argument against the death penalty seems to have come out of Hobbes by way of Beccaria, although Hobbes, of course, did not make it. For from Hobbes we learned the right of self-preservation; and from Hobbes we learned that the first law of nature is to seek peace; and as a result, *mere* life took on an importance it lacked in the past. *Mere* life is a life without dignity; *mere* life--just staying alive--lacks significance; and *mere* life--purposeless life--turns out to be life very cheaply regarded indeed.

It is not strange that retribution has been made to appear to be the most abominable of sentiments, and that so many tears are shed for the murderers

today, at a time when innocent human lives are being taken in ever greater numbers, and are being taken not only in fits of passion, by the amateur murderers, but in cold blood by the professional murderers, and not only by them but by the heads of states acting in the name of what they call science, a so-called racial science in the case of Hitler, and a so-called science of history in the case of Stalin and Mao. Why should human lives, even six or thirty million of them, stand in the way of history? Why should these millions of what are regarded as purposeless human lives stand in the way of history, when meaning is contained in history, not in human lives?

Retribution in Ill Repute

It is not strange that retribution is held in such ill repute at a time when human life is held so cheap in the literature we read and the films we see, and on which we bestow our prizes. Shakespeare's Macbeth killed for a kingdom, at a time when the world and the lives within it had meaning; and the consequences of his murder were terrible: the cosmos turned into chaos. Dostoevsky's Ras-kolnikov killed for profit during the solid, calculating 19th century, but because of that act he somehow found God and learned that murder is terrible. Camus's Meursault (in *L'Étranger*) killed for no reason at all, at a time when human life is regarded as having no meaning at all. And in that much-honored film, "The Godfather," the taking of human life is a regular business practice, like making a bank deposit.

So far I have considered deterrence and retribution as independent justifications for capital punishment. But there is a point where they come together. We can recognize that point of convergence when we acknowledge that the law works by praising as well as by blaming. The law blames when it prescribes punishment for certain acts and when it subjects those who commit those acts to punishment. We see that easily enough. We tend to forget, however, that in punishing the guilty (when it blames the deed he commits), the law praises those who do not commit the deed. The law praises righteousness and obedience to law. This point is well made by Adam Smith: we resent the criminal, he says. So much do we resent him, that not only do we wish to see him punished, but we wish to see him punished by our own hand and for the crime he committed. We feel cheated, he says, if the criminal should die of a fever before he is brought to justice. And with respect to murder, "nature, antecedent to all reflections upon the utility of punishment, has in this manner

stamped upon the human heart, in the strongest and most indelible characters, an immediate and instinctive approbation of the sacred and necessary law of retaliation."⁹ This passion—which he labels resentment—must of course be tamed; it must be tamed lest it become simple revenge, the "most detestable of the passions." It is the job of the law to tame this passion, which the law does by satisfying it. The law tames that passion, that anger we feel in the presence of injustice, by satisfying it, and it satisfies it when it brings the guilty to justice and when it pays him back.

Last summer, for example, a seven-year-old boy was brutally murdered on the lower East Side of Manhattan. The next day, in a nearby neighborhood, a 28-year-old girl was stabbed to death in the doorway to her apartment. The police caught the man suspected of doing it, and had a hard time protecting him from an angry crowd of local residents. A week later a 31-year-old man was stabbed to death by a burglar in his Ninth Avenue apartment, this before the eyes of his wife. I now quote from the *New York Times* account of these events (Sunday, August 26, 1973. News of the Week, p. 6): "On the lower East Side, most residents seemed to agree with the police that the next time a murder suspect is identified, Tuesday's mob scene is very likely to be repeated. There is a widespread feeling that the police, the courts, the entire criminal justice system simply acts out a sort of charade, and that it is up to the community to demand that justice is done. 'When the police find him, they'll just say he's a sick man and send him to a hospital for two years,' said . . . a Delancey Street shop-keeper. 'Then he'll be right back on the street. The only thing to do is to kill this man right away, quickly and quietly.'"

Injustice Arouses Justified Anger

That anger is not reprehensible. Anger is the sentiment aroused by the sight of injustice, and is therefore intimately allied with justice—and civil society requires justice. But that anger has to be tamed, and the local police alone cannot do it. I mean, the police protecting the suspect at the police station cannot tame that anger unless they can assure that righteously angry crowd that the murderer will be paid back. But there is more in this than immediately meets the eye: that anger is satisfied when retribution is exacted, yes, but that righteous anger is also rewarded when retribution is exacted. And that righteous anger should be rewarded, for its basis is the sentiment

that to murder is wrong. The law blames murder when it punishes the murderer; the law praises those who do not murder when it punishes that murderer, and in this way deters murder. "Many are the pangs of the wicked, but steadfast love surrounds him who trusts in the Lord. Be glad in the Lord, and rejoice. O righteous, and shout for joy, all you upright in heart." (Psalm 32, vs. 10-11)

The abolitionists, following modern thought, want to excise anger from the soul to get rid of it rather than to make a virtue of controlling it. To them anger is mere selfishness and altogether reprehensible. But if anger is a natural attribute of the human soul, one is bound to wonder how it will manifest itself when it is denied its legitimate expression, however tamed. And what would a world without anger be like? Nietzsche thought this through and called what he saw in his imagination the world of the Last Man.

¹Ramsey Clark, *Crime in America* (1970), p. 21.

²Karl Menninger, *The Crime of Punishment*, p. 113.

³*Ibid.*, p. 9.

⁴Friedrich Nietzsche, *Beyond Good and Evil*, (Kaufmann trans.) Sec. 201.

⁵Kasebaum, Ward, and Wilmer, *Prison Treatment and Parole Survival: An Empirical Assessment* (1971), p. 308.

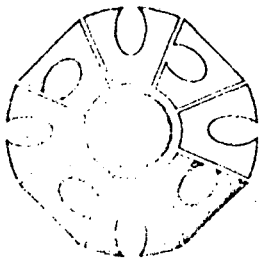
⁶*Ibid.*, p. 251.

⁷Irvin Waller, *Men Released from Prison* (Toronto: University of Toronto Press, 1974), p. 199.

⁸Isaac Ehrlich, "Participation in Illegitimate Activities: A Theoretical and Empirical Investigation," *Journal of Political Economy*, vol. 81 (May-June, 1973), p. 545.

⁹Adam Smith, *Theory of Moral Sentiments* (Augustus Kelley ed., 1966), p. 99.

Hillsdale College is marked by its strong independence and its emphasis on academic excellence. It holds that the traditional values of Western civilization, especially including the free society of responsible individuals, are worthy of defense. In maintaining these values, the college has remained independent throughout its 130 years, neither soliciting nor accepting government funding of any sort.



Center for constructive alternatives

The Center for Constructive Alternatives, under the direction of Emma Brossard, has announced its plans for four seminars in the 1974-75 academic year at Hillsdale College. These seminars will bring professors, authors, and men of affairs from throughout the country to the Hillsdale College campus to participate in a week of lectures, debates, panel discussions and classroom sessions.

Guests of the college are welcome to come for an entire session, or any part of it. Comfortable

accommodations are available in the Dow Conference Center on the college campus.

The topics and dates of the seminars will be:

September 29 - October 4, 1974

"Energy or Exhaustion: The Planet as Provider"

November 10 - 15, 1974

"Galloping Goals: Minority Quotas via Affirmative Action"

February 2 - 7, 1975

"Private vs. Public Education: Parental Control (1776) or Big Brother (1984)"

April 13 - 18, 1975

"The Sound Body: An Apple a Day Dilemma"

141-206

Copy to: 83-3



Government of Canada
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A R. TASSE, D.E.

FROM
DE B.C. HOFLEY
ADM, R & S

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE JANUARY 13, 1975.

SUBJECT
OBJET CAPITAL PUNISHMENT - MURDERS OF POLICEMEN AND PRISON GUARDS

1. In response to your request for information on the above (ref. your memo of January 7, 1975), attached are tables depicting the number of murders of policemen and prison guards in Canada and the disposition and sentences of the offenders for the period 1961-1974. (see Tables 1.1 to 1.7).
2. There is very little information available concerning the on-the-job risk of being a policeman compared to other occupations. We have calculated the rate of death by murder per 10,000 policemen in Canada and the United States. The results on Table 3.1, indicate a consistently higher rate in the United States. On Table 3.2, the rate per 1,000 total penitentiary employees killed in Canada between 1961-1974 is depicted. No information is readily available for provincial correctional institutions.

T. Sellin did some work in the United States in this area, but the data are for the period 1961-1963. He computed the risk of a policeman being killed in abolitionist and retentionist states using the number of policemen criminally killed during 1961-1963 and the number of policemen in these states according to the 1960 census. The risk for these three years in abolitionist states was 1.312 per 10,000 policemen and 1.328 in the bordering retentionist states. When he included policemen who died in accidents while on duty, the annual average risk of being killed on the job was 3.1 per 10,000 policemen. He compared this to the occupational risks of other types of work:

- 11 in mining industries,
- 7.7 in contract construction,
- 6.5 in agriculture,
- 4.2 in transportation and public utilities.

During 1963, 5 of every 10,000 male workers between 20 and 64 years of age in the United States died because of homicide or accidents at work.

Sellin felt that a further point to consider when analyzing the occupational risk for policemen and custodial officers should be woundings and assaults on them, particularly wounding with lethal

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- 2 -

weapons, as most woundings could be regarded as murders avoided by chance, or the ready availability of medical aid. This could be broadened even further to include attacks on these individuals whether they are hurt or not, since the use of a lethal weapon indicates a disregard for the consequences, and such weapons are potentially fatal to life.

D.K. Akman made a study of aggravated and simple assaults and homicides committed in Canadian federal penitentiaries in 1964 and 1965. Thirty-seven staff members were victims of these attacks. In addition to the murder of one guard, staff members were the victims of 11 aggravated assaults, 11 common assaults causing minor injuries, and 14 assaults resulting in no physical injury. Thus, the hazard rate for penitentiary staff was computed at 0.68 per 100 in 1964 and 0.45 per 100 in 1965. This percentage varied unequally between institutions as the majority of incidents occurred in maximum security institutions. Assuming that staff employed in strictly custodial duties were likely to face greater hazards, the rate still barely reached 1%. His rates included instances of assaults resulting in no injury.

Dr. C.W.S. Jayewardene, in his study The Canadian Experiment with the Penalty of Death, computed on-the-job risk of death for policemen in Canada for the period 1963-1971. He used the number of policemen killed on duty, both by criminal action and by accident, and the number of police personnel to calculate the risk of death per 10,000 policemen. Comparable data are not available for the computation of the risk prior to 1963. The results of his work are depicted in Table 3.3.

3. To obtain comparative data on murders of policemen and prison guards and occupational risks for these categories for other countries of the western world would be a major study. If the situation is like Canada, it would necessarily involve contacting many agencies to piece together the information. It would not be possible at this stage to provide a time frame for such a study until its terms of reference were more fully established both internally, and as an integral component of the total monitoring of the capital punishment moratorium.

However, during these past few days we were able to collect a few international statistics. Tables 2.1 and 2.2 show the number of police murders in the United States, and the disposition of offenders for the period 1961-1973. We were unable to obtain comparative information on the murders of prison guards from published material, except for the results of an incomplete survey carried out in the U.S. in 1965, in which Sellin reported 8 deaths of custodial officers.

.../3

TABLE 1.1 - POLICEMEN AND CUSTODIAL OFFICERS MURDERED,* CANADA

<u>1961-1974</u>			
<u>YEAR</u>	<u>POLICEMEN</u>	<u>CUSTODIAL OFFICERS</u>	<u>TOTAL</u>
1961	2	1	3
1962	11	-	11
1963	-	-	-
1964	2	1	3
1965	2	-	2
1966	3	-	3
1967	3	-	3
1968	5	-	5
1969	5	-	5
1970	3	-	3
1971	3	-	3
1972	3	1	4
1973	5	-	5
1974	8	1	9
TOTAL	55	4	59

All data on murders of policemen and custodial officers and outcome of charges for 1961-1973 was supplied by Statistics Canada. Data for 1974 police murders was supplied by the Canadian Association of Chiefs of Police. The Canadian Penitentiary Service reported the murder of one instructor at a penitentiary in 1974. Information concerning murders of staff in provincial institutions is not available.

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TABLE 1.2 - SUSPECTS AND PERSONS CHARGED FOR MURDER OF POLICEMEN

CANADA, 1961-1974

<u>YEAR</u>	<u>UNSOLVED</u>	<u>TOTAL SUSPECTS</u>	<u>SUSPECTS KILLED IN GUNFIGHT</u>	<u>SUSPECTS - SUICIDE</u>	<u>PERSONS CHARGED</u>
1961	-	2	-	-	2
1962	-	10	2	1	7
1963	-	-	-	-	-
1964	-	2	-	-	2
1965	-	2	-	2	-
1966	-	3	-	-	3
1967	-	3	1	1	1
1968	-	9	-	1	8
1969	1	7	-	-	7
1970	-	2	-	1	1
1971	1	2	-	-	2
1972	-	2	1	1	-
1973	-	7	-	2	5
1974	-	7*	-	-	7
TOTAL	2	58	4	9	45

* One suspect murdered 2 policemen

TABLE 1.3 - SUSPECTS AND PERSONS CHARGED FOR MURDER OF

CUSTODIAL OFFICERS, CANADA, 1961-1974

<u>YEAR</u>	<u>UNSOLVED</u>	<u>TOTAL SUSPECTS</u>	<u>SUSPECTS KILLED IN GUNFIGHT</u>	<u>SUSPECTS - SUICIDE</u>	<u>PERSONS CHARGED</u>
1961	1	-	-	-	-
1964	-	1	-	-	1
1972	-	2	-	-	2
1974	-	1	-	-	1
TOTAL	1	4	-	-	4

TABLE 1.4 - DISPOSITION OF PERSONS CHARGED WITH MURDER OF
POLICEMAN, CANADA, 1961-1974

YEAR	PERSONS CHARGED	UNFIT TO STAND TRIAL	ACQUITTED - INSANE	ACQUITTED	AWAITING TRIAL	CONVICTED
1961	2	-	1	-	-	1
1962	7	2	1	-	-	4
1963	-	-	-	-	-	-
1964	2	1	-	-	-	1
1965	-	-	-	-	-	-
1966	3	-	2	-	-	1
1967	1	-	-	-	-	1
1968	8	-	1	1	-	6
1969	7	-	-	-	-	7
1970	1	-	-	-	-	1
1971	2	-	1	-	-	1
1972	-	-	-	-	-	-
1973	5	-	-	-	-	5
1974	7	-	-	-	3	4
TOTAL	45	3	6	1	3	32

TABLE 1.5 - DISPOSITION OF PERSONS CHARGED WITH MURDER OF
CUSTODIAL OFFICERS, CANADA, 1961-1974

YEAR	PERSONS CHARGED	UNFIT TO STAND TRIAL	ACQUITTED - INSANE	ACQUITTED	AWAITING TRIAL	CONVICTED
1961	-	-	-	-	-	-
1964	1	-	-	-	-	1
1972	2	-	-	-	-	2
1974	1	-	-	-	1	-
TOTAL	4	-	-	-	1	3

**TABLE 1.6 - SENTENCE OF PERSONS CONVICTED FOLLOWING CHARGE OF
MURDER OF POLICEMAN, CANADA, 1961-1974**

YEAR	PERSONS CONVICTED	CAPITAL MURDER- EXECUTED	CAPITAL MURDER, PENDING EXECUTION	DEATH COMMUTED	NON- CAPITAL	MAN- SLAUGHTER	ASSAULT	OTHER LESSER OFFENCES
1961	1	-	-	-	1	-	-	-
1962	4	1	-	2	1	-	-	-
1963	-	-	-	-	-	-	-	-
1964	1	-	-	1	-	-	-	-
1965	-	-	-	-	-	-	-	-
1966	1	-	-	-	1	-	-	-
1967	1	-	-	1	-	-	-	-
1968	6	-	-	-	1	4	1	-
1969	7	-	-	2	4	1	-	-
1970	1	-	-	1	-	-	-	-
1971	1	-	1	-	-	-	-	-
1972	-	-	-	-	-	-	-	-
1973	5	-	2	-	2	-	-	1
1974	4	-	2	2	-	-	-	-
TOTAL	32	1	5	9	10	5	1	1

**TABLE 1.7 - SENTENCE OF PERSONS CONVICTED FOLLOWING CHARGE OF
MURDER OF CUSTODIAL OFFICER, CANADA, 1961-1974**

YEAR	PERSONS CONVICTED	CAPITAL MURDER- EXECUTED	CAPITAL MURDER, PENDING EXECUTION	DEATH COMMUTED	NON- CAPITAL	MAN- SLAUGHTER	ASSAULT	OTHER LESSER OFFENCES
1961	-	-	-	-	-	-	-	-
1964	1	-	-	1	-	-	-	-
1972	2	-	1	-	-	1	-	-
1974	1	-	-	-	-	-	-	-
TOTAL	3	-	1	1	-	1	-	-

TABLE 2.1 - POLICEMEN MURDERED IN THE
UNITED STATES, 1961-1973

<u>YEAR</u>	<u>POLICEMEN</u>
1961	37
1962	48
1963	55
1964	57
1965	53
1966	57
1967	76
1968	64
1969	86
1970	100
1971	126
1972	112
1973	127
TOTAL	998

The data refer to policemen murdered by felonious criminal action.

It should be noted that the F.B.I. Report does not have 100% coverage of the United States. For instance, in 1973, the combined coverage (urban-rural) accounted for 93% of the national population.

Source: "Crime in the United States",
Uniform Crime Reports of
the F.B.I.,
1961-1973

1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973

**TABLE 2.2 - DISPOSITION OF OFFENDERS INVOLVED IN MURDERS OF
LAW ENFORCEMENT OFFICERS, UNITED STATES, 1961-1971**

Known Offenders	1,025
Fugitives	9
Justifiably killed	129
Committed Suicide	25
Arrested and Charged	862
<hr/>	
Arrested and Charged	862
Guilty of Murder	560
Guilty of lesser offence related to murder ..	71
Guilty of crime other than murder	45
Acquitted or otherwise dismissed	111
Committed to mental institution	42
Case pending	23
Died in custody	10

Of the 560 offenders found guilty of murder, court disposition data reveals that 96 were sentenced to death, 284 were sentenced to life imprisonment, 176 received prison terms ranging from two to 999 years, and four offenders received probation.

Complete data is not readily available for the years 1972 and 1973; what is available is presented below.

	<u>1972</u>	<u>1973</u>
Number of police murders	112	127
Number of offenders identified	169	192
Offenders killed at scene of crime	20	28
Offenders committed suicide	6	3

Source: "Crime in the United States",
Uniform Crime Reports of
the F.B.I.,
1961-1973

TABLE 3.1 - RATE OF POLICE MURDERS PER 10,000 POLICEMEN,
CANADA, AND UNITED STATES, 1961-1973

<u>YEAR</u>	<u>CANADA</u>	<u>UNITED STATES</u>
1961	0.77	2.17
1962	4.33*	2.76
1963	0.00	3.02
1964	0.98	3.04
1965	0.62	2.79
1966	0.59	2.94
1967	0.84	3.80
1968	1.34	3.03
1969	1.30	3.85
1970	0.75	4.28
1971	0.72	5.11
1972	0.69	4.17
1973	1.75	4.59

* The rate was calculated on the basis of 12 murders; however Statistics Canada only records 11 policemen murdered in that year.

The rates of police murders per 10,000 policemen in Canada for 1961-1970 were taken from Capital Punishment - New Material: 1965-1972. Rates for 1971 and 1972 were calculated using Police Administration Statistics. As the number of policemen in Canada for 1973 is not yet available from Statistics Canada, we extrapolated the number by applying the average of yearly percentage increases in police strength in 1970-1972; then we calculated the rate. Therefore, this rate can only be considered as preliminary. The American rates were calculated using data from the annual report, Crime in the United States - (F.B.I. Uniform Crime Report); the rate for 1964 was calculated on an estimated number of police personnel, as we were unable to obtain the reported data for 1964.

TABLE 3.2 - NUMBER OF PENITENTIARY EMPLOYEES KILLED AND
RATE PER 1,000, CANADA, 1961-1974

<u>YEAR</u>	<u>NUMBER OF EMPLOYEES KILLED</u>	<u>NUMBER OF PENITENTIARY EMPLOYEES</u>	<u>RATE PER 1,000 EMPLOYEES</u>
1961	1	2,858	.350
1964	1	3,236	.309
1972	1	5,268	.190
1974	1	6,565	.015

The above rates were calculated using the number of employees for the fiscal years 1961/62, 1964/65, 1972/73, and 1974/75, as supplied by the Canadian Penitentiary Service.

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TABLE 3.3 - ON-THE-JOB-RISK OF DEATH FOR POLICEMEN,

CANADA, 1963-1971

<u>YEAR</u>	<u>RISK PER 10,000</u> <u>POLICE PERSONNEL</u>
1963	5.23
1964	3.82
1965	1.70
1966	3.00
1967	2.57
1968	3.74
1969	2.38
1970	2.00
1971	2.13

Average 2.82

The risk includes accidental and homicidal deaths of policemen. Dr. Jayewardene states that "the risk has varied from year to year but these changes do not represent any trend. Correlation with time shows a slight but statistically insignificant decrease in all Canada."

Source: The Canadian Experiment
With the Penalty of Death,
Dr. C.H.S. Jayewardene

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Government
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MEMORANDUM

NOTE DE SERVICE

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141-206

File
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TO
À

Mr. J. H. Hollies

FROM
DE

Deputy Solicitor General

SUBJECT
OBJET

Capital Punishment - Murders of Policemen and Prison Guards

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 7, 1975

The Solicitor General would like to have your advice as to whether it would be legally possible for the Governor in Council on commutation of a sentence of death for capital murder to impose conditions, relating to the paroling or the granting of temporary absences, of the type that the Judge may now impose in the case of non-capital murder, i.e. no parole for up to twenty years, etc.

Could Cabinet impose other conditions regarding for example the place of confinement of the offender? Could these conditions be changed from time to time?

I would appreciate it if you could give me your advice on these questions by not later than Monday, January the 13th.

RT

Roger Tassé

RT/t1

c.c. The Hon. Warren Allmand

49B



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

Mr. B. C. Hofley

FROM
DE

Deputy Solicitor General

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE

January 7, 1975

SUBJECT
OBJET

Capital Punishment - Murders of Policemen and Prison Guards

With regard to the above, I would appreciate it if you could get me the following information:

1. The number of policemen and prison guards, separately, that were killed as a result of a criminal action during each of the last 15 years, including 1974, in the course of their duties;

The number of offenders that were convicted of murders or capital murders, in such instances, for each of those years; and

the number of convictions for capital murders in such instances that were commuted to life imprisonment.

2. The occupational risk in the police and prison guard sectors, compared to other sectors, and the changes that might have occurred in this respect in the last 15 years.
3. Comparative data regarding the above, in respect of the U.S. and other countries of the Western World.

This information is required by next Monday. If you cannot get all of the information by that time, I would appreciate it if you could give a progress report on whatever information will be available by that time, indicating how long it will take to get the rest of the information.

Roger Tassé

RT/t1

c.c. The Hon. Warren Allmand

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141-206

Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

Mr. J. Townesend
Chief, Statistics Co-ordination

FROM
DE

Director General
Research Division

SUBJECT
OBJET

CAPITAL PUNISHMENT

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE December 13, 1974

At the Senior Management Committee meeting Mr. Grainger asked me to review the standard paragraph that is used in correspondence with the Minister on the issue of capital punishment. I have set out below a draft. I should be grateful if you would give me any comments as soon as possible.

"It is our assessment of the research and statistics available to us that the death penalty does not have a significant impact either on the number of homicides committed in each year or on the level of violent crimes. Researchers have focused on this specific problem in several jurisdictions in North America, as well as in Europe. We have reviewed these studies along with one done by Professor Fattah entitled "A Study of the Deterrent Effect of Capital Punishment with Special Reference to the Canadian Situation", before taking our present position. Professor Fattah's study is available through Information Canada, Research Report No. 2, Department of the Solicitor General, Catalogue No. Js32-1/2. In addition, we are trying to undertake, with the co-operation of Statistics Canada, a monitoring of the effect of the moratorium on capital punishment with particular reference to the level of homicides and violent crimes in Canada

I should draw to your attention that the deterrent value of capital punishment is only one aspect of our concern. Of equal or perhaps even greater importance is the moral issue of whether our society should tolerate the taking of one life deliberately in response to the taking of another life."

C. Donnelly

pp Irvin Waller

IW/ed

cc: B.C. Hofley

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J.T.
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du Canada

MEMORANDUM

NOTE DE SERVICE

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SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE

December 2, 1974

TO: Mr. B.C. Hofley
ADM Research & Systems Development

FROM: Dr. I. Waller
DE: Director General Research

File 80
Classer

SUBJECT: MONITORING THE MORATORIUM ON CAPITAL PUNISHMENT
OBJET:

While our particular concerns with the "Capital Punishment issue: An Internal Sourcebook" and the "Prototype Model for Monitoring the Moratorium" have been expressed in earlier memoranda (October 8 and November 21, attached) there are some general issues which I would like to draw to your attention.

The "Prototype Model" promises descriptive statistics which may allow us to respond to some of the questions being raised in the House. John Townsend's claim to the contrary notwithstanding, the prototype model is not sensitive to the full range of questions which have been raised and which we can reasonably expect to confront again. For example -- the prototype is silent on the question, "Does capital punishment deter"? Questions of this sort demand through examination of the --

- 1) nature of the offense
- 2) nature of the data
- 3) kinds of analyses to which the data are amenable, and
- 4) the kinds of inferences one could draw from these analyses.

As indicated in the memorandum of November 12, homicide data do not "speak for themselves" and it is incumbent upon us to provide guidelines for their analysis and interpretation.

This is especially important since the Minister and/or Deputy will no doubt be confronted with questions of the sort indicated above, outside the House, with the media present, and we must ensure that they are informed on these issues. I suspect that Cabinet would also want to be informed on these matters.

I feel that these concerns are central to the task of monitoring the moratorium, and that they have not been adequately dealt with to date. In light of this, I am happy to note that you are contemplating a meeting with experts in the capital punishment area to discuss these issues. I believe such a meeting would greatly assist us in our

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efforts and I will be happy to assist you in identifying experts who might be invited to attend the discussions. We cannot, of course, presume that such a meeting will in any way resolve the capital punishment debate. On the other hand, it might provide us with a clearer understanding of the degree to which the debate can be informed by systematic research and how we should proceed in this regard.

I. Waller

attach.

141-206



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Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

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TO
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**THE SOLICITOR GENERAL
(Through Mr. Tassé)**

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Current Capital Cases

NATIONAL PAROLE

DEC 2 1974

BOARD - HQ.

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

November 28, 1974

There are now five persons in Canada under sentence of death. Their current status is as follows:

- 1. An appeal is pending before the Supreme Court of Canada.

- 2. Date of execution is set as 29 April, 1975.

- 1. An appeal is pending before the Supreme Court of Canada.

- 2. Date of execution is set as 12 March, 1975.

- 1. An appeal has been heard by the Quebec Court of Appeal, but judgment has not yet been rendered.

- 2. Date of execution is set as 25 April, 1975.

- 1. Convicted November 15, 1974.

- 2. Date of execution is set as January 28, 1975.

- 1. Convicted November 15, 1974.

- 2. Date of execution is set as January 28, 1975.

Copies on msc. Capital cases

HE/mab

J.H. Hollies,
Departmental Counsel

001908



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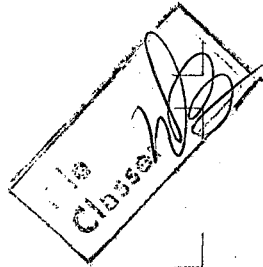
MEMORANDUM

NOTE DE SERVICE

TO
A DEPUTY SOLICITOR GENERAL

FROM
DE A.D.M. (R. & S.)

SUBJECT
OBJET THE CAPITAL PUNISHMENT ISSUE



SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/REFERENCE 83-3 <u>141-206</u> <i>file</i>
YOUR FILE - N/REFERENCE
DATE NOVEMBER 26, 1974.

The attached volumes were designed as a package to stimulate discussion and consensus with respect to how the capital punishment issue should be handled between now and the expiry of the second moratorium in 36 months time.

The yellow volume - An Internal Sourcebook - brings together past experience and uses this as a first step towards identifying options for future directions. It is, therefore, broad in scope and addresses the issues in terms that would include Policy Planning, Consultation, Research and Statistics - and probably in that order if internal consistency is to be maintained in overall Ministry strategy. This volume bears the caveat "For Internal Reference", reflecting the fact that its contents is drawn largely from the Secretariat's administrative files, although it is fair to say that such have been edited to avoid any fear of embarrassment. Accordingly, it could well be shared with the line agencies and Statistics Canada.

The buff volume - A Prototype Model for Monitoring the Moratorium - is much more specific in its content, discussing a possible approach to statistics describing experience during the present moratorium. The written record seems to have already identified this as a priority, and copies were distributed at the Statistics Management Committee meeting on November 6 to the line agencies and to Statistics Canada. Further discussion is scheduled with these parties to determine the mechanism for moving ahead with the monitoring operation, and to agree upon a final model for this.

Ideally, the statistics effort would be pre-determined as being compatible with overall Ministry objectives before its initiation. In reality, however, time has already been lost and it is difficult to see how it would be incompatible with any overall objectives later determined as it is specifically addressed to answering the type of questions that were unanswerable at the end of the first moratorium for lack of data.

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On a broader research base, it is also anticipated that we shall be calling together a select group of recognized experts in the capital punishment area for round-table discussions. These would be directed towards determining possible methodological approaches, and would address the issue in a comprehensive perspective of crimes of violence in general.

Finally, since the issue touches on all Branches of the Ministry and on each of the line agencies, it is thought useful to distribute copies of both volumes to members of the Senior Policy Advisory Committee, although you may wish to postpone this until after Christmas.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
B. C. Hofley

B. C. Hofley

Attach

JFT/nl

cc: Irvin Waller

141-206

Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO: J. Townesend
Chief, Statistics Coordination

FROM: P.A. Engstad
DE: Research Coordinator

SUBJECT
OBJET

The Capital Punishment Issue: A prototype
model for monitoring the moratorium

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 83-21 83-3
YOUR FILE - V/RÉFÉRENCE
DATE November 21, 1974

Dr. Waller and I have read the above mentioned report and I am passing along some of our initial observations for your information.

Page 1, Paragraph 7

"Infaticide." (SIC) is being excluded from consideration, yet victim/incident rates are being calculated per 100,000 total population (page 5) and the victim category (page 58) includes victims aged 0 - 1 years. Also, I see some difficulty using legal categories rather than behavioural criteria for the selection of events appropriate for consideration. In sum, I am a bit uncomfortable with "SCH" as described on page 1. Demers thesis gives a thoughtful presentation of the 'homicides' appropriate to this project.

Page 6.

I would think that "Victims" and "incidents" by institution would be an appropriate addition to the section on the distribution of prison inmate/guard homicides. (The same comment applies to pages 43-44).

Page 11

(a) There is no mention of victim-precipitated homicide, and I view this as a significant omission.

(b) I think "sexual assaults" should be included among the categories of victim offender relationships. (See page 61).

Page 34.

"Death Sentences - Carried Out" (however unlikely this may be) should be included as a 5th sentencing alternative. (See page 60).

- 2 -

Page 52

There is no mention of "escapes". The discussion of post release activity ought to accommodate the empirical (albeit regrettable) fact that some offenders "release" themselves.

In Addition:

1. Neither the flow chart nor text appear to deal with the commutation of the death sentence by Cabinet. This would seem to be a particularly serious omission.

2. Given the frequency with which it occurs, "Not guilty by reason of insanity", should probably be among the dispositions as well.

3. Likewise, the category "unfit to stand trial", should probably be included as a separate category.

4. Also, attention might be given to the effect of a lack of capital punishment on the number of convictions for capital offenses.

5. Since police/prison guards may be offenders as well as victims of SCH's, the tables should probably center plate this possibility as well.

6. Greater attention might be given to the reliability/validity of the data.

Finally, there is no mention of analyses beyond the presentation of descriptive data. Since descriptive data do not, as a rule, "speak for themselves", it is perhaps incumbent upon us to provide guidelines for the analysis of the data and the kinds of inferences that can be made. The study by Fattah, Jaywardene and Demers may be instructive in this regard.

P.A. Engstad

cc:

Mr. B.C. Hofley, ADM

Dr. I. Waller

Ms. F. Bertrand.



FILE NO.—DOSSIER N°

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TO—À

Mr. Tasse

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VU PAR

FROM—DE

Hollies

R. Tasse

☐ 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
COMMENTAIRES

☐ DRAFT REPLY
PROJET DE RÉPONSE

☐ MAKE
FAIRECOPIES

☐ NOTE AND FILE
NOTER ET CLASSER

☐ NOTE & RETURN
NOTER ET RETOURNER

☐ NOTE & FORWARD
NOTER ET FAIRE SUIVRE

Revised chart, as requested.
Extra copy attached for
SG.

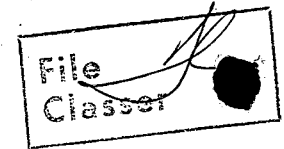
Hollies

CALL RECEIVED BY
MESSAGE REÇU PAR

TIME
HEURE

001913

EFFECT OF CRIMINAL LAW AMENDMENT (CAPITAL PUNISHMENT) ACT
AND PAROLE REGULATIONS ON GRANTS OF PAROLE AND TEMPORARY ABSENCE
TO CONVICTED MURDERERS



PERSONS SENTENCED TO DEATH

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Act</u>
Commuted before 1 January, 1974.	Board precluded from paroling until ten years have elapsed since arrest on charge.	Council approval necessary for full parole. No restriction on day parole or on temporary absence with or without escort.
Commuted on or after 1 January, 1974, or person sentenced to death between 29 December, 1972, and 1 January, 1974, for a murder no longer punishable by death under Act. (Deemed to be a sentence of life imprisonment).	No regulation. Governed by Act.	No full parole for ten years, or for up to twenty years if court so orders. No temporary absence without escort or day parole until all but three years of period has been served. Two-thirds vote of Parole Board necessary * for any parole. Council approval necessary for full parole.

NOTE:

- * There may be some doubt as to whether the two-thirds rule applies to the grant of day parole, but the Act can be interpreted to so require.

Copy on 140-89

PERSONS SENTENCED TO LIFE IMPRISONMENT

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Act</u>
Convicted before 4 January, 1968.	Must normally serve seven years, but can be paroled at any time in exceptional circumstances.	Council approval necessary for full parole. No restriction on day parole or on temporary absence with or without escort.
Convicted on or after 4 January, 1968, but before 1 January, 1974.	Board precluded from paroling until ten years have elapsed since arrest on charge.	As above.
Convicted on or after 1 January, 1974.	As immediately above.	No full parole for ten years, or for up to twenty years if court so orders. No temporary absence without escort or day parole until all but three years of period has been served. Two- thirds vote of Parole Board necessary for any parole. (See Note * page 1) Council approval necessary for full parole



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MEMORANDUM

NOTE DE SERVICE

file
PAC

TO
A D A.D.M. (R. & S.)

FROM
DE CHIEF, STATISTICS COORDINATION

SUBJECT
OBJET THE CAPITAL PUNISHMENT ISSUE

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 83-3 141-206 YOUR FILE - V/RÉFÉRENCE
DATE NOVEMBER 1, 1974.

The attached volumes were designed as a package to stimulate discussion and consensus with respect to how the capital punishment issue should be handled between now and the expiry of the second moratorium in 37 months time.

The yellow volume - An Internal Sourcebook - brings together past experience and uses this as a first step towards identifying options for future directions. It is, therefore, broad in scope and addresses the issues in terms that would include Policy Planning, Consultation, Research and Statistics - and probably in that order if internal consistency is to be maintained in overall Ministry strategy. This volume bears the caveat "For Internal Reference", reflecting the fact that its contents is drawn largely from the Secretariat's administrative files, although it is fair to say that such have been edited to avoid any fear of embarrassment. Accordingly, it could well be shared with the line agencies and Statistics Canada.

The buff volume - A Prototype Model for Monitoring the Moratorium - is much more specific in its content, discussing a possible approach to statistics describing experience during the present moratorium. The written record seems to have already identified this as a priority, and it was agreed at the last Statistics Management Committee meeting that copies would be circulated to members in order to get the discussion underway. In fact, it is on the agenda for the November 6 meeting.

Ideally, the statistics effort would be pre-determined as being compatible with overall Ministry objectives before its initiation. In reality, however, time has already been lost and it is difficult to see how it would be incompatible with any overall objectives later determined as it is specifically addressed to answering the type of questions that were unanswerable at the end of the first moratorium for lack of data. Perhaps, therefore, we should proceed and, at the same time, contribute in determining future directions in general to assure a coordinated approach.

.../2

001916

- 2 -

Perhaps the time has now come to decide on how the issue will be approached in general, and the yellow volume contains some proposals in this direction to get the discussion underway. We have 40 copies of this, and 50 of the buff volume so perhaps their distribution would be a first move towards getting things underway. I would appreciate an opportunity to discuss with you the best approach for such a distribution.



John F. Townesend.

Attach

Registry

141-206



Government
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MEMORANDUM

NOTE DE SERVICE

s.23

TO
A

**MISS INGER HANSEN, Q.C.,
CORRECTIONAL INVESTIGATOR**

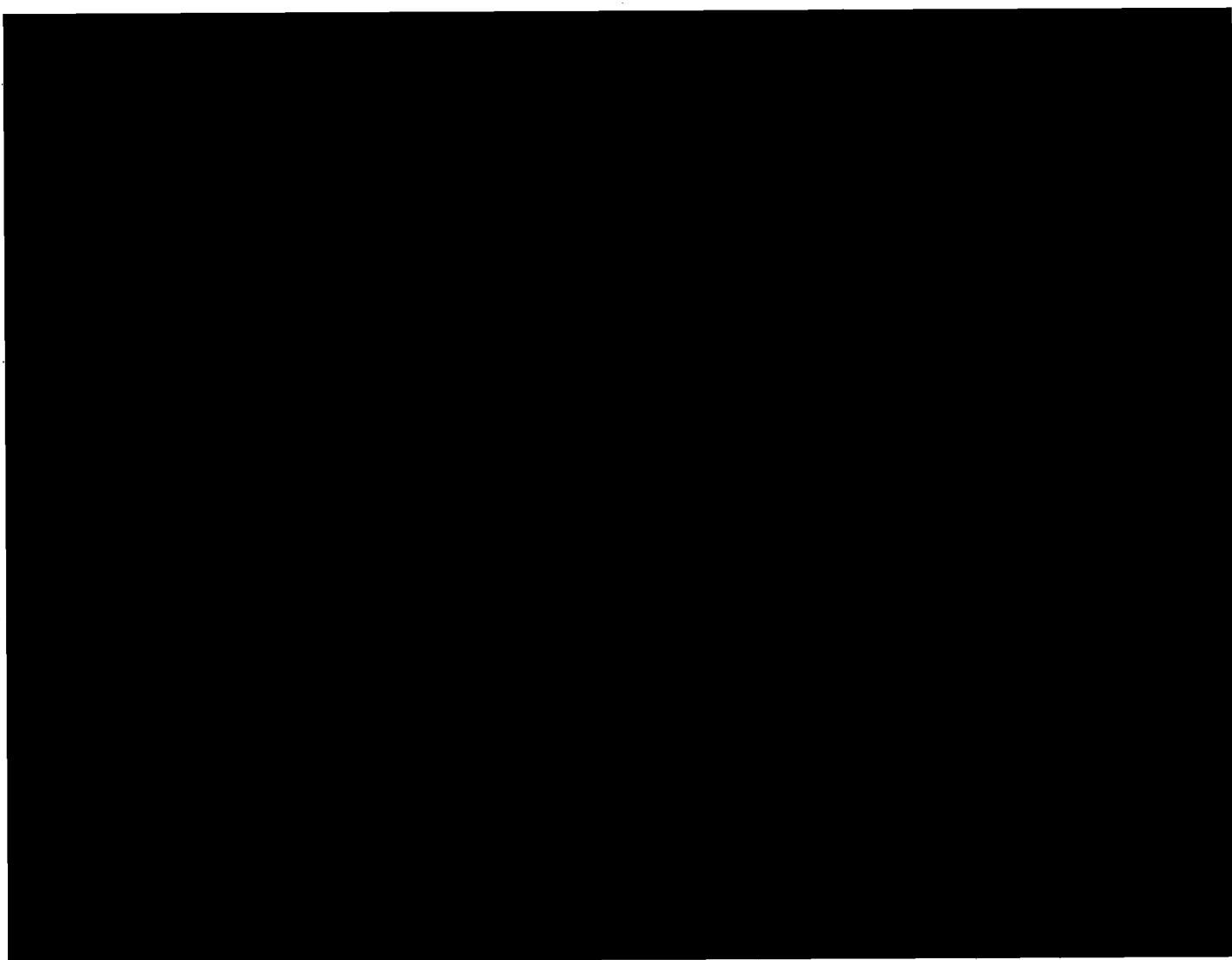
FROM
DE

J.H. HOLLIES

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE October 16, 1974

SUBJECT
OBJET

**Effect of Criminal Law Amendment
(Capital Punishment) Act, and
Amendments to Parole Regulations**



*Revised on 140-89
420-13*

Encl.

JHH/mab

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

001919

141-206

PAE/aw

Mr. J. F. Townesend
Chief, Statistics

Dr. I. Waller
Director
Research Division

83-3

October 8, 1974

The Capital Punishment Issue-
an Internal Sourcebook

Thank you for your memorandum of September 19, 1974, and the attached "Sourcebook" on the Capital Punishment issue.

Your suggested "overall strategy leading to a review of capital punishment legislature" seems rather more complicated than necessary. Moreover, in the absence of the "model" which presumably describes the characteristics and dimensions of the proposed research, it is difficult to know whether your suggested "strategy" would meet Ministerial objectives in this area.

The key questions, I would suggest, are - (1) who would be undertaking the proposed research ? and, (2) what resources (manpower and otherwise) would be needed to implement the "model for monitoring the moratorium" ?

It is hoped that these questions, along with a clear statement of ministerial objectives in respect to monitoring the moratorium, will be addressed in your presentation of the research "model" which you have devised.

The "Sourcebook" might be circulated as background material attached to this statement of objectives and model itself.

I. Waller.



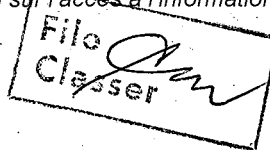
Government
of Canada

Gouvernement
du Canada

s.19(1)

MEMORANDUM

NOTE DE SERVICE



TO
A

THE SOLICITOR GENERAL
(Through Deputy Solicitor General)

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Current Capital Cases

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE September 30, 1974

There are now three people in Canada under sentence of death. Their current status is as follows:

- [REDACTED]
1. An appeal is pending before the Supreme Court of Canada.
 2. Date of execution is set as the 28th of November, 1974.

- [REDACTED]
1. An appeal is pending before the Supreme Court of Canada.
 2. Date of execution is set as the 2nd of December, 1974.

- [REDACTED]
1. An appeal has been heard by the Quebec Court of Appeal, but judgment has not yet been rendered.
 2. Date of execution is set as the 29th of November, 1974.

HE/pw/JHH/mab

J.H. Hollies,
Departmental Counsel

141-206


THE SOLICITOR GENERAL
(Through Deputy Solicitor General)


DEPARTMENTAL COUNSEL


September 30, 1974

Current Capital Cases

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1. An appeal has been heard by the Quebec Court of Appeal, but judgment has not yet been rendered.
 2. Date of execution is set as the 29th of November, 1974.

HE/pw/JHH/mab


J.H. Hollies,
Departmental Counsel



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MEMORANDUM

NOTE DE SERVICE

TO
A MR. D. FLETCHER

FROM
DE JOHN F. TOWNSEND

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/REFERENCE

83-3

141-206

YOUR FILE - V/REFERENCE

DATE

July 25, 1974.

SUBJECT
OBJET

STATISTICAL MONITORING OF THE MORATORIUM ON CAPITAL PUNISHMENT

Further to my memorandum to you of June 26, we have now reached the point in this study where it would be useful for Avtar Singh to obtain your advice in relation to the availability of package programs for generating the broad spectrum of model cross-classifications available given certain data elements and their internal categorizations.

At this point, therefore, we are not discussing data per se but, rather, wish to get a feel for possible output formats. This could be done manually, but it might be done faster and more comprehensively if we use a package program.

Avtar Singh will be in touch with you regarding a mutually suitable time for a meeting.

ORIGINAL SIGNED BY
J.F. TOWNSEND

John F. Townsend.

cc: Avtar Singh

Registry



Government
of Canada

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du Canada

s.19(1)

MEMORANDUM

NOTE DE SERVICE

141-206

TO
À

Solicitor General
(Through Deputy Solicitor General)

FROM
DE

Departmental Counsel

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 11, 1974.

SUBJECT
OBJET

Current Capital Cases

There are now three people in Canada under sentence of death. Their current status is as follows:

[REDACTED] C.C. 6

1. An appeal is pending before the Supreme Court of Canada.
2. Date of execution is set as the 28th November 1974.

[REDACTED] C.C. 7

1. An appeal is pending before the Supreme Court of Canada.
2. Date of execution is set as the 2nd December 1974.

[REDACTED] C.C. 8

1. An appeal is pending before the Quebec Court of Appeal.
2. Date of execution is set as 26th July 1974.
By reason of the operation of Section 607(3) of the Criminal Code, regardless of the fixed date of execution, Connearney will not be executed until the appeal process is complete.

J.H. Hollies
Departmental Counsel

FILE
CLASSE



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du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

**MR. D.H. CHRISTIE, Q.C.,
ASSOCIATE DEPUTY MINISTER,
DEPARTMENT OF JUSTICE**

FROM
DE

J.H. HOLLIES

SUBJECT
OBJET

**Criminal Law Amendment
(Capital Punishment) Act**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
141-206
YOUR FILE - V/RÉFÉRENCE
DATE
July 10, 1974

Reference your note of July 5th. The Solicitor General has not as yet communicated his views. I have today prepared a further memorandum to him asking for an expression of his opinion.

I return the original of my memorandum of May 23rd addressed to you.

Encl.


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

JHH/mab

001926



Government
of Canada

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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

THE SOLICITOR GENERAL

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

**Criminal Law Amendment
(Capital Punishment) Act**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 141-206
YOUR FILE - V/RÉFÉRENCE
DATE July 10, 1974

The Associate Deputy Minister of the Department of Justice has asked whether we are in a position to let that Department have your views as to whether the Crown should have the right to appeal in instances where the trial judge in a murder case does not fix a period exceeding ten years as being the time in which the inmate shall not be paroled.

You will recall that this matter was first raised in May, and for your ease of reference I attach a copy of my memorandum to you of May 23rd, the memorandum to Mr. Christie from Mr. Hollies of the same date, and the material furnished to us by the Department of Justice.

Do you wish me to convey to the Department of Justice the position you wish to take on this matter?

AS SIGNED BY
ORIGINAL SIGNED PAR
R. TASSE

Encls.

**Roger Tassé,
Deputy Solicitor General**



Solicitor General
Canada

Solliciteur général
Canada

Mr. Tassé

Memo to SG,
recommended for signature,
please.

Phillips
10 Jul 74



001928

DEPARTMENT OF JUSTICE

MINISTÈRE DE LA JUSTICE

MEMORANDUM

July 5, 1974

TO: Mr. Hollies

FROM: D.H. Christie

Have you had a decision on this
point from the Solicitor General?

D.H.C.

001929



Government of Canada
Gouvernement du Canada

s.23

MINISTRY-MINISTÈRE
SECRETARIAT
MEMORANDUM SOL. GEN. NOTE DE SERVICE

'74 JUN 27

TO
A

MR. JOHN F. TOWNSEND,
CHIEF, STATISTICS COORDINATION

FROM
DE

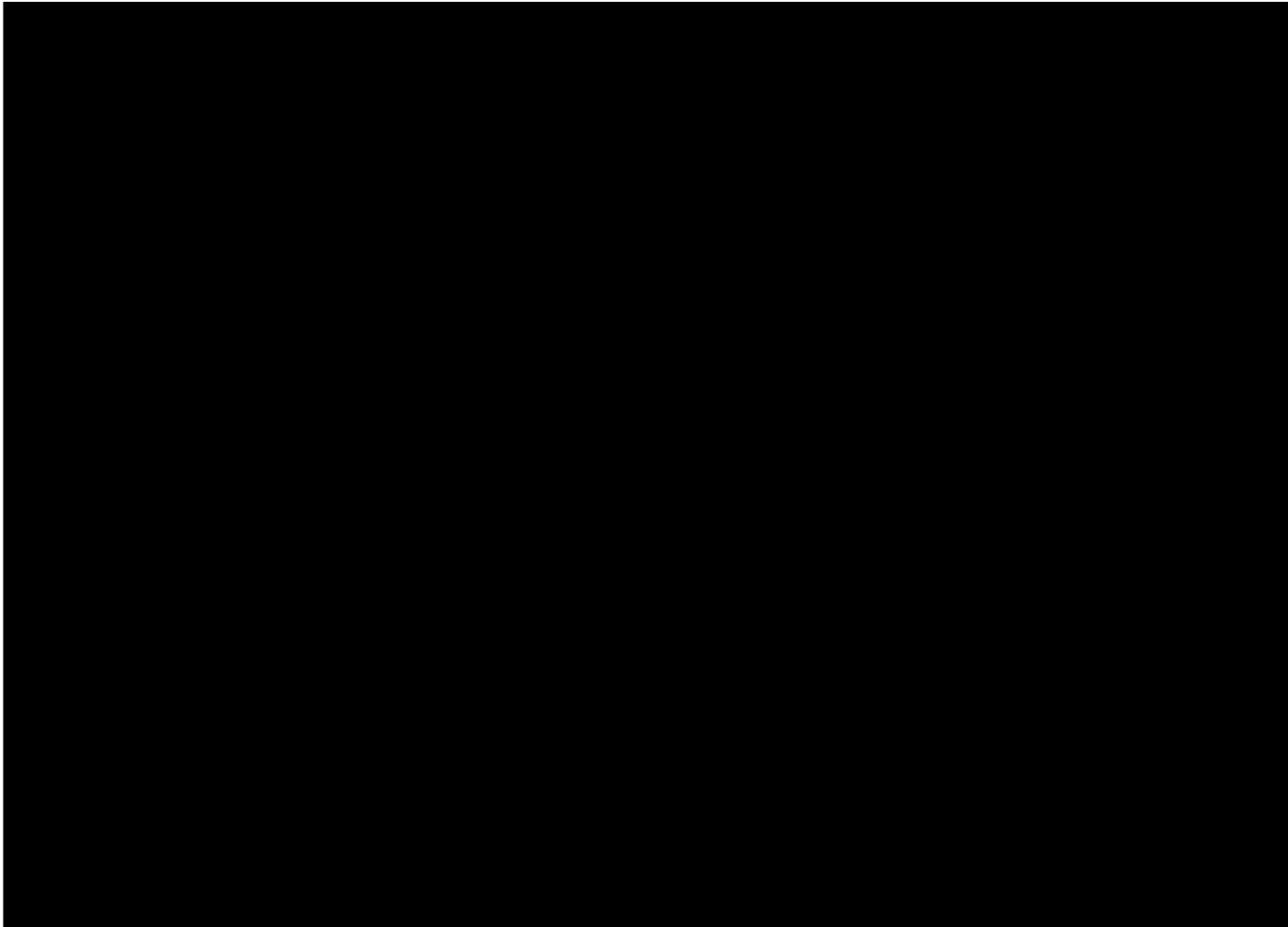
DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Statistical Monitoring of the
Capital Punishment Moratorium

SECURITY CLASSIFICATION — DE SÉCURITÉ 16:32
OUR FILE — N/RÉFÉRENCE
YOUR FILE — V/RÉFÉRENCE
DATE June 27, 1974

Thank you for your memorandum of June 26 on
the above subject.



Artes
Please note
S.S.

...2

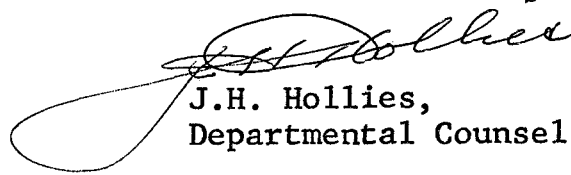
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- 2 -



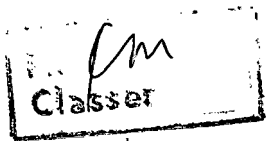
JHH/mab


J.H. Hollies,
Departmental Counsel

To DM.

Fr BETH.

For information.





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Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

93-141-206

TO
A

DISTRIBUTION

FROM
DE

JOHN F. TOWNSEND
CHIEF, STATISTICS COORDINATION

15

SECURITY - CLASSIFICATION -- DE SÉCURITÉ
OUR FILE -- N/RÉFÉRENCE 83-3 141-206
YOUR FILE -- V/RÉFÉRENCE
DATE June 26, 1974

SUBJECT
OBJET

Statistical Monitoring of the Capital Punishment Moratorium

We have procured the services of Mr. Avtar Singh during the summer months and he will be directing his attention to developing a model system to statistically monitor the present moratorium on capital punishment.

Mr. Singh holds an M.A. in Criminology from the University of Ottawa, his thesis topic having been Criminal Homicide and Culture Conflict in Canada. In addition, he later assisted Dr. C.H.S. Jayewardene in preparation of his manuscript the Canadian Experiment with the Penalty of Death.

Mr. Singh commences studies on a Ph.D. this coming fall.

The draft specifications for the study during the summer are attached and it would be especially helpful if you could let me know whether they reflect the type of output that would be useful to you, or what changes would better reflect your needs.

John F. Townsend

Attach.

DISTRIBUTION

✓ Mr. B.C. Hofley
Dr. R.G. Cassidy
Dr. I. Waller
Mr. J.A. Hollies
Mr. A.T. Wakabayashi
Mr. M. Laniel
Mr. S.H. Schultz
Mr. G. Vincent
Mr. J. MacDonald

74 JUN 28 13:38

MINISTRE-MINISTÈRE
SECRETARIAT
SOL. GEN.

001933



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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À MR. AVTAR SINGH

FROM
DE MR. JOHN TOWNSEND
CHIEF, STATISTICS COORDINATION

SUBJECT
OBJET

System to statistically monitor the Moratorium on
Capital Punishment effective until December 31, 1977

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 83-3 141-206
YOUR FILE - V/RÉFÉRENCE
DATE June 25, 1974

As we discussed, your previous specialization in murder statistics will place you in a favourable position to formulate and recommend a system serving the above needs while you are with us in your capacity as a career oriented summer student employee.

The attached Guidelines for the project to a large extent reflect the benefit of previous experience so far as informational needs are concerned. At the same time, they are in no way constraints on your own initiative but would, rather, indicate minimum returns from such a system.

We are anxious to provide you with whatever advice and support you need, and will follow your progress with interest.

John F. Townsend

Attach.

c.c. Mr. B.C. Hofley
Dr. R.G. Cassidy
Dr. I. Waller
Mr. J.H. Hollies
Mr. G. Koz
Mr. M. Préfontaine

001934

SYSTEM TO STATISTICALLY MONITOR THE MORATORIUM ON CAPITAL PUNISHMENT EFFECTIVE UNTIL DECEMBER 31, 1977

GUIDELINES FOR THE STUDY

BACKGROUND

Departmental Counsel advises that Bill C-2 respecting capital murder continues the new provisions in force until December 31, 1977, whereupon they expire unless Parliament, by joint resolution of both Houses, continues 214(2) in force.

OBJECTIVE OF THE SYSTEM

The objective of the proposed system is to improve quantitative knowledge of use to the Ministry of the Solicitor General contributing to an understanding of the impact of capital punishment in all its dimensions, with particular reference to experience under the moratorium ending December 31, 1977.

GOAL OF THE PROPOSED SYSTEM

The goal of the proposed system is to maintain a continuing statistical record of real-life experience during the life of the moratorium, with a view to:

- a) establishing a uniform, comprehensive and relevant data base for analysis towards the conclusion of the moratorium;
- b) to provide relevant statistical input at any point during the life of the moratorium for inclusion in Submissions to Cabinet relating to commutations of the death penalty in specific cases;
- c) to provide relevant statistical input at any point during the life of the moratorium, related to ministerial administration, proposed correctional policy or legislative change.

BASIC REQUIREMENTS

- 1) The product of the system should be readily intelligible to the lay reader;
- 2) Constraints on the reliability and validity of data should be identifiable in footnote or paranthetic forms;

- 2 -

- 3) Sources of data should be readily identifiable;
- 4) the system should reflect practical realities (including data availability), at the same time highlighting data needs not met by continuation of existing systems.

BASIC APPROACH FOR THE SYSTEM

- 1) First, to determine, as far as possible, the objectives seen to be realized by the moratorium;
- 2) Then, to establish means to quantitatively determine the extent to which those objectives will have been met;
- 3) Generally, to enable quantitative description of Canada's experience relating specifically to the death penalty during the moratorium and prior to it, rather than relating to the phenomenon of homicide in general.

MINIMUM OUTPUT REQUIREMENTS

- 1) The output should be in such a form as to accommodate periodic update and periodic updated trend analyses, extending back, wherever possible, to the commencement of the first moratorium on December 27, 1967;
- 2) The following data, for which need is already identified, should form at least part of the system output:
 - (a) Victim count - the number and rate of selected homicides (Capital Murder, Non-Capital Murder and Manslaughter, shown separately) per 100,000 total population (i.e. not population aged 7 years and over);
 - (b) Offender count - the number and rate of convictions for selected homicides (as defined in (a)) per 100,000 total population;
 - (c) Incident Count - the number and rate of incidents of selected homicide (defined as in (a)) per 100,000 total population;
 - (d) for each of (a), (b) and (c):
 - (i) - by province and Canada total;
 - (ii) - by Canada total, England and Wales, France, and Retentionist and Non-Retentionist States in the United States;

- 3 -

(e) for each (d)(i) and (d)(ii):

(i) by Relationship of Suspect to Murder Victim

- domestic - baby up to 1 year
- other domestic
- love triangles
- quarrels between strangers
- during committal of another offence (where relevant, specified per UCR classification)
- professional killings

(ii) by whether committed by paroled inmates

- with previous history of the 3 selected homicide offences
 - with parole history (day parole or other)
 - with no parole history (day parole or other)
- with no such previous history
 - with parole history (day parole or other)
 - with no parole history (day parole or other)

(iii) as relevant, by whether victim a person as defined in section 214(2)(a) and (b) of the Act (i.e. police officer, prison guard, etc.), specified by category of employment detailed in the Act;

(iv) as relevant, by court disposition, jury recommendation to the Solicitor General, appeal history and commutation;

(v) as relevant, by occupation of accused;

(f) Number and rate per 100,000 total population of persons sentenced to terms of life imprisonment and death commuted to life imprisonment, indicated separately;

(g) Number and rate per 100,000 total population of persons admitted to custody for life imprisonment and death commuted to life imprisonment, indicated separately;

.../4

- 4 -

- (h) Number and rate per 100,000 total population of incidents of selected homicides (defined as in (a)) where the victim was a person as defined in section 214(2) (a) and (b) of the Act, or equivalent;
- (j) for each of (f), (g) and (h):
 - (i) - by province, Canadian Penitentiary Service Region and Canada total;
 - (ii) - by Canada total, England and Wales, France, Retentionist and Non-Retentionist States in the United States;
- (k) Number and percentage of total Canadian penitentiary population of persons serving sentences of, indicated separately, life imprisonment and death commuted to life imprisonment who:
 - (i) attempt to commit or actually commit suicide while in custody, shown separately;
 - (ii) have or have not previous records of selected homicides (as defined in (a) above);
 - (iii) categorized by appropriate time frames of length of custody, are released from custody, by type of release;
- (m) By stratified random sample, response of Canadian citizens to the question:

"As you may know, the death penalty is suspended in Canada until the end of 1977, except for the killing of prison guards or policemen on duty. In your opinion, should the death penalty be brought back or not, and why?"

STUDY CONTENT AND SCHEDULE

- 1) By mid-July - Conceptualization completed, and draft formats available for model of periodic output discussed on page 2 above (in table, chart and narrative form);

.../5

- 5 -

- 2) By mid-August - Existing and proposed data sources systematically identified, constraints on comparability articulated, data processing requirements defined, and final draft of periodic output completed;
- 3) By mid-September - Annual time-series completed in context of the periodic output, retroactive back to, and including, calendar year 1968.



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MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

DISTRIBUTION

FROM
DE

JOHN F. TOWNSEND
CHIEF, STATISTICS COORDINATION

SUBJECT
OBJET

Statistical Monitoring of the Capital/Punishment
Moratorium

We have procured the services of Mr. Avtar Singh during the summer months and he will be directing his attention to developing a model system to statistically monitor the present moratorium on capital punishment.

Mr. Singh holds an M.A. in Criminology from the University of Ottawa, his thesis topic having been Criminal Homicide and Culture Conflict in Canada. In addition, he later assisted Dr. C.H.S. Jayewardene in preparation of his manuscript the Canadian Experiment with the Penalty of Death.

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The draft specifications for the study during the summer are attached and it would be especially helpful if you could let me know whether they reflect the type of output that would be useful to you, or what changes would better reflect your needs.

ORIGINAL SIGNED BY
J.F. TOWNSEND

John F. Townsend

Attach.

FT/gg

DISTRIBUTION

Mr. B.C. Hofley
Dr. R.G. Cassidy
Dr. I. Waller
Mr. J.A. Hollies
Mr. A.T. Wakabayashi
Mr. M. Laniel
Mr. S.H. Schultz
Mr. G. Vincent
Mr. J. MacDonald

SECURITY CLASSIFICATION	DE SÉCURITÉ
OUR FILE - N. REFERENCE	
83-3	
141-206 ✓	
YOUR FILE - V. RÉFÉRENCE	
DATE	June 26, 1974

001940



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A **MR. AVTAR SINGH**

FROM
DE **MR. JOHN TOWNSEND**
CHIEF, STATISTICS COORDINATION

SUBJECT
OBJET

**System to statistically monitor the Moratorium on
Capital Punishment effective until December 31, 1977**

As we discussed, your previous specialization in murder statistics will place you in a favourable position to formulate and recommend a system serving the above needs while you are with us in your capacity as a career oriented summer student employee.

The attached Guidelines for the project to a large extent reflect the benefit of previous experience so far as informational needs are concerned. At the same time, they are in no way constraints on your own initiative but would, rather, indicate minimum returns from such a system.

We are anxious to provide you with whatever advice and support you need, and will follow your progress with interest.

ORIGINAL SIGNED BY
J.F. TOWNSEND

John F. Townsend

Attach.
JFT/gg

c.c. Mr. B.C. Hofley
Dr. R.G. Cassidy
Dr. I. Waller
Mr. J.H. Hollies
Mr. G. Koz
Mr. M. Préfontaine

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 83-3 141-206
YOUR FILE - V/RÉFÉRENCE
DATE June 25, 1974



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A D MR. D. FLETCHER

FROM JOHN F. TOWNSEND
DE

SUBJECT
OBJET

**Statistical Monitoring of the Moratorium
on Capital Punishment**

You will see that the attached specifications make mention of data processing in the final section and, accordingly, you may be interested to get some advance notice of Mr. Singh's activities.

ORIGINAL SIGNED BY
J.F. TOWNSEND

John F. Townsend

Attach.

JFT/gg

c.c. Mr. Avtar Singh

SECURITY CLASSIFICATION DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 83-3 141-206
YOUR FILE - V/RÉFÉRENCE
DATE June 26, 1974

240 Laurier Ave., West,
Ottawa, Ontario.
K1A 0P8

June 26, 1974

Our File: 83-3
141-206

Dr. C.H.S. Jayewardene,
Director, Department of Criminology,
University of Ottawa,
Ottawa, Ontario.
R1N 6M5

Dear Dr. Jayewardene:

**Subject: Statistical Monitoring of the Capital
Punishment Moratorium**

Just a note to thank you for granting us permission to use
the content of The Canadian Experiment with the Penalty of Death
in the work that Avtar Singh is doing for us.

The draft specifications for this study are attached and
your criticism would be most welcome if you have a moment to
spare.

Yours sincerely,

ORIGINAL SIGNED BY
J.F. TOWNSEND

John F. Townsend
Chief, Statistics Coordination

Attach.

c.c. Mr. Avtar Singh

JFT/gg

SYSTEM TO STATISTICALLY MONITOR THE MORATORIUM ON CAPITAL PUNISHMENT EFFECTIVE UNTIL DECEMBER 31, 1977

GUIDELINES FOR THE STUDY

BACKGROUND

Departmental Counsel advises that Bill C-2 respecting capital murder continues the new provisions in force until December 31, 1977, whereupon they expire unless Parliament, by joint resolution of both Houses, continues 214(2) in force.

OBJECTIVE OF THE SYSTEM

The objective of the proposed system is to improve quantitative knowledge of use to the Ministry of the Solicitor General contributing to an understanding of the impact of capital punishment in all its dimensions, with particular reference to experience under the moratorium ending December 31, 1977.

GOAL OF THE PROPOSED SYSTEM

The goal of the proposed system is to maintain a continuing statistical record of real-life experience during the life of the moratorium, with a view to:

- a) establishing a uniform, comprehensive and relevant data base for analysis towards the conclusion of the moratorium;
- b) to provide relevant statistical input at any point during the life of the moratorium for inclusion in Submissions to Cabinet relating to commutations of the death penalty in specific cases;
- c) to provide relevant statistical input at any point during the life of the moratorium, related to ministerial administration, proposed correctional policy or legislative change.

BASIC REQUIREMENTS

- 1) The product of the system should be readily intelligible to the lay reader;
- 2) Constraints on the reliability and validity of data should be identifiable in footnote or paranthetic forms;

- 2 -

- 3) Sources of data should be readily identifiable;
- 4) the system should reflect practical realities (including data availability), at the same time highlighting data needs not met by continuation of existing systems.

BASIC APPROACH FOR THE SYSTEM

- 1) First, to determine, as far as possible, the objectives seen to be realized by the moratorium;
- 2) Then, to establish means to quantitatively determine the extent to which those objectives will have been met;
- 3) Generally, to enable quantitative description of Canada's experience relating specifically to the death penalty during the moratorium and prior to it, rather than relating to the phenomenon of homicide in general.

MINIMUM OUTPUT REQUIREMENTS

- 1) The output should be in such a form as to accommodate periodic update and periodic updated trend analyses, extending back, wherever possible, to the commencement of the first moratorium on December 27, 1967;
- 2) The following data, for which need is already identified, should form at least part of the system output:
 - (a) Victim count - the number and rate of selected homicides (Capital Murder, Non-Capital Murder and Manslaughter, shown separately) per 100,000 total population (i.e. not population aged 7 years and over);
 - (b) Offender count - the number and rate of convictions for selected homicides (as defined in (a)) per 100,000 total population;
 - (c) Incident Count - the number and rate of incidents of selected homicide (defined as in (a)) per 100,000 total population;
 - (d) for each of (a), (b) and (c):
 - (i) - by province and Canada total;
 - (ii) - by Canada total, England and Wales, France, and Retentionist and Non-Retentionist States in the United States;

- 3 -

(e) for each (d)(i) and (d)(ii):

(i) by Relationship of Suspect to Murder Victim

- domestic - baby up to 1 year
- other domestic
- love triangles
- quarrels between strangers
- during committal of another offence (where relevant, specified per UCR classification)
- professional killings

(ii) by whether committed by paroled inmates

- with previous history of the 3 selected homicide offences
 - with parole history (day parole or other)
 - with no parole history (day parole or other)
- with no such previous history
 - with parole history (day parole or other)
 - with no parole history (day parole or other)

(iii) as relevant, by whether victim a person as defined in section 214(2)(a) and (b) of the Act (i.e. police officer, prison guard, etc.), specified by category of employment detailed in the Act;

(iv) as relevant, by court disposition, jury recommendation to the Solicitor General, appeal history and commutation;

(v) as relevant, by occupation of accused;

(f) Number and rate per 100,000 total population of persons sentenced to terms of life imprisonment and death commuted to life imprisonment, indicated separately;

(g) Number and rate per 100,000 total population of persons admitted to custody for life imprisonment and death commuted to life imprisonment, indicated separately;

.../4

- 4 -

- (h) Number and rate per 100,000 total population of incidents of selected homicides (defined as in (a)) where the victim was a person as defined in section 214(2) (a) and (b) of the Act, or equivalent;
- (j) for each of (f), (g) and (h):
 - (i) - by province, Canadian Penitentiary Service Region and Canada total;
 - (ii) - by Canada total, England and Wales, France, Retentionist and Non-Retentionist States in the United States;
- (k) Number and percentage of total Canadian penitentiary population of persons serving sentences of, indicated separately, life imprisonment and death commuted to life imprisonment who:
 - (i) attempt to commit or actually commit suicide while in custody, shown separately;
 - (ii) have or have not previous records of selected homicides (as defined in (a) above);
 - (iii) categorized by appropriate time frames of length of custody, are released from custody, by type of release;
- (m) By stratified random sample, response of Canadian citizens to the question:

"As you may know, the death penalty is suspended in Canada until the end of 1977, except for the killing of prison guards or policemen on duty. In your opinion, should the death penalty be brought back or not, and why?"

STUDY CONTENT AND SCHEDULE

- 1) By mid-July - Conceptualization completed, and draft formats available for model of periodic output discussed on page 2 above (in table, chart and narrative form);

.../5

- 5 -

- 2) By mid-August - Existing and proposed data sources systematically identified, constraints on comparability articulated, data processing requirements defined, and final draft of periodic output completed;
- 3) By mid-September - Annual time-series completed in context of the periodic output, retroactive back to, and including, calendar year 1968.



Solicitor General
Canada

Solliciteur général
Canada

PA

DM.

Recommended for
signature, please.

Hollies

23 May 74

001949

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

THE SOLICITOR GENERAL

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

**Criminal Law Amendment
(Capital Punishment) Act**

SECURITY - CLASSIFICATION — DE SÉCURITÉ
OUR FILE — N/RÉFÉRENCE
141-206
YOUR FILE — V/RÉFÉRENCE
DATE
May 23, 1974

I enclose copies of correspondence received from the Department of Justice, and the reply forwarded to Mr. Christie concerning the period to be served before parole may be granted when an accused person has been convicted of murder.

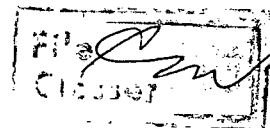
As you will see from Mr. Hollies' memorandum, our recommendation has been expressed as being subject to your views on this issue. I should be grateful if you would let me know what, if any, further action should be taken.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSÉ

Encls.

**Roger Tassé,
Deputy Solicitor General**

J.H. HOLLIES/mab



Sent to SG 27/5/74

Rm

DEPARTMENT OF THE SOLICITOR GENERAL

Ottawa K1A 0P8, May 23, 1974

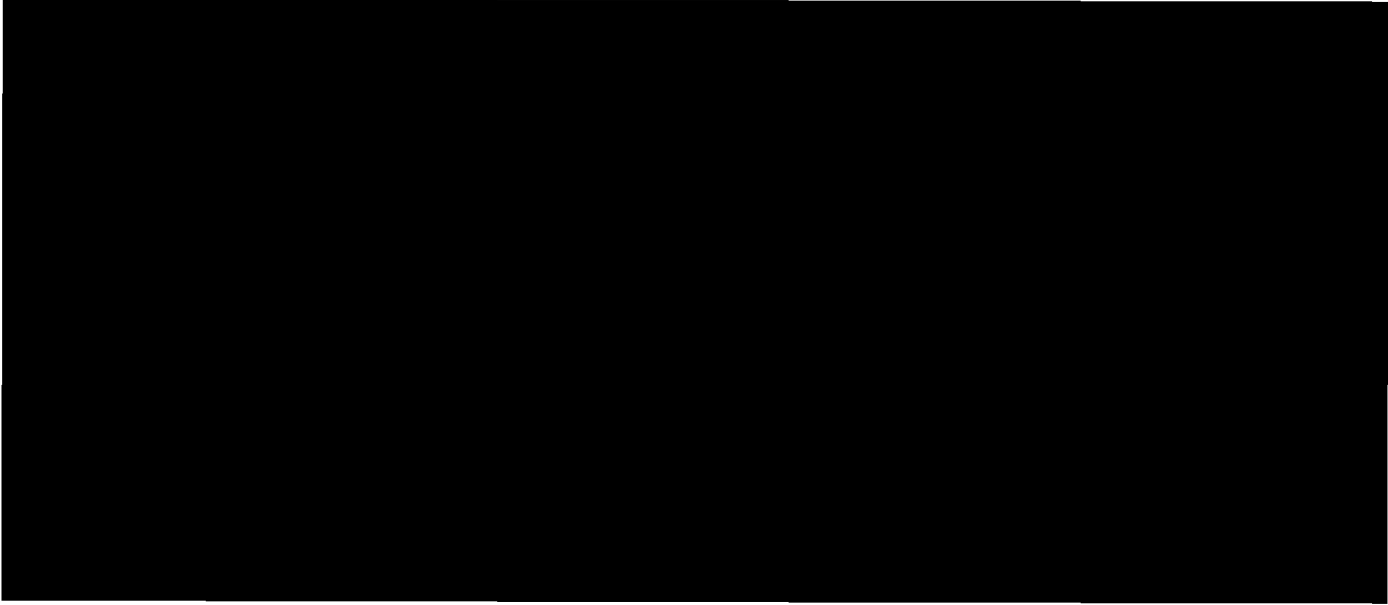
MEMORANDUM TO: MR. D.H. CHRISTIE, Q.C.,
ASSOCIATE DEPUTY MINISTER,
DEPARTMENT OF JUSTICE

FROM: J.H. HOLLIES,
DEPARTMENT OF THE SOLICITOR GENERAL

RE: Criminal Law Amendment
(Capital Punishment) Act

I regret not having answered at an earlier date
your memorandum of May 7, under your file 225000-24.

I have had an opportunity to discuss this matter
with the Deputy Solicitor General, but so far the Minister has not
been approached in order that his views might be ascertained. What
follows is, therefore, subject to the caveat that the Solicitor
General may wish to advance some representations, possibly differing
from the contents of this memorandum.



JHH/mab


J.H. Hollies,
Departmental Counsel

MINISTRY-MINISTÈRE
SECRETARIAT
SOL. GEN.

225000-24

'74 MAY 8 14:11

DEPARTMENT OF JUSTICE

DHC/r1

May 7, 1974

MEMORANDUM TO: Mr. J. Hollies

FROM: D.H. Christie

RE: Criminal Law Amendment (Capital
Punishment) Act.

Attached hereto is copy of a self-
explanatory memorandum of even date which I sent to
Mr. Gibson. Could I please have your comments?

May 9th → Mr. call to Goodman.
Says it was a gang-bang
murder. habit (age 24 or 25)
thought the victim had
informed on him ^{to the police} and lured him
into the country, got him to dig
his own grave, and shot him.
The victim was 19.

D.H.C.
[Signature]

225000-24

DEPARTMENT OF JUSTICE

May 7, 1974

MEMORANDUM TO: Mr. Gibson

FROM: D.H. Christie

RE: Criminal Law Amendment (Capital Punishment) Act.

G.R. Goodman, Assistant Deputy Minister with the Attorney General's Department in Manitoba has brought to my attention what appears to be an oversight in the legislation relating to a murder.

This is what he says:

"This is to confirm our telephone conversation wherein I advised that there appears to be a loop-hole in your legislation inasmuch as the Crown cannot appeal a sentence where an accused person was convicted of murder punishable by imprisonment for life and the Court does not make any order under Section 218(6) of the Code increasing the minimum number of years that the convicted person must serve.

In particular, one Peter Labuik (along with one Joseph McManus) was convicted of murder punishable by imprisonment for life at the recent Assize sitting in Portage la Prairie, Manitoba. We considered the offence to be so serious and Labuik to be such a dangerous criminal that we desired to appeal that sentence to the Court of Appeal with a view to having the minimum number of years that Labuik is to serve increased by as much as the Court of Appeal would agree.

The definition of "sentence" as set out in Section 6.1 of the Criminal Law Amendment (Capital Punishment) Act states that "sentence" includes an order made under subsection 218(6); Labuik and McManus will be serving their sentence in accordance with Section 218(5)(d) of the Criminal Code.

2.

I would appreciate your comments in this regard. What action, if any, do you propose to take? For your information, Labuik and McManus were convicted and sentenced on March 15th, 1974."

What do you think?

D.H.C.

File No. 111 Mc et al



Province of Manitoba

Department of the Attorney-General

Administration

G.R. Goodman, Q.C.

APR 1 1974

Assistant Deputy Minister (Legal)

Ph. (204) 946-7121

DEPT. OF JUSTICE - OTTAWA

116 Legislative Building

Winnipeg, Manitoba

R3C 0V8

March 28, 1974.

D.H. Christie, Esq., Q.C.,
Assistant Deputy Attorney-General,
Department of Justice,
OTTAWA, Ontario.

Dear Sir:

225000-24

Re: Criminal Law Amendment (Capital Punishment) Act

This is to confirm our telephone conversation wherein I advised that there appears to be a loop-hole in your legislation inasmuch as the Crown cannot appeal a sentence where an accused person was convicted of murder punishable by imprisonment for life and the Court does not make any order under Section 218(6) of the Code increasing the minimum number of years that the convicted person must serve.

In particular, one Peter Labuik (along with one Joseph McManus) was convicted of murder punishable by imprisonment for life at the recent Assize sitting in Portage la Prairie, Manitoba. We considered the offence to be so serious and Labuik to be such a dangerous criminal that we desired to appeal that sentence to the Court of Appeal with a view to having the minimum number of years that Labuik is to serve increased by as much as the Court of Appeal would agree.

The definition of "sentence" as set out in Section 6.1 of the Criminal Law Amendment (Capital Punishment) Act states that "sentence" includes an order made under subsection 218(6); Labuik and McManus will be serving their sentence in accordance with Section 218(5)(d) of the Criminal Code.

I would appreciate your comments in this regard. What action, if any, do you propose to take? For your information, Labuik and McManus were convicted and sentenced on March 15th, 1974.

Yours truly,

G.R. Goodman.

GRG/jme

ENTERED

PART XVIII

Appeals - Indictable Offences

MINAL CODE SUPPLEMENT

an accused guilty of murder punishable by death, the judge who presides at the trial, after consulting the jury, put to them the following question:

"If you find the accused guilty of murder punishable by death, and the law requires that I now pronounce sentence of imprisonment for life against him, do you recommend that I should substitute for the term of imprisonment for life, a number of years not exceeding twenty but more than ten."

Penitentiary Act and the *Parole Act*, as amended, prescribed in paragraph (5) (a), (b) of the *Parole Act* and no day parole may be granted under the *Parole Act* until the expiration of the time referred to in paragraph (5) (a) thereof pursuant to subsection (5) (b) of the *Parole Act*.

substituted (s.4):

DEATH TO BE SPECIFICALLY CHARGED.
If a person is convicted of murder punishable by death, the judge who presides at the trial, after consulting the jury, put to them the following question:

substituted (s.5):

If a person is convicted of murder punishable by death or by imprisonment for life, the judge who presides at the trial, after consulting the jury, put to them the following question: "If you find the accused guilty of murder punishable by death, and the law requires that I now pronounce sentence of imprisonment for life against him, do you recommend that I should substitute for the term of imprisonment for life, a number of years not exceeding twenty but more than ten."

MARTIN'S ANNUAL CRIMINAL CODE SUPPLEMENT 5

Section 589(2)

Repealed and the following substituted (s.6):

Where murder punishable by death charged and part only proved.

(2) For greater certainty and without limiting the generality of subsection (1), where a count charges murder punishable by death and the evidence does not prove murder punishable by death, but proves murder punishable by imprisonment for life, or an attempt to commit murder punishable by imprisonment for life, the jury may find the accused not guilty of murder punishable by death but guilty of murder punishable by imprisonment for life or an attempt to commit murder punishable by imprisonment for life, as the case may be.

Section 601

Definition "sentence" repealed and the following substituted (s.6.1):

"Sentence"

"sentence" includes a declaration made under subsection 181(3), an order made under section 95, 653, 654 or 655 or subsection 218(6), and a disposition made under subsection 662.1(1), subsection 663(1) or subsection 664(3) or (4);

Section 684(3)

Repealed and the following substituted (s.7):

Approval by Governor in Council of release after commutation of sentence.

(3) Notwithstanding any other law or authority, a person

(a) in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment,

(b) upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, or

(c) upon whom a sentence of imprisonment for life is deemed by section 8 of the *Criminal Law Amendment (Capital Punishment) Act* to have been imposed,

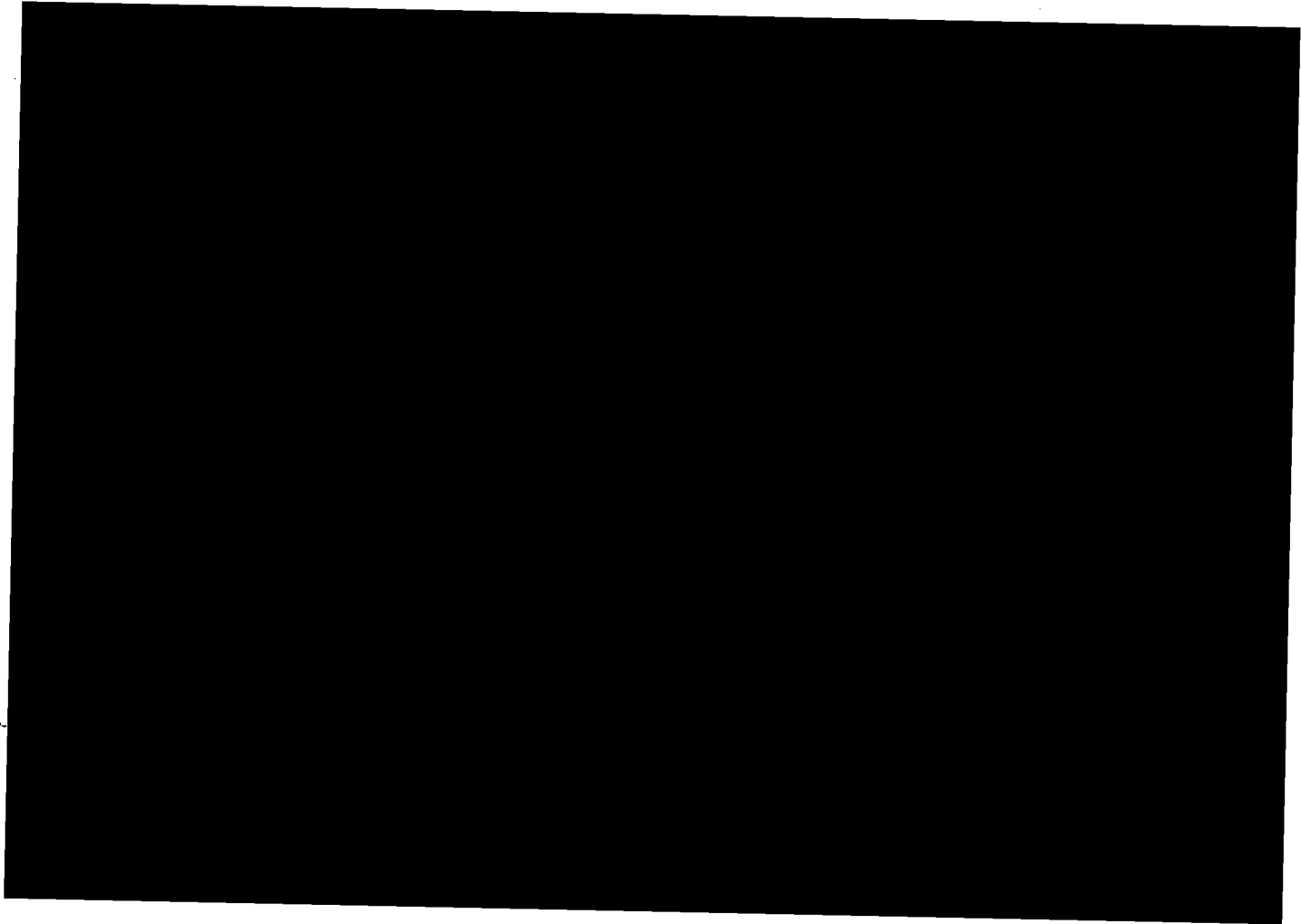
shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council, but this subsection does not apply in respect of any absence authorized under section 26 of the *Penitentiary Act* or any day parole granted under section 10 of the *Parole Act*.

s.23

Ottawa K1A 0P8, April 17, 1974

Mr. B.C. Rutherford,
Editorial Department,
The Toronto Star,
1 Yonge Street,
Toronto, Ontario.
M5E 1E6

Dear Sir:



Yours very truly,

A handwritten signature in dark ink, appearing to be 'J.H. Hollies'.

J.H. Hollies,
Departmental Counsel

JHH/mab

MINISTÈRE
SECRETARIAT
GÉNÉRAL

Mr. Hollies

'74 APR 17 : 06

Ottawa, Ontario.
K1A 0H8

April 10, 1974.

Mr. B.C. Rutherford,
Editorial Department,
The Toronto Star,
1 Yonge Street,
Toronto, Ontario. MSE 1E6

Dear Mr. Rutherford:

I have been asked to acknowledge your letter of March 29 to which you appended a letter from a Reg Piper of Oshawa, Ontario.

I am afraid that the Department of Justice no longer has any information on capital punishment as legislative responsibility for that subject was transferred to the Department of the Solicitor General in 1966. Stemming from this transfer, we passed all our case files to them for retention.

However, to obviate you writing another letter, I am referring your letter and Mr. Piper's to Mr. J.H. Hollies Q.C., Ministry Counsel, Department of the Solicitor General.

Yours truly,

Original Signed by
E.R.M. GRIFFITHS

E.R.M. Griffiths,
Departmental Assistant.

c.c. Mr. J.H. Hollies Q.C.



One Yonge Street
Toronto, Ontario, Canada
M5E 1E6

E. R. M. GRIFFITHS

Editorial Department

APR 4 1974

March 29, 1974

Mr. E.R.M. Griffiths
Justice Department
West Memorial Building
344 Wellington Street
Ottawa, Ontario

Dear Mr. Griffiths:

It has been suggested that you may be able to help me answer the question contained in the letter a photo copy of which I enclose.

My efforts through provincial agencies have led to nothing but frustration. At this point, I am willing to forget about the youngest person ever hanged in Ontario and settle for in Canada.

If you have any information along these lines, I'd be most grateful to hear from you. Or, on the other hand, if you have any suggestions as to where I might track down this seemingly-elusive nugget of history, please call me collect at (416) 367-2458.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "B.C. Rutherford".

B.C. Rutherford

BCR/ohd

Off Mc Kee 2395

s.19(1)

March 4/74.

Dear Sirs,

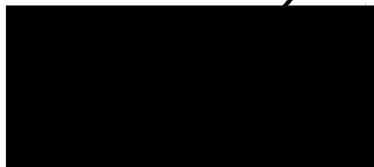
Throughout the course of a Commission, the subject of "Capital Punishment" was brought up.

I would like to know what was the youngest person hanged in Ontario.

I remember one lad about 1944 who was hanged in Barrie Ont at what I would guess at about 16 years of age.

Your reply would be appreciated.

Yours Truly,



Clay Powell prosecutor A.G.

Out Maloney 595-1333

Archivist: 965-4030

Stenif 7261

Arson Law Office
965-2831

K1A 0H8

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

0 03 0 0000 1 00 000 0
001961

**MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA**



**MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA**

001962



Government
of Canada

Gouvernement
du Canada

RECEIVED
OFFICE OF THE
MEMORANDUM

MAR 18 11 55 AM '74

NOTE DE SERVICE

TO
A

Mr. Jim McDonald,
Secretary to the Minister

FROM
DE

ADM - R. & S.D.

SUBJECT
OBJET

Seminar on Murder Statistics

SECURITY - CLASSIFICATION / DE SÉCURITÉ <i>File</i> <i>Class</i>
OUR FILE - N/RÉFÉRENCE <i>141-206</i>
YOUR FILE - V/RÉFÉRENCE
DATE March 15, 1974

I would appreciate your views on this. When we get a little further down the road, I will be referring it to the Minister through the Deputy Minister.

①

BCH
B. C. Hofley.

*Return to
B. Hofley*

*See comments
infra*

② Mr. Hofley

*These needs have been incorporated within the project
now underway. J.T.*

4-7-74.

Dr. Cassidy, Director,
Statistics Division.

83-3

Carolyn Fuller
Statistics Division.

February 11, 1974.

Seminar on Murder Statistics, Statistics Canada,
February 7, 1974.

On February 7, 1974, I attended this seminar as the representative of the Statistics Division. Also present were:

- Dr. Ciale and Dr. Jayewardene, Ottawa University,
- Mr. Préfontaine, Mr. Holt, Mr. Gervais, Ms Bleszinski, Ms Bertrand, P. Reed, Dr. Von Sur Muehlen and Dr. Wisenthal of Statistics Canada,
- W. Kitchen, Dept. of Justice,
- M. Krasnick, Law Reform Commission.

Dr. Ciale opened the meeting with a brief review of events leading to his interest in producing a study on murder in Canada. He then discussed some of the technical problems he had encountered in producing the Murder Study in Canada, 1961-1970

eg. matching incidents with suspects with victims;
coding errors.

A 10 page draft of "comments" on the study by various sources was distributed (copy attached) and there was discussion of some of the points mentioned.

- eg. 1) discrepancy over number of policemen killed between Statistics Canada reports and Dr. Ciale's study;
- 2) definitional problems - interchanging the terms murder/homicide;
- 3) internal discrepancies in statistics quoted.

There was then a brief discussion of what type of publication was needed - one to appeal to the lay reader or one for the academic community. It was agreed that the draft would have to be "polished up" prior to being published by Statistics Canada. The final report is expected by June 1, 1974.

.../2


- 2 -

The content will be kept fairly technical to please the academics, with a brief summary at the beginning of each chapter for the lay person.

The need to provide a continuous update of this sort of study prior to the 1977 review of the death penalty moratorium was seen as necessary by everyone, and Dr. Ciale expressed an interest in doing this project.

Dr. Ciale concluded by making a few suggestions regarding an ongoing system of monitoring murders:

- 1) A clear-cut definition of murder to differentiate it from homicide, infanticide manslaughter, criminal negligence and other forms of non-accidental and unnatural deaths, to reflect the Criminal Code definition and not just Statistics Canada definition which is largely based on the original charge and subsequent judicial proceedings.
- in series, yes, but in a separate category, rarely*
2) Inclusion of manslaughter statistics in the Murder Series - ie. where the original charge is manslaughter, and also, cases of "murder" reduced to manslaughter.
- 3) Adoption of "incidents" of murder as basis for count as apposed to existing confusion over incidents, suspects, victims.
- on a statistical aggregate basis? Any concern here about privacy or confidentiality?*
4) Inclusion of previous criminal history of suspects.
- 5) Adoption of clearly defined coding procedures, and edit routines to avoid error and illogicalities in the data. Adopt a program that will have "tracers" for unclosed cases.
- 6) Blocking of the data into groups.
eg. family/non-family murders or cases cleared by suicide of suspect and cases with suspect proceeding to trial, and unsolved cases.
excellent


Carolyn Fuller.

cc: - John Townsend.

CF/nd

MEMORANDUM

Date January 29, 1974

To - A Distribution

From - De Paul Reed, Institutional and Public Finance Branch Headquarters

Subject - Sujet Seminar on Murder Statistics

On Thursday February 7, at 1:30 p.m., a seminar on murder statistics in Canada will be held, with particular emphasis on a recent Study of Murder in Canada carried out by Professors Ciale and Jayewardene of the University of Ottawa.

Professor Ciale and Professor Jayewardene will outline their analytical approach and computational methods, along with various technical problems they encountered.

Anyone interested in this topic is invited to attend, in the Board Room of No. 5 Temporary Building.

Distribution

K. Holt
G. Gervais
T. Bleszinski
M. Préfontaine
M. Wisenthal
L.E. Rowbottom
J. Ciale
C.H.S. Jayewardene



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
À

Dr. Cassidy

FROM
DE

ADM - R. & S.D.

File
Classer

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE February 20, 1974

SUBJECT
OBJET

Operation of Bill C-2 - Timeframe

You will be interested in this in relation to the study on murder statistics. I would like John Townesend to keep me informed on the developments of this matter.

B. C. Hofley

B. C. Hofley.

Copy on 83-3

001967

141-206



Government
Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

**MR. B.C. HOFLEY,
ASSISTANT DEPUTY MINISTER
RESEARCH & SYSTEMS DEVELOPMENT**

FROM
DE

DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE February 14, 1974

SUBJECT
OBJET

Operation of Bill C-2 - Timeframe

Reference your enquiry of yesterday afternoon, Bill C-2 respecting capital murder continues the new provisions in force until the 31st of December, 1977, whereupon they expire unless Parliament, by joint resolution of both Houses, continues subsection 214(2) in force. 214(2) specifies the type of murder punishable by death. It is worth noting that the revised subsection 684(3), which deals with the release of persons convicted of murder and requires the prior approval of the Governor in Council, does not expire.

You also asked me about the retroactive provisions, i.e. those covering the period from December 29, 1972, to the coming into force of the Act on 1 January, 1974. These are contained in sections 8 and 9 of Bill C-2, and I enclose a copy of those sections.

Encls.


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

JHH/mab

Transi-
tional

8. Where, either before or after the coming into force of this Act, a person has been convicted of having committed a murder that

(a) was alleged by an indictment to have been committed on, or on or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days within that period,

(b) was, at the time alleged by the indictment to have been the time when the murder was committed, punishable by death, and

(c) under subsection 214(2) of the *Criminal Code*, as enacted by section 2 of this Act, is no longer punishable by death,

such person shall, if upon the coming into force of this Act he has not been sentenced, be sentenced to imprisonment for life, and,

if at that time he has been sentenced to death, that sentence shall be deemed to be a sentence of imprisonment for life imposed by the court that sentenced him to death.

Idem

9. (1) Where, after the coming into force of this Act,

(a) proceedings are commenced in respect of a murder alleged by an indictment to have been committed on, or on or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days the earlier of which is within that period, or

(b) a new trial of a person is commenced for a murder referred to in paragraph (a),

the offence shall be tried and determined, and any punishment in respect of the offence shall be imposed, as if the offence had been committed after the coming into force of this Act.

When
proceedings
commenced

(2) 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*.

Mesure
transitoire

8. Lorsque, avant ou après l'entrée en vigueur de la présente loi, une personne a été déclarée coupable d'un meurtre

a) dont un acte d'accusation allègue qu'il a été commis un jour ou vers un jour se trouvant dans la période allant du 29 décembre 1972 à l'entrée en vigueur de la présente loi, ou entre deux jours se trouvant dans cette période,

b) qui était, à l'époque où l'acte d'accusation allègue qu'il a été commis, punissable de mort, et

c) qui, en vertu du paragraphe 214(2) du *Code criminel*, tel qu'il est édicté par l'article 2 de la présente loi, n'est plus punissable de mort,

cette personne doit, si elle n'a pas été condamnée lors de l'entrée en vigueur de la présente loi, être condamnée à l'emprisonnement à perpétuité et, si à cette époque elle a été condamnée à mort, cette senten-

ce doit être réputée être une sentence d'emprisonnement à perpétuité qu'a imposée la cour qui l'a condamnée à mort.

5

9. (1) Lorsque, après l'entrée en vigueur de la présente loi,

a) des procédures sont commencées relativement à un meurtre dont un acte d'accusation allègue qu'il a été commis un jour ou vers un jour se trouvant dans la période allant du 29 décembre 1972 à l'entrée en vigueur de la présente loi, ou entre deux jours dont le plus ancien se trouve dans cette période, ou

b) un nouveau procès d'une personne est commencé relativement à un meurtre visé à l'alinéa a),

l'infraction doit être jugée et décidée, et toute peine relative à cette infraction doit être imposée, comme si ladite infraction avait été commise après l'entrée en vigueur de la présente loi.

Idem

5

(2) Aux fins du présent article, des procédures relatives à une infraction sont réputées avoir été commencées lors de la présentation d'un acte d'accusation en application des dispositions de la Partie XVII du *Code criminel*.

Cas où les
procédures
sont
commencées

141-206

Ottawa (Ontario)
K1A 0P8

le 6 février 1974

Cher Monsieur,

C'est le ministère de la Justice qui m'a demandé de vous faire parvenir un exemplaire de la proclamation mettant en vigueur l'amendement à la Loi modifiant le droit pénal (peine de mort), paru dans la Gazette du Canada du 9 janvier 1974. Je joins donc une photocopie de cette proclamation. Je regrette que ce texte ne vous ait pas été expédié plus tôt. Le retard est dû au fait que bien que j'aie demandé qu'on me remette la proclamation dès sa parution, on ne me l'a remise que ce matin.

Veillez agréer, cher Monsieur, l'expression de mes sentiments les meilleurs.

L'avocat du ministère,


J.H. Hollies

Maître Drouin
Ministère de la Justice
225 est, Grande Allée
Chambre R-3
Québec (Québec)

P.j.

141-206

Ottawa, Ontario
K1A 0P8

February 4, 1974.

Dear Sir:

I have been asked by the Department of Justice to furnish you with a copy of the Proclamation bringing into force the Criminal Law Amendment (Capital Punishment) Act which appeared in the Canadian Gazette of January 9, 1974. Accordingly, I enclose a photo copy of the Proclamation. I regret that this was not sent to you earlier. The delay was occasioned by the fact that although I had asked to be provided with the Proclamation as soon as it was issued, it was only brought to my attention this morning.

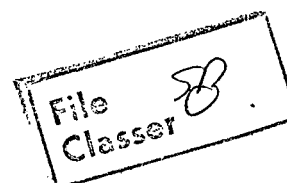
Yours very truly,



J.H. Hollies,
Departmental Counsel

Bruce Affleck, Esq., Q.C.,
Crown Attorney,
Court House,
Whitby, Ontario.

JHE/ob





Government
of Canada

Gouvernement
du Canada

MEMORANDUM

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

NOTE DE SERVICE

TO
À

MRS. F. HARRIS,
LIBRARIAN

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Bill C-2 - Capital Punishment

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 10, 1974

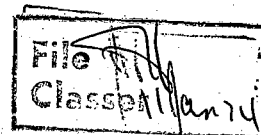
I have been made responsible for sending copies to certain people of the proclamation bringing into force Bill C-2. The legislation became effective on January 1, 1974, when the proclamation was signed, but it has not yet appeared in the Canada Gazette.

I do not normally get the Canada Gazette, and am concerned lest the proclamation in question should not come to my attention. I should, accordingly, be grateful if you would send me any copy of the Canada Gazette dated after 1 January, 1974, immediately it is received. I will undertake to let you have it back the same day that I get it. Alternatively, you may wish to scrutinize the Gazettes as they come in and let me know at once when the proclamation appears.

JHH/mab

J.H. Hollies,
Departmental Counsel

*Mr Hollies
I will check each
copy of January
Canada gazettes and
send a copy for your
personal use as soon
as it is printed.
J Harris
LB*





Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
À

**MRS. F. HARRIS,
LIBRARIAN**

FROM
DE

DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 10, 1974

SUBJECT
OBJET **Bill C-2 - Capital Punishment**

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JHH/mab


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

001973

Government
of CanadaGouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

DEPUTY SOLICITOR GENERAL
CHAIRMAN, NATIONAL PAROLE BOARD
COMMISSIONER OF PENITENTIARIES
MR. JIM McDONALD

FROM
DE

DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE January 10, 1974


SUBJECT
OBJET

Coming into force of Bill C-2

It has been drawn to my attention that I have failed formally to notify those concerned as to the date that the new legislation dealing with capital punishment came into force. The proclamation was signed late in December, bringing the legislation into force from 1 January, 1974. The proclamation has not as yet been Gazetted, but is nonetheless effective.

I regret any inconvenience that may have been occasioned by my failure to despatch a memorandum at an earlier date.

JHH/mab


J.H. Hollies,
Departmental Counsel



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

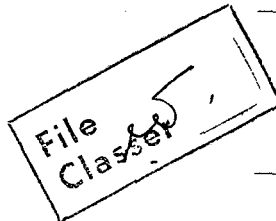


TO
A

DEPUTY SOLICITOR GENERAL
CHAIRMAN, NATIONAL PAROLE BOARD
COMMISSIONER OF PENITENTIARIES
MR. JIM McDONALD

FROM
DE

DEPARTMENTAL COUNSEL



SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
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JHH/mab

J.H. Hollies,
Departmental Counsel

141-206

DEPARTMENT OF THE SOLICITOR GENERAL

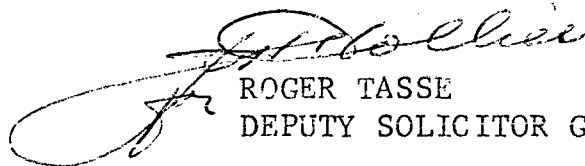
TELEGRAM

OTTAWA K1A 0P8, December 28, 1973

TO ALL DEPUTY ATTORNEYS GENERAL
OR DEPUTY MINISTERS

A PROCLAMATION HAS BEEN SIGNED BRINGING BILL C-2 THE CRIMINAL LAW
AMENDMENT (CAPITAL PUNISHMENT) ACT INTO FORCE ON AND AFTER 1 JANUARY,
1974.

JHH/mab



ROGER TASSE
DEPUTY SOLICITOR GENERAL

Charge to:

Department of the Solicitor General
Account No. 2-200-54831

Telephoned - C.N.R. Office - 235-3311

LIST ATTACHED

Mr. David Vickers,
Deputy Attorney General of
the Province of British Columbia,
Parliament Buildings,
VICTORIA, British Columbia

Mr. William F. McLean, Q.C.,
Deputy Attorney General of the
Province of Alberta,
Madison Building,
EDMONTON, Alberta

Mr. Kenneth M. Lysyk,
Deputy Attorney General of the
Province of Saskatchewan,
Legislative Building,
REGINA, Saskatchewan

Mr. Gordon E. Pilkey, Q.C.,
Deputy Attorney General of the
Province of Manitoba,
Legislative Buildings,
WINNIPEG, Manitoba

Mr. F.W. Callaghan, Q.C.,
Deputy Attorney General of the
Province of Ontario,
Ministry of the Attorney General,
18 King Street East,
TORONTO, Ontario

Mr. Robert Normand, Q.C.,
Deputy Minister of Justice for
the Province of Quebec,
Parliament Buildings,
QUEBEC, Quebec

Mr. Gordon F. Gregory,
Deputy Minister of Justice for
the Province of New Brunswick,
Centennial Building,
FREDERICTON, New Brunswick

Mr. Gordon F. Coles, Q.C.,
Deputy Attorney General of the
Province of Nova Scotia,
Provincial Building,
HALIFAX, Nova Scotia

- 2 -

Mr. Wendall MacKay,
Deputy Attorney General of
the Province of Prince Edward Island,
Confederation Centre,
CHARLOTTETOWN, Prince Edward Island

Mr. Vincent P. McCarthy, Q.C.,
Deputy Minister of Justice for
the Province of Newfoundland,
Confederation Building,
ST. JOHN'S, Newfoundland

141-206

DEPARTMENT OF THE SOLICITOR GENERAL

Ottawa K1A 0P8, December 17, 1973

MEMORANDUM TO: MISS E.I. MacDONALD, Q.C.,
LEGISLATION SECTION,
DEPARTMENT OF JUSTICE

FROM: J.H. HOLLIES,
DEPARTMENT OF THE SOLICITOR GENERAL

RE: Bill C-2 the Criminal Law Amendment
(Capital Punishment) Act

I enclose a copy of Order in Council
P.C. 1973-3812, which only reached me this morning. Would
you be good enough to cause the requisite proclamation to
issue.



J.H. Hollies,
Departmental Counsel

Encl.

JHH/mab



P.C. 1973-3812
11 December, 1973

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Solicitor General, pursuant to section 12 of the Criminal Law Amendment (Capital Punishment) Act, being Chapter 38, 1st Session 29th Parliament, 21-22 Elizabeth II, 1973, is pleased hereby to direct that a proclamation do issue fixing the first day of January, 1974, as the day on which the said Act shall come into force.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in dark ink, appearing to read "W. A. Roberson".

CLERK OF THE PRIVY COUNCIL - LE GRÉFFIER DU CONSEIL PRIVÉ

001980

141-206

DEPARTMENT OF THE SOLICITOR GENERAL

Ottawa K1A 0P8, December 17, 1973

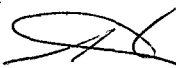
MEMORANDUM TO: MISS E.I. MacDONALD, Q.C.,
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DEPARTMENT OF JUSTICE

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DEPARTMENT OF THE SOLICITOR GENERAL

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Departmental Counsel

Encl.

JHH/mab



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1973-3812
11 December, 1973

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

141-206

P.C. 1973-3812
11 December, 1973



PRIVY COUNCIL • CONSEIL PRIVÉ

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

SECRETARIAT

SOL. GEN.

P.C. 1973-3812

11 December, 1973

73 DEC 14 14:18

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Solicitor General, pursuant to section 12 of the Criminal Law Amendment (Capital Punishment) Act, being Chapter 38, 1st Session 29th Parliament, 21-22 Elizabeth II, 1973, is pleased hereby to direct that a proclamation do issue fixing the first day of January, 1974, as the day on which the said Act shall come into force.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

141-206

SOLICITOR GENERAL

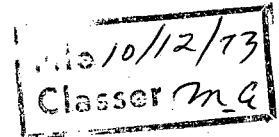


SOLICITEUR GÉNÉRAL

December 10, 1973

TO HIS EXCELLENCY

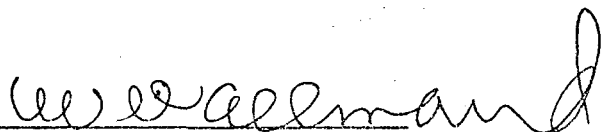
THE GOVERNOR GENERAL IN COUNCIL




The undersigned has the honour to recommend:

That your Excellency in Council be pleased to direct that a proclamation do issue bringing into force Bill C-2, the Criminal Law Amendment (Capital Punishment) Act, to have effect upon, from and after the first day of January, 1974.

Respectfully submitted


Solicitor General

Signed by W.W. Allmand and sent
by hand to J.L. Cross, Assistant
Clerk of the Privy Council on
December 10, 1973.


for J.G.R.

Government
of CanadaGouvernement
du CanadaACTION
REQUESTFICHE DE
SERVICE

TO - À

FILE NO. - DOSSIER N°

Mr. Hollies

DATE

Dec 9/73

FROM - DE

J. G. Reinhold.

☐ PLEASE CALL
PRIÈRE D'APPELER

TEL. NO. - N° DE TEL.

EXT. - POSTE

☐ WANTS TO SEE YOU
DÉSIRE VOUS VOIR

DATE

TIME - HEURE

☐ WILL CALL AGAIN
DOIT RAPPELERCALL RECEIVED BY
MESSAGE REÇU PAR☐ ACTION
DONNER SUITE☐ APPROVAL
APPROBATION☐ NOTE & RETURN
NOTER ET RETOURNER☐ COMMENTS
COMMENTAIRES☐ DRAFT REPLY
PROJET DE RÉPONSE☐ NOTE & FORWARD
NOTER ET FAIRE SUIVRE☐ MAKE
FAIRE COPIES☐ SIGNATURE☐ NOTE & FILE
NOTER ET CLASSER

CR. Please PA

to file

001986

141-206

SOLICITOR GENERAL



SOLICITEUR GÉNÉRAL

December 10, 1973

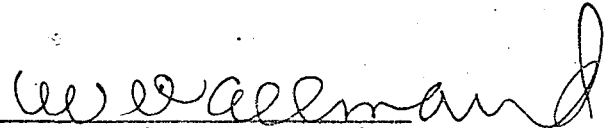
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Respectfully submitted


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Signed by W.W. Allmand and sent
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Clerk of the Privy Council on
December 10, 1973.


for J.G.R.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

**MR. JIN McDONALD,
EXECUTIVE ASSISTANT TO
THE SOLICITOR GENERAL**

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Coming into force of Bill C-2

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE November 30, 1973

Further to our telephone conversation of this morning, I have been asked by Mr. Christie of the Department of Justice to inform the Chief Crown Attorney in Montreal as soon as we can say the date upon which Bill C-2 will come into force. I would be grateful therefore if you would advise me as soon as you know the date it is to be proclaimed.

JHH/mab


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

NOTE:

Upon receipt of the information requested, I am to telephone Edgar Allard at 873-4363 in Montreal.


JHH

001988

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM NOTE DE SERVICE

s.23

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE


DEPARTMENTAL COUNSEL

SUBJECT
OBJET

**Effect of Bill C-2 on Parole
and Temporary Absence**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE November 26, 1973

Encls.


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

JHH/mab

*Nov 26 - copy sent to Sts
for info.*

001989

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON
GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS

PERSONS SENTENCED TO DEATH

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Bill C-2</u>
Commutated before Bill C-2 proclaimed.	Council approval required for full and day parole. * Board precluded from making recommendation until ten years have been served.	Council approval necessary for full parole. No restriction on day parole or on temporary absence with or without escort.
Commutated after Bill C-2 proclaimed, persons sentenced to death between 29 December, 1972, and date Bill C-2 proclaimed, for a murder no longer punish- able by death under Bill C-2. (Deemed to be a sentence of life imprisonment).	As immediately above.	No full parole for ten years, or for up to twenty years if court so orders. No temporary absence with- out escort or day parole until all but three years of period has been served. Two-thirds vote of Parole Board necessary for any parole. ** Council approval necessary for full parole.

NOTES:

- * The requirement for Council approval for day parole is under reconsideration.
- ** There may be some doubt as to whether the two-thirds rule applies to the grant of day parole, but the Bill can be interpreted to so require.

PERSONS SENTENCED TO LIFE IMPRISONMENT

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Bill C-2</u>
Convicted before 4 January, 1968.	No approval of Council necessary for full or day parole. Must normally serve seven years, but can be paroled at any time in exceptional circumstances.	Council approval necessary for full parole. No restriction on day parole or on temporary absence with or without escort.
Convicted after 4 January, 1968, but before Bill C-2 proclaimed.	Council approval required for full and day parole (See Note *, page 1) precluded from making recommendation until ten years have been served.	As above.
Convicted after Bill C-2 proclaimed.	As immediately above.	No full parole for ten years, or for up to twenty years if court so orders. No temporary absence without escort or day parole until all but three years of period has been served. Two-thirds vote of Parole Board necessary for any Parole. (See Note ** page 1) Council approval necessary for full parole.

s.23

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Effect of Bill C-2 on
Parole and Temporary Absence

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/REFERENCE
141-206
YOUR FILE - V/REFERENCE
DATE
July 30, 1973

Pursuant to your memorandum of July 27th, I am enclosing for your signature memoranda to Mr. Faguy and Mr. Street forwarding copies of the chart that was prepared on the above subject.

Encls.

J.H. Hollies,
Departmental Counsel

JHH/mab

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON
GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS

NON-CAPITAL MURDERS

Category

Present Parole Regulations

Bill C-2

1. Convicted before
4 January, 1968.

No approval of Council necessary
for full or day parole. Must
normally serve seven years, but
can be paroled at any time in
exceptional circumstances.

Council approval necessary
for full parole. No
restriction on day parole
or on temporary absence
with or without escort.

2. Convicted after
4 January, 1968,
but before 29
December, 1972.

Council approval required for
full and day parole. *(See note #, page 1.)*
precluded from making
recommendation until ten years
have been served.

As above.

3. Convicted on or
after 29 December,
1972.

As immediately above.

No full parole for ten
years, or for up to twenty
years if court so orders.
No temporary absence with-
out escort or day parole
until all but three years
of period has been served.
Two-thirds vote of Parole
Board necessary for any
Parole. *(See note #, page 1.)*
Council approval necessary
for full parole.

....2
double asterisk

CAPITAL MURDERS

Category

Present Parole Regulations

Bill C-2

4. Commuted before
Bill C-2 comes
into force.

Council approval required for full
and day parole.* Board precluded
from making recommendation until
ten years have been served.

Council approval necessary
for full parole. No
restriction on day parole or
on temporary absence with or
without escort.

5. Commuted after
Bill C-2 comes into
force, or deemed
commuted by section
8 of Bill C-2.

As immediately above.

No full parole for ten years,
or for up to twenty years if
court so orders. No temporary
absence without escort or day
parole until all but three
years of period has been
served. Two-thirds vote of
Parole Board necessary for any
parole.** (See Note). Council
approval necessary for full
parole.

NOTES 7

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of day parole, but the Bill can be interpreted to so require.

* The requirement for Council approval for day parole is under
re consideration



MEMORANDUM

s.23

TO
A DEPUTY SOLICITOR GENERAL

*Minister -
For your information.*

FROM
DE DEPARTMENTAL COUNSEL

Nov 26/73

SUBJECT
OBJET Effect of Bill C-2 on Parole
and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE November 26, 1973



Encls.

JHH/mab

J.H. Hollies,
Departmental Counsel

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON
GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS

PERSONS SENTENCED TO DEATH

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Bill C-2</u>
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Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

CHAIRMAN, NATIONAL PAROLE BOARD

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Effect of Bill C-2 on Parole
and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE November 26, 1973

Under date of July 30th, I sent to you a copy of a chart prepared to show how Bill C-2 would affect the grant of parole and temporary absence, including a resumé of the effect of present Parole Regulations. This chart has been recast with a view to greater clarity, to delete references to "capital" or "non-capital" murder since these terms will no longer be appropriate when Bill C-2 becomes law, to alert the user to the possibility of a change in regulations governing the grant of day parole, and to remove references to December 29, 1972, in instances where that date is not relevant. A copy of the revised chart is enclosed.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Roger Tassé,
Deputy Solicitor General

Encl.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

COMMISSIONER OF PENITENTIARIES

FROM
DE

DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE November 26, 1973

SUBJECT
OBJET

**Effect of Bill C-2 on Parole
and Temporary Absence**

Under date of July 30th, I sent to you a copy of a chart prepared to show how Bill C-2 would affect the grant of parole and temporary absence, including a resumé of the effect of present Parole Regulations. This chart has been recast with a view to greater clarity, to delete references to "capital" or "non-capital" murder since these terms will no longer be appropriate when Bill C-2 becomes law, to alert the user to the possibility of a change in regulations governing the grant of day parole, and to remove references to December 29, 1972, in instances where that date is not relevant. A copy of the revised chart is enclosed.

ORIGINAL SENT BY
R. TASSE

Encl.

**Roger Tassé,
Deputy Solicitor General**



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A  COMMISSIONER OF PENITENTIARIES

FROM
DE DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET Effect of Bill C-2 on Parole
and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
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DATE November 26, 1973

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ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Encl.

Roger Tassé,
Deputy Solicitor General

Les chefs de police et la peine capitale

L'Association des chefs de police vient de se prononcer pour le maintien de la peine capitale. Avec une rare insistance, elle demande aux députés d'agir en ce sens même si ce faisant, ils vont à l'encontre de ce que leur dicte leur conscience. Venant d'un organisme aussi important cet appel à ne pas tenir compte de sa conscience me semble extrêmement troublant; les autorités compétentes devraient demander aux responsables de cette déclaration de retirer ces paroles et de s'excuser publiquement.

A part cette insistance à faire valoir leur avis, les policiers n'apportent rien de nouveau au débat sur la peine capitale. C'est toujours la même affirmation tête: la peine de mort retient plusieurs citoyens de tuer leurs semblables. Il est très difficile d'avoir à ce sujet une certitude absolue, mais les études anciennes et récentes, et l'expérience de nombreux pays plaident dans un sens contraire. Pourquoi les policiers s'acharnent-ils à défendre une position aussi faible?

On peut cependant se demander si, posée en ces termes, la question de la peine capitale n'est pas mal engagée. Est-ce parce qu'elle est efficace ou inefficace que l'on doit conserver ou abolir la peine de mort? Dans l'état actuel des choses, la peine de mort, c'est tout simplement la peine reconnue comme maximale par la société, c'est-à-dire celle que l'on applique aux crimes les plus graves. Ce sont les us et coutumes qui font que cette peine maximale est la mort et non pas son efficacité interne. Car si l'efficacité de la lutte contre le crime résidait réellement dans l'horreur que suscite la peine, on pourrait penser à des châtiments beaucoup plus terribles que la mort: on pourrait par exemple mutiler les coupables; les castrer, leur couper les pieds ou les mains, leur brûler les yeux; on pourrait les faire souffrir avant de les tuer, les écarteler ou prendre les membres de leur famille en otage et les

exposer au pilori... Ce n'est pas parce que ces châtiments sont inefficaces que la société n'y recourt plus: l'abolition de la peine du fouet par exemple n'a donné lieu à aucune commission d'enquête. Si la société a abandonné ces châtiments physiques, c'est qu'ils ne correspondent plus à ses valeurs et non pas parce qu'on a pu prouver leur inutilité. Un problème identique se pose au sujet de la torture: si les gens sont peu disposés ici à admettre ces méthodes "barbares", ce n'est pas parce qu'elles se sont avérées inefficaces. Ce n'est pas parce que les bombardements des populations civiles sont inutiles que les personnalités les plus éminentes les réprouvent. Ce n'est pas parce que nous élevons des bêtes à boucherie que nous avons abandonné le cannibalisme et cessé de manger nos grands-parents... Nous invoquons une argumentation semblable quand nous enseignons que le crime ne paie pas; et si le crime payait...

Ce qui me semble essentiel dans un tel débat relève d'abord des valeurs que nous défendons. Il s'agit de savoir si la société à laquelle nous appartenons veut continuer à tuer des gens pour se protéger. Cela me semble beaucoup plus un problème de culture et de conscience qui nous renvoie à nous-même. Le recours aux rapports de recherche n'est qu'une vaine tentative d'asseoir notre certitude et leurs conclusions ne sauraient se substituer à la responsabilité que nous avons. Car même si l'on prouvait de façon scientifique que la peine de mort réduit le nombre de meurtres, il faudrait s'interroger quand même sur l'opportunité de la conserver ou de la remplacer. Il faut que la question soit posée en termes clairs: traditionnellement la société a supplicié ses criminels de façon plus ou moins cruelle: le feu, la hache, la roue, etc.; si nous en sommes venus à les pendre c'était pour que le supplice soit le moins "inhumain" possible. Il nous faut maintenant décider si nous continuons

d'admettre dans nos us et coutumes que des gens soient tués à des fins sociales.

Parce qu'ils sont entraînés à l'usage de la force et de la violence, les policiers ont tendance à considérer comme femmelettes tous ceux qui luttent contre la peine capitale. Leur position cependant a la même faiblesse que celle des militaires qui font l'apologie de la guerre. Ils devraient se rappeler que leur puissance de feu ou leur force physique n'ont pas pour but d'en faire des modèles culturels mais plutôt de protéger un idéal social qui se définit d'abord par la non-violence et le respect d'autrui. En premier lieu, l'Etat et la police ont le devoir de préserver la vie, y compris d'ailleurs celle des criminels; on peut douter que la pendaison soit le meilleur moyen pour y arriver.

En fait ce n'est par l'argument de son utilité qu'on invoque pour maintenir la peine de mort, car si on a beaucoup de mal à prouver qu'elle est inutile, on aurait beaucoup plus de mal à prouver qu'elle est vraiment efficace. Les policiers sont les experts de la protection de l'ordre public et de l'ordre social; quelles données objectives peuvent-ils apporter pour dire que la peine de mort est le moyen le plus adéquat et le seul moyen pour assurer la protection de la vie. Devant les doutes qui nous assaillent c'est à eux de prouver que la peine de mort est nécessaire. Leur position apparaît plutôt basée sur un conservatisme aveugle; c'est à croire que ces hommes durs et courageux sont incapables de supporter le changement social.

Si nous tenons tellement à être pratiques, tuons les criminels mais pour des raisons économiques, car les condamnés à perpétuité nous coûtent très cher. Il nous faudra cependant, pour être logique, être particulièrement impitoyables envers les plus jeunes car ce sont eux qui risquent de nous coûter le plus.

Jacques de GUISE
Ste-Foy, le 31 janvier 1973.

Capital Punishment



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

File *R.P.P.*
Classer

TO
À

SOLICITOR GENERAL

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Proposed Amendments to Bill C-2

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	July 24, 1973 - Amended August 21, 1973

1. This memorandum examines Amendments Nos. 2 and 3 standing in the name of Mrs. Moran and Mr. Lawrence respectively.

Amendment No. 2

The first portion of this amendment would make the death penalty mandatory for persons causing death while committing or attempting to commit rape.

The circumstances in which rape may be committed vary very greatly. One may contemplate a case of a highly provocative woman who only at the last moment refuses to have intercourse. In such circumstances the man may place his hand over the woman's mouth with the intent only of muffling her outcry and inadvertently cause death. This should not attract the death penalty.

Before the Standing Committee Mrs. Moran suggested that as rape was already punishable by life imprisonment the man was not at greater risk if he caused death unless the causing of death would result in capital punishment. This argument is not valid. The ordinary sentence for rape is something less than ten years and occasionally markedly less. Since any murder will result in a sentence of life imprisonment, in such circumstances any possible additional deterrent effect arising from the death penalty is not in point.

The amendment as drafted does not deal with homosexual rape. If the amendment is appropriate in the case of heterosexual rape it should equally be applicable to homosexual rape.

The second portion of Amendment No. 2 deals with the causing of death while committing or attempting to commit an offence under section 247 or where death ensues as a consequence of abandoning a person during the commission or attempted commission.

It is important to note that the offences in 247 are two-fold, i.e. kidnapping (subsection (1)) and confining, imprisoning or forcible seizure of another without lawful authority (subsection (2)). Under

002002

- 2 -

the kidnapping provisions it is possible for a man or a woman to commit the offence by taking his or her own natural child in contravention of a court order awarding custody of the other parent, intending to remove that child outside of Canada against his will. Thus, if this amendment were to become law the natural father seeking to remove his child to England against the will of the child and contrary to a court order for custody would be subject to an automatic death sentence if, while driving to the airport he had a vehicle accident in which the child was killed.

Under the second portion of section 247 of the Criminal Code, a person commits an offence merely by seizing another person forcibly and without lawful authority. If in so doing one causes that other person to fall and strike his head and death ensues, the court would have no option but to pass a sentence of death.

Amendment No. 3

This amendment would make murder capital where a person had previously been convicted of murder (whether that murder was capital or not) and where the accused person was convicted of an offence of committing or attempting to commit the offences prescribed by section 76.1 of the Criminal Code. This memorandum does not concern itself with the situation where a second murder has been committed since this is of such extremely rare occurrence as to be of minimal importance.

Perhaps the main objection of this amendment on purely legal grounds is the difficulty of interpretation that may well ensue. For example, the hijacker who causes the aircraft to deviate from its flight plan has committed the offence under that section. If on such deviation a collision occurs with another aircraft or the aircraft lands at a field unsuitable for its type and death occurs in the collision or landing, it is difficult to say whether the accused person has caused the death and hence must be sentenced to be hanged.

Another argument on this point arises from a consideration of the very different circumstances in which hijacking has taken place. I have in mind the recent cases where the hijacker was very disturbed and the hijacking in a real sense was almost the entire product of his mental disturbance although his mental state was not such as to make him unfit to stand trial. If by some mischance his action had caused death it would not seem that his case should be one to which the death penalty should be automatically imposed, in contradistinction to the more lurid types of hijacking for the most evil of motives.

General

On both these amendments there would easily be cases brought before the courts where capital murder was charged and which, according to the amendments, would undoubtedly in law amount to that offence. Yet

- 3 -

because of the attendant highly mitigating circumstances and the complete inappropriateness of the death penalty, juries would be loath to convict and in many cases might acquit. This could only serve to bring the administration of justice into disrepute as well as making it more difficult to achieve proper verdicts in cases where the protection of society could be assured by a conviction of an appropriate offence.

Roger Tassé



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

CHAIRMAN, NATIONAL PAROLE BOARD

FROM
DE

DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

November 26, 1973

SUBJECT
OBJET

**Effect of Bill C-2 on Parole
and Temporary Absence**

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ORIGINAL FILED BY

ORIGINAL SIGNÉ PAR

R. TASSE

Encl.

**Roger Tassé,
Deputy Solicitor General**

141-206

Ottawa K1A 0P8, November 23, 1973

Dear Senator Martin:

May I refer to our telephone conversation of yesterday in which you asked me for a short memorandum as to the use of the Letters Patent to commute a death sentence.

I take it that your query related particularly to the position that would obtain if the amendment to Bill C-2 proposed by Senator Molson had been approved. In other words, could the clemency power of the Governor General under the Letters Patent be resorted to if the Governor in Council were, as a matter of law, precluded from commuting the sentence pursuant to section 684(1) of the Criminal Code by reason of the fact that no recommendation for mercy had been made by the judge or jury.

I would first observe that under Item XII of the Letters Patent, the Governor General is given power to grant pardons or to respite the execution of sentence. The only specific reference to capital cases is contained in the last sentence of this item which directs and enjoins the Governor General not to "pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada". As will be seen, the language in the Letters Patent differs materially from that employed in section 684 of the Criminal Code in that, unlike the Code, the Letters Patent contain no provision for the substitution of a sentence of imprisonment for the sentence of death, but rather relate solely to pardon or reprieve.

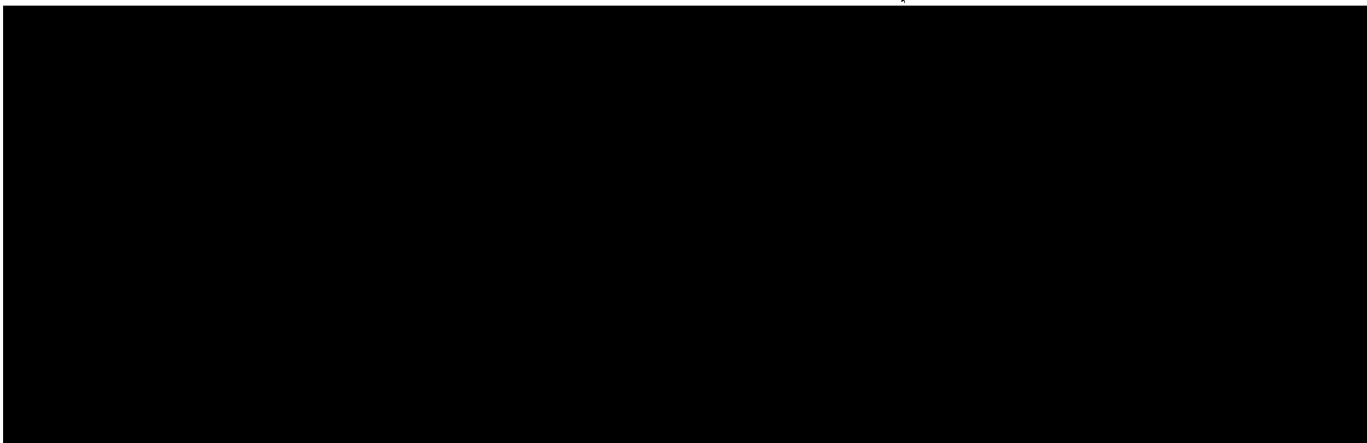
....2

The Honourable Paul Martin, P.C.,
Room 279-S,
The Senate,
Parliament Buildings,
Ottawa, Ontario.
K1A 0A4

Copy to: MARTIN P. (Hon.)


s.23

- 2 -



Yours truly,

JHH/mab


J.H. Hollies,
Departmental Counsel

141-206

Roger Tassé
Deputy Solicitor General

G.C. Koz

Nov. 20th/73

Capital Punishment -- Inquiry from Minister's Office

I understand that informal parliamentary inquiry was made with regard to Minister's statement in the House of Commons on October 18th, 1973, Hansard, page 7013:

"In the entire history of Canada there have been only three individuals who have ever been convicted a second time of murder."

Mr. Jack MacDonald of Minister's Office inquired yesterday as to who could have provided this information to the Minister. I notified him that such information could not possibly have come from Mr. A.J. MacLeod. I recall distinctly making verification for Mr. MacLeod, earlier this year or during the Ministry of Mr. Goyer to the effect that only one person has been convicted twice for murder. This verification was made from two sources; the list of capital cases in the Department of Justice and Parole Records of Murders released on parole. There was only one person convicted twice for murder, and this was the case of Westgate in 1943 and he was subsequently hanged in 1944.


G.C. Koz

141-206

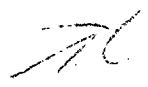
Ottawa K1A 0P8, November 13, 1973

Dear Senator McIlraith:

As requested by you in our telephone conversation of November 8, I enclose the following documents:

- (a) A list of death sentences commuted since 1962, showing whether the jury, the judge, or both, recommended clemency. This list has been broken into two parts, depending upon whether or not the victim was a police officer or prison guard;
- (b) a document showing the provisions for the exercise of the Royal Prerogative of Mercy under the Letters Patent as compared to commutation under the provisions of the Criminal Code;
- (c) an example of the use of a free pardon under the Letters Patent. I might point out that there is no example of the free pardon in the case of a murder.

Yours truly,


J.H. Hollies,
Departmental Counsel

Encls.

JHH/mab

The Honourable G.J. McIlraith, P.C., Q.C.,
The Senate,
Parliament Buildings,
Ottawa, Ontario.

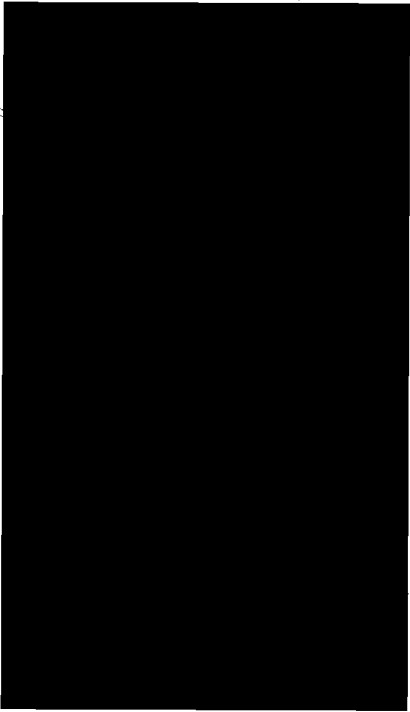
Copy to: MCILRAITH G.J.

DEATH SENTENCES COMMUTED SINCE 1962 (VICTIM NOT POLICE OFFICER OR PRISON GUARD)

<u>Name</u>	<u>Recommendation for Clemency</u>		<u>Commuted</u>
	<u>By Jury</u>	<u>By Judge</u>	
	Yes	No	March 12, 1963
	Yes	No	March 12, 1963
	Yes	Yes	February 21, 1963
	Yes	No	May 9, 1963
	Yes	No	June 27, 1963
	Yes	Yes	September 12, 1963
	Yes	No	October 3, 1963
	Yes	No	January 7, 1964
	Yes	No	April 23, 1964
	Yes	No	June 18, 1964
	No	No	November 3, 1964
	Yes	Yes	January 20, 1965
	No	No	March 4, 1965
	Yes	Yes	April 14, 1965
	No	No	May 4, 1965
	Yes	Yes	May 6, 1965
	Yes	Yes	November 10, 1965
	No	No	November 29, 1965
	Yes	No	November 29, 1965
	No	No	November 29, 1965
	No	Yes	May 12, 1966
	Yes	Yes	February 3, 1965
	Yes	<u>Against</u>	October 6, 1966
	No	No	November 29, 1965
	No	No	January 4, 1968
	No	No	January 4, 1968
	Yes	No	January 4, 1968
	Yes	No	January 4, 1968
2	No 1 Yes	No	August 3, 1966
	No	No	December 27, 1967
	Yes	No	May 2, 1967
	Yes	Yes	May 25, 1967
	Yes	Yes	January 21, 1967
	No	No	January 4, 1968
	<u>Against</u>	Yes	January 4, 1968

- 2 -

Recommendation for Clemency

Name	Recommendation for Clemency		Commuted
	By Jury	By Judge	
	Yes	Yes	January 24, 1967
	Yes	No	January 4, 1968
	No Data		January 4, 1968
	No	No	January 4, 1968
	Yes	No	January 4, 1968
	Yes	Yes	January 4, 1968
	Yes	Yes	January 4, 1968
	No	No	January 4, 1968
	Yes	No	January 4, 1968
	No Data		January 4, 1968
	Yes	No Report	January 4, 1968
	No	No	January 4, 1968

NOTE: Where the entry under "recommendation for clemency" shows "no" the jury or judge, as the case may be, made no recommendation for or against clemency. However, where the entry is "against" the recommendation was that clemency should not be extended.

NOTE: In the case of Gladu and Myers, in which no data were available, it is noted that these commutations took place on January 4, 1968. On that occasion a number of death sentences were commuted solely on the ground that because of the change that had just occurred in the definition of capital murder the offences were no longer capital. In these circumstances, action was taken to commute without waiting for the appeal process to expire and, accordingly, many of the files are incomplete.

DEATH SENTENCES COMMUTED SINCE 1962 (VICTIM POLICE OFFICER OR PRISON GUARD)

<u>Name</u>	<u>Recommendation for Clemency</u>		<u>Commuted</u>
	<u>By Jury</u>	<u>By Judge</u>	
MARCOTTE, Georges	No	No	December 3, 1964
YOUNG, Melvin Peter	Yes	Yes	November 10, 1965
COLPITTS, Reginald John	9 No 3 Yes	No	January 14, 1966
BORG, Leonard Otto	Yes	No	July 3, 1969
LURVEY, Clifford W.	Yes	No	December 23, 1970
ROSIK, William R.	No	No	February 4, 1971
SHAND, Thomas Mason	No	No	February 24, 1972

Exercise of Clemency under Letters Patent compared to
Criminal Code provisions on Commutation of Sentence

The Letters Patent constituting the Office of Governor General of Canada, which became effective on October 1, 1947, confer upon the Governor General "all powers and authorities lawfully belonging to (Her Majesty) in respect of Canada". (Item II). His clemency powers are set out in Item XII reading as follows:

" And We do further authorize and empower Our Governor General, as he shall see occasion, in Our name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers."

It should be noted that under Item XII the Governor General is not empowered to substitute one sentence for another, but only to grant either a pardon or a respite of the execution of a sentence. This may be contrasted with the specific powers of commutation of a death sentence contained in section 684 of the Criminal Code. Subsection (1) of that section reads as follows:

" The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years."

As will be seen, the Governor in Council has power not only to ensure that the death sentence is not carried out, but to substitute for the death sentence by way of commutation a sentence of imprisonment for life or for any lesser term. There has been no case, at least in the last forty-five years, in which a sentence of death has been commuted to any sentence other than a sentence of imprisonment for life.

Grant of a Full Pardon by the Governor General

The Fauteux Report of 1956 dealt in part with the Prerogative of Mercy exercised by the Governor General on behalf of the Queen. In considering the grant of a free pardon the report pointed out (page 33) that when an offender was before the court he had, until convicted, the benefit of the presumption of innocence. Since a free pardon is granted only on the ground that an innocent person has been wrongfully convicted, an application for a free pardon, by reason of the doctrine of *reus judicata*, is dealt with on the presumption that, until proved otherwise, the person was guilty. Thus to justify a free pardon the existence of material facts which were not before the court that convicted the offender must be found, and must afford convincing reasons leading to the positive conclusion that had the court been aware of them the accused would have been acquitted.

A recent example of a submission for the grant of a full pardon occurred by reason of the conviction of a sixteen year old boy who had pleaded guilty of an offence that was in fact committed by his brother. It was ascertained that he had pleaded guilty on the advice of counsel, and that he had no previous juvenile record and had never previously even been charged with an offence. The error was discovered by the R.C.M. Police, who initiated clemency proceedings.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

Mr. Shuster

File
Classer

FROM
DE

ADM - R. & S.D.

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

November 2, 1973

SUBJECT
OBJET

Capital Punishment Bill

Now that the capital punishment Bill has been settled for another five years we should give immediate thought to setting up a system to monitor and evaluate the law. In five years the Deputy will come up again in the House and we should be in a position to support our arguments with good information. Possibly we should get together to decide how we would proceed and at a later date meet with Statistics Canada. There is a tendency to put off this kind of a discussion and therefore we should proceed immediately with this or we will lose sight of it.

B. C. Hofley.

cc: Dr. Cassidy.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

File *201*
Classer

TO
A

SOLICITOR GENERAL

FROM
DE

DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	July 24, 1973 - Amended August 21, 1973

SUBJECT
OBJET

Proposed Amendments to Bill C-2

1. This memorandum examines Amendments Nos. 2 and 3 standing in the name of Mrs. Moran and Mr. Lawrence respectively.

Amendment No. 2

The first portion of this amendment would make the death penalty mandatory for persons causing death while committing or attempting to commit rape.

The circumstances in which rape may be committed vary very greatly. One may contemplate a case of a highly provocative woman who only at the last moment refuses to have intercourse. In such circumstances the man may place his hand over the woman's mouth with the intent only of muffling her outcry and inadvertently cause death. This should not attract the death penalty.

Before the Standing Committee Mrs. Moran suggested that as rape was already punishable by life imprisonment the man was not at greater risk if he caused death unless the causing of death would result in capital punishment. This argument is not valid. The ordinary sentence for rape is something less than ten years and occasionally markedly less. Since any murder will result in a sentence of life imprisonment, in such circumstances any possible additional deterrent effect arising from the death penalty is not in point.

The amendment as drafted does not deal with homosexual rape. If the amendment is appropriate in the case of heterosexual rape it should equally be applicable to homosexual rape.

The second portion of Amendment No. 2 deals with the causing of death while committing or attempting to commit an offence under section 247 or where death ensues as a consequence of abandoning a person during the commission or attempted commission.

It is important to note that the offences in 247 are two-fold, i.e. kidnapping (subsection (1)) and confining, imprisoning or forcible seizure of another without lawful authority (subsection (2)). Under

- 2 -

the kidnapping provisions it is possible for a man or a woman to commit the offence by taking his or her own natural child in contravention of a court order awarding custody of the other parent, intending to remove that child outside of Canada against his will. Thus, if this amendment were to become law the natural father seeking to remove his child to England against the will of the child and contrary to a court order for custody would be subject to an automatic death sentence if, while driving to the airport he had a vehicle accident in which the child was killed.

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Perhaps the main objection of this amendment on purely legal grounds is the difficulty of interpretation that may well ensue. For example, the hijacker who causes the aircraft to deviate from its flight plan has committed the offence under that section. If on such deviation a collision occurs with another aircraft or the aircraft lands at a field unsuitable for its type and death occurs in the collision or landing, it is difficult to say whether the accused person has caused the death and hence must be sentenced to be hanged.

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General

On both these amendments there would easily be cases brought before the courts where capital murder was charged and which, according to the amendments, would undoubtedly in law amount to that offence. Yet

- 3 -

because of the attendant highly mitigating circumstances and the complete inappropriateness of the death penalty, juries would be loath to convict and in many cases might acquit. This could only serve to bring the administration of justice into disrepute as well as making it more difficult to achieve proper verdicts in cases where the protection of society could be assured by a conviction of an appropriate offence.

Roger Tassé

JHHOLLIES/ROP

c.c. for the information of Mr. J. P. Hollies

Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À
SOLICITOR GENERAL

FROM
DE
DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET
Proposed Amendments to Bill C-2

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 24, 1973

1. This memorandum examines Amendments Nos. 2 and 3 standing in the name of Mrs. Moran and Mr. Lawrence respectively.

Amendment No. 2

The first portion of this amendment would make the death penalty mandatory for persons causing death while committing or attempting to commit rape.

The circumstances in which rape may be committed vary very greatly. One may contemplate a case of a highly provocative woman who only at the last moment refuses to have intercourse. In such circumstances the man may place his hand over the woman's mouth with the intent only of muffling her outcry and inadvertently cause death. This should not attract the death penalty.

Before the Standing Committee Mrs. Moran suggested that as rape was already punishable by life imprisonment the man was not a greater risk if he caused death unless the causing of death would result in capital punishment. This argument is not valid. The ordinary sentence for rape is something less than ten years and occasionally markedly less. Since any murder will result in a sentence of life imprisonment in such circumstances any possible additional deterrent effect arising from the death penalty is not in point.

The amendment as drafted does not deal with homosexual rape. If the amendment is appropriate in the case of heterosexual rape it should equally be applicable to homosexual rape.

The second portion of Amendment No. 2 deals with the causing of death while committing or attempting to commit an offence under section 247 or where death ensues as a consequence of abandoning a person during the commission or attempted commission.

It is important to note that the offences in 247 are two-fold, i.e. kidnapping (subsection (1)) and confining, imprisoning or forcible seizure of another without lawful authority (subsection (2)). Under the kidnapping provisions it is possible for a man or a woman to commit the offence by taking his or her own natural child in contravention of a court order awarding custody of the other parent intending

002019

- 2 -

to remove that child outside of Canada against his will. Thus, if this amendment were to become law the natural father seeking to remove his child to England against the will of the child and contrary to a court order for custody would be subject to automatic death sentence if, while driving to the airport he had a vehicle accident in which the child was killed.

Under the second portion of section 247 of the Criminal Code, a person commits an offence merely by seizing another person forcibly and without lawful authority. If in so doing one causes that other person to fall and strike his head and death ensues, the court would have no option but to pass a sentence of death.

Amendment No. 3

This amendment would make murder capital where a person had previously been convicted of murder (whether that murder was capital or not) and where the accused person was convicted of an offence of committing or attempting to commit the offences prescribed by section 76.1 of the Criminal Code. This memorandum does not concern itself with the situation where a second murder has been committed since this is of such extremely rare occurrence as to be of minimal importance.

Perhaps the main objection to this amendment on purely legal grounds is the difficulty of interpretation that may well ensue, for example, the hi-jacker who causes the aircraft to deviate from its flight plan has committed the offence under that section. If on such deviation a collision occurs with another aircraft or the aircraft lands at a field unsuitable for its type and death occurs in the collision or landing it is difficult to say whether the accused person has caused the death and hence must be sentenced to be hanged.

Another argument on this point arises from a situation of the very different circumstances in which hi-jacking has taken place. I have in mind the recent cases where the hi-jacker was very disturbed and the hi-jacking in a real sense was almost the entire product of his mental disturbance although his mental state was not such as to make him unfit to stand trial. If by some mischance his action had caused death it would not seem that his case should be one to which the death penalty should be automatically imposed in contradistinction to the more allured types of hi-jacking for the most evil of motives.

General

On both these amendments there would easily be cases brought before the courts where capital murder was charged and which according to the amendments would undoubtedly in law amount to that offence. Yet because of the attendant highly mitigating circumstances and the

- 3 -

complete inappropriateness of the death penalty juries would be loathe to convict and in many cases might acquit. This could only serve to bring the administration of justice into disrepute as well as making it more difficult to achieve proper verdicts in cases where the protection of society could be assured by a conviction of an appropriate offence.

Roger Tassé



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
A

DEPUTY SOLICITOR GENERAL

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

Effect of Bill C-2 on
Parole and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

141-206

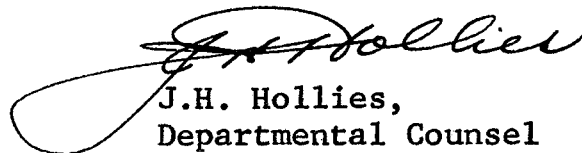
YOUR FILE - V/RÉFÉRENCE

DATE

July 30, 1973

Pursuant to your memorandum of July 27th, I am enclosing for your signature memoranda to Mr. Faguy and Mr. Street forwarding copies of the chart that was prepared on the above subject. I have in fact amended the chart by showing the two-thirds vote requirement as being necessary for "any parole" in two instances.

Encls.


J.H. Hollies,
Departmental Counsel

JHH/mab

*A copy of memo
to Faguy - with attach-
ment & should go to S/G.*

002022



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE

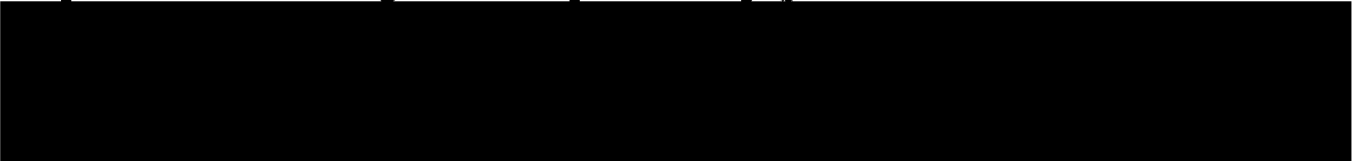
DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
141-206
YOUR FILE - V/RÉFÉRENCE
DATE
July 30, 1973

SUBJECT
OBJET

**Effect of Bill C-2 on
Parole and Temporary Absence**

Pursuant to your memorandum of July 27th, I am enclosing for your signature memoranda to Mr. Faguy and Mr. Street forwarding copies of the chart that was prepared on the above subject. I have in fact amended the chart by showing the two-thirds vote requirement as being necessary for "any parole" in two instances.



Encls.


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

JHH/cab

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON
GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS

NON-CAPITAL MURDERS

<u>Category</u>	<u>Present Parole Regulations</u>	<u>Bill C-2</u>
Convicted before 4 January, 1968.	No approval of Council necessary for full or day parole. Must normally serve seven years, but can be paroled at any time in exceptional circumstances.	Council approval necessary for full parole. No restriction on day parole or on temporary absence with or without escort.
Convicted after 4 January, 1968, but before 29 December, 1972.	Council approval required for full and day parole. Board precluded from making recommendation until ten years have been served.	As above.
Convicted on or after 29 December, 1972.	As immediately above.	No full parole for ten years, or for up to twenty years if court so orders. No temporary absence with- out escort or day parole until all but three years of period has been served. Two-thirds vote of Parole Board necessary for any Parole. (See note, page 2) Council approval necessary for full parole.

....2

CAPITAL MURDERS

Category

Present Parole Regulations

Bill C-2

Commutated before
Bill C-2 comes
into force.

Council approval required for full
and day parole. Board precluded
from making recommendation until
ten years have been served.

Council approval necessary
for full parole. No
restriction on day parole or
on temporary absence with or
without escort.

Commutated after
Bill C-2 comes into
force, or deemed
commuted by section
8 of Bill C-2.

As immediately above.

No full parole for ten years,
or for up to twenty years if
court so orders. No temporary
absence without escort or day
parole until all but three
years of period has been
served. Two-thirds vote of
Parole Board necessary for any
parole. (See Note). Council
approval necessary for full
parole.

NOTE:

There may be some doubt as to whether the two-thirds rule applies to the grant
of day parole, but the Bill can be interpreted to so require.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

MR. J.H. HOLLIES, Q.C.

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 27, 1973

1. I returned to you, some time ago, the chart that you have prepared regarding the effects that Bill C-2 will have, when passed, on certain categories of lifers.
2. I would like to send a copy of this chart to Mr. Faguy and Mr. Street, for their information. Would you kindly make the necessary arrangements to that effect.

RT

Roger Tassé



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

**MR. PAUL FAGUY,
COMMISSIONER OF PENITENTIARIES**

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

**Effect of Bill C-2 on
Parole and Temporary Absence**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 141-206
YOUR FILE - V/RÉFÉRENCE
DATE July 30, 1973

I enclose a table showing the effect of the present Parole Regulations, and of Bill C-2 if it becomes law, upon grants of parole and temporary absence to persons convicted of murder.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Encl.

**Roger Tassé,
Deputy Solicitor General**



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

MR. T.G. STREET,
CHAIRMAN, NATIONAL PAROLE BOARD

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Effect of Bill C-2 on
Parole and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
141-206
YOUR FILE - V/RÉFÉRENCE
DATE
July 30, 1973

I enclose a table showing the effect of the present Parole Regulations, and of Bill C-2 if it becomes law, upon grants of parole and temporary absence to persons convicted of murder.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Encl.

Roger Tassé,
Deputy Solicitor General



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
À

MR. J.H. HOLLIES, Q.C.

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 27, 1973

File
Classer *RT*

1. I returned to you, some time ago, the chart that you have prepared regarding the effects that Bill C-2 will have, when passed, on certain categories of lifers.

2. I would like to send a copy of this chart to Mr. Faguy and Mr. Street, for their information. Would you kindly make the necessary arrangements to that effect.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

RT/h1

Roger Tassé

002029



Government
of Canada

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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

Mr. R. Tassé
DEPUTY SOLICITOR GENERAL

FROM
DE

A. Therrien
Vice-Chairman
NATIONAL PAROLE BOARD

SUBJECT
OBJET

Effect of Bill C-2 on the
Grant of Day Parole

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 20, 1973

This is further to my memo of July 19
which I discussed with Mr. Hollies.

In the context of a 19-member Board,
with at least 10 residing out of Ottawa, a two-third
majority requirement for any parole decision will create
undue difficulties.

In practice, it would mean that the
affirmative votes of the board members in the region
from where the case originates and of the Headquarters'
members would not suffice. Members from at least
another region would have to be involved.

I think the rule should be two thirds
of a Section of the Board including all members from
the originating region and all Headquarters' members.
This would require amendments to Bill C-2 and to
Section 5 of the Rules.


A. Therrien

File
Classer

HL

F.A.

July 23/73

*Read by WA
July 23/73*



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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

Mr. R. Tassé
DEPUTY SOLICITOR GENERAL

FROM
DE

A. Therrien
Vice-Chairman
NATIONAL PAROLE BOARD

SUBJECT
OBJET

Effect of Bill C-2 on the
Grant of Day Parole

SECURITY CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 19, 1973

This is further to Mr. Hollies' July 18 memo to you on the above-named topic.

The Board's experience is that when lifers have been released either on full or day parole, there was always more than two thirds of positive votes.

My view then has to be that a requirement for a two-third majority on a grant of day parole would not create an undue difficulty.


A. Therrien

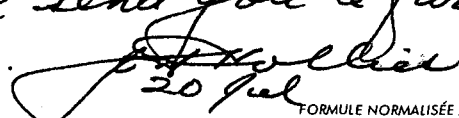
II. Mr. Hollies -

check with André -

there will soon be 19 members on the Board - He may not have been mindful of this

July 19/73.

III Mr. Tassé

Called André, who was not mindful of the new numbers. He will send you a further memo - re both full & day parole.  30 Jul 002031



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
A

DEPUTY SOLICITOR GENERAL

FROM
DE

DEPARTMENTAL COUNSEL

SUBJECT
OBJET

**Effect of Bill C-2 on the
Grant of Day Parole**

*II Am. Thierien
What do you
think?*

*R.T.
July 18/73.*

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - RÉFÉRENCE
141-206
YOUR FILE - V/RÉFÉRENCE
DATE
July 18, 1973

You will remember that I had a telephone conversation with Mr. R.L. du Plessis concerning whether the "two-thirds rule", applicable to the grant of full parole for lifers, would also apply to the grant of day parole. He undertook to discuss it with Mr. Thorson.

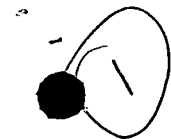
With this memorandum I forward the material Mr. du Plessis has returned to me. I was told in a telephone conversation this morning that Mr. du Plessis is of the view that this does not amount to a formal opinion, and if we wish a formal opinion we should address a memorandum either to the Advisory Section or to Mr. Thorson.

Encl.

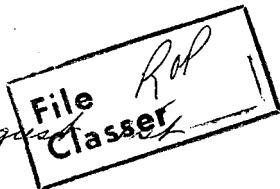
JHH/mab

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

002032



B 7 August



002033

141-206



Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A
GEORGE STREET
FROM
DE
SOLICITOR GENERAL

SUBJECT
OBJET

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 17, 1973.

For discussion with 8/19 - to be done -
This is already done - says S. Street.
15
Aug 1/73

I was speaking with Senator Hastings who made the following suggestion with respect to the parole of persons serving life sentences for murder. Senator Hastings suggests that all persons on parole for murder should first of all be placed on a 3 to 6 month day parole in a community correctional centre. He believes that this will provide a trial period for the prospective parolee and if there are any problems they will likely show up during this period.

Would you kindly examine this suggestion and give me your comments when we next meet.

Warren Allmand.

c.c. Roger Tasse ✓

002034

Copy to 700-3



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du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
A

Mr. Roger Tassé,
Deputy Solicitor General

FROM
DE

J.H. Hollies,
Departmental Counsel

SUBJECT
OBJET

Effect of Bill C-2 on Parole and Temporary Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 141 - 206 (6)
YOUR FILE - V/RÉFÉRENCE
DATE July 11, 1973.

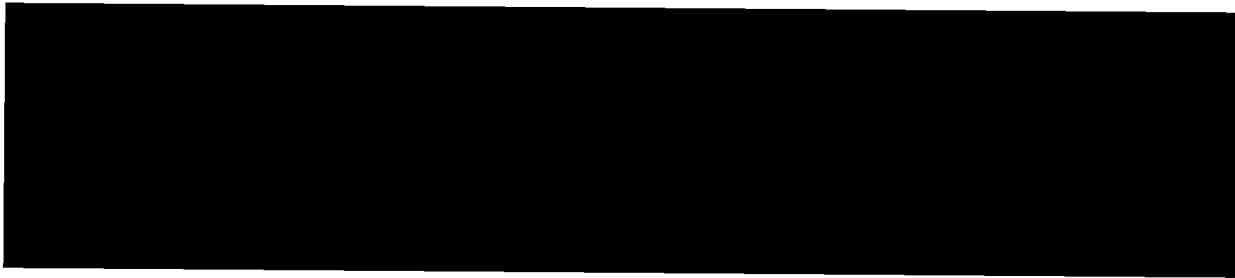
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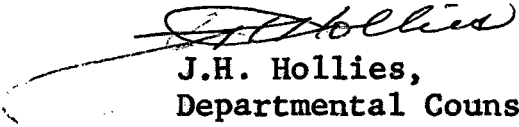
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002035

s.23

- 2 -




J.H. Hollies,
Departmental Counsel

JHH:rh

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM NOTE DE SERVICE

TO
À

**Mr. R.L. duPlessis,
Legislation Section,
Department of Justice.**

FROM
DE

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

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 11, 1973.

SUBJECT
OBJET

Bill C - 2

Further to our telephone conversation of this morning, I enclose an extract of a memorandum sent by me to the Deputy Solicitor General on July 5th.

I am grateful for your assistance in this matter.


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

**JHH:rh
Encl:**

There is one aspect of the Bill that causes me difficulty in interpretation. Subsection 3(2), in adding subsection (5) to section 218 of the Code, prohibits release "pursuant to a grant of parole under the Parole Act" unless a certain period of time has been served and the Board votes in favour of parole by at least two-thirds of its members. The same subsection, in adding subsection (9) to section 218, makes a special rule concerning the grant of day parole. Yet both day parole and "full parole" are grants of parole under the Parole Act. I think it is clear that the special rule as to day parole will govern as to the period to be served before eligibility occurs, but it is by no means clear whether the Board would have to have a two-thirds majority for the grant of day parole. Perhaps this should be clarified by a suitable amendment before the Bill passes.



Government
of Canada

Gouvernement
du Canada

s.23

MEMORANDUM

NOTE DE SERVICE

TO
A

**Mr. Roger Tassé,
Deputy Solicitor General**

FROM
DE

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

SUBJECT
OBJET

Effect of Bill C-2 on Parole and Temporary Absence

**This is further to my memorandum of July 5th and
in reply to your memorandum of July 9th.**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE 141 - 206 (6)
YOUR FILE - V/RÉFÉRENCE
DATE July 11, 1973.

... 2

002039

*Copies on 700-3
645-7*

s.23

- 2 -




J.H. Hollies,
Departmental Counsel

JHH:rh

141-206



Government
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Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

MR. J.H. HOLLIES, Q.C.

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Effect of Bill C-2 on Parole and Temporary
Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 9, 1973

1. This refers to your memorandum of July 5, 1973 regarding the above.
2. You stated, in your memorandum, that "it is by no means clear whether the Board would have to have a two-thirds majority for the grant of day parole". I believe the Minister would wish to avoid having to move an amendment to Bill C-2 unless it is absolutely necessary. Perhaps you might wish to discuss the matter with Don Christie of the Department of Justice. If the conclusion is that there is a substantial doubt, I will raise the matter with the Minister.
3. With respect to the Table that was appended to your memorandum, I note that it is your view that under Bill C-2, Council's approval will be necessary for "any" parole with respect to both capital and non-capital murders. That is not my reading of Bill C-2, and especially clause 7 and I am wondering whether the word "any" should not, in effect, read "full".

R.T.

Roger Tassé

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

MR. J.H. HOLLIES, Q.C.,

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Effect of Bill C-2 on Parole and Temporary
Absence

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 9, 1973

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ON
ORIGINAL
R. TASSE

RT/hl

Roger Tassé

*Copy to: 700-3
648-7*



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
À

Mr. Roger Tassé,
Deputy Solicitor General

FROM
DE

J.H. Hollies,
Departmental Counsel

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

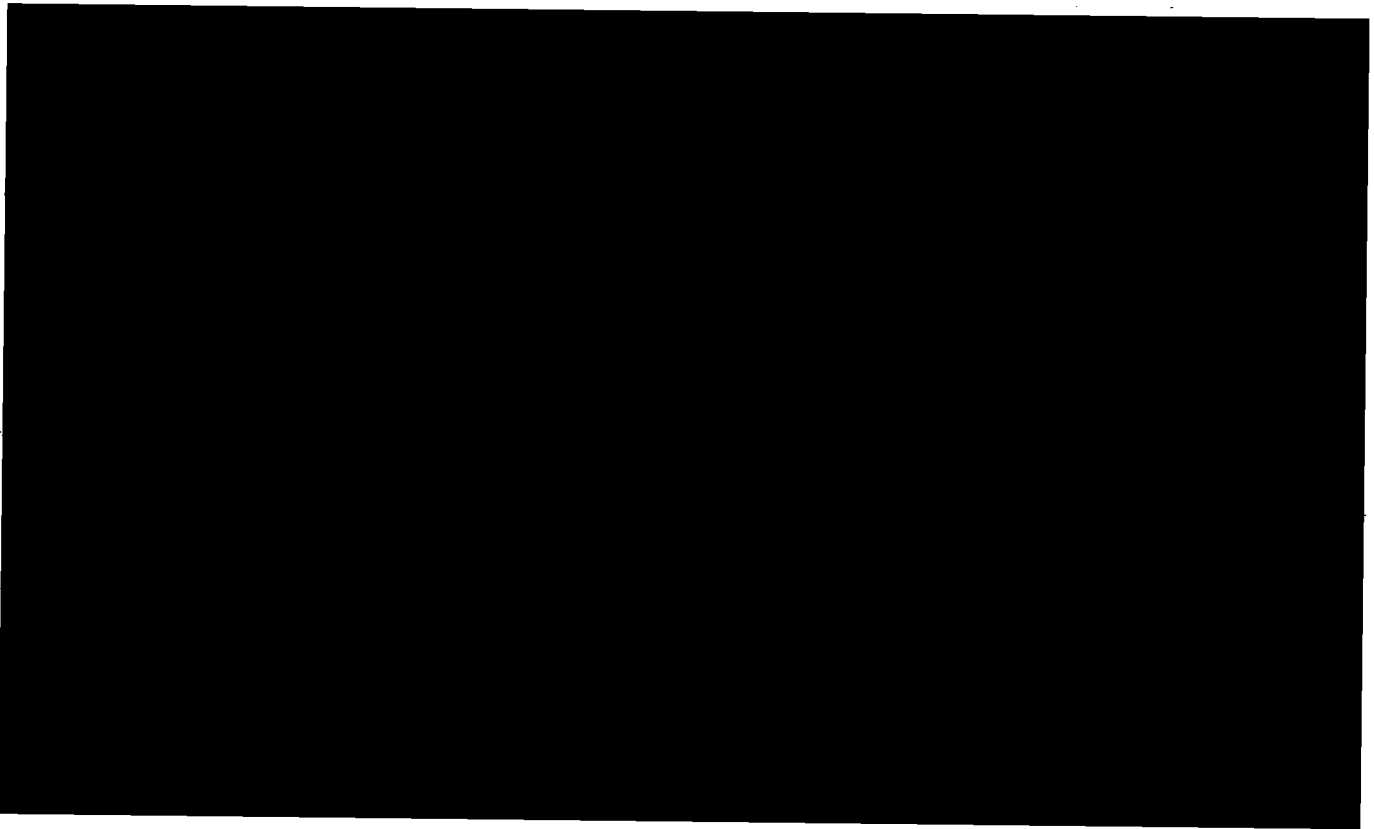
YOUR FILE - V/RÉFÉRENCE

DATE

July 5, 1973

SUBJECT
OBJET

RE: Effect of Bill C-2 on parole and temporary absence.



*check
distribution*

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

JHH:rh

002043

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON
GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS.

Non-capital Murders

Category

Present Parole Regs.

Bill C-2

Convicted before
4 Jan 68.

No approval of Council
necessary for full or
day parole. Must norm-
ally serve seven years,
but can be paroled at
any time in exceptional
circumstances.

Council approval necessary
for full parole. No restric-
tion on day parole or on
temporary absence with or
without escort.

Convicted after
4 Jan 68, but
before 29 Dec 72.

Council approval required
for full and day parole.
Board precluded from making
recommendation until ten
years have been served.

As above.

Convicted on or ~~after~~ 29 Dec 72. As immediately above.

No full parole for ten years,
or for up to twenty years if
court so orders. No tempor-
ary absence without escort or
day parole until all but
three years of period has
been served. Two-thirds vote
of Parole Board necessary
for full parole. ~~(And see~~
~~covering memorandum.)~~ Council
approval necessary for ~~any~~
parole.

(See Note, page 2)

- 2 -

Category

Commutated before Bill C-2
comes into force.

Commutated after Bill C-2
comes into force, or deemed
commuted by section 8 of
Bill C-2.

Capital Murders

Present Parole Regs.

Council approval required
for full and day parole.
Board precluded from making
recommendation until ten
years have been served.

As immediately above.

Bill C-2

Council approval necessary
for full parole. No restric-
tion on day parole or on
temporary absence with or
without escort.

No full parole for ten years,
or for up to twenty years if
court so orders. No tempor-
ary absence without escort or
day parole until all but
three years of period has
been served. Two-thirds vote
of Parole Board necessary
for ~~full~~ parole. ^{any} (See Note) ~~(And see~~
~~covering memorandum.)~~ Council
approval necessary for ~~any~~
parole. *full*

NOTE:

There may be some doubt as to whether the two-thirds rule
applies to the grant of day parole, but the Bill can be interpreted
to so require.

141-206



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

s.23

TO
À

**Mr. Roger Tassé,
Deputy Solicitor General**

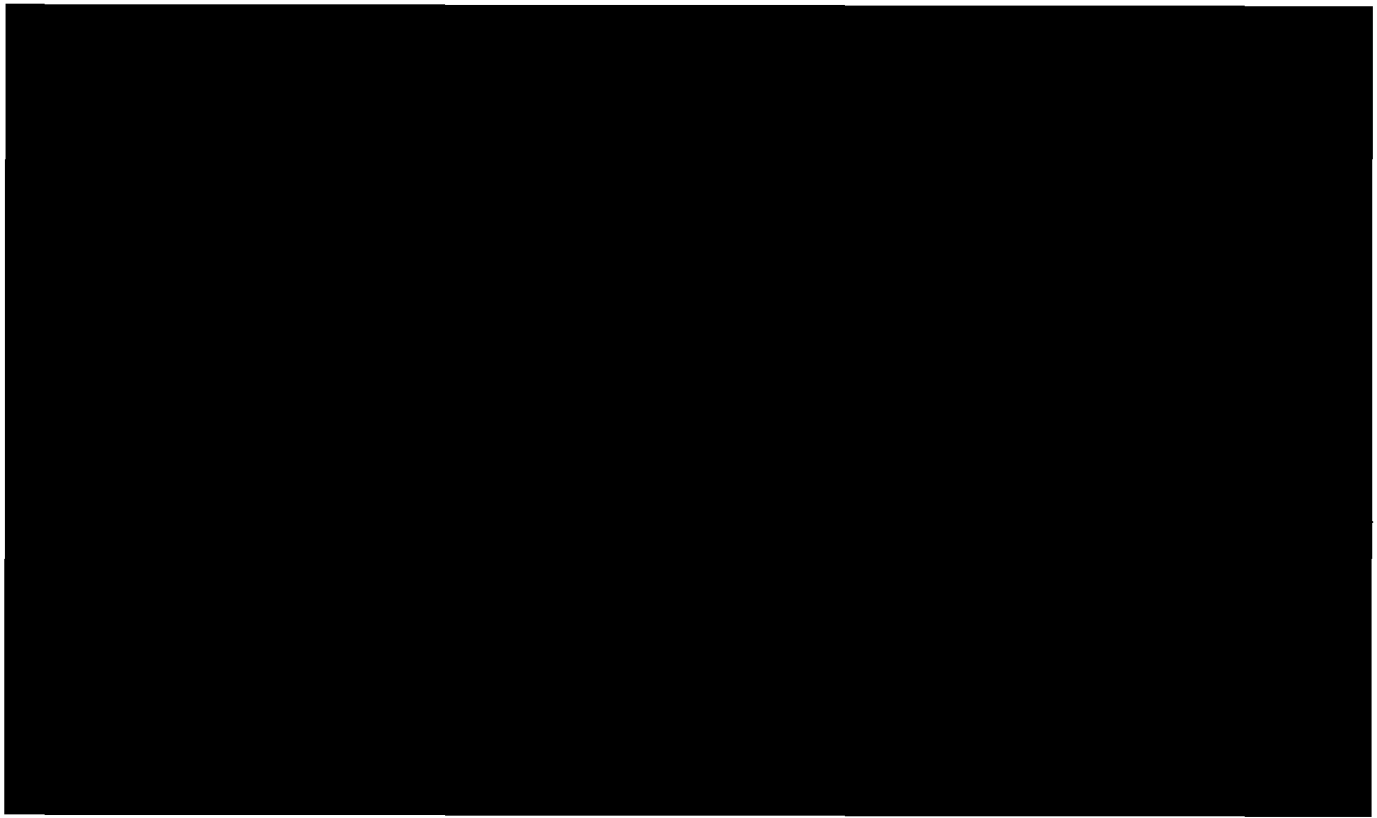
FROM
DE

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

SUBJECT
OBJET

RE: Effect of Bill C-2 on parole and temporary absence.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE July 5, 1973



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

JHH:rh

*Copies on: 700-3
645-7*

EFFECT OF BILL C-2 AND PRESENT PAROLE REGULATIONS ON

GRANTS OF PAROLE AND TEMPORARY ABSENCE TO CONVICTED MURDERERS.

Non-capital Murders

Category

Present Parole Regs.

Bill C-2

**Convicted before
4 Jan 68.**

**No approval of Council
necessary for full or
day parole. Must norm-
ally serve seven years,
but can be paroled at
any time in exceptional
circumstances.**

**Council approval necessary
for full parole. No restric-
tion on day parole or on
temporary absence with or
without escort.**

**Convicted after
4 Jan 68, but
before 29 Dec 72.**

**Council approval required
for full and day parole.
Board precluded from making
recommendation until ten
years have been served.**

As above.

**Convicted on or
after 29 Dec 72.**

As immediately above.

**No full parole for ten years,
or for up to twenty years if
court so orders. No tempor-
ary absence without escort or
day parole until all but
three years of period has
been served. Two-thirds vote
of Parole Board necessary
for full parole. (And see
covering memorandum.) Council
approval necessary for ^{full} any
parole.**

- 2 -

Category

Committed before Bill C-2
comes into force.

Committed after Bill C-2
comes into force, or deemed
committed by section 8 of
Bill C-2.

Capital Murders

Present Parole Regs.

Council approval required
for full and day parole.
Board precluded from making
recommendation until ten
years have been served.

As immediately above.

Bill C-2

Council approval necessary
for full parole. No restric-
tion on day parole or on
temporary absence with or
without escort.

No full parole for ten years,
or for up to twenty years if
court so orders. No tempor-
ary absence without escort or
day parole until all but
three years of period has
been served. Two-thirds vote
of Parole Board necessary
for full parole. (And see
covering memorandum.) Council
approval necessary for any
parole. *full*

141-206

C-2

C-2

First Session, Twenty-ninth Parliament,
21-22 Elizabeth II, 1973

Première Session, Vingt-neuvième Législature,
21-22 Elizabeth II, 1973

THE HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-2

BILL C-2

An Act to amend the Criminal Code

Loi modifiant le Code criminel

REPRINTED AS AMENDED AND REPORTED BY THE
STANDING COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS

RÉIMPRIMÉ AINSI QUE L'A MODIFIÉ ET EN A FAIT
RAPPORT LE COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES JURIDIQUES

THE SOLICITOR GENERAL

LE SOLICITEUR GÉNÉRAL

1st Session, 29th Parliament, 21-22 Elizabeth II,
1973

1^{re} Session, 29^e Législature, 21-22 Elizabeth II,
1973

THE HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-2

BILL C-2

An Act to amend the Criminal Code

Loi modifiant le Code criminel

R.S., cc.
C-34,
C-35

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

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

S.R., cc.
C-34, C-35

Short
title

1. This Act may be cited as the *Criminal Law Amendment (Capital Punishment) Act*.

1. La présente loi peut être citée sous le titre: *Loi modifiant le droit pénal (peine capitale)*.

Titre
abrégé

2. Section 214 of the *Criminal Code*, as amended by the *Criminal Code 1967 Amendment Act*, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed 10 and the following substituted therefor:

2. L'article 214 du *Code criminel*, modifié par la *Loi de 1967 modifiant le Code criminel*, chapitre C-35 des Statuts révisés du Canada de 1970, est abrogé et 10 remplacé par ce qui suit:

Classi-
fication
of murder

“214. (1) Murder is punishable by death or is punishable by imprisonment for life.

«214. (1) Le meurtre est punissable de mort ou est punissable d'emprisonnement à perpétuité.

Classification
du meurtre

Murder
punishable
by death

(2) Murder is punishable by death, 15 in respect of any person, where such person by his own act caused or assisted in causing the death of

(2) Le meurtre est punissable de mort, 15 à l'égard de toute personne, lorsque cette personne, par son propre fait, a causé ou aidé à causer la mort

Meurtre
punissable
de mort

(a) a police officer, police constable, constable, sheriff, deputy sheriff, sher- 20 iff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

a) d'un officier de police, d'un agent de police, d'un constable, d'un shérif, 20 d'un shérif adjoint, d'un officier de shérif ou d'une autre personne employée à la préservation et au maintien de la paix publique, agissant dans l'exercice de ses fonctions, ou 25

(b) a warden, deputy warden, instruc- 25 tor, keeper, gaoler, guard or other officer or permanent employee of a

b) d'un directeur, d'un sous-directeur, d'un instructeur, d'un gardien, d'un

EXPLANATORY NOTE FOR REPRINT

All amendments made in the Standing Committee on Justice and Legal Affairs are indicated by vertical lines or underlining. The Bill as distributed in First Reading Form may be used for purposes of comparison.

NOTE EXPLICATIVE CONCERNANT LA RÉIMPRESSION

Les modifications apportées par le Comité permanent de la justice et des affaires juridiques sont indiquées par des traits verticaux ou du soulignement. Aux fins de comparaison on peut se reporter au bill tel qu'il a été distribué en première lecture.

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.

5

geôlier, d'un garde ou d'un autre fonctionnaire ou employé permanent d'une prison, agissant dans l'exercice de ses fonctions,

ou a conseillé à une autre personne de 5
commettre un acte quelconque qui cause ou aide à causer la mort, ou a incité cette autre personne à commettre un tel acte.

Murder punishable by imprisonment for life

(3) All murder other than murder punishable by death is punishable by imprisonment for life."

(3) Tout meurtre autre qu'un meurtre punissable de mort est punissable d'emprisonnement à perpétuité.»

Meurtre punissable d'emprisonnement à perpétuité

3. (1) Subsections 218(1) to (3) of the said Act are repealed and the following substituted therefor:

10

3. (1) Les paragraphes 218(1) à (3) de ladite loi sont abrogés et remplacés par ce qui suit:

15

Punishment for murder

"218. (1) Every one who commits murder punishable by death is guilty of an indictable offence and shall be sentenced to death.

15

«218. (1) Quiconque commet un meurtre punissable de mort est coupable d'un acte criminel et doit être condamné à mort.

Peine pour meurtre

Idem

(2) Every one who commits murder punishable by imprisonment for life is guilty of an indictable offence and shall be sentenced to imprisonment for life.

20

(2) Quiconque commet un meurtre punissable d'emprisonnement à perpétuité est coupable d'un acte criminel et doit être condamné à l'emprisonnement à perpétuité.

Idem

Exception for persons under age of eighteen years

(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 murder punishable by death shall not be sentenced to death upon conviction therefor but shall be sentenced to imprisonment for life."

25

(3) Nonobstant le paragraphe (1), une personne qui paraît à la cour avoir moins de dix-huit ans au moment où elle a commis un meurtre punissable de mort ne peut pas être condamnée à mort sur déclaration de culpabilité à cet égard, 30 mais doit être condamnée à l'emprisonnement à perpétuité.»

Exception quant aux personnes de moins de dix-huit ans

Conditions of granting parole

(2) Section 218 of the said Act is further amended by adding thereto the following subsections:

30

(2) L'article 218 de ladite loi est en outre modifié par l'adjonction des paragraphes suivants:

35

"(5) Notwithstanding anything in the Parole Act and unless the Parliament of Canada otherwise directs, no person

«(5) Nonobstant toute disposition de la Loi sur la libération conditionnelle de détenus et à moins que le Parlement du Canada n'ordonne le contraire, nulle personne

«Conditions d'octroi de la libération conditionnelle

35

(a) upon whom a sentence of imprisonment for life in respect of murder has been imposed after the coming into force of this subsection,

a) à qui une sentence d'emprisonnement à perpétuité pour meurtre a été

Extension of
term to be
served before
eligibility
for parole

(b) upon whom a sentence of imprisonment for life is deemed by section 8 of the *Criminal Law Amendment (Capital Punishment) Act* to have been imposed, or

(c) in respect of whom a sentence of death in respect of murder has been commuted after the coming into force of this section to imprisonment for life, shall be released pursuant to the terms of 10 a grant of parole under the *Parole Act* unless

(d) at least ten years of that sentence calculated in the manner described in subsection (7) have been served, and 15

(e) the National Parole Board, by a vote of at least two-thirds of its members, has made a decision that parole under that Act be granted to that person.

(6) Notwithstanding paragraph (5) (d), the judge presiding at the trial of an accused who is or was convicted of murder or, where such judge is unable to do so, another judge of the same court 25 may

(a) at the time of sentencing of the accused, in a case referred to in paragraph (5) (a), or

(b) at any time on application made to 30 him within a reasonable time after

(i) the coming into force of this section, in a case referred to in paragraph (5) (b), or

(ii) the execution of an instrument 35 or writing mentioned in subsection 684(2) declaring that a sentence of

imposée après l'entrée en vigueur du présent paragraphe,

b) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la *Loi modifiant le droit 5 pénal (peine capitale)*, réputée avoir été imposée, ou

c) relativement à laquelle une sentence de mort pour meurtre a été commuée, après l'entrée en vigueur du 10 présent article, en un emprisonnement à perpétuité,

ne doit être remise en liberté en vertu de l'octroi d'une libération conditionnelle aux termes de la *Loi sur la libéra- 15 tion conditionnelle de détenus*, à moins

d) qu'elle n'ait purgé au moins dix années de cette sentence, calculées de la manière indiquée au paragraphe (7), et 20

e) que la Commission nationale des libérations conditionnelles n'ait décidé, par un vote d'au moins les deux tiers de ses membres, d'accorder à cette personne la libération conditionnelle 25 visée par cette loi.

(6) Nonobstant l'alinéa (5)d), le juge qui préside le procès d'un accusé qui est ou a été déclaré coupable de meurtre, ou, lorsque ce juge est incapable de ce faire, 30 un autre juge du même tribunal peut,

Prolonga-
tion de la
période à
purger
avant d'être
admissible
à la
libération

a) au moment de prononcer la sentence de l'accusé, s'il s'agit d'un cas visé à l'alinéa (5)a), ou

b) à tout moment, sur demande, pour- 35 vu que cette demande lui soit présentée dans un délai raisonnable

(i) après l'entrée en vigueur du présent article, s'il s'agit d'un cas visé à l'alinéa (5)b), ou 40

(ii) après la signature d'un instrument ou d'un écrit mentionné au paragraphe 684(2), déclarant qu'une

death has been commuted, in a case referred to in paragraph (5) (c), having regard to the character of the accused, the nature of the offence and the circumstances surrounding its commission, and to any recommendation made pursuant to subsection (8), by order substitute for the number of years specified in paragraph (5) (d) a number of years that is not more than twenty but more than ten.

Time spent
in custody

(7) In calculating the time referred to in paragraph (5) (d) or the time substituted therefor pursuant to subsection (6), there shall be included any time spent in custody between,

(a) in the case of a sentence of imprisonment for life, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life and the day the sentence was imposed or was deemed by section 8 of the *Criminal Law Amendment (Capital Punishment) Act* to have been imposed, or

(b) in the case of a sentence of death, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to death and the day the sentence was commuted.

Recommendation by
jury

(8) Where a jury finds an accused guilty of murder punishable by imprisonment for life, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

"You have found the accused guilty of murder punishable by imprisonment for life and the law requires that I now pronounce a sentence of imprisonment for life against him. Do you wish to make any recommendation with respect to the number of years he must serve before he is eligible for release on parole? You are

sentence de mort a été commuée, s'il s'agit d'un cas visé à l'alinéa (5)c), compte tenu du caractère de l'accusé, de la nature de l'infraction et des circonstances qui ont entouré sa perpétration, ainsi que toute recommandation faite en application du paragraphe (8) remplacer par ordonnance le nombre d'années spécifié à l'alinéa (5)d) par un nombre d'années supérieur à dix mais ne dépassant pas vingt.

(7) Dans le calcul de la période mentionnée à l'alinéa (5)d) ou de celle par laquelle celle-ci est remplacée en application du paragraphe (6), il doit être inclus toute période passée sous garde,

a) dans le cas d'une sentence d'emprisonnement à perpétuité, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à l'emprisonnement à perpétuité et le jour où la sentence a été imposée ou est réputée, aux termes de l'article 8 de la *Loi modifiant le droit pénal (peine capitale)*, avoir été imposée, ou,

b) dans le cas d'une sentence de mort, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à mort et le jour où la sentence a été commuée.

Temps
passé
sous garde

(8) Lorsqu'un jury déclare un accusé coupable de meurtre punissable d'emprisonnement à perpétuité, le juge qui préside au procès doit, avant de dissoudre le jury, poser aux jurés la question suivante:

«Vous avez déclaré l'accusé coupable de meurtre punissable d'emprisonnement à perpétuité et la loi exige que je prononce maintenant contre lui la peine d'emprisonnement à perpétuité. Désirez-vous faire une recommandation quant au nombre d'années qu'il doit purger

Recommandation
du jury

not required to make any recommendation but if you do, your recommendation will be considered by me when I am considering whether I should substitute for the ten year period, which the law would otherwise require the accused to serve before he is eligible for release on parole, a number of years that is not more than twenty but more than ten.

Temporary
absence and
day parole

(9) Notwithstanding the *Penitentiary Act* and the *Parole Act*, in the case of any person described in paragraph (5)(a), (b) or (c), no absence without escort may be authorized under section 26 of the *Penitentiary Act* and no day parole may be granted under section 10 of the *Parole Act* until the expiration of all but three years of the time referred to in paragraph (5)(d) or the time substituted therefor pursuant to subsection (6), as the case may be."

avant de devenir admissible à la libération conditionnelle? Vous n'êtes pas tenus de faire une recommandation, mais si vous le faites je tiendrai compte de votre recommandation lorsque j'examinerai si je dois remplacer ou non par une période supérieure à dix ans mais ne dépassant pas vingt ans, la période de dix ans que l'accusé devrait autrement purger en vertu de la loi avant de devenir admissible à la libération conditionnelle.

(9) Nonobstant la *Loi sur les pénitenciers* et la *Loi sur la libération conditionnelle de détenus*, dans le cas de toute personne visée à l'alinéa (5)a), b) ou c), aucune absence sans escorte ne peut être autorisée en vertu de l'article 26 de la *Loi sur les pénitenciers* et aucune libération conditionnelle de jour ne peut être accordée en vertu de l'article 10 de la *Loi sur la libération conditionnelle de détenus* avant la troisième année précédant l'expiration de la période mentionnée à l'alinéa (5)d) ou de la période par laquelle celle-ci est remplacée en application du paragraphe (6).»

Absence
temporaire
et libération
conditionnelle
de jour

4. Section 511 of the said Act is repealed and the following substituted therefor:

Murder
punishable
by death
to be
specifically
charged

"511. No person shall be convicted of murder punishable by death unless in the indictment charging the offence he is specifically charged with murder punishable by death."

5. Subsection 538(3) of the said Act is repealed and the following substituted therefor:

Effect of
previous
charge of
murder
punishable
by death
or by
imprisonment
for life

"(3) A conviction or acquittal on an indictment for murder punishable by death bars a subsequent indictment for the same homicide charging it as murder punishable by imprisonment for life, and a conviction or acquittal on an indictment for murder punishable by imprisonment for life bars a subsequent indictment for the same homicide charging it as murder punishable by death."

4. L'article 511 de ladite loi est abrogé et remplacé par ce qui suit:

"511. Nul ne peut être déclaré coupable de meurtre punissable de mort sauf si, dans l'acte d'accusation l'incriminant de meurtre, il est expressément accusé de meurtre punissable de mort."

5. Le paragraphe 538(3) de ladite loi est abrogé et remplacé par ce qui suit:

"(3) Une déclaration de culpabilité ou un acquittement sur un acte d'accusation de meurtre punissable de mort constitue une fin de non-recevoir contre un acte d'accusation subséquent pour le même homicide l'imputant comme meurtre punissable d'emprisonnement à perpétuité."

Le meurtre
punissable
de mort
doit faire
l'objet d'une
accusation
expresse

Effet d'une
accusation
antérieure
de meurtre
punissable
de mort ou
d'emprisonnement
à perpétuité

sonment for life bars a subsequent indictment for the same homicide charging it as murder punishable by death."

6. Subsection 589(2) of the said Act is repealed and the following substituted 5 therefor:

Where
murder
punishable
by death
charged
and part
only proved

"(2) For greater certainty and without limiting the generality of subsection (1), where a count charges murder punishable by death and the evidence does 10 not prove murder punishable by death, but proves murder punishable by imprisonment for life, or an attempt to commit murder punishable by imprisonment for life, the jury may find the ac- 15 cused not guilty of murder punishable by death but guilty of murder punishable by imprisonment for life or an attempt to commit murder punishable by imprisonment for life, as the case may 20 be."

6.1 The definition "sentence" in section 601 of the said Act is repealed and the following substituted therefor:

"sentence"
«sentence»

"sentence" includes a declaration made 25 under subsection 181(3), an order made under section 95, 653, 654 or 655 or subsection 218(6), and a disposition made under subsection 662.1(1), subsection 663(1) or subsection 664(3) or 30 (4);"

7. Subsection 684(3) of the said Act, as amended by the *Criminal Code 1967 Amendment Act*, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed 35 and the following substituted therefor:

tuité, et une déclaration de culpabilité ou un acquittement sur un acte d'accusation de meurtre punissable d'emprisonnement à perpétuité constitue une fin de non-recevoir contre un acte d'accusation sub- 5 séquent pour le même homicide l'imputant comme meurtre punissable de mort.»

6. Le paragraphe 589(2) de ladite loi est abrogé et remplacé par ce qui suit:

«(2) Pour plus de certitude et sans 10 restreindre la généralité du paragraphe (1), lorsqu'un chef d'accusation inculpe de meurtre punissable de mort et que les témoignages ne prouvent pas le meurtre punissable de mort, mais prouvent le 15 meurtre punissable d'emprisonnement à perpétuité ou une tentative de commettre un meurtre punissable d'emprisonnement à perpétuité, le jury peut déclarer l'accusé non coupable de meurtre punissable 20 de mort, mais coupable de meurtre punissable d'emprisonnement à perpétuité ou de tentative de commettre un meurtre punissable d'emprisonnement à perpétuité, selon le cas.» 25

Lorsque
l'accusation
porte sur le
meurtre
punissable
de mort et
que celui-ci
n'est
prouvé
qu'en partie

6.1 La définition des termes «sentence» ou «condamnation» figurant à l'article 601 de ladite loi est abrogée et remplacée par ce qui suit:

«sentence» ou «condamnation» com- 30 prend une déclaration faite aux termes du paragraphe 181(3), une ordonnance rendue aux termes de l'article 95, 653, 654 ou 655 ou du paragraphe 218(6), et une déclaration prise en vertu du 35 paragraphe 662.1(1), du paragraphe 663(1) ou du paragraphe 664(3) ou (4).»

«sentence»
«sentence»

7. Le paragraphe 684(3) de ladite loi, modifié par la *Loi de 1967 modifiant le Code 40 criminel*, chapitre C-35 des Statuts révisés du Canada de 1970, est abrogé et remplacé par ce qui suit:

Approval
by
Governor
in Council
of release
after
commutation
of sentence

"(3) Notwithstanding any other law or authority, a person

(a) in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment,

(b) upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, or

(c) upon whom a sentence of imprisonment for life is deemed by section 8 of the *Criminal Law Amendment (Capital Punishment) Act* to have been imposed,

shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council, but this subsection does not apply in respect of any absence authorized under section 26 of the *Penitentiary Act* or any day parole granted under section 10 of the *Parole Act*."

Transi-
tional

8. Where, either before or after the coming into force of this Act, a person has been convicted of having committed a murder that

(a) was alleged by an indictment to have been committed on, or on or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days within that period,

(b) was, at the time alleged by the indictment to have been the time when the murder was committed, punishable by death, and

(c) under subsection 214(2) of the *Criminal Code*, as enacted by section 2 of this Act, is no longer punishable by death,

such person shall, if upon the coming into force of this Act he has not been sentenced, be sentenced to imprisonment for life, and,

«(3) Nonobstant toute autre loi ou autorité, une personne,

a) à l'égard de qui une sentence de mort a été commuée en emprisonnement à perpétuité ou en un emprisonnement à temps,

b) à qui une sentence d'emprisonnement à perpétuité a été imposée comme peine minimum, ou

c) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la *Loi modifiant le droit pénal (peine capitale)*, réputée avoir été imposée,

ne doit pas être remise en liberté de son vivant ou pendant la durée de son emprisonnement, selon le cas, sans l'approbation antérieure du gouverneur en conseil; toutefois ce paragraphe ne s'applique pas à l'égard d'une absence autorisée en vertu de l'article 26 de la *Loi sur les pénitenciers* ou d'une libération conditionnelle de jour accordée en vertu de l'article 10 de la *Loi sur la libération conditionnelle de détenus*."

Le
gouverneur
en conseil
doit
approuver
tout
élargissement
permis après
une
commutation
de peine

25

8. Lorsque, avant ou après l'entrée en vigueur de la présente loi, une personne a été déclarée coupable d'un meurtre

a) dont un acte d'accusation allègue qu'il a été commis un jour ou vers un jour se trouvant dans la période allant du 29 décembre 1972 à l'entrée en vigueur de la présente loi, ou entre deux jours se trouvant dans cette période,

b) qui était, à l'époque où l'acte d'accusation allègue qu'il a été commis, punissable de mort, et

c) qui, en vertu du paragraphe 214(2) du *Code criminel*, tel qu'il est édicté par l'article 2 de la présente loi, n'est plus punissable de mort,

cette personne doit, si elle n'a pas été condamnée lors de l'entrée en vigueur de la présente loi, être condamnée à l'emprisonnement à perpétuité et, si à cette époque elle a été condamnée à mort, cette senten-

Mesure
transitoire

if at that time he has been sentenced to death, that sentence shall be deemed to be a sentence of imprisonment for life imposed by the court that sentenced him to death.

5

ce doit être réputée être une sentence d'emprisonnement à perpétuité qu'a imposée la cour qui l'a condamnée à mort.

Idem	<p>9. (1) Where, after the coming into force of this Act,</p> <p>(a) proceedings are commenced in respect of a murder alleged by an indictment to have been committed on, or on 10 or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days the earlier of which is within that period, or</p> <p>(b) a new trial of a person is commenced for a murder referred to in paragraph (a),</p> <p>the offence shall be tried and determined, and any punishment in respect of the 20 offence shall be imposed, as if the offence had been committed after the coming into force of this Act.</p>	<p>9. (1) Lorsque, après l'entrée en vigueur de la présente loi,</p> <p>a) des procédures sont commencées relativement à un meurtre dont un acte d'accusation allègue qu'il a été commis un jour où vers un jour se trouvant dans la période allant du 29 décembre 1972 à 10 l'entrée en vigueur de la présente loi, ou entre deux jours dont le plus ancien se trouve dans cette période, ou</p> <p>b) un nouveau procès d'une personne est commencé relativement à un meurtre 15 visé à l'alinéa a),</p> <p>l'infraction doit être jugée et décidée, et toute peine relative à cette infraction doit être imposée, comme si ladite infraction avait été commise après l'entrée en vigueur 20 de la présente loi.</p>	Idem 5
When proceedings commenced	<p>(2) For the purposes of this section, proceedings in respect of an offence shall be 25 deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the <i>Criminal Code</i>.</p>	<p>(2) Aux fins du présent article, des procédures relatives à une infraction sont réputées avoir été commencées lors de la présentation d'un acte d'accusation en ap- 25 plication des dispositions de la Partie XVII du <i>Code criminel</i>.</p>	Cas où les procédures sont commencées
Duration of amendments	<p>10. Subject to subsection 11(2), subsection 214(2) of the <i>Criminal Code</i>, as enacted by section 2 of this Act, <u>subsections 218(5) to (9) of the <i>Criminal Code</i>, as enacted by subsection 3(2) of this Act, and</u> 35 sections 8 and 9 of this Act continue in force until the 31st day of December, 1977 and then expire unless before that day Parliament, by joint resolution of both Houses, directs that the said subsection 214(2) as so enacted shall continue in force. 40</p>	<p>10. Sous réserve du paragraphe 11(2), le paragraphe 214(2) du <i>Code criminel</i>, tel qu'il est édicté par l'article 2 de la présente 30 loi, <u>les paragraphes 218(5) à (9) du <i>Code criminel</i>, tel qu'ils sont édictés par le paragraphe 3(2) de la présente loi, et les articles</u> 8 et 9 de la présente loi, demeurent en vigueur jusqu'au 31 décembre 1977, et 35 cessent alors d'avoir effet à moins qu'avant ce jour, le Parlement n'ordonne par résolution conjointe des deux Chambres le maintien en vigueur dudit paragraphe 214(2), tel qu'il est ainsi édicté. 40</p>	Durée des modifications
Effect of expiration	<p>11. (1) Upon the expiration of subsection 214(2) of the <i>Criminal Code</i> referred to in section 10 of this Act, that subsection is repealed and the following substituted therefor: 45</p>	<p>11. (1) Dès que cesse de s'appliquer le paragraphe 214(2) du <i>Code criminel</i>, mentionné à l'article 10 de la présente loi, ce paragraphe est abrogé et remplacé par ce 45 qui suit:</p>	Effet de la cessation d'application

Murder
punishable
by death

“(2) Murder is punishable by death,
in respect of any person, where

(a) it is planned and deliberate on the
part of such person,
(b) it is within section 213 and such 5
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 10
assisted in administering the stupe-
fying or over-powering thing from
which the death ensued,

(iii) by his own act stopped or
assisted in the stopping of the breath 15
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 20
person to do any act mentioned in
subparagraph (i), (ii) or (iii) or to
use any weapon mentioned in sub-
paragraph (iv), or

(c) such person by his own act caused 25
or assisted in causing the death of

(i) a police officer, police constable,
constable, sheriff, deputy sheriff,
sheriff's officer or other person em-
ployed for the preservation and 30
maintenance of the public peace,
acting in the course of his duties, or
(ii) a warden, deputy warden, in-
structor, keeper, gaoler, guard or
other officer or permanent employee 35
of a prison, acting in the course of
his duties,

or counselled or procured another per-
son to do any act causing or assisting
in causing the death.” 40

«(2) Le meurtre est punissable de mort,
à l'égard de toute personne, lorsque

a) cette personne l'a prémédité et
commis de propos délibéré,

b) il tombe sous le coup de l'article 5
213 et cette personne,

(i) a, par son propre fait, causé ou
aidé à causer les lésions corporelles
qui ont entraîné la mort,

(ii) a, par son propre fait, adminis- 10
tré ou aidé à administrer un stupé-
fiant ou un soporifique qui a en-
traîné la mort,

(iii) a, par son propre fait, arrêté la
respiration ou aidé à l'arrêt de la 15
respiration qui a entraîné la mort,

(iv) a employé elle-même ou avait
sur sa personne l'arme qui a provo-
qué la mort, ou

(v) a conseillé à une autre personne 20
de commettre ou l'a incitée à com-
mettre un acte quelconque mention-
né aux sous-alinéas (i), (ii) ou (iii),
ou a conseillé à cette autre personne
d'employer ou l'a incitée à employer 25
toute arme mentionnée au sous-
alinéa (iv), ou

c) cette personne a, par son propre
fait, causé ou aidé à causer la mort

(i) d'un officier de police, d'un agent 30
de police, d'un constable, d'un shérif,
d'un shérif adjoint, d'un officier de
shérif ou d'une autre personne em-
ployée à la préservation et au main-
tien de la paix publique, agissant 35
dans l'exercice de ses fonctions, ou

(ii) d'un directeur, d'un sous-direc-
teur, d'un instructeur, d'un gardien,
d'un géôlier, d'un garde ou d'un
autre fonctionnaire ou employé 40
permanent d'une prison, agissant
dans l'exercice de ses fonctions,

ou a conseillé à une autre personne de
commettre un acte quelconque qui
cause ou aide à causer la mort, ou a 45
incité cette autre personne à commet-
tre un tel acte.»

M. e
punissable
de mort

Applica-
tion

(2) Subsection (1) does not operate in respect of any offence alleged by an indictment to have been committed on, or on or about, a day prior to the expiration of subsection 214(2) of the *Criminal Code* referred to in section 10 of this Act, or between two days the earlier of which is prior to that expiration; and in respect of any offence to which this subsection applies, subsection 214(2) of the *Criminal Code* referred to in section 10 of this Act continues to operate.

Coming
into force

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

(2) Le paragraphe (1) ne s'applique pas à une infraction dont un acte d'accusation allègue qu'elle a été commise un jour ou vers un jour antérieur à la cessation d'effet du paragraphe 214(2) du *Code criminel* mentionné à l'article 10 de la présente loi, ou entre deux jours dont le plus ancien est antérieur à cette cessation d'effet; à l'égard de toute infraction à laquelle s'applique le présent paragraphe, le paragraphe 214(2) du *Code criminel* mentionné à l'article 10 de la présente loi continue à s'appliquer.

Application

Entrée en
vigueur

12. La présente loi entrera en vigueur à une date qui sera fixée par proclamation.

141-206



Government
Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A
Mr. Roger Tassé
Deputy Solicitor General

Mr. Z. Levine
Executive Assistant to the
Solicitor General

FROM
DE
D.G. Cobb

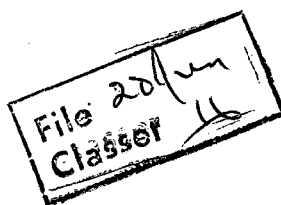
SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 27, 1973

SUBJECT
OBJET

BILL TO EXTEND PARTIAL BAN ON CAPITAL PUNISHMENT
- COMMITTEE EXAMINATION

Further to memo of June 22nd, the Standing Parliamentary Committee on Justice and Legal Affairs plans a wrap up Session of this Bill at 9:30 a.m. on Thursday June 28th - in room 269 of the West Block.

Charlotte Froggier
for D.G. Cobb





Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

141-206

TO
A

Mr. Roger Tassé
Deputy Solicitor General

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Executive Assistant to the
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FROM
DE

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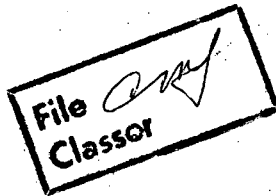
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for D.G. Cobb





Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE

ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 25, 1973

SUBJECT
OBJET

Bill C-2 - Capital Punishment

The attached tables have been compiled to partially meet the requirements outlined in your memorandum of June 22, 1973.

The tables include the most recently published or otherwise available information.

Information available indicates that there are at present no penitentiary inmates serving terms for Murder who have previous records for the same type of offence. There is, however, at present no regular reporting system to provide information of this nature. The information is unavailable for past penitentiary populations.

B.C. Hofley.

TABLE 1

SUICIDES BY INMATES IN FEDERAL INSTITUTIONS

<u>Year</u>	<u>Number</u>
1959	6
1960	3
1961	5
1962	1
1963	1
1964	5
1965	6
1966	11
1967	11
1968	16
1969	5
1970	20
1971	7
1972	7
1973	7 (to date)

TOTAL 111

Source: C.P.S. Inmate Statistics Section.

Compiled by: Subject-matter Coordination Section,
Research and Systems Development Division.
June 25, 1973.

TABLE 1 (A)

SUICIDE BY INMATES SERVING LIFE TERMS (1) IN FEDERAL
INSTITUTIONS 1959 - 1973 (TO DATE)

Life - Death Commuted	5
Life - Murder	4
- Other Offence	3
Total	12

(1) Of all total suicides for all inmates, regardless of sentence type, there were 34 cases in which the sentence was not identified. Some of these cases could also have been serving life terms.

Source: C.P.S. Inmate Statistics Section.

Compiled by: Statistical Coordination Section,
Research Systems Development Division.
June 26, 1973.

ANALYSIS

- 10.8% of penitentiary inmates (12 of 111 cases) who have committed suicide in custody since January 1, 1959, were serving terms of life imprisonment.
- 75% of suicides (9 of 12) by persons serving life terms had been convicted for Murder.

TABLE 2

(1)

PERSONS SENTENCED TO PENITENTIARIES FOR LIFE

<u>Year</u>	<u>Number</u>
1960	7
1961	18
1962	21
1963	35
1964	35
1965	35
1966	37
1967	40
1968	25
1969	26 (2)
1970	40 (2)

TOTAL 319

(1) For all relevant offences.

(2) Excludes Quebec and Alberta, for which
data is unavailable.

Source: 1960-1969 - Statistics Canada, Catalogue 85-201, Table 1
1970 - Unpublished, Statistics Canada.

Compiled by: Subject-matter Coordination Section,
Research and Systems Development Division.
June 25, 1973.

TABLE 3

PERSONS ADMITTED TO PENITENTIARIES FOR LIFE

<u>Year</u>	<u>Death to Life</u>	<u>Life (1)</u>	<u>Total</u>
1960-61	5	4	9
1961-62	7	26	33
1962-63	5	27	32
1963-64	5	42	47
1964-65	6	43	49
1965-66	7	42	49
1966-67	3	42	45
1967-68	6	40	46
1968-69	4	41	45
1969	4	52	56
1970	-	80	80
1971	-	70	70
TOTAL	52	509	561

(1) For all relevant offences.

Sources: 1960-61 to 1963-64 - Reports of Commissioners of Penitentiaries
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1971 - Unpublished, Statistics Canada.

Compiled by: Subject-matter Coordination Section,
Research and Systems Development Division
June 25, 1973.

Parole Statistics
1960 to May 1973

	<u>Paroled</u>	<u>Revoked</u>	<u>Forfeited</u>
Life (N.C.M.)	56	8	6

Reasons for revocation:

Present Status

1) Drinking & bizarre behaviour	In custody
2) Explosive family situation developing	In custody
3) Left country w/o permission	In custody
4) Drinking, poor associates	In custody
5) Drinking, sexual attack on 10 year old granddaughter	In custody
6) Lack of co-operation with supervisor - danger to society	In custody
7) Convicted of possession of an offensive weapon and assault causing bodily harm - 6 months each chg. conc.	In custody
8) Deteriorating - drinking, unable to hold a job. attempted suicide	In custody

Reasons for forfeiture:

Present Status

1) Theft over \$50.00 - 2 years	In custody
2) Kidnapping & R.W.A. - 15 years	In custody
3) Robbery - 5 years	In custody
4) Break & enter with intent: break, enter & theft (6 chgs)-30 mos; 2 yrs conc.	In custody
5) Theft - 1 year suspended sentence & probation	In custody
6) Cause bodily harm with intent - 2½ years (Parole was revoked prior to conviction)	In custody

- 2 -

	<u>Paroled</u>	<u>Revoked</u>	<u>Forfeited</u>
Death Commuted	68	7	3

Reasons for revocation:

	<u>Present Status</u>
1) Mental deterioration	In custody
2) Leaving country without permission	In custody
3) Unable to cope. Asked to be returned to institution	In custody
4) Whereabouts were unknown. Apprehended.	In custody
5) Left area without permission	Died in custody
6) Threatened wife and children	On parole
7) Failed to report and co-operate with super- visor	In custody

Reasons for forfeiture:

	<u>Present Status</u>
1) Obstructing a peace officer - 30 days	On parole
2) Break, enter & theft (2 chgs)-1 year, 30 mos conc.	In custody
3) Fraud - 5 mos	Died in custody

A.R. Fulton,
June 26, 1973.



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of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

DEPUTY SOLICITOR GENERAL

FROM
DE

ASSISTANT DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Bill C-2 - Capital Punishment

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 25, 1973

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B.C. Hofley.

J.F. TOWNSEND/mc

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1973	7 (to date)

TOTAL 110

Source: C.P.S. Inmate Statistics Section.

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Research and Systems Development Division.
June 25, 1973.

TABLE 2

(1)

PERSONS SENTENCED TO PENITENTIARIES FOR LIFE

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du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

DEPUTY SOLICITOR GENERAL

FROM
DE

ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
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B.C. Hofley.

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(1) Of 111 total suicides for all inmates, regardless of sentence type, there were 34 cases in which the sentence was not identified. Some of these cases could also have been serving life terms.

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June 26, 1973.

ANALYSIS

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TABLE 2

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Compiled by: Subject-matter Coordination Section,
Research and Systems Development Division
June 25, 1973.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

MR. B.C. HOFLEY

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Bill C-2 - Capital Punishment


SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 22, 1973

1. The above bill was discussed by the Parliamentary Justice and Legal Affairs Committee yesterday and, during the discussion, Mr. Raynald Guay - the Parliamentary Assistant to the Minister of Justice - asked that we provide the Committee with statistical data on the number of life sentences as well as the number of suicides.

2. I suppose that we should try to cover the last ten or fifteen years.

3. We provided the Committee with data on the number of murders committed by an offender on parole who had already been convicted of murder. The Committee would like to get some information as to the number of instances where a murder has been committed by a person who had already been convicted of murder. This means, in effect, that the information should disclose murders committed by convicted murderers other than on parole, such as for example a second murder committed by an escapee or inside an institution.

4. Would you try to get this information for not later than Tuesday morning.


Roger Tassé

Parole Statistics
1960 to May 1973

	<u>Paroled</u>	<u>Revoked</u>	<u>Forfeited</u>
Life (N.C.M.)	56	8	6

Reasons for revocation:

Present Status

1) Drinking & bizarre behaviour	In custody
2) Explosive family situation developing	In custody
3) Left country w/o permission	In custody
4) Drinking, poor associates	In custody
5) Drinking, sexual attack on 10 year old granddaughter	In custody
6) Lack of co-operation with supervisor - danger to society	In custody
7) Convicted of possession of an offensive weapon and assault causing bodily harm - 6 months each chg. conc.	In custody
8) Deteriorating - drinking, unable to hold a job. attempted suicide	In custody

Reasons for forfeiture:

Present Status

1) Theft over \$50.00 - 2 years	In custody
2) Kidnapping & R.W.A. - 15 years	In custody
3) Robbery - 5 years	In custody
4) Break & enter with intent: break, enter & theft (6 chgs)-30 mos; 2 yrs conc.	In custody
5) Theft - 1 year suspended sentence & probation	In custody
6) Cause bodily harm with intent - 2½ years (Parole was revoked prior to conviction)	In custody

- 2 -

	<u>Paroled</u>	<u>Revoked</u>	<u>Forfeited</u>
Death Commuted	68	7	3

Reasons for revocation:

	<u>Present Status</u>
1) Mental deterioration	In custody
2) Leaving country without permission	In custody
3) Unable to cope. Asked to be returned to institution	In custody
4) Whereabouts were unknown. Apprehended.	In custody
5) Left area without permission	Died in custody
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Reasons for forfeiture:

	<u>Present Status</u>
1) Obstructing a peace officer - 30 days	On parole
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A.R. Fulton,
June 26, 1973.

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Death Commuted	68	7	3

Reasons for revocation:

	<u>Present Status</u>
1) Mental deterioration	In custody
2) Leaving country without permission	In custody
3) Unable to cope. Asked to be returned to institution	In custody
4) Whereabouts were unknown. Apprehended.	In custody
5) Left area without permission	Died in custody
6) Threatened wife and children	On parole
7) Failed to report and co-operate with super- visor	In custody

Reasons for forfeiture:

	<u>Present Status</u>
1) Obstructing a peace officer - 30 days	On parole
2) Break, enter & theft (2 chgs)-1 year, 30 mos conc.	In custody
3) Fraud - 5 mos	Died in custody

A.R. Fulton,
June 26, 1973.



Government
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Gouvernement
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MEMORANDUM

NOTE DE SERVICE

TO
A

SOLICITOR GENERAL

FROM
DE

DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

Capital Punishment

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 22, 1973

1. Attached is a copy of the material prepared by the Department of Justice proposing amendments to Bill C-2, along the lines that you have indicated to the Justice and Legal Affairs Committee yesterday. This material has been sent over to the Clerk of the Committee for distribution to the members.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé

Attach.

RT/ROP

c.c. for the information of:

Mr. P. A. Faguy,
Mr. T. G. Street, Q.C.,
Mr. A. J. MacLeod, Q.C. and
Mr. J. H. Hollies, Q.C.



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

TO
À

MR. B.C. HOFLEY

FROM
DE

DEPUTY SOLICITOR GENERAL

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 22, 1973

SUBJECT
OBJET

Bill C-2 - Capital Punishment

1. The above bill was discussed by the Parliamentary Justice and Legal Affairs Committee yesterday and, during the discussion, Mr. Raynald Guay - the Parliamentary Assistant to the Minister of Justice - asked that we provide the Committee with statistical data on the number of life sentences as well as the number of suicides.
2. I suppose that we should try to cover the last ten or fifteen years.
3. We provided the Committee with data on the number of murders committed by an offender on parole who had already been convicted of murder. The Committee would like to get some information as to the number of instances where a murder has been committed by a person who had already been convicted of murder. This means, in effect, that the information should disclose murders committed by convicted murderers other than on parole, such as for example a second murder committed by an escapee or inside an institution.
4. Would you try to get this information for not later than Tuesday morning.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé

RT/h1

CROSS REFERENCE
RÉFÉRENCES CROISÉES

MINISTRY SECRETARIAT - SECRÉTARIAT DU MINISTÈRE

Administration & Organization

Acts & Legislation - Federal

CRIMINAL CODE Criminal Code - Capital Punishment

CAPITAL PUNISHMENT

1037-60-12

###206

No.

No.

VOL.

FROM

DE

TO

A

GENERAL ENTRIES CIRCULATION DU DOSSIER				B.F. AND P.A. ENTRIES INSTRUCTIONS AU CLASSIER				INSP
REFERRED TO DESTINATAIRE	PURPOSE OBJET	DATE	INIT.	DATE P.A. À CLASSER	INIT.	DATE B.F. À RENVOYER	CANC. B.F. RENV. ANN.	
Mr. Hollies	mail: 23-9-74	24/9/74	AD					
Mr. Epstein	W. & P. 202	25 Sep	H	4/10/74	pr			
Mr. Epstein	mail 30/10/74	4/11	AS	4/11/74	pr			
Mr. Granger	Request	5/12/74	S.M.	5/11/74	SA			
Mr. Granger		9/12/74	H	10/12	SA			
Mr. Hogley	as per Reg	12/76	SA	12/2	103			

CLASSIFIED