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OTTAWA 4, April 23, 1965.

MEMORANDUM TO CABINET

Contributions to Newfoundland
Respecting Indians and Eskimos

Background of this Memorandum

By letter dated March 23, 1964, to the Prime Minister, Mr. Smallwood asked the Government of Canada either to (1) take over full responsibility for Indians and Eskimos in Labrador or (2) give the province the same degree of financial support as it gives in respect of Indians and Eskimos living in other provinces. This request was considered by the Cabinet Committee on Social Security and Labour in May 1964 and, on August 10, 1964, the Prime Minister informed Premier Smallwood that "the federal government does not wish to disturb the established arrangements for provincial administration of Indian and Eskimo affairs in Newfoundland. We appreciate the financial problem that confronts Newfoundland in administering the affairs of the Indians and the Eskimos in Labrador and we are prepared to provide such continuing financial support as seems appropriate in the light of the needs of Indians and Eskimos in your province, and of our programmes relating to Indians and Eskimos elsewhere in Canada". The Prime Minister went on to suggest a meeting of federal and provincial officials, and a visit to Labrador by federal officials "to work out a programme of assistance for submission to both governments".

Meetings have been held in Ottawa between federal and provincial officials and a representative of the Department of Northern Affairs and National Resources has visited Newfoundland for discussions with provincial officials. An interdepartmental committee comprised of representatives of the departments of Northern Affairs and National Resources, Citizenship and Immigration, National Health and Welfare, and Finance (Treasury Board) has thoroughly examined the provincial request for financial aid, and the purpose of this memorandum is to request Cabinet approval in principle for terms of agreement, as proposed by the interdepartmental committee, and for the communication of such terms to the Premier of Newfoundland.

Background Information

There are approximately 450 Indians and 900 Eskimos in Labrador. A summary of previous negotiations with Newfoundland for financial assistance for its programs with Eskimos and Indians is attached as Appendix "A".

Constitutional Position

A summary of the constitutional position vis-à-vis legislative, policy making and financial responsibility for Indians and Eskimos in Labrador is attached as Appendix "B". A substantial degree of federal obligation with respect to the formulation of policies and the voting of funds to provide for programmes on behalf of Indians and Eskimos in Labrador is indicated.

Proposed Terms of Agreement

The objective of the Government of Canada in Newfoundland and elsewhere is to see the Indians and Eskimos take their place as fully participating members of the provincial communities, accepting all the responsibilities and receiving all the benefits of other citizens. The achievement of this objective will entail the provision of continuing financial assistance

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to Newfoundland for programmes comparable to those in effect for Indians and Eskimos elsewhere in Canada.

It is recommended that the agreements be reviewed and renegotiated at 5-year intervals to ensure that they are kept up to date in the light of changing circumstances and needs of the Eskimos and Indians in the Labrador. This periodic review, moreover, will enable the agreements to be adjusted as necessary to conform to the changing federal-provincial relations with respect to Indians and Eskimos in Canada.

Two agreements with Newfoundland and payment of a share of the capital costs incurred by Newfoundland in the period 1959-1964 are recommended, as detailed below.

1. To ensure continuity of services and because the special arrangements with respect to health treatment expired March 31, 1964, an agreement is urgently required to extend immediately, for a further 5-year period, with effect April 1, 1964, the 10-year agreement covering medical and hospital costs for Indians and Eskimos (see Appendix "A").
2. A new agreement in respect of all provincial expenditures on Indians and Eskimos, other than medical and hospital costs covered in item 1, to provide that:
 - (a) Canada will reimburse Newfoundland for 90 per cent of the province's expenditures on Indians and Eskimos, as certified by provincial auditors and subject to federal audit commencing April 1, 1965;
 - (b) such reimbursement will not apply to any part of such expenditures which Newfoundland recovers from Canada under any other federal-provincial agreement;
 - (c) the total amount of reimbursement made by Canada to Newfoundland under this agreement will not exceed \$1 million per year for the first 5-year period (see Appendix "C");
 - (d) provincial expenditures on programmes for Eskimos and Indians will be subject to an annual budget recommended by a federal-provincial committee of officials and approved by each government;
 - (e) Irrelevant

The proposed new agreement will cover both operating and capital expenditures and this provision in the new agreement, therefore, would apply both to operating and capital costs in these communities:

- (f) In regard to capital costs for regional institutions which will serve predominantly white communities as well as Indian and Eskimo communities, the federal 90 per cent share should only apply to that part of the cost representing the proportion of use which the Indians and Eskimos bear to the total enrolment.

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- (g) this agreement will be renegotiated at 5-year intervals.
3. Canada to reimburse Newfoundland in an amount not exceeding \$255,000 representing 90 per cent of the province's capital expenditure for Indians and Eskimos in the period 1959-64 which totalled \$280,564.

Explanation

The explanation of the features and the recommendations set out above are as follows:

1. Medical and Hospital Services

The continuation of the agreement which has been in effect for the past 10 years is recommended to ensure continuity of an essential programme and under procedures which, it is understood, have proven satisfactory both to the Government of Newfoundland and to Indian and Northern Health Services. An extension for a 5-year term is, therefore, recommended rather than attempting to bring this service within the scope of the general agreement at this time.

2. Agreement for General Services

- (a) A 90/10 federal-provincial sharing of costs for Indians and Eskimos is based on the following:
- (i) Although exact figures are not available, it is estimated that at least an equivalent 10% contribution is made by other provinces in respect to the substantial number of persons of Indian status who do not reside on reserves or on Crown land. All provincial services are extended to such Indians at provincial cost without federal subsidy.
 - (ii) In addition, many of the provinces in Canada are extending a wide range of services to Indians on reserves. Depending on the province, these include substantial provincial subsidies for roads, welfare services, extension services of various kinds and a variety of economic development projects.
 - (iii) Cabinet approved 28 May, 1964 (refer to memo. to Cabinet 139-64) an approach to the provinces based on a federal-provincial division of costs for welfare services on a formula which, initially, would approximate a 90 per cent federal share of the costs of provincial services extended to Indians residing on reserves or on Crown lands.
 - (iv) Effective administration requires that the agency administering a programme bear a significant share of costs.
- (b) is self explanatory.
- (c) The proposed federal ceiling of \$1 million per year for reimbursements to Newfoundland for the period 1965-70 represents the approximate cost to Canada in 1963-64 for the care of equivalent numbers of Indians and

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Eskimos in parts of Canada where living conditions are comparable to those of Labrador, excluding capital and operating costs pertaining to medical and hospital treatment. The per capita expenditures forming the basis for this calculation are set out in Appendix "C". The substantial difference between per capita expenditures on Indians and Eskimos is primarily due to such factors as Eskimos living in high-cost areas and particularly in areas where normal provincial and municipal services are not available. This difference in per capita costs should not appear in the agreement with Newfoundland because it could be interpreted as a suggestion that the province spend one amount on Indians and another on Eskimos. Eskimos and Indians live in similar circumstances in Labrador and it is desirable that they receive equal treatment.

- (d) (i) The proposed federal-provincial committee would review the budget for the forthcoming year and the programmes to be carried out. It is recommended that the committee be chaired by a Newfoundland official and include such representatives as the Government of Newfoundland may wish to nominate. Canada would be represented by officials of the Department of Citizenship and Immigration and Northern Affairs and National Resources, with provision that officials from the Department of National Health and Welfare and of Finance may attend as and when required.
- (ii) The committee would be required to make appropriate recommendations to both governments which, when approved, would then constitute the operational plan and the basis for cost sharing for the ensuing fiscal year.
- (iii) For the current fiscal year (1965-66) the Province of Newfoundland to be asked to submit operational plans based on their current estimates.
- (iv) The committee would also serve for an exchange of information with respect to programmes and developments of mutual concern and interest.
- (e) This provision, as explained, was included in the previous agreement with Newfoundland with respect to capital costs which spanned the years 1954-59. By carrying this provision forward into the proposed new agreement, the necessity of identifying individuals with respect to status is avoided. The purpose is to ensure that Canada's contribution to costs is applied to the Eskimo and Indian population.
- (f) It is understood that Newfoundland has plans for larger institutions to serve relatively broad areas in some fields. In such cases there must be an initial distribution of costs based on the proportion of use by the Indians and Eskimos. The 90 per cent reimbursement of provincial expenditures would, therefore, only apply to that proportion of the cost represented by the use made of such institutions by Indians and Eskimos.
- (g) This provision has previously been explained in the introduction to the terms of the agreement.

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Appendices

Appendix "A" - Background Information.

Appendix "B" - Constitutional Issue.

Appendix "C" - Per Capita Expenditures on Indians and Eskimos.

Appendix "D" - Justice Opinion April 14, 1950.

Appendix "E" - Justice Opinion November 23, 1964.

Appendix "F" - Letter from the Minister of Citizenship and Immigration, March 21, 1962, to the Solicitor General of Canada.

APPENDIX "A"

OTTAWA 4, April 22, 1965.

Indians and Eskimos in LabradorBackground Information

When the terms of union between Canada and Newfoundland were being discussed, the future status of the Indians and Eskimos of Labrador was considered. While the federal government had accepted responsibility for the welfare of native people in all parts of Canada outside Newfoundland, unusual conditions existed within the proposed Province of Newfoundland that appeared to make it more logical to leave this responsibility with the new provincial government. Among these conditions were the unusual degree to which the native population had inter-married with the white population, and the long experience of the old Newfoundland Government in the handling of its own native problems.

Because of its complexity, the question was not dealt with under the terms of union, but it was agreed in correspondence this question would be dealt with later. It was generally accepted that the federal government had some responsibility in this field, but the exact definition of this responsibility was left for later study. The first important negotiations intended to produce a permanent settlement were undertaken in 1953, and on April 7, 1954, the then Secretary of State recommended to Cabinet that the following settlement be made:

- (a) The federal government to provide contributions in a total not exceeding \$200,000 toward capital expenditures made by Newfoundland on certain approved projects for the benefit of the Indians and Eskimos.
- (b) The federal government to assume for a ten-year period beginning April 1, 1954, full financial and, to the extent required, administrative responsibility for the transportation, hospitalization and treatment of northern Labrador Indians and Eskimos requiring hospital treatment and during the same ten-year period to undertake an aggressive anti-tuberculosis program.
- (c) The Government of Newfoundland as of April 1, 1954, to assume all financial and administrative responsibility for the Indian and Eskimo population of Labrador, including relief but excluding the matters referred to in (a) and (b) above, and all federal benefits such as family allowances and old age pensions which have a general application throughout Canada.

The Cabinet approved this program, as did the Government of Newfoundland, and it was given effect.

In 1959, a request was received from Newfoundland for participation in further minor capital projects for Indians and Eskimos, principally housing and schools, with a proposed federal share of \$211,000. The then Ministers of Citizenship and Immigration and Northern Affairs and National Resources recommended the grants to Cabinet on the grounds of reasonableness for projects designed to make the people self-supporting. No decision was taken by the Cabinet from 1959 onwards, although the matter was resubmitted four times by the ministers concerned.

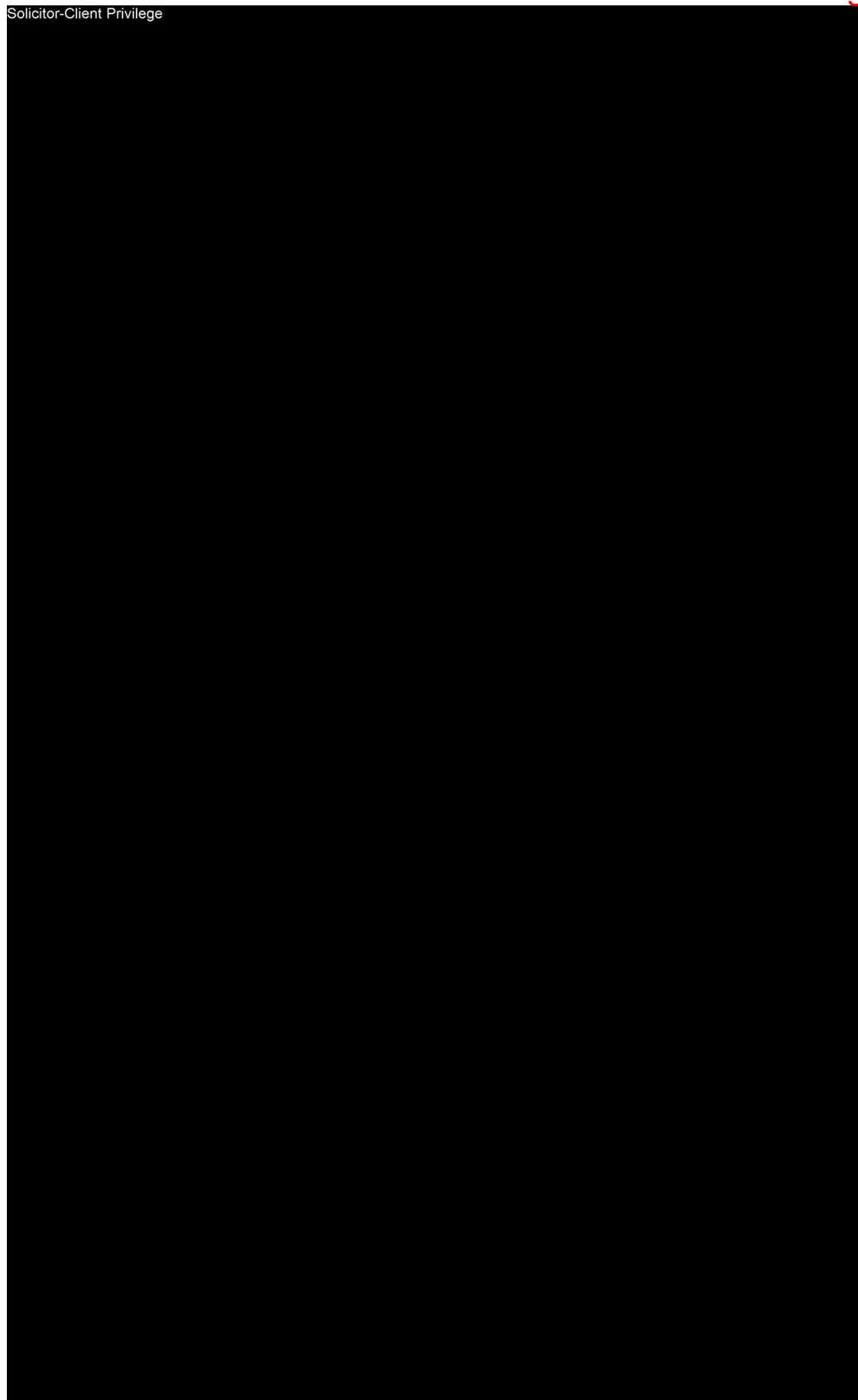
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On October 15, 1963, the Newfoundland Minister of Public Welfare wrote the federal government asking:

- (a) again for the \$211,000 grant requested in 1959;
- (b) additional capital project money for the period 1959-63 amounting to \$70,333;
- (c) approval of a capital expenditure plan for the next five years beginning April 1, 1964, with a federal share of \$523,333; and
- (d) an extension of the health plan for another ten years.

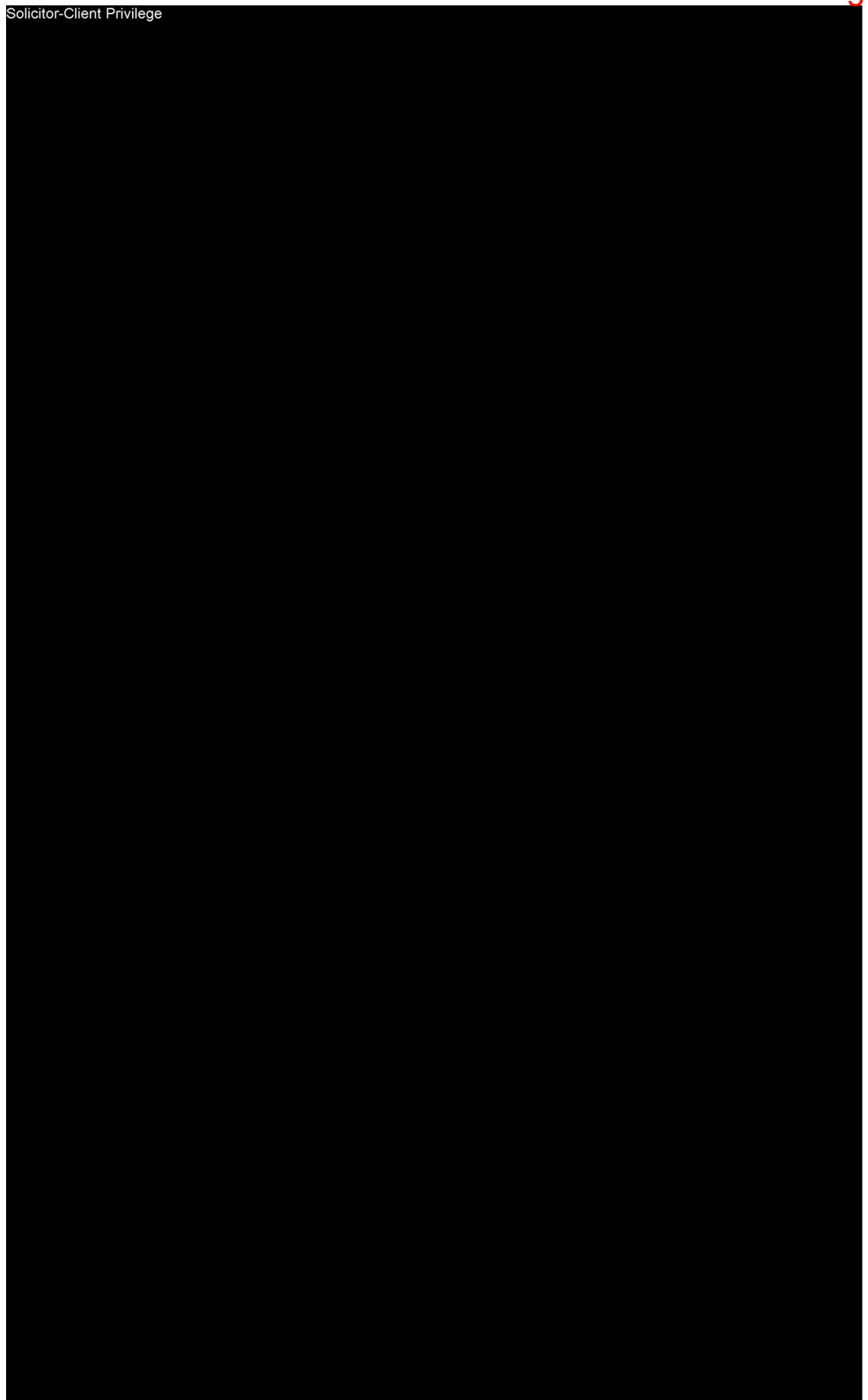
An interdepartmental committee undertook to study this request, particularly in the light of the discussions then current with the Government of Quebec respecting a possible assumption of responsibility for the administration of Eskimo affairs by the province. On March 23, 1964, Premier Smallwood wrote the Prime Minister the request which is the subject of this submission, in effect asking federal aid not only for capital costs, but for operating costs as well, at least to the extent that the federal government accepts financial responsibility for Indians and Eskimos in other provinces.

Solicitor-Client Privilege



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APPENDIX "C"

Per Capita Expenditures by Canada
on Indians and Eskimos in Areas
Where living conditions are comparable to Labrador

All figures are for the fiscal year 1963-64

1. Indian Affairs Branch expenditures on Indians:

Abitibi Agency	- \$262. per capita
James Bay Agency	- \$322. per capita
Approximate Average	- <u>\$300. per capita</u>

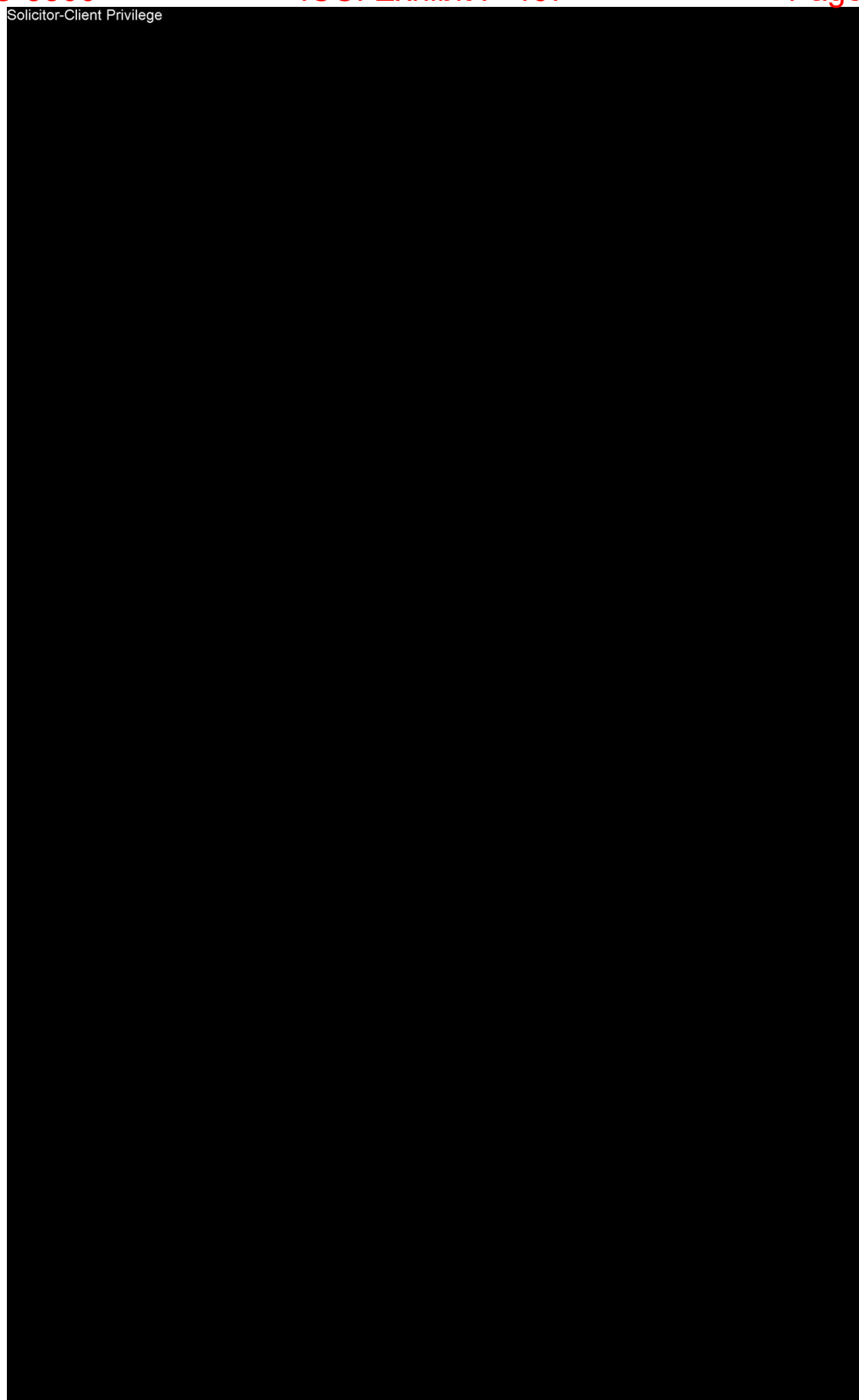
2. Northern Administration Branch expenditures on Eskimos:

Northern Quebec Region - \$922. per capita

3. Applying these per capita figures to the Indian (450) and Eskimo (900) population of Labrador produces the following:

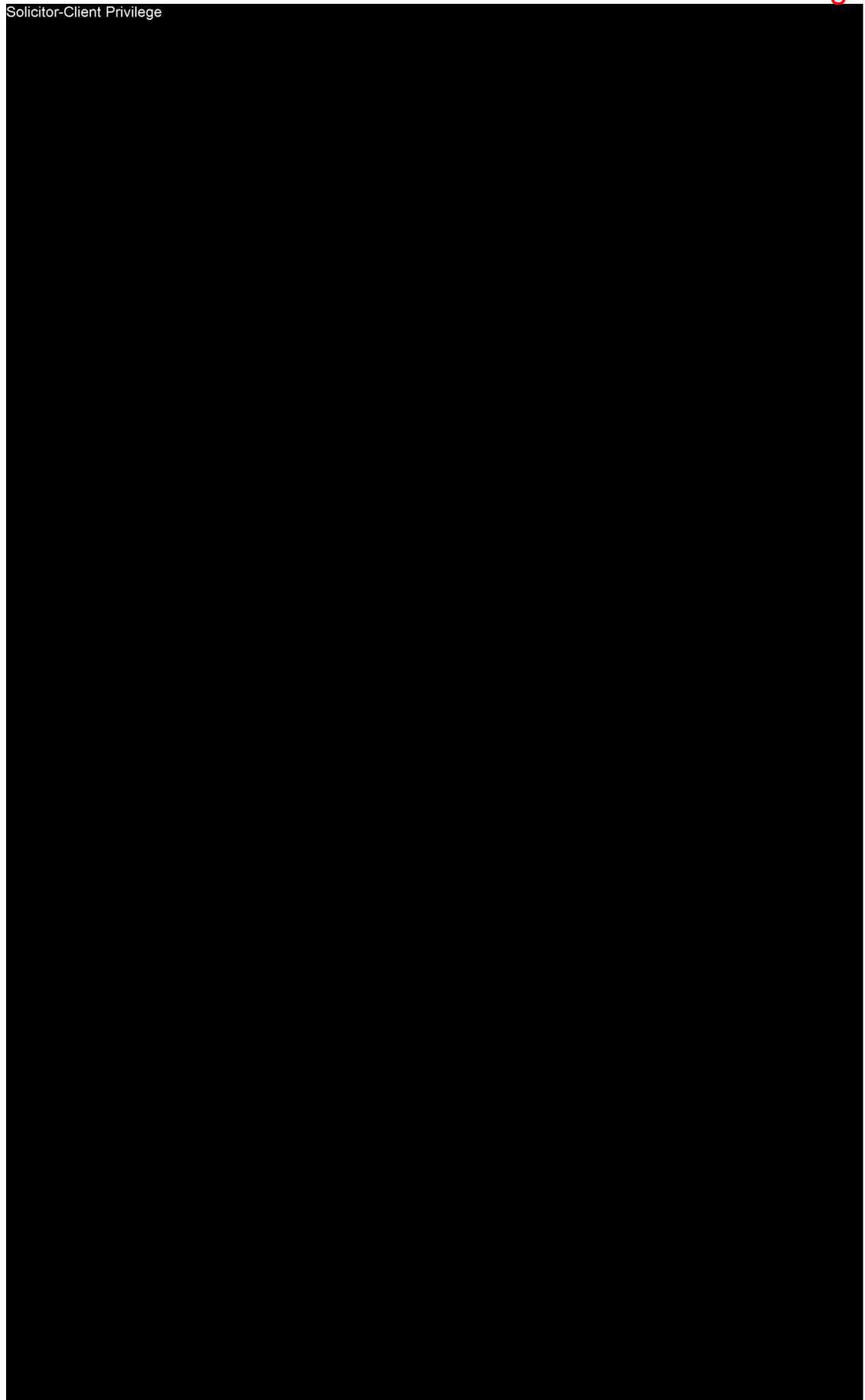
450 Indians x \$300. per capita	=	\$135,000.
900 Eskimos x \$922. " "	=	<u>829,800.</u>
Total		<u>\$964,800.</u>

Solicitor-Client Privilege



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Solicitor-Client Privilege



APPENDIX "F"

O T T A W A,
March 21, 1962.

Hon. W. J. Browne, Q.C., P.C., M.P.,
Solicitor General,
Justice Building,
Ottawa.

My dear Colleague;

This will refer to your letter of February 15, with which you enclosed a copy of a letter from the Reverend Father Charles N. DeHarvenz, O.M.I., Chairman of the Roman Catholic Board of Education, Labrador North, Newfoundland. Father DeHarvenz's letter refers to the need for financial assistance in providing further educational facilities for the Labrador Indians. His letter also advances the argument that the real legal responsibility for the Labrador Indians rests with the federal government and not with the Province of Newfoundland.

As you are aware, this is a problem that has arisen on numerous occasions, and the position which has been consistently taken by the federal government is that the Indians of Newfoundland were enfranchised and full citizens of the Province on the day when Newfoundland entered Canada in 1949, and that consequently the federal government has no constitutional responsibility for the persons of Indian ethnic origin in the Province. The terms of union themselves do not make any reference to Indians and, that being the case, there is no basis upon which the federal government can take a particular responsibility in constitutional terms for any group of people, citizens of the Province, for whom special authority or responsibility is not clearly set out in the terms of union.

We have, however, recognized the special problem in Newfoundland on a number of occasions since 1949 by providing special assistance to the provincial authorities, to enable them to carry the additional burdens which rest upon them as a result of the fact that Indians in Newfoundland, unlike other provinces, are a responsibility of the provincial government.

You are, I think, familiar with the more recent proposals which have been made along the lines of the foregoing. On July 5, 1958, the Minister of Northern Affairs and I submitted a joint memorandum to Cabinet, recommending approval of a request received from Newfoundland for certain assistance over and above that already given in accordance with the terms of union, to enable the Province to provide services to meet the changing and growing needs of Eskimos and Indians in Labrador. This proposal represented an additional federal contribution of approximately \$215,000, of which \$124,000 would meet two-thirds of the capital costs of works for Eskimos, to be provided through the estimates of the Department of Northern Affairs, and \$91,000 would represent the 100% reimbursement of the costs of housing for Indians, to be provided in the estimates of this Department.

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When this proposal was put to Cabinet, a sub-committee was established, including the Minister of Northern Affairs, the Minister Without Portfolio, yourself and myself. This sub-committee held a number of meetings and finally on June 7, 1961, endorsed the recommendations contained in the Memorandum to Cabinet of July 1958. A note on our departmental file indicates that Cabinet itself considered the matter on July 10 and again on November 15. The final decision at both these meetings was that the matter should be left in the hands of the Prime Minister, who would make an announcement at an appropriate time. It was hoped in July, and again in November, that the Prime Minister would make an announcement with reference to this matter, when he was in Newfoundland on other business. Unfortunately he did not have the opportunity to make any announcement either time, and the matter rests there.

I should add that the assistance to be provided from this Department on behalf of the Indians of Labrador provides for the reimbursement to the Province of Newfoundland of the cost of constructing some forty houses for Indians, as well as for the reimbursement to Newfoundland of some \$11,000 which the Province has already spent for this purpose. Newfoundland's request and the Memorandum to Cabinet do not include provision for the costs involved in the enlargement of the school to which Father DeHarveng refers in his letter of February 3, 1962, to you.

You will recall that, when this matter was previously discussed, it was agreed that the federal authority could not deal directly with a request advanced by Father DeHarveng, in the face of requests for different kinds of assistance already presented to us by the provincial authorities. You agreed at the time that you would get in touch with Mr. F. R. Kennedy, Superintendent of Education for the Province of Newfoundland (Roman Catholic), in order to clarify more precisely the position of the Province. Mr. Kennedy confirmed to you, I understand, the position already advanced by the Province, namely that it desired financial assistance from the federal government for the matters referred to in the Cabinet Memorandum, and that it was not including as a part of its request for assistance any provision for the costs involved in the enlargement of the school concerning which Father DeHarveng has made representations to you.

I can assure you that no one would be happier than Mr. Dinsdale and myself if this question, which has already been approved in principle by Cabinet, could be brought to finality in some way. In the circumstances which I have outlined, however, I do not think that we can do more than remind the Prime Minister at an appropriate time of this outstanding item and suggest that, if at all possible, he should make an announcement concerning it. It is probable that, in the press of other matters it has slipped his mind. It seems to me that in view of your particular interest in the matter, your opinion as to the most appropriate time to make the announcement would carry special weight with the Prime Minister. Perhaps you could have a word with him about it.

Yours sincerely,

Ellen L. Fairclough