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PREM 19/397

UK / Canadian relations
The Canadian constitution
British North American Acts
Internal situation

Part 2

CANADA

Part 1 : May 1979

Part 2 : November 1980

PREM 19/397

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~27.11.80~~							
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PART 2 ends:-

27 . 2 - 81

PART 3 begins:-

2 . 3 . 81

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
C (80) 69	11.11.80
CC (80) 42nd Conclusions, Minute 6	27.11.80
CC (80) 45th Conclusions, Minute 2	18.12.80
L (81) 43	11.2.81
CC (81) 6th Conclusions, Minute 2	12.2.81
OD (81) 11	18.2.81
CC (81) 7th Conclusions, Minute 2	19.2.81
OD (81) 12	19.2.81
OD (81) 3rd Meeting, Minutes	23.2.81

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed Wayland Date 25 August 2011

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

1. First Report from the Foreign Affairs Committee, Session 1980-1981 British North America Acts: the role of Parliament
   Published by HMSO, 21 January 1981

2. Canadian Parliament Paper: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

Signed OWayland Date 25 August 2011

PREM Records Team

W55
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(2)

Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister
To note
Rmk 2/3

27 February 1981

Dear David,

PATRIATION OF THE CANADIAN CONSTITUTION

I have been asked to reply to your letter of 25 February to George Walden in his absence in the United States. Martin Berthoud has now established from the Canadian High Commission that the long title of the Bill has apparently been changed back to the formulation we had ourselves originally put forward. The Canadians themselves were aware of the unfortunate nature of the reversion of the long title to its original form, imposed in committee, before we pointed it out to them. To make assurance doubly sure, we have asked our High Commission at Ottawa to let us have the precise wording of the present long title. I shall, of course, let you know if it differs from the version we had proposed.

Meanwhile, as you will know, our Legal Advisers are discussing with the Attorney General's Office the question of whether the Canadian Bill will in fact be amendable regardless of its long title.

I am sending copies of this letter to the recipients of yours.

Yours
Alan

A K C Wood
Assistant Private Secretary
to the Lord Privy Seal

D J Wright Esq
Cabinet Office
70 Whitehall
London SW1

With the Compliments
of the
Private Secretary
to the
Secretary of the Cabinet

M. O'D. B. Alexander, Esq

for information

Cabinet Office,
London, S.W.1.

SECRET

Canada

CABINET OFFICE

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref: A04325

25th February 1981

Patriation of the Canadian Constitution

At the meeting of the Defence and Oversea Policy Committee on 23rd February to discuss this matter, the Attorney General told his colleagues that he had just heard that, despite the informal advice which had been given to the Canadian Government from here, their proposed Joint Address had emerged from its committee stage in Ottawa with its long title unamended. Amending it as suggested would make the ensuing Bill virtually unamendable in the House of Commons. Sir Michael Havers therefore thought it important to persuade the Canadians to reinstate the amendment. OD agreed.

This point is not being minuted, but I should record that OD invited the Foreign and Commonwealth Secretary to pursue the matter with the Canadian High Commissioner to try and ensure that the necessary amendment is made to the long title before the request of the Canadian Federal Parliament is received at Westminster. From what Martin Berthoud has since told Richard Hastie-Smith, the Canadians now seem to realise the mistake they have made. So it may not be difficult for you to get them to try to reverse it.

Copies of this letter go to the Private Secretaries to the Lord Chancellor, Chancellor of the Duchy, Lord President and Attorney General, and to Michael Alexander at No. 10.

D. J. WRIGHT

(D. J. Wright)

G. G. H. Walden, Esq., CMG

SECRET

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

Canada

CONFIDENTIAL

23rd February, 1981

The Right Honourable
The Prime Minister

Dear Margaret

Patriation of the Canadian Constitution

In any constitutional question, and in this in particular, there are at least four separate questions to answer and in the following order.

1. The strict legal position. This is as the Attorney General says. But it is entirely barren, since, as often, the strict legal position is over laid by convention as binding as law.

2. The position under established constitutional convention. This is expressly recognised, as the Attorney General points out, by the third paragraph of the preamble to the Statute of Westminster Act 1931. It is relevant to the present discussion because, at least in my opinion, it completely prohibits either (a) Plain "patriation" or (b) amendment except in accordance with a "request and consent" of the relevant Commonwealth Member.

3. Constitutional propriety. By this phrase I mean something which is not governed by an established convention, but action which will be treated as a precedent establishing a convention if it is correctly answered and lead to a shambles if the action taken is a mistake (e.g. the House of Lords' rejection of the Budget in 1909). I agree with the Attorney General that though convention completely governs and inhibits simple "patriation" or amendment, it is not yet expressly established by convention that Parliament may not refuse to accept a "request and consent". It is at this stage that the case becomes arguable.

In their report the FAC argue that it would in this sense be constitutionally proper to reject a Bill. I am sure they are wrong. They found their belief on the supposition that s.7 of the Statute of Westminster Act constitutes the U.K. Parliament a guardian, arbiter or trustee, or, in a sense the guarantor of the rights of the provinces under the BNA 1867 as amended. Historically I do not believe that this is correct. S.7 is there because Canadians in 1931 were not prepared to say what should take the place of the legal status quo. Even if I were wrong about this I would agree with the Attorney General and the Lord Privy Seal that it is perverse to believe that, in 1981, the constitutional proprieties remain unchanged from 1931. In the 50 years which have supervened the standing of Canada has completely altered. Her Government is the only entity which in international law, in the community of nations, can represent her people and the machinery

/Contd.

by which Canada can consent and request is the machinery established by custom of Parliamentary approval in Ottawa, initiated by the Government in Ottawa responsible to that Parliament. It may be true that by the Canadian proprieties that Government has blundered in its treatment of the provinces. I am prepared to assume in favour of the FAC that this is correct, without necessarily thinking that this is so. But we are not concerned with the Canadian proprieties. It would be a constitutional impropriety on our part, at least in my view, quoad Canada even more so than quoad Australia, where the case is not the same, but even quoad Australia for the U.K. Parliament to reject a request from the Parliament passed in accordance with existing machinery. I would be prepared to accept that there might be a case for delay out of respect for the Canadian judiciary, but, speaking personally I cannot conceive what justiciable issue can exist for the Canadian Courts to decide. I therefore basically agree with the conclusion of the Lord Privy Seal.

4. There remains the fourth question which may be the most important. In the last resort a British Government and a British Parliament are bound to act in the interests of the U.K. What is that interest here? I cannot conceive any advantage accruing to the U.K. by disregarding a "request and consent" properly passed by the established machinery in Ottawa which could possibly compensate for the infinite damage which would accrue to the U.K. interests in Canada, to our relations with Canada, bilaterally, in the Commonwealth, in NATO, in the UNO were we to disregard a "request and consent", if we were to purport to act in the interests of the Provinces - or rather the Provincial Governments and legislatures - against the expressed opinion of the Ottawa Parliament and Government in the present instance. Such action would, I believe, be a blunder only equalled by the action of the House of Lords in 1909.

I am copying this to the other members of OD, the Attorney General, the Parliamentary Secretary, Treasury and Sir Robert Armstrong.

yrs:
Q.H

Ref: A04296

CONFIDENTIAL

PRIME MINISTER

Patriation of the Canadian Constitution
(OD(81) 11 and 12)

BACKGROUND

As requested by the Cabinet, the Attorney General has prepared an assessment of the legal position in OD(81) 11. The paper by the Lord Privy Seal (OD(81) 12) puts the problem in a wider political and Parliamentary context.

2. When you saw Mr. Trudeau on 25th June and two Canadian Ministers on his behalf on 6th October last year, you made it clear that there was no question of the British Government refusing a request from the Canadian Government for patriation of their Constitution. When the Cabinet discussed the issue on 27th November this view was confirmed, although it was recognised that there was likely to be considerable difficulty in Parliament and that these difficulties would be the greater if proceedings were still pending before the Canadian courts. The Cabinet agreed that an emissary should be sent to Mr. Trudeau to explore the possibility of the request from the Canadian Government being delayed until the Canadian Supreme Court had ruled on the matter. Mr. Pym, who went to see Mr. Trudeau, was not successful in persuading him of the advantages of such delay, but he did warn him of the Parliamentary difficulties and the fact that the British Parliament might reject his present proposals.

3. These difficulties were underlined by the publication on 21st January of the report from the Foreign Affairs Committee (FAC). A good deal of their evidence came from sources favourable to the provincial case, but they also took evidence from Dr. Marshall of Queen's College, Oxford, an acknowledged authority on constitutional matters. The FAC took the view that "where a requested amendment or patriation would directly affect the federal structure of Canada and the opposition of provincial governments and legislatures is officially represented to the United Kingdom Government

CONFIDENTIAL

or Parliament, the United Kingdom Parliament is bound to exercise its best judgment in deciding whether the request in all the circumstances conveys the clearly expressed wishes of Canada as a federally structured whole". Their report brought a strong riposte from Mr. MacGuigan, the Canadian Minister for External Affairs who, in a speech on 6th February, attacked the conclusions of the FAC on the grounds that it was the Canadian Federal Government and Parliament who were answerable to the Canadian people and that this view was supported in law by the decision of the Court of Appeal of Manitoba. I attach a copy of his speech.

4. The formal request from the Canadian Federal Parliament for patriation seems unlikely to reach the United Kingdom before mid-March, but the problem is already attracting a lot of publicity, and the supporters of the provincial side of the case are making most of the running. The Government needs to take a view now on how it is going to deal with the issue, and to start to take steps to condition public and Parliamentary opinion to its preferred course of action.

5. In discussing this problem you may like to deal with it under the following four headings:-

(a) The Canadian legal position No legal impediment

(b) The constitutional position - 2 views

(c) Foreign policy aspects

(d) Parliamentary handling

6. On (a) the position under Canadian law appears to be that there is no legal impediment to the Federal Government and Parliament acting as they are proposing to act. The majority of the Manitoba Appeal Court took the view that the Federal Government was within its powers to make such proposals without provincial agreement. Legal processes are continuing in Newfoundland and Quebec, and the issue may well reach the Canadian Supreme Court, though possibly not until towards the end of the year. As things stand at present, the Canadian Federal Government can argue that Canadian law is on its side, but that does not dispose of the Attorney General's view that on grounds of propriety the United Kingdom Parliament would do better to wait until the Canadian Supreme Court has reached a view.

7. In regard to (b) a great deal has been written and spoken about the underlying constitutional theory and the constitutional conventions. The issues are fairly set out in the Attorney General's paper. There is no doubt that Canada is wholly independent. One view is that in such an independent and democratic country the principle of electoral answerability must be paramount. The Canadian Federal Government and Parliament are answerable to that electorate. Since the Westminster Parliament is not, by definition, so answerable, it is not entitled to form a view of its own. Its duty is to act - proponents of this view would say to act blindly - as it is asked to act by the Canadian Federal Parliament and Government.

8. The alternative view is that the United Kingdom Parliament is involved precisely because neither in 1931, nor before or since, have the Provinces and the Federal Government of Canada been able to agree about changes in the division of power between the Canadian Provinces and the central Government. The lengthy constitutional discussions in Canada have always until now proceeded on the assumption that the British North America Act could be altered in this respect only when proposals had been agreed by both Federal Government and at least a clear majority of the Provinces. There would have been no purpose in leaving these powers with Westminster in 1931 (and again in 1949) had the Federal Government possessed a unilateral right to request and secure a change in the federal structure of the Canadian Constitution.

9. In regard to (c) the overwhelming balance of advantage in terms of foreign policy lies in agreeing to the proposals of the Federal Government. Canadian-British relations would be severely damaged by a failure on the British part to act on the Canadian proposals. If the Committee accepted this view, they would still have to decide how much weight to place on it in public and Parliamentary argument. If the Federal Government were right in saying that the British Government and Parliament had no locus to challenge the legality or merits of the Canadian proposals, arguments about British foreign policy would, strictly speaking, be beside the point. But it might still be an argument that would carry weight in private discussions with backbenchers who were doubtful about voting for the Bill.

10. In regard to (d) the question of Parliamentary handling (at Westminster) is probably the most difficult to solve at this stage. But the question will be simplified if the Committee can reach agreement that in regard to (a), (b) and (c) it is right for the British Government to seek to give effect to the request from the Canadain Federal Government. The discussion will then centre around Parliamentary handling and tactics.

11. If the Committee's decision is that the Government should put to Parliament whatever request it receives from Canada, there will presumably be no need for any further message or emissary to Mr. Trudeau. If on the other hand the Committee were to reach some other conclusion - for example, that Mr. Trudeau should be asked to make one more attempt to reach agreement with the provincial Premiers before the request was sent forward, or that the Government should postpone introduction at Westminster until court proceedings in Canada are exhausted, or that it would be advantageous to explore whether, if Parliament were to refuse to pass the Bill as requested, Mr. Trudeau would prefer to lose the whole Bill or to accept a Bill providing for patriation and the amending formula without the Charter of Rights - then it would probably be necessary to send another emissary to Ottawa very soon, before the proceedings in the Canadian Parliament are completed.

12. The Attorney General and the Chief Whip have been invited for this item. The presence of the Lord President of the Council is a little uncertain, as he may be called away to deal with the Civil Service Staff Associations; but you will want his views on the prospects in the House of Lords (see paragraph 13 below).

HANDLING

13. You may like to deal with the legal aspects of the problem first by inviting the Attorney General to introduce his paper. Points to establish in subsequent discussion are:-

(a) Does the Attorney General consider that the decision already taken by the Manitoba Court of Appeal is likely to set the pattern for the other judicial processes in Canada?

(b) Do the Foreign and Commonwealth Secretary or the Chancellor of the Duchy sympathise with the Attorney General's implied view that we ought to postpone Westminster action until all the Canadian legal proceedings have come to an end? If so, how long is that likely to be? Should we be in even more political difficulties if we waited for the Canadian courts and they in the end found against the Government - which at present seems unlikely - than if we legislated ahead of the exhaustion of the legal processes in Canada?

(c) Does the Attorney General agree with the view given in the House of Lords this week by the Foreign and Commonwealth Secretary that the constitutional convention that the United Kingdom Government ought not to legislate other than upon a Federal request rules out the possibility of the Westminster Parliament proprio motu legislating to patriate the Canadian Constitution (with or without an amending formula)? At a previous discussion the Lord Chancellor suggested that this was a possible weapon of last resort.

(d) Is it the view of the Attorney General that the absence of a relevant legal precedent means that no clear cut course of action is prescribed in the current circumstances for the British Government on purely legal grounds?

14. You may then care to ask the Lord Privy Seal to introduce the paper on the political and Parliamentary aspects of the problem. The points to establish in subsequent discussion are:-

(e) Does the Lord Privy Seal agree that from the point of view of foreign policy it is in the British interest to act on the Canadian proposals? How disagreeable are the consequences likely to be if the British Government decides not to do so? Is it probable that, if the British Government seeks to give effect to the Canadian proposals but they are voted down in the Westminster Parliament, Mr. Trudeau would accept this rebuff gracefully? (Mr. Pym had some discussion with Mr. Trudeau along these lines at his December meeting.)

(f) If the formal request from the Canadian Parliament for patriation is not received in the United Kingdom before mid-March, what in the opinion of the Chancellor of the Duchy of Lancaster and the Lord President are the prospects of getting the legislation passed in the current session? If the prospects are bad, should Mr. Trudeau be warned of this fact now? To what extent is the legislative programme likely to be dislocated by its attempted passage?

(g) To what extent in the opinion of the Chancellor of the Duchy of Lancaster and the Chief Whip are the views expressed in the First Report from the FAC likely to be representative of the views of the House of Commons as a whole? There are some slight indications that Parliamentary opinion may be beginning to shift to the view that the least evil of the courses available is to legislate as requested by Canada. Is Parliament likely to be susceptible to the argument that the primary consideration must be the preservation of good relations with Canada, and that it is the Canadian Federal Parliament which is responsible to the Canadian electorate for the proposals?

(h) Is the Chancellor of the Duchy of Lancaster still in favour of a Parliamentary Debate prior to the receipt of the Canadian proposals, or after the Canadian request has been received on the question of whether the Canadian proposals were amendable. Would such a Debate lower the Parliamentary temperature? Or would it be better to put the Canadian request directly before Parliament without any curtain raiser, on the grounds that this way Parliamentary discussion on the request could be discouraged by the argument that the responsibility for the proposals really rested with the Canadian Federal Parliament?

(j) If the Committee reach the view that there is no alternative to putting the Canadian proposal to Parliament as quickly as possible once they are received should a three-line whip be applied if necessary? Mr. Trudeau already believes that he has got an assurance that a three-line whip will be applied. I believe the Foreign and Commonwealth Secretary thinks that it should be. What do the Chief Whip and the Chancellor of the Duchy of Lancaster think? How does the Lord President of the Council consider the matter should be handled in the House of Lords?

(k) Although a final decision on whether a three-line whip should be applied probably need not be taken until the reactions of the Opposition are known, what steps (if any) does the Chancellor of the Duchy feel can be taken now to improve the climate of opinion within the country and within Parliament towards the proposals of the Canadian Federal Government? At the moment the proponents of the provincial case are having things all their own way. Should the British Government take sides in the Canadian argument, and come out in support of the Federal Government's proposals? Or is it more consistent with the Government's posture to say simply that it is not for the British Government (or Parliament) to express views about what is proposed: their duty is simply to introduce and pass whatever legislation is duly requested by the Canadian Federal Institutions? Should the line be taken in public that this really is not a British problem and that, as the FAC report has already recommended, the primary aim of the British Government should be to maintain and enhance the warm and friendly relations with Canada which have existed over many decades and through two World Wars?

CONCLUSION

15. Subject to points made in discussion the Committee might be guided:-

(i) to agree that the proposals of the Canadian Federal Parliament should be put to the Westminster Parliament as soon as possible once they have been received;

(ii) to invite the Foreign and Commonwealth Secretary, in consultation with the Chancellor of the Duchy of Lancaster and the Chief Whip, to report back to the Committee when the Canadian proposals have been received to consider the best practical way of handling them in the circumstances of the moment;

(iii) to invite the Chancellor of the Duchy of Lancaster to consider how best to put over the Government's case in support of acceptance of the proposals of the Canadian Federal Government;

(iv) to consider whether any further message or emissary should be sent to Mr. Trudeau at this stage.

RCA

(Robert Armstrong)

20th February 1981

COMMENTS ON THE REPORT OF THE UNITED KINGDOM

SELECT COMMITTEE ON FOREIGN AFFAIRS

ON THE BRITISH NORTH AMERICA ACTS

ADDRESS BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS TO THE EDMONTON CHAMBER OF COMMERCE CONSTITUTIONAL CONFERENCE

6 FEBRUARY 1981

MR. CHAIRMAN, I AM DELIGHTED TO BE ABLE TO COME TO EDMONTON AND PARTICIPATE IN THIS PANEL ON DIFFERENT PERSPECTIVES ON OUR CURRENT CONSTITUTIONAL SITUATION.

I AM PARTICULARLY PLEASED TO SEE SIR ANTHONY KERSHAW HERE. HE IS WITH US BECAUSE OF WHAT HE AND OTHERS HAVE REFERRED TO AS AN "ANACHRONISM", NAMELY THE REMAINING CONSTITUTIONAL LINKAGE THAT CANADA HAS WITH THE UNITED KINGDOM BECAUSE THE BNA ACT RESIDES IN WESTMINSTER.

WITH YOUR PERMISSION, MR. CHAIRMAN, I SHOULD LIKE TO TAKE ADVANTAGE OF SIR ANTHONY'S PRESENCE TO REVIEW THE RECENT REPORT OF THE BRITISH COMMITTEE ON FOREIGN AFFAIRS. THE COMMITTEE REPORTED MATTERS AS IT SAW THEM FROM WESTMINSTER AND IT REACHED CERTAIN CONCLUSIONS WHICH, IF ACCEPTED BY THE BRITISH PARLIAMENT, WOULD PRODUCE A MAJOR CONSTITUTIONAL CRISIS BETWEEN OUR TWO PARLIAMENTS AND GOVERNMENTS.

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I WANT TO ASSURE SIR ANTHONY THAT THE GOVERNMENT OF CANADA DID NOT UNDERTAKE ITS PRESENT CONSTITUTIONAL INITIATIVES LIGHTLY - FAR FROM IT. THE GOVERNMENT HAS TRIED FOR YEARS, IN MEETING AFTER MEETING WITH THE PROVINCES, TO MAKE SOME PROGRESS TOWARDS CONSTITUTIONAL REFORM IN THIS COUNTRY. EVERY ATTEMPT HAS FAILED. WE HAVE COME VERY CLOSE ON OCCASION, FOR EXAMPLE AT VICTORIA IN 1971, BUT EVERY TIME THE ELUSIVE GOAL HAS ESCAPED OUR GRASP. IN FACT, IF ANYTHING, WE HAVE MOVED FURTHER FROM THE POSSIBILITY OF AGREEMENT IN THE LAST TEN YEARS. THIS IS DESPITE A SERIES OF OFFERS BY THE FEDERAL GOVERNMENT AIMED AT ACCOMMODATING THE PROVINCES. THE TENDENCY HAS BEEN FOR PROVINCIAL GOVERNMENTS TO ADD TO THEIR DEMANDS REGARDING THE AMENDING FORMULA AND THE DISTRIBUTION OF POWERS AS A PRE-CONDITION FOR ACTION ON PATRIATION OR A CHARTER OF RIGHTS. FOR EXAMPLE, THE RESOURCE POWER WAS NOT ON THE AGENDA BEFORE 1973 AND FISHERIES WAS ADDED IN THE LATE 1970'S. BOTH BECAME PROVINCIAL PRE-CONDITIONS FOR PATRIATION. THE FEDERAL GOVERNMENT DECIDED THAT THIS STALEMATE COULD NOT CONTINUE: IT WAS PROVING DESTRUCTIVE TO NATIONAL UNITY AND ACCREDITING THE ARGUMENTS OF THOSE WHO WISH TO DESTROY CANADA AS A UNITED NATION.

IN CONSIDERING ITS ALTERNATIVES TO BREAK THIS DEAD-LOCK THE FEDERAL GOVERNMENT WAS DETERMINED THAT ITS MEASURES SHOULD SATISFY THREE CONDITIONS: THEIR SUBSTANCE SHOULD

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RESPOND TO THE WISHES OF A SUBSTANTIAL MAJORITY OF THE POPULATION; THEY SHOULD STRENGTHEN THE FEDERATION; AND THEY SHOULD BE LEGAL AND "CONSTITUTIONAL" IN THE PROPER SENSE.

THERE CAN BE NO DOUBT THAT THE TWO MAJOR ELEMENTS OF OUR PACKAGE, PATRIATION AND THE CHARTER OF RIGHTS, HAVE THE SUPPORT OF THE OVERWHELMING MAJORITY OF CANADIANS. ALL PUBLIC OPINION POLLS SHOW THIS, EVEN THOSE TAKEN ONLY IN WESTERN CANADA. THE CONSERVATIVE PARTY ACKNOWLEDGES IT. MR. EPP, THE CONSERVATIVE PARTY SPOKESMAN, HAS STATED: "IT IS THE POPULAR WILL OF CANADIANS THAT OUR CONSTITUTION REST IN THIS COUNTRY. IT IS ALSO THE POPULAR WILL THAT WE HAVE A CHARTER OF RIGHTS AND FREEDOMS FOR THE CANADIAN PEOPLE EMBEDDED IN THE CONSTITUTION".

THERE IS NO REAL DOUBT THAT THE SUBSTANCE OF THE GOVERNMENT'S PACKAGE HAS THE SUPPORT OF THE LARGE MAJORITY OF CANADIANS.

THE PACKAGE IS DESIGNED TO STRENGTHEN OUR FEDERATION, AFTER A PERIOD OF SEVERE CHALLENGES, PARTICULARLY IN QUEBEC. THE SYMBOLIC ACT OF PATRIATION IS IMPORTANT IN THIS REGARD. SO IS THE ESTABLISHMENT OF AN AMENDING FORMULA THAT WILL BE MORE FLEXIBLE THAN THE LONG-SOUGHT UNANIMITY AND THAT WILL BREAK THE

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VICIOUS PATTERN OF BARGAINING AMENDMENTS TO THE DISTRIBUTION OF POWERS AGAINST SUCH BASIC PRINCIPLES AS PATRIATION AND THE CHARTER OF RIGHTS. I MAY SAY TO OUR BRITISH FRIENDS THAT A CHARTER OF RIGHTS HAS A SPECIAL PLACE IN A FEDERATION WHICH IT MAY NOT HAVE IN A UNITARY STATE. IT ESTABLISHES THAT CERTAIN BASIC RIGHTS WILL BE AVAILABLE TO A CITIZEN THROUGHOUT THE COUNTRY, AND PARTICULARLY RESPONDS TO OUR PLURALISTIC, MULTICULTURAL SOCIETY.

THE THIRD CRITERION WAS THAT THE GOVERNMENT'S MEASURES SHOULD BE LEGAL AND CONSTITUTIONAL. AGAIN, THIS WAS NOT SOMETHING WE CONSIDERED LIGHTLY. I PERSONALLY AM A FORMER PROFESSOR OF CONSTITUTIONAL LAW, AS IS PRIME MINISTER TRUDEAU. CABINET RECEIVED CAREFULLY-WEIGHED ADVICE FROM ITS MOST SENIOR LEGAL OFFICERS. IT WAS CONCLUDED THAT THERE WAS NO REASONABLE DOUBT AS TO THE LEGALITY AND CONSTITUTIONALITY OF THE COURSE WE PROPOSED. WE RECOGNISED THAT IT REPRESENTED A CHANGE IN DIRECTION IN TERMS OF POLICY, BUT THE CHANGE WAS FULLY WITHIN THE RIGHTS OF THE FEDERAL GOVERNMENT AND PARLIAMENT. WE KNEW THE MEASURE WOULD BE POLITICALLY CONTROVERSIAL, BUT WE WERE CONFIDENT THAT IT WAS JUSTIFIED AND THAT IT WOULD SERVE THE LONG-TERM INTERESTS OF CANADA.

I KNOW THAT MEMBERS OF THE BRITISH PARLIAMENT HAVE BEEN EXPOSED TO VERY INTENSIVE LOBBYING BY CERTAIN PROVINCES

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ARGUING THAT THE MEASURE PROPOSED IS ILLEGAL AND UNCONSTITUTIONAL. I HOPE SOME OF THEM APPRECIATE THE IRONY OF THE QUEBEC AGENT GENERAL NOW LOBBYING TO KEEP CANADA FROM REALIZING FULL SOVEREIGNTY WHEN THE PARTI QUEBECOIS WAS TRYING ARDENTLY FOR QUEBEC'S SOVEREIGNTY SO RECENTLY. BUT I WOULD HAVE HOPED THAT BRITISH MPS WOULD HAVE RECOGNISED THAT THE CANADIAN GOVERNMENT HAS TOO MUCH RESPECT FOR THE DIGNITY AND SOVEREIGNTY OF WESTMINSTER THAN TO TRY TO USE IT AS A TOOL OF SOME SHABBY CONSTITUTIONAL PLOY. WE WOULD NEVER ASK THE BRITISH PARLIAMENT TO ACT IN ANY WAY CONTRARY TO LEGAL AND CONSTITUTIONAL PRACTICE. WE WERE CONFIDENT OF THE FOUNDATION OF WHAT WE WERE DOING AND WE WERE PLEASED BUT IN NO WAY SURPRISED, THAT THE BRITISH GOVERNMENT AGREED WITH US.

IT WAS THUS A SHOCK AND SURPRISE TO FIND THE SELECT COMMITTEE REACH CONCLUSIONS WHICH, PUT BALDLY, ARE THAT THE FEDERAL GOVERNMENT'S PROPOSALS ARE, IN PART, UNCONSTITUTIONAL AND ON THE SOLE GROUND THAT SOME PROVINCES CLAIM THAT THEY ARE - THIS ENTIRELY UNSUBSTANTIATED CLAIM IS THE ONLY BASIS FOR THE MOST CRUCIAL CONCLUSIONS OF THE REPORT. I WOULD HAVE HOPED THAT OUR FELLOW PARLIAMENTARIANS IN BRITAIN WOULD HAVE SHOWN MORE CONFIDENCE IN THE INTEGRITY OF THE LARGE MAJORITY IN THE CANADIAN HOUSE OF COMMONS.

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THE SELECT COMMITTEE REPORTED ON FRIDAY, JANUARY THE 28TH. ON TUESDAY, FEBRUARY THE 3RD, THE MANITOBA COURT OF APPEAL DELIVERED A JUDGEMENT WHICH REACHED DIRECTLY OPPOSITE CONCLUSIONS. IT CONCLUDED THAT THERE IS NO CONSTITUTIONAL CONVENTION THAT THE CONSENT OF THE PROVINCES MUST BE OBTAINED BEFORE OUR PARLIAMENT CAN REQUEST AN AMENDMENT TO THE CONSTITUTION WHICH AFFECTS FEDERAL-PROVINCIAL RELATIONSHIPS, OR THE RIGHTS, POWERS AND PRIVILEGES OF THE PROVINCES. AND IT CONCLUDED THAT THE AGREEMENT OF THE PROVINCES IS NOT CONSTITUTIONALLY REQUIRED FOR AMENDMENT OF OUR CONSTITUTION IN MATTERS AFFECTING FEDERAL-PROVINCIAL RELATIONSHIPS.

THE MANITOBA COURT REACHED THESE CONCLUSIONS BECAUSE IT VIEWED A NUMBER OF KEY QUESTIONS VERY DIFFERENTLY FROM THE SELECT COMMITTEE.

IT SHOWED THAT THE 1965 FEDERAL WHITE PAPER ON THE CONSTITUTION DID NOT, AS THE COMMITTEE CONCLUDED, ESTABLISH A PRINCIPLE THAT THE FEDERAL GOVERNMENT WOULD NOT REQUEST AN AMENDMENT DIRECTLY AFFECTING FEDERAL-PROVINCIAL RELATIONSHIPS WITHOUT THE AGREEMENT OF THE PROVINCES. IN FACT, A PASSAGE IN THE WHITE PAPER EXPRESSLY NEGATED THAT PROPOSITION. AS CHIEF JUSTICE FREEDMAN WROTE: "IN MY VIEW THERE IS NO SUCH CONSTITUTIONAL CONVENTION IN CANADA, AT LEAST NOT YET. HISTORY AND PRACTICE DO NOT ESTABLISH ITS EXISTENCE: RATHER THEY BELIE

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IT. THAT WE MAY BE MOVING TOWARDS SUCH A CONVENTION IS CERTAINLY A TENABLE VIEW. BUT WE HAVE NOT YET ARRIVED THERE".

THE MANITOBA COURT ALSO DIFFERED FROM THE SELECT COMMITTEE IN ITS VIEW OF THE SIGNIFICANCE OF THE FEDERAL GOVERNMENT'S REFERENCE TO THE SUPREME COURT OF THE PROPOSED AMENDMENTS TO THE SENATE IN 1979. CHIEF JUSTICE FREEDMAN FLATLY CONCLUDED: "THE LANGUAGE USED BY THE SUPREME COURT (IN THIS CASE) IS NOT LANGUAGE APPROPRIATE TO RECOGNITION OF THE EXISTENCE OF A CONVENTION FULL-BLOWN, VIGOROUS, AND OPERATIVE. A CONVENTION SHOULD BE CERTAIN AND CONSISTENT; WHAT WE HAVE IS UNCERTAIN AND VARIABLE".

ANOTHER STRIKING CONTRADICTION BETWEEN THE VIEW OF THE MANITOBA COURT AND THAT OF THE SELECT COMMITTEE CONCERNS THE PATTERN OF CONSTITUTIONAL AMENDMENT IN CANADA. WHERE THE COMMITTEE SEES A CONVENTION THE COURT SEES NONE. CHIEF JUSTICE FREEDMAN CONCLUDES THAT THE HISTORY OF AMENDMENTS WHERE PROVINCES HAVE BEEN CONSULTED DO NOT IN THEMSELVES CONSTITUTE A PATTERN OF LEGISLATIVE CONDUCT "NOR DO THEY POSSESS THE VIGOUR, WARRANTING THE ASCRIPTION TO THEM OF A CONSTITUTIONAL CONVENTION".

THE COURT ADOPTS A VERY DIFFERENT VIEW OF THE SIGNIFICANCE OF CANADA'S CONSTITUTIONAL LINKS WITH WESTMINSTER BEING PRESERVED IN THE STATUTE OF WESTMINSTER IN 1931.

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THE COMMITTEE CONCLUDED THAT THIS SOMEHOW DEMONSTRATED SOME SORT OF REQUIREMENT FOR PROVINCIAL CONSENT FOR FEDERAL REQUESTS. THE COURT CONCLUDES THE EFFECT OF THE STATUTE TO BE "NEUTRAL" AND THAT IN NO WAY DID PROVINCIAL CONCURRENCE FIGURE IN THE SCHEME OF THINGS PRIOR OR SUBSEQUENT TO 1931.

THESE ARE ONLY A FEW OF THE POINTS ON WHICH THE MANITOBA COURT REACHED CONCLUSIONS VERY DIFFERENT FROM THE SELECT COMMITTEE.

LET ME TURN TO THE MOTION FREQUENTLY EXPRESSED BY SIR ANTHONY KERSHAW THAT STILL IN 1981 THE PARLIAMENT AT WESTMINSTER IS, IN SOME WAY, THE "GUARDIAN" OF THE FEDERAL CHARACTER OR BALANCE OF CANADA. AS HE SAID THIS MORNING, "WE REGRET WE SHOULD HAVE BEEN CALLED UPON TO ADJUDICATE IN THIS DISPUTE". THIS STRIKING WORD "ADJUDICATE" IMPLIES THE IMPERIAL SENSE OF GUARDIANSHIP SIR ANTHONY SEES AS THE BRITISH BURDEN.

THE GOVERNMENTS OF CANADA AND OF THE UNITED KINGDOM TAKE THE VIEW THAT CONSTITUTIONAL PRECENDENTS REQUIRE THE BRITISH PARLIAMENT TO GIVE EFFECT TO ANY REQUEST COMING FROM THE CANADIAN PARLIAMENT. IT IS ALSO THE VIEW OF THE TWO GOVERNMENTS THAT THERE IS NO CONSTITUTIONAL CONVENTION REQUIRING

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PROVINCIAL CONSULTATIONS OR CONSENT. THIS VIEW HAS JUST BEEN SUSTAINED BY THE MANITOBA COURT. I APPRECIATE THAT THIS AUTHORITY OF THE FEDERAL PARLIAMENT LOOKS OUT OF PLACE IN RELATION TO CLASSIC NOTIONS OF FEDERALISM WITH TWO SOVEREIGNTIES SEPARATE AND PROTECTED FROM ONE ANOTHER. CLEARLY SUCH A POWER OR AUTHORITY COULD BE SUBJECT TO ABUSE. BUT THE FACT THAT A CONSTITUTIONAL POWER MIGHT BE SUBJECT TO ABUSE DOES NOT MEAN THAT IT IS LESS REAL FOR THAT, OR THAT IT WILL BE ABUSED, OR THAT THERE MUST BE SOME NEAT EXTERNAL CHECK OR LIMIT FOUND FOR THAT POWER.

THE PRESENT POSITION OF THE GOVERNMENT AND PARLIAMENT OF CANADA AS THE SOLE AUTHORITIES HAVING STANDING IN CONSTITUTIONAL MATTERS IN RELATIONS WITH THE BRITISH GOVERNMENT AND PARLIAMENT IS IN MANY WAYS AN ANACHRONISTIC OR UNFEDERAL OR UNITARY CHARACTER OF OUR CONSTITUTION. BUT IT IS, I REPEAT, THE TRUE POSITION. AND WE SHOULD NOT BE ASTOUNDED BY IT. THERE ARE MANY SIMILAR "UNFEDERAL" OR "UNITARY" ASPECTS TO OUR FEDERAL CONSTITUTION. SO MANY, IN FACT, THAT THE GREAT AUTHORITY ON FEDERALISM, SIR K.C. WHEARE, DESCRIBED CANADA'S CONSTITUTION AS "QUASI-FEDERAL".

LET ME JUST LIST SOME OF THESE UNITARY ASPECTS WRITTEN INTO OUR CONSTITUTION BACK IN 1867: -- THE FEDERAL GOVERNMENT APPOINTS THE LIEUTENANT-GOVERNORS OF OUR PROVINCES;

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-- THESE LIEUTENANT-GOVERNORS CAN ON THEIR OWN OR UNDER INSTRUCTION FROM THE FEDERAL GOVERNMENT RESERVE ANY PIECE OF PROVINCIAL LEGISLATION OR EVEN DISALLOW IT;

-- THE FEDERAL GOVERNMENT, WITH THE SO-CALLED DECLARATORY POWER, CAN DECLARE ANY WORK UNDER PROVINCIAL JURISDICTION TO BE FOR THE GENERAL ADVANTAGE OF CANADA AND THUS BRING IT UNDER FEDERAL JURISDICTION;

-- THE FEDERAL GOVERNMENT CAN UNDER THE "PEACE, ORDER AND GOOD GOVERNMENT" CLAUSE IMPOSE ITS AUTHORITY AS NECESSARY IN CASE OF AN EMERGENCY;

-- THE FEDERAL GOVERNMENT CAN, UNDER THE SO-CALLED SPENDING POWER, RAISE AND SPEND MONEY FOR ANY OBJECT IT SEES FIT, INCLUDING, FOR EXAMPLE, EDUCATION;

-- THE FEDERAL GOVERNMENT ALONE APPOINTS MEMBERS OF CANADA'S SENATE WHICH IS THE REGIONALLY DISTRIBUTED UPPER HOUSE.

IF THIS CATALOGUE WERE READ LITERALLY AND IN ISOLATION IT WOULD GIVE A COMPLETELY DISTORTED IDEA OF THE CURRENT PRACTICE OF CANADIAN FEDERALISM. YET ALL OF THESE POWERS ARE REAL AND ALL OF THEM ARE OPEN TO POLITICAL ABUSE. A DETERMINED FEDERAL GOVERNMENT COULD SERIOUSLY DAMAGE THE FEDERAL CHARACTER OR BALANCE OF OUR INSTITUTIONS. BUT NO FEDERAL GOVERNMENT EVER WOULD ACT THAT WAY BECAUSE OUR POLITICIANS AND OUR PEOPLE HAVE FAR TOO GREAT A RESPECT FOR OUR FEDERAL SYSTEM. WE HAVE SEEN OUR SYSTEM EVOLVE FROM A HIGHLY CENTRALIZED, QUASI-

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FEDERALIST SYSTEM IN 1867, TO A LARGELY DECENTRALIZED, TRULY FEDERAL SYSTEM IN 1981. WE HAVE NOT REQUIRED ANY EXTERNAL "GUARDIAN" TO KEEP US ON THE TRUE FEDERALIST ROAD.

THIS IS WHY ANY CANADIAN PARLIAMENTARIAN MUST FIND OFFENSIVE THE SELECT COMMITTEE'S CONCLUSION THAT WESTMINSTER MUST SERVE AS THE "GUARDIAN" OF THE FEDERAL CHARACTER OF OUR CONSTITUTION. THE FEDERAL GOVERNMENT IS ALREADY ENDOWED WITH MORE THAN ENOUGH MEANS TO MAKE A LEGAL ASSAULT ON CANADIAN FEDERALISM IF IT EVER CHOSE TO DO SO. BUT IT NEVER WILL. CERTAINLY IT IS NOT PROPOSING ANY SUCH ASSAULT IN ITS PRESENT CONSTITUTIONAL PROPOSALS. IF IT WERE, IT WOULD HAVE TO ANSWER TO THE PEOPLE IN THE NEXT ELECTION.

IT IS THIS ANSWERABILITY OF THE CANADIAN PARLIAMENT WHICH IS FUNDAMENTAL TO THE PRESENT EXERCISE. A LARGE MAJORITY IN THE HOUSE OF COMMONS HAS DECIDED THAT CANADA CANNOT CONTINUE INDEFINITELY IN THE CONSTITUTIONAL STALEMATE WE HAVE KNOWN SO LONG. ALL OF US WHO SUPPORT THE PRESENT PACKAGE BELIEVE VERY DEEPLY THAT IT WILL SECURE AND STRENGTHEN THE FEDERAL CHARACTER OF CANADA. THE SELECT COMMITTEE GIVES GREAT WEIGHT TO ITS UNSUBSTANTIATED VIEW THAT CERTAIN PARTS OF THE CHARTER OF RIGHTS WOULD LIMIT PROVINCIAL JURISDICTION, BUT IT DOES NOT MENTION THAT WHATEVER THE CHARTER MAY DO, IT WILL APPLY EQUALLY TO BOTH THE FEDERAL AND PROVINCIAL JURISDICTIONS. IT IN NO WAY REPRESENTS

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A TRANSFER OF POWER BETWEEN LEVELS AND IT IS FUNDAMENTALLY FEDERAL IN ITS OBJECTIVES. THE ONLY ACTION IN RELATION TO PROVINCIAL POWERS WILL BE TO CONFIRM THEIR OWNERSHIP OF RESOURCES AND TO EXTEND THEIR POWERS IN INTER-PROVINCIAL TRADE. BEYOND THAT, THE AMENDING FORMULA WILL GIVE THEM NEW RIGHTS, IN THAT THEY WILL HAVE A CONSTITUTIONAL ROLE IN AMENDMENTS. THUS THE FEDERAL PROPOSALS DO PASS THE TEST THE KERSHAW REPORT ESTABLISHED. THEY DO NOT DIRECTLY AFFECT FEDERAL-PROVINCIAL RELATIONSHIPS EXCEPT WHERE THEY GIVE THE PROVINCES ADDITIONAL POWERS. THERE IS IN THE FEDERAL PACKAGE NOT A SINGLE INSTANCE IN WHICH PROVINCIAL POWERS ARE DIRECTLY DIMINISHED IN FAVOUR OF THE FEDERAL GOVERNMENT. WHERE THE PROVINCES LOSE, THEY LOSE TO THEIR OWN PEOPLE, NOT THE FEDERAL GOVERNMENT.

IN ADVANCING THESE PROPOSALS THE GOVERNMENT HAS FACED OPPOSITION FROM THE OFFICIAL OPPOSITION AND FROM A NUMBER OF PROVINCES. OBVIOUSLY THE GOVERNMENT TAKES THIS OPPOSITION SERIOUSLY. I CAN ASSURE YOU IT HAS AFFECTED THE DESIGN OF THE PACKAGE. BUT ULTIMATELY THE GOVERNMENT AND A MAJORITY IN PARLIAMENT MUST ACT, CONFIDENT THAT THEY ARE ACTING WITHIN THEIR AUTHORITY AND THAT THEY ARE ULTIMATELY RESPONSIBLE TO THE CANADIAN PEOPLE.

AND THIS, OF COURSE, IS THE GREAT DIFFERENCE BETWEEN THE BRITISH PARLIAMENT AND THE CANADIAN PARLIAMENT IN THESE

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QUESTIONS. THE CANADIAN PARLIAMENT MUST ANSWER TO THE CANADIAN PEOPLE. THE BRITISH PARLIAMENT DOES NOT. I BELIEVE THIS DIFFERENCE IS ABSOLUTELY FUNDAMENTAL AND I WOULD ENCOURAGE EVERY MEMBER OF THE BRITISH PARLIAMENT TO WEIGH ITS SIGNIFICANCE FULLY. DOES THE BRITISH PARLIAMENT REALLY WISH TO REPLACE THE PARLIAMENT OF CANADA AS THE GUARDIAN OF THE FEDERAL INSTITUTIONS OF CANADA?

SOME MAY REPLY THAT THE BRITISH PARLIAMENT CLEARLY HAS THE LEGAL ABILITY TO PASS OR DEFEAT A CANADIAN PROPOSAL. THIS MAY BE TRUE IN THE NARROW, LEGAL SENSE. BUT THE CANADIAN GOVERNMENT -- AND, AS I SAY, THE BRITISH GOVERNMENT -- INSISTS THAT THIS NARROW, LEGAL RIGHT IS, TO USE THE TERM AGAIN, AN "ANACHRONISM" WHICH CAN ONLY PROPERLY BE USED BY PASSING "ON THE NOD", WITHOUT LOOKING AT THE SUBSTANCE, ANY REQUEST FROM THE CANADIAN PARLIAMENT. TO QUOTE VISCOUNT JOWETT ON AN EARLIER REQUEST IN 1940, "IT IS SUFFICIENT JUSTIFICATION FOR THE BILL THAT WE ARE MORALLY BOUND TO ACT ON THE GROUNDS THAT WE HAVE HERE THE REQUEST OF THE DOMINION PARLIAMENT".

I RECOGNIZE THAT THE PRESENT CONSTITUTIONAL ANACHRONISM CREATES AN UNCOMFORTABLE OR EMBARRASSING SITUATION FROM SOME BRITISH PARLIAMENTARIANS. FOR US IN CANADA AS WELL THERE IS SOMETHING STRANGE ABOUT HAVING TO RESORT TO THE

MECHANISMS OF THE BRITISH PARLIAMENT IN ORDER TO SECURE AN AMENDMENT TO OUR OWN CONSTITUTION. CANADA HAS LONG SINCE WON ITS SOVEREIGNTY AND ITS INDEPENDENCE, IN TWO WORLD WARS AND THROUGH A PROCESS OF CONSTITUTIONAL DEVELOPMENT WHICH IN SOME WAYS AT LEAST COULD SERVE AS A MODEL FOR THE WORLD.

FOR BOTH CANADA AND BRITAIN IT WOULD BE A TRAGEDY TO MAR THE SHARED HISTORY OF THAT CONSTITUTIONAL DEVELOPMENT AT THE VERY END OF THE PROCESS. TO THOSE BRITISH PARLIAMENTARIANS WHO MAY FEEL UNCOMFORTABLE ABOUT THE PRESENT SITUATION, AND ESPECIALLY TO SIR ANTHONY KERSHAW, LET ME ONLY SAY THIS: YOU DO NOT SOLVE A PROBLEM IN BRITAIN OR CANADA BY MAKING IT A PROBLEM BETWEEN BRITAIN AND CANADA. YOU CANNOT PATRIATE THE PROBLEM WITHOUT PATRIATING THE SOLUTION. AND, ABOVE ALL, YOU CANNOT DISPOSE OF A LIVE ANACHRONISM OF PROCEDURE BY EVOKING A DEAD ANACHRONISM OF SUBSTANCE, BY CLAIMING A "GUARDIANSHIP" WHICH SURELY MUST SEEM AS UNREAL TO YOU AS IT DOES TO US. YET THERE IS A WAY FOR CANADA'S CONSTITUTIONAL PROBLEMS TO BE DEALT WITH IN CANADA, WHERE THEY BELONG. THERE IS A WAY THAT IS CONSISTENT WITH PRECEDENT. THERE IS A WAY THAT IS CONSISTENT WITH THE DIGNITY AND THE SOVEREIGNTY OF THE MOTHER OF PARLIAMENTS. THERE IS A WAY THAT IS CONSISTENT WITH THE DIGNITY AND SOVEREIGNTY OF THE PARLIAMENT OF CANADA. AND, PERHAPS ABOVE ALL, THERE IS A WAY THAT IS CONSISTENT WITH THE GREAT PRINCIPLE OF RESPONSIBLE GOVERNMENT THAT IS THE MOST FUNDAMENTAL ELEMENT

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IN OUR COMMON HERITAGE. AND THERE IS ONLY ONE WAY. THAT ONE WAY IS FOR THE BRITISH PARLIAMENT TO ENACT THE CONSTITUTIONAL MEASURES REQUESTED BY THE GOVERNMENT OF CANADA, AND TO LET THE RESPONSIBILITY FOR THESE MEASURES REST WHERE IT MUST REST IN THE END IN ANY CASE -- WITH THE GOVERNMENT AND PARLIAMENT OF CANADA. THAT WAY, WE ENSURE OUR CONTINUING DEEP FRIENDSHIP.

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10 DOWNING STREET

From the Private Secretary

20 February 1981

Chase?

Answer already rec'd & seen by P.M.

The Prime Minister has received a letter pointing out that while the BBC World Service programmes in the English language are picked up in Canada and contain material on the Constitutional issue, there is no parallel British output in the French language. The Prime Minister's correspondent suggests that we are missing a trick in leaving French listeners in Canada without any opportunity to receive a balanced account of British views on the patriation problem.

I should be grateful if you could let me have an early comment on this.

M. O'D. B. ALEXANDER

F. N. Richards, Esq.,
Foreign and Commonwealth Office.

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The National Archives

LETTERCODE/SERIES PREM 19 PIECE/ITEM 397 (one piece/item number)	Date and sign
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M. Alexander

None - have told D. Wright

C.S. (8)2

Ref. A04688

for Mrs

Mrs Stephens: I see no problem. Mrs

MR. WHITMORE

In my minute of 13th February, I explained that since it was desirable that the Foreign and Commonwealth Secretary should be present when the Patriation of the Canadian Constitution was discussed, this pointed to discussion at a meeting of OD at 3.00 pm on Monday 23rd February.

2. A ring-round of the members of OD has revealed that both the Chancellor of the Duchy and the Lord President would have difficulties with a meeting at 3.00 pm since both have to be in Parliament. In view of the importance of the presence of both the Chancellor of the Duchy and the Lord President for a discussion of Patriation, I should be grateful if you would let me know whether it might be possible to switch this meeting of OD and the briefing meeting for the Prime Minister's visit to the United States so that the latter takes place at 3.00 pm and is followed by OD at 4.30 pm. I have confirmed that if the two meetings take place in this order, those involved could be present.

D J Wright

D.J. WRIGHT

17th February, 1981

GRS 710

UNCLASSIFIED
DESKBY 170900Z FEB
FM OTTAWA 162255Z FEB 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 86 OF 16 FEBRUARY

CONSTITUTION

1. THE SPECIAL JOINT COMMITTEE PRESENTED ITS REPORT ON FRIDAY, 13 FEBRUARY: DEBATE IN THE HOUSE OF COMMONS WILL BEGIN ON TUESDAY. THERE WILL BE ONE VOTE AT THE END OF THE DEBATE ON THE ADDRESS AND THE CONSTITUTION ACT TOGETHER. DISCUSSION IS CONTINUING BETWEEN PARTY MANAGERS ABOUT THE CONDUCT OF THE DEBATE. AT PRESENT IT LOOKS AS IF THE GOVERNMENT WILL BE FLEXIBLE TO THE POINT OF ALLOWING EXTENDED HOURS AND A LIMIT ON INDIVIDUAL SPEECHES BUT WILL NOT TOLERATE FILIBUSTERING. MOST OBSERVERS BELIEVE THAT THE GOVERNMENT WILL ACCEPT A DEBATE LASTING A MONTH, AFTER WHICH CLOSURE WILL BE IMPOSED AND THE DDRESS DESPATCHED TO THE UK VERY QUICKLY INDEED (WITHIN A WEEK).

2. DURING THE COURSE OF THE 14 WEEK DISCUSSION IN THE COMMITTEE, THE GOVERNMENT ACCEPTED OR PRESENTED (EG ON 12 JANUARY) A CONSIDERABLE NUMBER OF AMENDMENTS WHICH MET MANY OF THE CRITICISMS MADE OF THE CHARTER OF RIGHTS BY VARIOUS INTEREST GROUPS. THE CHARTER IS CLEARLY NOW A MUCH BETTER DRAFTED AND COHERENT DOCUMENT AND A NUMBER OF SIGNIFICANT PEOPLE (EG THE CHAIRMAN OF THE CANADIAN HUMAN RIGHTS COMMISSION AND REPRESENTATIVES OF THE HANDICAPPED) ARE NOW IN FAVOUR OF IT BUT THERE ARE IMPORTANT INTEREST GROUPS WHO REMAIN OPPOSED OR ARE EQUIVOCAL. THE FEMINISTS WHO HELD A CONFERENCE LAST WEEKEND ARE A CASE IN POINT. THEY STILL WISH TO HAVE A DRAFT CHARTER TIGHTENED UP TO PROVIDE FOR MORE SPECIFIC EQUALITY OF THE SEXES. BUT PERHAPS THE MOST SIGNIFICANT IN TERMS OF UK INTERESTS IS THE ABORIGINAL GROUP. THIS GROUP SUFFERS FROM DISSENT WITHIN ITS OWN RANKS. AS WE UNDERSTAND IT THE METIS AND THE INNUIT ARE NOW CONTENT WITH THE DOCUMENT AND BELIEVE THAT IT FULLY SAFEGUARDS THEIR RIGHT BUT THE POWERFUL NATIONAL INDIAN BROTHERHOOD (NIB) IS ENGAGING IN INTERNAL DISCUSSIONS, THE OUTCOME OF WHICH IS NOT CLEAR. THE NIB SPOKESMAN IN LONDON WHO APPARENTLY RECENTLY SAID THAT THE NIB REJECTED THE CHARTER MAY HAVE BEEN SPEAKING OUT OF LINE. THE MAIN POINT AT ISSUE IS THAT WHILE ABORIGINAL AND TREATY RIGHTS ARE NOW AFFIRMED IN THE CHARTER, SOME PEOPLE FEEL THAT THESE RIGHTS ARE INADEQUATE SINCE THEY REMAIN SUBJECT TO PROVINCIAL AND FEDERAL INTERPRETATION. TO MEET THIS POINT THE FEDERAL GOVERNMENT HAS AGREED THAT NATIVE PEOPLE WILL PARTICIPATE ACTIVELY IN ANY CONSTITUTIONAL CONFERENCE WHICH MIGHT AFFECT THEIR RIGHTS.

3. THE FEDERAL GOVERNMENT HAS NOT IN THE COURSE OF DISCUSSION IN COMMITTEE ATTEMPTED TO MEET CRITICISMS OF THE SIX PROVINCIAL GOVERNMENTS WHICH ARE TAKING THE ISSUE TO COURT. IT HAS CLEARLY

/ CONCENTRATED

CONCENTRATED ON KEEPING ON BOARD THE GOVERNMENTS OF ONTARIO AND NEW BRUNSWICK AND ATTEMPTING TO MOULD THE PACKAGE TO MAKE IT ACCEPTABLE TO SASKATCHEWAN. IT LOOKS AS IF IT HAS FAILED IN THIS LAST RESPECT: THE FEDERAL PACKAGE REMAINS UNACCEPTABLE TO SASKATCHEWAN IN RESPECT OF PROVINCIAL RIGHTS IN INTERNATIONAL TRADE ON NATURAL RESOURCES AND THE CRUCIAL POWER WHICH THE SENATE WILL RETAIN IN THE CONSTITUTIONAL PROCESS.

4. ON THE FEDERAL POLITICAL PLANE THE GOVERNMENT WAS FORCED TO BACKTRACK ON THE AMENDMENT WHICH WOULD HAVE REDUCED THE ROLE OF THE SENATE (BECAUSE OF OPPOSITION IN THE SENATE ITSELF WHICH IS CURRENTLY AN INESCAPABLE LINK IN THE CONSTITUTIONAL CHAIN) BUT HAS ACCEDED TO VARIOUS AMENDMENTS AND SUGGESTIONS FORM THE NDP, EG. ON PROVINCIAL CONTROL OF RESOURCES WHICH WILL ENSURE AT LEAST CONDITIONAL SUPPORT FROM THE NDP DURING THE REST OF THE DEBATE. THE MINIMUM PRICE FOR CONTINUED NDP SUPPORT APPEARS TO BE THAT CLOSURE SHOULD NOT BE IMPOSED ON THE DEBATE IN THE FULL HOUSE. THE PROGRESSIVE CONSERVATIVES HAVE TROD CAREFULLY THE LINE BETWEEN REJECTING THE WHOLE PACKAGE AND ACCEPTING THE INEVITABILITY OF THE WHOLE EXERCISE. THEY HAVE MADE GREAT EFFORTS TO IMPROVE THE PACKAGE, PARTICULARLY THE CHARTER OF RIGHTS, WHILE MAINTAINING THEIR FUNDAMENTAL STAND THAT THE PACKAGE SHOULD BE CONFINED TO PATRIATION AND AN AMENDING FORMULA.

5. THE DEBATE IN THE HOUSE IS LIKELY TO PROVE VERY HEATED INDEED. THE CONSERVATIVES WILL CERTAINLY TABLE AMENDMENTS SUCH AS THE RIGHT TO PROPERTY WHICH THE GOVERNMENT WILL FIND QUITE UNACCEPTABLE IF ONLY BECAUSE THEY ARE UNACCEPTABLE TO THE NDP.

6. ELSEWHERE COURT PROCEEDINGS IN NEWFOUNDLAND HAVE BEEN LAUNCHED. THE SUBSTANCE OF THE PROVINCIAL CASE IS ALMOST IDENTICAL TO THAT HEARD IN MANITOBA BUT HAS A FOURTH QUESTION RELATING TO NEWFOUNDLAND, IN PARTICULAR ITS DENOMINATIONAL SCHOOL SYSTEM. IT IS TOO EARLY TO SAY WITH ANY ASSURANCE WHEN THE COURT WILL BRING DOWN ITS FINDINGS BUT IT SEEMS UNLIKELY TO DO SO IN LESS THAN A MONTH.

DAVIES

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jfh

Canada

16 February 1981

I enclose, together with its attachment, a copy of a letter which the Prime Minister has received from the Canadian High Commissioner. I have acknowledged Mrs Wadds' letter. No further action would seem to be required.

M. O'D. B. ALEXANDER

CA

Roderic Lyne, Esq.,
Foreign and Commonwealth Office.

jfh

16 February 1981

I am writing on the Prime Minister's behalf to thank you for your letter to her of 12 February enclosing a copy of a speech by Mr. MacGuigan. I have drawn your letter and its enclosure to the Prime Minister's attention.

M. O'D. B. ALEXANDER

Her Excellency Mrs Jean C. Wadds.

GPS 550

Ms. Ward

1000

Prime Minister

14/2.

UNCLASSIFIED
FM OTTAWA 131540Z FEB 81
TO IMMEDIATE NORTH AMERICA DEPARTMENT FCO
TELEGRAM NUMBER FCO 84 OF 13TH FEBRUARY

FOR MARTIN BERTHOUD, NAD, FROM HILL

YOUR TELEPHONE CONVERSATION WITH DAVIES OF 13 FEBRUARY
CONSTITUTION

1. FOLLOWING ARE EXTRACTS FROM MR. TRUDEAU'S PRESS CONFERENCE YESTERDAY AFTERNOON:

Q: '' WOULD YOU CONSIDER A MEETING WITH MRS. THATCHER?''

A: '' I DON'T THINK MRS. THATCHER HAS SUGGESTED SUCH A MEETING, AND I HAVEN'T — AND I THINK THAT PROVES THAT WE ARE BOTH PRETTY SMART POLITICIANS. MRS. THATCHER WOULD BE WELCOME AT ALL AND EVERY TIME, BUT I THINK IT MIGHT BE UNWISE FOR HER TO COME NOW AND APPEAR TO BE DISCUSSING SOMETHING THAT SHE DOESN'T PARTICULARLY WANT TO DISCUSS WITH ME AT THIS TIME. THEREFORE, I DON'T WANT TO LAY THAT KIND OF A BOOBY TRAP FOR HER, BECAUSE I LIKE HER TOO MUCH.''

2. ASKED ABOUT PROVINCIAL PREMIERS' GOING TO LONDON, MR TRUDEAU REPLIED:

'' I DON'T THINK THE BRITISH WOULD AGREE TO SEE THEM — NOT THE GOVERNMENT, AT ANY RATE. I MEAN, SOME FOREIGN OFFICE OFFICIAL WOULD CERTAINLY SERVE THEM TEA. I CANNOT SPEAK FOR THE BRITISH GOVERNMENT. THAT IS AN OFFHAND VIEW.

I THINK IT IS BASED ON PRECEDENT. YOU KNOW, THE BRITISH GOVERNMENT DIDN'T RECEIVE THE INDIANS — WAS IT LAST YEAR OR TWO YEARS AGO.

I SUPPOSE THAT IS NOT A GOOD PARALLEL.''

3. ASKED WHETHER HE HAD FOUND ANYTHING UNACCEPTABLE OR OBJECTIONABLE IN THE CONDUCT OF SIR JOHN FORD IN RELATIONSHIP TO THE CONSTITUTIONAL QUESTION, MR TRUDEAU REPLIED

''NO, PERSONALLY I DON'T HAVE ANY COMPLAINTS. I KNOW THAT THERE WAS AN INVESTIGATION BY THE DEPARTMENT OF EXTERNAL AFFAIRS, AND THE RESULTS OF IT HAVE BEEN TRANSMITTED, SHALL WE SAY, BY DIPLOMATIC CHANNELS TO THE BRITISH FOREIGN OFFICE. BUT PERSONALLY, I HAVE NEVER HAD ANY BRUSH-UP WITH SIR JOHN FORD.''

Q: '' CAN YOU TELL US WHAT THE RESULTS OF YOUR INVESTIGATIONS WERE AND WHAT CONCLUSIONS YOU CAME TO?''

A: ''THE RESULTS OF THE INVESTIGATION WERE COMMUNICATED TO THE BRITISH. I HAVEN'T SEEN THE RESULTS OF THE INVESTIGATION IN DETAIL. I KNOW THE KIND OF THINGS THAT WERE BEING INVESTIGATED.

I DO KNOW THAT THE DEPARTMENT MADE A VERY FIRM DECISION NOT TO MAKE ANY RECOMMENDATIONS TO THE BRITISH. WHAT THEY WERE TOLD TO DO, AND WHAT I THINK THEY DID DO, IS JUST TELL THE BRITISH WHAT THEY HAD TURNED UP IN TERMS OF SIR JOHN FORD'S ACTIONS.''

4. WHEN ASKED WHETHER THERE WAS A RISK THAT THE BRITISH WOULD AMEND THE STATUTE OF WESTMINSTER TO DENY THEMSELVES ANY FURTHER RESPONSIBILITY FOR THE CANADIAN CONSTITUTION, MR TRUDEAU REPLIED:

A: '' I CANNOT SPEAK FOR THE BRITISH, BUT I WOULD BE VERY SURPRISED IF THE BRITISH GOVERNMENT ADVOCATED THAT ROUTE.

I DIDN'T DISCUSS IT WITH MRS. THATCHER --- AND THAT IS NOT SAID TONGUE-IN-CHEEK, BUT I KNOW THERE WAS A SUGGESTION IN ONE OF THE LONDON PAPERS -- I FORGET WHICH -- THAT THAT SHOULD BE THE COURSE. I BELIEVE THERE WAS ALSO A SUGGESTION IN ONE OF THE CANADIAN PAPERS TO THAT EFFECT. I DON'T THINK THEY UNDERSTAND THE BRITISH MENTALITY WELL IF THEY THINK THAT THEY WOULD TAKE THAT EASY WAY OUT. I DON'T THINK THEY WILL.

Q: '' AND YOU DON'T FAVOUR THAT YOURSELF, SIR--''

A: ''NO, I DON'T.''

Q: ''--DESPITE THE FACT THAT IT WOULD REMOVE THIS PROBLEM?''

A: '' IF WE MOVE UNILATERALLY, IT WOULD BE A LEGAL BREAK -- I WOULD SAY A REVOLUTIONARY BREAK WITH GREAT BRITAIN. AND I THINK THAT IF THEY HAD A UDI, IT WOULD BE THE SAME. IF THEY ACTED WITHOUT A REQUEST FROM THE BRITISH PARLIAMENT, IT WOULD BE LIKE THEIR SAYING TO THE CROWN COLONY OF BELIZE, YOU KNOW, ''WE CAST YOU OFF, YOU ARE ON YOUR OWN.''

THAT IS A RHODESIA IN CONVERSE. AND I DON'T THINK THAT IS IN THEIR MENTALITY. THEY HAVE THEIR WEAK POINTS, BUT I DON'T THINK THEY SLOUGH OFF THEIR RESPONSIBILITIES IN THAT WAY.''

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Ms Rmds

(2)

Prime Minister
You will want to be aware of this impending development. It will not be helpful.
Rmds 13/2

Foreign and Commonwealth Office
London SW1A 2AH

13 February 1981

Dear Michael,

Canadian Constitution

As I told you on the telephone, the Canadian Minister of External Affairs, said in the Federal Parliament this afternoon that he was ready to make a statement on the activities of the British High Commissioner: but was then interrupted by the Speaker, who declared that Question Time had come to an end. We assume that Mr MacGuigan will now make his statement on Monday. I enclose a revised text of the statement: this incorporates, in the third paragraph, most of the amendments which we suggested. We do not yet know whether Mr MacGuigan intends to use the words in square brackets in that paragraph.

Yours ever

Roderic Lyne

(R M J Lyne)
Private Secretary

M O D B Alexander Esq
10 Downing Street
LONDON

CONFIDENTIAL

STATEMENT TO BE MADE BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS FOR CANADA, THE HONOURABLE MARK MacGUIGAN, TO THE CANADIAN HOUSE OF COMMONS ON FREBRUARY 13, 1981 - AT 11.00 a.m.

Following questions by the Honourable Member for Oshawa, an enquiry has been made into the activities of the British High Commissioner. This enquiry, conducted with the assistance of officials, concerned contacts Sir John Ford has had with elected officials at the federal and provincial levels.

The Canadian Government has absolutely no objection to anything the High Commissioner may have done to represent the position of the British Government in relation to its interests or to communicate his understanding of the situation in the British Parliament. This is an entirely appropriate type of diplomatic activity. In another context, the Prime Minister stated the government's position on such matters to the House on 16 December, 1977. Part of the High Commissioner's activity, of course, was of this type.

However, there are indications that the High Commissioner went beyond these normal functions [into internal political questions]. I am assured that the High Commissioner has noted the views expressed in this House. I have also been informed that there is no intention on the part of the British Government to intervene in affairs which are properly matters for Canadians.

This information has been shared with the Britsih authorities through diplomatic channels. The Canadian Government has made, and will make, no recommendation to the British Government. It has been known for some time that Sir John Ford was scheduled to retire soon. His successor has now been named and the Canadian Government welcomed the appointment on January 27.

It would be inappropriate for me to make public the substance of our findings. I shall have no further comment on this question and I consider the matter closed.

M. O'D. B. Alexander, Esq.

MoBA
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CABINET OFFICE

With the compliments of
Sir Robert Armstrong KCB, CVO
Secretary of the Cabinet

70 Whitehall, London SW1A 2AS
Telephone: 01-233 8319

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(2)

Prime Minister
See final sentences
RT

CABINET OFFICE

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref. A04242

12th February, 1981

Patriation of the Canadian Constitution: Sir John Ford

I spoke to you on the telephone after my meeting with Alan Gotlieb who called on me on Tuesday, accompanied by the Canadian High Commissioner, Mrs. Jean Wadds. He came mainly to discuss economic summitry ahead of next week's meeting of Personal Representatives (he is the Canadian Personal Representative); but he also spoke about patriation and John Ford, evidently with the intention that I should pass it on.

Gotlieb said that the Canadians were entirely in agreement with the action which the Foreign and Commonwealth Secretary was intending to take over Sir John Ford. He thought that this would be helpful in dealing with the present difficult situation in Canada: both Prime Minister Trudeau and Mr. MacGuigan had already been pressed hard in the Canadian Parliament to agree that Sir John Ford's activities would be investigated. It would be important now for the British and Canadian Governments to work together in handling their reaction to any further disclosures about Sir John Ford. Gotlieb feared that, because of the energy with which Sir John Ford had gone about his activities and the breadth of his contacts, there was a risk of further disclosures: I formed the impression that Gotlieb already had evidence of other conversations which would create embarrassment if made public.

Emphasising that he was speaking entirely informally, Gotlieb thought that it would be in both Government's interest if the consultations for which Sir John Ford was being recalled could proceed at a leisurely pace and his return to Canada could be delayed for some time. Lord Moran's appointment as his successor was being announced that day, and it would thus become widely known that Sir John Ford would be leaving Canada on retirement in May. If it were possible for him to take whatever accumulated leave he had before his retirement date, thereby bringing forward the time of his departure from Ottawa, this would probably help to lower the temperature still further.

Gotlieb said that there were two other points he wished to make about recent developments over patriation. In the first place, the Canadian Government greatly regretted the recent leaks of Canadian telegraphic traffic on

/patriation

Sir Edward Youde, KCMG, MBE

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patriation. They realised that this had been a source of great embarrassment to the British Government and would now do their best to prevent these leaks happening again. It was particularly disturbing that these leaks seemed to have come from high-placed sources in the Canadian Administration. This was evidence of the sensitivity of the patriation issue and the extent to which it was straining national unity. Secondly, he thought it important that there should be no misunderstanding about the significance which Prime Minister Trudeau attached to his relations with the Prime Minister. He remained confident that his personal relationship with her was good and strong, and he hoped and believed that it would not be damaged by recent events. In particular, he did not think that the comments now being traded between Britain and Canada on the role of the British Parliament in dealing with patriation would affect that relationship.

I am sending a copy of this letter to Michael Alexander, to whom I have also reported orally, and to Robin Birch.

ROBERT ARMSTRONG

Canadian High Commission Haut Commissariat du Canada

February 12th, 1981

The Rt. Hon. Margaret Thatcher MP
Prime Minister
House of Commons
London SW1A OAA

My Dear Prime Minister

There seems to be increased interest in the expected request by the Canadian Parliament for the Patriation of the British North America Act.

A speech delivered by the Honourable M. MacGuigan, Secretary of State for External Affairs, in Edmonton, Alberta, on February 6th represents a first response to the major conclusions of the House of Commons Foreign Affairs Committee. A copy of this speech is appended for your information.

The first week of February witnessed the long-awaited decision of the Court of Appeal of the Province of Manitoba on the constitutionality of the Federal Government's proposals. The Court's opinion, although not unanimous, was in favor of the Federal Government. Chief Justice Freedman, in leading the majority, rejected the Provincial argument that the Federal Government is attempting to have Westminster do indirectly what it cannot do directly in Canada. I quote from the Chief Justice's summary:

> The Attorney General of Manitoba alleges that because the Parliament of Canada cannot legislate to amend the Constitution of Canada in certain respects, it, therefore, cannot request that the Parliament of the United Kingdom, which has full legislative authority, legislate. It is claimed that to do so would be to do indirectly what cannot be done directly. This is a complete misapplication of a well known maxim. The fact is that nothing is being done indirectly. Should the Senate and House of Commons send the proposed joint address to Westminster, they would be doing directly exactly what they have always done directly in such cases, and the United Kingdom Parliament, in acting upon the request, would be doing directly exactly what it has always done directly when given such a request.

In due course my government will be preparing a more detailed commentary upon the conclusions reached by the Foreign Affairs Committee and I look forward to sharing this with you when I have it in hand.

Yours sincerely

Jean Casselman Wadds

Jean Casselman Wadds
High Commissioner

COMMENTS ON THE REPORT OF THE UNITED KINGDOM

SELECT COMMITTEE ON FOREIGN AFFAIRS

ON THE BRITISH NORTH AMERICA ACTS

ADDRESS BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS TO THE EDMONTON CHAMBER OF COMMERCE CONSTITUTIONAL CONFERENCE

6 FEBRUARY 1981

MR. CHAIRMAN, I AM DELIGHTED TO BE ABLE TO COME TO EDMONTON AND PARTICIPATE IN THIS PANEL ON DIFFERENT PERSPECTIVES ON OUR CURRENT CONSTITUTIONAL SITUATION.

I AM PARTICULARLY PLEASED TO SEE SIR ANTHONY KERSHAW HERE. HE IS WITH US BECAUSE OF WHAT HE AND OTHERS HAVE REFERRED TO AS AN "ANACHRONISM", NAMELY THE REMAINING CONSTITUTIONAL LINKAGE THAT CANADA HAS WITH THE UNITED KINGDOM BECAUSE THE BNA ACT RESIDES IN WESTMINSTER.

WITH YOUR PERMISSION, MR. CHAIRMAN, I SHOULD LIKE TO TAKE ADVANTAGE OF SIR ANTHONY'S PRESENCE TO REVIEW THE RECENT REPORT OF THE BRITISH COMMITTEE ON FOREIGN AFFAIRS. THE COMMITTEE REPORTED MATTERS AS IT SAW THEM FROM WESTMINSTER AND IT REACHED CERTAIN CONCLUSIONS WHICH, IF ACCEPTED BY THE BRITISH PARLIAMENT, WOULD PRODUCE A MAJOR CONSTITUTIONAL CRISIS BETWEEN OUR TWO PARLIAMENTS AND GOVERNMENTS.

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I WANT TO ASSURE SIR ANTHONY THAT THE GOVERNMENT OF CANADA DID NOT UNDERTAKE ITS PRESENT CONSTITUTIONAL INITIATIVES LIGHTLY - FAR FROM IT. THE GOVERNMENT HAS TRIED FOR YEARS, IN MEETING AFTER MEETING WITH THE PROVINCES, TO MAKE SOME PROGRESS TOWARDS CONSTITUTIONAL REFORM IN THIS COUNTRY. EVERY ATTEMPT HAS FAILED. WE HAVE COME VERY CLOSE ON OCCASION, FOR EXAMPLE AT VICTORIA IN 1971, BUT EVERY TIME THE ELUSIVE GOAL HAS ESCAPED OUR GRASP. IN FACT, IF ANYTHING, WE HAVE MOVED FURTHER FROM THE POSSIBILITY OF AGREEMENT IN THE LAST TEN YEARS. THIS IS DESPITE A SERIES OF OFFERS BY THE FEDERAL GOVERNMENT AIMED AT ACCOMMODATING THE PROVINCES. THE TENDENCY HAS BEEN FOR PROVINCIAL GOVERNMENTS TO ADD TO THEIR DEMANDS REGARDING THE AMENDING FORMULA AND THE DISTRIBUTION OF POWERS AS A PRE-CONDITION FOR ACTION ON PATRIATION OR A CHARTER OF RIGHTS. FOR EXAMPLE, THE RESOURCE POWER WAS NOT ON THE AGENDA BEFORE 1973 AND FISHERIES WAS ADDED IN THE LATE 1970'S. BOTH BECAME PROVINCIAL PRE-CONDITIONS FOR PATRIATION. THE FEDERAL GOVERNMENT DECIDED THAT THIS STALEMATE COULD NOT CONTINUE: IT WAS PROVING DESTRUCTIVE TO NATIONAL UNITY AND ACCREDITING THE ARGUMENTS OF THOSE WHO WISH TO DESTROY CANADA AS A UNITED NATION.

IN CONSIDERING ITS ALTERNATIVES TO BREAK THIS DEAD-LOCK THE FEDERAL GOVERNMENT WAS DETERMINED THAT ITS MEASURES SHOULD SATISFY THREE CONDITIONS: THEIR SUBSTANCE SHOULD

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RESPOND TO THE WISHES OF A SUBSTANTIAL MAJORITY OF THE POPULATION; THEY SHOULD STRENGTHEN THE FEDERATION; AND THEY SHOULD BE LEGAL AND "CONSTITUTIONAL" IN THE PROPER SENSE.

THERE CAN BE NO DOUBT THAT THE TWO MAJOR ELEMENTS OF OUR PACKAGE, PATRIATION AND THE CHARTER OF RIGHTS, HAVE THE SUPPORT OF THE OVERWHELMING MAJORITY OF CANADIANS. ALL PUBLIC OPINION POLLS SHOW THIS, EVEN THOSE TAKEN ONLY IN WESTERN CANADA. THE CONSERVATIVE PARTY ACKNOWLEDGES IT. MR. EPP, THE CONSERVATIVE PARTY SPOKESMAN, HAS STATED: "IT IS THE POPULAR WILL OF CANADIANS THAT OUR CONSTITUTION REST IN THIS COUNTRY. IT IS ALSO THE POPULAR WILL THAT WE HAVE A CHARTER OF RIGHTS AND FREEDOMS FOR THE CANADIAN PEOPLE EMBEDDED IN THE CONSTITUTION".

THERE IS NO REAL DOUBT THAT THE SUBSTANCE OF THE GOVERNMENT'S PACKAGE HAS THE SUPPORT OF THE LARGE MAJORITY OF CANADIANS.

THE PACKAGE IS DESIGNED TO STRENGTHEN OUR FEDERATION, AFTER A PERIOD OF SEVERE CHALLENGES, PARTICULARLY IN QUEBEC. THE SYMBOLIC ACT OF PATRIATION IS IMPORTANT IN THIS REGARD. SO IS THE ESTABLISHMENT OF AN AMENDING FORMULA THAT WILL BE MORE FLEXIBLE THAN THE LONG-SOUGHT UNANIMITY AND THAT WILL BREAK THE

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VICIOUS PATTERN OF BARGAINING AMENDMENTS TO THE DISTRIBUTION OF POWERS AGAINST SUCH BASIC PRINCIPLES AS PATRIATION AND THE CHARTER OF RIGHTS. I MAY SAY TO OUR BRITISH FRIENDS THAT A CHARTER OF RIGHTS HAS A SPECIAL PLACE IN A FEDERATION WHICH IT MAY NOT HAVE IN A UNITARY STATE. IT ESTABLISHES THAT CERTAIN BASIC RIGHTS WILL BE AVAILABLE TO A CITIZEN THROUGHOUT THE COUNTRY, AND PARTICULARLY RESPONDS TO OUR PLURALISTIC, MULTICULTURAL SOCIETY.

THE THIRD CRITERION WAS THAT THE GOVERNMENT'S MEASURES SHOULD BE LEGAL AND CONSTITUTIONAL. AGAIN, THIS WAS NOT SOMETHING WE CONSIDERED LIGHTLY. I PERSONALLY AM A FORMER PROFESSOR OF CONSTITUTIONAL LAW, AS IS PRIME MINISTER TRUDEAU. CABINET RECEIVED CAREFULLY-WEIGHED ADVICE FROM ITS MOST SENIOR LEGAL OFFICERS. IT WAS CONCLUDED THAT THERE WAS NO REASONABLE DOUBT AS TO THE LEGALITY AND CONSTITUTIONALITY OF THE COURSE WE PROPOSED. WE RECOGNISED THAT IT REPRESENTED A CHANGE IN DIRECTION IN TERMS OF POLICY, BUT THE CHANGE WAS FULLY WITHIN THE RIGHTS OF THE FEDERAL GOVERNMENT AND PARLIAMENT. WE KNEW THE MEASURE WOULD BE POLITICALLY CONTROVERSIAL, BUT WE WERE CONFIDENT THAT IT WAS JUSTIFIED AND THAT IT WOULD SERVE THE LONG-TERM INTERESTS OF CANADA.

I KNOW THAT MEMBERS OF THE BRITISH PARLIAMENT HAVE BEEN EXPOSED TO VERY INTENSIVE LOBBYING BY CERTAIN PROVINCES

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ARGUING THAT THE MEASURE PROPOSED IS ILLEGAL AND UNCONSTITUTIONAL. I HOPE SOME OF THEM APPRECIATE THE IRONY OF THE QUEBEC AGENT GENERAL NOW LOBBYING TO KEEP CANADA FROM REALIZING FULL SOVEREIGNTY WHEN THE PARTI QUEBECOIS WAS TRYING ARDENTLY FOR QUEBEC'S SOVEREIGNTY SO RECENTLY. BUT I WOULD HAVE HOPED THAT BRITISH MPS WOULD HAVE RECOGNISED THAT THE CANADIAN GOVERNMENT HAS TOO MUCH RESPECT FOR THE DIGNITY AND SOVEREIGNTY OF WESTMINSTER THAN TO TRY TO USE IT AS A TOOL OF SOME SHABBY CONSTITUTIONAL PLOY. WE WOULD NEVER ASK THE BRITISH PARLIAMENT TO ACT IN ANY WAY CONTRARY TO LEGAL AND CONSTITUTIONAL PRACTICE. WE WERE CONFIDENT OF THE FOUNDATION OF WHAT WE WERE DOING AND WE WERE PLEASED BUT IN NO WAY SURPRISED, THAT THE BRITISH GOVERNMENT AGREED WITH US.

IT WAS THUS A SHOCK AND SURPRISE TO FIND THE SELECT COMMITTEE REACH CONCLUSIONS WHICH, PUT BALDLY, ARE THAT THE FEDERAL GOVERNMENT'S PROPOSALS ARE, IN PART, UNCONSTITUTIONAL AND ON THE SOLE GROUND THAT SOME PROVINCES CLAIM THAT THEY ARE - THIS ENTIRELY UNSUBSTANTIATED CLAIM IS THE ONLY BASIS FOR THE MOST CRUCIAL CONCLUSIONS OF THE REPORT. I WOULD HAVE HOPED THAT OUR FELLOW PARLIAMENTARIANS IN BRITAIN WOULD HAVE SHOWN MORE CONFIDENCE IN THE INTEGRITY OF THE LARGE MAJORITY IN THE CANADIAN HOUSE OF COMMONS.

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THE SELECT COMMITTEE REPORTED ON FRIDAY, JANUARY THE 28TH. ON TUESDAY, FEBRUARY THE 3RD, THE MANITOBA COURT OF APPEAL DELIVERED A JUDGEMENT WHICH REACHED DIRECTLY OPPOSITE CONCLUSIONS. IT CONCLUDED THAT THERE IS NO CONSTITUTIONAL CONVENTION THAT THE CONSENT OF THE PROVINCES MUST BE OBTAINED BEFORE OUR PARLIAMENT CAN REQUEST AN AMENDMENT TO THE CONSTITUTION WHICH AFFECTS FEDERAL-PROVINCIAL RELATIONSHIPS, OR THE RIGHTS, POWERS AND PRIVILEGES OF THE PROVINCES. AND IT CONCLUDED THAT THE AGREEMENT OF THE PROVINCES IS NOT CONSTITUTIONALLY REQUIRED FOR AMENDMENT OF OUR CONSTITUTION IN MATTERS AFFECTING FEDERAL-PROVINCIAL RELATIONSHIPS.

THE MANITOBA COURT REACHED THESE CONCLUSIONS BECAUSE IT VIEWED A NUMBER OF KEY QUESTIONS VERY DIFFERENTLY FROM THE SELECT COMMITTEE.

IT SHOWED THAT THE 1965 FEDERAL WHITE PAPER ON THE CONSTITUTION DID NOT, AS THE COMMITTEE CONCLUDED, ESTABLISH A PRINCIPLE THAT THE FEDERAL GOVERNMENT WOULD NOT REQUEST AN AMENDMENT DIRECTLY AFFECTING FEDERAL-PROVINCIAL RELATIONSHIPS WITHOUT THE AGREEMENT OF THE PROVINCES. IN FACT, A PASSAGE IN THE WHITE PAPER EXPRESSLY NEGATED THAT PROPOSITION. AS CHIEF JUSTICE FREEDMAN WROTE: "IN MY VIEW THERE IS NO SUCH CONSTITUTIONAL CONVENTION IN CANADA, AT LEAST NOT YET. HISTORY AND PRACTICE DO NOT ESTABLISH ITS EXISTENCE: RATHER THEY BELIE

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IT. THAT WE MAY BE MOVING TOWARDS SUCH A CONVENTION IS CERTAINLY A TENABLE VIEW. BUT WE HAVE NOT YET ARRIVED THERE".

THE MANITOBA COURT ALSO DIFFERED FROM THE SELECT COMMITTEE IN ITS VIEW OF THE SIGNIFICANCE OF THE FEDERAL GOVERNMENT'S REFERENCE TO THE SUPREME COURT OF THE PROPOSED AMENDMENTS TO THE SENATE IN 1979. CHIEF JUSTICE FREEDMAN FLATLY CONCLUDED: "THE LANGUAGE USED BY THE SUPREME COURT (IN THIS CASE) IS NOT LANGUAGE APPROPRIATE TO RECOGNITION OF THE EXISTENCE OF A CONVENTION FULL-BLOWN, VIGOROUS, AND OPERATIVE. A CONVENTION SHOULD BE CERTAIN AND CONSISTENT; WHAT WE HAVE IS UNCERTAIN AND VARIABLE".

ANOTHER STRIKING CONTRADICTION BETWEEN THE VIEW OF THE MANITOBA COURT AND THAT OF THE SELECT COMMITTEE CONCERNS THE PATTERN OF CONSTITUTIONAL AMENDMENT IN CANADA. WHERE THE COMMITTEE SEES A CONVENTION THE COURT SEES NONE. CHIEF JUSTICE FREEDMAN CONCLUDES THAT THE HISTORY OF AMENDMENTS WHERE PROVINCES HAVE BEEN CONSULTED DO NOT IN THEMSELVES CONSTITUTE A PATTERN OF LEGISLATIVE CONDUCT "NOR DO THEY POSSESS THE VIGOUR, WARRANTING THE ASCRIPTION TO THEM OF A CONSTITUTIONAL CONVENTION".

THE COURT ADOPTS A VERY DIFFERENT VIEW OF THE SIGNIFICANCE OF CANADA'S CONSTITUTIONAL LINKS WITH WESTMINSTER BEING PRESERVED IN THE STATUTE OF WESTMINSTER IN 1931.

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THE COMMITTEE CONCLUDED THAT THIS SOMEHOW DEMONSTRATED SOME SORT OF REQUIREMENT FOR PROVINCIAL CONSENT FOR FEDERAL REQUESTS. THE COURT CONCLUDES THE EFFECT OF THE STATUTE TO BE "NEUTRAL" AND THAT IN NO WAY DID PROVINCIAL CONCURRENCE FIGURE IN THE SCHEME OF THINGS PRIOR OR SUBSEQUENT TO 1931.

THESE ARE ONLY A FEW OF THE POINTS ON WHICH THE MANITOBA COURT REACHED CONCLUSIONS VERY DIFFERENT FROM THE SELECT COMMITTEE.

LET ME TURN TO THE MOTION FREQUENTLY EXPRESSED BY SIR ANTHONY KERSHAW THAT STILL IN 1981 THE PARLIAMENT AT WESTMINSTER IS, IN SOME WAY, THE "GUARDIAN" OF THE FEDERAL CHARACTER OR BALANCE OF CANADA. AS HE SAID THIS MORNING, "WE REGRET WE SHOULD HAVE BEEN CALLED UPON TO ADJUDICATE IN THIS DISPUTE". THIS STRIKING WORD "ADJUDICATE" IMPLIES THE IMPERIAL SENSE OF GUARDIANSHIP SIR ANTHONY SEES AS THE BRITISH BURDEN.

THE GOVERNMENTS OF CANADA AND OF THE UNITED KINGDOM TAKE THE VIEW THAT CONSTITUTIONAL PRECENDENTS REQUIRE THE BRITISH PARLIAMENT TO GIVE EFFECT TO ANY REQUEST COMING FROM THE CANADIAN PARLIAMENT. IT IS ALSO THE VIEW OF THE TWO GOVERNMENTS THAT THERE IS NO CONSTITUTIONAL CONVENTION REQUIRING

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PROVINCIAL CONSULTATIONS OR CONSENT. THIS VIEW HAS JUST BEEN SUSTAINED BY THE MANITOBA COURT. I APPRECIATE THAT THIS AUTHORITY OF THE FEDERAL PARLIAMENT LOOKS OUT OF PLACE IN RELATION TO CLASSIC NOTIONS OF FEDERALISM WITH TWO SOVEREIGNTIES SEPARATE AND PROTECTED FROM ONE ANOTHER. CLEARLY SUCH A POWER OR AUTHORITY COULD BE SUBJECT TO ABUSE. BUT THE FACT THAT A CONSTITUTIONAL POWER MIGHT BE SUBJECT TO ABUSE DOES NOT MEAN THAT IT IS LESS REAL FOR THAT, OR THAT IT WILL BE ABUSED, OR THAT THERE MUST BE SOME NEAT EXTERNAL CHECK OR LIMIT FOUND FOR THAT POWER.

THE PRESENT POSITION OF THE GOVERNMENT AND PARLIAMENT OF CANADA AS THE SOLE AUTHORITIES HAVING STANDING IN CONSTITUTIONAL MATTERS IN RELATIONS WITH THE BRITISH GOVERNMENT AND PARLIAMENT IS IN MANY WAYS AN ANACHRONISTIC OR UNFEDERAL OR UNITARY CHARACTER OF OUR CONSTITUTION. BUT IT IS, I REPEAT, THE TRUE POSITION. AND WE SHOULD NOT BE ASTOUNDED BY IT. THERE ARE MANY SIMILAR "UNFEDERAL" OR "UNITARY" ASPECTS TO OUR FEDERAL CONSTITUTION. SO MANY, IN FACT, THAT THE GREAT AUTHORITY ON FEDERALISM, SIR K.C. WHEARE, DESCRIBED CANADA'S CONSTITUTION AS "QUASI-FEDERAL".

LET ME JUST LIST SOME OF THESE UNITARY ASPECTS WRITTEN INTO OUR CONSTITUTION BACK IN 1867: -- THE FEDERAL GOVERNMENT APPOINTS THE LIEUTENANT-GOVERNORS OF OUR PROVINCES;

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-- THESE LIEUTENANT-GOVERNORS CAN ON THEIR OWN OR UNDER INSTRUCTION FROM THE FEDERAL GOVERNMENT RESERVE ANY PIECE OF PROVINCIAL LEGISLATION OR EVEN DISALLOW IT;

-- THE FEDERAL GOVERNMENT, WITH THE SO-CALLED DECLARATORY POWER, CAN DECLARE ANY WORK UNDER PROVINCIAL JURISDICTION TO BE FOR THE GENERAL ADVANTAGE OF CANADA AND THUS BRING IT UNDER FEDERAL JURISDICTION;

-- THE FEDERAL GOVERNMENT CAN UNDER THE "PEACE, ORDER AND GOOD GOVERNMENT" CLAUSE IMPOSE ITS AUTHORITY AS NECESSARY IN CASE OF AN EMERGENCY;

-- THE FEDERAL GOVERNMENT CAN, UNDER THE SO-CALLED SPENDING POWER, RAISE AND SPEND MONEY FOR ANY OBJECT IT SEES FIT, INCLUDING, FOR EXAMPLE, EDUCATION;

-- THE FEDERAL GOVERNMENT ALONE APPOINTS MEMBERS OF CANADA'S SENATE WHICH IS THE REGIONALLY DISTRIBUTED UPPER HOUSE.

IF THIS CATALOGUE WERE READ LITERALLY AND IN ISOLATION IT WOULD GIVE A COMPLETELY DISTORTED IDEA OF THE CURRENT PRACTICE OF CANADIAN FEDERALISM. YET ALL OF THESE POWERS ARE REAL AND ALL OF THEM ARE OPEN TO POLITICAL ABUSE. A DETERMINED FEDERAL GOVERNMENT COULD SERIOUSLY DAMAGE THE FEDERAL CHARACTER OR BALANCE OF OUR INSTITUTIONS. BUT NO FEDERAL GOVERNMENT EVER WOULD ACT THAT WAY BECAUSE OUR POLITICIANS AND OUR PEOPLE HAVE FAR TOO GREAT A RESPECT FOR OUR FEDERAL SYSTEM. WE HAVE SEEN OUR SYSTEM EVOLVE FROM A HIGHLY CENTRALIZED, QUASI-

FEDERALIST SYSTEM IN 1867, TO A LARGELY DECENTRALIZED, TRULY FEDERAL SYSTEM IN 1981. WE HAVE NOT REQUIRED ANY EXTERNAL "GUARDIAN" TO KEEP US ON THE TRUE FEDERALIST ROAD.

THIS IS WHY ANY CANADIAN PARLIAMENTARIAN MUST FIND OFFENSIVE THE SELECT COMMITTEE'S CONCLUSION THAT WESTMINSTER MUST SERVE AS THE "GUARDIAN" OF THE FEDERAL CHARACTER OF OUR CONSTITUTION. THE FEDERAL GOVERNMENT IS ALREADY ENDOWED WITH MORE THAN ENOUGH MEANS TO MAKE A LEGAL ASSAULT ON CANADIAN FEDERALISM IF IT EVER CHOSE TO DO SO. BUT IT NEVER WILL. CERTAINLY IT IS NOT PROPOSING ANY SUCH ASSAULT IN ITS PRESENT CONSTITUTIONAL PROPOSALS. IF IT WERE, IT WOULD HAVE TO ANSWER TO THE PEOPLE IN THE NEXT ELECTION.

IT IS THIS ANSWERABILITY OF THE CANADIAN PARLIAMENT WHICH IS FUNDAMENTAL TO THE PRESENT EXERCISE. A LARGE MAJORITY IN THE HOUSE OF COMMONS HAS DECIDED THAT CANADA CANNOT CONTINUE INDEFINITELY IN THE CONSTITUTIONAL STALEMATE WE HAVE KNOWN SO LONG. ALL OF US WHO SUPPORT THE PRESENT PACKAGE BELIEVE VERY DEEPLY THAT IT WILL SECURE AND STRENGTHEN THE FEDERAL CHARACTER OF CANADA. THE SELECT COMMITTEE GIVES GREAT WEIGHT TO ITS UNSUBSTANTIATED VIEW THAT CERTAIN PARTS OF THE CHARTER OF RIGHTS WOULD LIMIT PROVINCIAL JURISDICTION, BUT IT DOES NOT MENTION THAT WHATEVER THE CHARTER MAY DO, IT WILL APPLY EQUALLY TO BOTH THE FEDERAL AND PROVINCIAL JURISDICTIONS. IT IN NO WAY REPRESENTS

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A TRANSFER OF POWER BETWEEN LEVELS AND IT IS FUNDAMENTALLY FEDERAL IN ITS OBJECTIVES. THE ONLY ACTION IN RELATION TO PROVINCIAL POWERS WILL BE TO CONFIRM THEIR OWNERSHIP OF RESOURCES AND TO EXTEND THEIR POWERS IN INTER-PROVINCIAL TRADE. BEYOND THAT, THE AMENDING FORMULA WILL GIVE THEM NEW RIGHTS, IN THAT THEY WILL HAVE A CONSTITUTIONAL ROLE IN AMENDMENTS. THUS THE FEDERAL PROPOSALS DO PASS THE TEST THE KERSHAW REPORT ESTABLISHED. THEY DO NOT DIRECTLY AFFECT FEDERAL-PROVINCIAL RELATIONSHIPS EXCEPT WHERE THEY GIVE THE PROVINCES ADDITIONAL POWERS. THERE IS IN THE FEDERAL PACKAGE NOT A SINGLE INSTANCE IN WHICH PROVINCIAL POWERS ARE DIRECTLY DIMINISHED IN FAVOUR OF THE FEDERAL GOVERNMENT. WHERE THE PROVINCES LOSE, THEY LOSE TO THEIR OWN PEOPLE, NOT THE FEDERAL GOVERNMENT.

IN ADVANCING THESE PROPOSALS THE GOVERNMENT HAS FACED OPPOSITION FROM THE OFFICIAL OPPOSITION AND FROM A NUMBER OF PROVINCES. OBVIOUSLY THE GOVERNMENT TAKES THIS OPPOSITION SERIOUSLY. I CAN ASSURE YOU IT HAS AFFECTED THE DESIGN OF THE PACKAGE. BUT ULTIMATELY THE GOVERNMENT AND A MAJORITY IN PARLIAMENT MUST ACT, CONFIDENT THAT THEY ARE ACTING WITHIN THEIR AUTHORITY AND THAT THEY ARE ULTIMATELY RESPONSIBLE TO THE CANADIAN PEOPLE.

AND THIS, OF COURSE, IS THE GREAT DIFFERENCE BETWEEN THE BRITISH PARLIAMENT AND THE CANADIAN PARLIAMENT IN THESE

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QUESTIONS. THE CANADIAN PARLIAMENT MUST ANSWER TO THE CANADIAN PEOPLE. THE BRITISH PARLIAMENT DOES NOT. I BELIEVE THIS DIFFERENCE IS ABSOLUTELY FUNDAMENTAL AND I WOULD ENCOURAGE EVERY MEMBER OF THE BRITISH PARLIAMENT TO WEIGH ITS SIGNIFICANCE FULLY. DOES THE BRITISH PARLIAMENT REALLY WISH TO REPLACE THE PARLIAMENT OF CANADA AS THE GUARDIAN OF THE FEDERAL INSTITUTIONS OF CANADA?

SOME MAY REPLY THAT THE BRITISH PARLIAMENT CLEARLY HAS THE LEGAL ABILITY TO PASS OR DEFEAT A CANADIAN PROPOSAL. THIS MAY BE TRUE IN THE NARROW, LEGAL SENSE. BUT THE CANADIAN GOVERNMENT -- AND, AS I SAY, THE BRITISH GOVERNMENT -- INSISTS THAT THIS NARROW, LEGAL RIGHT IS, TO USE THE TERM AGAIN, AN "ANACHRONISM" WHICH CAN ONLY PROPERLY BE USED BY PASSING "ON THE NOD", WITHOUT LOOKING AT THE SUBSTANCE, ANY REQUEST FROM THE CANADIAN PARLIAMENT. TO QUOTE VISCOUNT JOWETT ON AN EARLIER REQUEST IN 1940, "IT IS SUFFICIENT JUSTIFICATION FOR THE BILL THAT WE ARE MORALLY BOUND TO ACT ON THE GROUNDS THAT WE HAVE HERE THE REQUEST OF THE DOMINION PARLIAMENT".

I RECOGNIZE THAT THE PRESENT CONSTITUTIONAL ANACHRONISM CREATES AN UNCOMFORTABLE OR EMBARRASSING SITUATION FROM SOME BRITISH PARLIAMENTARIANS. FOR US IN CANADA AS WELL THERE IS SOMETHING STRANGE ABOUT HAVING TO RESORT TO THE

MECHANISMS OF THE BRITISH PARLIAMENT IN ORDER TO SECURE AN AMENDMENT TO OUR OWN CONSTITUTION. CANADA HAS LONG SINCE WON ITS SOVEREIGNTY AND ITS INDEPENDENCE, IN TWO WORLD WARS AND THROUGH A PROCESS OF CONSTITUTIONAL DEVELOPMENT WHICH IN SOME WAYS AT LEAST COULD SERVE AS A MODEL FOR THE WORLD.

FOR BOTH CANADA AND BRITAIN IT WOULD BE A TRAGEDY TO MAR THE SHARED HISTORY OF THAT CONSTITUTIONAL DEVELOPMENT AT THE VERY END OF THE PROCESS. TO THOSE BRITISH PARLIAMENTARIANS WHO MAY FEEL UNCOMFORTABLE ABOUT THE PRESENT SITUATION, AND ESPECIALLY TO SIR ANTHONY KERSHAW, LET ME ONLY SAY THIS: YOU DO NOT SOLVE A PROBLEM IN BRITAIN OR CANADA BY MAKING IT A PROBLEM BETWEEN BRITAIN AND CANADA. YOU CANNOT PATRIATE THE PROBLEM WITHOUT PATRIATING THE SOLUTION. AND, ABOVE ALL, YOU CANNOT DISPOSE OF A LIVE ANACHRONISM OF PROCEDURE BY EVOKING A DEAD ANACHRONISM OF SUBSTANCE, BY CLAIMING A "GUARDIANSHIP" WHICH SURELY MUST SEEM AS UNREAL TO YOU AS IT DOES TO US. YET THERE IS A WAY FOR CANADA'S CONSTITUTIONAL PROBLEMS TO BE DEALT WITH IN CANADA, WHERE THEY BELONG. THERE IS A WAY THAT IS CONSISTENT WITH PRECEDENT. THERE IS A WAY THAT IS CONSISTENT WITH THE DIGNITY AND THE SOVEREIGNTY OF THE MOTHER OF PARLIAMENTS. THERE IS A WAY THAT IS CONSISTENT WITH THE DIGNITY AND SOVEREIGNTY OF THE PARLIAMENT OF CANADA. AND, PERHAPS ABOVE ALL, THERE IS A WAY THAT IS CONSISTENT WITH THE GREAT PRINCIPLE OF RESPONSIBLE GOVERNMENT THAT IS THE MOST FUNDAMENTAL ELEMENT

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IN OUR COMMON HERITAGE. AND THERE IS ONLY ONE WAY. THAT ONE WAY IS FOR THE BRITISH PARLIAMENT TO ENACT THE CONSTITUTIONAL MEASURES REQUESTED BY THE GOVERNMENT OF CANADA, AND TO LET THE RESPONSIBILITY FOR THESE MEASURES REST WHERE IT MUST REST IN THE END IN ANY CASE -- WITH THE GOVERNMENT AND PARLIAMENT OF CANADA. THAT WAY, WE ENSURE OUR CONTINUING DEEP FRIENDSHIP.

12 February 1981

I am writing on behalf of the Prime Minister to thank you for your letter of 12 February, which I will place before her at once.

N. J. SANDERS

David Ginsburg, Esq., M.P.

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10 DOWNING STREET

PRIME MINISTER

This letter from David Ginsburg says that the BBC Overseas Service does not transmit in French to Canada. His letter is marked "private and confidential".

Would you like us to take up the question with the FCO, without revealing that it is Mr. Ginsburg who has raised it with you? / Yes

I've sent an acknowledgment to Mr Ginsburg. MS

MS

MODBA

Would you like to follow this one up? I would be glad to if you're busy

Nick

12 February 1981

12/2

12/2
LCCIG

FROM DAVID GINSBURG, MP

HOUSE OF COMMONS
LONDON SWIA OAA

12th February 1981

PRIVATE & CONFIDENTIAL

Rt. Hon. Mrs. M. Thatcher, MP
Prime Minister,
10 Downing Street,
London,
S.W.1.

Dear Prime Minister.

I hope you do not mind my troubling you with a piece of advice about the vexed problem of the patriation of the Canadian Constitution. Before doing so I should declare an interest. As you know I have broadcast for many years on the French service of the B.B.C., but also for the last few years I have done radio and television programmes for C.B.C./Radio Canada. Most of these programmes have been in the French language and nearly all of them, going back, I think, to 1976, have concerned the hypothetical patriation of the Canadian Constitution. I can modestly claim some knowledge of the subject.

The point I am seeking to alert you on is that though the B.B.C. world service programmes in the English language are picked up in Canada and contain material on the Constitutional issue there is no parallel British output in the French language. In practice this means that though the English speaking population of Canada are in a position to understand the British point of view on this very difficult and sensitive issue, French listeners have no such possibilities as the B.B.C. French service is not beamed to Canada. I believe though, in contrast, the French state does relay some domestic output to Canada for several hours a day.

I am not in any way suggesting that you should mount a propaganda drive, it is simply that the U.K. needs to convey the facts to the people of Canada. I am not a technical expert in transmission matters but I imagine that in an emergency situation we could do something fairly quickly.

If I am right in my judgement this matter could hot up even more in the next few weeks and you may feel that my suggestion has something to commend it.

Yours Sincerely
David.

P.S. This letter is written to you in a helpful spirit and apart from acknowledgement it does not call for a reply on the substantive issue.

SECRET AND PERSONAL

4

Foreign and Commonwealth Office

London SW1A 2AH

11 February 1981

PM has seen. F.N.

Dear Michael,

Rmd 11/4

Canadian Constitution

I understand that the Foreign and Commonwealth Secretary has described to the Prime Minister the demarche made by Mr Gotlieb to Sir Edward Youde on 9 February. I enclose a copy of Mr Gotlieb's speaking note. For obvious reasons, this has been given a very limited circulation in the FCO. Mr Gotlieb declined to identify the provincial premier to which the note referred.

Yours ever

Robert Lyne

(R M J Lyne)
Private Secretary

M O'D B Alexander Esq
10 Downing Street

SECRET AND PERSONAL

P.C

REPORT

The Premier called the High Commissioner Wednesday afternoon, February 4, for a general discussion about the situation in Britain and had a long conversation from about 3.30 to 4.30 pm.

During this conversation, Sir John

1) attacked the Prime Minister;

2) indicated the High Commissioner's involvement in planning to stop him;

3) urged the premier to join other premiers in doing so.

1) Sir John alleged that ''Trudeau's defence policies are destroying NATO, that his National Energy Policy is adversely affecting the Canada-US relationship, that he is making a mockery of the Economic Summit, that he is [threatening] the Commonwealth, that the breakdown in [destroying]
relations with the UK is all the fault of Trudeau.''
''He mesmerizes you Canadians like birds in a tree and it's time you birds started flying out of the tree.''
''This machine that is riding rough shod over Canada must be stopped.''

2) Sir John took the view the provinces should get together to agree on an amending formula. The Premier argued that Quebec, at least, would never agree on a single item - constitutional reform, to which it has traditionally been opposed, especially on the verge of a general election. The High Commissioner argued that when he (Sir John) proposed the idea to Premier Levesque he seemed ''to have warmed to it''.

Sir John then argued that to defeat the government's resolution in the House of Commons, all that is necessary is to turn around the NDP and change the vote of 5 Liberal MPs from Quebec. The Premier asked, why specify Quebec MPs; Sir John said the pressure must be intense on them at this point because the polls show that 60% of the Quebec people are against what they are doing and that 2 of them have already given way. The Premier replied that he wouldn't give much weight to the polls, that the Prime Minister could turn them around in a week on the hustings. Sir John said, ironically, yes he can mesmerize you.

/3)

3) Sir John urged the Premier to attend the meeting with the other Premiers in Montreal Monday [today]. The Premier said he wasn't even invited. The High Commissioner said it would be no problem for him to go if he wanted to.

The Premier felt that throughout the conversation Sir John was putting pressure on him to stop the Federal Government.

9 February 1981

CABINET OFFICE

With the compliments of
Sir Robert Armstrong KCB, CVO
Secretary of the Cabinet

M. O'D B. Alexander, Esq

70 Whitehall, London SW1A 2AS
Telephone: 01-233 8319

CABINET OFFICE

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref: A04253

NBPM
Rmt
-12/2

CHANCELLOR OF THE DUCHY OF LANCASTER
AND PAYMASTER GENERAL

Patriation of Canadian Constitution

will respond if required

We discussed this afternoon my minute of 9th February about the letter which you have received from the Canadian High Commissioner. You said that you would like to suggest to her that she should commission Sir Richard Barlas to prepare a memorandum.

2. I have ascertained that the Clerk of the House of Commons would have no objection to this. He has been in touch with Sir Richard Barlas, who is prepared to take it on. Apparently Sir Richard Barlas is due to go to Canada on other business at the end of next week; the sooner Mrs. Wadds gets in touch with him the better.

3. I attach a draft of a letter for you to send to Mrs. Wadds.

ROBERT ARMSTRONG

11th February 1981

DRAFT LETTER FROM THE CHANCELLOR OF THE DUCHY OF LANCASTER AND PAYMSTER GENERAL TO HER EXCELLENCY MRS. JEAN CASSELMAN WADDS, HIGH COMMISSIONER FOR CANADA

Thank you for your letter of 2nd February, seeking help in getting the best possible understanding of the procedure when the Canadian constitutional measure reaches Westminster in the form of a Bill and of the various ways in which it might be dealt with there.

After taking soundings in Whitehall and in Westminster, I have come to the conclusion that the best way of meeting your requirement would be for you to commission the services of a former officer of the House of Commons to prepare a memorandum on the lines you indicate in your letter. The man I have particularly in mind is Sir Richard Barlas, who ~~also~~ as the recently retired Clerk of the House of Commons is fully versed in questions of Parliamentary Procedure, and who also has (I understand) the advantage of having been in Canada recently, advising officers of the Canadian House of Commons on other matters, and of having got to know something of the Canadian constitutional issue.

If that suggestion is acceptable to you, I think that the simplest way to proceed would be for you to be in touch with him direct, to discover whether he would be willing to provide you with what you are looking for. His address is Walnut House Ticehurst, East Sussex. I believe that he is due to return to Canada on other business in ten days' time; I expect you will want to be in touch with him before that.

Canada
PS | No 10 Downing Street

6101 - 1

Ls

GRS 316
D E Y O U
CONFIDENTIAL
STAFF-IN-CONFIDENCE

FM FCO 091900Z FEB 81
TO FLASH OTTAWA
TELEGRAM NUMBER 48 OF 9 FEBRUARY,
INFO IMMEDIATE DEYOU LISBON.

CANADIAN CONSTITUTION.

1. MR GOTLIEB SAW SIR E YOUDE THIS MORNING. HE WENT THROUGH A NUMBER OF ALLEGED STATEMENTS BY YOURSELF TO WHICH THE CANADIAN GOVERNMENT TOOK EXCEPTION. YOUDE MADE NO COMMENT ON THE SUBSTANCE OF THE ALLEGATIONS, BUT SAID THAT WE WOULD TAKE THE EARLIEST OPPORTUNITY OF DISCUSSING ALL THIS WITH YOU.

2. UNDER THE CIRCUMSTANCES, I THINK IT BEST IF YOU COULD RETURN FOR CONSULTATIONS ON WEDNESDAY.

3. WE HAVE ALSO DECIDED THAT TO AVOID THE SPECULATION WHICH WOULD ARISE IF WE DELAYED THE PRESS ANNOUNCEMENT ABOUT YOUR SUCCESSOR, WE SHOULD GO AHEAD TOMORROW AS ORIGINALLY PLANNED. THE FOLLOWING ANNOUNCEMENT WILL, THEREFORE, BE MADE AT THE 12.30 NEWS CONFERENCE TOMORROW, 10 FEBRUARY.

QUOTE
THE FOREIGN AND COMMONWEALTH SECRETARY, WITH THE CONCURRENCE OF THE PRIME MINISTER, HAS APPOINTED THE LORD MORAN KCMG TO BE BRITISH HIGH COMMISSIONER TO CANADA IN SUCCESSION TO SIR JOHN FORD KCMG MC, WHO WILL BE RETIRING FROM THE DIPLOMATIC SERVICE.
END QUOTE

WE HAVE TOLD THE CANADIAN HIGH COMMISSION HERE.

4. IN ANSWER TO ANY QUESTIONS, THE SPOKESMAN WILL SAY THAT WE PROPOSE TO MAKE THE CHANGE-OVER IN EARLY SUMMER. NEWS DEPARTMENT WILL ADD, AS NECESSARY, THAT THIS CHANGE OF HIGH COMMISSIONER HAS BEEN IN THE PIPELINE FOR SOME TIME AND THE CANADIAN GOVERNMENT WERE INFORMED OF THE PROPOSED APPOINTMENT OF **LORD MORAN SOME TIME AGO.**

/5.

5. IF THERE ARE QUESTIONS ABOUT YOUR RETURN LATER THIS WEEK, NEWS DEPARMENT WILL CONFIRM THAT YOU ARE COMING FOR A SHORT PERIOD OF CONSULTATIONS ABOUT THE CONSTITUTIONAL QUESTION. IF ANY SUGGESTION IS MADE THAT YOU ARE RETURNING AT THE REQUEST OF THE CANADIAN GOVERNMENT, THE SPOKESMAN WILL SAY THAT THIS IS NOT THE CASE.

CARRINGTON

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PS/LPS

PS/MR RIDLEY
PS/PUS
SIR E.YOUDE
MR DAY
MR URE

COPIES TO:
PS/No.10 DOWNING ST.

9 February, 1981.

Patriation of the Canadian Constitution

The Prime Minister has seen and taken note of your letter to me of 4 February describing the outcome of a discussion between the Foreign and Commonwealth Secretary and the Chancellor of the Duchy of Lancaster on 2 February.

M. O'D. B. ALEXANDER

CS

F.J. Richards, Esq.,
Foreign and Commonwealth Office.

GRS 850
CONFIDENTIAL
DESKBY 090900Z FEB
FM OTTAWA 082140Z FEB 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 69 OF 8 FEBRUARY

Read in full

CANADIAN CONSTITUTION

1. TRUDEAU IS UNPREDICTABLE AND I CANNOT PRETENT TO KNOW HIS GAME PLAN: AND WHAT FOLLOWS IS LARGELY CONJECTURAL.

IT MAY NEVERTHELESS BE HELPFUL TO YOU AS ONE POSSIBLE SCENARIO OF WHICH WE SHOULD TAKE ACCOUNT IN OUR OWN CALCULATIONS.

2. SOME MONTHS AGO I HEARD THAT WHEN BRIEFING CANADIAN STAFFS IN NEW YORK MR KIRBY THE DEPUTY MINISTER MOST DIRECTLY INVOLVED WITH THE CONSTITUTION SAID THAT IF MR TRUDEAU WAS THWARTED BY THE BRITISH HE WOULD NOT HESITATE TO FOLLOW MACKENZIE KINGS EXAMPLE OVER THE BYNG INCIDENT.

3. TO BEGIN WITH THE CANADIANS THOUGHT THAT OUR PARLIAMENT WOULD NOT BE INTERESTED IN THE CONSTITUTIONAL ISSUE AND THAT HMG WOULD BE ABLE TO GET THEIR RESOLUTION PASSED WITH LITTLE DIFFICULTY AT WESTMINSTER. FOR TOO LONG THEY FAILED TO RECOGNISE THE INCREASING INDICATIONS TO THE CONTRARY. WHEN THESE INDICATIONS BECAME TOO STRONG TO IGNORE MR TRUDEAU DECIDED THAT HIS BEST COURSE OF ACTION IF HE WAS NOT TO AGGRAVATE HIS DIFFICULTIES WOULD BE TO CONCEAL FROM THE CANADIAN PARLIAMENT THE LIKELIHOOD OF SERIOUS PROBLEMS AT WESTMINSTER. HE HOPED THAT HE COULD THEN FORCE HIS PROPOSALS THROUGH HERE AND AFTERWARDS PUT PRESSURE ON HMG BY ACCUSING IT OF BREACH OF PROMISE AND COLONIALISM IF HMG FAILED TO DELIVER QUICKLY AT WESTMINSTER, AND BY ARGUING CANADA'S CASE AS A SOVEREIGN POWER IN THE UN AND COMMONWEALTH FORA. (THE SUPPORT WHICH HE HAS SO FAR RECEIVED FROM FOR EXAMPLE MESSRS RAMPHAL AND WHITLAM MUST HAVE ENCOURAGED HIS HOPES THAT HE COULD EFFECTIVELY PILLORY US IN THAT EVENTUALITY).

/4. THINGS

4. THINGS HAVE NOT HOWEVER GONE QUITE ACCORDING TO PLAN. HIS PARLIAMENTARY TIMETABLE HERE HAS SLIPPED A COUPLE OF MONTHS: LEAKS MAINLY FROM CANADIAN SOURCES HAVE REVEALED VIRTUALLY ALL CANADIAN DISCUSSIONS WITH BRITISH MINISTERS AND SHOWN MR TRUDEAU TO HAVE BEEN LESS THAN CANDID WITH CANADIANS AND THEIR PARLIAMENT: HE AND HIS TEAM HAVE BECOME INCREASINGLY EDGY: AND HE HAS FELT HIMSELF FORCED PREMATURELY TO USE HIS NATIONALIST/ANTI COLONIALIST CARD. (HOW FAR HE INTENDS TO PLAY IT IS NOT CLEAR. IF HE WERE TO DECLARE ME PERSONA NON GRATA THAT WOULD BE A SIGN THAT HE WANTED DELIBERATELY TO RAISE THE POLITICAL TEMPERATURE IN BRITAIN TO CREATE MAJOR FRICTION BETWEEN THE TWO COUNTRIES IN THE HOPE THAT THIS COULD BE USED TO HIS ADVANTAGE IN MANIPULATING CANADIAN PUBLIC OPINION). BY THE END OF THE COMING WEEK HE WILL HAVE GOT HIS RESOLUTION AND CHARTER OF RIGHTS THROUGH THE JOINT HOUSE/SENATE COMMITTEE AND ALREADY MR CHRETIEN HAS SAID THAT PARLIAMENT IS BY THAT ACTION OBLIGATED TO THE PEOPLE OF CANADA AND MUST DELIVER AND GET BRITAIN TO DO SO QUICKLY.

5. MEANWHILE THE POLITICAL SITUATION IS CANADA HAS BEEN SHIFTING IN A WAY WHICH COULD ENCOURAGE MR TRUDEAU TO APPEAL TO THE PEOPLE. MR CLARK'S LEADERSHIP OF THE PARTY IS UNDER ATTACK: ONE CONSERVATIVE MAVERICK (MR YURKO) HAS OPENLY SIDED WITH THE FEDERAL GOVERNMENT ON THE CONSTITUTIONAL ISSUE: THERE IS TO BE A CONSERVATIVE PARTY CONVENTION ON FEBRUARY 27 TO DECIDE WHETHER TO HOLD A LEADERSHIP CONVENTION: AND OTHER PARTY MEMBERS ARE ROOTING AGAINST MR CLARK. IF THE PARTY DOES DECIDE ON HOLDING A LEADERSHIP CONVENTION THE PARTY WILL BE EVEN LESS EFFECTIVE UNTIL MR CLARK'S LEADERSHIP HAS BEEN CONFIRMED OR A SUCCESSOR CHOSEN AND RUN IN. MR DAVIS PREMIER OF ONTARIO HAS CALLED AN ELECTION FOR MARCH AND THIS COULD HAVE IMPLICATIONS FOR ONTARIO'S SUPPORT OF THE TRUDEAU CONSTITUTIONAL PACKAGE: AND THE EDITORIAL IN TODAYS GLOBE AND MAIL SEEKS TO UNDERMINE THAT SUPPORT. A QUEBEC PROVINCIAL ELECTION MAY BE IMMINENT AND MUST BE HELD BEFORE THE END OF THE YEAR. IT WILL MOST LIKELY BRING TO POWER THE LIBERALS HEADED BY MR RYAN WHO DEEPLY OPPOSES MR TRUDEAU'S UNILATERAL IDEAS AND WILL BE A MUCH MORE DIFFICULT OPPONENT THAN MR LEVESQUE, DISCREDITED BY THE LOSS OF HIS 1980 REFERENDUM. A LONG DELAY COULD THUS BE A SERIOUS THREAT TO THE ULTIMATE SUCCESS OF MR TRUDEAU'S PLAN. THE FEDERAL GOVERNMENT HAVE MADE MUCH OF THEIR VIEW THAT THEIR UNILATERAL ACTION IS A POLITICAL ACT AND NO BUSINESS OF THE COURTS. MR TRUDEAU HAS RECENTLY TWICE INDICATED THAT IF HE IS THWARTED BY WESTMINSTER HE MIGHT GO TO THE COUNTRY IN A GENERAL ELECTION.

/6. ALL

6. ALL THIS SUGGESTS THAT HE MAY NOW BE THINKING OF CALLING A SUMMER ELECTION AND BE QUIETLY PREPARING FOR THAT EVENTUALITY. A FINAL DECISION WOULD BE TAKEN ONCE HE HAD SEEN WHETHER HIS AMENDED CHARTER OF RIGHTS (AMENDED TO MEET THE VIEWS OF MOST OF THE MAIN LOBBIES ON RIGHTS ISSUES) IS SHOWING SIGNS OF SWINGING PUBLIC OPINION BEHIND HIM. AN ELECTION RESULT WHICH WAS DECISIVE AND APPLIED RIGHT ACROSS THE COUNTRY, WHICHEVER WAY IT WENT, WOULD PRESUMABLY BE HELPFUL TO THE BRITISH PARLIAMENT. A RESULT WHICH BROUGHT MR TRUDEAU BACK BUT CONFIRMED THE DIVISION OF CANADA WOULD LEAVE CANADA WORSE OFF AND THE BRITISH PARLIAMENT WITH ITS DILEMMA EVEN MORE SHARPLY DEFINED.

7. IN THIS COMPLEX SITUATION I SEE NO PRACTICABLE CHANGE OF COURSE FOR US.

FORD

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MR FREELAND
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MR URE

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PS/CHANCELLOR OF THE DUCHY OF LANCASTER
DIO CABINET OFFICE

5969 - 1

OO OTTAWA
GRS 384
CONFIDENTIAL
DESKBY 091400Z
FM FCO 081715Z
IMMEDIATE OTTAWA
TEL NO 45 OF 8 FEBRUARY 1981
PERSONAL FOR HIGH COMMISSIONER FROM YOUDE
YOUR TEL NO 67 : CANADIAN CONSTITUTION.

1. AFTER CONSULTING THE SECRETARY OF STATE I SPOKE TO THE CANADIAN HIGH COMMISSIONER YESTERDAY, REFERRING TO THE EXCHANGES IN THE CANADIAN PARLIAMENT ON FRIDAY AND YOUR FORTHCOMING TALK WITH GOTTLIEB. I SAID THAT YOU HAD BEEN ACTING IN ACCORDANCE WITH THE GENERAL REMIT OF ALL AMBASSADORS AND HIGH COMMISSIONERS TO EXPLAIN THE VIEW OF THEIR GOVERNMENTS AND THE SITUATION IN THEIR CAPITALS. I THOUGHT THAT WE COULD ALL AGREE THAT IT WOULD BE BEST IF WE COULD KEEP THE TEMPERATURE DOWN ON THIS ISSUE AND THIS WAS VERY MUCH OUR AIM. AS YOU HAD SAID IN YOUR PRESS CONFERENCE IT WAS YOUR OBJECTIVE TO RETURN TO A LOW PROFILE AND THIS WAS VERY MUCH IN LINE WITH OUR THINKING. I ASKED HER TO LET OTTAWA KNOW THIS.

2. MRS WADDS CALLED BACK TODAY TO SAY THAT SHE HAD TALKED TO GOTLIEB AND PITFIELD AND THEY WERE GRATEFUL FOR THIS HELPFUL MESSAGE. THEY TOO WERE TRYING TO PLAY IT COOL. THEY REFERRED TO MR TRUDEA'S TRUST IN THE PRIME MINISTER AND CONFIDENCE IN HER HANDLING OF THE ISSUE. THEY SYMPATHISED WITH YOUR DIFFICULTIES. MR MACGUIGAN HAD NOT WANTED YOUR NAME TO BE RAISED IN THE HOUSE. SINCE YOU HAD APPARENTLY SPOKEN TO A NUMBER OF ELECTED REPRESENTATIVES THEY COULD NOT BE CONFIDENT THAT MORE OF THE SAME KIND OF THING WOULD NOT SURFACE BUT WE SHOULD BE READY TO HANDLE IT TOGETHER.

3. MRS WADDS ALSO REFERRED TO PRESS REPORTING ON THE SITUATION. EVEN THE NORMALLY RELIABLE TORONTO GLOBEAND MAIL HAD NOT GIVEN FULL COVERAGE TO THE CONSOLIDATION OF SUPPORT FOR THE CONSTITUTIONAL PACKAGE WHICH HAD BEEN REFLECTED IN THE POLLS. THE CANADIAN GOVERNMENT HAD BEEN ENCOURAGED BY NDP SUPPORT AND SIMILAR

EXPRESSIONS OF SUPPORT IN POLITICAL MEETINGS NOT REPORTED IN THE PRESS.

4. THE CANADIANS WERE GRIEVEDABOUT THE LEAKS WHICH HAD TAKEN PLACE. NORMALLY CANADIAN ISSUES COULD BE CONFINED TO DOMESTIC POLITICS BUT GIVEN THE INTERNAL POLITICAL SITUATION AND THE INTENSE DEGREE OF INTEREST IN THE REPATRIATION QUESTION THERE HAD INEVITABLY BEEN A SPILL-OVER. THEY NEEDED THE BRITISH GOVERNMENT'S UNDERSTANDING ON THIS AND MR TRUDEAU WISHED THE PRIME MINISTER TO KNOW THAT HE HAD SOUGHT TO BE AS CAREFUL IN THE HANDLING OF THE ISSUE AS SHE HAD BEEN.

CARRINGTON

NNNN

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PS/MR RIDLEY

PS/PUS

SIR E YOUDE

MR DAY

MR URE

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With the compliments of

THE PRIVATE SECRETARY

FOREIGN AND COMMONWEALTH OFFICE
SW1A 2AH

For No 10

Foreign and Commonwealth Office

London SW1A 2AH

5 February 1981

Canada

Hon Jack Davis, MLA
Member of the Queen's Privy
Council for Canada
Legislative Assembly
Province of British Columbia.

Dear Mr Davis,

I have been asked to thank you for your letter of 21 January to the Prime Minister about patriation of the Canadian Constitution, and to reply on her behalf.

It was good of you to let us have your views on this important and sensitive issue. I know that you are not alone in holding them. Nonetheless, it would be wrong for me to comment at this stage, while we await a formal request for patriation from Ottawa and the Canadian Parliament is, as you know, still considering the Federal Government's constitutional proposals. All I can do is assure you that we are fully conscious of the need to safeguard the close and friendly relationship that exists between our two countries, and to that end the points you raised have been carefully noted.

Thank you again for writing.

Yours sincerely,

Martin Berthoud

M S Berthoud
Head of North
America Department

✓ b.cc. P.S.

(110)

Amc 012/1

-6FEB1981

5493 - 2

(Submission 95)

GRS 413
CONFIDENTIAL
FM FCO 041318Z FEB 81
IMMEDIATE TO OTTAWA
TELEGRAM NUMBER 40 OF 5 FEBRUARY
YOUR TELNO 55: CANADIAN CONSTITUTION

(94)

1. I AM RELUCTANT TO RECOMMEND THAT THE PRIME MINISTER SHOULD FOR THE TIME BEING SEND ANOTHER MESSAGE TO MR TRUDEAU. IN ANSWER TO A QUESTION BY MR MACNAMARA IN THE HOUSE OF COMMONS ON FEBRUARY SHE SAID:

QUOTE
MR SPEAKER, MATTERS CONCERNING THREE LINE WHIPS ARE NOT USUALLY DISCUSSED UNTIL WE HAVE THE BUSINESS BEFORE US FOR THE NEXT WEEK. WE HAVE NOT YET RECEIVED A REQUEST FROM THE GOVERNMENT OR PARLIAMENT OF CANADA. I TAKE THE VIEW WHICH I HAVE ALWAYS TAKEN. WHEN WE DO RECEIVE A REQUEST FROM THE GOVERNMENT AND PARLIAMENT OF CANADA WE HAVE TO DEAL WITH IT AS EXPEDITIOUSLY AS POSSIBLE IN ACCORDANCE WITH PRECEDENT AND IN ACCORDANCE WITH THE LAW. UNQUOTE

2. WE HAVE CONSIDERED THE MESSAGE YOU PUT FORWARD VERY CAREFULLY. WE CANNOT LET MR TRUDEAU CONTINUE TO BUILD ON MINISTERIAL STATEMENTS OR UNDERTAKINGS WITHOUT CORRECTION. ON THE OTHER HAND, THE MESSAGE WHICH YOU PUT FORWARD IN YOUR TELNO 50 SUGGESTS THAT WE ARE NOW CHANGING POLICY IN AN IMPORTANT RESPECT AND SHOULD ASK MR TRUDEAU TO ABANDON HIS CHARTER OF RIGHTS AND FREEDOMS. ALL THE INDICATIONS WE HAVE FROM YOUR REPORTING AND ELSEWHERE ARE THAT THIS IS SOMETHING HE CHERISHES AND IS UNLIKELY TO ABANDON IN A HURRY. HE SEEMS LEAST LIKELY OF ALL TO GIVE IT UP IN RESPONSE TO A REQUEST FROM US, WHICH HE WOULD SEE AS INTERFERENCE.

3. MOREOVER, I SEE DANGER IN SENDING A MESSAGE OF THIS KIND AND AT THE SAME TIME TELLING MR TRUDEAU THAT WE PROPOSE TO MAKE A SIMILAR PUBLIC STATEMENT WITHIN A CERTAIN PERIOD. HE WOULD SURELY SEE THIS AS A GUN POINTED AT HIS HEAD. THIS COULD GIVE HIM THE OPPORTUNITY TO USE THE UK AS A SCAPEGOAT.

4. AS YOU KNOW, WE HAVE RECENTLY BEEN REVIEWING THE LINES OF OUR POLICY. AS THE PRIME MINISTER'S STATEMENT IN THE COMMONS

MAKES CLEAR, THERE HAS BEEN NO CHANGE. OUR CENTRAL AIM IS TO MAINTAIN GOOD RELATIONS WITH THE FEDERAL GOVERNMENT. AT THIS STAGE I THINK THIS IS BEST SERVED BY CONTINUING TO KEEP A LOW PROFILE, AND NOT RESPONDING HASTILY TO REMARKS MADE BY MR TRUDEAU UNDER PRESSURE IN CANADA.

5. IN SPITE OF THIS, IT MAY WELL BE USEFUL FOR US TO CONTINUE TO UNDERLINE PUBLICLY THE DIFFICULTIES WHICH THE PRESENT CANADIAN PROPOSALS COULD CAUSE US IN PARLIAMENT. WE ARE PREPARING MATERIAL WHICH MINISTERS CAN USE IN PARLIAMENT WHICH WILL MAKE THIS POINT AND HELP TO PUT MR TRUDEAU'S RECENT REMARKS INTO PERSPECTIVE - BUT WITHOUT, WE HOPE, PROVOKING HIM FURTHER.

CARRINGTON

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PS/LPS	MR PARRY

CONFIDENTIAL

file

DSG

5 February 1981

CANADIAN CONSTITUTION

The Prime Minister has seen your letter to me of 3 February and has approved the draft telegram to Sir John Ford enclosed with it. You will wish to replace "yesterday" with "on Tuesday" in the second sentence of the draft.

M. O'D. B. ALEXANDER

Francis Richards, Esq.,
Foreign and Commonwealth Office.

KRB

CONFIDENTIAL

(2)

Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister
i.e. 'steady as she goes' which I am sure is right.

MT 4/2

4 February 1981

Dear Michael,

Meeting between Lord Carrington and Mr Pym at the House of Lords on Monday, 2 February

Lord Carrington and Mr Pym met at 4.15 pm on Monday 2 February in the House of Lords to discuss the Canadian constitutional issue. Mr Ridley was also present.

During the meeting it was agreed that:

(i) we were obliged to put a Canadian request for patriation, when received, to Parliament as a government measure. This was in any case the right course;

(ii) we must, however, prepare a plausible public defence of this position;

(iii) in this context, we should prepare our reply to the FAC Report as soon as possible, even though we might not wish to put it in final form at once;

(iv) we should meanwhile try to focus attention, particularly among MPs, on the realities of the situation, notably the importance of our relations with the Canadian Federal Government (as opposed to the Provinces);

(v) we should not imply to the Canadians or anyone else that we had closed off the possibility of getting the legislation through Parliament, whether this session or next. Possible parliamentary tactics, relating specifically to the current session, were discussed;

/(vi)

(vi) Mr Pym would consider the possibility of a preliminary motion which could have the effect of making the Canadian Bill harder to amend in the British Parliament;

(vii) we should not at this stage propose a preliminary debate in the House of Commons; but we should consult Sir John Ford about likely Canadian reactions to a debate in Parliament prior to receipt of the Canadian proposals.

There was also some discussion of whether Mrs Thatcher should send a message to Mr Trudeau, as Sir John Ford has proposed. I shall be writing to you about this separately.

Submitted separately.

Yours ever,

Francis Richards

(F N Richards)
Private Secretary

M O'D B Alexander Esq
10 Downing St

MG

GRS 35

UNCLASSIFIED
FM OTTAWA 042205Z FEB 81
TO PRIORITY FCO
TELEGRAM NUMBER 61 OF 4 FEBRUARY

CANADIAN CONSTITUTION

1. CANADIAN PARLIAMENT AGREED THIS AFTERNOON TO POSTPONE UNTIL FEB 13 THE DEADLINE FOR THE COMPLETION OF THE REPORT ON THE PROPOSED RESOLUTION TO BOTH HOUSES.

FORD

[THIS TELEGRAM WAS NOT ADVANCED]
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MR PARRY)

PS/CHANCELLOR OF THE DUCHY OF LANCASTER

DIO CABINET OFFICE

PS/S OF S FOR DEFENCE

(1)

10 DOWNING STREET

Prime Minister.

Sir V. Ford's suggested message from you to Mr Trudeau is at Flag A. The draft letter to Sir V. Ford rejecting the suggestion is at Flag B.

I think it would be quite wrong for you to send a message to Mr Trudeau at this juncture. Indeed I find the idea – & more particularly Sir V. Ford's draft – mildly eccentric.

Agree text at Flag B?

Yes

MT

4.2.87.

2 pps

Foreign and Commonwealth Office

London SW1A 2AH

3 February 1981

Dear Michael,

Canadian Constitution

You will have seen Ottawa telegrams number 49 and 50 in which the High Commissioner suggested that the Prime Minister might send a personal message to Mr Trudeau. Following Mr Trudeau's recent remarks in the Canadian House of Commons the High Commissioner sent two further telegrams (numbers 54 and 55) yesterday reiterating his suggestion. Copies of all four telegrams are attached.

/

Sir John Ford's suggested message implies that we should consider changing our policy and backtrack at least to the extent of asking Mr Trudeau to drop his Bill of Rights. As you know from my separate letter today Lord Carrington and Mr Pym have discussed our policy recently and are agreed that we should not make a change - both because of our commitments to the Canadian Federal Government and because the policy is right. Under the circumstances, Lord Carrington feels that a message would be likely to do more harm than good.

Lord Carrington would be grateful to know if the Prime Minister agrees with this line. If so, we would inform the High Commissioner in Ottawa along the lines of the enclosed draft telegram.

/

Yours ever,

Francis Richards

(F N Richards)
Private Secretary

M O'D B Alexander Esq
10 Downing Street

Spare

(94)

~~AMC 012/1~~

XXX

WONFO 017/03
OTWON 003/03

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ADVANCE COPY Hd/NAD
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PS/Mr Ridley
Ld NG Lennox PS/Mr Blaker
Mr Ure PS/PUS
Mr Freeland Sir E Youde
Mr Parry Ld Trefgarne
[Limited] Mr Day

GRS 360

CONFIDENTIAL
FM OTTAWA 031450Z FEB 81
TO FLASH FCO
TELEGRAM NUMBER 55 OF 3 FEBRUARY

MY IMMEDIATELY PRECEDING TELEGRAM

(93)

CANADIAN CONSTITUTION

1. IF MRS THATCHER DOES SEND TRUDEAU A MESSAGE INTENDED FOR EARLY PUBLICATION WE SHALL NEED HERE TO SPEAK UP BOTH ON AND OFF THE RECORD IN ITS SUPPORT AND I SHALL HAVE TO GIVE QUICK GUIDANCE TO MY TEAM.

(X16)

(80)

2. IF MESSAGE IS ON THE LINES SUGGESTED IN MY TELNO 50 I SUGGEST THAT WE SHOULD BASE OURSELVES ON ITS CONTENTS, ON THE FAC REPORT, AND STRESS THE IMPOSSIBLE POSITION IN WHICH THE FEDERAL GOVERNMENT HAVE PLACED HMG. CANADA IS A FEDERATION AND IN A FEDERATION INTERNAL POWER IS SHARED. THE DOCUMENT DEFINING THE LIMITS OF INTERNAL POWER OF THE TWO LEVELS OF GOVERNMENT HERE IS THE BNAA AND CANADA ASKED THE BRITISH PARLIAMENT TO BE THE GUARDIAN OF IT. IN EFFECT THE FEDERAL GOVERNMENT NOW WANT TO CHANGE THE BALANCE OF POWER UNILATERALLY AND TO GET THE BRITISH ARBITRATOR TO SIDE WITH THEM.

3. DURING THE PAST MONTHS WE HAVE BEEN UNCERTAIN OF TRUDEAU'S INTENTIONS AND HAVE NOT WISHED TO DO ANYTHING TO PREJUDICE ANY PLANS HE MIGHT HAVE ULTIMATELY TO SECURE SOME CONSENSUS IN

/CANADA.

CANADA OR WHICH MIGHT BE INTERPRETED AS INTERFERENCE IN CANADA'S INTERNAL AFFAIRS. HENCE OUR UNWILLINGNESS TO SAY ANYTHING IN PUBLIC AND HMG'S UNWILLINGNESS TO UNDERTAKE ANY WIDE AND DEFINITIVE ENQUIRY INTO THE CONSTITUTIONAL POSITION OF THE BRITISH PARLIAMENT, WHICH WAS ANYWAY IMPOSSIBLE IN ADVANCE OF RECEIPT OF A JOINT RESOLUTION FROM THE CANADIAN PARLIAMENT AND WITHOUT KNOWLEDGE OF THE CIRCUMSTANCE IN CANADA UNDER WHICH ANY JOINT RESOLUTION MIGHT BE SENT. THE ACTION OF THE INDEPENDENT FAC HAS NOW COVERED SOME OF THE GROUNDS AND THE PAST STATEMENTS MADE IN THE BRITISH HOUSES SHOULD BE INTERPRETED IN THE CONTEXT DESCRIBED IN PARA 77 OF THE COMMITTEE'S REPORT. MRS THATCHER'S ORAL COMMITMENTS TO TRUDEAU AND CANADIAN MINISTERS WERE NO MORE THAN A REPETITION OF THE CONTENT OF THOSE STATEMENTS AND HER MESSAGE OF DECEMBER 5 TO TRUDEAU MERELY SAID THAT THERE WAS NO CHANGE IN HMG'S POLICY SINCE THOSE MEETINGS.

4. MORE BROADLY I SUGGEST WE BASE OURSELVES ON THE LINE ENCLOSED IN MY LETTER Ø12/2 OF JAN 19 TO BERTHOUD, STRESSING THAT HMG CANNOT REASONABLY BE SEPERATED TO DETERMINE EXACTLY WHAT IT WILL DO UNTIL THE SITUATION WHICH IS AT PRESENT HYPOTHETICAL HAS BECOME A REALITY.

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AMC 012/1 (93)

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PS/Mr Blaker
PS/Ld Trefgarne
PS/PUS
Sir E Youde
Mr. Day

INFO 16/30TWON 2/3

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GR 250
CONFIDENTIAL
FM OTTAWA 031350Z FEB 81
TO FLASH FCO
TELEGRAM NUMBER 54 OF 3 FEB 81

Sir I Sinclair
Ld M. G Lennox
Mr. Harding
Mr. Une
Mr. Freeland } Legal Adv.
Mr. Parry

MY TELEGRAM NO 53 (OF FEB 2)

CANADIAN CONSTITUTION

X-18

1. LAST NIGHT TRUDEAU'S OFFICE (REFERRING I BELIEVE TO MRS THATCHER'S MESSAGE OF DEC 5) REITERATED THAT HE DID HAVE MRS THATCHER'S ASSURANCES IN WRITING AND APPARENTLY CHALLENGED HER TO COME CLEAN. THE CONSERVATIVE PARTY ANNOUNCED THAT THEIR COPY OF MR PYM'S NOTES HAD BEEN OBTAINED FROM CANADIAN SOURCES. TO-DAY'S LEADING EDITORIAL IN THE GLOBE AND MAIL ATTACKS TRUDEAU FOR CREATING HIS OWN CRISIS AND, REFERRING TO HIS KNOWN REPUBLICAN PAST, IMPLIES THAT WHAT HE IS DOING IS A CONSPIRACY TO DECLARE CANADA A REPUBLIC WITH HIMSELF AS FIRST PRESIDENT.

2. THE CONSERVATIVES HAD TRUDEAU ON THE DEFENSIVE IN THE HOUSE YESTERDAY AND HAVE ANNOUNCED HOPES OF KEEPING HIM THERE WITH MORE REVELATIONS OF TRUDEAU'S LACK OF CANDOUR.

3. IF MRS THATCHER DOES NOT NOW SAY SOMETHING QUICKLY, I SEE A DANGER THAT WOUNDING ACCUSATIONS MAY BE LAUNCHED AGAINST US, IMPLYING UNWORTHY MOTIVES FOR OUR KEEPING MUM AND LETTING LEAKS DRIBBLE OUT THE TRUTH SLOWLY AT A TIME WHEN TRUDEAU IS SAYING THAT HE IS BOUND BY THE RULES GOVERNING PRIVATE CONVERSATIONS BETWEEN MINISTERS.

74

4. I NOW THEREFORE URGE STRONGLY THE COURSE SUGGESTED IN MY TELEGRAM NO 49 SO THAT WE CAN EXPLOIT TO THE FULL THE PRESENT MOOD HERE. IF A MESSAGE IS SENT I SUGGEST THAT, IN VIEW OF TRUDEAU'S CHALLENGE, IT SHOULD PROPOSE EARLY PUBLICATION AT A TIME TO BE COORDINATED BETWEEN THE TWO PRIME MINISTERS' OFFICES. THE SOONER THE MESSAGE CAN COME AND THE CONTENTS GET OUT THE BETTER.

GRS 1080

Amc 0211
TOP COPY
2 FEB 1981

(80)

SECRET
DESKBY 020900Z FEB
FM OTTAWA 011930Z FEB
TO IMMEDIATE FCO
TELEGRAM NUMBER 50 OF 1 FEBRUARY

MY IMMEDIATELY PRECEEDING TELEGRAM. (74)

CANADIAN CONSTITUTION.

1. FOLLOWING IS PUT FORWARD AS A TENTATIVE DRAFT MESSAGE IN THE HOPE THAT IT MIGHT BE HELPFUL.

2. DRAFT BEGINS. I HAVE BEEN WATCHING WITH CLOSE INTEREST THE PROGRESS OF YOUR CONSTITUTIONAL DEBATE AND WAS GRATEFUL TO YOU FOR SO CLEARLY GIVING FRANCIS PYM YOUR THOUGHTS WHEN HE SAW YOU BEFORE CHRISTMAS. I EXPECT THAT YTHAVE BEEN WATCHING EQUALLY CLOSELY THE DEVELOPMENT OF OPINION IN THE BRITISH PARLIAMENT.

3. WHEN WE MET ON JUNE 25 WE DISCUSSED YOUR HOPES OF BEING ABLE TO SECURE THE PATRIATION OF THE CANADIAN CONSTITUTION. AT THAT TIME OUR CONVERSATION DID NOT GO INTO THE DETAILS OF THE PATRAITION AND AMENDING FORMULA WHICH YOU HAD IN MIND. WE DID TOUCH BRIEFLY ON THE POSSIBILITY THAT THE NEGOTIATIONS THEN IN PROGRESS WITH THE PROVINCIAL PREMIERS MIGHT NOT LEAD TO UNANIMOUS AGREEMENT, THOUGH YOU APPEARED HOPEFUL THAT IF NOT UNANIMOUS AGREEMENT AT LEAST A LARGE MEASURE OF AGREEMENT WOULD BE SECURED. I WARNED YOU THAT INEVITABLY ANY DISAGREEMENTS IN CANADA WOULD BE REFLECTED IN THE DEBATES AT WESTMINSTER AND THERFORE HOPED FOR ALL OUR SAKES THAT YOUR NEGOTIATIONS WITH YOUR PREMIERS WOULD BE SUCCESSFUL.

4. DURING AUGUST AS IT INCREASINGLY BECAME APPARENT THAT THE NEGOTIATIONS WITH THE PREMIERS WERE NOT GOING WELL OUR HIGH COMMISSIONER WARNED OFFICIALS AND MINISTERS IN OTTAWA THAT POLITICS WAS NOT AN EXACT SCIENCE AND THAT ANY HIGHLY CONTENTIOUS ACTION IN CANADA WOULD BE BOUND TO LEAD TO EFFECTIVE LOBBYING OF MEMBERS OF BOTH HOUSES IN WESTMINSTER AND THIS WOULD INCREASE THE UNCERTAINTY WHETHER HMG COULD GET THE FINAL RESOLUTION THROUGH THE BRITISH PARLIAMENT. THE HIGH COMMISSIONER WARNED THAT THE RISK OF PARLIAMENTARY ACCIDENTS AT WESTMINSTER COULD BE SERIOUS AND THAT IF THE ISSUE WERE SUB JUDICE IN CANADA AT THE TIME THE BRITISH PARLIAMENT WERE TO BE ASKED TO DEAL WITH IT, THIS WOULD FURTHER INHIBIT THE BRITISH PARLIAMENT FROM ACTING QUICKLY.

5. WE KNEW FROM THE LEAKED CABINET PAPER OF AUG 30 THAT YOUR OPTIONS WERE STILL OPEN IN ADVANCE OF YOUR FIRST MINISTERS CONFERENCE IN SEPTEMBER AND THE FIRST CLEAR INDICATION OF WHAT YOU HAD IN MIND CAME WHEN YOUR LEGAL ADVISERS CONSULTED WITH OUR

/ LEGAL ADVISERS

LEGAL ADVISERS AT THE END OF SEPTEMBER . THE PUBLICATIONS OF YOUR PROPOSALS IN CANADA CAME ON OCT 2 BUT AS MY SUPRISE INDICATED TO MARK MACGUIGAN AND JOHN ROBERTS WHEN THEY CALLED ON ME ON OCT 6, THEIR EXPLANATION PROVIDED THE FIRST SPECIFIC INDICATION OF THE FULL EXTENT OF WHAT YOU HAD IN MIND: AND AS I THUMBED THROUGH THE LENGTHY TEXT OF YOUR PROPOSED CHARTER OF RIGHTS I TOLD BOTH MINISTERS THAT I HAD NOT EXPECTED TO BE ASKED TO GET SUCH A LENGTHY MEASURE THROUGH PARLIAMENT: AND I WARNED THAT THE INCLUSIONS OF THE CHARTER OF RIGHTS WOULD MUCH INCREASE MY DIFFICULTIES AND WONDERED WHETHER THE CHARTER COULD NOT BE REMOVED SO THAT ALL THE BRITISH PARLIAMENT WAS ASKED TO DO WAS PATRIATE THE NAA WITH AN AMENDING FORMULA. LATER WHEN PETER CARRINGTON SAW YOUR TWO MINISTERS HE WARNED THEM CLEARLY OF THE DIFFICULTY WHICH THE INCLUSION OF THE CHARTER OF RIGHTS WOULD ENTAIL IN THE PASSING OF THE MEASURE THROUGH THE LORDS.

6. IN OCTOBER WE HAD NO IDEA HOW FAR DISCUSSIONS OF YOUR PROPOSALS IN THE CANADIAN PARLIAMENT WOULD LEAD TO THEIR AMENDMENT OR TO A NATIONAL CONSENSUS ON THEM: NOR DID WE WANT TO SAY OR DO ANYTHING AT WESTMINSTER WHICH MIGHT BE THOUGHT TO BE TRYING TO INFLUENCE THE MINDS OF CANADIAN MEMBERS OF PARLIAMENT OR SENATORS.

7. AS CHRISTMAS APPROACHED IT BECAME CLEAR THAT YOUR PROPOSALS WERE IN FACT VERY CONTENTIOUS INDEED IN CANADA AND THAT SIX PROVINCES WERE INSTITUTING COURT ACTION WITH A FURTHER TWO HESITANT WHETHER TO JOIN THEM AND ONLY TWO PROVINCES SUPPORTING THE FEDERAL GOVT. AT WESTMINSTER THE LOBBYING OF BACKBENCHERS BY CANADIANS WAS EVEN MORE VIGOROUS THAN I CERTAINLY HAD ANTICIPATED AND THE SELECT COMMITTEE ON FOREIGN AFFAIRS (ONE OF OUR INDEPENDENT STANDING COMMITTEES OF BACKBENCHERS) WAS UNDERTAKING AN INVESTIGATION INTO THE ROLE OF THE BRITISH PARLIAMENT IN RELATION TO THE BRITISH NORTH AMEERICA ACT. I THEREFORE ASKED FRANCIS PYM TO GIVE YOU AN AUTHORITATIVE VIEW OF THE STATE OF PARLIAMENTARY OPINION IN WESTMINSTER AND TO WARN YOU OF THE SERIOUS POSSIBILITY THAT YOUR PROPOSALS WOULD NOT BE ACCEPTABLE TO THE UK PARLIAMENT.
BEARING IN MIND THAT POLITICS IS THE ART OF THE POSSIBLE, I WANTED YOU TO BE IN NO DOUBT OF THE WAY IN WHICH OPINION WAS MOVING AT WESTMINSTER. DURING JANUARY THAT OPINION WAS CLEARLY HARDENING AND WHEN HE SAW HER IN JAN 23 FRANCIS PYM ASKED YOUR HIGH COMMISSIONER IN LONDON TO MAKE THAT CLEAR TO YOU. THE PUBLICATION OF THE REPORT OF THE FOREIGN AFFAIRS COMMITTEE ON JAN 21 HAS FURTHER INFLUENCED OPINION AND WHAT FRANCIS PYM TOLD JEAN WADDS IS NOW EVEN MORE TRUE.

8. I REALISE HOW STRONGLY YOU PERSONALLY FEEL ABOUT THE NEED TO INCLUDE A CHARTER OF RIGHTS IN THE BNAA BEFORE IT IS PATRIATED. THE BRITISH PARLIAMENTS RESPONSIBITY FOR THE BNAA WAS A RESPONSIBILITY RETAINED IN 1931 ONLY AT THE SPECIFIC REQUEST OF THE CANADIAN GOVERNMENT AND PARLIAMENT OF CANADA WITH THE CONCURRENCE OF THE CANADIAN PROVINCES. THIS GUARDIANSHIP OF THE BALANCE OF POWER

/ BETWEEN

BETWEEN THE FEDERAL GOVERNMENT AND PROVINCES IN THE CANADIAN CONFEDERATION WAS ONLY UNDERTAKEN WITH RELUCTANCE BUT, HAVING BEEN UNDERTAKEN, IS NATURALLY TAKEN SERIOUSLY BY THE BRITISH PARLIAMENT. BRITISH MPS AND PEERS HAVE NOT HITHERTO ENACTED A CHARTER OF RIGHTS FOR THE UNITED KINGDOM AND SOME OF THEM HAVE STRONG VIEWS ON THE SUBJECT, WHILE MANY MP'S FEEL STRONGLY THAT THEY WERE NOT ELECTED TO ENACT SUCH CHARTERS FOR CANADA. WE MUST THEREFORE FACE THE SITUATION THAT IF THE CANADIAN PARLIAMENT PERSISTS WITH ITS PRESENT COURSE IT WILL SERIOUSLY RISK HEADING FOR A COLLISION WITH THE UK PARLIAMENT.

9. THIS CAN BE IN THE INTERESTS OF NONE OF US. AT A TIME WHEN THROUGHOUT THE WORLD PARLIAMENTARY DEMOCRACY IS UNDER CHALLENGE AND WHEN THE FORCES RANGED AGAINST IT ARE MOST THREATENING, IT WOULD BE A TRAGEDY IF TWO MEMBERS OF NATO WERE TO BE SET AT ODDS AGAINST EACH OTHER. A MAJOR DISPUTE BETWEEN OUR PARLIAMENTS ALSO COULD NOT FAIL TO SOUR THE ATMOSPHERE OF THE OTTAWA ECONOMIC SUMMIT CONFERENCE AND THE MELBOURNE COMMONWEALTH CONFERENCE LATER THIS YEAR AT BOTH OF WHICH I AM SO MUCH LOOKING FORWARD TO WORKING WITH YOU ON THE PRESSING GLOBAL PROBLEMS WHICH FACE US.

10. I HAVE MENTIONED THAT THE BRITISH GOVERNMENT AND PARLIAMENT ONLY WITH RELUCTANCE ACCEPTED THE GUARDIANSHIP OF THE CANADIAN CONSTITUTION IN 1931. I THINK I CAN SPEAK FOR BOTH HOUSES OF THE UK PARLIAMENT WHEN I SAY HOW RELIEVED WE SHOULD BE TO BE ASKED TO PATRIATE THE BNAA WITH AN AMENDING FORMULA AND HOW MUCH WE HOPE EVEN AT THIS LATE STAGE YOU MAY BE ABLE TO MODIFY YOUR PROPOSALS SO AS TO OBTAIN THE BROAD CONCENSUS IN CANADA TO ENABLE US TO TAKE QUICK ACTION AT WESTMINSTER.

11. I PROPOSE TO INFORM PARLIAMENT ON FEB 8 THAT I HAVE MADE MY VIEWS KNOWN TO YOU ON THE ABOVE LINES.

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LEGAL ADVISERS
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PS/MR RIDLEY
PS/PUS
MR DAY
MR URE

(74)

Amc 012/1

-2 FEB 1981

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GRS 830 SECRET

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FM OTTAWA 011840Z FEB 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 49 OF 1 FEBRUARY

PM Hedge?
Cmd 9.

— (72).

MY TELNO 47 (OF 31 JANUARY)

CANADIAN CONSTITUTION

1. I HAVE NOW BEEN ABLE TO READ THE FOREIGN AFFAIRS COMMITTEE'S REPORT WHICH SUGGESTS THAT THE ANSWER WHICH MR HATTERSLEY GAVE TO THE HOUSE ON 10 JUNE 1976 AND ALL SUBSEQUENT STATEMENTS IN THE HOUSE TO THE SAME EFFECT MAY HAVE BEEN BASED ON DEFECTIVE REASONING AND THAT THE BRITISH PARLIAMENT IS INDEED BOUND TO TAKE ACCOUNT OF CANADA'S FEDERAL NATURE AND THE NEED FOR SOME CONCENSUS IN CANADA BEFORE, AS THE GUARDIAN OF THE CONSTITUTION, THE BRITISH PARLIAMENT TAKES ACTION TO CHANGE THE BALANCE OF POWER BETWEEN THE CANADIAN FEDERAL GOVERNMENT AND PROVINCIAL GOVERNMENTS. I ASSUME THAT, EVEN THOUGH THIS REPORT IS NOT BINDING ON HMG IT WILL CARRY GREAT WEIGHT WITH PARLIAMENT AND THAT ITS PUBLICATION WILL GIVE ADDED WEIGHT TO WHAT MR PYM TOLD MRS WADDS ON JAN 23 (YOUR TELNO 20). — (55). I ALSO ASSUME THAT YOU WILL BE CONSIDERING WHETHER TRUDEAU'S STATEMENTS HERE (MY TELEGRAMS NO 45 AND 47) NECESSITATE ANY ACTION — 70-72 IN LONDON. THE FOLLOWING THOUGHTS MAY THEREFORE BE HELPFUL.

2. NO ACTION COULD BE TAKEN: AND WE COULD PURSUE THE POLICY SUGGESTED IN PARA 7 OF MY TELNOS 553 OF DEC 20. THIS WOULD AVOID ANY ACCUSATION THAT HMG ARE SEEKING TO INFLUENCE THE DEBATE IN OTTAWA AND GIVE LITTLE TARGET FOR TRUDEAU TO SNIPE IN HIS ATTEMPTS TO BEAT THE ANTI-COLONIALIST DRUM TO WHIP UP SUPPORT FOR HIS UNILATERAL ACTION.

3. I AM, HOWEVER, A LITTLE UNEASY ABOUT LETTING THE RECORD ON OUR SIDE STAND ON THE STATEMENTS WHICH HAVE BEEN MADE IN PARLIAMENT WHICH IMPLY COMMITMENT WHICH TRUDEAU SPOTLIGHTS HERE AND DISTORTS AS AN ABSOLUTE COMMITMENT TO SUPPORT HIM IN WHAT HE WANTS TO ACHIEVE. AS THE RECORD NOW STANDS HE COULD AND WOULD ARGUE THAT HE IS THE VICTIM OF A BREACH OF PROMISE IF HMG DID NOT PUT A JOINT RESOLUTION OF THE CANADIAN PARLIAMENT TO THE BRITISH PARLIAMENT ON ITS RECEIPT AT WESTMINSTER AND IF HMG DID NOT ATTEMPT SERIOUSLY TO GET IT QUICKLY PASSED BY THE UK PARLIAMENT.

4. SO LONG AS THE JOINT COMMITTEE OF THE CANADIAN HOUSE/SENATE HAS BEEN CONSIDERING THE CONTENT OF THE THE DRAFT RESOLUTION COMMENT BY HMG COULD OBVIOUSLY BE ATTACKED AS INTERFERENCE. BUT ONCE THE JOINT COMMITTEE'S REPORT HAS GONE TO BOTH HOUSES HERE FOR FINAL DEBATE AND ACCEPTANCE, THE DEBATE SHOULD BE MORE ABOUT THE WAY IN WHICH THE FEDERAL GOVT IS PROCEEDING THAN ABOUT THE CONTENT OF THE RESOLUTION. AS THAT WAY INVOLVES HMG AND THE BRITISH PARLIAMENT IT WOULD SEEM APPROPRIATE (INDEED PERHAPS NECESSARY) THAT THERE SHOULD BE NO MISUNDERSTANDING ABOUT HOW HMG AND THE BRITISH PARLIAMENT VIEW THE SITUATION.

5. FOROM OUR POINT OF VIEW THE BEST SITUATION WOULD BE FOR THE FEDERAL GOVT TO COMPROMISE AT THE LAST MOMENT, TO TAKE OUT THE BILL OF RIGHTS, AND SEND US A REQUEST FOR PATRIATION AND AN AMENDING FORMULA WHICH HAD THE SUPPORT OF A CONCENSUS HERE. THAT IS WHAT THE CONSERVATIVES HAVE SUGGESTED AND ARE PUSHING IN THE HOPE THAT THE PROVINCIAL PREMIERS MEETING ON FEB 9 WILL ENDORSE THEIR VIEW AND OFFER TRUDEAU A CONSENSUS WHICH WILL HAVE ENOUGH APPEAL TO DOUBTERS IN THE LIBERAL CAUCUS TO FORCE HIM TO ACCEPT A COMPROMISE. MY CONVERSATION WITH SENATOR TREMBLAY ON JAN 29 LEADS ME TO BELIEVE THAT THE CONSERVATIVES ARE NOT CONFIDENT THEY WILL SUCCEED. (MR EPP'S (CONSERVATIVE SPOKESMAN ON THE CONSTITUTIONAL ISSUE) LUNCH WITH ME TOMORROW WILL GIVE ME A SECOND OPINION.) A MANITOBA COURT DECISION COULD UPSET THE TRUDEAU APPLECART IF IT WENT AGAINST THE FEDERAL GOVT BUT ITS TIMING IS UNCERTAIN AND THE QUOTE IF UNQUOTE IS A BIG ONE. MY HUNCH IS HIS EXPRESS MAY YET BE DERAILED: BUT THAT IS ONLY A HUNCH. THE EVIDENCE STILL POINTS THE OTHER WAY.

6. THE SECOND BEST SOLUTION IS THAT TRUDEAU FAILS SO THAT THE CUP FOR THE TIME BEING PASSES FROM US.

7. THE WORST SOLUTION WILL BE FOR THE RESOLUTION TO COME TO WESTMINSTER IF THE BRITISH PARLIAMENT WILL NOT PASS IT. HOW WE DEAL WITH THAT NEED NOT BE DECIDED NOW: BUT WHAT WE DECIDE NOW COULD AFFECT O OUR TACTICS THEN.

8. I CAN SEE SOME ADVANTAGE IN OUR NOW ATTEMPTING TO SET THE RECORD STRAIGHT IN A MANNER WHICH WOULD REMOVE THE POSSIBITY OF VALID CHARGES OF BREACH OF FAITH, ACCENTUATE THE FACT THAT THE CONSTITUTIONAL ISSUE IS MORE A PARLIAMENT TO PARLIAMENT ISSUE THAN AN INTERGOVERNMENTAL ONE, UNDERLINE THE DANGERS OF ALLOWING THE TWO PARLIAMENTS TO CONTINUE ON A COLLISION COURSE, AND MASSAGE THE DOUBTS OF POTENTIAL WAVERERS IN THE LIBERAL AND NDP RANKS.

/9. THIS

9. THIS MIGHT TAKE THE FORM OF A PERSONAL MESSAGE FROM MRS THATCHER WHICH WAS FOLLOWED UP BY SOME STATEMENT IN PARLIAMENT . THE QUESTION OF TIMING WOULD THEN ARISE. WE COULD WAIT UNTIL AFTER THE MANITOBA DECISION: BUT IN VIEW OF THE UNCERTAINTIES I DOUBT IF THAT WOULD BE WISE. WE COULD WAIT UNTIL TOWARDS THE END OF THE FINAL DEBATES (I EXPECT TRUDEAU TO GUILLOTINE THEM IN THE LAST DAYS OF FEBRUARY) AND SEE HOW THE DEBATES UNFOLD. OR WE COULD ACT ON THE EVE OF THE FINAL DEBATES SO THAT THE STATEMENT COULD BE TAKEN INTO ACCOUNT BY THE PROVINCIAL PREMIERS ON FEB 9, IE A MESSAGE TO TRUDEAU ON FEB 6 WITH A STATEMENT ON FEB 8.

10. TRUDEAU IS UNPREDICTABLE AND THE UNEXPECTED COULD HAPPEN AT ANY TIME, INCLUDING EVEN HIS RESIGNATION IN THE FACE OF EVIDENCE (ACTUAL OR IMAGINED) OF LOSS OF SUPPORT IN HIS CAUCUS. ON BALANCE AND WELL AWARE AS I AM OF THE DANGER THAT ANYTHING WE SAY WILL BLOW BACK IN OUR FACES, I FAVOUR COURSE SUGGESTED IN PARA 8.

11. SEE MY IMMEDIATELY FOLLOWING TELEGRAM.

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Classification and Caveats	Precedence/Deskby
CONFIDENTIAL	IMMEDIATE

ZCZC 1 ZCZC
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CLASS 3 CONFIDENTIAL
CAVEATS 4
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FM FCO 6 FM FCO 04 FEBRUARY 1981
PRE/ADD 7 IMMEDIATE TO OTTAWA
TEL NO 8 TELEGRAM NO

Your telno 55: CANADIAN CONSTITUTION

1. I am reluctant to recommend that the Prime Minister should for the time being send another message to Mr Trudeau. In answer to a question by Mr MacNamara in the House of Commons ~~this afternoon~~ yesterday she said:

quote

Mr Speaker, matters concerning three line whips are not usually discussed until we have the business before us for the next week. We have not yet received a request from the Government or Parliament of Canada. I take the view which I have always taken. When we do receive a request from the Government and Parliament of Canada we have to deal with it as expeditiously as possible in accordance with precedent and in accordance with the law. unquote

/// 2. We have considered the message you put forward very carefully. We cannot let Mr Trudeau continue to build on Ministerial statements or undertakings without correction. On the other hand, the message which you put forward in your telno

NNNN ends telegram	BLANK	Catchword 50
File number	Dept Private Office	Distribution
Drafted by (Block capitals) G G H Walden		Minimal NAD PS PS/LPS PS/Mr Ridley PS/Mr Blaker PS/PUS Mr Day Mr Ure Mr Freeland Mr Parry CCD PCCU News Dept
Telephone number 233 5791		
Authorised for despatch		
Comcen reference	Time of despatch	

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50 suggests that we are now changing policy in an important respect and should ask Mr Trudeau to abandon his Charter of Rights and Freedoms. All the indications we have from your reporting and elsewhere are that this is something he cherishes and is unlikely to abandon in a hurry. He seems least likely of all to give it up in response to a request from us, which he would see as interference.

3. Moreover, I see danger in sending a message of this kind and at the same time telling Mr Trudeau that we propose to make a similar public statement within a certain period. He would surely see this as a gun pointed at his head. This could give him the opportunity to use the UK as a scapegoat.

4. As you know, we have recently been reviewing the lines of our policy. As the Prime Minister's statement in the Commons makes clear, there has been no change. Our central aim is to maintain good relations with the Federal Government. At this stage I think this is best served by continuing to keep a low profile, and not responding hastily to remarks made by Mr Trudeau under pressure in Canada.

5. In spite of this, it may well be useful for us to continue to underline publicly the difficulties which the present Canadian proposals could cause us in Parliament. We are preparing material which Ministers can use in Parliament which will make this point and help to put Mr Trudeau's recent remarks into perspective - but without, we hope, provoking him further.

CARRINGTON

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PS/PUS
Sir E Youde
Ld Trefgarne
Mr Day

Hd/PCCU
Ld NG Lennox
Mr Ure
Mr Freeland
Mr Parry
[Limited]

GRS 360

CONFIDENTIAL
FM OTTAWA 031450Z FEB 81
TO FLASH FCO
TELEGRAM NUMBER 55 OF 3 FEBRUARY

MY IMMEDIATELY PRECEDING TELEGRAM

(93) CANADIAN CONSTITUTION

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3. DURING THE PAST MONTHS WE HAVE BEEN UNCERTAIN OF TRUDEAU'S INTENTIONS AND HAVE NOT WISHED TO DO ANYTHING TO PREJUDICE ANY PLANS HE MIGHT HAVE ULTIMATELY TO SECURE SOME CONSENSUS IN

/CANADA.

CANADA OR WHICH MIGHT BE INTERPRETED AS INTERFERENCE IN CANADA'S INTERNAL AFFAIRS. HENCE OUR UNWILLINGNESS TO SAY ANYTHING IN PUBLIC AND HMG'S UNWILLINGNESS TO UNDERTAKE ANY WIDE AND DEFINITIVE ENQUIRY INTO THE CONSTITUTIONAL POSITION OF THE BRITISH PARLIAMENT, WHICH WAS ANYWAY IMPOSSIBLE IN ADVANCE OF RECEIPT OF A JOINT RESOLUTION FROM THE CANADIAN PARLIAMENT AND WITHOUT KNOWLEDGE OF THE CIRCUMSTANCE IN CANADA UNDER WHICH ANY JOINT RESOLUTION MIGHT BE SENT. THE ACTION OF THE INDEPENDENT FAC HAS NOW COVERED SOME OF THE GROUNDS AND THE PAST STATEMENTS MADE IN THE BRITISH HOUSES SHOULD BE INTERPRETED IN THE CONTEXT DESCRIBED IN PARA 77 OF THE COMMITTEE'S REPORT. MRS THATCHER'S ORAL COMMITMENTS TO TRUDEAU AND CANADIAN MINISTERS WERE NO MORE THAN A REPETITION OF THE CONTENT OF THOSE STATEMENTS AND HER MESSAGE OF DECEMBER 5 TO TRUDEAU MERELY SAID THAT THERE WAS NO CHANGE IN HMG'S POLICY SINCE THOSE MEETINGS.

4. MORE BROADLY I SUGGEST WE BASE OURSELVES ON THE LINE
(87) ENCLOSED IN MY LETTER Ø12/2 OF JAN 19 TO BERTHOUD, STRESSING THAT HMG CANNOT REASONABLY BE SEPERATED TO DETERMINE EXACTLY WHAT IT WILL DO UNTIL THE SITUATION WHICH IS AT PRESENT HYPOTHETICAL HAS BECOME A REALITY.

FORD

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PS/LPS
PS/Mr Ridley
PS/Mr Blaker
PS/Ld Trefgarne
PS/PUS
Sir E Youde
Mr. Day

Sir I Sinclair
Ld M.G Lennox
Mr. Harding
Mr. Une
Mr. Freeland } Legal Adv.
Mr. Parry

X-18

ZZ FCO

GR 250
CONFIDENTIAL
FM OTTAWA 031350Z FEB 81
TO FLASH FCO
TELEGRAM NUMBER 54 OF 3 FEB 81

MY TELEGRAM NO 53 (OF FEB 2)

CANADIAN CONSTITUTION

1. LAST NIGHT TRUDEAU'S OFFICE (REFERRING I BELIEVE TO MRS THATCHER'S MESSAGE OF DEC 5) REITERATED THAT HE DID HAVE MRS THATCHER'S ASSURANCES IN WRITING AND APPARENTLY CHALLENGED HER TO COME CLEAN. THE CONSERVATIVE PARTY ANNOUNCED THAT THEIR COPY OF MR PYM'S NOTES HAD BEEN OBTAINED FROM CANADIAN SOURCES. TO-DAY'S LEADING EDITORIAL IN THE GLOBE AND MAIL ATTACKS TRUDEAU FOR CREATING HIS OWN CRISIS AND, REFERRING TO HIS KNOWN REPUBLICAN PAST, IMPLIES THAT WHAT HE IS DOING IS A CONSPIRACY TO DECLARE CANADA A REPUBLIC WITH HIMSELF AS FIRST PRESIDENT.

2. THE CONSERVATIVES HAD TRUDEAU ON THE DEFENSIVE IN THE HOUSE YESTERDAY AND HAVE ANNOUNCED HOPES OF KEEPING HIM THERE WITH MORE REVELATIONS OF TRUDEAU'S LACK OF CANDOUR.

3. IF MRS THATCHER DOES NOT NOW SAY SOMETHING QUICKLY, I SEE A DANGER THAT WOUNDING ACCUSATIONS MAY BE LAUNCHED AGAINST US, IMPLYING UNWORTHY MOTIVES FOR OUR KEEPING MUM AND LETTING LEAKS DRIBBLE OUT THE TRUTH SLOWLY AT A TIME WHEN TRUDEAU IS SAYING THAT HE IS BOUND BY THE RULES GOVERNING PRIVATE CONVERSATIONS BETWEEN MINISTERS.

(74)

4. I NOW THEREFORE URGE STRONGLY THE COURSE SUGGESTED IN MY TELEGRAM NO 49 SO THAT WE CAN EXPLOIT TO THE FULL THE PRESENT MOOD HERE. IF A MESSAGE IS SENT I SUGGEST THAT, IN VIEW OF TRUDEAU'S CHALLENGE, IT SHOULD PROPOSE EARLY PUBLICATION AT A TIME TO BE COORDINATED BETWEEN THE TWO PRIME MINISTERS' OFFICES. THE SOONER THE MESSAGE CAN COME AND THE CONTENTS GET OUT THE BETTER

CHANCELLOR OF THE DUCHY'S CASE:

For Action to: L Harris

For Information or Comments, if any:

S Comersal
D Wright
W Hyde
R Hasti-smith
M Alexander

FOR PRIVATE OFFICE USE ONLY

Further action:

B/F with back papers:

B/F with advice:

Copy also to:

PA

Initialled:

Canadian High Commission

Haut Commissariat du Canada

February 2, 1981

NB RM

4/2

The Rt Hon. Francis Pym, MC, MP,
Chancellor of the Duchy of
Lancaster and Leader of
the House,
House of Commons,
London W.1

Dear Chancellor,

Let me first say how much I appreciate the opportunity you gave me on January 23 to exchange with you views and information on the Canadian constitutional measure and for your suggestion that we meet again when the report of the Select Committee and the judgment of the Manitoba Court of Appeal are in our hands.

I am writing now to seek your advice and help on a related matter. There is some concern both in this Mission and in Ottawa that we do not have the best possible understanding of the procedure when the Canadian measure reaches Westminster in the form of a bill and of the various ways in which it might be dealt with there.

What we would like to have is a paper setting out what might be expected in the normal course and examining the various possibilities that present themselves. In particular we would like to know if amendments could be proposed and if so what kinds of amendments might be accepted by the Speaker, how they would be dealt with and what might be their effect. For instance, it has been suggested to us that only the Government could propose an amendment to the title of the bill and that the wording of the title could have a bearing on the acceptability of amendments proposed to the substance of the measure.

.../2

My own years in politics have brought home to me that it is not possible to forecast with any degree of certainty how the legislature will see fit to deal with any measure laid before it. It should, however, be feasible to examine various possibilities and their effects.

I need not say that we would be happy to employ the services of a scholar to prepare such a paper for us and if this appears to you the best course to follow we would greatly appreciate any suggestions you might have as to whom we might thus approach.

Should you conclude, however, that such a paper would best be prepared by the officers of the House and of the Lords, we would have to rely upon your generosity and hope that the paper we are seeking would have to be of value to your Government as well as mine.

I look forward to hearing from you at your convenience,

With best wishes,

Yours sincerely,

Jean Casselman Wadds

Jean Casselman Wadds
High Commissioner

Canada.

GRS 90

RESTRICTED
DESKBY 030900Z FEB 81
FM OTTAWA 022310Z FEB 81
TO IMMEDIATE F C O
TELEGRAM NUMBER 53 OF 2 FEBRUARY

MY IMMEDIATELY PRECEEDING TELEGRAM

CANADIAN CONSTITUTION.

1. THE REFERENCE TO THE WRITTEN ASSURANCE IN PARA 2 REFERS TO MRS THATCHER'S MESSAGE OF DEC 5 (YOUR TELNO 406)

2. THE CONSERVATIVES' PROBING INTO MR PYM'S VISIT SUGGESTED THAT THEY HAD BEEN GIVEN MORE DETAILED INFORMATION THAN WHAT WE HAVE BEEN SAYING BY WAY OF UNATTRIBUTABLE BACKGROUND BRIEFING HERE AND TONIGHTS T V NEWS CONTAINED A PHOTOGRAPH OF MY PYM'S NOTES WHICH WERE SAID TO HAVE GOT INTO THE CONSERVATIVE PARTY'S HANDS HERE. NO COPIES OF MR PYM'S NOTES ARE OR HAVE BEEN HELD HERE.

FORD [COPIES SENT TO NO 10 DOWNING ST]

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PS/MR RIDLEY
PS/MR BLAKER
PS/LORD TREFGARNE
PS/PUS
SIR E YOUDE
MR DAY
SIR I SINCLAIR
LORD N G LENNOX
MR HARDING
MR URE

COPIES TO:
MR FREELAND LEGAL ADVS.
MR PARRY LEGAL ADVS.
PS/S OF S FOR DEFENCE
PS/CHANCELLOR OF THE DUCHY OF LANCASTER
DIO CABINET OFFICE

Canada position

GRS 780

UNCLASSIFIED
DESKBY 030900Z FEB 81
FM OTTAWA 022225Z FEB 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 52 OF 2 FEBRUARY

THE CONSTITUTION: MY TELEGRAM 50 (OF 1 FEBRUARY)

This will give you the flavour of the exchanges in Canada. There is little that is actually dishonest but there is a continuing effort to place some of the burden or the responsibility on your shoulders.

1. ON SATURDAY MR CHRETIEN, FEDERAL MINISTER OF JUSTICE SAID QUOTE IF MRS THATCHER HAS MISGIVINGS ABOUT THE CANADIAN GOVERNMENT'S PROPOSALS, SHE CAN SPEAK FOR HERSELF UNQUOTE. HE ADDED QUOTE THE BRITISH PRIME MINISTER HAS GIVEN HER WORD TO PASS THE RESOLUTION AND WAS FULLY BRIEFED ON THE MATTER IN JUNE AND LATER IN OCTOBER WHEN THE FULL EXTENT OF THE PACKAGE WAS MADE PUBLIC. SHE HAS BEEN INFORMED OF THE PRECISE PROJECT IN OCTOBER AND SHE HAS ALL THE TIME TO CALL MR TRUDEAU IF SHE WANTED SOME EXPLANATION. WE'RE DEALING WITH THE PRIME MINISTER OF ENGLAND. SHE IS WELL KNOWN AND SHE DOES NOT BACK DOWN EASILY. SHE GAVE HER WORD UNQUOTE.

2. ON SUNDAY MR MACGUIGAN, MINISTER OF EXTERNAL AFFAIRS SAID QUOTE I CAN SAY THAT WE HAVE HAD ASSURANCES, NOT ONLY FROM THE BRITISH PRIME MINISTER, NOT ONLY ONCE BUT AT LEAST TWICE AND ONCE IN WRITING. WE'VE HAD PUBLIC STATEMENTS BY HER, WE'VE HAD ASSURANCES BY AT LEAST FOUR OTHER MINISTERS THAT THE BRITISH WILL FOLLOW THE TRADITION OF PRESENTING TO AND RECOMMENDING TO THEIR PARLIAMENT ANY JOINT RESOLUTION WHICH THEY RECEIVE FROM THE PARLIAMENT OF CANADA.

3. QUESTION TIME IN PARLIAMENT THIS AFTERNOON, THE LEADER OF THE OPPOSITION, JOE CLARK, PROBED WHETHER MR TRUDEAU HAD SPOKEN THE TRUTH ON JUNE 25 WHEN ASKING QUESTIONS TO JOURNALISTS. MR TRUDEAU SAID IT WAS NOT HIS CUSTOM WHEN MEETING THE PRESS TO GET INTO ANY DETAILS ABOUT WHAT TRANSPIRED IN DISCUSSIONS BETWEEN TWO PRIME MINISTERS. QUOTE I WAS FOLLOWING THIS LINE AT THAT POINT. I WAS FOLLOWING IT IN AGREEMENT WITH THE BRITISH PRIME MINISTER THAT WE WOULD NOT GET INTO DETAILS IN THESE QUESTIONS UNQUOTE. HE CONTINUED QUOTE I PUT MY CUSTOMARY BRAVE FRONT BY SAYING THAT THE PACKAGE WAS SO GOOD... THAT THE PROVINCES WOULD AGREE UNQUOTE. LATER IN THE SAME REPLY MR TRUDEAU CONTINUED QUOTE NOW, PRIVATELY, I'VE TOLD THE HOUSE THAT I WARNED MRS THATCHER THAT WE HAVE NEVER HAD UNANIMITY FOR 53 YEARS AND THAT IT WAS IMPOSSIBLE, INDEED UNLIKELY ... WE WOULD NOT GET UNANIMITY. NOW I STAND ON THAT MADAM SPEAKER, AND I CAN ONLY SAY THAT UNTIL MRS THATCHER IS PREPARED TO SAY THE CONTRARY, MY WORD MUST STAND ANDIF SHE SAYS THAT SHE WOULD NOT COMMENT BECAUSE SHE WOULD NOT REVEAL A CONFIDENCE I HEREBY AUTHORISE HER TO SAY THE CONTRARY IF IT IS TRUE UNQUOTE.

/4. MR. CLARK

4. MR CLARK THAN ASKED MR TRUDEAU WHETHER THE WRITTEN ASSURANCE, REFERRED TO BY MR MACGUIGAN IN HIS TELEVISION INTERVIEW, WOULD BE TABLED IN THE HOUSE OF COMMONS. PART OF MR TRUDEAU'S REPLY WAS QUOTE HE'S REFERRING TO A LETTER ... FORM THE BRITISH PRIME MINISTER. IN IT, IN ESSENCE, SHE SAID WHAT EVERY BRITISH MINISTER AND THE PRIME MINISTER HERSELF HAS SAID SINCE THE BEGINNING THAT THE PROBLEM WAS WITH THE TIMING NOT WITH THE SUBSTANCE. ... THAT WITH A CHARTER IN IT WOULD BE MORE DIFFICULT UNQUOTE.

5. UNDER REPEATED QUESTIONING WHETHER HE TOLD MR PYM ABOUT THE CONCERN IN CANADA OVER THE GOVERNMENT'S UNILATERAL ACTION TRUDEAU REPLIED QUOTE I ONCE AGAIN WANT TO POINT OUT THAT IT IS NOT CUSTOMARY FOR ME TO GIVE DETAILS OF A CONVERSATION HELD IN PRIVATE BETWEEN HEAD OF STATE AND ANOTHER HEAD OF GOVERNMENT OR ANY IMPORTANT MINISTER ON VISIT TO CANADA. I REGRET THAT THIS HAS RESULTED IN SOME LACK OF CANDOR IN DISCUSSIONG WITH THE PRESS AFTERWARDS WHAT TOOK PLACE IN THE CASE OF DOWNING STREET. I WOULD LIKE TO TAKE THE SAME ATTITUDE AS REGARDS TO THE MEETING I HAD WITH MINSTER PYM IN DECEMBER. I AM PREPARED TO BREAK THIS RULE IF THE HOUSE FORCES ME TO .. IF THE BRITISH GOVERNMENT HAD ANY DOUBTS ABOUT THE COURSE OF ACTION WE ARE TAKING, THEY WOULD HAVE TOLD US. THEY WILL NOT PASS RESOLUTION IF IT CONTAINS THIS OR THAT OR THE NEXT THING BUT THAT THEY WOULD PASS IT IF IT CONTAINED SOMETHING ELSE. I PERSONALLY DON'T THINK THAT THAT WOULD BE A PROPER ATTITUDE FOR THE BRITISH GOVERNMENT I THINK THAT IS ALSO THE WAY THE PRPESENT BRITISH PRIME MINISTER AND THE PREVIOUS PRIME MINISTER THINK... I WOULD HESITATE TO TELL THE HOUSE WHAT MR PYM TOLD ME. I WOULD SAY THAT IF HE WANTS TO SAY PUBLICLY ANYTHING THAT HE TOLD ME, I UNBIND HIM FROM ANY SECRECY HE THINKS HE IS BOUND BY... ...I AM PRETTY FREE ON SAYING WHAT I HAVE SAID.... BUT I'VE RARELY BROKEN THE RULE OF SAYING WHAT SOMEONE ELSE HAS SAID... IT IS REALLY FOR MR PYM OR MRS THATCHER IF THEY WANT TO MAKE THEIR POSITION CLEAR TO DO SO UNQUOTE.

6. SEE MY IMMEDIATELY FOLLOWING TELEGRAM.

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PS/MR BLAKER
PS/LORD TREFGARNE
PS/PUS
SIR E YOUDE
MR DAY

SIR I SINCLAIR
LORD N G LENNOX
MR HARDING
MR URE

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MR FREELAND } LEGAL ADVS.
MR PARRY } LEGAL ADVS.
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DIO CABINET OFFICE

Amc 012/1
TOP COPY 2 FEB 1981

SECRET
DESKBY 020900Z FEB
FM OTTAWA 011930Z FEB
TO IMMEDIATE FCO
TELEGRAM NUMBER 50 OF 1 FEBRUARY

MY IMMEDIATELY PRECEEDING TELEGRAM.

CANADIAN CONSTITUTION.

1. FOLLOWING IS PUT FORWARD AS A TENTATIVE DRAFT MESSAGE IN THE HOPE THAT IT MIGHT BE HELPFUL.

2. DRAFT BEGINS. I HAVE BEEN WATCHING WITH CLOSE INTEREST THE PROGRESS OF YOUR CONSTITUTIONAL DEBATE AND WAS GRATEFUL TO YOU FOR SO CLEARLY GIVING FRANCIS PYM YOUR THOUGHTS WHEN HE SAW YOU BEFORE CHRISTMAS. I EXPECT THAT YTHAVE BEEN WATCHING EQUALLY CLOSELY THE DEVELOPMENT OF OPINION IN THE BRITISH PARLIAMENT.

3. WHEN WE MET ON JUNE 25 WE DISCUSSED YOUR HOPES OF BEING ABLE TO SECURE THE PATRIATION OF THE CANADIAN CONSTITUTION. AT THAT TIME OUR CONVERSATION DID NOT GO INTO THE DETAILS OF THE PATRAITION AND AMENDING FORMULA WHICH YOU HAD IN MIND. WE DID TOUCH BRIEFLY ON THE POSSIBILITY THAT THE NEGOTIATIONS THEN IN PROGRESS WITH THE PROVINCIAL PREMIERS MIGHT NOT LEAD TO UNANIMOUS AGREEMENT, THOUGH YOU APPEARED HOPEFUL THAT IF NOT UNANIMOUS AGREEMENT AT LEAST A LARGE MEASURE OF AGREEMENT WOULD BE SECURED. I WARNED YOU THAT INEVITABLY ANY DISAGREEMENTS IN CANADA WOULD BE REFLECTED IN THE DEBATES AT WESTMINSTER AND THERFORE HOPED FOR ALL OUR SAKES THAT YOUR NEGOTIATIONS WITH YOUR PREMIERS WOULD BE SUCCESSFUL.

4. DURING AUGUST AS IT INCREASINGLY BECAME APPARENT THAT THE NEGOTIATIONS WITH THE PREMIERS WERE NOT GOING WELL OUR HIGH COMMISSIONER WARNED OFFICIALS AND MINISTERS IN OTTAWA THAT POLITICS WAS NOT AN EXACT SCIENCE AND THAT ANY HIGHLY CONTENTIOUS ACTION IN CANADA WOULD BE BOUND TO LEAD TO EFFECTIVE LOBBYING OF MEMBERS OF BOTH HOUSES IN WESTMINSTER AND THIS WOULD INCREASE THE UNCERTAINTY WHETHER HMG COULD GET THE FINAL RESOLUTION THROUGH THE BRITISH PARLIAMENT. THE HIGH COMMISSIONER WARNED THAT THE RISK OF PARLIAMENTARY ACCIDENTS AT WESTMINSTER COULD BE SERIOUS AND THAT IF THE ISSUE WERE SUB JUDICE IN CANADA AT THE TIME THE BRITISH PARLIAMENT WERE TO BE ASKED TO DEAL WITH IT, THIS WOULD FURTHER INHIBIT THE BRITISH PARLIAMENT FROM ACTING QUICKLY.

5. WE KNEW FROM THE LEAKED CABINET PAPER OF AUG 30 THAT YOUR OPTIONS WERE STILL OPEN IN ADVANCE OF YOUR FIRST MINISTERS CONFERENCE IN SEPTEMBER AND THE FIRST CLEAR INDICATION OF WHAT YOU HAD IN MIND CAME WHEN YOUR LEGAL ADVISERS CONSULTED WITH OUR

/ LEGAL ADVISERS

LEGAL ADVISERS AT THE END OF SEPTEMBER . THE PUBLICATIONS OF YOUR PROPOSALS IN CANADA CAME ON OCT 2 BUT AS MY SUPRISE INDICATED TO MARK MACGUIGAN AND JOHN ROBERTS WHEN THEY CALLED ON ME ON OCT 6, THEIR EXPLANATION PROVIDED THE FIRST SPECIFIC INDICATION OF THE FULL EXTENT OF WHAT YOU HAD IN MIND: AND AS I THUMBED THROUGH THE LENGTHY TEXT OF YOUR PROPOSED CHARTER OF RIGHTS I TOLD BOTH MINISTERS THAT I HAD NOT EXPECTED TO BE ASKED TO GET SUCH A LENGTHY MEASURE THROUGH PARLIAMENT: AND I WARNED THAT THE INCLUSIONS OF THE CHARTER OF RIGHTS WOULD MUCH INCREASE MY DIFFICULTIES AND WONDERED WHETHER THE CHARTER COULD NOT BE REMOVED SO THAT ALL THE BRITISH PARLIAMENT WAS ASKED TO DO WAS PATRIATE THE NAA WITH AN AMENDING FORMULA. LATER WHEN PETER CARRINGTON SAW YOUR TWO MINISTERS HE WARNED THEM CLEARLY OF THE DIFFICULTY WHICH THE INCLUSION OF THE CHARTER OF RIGHTS WOULD ENTAIL IN THE PASSING OF THE MEASURE THROUGH THE LORDS.

6. IN OCTOBER WE HAD NO IDEA HOW FAR DISCUSSIONS OF YOUR PROPOSALS IN THE CANADIAN PARLIAMENT WOULD LEAD TO THEIR AMENDMENT OR TO A NATIONAL CONSENSUS ON THEM: NOR DID WE WANT TO SAY OR DO ANYTHING AT WESTMINSTER WHICH MIGHT BE THOUGHT TO BE TRYING TO INFLUENCE THE MINDS OF CANADIAN MEMBERS OF PARLIAMENT OR SENATORS.

7. AS CHRISTMAS APPROACHED IT BECAME CLEAR THAT YOUR PROPOSALS WERE IN FACT VERY CONTENTIOUS INDEED IN CANADA AND THAT SIX PROVINCES WERE INSTITUTING COURT ACTION WITH A FURTHER TWO HESITANT WHETHER TO JOIN THEM AND ONLY TWO PROVINCES SUPPORTING THE FEDERAL GOVT. AT WESTMINSTER THE LOBBYING OF BACKBENCHERS BY CANADIANS WAS EVEN MORE VIGOROUS THAN I CERTAINLY HAD ANTICIPATED AND THE SELECT COMMITTEE ON FOREIGN AFFAIRS (ONE OF OUR INDEPENDENT STANDING COMMITTEES OF BACKBENCHERS) WAS UNDERTAKING AN INVESTIGATION INTO THE ROLE OF THE BRITISH PARLIAMENT IN RELATION TO THE BRITISH NORTH AMEERICA ACT. I THEREFORE ASKED FRANCIS PYM TO GIVE YOU AN AUTHORITATIVE VIEW OF THE STATE OF PARLIAMENTARY OPINION IN WESTMINSTER AND TO WARN YOU OF THE SERIOUS POSSIBILITY THAT YOUR PROPOSALS WOULD NOT BE ACCEPTABLE TO THE UK PARLIAMENT. BEARING IN MIND THAT POLITICS IS THE ART OF THE POSSIBLE, I WANTED YOU TO BE IN NO DOUBT OF THE WAY IN WHICH OPINION WAS MOVING AT WESTMINSTER. DURING JANUARY THAT OPINION WAS CLEARLY HARDENING AND WHEN HE SAW HER IN JAN 23 FRANCIS PYM ASKED YOUR HIGH COMMISSIONER IN LONDON TO MAKE THAT CLEAR TO YOU. THE PUBLICATION OF THE REPORT OF THE FOREIGN AFFAIRS COMMITTEE ON JAN 21 HAS FURTHER INFLUENCED OPINION AND WHAT FRANCIS PYM TOLD JEAN WADDS IS NOW EVEN MORE TRUE.

8. I REALISE HOW STRONGLY YOU PERSONALLY FEEL ABOUT THE NEED TO INCLUDE A CHARTER OF RIGHTS IN THE BNAA BEFORE IT IS PATRIATED. THE BRITISH PARLIAMENTS RESPONSIBITY FOR THE BNAA WAS A RESPONSIBILITY RETAINED IN 1931 ONLY AT THE SPECIFIC REQUEST OF THE CANADIAN GOVERNMENT AND PARLIAMENT OF CANADA WITH THE CONCURRENCE OF THE CANADIAN PROVINCES. THIS GUARDIANSHIP OF THE BALANCE OF POWER

SECRET / BETWEEN

BETWEEN THE FEDERAL GOVERNMENT AND PROVINCES IN THE CANADIAN CONFEDERATION WAS ONLY UNDERTAKEN WITH RELUCTANCE BUT, HAVING BEEN UNDERTAKEN, IS NATURALLY TAKEN SERIOUSLY BY THE BRITISH PARLIAMENT. BRITISH MPS AND PEERS HAVE NOT HITHERTO ENACTED A CHARTER OF RIGHTS FOR THE UNITED KINGDOM AND SOME OF THEM HAVE STRONG VIEWS ON THE SUBJECT, WHILE MANY MP'S FEEL STRONGLY THAT THEY WERE NOT ELECTED TO ENACT SUCH CHARTERS FOR CANADA. WE MUST THEREFORE FACE THE SITUATION THAT IF THE CANADIAN PARLIAMENT PERSISTS WITH ITS PRESENT COURSE IT WILL SERIOUSLY RISK HEADING FOR A COLLISION WITH THE UK PARLIAMENT.

9. THIS CAN BE IN THE INTERESTS OF NONE OF US. AT A TIME WHEN THROUGHOUT THE WORLD PARLIAMENTARY DEMOCRACY IS UNDER CHALLENGE AND WHEN THE FORCES RANGED AGAINST IT ARE MOST THREATENING, IT WOULD BE A TRAGEDY IF TWO MEMBERS OF NATO WERE TO BE SET AT ODDS AGAINST EACH OTHER. A MAJOR DISPUTE BETWEEN OUR PARLIAMENTS ALSO COULD NOT FAIL TO SOUR THE ATMOSPHERE OF THE OTTAWA ECONOMIC SUMMIT CONFERENCE AND THE MELBOURNE COMMONWEALTH CONFERENCE LATER THIS YEAR AT BOTH OF WHICH I AM SO MUCH LOOKING FORWARD TO WORKING WITH YOU ON THE PRESSING GLOBAL PROBLEMS WHICH FACE US.

10. I HAVE MENTIONED THAT THE BRITISH GOVERNMENT AND PARLIAMENT ONLY WITH RELUCTANCE ACCEPTED THE GUARDIANSHIP OF THE CANADIAN CONSTITUTION IN 1931. I THINK I CAN SPEAK FOR BOTH HOUSES OF THE UK PARLIAMENT WHEN I SAY HOW RELIEVED WE SHOULD BE TO BE ASKED TO PATRIATE THE BNAA WITH AN AMENDING FORMULA AND HOW MUCH WE HOPE EVEN AT THIS LATE STAGE YOU MAY BE ABLE TO MODIFY YOUR PROPOSALS SO AS TO OBTAIN THE BROAD CONCENSUS IN CANADA TO ENABLE US TO TAKE QUICK ACTION AT WESTMINSTER.

11. I PROPOSE TO INFORM PARLIAMENT ON FEB 8 THAT I HAVE MADE MY VIEWS KNOWN TO YOU ON THE ABOVE LINES.

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PS/MR RIDLEY
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Amc 0121

-2 FEB 1981

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TO IMMEDIATE FCO
TELEGRAM NUMBER 49 OF 1 FEBRUARY

-(72).

MY TELNO 47 (OF 31 JANUARY)

CANADIAN CONSTITUTION

1. I HAVE NOW BEEN ABLE TO READ THE FOREIGN AFFAIRS COMMITTEE'S REPORT WHICH SUGGESTS THAT THE ANSWER WHICH MR HATTERSLEY GAVE TO THE HOUSE ON 10 JUNE 1976 AND ALL SUBSEQUENT STATEMENTS IN THE HOUSE TO THE SAME EFFECT MAY HAVE BEEN BASED ON DEFECTIVE REASONING AND THAT THE BRITISH PARLIAMENT IS INDEED BOUND TO TAKE ACCOUNT OF CANADA'S FEDERAL NATURE AND THE NEED FOR SOME CONCENSUS IN CANADA BEFORE, AS THE GUARDIAN OF THE CONSTITUTION, THE BRITISH PARLIAMENT TAKES ACTION TO CHANGE THE BALANCE OF POWER BETWEEN THE CANADIAN FEDERAL GOVERNMENT AND PROVINCIAL GOVERNMENTS. I ASSUME THAT, EVEN THOUGH THIS REPORT IS NOT BINDING ON HMG IT WILL CARRY GREAT WEIGHT WITH PARLIAMENT AND THAT ITS PUBLICATION WILL GIVE ADDED WEIGHT TO WHAT MR PYM TOLD MRS WADDS ON JAN 23 (YOUR TELNO 20). -(55). I ALSO ASSUME THAT YOU WILL BE CONSIDERING WHETHER TRUDEAU'S STATEMENTS HERE (MY TELEGRAMS NO 45 AND 47) NECESSITATE ANY ACTION -70-72. IN LONDON. THE FOLLOWING THOUGHTS MAY THEREFORE BE HELPFUL.

2. NO ACTION COULD BE TAKEN: AND WE COULD PURSUE THE POLICY SUGGESTED IN PARA 7 OF MY TELNOS 553 OF DEC 20. THIS WOULD AVOID ANY ACCUSATION THAT HMG ARE SEEKING TO INFLUENCE THE DEBATE IN OTTAWA AND GIVE LITTLE TARGET FOR TRUDEAU TO SNIPE IN HIS ATTEMPTS TO BEAT THE ANTI-COLONIALIST DRUM TO WHIP UP SUPPORT FOR HIS UNILATERAL ACTION.

3. I AM, HOWEVER, A LITTLE UNEASY ABOUT LETTING THE RECORD ON OUR SIDE STAND ON THE STATEMENTS WHICH HAVE BEEN MADE IN PARLIAMENT WHICH IMPLY COMMITMENT WHICH TRUDEAU SPOTLIGHTS HERE AND DISTORTS AS AN ABSOLUTE COMMITMENT TO SUPPORT HIM IN WHAT HE WANTS TO ACHIEVE. AS THE RECORD NOW STANDS HE COULD AND WOULD ARGUE THAT HE IS THE VICTIM OF A BREACH OF PROMISE IF HMG DID NOT PUT A JOINT RESOLUTION OF THE CANADIAN PARLIAMENT TO THE BRITISH PARLIAMENT ON ITS RECEIPT AT WESTMINSTER AND IF HMG DID NOT ATTEMPT SERIOUSLY TO GET IT QUICKLY PASSED BY THE UK PARLIAMENT.

SECRET /4. SO LONG

4. SO LONG AS THE JOINT COMMITTEE OF THE CANADIAN HOUSE/SENATE HAS BEEN CONSIDERING THE CONTENT OF THE THE DRAFT RESOLUTION COMMENT BY HMG COULD OBVIOUSLY BE ATTACKED AS INTERFERENCE. BUT ONCE THE JOINT COMMITTEE'S REPORT HAS GONE TO BOTH HOUSES HERE FOR FINAL DEBATE AND ACCEPTANCE, THE DEBATE SHOULD BE MORE ABOUT THE WAY IN WHICH THE FEDERAL GOVT IS PROCEEDING THAN ABOUT THE CONTENT OF THE RESOLUTION. AS THAT WAY INVOLVES HMG AND THE BRITISH PARLIAMENT IT WOULD SEEM APPROPRIATE (INDEED PERHAPS NECESSARY) THAT THERE SHOULD BE NO MISUNDERSTANDING ABOUT HOW HMG AND THE BRITISH PARLIAMENT VIEW THE SITUATION.

5. FOROM OUR POINT OF VIEW THE BEST SITUATION WOULD BE FOR THE FEDERAL GOVT TO COMPROMISE AT THE LAST MOMENT, TO TAKE OUT THE BILL OF RIGHTS, AND SEND US A REQUEST FOR PATRIATION AND AN AMENDING FORMULA WHICH HAD THE SUPPORT OF A CONCENSUS HERE. THAT IS WHAT THE CONSERVATIVES HAVE SUGGESTED AND ARE PUSHING IN THE HOPE THAT THE PROVINCIAL PREMIERS MEETING ON FEB 9 WILL ENDORSE THEIR VIEW AND OFFER TRUDEAU A CONSENSUS WHICH WILL HAVE ENOUGH APPEAL TO DOUBTERS IN THE LIBERAL CAUCUS TO FORCE HIM TO ACCEPT A COMPROMISE. MY CONVERSATION WITH SENATOR TREMBLAY ON JAN 29 LEADS ME TO BELIEVE THAT THE CONSERVATIVES ARE NOT CONFIDENT THEY WILL SUCCEED. (MR EPP'S (CONSERVATIVE SPOKESMAN ON THE CONSTITUTIONAL ISSUE) LUNCH WITH ME TOMORROW WILL GIVE ME A SECOND OPINION.) A MANITOBA COURT DECISION COULD UPSET THE TRUDEAU APPLECART IF IT WENT AGAINST THE FEDERAL GOVT BUT ITS TIMING IS UNCERTAIN AND THE QUOTE IF UNQUOTE IS A BIG ONE. MY HUNCH IS HIS EXPRESS MAY YET BE DERAILED: BUT THAT IS ONLY A HUNCH. THE EVIDENCE STILL POINTS THE OTHER WAY.

6. THE SECOND BEST SOLUTION IS THAT TRUDEAU FAILS SO THAT THE CUP FOR THE TIME BEING PASSES FROM US.

7. THE WORST SOLUTION WILL BE FOR THE RESOLUTION TO COME TO WESTMINSTER IF THE BRITISH PARLIAMENT WILL NOT PASS IT. HOW WE DEAL WITH THAT NEED NOT BE DECIDED NOW: BUT WHAT WE DECIDE NOW COULD AFFECT O OUR TACTICS THEN.

8. I CAN SEE SOME ADVANTAGE IN OUR NOW ATTEMPTING TO SET THE RECORD STRAIGHT IN A MANNER WHICH WOULD REMOVE THE POSSIBITY OF VALID CHARGES OF BREACH OF FAITH, ACCENTUATE THE FACT THAT THE CONSTITUTIONAL ISSUE IS MORE A PARLIAMENT TO PARLIAMENT ISSUE THAN AN INTERGOVERNMENTAL ONE, UNDERLINE THE DANGERS OF ALLOWING THE TWO PARLIAMENTS TO CONTINUE ON A COLLISION COURSE, AND MASSAGE THE DOUBTS OF POTENTIAL WAVERERS IN THE LIBERAL AND NDP RANKS.

/9. THIS

9. THIS MIGHT TAKE THE FORM OF A PERSONAL MESSAGE FROM MRS THATCHER WHICH WAS FOLLOWED UP BY SOME STATEMENT IN PARLIAMENT . THE QUESTION OF TIMING WOULD THEN ARISE. WE COULD WAIT UNTIL AFTER THE MANITOBA DECISION: BUT IN VIEW OF THE UNCERTAINTIES I DOUBT IF THAT WOULD BE WISE. WE COULD WAIT UNTIL TOWARDS THE END OF THE FINAL DEBATES (I EXPECT TRUDEAU TO GUILLOTINE THEM IN THE LAST DAYS OF FEBRUARY) AND SEE HOW THE DEBATES UNFOLD. OR WE COULD ACT ON THE EVE OF THE FINAL DEBATES SO THAT THE STATEMENT COULD BE TAKEN INTO ACCOUNT BY THE PROVINCIAL PREMIERS ON FEB 9, IE A MESSAGE TO TRUDEAU ON FEB 6 WITH A STATEMENT ON FEB 8.

10. TRUDEAU IS UNPREDICTABLE AND THE UNEXPECTED COULD HAPPEN AT ANY TIME, INCLUDING EVEN HIS RESIGNATION IN THE FACE OF EVIDENCE (ACTUAL OR IMAGINED) OF LOSS OF SUPPORT IN HIS CAUCUS. ON BALANCE AND WELL AWARE AS I AM OF THE DANGER THAT ANYTHING WE SAY WILL BLOW BACK IN OUR FACES, I FAVOUR COURSE SUGGESTED IN PARA 8.

11. SEE MY IMMEDIATELY FOLLOWING TELEGRAM.

FORD

(80)

LIMITED
NAD
NEWS D
LEGAL ADVS
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
MR DAY
MR URE

72

Amc 012/1

GRS 440

CONFIDENTIAL

CONFIDENTIAL
FM OTTAWA 311615Z JAN 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 47 OF 31 JANUARY

MY TELNO 46 (OF JAN 30) (71)

CANADIAN CONSTITUTION

1. TO-DAY'S GLOBE AND MAIL CARRIES STORY DATELINED LONDON WHICH GIVES A BY AND LARGE ACCURATE ACCOUNT OF MR TRUDEAU'S CALL ON MRS THATCHER IN JUNE AND MESSRS MACGUIGAN AND ROBERTS' CALL IN OCTOBER. ONLY SUBSTANTIAL INACCURACY WAS THAT YOU WERE PRESENT AT OCTOBER MEETING WHEN IN FACT YOU RECEIVED THE TWO MINISTERS SEPARATELY AT THE HOUSE OF LORDS. LAST NIGHT TV NEWS SHOWED A CUT FROM A FILM OF MR TRUDEAU LEAVING NO 10 ON JUNE 25 WHICH SHOWED THAT OUTSIDE NO 10 MR TRUDEAU, WHEN ASKED ABOUT WHETHER HE HAD DISCUSSED WITH MRS THATCHER THE POSSIBITY OF PROVINCIAL OPPOSITION, HAD REPLIED QUOTE I DIDN'T BRING UP THAT HYPOTHESIS AND I DO NOT BELIEVE MRS THATCHER BROUGHT IT UP EITHER UNQUOTE. THIS IS BEING ADDUCED AS FURTHER EVIDENCE THAT MR TRUDEAU HAS BEEN LESS THAN HONEST IN WHAT HE HAS REPORTED HERE ABOUT CANADIAN DISCUSSIONS WITH HMG.

2. OFF THE RECORD AND UNATTRIBUTABLY WE SHALL TAKE THE LINE HERE THAT THE REPORT IS SUBSTANTIALLY CORRECT AND THAT HMG'S POLICY REMAINS AS HAS BEEN STATED IN PARLIAMENT. WE SHALL STRESS THAT THE MATTER OF THE RESOLUTION IS STILL BEFORE THE CANADIAN PARLIAMENT AND THAT IT WOULD BE INAPPROPRIATE FOR US TO COMMENT ON THE DEBATE THERE. AS REGARDS COMMENT ON THE FAC REPORT I AGREED WITH DEA THAT WE WOULD BOTH TRY TO GIVE IT A LOW PROFILE AND SAID WE WOULD BE TAKING THE LINE IN YOUR TELEGRAM NUMBER 32.

(70) 3. AT HIS PRESS CONFERENCE YESTERDAY MR TRUDEAU TOOK MUCH THE SAME LINE AS IN THE HOUSE (MY TELNO 45). IN ANSWER TO A QUESTION WHETHER HE HAD SUGGESTED TO HMG THAT IF THE BRITISH INTERFERED CANADA WOULD WITHDRAW FROM THE COMMONWEALTH HE REPLIED QUOTE I DIDN'T SUGGEST THAT CANADA WITHDRAW FROM THE COMMONWEALTH. I SAID IT WOULD BE FUNNY FOR BRITAIN TO REMAIN IN THE COMMONWEALTH AND (NOT) TO HAVE ACTED OR REFUSED TO GIVE COMPLETE AND FINAL INDEPENDENCE TO ONE OF ITS FORMER COLONIES WHEN THAT IS BEING REQUESTED. I SAID THEY MIGHT FIND IT DIFFICULT TO JUSTIFY THEIR POSITION WHEN WE MEET IN MELBOURNE UNQUOTE. (FULL TEXT OF PRESS CONFERENCE FOLLOWS BY BAG AND AIR MAIL).

CONFIDENTIAL

/4

4. IN AN INTERVIEW ON CANADA AM WHEN COMMENTING ON FAC REPORT MR FLEMMING, MINISTER OF STATE FOR MULTICULTURALISM, STARTED BEATING THE NATIONALIST DRUMS AND HIS CUE SEEMS TO HAVE BEEN FOLLOWED BY ONE OR TWO NEWSCASTERS LAST NIGHT. FROM OUR POINT OF VIEW IT IS SATISFACTORY THAT HIS ANTI-COLONIAL CARD IS BEING PLAYED NOW ON THE EVE OF THE FINAL WEEKS DELIBERATION OF THE JOINT CTTEE. I INTEND TO AVOID BEING PUBLICLY DRAWN INTO THE DEBATE.

FORD

LIMITED
NAD
LEG ADV
NEWS D
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
MR DAY
MR URE

(1)

10 DOWNING STREET

Prime Minister.

I attach an exchange of correspondence between Lord Carrington & Mr Pym about the fabrication of the Canadian Constitution. Mr Pym's proposal for a debate next month strikes me as pretty odd: the only result of a debate without the discipline of a definite proposal & a vote at the end will be to encourage people to take up extreme attitudes.

Would you like the meeting between Lord Carrington & Mr Pym to take place here? Yes

Yes Should the Chief Whip be present?

No

[illegible] 30/1

Amc 012/1

2 FEB 1981

(71)

CONFIDENTIAL

GRS 230
CONFIDENTIAL
FM OTTAWA 302312Z JAN 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 46 OF 30 JANUARY

(70)

MY TELEGRAM NO 45 (OF JAN 30)
CANADIAN CONSTITUTION

50.

1. MY ADVICE REMAINS AS IN MY TELNO 26. I AM SAYING NOTHING HERE ON THE RECORD. OFF THE RECORD BY WAY OF BACKGROUND BRIEFING I AM INDICATING THAT THE INCLUSION OF SUCH A LONG CHARTER OF RIGHTS IN THE DRAFT RESOLUTION DID COME AS A SURPRISE TO US. I AM ALSO DRAWING ATTENTION TO THE FACT THAT EVEN AS LATE AS AUG 30 IT SEEMED CLEAR THAT THE FEDERAL GOVERNMENT HAD NOT DECIDED WHAT TO PUT IN ITS RESOLUTION AND WAS CONSIDERING VARIOUS POSSIBLE OPTIONS (MY TELNO 394 OF SEPT 13). ON JUNE 25 MR CHRETIEN WAS AT AN EARLY STAGE OF HIS NEGOTIATIONS WITH THE PROVINCES AND WHAT WE WERE THINKING OF WAS PATRIATION WITH AN AMENDING FORMULA (WHICH WAS ALSO WHAT THE PREVIOUS BRITISH GOVERNMENT HAD THOUGHT WAS LIKELY TO BE REQUESTED).

Amc 012/1 (80)

(82)

2. ON THE USE OF THE WHIP I AM UNATTRIBUTABLY TAKING THE LINE THAT TOO MUCH SIGNIFICANCE SHOULD NOT BE ATTACHED TO THIS. THE WHIP IS NOT ALWAYS EFFECTIVE ON ISSUES NOT CENTRAL TO A GOVERNMENT'S PROGRAMME ESPECIALLY WHERE THE CONSCIENCE OF THE HOUSE IS CONCERNED. FOR THAT REASON A FREE VOTE HAS BEEN ALLOWED ON ISSUES SUCH AS THE RETENTION OF THE DEATH PENALTY. WHAT IS IMPORTANT IS THE MOOD OF THE HOUSE AND IT HAS BEEN MADE QUITE CLEAR THAT THE CANADIANS WOULD BE MAKING A MISTAKE IF THEY THOUGHT THAT A RESOLUTION ON THE PRESENT LINES COULD BE GOT QUICKLY THROUGH THE BRITISH PARLIAMENT OR THAT TIME WOULD NECESSARILY MAKE IT EASIER TO PASS.

FORD

LIMITED
NAD
LEGAL ADVISERS
NEWS D
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
MR DAY
MR URE

CONFIDENTIAL

(70)

AMC 012/1
-2FEB 1981

GRS 340
UNCLASSIFIED
FM OTTAWA 302209Z JAN 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 45 OF 30 JANUARY

CONSTITUTION

1. IN ANSWER TO PERSISTENT QUESTIONING IN THE HOUSE MR TRUDEAU TODAY REPLIED THAT WHEN HE MET THE PRIME MINISTER IN JUNE HE ''EXPLAINED TO HER WHAT WAS IN THE PACKAGE THAT WE HAD PUT TO THE PREMIERS AT THE BEGINNING OF JUNE, PEOPLE'S PACKAGE, PATRIATION, AMENDING FORMULA AND THE CHARTER..... I CAN'T ASSURE THE LEADER OF THE OPPOSITION THAT I WENT INTO DETAILS ON EACH OF T THE MANY, MANY ITEMS WHICH WERE DISCUSSED DURING THE SUMMER. I DID TELL HER WHAT THE AGENDA WAS, WHAT WE HAD DISCUSSED AT THE BEGINNING OF JUNE, AND THEY CAME UNDER ALL THESE GENERAL HEADINGS. MADAME SPEAKER, THE BRITISH PRIME MINISTER DID NOT ASK FOR DETAILS AND SUB-QUESTIONS. SHE TOOK THE POSITION THAT IF THE PARLIAMENT OF CANADA PUT AN ADDRESS TO HER MAJESTY THAT THE BRITISH PARLIAMENT WOULD HAVE NO CHOICE BUT TO TAKE IT AS A GOVERNMENT MEASURE AND TO ASSURE ITS PASSAGE; AND THIS WAS NOT DONE IN IGNORANCE, THIS WAS DONE AS A RESULT OF THE BRITISH PARLIAMENT, INCLUDING THE FORMER GOVERNMENT OF MR CALLAGHAN, HAVING BEEN ASKED REPEADEDLY WHAT THE POSITION WOULD BE WHEN THEY RECEIVED THE RESOLUTION FROM THE CANADIAN PARLIAMENT.'' WHEN PRESSED, MR TRUDEAU ADDED ''I DON'T KNOW WHAT DATE THE PRIME MINISTER OF GREAT BRITAIN INFORMED HERSELF IN DETAIL OF THE CONTENTS OF IT (THE PACKAGE). I CAN TELL HER SHE WAS INFORMED OF THE CONTENTS ON THAT DAY AT THE END OF JUNE WHEN I SAT DOWN WITH HER AT DOWNING STREET AND THE LEADER OF THE OPPOSITION SHOULD NOT SAY THAT MY PREVIOUS ANSWER LEFT THAT IN CONSIDERABLE DOUBT. IT WAS MADE QUITE CLEAR TO HER THAT WE WERE PROCEEDING WITH THIS PACKAGE HOPEFULLY WITH THE CONSENT OF THE PROVINCES BUT THE WHOLE POINT OF US DISCUSSING IT TOGETHER WAS THAT PERHAPS WE WOULD NOT HAVE THE CONSENT OF THE PROVINCES.'' FINALLY, WHEN ASKED WHETHER MRS THATCHER ''KNEW IN JUNE THAT GOVERNMENT OF CANADA INTENDED TO INCLUDE IN ITS PACKAGE A CHARTER OF RIGHTS,'' HE RELIED ''UNLESS SHE WAS NOT LISTENING WHILE I WAS TALKING OR UNLESS SHE WAS NOT INFORMED BY HER PEOPLE WHAT ALL THE CANADIAN PEOPLE KNEW AND WHAT THE 10 PREMIERS KNEW BECAUSE IT HAD BEEN MADE PUBLIC HERE IN CANADA, THEN THE ANSER TO THE QUESTION IS SHE DID KNOW.''

FORD

LIMITED
NAD
LEGAL ADVISERS
NEWS D
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
MR DAY
MR URE

(69)

AMC 012/1

RESTRICTED

30 JAN 1981

GRS 145

RESTRICTED
FM OTTAWA 292919Z JAN 81
TO ROUTINE FCO
TELEGRAM NUMBER 40 OF 29 JANUARY

CONSTITUTION

1. CLAUDE RYAN, THE LEADER OF THE QUEBEC LIBERAL PARTY, HAS SENT HIS CHEF DE CABINET, PIERRE PETTIGREW TO LONDON TO GET FIRST HAND IMPRESSIONS OF THE ATTITUDES OF MP'S TO THE FEDERAL PATRIATION PROJECT.

2. PETTIGREW WILL PROBABLY ALSO SEEK TO EXPLAIN THAT THE LIBERALS' REFUSAL TO BE ASSOCIATED WITH THE PEQUISTE MOTION OF OPPOSITION TO THE FEDERAL PROJECT WAS DICTATED BY THE RISK OF AN EARLY ELECTION AND DID NOT MEAN THAT THEY APPROVED IT. HE WILL PROBABLY UNDERLINE THAT THE LIBERALS OPPOSITION IS JUST AS STRONG AS THAT OF THE PQ, THOUGH ON DIFFERENT GROUNDS.

3. PETTIGREW WILL PROBABLY RECEIVE ASSISTANCE OVER CONTACTS FROM GILLES LOISELLE: IF HE CONTACTS THE DEPARTMENT HE WOULD BE WORTH LISTENING TO AS A PERSON OF INFLUENCE IN THE PARTY THAT SEEMS LIKELY TO WIN THE NEXT PROVINCIAL ELECTIONS (WHICH MUST BE HELD BEFORE NOVEMBER).

FORD

THIS TELEGRAM WAS NOT ADVANCED

LIMITED	PS/MR RIDLEY
NAD	PS/PUS
CCD	MR DAY
LEGAL ADV:	SIR L ALLINSON
PS	MR URE
PS/LPS	

RESTRICTED

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Mr Ryrie
- 2/2

Patriation of the Canadian Constitution

in box

Thank you for your minute of 28th January. I think that it would indeed be valuable if we could, as you suggest, have an early meeting to talk about the next steps. You will by now have seen the full record of the discussion and I hold strongly to the view I expressed to Mrs Wadds that the gravity of the Parliamentary situation should not be underestimated. I thought it right to convey this in the plainest terms to her, not in order to close any options, but to try to bring greater realism into the Canadian appreciation of what is likely to happen. It is strongly my view that the joint objective of both countries should be to find a solution which will both meet Canada's needs and prove acceptable to Westminster.

A discussion between us will be particularly useful at this stage since I also think it important that the gravity of the situation likely to confront us in Parliament should be fully appreciated. But having said that, I stress that it is my objective all the time to try to improve attitudes in Parliament so as to reduce the difficulty of the Government's task. I think that the report of the Foreign Affairs Committee, which gives a more balanced appreciation of the problem than I had expected, may yet prove helpful to us in this respect. At the right moment - perhaps towards the end of February - I believe it would be helpful and

Contd .....

wise to give the House of Commons an opportunity to debate the report at a time when there will be no issue before the House for decision. We need to test the Parliamentary water before any request is despatched, and this seems the ideal way to do this. It will, of course, be necessary to judge the timing of this debate - if that finds favour with colleagues - in relation to developments in Ottawa.

My office will be in touch with yours about a date for a meeting.

I am sending a copy of this minute to the Prime Minister.

F.P.

29 January 1981

EXSTX	OP
A23	SO

ACTION COPY

JAN 30 07:45

Given to Mr Gray by Canadian High Commissioner
cc Mr Freeland, Mr Perry, LA
Mr McCoory News Dept.
(Canadian Press line page 6a)
G A Griffin

20 CDA-16
30 JAN 1981
RETAIN ☐ DESTROY

R E S T R I C T E D

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INFO PARIS BRU WSHDC PRMNY BONN PMOOTT/GOSSAGE PCOOTT/FOWLER

BH FPROOTT/GIBSON/KIRBY DE OPM

DISTR MIN AEG DMM FLP FCP PGE FCO FLE

---SELECT COMMITTEE REPORT

NEW OF THIS REPORT BROKE HERE TODAY AT QUESTION PERIOD.FOLLOWING IS EXCHANGE IN HOC(RESUME)ON PATRIATION:

MR EPP(PROVENCHER)REFERRED TO A TELEPHONE CONVERSATION WITH SIR A KERSHAW CONCERNING HIS COMMITTEES REPORT ON THE PROCEDURE TO PATRIATE THE CONSTITUTION.HE QUOTED KERSHAW AS SAYING WHEN ASKED IF THE BRITISH PARLIAMENT WAS OBLIGED TO PASS THE CANADIAN GOVERNMENTS CONSTITUTIONAL PACKAGE, QUOTE INDEED BRITAIN WOULD BE OBLIGED TO REJECT IT UNQUOTE. MR EPP ASKED THE PRIME MINISTER IF,IN LIGHT OF THIS COMMITTEES REPORT,HE WOULD RECONSIDER HIS APPROACH AND CALL A FIRST MINISTERS MEETING TO RESOLVE THE QUESTION IN CANALA.THE PRIME MINISTER SAID HE WAS NOT/NOT CERTAIN HE COULI COMMENT ON A REPORT OF AN AD HOC COMMITTEE.HE SAID THAT THE REPORTED COMMENTS WERE NOT/NOT IN ACCORD WITH THE POLICY OF THE BRITISH GOVERNMENT.

MR EPP NOTED THAT THE COMMITTEE WAS THE SELECT COMMITTEE

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Rpt 2/2

Mr Graham
Mr Alexander

To see this exchange in the Canadian Press
– sidelined passages

Chambers

2/2

NOT/NOT THE AD HOC COMMITTEE AND HE CALLED UPON THE GOVERNMENT TO SPLIT ITS PROPOSAL,SEPARATING THE SIMPLE PATRIATION WITH AN AMENDING FORMULA FROM OTHER ISSUES NEEDING PROVINCIAL CONSENT. THE PRIME MINISTER REPLIED HE TOOK THE POSITION THAT BY CUSTOM, TRADITION AND CONSTITUTIONAL LAW,THE BRITISH PARLIAMENT MUST ACT ON A REQUEST OF THE CANADIAN PARLIAMENT.HE SAID KERSHAWS OPINION IS NOT/NOT THE POSITION OF THE BRITISH GOVERNMENT.

MR MCGRATH(ST JOHNS EAST)SAID KERSHAW HAD SAID 26 COPIES OF THE COMMITTEES REPORT HAD BEEN SENT TO THE HIGH COMMISSION. HE QUOTED THE REPORT AS SAYING QUOTE BRITAIN IS THE GUARDIAN OF BOTH FEDERAL AND PROVINCIAL INTEREST UNQUOTE.HE SAID A REJECTION BY THE BRITISH PARLIAMENT OF A PROPOSAL PUT FORWARD BY THE CANADIAN PARLIAMENT WOULD BE A NATIONAL DISGRACE AND HE CALLED UPON THE PRIME MINISTER@TO CALL A FIRST MINISTERS MTG.MR MCGRATH REFERRED TO THE STEAM-ROLLING TACTICS OF THE GOVERNMENT. THE PRIME MINISTER REPLIED THERE WAS NO/NO HOPE FOR AGREEMENT WITH THE PROVINCES.HE SAID,QUOTE WHAT MUST BE DONE SHOULD BE DONE AND THAT IS WHAT IS BEING DONE UNQUOTE.HE SAID THE BRITISH GOVT WAS CONSULTED IN JUNE AND IT HAD PROMISED TO MAKE THE PROPOSAL A GOVT MEASURE AND TO REINFORCE IT WITH A THREE LINE WHIP.

MR BAKER(NEPEAN CARLETON)ASKED THE PRIME MINISTER IF HE DID NOT/NOT FIND IT INCONGRUOUS THAT HE IS ASKING THE BRITISH GOVT TO LAY ON A THREE LINE WHIP TO DO SOMETHING CDNS ARE OPPOSED TO.

...3

HE ALSO CALLED ON THE PRIME MINISTER TO CALL ANOTHER FIRST MINISTERS MTG.THE PRIME MINISTER REPLIED THERE WAS NO/NO WILL AMONG THE PROVINCES TO REACH A CONSENSUS ON THIS ISSUE.

2.OUTSIDE HOUSE,SSEA - MACQUIGGAN WAS INTERVIEWED AND REPLIED AS FOLLOWS:

Q.ITS JUST THE REPORT OF A STANDING COMMITTEE AND IN EFFECT IT REALLY DOESNT MEAN ANYTHING?

SSEA:ITS LIKE THE REPORT OF ANY STANDING COMMITTEE,EXCEPT THAT IN OUR PARLIAMENT STANDING COMMITTEES ARE NOT/NOT ALLOWED TO MAKE REPORTS EXCEPT ON A REFERENCE WHICH THE GOVT HAS GIVEN THEM.IN THIS CASE THE BRITISH GOVT DID NOT/NOT GIVE THE STANDING CTTEE A REFERENCE;THEY TOOK THIS JURISDICTION THEMSELVES, PROCEEDED TO STUDY THE SUBJECT,AND HAVE NOW PROCEEDED TO MAKE A RECOMMENDATION,BUT IT HAS NO/NO STATUS WHATSOEVER OTHER THAN IT BEING A REPORT WHICH IS MADE TO THE BRITISH PARLIAMENT.IT DOES NOT/NOT REFLECT THE VIEWS EITHER OF THE BRITISH PARLIAMENT OR OF THE BRITISH GOVT.IN FACT THE BRITISH GOVT MADE A SUBMISSION TO THIS CTTEE WHICH IS DIAMETRICALLY OPPOED TO WHAT THE CONCLUSIONS ARE REPORTED TO BE.

1.SO YOURE SAYING IT WONT HAVE ANY EFFECT ON MPS THEN?

SSEA:I DONT KNOW WHAT EFFECT IT WILL HAVE ON MPS BUT IT DOESNT AFFECT THE GOVTS COMMITMENT OR THE GOVTS POSITION.

Q.DOES IT NOT/NOT SHOW THAT THERE ARE A GROWING NUMBER OF BRITISH MPS WHO WANT TO TAKE A SECOND LOOK,WANT CDA TO SETTLE

...4

IT THEMSELVES-JUST BECAUSE PRIME MINISTER THATCHER SAYS THAT THE PARTY SHOULD GO ALONG AND THAT LEADERS SAY THEY SHOULD GO ALONG,IT DOESNT NECESSARILY MEAN THAT THEY HAVE TO.

SSEA:I DONT THINK THAT THIS INDICATES ANYTHING ABOUT A GROWING NUMBER OF MPS.THE MEMBERSHIP OF THIS CTTEE IS COMPARATIVELY SMALL AND WEVE KNOWN ALL ALONG THAT THERE IS SOME OPPOSITION ON THE PART OF SOME BRITISH MPS,AND THE OPPOSITION IS,I THINK,LOCALIZED IN THIS CTTEE AMONG A FEW OTHER PLACES.

Q.THIS IS AN ALL-PARTY COMMITTEE THOUGH,ISNT IT?

SSEA:YES,IT IS,I BELIEVE,AN ALL-PARTY CTTEE.

Q.DOES YOUR GOVT HAVE A COPY OF THE RECOMMENDATIONS OF THE KERSHAW CTTEE?

SSEA:I DO NOT/NOT BELIEVE THE GOVT HAS AS YET RECEIVED AN OFFICIAL COPY OF THE...

Q.NO/NO,NOT/NOT AN OFFICIAL COPY,I UNDERSTOOD UNOFFICIALLY YOU HAD RECEIVED A COPY OF THE RECOMMENDATIONS?

SSEA:WELL,WE GATHER INFORMATION WHERE WE CAN,BUT WE WILL AWAIT A RECEIPT OF THE REPORT BEFORE WE MAKE ANY COMMENTS ON THE REPORT.

Q.IN OTHER WORDS THE QUESTIONS TODAY WERE NOT/NOT A SURPRISE TO YOU(BY MR EPP)AND THEY WERE NOT/NOT A SURPRISE TO THE PRIME MINISTER?

...5

SSEA:WELL YES,THEY WERE A SURPRISE TO ME AS A MATTER OF FACT.

Q.CONNAISSEZ-VOUS PERSONNELLEMENT ANTHONY KERSHAW?

SSEA·NON/NON.

Q.M MACGUIGAN,QUELLE EST VOTRE REACTION AUX DECLARATIONS QUI ARRIVENT DE LONDRES,PRINCIPALEMENT PAR LA BOUCHE DU PRESIDENT DU COMITE DES COMMUNIES ANGLAISES DES AFFAIRES EXTERIEURES,M ANTHONY KERSHAW,QUI SELON LUI,SELON LES DEPECHES QU ON A, AURAIT DIT QUE LA RESOLUTION DU GOVERNMENT TRUDEAU ETAIT INACCEPTABLE TANT QU IL N Y AVAIT PAS/PAS UNE MAJORITY DE PROVINCES QUI SERAIENT D ACCORD AVEC ELLE?

SSEA:JE N AI PAS/PAS UNE REACTION ENCORE A LA SUBSTANCE PARCE QUE NOUS N AVONS PAS/PAS RECU LE RAPPORT DU COMITE, MAIS JE PEUX DIRE QUE C EST UN COMITE DU PARLEMENT DE L ANGLETERRE QUI REPRESENTE...QUI CONSISTE DE QUELQUES MEMBRES...QUI A LUI-MEME CHOISI LE SUJET SANS ORDRE DE REFERENCE ET MAINTENANT PRESENTE LE RAPPORT.MAIS CE N EST PAS/PAS L OPINION DU PARLEMENT DE L ANGLETERRE NI DU GOUVT DE L ANGLETERRE.

Q.DONC,D APRES VOUS,CE N EST QU UN SON DE CLOCHE ET QUI EST UN PEU FAUX PAR RAPPORT AUX OPINIONS QUE VOUS AVEZ RECUES DU GOUVERNEMENT DE MME THATCHER.

SSEA:CERTAINEMENT,OUI.C EST UNE OPINION DE QUELQUES ARRIERE BENCHERS.EST-CE QUE ON PEUX UTILISER CE MOT?

...6

Q.IE L ARRIERE-BANC?

3.BRIEFING NOTES HAVE SUGGESTED BASIC LINE BE QUOTE
I HAVE NOT/NOT SEEN THE REPORT AND I UNDERSTAND IT WILL ONLY
BE RELEASED AT NOON,LONDON TIME,TOMORROW.I SHALL NOT/NOT
COMMENT UNTIL I HAVE HAD A CHANCE TO STUDY THE REPORT.I CAN
SAY,HOWEVER,THAT THE GOVERNMENT HAS NO/NO DOUBTS AS TO THE
CONSTITUTIONAL PROPRIETY OF THE COURSE OF ACTION IT IS PROPOSING.
UNQUOTE IF MINISTERS FEEL OBLIGED TO GO BEYOND THIS,
FOLLOWING ARE ADDITIONAL POINTS IT IS SUGGESTED THEY MIGHT
MAKE:QUOTE
(A)THE REPORT IS HYPOTHETICAL ONLY SINCE NO/NO REQUEST
HAS YET BEEN TRANSMITTED TO LONDON FROM THE PARLIAMENT OF CANADA;
(B)IT MUST BE KEPT IN MIND THAT THIS IS A REPORT OF THE
SMALL COMMITTEE OF THE HOUSE OF COMMONS,NOT/NOT THE POSITION
OF THE GOVERNMENT OR EVEN OF PARLIAMENT AS A WHOLE;
(C)WE FIND SURPRISING THE CONCLUSION(IF IT IS ACCURATELY
REPORTED)THAT THE UK PARLIAMENT CAN QUOTE LOOK BEHIND UNQUOTE A
REQUEST SUBMITTED BY THE PARLIAMENT OF CANADA.THIS IS
CONTRARY TO ALL PRECEDENTS AND THE STATEMENTS OF BRITISH
GOVERNMENTS,PAST AND PRESENT.
(D)IT MUST ALSO BE REMEMBERED THAT THE MAIN EVIDENCE BEFORE
THE COMMITTEE INCLUDED:
(I)WRITTEN BRIEFS FROM QUEBEC,BC AND NEWFOUNDLAND,

...7

PROVINCES WHICH HAVE NOT/NOT SEEN FIT TO APPEAR BEFORE THIS CANADIAN PARLIAMENTARY COMMITTEE ON THE CONSTITUTION;

(II)THREE QUOTE EXPERT UNQUOTE WITNESSES,NONE OF THEM CANADIANS, TWO OF WHOM(PROFESSORS WADE AND LAUTERPACHT)TOLD THE COMMITTEE THEY HAD BEEN CONSULTED PROFESSIONALLY BY QUEBEC BUT WERE EXPRESSING THEIR PERSONAL VIEWS TO THE COMMITTEE;

(III)BACKGROUND INFORMATION ONLY FROM THE BRITISH GOVERNMENT,WHICH DECLINED TO STATE OR ARGUE A POSITION ON HOW IT OR PARLIAMENT RESPOND TO A REQUEST FROM CANADA,ON THE PROPER GROUND THAT THE QUESTION WAS HYPOTHETICAL AND AN ANSWER COULD BE INTERPRETED AS AN INTRUSION INTO CANADAS INTERNAL AFFAIRS.

(E)IT MUST ALSO BE REMEMBERED THAT THE GOVERNMENT OF CANADA DID NOT/NOT MAKE ANY SUBMISSION TO THIS COMMITTEE,AS WE DEAL WITH THE GOVERNMENT OF THE UK LIKE WE DEAL WITH THAT OF ANY OTHER FOREIGN STATE.IT WOULD NOT/NOT BE APPROPRIATE FOR THE CANADIAN GOVERNMENT TO ATTEMPT TO TELL BRITISH MPS WHAT FUTURE ADVICE AND RECOMMENDATIONS OF THE BRITISH GOVERNMENT THEY SHOULD EITHER RECEIVE OR ACT ON.UNQUOTE.

CCC/282 2923452 GEB0318

Canada

Prime Minister

(2)

Fr. Wadds 2/2

You may feel that if the Chancellor of the Duchy cannot accept Lord Carrington's line, you should have a meeting with both of them.

Yes pm

FCS/81/10

CHANCELLOR OF THE DUCHY OF LANCASTER

Ack 28/1

Patriation of the Canadian Constitution

1. Thank you for your letter of 19 January. We sent across suggested talking points for your meeting with Mrs Wadds, and I would like, if I may, to mention first the line which I am told by the Department you took with her.

2. We have not yet seen a written record of conversation: but I gather that you told her squarely that if the Canadian Government thought they were going to get their proposals through the UK Parliament during this session, they would be mistaken. I believe you may have added that things would not become any easier with the passing of time if the proposals remained in their present form; there was no way in which you could guarantee they would get through Parliament.

3. I realise that you spoke in quite strong terms to Mr Trudeau in December; but the impression I get from, for instance, Ottawa telegram number 552 of 19 December, is that you left open at least the possibility of the Canadian legislation going through during the current session (eg in paragraph 2 of the telegram you are quoted as saying 'it was highly questionable whether it would be possible at present to achieve the passage of the necessary legislation through Parliament'.) In other words, you seem to have left a

/chink

chink of light for Mr Trudeau. With Mrs Wadds, it seems that you have closed this off. I confess I am a little worried as to the repercussions that Mrs Wadds' subsequent report will have in Ottawa.

4. I realise that this is a difficult hand to play at this moment. So much will depend not only on the ultimate shape of the Canadian proposals and the eventual degree of opposition they attract in Canada - but also on the results of court action in Canada. There seems to be some prospect that both the Manitoba and the Quebec courts will find in favour, to a greater or lesser extent, of the Federal position. This would presumably have a considerable impact in Canada and on opinion among MPs in this country. At the same time, I recognise that the unfavourable conclusions expected from the FAC will militate in the opposite direction.

5. For the kind of reasons which I have indicated, I think it important, as you yourself suggest in your letter, that we should all, at this very delicate moment, continue to keep our options open. I interpret this as warning the Canadians of possible difficulties; but not at this stage risk souring our relations with them by seeming to close the door entirely to their prcposals.

6. You ask about alternative courses of action, including that of unilateral patriation, without a Bill of Rights but with provision for the amendment of the Constitution. This is a theoretical possibility which has frequently been considered; but it suffers from our point of view from two major difficulties:

(a) It is open to serious question on constitutional grounds, as it runs counter to the 'request and consent' convention.

/(b)

(b) It would be regarded by the Canadians as a worse form of interference in their internal affairs than any other move we could contemplate.

7. To expand a little the second point, the way things are going now, the Canadians are themselves deciding both on the shape of their proposals and the timing of sending them to London. To the maximum extent, they are deciding their own destiny. If we snatched the ball from their hands, I feel convinced we would simply succeed in uniting them against us. Quite apart from this general principle, whatever amending formula we used would be objected to by some of the Provinces. I do not, of course, mean to preclude the possibility of our going back to Mr Trudeau at some stage and asking him to modify his proposals by omitting the Bill of Rights. But all the indications are that, as things now stand, this would infuriate him, almost as much as 'unilateral' patriation.

8. My conclusion is that we should stick to the line you took in Canada; warn the Canadians of the difficulties, but keep options open pending court action in Canada. If this is agreed, we could postpone consideration at OD until the court situation is clearer. But if you think the Parliamentary situation is such that we must go on giving the Canadians your recent message to Mrs Wadds, we should perhaps have an early meeting to thrash the matter out.

9. I am copying this minute to the Prime Minister.

C

(CARRINGTON)

Foreign and Commonwealth Office
28 January 1981

HOUSE OF LORDS,
SW1A 0PW

With the Compliments of the
Lord Chancellor's
Private Secretary

FROM THE PRIVATE SECRETARY

Canada

HOUSE OF LORDS,
SW1A 0PW

28th January, 1981

Francis Richards Esq.,
Private Secretary to the
Secretary of State,
Foreign & Commonwealth Office,
Downing Street,
London, SW1.

Dear Francis,

Patriation of the Canadian Constitution

I wrote to you on 26th January about a visit which Premier Lougheed of Alberta was planning to make to this country from 3rd to 5th February.

I now understand from the Agent-General for Alberta that the visit has been postponed for about a month.

Copies of this go to those who had copies of my previous letter.

Yours sincerely,

Alistair Shaw.

A.E. Shaw

SECRET

Canada

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

IA

Chancellor of the Duchy of Lancaster

28th January 1981

NBPR yet.

Rmd 28/1

Dear George.

PATRIATION OF THE CANADIAN CONSTITUTION

... I enclose a record of the discussion which the Chancellor of the Duchy had on Friday, 23rd January, with Mrs Wadds and Mr Haggan about the problem of the Canadian Constitution. In view of the sensitive nature of the discussion you will see that I have put a high classification on the note.

At the end of the meeting it was agreed that the Chancellor of the Duchy and the High Commissioner would keep in touch from time to time and would have another meeting in about a fortnight's time as part of this process.

I am sending copies of this letter and the enclosure to Stephen Gomersall, to David Wright, Wilfred Hyde, Richard Hastie-Smith, and Michael Alexander at Number 10.

Yours ever,

Robin

R A BIRCH

G G H Walden Esq
Private Secretary to
The Secretary of State for
Foreign and Commonwealth Affairs
LONDON SW1

SECRET

PATRIATION OF THE CANADIAN CONSTITUTION

NOTE OF MEETING WITH CANADIAN HIGH COMMISSIONER, 23rd JANUARY

PRESENT

The Chancellor of the Duchy of Lancaster
The High Commissioner, Mrs Wadds
Mr Reeves Haggan (Assistant Secretary of the Canadian Cabinet)
Mr Dan Gagnier (First Secretary. Canadian High Commission)

IN ATTENDANCE

Mr Hyde (Cabinet Office)
Mr Birch

The Chancellor of the Duchy said he was glad of the opportunity to give the High Commissioner a first hand account of his discussion with Mr Trudeau and to explain to her the extreme difficulty of the situation that was likely to arise if the Canadian Government were to ask the British Government to secure the passage through the British Parliament of legislation on the lines presently envisaged. As he had made clear to Mr Trudeau, it was his judgment that such legislation would not go through either House of the British Parliament. There was no doubt that the British Parliament would be very willing to patriate the Canadian Constitution with powers for its subsequent amendment in Canada, or to implement a request on which it was known the Federal Government and the Canadian Provinces were of one mind. At present, however, it seemed to members of both Houses that they were being asked to take a view on a particular solution proposed by the Federal Government to the constitutional problems that had arisen in Canada. They did not feel that they had the knowledge or competence to make such a judgment. On the other hand, the extended discussions about devolution to Wales and Scotland between 1977 and 1979 had made members of all parties aware of the significance of the issues now being debated in Canada and a number of members were well informed

about the situation there as a result of visits they had made and the representations made by Canadian interests in this country. Part, but not all, of the objections that were felt to the proposed legislation would be removed if the current legal proceedings in Canada had been satisfactorily completed. The Chancellor of the Duchy emphasised that the Government were well aware that there were strong arguments that could be deployed to counter some of the objections which he had described. He was bound to say, however, that he did not think that at present these counter arguments would carry the day, and it would do great damage to relations between the two countries if the British Government were to present to Parliament a Bill which they did not believe would pass into law.

The High Commissioner thanked the Chancellor for his clear exposition of the situation as he saw it and as he had explained it to Mr Trudeau. The Federal Government could not accept the argument that they were somehow unfairly inflicting Canadian problems on the British Parliament. The Federal Government had, and were taking, responsibility for the form of the proposed Bill and there was no difference in principle between what was now proposed and earlier occasions on which amendments to the British North America Act had been passed by the British Parliament. Not all these amendments had had the support of the Provinces. The matter was essentially one for decision by the duly elected Canadian Government and she found it hard to comprehend that British Members of Parliament should feel that they could pass judgment on what the Canadian Government and Parliament had decided. In Canada, loyalty to the Federal Government was as great as loyalty to individual Provinces and once the Federal Parliament had passed the Bill, Canadians as a whole would not expect the Government or Parliament of another country to make difficulties about the necessary change in the law.

Mr Haggan said that he thought it likely that the forthcoming judgment in the Manitoba Supreme Court would not be unanimous and would not be in such precise terms as to enable either view of the legality of what the Federal Government proposed to be said to have prevailed. In any event, the case the Federal Government had argued before the Manitoba Court was that the issue was not justiciable. Mr Trudeau considered that it was a major abuse of the Courts to ask them to decide what was in essence a political question with the risk of their passing a political judgment. As regards the likely timing, he would expect the Bill to have passed through the Federal Parliament by about end of February or the beginning of March so that the formal request from the Federal Government to the United Kingdom Government for them to introduce the necessary legislation at Westminster would follow shortly afterwards. On this point the Chancellor said that although he had made clear to Mr Trudeau the particular problems of passing in the present Parliamentary Session a controversial Bill that could not be introduced until March he had also stressed that shortage of Parliamentary time was not of the essence of the problem. The essence was that members of Parliament did not feel it was right for them to pass a Bill other than one which patriated the Constitution to Canada.

The following points were made in further discussion:-

a. The Select Committee on Foreign and Commonwealth Affairs at Westminster had taken evidence about the proposed Bill mostly from Opponents of the Federal Government's intentions, and their report, which was due out shortly, was unlikely to be helpful;

b. A vigorous adverse reaction could be expected in Canada if it became apparent that the Canadian Government could, in effect, be defeated in Britain as a result of lobbying here by Canadians whose views had not succeeded in the Federal Parliament. It had been, and remained, the view of the Canadian Prime Minister that the Canadian Government should not itself undertake lobbying of British opinion because to do so would concede the right of the British Parliament to give consideration to the substance of the request made by the Federal Government.

c. Nevertheless the High Commission were working to see that British MPs understood what was involved. They had explained for example to members of all parties that a rejection of the Bill in Westminster would destabilise Canada. Quebec might well be lost and the other Provinces opposed to the Federal Government would have a great political victory. Under the existing constitutional arrangements the Provinces had devolved powers to such an extent as endangered the ability of the Federal Government to manage the economy. Any action that increased those powers would be very dangerous and would provoke a major crisis not only within Canada but also for relations between Canada and Britain.

In conclusion, the Chancellor said that he entirely shared the High Commissioner's appreciation of the gravity of the situation that would arise if the British Government or Parliament found itself in opposition to the declared wishes of the Canadian Government. While his particular responsibilitites concerned the Parliamentary situation and the responsibility for relations with Canada rested of course with

the Foreign and Commonwealth Secretary he knew that the Government as a whole shared his concern that such a dangerous, indeed calamitous, situation should not arise. The danger was that it might arise on issues that were, to the ordinary people of both countries, extremely esoteric, because on the one hand it appeared politically impossible for the Prime Minister of Canada to change course and on the other many Members of the British Parliament were deeply and genuinely concerned that they would be asked to play what seemed to them an inappropriate part in the resolution of the internal affairs of Canada. The situation was a changing one, and might be affected by the terms of the report of the Select Committee, and by the judgment of the Manitoba Court. He suggested, and the High Commissioner readily agreed, that there should be a further informal meeting in about a fortnight's time.

Copied to: Mr Walden (Foreign and Commonwealth Office)
Mr Wright (Cabinet Office)
Mr Hyde
Mr Hastie-Smith
Mr Alexander (No 10)

FROM THE PRIVATE SECRETARY

Canada

HOUSE OF LORDS,
SW1A 0PW

26th January, 1981

Francis Richards Esq.,
Private Secretary to the
Secretary of State,
Foreign & Commonwealth Office,
Downing Street,
London, SW1.

NBPM

Rmk
- 26/1

Dear Francis,

Patriation of the Canadian Constitution

McKibben, the Agent-General for Alberta, spoke to me this morning. Mr. Peter Lougheed, the Premier of Alberta, will be visiting London from 3rd to 5th February, and would like to see the Lord Chancellor to seek his views on the patriation of the Canadian constitution. I gather that he will also be asking to see a Foreign and Commonwealth Office Minister, and the Chancellor of the Duchy of Lancaster.

McKibben told me emphatically that the Premier was not here to lobby, but to assess as accurately as he could the views of Ministers and the Parliamentary situation before a conference of state Premiers in mid February. He understands that principal responsibilities for the Canadian constitution, and the Parliamentary timetable, lie elsewhere.

The Lord Chancellor is willing to see Premier Lougheed, but only if Lord Carrington thinks it would be appropriate or helpful. I should be grateful if you could possibly advise us.

I am copying this letter to Michael Alexander (No. 10), Stephen Boys Smith (Home Office), Robin Birch (Chancellor of the Duchy), Murdo Maclean (Chief Whip), Jim Nursaw (Law Officers') and David Wright.

Yours sincerely,

Alistair Shaw

A.E. Shaw

CONFIDENTIAL

3719 - 1

OO OTTAWA

GRS 203
CONFIDENTIAL
FM FCO 231730Z JAN 81
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 20 OF 23 JANUARY

YOUR TELECON WITH BERTHOUD
MR PYM'S MEETING WITH THE CANADIAN HIGH COMMISSIONER TODAY.

You may like to read this in full & glance at the attachments. I confess to being a little bothered by the line Mr Pym has been taking since before Christmas: he seems creating the impression that we will not stay.

1. MR PYM'S OFFICE HAVE TOLD US THAT HE MADE IT VERY CLEAR TO THE HIGH COMMISSIONER THAT IF THE CANADIAN GOVERNMENT THOUGHT THEY WERE GOING TO GET THEIR PROPOSALS THROUGH THE UK PARLIAMENT DURING THIS SESSION THEY WOULD BE MISTAKEN. MR PYM SAID THAT IT WOULD ALSO NOT BECOME ANY EASIER WITH THE PASSING OF TIME IF THE PROPOSALS REMAINED IN THEIR PRESENT FORM AND THERE WAS NO WAY IN WHICH HE COULD GUARANTEE THAT THEY WOULD GET THROUGH PARLIAMENT.

?

2. MR PYM STRESSED THAT HMG'S OBJECT WAS TO MAINTAIN OUR GOOD RELATIONS WITH CANADA AND IT WAS REGRETTABLE THAT THEY MIGHT BE AFFECTED BY MR TRUDEAU'S PROPOSALS BUT THERE WAS NO HOPE THAT PARLIAMENT COULD BE SHANGHAIED.

3. ALTHOUGH MR PYM HAD TOLD MR TRUDEAU SOMETHING LIKE THIS DURING HIS VISIT IN DECEMBER HIS OFFICE THOUGHT THAT THE HIGH COMMISSIONER HAD NOT HEARD IT PUT IN SUCH STRONG TERMS BEFORE AND SHE COULD BE EXPECTED TO SEND A GLOOMY REPORT TO OTTAWA.

4. THESE COMMENTS ARE VERY MUCH OFF THE CUFF FROM MR PYM'S PRIVATE OFFICE: SO PLEASE TREAT WITH DISCRETION UNTIL FULL RECORD IS AVAILABLE.

CARRINGTON

LIMITED
NAD
NEWS DEPT
CCD
LEGAL ADVISERS (FOR SIR I SINCLAIR
MR FREELAND

COPIES TO
MR GARDINER, LEGAL ADVISERS

PS
PS/LPS
PS/MR RIDLEY
PS/MR BLAKER
PS/MR LUCE
PS/PUS

CONFIDENTIAL

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FM OTTAWA 231915Z JAN 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 27 OF 23 JANUARY

MY TELNO 26 (OF JAN 23)

CANADIAN CONSTITUTION

1. I CANNOT MYSELF REMEBER ANY SPECIFIC UNDERTAKING AT EITHER TRUDEAU'S MEETING WITH MRS THATCHER ON JUNE 25 OR AT HER OR LORD CARRINGTON'S MEETING WITH CANADIAN MINISTERS ON OCT 6 THAT HMG WOULD IMPOSE A THREE-LINE WHIP ON DISCUSSION AT WESTMINSTER OF A CANADIAN JOINT RESOLUTION. CANADIANS COULD, HOWEVER, HAVE REASONABLY ASSUMED THAT THE UNDERTAKINGS IMPLICIT IN WHAT THEY WERE TOLD IMPLIED ALSO SOME USE OF THE WHIP.

2. I CANNOT RECOLLECT THAT ANY MENTION OF A CHARTER OF RIGHTS WAS MADE ON JUNE 25. I BELIEVE IT WAS NOT. AT NO TIME WAS I WARNED IN AUGUST THAT A PATRIATION MEASURE WAS LIKELY TO BE COMPLICATED IN THAT WAY. THE FIRST OFFICIAL WARNING OF IT WAS WHEN CANADIAN OFFICIALS BROUGHT THE TEXT TO LONDON A FEW DAYS BEFORE ITS PUBLICATION HERE. ON OCT 6 MRS THATCHER CLEARLY EXPRESSED HER SUPRISE AT IT.

3. UNLESS POLITICALLY THERE IS NEED IN THE UK FOR MRS THATCHER PUBLICLY TO PUT THE RECORD STRAIGHT I BELIEVE THAT OUR BEST COURSE WILL REMAIN TO KEEP A LOW PROFILE, KEEP ALL OUR OPTIONS OPEN AND FOLLOW LINE SUGGESTED IN PARA 7 OF MY TELEGRAM NO 553 OF DEC 19.

4. IN MY LETTER 012/2 OF JAN 20 TO BERTHOUD (SENT BY BAG ON JAN 20) I CONCLUDED THAT IT IS STILL NOT CERTAIN THAT TRUDEAU WILL GET HIS WAY HERE. ON JAN 20 MR PRUD'HOMME, LIBERAL CHAIRMAN OF THE COMMONS STANDING COMMITTEE ON EXTERNAL AFFAIRS AND DEFENCE, TOLD ME THAT HE PERSONALLY HAD SERIOUS DOUBTS ABOUT WHAT TRUDEAU WAS DOING (RECORD OF TALKS LEAVES BY BAG TO-DAY). AT A DINNER ON JAN 21 MR MARCHAND, A FORMER CLOSE BUDDY OF TRUDEAU'S AND NOW SPEAKER OF THE SENATE, SAID THAT HE THOUGHT TRUDEAU WAS GOING

/ABOUT

ABOUT THINGS THE WRONG WAY AND RAISING ALL SORTS OF RESISTENCE. HE THOUGHT HE WOULD GET HIS WAY IN THE CANADIAN PARLIAMENT (BUT MARCHAND DID NOT SEEM TO SAY THIS WITH MUCH CONVICTION). AT THE MOMENT I SENSE THAT THE TIDE IS FLOWING AMONG THE PEOPLE IN CANADA AGAINST TRUDEAU AND THAT DOUBTS ARE INCREASING IN SOME MINDS IN THE LIBERAL CAUCUS, ALTHOUGH TRUDEAU STILL HAS IT UNDER CONTROL AND IS ACTING AS IF HE BELIEVES IT WILL REMAIN SO. IN THESE CIRCUMSTANCES IT WOULD SEEM IN OUR INTERESTS HERE FOR HMG IF POSSIBLE TO CONTINUE AVOIDING ENTRY INTO THE DEBATE.

5. THE ISSUE OF THE SELECT COMMITTEE REPORT WILL I ASSUME GET THE HEADLINES BOTH HERE AND IN LONDON. SIR ANTHONY KERSHAW'S SPEECH IN ALBERTA ON FEB 6 WILL GIVE AN EXCELLENT OPPORTUNITY FOR A NON-OFFICIAL SOURCE TO MASSAGE THE DOUBTS AND CONCERNS OF LIBERAL PARLIAMENTARIANS HERE. I REALISE THAT HE WILL WANT TO SPEAK FOR HIMSELF BUT I HAVE SUGGESTED IN MY LETTER Ø12/2 OF JAN 19 TO BERTHOUD A LINE IN WHICH HE COULD USEFULLY TAKE: AND I HOPE THAT THIS CAN BE PUT TO HIM.

FORD

LIMITED
NAD
CCD
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
SIR A ACLAND
MR URE

GRS 1120

UNCLASSIFIED
FM OTTAWA 231550Z JAN 81
TO IMMEDIATE FCO
TELEGRAM NUMBER 26 OF 23 JANUARY

CANADIAN CONSTITUTION

1. FOLLOWING IS TEXT OF MR TRUDEAU'S ANSWERS AT A PRESS CONFERENCE YESTERDAY.

2. IN ANSWER TO A QUESTION ABOUT PREMIER HATFIELD'S WARNING IN LONDON ABOUT THE CONSEQUENCES OF A FAILURE BY THE BRITISH PARLIAMENT TO ACT ON A CANADIAN REQUEST MR TRUDEAU SAID QUOTE-

I REALLY PREFER TO TALK TO MR HATFIELD ON THIS, BECAUSE AS I WAS SAYING A MOMENT AGO, HE WANTS TO SEE ME AND REPORT ON SOMETHING. BUT UNTIL I HAVE SPOKEN TO HIM, AND UNLESS HE MAKES ME CHANGE MY MIND, I CANNOT SUBSCRIBE TO THESE DIRE WARNINGS, FOR THE SIMPLE REASON THAT I HAVE THE PRIME MINISTER OF GREAT BRITAIN'S WORD THAT HER PARTY WOULD TAKE ANY RESOLUTION PRESENTED TO HER BY THE CANADIAN PARLIAMENT AS A GOVERNMENT MEASURE IN BRITAIN AND PUT A THREE-LINE WHIP ON IT.

I WILL SEE WHAT MR HATFIELD SAYS. I THINK HE IS SAYING NO MORE, AS I WAS SAYING A MOMENT AGO, THAN THAT THE BRITISH MPS HAVE BEEN LOBBIED BY PROVINCIAL SPOKESMEN, SOME OF WHOM WANT TO DESTROY CANADA -- THE SPOKESMAN FOR THE PROVINCE OF QUEBEC. AND THEY HAVE ALWAYS BEEN AGAINST THE MONARCHY. SO, I THINK THE BRITISH MPS SHOULD TAKE, WITH A BIT OF CAUTION, DEFENDERS OF THE SPIRIT OF FEDERALISM WHEN IT COMES TO PEOPLE WHO, AS RECENTLY AS SIX MONTHS AGO, TRIED TO DESTORY THAT FEDERAL SYSTEM. BUT WE WILL SEE WHAT MR HATFIELD HAS TO SAY.
UNQUOTE

3. IN ANSWER TO THE QUESTION QUOTE WHEN YOU GOT THE ASSURANCE FROM MRS THATCHER THAT THEY WOULD PUT A THREE-LINE WHIP ON THE RESOLUTION THIS SUMMER DID YOU TELL HER THAT IT WOULD BE COMING OVER WITH A CHARTER OF RIGHTS ATTACHED? UNQUOTE TRUDEAU REPLIED QUOTE-

ON YOUR QUESTION ABOUT WHAT MRS THATCHER KNEW, YOU MUST PUT YOURSELF IN THE CONTEXT -- I THINK THE ANSWER TO YOUR QUESTION IS ''YES'': BUT PUT YOURSELF IN THE CONTEXT OF WHAT STATE OF PLAY THE WHOLE BUSINESS WAS IN WHEN I SAW MRS THATCHER AT THE END OF JUNE LAST. I HAD JUST MET WITH THE PROVINCES: I HAD PROPOSED TO THEM WORK THROUGH THE WHOLE SUMMER ON A PACKAGE OF AMENDMENTS. I EXPLAINED TO MRS THATCHER, IN GENERAL TERMS, WHAT THIS PACKAGE COMPRISED, AND OF COURSE WITH INSISTENCE THAT, AS FAR AS WE WERE CONCERNED, THE PEOPLES' PACKAGE WAS THE ONE ON WHICH I WANTED ACTION BY SEPTEMBER AND THAT WE WOULD, AS SOON AS POSSIBLE AFTER SEPTEMBER, BE COMING TO HER FOR ACTION ON IT, AND THAT PEOPLES' PACKAGE, OF COURSE, INCLUDED PATRIATION, AN AMENDING FORMULA, AND THE CHARTER.

/BUT

BUT TO BE QUITE HONEST AND FAIR TO MRS THATCHER, I DID NOT ENVISAGE THEN THAT WE WOULD BE COMING TO HER WITHOUT THE SUPPORT OR CONSENSUS OF THE PROVINCES. I SAID, ''THIS IS WHAT WE ARE GOING TO BE DISCUSSING THIS SUMMER. WE HAD A MEETING AT THE BEGINNING OF JUNE AMONGST FIRST MINISTERS WHICH WAS NOT VERY SUCCESSFUL, BUT WE ARE GOING TO PUT IN A WHOLE SUMMER'S FULL OF WORK BETWEEN MINISTERS AND OFFICIALS AT A VERY INTENSIVE PACE, AND I HOPE TO COME TO YOU IN SEPTEMBER WITH A PACKAGE WHICH I HOPE YOU WILL PASS. BUT I WARN YOU'' -- AND THIS WAS QUITE CLEAR, OTHERWISE, THE POINT OF TALKING TO HER WOULD HAVE BEEN LOST — '' IT IS POSSIBLE THAT WE WILL NOT GET THE SUPPORT OF ALL THE PROVINCES, AND I WOULD LIKE TO KNOW FROM YOU IF YOU STILL SHARE THE VIEW, WHICH IS TRADITIONAL AT WESTMINSTER, THAT WHEN THE CANADIAN PARLIAMENT PRESENTS A RESOLUTION FOR CONSTITUTIONAL AMENDMENT, THAT THE BRITISH PARLIAMENT WILL ADOPT IT AS A GOVERNMENT MEASURE.'' AFTER HAVING SAID, '' I CANNOT GUARANTEE THAT THERE WILL BE UNANIMOUS CONSENT, BUT I CAN GUARANTEE THAT I AM DETERMINED TO PROCEED IN SEPTEMBER ON THE PEOPLES PACKAGE, '' WHICH I HAVE SAID PUBLICLY, WHICH I TOLD THE PREMIERS IN JUNE, AND SO ON, AND I TOLD HER. SO, THERE CAN BE NO DOUBT IN ANYONE'S MIND THAT THE BRITISH KNEW THE SCENARIOS WHICH MIGHT BE PLAYED OUT. I REPEAT, IN FARINESS, I WAS STILL HOPING THAT WE WOULD GET SOME CONSENSUS IN CANADA, IF NOT UNANIMITY, AND THEREFORE I DID NO PAINT THE BLEAKEST PICTURE, BUT I DID POINT OUT THAT IT WAS POSSIBLE THAT WE WOULD NOT GET THE SUPPORT OF ALL OR ANY OF THE PROVINCES AND, THEREFORE, I WAS ASKING HER WHAT HER ATTITUDE WOULD BE.

4. IN ANSWER TO THE QUESTIONS WHETHER HE WOULD CONSIDER SENDING A CABINET OFFICIAL OR HIMSELF GOING TO LOBBY WESTMINSTER TRUDEAU REPLIED QUOTE-

I HAVE CONSIDERED IT, AND I HONESTLY DO NOT THINK IT IS PROPER. I DO NOT THINK IT IS PROPER FOR MEMBERS OF THE CABINET IN CANADA TO GO AND LOBBY WHAT JAKE EPP CALLS GOVERNMENT. I AM SURPRISED THAT HE CALLED BRITAIN A FOREIGN GOVERNMENT, A FOREIGN COUNTRY. BUT I DO NOT THINK THAT IS THE WAY. IT SEEMS TO ME, AS A CANADIAN HEAD OF GOVERNMENT, THE WHOLE POINT OF DECOLONIZATION IS TO ESTABLISH THAT WE REALLY SHOULD NOT HAVE TO CONVINCE THE PRITISH GOVERNMENT. PRIVATELY I TALKED TO MRS THATCHER.
THERE IS A PARADOX THERE, BECAUSE OBVIOUSLY THE BRITISH PARLIAMENTARIAN, ACCORDING TO MR HATFIELD, IS MISINFORMED. HE IS BEING LOBBIED BY THE RIGHT PEOPLE. BUT YOU SEE THE PARADOX YOURSELF OF A SEPARATIST GOVERNMENT IN CANADA, IN QUEBEC, WHICH WANTS TO DESTROY CANADA AS ONE NATION, AND SEEKING INDEPENDENCE FOR THAT PROVINCE, IS OUT LOBBYING ANOTHER GOVERNMENT TO PROTECT IT FROM A GOVERNMENT IN OTTAWA WHICH ELECTS 74 OUT OF 75 SEATS FROM QUEBEC.

/SO.

SO , I DO NOT WANT TO ENTER INTO THAT KIND OF GAME, AND I THINK THE BRITISH UNDERSTAND IT. THERE WOULD BE CERTAINLY SOMETHING VERY COLONIAL, AND ANNOUNCED AS SUCH, IF I WENT OVER THERE AS THE PRIME MINISTER OF A SOVEREIGN COUNTRY TO BEG THE BRITISH PARLIAMENTARIANS TO COME TO MY SIDE. THAT IS WHY I HAVE ALWAYS HELD THAT THE BRITISH PARLIAMENTARIANS SHOULD NOT NOW, ANY MORE THAN THEY HAVE IN THE PAST, QUESTION THE WISDOM OF THE CANADIAN PARLIAMENT WHEN IT ASKS THEM TO PASS A LAW ENTRENCHING A RESOLUTION — OR, RATHER, LEGISLATING A RESOLUTION. IT IS NOT NEW. THERE HAVE BEEN, IN MANY OF THE AMENDMENTS PRESENTED TO WESTMINSTER, OCCASIONS WHEN PROVINCES OBJECTED, AND EACH TIME WESTMINSTER SAID, ''WELL, WE DONT WANT TO KNOW IF YOU ARE RIGHT ARE WRONG, BUT WE HAVE A RESOLUTION IN ITS CORRECT FORM FROM THE CANADIAN PARLIAMENT, AND WE MUST ACT ON IT.''

BECAUSE THERE CAN ONLY BE, SURELY, ONE GOVERNMENT SPOKESMAN FOR CANADA: THERE CANNOT BE ELEVEN. ELSE, WE ARE NOT ONE STATE. IT HAS ALWAYS BEEN THAT WAY INT THE PAST, AND I DO NOT SEE ANY REASON TO CHANGE NOW. THE LOBBYING IS MORE INTENSE NOW BECAUSE, I SUPPOSE, COMMUNICATIONS ARE EASIER: BUT WE ALL KNOW OF OCCASIONS IN THE LAST CENTURY AND IN THIS ONE WHEN PROVINCES SENT DELEGATIONS OVER TO WESTMINSTER TO GET THEM NOT TO ADOPT THE RESOLUTION, THE CONSTITUTIONAL AMENDMENTS PROPOSED BY THE CANADIAN PARLIAMENT.

IN A SENSE, IT HAS NEVER BEEN EASY FOR THE BRITISH, BECAUSE THEY HAVE ALWAYS HAD TO -- BUT, YOU KNOW, THE QUEBEC ACT WASN'T EASY EITHER: NOR WAS THE ROYAL PROCLAMATION OF '63: AND GOD KNOWS THE BNA ACT OF 1867 WASN'T EASY. CANADIANS TRIED TO HAMMER IT OUT OVER A PERIOD OF THREE YEARS AND THEN WENT OVER THERE.

SO , NOTHING IS EASY. THE ABOLITION OF SLAVERY IN THE UNITED STATES WASN'T EASY, BUT IT HAD TO BE DONE. I THINK THIS IS PEANUTS COMPARED TO WHAT HAD TO BE DONT THERE, AND THE METHODS WE ARE USING, SURELY, ARE MUCH MORE DEMOCRATIC AND PEACEFUL.

5. IN ANSWER TO A QUESTION TRUDEAU AFFIRMED THAT HE WOULD NOT PERMIT A FREE VOTE OF THE CANADIAN PARLIAMENT ON THE ISSUE.

FORD

FCO|WH

NAD

Canada

Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

19 January 1981

(2)

The Rt Hon The Lord Carrington KCMG MC
Secretary of State for Foreign & Commonwealth
Affairs
Downing Street
SW1A 2AL

Prime Minister.

The "as expeditiously as possible" formula leaves one a good deal of latitude: I still think that to start writing at (as opposed to thinking about) ideas like that at A below will cause a great deal of trouble. Sir R. Armstrong's letter (attached) suggests (see 'B' on page 2) that we may not for long have the cover of legal disagreement in Canada.

Dear Peter,

PATRIATION OF THE CANADIAN CONSTITUTION

As your officials know, Mrs Wadds, the Canadian High Commissioner, is coming to see me on Friday for a first discussion since I became Leader of the House of Commons. I have no doubt she will raise the problem of the Canadian constitutional issue. Your officials are very kindly providing briefing for that meeting.

I am, as my Private Secretary told your officials at the end of last week, anxious about our repetition, most recently in the briefing for the Prime Minister's Question Time on 15 January, of the pledge that when a request comes from the Canadian Federal Government "we shall try to deal with it as expeditiously as possible". As you know, my opinion is that we should secure for ourselves the maximum room for political manoeuvre in dealing with the Federal Government. This is not going to be easy in view of the commitments which the Prime Minister has made in public.

A

I know that you and your officials have been thinking hard about alternative courses of action. Doubtless these alternatives include the option of unilateral patriation of the Canadian Constitution, without a Bill of Rights but with provision for the amendment of their Constitution. I realise that there are considerable potential difficulties in the pursuit of such a line but it is an option we ought to explore fully, and prepare for.

I am sending a copy of this letter to the Prime Minister.

Yours ever
Francis

Francis Pym

This is a copy. The original has been extracted and closed, 40 years.
[signature]

CONFIDENTIAL

CABINET OFFICE

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref. A04008

16 January 1981

Patriation of the Canadian Constitution

~~ after consultation with Derek Day, I had a talk yesterday afternoon with Mr Richard Hatfield, the Premier of New Brunswick. Mr Hatfield is one of those provincial Premiers - I think there is only one other - that support the Canadian Government's proposals.

Mr Hatfield said that he had talked to both Members of the House of Commons and Members of the House of Lords and had been clearly given to understand that the draft Bill proposed by the Canadian Government could not be got through Parliament, in the present state of Parliamentary opinion. I said that I thought that the British Government's assessment was very similar and that Mr Trudeau was aware of that.

We had some discussion of the timing. I said that Mr Trudeau had hoped that the Bill could be passed and enacted by 1 July. Even assuming Parliamentary willingness to approve it, there would now be great difficulty in enacting the Bill by 1 July this year. The period from March to the end of July was already fully taken up with the Government's own legislative programme. The Canadian Bill would have to be taken in Committee of the whole House, as a constitutional measure, and could require up to 5 Parliamentary days in the House of Commons and as many or more in the House of Lords. Mr Hatfield said that he understood that the Bill might be unamendable in the House of Commons. I said that it might be, or might be able to be made, so; but it was not certain that the House of Commons could be prevented from removing whole clauses from the Bill, and it would in any case be amendable in the House of Lords, unless they could be persuaded not to amend it: there appeared to be no procedural means of making it unamendable.

/I asked

~ Passage deleted and closed (40 years) under FOI Exemptions

O Wayland
25 August 2011

G G H Walden Esq CMG

M Alexander Esq

CABINET OFFICE

With the compliments of

Sir Robert Armstrong KCB, CVO

Secretary of the Cabinet

70 Whitehall, London SW1A 2AS
Telephone: 01-233 8319

I asked Mr Hatfield how important the date of 1 July was. It had seemed to us that Mr Trudeau was very anxious to celebrate the 50th Anniversary of the Statute of Westminster by completing the final breaking of the link in time for a celebration on Canada day, 1 July. Was there any deeper reason for Mr Trudeau's urgency? Mr Hatfield obviously thought that in Canadian terms this process ought not to be allowed to drag on, but he thought that, if Mr Trudeau could be reasonably sure that the British Parliament would get the measure through in the 1981-82 session, he would in the end be prepared to wait.

Mr Hatfield asked whether I had any suggestions for things that ought to be done in the near future. I said that he would have become aware that those who were opposed to the Canadian Government's proposals were actively lobbying in this country with Parliament and other opinion, and it seemed as if the case for the Canadian Government's proposals was not being put over here. I thought that it would be useful if that case could be developed more positively. Mr Hatfield was obviously concerned about the effects on relations between this country and Canada, if the British Parliament failed to pass whatever measure was sent to it, and I said that I very much shared that concern; the problem was to make people aware of the concern without it appearing to take the form of a threat.

Mr Hatfield told me a number of other interesting things.

B

On the legal side, he said that the Supreme Court of Manitoba was expected to duck the issue, by finding that there was no legal question but only a political one, in which the Court had no locus. A case was also coming forward shortly in the Supreme Court of Quebec. Mr Hatfield was impressed with the skill with which the Quebec Government's case was being put, but he had been advised that the balance of probability was that the Quebec Court would find for the Federal Government. If it did so, Mr Hatfield thought that that might well be the end of the legal argument in Canada. These hearings were expected to take place within the next few weeks.

Mr Hatfield said that he saw no possibility of agreement among or with the provincial Premiers

Mr Hatfield said that the opposition to the Charter of Rights which was tagged on to the Patriation provisions was concentrated mainly on the language provisions. He said that the Parti Quebecquois objected to these proposals being introduced by way of legislation of the British Parliament introduced at the request of the Canadian Parliament: they wanted themselves to claim credit for any developments of this kind. This was one of the reasons why it was important to Mr Trudeau that the provisions should be introduced as a result of a resolution by Federal Government and dealt with through the appropriate constitutional channels.

/Mr Hatfield

Mr Hatfield told me about the results of a Gallup poll taken in December which had recently been announced. These showed that more than 60 per cent of those polled supported Patriation of the Canadian Constitution; but only 22 per cent supported the Canadian Government's proposals, including the Charter of Rights. The 22 per cent was an average over the whole of Canada, and the highest figure in any single province was 28 per cent. This poll would undoubtedly be a set-back to Mr Trudeau. Mr Hatfield very much doubted whether the Canadian Government would adopt what he called the referenda route, of which he himself was not in favour.

Mr Hatfield said that he would be in London again on 19 and 20 February and I said that if he should wish to be in touch again at that time I hoped he would let me know.

I am sending copies of this letter to Michael Alexander and Robin Birch.

ROBERT ARMSTRONG

(3)

CABINET OFFICE

With the compliments of

Sir Robert Armstrong KCB, CVO

Secretary of the Cabinet

M. O'D. B. Alexander, Esq

70 Whitehall, London SW1A 2AS
Telephone: 01-233 8319

Canada

CONFIDENTIAL

Mr Pitt 9/1

CABINET OFFICE

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

From the Secretary of the Cabinet: Sir Robert Armstrong KCB, CVO

Ref. A03938

8 January 1981

Patriation of the Canadian Constitution

Michael Pitfield, the Secretary to the Canadian Cabinet, is coming to see me here in London on Monday 26 January.

The declared purpose of his visit is to have informal discussions on the subjects to which the Canadian Government will have to address themselves when they receive (as they are about to do) the final Report of the McDonald Commission. This is a matter which I am pursuing separately with the Permanent Under-Secretary of State, and I do not need to trouble you with it. But Mr Pitfield was among those present when Mr Pym saw Mr Trudeau before Christmas; it seems possible that he may take the opportunity of his visit to me to revert to the subject of the patriation of the Canadian Constitution; and, even if he does not, his visit provides us with an opportunity to make any points which we might wish to make to someone who is known to be very close to Mr Trudeau's thinking on the matter.

I should be very grateful if I could be furnished with a defensive brief, against the possibility that Mr Pitfield may raise the matter when he comes; and, of course, with any indication of points which it is desired that I should make to him.

I am sending copies of this letter for information to Michael Alexander and Robin Birch.

ROBERT ARMSTRONG

G G H Walden Esq, CMG

Foreign and Commonwealth Office document

Reference DIPLOMATIC REPORT No. 7/81

Description Canada: Annual Review for 1980:

Trudeau resurrected and resurgent

Date 31 December 1980

The above FCO document, which was enclosed on this file has been removed and destroyed.

Such documents are the responsibility of the Foreign and Commonwealth Office. When released they are available in the appropriate FCO CLASSES.

Signed C Wayland Date 25 August 2011

PREM Records Team

cc Chief Whip's Office

2

01-405 7641 Ext.
Communications on this subject should be addressed to
LEGAL SECRETARY
ORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Canada

23 December, 1980

Prime Minister

A note of caution on the validity of the precedent argument.

MAP 29/XII

Michael Alexander, Esq.,
10 Downing Street,
London, SW1.

Dear Michael,

PATRIATION OF THE CANADIAN CONSTITUTION

I mentioned to you on the telephone a little while ago that the Attorney General was uneasy about the way in which we seemed to be getting into the position of resting our justification for eventually complying with a Canadian "request and consent" on the argument that precedent constrains us to do so. You said that it would be helpful if I let you have a brief explanation in writing of the basis for the Attorney General's unease. Here it is - and I have taken you at your word and kept it as brief as possible: I am sorry that I have not been able to let you have it before now.

I start by reminding you that, on one limited and temporary aspect of the problem, the Attorney General has already given his advice. This is whether it would be right to proceed to comply with a "request and consent" while the question whether it had been properly put to us was itself the subject of active litigation in the Canadian courts. In my letter to John Freeland of 12 November I reported the Attorney General's view that, while there would be no legal or technical bar to our doing so, considerations of propriety argue very strongly against it. This subsidiary aspect of the matter is not one where precedent can be prayed in aid, one way or the other: the only previous case in which there was litigation pending at the time we contemplated legislating was the Newfoundland case in 1949, but it was overwhelmingly clear in that case that the litigation was frivolous and vexatious and, since that cannot be said - at least at the present stage - of the litigation now pending in the Canadian courts, the 1949 case has no value as a precedent.

I should also remind you that, in the same letter to John Freeland, I made it clear (and I explained why) the Attorney General was not then purporting to express a considered view on the basic question whether - once the pending litigation has been disposed of - the U.K. Government should regard themselves as

/bound

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THE LEGAL SECRETARY
TO THE ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

bound, as a matter of law and/or constitutional convention, to comply with any "request and consent" that may be put forward by the Canadian Government, irrespective of the substance of what is asked for and irrespective of the attitude of the Provinces to it. In addition to the reasons which I indicated in that letter for the Attorney General's reluctance to commit himself yet to a firm view on that question, you will appreciate that the outcome of the present litigation may itself constitute a substantial factor in our approach to the eventual answer to the question - e.g., by amounting to a clear ruling that, as a matter of Canadian law or convention, the Provinces are not entitled to any say at all in relation to amendments to the BNAA of the sort now contemplated; or, conversely, by amounting to a clear ruling that a "request and consent" for such amendments is, again as a matter of Canadian law or convention, not properly made if it is opposed by some, or a majority, of the Provinces. Another possible outcome is that the Canadian courts will decline to rule at all on all or some of the questions put to them, in effect accepting the Federal Government's contention that these are non-justiciable questions. But even in this case they may express opinions which we have to take into account in deciding what we ourselves should do. One way or the other, we may find ourselves, after the litigation has run its course, squarely faced with the difficult question of what, in terms of intra-Commonwealth convention, the U.K. Government and Parliament ought to do when presented with a "request and consent" which has been authoritatively declared not to be properly made in terms of Canadian law or convention. Alternatively, the litigation may in the end conclusively establish that this is an unreal problem, at least in the present case. Or it may simply leave it uncertain, and still open to argument, whether the problem arises or not.

But all this must, for the time being, be pure speculation. I mention it simply to show that there are some extremely difficult questions of law on which Ministers may wish to obtain the Attorney General's views before finally deciding what to do but on which he is not yet in a position to give firm advice. My present concern is more limited. It is simply to point out, on the Attorney General's behalf that, whether or not he eventually advises that we are constrained by rules of law or constitutional convention to comply with the Federal Government's wishes and whether or not we choose to comply even if not so constrained, it is unsafe to argue now that we are constrained by precedent. In the pleadings which have so far been put forward by some of the Provinces in the Canadian courts, and in the memoranda which have been submitted to the Foreign Affairs Committee of our own House of Commons by a number of eminent constitutional lawyers in this country, the view has been forcefully expressed that, so far as the precedents go at all,

/they

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ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

they point in the opposite direction, i.e., in the sense of the Federal Government recognising (e.g., in their 1965 White Paper) and hitherto respecting an obligation to consult and carry the Provinces with them before pressing a request for an amendment of the BNAA which vitally affects the Federal/Provincial relationship. The Attorney General has not seen all the material that has been produced or cited to the Canadian courts or to the Foreign Affairs Committee - still less has he had a chance to form a considered view on it - but his initial reaction is that the argument which I have just described is persuasive and may well commend itself to both those audiences as establishing that precedent is on the side of the Provinces. Putting the matter at its lowest, no convincing example has been cited of a precedent pointing the other way, i.e., a precedent for the U.K. Government and Parliament acting on a request and consent by the Canadian Government and Parliament for an amendment which went (as in the instant case) to the very heart of the Federal/Provincial relationship and which was bitterly opposed by the majority of the Provinces.

This, in a nutshell, is why the Attorney General considers that, whatever reasons we may assign, now or in the future, for accommodating the Federal Government, we should be on very shaky ground if we relied simply on precedent.

To avoid any misunderstanding, I add that the Attorney General is well aware that the legal considerations (including the force of precedent) are not the beginning and the end of the matter and that there are also important policy considerations which have to be taken into account in deciding whether or not to do as Mr. Trudeau asks if he persists with his request. The Attorney General's only concern is that, whatever his colleagues' decision may be, they should not put themselves in a false tactical position by relying heavily on precedent when their opponents may be able to make out a convincing case - perhaps supported by the judgments that may by then have been given in the Canadian courts - that there are no precedents in point or even that the precedents go the other way.

I am copying this letter only to John Freeland in the F.C.O. but I would have no objection to you or him sending copies to anybody else who might find it useful.

Yours ever,

Henry

(H. Steel)

CONFIDENTIAL

File
cc LOD
CO
FCO
MOD
OLC

Canada

cc. chief whip's office

10 DOWNING STREET

From the Private Secretary

23 December 1980

Dear Paul

Patriation of the Canadian Constitution

During a meeting to discuss other matters yesterday afternoon, the Defence Secretary took the opportunity to report to the Prime Minister and the Foreign and Commonwealth Secretary about his talk with Mr. Trudeau in Ottawa on 19 December. Since both the Prime Minister and Lord Carrington had seen the reporting telegrams on Ottawa, Mr. Pym did not rehearse his discussion with the Canadian Prime Minister in detail.

Mr. Pym said that, in his view, Mr. Trudeau was determined to resolve Canada's constitutional problems, as he saw them, and was not very interested in the problems to which this might give rise for the British Government. He had little room for manoeuvre. He could not, for instance, drop the so-called Charter of Rights. He had a majority in the Federal Parliament and intended to use it to force the legislation through. He would probably need to use the guillotine but expected to be in a position to forward his request to Westminster in March.

Mr. Pym said that, given the difficulties that the Government would face in both the House of Commons and the House of Lords, we ought to be thinking of shifting our ground. We should perhaps be saying that we would have to wait for the decision of the Canadian Supreme Court. The Foreign and Commonwealth Secretary pointed out that this might take a year to be forthcoming. We should therefore be giving more thought to the possibility of patriating the Constitution unilaterally with an amending clause but without the Charter of Rights.

In further discussion it was agreed that Mr. Trudeau probably underestimated the difficulties he was going to face in the Provinces. It was by no means certain that he would be able to hold the country together. Nonetheless there was no foreseeable likelihood of his Party splitting. The problem would therefore probably be thrown into Westminster at some stage in the spring. For the moment the Government had little choice but to await developments. However we should be thinking both of ways to maximise our room for manoeuvre and of the need to protect ourselves against accusations of residual colonialism.

/I am

CONFIDENTIAL

I am sending copies of this letter to Brian Norbury (Ministry of Defence), Robin Birch (Chancellor of the Duchy of Lancaster's Office), Michael Collon (Lord Chancellor's Office), Jim Nursaw (Law Officers' Department) and David Wright (Cabinet Office).

Yours ever

Michael Alexander

Paul Lever, Esq.,
Foreign and Commonwealth Office.

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NOTE FOR THE RECORD

RECORD OF A MEETING BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND MR MARK MACGUIGAN THE CANADIAN SECRETARY OF STATE FOR EXTERNAL AFFAIRS AT THE DEPARTMENT OF EXTERNAL AFFAIRS OTTAWA AT 1500 ON FRIDAY 19TH DECEMBER 1980

Present:

The Rt Hon Francis Pym MC MP
Secretary of State for Defence

Mr J R Freeland
Second Legal Adviser, FCO

Mr B M Norbury
PS/Secretary of State

The Hon Mark MacGuigan
Secretary of State for External Affairs

Mr L Legault

Mr G Anderson

Mr F Gibson

Miss C Anderson

1. The Secretary of State said that he had spent an interesting day on Thursday at National Defence Headquarters. He had explained to the Canadian Defence Minister then, and wanted to re-emphasise now, the importance the United Kingdom attached to the NATO aim of a real increase in defence expenditure of 3% a year. The threat was becoming greater and it was important for the Allies to hold together. The United Kingdom hoped to do a little more outside the NATO area, in support of the United States and this in its turn required greater Alliance effort within Europe. He had explained in Brussels in the previous week the United Kingdom Government's view that a fresh look at NATO needed to be taken to ensure that, in the very changed circumstances since the Alliance was founded, we were getting the best value for money. It was significant that NATO as an Alliance was spending more on defence than the Warsaw Pact and yet did not seem to be getting so much out of it.

2. Mr MacGuigan agreed that it did not feel that we were doing this; there seemed to be some dispersal of effort. But he hoped that the Alliance would become more united under the new American leadership. So far as out-of-area activities were concerned the Canadians planned to do more in the West Indies, for example by helping with police

training, in part as a counter-weight to the British process of disengagement in the region. He thought that United Kingdom's military commitment to Belize might need to remain for a period after independence.

3. Mr MacGuigan enquired how the Secretary of State's lunch with Mr Trudeau had gone.

4. The Secretary of State said that they had been able to have a good discussion and that he had been able to make clear to the Prime Minister the very real difficulties with which the present Canadian proposals would present the British Government in the Westminster Parliament, and his extreme concern about going ahead with a real possibility of failure. Both Houses were at present reluctant to contemplate doing what, particularly in relation to the Charter of Rights, they thought it was for Canadians to do; they were also hesitant about taking action on proposals which were under legal challenge in Canada.

5. Mr MacGuigan commented that Mr Pym had a very good sense of the British House of Commons so that Mr Trudeau and he had to take what he said about the Westminster Parliament very seriously. But the Canadian Government attached very great importance to the Charter of Rights, more indeed than to patriation in itself. The Charter was the key element. The objection from the Provinces was not so much on substance but to the whole process by which the opportunity to argue with the Federal government about the constitution would be removed from them. The Federal Government's motives were political and there was no bargain for them to strike with the Provinces. The unanimity rule had always previously defeated Federal/Provincial agreement on constitutional changes.

6. The Secretary of State said that the problem was not what the British Government thought but what the British Parliament thought: it would be clear to Parliament that Canada should have her constitution patriated, and with an amendment formula, but not that they should involve themselves further in Canadian business. The whole matter needed to be taken very slowly if the proposals were not to be defeated at Westminster, with what he considered would be very serious consequences indeed. There were strong arguments in favour of the Canadian government's proposals, and their striving for national unity, but these arguments had not yet been presented in Britain.

7. Mr MacGuigan said that the Manitoban court should have reached a judgement by the end of January; he wondered whether a decision in the Federal Government's favour would incluence British Parliamentary opinion. Lord Carrington had told him in Brussels that the resolution of the legal position would make a big difference.

8. The Secretary of State said that this would be a great help but would not in itself ensure success. If the judgement went against the Government how long would the Supreme Court take to reach a judgement if the Federal Government appealed to it?

9. Mr MacGuigan said that the Federal Government were reluctant to seek a judgement at this juncture from the Supreme Court since they believed that the questions raised were political and not legal. If they were forced subsequently to make an appeal this would have to be very broad based so as to preempt all other possible Provincial actions and it could take a year for the Supreme Court to make its judgement. Mr Legault confirmed this.

10. The Secretary of State suggested that the two Governments should work closely together on public presentation if the Canadian government decided to go ahead, but he still considered that a lot of time would be needed; it was only very recently indeed that the British government had been acquainted with the full range of the proposals; and despite the assurances the Canadian Government had received from the then Leader of the Opposition and the Liberal Leader he did not believe that they could necessarily deliver their members. And there would also be very considerable difficulties in the House of Lords. The Select Committee's report was unlikely to be helpful. The issues were daily reported in the British press. He was in Ottawa to make the problems absolutely clear.

11. Mr MacGuigan suggested that the two Governments should consult again once the Manitoba Court had made its judgement. (Mr Legault interjected that this might very well not be a black and white one, nor a unanimous one.) Once a formal approach had been made to the British Government it would be possible for the British Government to argue positively in favour of taking the action the Federal Government wanted and this should, as in the case of the Newfoundland precedent, have a significant effect on Parliamentary opinion.

12. The Secretary of State doubted this; we were now living in a different day and age. A firm British Cabinet statement would be important but he did not think that it would take the trick. He hoped the Canadian Government now realised, if they had not fully realised before, how very difficult indeed it would prove for the British Government to get the Canadian proposals through. The Government could propose, but Parliament disposed.

13. The meeting concluded at about 4.00pm.

Ministry of Defence

22nd December 1980

DISTRIBUTION:

M O'D B Alexander Esq: No 10 Downing Street
G G H Walden Esq: Foreign and Commonwealth Office
D M Day Esq CMG: Foreign and Commonwealth Office

Sir John Ford KCMG MC, British High Commissioner, Ottawa

The National Archives

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1.

Commander

SECRET
DESKBY 220900Z
FM OTTAWA 201615Z DEC 80
TO IMMEDIATE FCO
TELEGRAM NUMBER 553 OF 20 DECEMBER
INFO IMMEDIATE MOD(FOR SECRETARY OF STATE)

MY TELEGRAM NOS 551 AND 552 (OF DEC 19)
CANADIAN CONSTITUTION.

1. THE FOLLOWING THOUGHTS SET DOWN WHILE REFLECTING ON MY LAST CONVERSATION WITH MR PYM MAY BE HELPFUL TO YOU IN CONSIDERING OUR BEST COURSE OF ACTION OVER THE COMING MONTHS.

2. TRUDEAU IS SHOWING A STEELY DETERMINATION TO PRESS ON REGARDLESS OF CONSEQUENCES FOR HMG AND IS EVIDENTLY READY TO EXPLOIT TO HIS ADVANTAGE ANY OBSTRUCTION BY THE UK PARLIAMENT.

3. IF, REPEAT IF, IT IS CLEAR THAT UK PARLIAMENT WILL NOT DO WHAT HE WANTS ANGLO-CANADIAN GOVERNMENT RELATIONS ARE IN FOR A BRUISING WHICH NO ATTEMPTS TO APPEASE HIM BEFOREHAND WILL DIMINISH.

4. ALL IS NOT CLEAR RUNNING ON HIS HOME FRONT. HIS ECONOMIC PROBLEMS ARE INCREASING AND THE PUBLIC'S PERCEPTION THAT HE HAS HIS EYE ON THE WRONG BALL IS LIKELY TO GROW. THE MANITOBA APPEAL COURT MAY GIVE A JUDGEMENT AGAINST HIM IN JANUARY. THE PROVINCIAL PREMIERS, PERHAPS WITH SOME SUPPORT FROM ONTARIO, MAY COME UP WITH A NEW INITIATION OVER PATRIATION AND AN AMENDING FORMULA WHICH WOULD GAIN OBVIOUS PUBLIC SUPPORT AND MAKE IT MORE DIFFICULT FOR HIM TO CONFUSE IN THE PUBLIC'S MIND THE TWO ISSUES OF PATRIATION AND A BILL OF RIGHTS. THE NDP PARTY ARE BECOMING SO CRITICAL OF TRUDEAU'S ECONOMIC POLICY THAT THEY MAY YET RAT ON HIM ON THE CONSTITUTIONAL FRONT. ON THE OVERSEAS FRONT HIS ENERGY POLICY IS NOT POPULAR WITH THE USA AND EEC: HE IS AT ODDS WITH FRANCE OVER QUEBEC: AT ODDS WITH THE EEC AND USA OVER HIS INWARD INVESTMENT AND FIRA POLICIES, AND HIS IDEAS ON THE NORTH-SOUTH ISSUE MAY NOT COINCIDE WITH OUR, FRANCE'S, GERMANY'S OR THE USA'S. HIS RELATIONS WITH MR REAGAN MAY NOT BE EASY.

5. WE SHOULD NOT LET MENTION BY TRUDEAU OF ISSUES SUCH AS THE RETENTION OF THE MONARCHY, UDI AND THE NEXT COMMONWEALTH PRIME MINISTERS' CONFERENCE DISTRACT US FROM A COLD EXAMINATION OF OUR AND HIS INTERESTS. ACTION AGAINST UK INVESTMENTS IN CANADA WOULD HAVE A DEPLORABLE EFFECT ON OTHER FOREGN INVESTORS, PARTICULARLY AMERICAN. THE CANADIANS ARE INCREASING THEIR STAKE IN THE NORTH SEA, AND WE BUY MUCH MORE FROM THEM THAN THEY FROM US. WE HAVE AN ESSENTIAL ROLE TO PLAY IN THE JULY SUMMIT.

/6. IF WE

6. IF WE ANTICIPATE A BATTLE, WE SHOULD PREPARE THE GROUND BEFOREHAND AND HOPE BY OUR STEELINESS OF PURPOSE AT BEST TO DETER TRUDEAU (WHICH MAY NOT BE POSSIBLE) AND AT LEAST TO DIMINISH HIS CHANCES OF PROFITING BY IT.

7. THIS SUGGESTS THAT IT WILL BE TO OUR ADVANTAGE TO PREVARICATE WHILE THE ISSUE IS SUB JUDICE AND TO GIVE HIS OPPOSITION WHAT GRIST WE CAN WITHOUT LAYING OURSELVES OBVIOUSLY OPEN TO THE CHARGE OF INTERFERENCE IN CANADIAN AFFAIRS: AND THAT WE SHOULD MAKE IT ABUNDANTLY CLEAR TO THE CANADIANS (WITHOUT ANY INDICATION THAT THERE IS ANY CONNECTION WITH THE CONSTITUTIONAL ISSUE) THAT WE HAVE INTERESTS ON OTHER FRONTS THAT WE ARE GOING TO START PUSHING, EG OVER ENERGY, FIRA, CANADIANISATION AND NORTH SOUTH DIALOGUE, IN CONJUNCTION WITH THE USA AND OUR EEC PARTNERS. WE SHOULD ALSO DO ALL WE CAN THROUGH PQ'S PUBLICITY, SPEECHES ETC WHICH CAN BE PICKED UP IN CANADA TO UNDERLINE THAT WE ARE NOT COLONIALIST AND THAT PARLIAMENTARY WORRIES IN THE UK ARE ABOUT TRUDEAU'S ATTEMPTS TO FORCE US TO BE SO BY IMPOSING ON CANADA WHAT CANADIANS DO NOT WANT TO DO FOR THEMSELVES: AND BY CHANGING A CONSTITUTION UNDER WHICH THE CANDIAN CONFEDERATION HAS PROSPERED FOR MORE THAN A CENTURY.

FORD

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LIMITED

NAD
CCD
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
SIR A ACLAND
MR HARDING

GRS 215
CONFIDENTIAL
DESKBY 200900Z
FM OTTAWA 192152Z DEC 80
TO IMMEDIATE FCO
TELEGRAM NUMBER 551 OF 19DECEMBER

FOR PRIME MINISTER FROM SECRETARY OF STATE FOR DEFENCE

1. I HAD A USEFUL DISCUSSION WITH TRUDEAU OVER LUNCH TO-DAY. AFTER EMPHASISING THAT YOU AND MINISTERS STOOD BY THEIR PREVIOUS UNDERTAKINGS AND WANTED TO DO WHAT THE CANADIAN GOVT AND PARLIAMENT WANTED, I DESCRIBED THE LIKELY PARLIAMENTARY DIFFICULTIES ON THE LINES WE AGREED AND URGED ON TRUDEAU THE NEED TO TAKE THE ISSUE SLOWLY SO AS TO HELP US CONDITION PARLIAMENT TO ACQUIESCE.

2. TRUDEAU WAS CLEARLY UNWILLING TO ACCEPT THAT DELAY WOULD IN FACT LEAD TO GREATER CHANCES OF ACCEPTANCE, UNDERLINED THE CONSTITUTIONAL SIGNIFICANCE AND URGENCY OF WHAT HE WAS PROPOSING AND INDICATED HIS DETERMINATION TO PRESS ON WITH A VIEW TO GETTING THE RESOLUTION TO WESTMINSTER IN MARCH AND TO HAVING IT ACCEPTED OR REJECTED IN THE CURRENT PARLIAMENTARY SESSION. HE MADE IT CLEAR THAT IN THE EVENT OF REJECTION HE WOULD APPEAL TO PUBLIC OPINION IN BOTH BRITAIN AND CANADA AGAINST THE OBSTRUCTION OF BACKBENCHERS AT WESTMINSTER BUT LEFT UNDISCLOSED WHAT FURTHER ACTION HE WOULD TAKE.

3. THE DISCUSSION WAS FRIENDLY. I LEFT IT THAT I WOULD REPORT TO YOU AND MY COLLEAGUES AND THAT WE WOULD CONSIDER WHAT FURTHER STEPS WE COULD TAKE TO IMPROVE THE CLIMATE AT WESTMINSTER AND THAT WE WOULD GET IN TOUCH WITH HIM AGAIN.

4. A FULLER REPORT IS CONTAINED IN MY IMMEDIATELY FOLLOWING TELEGRAM.

FORD

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PS
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MR HARDING

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PS/S OF S FOR DEFENCE

8170 - 1

OO OTTAWA

GRS 709

CONFIDENTIAL
FM FCO 181330Z DEC 80
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 425 OF 18 DECEMBER

FOLLOWING FOR DAY AND NORBURY.

1. YOU MAY LIKE TO HAVE WITH YOU THE TEXT OF MICHAEL ALEXANDER'S LETTER OF 17 DECEMBER TO BRIAN NORBURY ON MR PYM'S CALL ON THE PRIME MINISTER BEFORE HE LEFT FOR OTTAWA, AS FOLLOWS :

QUOTE

THE SECRETARY OF STATE FOR DEFENCE CALLED ON THE PRIME MINISTER THIS MONG TO DISCUSS THE LINE HE WILL TAKE WITH MR TRUDEAU ON FRIDAY 19 DECEMBER AT THEIR MEETING.

MR PYM TOLD THE PRIME MINISTER THAT IN HIS VIEW A BILL FOR THE PATRIATION OF THE CANADIAN CONSTITUTION WOULD, IF THE CANADIAN GOVERNMENT DID NOT MODIFY THEIR REQUEST, GET THROUGH NEITHER THE HOUSE OF COMMONS NOR THE HOUSE OF LORDS. THE MORE MEMBERS OF PARLIAMENT WENT INTO THE MATTER, THE LESS THEY LIKED IT. THE FOREIGN AFFAIRS COMMITTEE WERE LIKELY TO REPORT UNANIMOUSLY AGAINST THE LEGALITY OF THE CANADIAN PROPOSAL. THE GROUP SET UP BY MR AITKEN AND MR FOULKES WOULD ALSO BE HOSTILE. THE OPPOSITION WOULD BE UNHELPFUL IF ONLY BECAUSE THEY SAW AN OPPORTUNITY TO MAKE TIMETABLE DIFFICULTIES FOR THE GOVERNMENT. IT WOULD NOT, IN MR PYM'S VIEW, BE POSSIBLE TO GET AWAY WITH A SINGLE VOTE ON THE MEASURE. THE CHIEF WHIP AND MR RIDLEY BOTH SHARED HIS VIEW ABOUT THE SITUATION IN THE HOUSE OF COMMONS. THE LORD PRESIDENT AND THE FOREIGN AND COMMONWEALTH SECRETARY DID NOT THINK THE HOUSE OF LORDS WOULD AGREE TO PASSAGE OF THE NECESSARY LEGISLATION IN PRESENT CIRCUMSTANCES.

MR PYM SAID THAT HIS MESSAGE TO MR TRUDEAU WOULD THEREFORE BE THAT, WHILE HMG WERE ABSOLUTELY BEHIND HIM, THE LEGISLATION WHICH HE WAS ASKING TO HAVE PASSED THROUGH THE WESTMINSTER PARLIA-

MENT WOULD BE HIGHLY CONTROVERSIAL. EITHER MR TRUDEAU SHOULD RECONSIDER THE SUBSTANCE OF THE REQUEST, EG DROP THE BILL OF RIGHTS AND ASK ONLY FOR PATRIATION WITH AMENDING POWERS, OR THE BRITISH GOVERNMENT WOULD HAVE TO BE GIVEN ADDITIONAL TIME TO GET THE MEASURE THROUGH. HIS INTENTION WOULD BE TO ENCOURAGE MR TRUDEAU TO THINK MORE SERIOUSLY ABOUT WHAT THE CANADIAN GOVERNMENT COULD DO TO HELP OVERCOME THE EVIDENT DIFFICULTIES AT WESTMINSTER. HMG MUT NOT GET INTO A POSITION WHERE THEY ATTEMPTED TO PASS LEGISLATION ON BEHALF OF THE CANADIAN GOVERNMENT AND FAILED BECAUSE OF OPPOSITION IN THE CONSERVATIVE PARTY. MR PYM SAID THAT HE BELIEVED THAT WITH TIME IT SHOULD BE POSSIBLE TO MEET THE CANADIAN GOVERNMENT'S REQUEST BUT THAT THERE WAS NO CHANCE OF GETTING IT THROUGH BY 1 JULY AS MR TRUDEAU HOPED - THE MORE SO SINCE THERE SEEMED LIKELY TO BE CONSIDERABLE DELAY BEFORE THE FORMAL REQUEST WAS RECEIVED.

THE PRIME MINISTER SAID THAT MR P'S COMMENTARY WOULD COME AS A CONSIDERABLE SURPRISE TO MR TRUDEAU. IF THE MESSAGE WAS CONVEYED TOO STARKLY, THERE WOULD BE A REAL RISK OF AN EXPLOSION ON THE CANADIAN PRIME MINISTER'S PART WITH ALL THE CONSEQUENCES THAT THIS MIGHT HAVE FOR ANGLO-CANADIAN RELATIONS, FOR THE QUEEN'S POSITION, AND FOR CANADA'S MEMBERSHIP OF THE COMMONWEALTH. MR PYM SHOULD THEREFORE NOT TELL MR TRUDEAU THAT THAT THERE WAS QUOTE NO HOPE UNQUOTE OF MEETING HIS REQUEST. HE SHOULD TAKE THE LINE THAT HE WISHED TO SHARE HIS CONCERN WITH MR TRUDEAU AND EXPLAIN THE DIFFICULTIES LIKELY TO BE ENCOUNTERED. HE SHOULD SAY THAT THE MORE THE PROBLEMS IN CANADA, EG WITH THE SUPREME COURT, HAD BEEN CLEARED UP, THE EASIER IT WOULD BE HERE. MR PYM SHOULD ALSO EXPLAIN THE DIFFICULTIES WHICH HAD ARISEN WITH A FOREIGN AFFAIRS COMMITTEE WHICH HAD ONLY JUST BEEN ESTABLISHED, AND WAS DETERMINED TO EXERCISE ITS NEW FOUND POWERS.

THE PRIME MINISTER SAID THAT SHE CONTINUED TO FEEL STRONGLY THAT THE UNITED KINGDOM GOVERNMENT COULD NOT QUOTE LOOK THROUGH UNQUOTE THE CANADIAN GOVERNMENT'S REQUEST. WE HAD TO DO OUR BEST TO MEET IT. HMG SHOULD GIVE POLITICAL ADVICE RATHER THAN LEGAL ADVICE TO PARLIAMENT. THE SITUATION WOULD OF COURSE BE DIFFERENT IF THE CANADIAN SUPREME COURT SAID THAT MR TRUDEAU WAS ACTING

ULTRA VIRES. MR PYM SAID THAT THERE SEEMED TO BE A 50-50 CHANCE THAT THE SUPREME COURT WOULD TAKE THIS VIEW.

MR PYM AGREED ABOUT THE NEED TO TAKE MR TRUDEAU THROUGH THE PROBLEMS AS GENTLY AS POSSIBLE. BUT IT WOULD BE WRONG TO DISGUISE FROM MR TRUDEAU THAT IT WAS QUOTE EXTREMELY UNLIKELY UNQUOTE THAT THE LEGISLATION, IF SUBMITTED AS AT PRESENT ENVISAGED, WOULD GO THROUGH.

END QUOTE

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cc Master

10 DOWNING STREET

From the Private Secretary

17 December 1980

Dear Brian,

Patriation of the Canadian Constitution: Visit to Canada by Mr. Pym

The Secretary of State for Defence called on the Prime Minister this morning to discuss the line he will take with Mr. Trudeau on Friday 19 December at their meeting.

Mr. Pym told the Prime Minister that in his view a Bill for the Patriation of the Canadian Constitution would, if the Canadian Government did not modify their request, get through neither the House of Commons nor the House of Lords. The more Members of Parliament went into the matter, the less they liked it. The Foreign Affairs Committee were likely to report unanimously against the legality of the Canadian proposal. The group set up by Mr. Aitken and Mr. Foulkes would also be hostile. The Opposition would be unhelpful if only because they saw an opportunity to make timetable difficulties for the Government. It would not, in Mr. Pym's view, be possible to get away with a single vote on the measure. The Chief Whip and Mr. Ridley both shared his view about the situation in the House of Commons. The Lord President and the Foreign and Commonwealth Secretary did not think the House of Lords would agree to passage of the necessary legislation in present circumstances.

Mr. Pym said that his message to Mr. Trudeau would therefore be that, while HMG were absolutely behind him, the legislation which he was asking to have passed through the Westminster Parliament would be highly controversial. Either Mr. Trudeau should reconsider the substance of the request, eg drop the Bill of Rights and ask only for patriation with amending powers, or the British Government would have to be given additional time to get the measure through. His intention would be to encourage Mr. Trudeau to think more seriously about what the Canadian Government could do to help overcome the evident difficulties at Westminster. HMG must not get into a position where they attempted to pass legislation on behalf of the Canadian Government, and failed because of opposition in the Conservative Party. Mr. Pym said that he believed that with time it should be possible to meet the Canadian Government's request but that there was no chance of getting it through by 1 July as Mr. Trudeau hoped - the more so since there seemed likely to be a considerable delay before the formal request was received.

/ The Prime Minister

The Prime Minister said that Mr. Pym's commentary would come as a considerable surprise to Mr. Trudeau. If the message was conveyed too starkly, there would be a real risk of an explosion on the Canadian Prime Minister's part with all the consequences that this might have for Anglo-Canadian relations, for The Queen's position, and for Canada's membership of the Commonwealth. Mr. Pym should therefore not tell Mr. Trudeau that there was "no hope" of meeting his request. He should take the line that he wished to share his concern with Mr. Trudeau and explain the difficulties likely to be encountered. He should say that the more the problems in Canada, eg with the Supreme Court, had been cleared up, the easier it would be here. Mr. Pym should also explain the difficulties which had arisen with a Foreign Affairs Committee which had only just been established, and was determined to exercise its new found powers.

The Prime Minister said that she continued to feel strongly the the United Kingdom Government could not "look through" the Canadian Government's request. We had to do our best to meet it. HMG should give political advice rather than legal advice to Parliament. The situation would of course be different if the Canadian Supreme Court said that Mr. Trudeau was acting ultra vires. Mr. Pym said that there seemed to be a 50-50 chance that the Supreme Court would take this view.

Mr. Pym agreed about the need to take Mr. Trudeau through the problems as gently as possible. But it would be wrong to disguise from Mr. Trudeau that it was "extremely unlikely" that the legislation, if submitted as at present envisaged, would go through.

I am sending copies of this letter to George Walden (Foreign and Commonwealth Office), Murdo Maclean (Chief Whip's Office), Robin Birch (Office of the Chancellor of the Duchy of Lancaster), Jim Buckley (Lord President's Office), and David Wright (Cabinet Office).

Yours sincerely

Michael Alexander

Brian Norbury Esq
Ministry of Defence.

NRMM

File

10 DOWNING STREET

From the Private Secretary

16 December 1980

I enclose a copy of a letter which the Prime Minister has received from the Prime Minister of Canada about the Defence Secretary's visit to Ottawa later this week. The letter does not seem to call for a substantive reply but Mr. Pym will no doubt wish to mention to Mr. Trudeau that it has been safely received.

I am sending a copy of this letter and enclosure to Paul Lever (Foreign and Commonwealth Office).

M. O'D. B. ALEXANDER

Brian Norbury, Esq.,
Ministry of Defence.

86

Foreign and Commonwealth Office

London SW1A 2AH

16 December 1980

Dear Michael,

Patriation of the Canadian Constitution:

Visit to Canada by Mr Pym

You asked for a note to bring you up to date prior to the Prime Minister's meeting with Mr Pym tomorrow.

In Canada, there have been no significant new developments. The Joint Parliamentary Committee examining the Federal constitutional proposals was due to report on 9 December. The reporting date has now been postponed to 6 February. This seems to have been largely the result of the queue of people (some 400 bodies or individuals) who wanted to give evidence to the Committee. This postponement, following Mr Trudeau's earlier guillotining of the parliamentary debate on the Federal proposals, has been interpreted as a set-back for the Canadian Prime Minister. So has the result of a recent Gallup poll, showing that 58% of those asked disapproved of Mr Trudeau's 'unilateral' constitutional action.

Court proceedings in the first of the Provinces tackling the Federal proposals have now begun in Manitoba. The court is expected to produce an opinion in the course of January. Two other provincial courts (Quebec and Newfoundland) are expected to embark on proceedings before long; but the whole process of provincial court hearings, if pursued to the full extent, could take several months.

The Canadian Secretary of State for External Affairs, Mr MacGuigan, told Lord Carrington at the NATO meeting in Brussels that some modification of the constitutional proposals could be expected. This would take account of some of the Provinces' complaints. Later discussions with the Canadians has made it clear however that these amendments will not remove the central objections of a majority of the opposing provinces.

/In

In Britain the House of Commons Foreign Affairs Committee has completed its proceedings and is expected to report between 15 and 20 January. The Chief Whip has quoted Mr Kershaw as saying that he believes the report will say that we cannot do what Mr Trudeau wants under law.

Meanwhile, an All Party Group on the Canadian Constitution under the chairmanship of Mr Foulkes and Mr Aitken has been formed to look at the constitutional issue. Its general line seems to favour the provincial case against the Federal Government's proposals. The same appears to go for the Commonwealth Parliamentary Association, who were recently addressed by the Canadian High Commissioner, Mrs Wadds.

Mr Pym will therefore be going to Canada at a time when opposition in Canada to Mr Trudeau's proposals seems as deep-seated as ever, while in Britain the provincial case appears to have been accepted by the Foreign Affairs Committee and a significant number of parliamentarians from both parties.

Yours ever

Paul

(P Lever)
Private Secretary

M O'D B Alexander Esq
10 Downing St

SUBJECT

c/ Master Ops

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T 241B/80

PRIME MINISTER • PREMIER MINISTRE
OTTAWA

December 11, 1980

Dear Margaret.

Thank you very much for your message last week suggesting that Francis Pym come to Ottawa to carry on our dialogue on the Constitution. I very much appreciate your acting in this way. As you will have heard, I would be happy to receive Mr. Pym on December 19th at ~~3 p.m.~~ lunch. I understand that he has already seen our Minister of Defence, Gilles Lamontagne, in Brussels and that they are agreed on the basic approach to the visit. As well, our officials have, as you proposed to me, agreed on a press line.

I was particularly pleased that your message made it clear that there has been no change in your Government's position from our understandings last June or from those received by Mark MacGuigan and John Roberts in September. You are well aware of the fundamental priority my Government attaches to these constitutional measures and of our concern to achieve this step in Canadian history as quickly as possible. I was also gratified to learn of your answers during Question Period yesterday, December 9, in which you made it clear that you are committed to following precedent and giving effect to the Canadian measure as expeditiously as possible.

The Right Honourable M. Thatcher
Prime Minister of the United Kingdom

I am sure we shall both be pleased when this exercise is over. It is my hope that the way in which we manage the ending of this last constitutional link between our two Parliaments will serve to reinforce the great ties of friendship between our peoples and governments.

Yours sincerely,

P.S. Thanks also for to-day's note expressing approval for my message to Brezhnev. As you know, I believe we should attempt to make consultation in such matters the rule rather than the exception. Best wishes.

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TO PRIORITY FCO

TELEGRAM NUMBER 536 OF 10 DECEMBER

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A potentially serious problem.

MT.

MY TWO MIPTS

CANADIAN ENERGY POLICY

1. NO MAJOR STEPS HAVE SO FAR BEEN TAKEN IN PURSUIT OF CANADIANIZATION OF THE INDUSTRY. BUT BRITISH INTERESTS (CHIEFLY BP, SHELL AND ULTRAMAR) HAVE NO REASON TO BE COMPLACENT ABOUT THEIR FUTURE, EITHER IN PURELY COMMERCIAL TERMS OR THEIR VULNERABILITY TO TAKE-OVER. I AM MOST CONCERNED ABOUT BP.

2. I WAS DISAPPOINTED THAT BP DID NOT CALL ON THIS OFFICE DURING THEIR RECENT HIGH LEVEL VISIT TO CANADA BUT I HAVE SINCE SPOKEN TO THE CHAIRMAN OF BP (CANADA) WHO TELLS ME THAT BP BELIEVE, BECAUSE OF THE CONSTITUTIONAL ISSUE, THEY WOULD NOT BE A TARGET FOR TAKE-OVER OR NATIONALIZATION. I DOUBT THIS. BECAUSE OF ITS MIX OF ASSETS, BP IS AN ATTRACTIVE COMPANY FOR PETROCANADA TO ADD TO ITS PORTFOLIO. THERE IS THE ADDITIONAL FACTOR THAT THE CANADIANS HAVE ALREADY TOLD THE AMERICANS HERE THAT A NON-AMERICAN COMPANY WOULD BE AMONG THE FIRST TO BE TAKEN OVER IN ORDER TO DEMONSTRATE THAT THE CANADIANIZATION POLICY WAS NOT DIRECTED AGAINST US INTERESTS. THUS BP MAY WELL BE A TARGET FOR COMMERCIAL TAKE-OVER.

3. IT CAN RESIST THIS, IF IT WISHES. BUT THERE IS ALSO THE POSSIBILITY THAT IF WE DID NOT RESPOND QUICKLY OR AS TRUDEAU WISHED ON THE CONSTITUTION, TRUDEAU WOULD SEEK TO RETALIATE. THE NATIONALIZATION OF BP CANADA WOULD BE ONE WAY. I CERTAINLY ATTACH NO CREDENCE TO THE VIEW RECENTLY EXPRESSED TO ME BY COHEN (DEPUTY MINISTER EM AND R) THAT THE CANADIANS WERE REALLY AFTER US COMPANIES. SEE PARA 2 ABOVE.

4. I BELIEVE THERE ARE THREE AREAS IN WHICH WE SHOULD TAKE ACTION SWIFTLY:

A) WE SHOULD ENSURE THAT BP IN LONDON UNDERSTAND THE VULNERABILITY OF THEIR POSITION, AS I VIEW IT, AND STRESS TO THEM THAT THEY SHOULD URGENTLY SEEK TO STRENGTHEN THEIR POSITION HERE. MUCH THE BEST WAY OF DOING THIS WOULD BE BY SOME ASSOCIATION OF THE MAIN SUBSIDIARY (IN WHICH THERE IS ALREADY CANADIAN EQUITY PARTICIPATION) WITH A TRULY CANADIAN COMPANY, SO THAT ANY TAKE-OVER OR, WORSE, NATIONALIZATION, WOULD BE SEEN AS AN ATTACK ON CANADIAN INTERESTS. AN ALBERTAN COMPANY MIGHT BE THE BEST BUTTRESS, SINCE AN ATTACK ON BP COULD THEN BE INTERPRETED AS A FURTHER FEDERAL ATTACK ON THE WEST.

B) THE MAJOR COMPANIES ARE INHIBITED FROM COLLABORATION AGAINST THE GOVERNMENT BY ANTITRUST LEGISLATION. IT IS MORE THAN EVER IMPORTANT THEREFORE THAT THEIR PARENT NATIONAL GOVERNMENTS SHOULD COORDINATE THE DEFENCE OF THEIR INTERESTS IN CANADA THROUGH COLLECTIVE ACTION IN THE IEA, THE OECD AND WHERE POSSIBLE THE GATT. APART FROM THE US (WHICH IS ALREADY ACTIVE) THE GOVERNMENTS MOST IMMEDIATELY CONCERNED ARE OURSELVES, FRANCE, BELGIUM AND THE NETHERLANDS. THE GERMANS (ALREADY CONCERNED OVER FOREIGN INVESTMENT RESTRICTIONS) WOULD PROBABLY OFFER SUPPORT.

C) I STRONGLY RECOMMEND THAT MRS WADDS SHOULD BE CALLED IN AND TOLD OF OUR ANXIETY AT THE NEW POLICY, PARTICULARLY BECAUSE OF ITS CONFLICT WITH CANADA'S INTERNATIONAL OBLIGATIONS BUT ALSO BECAUSE OF ITS OVERT DISCRIMINATION AGAINST AND THREAT TO UK INVESTMENTS.

5. I BELIEVE THAT THE CANADIANS WILL ONLY RESPOND TO REAL MEASURES OR THEIR THREAT. THEIR CURRENT PERFORMANCE SEEMS TO MAKE NONSENSE OF THEIR COMMITMENTS AT THE BONN AND VENICE SUMMITS AND WOULD SEEM INCOMPATIBLE WITH THEIR PARTICIPATION IN ANY FURTHER MEANINGFUL STATEMENT ON OIL PRICE OR SUPPLY AT THE OTTAWA SUMMIT NEXT YEAR. TRUDEAU OBVIOUSLY WANTS TO CUT A PRETTY CAPER NEXT JULY AND SOME INDICATION THAT THE CONTINUATION OF HIS PRESENT ENERGY POLICIES WOULD PREJUDICE HIS ABILITY TO DO SO, MIGHT CARRY WEIGHT WITH HIM. THIS MAY BE TRUDEAU'S MOST VULNERABLE SPOT AND, I SUGGEST THAT WAYS OF ATTACKING IT SHOULD BE CONSIDERED. UNFORTUNATELY CANADIAN COMMERCIAL INTERESTS IN THE UK DO NOT LEND THEMSELVES TO RETALIATION IN THE EVENT OF ACTION AGAINST BP. INDEED THOSE IN THE NORTH SEA ARE, WITH THE EXCEPTION OF THOMSON, ALL INDEPENDENT WESTERN CANADIAN INTERESTS, WHOSE SUPPORT WE PRESENTLY ENJOY IN OPPOSING THE NEW FEDERAL POLICY.

FCO PSE PASS SAVING TO UKDEL OECD

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cc to Mini Ab file.

Canada

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1
Telephone 01-930 7822 218 2111/3

MO 14/6

10th December 1980

1) MOD(B)A
2) MOD

DM has already approved. Note for weekly list

Dear George,

PATRIATION OF THE CANADIAN CONSTITUTION

Further to my letter to you of 4th December, and the message that was subsequently delivered in Ottawa, I should confirm that my Secretary of State will be leaving for Ottawa next Wednesday 17th December, returning on Friday 19th December.

As regards publicity for the visit, Mr Pym had a word in Brussels this morning with the Canadian Defence Minister and they agreed that the Canadians should issue in Ottawa today the Press Release proposed in Ottawa telegram 529 of 9th December with the deletion of one word in the second paragraph. The Release they agreed is at Annex to this letter and we shall be issuing a similar Release once it is confirmed that the Canadian Release has been made. The two Ministers agreed that, if the question arose, authorities in both countries should confirm that patriation of the Canadian constitution might be one of the subjects discussed between Mr Trudeau and Mr Pym, but that they should not be drawn further.

I understand FCO briefing is in hand and I have already had helpful advice from the Cabinet Office; Mr Pym is considering whether he should, as FCO have advised, take two officials with him to Ottawa (we have made provisional commercial bookings).

I assume that the FCO will meet the costs of my Secretary of State's mission and S9(Air) here will be sending a bill for the air fares to Finance Department in due course.

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G G H Walden Esq

I am sending copies of this letter to Michael Alexander (No 10), Miles Wickstead (Lord Privy Seal's Office), Jim Buckley (Civil Service Department), Robin Birch (Chancellor of the Duchy's Office), Jim Nursaw (Law Officers Department), Murdo MacLean (Chief Whip's Office) and David Wright (Cabinet Office). Copies also go to Martin Berthoud, Head of North American Department and Richard Hastie-Smith (Cabinet Office).

Yours ever
Bill

(B M NORBURY)

ANNEX

The Minister of National Defence, the Hon Gilles Lamontagne, is very pleased to announce that his British colleague, the Rt Hon Francis Pym, Secretary of State for Defence, will make an official visit to Canada on December 18th and 19th. Mr Pym will thus be honouring an outstanding invitation which has existed since Mr Pym was obliged to postpone a planned visit in July 1979.

While in Ottawa, Mr Pym will also pay calls on Prime Minister Trudeau and the Secretary of State for External Affairs, Mr MacGuigan.

cc to Mrs Atkinson

(2)

Prime Minister

Mr Harding

VISIT BY MR PYM TO CANADA.

The Canadian High Commission have just telephoned to say that Mr Trudeau will be pleased to receive Mr Pym at 3.00 pm on Friday, 19 December. A formal reply from Mr Trudeau to Mrs Thatcher's message will follow shortly.

2. The Canadians are anxious that the visit should take the form of a routine one at the invitation of Mr Pym's opposite number, Mr Lamontagne. They agree with us that no announcement should be made, at least until near to the date of Mr Pym's departure. I am working out the details of our press line with those concerned.

Martin Berthoud

M S Berthoud
North America Department

9 December 1980

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PS/Mr Pym
Mr Hastie-Smith Cabinet Office
Mr Steel, Law Officers Dept
Mr Legg, Lord Chancellor's Office

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TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 406 OF 5 DECEMBER

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T235A/80

MIPT.
FOLLOWING IS TEXT OF MESSAGE FROM THE PRIME MINISTER FOR DELIVERY TO MR TRUDEAU.
QUOTE
FOLLOWING OUR MEETING IN JUNE, YOU WERE GOOD ENOUGH TO SEND TWO OF YOUR COLLEAGUES, YOUR SECRETARY OF STATE FOR EXTERNAL AFFAIRS MR MARK MACGUIGAN AND MINISTER OF STATE FOR SCIENCE AND TECHNOLOGY AND MINISTER OF THE ENVIRONMENT, MR JOHN ROBERTS, TO SEE ME IN SEPTEMBER. I FOUND IT MOST USEFUL TO BE BROUGHT UP TO DATE IN THIS WAY WITH THE PROGRESS YOU ARE MAKING ON THE CONSTITUTIONAL ISSUE.

TAKING A LEAF OUT OF YOUR BOOK, I WOULD LIKE TO SUGGEST A VISIT TO OTTAWA BY THE SECRETARY OF STATE FOR DEFENCE, FRANCIS PYM, AS A CONTINUATION OF OUR DIALOGUE. IF IT WAS CONVENIENT TO YOU, HE COULD SEE YOU ON 18 OR 19 DECEMBER. I SHOULD SAY AT ONCE THAT THERE HAS BEEN NO CHANGE IN OUR POLICY SINCE I SAW YOU IN JUNE AND WE HAD THE FURTHER DISCUSSIONS IN SEPTEMBER. THERE ARE, HOWEVER, POINTS BEARING ON TIMING AT THIS END WHICH CAN, I BELIEVE, BE MOST USEFULLY EXPLAINED TO YOU AT FIRST HAND. NO DOUBT MR PYM WOULD ALSO BE ABLE TO CALL ON HIS OPPOSITE NUMBER, MR LAMONTAGNE, AS WELL PERHAPS AS ON MR MACGUIGAN.

PERHAPS I SHOULD ADD THAT I ASKED MR PYM TO VISIT YOU NOT ONLY FOR HIS SENIORITY IN THE CABINET BUT ALSO BECAUSE OF HIS DEEP EXPERIENCE OF OUR PARLIAMENTARY AFFAIRS (PARTICULARLY AS CHIEF WHIP).

IT WILL PROBABLY BE IMPOSSIBLE TO AVOID PUBLICITY FOR MR PYM'S VISIT. IT WILL CLEARLY BE IMPORTANT THAT YOUR PEOPLE AND MINE SHOULD WORK OUT A MUTUALLY ACCEPTABLE FORMULA FOR USE WITH THE PRESS.

I VERY MUCH HOPE THAT YOU WILL WELCOME THIS PROPOSED VISIT.
I LOOK FORWARD TO HEARING FROM YOU.
WITH MY BEST WISHES MEANWHILE.
SQUARE BRACKETS MARGARET THATCHER SQUARE BRACKETS
END QUOTE

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TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 405 OF 5 DECEMBER

PATRIATION : MESSAGE FOR MR TRUDEAU.

1. IN CONSIDERING THE CANADIAN CONSTITUTION RECENTLY, MINISTERS DECIDED THAT A PERSONAL MESSAGE SHOULD BE SENT TO MR TRUDEAU TO MAKE IT CLEAR THAT, WHILE THE UK WAS FIRMLY COMMITTED IN PRINCIPLE TO INTRODUCE IN THE WESTMINSTER PARLIAMENT WHATEVER MEASURE WAS REQUESTED BY THE CANADIAN GOVERNMENT AND PARLIAMENT, THE PASSAGE OF THE BILL AT WESTMINSTER WOULD BE VERY GREATLY EASED AND SPEEDED UP IF THE REQUEST COULD BE DELAYED UNTIL THE SUPREME COURT OF CANADA HAD ADVISED THAT IT WAS INTRA VIRES IN CANADIAN LAW.

2. THE NEWS THAT THE REPORTING DATE OF THE CANADIAN JOINT PARLIAMENTARY COMMITTEE STUDYING THE FEDERAL CONSTITUTIONAL PROPOSALS HAS BEEN DELAYED UNTIL 6 FEBRUARY ALSO MEANS THAT IT WILL PROBABLY BE DESIRABLE, IN THE MESSAGE TO MR TRUDEAU, TO MAKE IT CLEAR TO HIM THE DIFFICULTIES WHICH THIS WILL POSE IN TERMS OF THE PROGRAMME OF THIS SESSION OF PARLIAMENT.

3. THE PRIME MINISTER HAS THEREFORE DECIDED TO SEND MR TRUDEAU THE MESSAGE IN MIFT. YOU WILL SEE FROM THIS THAT IT IS THOUGHT THE MATTER IS OF SUFFICIENT IMPORTANCE TO JUSTIFY THE DESPATCH OF A SENIOR MEMBER OF THE CABINET (MR PYM) TO DELIVER A MESSAGE CONTAINING THE ELEMENTS WHICH I HAVE INDICATED ABOVE TO MR TRUDEAU.

4. THE PRECISE TERMS OF THE MESSAGE TO BE CARRIED BY MR PYM HAVE NOT YET BEEN WORKED OUT. IT WOULD ANYWAY DETRACT FROM ITS IMPACT IF YOU WERE TO ANTICIPATE ITS CONTENTS IN ANY DISCUSSION, FOR INSTANCE, WITH THE DEPARTMENT OF EXTERNAL AFFAIRS. I WOULD THEREFORE BE GRATEFUL IF YOU COULD SIMPLY CAUSE THE MESSAGE IN MIFT TO BE DELIVERED TO MR TRUDEAU AS SOON AS POSSIBLE, WITHOUT ADDING ANY GLOSS OF YOUR OWN.

5. ON TIMING, MR PYM WOULD PLAN TO FLY TO CANADA ON 17 DECEMBER AND TO TALK TO MR TRUDEAU ON THE 18TH OR 19TH. YOU WILL DOUBTLESS BE ABLE TO ADVISE US IN DUE COURSE WHETHER A SINGLE DAY WOULD BE SUFFICIENT. AND WHETHER ADDITIONAL MEETINGS, BEYOND THOSE ENVISAGED IN THE MESSAGE, WOULD BE DESIRABLE. IF THESE DATES ARE NOT CONVENIENT TO MR TRUDEAU, PLEASE LET ME KNOW AND PROVIDE ALTERNATIVE DATES WHICH WOULD SUIT THE CANADIANS THEREAFTER.

6. MR PYM WOULD PROBABLY BE ACCOMPANIED BY AN UNDER SECRETARY AND ONE OFMMY LEGAL ADVISERS.

7. THERE IS CLEARLY A RISK OF THE CANADIAN PUBLIC MISUNDERSTANDING THE PURPOSE OF MR PYM'S VISIT. THIS WILL BE MINIMISED IF THERE IS NO PREMATURE PUBLICITY AND IF, WHEN THE MOMENT COMES FOR AN ANNOUNCEMENT, ITS SUBSTANCE IS CAREFULLY CO-ORDINATED BETWEEN OURSELVES AND THE CANADIANS. FURTHER INSTRUCTIONS WILL FOLLOW ON THIS POINT: MEANWHILE, YOU SHOULD STRESS TO THE DEA THE IMPORTANCE WE ATTACH TO THIS ASPECT.

8. MR PYM WILL BE MEETING HIS CANADIAN OPPOSITE NUMBER, MR LAMONTAGNE, AT THE NATO MINISTERIAL MEETING IN BRUSSELS ON 9 DECEMBER. HE WILL TAKE THE OPPORTUNITY OF MENTIONING THE POSSIBILITY OF HIS VISIT TO HIM, BUT IN THE STRICTEST CONFIDENCE. FOR THIS AND OTHER REASONS, IT IS IMPORTANT THAT I SHOULD KNOW AS SOON AS POSSIBLE OF MR TRUDEAU'S RESPONSE TO THE PRIME MINISTER'S MESSAGE.

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MR PARRY)

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PS/NO. 10 D.S.
PS/S OF S DEFENCE
PS/CHANCELLOR OF DUCHY OF LANCASTER

CONFIDENTIAL

R H

Canada

5 December, 1980

BF for tel to 'T'

Patriation of the Canadian Constitution

As I have already told you on the telephone, the Prime Minister has seen and approved the draft message enclosed with your letter to me of 3 December on this subject.

I am sending copies of this letter to Brian Norbury (Ministry of Defence) and David Wright (Cabinet Office).

M. O'D. B. ALEXANDER

Sir

G G H Walden, Esq
Foreign and Commonwealth Office

CONFIDENTIAL

cc to Mins Abs. file.

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1
Telephone 01-~~930 7022~~ 218 2111/3

MO 14/6

4th December 1980

Mr Alexander
4 Dec

Dear George,

We spoke yesterday evening about the mission my Secretary of State is prepared to undertake at the request of the Foreign and Commonwealth Secretary, if the Prime Minister so approves.

I understand that it is desired that Mr Pym should make his visit before Christmas. He realises that the timing must depend essentially on when he would be welcome, but the constraints on his diary this month are acute and he has asked that our High Commissioner be advised that what would best suit him would be to leave London on Wednesday 17th December returning to London the following weekend. I do not know whether this could be suggested to the host Government?

I am sending copies of this letter to Michael Alexander (No 10) and Derek Day (FCO).

Yours ever
Brian

(B M NORBURY)

G G H Walden Esq

Foreign and Commonwealth Office

London SW1A 2AH

Prime Minister (1)

Agree draft message?

3 December 1980

Yes mt

Dear Clive,

Patriation of the Canadian Constitution

Thank you for your letter of 28 November about the message to be conveyed to Mr Trudeau and the question of who the most appropriate emissary would be.

As agreed, Lord Carrington has had a preliminary word with Mr Pym, who has agreed to take this on. Mr Pym will do his best to get to Canada before Christmas.

There remains the danger that Mr Trudeau's first reaction on being asked to receive a special emissary of this kind would be to suspect that we were about to go back on our commitments. It is clearly important that we should reassure him on this point in our preliminary message. I attach a suggested message bearing this point in mind. If you agree with it, we will arrange for the High Commissioner, Sir John Ford, to deliver it as soon as possible.

I am copying this letter to Brian Norbury in Mr Pym's office, and to David Wright at the Cabinet Office.

Yours ever

(G G H Walden)

C Whitmore Esq
10 Downing Street

SUGGESTED MESSAGE FROM THE PRIME MINISTER TO MR TRUDEAU

Following our meeting in June, you were good enough to send two of your colleagues, your Secretary of State for External Affairs, Mr Mark MacGuigan, and Minister of State for Science and Technology and Minister of the Environment, Mr John Roberts, to see me in September. I found it most useful to be brought up to date in this way with the progress you are making on the constitutional issue.

Taking a leaf out of your book, I would like to suggest a visit to Ottawa by the Secretary of State for Defence, Francis Pym, as a continuation of our dialogue. He would be able to come at a date convenient to yourself between ... and ... December. I should say at once that there has been no change in our policy since I saw you in June and we had the further discussions in September. There are, however, points bearing on timing at this end which can, I believe, be most usefully explained to you at first hand. No doubt Mr Pym would also be able to call on his opposite number, Mr Lamontagne, as well perhaps as on Mr MacGuigan.

Perhaps I should add that I have asked Mr Pym to visit you not only for his seniority in the Cabinet but also because of his deep experience of our parliamentary affairs (particularly as Chief Whip).

It will probably be impossible to avoid publicity for Mr Pym's visit. It will clearly be important that your people and mine should work out a mutually acceptable formula for use with the press.

I very much hope that you will welcome this proposed visit. I look forward to hearing from you.

With my best wishes meanwhile

[Margaret Thatcher]

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CONFIDENTIAL

Canada

SIR ROBERT ARMSTRONG

PATRIATION OF CANADIAN CONSTITUTION

The Prime Minister was grateful for your minute A03684 of 28 November 1980 about the emissary to be sent to Mr. Trudeau about the Patriation of the Canadian Constitution.

When she discussed this with Lord Carrington and you on Friday evening it was decided, as is recorded in my letter of 28 November to George Walden, that the best person to undertake this mission was Mr. Pym. An alternative might be Sir John Johnston, our former High Commissioner in Ottawa.

C. A. WHITMORE

2 December 1980

CONFIDENTIAL

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Francis Pym is trying for the Foreign Secretaryship. Prime Minister.

MT

28xi

Ref. A03684

MR. WHITMORE

Patriation of Canadian Constitution

The Cabinet yesterday decided that an emissary should be sent across to Mr. Trudeau.

2. We discussed this briefly with the Prime Minister yesterday. If the emissary is to go direct to Mr. Trudeau, he will have to be a Cabinet Minister. We thought that the Foreign and Commonwealth Secretary himself would be too grand and too visible, and that the Lord Privy Seal would not be the right person. We thought that the Secretary of State for Defence might be a suitable candidate. If the Prime Minister is still of this mind, I think that it would be useful if she could mention it to the Foreign and Commonwealth Secretary when she sees him this afternoon.

3. The alternative would be to send an emissary to one of Mr. Trudeau's close advisers. The obvious person here is Mr. Michael Pitfield, the Secretary of the Cabinet. He has had close contacts with a succession of his opposite numbers here. We could once again task Lord Hunt of Tanworth to go to Ottawa; or I could go myself.

4. I am due to see the Canadian Personal Representative in Paris the week after next; but I do not think that he is the right contact for this purpose.

RTA

ROBERT ARMSTRONG

28th November, 1980

CONFIDENTIAL

CONFIDENTIAL

JS
cc CO

10 DOWNING STREET

From the Principal Private Secretary

28 November 1980

PATRIATION OF THE CANADIAN CONSTITUTION

The Prime Minister and the Foreign and Commonwealth Secretary had a brief word this evening about the decision reached by Cabinet yesterday that a personal message should be conveyed to Mr. Trudeau which would make it clear to him that while the Government was committed in principle to introducing in the Westminster Parliament whatever measure was requested by the Canadian Government and Parliament, the passage of the Bill at Westminster would be considerably eased if the request could be delayed until the Supreme Court of Canada had advised that it was intra vires in Canadian law. Sir Robert Armstrong was also present.

Lord Carrington said that he had not yet made up his mind who the most appropriate emissary would be. If we sent a Cabinet Minister, the Canadians might interpret this as meaning that we were trying to back out of the undertakings we had already given to them. On the other hand, if we sent a lesser figure, Mr. Trudeau might decline to see him.

After a short discussion, it was agreed that the Foreign and Commonwealth Secretary would consider further the suggestion that Mr. Pym might be asked to go to see Mr. Trudeau. If he concluded that it was appropriate for the Defence Secretary to undertake this mission, he would have a word with him. One advantage of sending Mr. Pym was that his visit could be given a defence flavour. If, for whatever reason, Mr. Pym did not act as the emissary, one possible alternative was Sir John Johnston, our former High Commissioner in Ottawa.

I am sending a copy of this letter to David Wright (Cabinet Office).

C. A. WHITMORE

G.G.H. Walden, Esq.,
Foreign and Commonwealth Office.

Gouvernement du Québec
Délégation générale
Londres

THE CANADIAN CONSTITUTION

Background Brief No 2 -
Comments by politicians and media - Canada and UK

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> "Federalism is by its very essence a compromise and a pact. It is a compromise in the sense that when national consensus on all things is not desirable or cannot readily obtain, the area of concensus is reduced in order that consensus on some things be reached. It is a pact or quasi-treaty, in the sense that the terms of that compromise cannot be changed unilaterally. That is not to say that the terms are fixed forever; but only that in changing them, every effort must be made not to destroy the consensus on which the federated nation rests."

MR PIERRE TRUDEAU
("The Future of Canadian Federalism"
Crepeau and Macpherson, ed.,
University of Toronto Press, 1965, p24)

For further information please contact:

Roger Langlois (01) 629 4155

12 Upper Grosvenor Street, London, W1X 9PA, England
Telephone : 01-629 4155 Telex : 261618

POLITICIANS COMMENTS (HISTORICAL)

THE EARL OF CARNARVON, at Westminster (Ref: The Parliamentary Debates, 30 Victoria 1867, Vol. CLXXXV p. 558, Annexe G):

> "To those resolutions all the British Provinces in North America were, as I have said, consenting parties, and the measure founded upon them must be accepted as a treaty of union."

WINSTON CHURCHILL, Under Secretary of State for the Colonies, at Westminster (Ref: The Parliamentary Debates, 7 Edward VII, Vol. CLXXV 1907 p. 1617, Annexe I):

> "On the other hand, he would be very sorry if it were thought that the action which His Majesty's Government had decided to take meant that they had decided to establish as a precedent that whenever there was a difference on a constitutional question between the Federal Government and one of the provinces, the Imperial Government would always be prepared to accept the Federal point of view as against the provincial."

WINSTON CHURCHILL, Under Secretary of State for the Colonies, at Westminster (Ref: The Parliamentary Debates, 7 Edward VII Vol. CLXXV 1907 p. 753, Annexe F):

> "The British North America Act is the fundamental Act governing the Constitution of the Dominion of Canada, and the different Prime Ministers of

Canada voluntarily entered into that union. Adherence to the union was something in the nature of a treaty, and when an alteration in the basis of the treaty is made, as it is by the revised schedule of subventions proposed, it was felt desirable by all the Prime Ministers in conference that such a matter should be ratified by the Imperial Parliament in the most formal way."

MR ERNEST LAPOINTE, Attorney-General, (Debates of the The House of Commons of Dominion of Canada Vol. LXXXIX 1906-7 p. 2199):

"I repeat, Mr Speaker, that if the British North America Act is a covenant, is of the nature of a treaty the provisions of which were essential for the acceptance of the whole scheme, have we the right to ask to be enabled to alter it without the consent of those who were parties to the agreement?"

MR ERNEST LAPOINTE, Attorney-General, (Debates of The House of Commons of Dominion of Canada Vol. 1 1925 p. 298) quoted Sir John Mcdonald (who was to move the adoption of confederation) as having said:

" - the Government desired to say that they presented the scheme as a whole, and they would exert all the influence they could bring to bear in the way of argument to induce the House to adopt the scheme without alteration, and for the simple reason that the scheme was not one framed by the Government of Canada or by the Government of Nova Scotia, but was in the nature of a

> treaty settled between the different colonies, each clause of which had been fully discussed and which had been agreed to by a system of mutual compromise."

Mr Lapointe went on to point out that after moving the adoption, Sir John said:

> "I trust the scheme will be assented to as a whole. I am sure this House will not seek to alter it in its unimportant details; and, if altered in any important provisions, the result must be that the whole will be set aside, and we must begin de novo. If any important changes are made, everyone of the colonies will feel itself absolved from the implied obligation to deal with it as a treaty, each province will feel itself at liberty to amend it ad libitum so as to suit its own views and interests: in fact, the whole of our labours will have been for naught, and we will have to renew our negotiations with all the colonies for the purpose of establishing some new scheme."

THE RIGHT HON. W.L. MACKENZIE KING, Prime Minister of Canada, (Debates of the House of Commons of Dominion of Canada Vol. 1 1925):

> "All of the particular phase of the question was so fully and conclusively argued by the Minister of Justice yesterday that this House, I believe, is practically unanimously of the view that if an amendment of the kind is to be sought, due regard should be had to

> the view that a compact was made at the time of confederation, and that an amendment of the importance that such an amendment certainly would have, ought only to be proposed after there had been a conference and agreement between the Dominion and the provinces."

RIGHT HON. SIR WILFRID LAURIER, Prime Minister of Canada, (Debates of the House of Commons of the Dominion of Canada Vol. LXXXIX 1906-7 p. 2199):

> "Such a course might be followed by very serious consequences. Confederation is a compact, made originally by four provinces, but adhered to by all the nine provinces who have entered it, and I submit to the judgement of this House and to the best consideration of its members, that this compact should not be lightly altered. It should be altered only for adequate cause, and after the provinces themselves have had an opportunity to pass judgement on the same. My hon. friend from York, N.B., (Mr Crocket) stated in the course of his argument that we have announced in the speech from the Throne that we are going to ask parliament to alter the financial terms of confederation. That is very true; but my hon. friend should know that we did not come to that conclusion except after conference with the provinces and after all the provincial governments had united in a prayer for the same."

LOUIS S. ST. LAURENT, Prime Minister of Canada, in a letter dated September 14, 1949, to the Premiers of all the provinces (extract):

> "I stated also that it was the intention of the government, after the election, to consult the provincial governments with a view to working out a method of amending the constitution in Canada, which would be satisfactory to all Canadians.
>
> My colleagues and I recognise that the working out of a satisfactory method of making all kinds of amendments will not be easy, and the government has accordingly decided to submit to our parliament, at the forthcoming session, an address requesting an amendment of the British North America Act by the United Kingdom parliament which would vest in the parliament of Canada the authority to amend the constitution of Canada but only in relation to matters not coming within the jurisdiction of the legislatures of the provinces, nor affecting the rights and privileges of the provinces, or existing constitutional rights and privileges with respect to education and to the use of the English and French languages."

POLITICIANS COMMENTS (CURRENT)

MR CLAUDE RYAN, Liberal Leader, Quebec, speaking at a nomination meeting in Quebec on October 10 1980:

> "Prime Minister Trudeau's proposed resolution to Westminster is unacceptable and threatens to upset the fundamental equilibrium of the federal system."

MR JOE CLARK, Leader of the opposition, speaking in a Canadian Government debate on October 24 1980:

> "Mr Speaker, by their actions in the last 24 hours, the Government has demonstrated what some of us previously had only feared - that there is no willingness at all on the part of the Prime Minister, his Ministers or, apparently, his supporters on both sides of this House of Commons to engage in meaningful Parliamentary debate on the constitutional resolution."

MR ED BROADBENT, New Democratic Party Leader, speaking at St Jerome on October 24 1980 said he was confident the Trudeau Government's constitutional reform package will be upheld in court. The reform package provides something for every region of Canada.

MR ALAN BLAKENEY, Prime Minister of Saskatchewan, speaking at Federal-Provincial Conference of First Ministers on the constitution on September 11, 1980:

"I won't attempt to deal with the legalities, but I know that all of us will agree that that has been the law, at least the convention of Canada for many years. I have here, and I will not burden you with a detailed quote of them, but the remarks of M. Lapointe in the House of Commons in 1925, the remarks of Prime Minister McKenzie King in 1925, the remarks of Senator Arthur Meighan in 1925, the remarks of the Minister, Mr Guthrie in 1931 and some further statements to that effect by Prime Minister St. Laurent, the well-known statement of Mr Guy Favreau when he was Minister of Justice in about 1965, a good number of academic views as well, all either indicating that unilateral patriation is unthinkable or highly inappropriate."

MR PETER LYON, Prime Minister of Manitoba, speaking at Federal Provincial Conference of First Ministers on the constitution on September 11 1980 (Verbatim transcript):

"I share the view of the Premier of Saskatchewan that a unilateral patriation is totally inappropriate and I suggest no responsible Government of Canada would undertake that course of action."

MR PETER LOUGHEED, Prime Minister of Alberta, speaking at Federal Provincial Conference of First Ministers on the constitution on September 11 1980 (Verbatim transcript):

"Patriation, I gave for Alberta a commitment that patriation, subject to very, very careful analysis of the legalities involved, the safeguard provided, is something that

could be accepted, but then I had to pause already today because if that patriation is a reflection of unilateral action by the Federal Government without the most sensitive reaction to the feelings of the Provinces, it will, as Premier MacLean said, backfire and will be a very hollow action indeed ..

So I say to you, Mr Prime Minister, to preserve the federal system, be very, very careful with that move."

MR BRIAN PECKFORD, Prime Minister of Newfoundland, speaking at Federal-Provincial Conference of First Ministers on constitution on September 11, 1980 (Verbatim transcript):

"However, to patriate without prior agreement on an appropriate amending formula and on other major constitutional issues would be merely a cosmetic gesture without substance or meaning."

MR ALLAN BUCHANAN, Prime Minister of Nova Scotia, speaking at Federal-Provincial Conference of First Ministers on the constitution on September 11, 1980 (Verbatim transcript):

"It is our sincere belief that we should be able to achieve the patriation of the Constitution with a formula by the end of this conference. We very sincerely believe that. We are very flexible in this matter because we think it is very important in the interests not only of this conference but of future ones that we come to a consensus on patriation and a consensus on how the Constitution can be amended."

MR BILL BENNETT, Prime Minister of British Columbia, speaking at Federal-Provincial Conference of First Ministers on the Constitution on September 11, 1980 (Verbatim transcript):

> "We have said before that patriation is desirable, we say again that patriation with a formula that is acceptable is most desirable. We say again patriation with an acceptable formula and positive change which can encourage our governments to do a better job in the future for the people who elect us is the most desirable of all."

MR ANGUS MACLEAN, Prime Minister of Prince Edward Island, speaking at Federal-Provincial Conference of First Ministers on the Constitution on September 11, 1980 (Verbatim transcript):

> "As far as the amending formula is concerned, in general terms the so-called Vancouver agreement meets with our approval, but the very question of an amending formula requires that some provinces, some minorities give up a right of veto that they now have, perhaps by accident, but nevertheless it is there and therefore before any minority, or before any province should be required to give up that veto, the decision to do so should be with their consent."

MR WILLIAM DAVIS, Prime Minister of Ontario, speaking at Federal-Provincial Conference of First Ministers on the Constitution on September 13, 1980 (Verbatim transcript):

> "Let us patriate our constitution now ... I have heard the arguments against such a step at this time ... I further understand that patriation with an amending formula (by far my preference) may be difficult. I would

suggest that we accept unanimity as an interim but I emphasise interim provision until we have completed our task of agreeing on an acceptable formula, but with or without in Ontario's view the time has come to act."

MR RICHARD HATFIELD, Prime Minister of New-Brunswick, speaking at Federal-Provincial Conference of First Ministers on the Constitution on September 13, 1980 (Verbatim transcript):

"Excuse me, Mr Prime Minister and excuse me, Premier Bennett, but I neglected a detail. I wanted to advise you that I will return to meet the members of my government tomorrow and that I will recommend the patriation of our constitution with the entrenchment of the amending formula requiring the consent of the ten legislatures and the Parliament of Canada."

MR RENE LEVESQUE, Prime Minister of Quebec, speaking at Federal-Provincial Conference of First Ministers on the Constitution (Verbatim transcript):

"We came here for a whole week after a long hot summer of negotiations in the spirit of not just positive co-operation but of some hope, and we thought justified hope, for satisfactory results.

I must say that among provinces the climate of undertaking and the many areas of consensus that we found this week has been for me an extraordinary and unprecedented experience, but we hit against a wall, the wall of a rigid, even in some ways authoritarian conception of federalism. We were met, among other things, with a long prepared adversary strategy designed not to negotiate

but basically to impose federal views in all things and by all means, not just the classical method of divide and conquer, because that is par for the course, but even by the use of menace, including the supposedly supreme menace of unilateral action.

So, the old BNA Act may be patriated but in a rather depressing and sterile atmosphere without full agreement because that is not the way to do it and certainly and explicitly, and I have to say it the way I feel and the way it will be, without the consent of Quebec."

EXTRACTS FROM LEADER ARTICLES IN CANADIAN NEWSPAPERS

THE PROVINCE, (Vancouver), September 25 1980

Leader "An unwanted kind of Canada"

> "The Trudeau government should not ignore the caution signals shown by the latest public opinion polls anyway - as it prepares a constitutional reform package to be presented to the British Parliament. The majority of Canadians in every region is opposed to increased federal powers ..
>
> "In the face of these poll results, Mr Trudeau and his advisers simply can't continue making the claim that they have majority support."

THE CALGARY HERALD, October 3, 1980

Leader "Big Gamble on the Constitution"

> "But most important of all by far is the fundamental Trudeau challenge. As a matter of principle can this country be governed at the federal level (even by a government so demonstrably incompetent as his) or is it to drift forever further into regionalism, particularism and eventually, maybe separatism?"

VANCOUVER SUN, October 3 1980

Leader "For a Better Canada"

> "He (Mr Trudeau) must allow sufficient time for members of Parliament to consult their constituents properly and for the provincial premiers - over whose heads he proposes to go

to Westminster - to state their objections ..

"But the inclusion in the charter of rights of clauses to ensure both minority language rights and the freedom of Canadians to live and work on equal terms in all provinces - as necessary and desirable as such rights are - will be seen as intrusions into provincial jurisdiction over education, property and civil rights."

THE TORONTO STAR, October 3 1980

Leader "Trudeau is right to act"

"Prime Minister Trudeau had done the right and necessary thing in launching federal action to bring home our constitution and enshrine in it the fundamental rights which should be guaranteed to all Canadians .

"He has chosen a course which, while taking nothing away from any individual or any provincial government, can unblock the process of constitutional renewal and help make Canada a better nation."

THE WINNIPEG FREE PRESS October 3 1980

Leader "The False Foundation"

"The statement made by Prime Minister Trudeau last night as he presented his constitutional proposals to the Canadian people, was more of a confidence trick than an appeal to reason and unity. The Prime Minister distorted reality and mis-stated the position of those who disagree with him. He guaranteed that Canada's new constitution will be born in distrust and disunity."

EDMONTON JOURNAL, October 3 1980

Leader "Dream or obsession?"

"A group of remarkable people created Canada's constitution in 1867, said Pierre Trudeau last night. Now he wants just one remarkable person - himself - to finish the job.

This is the terrible flaw in Pierre Trudeau's Constitution Act, 1980. One man, one party, one government seeks to change the very nature of other people's lives either against their

wills or without their consent. This is not federalism, this is the act of a unitary state. This is not the Canadian way and it should never become the Canadian way. Federalism must prevail."

LONDON FREE PRESS, London October 16 1980

Leader "Provinces have a case"

"Prime Minister Pierre Trudeau's determination to end Canada's constitutional impasse could be self-defeating if the vigorous opposition of some provincial premiers is subsequently matched by public opinion in those regions ..

"But the decision of five provincial premiers to try to block the Trudeau changes - with the likelihood of others following - should be of sufficient public concern to cause the Prime Minister to reconsider his methods, which are clearly divisive. National unity will be further threatened if compromise is not sought."

THE GLOBE AND MAIL, Toronto October 15 1980

Leader "The Constitution and the Court"

"Mr Trudeau's insistence upon a unilateral course at a time when most premiers felt the country was moving closer to agreement on crucial constitutional issues was an act of confrontation. Hewas to have the changes he wanted made by the British without reference to the provincial governments which had priorities of their own. The provinces, with their wishes for amendment, would have to

> await the day of total agreement or, worse, the results of a referendum which would be called by Ottawa, phrased by Ottawa, and sold by Ottawa with its unlimited advertising resources."

THE GLOBE AND MAIL, Toronto November 5 1980

Leader "Britain and Canada"

> "In plain words Mr Trudeau is asking Britain to make changes to the Canadian constitution that go far beyond the changes he could make himself if the constitution had already been repatriated. Worse, they are changes that go far beyond the changes he could make if, in addition to repatriation, the substantive constitutional amending changes he demands had already been made. For he does not have in Canada the support he would need to carry through these amendments under the amending formula he has himself set down."

EXTRACTS FROM LEADER ARTICLES IN UK NEWSPAPERS

THE TIMES, September 9, 1980

Leader "Canada's Federal Problems"

> "..Mr Trudeau has told the ten provincial governments that if they do not agree on the new constitution this week, only one of those twelve main provisions is "patriation", that he will ask the British Government to move.
>
> Unfortunately, it will not be so easy for the British Government to comply, even if Mr Trudeau secures the necessary majorities in both Canadian houses for an address to the Queen which is the way arrangements for constitutional change are made. For what is to be transferred is not so much the details of the 1867 Act as variously amended, but the right to amend it in Ottawa without the intervening process of going through Westminster."

THE GUARDIAN, October 1 1980

Leader "Canada: Ties that don't bind"

> ".. For the British, the easiest option might be to bat the ball back to Ottawa. But a refusal to do anything would leave Mr Trudeau in legal limbo .."
>
> "Commonsense and legal precedent dictate that our House of Commons should ncw enact whatever amendments to the British North America Act which emerge in December from both Houses of Ottawa's parliament. It is in Canada'a and Britain's interest that we should vote our last act of decolonisation with all graceful speed."

THE FINANCIAL TIMES, October 6 1980

Leader "The unity of Canada"

"Where money and racial prejudice are involved, the argument is sure to be tense. It remains to be seen how flexible Mr Trudeau will prove to be in the face of provincial aspirations. The proposals he presented were less centralist than originally planned in one important respect: he preferred not to ask for a constitutional clause forbidding provinces to give preferential treatment to their own entrepreneurs. There are other areas where he could make concessions in the interests of his vision of the unity of Canada."

THE DAILY TELEGRAPH, October 10 1980

Leader "Canadians Must Agree First"

"Mr Trudeau, the Canadian Federal Prime Minister, is trying to bounce Britain into committing a dubious act over the vexed question of "patriating" the 1867 British North America Act. He should be resisted ..

"The trouble with this is that all but one of the ten Canadian Provincial Governments are opposed to the changes Mr Trudeau's Federal Government wants Britain to make. The matter is being debated in the Parliament in Ottawa. Mr Trudeau hopes it will pass resolutions by December enabling him to make a formal request to Britain."

THE TIMES, November 27 1980

Leader "Ottawa comes to London"

> "Nor need the British Government stand helplessly by in the face of approaching embarrassment. It can impress on Mr Trudeau the need to present his proposals to Parliament here in a form which does not appear to do violence to the federal balance of the Canadian constitution.
>
> Westminster is a sovereign Parliament too. No sovereign Parliament likes to be used as a rubber stamp."

- ends -

28 November 1980

CANADA

PS / No 10 Downing Street

GRS 100
UNCLASSIFIED
FM FCO 271230Z NOVEMBER 1980
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 394 OF 27 NOVEMBER

T230/80

DEATH OF JULES LEGER.

1. PLEASE DELIVER THE FOLLOWING MESSAGE OF CONDOLENCE FROM THE PRIME MINISTER TO MR TRUDEAU.

QUOTE

I WAS SADDENED TO LEARN OF THE DEATH OF JULES LEGER. HE WAS MUCH RESPECTED IN THIS COUNTRY FOR A LONG AND DISTINGUISHED CAREER IN THE SERVICE OF CANADA AND OF INTERNATIONAL RELATIONS. ON BEHALF OF THE BRITISH GOVERNMENT, I OFFER YOU AND HIS FAMILY OUR SYMPATHY AND OUR PRAYERS.

END QUOTE

CARRINGTON
NNNN
DISTRIBUTION
LIMITED
NAD
PCD
NEWS DEPT
PS
PS/LPS
PS/MR RIDLEY
PS/PUS
MR HARDING

Ref. A03657

PRIME MINISTER

The Canadian Constitution

(C(80) 69)

The only significant development on this subject which has taken place since the Cabinet discussion which was due to take place on 13th November was postponed has been the receipt by the Chancellor of the Duchy of Lancaster of the attached letter dated 21st November from the Canadian High Commissioner.

2. This letter confirms a point on which there has hitherto been doubt, that a right of appeal to the Canadian Supreme Court exists from an opinion or judgment given by a Court of Appeal of a Province, except in the case of Quebec (which is however proposing to change its law on this point).

3. In opening the discussion on this subject at the Cabinet meeting on 27th November, after the Foreign and Commonwealth Secretary has introduced his paper, you may care to ask the Attorney General how this letter affects the issue. Does it strengthen the argument that the Government should regard themselves as relieved of the commitment to proceed with this Bill until the issue before the Canadian courts has been resolved?

4. Does the Chancellor of the Duchy of Lancaster consider that this delay will mean that the requirement thereafter to legislate will be unlikely to fall within the present Session of Parliament?

5. How does the Foreign and Commonwealth Secretary believe Mr. Trudeau will react to the news of this delay? At what stage and in what way should the Canadians be warned of its likelihood?

6. You may also wish to ask the Attorney General for his views on the proposition that Parliament cannot amend the Bill implementing the request of the Canadian Federal Government, but can only accept or reject it in toto. You may seek to draw a distinction in his views between the legal point concerning Parliament's theoretical omnicompetence, and the procedural point that suitable drafting of the Bill's long title can cause substantive amendments to be ruled out

of order in the House of Commons. Does the Chancellor of the Duchy of Lancaster consider that such a procedural device will work? What is the likelihood that the House of Lords will pass amendments which will be subsequently taken up in the House of Commons? Does the Lord President see any danger of the Bill being defeated in the House of Lords?

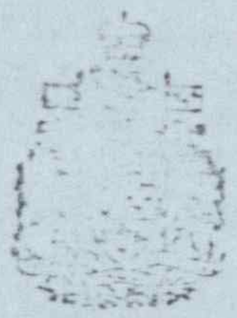
7. In concluding this discussion, you may wish to guide the Cabinet to agree that the Government should still respond to the request of the Canadian Federal Government when this is received. But if you decide in the light of discussion that the Government should wait to introduce the new Bill until the matter has been resolved before the Canadian courts, and this is likely to result in considerable delay and a strongly adverse reaction from Mr. Trudeau, you may wish to invite the Foreign and Commonwealth Secretary to bring the matter back to the Cabinet for further consideration in the light of whatever new circumstances have developed.

RTA

ROBERT ARMSTRONG

26th November, 1980

Canadian High Commission



Haut Commissariat du Canada

32

Macdonald House
1 Grosvenor Square
London, W1X 0AB

November 21, 1980

Dear Mr. St. John-Stevas,

In follow-up to your meeting of November 10th last with the Honourable Mark MacGuigan, Secretary of State for External Affairs, I have the pleasure of appending a paper which is meant to clarify certain technical matters which arose during the discussion.

I should add that this information, as stated by my Minister, does not alter in any way the position of the Government of Canada on its understanding of procedures to be followed by the Government of the United Kingdom and its Parliament.

Yours sincerely,

Jean Casselman Wadds

Jean Casselman Wadds
High Commissioner

The Rt. Hon. Norman St John-Stevas, M.P.
Chancellor of the Duchy of Lancaster
70 Whitehall
London, [illegible]

PATRIATION: TECHNICAL ISSUES

The Governments of the Provinces of Québec, Manitoba, and Newfoundland have publically announced their intentions to refer the Federal Government's proposed constitutional measure to their respective courts of appeal, the highest courts of final resort in each of these provinces. Under the laws of the several Canadian provinces, the Lieutenant-Governor in Council of each province has the authority to refer matters to the court of appeal in the province for an opinion of that court. While provincial laws governing references are not identical in every respect, in general a reference can be made by the Lieutenant-Governor in Council to the provincial court of appeal for hearing or for consideration on any matter which, in his discretion, he thinks fit to refer. Such a reference has now been made by the Lieutenant-Governor of Manitoba, asking the Manitoba Court of Appeal to give an opinion on several issues related to conventions that apply to constitutional amendments in Canada. We have not yet been notified of the terms of the anticipated Québec and Newfoundland references.

It is useful to point out that there is very little to restrict Lieutenant-Governors of provinces (i.e. the provincial governments) from referring at their discretion any legal issues at any time to provincial courts of appeal for consideration. Where such references involve a point of constitutional law, the Attorneys-General of any other provinces have the right to be heard in reference. In the forthcoming Manitoba reference, of course, the Attorney-General of Canada will be represented.

For the purposes of clarifying the situation concerning appeals from the opinions of the courts of final resort (i.e. the courts of appeal) of the provinces, the following should be noted. In all cases except Québec, a right of appeal lies from an opinion or judgement given upon a reference by a court of appeal of a province to the Supreme Court of Canada. In the case of the present constitutional references, therefore, should a particular provincial government not be satisfied with the opinion expressed by its court of appeal, it could appeal matter as of right to the Supreme Court of Canada. This right of appeal is given under the governing federal statute, the Supreme Court Act, but it depends upon whether provincial law also recognizes such a right of appeal. We understand that Québec will be changing its law to permit an appeal to the Supreme Court of Canada from an opinion of the Québec Court of Appeal given upon a reference to that court.

Foreign and Commonwealth Office

London SW1A 2AH

26 November 1980

FOREIGN AFFAIRS COMMITTEE : BRITISH NORTH AMERICA ACTS

Thank you for sending me a copy of your letter of 14 November to Harry Steel in the Law Officers' Department. This considered the possibility mentioned in Michael Alexander's letter of 5 November that the Lord Chancellor and the Attorney General might, at a later stage, give evidence before the Foreign Affairs Committee to deal with criticisms which may be made of the Government's position on constitutional and legal grounds.

The position of the Lord Chancellor and Attorney General in this matter has been clearly set out in letters dated 31 October from each of the two Departments to the Committee Clerk. I attach copies. The position is further explained in paragraphs 25(ii) and 31 of the Civil Service Department Memorandum of Guidance for officials giving evidence before Select Committees, copies of which were sent to the Committee when it was issued in May.

I doubt whether any useful purpose would be served by a further informal approach to the Clerk at this stage.

I am copying this letter to the recipients of yours.

M A Wickstead
Assistant Private Secretary
to the Lord Privy Seal

Robin Birch Esq

Private Secretary to the Chancellor
of the Duchy of Lancaster

Privy Council Office

Whitehall

London SW1A 2AT

Communications on this subject should be addressed to
THE [illegible]AL SECRETARY
ATTO[illegible]EY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

(14)

31 October, 1980

Dear Rose,

Thank you for your letter of 30 October informing me of the intention of the Foreign Affairs Committee of the House of Commons to carry out a study of "the role of the British Parliament in relation to the British North America Acts". As I explained when we spoke on the telephone on 29 October, the Law Officers have no Ministerial responsibility in this matter and the Attorney-General has therefore directed me to say that he regrets that he must decline the Committee's invitation to this Department to submit a memorandum and to give oral evidence. The Minister who would appear to have responsibility for the subject matter of the Committee's study is the Foreign and Commonwealth Secretary, and the Foreign and Commonwealth Office are presumably competent to assist the Committee on the particular issues (including the legal and constitutional issues) with which, as you say, the Committee will be concerned. I would mention, however, that in testifying to the Committee the FCO will of course be subject to the convention that they are precluded from disclosing what advice, if any, they may have received from the Law Officers.

Yours sincerely,

Harry Steel

H. STEEL

J R Rose Esq
Clerk to the Committee
Foreign Affairs Committee
Committee Office
House of Commons
London, SW1A 0AA

cc [illegible] Thompson Esq, PCCU, FCO
Lord Nicholas Gordon Lennox, FCO
T S Legg Esq, Lord Chancellor Office

HOUSE OF LORDS,
SW1A 0PW

31st October 1980

(13)

Dear Rose,

Thank you for your letter of 30th October, which we have since discussed on the telephone. As I explained, the Lord Chancellor has no departmental responsibility for the role of the British Parliament in relation to the British North America Acts. Nor, as I expect you know, does he perform the function of legal adviser to the Government. It would not, therefore, seem appropriate for him or his Department to offer evidence to the Select Committee on this matter. The Secretary of State for Foreign and Commonwealth Affairs is the Minister responsible for matters relating to the British North America Acts, and I understand that the Foreign and Commonwealth Office are in fact preparing to comply with your Committee's request.

I am sending copies of this letter to the recipients of yours.

Yours sincerely,
Tom Legg

T.S. Legg

J.R. Rose, Esq.,
Clerk to the Foreign Affairs Committee,
Committee Office,
House of Commons,
London, SW1A OAA

Message despatched -
Prime Minister
Agree text?

Foreign and Commonwealth Office

London SW1A 2AH

25 November 1980

Dear Michael,

Death of the Rt Hon Jules Leger (Governor-General of Canada 1974 - 79) on 22 November

I enclose a draft message from the Prime Minister to Mr Trudeau, expressing condolence on the death of Mr Leger. This has been the procedure followed when other former Canadian Governors-General have died.

If you could kindly let me know by telephone when the Prime Minister has approved the message, we will despatch it from here.

Yours ever

Roderic Lyne

(R M J Lyne)
Private Secretary

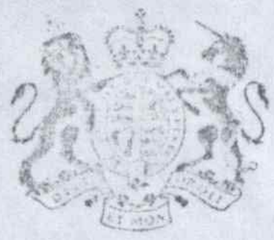
M O'D B Alexander Esq
10 Downing Street
LONDON

Suggested message of condolence from the Prime Minister to Mr Trudeau

---

I was saddened to learn of the death of Jules Léger. He was much respected in this country for a long and distinguished career in the service of Canada and of international relations. On behalf of the British Government, I offer you and his family our deep sympathy.

Canada



Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

24 November 1980

for inclusion with Cabinet brief.
Rab

Dear Miles,

Further to the recent meeting that the Chancellor of the Duchy had with representatives of the Canadian Government including the High Commissioner, I now enclose a copy of a letter which he has received from the High Commissioner dated 21 November clarifying a point raised during their earlier discussion. From the Government's point of view, the point contained in the last paragraph of the annex to the letter is of fundamental significance for consideration by the British Government on how to handle the issue of patriation.

When the Canadians visited us they said that no appeal lay from the provincial courts of appeal to the Supreme Court of Canada, but they have now, with some evident embarrassment, come up with further legal advice that in all cases except Quebec such a right of appeal does lie to the Supreme Court. Taken together with earlier advice which we had received from the Attorney General, this considerably strengthens the argument for saying that it would be unsafe to proceed with legislation to patriate the Canadian constitution while the issue is sub-judice and for accepting that if we wait for the issue to be cleared by the Canadian Supreme Court any requirement thereafter to legislate would be unlikely to fall within the present session of Parliament. Account should no doubt be taken of the advice in this letter in the forthcoming discussion in Cabinet on Thursday 27 November.

In view of this, I am copying this letter and the enclosure to the Private Secretaries of members of Cabinet, to Anthony Meyer, Murdo MacLean, Jim Nursaw and David Wright.

Yours ever
Robin

R A BIRCH

Miles Wickstead Esq
Private Secretary to the
Lord Privy Seal
Foreign & Commonwealth Office

Canadian High Commission

Haut Commissariat du Canada

32

Macdonald House
1 Grosvenor Square
London, W1X 0AB

November 21, 1980

Dear Mr. St. John-Stevas,

In follow-up to your meeting of November 10th last with the Honourable Mark MacGuigan, Secretary of State for External Affairs, I have the pleasure of appending a paper which is meant to clarify certain technical matters which arose during the discussion.

I should add that this information, as stated by my Minister, does not alter in any way the position of the Government of Canada on its understanding of procedures to be followed by the Government of the United Kingdom and its Parliament.

Yours sincerely,

Jean Casselman Wadds

Jean Casselman Wadds
High Commissioner

The Rt. Hon. Norman St John-Stevas, M.P.
Chancellor of the Duchy of Lancaster
70 Whitehall
London, SW1A 2AS

PATRIATION: TECHNICAL ISSUES

The Governments of the Provinces of Québec, Manitoba, and Newfoundland have publically announced their intentions to refer the Federal Government's proposed constitutional measure to their respective courts of appeal, the highest courts of final resort in each of these provinces. Under the laws of the several Canadian provinces, the Lieutenant-Governor in Council of each province has the authority to refer matters to the court of appeal in the province for an opinion of that court. While provincial laws governing references are not identical in every respect, in general a reference can be made by the Lieutenant-Governor in Council to the provincial court of appeal for hearing or for consideration on any matter which, in his discretion, he thinks fit to refer. Such a reference has now been made by the Lieutenant-Governor of Manitoba, asking the Manitoba Court of Appeal to give an opinion on several issues related to conventions that apply to constitutional amendments in Canada. We have not yet been notified of the terms of the anticipated Québec and Newfoundland references.

It is useful to point out that there is very little to restrict Lieutenant-Governors of provinces (i.e. the provincial governments) from referring at their discretion any legal issues at any time to provincial courts of appeal for consideration. Where such references involve a point of constitutional law, the Attorneys-General of any other provinces have the right to be heard in reference. In the forthcoming Manitoba reference, of course, the Attorney-General of Canada will be represented.

For the purposes of clarifying the situation concerning appeals from the opinions of the courts of final resort (i.e. the courts of appeal) of the provinces, the following should be noted. In all cases except Québec, a right of appeal lies from an opinion or judgement given upon a reference by a court of appeal of a province to the Supreme Court of Canada. In the case of the present constitutional references, therefore, should a particular provincial government not be satisfied with the opinion expressed by its court of appeal, it could appeal matter as of right to the Supreme Court of Canada. This right of appeal is given under the governing federal statute, the Supreme Court Act, but it depends upon whether provincial law also recognizes such a right of appeal. We understand that Québec will be changing its law to permit an appeal to the Supreme Court of Canada from an opinion of the Québec Court of Appeal given upon a reference to that court.

Canada

01-405 7641 Ext. 3229

Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/79/418

21 November, 1980

Mr Ryder – 24/11

FOREIGN AFFAIRS COMMITTEE: BRITISH NORTH AMERICA ACTS

I am sorry not to have been able to reply before now to your letter of 14 November: I wanted first to discuss it with the Attorney-General. I have now done that and this letter reflects his views.

What I said in my letter of 31 October about this Department giving evidence to the Committee applies just as much to the Attorney-General himself testifying to it. He remains firmly of the view that it would be quite wrong for him to do so. As I said in my letter to the Clerk of the Committee, he has no Ministerial responsibility in this matter for which he can account to the Committee and he considers that his giving evidence to it of the kind suggested in your letter would run absolutely counter to the need for him to refuse to disclose what advice he has given, is giving or may give to his colleagues. Speaking as a Minister on behalf of the Government in appropriate cases - eg in debates on the floor of the House or during the committee stages of legislation - is one thing (as also is advising the House or, in rare circumstances, a Committee in the very limited range of cases identified in Roscoe's letter to you of 29 July 1980): but appearing before a Select Committee in his capacity as a Law Officer to testify or advise them on whether the Government is acting legally or constitutionally is quite another.

/You

01-405 7641 Ext.

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THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

You said in your letter that the giving of evidence to the Committee by the Lord Chancellor or the Attorney-General was envisaged at the meeting which took place under the Prime Minister's chairmanship on 3 November. The Attorney-General does not know whether this is in fact what was then envisaged: it is not how we read the relevant passage in Michael Alexander's letter which refers to the Foreign and Commonwealth Secretary arranging to give evidence to the Select Committee to explain the reason for the position which the Government was taking up, with the Lord Chancellor and the Attorney-General merely holding themselves in reserve to deal with the criticisms which were likely to be made of the Government's position on constitutional and legal grounds. But the Attorney-General asked me to point out that, in any event, he was not present at that meeting (because he had not been invited to it) and would, if he had been present, have registered his very strong objections, for the reasons I have indicated above, to any proposal of the sort which you say was envisaged. He adds, in passing, that it is very unsatisfactory to find his colleagues taking decisions on the legal aspects (both substantive and procedural), of a problem as important as this - or perhaps any problem, however important - without one of the Law Officers being present. As Tom Legg rightly pointed out in his own letter to the Clerk of the Committee (which may not have been copied to you), "[the Lord Chancellor does not] perform the function of legal adviser to the Government".

Finally, may I advert to the suggestion that I should make a further informal approach to the Clerk of the Committee to explain the basis of the Attorney-General's position. With respect, I doubt if that is necessary. I did explain the position to Rose on the telephone - admittedly in very general and tentative terms - when he first sounded me out on it and the fact that the Committee

/have

01-[illegible]7641 Ext.

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THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

have not pressed their request suggests to me that they do not need further persuasion. In this connection you will be interested to see the enclosed copy of the reply which I had from Rose and which shows no disposition to argue the toss and no apparent resentment. In general, I should be hesitant to risk stirring things up again by proferring explanations which have not been asked for.

I am copying this letter and its enclosures to Miles Wickstead, Nick Sanders and Murdo Maclean.

Yours ever,
Harry Steel

H. STEEL

Robin Birch Esq
Private Secretary to the
Chancellor of the Duchy of Lancaster
Privy Council Office
Whitehall
London SW1A 2AT

COMMITTEE OFFICE
HOUSE OF COMMONS
LONDON SWIA OAA
01-219 3278 (Direct Line)
01-219 3000 (Switchboard)

FOREIGN AFFAIRS COMMITTEE

6th November 19870

A-C
To see.
HJ
10/11

Seen MH
11.11

Dear Steel,

Many thanks for your prompt and helpful reply of 31st October to my letter of 30th October, which the Committee considered yesterday.

The Committee will for the time being pursue their inquiries into the British North America Acts with the FCO alone. I hope therefore it will not prove necessary for me to trouble you again on this particular subject, though I cannot of course guarantee it.

Yours sincerely,

John Rose

J. R. Rose
Clerk to the Committee

H. Steel Esq. CMG OBE
Attorney General's Chambers,
Law Officers' Department,
Royal Courts of Justice,
LONDON WC2.

LAW OFFICERS' DEPARTMENT
27 NOV 1980

Canada.

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

14 November 1980

Mr Rutt - 17/xi.

Dear Steel,

FOREIGN AFFAIRS SELECT COMMITTEE: BRITISH NORTH AMERICA ACTS

You wrote to me on 31 October about a request which the Attorney General had received from the Foreign Affairs Committee for evidence with regard to its enquiry into the role of the B ritish Parliament in relation to the British North America Acts. Since then the question of the Government's evidence to the Committee has, of course, been discussed at a meeting under the Prime Minister's chairmanship. Michael Alexander's letter of 5 November, copied to Jim Nursaw, refers. It was envisaged at that meeting that the Lord Chancellor or the Attorney General might, at a later stage, give evidence before the Committee dealing with criticisms of the Government's position on constitutional and legal grounds.

The Chancellor of the Duchy has asked me to let you know this and adds that he has noted an d shares the Attorney General's view that it would be inappropriate to give any evidence which disclosed the nature of the confidential advice he might have given to his Ministerial colleagues. You and the FCO will no doubt want to consider in the light of later developments whether it is worth making a further informal approach to the Clerk of the Committee to explain the basis of the Attorney General's position. The two FCO memoranda and subsequent oral evidence of course dealt with many of the legal and constitutional issues in which the Committee are interested.

I am copying this letter to Miles Wickstead (Lord Privy Seal's office), Nick Sanders at No 10 and Murdo Maclean in the Chief Whip's office.

Yours sincerely,

Robin Biggs

H Steel, Esq.,
Attorney General's Chambers
Law Officers' Department
Royal Courts of Justice
London, WC2

CONFIDENTIAL

Ref. A03543

MR. ALEXANDER

Patriation of the Canadian Constitution

(C(80) 69)

As a postscript to the brief that Sir Robert Armstrong has submitted on the paper which the Cabinet will be discussing on 13th November I attach an Opinion by the Attorney General which the Prime Minister may care to see.

2. It makes two important points. It is the view of the Attorney General that if this issue is still being considered by the Canadian courts, the Government are entitled, if they so wish, to adopt the position that they are relieved by this new factor from any commitment to proceed with the Bill at this stage. He also considers that Parliament cannot be prevented from amending the Bill, although the Government can and should do whatever they can to dissuade Parliament from seeking to amend it.

D. J. Wright

D. J. WRIGHT

12th November, 1980

CONFIDENTIAL

CONFIDENTIAL

01-405 7641 Ext.

Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

La.

Prime Minister

A useful & clear exposition of the A-G's position

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

(2)

12 November, 1980

Dear John,

PATRIATION OF THE CANADIAN CONSTITUTION

You told me on Monday that the Lord Privy Seal had asked if the Attorney-General could give an informal indication of his thinking, in advance of tomorrow's Cabinet meeting, on two procedural questions which may well be raised at that meeting. I have discussed the two questions with the Attorney-General and this letter sets out his views on them for the Lord Privy Seal's benefit. Since my discussion with the Attorney-General took place, I have seen copies of Robin Birch's letters of 11 November to Miles Wickstead and to Michael Alexander, in the former of which he reports that theChancellor of the Duchy has also asked for the opinion of the Law Officers on one of the Lord Privy Seal's questions. I am therefore copying this letter to Birch and to the various recipients of his letters (including George Walden, Miles Wickstead and Ken Temple in the FCO).

The two questions which the Lord Privy Seal asked to be put to the Attorney-General were these:

(a) What would be the effect on the proposed Parliamentary proceedings here of litigation being actually pending in theCanadian courts to challenge the legitimacy of the Federal request and consent? (The factual background to this question is explained in Annex B to your Secretary of State's paper for Cabinet and you also referred me to certain supporting material relating to the 1949 Newfoundland case.)

(b) Does the Attorney-General agree with the proposition (apparently advanced by the Lord Chancellor at the meeting on 3 November) that a Bill implementing the Federal request and consent could not be amended by Parliament, which could only either pass it or reject it?

The Attorney-General wishes me to make it clear that, in considering question (a), he has not thought it necessary to address himself at this stage - and you have not asked him to do so - to the general

/question

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01-405 7641 Ext.

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THE LEGAL SECRETARY
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ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

question whether, when faced with a request and consent by the Canadian Government and Parliament, the British Government would ordinarily be under an unqualified obligation to introduce the necessary legislation here (and, if possible, get it through) irrespective of the views of the Canadian Provinces. In the light of the apparently conflicting and uncertain state of the authorities and precedents, such as they are, that is a question which could not be answered without more research and study than we have had the chance to give it and we should certainly need considerable FCO assistance with it. But, more important, the Attorney-General considers that, in view of the Prime Minister's assurances to Mr. Trudeau, it is a question which does not arise in practice in the present case - and that is presumably why it has not been thought necessary specifically to seek his advice on it. The fact is that, whether or not such a general obligation might attach in ordinary circumstances, we have given a clear commitment to the Canadian Government that we will in fact introduce the legislation if we receive a request and consent duly made by their Parliament and the only question that therefore falls to be considered at this stage is whether the institution of litigation in the Canadian courts constitutes a relevant new factor which would entitle us, at least temporarily, to claim relief from that commitment.

In the Attorney-General's view, the litigation does constitute such a new factor. While the ordinary sub judice rules have no operation in this situation and the existence of the litigation cannot therefore be said to be a legal or technical bar to our proceeding with the Bill, it does give rise to strong considerations of propriety (respect for the Canadian courts and legal processes in Canada) against our doing so. It might be different if the litigation were obviously frivolous or vexatious or manifestly ill-founded; but we have no grounds, at least at present, for taking that line. In these circumstances the Attorney-General considers that the situation has changed materially, and in a very important respect, from what it was when Mr. Trudeau was given his assurances. Accordingly, his advice is that the Government are entitled, if they wish, to adopt the position that they are relieved, by this new factor, from any commitment to proceed with the Bill at this stage. He adds that since the proprieties are an element which, in his view, should weigh heavily with us in this case, he would hope that his colleagues would indeed be disposed to adopt that position. He also thinks it right to point out that any attempt by the Government to ignore the considerations of propriety would be likely to attract very heavy criticism in Parliament which could not simply be brushed aside. The task of attempting to refute it would no doubt fall to him and he has to say that he is not confident that it could convincingly be

/done.

01-405 7641 Ext.

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ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

done. He asks me to point out, however, that this advice relates to the position as it now is. It is conceivable that the outcome of the early rounds of the litigation in the Canadian courts may show that the Provinces do not have a respectable legal case: we should then be much closer to the 1949 Newfoundland precedent and we might then be able to take a more relaxed view of the formal proprieties. But this is speculation and we should not put any reliance on it at this stage.

As regards question (b), the Attorney-General does not share the view that there is some inherent limitation on Parliament's legal competence in this field which would make it impossible for amendments to the Bill to be moved during its passage through either House so that it would be necessary for the Bill either to be passed in toto as originally introduced or rejected in toto. He regards that view as incompatible with Parliament's legal supremacy and theoretical omnicompetence. In his view the correct proposition is not that Parliament may not amend the Bill but rather that Parliament should not amend it and that, if there is any obligation at all in this matter, it is an obligation which rests on the United Kingdom Government to do whatever they can - and in practice they can do whatever is necessary - to dissuade and prevent Parliament from amending it. His advice is therefore that Ministers should not seek to argue that amendments are legally inadmissible but should argue instead that the adoption of the amendments would constitute an unwarranted interference in Canadian internal affairs and that they should therefore be rejected.

In giving his advice on this point, the Attorney-General is not, of course, adverting to the rather different question of whether the Bill (and especially the long title) could be so drafted that any amendment of the sort we fear (perhaps any amendment at all) would have to be ruled out of order. Whether and how that result could be achieved is a question essentially for Parliamentary Counsel and the House authorities. It seems from Robin Birch's letter to Michael Alexander that it might be possible to achieve it in the Commons but there would be less certainty about the position in the Lords.

Yours ever,
Harry

H. STEEL

J R Freeland Esq CMG
Second Legal Adviser
Foreign and Commonwealth Office
London, SW1.

Ref. A03533

PRIME MINISTER

The Canadian Constitution

(C(80) 69)

BACKGROUND

This paper by the Foreign and Commonwealth Secretary has been circulated for discussion by the Cabinet in accordance with the conclusions of your meeting on Monday, 3rd November. You will recall that at that meeting the Lord Chancellor said that the only real question for the British Government was whether the request of the Canadian Federal Government should be accepted or rejected as a whole. In terms of constitutional propriety acceptance appears to be the only course. The British Government has a relationship with the Federal Government of Canada, not with the Provincial Governments, and Her Majesty's Government should not place itself in the position of trying to judge the merits of an argument between the Canadian Federal and Provincial Governments. Unfortunately it is precisely this area which has been reserved to the Westminster Parliament, and some of the Provincial Governments will argue and lobby for the view that the Westminster Parliament has a trustee function in relation to the Canadian Provincial Governments which has got to be taken seriously. Probably the most realistic way of approaching the problem is the one in paragraph 7 of Annex A to the Foreign and Commonwealth Secretary's paper, which quotes Lord Altrincham on the proposition that the reservation of an amending power by the Statute of Westminster has become an anachronism. Canada has been fully independent since the Statute of Westminster, and British relations with Canada is in international law no different from that with any non-Commonwealth independent sovereign state. The sole representative in international law of a Federal State is the Federal Government. To look behind a request from the Federal Government and enquire into the basis on which it was put forward would rightly be regarded as an unwarranted interference in the internal affairs of an independent friendly state. This appears to be Mr. Trudeau's own view.

2. At the conclusion of your meeting on 3rd November, you decided that this issue ought to be discussed by the Cabinet because of its importance. In the light of the Cabinet's decision the Foreign and Commonwealth Secretary, accompanied by his Legal Adviser, will give evidence to the Select Committee on Foreign Affairs to explain the reasons for the position which the Government is taking up. It is important for the Cabinet to be clear and in agreement on these reasons. The six Provinces who are in disagreement with the Canadian Federal Government are likely to be active in lobbying their cause over the next few months and the Government should respond with a single voice.

3. This problem could give rise to political embarrassment in several different ways. It seems likely that, if the Bill is drafted to give effect to "a request from the Canadian Legislature" it will not be possible to move substantive amendments to the Bill in the House of Commons. But there remains the risk of substantive discussion and perhaps defeat for the Government in the House of Lords.

4. There is also a problem over the legal action which is being taken in Canada. At your meeting on 3rd November it was suggested that the challenge in the Canadian courts to the Federal Government's legislation would probably be exhausted by Christmas. The report of the Chancellor of the Duchy's recent conversations with the Canadian Foreign Minister casts some doubt over that; and on 6th November The Times suggested that there would be a strong strategic advantage in having the United Kingdom legislation enacted before a Canadian court had occasion to pronounce on the validity of the measure. It is clear that this could happen. A thoroughly awkward situation could arise if after the British legislation had been passed, a Canadian court ruled that it was invalid. The only comfort in this situation would be that the main embarrassment would be to the Canadians.

HANDLING

5. You will wish to ask the Foreign and Commonwealth Secretary to introduce his paper. The points to establish in subsequent discussion are:-

(a) Can the Bill be drafted in a way that will make it impossible to move substantive amendments in the House of Commons? You will wish to ask the Chancellor of the Duchy of Lancaster for his views on this point. You will wish to ask the Lord President and the Foreign and Commonwealth Secretary to what extent the House of Lords are likely to indulge in substantive discussion and amendment.

(b) To what extent is the Government's legislative programme likely to be seriously threatened by this issue? You may care to seek the views of the Chief Whip on the extent to which many of the Government's supporters in the House are likely to be aroused on this issue.

(c) Is there anything to be said for introducing this legislation and leaving it to a free vote by the House? Is it possible that this course of action would cause more trouble and confusion in Parliament than putting the Government's full weight behind the legislation, as well as being likely to give offence to Mr. Trudeau?

(d) What parts of the proposed legislation are most likely to give rise to difficulties during the passage of the Bill? It seems likely that these may be clauses 16-22 dealing with the recognition of French as well as English as the official language of Canada (even in those Provinces where the French are in a small ethnic minority) and above all clauses 23-24 dealing with minority language educational rights. Is there any risk that these parts of the Bill may be used as a basis for a claim by the Welsh language protagonists?

(e) It is not yet clear when the Canadians will deliver their Bill to the Westminster Parliament; but if at that stage it is still being considered by the Canadian courts, does the Attorney General consider this to be an adequate reason for postponing action on the Canadian request? What does the Foreign and Commonwealth Secretary think? Annex B of his paper deals with this issue but in inconclusive terms.

(f) Does the Lord Chancellor consider that the Government really has any freedom of action in this matter? You will recall that at your meeting on 3rd November he expressed in forcible terms the view that the

Government really had no choice other than to do what the Canadian Federal Government asked. As a weapon of last resort it would be open to the Westminster Parliament proprio motu to patriate the Canadian Constitution by means of a one clause act which would simply transfer the powers now rested in Westminster to the Canadian Federal Parliament, even without their consent. You may like to get him to repeat this authoritative view, together with the warning that such a course of action might lead to Canadian retaliation.

CONCLUSION

6. In the light of discussion on these points the Cabinet might be guided to agree that the Government should respond to the probable request of the Canadian Federal Government when this is received. But you will wish to decide in the light of the discussion whether this conclusion should be qualified if the issue has not yet been resolved in the Canadian courts.

RTA

(Robert Armstrong)

12th November, 1980

Canada

Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

11 November 1980

NBPM yet
11/XI

Dear Michael,

PATRIATION OF THE CANADIAN CONSTITUTION

You sent me a copy of your letter to George Walden of 5 November on this subject. I now enclose a note of a meeting held yesterday by the Chancellor of the Duchy with representatives of the Canadian Government, and also of a note I have sent to Miles Wickstead in the Lord Privy Seal's Office.

In your letter you recorded that the Chancellor of the Duchy should arrange through his officials to obtain the views of the Clerk of the House of Commons on whether a Bill requested by the Canadian Government and Parliament would be unamendable, or if not, whether it was feasible by suitably entitling the draft Canada Act to make it proof against amendment in the House of Commons.

I have consulted Sir Henry Rowe, who has been in touch with the Chief Clerk of the Public Bill Office. I understand that his informal advice was that if the Bill were drafted as one to give effect to a request from the Canadian legislature it would not be possible to move substantive amendments to the Bill in the Commons. There would, however, remain the risk of substantive discussion of the content of the Canadian Act in the House of Lords.

It is also of interest that, as you will see from the note of yesterday's meeting, the Canadians have already taken aboard the need for them to consider how the drafting of their Bill can be adapted to conform as closely as possible to UK practice. They did not elaborate, but I assume that the FCO have been in touch with them on this question.

I am sending copies of this letter to the recipients of yours.

Yours ever,

Robin

R A BIRCH

M Alexander Esq
10 Downing Street

PATRIATION OF CANADIAN CONSTITUTION: NOTE OF A MEETING BETWEEN THE CHANCELLOR OF THE DUCHY OF LANCASTER AND REPRESENTATIVES OF THE CANADIAN FEDERAL GOVERNMENT ON 10 NOVEMBER 1980

Present: Chancellor of the Duchy of Lancaster
Mr MacGuigan
Mr Gottlieb
Mrs Wadds

Mr R A Birch

In welcoming the Canadians, the Chancellor referred to the very tight legislative session confronting the Government, and emphasised that what could be done depended very much on the date on which the Canadian Government put their request for legislation to us. The latest date which would give any reasonable prospect of getting the Bill through the current session would be early January.

In reply, the Canadian representatives said that no formal request can be made to the British Government until the Bill has completed its passage through the Canadian Parliament. The matter would be at Committee Stage until 9 December, and further debate would be needed in both houses. The legislative process should finish in January, and they would aim at as early a date as possible. It was not yet clear if the guillotine would be used again; this might be necessary if the Opposition mounted a long filibuster, but they would not pursue this option if the debate was likely to be over in 3 or 4 weeks. They thought that mid-January was probably an attainable date.

In reply, the Chancellor stressed that the Bill would have to be received as early as possible in January, as otherwise no guarantee of passage in the forthcoming session was possible. The Canadians noted this point, saying that they were most anxious to conclude the matter in the forthcoming session, since this would be the end of the domestic Canadian debate.

The Chancellor raised the question of the Bill of Rights and whether the inclusion of this in the legislation could give rise to challenge in the courts of Canada; if this happened difficulties might be created for the British Government. The Canadians replied that the Bill of Rights was the most essential feature of the measure, since it was a mutual guarantee of language rights to French Canadians in Canada as a whole and to the English in Quebec. This could not be accomplished in the Canadian Parliament, but change must begin with the Statute of Westminster.

Some challenges were proposed by the Provinces, beginning with Manitoba; others could be expected to follow in succession.

The view of the Federal Government was that there was no legal issue, but that the point was one of policy. If the Province were unsuccessful in its challenge it could appeal to its own Supreme Court, but it was doubtful if it could go to the Supreme Court of Canada, since it was thought that reference of the issue to this court could be made only by the Federal Government.

The Chancellor stressed the importance of checking this point. We could not put a Bill forward to the House of Commons if the issue was still subject to dispute in the Canadian courts, since the House of Commons would be likely to regard the matter as sub-judice. It would be necessary to look into the matter further with the Law Officers; he could foresee considerable difficulties on the point. Although he appreciated that the Federal Government urged that these were not issues of law but of policy, it was unavoidable that the British Government and Parliament should see the issue in terms of our own political situation; back-benchers and indeed the official Opposition, could decide to make difficulties if they regarded the basis for the legislation as unsatisfactory. He referred to the forthcoming investigation of the issue by the Select Committee on Foreign Affairs; the position in Parliament might depend in part on what they said in their report. The Canadian representatives commented that there might be a compromise position if it were accepted that the Bill should not proceed until the completion of the first appeal; it would not, however, be acceptable for the Bill to be deferred until all appeals had been exhausted.

The Chancellor said that another important issue for the British Government would lie in the need to render the Bill immune from amendment. This would call for a degree of co-operation from the Federal Government; it was important that the request and the Bill should be so framed as to give it the greatest possibility of success.

The Canadians replied that they were already engaged in drafting but had already taken this point and were changing the pre-amble to conform with UK practice. They hoped the Government would do all they could to get the Bill through Parliament, and understood that the Prime Minister had promised a Three-Line Whip for this purpose. They were themselves very dependent on the British Government since they could not deal directly with MPs. Nevertheless, if private Members were to try to prevent Parliament from enacting the Bill they would see this as interference in Canadian affairs. They were themselves restrained by their wish not to interfere in UK Parliamentary affairs.

In response, the Chancellor said that he would not wish to leave them in any doubt about the Parliamentary difficulties the Government would face. The Government would use its best endeavours, but the problems could not be ignored. Even with a Three-Line Whip the scope for procedural obstruction was still very great; nor would such a whip extend in its operation to the Select Committee. The Commons would be likely to insist on taking a Bill of such importance on the Floor of the House.

As to the likelihood of private Member interest, the Chancellor said that there were a number of close connections between the UK and Canadian legislatures, and the House of Commons was not biddable, so that procedural devices were certain to be employed. This is why unamendability was important. On the timetable, if we received the Bill in January, Second Reading could perhaps be achieved in February.

On more general attitudes, the Canadian representatives said that there was considerable support in Canada for the Bill, and the Leader of the opposition had admitted that he had little support. The issue was mainly one which concerned the provincial governments. Quebec had drawn back from court action when they had perceived the likelihood of losing; their opposition to the Bill was founded on the recognition that the proposed changes would undermine the case for separatism. The Canadian Government was a majority Government and accountable, and the subject of patriation had been an issue at the last general election, though on a small scale. The Canadian representatives added that they would be contacting the new Labour Party leader and David Steel, and were considering what they might do to offset lobbying from the Provinces in this country.

On the activities of the Select Committee on Foreign Affairs, they foresaw difficulties in Canada if the Committee proceeded to hear Canadian witnesses. The Chancellor said that he could foresee considerable activity by the Committee if they decided that the issue was of major importance. He would, however, speak to the Chairman of the Committee to see what the situation might be. In response, the Canadians said that they recognised that the Committee's terms of reference were so framed as to avoid interference in Canadian internal affairs, but that they hoped that the Committee would be equally careful in considering the context of its hearings.

In conclusion the Chancellor said that within the limits of their powers the British Government would do all they could to help, but in particular stressed the importance of receiving the Bill early and in an unamendable form.

RAB

cc: Chancellor of the Duchy of Lancaster
Mr Hyde
Mr Harris
Mr M Wickstead (Lord Privy Seal's Office)
Mr Brian Berry (FCO)
Mr M Alexander (No 10)
Mr M MacLean (No 12)

PART 1 ends:-

Howe to Ch Whip 6.11.80

PART 2 begins:-

PCO to MODBA 11.11.80

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