CONF.

No. 161407

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No. 161407

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Reviewed by / Révisé par : CJM Date : 6/8/2015

Titre
Title Claims Ar
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OBJET
SUBJECT War Claims Commission

De
From

PERMANENT RETENTION
IN JUSTICE
CONSERVATION PERMANENTE
À LA JUSTICE

Mandataire
Agent

Renvoi
Cross Reference

DEPARTMENT OF JUSTICE

February 17, 1967.

MEMORANDUM FOR: THE MINISTER

FROM: THE DEPUTY MINISTER

161407

The Secretary of State for External Affairs has written to us to ask whether you concur in a procedure that he is suggesting for the distribution of all funds that it is hoped will be secured from Eastern European Governments in settlement of claims by Canadians arising out of nationalization at the time the Communist regimes took over.

There has been included in the Supplementary Estimates (A) of the fiscal year 1966-67 a vote to authorize the establishment of a special account in the Consolidated Revenue Fund to this end. Mr. Martin has proposed that instead of appointing a special advisor on claims as has been done in the case of Bulgaria, that a commissioner be appointed under the Inquiries Act to look into the claims that are made against the Fund. Under this Act he would have power to summon witnesses as if he were a court of record and this would give to the proceedings a quasi-judicial character. I may say that this was the way in which War Claims were disposed of and I see no objection to it in principle.

I am, therefore, attaching a draft letter to Mr. Martin for your signature indicating your concurrence with the proposal.

E.A.D.

payable to Canada and for their distribution. This new vote is Vote 22a of Supplementary Estimates (A) 1966-67 and reads as follows:

"To authorize the Minister of Finance to establish a special account in the Consolidated Revenue Fund to be known as the "Foreign Claims Fund" to which shall be credited,

(a) notwithstanding Vote 696 of Appropriation Act No. 4, 1952, such part of the money received by him from the Custodian of Enemy

TBS/tstg

DEPARTMENT OF JUSTICE

February 3, 1967.

MEMORANDUM FOR: The Deputy Minister

FROM: T. B. Smith

161407

The Secretary of State for External Affairs has written to the Minister to ask his views on a proposed method of distributing funds that may be secured in settlements with Eastern European Governments.

You will recall that an agreement was entered into with Bulgaria, see file 205397 attached, and that subsequently a vote was obtained and some rules were drawn up for distribution. Chief Justice Campbell is acting as a special adviser. External is attempting to secure agreements with other Eastern European Governments now in respect of claims by Canadian citizens for property nationalized or confiscated by those Governments in the past war period. The settlements will, of course, be lump sum settlements. On the file referred to above, we have given some general advice with respect to the agreements.

Mr. Martin is now concerned with the manner of the distribution of the funds that will be secured. He feels the securing of a special Act of Parliament may unnecessarily delay dealing with the claims and I am certainly inclined to agree with this. He proposes that there be established a claims commission of a quasi-judicial character embodying a system more elaborate than that established in respect of the Bulgarian claims. What he has in mind is something akin to the way in which war claims were dealt with.

You will recall that war claims were distributed by the War Claims Commission which was established under Part I of the Inquiries Act. The moneys were, of course, dealt with pursuant to an item in the Estimates which provided, inter alia, for payment out to claimants and for the establishment of rules for their distribution. Recently, in relation to the Bulgarian claims a new vote was prepared which, in my view, is quite sufficient to provide for the deposit of other moneys that may be payable to Canada and for their distribution. This new vote is Vote 22a of Supplementary Estimates (A) 1966-67 and reads as follows:

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Property under paragraph (a) of that Vote, the proceeds of sale of property under paragraph (b) of that Vote and the earnings of property specified in paragraph (b) thereof, as the Governor in Council directs, and

(b) all amounts received from governments of other countries pursuant to agreements entered into after April 1, 1966 relating to the settlement of Canadian claims,

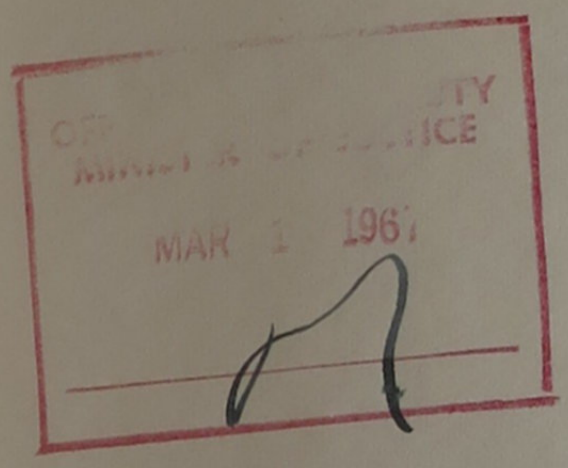
and, notwithstanding section 35 of the Financial Administration Act, to provide for payments of the Foreign Claims Fund in the current and subsequent fiscal years in accordance with regulations of the Governor in Council which regulations may, inter alia, provide for the determination of the nature of claims for compensation that may be made, the persons to whom compensation may be paid, and the manner and time for the submission of claims, the calculation (including any weighted or pro rata distribution) of the amount of the payments by the Minister of Finance and the Secretary of State for External Affairs, and to authorize payment of the expenses incurred in investigating and reporting on such claims."

It seems to me that this legislation will provide a proper framework for the distribution of funds and that all that is required is an Order-in-Council naming a commissioner under the Inquiries Act. In this connection I attach file No. 161407 which contains the documents relating to the establishment of the War Claims Commission. I see no reason why a commissioner cannot be appointed in the same way for the purposes of investigating claims and in respect thereto calling witnesses, etc. He can then advise on the distribution of the fund in accordance with such regulations as have been drafted under the vote. In short, I do not think that the letter to the Minister amounts to very much except to seek his concurrence in the view that the use of the Inquiries Act would be appropriate under the circumstances.

It seems to me that it is entirely appropriate. Indeed, had I been aware of the existence of Vote 22a earlier I am sure we could have disposed of this file much sooner. The Minister makes no reference to anything in his letter about the vote but it seems to me that it is the linchpin of the whole operation, otherwise he would have to think in terms of drafting a new vote.

For your consideration, I am attaching a short memorandum to the Minister and a draft letter which, if you find it suitable, we can arrange to have translated.

T.B.S.



DEPARTMENT OF JUSTICE

February 17, 1967.

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161407

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DEPARTMENT OF JUSTICE

Mr. Smith

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(b) all amounts received from governments of other countries pursuant to agreements entered into after April 1, 1966 relating to the settlement of Canadian claims,

and, notwithstanding section 35 of the Financial Administration Act, to provide for payments of the Foreign Claims Fund in the current and subsequent fiscal years in accordance with regulations of the Governor in Council which regulations may, inter alia, provide for the determination of the nature of claims for compensation that may be made, the persons to whom compensation may be paid, and the manner and time for the submission of claims, the calculation (including any weighted or pro rata distribution) of the amount of the payments by the Minister of Finance and the Secretary of State for External Affairs, and to authorize payment of the expenses incurred in investigating and reporting on such claims."

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For your consideration, I am attaching a short memorandum to the Minister and a draft letter which, if you find it suitable, we can arrange to have translated.

T.B.S.

APPROPRIATION ACT NO. 4, 1952

Vote 696 - To authorize

(a) the Custodian of Enemy Property to transfer to the Minister of Finance such property, including the proceeds and earnings of property, that is vested in the Custodian in respect of World War II as the Governor in Council prescribes,

(b) the Minister of Finance to hold, sell or otherwise administer property received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II, and

(c) the Minister of Finance to establish a special account in the Consolidated Revenue Fund to be known as the War Claims Fund, to which shall be credited all money received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II, the proceeds of sale of property under paragraph (b), the earnings of property specified in paragraph (b) and amounts recovered from persons who have received overpayments in respect of claims arising out of World War II;

and, notwithstanding section 35 of the Financial Administration Act, to provide for payments out of the War Claims Fund in the current and subsequent fiscal years, in accordance with regulations of the Governor in Council, to persons who claim compensation in respect of World War II, for the payment out of the War Claims Fund in the current and subsequent fiscal years of expenses incurred in investigating and reporting on claims of those persons and for the repayment out of the War Claims Fund to Vote 128 (miscellaneous minor and unforeseen expenses) of all amounts that have been paid out of that Vote pursuant to The War Claims Interim Compensation Rules established by Order in Council, P.C. 667 of February 4, 1952 . . . $1

Draft Letter for Translation for Minister's signature

The Honourable Paul Martin, P.C., M.P.,
Secretary of State for External Affairs,
East Block,
Ottawa, Ontario.

My dear Colleague:

I have arranged for my officers to give consideration to the proposal that you made in your letter to me of December 6, 1966 on the disposition of funds that may be secured through settlements with certain Eastern European Governments. It is my understanding that you wish to establish machinery of a quasi-judicial nature that can be used as settlements are secured for the distribution to claimants of the funds thereby made available.

As I understand it, what you propose is a system similar to that in effect in relation to war claims; that is, the establishment of a special account in the Consolidated Revenue Fund, the making of regulations for the payment out of amounts in the account and the appointment of a commissioner under Part I of the Inquiries Act to advise on such payments. The commissioner would, of course, have power under the Inquiries Act to summon witnesses and hear evidence under oath and to enforce attendance in the same way as a court of record in civil cases. In carrying out his commission he would, of course, be guided by the instructions contained therein and by the regulations established pursuant to the vote establishing the fund. This would give the system a quasi-judicial aspect and would not involve the securing of special legislation that might result in delay.

In the light of the fact that there has already been included with the Supplementary Estimates (A) for the current fiscal year a vote, No. 22a, which authorizes the establishment of a Foreign Claims Fund and the making of regulations for payment out of the fund, it would appear to me that the only further step required when moneys are available for distribution is the appointment of a commissioner. I see no objection to this manner of proceeding, particularly in the light of the precedent that we have in relation to war claims. I should be glad to arrange to provide your Department with any assistance that it is felt this Department can furnish in this connection.

Sincerely,

MER:dg

December 31st, 1957.

MEMORANDUM FOR THE MINISTER OF JUSTICE:

Jacques Panneton and Ronald Halpin, Barristers and Solicitors in Montreal have forwarded to you a lengthy memorandum dealing with war claims by missionaries and religious corporations. Mr. Panneton has suggested the importance of giving immediate attention to this matter in view of "tens of thousands of members of these corporations and the tremendous influence they have throughout the country".

One of my legal officers has examined the Memorandum carefully and has discussed the question with Mr. Theriault, Secretary to the War Claims Commission in an endeavour to obtain sufficient information for you to determine whether or not you wish to grant an interview to Mr. Panneton, as he has requested.

The following is a brief summary of the position.

1. The memorandum complains about:

   (i) unfair and iniquitable treatment of religious corporations by the War Claims Commission,

   (ii) failure of previous Government or of the Commission to adopt a code of rules and procedure,

   (iii) failure of the previous Government and of the Commission to make special rules in favour of the religious corporations,

   (iv) failure of War Claims Commission to reply to a memorandum previously submitted to the Commission,

   failure of Commission to advise one religious corporation in one case that it should make its claim direct to the Japanese Government in accordance with the treaty with Japan.

In addition, the religious corporations complain about the extent of reduction of their claims by the War Claims Commission and demand that a special board should be named "in order to revise each and every case" to ascertain losses to individuals and to make special rules.

My legal officer has discussed this matter with Mr. Theriault, Secretary to the War Claims Commission and more briefly with Mr. Batt, Legal Adviser to the War Claims Commission. It

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CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO FILE NO. G-12

DEPARTMENT OF JUSTICE
JUL 20 1951
CANADA

Victoria Bldg., 7 O'Connor St.,
Ottawa 4, Ontario
July 19, 1951

F. P. Varcoe, Esq., K.C.,
Deputy Minister of Justice,
Department of Justice,
Ottawa 4, Ontario

161407

Re: War Claims Commission
Your File No. 161407

Dear Mr. Varcoe:

Please refer to your letter of the 18th instant, attaching a draft of the Order in Council. From the point of view of the Custodian, the draft is satisfactory. Mr. Napier, however, has asked me to point out that in 1 (b) the words "for which no provision for compensation is otherwise made" should be deleted, as provision for compensation is sometimes unenforceable. Mr. Napier regrets that he omitted to comment on this when he was with you yesterday afternoon.

Copies of the draft have been circulated among the Departments concerned.

Yours very truly,

K. W. WRIGHT
CHIEF COUNSEL

KWW/JF

Mr. Olmsted

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

DEPARTMENT OF JUSTICE
JUL 20 1951
CANADA

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO

FILE No. G-12

Ottawa, July 19, 1951

MEMORANDUM FOR MR. F. P. VARCOE, C.M.G., K.C.

RE: War Claims

I attach Mr. Napier's memorandum to you which deals with the matter of source of funds to be used as reparations as well as possible amendments to The Trading with the Enemy (Transitional Powers) Act, 1947. Mr. Napier suggests that I give an opinion on the latter which is covered by Part II of his memo.

In my view, existing legislation empowers the Custodian to liquidate enemy assets. I rely on Regulations 6 (1) and 38 (1) in the Schedule to the above Act rather than Regulation 39 referred to by Mr. Napier.

Regulation 6 (1) reads as follows:

"6 (1) The Secretary of State is hereby appointed to receive, hold, manage, release, dispose of and otherwise deal with all property which is reported to him, received or controlled by him or vested in him under or by virtue of these Regulations, and he is hereafter referred to as "the Custodian".

Regulation 38 (1) reads as follows:

"38 (1) The Custodian may, where he considers it advisable to do so, sell, liquidate or otherwise dispose of any property vested in him and shall deal with the proceeds of such property in the same manner as he may deal with moneys paid to him under these Regulations".

As pointed out by Mr. Napier, Cabinet approved liquidation of German and Japanese assets at a meeting which took place on the 15th ultimo.

As to disposition of proceeds of liquidation it appears that legislation is necessary.

A memorandum of the Secretary of State, dated March 27, 1950, on the subject of war claims and belligerent enemy assets, was placed before Cabinet shortly after that date and the following paragraph appears therein:

"Special authority to use the proceeds of liquidation of enemy property for the payment of war claims is required because under the Trading with the

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FILE No.....

Enemy Regulations, as construed by the Deputy Minister of Justice, the release of the property or the proceeds of its liquidation can only be made to the former owner".

I also wish to refer to the decision of President Thorson in Nakashima v. The King (1947) Ex. C.R. 486 and quote the following passages from the decision:

Page 495 - "Furthermore, the Custodian is given full control over his own funds. By section 42 he may deposit moneys paid to or received by him in any bank. They are not paid in to the Consolidated Revenue...He is not dependent at all for the administration of the regulations on any appropriations by Parliament. These references to the regulations sufficiently show the independence with which the law has endowed the Custodian. It is true that he is subject to control by the Governor in Council, but such control is not executive but of a legislative nature of the same kind as that which Parliament itself might exercise, which is a very different thing from the control which the Crown, meaning thereby His Majesty acting on advice in his executive capacity, exercises over its servants".

Page 496 - "It seems clear to me, in view of the wide discretionary powers of the Custodian over the property vested in him, his freedom from governmental control in the management of his office and the appointment and remuneration of members of his staff, and his complete control over his funds and their expenditure, that it was intended by the Consolidated Regulations that the Custodian should not be a servant or agent of the Crown but an independent person. It was important and proper that this should be so in order that the properties vested in him should be held by him neither for the former owners nor for the Crown but independently in a state of suspense until their final disposition should be determined pursuant to appropriate legislative enactment in the light of the turn of events on the conclusion of the emergency that made their vesting necessary or advisable".

For purpose of convenience, I attach copy of Mr. Jackett's opinion under date of May 5, 1947.

K. W. WRIGHT
CHIEF COUNSEL

KWW/JF
Encl.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO

FILE No.....

AN:PF

WAR CLAIMS BRANCH

Victoria Building,
7 O'Connor Street,
Ottawa, Ontario.

July 19, 1951.

MEMORANDUM FOR MR. F.P. VARCOE, C.M.G., K.C.

In accordance with your request I am submitting a memorandum on the sources of funds to be used as reparations as well as on the advisability of legislation to amend the Trading with the Enemy (Transitional Powers) Act, 1947. As I explained to you this latter matter is one on which Mr. Wright, rather than myself, is qualified to give an opinion and I accordingly will consult him.

1. Sources of Funds to be used as Reparation.

The reparations concerned in the figure of $10,000,000., which I mentioned, are from German and Japanese sources. There is a slight possibility that assets of Hungarian and Roumanian origin, sequestrated in Canada, may become available as reparation, but this matter need not be considered at the moment.

(a) Germany.

German reparations are dealt with by the Paris Agreement on German Reparation, signed in January, 1946, which established the Inter Allied Reparation Agency in Brussels. The function of the agency is to ensure an equitable distribution in accordance with the provisions of the Paris Agreement, of the total assets which are or may be declared available as reparations from Germany, among the 19 Member Nations entitled to reparation to compensate in some measure for the loss and suffering caused by Germany. The chief forms of reparation, made available to date, are industrial capital equipment, German external assets, merchant shipping and captured enemy supplies. Canada signed the said Agreement and is accordingly one of the 19 Member Nations. I understand that the said Agreement has been approved by a resolution of the Canadian Parliament. Your attention in particular is drawn to Article 2 of the said Agreement dealing with the settlement of claims against Germany, as well as to Article 6 of the said Agreement dealing with German external assets; the latter, inter alia, in effect provides for the disposition of German enemy assets held by the Custodian in Canada.

No firm estimate can be given as to the total amount which may ultimately become available as reparation from the proceeds of liquidation of German enemy assets held by the Custodian; it is believed, however, that the minimum figure is about $4,500,000., and the maximum figure about $8,500,000.

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The Department of Finance at the moment holds approximately $2,000,000., or the equivalent thereof in foreign currencies, received by Canada by way of further reparations under the said Agreement. Many of these foreign currencies are inconvertible. Part of the $2,000,000., represent the proceeds of sale of German merchant shipping, which was allocated to Canada. The remainder comprises Canada's share of the proceeds of sale of German external assets in various countries such as Italy, Japan and Spain. Canada is heavily underdrawn on German Reparation account, and it is hoped that further sums will be allocated to Canada by the Inter Allied Reparation Agency, notably by liquidation of German external assets in Switzerland, as well as possibly in Portugal and Turkey.

(b) Japan.

According to the draft Treaty of Peace with Japan all the Allied Powers concerned are in agreement that Japan should lose all her external assets in Allied countries, with very minor exceptions, and this, of course, also applies to the assets of Japanese nationals residing outside the Allied country concerned. The Custodian holds approximately $3,500,000., of such assets.

Japanese external assets in neutral and ex-enemy countries are to be turned over to the International Red Cross for the benefit of those members of the armed forces of the Allied Powers who suffered undue hardships while Prisoners of War of the Japanese. It is hoped that Canada may receive something from this source, but it is unlikely to amount to very much. There is little prospect of any reparations, other than as above mentioned, being received from Japan.

It should be noticed incidentally that the U.S. Government has not waited for the ratification of the Treaty of Peace with Japan, but has taken unilateral action to liquidate Japanese assets in the U.S. and to pay them into a War Claims Fund. Similar treatment was also meted out to German assets in the U.S. (please see section 12 of the War Claims Act of 1948).

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2. Legislation to Amend the Trading with the Enemy (Transitional Powers) Act, 1947.

The question here is whether or not legislation is necessary in Canada to enable the Custodian to liquidate German and Japanese assets and, if necessary, to pay

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CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

WAR CLAIMS BRANCH

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE
PLEASE REFER TO
FILE No.....

AN:PF

3/

July 19, 1951.

the proceeds of the liquidation to the Department of Finance to be held on reparations account. On this subject I have from time to time heard conflicting views. My own view, for what it is worth, is that such legislation is not strictly necessary in view of the wording of section 39 of the Trading with the Enemy (Transitional Powers) Act, 1947. I would, however, suggest that amending legislation is desirable in order to avoid argument and litigation. Perhaps something on the lines of section 12 of the U.S. War Claims Act of 1948 might be suitable for Canada.

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3. In conclusion I ought perhaps to point out that, at their meeting held on June 15th. last, Cabinet approved the appointment of a War Claims Commissioner as well as the liquidation of German and Japanese assets held by the Custodian.

The Department of Finance is in agreement that Canada's share of reparations should be used towards the satisfaction of war claims; the Canadian Government is prepared to give up any claim to these reparations on account of the general cost of the war, subject to certain small Government claims being considered by the Commission for compensation.

Alastair Napier

A. Napier,
Director,
War Claims Branch.

July 12,1951.

Strictly Confidential

Memo re War Claims

I spent July 10th and 11th with Mr.Napier,discussing this matter. Mr.Napier was most helpful and informative and appears to have a complete grasp of the subject, which was entirely new to me.

In case it should be of any assistance I have made some brief notes of matters touched on in my discussions with Mr.Napier. These are not arranged in order of relative importance.

I have formed the opinion that the proposed investigation will require considerably more than the estimated period of two months although I am not in a position to make an accurate or even approximate estimate of the probable time required.

This may appear surprising when the objects of the inquiry can be so briefly stated, being to inquire and report:-

a) What classes of claims and claimants should be admitted for compensation?

b) What priorities, if any, should be established for various types of claims?

c) What nature of tribunal or tribunals should be set up to adjudicate on individual claims?

d) To formulate rules of procedure and evidence to govern the proceedings of such tribunals.

I find that a commission set up for similar purposes in the United States was sworn in on September 14th, 1949, but but was able to make only an incomplete interim report by March 31st,1950, and hopes to make a further report in October. While, of course, the volume of claims in the United States will very greatly exceed that in Canada the problems facing this country will be similar and indeed the United States commission

did not attempt to formulate rules as required in (d) above.

The following are only some of the matters with which it would seem necessary for the commission to deal either in the report or proposed rules:-

1. A consideration of the number of claimants and the total amount of claims.
2. Classification of the claims, e.g.,for death, for personal injuries, for property.
3. The sources and approximate amounts of money available for claims.
4. Whether all this money will be regarded as one pool or whether e.g.,claims for damage caused by Germany shall have exclusive right to payment out of the funds coming from German sources.
5. Whether the funds available are likely to be sufficient to meet all claims which are ultimately established.
6. If not,the priorities to be established.
7. Whether ceilings should be provided.
8. What claimants shall be recognized? e.g. Must claimant be of Canadian nationality and/or Canadian domicile at time of loss? Would such a claimant lose right to claim if after the loss he has abandoned his Canadian nationality and/or domicile. Would acquiring Canadian nationality and/or domicile after loss give any right to claim?
9. The solution of question 8 may require some investigation as to practice in other countries, e.g., the United Kingdom has made partial compensation to some Canadians for losses of property on the "Athenia", in Thailand and in Malaya. After obtaining such information the question

of reciprocal treatment should be considered. France, Belgium and the Netherlands are in some cases acknowledging claims by Canadians. It may be necessary to inquire as to this also. Similarly the action of the United States as to Canadian claims may require study.

10. The claims of veterans may necessitate the obtaining of considerable details from D.V.A.files. That department has asked that veterans receive no less favourable treatment than after World War I when claims of varying amounts were allowed to those who could shew disability still existing from maltreatment while prisoners of war. The approximate cost of accepting this view must be calculated.

11. The manner of calculating the amount of claims for death should be set out. The laws of the provinces are not entirely uniform and it would seem that the rules should cover this comprehensively. After World War I the decisions on this were not uniform.

12. Corporation claims - What companies shall be deemed Canadian, e.g., If more than 50% of shares are held by Canadian nationals? e.g., foreign subsidiaries of Canadian companies such as Alcan and Massey-Harris?

13. The method of valuing ships and buildings that were destroyed e.g. replacement cost at time of loss, less depreciation or market value at time of loss, or some other method.

14. The question of interest on claims.

15. The effect of insurance or the lack of insurance.

16. The claims of insurance companies for subrogation.

17. Will claims for intangibles be entertained e.g., bank accounts liquidated by enemy?

18. Such questions as where goods were seized by enemny just after title had passed from the Canadian shipper to a foreign purchaser?

19. The effect, if any, on claims where war damaged property was subsequently nationalized without compensation? e.g.,Bata factory in Czecko-Slovakia; Alcan subsidiary plant in Isteria.

20. Whether claims for Sino-Jap "incident" admissible.

21. The complications arising from claims in foreign currencies.

22. The complications where claimant has a possible, but improbable, source of payment by claims against enemy country e.g.,Italy-particularly where such payment if obtained would be in inconvertible foreign currency.

23. Consideration must be given to the right of classes of claimants to be heard by counsel or to submit briefs. It seems to me that no group should be finally excluded by the report or rules or given a position on the priority list which may result in receipt of only a fraction of its established claim without having been given the right to be heard if this is practicable.

24. The date for filing claims and the power, if any, to grant extension in special cases.

25. The number and type of tribunals to adjudicate individual claims.

26. The rules of evidence before such tribunals,obviously the strict legal rules of evidence should be relaxed.

appears that

(a) The claims by these religious corporations are tremendously inflated. If they were given special preference instead of being paid according to the rules presently adopted in respect of other claims, the result would be to reduce the amount available for payment of claims in a second category.

(b) There can be no question of prejudice since the claims were heard in the first instance by French Catholic or Catholic Deputy Commissioners or Judges. When the claims were therefore not approved, the religious corporations had had the advantage of the most favourable possible consideration.

(c) The religious corporations have the opportunity of making further submissions which will be considered by the Commissioner. The claimants have therefore not availed themselves of all possible opportunities to present their case and it is perhaps improper to assume that any submissions they might make would necessarily be rejected by the Commissioner.

The Commission reports to the Secretary of State, who is responsible for administering the War Claims Regulations which were established by P.C. 4267 of 9 October, 1952 pursuant to Vote 696 of The Appropriation Act, No. 4, 1952. The same Vote authorizes the Minister of Finance to exercise certain powers in respect of payments out of the War Claims Fund. I assume that you would not wish to receive delegations with respect to matters falling within the jurisdiction of two other Ministers and which have no relation to matters within the jurisdiction of this Department.

I understand, however, that Mr. Panneton has interviewed both Mr. Balcer and Mr. Comtois with reference to this same matter. The attached draft letter notes that you will be glad to discuss the matter with these colleagues of yours.

The War Claims Commission has requested through Mr. Batt, Advisory Counsel to the War Claims Commission, a copy of the memorandum submitted by these religious corporations. I assume that you have no objection to providing such a copy and draft letter to the Commissioner of the War Claims Commission is therefore attached, as well as draft reply for Mr. Panneton.

W. R. J.

27. The right of appeal, if any, from decisions on individual claims and to what forum such appeal should lie.

The above are some only of the points that occur to me after a comparatively brief discussion. The problem appears to me to be an intricate one presenting many unusual features and not lending itself to quick or easy solution.

J.R.C.

MER:dg

BY HAND

4, December 19, 1957.

MEMORANDUM FOR MR. RICHER:

As mentioned to you over the telephone, the Minister of Justice has received from Mr. Jacques Panneton a request for an interview with reference to war claims by religious corporations.

I have discussed this matter with Mr. Theriault, Secretary to the War Claims Commission. Mr. Theriault is quite familiar with the whole situation. My understanding is that:

(a) The claims by these religious corporations are tremendously inflated. If they were given special preference instead of being paid according to the rules presently adopted in respect of other claims, the result would be to reduce the amount available for payment of claims in a second category.

(b) There can be no question of prejudice since the claims were heard in the first instance by French Catholic Deputy Commissioners or Judges. When the claims were therefore not approved, the religious corporations had had the advantage of the most favourable possible consideration.

(c) The religious corporations have the opportunity of making further submissions which will be considered by the Commissioner. The claimants have therefore not availed themselves of all possible opportunities to present their case and it is perhaps improper to assume that any submissions they might make would necessarily be rejected by the Commissioner.

I understand that the Commission reports to the Secretary of State. I further understand that the War Claims Fund itself is a trust fund which is, administratively, the responsibility of the Minister of Finance who is accountable to the Auditor-General and to Parliament for the expenditure of the Fund. The Minister of Finance has the task and duty to protect the Fund in order that all payments to claimants will be made on the basis of the same principles. The Minister of Finance also has to satisfy Parliament and therefore must make certain that the payments conform to the Regulations. The question arises as to whether it might not be embarrassing for the Minister of Justice to be receiving delegations in respect of a matter which does not directly concern this department but does concern the

Ministers of two other departments.

In addition, the problem would, of course, arise as to whether or not the present Government was prepared to change the War Claims Regulations in order to give a preferential position to these religious corporations when the previous Government evidently considered it unwise or undesirable to do so. Such a preferential position would, of course, mean that claims by other Canadians would not be able to be satisfied.

Since I understand that your own Minister has already seen Mr. Panneton, Mr. Theriault thought that it might be of assistance to Mr. Fulton to be aware of the general attitude which Mr. Comtois proposes to take on the matter.

My telephone number is 2-2391. I should appreciate it if you could telephone me at your earliest convenience.

Marguerite E. Ritchie.

MER:dg

December 30
December 18, 1957.

MEMORANDUM FOR THE DEPUTY MINISTER:

161407
Re: War Claims Commission -
War Claims by Religious Corporations.

This is a memorandum transmitted to the Minister of Justice by Jacques Panneton with reference to war claims by religious corporations. Mr. Pyper has requested you to return a draft reply for the Minister's signature, and he has also added the note:

" Would we have anything to do with this - or is it only the War Claims Commission?"

Our file 161407 (attached) indicates that this Department has only been concerned with such questions as the appointment of the Commissioners, (presumably on the basis that these appointments were essentially of a judicial nature) and the drafting of various orders in council and submissions to council. The Commissioners themselves have been appointed by order in council under Part I of the Inquiries Act (R.S.C. 1927, Chapter 99; now R.S.C. 1952, Chapter 154) which empowers the Governor in Council "whenever he deems it expedient" to cause "inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof." I have tabbed on the file, P.C. 3951 of 31st July, 1951 which, on the recommendation of the Secretary of State, authorized the appointment of the Honourable J.L. Ilsley to be a commissioner to inquire into and report upon these matters.

I have also tabbed P.C. 4267 of 9 October, 1952 by which the Governor General in Council pursuant to Vote 696 of the Appropriation Act, No. 4, 1952, made the annexed War Claims Regulations which, inter alia, set out the basis upon which all claims would be considered.

The present Memorandum submitted in support of the war claims by the missionaries and religious corporations complains:

1. About the rules adopted in P.C. 4267 by which

> "....all decisions and recommendations have been left entirely to the discretion of the Commissioner or sub-Commissioner, even of the employees, to interpret as best they could or would the suggestions of the report of the Advisory Commission...",

...2

instead of following the recommendation of the Advisory Commission and setting up a Code defining the war claims that were admissible and settling the basis upon which the compensation was to be determined (p. 4 of Brief).

2. About the failure to establish "special rules" in favour of charitable associations of a clearly Canadian character (p. 5 and 9 of Brief).

3. About injustices by the War Claims Commission in the treatment of claims by the religious corporations and distinction between award to one Catholic religious community and to another (p. 8-9).

4. About the failure of the Commissioner in Chief or the War Claims Commission to render a decision on a memorandum submitted by these organizations (p. 14).

5. The fact that a religious organization failed within the prescribed time to file a claim directly with the Japanese Government in accordance with the treaty between Canada and Japan, as a result of actions by Officers of the Commission leading the claimants to believe that such claims were properly filed with the Commission (p. 10-11 of Brief).

6. Decisions by officers and employees of War Claims Commission which are "what they want, when they want and how they want depending mostly on their good or bad will and on the amount claimed" (p. 14 of Brief).

7. "Bad faith and iniquity" as a consequence of the policy followed by the Commission. Cites acceptance of declaration of a witness whom the applicants have not heard (p. 15 of Brief).

8. Reversal by the Commission of certain awards to religious communities "in the face of the many claims /i.e., as a result of the many claims/ to come for damages sustained in similar cases by so many people" (p. 17 of Brief).

8. Denial of claims for injuries suffered as a result of detention, "because among other reasons, there was no medical proof to establish the relation of cause to effect between said internment and the injuries of which the claimants were complaining (p. 18 of Brief).

...3...

The Memorandum concludes by submitting

"...that a special Board be named in order to revise each and every case so that after taking cognizance of the damages suffered by Canadian subjects

'Guided by justice, equity and good faith'.

'Special rules will have to be made'.

'To ascertain the losses to individuals 'arising out of world of the war for which 'compensation is to be paid'."

I have discussed this matter with Mr. Theriault, Secretary to the War Claims Commission, and with the associate counsel, Mr. R.J. Batt. Copy of the present Memorandum has not been submitted to the War Claims Commission. The attitude taken by Mr. Theriault was that:

(a) The claims by these religious corporations are tremendously inflated. If they were given special preference instead of being paid according to the rules presently adopted in respect of other claims, the result would be to reduce the amount available for payment of other claims.

(b) There can be no question of prejudice since the claims were heard in the first instance by French Catholic Deputy Commissioners or judges. When the claims were therefore not approved, they had had the advantage of the most favourable possible consideration.

(c) The War Claims Fund itself is a trust fund which is, administratively, the responsibility of the Minister of Finance who is accountable to the Auditor-General and to Parliament for the expenditure of the Fund. The Minister of Finance has the task and duty to protect the Fund in order that all payments to claimants would be based on principles of equality. He has to satisfy Parliament and the Auditor-General and therefore has to make absolutely certain that the payments conform to the Regulations. Mr. Theriault notes that the Auditor-General has in fact on some ocassions referred the claims back to the Commission for additional consideration.

(d) The War Claims Commission reports to the Secretary of State. She was advised some time ago that because of the undue pressure being exercised in the present case, these claims were being put at

...4...

the foot of the list by the Commission. She did not object. Mr. Theriault informs me that similar pressure was exerted on the previous Government without success.

(e) The proper place for this solicitor to deliver his objection is to the War Claims Commission. The procedure followed is that an initial report is forwarded to the claimant in order that if he feels aggrieved by the report, he can then file a written argument to support his appeal before the final review of the Chief Commissioner. Although appeals have been filed in respect of some claims by these corporations and in others they have disclosed their intention of appealing, the present document has not been forwarded to the Commission.

The view might be taken that it is highly improper for an attempt to be made to influence the eventual outcome of the matter in this indirect way. If the War Claims Commission were a court, the matter would be sub judice and this procedure would really amount to contempt of court.

I understand that Mr. Panneton has already seen Mr. Balcer and Mr. Comtois. At the suggestion of Mr. Theriault I have discussed the matter with the executive assistant of both Mr. Balcer and Mr. Comtois but ~~they~~ the latter Ministers do not appear to have formed any firm opinion as to the matter.

The question really resolves itself into one of whether it is proper for the Minister to receive delegations in respect of matters which fall outside his jurisdiction and which do fall within the jurisdiction of one or more other Ministers of the same Government. Except for the fact that Mr. Balcer and Mr. Comtois have already received oral representations on this matter, I assume Mr. Fulton would not wish to be placed in the position of receiving representations from private persons about a matter falling within the jurisdiction of another Minister. The attached draft letter is drafted on this assumption. The Memorandum for the Minister which is attached hereto for your consideration draws his attention very briefly to the matters which are set out in more detail above. You may or may not feel, after considering it, that anything further should be added to it.

M.E.R.

MER:dg

December 18, 1957.

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the foot of the list by the Commission. She did not object. Mr. Theriault informs me that similar pressure was exerted on the previous Government without success.

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I understand that Mr. Panneton has already seen Mr. Balcer and Mr. Comtois. At the suggestion of Mr. Theriault I have discussed the matter with the executive assistant of both Mr. Balcer and Mr. Comtois but they do not appear to have formed any firm opinion as to the matter.

The question really resolves itself into one of whether it is proper for the Minister to receive delegations in respect of matters which fall outside his jurisdiction and which do fall within the jurisdiction of one or more other Ministers of the same Government. Except for the fact that Mr. Balcer and Mr. Comtois have already received oral representations on this matter, I assume Mr. Fulton would not wish to be placed in the position of receiving representations from private persons about a matter falling within the jurisdiction of another Minister. The attached draft letter is drafted on this assumption. The Memorandum for the Minister which is attached hereto for your consideration draws his attention very briefly to the matters which are set out in more detail above. You may or may not feel, after considering it, that anything further should be added to it.

M.E.R.

P.C. 4354

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 23rd October, 1952.

The Committee of the Privy Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, advise as follows:

(1) That, under and in pursuance of Part I of the Inquiries Act, a Commission do issue appointing the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, to be a Commissioner (to be called the Chief War Claims Commissioner) to inquire into and report upon claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims;

(2) That the said Commissioner inquire into all particular claims on the War Claims Fund that may be referred to him, and that he report in respect of each such claim to the Secretary of State stating whether in his opinion the claimant or other person is eligible under the rules referred to in section three of the War Claims Regulations established by Order in Council P.C. 4267 of 9th October 1952 to receive a payment out of the War Claims Fund, together with the reasons for his opinion and his recommendation as to the amount that in his opinion should be paid in respect of each such claim;

(3) That the said Commissioner be the Advisory Commissioner on Claims under the Treaty of Peace with Italy to inquire into and make reports and recommendations to the Minister of Finance concerning the matters specified in the War Claims (Italy) Settlement Regulations pursuant to the provisions thereof;

(4) That additional Commissioners be appointed pursuant to the Inquiries Act as may be required to inquire into and report upon such claims, and that the Chief War Claims Commissioner and the said Commissioners be known as the War Claims Commission, over which the Chief War Claims Commissioner shall preside.

(5) That the Chief War Claims Commissioner engage the services of

(a) a Secretary and such accountants, engineers, technical advisers or other experts, clerks, reporters and other assistants as he deems necessary or advisable, those persons to be seconded from the staffs of the various departments and agencies of the Government of Canada without expense to the said departments and agencies, and

(b) such other clerical assistants as he deems necessary or advisable,

and that they be paid such remuneration as the Chief War Claims Commissioner, with the approval of the Treasury Board prescribes;

(6) That all departments and agencies of the Government of Canada furnish such assistance or information as may be required by the Commission;

(7) That the Chief War Claims Commissioner be paid his actual travelling and living expenses while absent from his place of residence, for which accounts shall be submitted;

(8) That the expenses incurred under this order be paid out of the War Claims Fund.

J. W. Pickersgill,
Clerk of the Privy Council.

DHWH/TC

Ottawa, October 20, 1953.

MEMORANDUM TO MR. JACKETT:

Re: War Claims Fund.

This is a matter which Mr. Varcoe might want to consider upon his return.

Under the War Claims Rules the Government of Canada may claim against the War Claims Fund in respect of amounts paid to government officers to compensate them for loss of property during the war where the officer himself has a claim or could claim against the Fund in respect of the same loss.

There are, apparently, some fifty-seven possible claims of this nature. In eighteen of these cases the officer himself, apparently, intends to make a claim and his evidence would, I think, furnish the basis also for the Government's claim. In the other cases the evidence will have to be submitted by the Government.

The question is whether the Crown should be represented by counsel and Mr. Samuels suggests, after having discussed the matter with the Chief Commissioner, Mr. Francis and Commission Counsel, that the matter might most appropriately be handled by an administrative officer. He tells me that he expects that if this is done Mr. Hart Clark would be the officer who would submit the necessary evidence on behalf of the Crown.

As I understand it, the Department of Finance is not necessarily asking for legal assistance and would, I believe, be quite willing to submit the claims through an administrative officer.

I am inclined to think that Mr. Varcoe will take the position that the Department of Finance should decide whether it wishes to be represented by counsel. It might, however, informally be suggested that as the claims are submitted, if any situation arises in which the officers presenting the Crown's claim think they require legal assistance, they could, if necessary, refer the matter either to Mr. Samuels or to an officer here designated by Mr. Varcoe and a decision could then be made whether it is necessary for counsel to attend.

I...

I do not know what is the average size of claim but I am reasonably sure that a good many of the claims will be at least in the neighbourhood of one or two thousand dollars. I doubt if this is the kind of case in which we would wish to retain counsel outside the Department and the volume is probably too much for any officer within the Department.

Would you be inclined to leave the decision to the Department of Finance as to the particular instances in which they should obtain legal assistance?

D.H.W.H.

SS/T

October 19, 1953

MEMORANDUM TO MR. F.P. VARCOE

Re: War Claims Fund

The Government of Canada has certain claims against the War Claims Fund and the appropriate officers of the Department of Finance wish to know, as they are Government of Canada claims, whether the Department of Justice should

(a) deal with them,
(b) allow the Department of Finance exclusively to deal with them, or
(c) allow the Department of Finance to deal with them and keep the Department of Justice informed.

The claims with which the Department of Finance is presently concerned are those claims where the Government of Canada, prior to the time the War Claims Fund was set up, paid Crown employees for property losses suffered by those employees who, because of World War II, were compelled to leave behind their belongings when evacuating the country or lost them in transit to other posts in Canada or abroad.

As you know, Chief Justice Ilsley made certain recommendations with respect to the War Claims Fund and these recommendations were approved by the Governor in Council and have been put into operation and the claims are being considered by the War Claims Commission under Chief Justice Thane Campbell.

Chief Justice Ilsley in his report on page 71 speaking of claims by the Government of Canada said as follows:

> "While I am prepared to recommend that the Government of Canada should forego any claim on the War Claims Fund for any part of the general costs of the war, there are certain Government of Canada claims which, in my view, should rank as property claims. These claims are claims by Federal Government departments in respect of property of a non-military nature, such as office furniture and fittings of the Departments of Trade and Commerce, External Affairs, Citizenship and Immigration, National Revenue, National Health and Welfare, and the Public Archives lost or damaged during the war, or banking accounts of Government departments seized during the war and not returned after the war. The Government of Canada should be subject to the same priorities as other property claimants, and be treated as one claimant except where it claims reimbursement of amounts which it has paid out of sources other than the Fund to persons who could have claimed such amounts from the Fund. Where the Government of Canada has already

paid a person out of sources other than the War Claims Fund any amount for which that person could have ranked against the Fund either for property losses or for losses from death or personal injuries the Government should be entitled to claim this amount against the War Claims Fund and have the same priorities in each case that the person paid would have had if he had not been paid and had claimed against the Fund."

As I indicated above, the only claims with which the Department of Finance is concerned in the present instance are those cases where the Government of Canada can claim reimbursement of amounts which it has paid out of sources other than the War Claims Fund to persons who could now claim such amounts from the War Claims Fund.

Order in Council P.C. 6/1450 of February 24, 1942 was passed pursuant to the War Measures Act and provided a means whereby employees of the Government of Canada who were stationed at posts on the Continent of Europe and were compelled to leave all or part of their belongings when they left their posts in 1939 and 1940 could claim, inter alia,

(a) compensation for loss of use of clothing up to a certain amount,
(b) annual compensation for loss of use of furniture and household effects until the employee's belongings were recovered or their permanent loss established,
(c) an annual grant of $100 for not more than three years for loss of use of private automobiles, and
(d) in addition capital compensation when it was established that the belongings of a person had been permanently lost whether by theft, destruction, complete deterioration or otherwise.

N.B. Employees at posts other than posts on the Continent of Europe who suffered losses received awards pursuant to individual Orders in Council subject to the same conditions as applied to awards made under P.C. 6/1450 of February 24, 1942.

In all cases, I understand, each claimant was required to file with the department of which he was an employee an itemized list of the articles covered by the claim, the approximate year the goods were purchased, and the purchase price in Canadian dollars of the articles and these matters had to be supported by an affidavit. These are the claims, I understand, to which Chief Justice Ilsley referred ~~to~~ in his report, the relevant portion of which I quoted above.

I understand that when a claim was made by an employee pursuant to the abovementioned Order in Council or one dealt with apart therefrom, the evidence in support of the claim was submitted to Treasury Board and it was the Board, I understand, that decided whether the evidence was sufficient and if so, payment was authorized by the Board following which payment was actually made to the employee. In some cases an employee was fully compensated for his loss while in other cases he was not. These are all claims which could now be dealt with by the War Claims Commission and payment could be made out of the War Claims Fund. The Government of Canada is, of course,

interested in being reimbursed in respect of the moneys paid out. Some of the employees who were paid pursuant to Orders in Council will of their own motion claim against the Fund while others who feel they have already been fully compensated will not make a claim against the War Claims Fund. In other words, there appears to be two general classes of cases -

(a) where employees have been fully compensated and are probably, therefore, not interested in making any claim against the War Claims Fund, and

(b) where employees have not been fully compensated and will probably, therefore, make a claim against the War Claims Fund in the hope that they will be paid sufficient to fully compensate them for their loss.

In the cases where the employees will make no claim against the War Claims Fund the Government of Canada will, I believe, make the claim itself and submit to the War Claims Commission whatever evidence was before the Treasury Board when it considered the claim. In addition, the employee himself could be subponead or required to submit documentary evidence or other means could be employed to obtain further evidence. None of these types of cases will be submitted, however, to the War Claims Commission until December 31, 1953 because, I understand, that is the date after which persons who suffered property losses can make no claim against the War Claims Fund. I have discussed this phase of the matter with Chief Justice Thane Campbell and he feels that if the Government of Canada makes its claims on December 31st, that that would be satisfactory. At that time we will know which claims have not been pursued by the employees. Eighteen out of a known possible fifty-seven have submitted claims up to the present time.

With respect to those matters where the employees themselves feel they have not been fully compensated and make a claim against the War Claims Fund, it is felt that the Government of Canada should be represented because it is interested in being reimbursed in respect of any amount that has been paid to the employee pursuant to an Order in Council. In these types of cases, whoever appears on behalf of the Government of Canada could see that all available evidence is submitted in support of the claim and such steps could be taken as is considered necessary to obtain any further evidence before the claim is heard. As far as I know, there has been only one case where an employee who received some compensation under an Order in Council has had his claim against the War Claims Fund heard and in that case the Government of Canada was not represented and the employee had not submitted evidence to satisfy the Deputy Commissioner and the hearing was adjourned sine die. The Government of Canada was not notified that this hearing was going to be held and it had no knowledge of it until after the hearing had taken place. I have discussed this phase of the matter also with Chief Justice Campbell and with the Secretary to the War Claims Commission and have arranged for the Secretary to notify the Department of Finance in sufficient time so that the Government of Canada may be represented at any hearing.

The real question for your consideration seems to be whether the Government of Canada should be represented at the hearings in both types of cases by legal counsel. I discussed this point with Chief Justice Campbell, Mr. Francis, Deputy Commissioner, Mr. Batt, Counsel to the Commission, and Mr. Theriault, Secretary to the War Claims Commission. The view

seems to be that it would not be necessary for the Government of Canada to be represented by legal counsel and in fact Chief Justice Campbell expressed the view that it would be preferable if legal counsel were not present. The Commission operates in a very informal way and the ordinary rules of procedure and evidence applicable in courts of law are not always followed. The Commission attempts to simplify the presentation of claims so that claimants will not have to go to any added expense of employing legal counsel and are in a position to present their own claims. The counsel to the Commission assists the claimant in any way he can by telling him before the hearing what evidence he should have and whether he thinks that the evidence he has is sufficient. Counsel for the Commission gathers together the evidence, summarizes the facts and presents the case to the Commission at the hearing, at the same time attempting to protect the War Claims Fund. While Chief Justice Campbell did not appear to commit himself to the proposition that counsel to the Commission would assist a non-legal counsel on behalf of the Government of Canada to the same extent that he would assist an individual, I gained the impression from him that some assistance would be rendered. Chief Justice Campbell thought, however, that if the Government of Canada were to be represented by non-legal counsel that such person could, before presenting the claim at the hearing, discuss the matter fully with the legal adviser in his department.

It seems to me that what might be done is for the officer in the department (usually an administrative officer and not a lawyer) who is dealing with the claim of the employee of that department (usually External Affairs or Trade and Commerce) to gather together what evidence is available, discuss it with the legal adviser in his department and then discuss it further before the hearing with the appropriate officer of the Department of Finance. The officer of the department concerned, that is the administrative officer, could then represent the Government of Canada at the hearing either by himself or together with an officer (who is not a lawyer) of the Department of Finance.

I should be glad to have your instructions as to whether you agree that we should not go to the expense of employing counsel to represent the Government of Canada, that it does not appear necessary for legal counsel to represent the Government of Canada and if so, whether you agree with the suggestions I have made concerning how the claims should be dealt with and who should represent the Government of Canada.

I should have said earlier that it has been pointed out to me in further support of the view that the Government of Canada should not be represented by legal counsel that Chief Justice Ilsley said in his report at page 93 that "the Chief Commissioner should attempt as far as possible to provide through his staff such facilities as are practicable to enable claimants to obtain evidence inexpensively and expeditiously", and I understand that one of the rules of the Commission is that counsel to the Commission is to assist the claimant in any way he can so long as his doing so is not inconsistent with his duties towards the Commission.

Mr. Henry 16/11/53

I think they might ~~approve~~ proceed on this basis but Mr. Samuels should consider it his responsibility to ascertain what claims are being made & if such instructions re any claim where further legal aid seems called for. J.

S. Samuels

RAO/NM

File Away

March 18, 1954.

Mr. Olmsted. 161407

MEMORANDUM ~~FOR THE DEPUTY MINISTER:~~

Re: Suggested per diem living allowance for the Chief War Claims Commissioner

Under P.C. 4354 of October 23rd, 1952, Chief Justice Campbell was appointed Chief War Claims Commissioner and clause (7) of the Order stated that he be paid his actual travelling and living expenses while absent from his place of residence from which accounts will be submitted. Obviously this was his own choice as he anticipated the extent of his duties at the time.

Shortly thereafter a number of Deputy Commissioners were appointed and given a per diem allowance as follows:

Mr. Justice H. I. Bird	$ 30.00
Mr. Justice Fernand Choquette	30.00
Judge C. S. Trainor	20.00
Judge C.W.A. Marion	20.00
Mr. Justice J.D. Hyndman	30.00
J. Francis	20.00

On February 24, 1953, the Honourable Mr. Bradley wrote our Minister advising of the intention to pay the Deputy Commissioners a per diem allowance. You approved this and $20.00 was subsequently approved by Council.

It would appear that the Commission undertook on its own to have these allowances exempted under Section 5(b)(vii) of the Income Tax Act. This section states that income for a taxation year is the salary, wages, etc., plus

> "(b) all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose except
>
> (vii) allowances (not in excess of reasonable amounts) for travelling expenses received by an officer or employee.....if they were computed by reference to time actually spent by the officer or employee travelling away from.....his place of employment."

The Under Secretary of State proposes substituting the following for clause (7) (supra):

> "(7) That the Chief War Claims Commissioner be paid an allowance of $40.00 per diem for travelling and living expenses while absent from his place of residence."

No action now. F.H.L.

...2

While the amount may appear to be not reasonable within the meaning of Section 5(b)(vii) of the Income Tax Act, it would seem that that point has already been settled. The Secretary of State assumes responsibility and, as Taxation Division have granted exemption, it must also regard the amount as reasonable in the circumstances. Do I understand you to mean by your inquiry that you are disposed to advise Mr. Stein that you consider the amount not reasonable particularly in view of the amounts that have already been approved with regard to Deputy Commissioners?

I have reconsidered Sections 38 and 39 of the Judges Act. Possibly I placed too narrow an interpretation upon what constitutes living allowance. $40.00 per day as living allowance in Ottawa is excessive. Consequently, the considerable part of that amount I was disposed to regard as additional remuneration. In this regard, I was probably wrong.

Insofar as I am aware, the matter seems to have been cut and dried from every angle before it reached this Department, that is why I attached a draft letter to Mr. Stein advising that you had no further comment.

R. A. O.

FPV/ED

Ottawa, 18th March, 1954.

MEMORANDUM FOR MR. OLMSTED:

Re: Suggested per diem living allowance for the Chief War Claims Commissioner.

I do not think you have got to the bottom of this problem of paying to Chief Justice Campbell an allowance of $40 per diem. When first appointed the Chief Justice desired to be paid simply his out of pocket expenses as he understood that any fixed living allowance would be taxable. Since then however some sort of ruling has been given by Income Tax to the effect that a proper allowance would not be taxable. This ruling I understand depends on the terms of section 7B(5) of the Income Tax Act which has to do with fixed allowances payable to employees when away from home on their employer's business. It permits the employee to receive a reasonable allowance without being taxable. 5(b)(vii)

Personally I would not think that $40 per diem was reasonable.

I should very much like to know what is the basis of your statement that the payment of a living allowance to a judge engaged on extra judicial work authorized by the Governor in Council constitutes a breach of the Judges Act.

F.P.V.

RAC/NM

March 17, 1954.

MEMORANDUM FOR THE DEPUTY MINISTER:

Re: Suggested per diem living allowance
for the Chief War Claims Commissioner

Re suggested per diem allowance to Chief War Claims Commissioner, concurrence with Mr. Stein's proposal will mean no financial drain on this Department as the allowance is paid out of War Claims Fund.

It is stated that Chief Justice Campbell during the past year has lost approximately $2,700.00 by reason of his having to send his youngest daughter to boarding school and maintain some semblance of home life by obtaining an apartment here for himself and Mrs. Campbell.

Payment of these allowances to Chief Justice Campbell, Mr. Justice Choquette, Mr. Justice Bird, Judge Trainor and Judge Marion violates the Judges Act.

It seems that of late years the Act is honoured more in the breach than in the observance, and to prevent these contentious problems arising I would seriously suggest to you that consideration be given to amending the Judges Act.

Employment of judges in extra judicial capacities is a practice that will continue and payment to them of a per diem allowance as with judges who travel and receive $12.00 or $8.00, as the case may be, might better be made legal. The amendment would, of course, apply only to public service and not to chairmanship of provincial boards or arbitrations.

The reason why the proposal is to be effective as of October 1st, 1953, is that it will reimburse Chief Justice Campbell about $700.00 to reduce his loss by that amount during the past year. Treasury would, of course, deduct from the total the amount that has been paid to him as expenses since that date. Draft letter attached.

R. A. C.

CS/LT

Rec'd. Mar. 15/54
3:30 P.M.

CONFIDENTIAL

DEPARTMENT OF THE SECRETARY OF STATE
OF CANADA

Ottawa, March 12, 1954.

Dear Mr. Varcoe:

Re: Suggested per diem living allowance
for the Chief War Claims Commissioner

With reference to our telephone conversation of to-day, I enclose herewith copy of a memorandum, dated the 3rd instant, addressed to me by the Secretary of the War Claims Commission, together with copies of the two letters, dated December 9, 1953 and January 29, 1954 from the Assessments Branch of the Department of National Revenue (Taxation) to the Department of Finance, which contain the ruling mentioned in the first paragraph of the memorandum, to the effect that the per diem living allowances of deputy war claims commissioners are not subject to income tax.

As I told you, the name of Judge Hyndman is not mentioned in the memorandum or in the correspondence, but I understand that he is paid a $30.00 per diem allowance when engaged on business of the Commission outside Ottawa.

Also herewith is a copy of the draft recommendation to Council which I have prepared for my Minister's signature, to amend the relevant Order in Council so as to authorize the payment of a $40.00 per diem allowance to the Chief War Claims

F. P. Varcoe, Q.C.,
Deputy Minister and
Deputy Attorney General of Canada,
Department of Justice,
O t t a w a.

...2

Commissioner, in substitution for the existing provision which requires him to submit expense accounts. You will please note that, as requested in the memorandum, I have included in the recommendation a clause which would make the amendment retroactive to October 1, 1953.

By virtue of section (8) of Order in Council (P.C. 4354 of October 23, 1952), the expenses incurred thereunder are paid out of the War Claims Fund.

As I told you, the Secretary of State mentioned this matter to the Minister of Justice a couple of days ago and I have now been requested to consult you in connection with this proposed recommendation to Council. I shall be pleased to hear from you <u>at your earliest convenience</u>.

Yours sincerely,

C. Stein,
Under Secretary of State.

Apl 12, 906 Mc Clure St
Victoria B.C. 1st Decr 1953

Mr. Olmsted

Department of Justice
Ottawa.



Sirs,

I enclose herewith copy of my letter of today's date to the War Claims Commission (File N° 1626 B.I.X) and have asked that all correspondence be submitted to you to give an opinion of my domicile. I returned to Canada from internment in Stanley Camp per. M.S. "Gripsholm" in December 1943 and again took up residence in Canada and correspondence shows that I have always looked upon myself as a Canadian since my first arrival in Canada in December 1912 and services overseas with the Canadian Forces in the First World War.

Yours Truly
W. Buchanan
W. BUCHANAN

To Department of Justice
Ottawa.

Copy

Apl 12, 906 McClure St.
Victoria B.C 1st Dec 1953.

Your File No 1626 B I X

Sirs, Claim for losses in Hongkong and Maltreatment Allowance.

Further to our correspondence in connection with my claim for compensation I shall be obliged if you will be good enough to ask the Department of Citizenship and Immigration to obtain an opinion from the Department of Justice on the question of domicile and to submit all correspondence thereanent.

Yours truly
(Signed) W. BUCHANAN

To War Claims Commission,
Ottawa.

Copy to Department of Justice

RAO/RM

August 6, 1953.

MEMORANDUM FOR THE DEPUTY MINISTER:

Re: War Claims Commission

The original Order in Council setting up this Commission authorized the Commissioner to employ counsel and staff at salaries to be approved by the Governor in Council. However, this was amended and by P.C. 4354 of October 23, 1952, the Commissioner's authority was restricted and secretarial and other staff were to be obtained from available staff in other Departments.

The suggestion put forward to you by Mr. Theriault appears to be intended to circumvent the restriction imposed by this Order in Council, as action to establish a position and obtain this appointment through the Commission would take at least two months. There are quite a few employed by the Commission who are seconded from other Departments, and these Departments are reimbursed by the Commission out of the War Claims Fund.

If the suggestion of obtaining this proposed employee by naming him as an agent is adopted, Mr. Beddoe tells me that he would render a monthly account and it should be forwarded to the Department of Finance for payment, the total amount for twelve months not to exceed $5,000.00. The applicant is not in active practice, is not on the list and, Mr. Theriault tells me, is not currently an active member of any Quebec Bar. The next move appears to be to inform him that he has been nominated, the terms of his employment and to report for duty.

Louis

Regards
Counsel

URGENT

R.A.O. C.O.R. ... get
Form from Council.

P.C. 1953-857

PRIVY COUNCIL

CANADA

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 26th May 1953.

DEPARTMENT OF JUSTICE MAY 27 1953 CANADA

161407

The Committee of the Privy Council, on the recommendation of the Acting Prime Minister, advise that Order in Council P.C. 4354 of 23rd October 1952 relating to the appointment of the Honourable Thane A. Campbell as Chief War Claims Commissioner, be amended by inserting therein, immediately after paragraph (2) thereof, the following new paragraph (2a):-

(2a) That the said Commissioner inquire into and report upon conditions in civilian internment and military prison camps in Europe in which Canadians were interned or imprisoned during World War II, with a view to ascertaining whether maltreatment prevailed, sufficiently serious, general and prolonged to justify the payment of an automatic award to Canadians held in such camps, or any of them, for the duration of their internment or imprisonment or of any part of it.

D.H.W. Kerry

Clerk of the Privy Council.

DRAFT

Ottawa, May 20, 1953.

TO THE HONOURABLE

THE TREASURY BOARD:

Irvine.

The undersigned has the honour to recommend that the Honourable Mr. Justice Henry Ian Bird, who has been appointed Deputy War Claims Commissioner pursuant to the Inquiries Act, be paid out of the War Claims Fund a per diem living allowance of $30 for each day on which he is engaged in performing duties as Deputy War Claims Commissioner away from his place of residence together with his actual and necessary moving or transportation expenses while so engaged, for which the usual accounts shall be submitted.

Respectfully submitted,

Secretary of State.

(Same for Honourable Mr. Justice Fernand Choquette)

Ottawa 4, May 4, 1953.

Harry Simpson, Esq.,
655 21st Street,
Grand'mère, Quebec.

Dear Mr. Simpson:

The Prime Minister has asked me to acknowledge the receipt of your letter of April 10, which deals further with your application for a war claim because of your internment by the Japanese.

Enquires which have been made concerning your claim reveal that your application is now being considered by the Department of Justice. You, therefore, should be hearing further on the matter either from that Department or from the Warm Claims Branch of the Department of Secretary of State.

Yours sincerely,

W. R. Martin,
Secretary.

Y/Ref: 161407

CANADA

File Away

WAR CLAIMS COMMISSION

OTTAWA, April 27th, 1953.

Dear Sir:

In the absence of the Chief War Claims Commissioner, I beg to refer to your letter of April 24th, whereby, on behalf of the Deputy Minister, you confirm that the Honourable Mr. Justice James D. Hyndman, the Honourable Mr. Justice Fernand Choquette, the Honourable Mr. Justice Henry Ian Bird and Mr. James Francis, Q.C., may be appointed Deputy War Claims Commissioners.

In line with the approval of the Department of Justice, the Chief War Claims Commissioner has signed recommendations of appointment to this effect, which have been forwarded this day to the Secretary of State. It is our understanding that these recommendations of appointment will be approved at the cabinet meeting which will take place Wednesday, April 29th.

I would also like to confirm that the Commission has made certain that Mr. Justice Choquette was prepared to accept the appointment.

Yours very truly,

Paul Theriault

P. Theriault,
Secretary.

R.A. Olmsted, Esquire,
Law Branch,
Department of Justice,
Justice Building,
Ottawa, Ontario.

RAO/NM

DEPARTMENT OF JUSTICE
BY MAIL
APR 25 1953

April 24, 53

161407

My dear Chief Justice:

I have been asked by the Deputy Minister to advise you that The Honourable Mr. Justice James D. Hyndman, The Honourable Mr. Justice Fernand Choquette and The Honourable Mr. Justice Henry Ian Bird may now be appointed as Deputy War Claims Commissioners.

In the case of Mr. Justice Choquette, I assume that you will assure yourself that he is prepared to accept.

I assume that you also intend to appoint Mr. Francis.

Yours truly,

R. A. OLMSTED

for Deputy Minister.

Chief Justice Thane A. Campbell,
Chief War Claims Commissioner,
262 Wellington St.,
OTTAWA, Ont.

FPV/BB

April 24, 1953

MEMORANDUM FOR MR. OLMSTED

161407

Please advise Chief Justice Campbell that the following persons may now be appointed as Deputy Commissioners:

Honourable Mr. Hyndman,
Mr Justice Choquette, and
Mr. Justice Bird

They should, of course, assure themselves that Mr. Justice Choquette will accept. The other two gentlemen have indicated their willingness to act.

F. P. V.

DWM/TC

Ottawa, April 14, 1953.

MEMORANDUM TO THE DEPUTY MINISTER:

161407
Re: War Claims - Rules of Procedure.

You asked whether the Rules of Procedure made by the Chief War Claims Commissioner are in force and for comments on them.

I understand that the Rules of Procedure are being followed at the present time. I cannot, however, find any express authority authorizing the Chief War Claims Commissioner to make rules of procedure.

Vote 696 of Appropriation Act No. 4, 1952 (Ch. 55) provides as follows:-

"696. To authorize
(a) the Custodian of Enemy Property to transfer to the Minister of Finance such property, including the proceeds and earnings of property, that is vested in the Custodian in respect of World War II as the Governor in Council prescribes,
(b) the Minister of Finance to hold, sell or otherwise administer property received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II, and
(c) the Minister of Finance to establish a special account in the Consolidated Revenue Fund to be known as the War Claims Fund, to which shall be credited all money received by him from the Custodian under paragraph (a) or from other sources by way of reparations by former enemies (except Italy) in respect of World War II, the proceeds of sale of property under paragraph (b), the earnings of property specified in paragraph (b) and amounts recovered from persons who have received overpayments in respect of claims arising out of World War II;
and, notwithstanding section 35 of the Financial Administration Act, to provide for payments out of the War Claims Fund in the current and subsequent fiscal years, in accordance with regulations of the Governor in Council, to persons who claim compensation in respect of World War II, for the payment out of the War Claims Fund in the current and subsequent fiscal years of expenses incurred in investigating and

"reporting...

"reporting on claims of those persons and for the repayment out of the War Claims Fund to Vote 128 (miscellaneous minor and unforeseen expenses) of all amounts that have been paid out of that Vote pursuant to The War Claims Interim Compensation Rules established by Order in Council, P.C. 667 of February 4, 1952....$1".

Pursuant to this Vote, Order in Council P.C. 4267, of October 9, 1952 (tagged on file), enacted War Claims Regulations. The chief provision of these Regulations is "The recommendations contained in the "Report of the Advisory Commission on War Claims dated "February 25, 1952, modified to the extent specified in "the Schedule hereto, shall constitute the rules "governing payment out of the War Claims Fund of "compensation in respect of war claims" (S. 3). The Report of the Advisory Commission (Ilsley C.J.) covers, amongst other things, the setting up of war claims tribunals (pp. 91-94 - attached). There is no provision in the War Claims Regulations or the Schedule to them relating to tribunals. The Schedule, however, provides that "Notice of a claim must be received by "the War Claims Commission not later than December 31, "1953".

Order in Council P.C. 4354, of October 23, 1952 (tagged on file), authorized the issue of a Commission under the Inquiries Act appointing Campbell C.J. as Chief War Claims Commissioner. Amongst other things, he is to inquire into particular claims and report on them "stating whether in his opinion "the claimant...is eligible under the rules referred to "in section three of the War Claims Regulations established "by Order in Council P.C. 4267 of 9th October 1952 to "receive a payment out of the War Claims Fund...". The Chief Commissioner is authorized to engage the services of a secretary and other assistants. No mention is made in the Order in Council or in his Commission about rules of procedure.

The Inquiries Act (Ch. 99, R.S.C. 1927) does not mention rules of procedure.

Mr. Ilsley's Report, where he refers to tribunals, does not specifically mention the Chief Commissioner making rules of procedure. He recommends certain procedural steps (p. 92) and certain special rules of evidence (p. 93).

It does not, therefore, appear that the Chief War Claims Commissioner is expressly authorized to make any rules of procedure. It is submitted, however, that he may do so consistently with any procedural provisions in the Regulations or in Chief Justice Ilsley's Report. It is submitted that it is implicit in his authority to inquire into and report on war claims that he may lay down the course that he proposes to adopt in his inquiry subject to anything that is expressly provided.

I...

I have reviewed the Rules of Procedure that the Chief Commissioner has made (copy attached) and there appears to be nothing in them inconsistent with Chief Justice Ilsley's Report or the Regulations. The general procedure is as follows:-

(1) Provision is made for notice of claims (S. 1).

(2) The Commission may require a statement of the claim verified by affidavit or statutory declaration, which is to be acknowledged (Ss. 2 and 3).

(3) Although the burden of proof is on the claimant it is stated to be the policy of the Commission to assist in preparing claims. The Commission is to advise immediately of any fatal defects in claims. In such case, the claimant may insist that he have a hearing or the Chief Commissioner may authorize a hearing (Ss. 4 and 5).

(4) When a claim is ready to be referred to a Deputy Commissioner for hearing the Chief Commissioner is to notify the claimant that he has three options:-
   (a) Disposition of his claim on the strength of the documents submitted;
   (b) A hearing at Ottawa before a Deputy Commissioner; or
   (c) A regional hearing. (S. 6)

(5) Upon the claimant giving notice as to his choice, arrangements are then to be made for the hearing with notice to the applicant. (Ss. 7, 8, 9, 10, 11 and 12)

(6) Notice to persons outside of Canada may be given either through External Affairs or as the Chief Commissioner may direct (S. 13).

(7) The claimant is entitled to be present either personally or by any representative at the hearing (S. 14).

(8) Commission counsel are to attend at hearings. Their duties are not to obstruct but to assist the Commission (S. 15).

(9) Upon a Deputy Commissioner reporting to the Chief Commissioner with recommendations, a copy is to be sent to the claimant, who may request a review. Senior counsel to the Commissioner is required to indicate to the Chief Commissioner any matters with respect to which a Deputy Commisioner's report or recommendation calls for review (Ss. 16, 17 and 18).

(10) If the Chief Commissioner proposes in his final recommendation to depart from the Deputy Commissioner's recommendation adversely to the claimant, or if the claimant requests a review, the claimant is to be given an opportunity of submitting written argument but no further oral hearing. The Chief Commissioner, in his discretion, may direct a rehearing. The material the Chief Commissioner is to consider before

making...

making the final recommendation is set out (Ss. 20-23).

(11) The rules then provide that the Chief Commissioner may make such findings of fact and reach such conclusions of law as though he were hearing the claim in the first instance but, in general, he is to accord to the findings of fact made by a Deputy Commissioner consideration analogous to that generally adopted by a court of appeal. He is to bear in mind the desirability of uniformity. He may refer a claim back to the Deputy Commissioner (Ss. 24, 25 and 26).

(12) Certain special rules of evidence are set out. The general effect of these is to provide that the ordinary rules of evidence do not apply and any testimony or documents are admissible but the weight is for the Commissioner. Affidavits or declarations may be accepted. There may be special examiners. Documents certified by government officials may be accepted. Medical certificates may be required. The kind of evidence required to prove title to property is indicated. Corroboration may be required and shall be required in the case of claims relating to currency and luxury articles (Ss. 27 and 28).

(13) Claims may be consolidated (S. 29).

(14) If during disposition of a claim it appears that other persons might have a related claim, notice may be given to them if the time for claiming has not expired (S. 30).

While it would not appear that the Rules are in conflict with Chief Justice Ilsley's Report or the Regulations and that authority for them is not, therefore, required, you might consider it advisable to have them approved by the Governor in Council as regulations under Vote 696 to remove any doubts. They are somewhat unusually worded for regulations (See, for example, Ss. 4 and 15).

The Rules of Procedure, as a matter of fact, cover not only procedure but also instructions to the staff of the Commission as to their duties and similar matters.

D.W.M.

DWM/TC

Ottawa, April 2, 1953.

MEMORANDUM TO THE DEPUTY MINISTER:

Re: War Claims.

Chief Justice Campbell has forwarded to the Minister a copy of a report that he has sent to the Secretary of State on the present status of war claims. Attached is a numerical summary of the claims which you might be interested to see.

Chief Justice Campbell also raises the question of the appointment of additional deputy commissioners. Attached is a memorandum that he has forwarded to Mr. Bradley on the additional commissioners that he thinks should be appointed. He asks for the Minister's consideration on the selection of appropriate judges. In particular, he stresses the desirability of having Superior Court Judges in Montreal and Toronto as the large property claims will apparently be concentrated in those areas. I presume that the selection of the judges is something which you will wish to consider personally.

D.W.M.

CANADA

WAR CLAIMS COMMISSION

OTTAWA, March 23rd, 1953.

NUMERICAL SUMMARY

Number of Notices of Claim filed to date	3,136
Number of Claims on which hearings have been held ...	13
Final awards recommended 9	
Under advisement 4	
Number of Claims in which processing is almost completed for hearing	27
Number of Claims tentatively disallowed on prima facie examination, about	40
Number of Ex-POW Claims in advanced stage of processing	984
Number of Notices of Claim in intermediate stages of processing	2,076 (x)

(x) In cases of claims by Dependents, one original claim often developes into several individual claims. The 13 claims already heard developed from 9 original claims. It is, therefore, probable that the 3,136 notices already filed will ultimately develope into claims by as many as 5,000 persons, not to mention the fact that many individual claimants have several distinct causes of claim.

Estimated total number of persons represented by notices filed to date	5,000
Estimated total number of claims represented by notices filed to date	6,000

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CANADA

WAR CLAIMS COMMISSION

OTTAWA, March 23rd, 1953.

MEMORANDUM RE DISTRIBUTION OF DEPUTY COMMISSIONERS

1. Ottawa - Judge C.W.A. Marion

2. Atlantic Provinces - Judge C. St.C. Trainor.

3. Montreal - Preferably a Superior Court Judge, and preferably French, as this district will involve numerous property claims, and numerous claims by Religious Orders, many of which will be presented in French.

4. Toronto - Preferably a Superior Court Judge, as numerous property claims will be involved.

5. Vancouver - Preferably a Superior Court Judge, who would hear the claims from British Columbia and perhaps some from Alberta.

6. Winnipeg - Preferably a Superior Court Judge, who would hear the claims from Manitoba and Saskatchewan, and perhaps some from Alberta.

7. Italian)
   Hungarian) Claims - This Commissioner could also be used to relieve the bulk of claims anticipated at Ottawa, Montreal and Toronto.
   Roumanian)

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

MJL

OFFICE OF THE COMMISSIONER

CANADA

WAR CLAIMS COMMISSION

Department of Justice
RECEIVED
MAR 27 1953

OTTAWA, March 26, 1953.

Dear Mr. Garson:

I am enclosing herewith a copy of an initial progress report made to the Honourable Mr. Bradley, outlining the general method of procedure adopted by this Commission in dealing with claims against the War Claims Fund, and indicating the stage which the Commission has already reached in the processing and disposition of claims. Since writing Mr. Bradley, I have referred to Deputy Commissioner Marion twenty additional claims which are now ready for hearing, and the hearings of those claims will proceed in the course of a few days. In view of the rapid progress of processing the claims, the number available for hearing will very soon be largely increased.

I think the materials attached to, and accompanying, the letter to Mr. Bradley speak for themselves. I should like, however, to refer particularly to the "Memorandum re disposition of Deputy Commissioners". If judges are available for this work, I think their appointment as Deputy Commissioners is preferable to the appointment of outside persons, for several reasons. Their judicial standing and experience would commend them to the public as competent and independent adjudicators, and their employment would involve much less expenditure on the part of the Commission than would the employment of persons who would have to be paid substantial salaries in addition to any travelling expenses incurred. The salary question would be complicated by the fact that the duration and intensity of a Deputy Commissioner's work is not easily predictable, and a satisfactory salary basis would therefore be difficult to arrange in advance. While appreciating the difficulty of securing the services of judges in Quebec and Ontario where judicial work is very heavy, I should like to have this source of potential Deputy Commissioners explored, if possible. In the case of the Montreal and Toronto appointments, it would be particularly desirable to have a Superior Court Judge, as the large property claims will apparently be

The Honourable Stuart S. Garson,
Minister of Justice,
Ottawa, Ontario.

... 2.

concentrated in these areas, and the Montreal area also presents a large number of important claims by religious Orders.

I should be very glad indeed to receive any suggestions which you, or the Prime Minister, may have to make as to the availability of judges in the localities with which you are familiar.

Yours sincerely,

Thane A. Campbell

Thane A. Campbell
Chief War Claims Commissioner

E OF THE COMMISSIONER

CANADA

WAR CLAIMS COMMISSION

OTTAWA, March 23rd, 1953.

Dear Mr. Bradley,

This Commission has now passed the stage of preliminary organization, and has completed the disposition of a few claims as a result of the holding of a number of "pattern" hearings. I therefore consider it desirable to furnish you with a summarized outline of the procedure which has been adopted to ensure a complete and uniform consideration of the various classes of claims referred to me.

The main features of the prescribed procedure will be apparent from the attached "Outline", and further details may be gathered from the accompanying Claim Forms, and Form-Letters, as well as from the Rules of Procedure Nos. 1 - 31, which have already been printed. Our procedural pattern developed from three sources: (1) The Report of Advisory Commissioner Ilsley, as incorporated into the provisions of P.C. 4267 (1952); (2) Rules laid down in the course of our preliminary organization; (3) Rules arising out of problems presenting themselves in the course of our administrative and judicial proceedings. Since the printing of the main body of Rules of Procedure, supplementary rules numbered 32 - 43 have been adopted, and are now in course of preparation for printing.

I am also attaching a summary showing the number of notices of claim filed, and indicating the number of claims which we have been able to dispose of very recently.

I need hardly add that our present advanced stage of progress could not have been reached had it not been for the effective work of our legal advisers, James Francis and Jean Nicol, and of our competent administrative staff under the direction of executive Secretary Paul Thériault. I attach hereto a listing of all the personnel of the Commission, indicating the salaries paid to each. The addition of another legal adviser (Departmental Solicitor, Grade IV) at $5500 per annum, and a secretary for him (Grade III) at $2480 per annum, should round off the personnel required to dispose, efficiently and expeditiously, of the Commission's work. This, of course, does not include the staff who will be required, in a number as yet undetermined, for the conduct of regional hearings. It is anticipated that all regional staff, such as registrars, reporters, and interpreters, may be employed on a casual basis.

Yours faithfully,

Thane A. Campbell

Thane A. Campbell,
Commissioner, War Claims Commission.

Honourable F. Gordon Bradley,
Secretary of State,
O t t a w a.

CANADA

WAR CLAIMS COMMISSION

OTTAWA, March 23rd, 1953.

SUMMARIZED OUTLINE OF PROCEDURE

1. Letter acknowledging Notice of Claim and forwarding Statement of Claim and other Forms to be completed by Claimant.

2. Letter to Claimant acknowledging Statement of Claim and Forms. (In a great many cases these Forms must be returned to Claimant for more proper completion or for furnishing of additional information).

3. The processing of the Claims for purposes of corroboration and checking. This may consist of correspondence with the Claimant and other informants, as well as of checking the records of Government Departments, such as

    1. Citizenship and Immigration;(x)
    2. D.V.A.(x) re (a) Imprisonment;
       (b) Medical;
    3. External Affairs;
    4. R.C.M.P.;
    5. National Health and Welfare;
    6. Finance (x): re computations of interest, capitalization, expectancy of life, currency depreciation, exchange, conversion, etc;
    7. Secretary of State, War Claims Branch.

    (x) Full time officers have been assigned in these Departments to collaborate with our processing staff.

4. Notice to Claimant that he may now choose one of three methods of hearing: (a) Documentary;
   (b) Oral at Ottawa;
   (c) Regional.

5. Summary of Claim by Legal Adviser.

6. On receipt of Claimant's option, Reference to Deputy Commissioner for hearing.

7. In cases where oral hearing is chosen, notice to Claimant of time and place of hearing.

8. Hearing by Deputy-Commissioner.

9. Findings and Recommendation of Deputy Commissioner, with his reasons.

10. Letter enclosing copy of Deputy-Commissioner's Report is sent to Claimant in two cases:

    (a) if D.C. has not awarded the full amount claimed;

    (b) if Chief Commissioner proposes to revise the award adversely to a claimant;

..... 2

Such letter will advise the Claimant of the nature of review, and of his rights to present argument, etc.

11. Report of Legal Adviser to Chief Commissioner.

12. Further presentation, if any, by Claimant.

13. Notice to Claimant if rehearing allowed.

14. Review by Chief Commissioner.

15. Report and Recommendation by Chief Commissioner, with his reasons.

16. Tabulated Summary of Recommendation.

17. Letter to Claimant forwarding copy of Recommendation.

NOTE: To ensure expedition and uniformity of correspondence between the Commission and Claimants, 8 printed forms for Statement of Claim and about 10 Form-Letters (multilith), each in English and French, have been prescribed. The Form-letters are, of course, supplemented by numerous individual letters dealing with specific problems of the various claims. To the back cover of each claim-file is attached a tabulated Summary of processing. On this each procedural step taken is date-stamped and initialled, so that any person dealing with a file can see at a glance the procedural stage to which the claim has been advanced.

RE: PERSONNEL OF THE COMMISSION

	Salaries
A) Judicial and executive staff:	
Chief Justice Thane A. Campbell (Chief War Claims Commissioner)	
Judge Charles St.Clair Trainor Judge C.W.A. Marion (Deputy Commissioners)	
Mr. Paul Theriault (Secretary to the War Claims Commission and Registrar)	$6,000.00
Mr. James Francis, Q.C., (Chief Counsel)(paid by Dept. of Justice)	
Mr. Jean de C. Nicol (Assistant Counsel)	$5,920.00
B) Clerical staff:	
Miss Phyllis Fried (Principal Clerk)	$3,670.00
Mrs. Carmen S. Gagné (Assistant Principal Clerk)	$3,110.00
Mr. Michael A. Havelock (Investigator and Registrar)	$3,810.00
Mr. J.B. Arnold Graham (Investigator and Registrar)	$3,530.00
Mrs. Gilberte Whalen (Clerk)(casual employee)	$1,800.00
Miss Blanche Beaudin (Clerk)(casual employee)	$1,380.00
C) Secretarial and steno-typist staff:	
Miss Muriel J. Latour (Secretary to the Chief Commissioner, Court Reporter and Registrar)	$3,330.00
Mrs. Jeannine C. Lavigne, (Secretary to Secretary of War Claims Commission)	$3,110.00
Mrs. Ina Fraser (Secretary to Chief Counsel and Court Reporter)	$2,880.00
Miss Denise LeBlanc (Secretary to Assistant Counsel and Court Reporter)	$2,480.00
Miss Marguerite Ducharme (Secretary to Miss Fried and Deputy Commissioners, and Court Reporter)	$2,480.00
Mrs. Eleonore Ryan (Secretary to Mrs. Gagné and Messrs. Graham and Havelock) (casual employee)	$2,480.00

Miss Eileen (Nina) Saslove (Secretary to Miss Fried)	$2,480.00
	$ 48,460.00

WAR CLAIMS COMMISSION

MEMORANDUM RE FILE NO.....

NAME.....

CIRCULAR LETTERS:	Outgoing Date	Incoming Date
1.(a) Covering Letter for Forms	.....	.....
(b) Covering Letter for Forms (Dependents)	.....	.....
(c) Covering Letter for Forms (P.O.W.'s in Europe)	.....	.....
2. Acknowledgment of Forms	.....	.....
3. Pre adjudication Letter	.....	.....
4. Notice of Hearing	.....	.....
5. Letter forwarding Recommendation	.....	.....
6.(a) Notice re Argument on Review	.....	.....
(b) Notice of Rehearing	.....	.....
WAR CLAIMS APPLICATION FORMS:		
A. Statement of Claim	.....	.....
B. Declaration of Canadian Status	.....	.....
C. Loss in respect of Death	.....	.....
D. Loss in respect of Injury	.....	.....
E. Maltreatment - Civilian interned by Japanese	.....	.....
F. Maltreatment - Civilian interned in Europe	.....	.....
G. Maltreatment - Member of the Armed Forces of Canada	.....	.....
H. Loss in respect of Property	.....	.....
CORROBORATION:		
1. Citizenship	.....	.....
2. D.V.A.(a) Imprisonment	.....	.....
(b) Medical	.....	.....
3. External Affairs	.....	.....
4. R.C.M.P.	.....	.....
5. National Health & Welfare	.....	.....
FINANCIAL STATEMENT:		
1. Capitalization of Pension	.....	.....
2. Earning Capacity	.....	.....
3. Recommendation of Dep. Comm.	.....	.....
4. Statement of Compensation	.....	.....
5. Recommendation of Compensation	.....	.....
Cheque No..... Amount	.....	.....

161407

THE OTTAWA CITIZEN
March 28, 1953.

New Light On War Prisoner Claims

The issue of special compensation for all former prisoners of war in Germany, raised by the National Council of Canadian Prisoners of War, has not yet been settled by the government. Earlier impressions that the Council is asking for compensation on the grounds of suffering or other intangible losses have proved misleading. In effect, the Council is making claim for what is in a sense a loss of property. This puts a wholly different aspect on its case.

In 1934, Germany ratified the Geneva Convention of 1929. In so doing it bound itself to give prisoners of war certain property such as food, shelter and clothing at a specific level. In his 1952 report on the principles governing war claims, Chief Justice Ilsley of Nova Scotia quite properly argued (at page 42) that complete compliance with the Geneva Convention was extremely difficult. "Indeed," he pointed out, "the British handbook indicates that the government of the United Kingdom found it impracticable to comply in every respect with the Geneva Convention." And he quotes with approval the finding of Mr. Errol M. McDougall, commissioner appointed after World War 1 to investigate the question of maltreatment, that:

> poor food conditions in Germany, resulting in impaired health, unless deliberately and unreasonably imposed upon a claimant by the authorities, cannot be regarded as maltreatment. Germany's inability to obtain better food, at least during certain stages of the war, was notorious and obtained throughout the country. A hardship arising from necessity and which was borne alike by the captured and the captors does not constitute maltreatment.

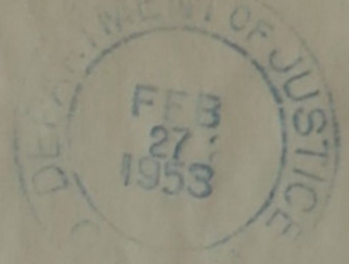
But if prisoners, however ill-fed, received rations at the ordinary German civilian scale in World War 1, it is not so clear that this was true in World War II. Chief Justice Ilsley says (page 50) that "the food supplied is said to have been on a scale of rations drawn by German civilians and I do not think that for purposes of claims for compensation from the War Claims Fund, limitation to this scale should be regarded as maltreatment." Yet officers of the Council deny that rations were equal. They say prisoners were given food at the "non-worker" level, although there were virtually no non-workers among healthy Germans during the war. The Council asserts that average civilian rations were far above those supplied the prisoners. Even Red Cross parcels did not help, since these were deducted from the normal ration. It is on these grounds that the Council claims compensation and argues that the Germans should now pay, through the custodian of enemy property, for the property (food) which the Germans should and could have let the prisoners have under the Geneva Convention.

The facts are in dispute, and deserve close examination by the cabinet. Should the Council's presentation be borne out, the former prisoners' claim for compensation would be put in a new light.

/13

P.C. 1953-302





AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 26th day of FEBRUARY, 1953.

PRESENT:

161407

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, was, by Order in Council P.C. 4354 of 23rd October 1952, appointed a Commissioner, styled Chief War Claims Commissioner, under Part I of the Inquiries Act, to inquire into and report upon claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims;

AND WHEREAS the said Honourable Thane A. Campbell has authorized and deputed His Honour Charles St. Clair Trainor, Judge of the County Court for Queens County, Prince Edward Island, a qualified person, to inquire into such of the said claims as may be referred to him by the Honourable Thane A. Campbell from time to time.

341

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Secretary of State and pursuant to section 11 of the Inquiries Act, is pleased to authorize and doth hereby authorize the said His Honour Charles St. Clair Trainor to have and exercise the same powers to take evidence, issue subpoenas and enforce the attendance of witnesses, compel them to give evidence and otherwise conduct his inquiries into the claims so referred to him as the Honourable Thane A. Campbell has and may exercise with respect to such claims.

Clerk of the Privy Council.

Minister of Justice.

> actual expenses would not constitute "remuneration" within the meaning of S. 37(1) and S. 37(3) does not prevent payment of actual disbursements. It deals only with the case where the Governor in Council establishes a rate of allowance."

I think that the Deputy Commissioners could be authorized to receive a per diem allowance under the authority of 37(3) of the Judges Act. This subsection provides, inter alia, that a judge performing any duty or service he is required to perform for or on behalf of the Government of Canada may receive in addition to his judicial salary such moving or transportation expenses or living allowances as the Governor in Council may fix.

The reason given for requesting that the Deputy Commissioners be paid a per diem allowance instead of actual expenses is that, to quote Chief Justice Campbell, "They will therefore wish to be assured that they will not incur any financial loss by undertaking the duties of the Commission, and will at the same time not wish to be subject to the necessity of submitting and arguing claims itemized in detail". A per diem allowance would be subject to income tax and Chief Justice Campbell suggests that the allowance be fixed so that the judges would net about $15 per day. Chief Justice Campbell says that this would require a gross allowance of $25 in the case of a Superior Court judge and about $20 in the case of a County Court judge. Chief Justice Campbell himself is on an expense basis.

E.A.D.

P.C. 1953-53

PRIVY COUNCIL CANADA

16407

AT THE GOVERNMENT HOUSE AT OTTAWA

WEDNESDAY, the 14th day of JANUARY, 1953.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, was, by Order in Council P.C. 4354, of 23rd October 1952, appointed a Commissioner, styled Chief War Claims Commissioner, under Part I of the Inquiries Act, to inquire into and report upon claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims;

AND WHEREAS the said the Honourable Thane A. Campbell has authorized and deputed His Honour Camille Wilfrid Arthur Marion, Judge of the County Court for Prescott and Russell, Ontario, a qualified person, to inquire into such of the said claims as may be referred to him by the Honourable Thane A. Campbell from time to time.

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Secretary of State and pursuant to section 11 of the Inquiries Act, is pleased to authorize and doth hereby authorize the said His Honour Camille Wilfrid Arthur Marion to have and exercise the same powers to take evidence, issue subpoenas and enforce the attendance of witnesses, compel them to give evidence and otherwise conduct his inquiries into the claims so referred to him as the Honourable Thane A. Campbell has and may exercise with respect to such claims.

Clerk of the Privy Council.

D R A F T

CONFIDENTIAL

The Committee of the Privy Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, advise that, under and in pursuance of Part I of the Inquiries Act a Commission do issue appointing His Honour Camille Wilfrid Arthur Marion, Judge of the County Court for Prescott and Russell, Ontario, to be a Commissioner to inquire into and to report upon, in the manner and to the extent specified hereunder, claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims;

That the said Commissioner be a member of the War Claims Commission established by paragraph (4) of Order in Council P.C. 4354 of 23rd October 1952;

That the said Commissioner, in accordance with such procedure as may be prescribed by the Chief War Claims Commissioner and in the manner specified hereunder, inquire into all particular claims coming within the above description that may be referred to him by the Chief War Claims Commissioner; and that he report to the Chief War Claims Commissioner in respect of each such claim stating whether in his opinion the claimant or other person is eligible to receive a payment out of such fund under the rules, conditions or requirements applicable thereto, together with the reasons for his opinion and his recommendation as to the amount that in his opinion should be paid in respect of each such claim; such report and recommendation, however, to be subject to review by the Chief War Claims Commissioner;

That the said Commissioner be paid his actual travelling and living expenses while absent from his place of residence, for which accounts shall be submitted.

I, the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, having been appointed by Order in Council P.C. 4354, of October 23, 1952, a Commissioner, styled Chief War Claims Commissioner, under Part I of the Inquiries Act, to inquire into and report upon claims made by Canadians arising out of World War II for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims, pursuant to section 11 of the Inquiries Act, do hereby authorize and depute His Honour Camille Wilfrid Arthur Marion, Judge of the County Court for Prescott and Russell, Ontario, a qualified person, to inquire into such of the said claims as may be referred by me to the said His Honour Camille Wilfrid Arthur Marion from time to time and to report the evidence and his findings thereon, if any, to me.

I hereby authorize the said His Honour Camille Wilfrid Arthur Marion to style himself with respect to such inquiry as Deputy War Claims Commissioner.

Chief War Claims Commissioner.

OTTAWA,
January 1953.

DWM/TC

Ottawa, January 8, 1953.

MEMORANDUM TO THE DEPUTY MINISTER:

161407
Re: War Claims Commission - Appointment of Deputy Commissioners.

The scheme of tribunals proposed by Chief Justice Ilsley was that there be a Chief Commissioner and Deputy Commissioners. The Deputy Commissioners would hear evidence and make recommendations to the Chief Commissioner on each war claim and would be appointed for various localities. The Chief Commissioner would review the reports of all the Deputy Commissioners and make a final recommendation to the Government in each case.

The only legislation directly relating to war claims is Vote 696, in Appropriation Act, No. 4, 1952 (Ch. 55). This Vote authorizes the transfer of property held by the Custodian and by the Minister of Finance for reparations to a special account in the Consolidated Revenue Fund and continues:

"and, notwithstanding section 35 of the Financial Administration Act, to provide for payments out of the War Claims Fund in the current and subsequent fiscal years, in accordance with regulations of the Governor in Council, to persons who claim compensation in respect of World War II, for the payment out of the War Claims Fund in the current and subsequent fiscal years of expenses incurred in investigating and reporting on claims of those persons and for the repayment out of the War Claims Fund to Vote 128 (miscellaneous minor and unforeseen expenses) of all amounts that have been paid out of that Vote pursuant to The War Claims Interim Compensation Rules established by Order in Council P.C. 667 of February 4, 1952..... $1".

Pursuant to this Vote, Order in Council P.C. 4267, of October 9, 1952, was passed enacting the "War Claims Regulations". The basic provision in these Regulations is S. 3, which reads:-

"3. The recommendations contained in the Report of the Advisory Commission on War Claims dated February 25, 1952, modified to the extent specified in the Schedule hereto, shall constitute the rules governing payment out of the War Claims Fund of compensation in respect of war claims."

By....

By Order in Council P.C. 4354, of October 23, 1952, Chief Justice Campbell was appointed a Commissioner under Part I of the Inquiries Act. By its terms, he is appointed "to inquire into and report upon claims made "by Canadians arising out of World War II for which "compensation may be paid from the War Claims Fund or "from any other fund...". It is provided that the "Commissioner inquire into all particular claims on the "War Claims Fund that may be referred to him, and that "he report in respect of each such claim to the Secretary "of State stating whether...the claimant...is eligible "under the...War Claims Regulations". He is also to act in an advisory capacity on Italian claims. It is then provided "That additional Commissioners be appointed "pursuant to the Inquiries Act as may be required to "inquire into and report upon such claims, and that the "Chief War Claims Commissioner and the said Commissioners "be known as the War Claims Commission, over which the "Chief War Claims Commissioner shall preside". There are other administrative provisions - see attached Order in Council.

The draft recommendation now forwarded to you is for the appointment under Part I of the Inquiries Act of Judge Marion "to be a Commissioner to inquire into and "to report upon, in the manner and to the extent specified "hereunder, claims made by Canadians arising out of World "War II...". It is then provided "That the said Com- "missioner be a member of the War Claims Commission...".

It is further provided "That the said Com- "missioner, in accordance with such procedure as may be "prescribed by the Chief War Claims Commissioner and in "the manner specified hereunder, inquire into all "particular claims...referred to him by the Chief War "Claims Commissioner; and that he report to the Chief War "Claims Commissioner in respect of each such claim..."; "such report and recommendation, however, to be subject "to review by the Chief War Claims Commissioner".

The way in which Chief Justice Ilsley's proposals are being carried out under the Inquiries Act is as follows. It is proposed to appoint the Chief Commissioner and the Deputy Commissioners each independently as Commissioners under Part I of the Inquiries Act to inquire into and report on war claims. One of these Commissioners will be known as Chief Commissioner and the other may be called Deputy Commissioners but each will be an independent Commissioner under Part I of the Inquiries Act. By the terms of reference, the so-called Deputy Commissioners will report to the Chief Commissioner. The Chief Commissioner is to report to the Secretary of State. The terms of reference of all the Commissioners require that they inquire into and report on such war claims as may be referred to them. The Deputy Commissioners will inquire into war claims referred to them by the Chief Commissioner. The Chief Commissioner will review these claims and report on them with a recommendation as to payment.

Although I have difficulty in giving a precise reason for having doubts about the effectiveness of this method of establishing the tribunals, I have considerable doubt as to whether they are effective.

It...

It seems to me that these so-called tribunals are not, in reality, to make an "inquiry" within the meaning of the Inquiries Act. S. 2 of that Act authorizes the Governor in Council, whenever he deems it expedient, to "cause inquiry to be made into and "concerning any matter connected with the good "government of Canada or the conduct of any part of "the public business thereof". It would appear that the tribunals to deal with war claims are not merely making inquiries but are, in effect, adjudicating upon the claims in accordance with the body of doctrines set out in Chief Justice Ilsley's Report.

On the other hand, the discretion given to the Governor in Council is the widest possible, since he may appoint a Commission "whenever he deems it expedient". Under the Nolan case, it is necessary to find either that the Governor in Council acted in bad faith or which amounts to the same thing, that no reasonable person could consider these Commissioners to be appointed to conduct inquiries into the public business. It can be argued that a reasonable person can consider them inquiries. They do not result in any binding decision but only in a recommendation. The Commissioners are to investigate facts surrounding certain claims and to report on them.

On this view, it would appear that the Deputy Commissioners could actually be considered to be conducting inquiries. On the other hand, the terms of reference of the Chief Commissioner are to "inquire into "all particular claims on the War Claims Fund that may be "referred to him". In fact, his function will be to review the reports from the Deputy Commissioners and, in practice, he will not make any inquiries himself beyond looking into these reports and the material supporting them. It is not necessary, however, for a Commissioner to make inquiries by taking oral evidence. It may be that if he considers the report and looks at the material collected by the Deputy Commissioners he can be considered to be making an inquiry.

There are a number of other points that arise.

It is submitted that there is no legal objection to the Governor in Council appointing a Commission under Part I of the Inquiries Act with instructions to report to a particular Minister. I understand the practice generally is that these Commissions report to the Governor in Council. The Governor in Council, however, might refer the report to a particular Minister after he has received it and it is submitted that there is no reason why he cannot direct the report to be sent to the particular Minister before the investigation is undertaken.

The Inquiries Act does not lay down any procedure to be followed by Commissioners beyond the two provisions in Part III of the Act, providing that any person whose conduct is being investigated is entitled to counsel and is entitled to be made acquainted with any charge against him. Otherwise, the Act prescribes no procedure. It is submitted that it is not a legal objection for the Governor

in...

in Council to direct the Commission to follow certain procedural lines. Where a number of Commissioners are appointed to investigate related matters it would appear proper to direct that they follow a common procedure, to be established in a manner set out in the Order in Council authorizing their appointment. Such a direction in the Order in Council would appear only to be a direction and not to be legally binding in the sense of ordinary procedural rules. It would seem, however, that Commissioners are statutory officers holding office under the Crown and presumably the Crown can, so far as is consistent with the statute, give reasonable directions as to the manner in which they carry out their duties. As against this, it can be argued that the intention of the statute is that Commissioners are to be independent in a way similar to the judiciary and not subject to direction. It is suggested, however, that proper procedural directions would not be inconsistent with this view.

You will note that the Order in Council appointing Chief Justice Campbell contemplates that additional Commissioners will be appointed and that all the Commissioners will constitute the War Claims Commission. It can be argued from this provision that there is to be but one Commission. It would seem to follow that the Commissioners should all act together as a Commission and that they are not independent Commissioners. As against this, however, it would seem that the draft recommendation to Council contemplates that Judge Marion will be appointed an independent Commissioner. The grouping of all these Commissioners under a common title, as the "War Claims Commission", would appear to be merely an administrative direction and not to define their legal position. Each of them will presumably receive a commission as an independent Commissioner.

Another objection that might be raised is that the recommendation to appoint Judge Marion requires him to report to the Chief War Claims Commissioner. Apart from the question next discussed, it would seem that the Governor in Council could give this direction as to whom the report is to be delivered, in the same way as he could order the Chief War Claims Commissioner to deliver his report to a Minister.

It is submitted, however, that the fundamental objection to the proposed method of appointing these Commissioners is that, in fact, the hierarchy of tribunals contemplated is not a system of inquiry that the Inquiries Act contemplates can be established in this way. In fact, the so-called Deputy Commissioners will report only to the Chief War Claims Commissioner and it is contemplated that he may accept or reject or vary the reports. In fact, the persons making the actual inquiry (the Deputy Commissioners) will not report to the Government at all but to the Chief War Claims Commissioner and the latter, who will not make any inquiry beyond reading their reports, will then report to the Minister. For this reason, it is submitted that the appointment of the Deputy Commissioners in this way is not authorized. The real scheme is to establish a hierarchy of tribunals rather than Commissions of inquiry. There...

There is an alternative method of proceeding, however. S. 11 of the Inquiries Act (Ch. 99, R.S.C. 1927) provides as follows:

> "11. The commissioners, whether appointed under Part I or under Part II of this Act, if thereunto authorized by the commission issued in the case, may engage the services of such accountants, engineers, technical advisers, or other experts, clerks, reporters and assistants as they deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.
>
> 2. The commissioners may authorize and depute any such accountants, engineers, technical advisers, or other experts, or any other qualified persons, to inquire into any matter within the scope of the commission as may be directed by the commissioners.
>
> 3. The persons so deputed, when authorized by Order in Council, shall have the same powers which the commissioners have to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence, and otherwise conduct the inquiry.
>
> 4. The persons so deputed shall report the evidence and their findings, if any, thereon to the commissioners."

You will note that subsections 2, 3 and 4 contemplate that the Commission may authorize other persons to make inquiries and provide that if such authority is given such other persons will have the power of compelling attendance of witnesses etc.

Moreover, it is to be noted that in subsection 2, not only persons employed under the authority of subsection 1, but "any other qualified persons" may be authorized by the Commission to act. It follows that the Chief Commissioner could authorize Deputy Commissioners to act on his behalf and then, if the Governor in Council approves his selection and confers such authority, they can be given power to take evidence and soforth under subsection 3.

It is submitted that this is the correct way to appoint the Deputy Commissioners, who could be called Deputy Commissioners if it was so decided.

There would appear to be no legal objection to this procedure. S. 37 (1) and (3) of the Judges Act (Ch. 56, 1946) provides:

> "37. (1) Except as provided in subsection three of this section, no judge shall receive any remuneration in addition to his judicial salary for acting as commissioner or arbitrator or for acting as administrator or deputy of the Governor General or for any duty or service, whether judicial or executive, that he may be required to perform for or on behalf of the Government of Canada or the government of any province."

(3)...

"(3) A judge acting as commissioner or arbitrator pursuant to subsection two of section thirty-six of this Act, or as administrator or deputy of the Governor General or performing any duty or service he is required to perform for or on behalf of the Government of Canada or the government of any province, may receive, in addition to his judicial salary, such moving or transportation expenses and living allowance as the Governor in Council or the Lieutenant-Governor in Council, as the case may be, may fix by general or special order."

S. 36(2) provides:

"(2) Every judge nominated for the purpose by the Governor in Council or the Lieutenant-Governor in Council may act as commissioner or arbitrator on any commission, inquiry or arbitration for which he may be appointed under any authority in that behalf exercisable by the Governor in Council or the Lieutenant-Governor in Council respectively."

It is not proposed to pay any remuneration to Judges acting as Deputy Commissioners but, I understand, merely to pay their actual accountable disbursements. It is submitted that this is authorized even though they would not be appointed by the Governor in Council. Payment of their actual expenses would not constitute "remuneration" within the meaning of S. 37(1) and S. 37(3) does not prevent payment of actual disbursements. It deals only with the case where the Governor in Council establishes a rate of allowance.

For the foregoing reasons, it is submitted that the proper legal course is for the Chief War Claims Commissioner to appoint Deputy Commissioners under S. 11 of the Inquiries Act.

Another way of proceeding might be to appoint all the Commissioners under the authority of Vote 696. Without going into the matter at length, it is submitted that the power of the Governor in Council to make Regulations under Vote 696 would include power to establish tribunals to hear and determine war claims and, in so doing, to confer such powers on the tribunals as are necessary for them to operate effectively. This would include the powers of Commissioners under Part I of the Inquiries Act. In view of S. 11 of the Inquiries Act, however, it is submitted that it is not necessary to consider this question at length.

D.W.M.

P.C. 4267

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 9th day of OCTOBER, 1952.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS pursuant to Order in Council P.C. 3951 of 31st July 1951, the Right Honourable James Lorimer Ilsley, Chief Justice of Nova Scotia, was appointed a Commissioner under Part I of the Inquiries Act to inquire into and report upon War Claims arising out of World War II made by Canadians in respect of death, personal injury, maltreatment, and loss of or damage to property;

AND WHEREAS a report dated February 25, 1952, entitled "Report of the Advisory Commission on War Claims" has been made by the said Commissioner containing certain recommendations pertaining to the classification of War Claims, the priorities to be established for the payment of claims, the maximum compensation to be prescribed in relation to any class of claims or claimants, the method to be adopted for determining losses and for the payment of compensation, and other related matters;

AND WHEREAS it is necessary that regulations be made to govern the payment of compensation from the War Claims Fund to such claimants as may be found to have valid claims.

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Right Honourable Louis S. St-Laurent, the Prime Minister, and pursuant to Vote 696 of The Appropriation Act, No. 4, 1952, is pleased to make the annexed War Claims Regulations, and they are hereby made and established, accordingly.

J.W. Pickersgill,
Clerk of the Privy Council.

WAR CLAIMS REGULATIONS

1. These regulations may be cited as the War Claims Regulations.

2. In these regulations,

(a) "war claim" means a claim for compensation arising out of World War II;

(b) "War Claims Commissioner" means a commissioner to be appointed after the coming into force of these regulations for the purpose of inquiring into, reporting upon and making recommendations with respect to the payment of war claims in particular cases;

(c) "War Claims Fund" means the War Claims Fund established by Vote 696 of The Appropriation Act, No. 4, 1952; and

(d) "war claims rules" and "rules" means the rules established by section three.

3. The recommendations contained in the Report of the Advisory Commission on War Claims dated February 25, 1952, modified to the extent specified in the Schedule hereto, shall constitute the rules governing payment out of the War Claims Fund of compensation in respect of war claims.

4.(1) Payment may be made out of the War Claims Fund, with the approval of the Treasury Board, to a person, or to another on his behalf, in respect of a war claim, of an amount that, in the opinion of the War Claims Commissioner, that person is eligible to receive under the war claims rules.

(2) Notwithstanding subsection one, payment may be made out of the War Claims Fund of compensation for maltreatment at the per diem rates specified in the rules to a person, or to another on his behalf, where, in the opinion of the Treasury Board, that person is eligible to receive such compensation under the rules.

(3) In approving payments under this section, the Treasury Board shall determine the times at which such payments shall be made to give effect to the order of priorities established by the war claims rules.

5. No right to payment is conferred by these regulations.

6. These regulations shall be administered by the Secretary of State.

SCHEDULE

1. Claims by Canadians

(a) Where a claim is made for maltreatment and the person who suffered the maltreatment was at the time when the maltreatment occurred a member of the armed forces of Canada, the claimant shall be deemed to have been a Canadian both at the time of the maltreatment and at the time of presentation of the claim.

(b) For the purpose of determining whether a corporation is a Canadian at any relevant time, of the three tests recommended by the Advisory Commission on War Claims, only those as to residence and trading are retained and the test relating to ownership of outstanding securities is deleted.

(c) A corporation regarded as having had residence both in Canada and outside of Canada at any relevant time may be treated as at that time having had Canadian residence only if it then was incorporated in Canada.

2. Maltreatment

(a) In respect of the European Theatre:

Where a person has been in the direct custody of members of an organization declared a criminal organization by the International Military Tribunal, Nuremberg, (such organizations being the SS, SD, Gestapo and Leadership Corps), and is ineligible for an award under the Sumner Commission test, he may, if held in such custody for a period of fourteen days or more, be awarded one dollar per diem for each day of such custody, but should such custody have been for less than fourteen days any award on a per diem basis shall be within the discretion of the War Claims Commission. The receipt of or the eligibility for a pension under the Pension Act for disability consequent upon maltreatment shall not be taken into account in determining eligibility for or the amount of a per diem award or a lump sum award for maltreatment.

(b) In respect of the Far Eastern Theatre:

Maltreatment awards at the rate of one dollar per diem to or in respect of former prisoners of war of the Japanese eligible therefor under the Report of the Advisory Commission on War Claims may be paid in a lump sum as in the case of such awards to or in respect of civilians, and such payments shall includ any benefit for which the recipients may be eligible pursuant to Article 16 of the Treaty of Peace with Japan.

3. Claims for Property Losses

(a) In any case in which final compensation for such loss has been provided for by or under an Act of the Parliament of Canada or by the Governor in Council, no claim on the War Claims Fund in respect of such loss shall be admitted.

(b) In the recommendation relating to the payment of certain expenses of claimants, the words "in former enemy or enemy-occupied territory" are substituted for the word "abroad".

4. Priorities

(a) Maltreatment is placed on the same priority basis as death and personal injury.

(b) The following additional order of priority is inserted immediately before the concluding order of priority;

all remaining claims for compensation for property losses up to an additional $50,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then pro rata.

5. Interest

Simple interest at three per centum per annum may be paid on the following classes of awards:

(a) For property losses on the high seas from the date of the loss;

(b) For personal injury or death on the high seas from the date of the loss;

(c) For disbursements for medical and similar expenses from the date of the disbursement; and

(d) For all other claims, excluding awards for maltreatment, from January 1, 1946.

6. Limitation of Time for Filing Claims

(a) Notice of a claim must be received by the War Claims Commission not later than December 31, 1953.

(b) A claim for maltreatment shall be deemed to be presented at the time when it is first made or on the date of coming into force of the War Claims Regulations, whichever is the later.

DST:VM

C A N A D A

ELIZABETH THE SECOND &c.....

To all to whom these Presents shall come or whom the same may in anywise concern,

GREETING:

WHEREAS pursuant to the provisions of Part I of the Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, Our Governor in Council, by Order P.C.4354 of the twenty-third day of October, in the year of Our Lord one thousand nine hundred and fifty-two, a copy of which is hereto annexed, has authorized the appointment of Our Commissioner therein and hereinafter named (to be called the Chief War Claims Commissioner and to preside over the War Claims Commission), to inquire into all particular claims made by Canadians arising out of World War II that may be referred to him and for which compensation may be paid from the War Claims Fund or from any other fund established for the payment of compensation in respect of such claims, and to report to the Secretary of State stating whether in his opinion the claimant or other person is eligible, under the rules referred to in section three of the War Claims Regulations established by Order in Council, P.C.4267, of the ninth day of October, one thousand nine hundred and fifty-two, to receive a payment out of the War Claims Fund, together with the reasons for his opinion and his recommendation as to the amount that in his opinion should be paid in respect of each such claim.

AND WHEREAS Our Governor in Council has further directed that Our said Commissioner shall be the Advisory Commissioner on Claims under the Treaty of Peace with Italy

to inquire into and make reports and recommendations to the Minister of Finance concerning the matters specified in the War Claims (Italy) Settlement Regulations, pursuant to the provisions thereof.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable Thane A. Campbell, Chief Justice of the Supreme Court of Judicature of Prince Edward Island, to be Our Commissioner to conduct such inquiries and to report as aforesaid.

TO HAVE, HOLD, EXERCISE and ENJOY the said office, place and trust unto the said Thane A. Campbell, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

AND We do hereby authorize the Chief War Claims Commissioner to engage the services of

(a) a Secretary and such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as he deems necessary or advisable, those persons to be seconded from the staffs of the various departments and agencies of the Government of Canada without expense to such departments and agencies, and

(b) such other clerical assistants as he deems necessary or advisable.

AND We do hereby require all departments and agencies of the Government of Canada to furnish such assistance or information as may be required by the Commission.

IN TESTIMONY &c.....

To bear date October 23, 1952.

MY DRAFT,

D.A.G.

RAO/NM

October 23, 1952.

MEMORANDUM FOR THE DEPUTY MINISTER:

161407
Re: War Claims

I have no comment to make with reference to the attached draft Order in Council in this matter. Clause 8 provides for travelling and living allowances and is in accord with the final clause of P.C. 3951 of July 31st, 1951.

The War Claims Regulations are apparently passed by Order in Council P.C. 4267 of the 9th instant and a copy is not yet available in our file. I have been unable to get in touch with either Mr. Napier or Mr. Henry, but I will endeavour to obtain a copy immediately from the Privy Council Office.

There is one point which, because of experience with the Japanese Property Claims, I consider of importance and that is the payment of out-of-pocket expenses to claimants who reside some distance from where the Chief Commissioner or Commissioner is sitting. Many of these men will have valid claims, but because of the expense will be unable to attend or will attend at a loss to present their claim.

I understand that Cabinet has considered and turned down the idea of reimbursing a successful claimant for out-of-pocket expenses. Do you think Cabinet would favourably consider authorizing the Custodian to pay to a successful claimant his out-of-pocket expenses to overcome his temporary difficulty and to charge the amount against any award that may be given him or, alternatively, to pay the expenses only of successful claimants?

If it became known that expenses were being paid, it might result in a large number of men trying to get something to which they were not entitled, but any publicity in this regard could include a warning that the expenses only of successful claimants will be paid.

On the other hand, the claimant who is entitled to an award of $500.00 might not object to having $50.00 or $75.00 charged against it.

I understand that at the present time the only matter arising out of the proposed Order in Council in which you are interested is that pertaining to what shall be paid the Commissioner. The clause as presently drafted by Mr. Henry reads as follows:

> "That the Chief War Claims Commissioner be paid his actual travelling and living expenses while absent from his place of residence, for which accounts shall be submitted."

No instructions at present

R. A. O.

RAO/NM

October 21, 1952.

MEMORANDUM FOR THE DEPUTY MINISTER:

~~152189-2~~

Arriving at the proper phraseology of an Order in Council relating to Chief Justice Campbell of Prince Edward Island, you asked me to look into the situation regarding payments to Mr. Justice Bird, Commissioner under Japanese War Claims.

You found the Order in Council P.C. 316/3040 of the 1st of August, 1947, to be somewhat ambiguous. I do not know who drafted this Order, but I do know that I assumed no responsibility in connection with War Claims until July 15th, 1948.

Mr. Justice Bird was paid various amounts under three headings:

(1) Travel expenses in British Columbia;
(2) A per diem allowance in lieu of expenses when outside British Columbia;
(3) Transportation expenses outside British Columbia.

The totals paid to him were as follows:

1947-48	(1)	(2)	(3)	Total
	$ 553.39	$ 200.00	$ 472.49	$ 1,225.88
1948-49	10.72	2,450.00	1,906.55	4,367.27
1949-50	33.28	575.00	544.70	1,152.98
1950-51	24.00			24.00
GRAND TOTALS -	621.39	3,225.00	2,923.74	6,770.13

There was some concern at the time, as under Section 5(b) of the Income Tax Act "All amounts received by him in the year as an allowance for personal or living expenses" was wholly taxable without deduction.

R. A. O.

HON. MR. JUSTICE. H. I. BIRD. — JAP. CLAIMS COMMISSION.

TRAVEL EXPENSES AND PER DIEM ALLOWANCES.

	TRAVEL IN PROV. OF B.C. Claims 4	PER DIEM OUTSIDE B.C.	TRAVEL OUTSIDE B.C. Claims 6	TOTAL
47-48				
#13440. VICT-VANC. SEPT 29/30/47 & days @ 25.00	25 00			
" DEC. 30 - JAN 7/48 TOR.		200 00		225 00
Vchrs 1 TO 120 BY COMM R. (VANC)	528 39		472 49	1000 88
TOTAL 1947-48	553 39	200 00	472 49	1225 88
1948-49.				
44 DAYS @ 25.00				
3142 - MAR 16 TO APRIL 29/48		1,100 00		1,100 00
PRARIDGE - CALGARY - MOOSEJAW - WPG.				
T.WM. - TORONTO.				
54 DAYS @ 25.00.				
3459 APR. 30 TO JUNE 26/48				
(4 days JUNE 21-24)				
R - MONT - OTTAWA.		1,350 00		1,350 00
V. 121-256 - BY COMM R. (VANC)	10 72		1,906 55	1,917 27
TOTAL 1948-49	10 72	2,450 00	1,906 55	4,367 27
1949-50.				
V. 5182. MAY 5-6, 9-27				
0-31 - 23 days @ 25.00.				
ORONTO - OTTAWA.		575 00		575 00
V 1-65 REGIONAL C.T.O.	33 28		544 70	577 98
TOTAL 1949-50	33 28	575 00	544 70	1,152 98
1950-51.				
V. 3. Regional CTO	24 00			24 00
GRAND TOTALS	621 39	3,225 00	2,923 74	6,770 13

T&I
OCT 20 1952

OTTAWA, October 16, 1952

MEMORANDUM TO MR. F.P. VARCOE

Mr. Olmsted tells me that Mr. Justice Bird, when absent from the Province of British Columbia as Japanese Claims Commissioner, received payment under all three paragraphs of the Order quoted in Mr. Jackett's memorandum of October 11th. On this basis, the $25.00 a day was in addition to his actual living expenses.

Under the Judges Act, it is clear that Chief Justice Campbell could receive

(a) a fixed per diem living allowance only,
(b) travelling expenses plus per diem living allowance,
(c) transportation expenses plus actual living expenses.

It is not so clear that the Judge might be granted actual living expenses plus a per diem living allowance. I should think that this would be very doubtful. The same result can be achieved by making the per diem allowance sufficient.

The draft of paragraph 7 of the proposed Order does not give effect to your intention as expressed to me yesterday, which is, I understand, to provide a per diem allowance of $25.00 when the Judge is required to go outside of Charlottetown. Did you also intend him to have transportation expenses?

I have not redrafted the paragraph as you wished to discuss the matter further with the Minister. You will note from Mr. Jackett's memorandum that he understands that Chief Justice Campbell has apparently accepted terms on the same basis as those allowed for Mr. Justice Bird.

D.H.W. Henry

WRJ:SON

October 11, 1952

MEMORANDUM FOR THE DEPUTY MINISTER:

The Minister telephoned me in your absence Saturday morning concerning the proposed appointment of the Chief Justice of Prince Edward Island to act as a Commissioner against the Custodian of Enemy Property.

He told me that he had communicated your suggestion that Chief Justice Campbell be remunerated on the same basis as Mr. Justice Bird was remunerated in connection with the Japanese claims to the Chief Justice, who is in hospital, through Mr. McNaught and that he has accepted the terms.

The Minister requested me to ask you

(a) to arrange with the State Department for the preparation of the necessary Report to Council for the appointment of Chief Justice Campbell, and

(b) to prepare a draft letter from him to the Chief Justice indicating the proposed terms and our understanding of the Income Tax situation.

On our file 152189-2, attached hereto, there is a copy of Order in Council P.C. 316/3040 of August 1, 1947 authorizing payments to Mr. Justice Bird as follows:

"(1) Actual living expenses while absent from his home in connection with his duties, for which the usual detailed accounts will be submitted.

(2) An allowance at the rate of $25.00 per day covering the days when it is necessary for the Commissioner, in the performance of his duties under the Commission, to be absent from the Province of British Columbia.

(3) Actual out-of-pocket transportation expenses when travelling in the performance of his duties for which the usual detailed accounts will be submitted."

I should have thought that it is reasonably clear that the Income Tax authorities would treat payments under paragraphs (1) and (3) as reimbursement of expenses incurred in the course of duties and therefore not taxable. The payment of $25.00 per day while out of his Province would be added to his taxable income.

W.R.J.

October 15, 1952

P. S. Yesterday, Mr. Pickersgill phoned me concerning the above and, As a result of telephone inquiries, I found that Mr. Henry had taken part in the preparation of a draft Report to Council which had been prepared for signature by the Prime Minister.

I have obtained from Mr. Henry a copy of the draft

- over -

Report to Council in which he has incorporated as paragraph (7) the terms of payment which are to be found in P.C. 316/3040 of August 1, 1947, appointing Mr. Justice Bird in connection with the Japanese Claims.

As I understand it, you are merely being asked at this time to indicate whether this paragraph represents the terms which you have recommended.

I presume you have considered whether the Judges Act permits payment of a daily allowance over and above all actual out of pocket expenses.

W. R. J.

WAR CLAIMS REGULATIONS

1. These regulations may be cited as the War Claims Regulations.

2. In these regulations,

(a) "war claim" means a claim for compensation arising out of World War II;

(b) "War Claims Commissioner" means a commissioner to be appointed after the coming into force of these regulations for the purpose of inquiring into, reporting upon and making recommendations with respect to the payment of war claims in particular cases;

(c) "War Claims Fund" means the War Claims Fund established by Vote 696 of The Appropriation Act, No. 4, 1952; and

(d) "war claims rules" and "rules" means the rules established by section three.

3. The recommendations contained in the Report of the Advisory Commission on War Claims dated February 25, 1952, modified to the extent specified in the Schedule hereto, shall constitute the rules governing payment out of the War Claims Fund of compensation in respect of war claims.

4.(1) Payment may be made out of the War Claims Fund, with the approval of the Treasury Board, to a person, or to another on his behalf, in respect of a war claim, of an amount that, in the opinion of the War Claims Commissioner, that person is eligible to receive under the war claims rules.

(2) Notwithstanding subsection one, payment may be made out of the War Claims Fund of compensation for maltreatment at the per diem rates specified in the rules to a person, or to another on his behalf, where, in the opinion of the Treasury Board, that person is eligible to receive such compensation under the rules.

(3) In approving payments under this section, the Treasury Board shall determine the times at which such payments shall be made to give effect to the order of priorities established by the war claims rules.

5. No right to payment is conferred by these regulations.

6. These regulations shall be administered by the Secretary of State.

SCHEDULE

1. Claims by Canadians

(a) Where a claim is made for maltreatment and the person who suffered the maltreatment was at the time when the maltreatment occurred a member of the armed forces of Canada, the claimant shall be deemed to have been a Canadian both at the time of the maltreatment and at the time of presentation of the claim.

(b) For the purpose of determining whether a corporation is a Canadian at any relevant time, of the three tests recommended by the Advisory Commission on War Claims, only those as to residence and trading are retained and the test relating to ownership of outstanding securities is deleted.

(c) A corporation regarded as having had residence both in Canada and outside of Canada at any relevant time may be treated as at that time having had Canadian residence only if it then was incorporated in Canada.

2. Maltreatment

(a) In respect of the European Theatre:

Where a person has been in the direct custody of members of an organization declared a criminal organization by the International Military Tribunal, Nuremberg, (such organizations being the SS, SD, Gestapo and Leadership Corps), and is ineligible for an award under the Sumner Commission test, he may, if held in such custody for a period of fourteen days or more, be awarded one dollar *per diem* for each day of such custody, but should such custody have been for less than fourteen days any award on a *per diem* basis shall be within the discretion of the War Claims Commission. The receipt of or the eligibility for a pension under the Pension Act for disability consequent upon maltreatment shall not be taken into account in determining eligibility for or the amount of a *per diem* award or a lump sum award for maltreatment.

(b) In respect of the Far Eastern Theatre:

Maltreatment awards at the rate of one dollar *per diem* to or in respect of former prisoners of war of the Japanese eligible therefor under the Report of the Advisory Commission on War Claims may be paid in a lump sum as in the case of such awards to or in respect of civilians, and such payments shall includ any benefit for which the recipients may be eligible pursuant to Article 16 of the Treaty of Peace with Japan.

3. Claims for Property Losses

(a) In any case in which final compensation for such loss has been provided for by or under an Act of the Parliament of Canada or by the Governor in Council, no claim on the War Claims Fund in respect of such loss shall be admitted.

(b) In the recommendation relating to the payment of certain expenses of claimants, the words "in former enemy or enemy-occupied territory" are substituted for the word "abroad".

4. Priorities

(a) Maltreatment is placed on the same priority basis as death and personal injury.

(b) The following additional order of priority is inserted immediately before the concluding order of priority;

> all remaining claims for compensation for property losses up to an additional $50,000 in full, or if the balance in the Fund is not sufficient to pay them in full, then *pro rata*.

5. Interest

Simple interest at three per centum per annum may be paid on the following classes of awards:

(a) For property losses on the high seas from the date of the loss;

(b) For personal injury or death on the high seas from the date of the loss;

(c) For disbursements for medical and similar expenses from the date of the disbursement; and

(d) For all other claims, excluding awards for maltreatment, from January 1, 1946.

6. Limitation of Time for Filing Claims

(a) Notice of a claim must be received by the War Claims Commission not later than December 31, 1953.

(b) A claim for maltreatment shall be deemed to be presented at the time when it is first made or on the date of coming into force of the War Claims Regulations, whichever is the later.

INTERDEPARTMENTAL COMMITTEE ON WAR CLAIMS

The second meeting of the Interdepartmental Committee on War Claims was held on Friday, August 1, 1952, at 2:30 p.m. in Room 232, Confederation Building.

Present:

Mr. K.W. Taylor, Assistant Deputy Minister of Finance (Chairman)
Mr. H.D. Clark, Department of Finance,
Mr. M. Blais, Department of External Affairs,
F/L T. Giles, Department of National Defence,
Mr. A. Napier, Department of the Secretary of State,
Mr. F.L. Barrow, Department of Veterans Affairs.

Mr. M.W. Cunningham, Privy Council Office (Secretary)
Mr. W.P. Chipman, Privy Council Office

DISCUSSION OF ICWC DOCUMENTS NOS. 1 TO 9.

1. The Chairman led the discussion on the following documents which had been circulated:

(a) letter from the Rt. Hon. J.L. Ilsley on test of residence of corporations (ICWC-1)

(b) letter from W.N. Duggan, ex-RCAF on War Claim (ICWC-2)

(c) letter from R.G. Brown, ex-RCAF on War Claim (ICWC-3)

(d) letter from K. Soelling on loss of position, pension, etc., under Nazis (ICWC-4)

(e) letter from S.A. Wallace on Athenia claim of Mrs. C.H. Prine (ICWC-5)

(f) letter from Mrs. Claude Young on claim of ex-Black Watch C.A. Young (ICWC-6)

(g) letter from A. Napier to H.D. Clark on termination of hostilities and shackling of prisoners (ICWC-7)

(h) draft letter to claimants (ICWC-8)

(i) extract from U.K. Prisoners of War Department World War II (ICWC-9)

2. In the discussion that followed it became evident that each of the documents contained some general principle which had been treated in the Report of the Commission and would be met in the many claims which would be presented.

(a) In document ICWC-2 the imprisonment of the claimant in a prison operated by the Gestapo and the S.S. was involved. The S.S. was declared a criminal organization by the International Military Tribunal sitting at Nuremburg. All Japanese ex-prisoners of war would be eligible to claim,

but in the European theatre only those imprisoned by illegal organizations might do so.

(b) The letter from Mr. Brown (document ICWC-3) involved a claim because of shackling. The Commissioner did not bar these claims but still did not put them in the class of unquestioned awards.

(c) Document ICWC-4 from K. Soelling represented a claim for loss of position and pension under the Nazis in the 1930's. This is not a proper war claim and was not dealt with in the Report.

(d) The letter (ICWC-5) dealing with Mrs. Prine, an Athenia victim, was the case of a women who had lost her Canadian status and presumably could not claim under the terms of the Report. It was also doubtful whether the United States would recognize her claim, since at the time of loss she was a Canadian citizen.

(e) The letter (ICWC-6) from Mrs. Young concerned shackling and appeared to be based on the incorrect assumption that all non-Japanese prisoners were not to receive anything.

(f) Documents 7, 8 and 9 all dealt to some extent with shackling and the handling of claims in this respect.

DISCUSSION OF COMMENTS OF DEPARTMENTS ON REPORT OF ADVISORY COMMISSION ON WAR CLAIMS

3. The Committee considered the letters received from several interested Government departments and agencies containing comments on the Report of the Advisory Commission on War Claims.

Veterans Affairs - Comment 1.

4. The Chairman said that Veterans Affairs questioned the proposal to give all civilian internees of Japan one dollar for each day of internment and certain ex-prisoners of war an initial seventy-five cents per day and a further twenty-five cents when the value of the benefit received under Article 16 of the Japanese Peace Treaty was ascertained.

5. Mr. Clark agreed that this apparent discrimination would be objected to by the ex-prisoners of war of Japan particularly as the United States Government had already authorized a basic payment of one dollar per day for ex-prisoners of war and would make an additional payment under Article 16. However, if Canadian veterans were now given one dollar a day final payment, and later heard that United States veterans had received a further payment under Article 16, they might also expect additional compensation.

6. The Chairman inquired whether the veterans might be paid one dollar a day now and possibly more later under Article 16 of the Treaty.

7. Mr. Clark felt that the Government would have to negotiate with the Red Cross Society as some agency in Canada would be required to handle the payment. Total receipts were not expected to reach one dollar per day in the case of veterans but would probably total eighty-five or ninety cents.

8. Mr. Barrow thought that if a payment of one dollar per day were made now a Board of Trustees might be established to receive the Article 16 money, and pay it to the Canadian Government when final settlement was possible. If the one dollar per day was to be paid to veterans in the long run, it did not seem advisable to invite trouble by making the payment in two instalments.

9. The Chairman inquired whether we might not award one dollar per day as an outright payment to ex-P.O.W's and have them assign to Her Majesty all the rights to further payments which might be made under Article 16. Many families of prisoners and prisoners themselves had already experienced a long delay and payment in two instalments would only mean further delay.

10. Mr. Napier added that many countries had not yet ratified the Treaty.

11. F/L Giles felt that there would be considerable administrative difficulties in paying in two instalments.

12. Mr. Napier thought that we might pay the full one dollar per day in one payment to veterans and deposit to Government Account what was received later from the Red Cross.

terans Affairs - Comment 2.

13. The Chairman said that Veterans Affairs had pointed out that many non-Canadians, particularly United States Citizens, who had served with the Canadian Forces and since had returned to their own countries would not be eligible to make claims because they were not Canadians at time of presentation of claim.

14. Mr. Napier thought that U.S. citizens who served in the Canadian Forces would get nothing from the United States but he agreed to write Washington to obtain more definite information.

15. The Chairman pointed out that many of these ex-service personnel would get from Canada almost all the benefits of Canadians who served in the Canadian Forces if they were not receiving similar benefits under the G.I. Bill of Rights. He felt that non-Canadian citizens who had served in the Canadian Forces should be able to claim for losses incurred strictly as a soldier, i.e. for maltreatment, personal effects, etc., but not for losses such as real estate, investments, etc.

Veterans Affairs - Comment 3.

16. The Chairman stated that Veterans Affairs had criticised the six months limitation placed on the period for filing claims as being too short.

17. Mr. Barrow added that a man who had gone north on a lengthy field survey would almost certainly miss the opportunity to claim.

18. The Chairman said that an even more difficult case might be that of a Canadian who went abroad. However, extending the time limit might hold up all claims for a further period. A firm stand has to be made somewhere and some positive date fixed. Perhaps the cut-off date for death claims might be fixed in 1945 or 1946.

19. F/L Giles pointed out that under the Motor Vehicles Act there was a one year limit on claims.

20. Mr. Napier said that veterans' dependents could present death claims for an indefinite period. He considered that under paragraph one of page 94 of the War Claims Report the Committee might recommend a definite rule on the understanding that the Chief Commissioner might vary it in particular cases.

National Health and Welfare

21. The Chairman said that National Health and Welfare were of opinion that the recommendations on page 93 of the Report respecting evidence should apply also to such medical evidence as might be required.

22. Mr. Napier said that if there was a conflict on medical proof between the claimants' doctors and the Government's doctors, the Commissioner would have to decide. He pointed out that all hospitals and medical expenses were claimable under the Commission's recommendations.

Trade and Commerce

23. The Chairman mentioned the letter from Trade and Commerce which dealt in some measure with claims of its employees.

24. Mr. Clark said that he was attempting to reconcile claims and payments of government employees. Trade and Commerce was reasonably clear in this respect while External Affairs presented difficulties in almost all cases. Trade and Commerce employees had the right to make further claims but it would be advisable to have them await further recommendations of the Committee.

Finance - Comment 1

25. The Chairman stated that Finance felt there was some inconsistency in the treatment of a Canadian-German dual national who claimed for loss of personal property and one who had a claim for loss of real estate.

26. Mr. Napier said the Commissioner was inclined to compensate such a dual national for actual losses sustained through his assertion of his Canadian citizenship. His property would be seized because of this but it would not suffer in bombing raids on account of his citizenship.

27. The Chairman considered that it would not be necessary to report to the Cabinet on this subject.

Finance - Comment 2.

28. The Chairman observed that Finance had pointed out that if a person died before his claim was submitted the beneficiary must be a Canadian at time of presentation in order to benefit from the claim, but if the claimant died after presentation the beneficiary's nationality was immaterial. An undue advantage would seem to be granted because of the time of death. Notwithstanding, the Chairman supported the principle that the claimant should be a Canadian at the time of loss and at the time of presentation of the claim.

29. Mr. Barrow said that a claimant might be unable to present his claim because the Government was not ready to receive it and the accident of death might penalize his beneficiary.

30. The Chairman suggested that the recommendation of the Advisory Commission should stand but that the Chief Commissioner might be empowered to vary the rule where he found injustice.

Finance - Comment 3.

31. The Chairman discussed Finance's observation that considerable objection had been raised to the recommendation that the claim of a Canadian who had changed his citizenship, say to American, before presentation of his claim be disallowed.

32. Mr. Clark felt on the whole that those who had so ceased to be Canadians should not get awards through the Government of Canada.

33. Mr. Barrow said that civilians who considered themselves badly treated in this respect would not appear to have as strong a claim for redress as United States citizens who had served in the Canadian Forces during the war and since returned to the United States.

34. The Chairman was of the opinion that nationality itself should not be permitted to raise too many obstacles but felt that the claimant should be Canadian at the time of the loss and of presentation of the claim but not necessarily at the time of award.

Finance - Comment 4.

35. The Chairman took up the suggestion by Finance that some interim limit on death claim settlements should be made in connection with priorities on payment in view of uncertainties expressed on page 87 of the Report. He thought that the Committee could make no prediction as to how the Commissioners would make awards and as to their size.

36. Mr. Napier believed that these would probably depend on the age of the claimant and on the size of his earning power.

37. The Chairman thought that in respect of claims for compensation for death and personal injury (see page 84(1) of the Report) some amount, perhaps as much as fifty thousand dollars, might be considered as an interim limit in the payment of such claims. However, it was indicated the question was purely academic and it might well be dropped for the present.

38. The Committee

(a) noted that interested Departments, in their comments on the Commission's Report, raised only details and were not critical of the general approach to the problem;

(b) instructed the Secretary to request the Associate Deputy Minister of Trade and Commerce to delay in informing departmental employees that they might submit further war claims until the Committee had made some further recommendation in this respect; and

(c) agreed

(i) that some procedure should be evolved whereby ex-prisoners of war of the Japanese might be paid in one payment one dollar per day for each day of imprisonment rather than in two payments of seventy-five cents and twenty-five cents;

(ii) that non-Canadian citizens who served in the Canadian forces and who were not Canadian citizens at the time of presentation of their war claims should, notwithstanding, be entitled to claim for losses such as maltreatment, etc., incurred as a result of their service in the Canadian forces.

NEXT MEETING

39. The Committee agreed to meet at 10:30 a.m. on Thursday, August 7th, 1952, in Room 232, Confederation Building, in connection with the duties of the Committee.

M. W. Cunningham,
Secretary.

Privy Council Office
August 6, 1952.

P.C. 3951

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Administrator on the 31st July, 1951.

The Committee of the Privy Council have had before them a report dated July 27, 1951, from the Secretary of State, representing:

That, arising out of World War II, many claims have been asserted by Canadians, hereinafter referred to as War Claims, in respect of death, personal injury, maltreatment, and loss of or damage to property;

That in respect of some of these claims partial compensation is provided for and may be obtained under treaties of peace or other international instruments, but that in respect of the bulk of them, no provision for compensation has been made; and

That such War Claims are matters connected with the public business of Canada and it is deemed advisable now to appoint a Commissioner under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes, 1927, to inquire into and report to the Governor in Council.

The Committee, therefore, on the recommendation of the Secretary of State, advise:

1. That under and in pursuance of the Inquiries Act a Commission do issue appointing the Right Honourable James Lorimer Ilsley, P.C., K.C., to be a Commissioner to inquire into and to report upon the aforesaid matters;

2. That, without restricting the generality of the above terms of reference, the Commissioner shall, in particular, make recommendations as to the following matters:

(a) An estimate or calculation as to the amount of the total funds available for the payment of such claims;

(b) The classification of War Claims and an estimate of the number of each class and of the total amount of such claims;

(c) As to (i) which class or classes of claims should be admitted for payment in full and (ii) which, if any, in part only, and (iii) which, if any, should be rejected;

(d) The classification of claimants whose claims should be admitted;

(e) The priorities, if any, that should be established for payment of (i) classes of claims and (ii) classes of claimants;

(f) The limitation of time that should be prescribed within which War Claims shall be filed;

(g) The maximum sum of compensation, if any, that should be prescribed in relation to any class of War Claims or claimants;

(h) The nationality or domicile at time of loss and/or at the time of filing the claim of claimants entitled to compensation;

(i) The method to be adopted for determining loss in case of each class of War Claims;

(j) Whether interest should in any cases be allowed; and

(k) The tribunal or tribunals that should be authorized to adjudicate upon individual claims and the rules of procedure and evidence to be adopted by such tribunals.

3. That the Commissioner be authorized to engage the services of counsel, technical advisers or other experts, clerks or reporters as he may deem necessary or advisable, at rates of compensation to be approved by the Governor in Council.

4. That the Commissioner be paid travelling and living allowances while absent from his place of residence, for which accounts shall be submitted.

N. A. Robertson,
Clerk of the Privy Council.

EAD/NEB

C A N A D A

GEORGE THE SIXTH &c....

To all to whom these Presents shall come or whom the same may in anywise concern,

GREETING:

WHEREAS arising out of World War II, many claims have been asserted by Canadians, hereinafter referred to as War Claims, in respect of death, personal injury, maltreatment, and loss of or damage to property.

AND WHEREAS in respect of some of these claims partial compensation is provided for and may be obtained under treaties of peace or other international instruments, but that in respect of the bulk of them, no provision for compensation has been made.

AND WHEREAS such War Claims are matters connected with the public business of Canada and it is deemed advisable now to appoint a Commissioner to inquire into and report to Our Governor in Council concerning such Claims.

AND WHEREAS it is expedient and Our Governor in Council has, by Order, P.C. 3951, of the thirty-first day of July, in the year of Our Lord one thousand nine hundred and fifty-one (copy of which is hereto annexed) authorized the appointment under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, of Our Commissioner therein and hereinafter named to inquire into and report upon the aforesaid matters, and without limiting the generality of the above terms of reference, in particular, make recommendations as to the following matters:

(a) An estimate or calculation as to the amount of the total funds available for the payment of such claims;

(b) The classification of War Claims and an estimate of the number of each class and of the total amount of such claims;

(c) As to (i) which class or classes of claims should be admitted for payment in full and (ii) which, if any, in part only, and (iii) which, if any, should be rejected;

(d) The classification of claimants whose claims should be admitted;

(e) The priorities, if any, that should be established for payment of (i) classes of claims and (ii) classes of claimants;

.....

(f) The limitation of time that should be prescribed within which War Claims shall be filed;

(g) The maximum sum of compensation, if any, that should be prescribed in relation to any class of War Claims or claimants;

(h) The nationality or domicile at time of loss and/or at the time of filing the claim of claimants entitled to compensation;

(i) The method to be adopted for determining loss in case of each class of War Claims;

(j) Whether interest should in any cases be allowed; and

(k) The tribunal or tribunals that should be authorized to adjudicate upon individual claims and the rules of procedure and evidence to be adopted by such tribunals.

NOW KNOW YE that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Right Honourable James Lorimer Ilsley, P.C., K.C., Chief Justice of Nova Scotia, to be Our Commissioner to hold and conduct such inquiry.

TO HAVE, HOLD, EXERCISE and ENJOY the said office, place and trust unto the said James Lorimer Ilsley, together with the rights, powers, privileges and emoluments unto the said office, place and trust of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

And We do hereby authorize Our said Commissioner to engage the services of counsel, technical advisers or other experts, clerks or reporters as he may deem necessary or advisable.

And We do hereby require and direct Our said Commissioner to report to Our Governor in Council the result of his investigations, together with the evidence taken before him and any recommendations which he may see fit to make in the circumstances.

IN TESTIMONY &c....

By Draft,

To bear date July 31st, 1951.

D.M.J.

SECOND DRAFT

OTTAWA, July 1951.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

The undersigned has the honour to report as follows:

That arising out of World War II many claims have been asserted by Canadians, hereinafter referred to as War Claims, in respect of death, personal injury, maltreatment, and loss of or damage to property.

That in respect of some of these claims partial compensation is provided for and may be obtained under treaties of peace or other international instruments, but in respect of the bulk of them, no provision for compensation has been made.

That such War Claims are matters connected with the public business of Canada and it is deemed advisable now to appoint a Commissioner under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes, 1927, to inquire into and report to the Governor in Council.

The undersigned, therefore, recommends that, pursuant to the Inquiries Act aforesaid, the following Order be made:-

"1. That the Right Honourable James Lorimer Ilsley, P.C., K.C., Chief Justice of Nova Scotia,

is appointed Commissioner pursuant to the Inquiries Act to inquire into and report to the Governor in Council on the best method of disposing of War Claims and, without restricting the generality of the foregoing, shall make recommendations as to the following matters:

(a) An estimate or calculation as to the amount of the total funds available for the payment of such claims;

(b) The classification of War Claims and an estimate of the number of each class and of the total amount of such claims;

(c) As to (i) which class or classes of claims should be admitted for payment in full and (ii) which, if any, in part only, and (iii) which, if any, should be rejected;

(d) The classification of claimants whose claims should be admitted;

(e) The priorities, if any, which should be established for payment of (i) classes of claims and (ii) classes of claimants;

(f) The limitation of time which should be prescribed within which War Claims must be filed;

(g) The maximum sum of compensation, if any, which should be prescribed in relation to any class of War Claims or claimants;

(h) The nationality or domicile at time of loss and/or at the time of filing the claim of claimants entitled to compensation;

(i) The method to be adopted for determining loss in case of each class of War Claims;

(j) Whether interest should in any cases be allowed; and

(k) The tribunal or tribunals which should be authorized to adjudicate upon individual claims and the rules of procedure and evidence to be adopted by such tribunals.

2. The Commissioner is authorized to engage the services of counsel, technical advisers or other experts, clerks or reporters as he may deem necessary or advisable, at rates of compensation to be approved by the Governor in Council.

3. This Order may be cited as The War Claims Order, 1951".

The undersigned further recommends that the Commissioner receive expenses while absent from Halifax.

Respectfully submitted,

Secretary of State.