



Office of  
The Prime Minister

Cabinet du  
Premier Ministre

Apr 20/79

CONFIDENTIAL

May 22, 1979

MEMORANDUM FOR R.G. ROBERTSON

From: Mary E. Macdonald

Re: Your memorandum for the Prime Minister  
April 30, 1979

"The Program to Achieve Constitutional  
Reform - your comments on my  
memorandum of April 6"

The Prime Minister has commented as follows:

re: page 2, "possibility of allowing regional  
referenda during the second part of the  
Third Stage. I must say I am still inclined  
not to make such a provision."

"What about the difficulty of "imposing" at  
stage 4 exactly what the people rejected at  
stage 3."

M. E. M.

FERO : BRFP  
R. G. ROBERTSON

MAY 24 1979

Ottawa K1A 0A2

Mac 1979

6661 Mar 1979

- ~~C.C.~~ Hon. Marc Lalonde
- Hon. John Reid
- Mr. Pitfield
- Mr. Robertson ✓
- Mr. Shoyama
- Mr. Tellier
- Mr. Rabinovitch
- Mr. Carter
- Mr. Gwyn
- Mr. MacKinnon
- Mr. Hayes
- Mr. Taylor
- Mr. Tassé
- Mr. Strayer
- FPRO File

CONFIDENTIAL

April 30, 1979

MEMORANDUM FOR THE PRIME MINISTER

The Program to Achieve Constitutional Reform - your comments on my memorandum of April 6

On April 17 I received through Michael Pitfield your comments on my April 6 memorandum and on the proposed letter to the Premiers which accompanied it. I am returning these items here-

-- with.

In so far as the letter is concerned, identical letters to the nine English-speaking Premiers and the version in French for Premier Lévesque are attached. The latter has been checked with the translators of your own office. The letters are undated, so that you can despatch them whenever you see fit. The letter to P.E.I. is done in two versions, one addressed to Mr. MacLean as "Premier Designate" and the other as Premier, the choice depending on the date you mail the letters and who is then in office. We will have copies on telex forms here, which could be sent out simultaneously with the mailing of the letters if you should so wish. Minor changes have been made in the basic letter, as you requested, and the new paragraph you asked for has been inserted just before the concluding paragraph on page 4.

--

You may wish to consider sending copies of the letters, with a complimentary slip or a short covering note, to the leaders of the other parties.

In so far as the memorandum of April 6 is concerned, you agreed that we should plan to include the Supreme Court in the Joint Address and we have communicated this to Roger Tassé and Barry Strayer who are working on the Address.

-- You also agreed generally with the alternative "Four Stage" basis for patriation which is set out in the memorandum (at the end of page 9, on pages 10 and 11, and the first half of page 12). You agreed, with some hesitation, that national referenda should be required (rather than allowing regional referenda) in the Fourth Stage. You raised the possibility, however, of allowing regional referenda during the second part of the Third Stage (described in (ii) on page 10). A revised page 10 is attached which includes that new arrangement. I must say I am still inclined not to make such a provision, even in the case of the Third Stage.

Also in connection with the Fourth Stage (page 11 of the memorandum) you asked whether item (i) should be dropped as it singled out resources (as opposed to education etc.) and you suggested that it might best be left to the provinces to raise. I would recommend strongly that you leave it in. It has a certain logic behind it, being singled out as an area where one province could well have an interest to protect against those of other provinces. (It is most unlikely, for example, that provinces generally would support a constitutional amendment in education that struck at one of their members.) More importantly, it is a "federal offer" on the table and taking it back now would lead to accusations of bad faith.

Finally, I gather your comment concerning the use of "expatriation" in rhetorical terms did not call on us to do any further thinking on the subject.

R. G. R.

F.A.G. Carter/JV

Second Stage - During the first two years of the three-year period provided for in the First Stage, the federal government and the provinces would seek unanimous agreement on a new amending formula. If such agreement was reached, the new formula would come into effect right away.

Third Stage - If no agreement had been reached between the federal government and the provinces during the two-year period of the Second Stage, there would then begin a period of one year in which a new formula could be adopted only (a) through the holding of a binding national referendum in which any formula, in order to be adopted, would have to receive majority support in all four regions of Canada, or (b) through the holding of a referendum in a single region if a government or governments in that region alone opposed the new formula. There would be these conditions governing such referenda:

- (i) the federal government would be obligated to put to all the people of Canada in the course of the year, any formula on which all ten provinces had agreed upon during the Second Stage (but which the federal government had opposed);
- (ii) the federal government would be free, as part of the referendum in (i) above, to put its own proposal to the people as an alternative, or if there had been no provincial agreement on a formula, would be free to conduct a national referendum on its own proposal (if a better or more acceptable formula than the one in the Fourth Stage below had emerged) or if a government or governments in a one region only had rejected a formula on which all other governments in Canada had agreed, would be free to hold a referendum in that region or would be free to hold no referendum and await the automatic coming into force of the Fourth Stage at the end of the third year of the process.



PRIME MINISTER · PREMIER MINISTRE

Ottawa  
K1A 0A2

Monsieur le Premier ministre,

A l'issue de la Conférence constitutionnelle du 6 février dernier, j'ai déclaré publiquement que la conjugaison de nos efforts nous avait permis, à mon sens, de réaliser de grands progrès. Par la même occasion, j'ai fait part de mon intention de réfléchir mûrement sur le prochain pas à franchir. J'ai pensé également qu'il serait bon d'organiser sous peu une autre conférence pour que nous poursuivions le débat sur les questions d'intérêt commun qui n'ont pas encore fait l'objet d'un accord général et que nous amorcions du même coup des discussions sur plusieurs autres points, y compris les questions d'importance concernant l'union économique canadienne.

Je persiste à croire que le renouvellement de notre Constitution est le fondement de l'évolution sociale et économique des Canadiens de tous les coins du pays. Devant

Monsieur René Lévesque  
Le Premier ministre du Québec  
Hôtel du Gouvernement  
Québec (Québec)  
G1A 1A2

... 2

l'imminence du référendum québécois, il s'avère plus urgent que jamais de démontrer que les divers gouvernements au Canada peuvent contribuer conjointement à apporter des changements capitaux pour le citoyen, de démontrer que le renouvellement de la Constitution canadienne est, de fait, chose possible.

C'est donc dans cette optique que je vous écris au sujet de l'organisation de notre prochaine conférence et de la date éventuelle de sa tenue. La question constitutionnelle revêt, à mon avis, une importance capitale, et le fait qu'il y ait présentement une campagne électorale ne devrait empêcher aucun d'entre nous de poursuivre la planification du renouvellement de la Constitution. Je propose donc que nous fixions maintenant la date de la prochaine conférence. Soyez assuré que je serai disposé à vous rencontrer le plus tôt possible après les élections, dans la mesure, bien entendu, où mon équipe sera reportée au pouvoir.

A ce qu'on me dit, le Comité permanent des ministres sur la Constitution a décidé provisoirement de tenir sa réunion du 4 au 6 juillet. Nous pourrions convenir de nous rencontrer une semaine ou une dizaine de jours plus tard, disons les 16, 17 et 18 juillet et, s'il y a lieu, le 19 juillet. Ou nous pourrions envisager d'avancer d'une semaine la date des deux réunions, pour ainsi nous rencontrer les 9, 10 et 11 juillet.

Je pense bien que l'ordre du jour de la conférence ne nous créera pas de grandes difficultés. Comme plusieurs l'ont déjà fait remarquer, il conviendrait en premier lieu de trouver des solutions aux questions de la "première liste"

que nous n'avons pu régler entièrement en février. Nous avons convenu de n'apporter aucun changement aux dispositions relatives à la monarchie et nous avons conclu une entente de base sur la question du droit de la famille. Il ne sert peut-être à rien, à l'heure actuelle, d'approfondir la question de l'impôt indirect, bien que le gouvernement fédéral soit entièrement prêt à le faire. Pour ce qui est des autres questions, toutefois, nous pourrions marquer de véritables progrès si nous pouvions disposer des jours supplémentaires qui nous permettraient de les régler. Dans certains cas, nous sommes près d'un accord général; dans d'autres, nous aurions sans doute intérêt à discuter davantage, même sur les questions qui soulèvent encore une vive controverse parmi nous, comme les ressources, l'importante question de savoir si l'unanimité est la seule voie en vertu de laquelle tout changement peut être apporté, le rapatriement de la Constitution et la formule d'amendement.

A la suite de l'examen des questions de la première liste, nous pourrions discuter, à titre préliminaire, des questions proposées pour la "deuxième liste" et chercher à nous entendre sur la version finale de cette liste. Nous pourrions en outre amorcer les études nécessaires et les autres préparatifs en vue d'une autre conférence qui se tiendrait à l'automne.

Depuis notre dernière rencontre, j'ai également eu l'occasion d'examiner la liste considérable de propositions que le gouvernement fédéral a présentées à la conférence de février ou aux réunions qui l'ont précédée. Toutes les idées que nous avons formulées traduisent notre désir de trouver, pour les années

à venir, un équilibre constitutionnel dont pourraient bénéficier les Canadiens. Nos propositions tenaient compte des projets que le gouvernement fédéral souhaite mener à bien et des aspirations des provinces. Je tiens à vous assurer qu'à notre prochaine rencontre, toutes les propositions fédérales, à une seule exception près, resteront les mêmes. Nous pourrions donc poursuivre nos discussions en nous servant de cette base.

La seule exception est l'applicabilité du pouvoir de déclaration aux ressources. Nous avons proposé qu'aux termes de la nouvelle Constitution, le Parlement ne puisse plus invoquer le pouvoir de déclaration pour légiférer en matière de développement et de répartition de toutes les catégories de ressources naturelles que nous définissons tous ensemble. Le gouvernement fédéral prévoyait compter uniquement sur le pouvoir d'urgence pour régler ces questions, dans le cas peu probable où une province agirait (ou refuserait d'agir) d'une façon qui pourrait être très préjudiciable aux autres provinces ou à l'ensemble des Canadiens.

Les événements mondiaux des derniers mois nous ont amenés à procéder à un nouvel examen, particulièrement minutieux, de cette question et à nous en préoccuper davantage. Bien que nous souhaitions tous que la situation ne nécessite jamais l'intervention du gouvernement fédéral, nous voulons, en élaborant une nouvelle Constitution, prendre des dispositions pour les prochaines décennies. Je propose par conséquent que le pouvoir de déclaration en matière de ressources demeure tel quel, mais que l'on ne puisse s'en servir que si une

situation menaçant l'intérêt du pays l'exige. Nous serions disposés, bien entendu, à étudier cette proposition à la lumière de tous les futurs accords auxquels nous arriverons à l'égard d'une nouvelle définition du pouvoir d'urgence du gouvernement fédéral.

Toutes les autres propositions touchant le renouvellement de la Constitution énoncées dans notre première liste, à la conférence des 5 et 6 février dernier, resteront les mêmes pour notre prochaine conférence, comme nous l'avons déjà mentionné. Un grand nombre de ces propositions, dont celles qui visent les ressources et les télécommunications, ont été présentées pour répondre aux désirs clairement exprimés par certaines provinces et comportent, à notre avis, des concessions importantes. Nous voulons bien faire avancer les discussions sur ces questions d'intérêt primordial pour les provinces, à la condition, bien entendu, que ces dernières soient prêtes à en faire autant pour les points qui intéressent le gouvernement fédéral. Parmi ceux-ci, il faut compter les dispositions de la Charte des droits et libertés concernant les droits linguistiques, y compris les droits des minorités en matière d'enseignement.

Je vous saurais gré de me faire connaître vos idées sur les dates et l'ordre du jour proposés en vue d'une prochaine conférence constitutionnelle. Je demeure fermement convaincu que le renouvellement de notre Constitution est essentiel à la fois à notre unité, à notre évolution économique et à notre bien-être.

Je vous prie d'agréer, Monsieur le Premier ministre, l'assurance de ma haute considération.



CANADA

PRIME MINISTER · PREMIER MINISTRE

Ottawa  
K1A 0A2

My dear Premier:

At the close of the Constitutional Conference on February 6, I expressed publicly my feeling that we had made a good deal of progress in our work together. At the same time, I said that I would like to think over carefully what should next be done. I foresaw another Conference taking place soon to continue discussions on those items of mutual interest on which unanimous agreement had not been reached, and to begin discussions on many other items, including those important questions affecting the Canadian economic union.

I believe more than ever that the renewal of our Constitution is an essential base for the future social and economic progress of all Canadians, wherever they may live. With the holding of the referendum in Quebec coming closer each day, it is more urgent than it has ever been to show that governments in Canada can work together to effect changes of importance to the citizen - that the Canadian Constitution can indeed be renewed.

The Honourable William G. Davis, Q.C.  
Premier of Ontario  
Parliament Buildings  
Queen's Park  
Toronto, Ontario  
M7A 1A2

. . . 2

It is in these circumstances that I am now writing to you about the planning for our next Conference and to suggest possible dates. The constitutional question is, I believe, of vital importance and the fact that the election campaign is under way should not deter any of us from planning its renewal. I would like to propose, therefore, that we now set aside time for our next Conference. Certainly if I form the next government, I will be ready to meet with you shortly after the election is over.

The Continuing Committee of Ministers on the Constitution is, I gather, tentatively scheduled to meet on July 4-5-6. We could plan to meet a week or ten days later, say July 16-17-18, perhaps keeping July 19 clear in case of need. Or, we might contemplate shifting both meetings one week forward, so that we could meet on July 9-10-11.

The agenda for our meeting will not, I imagine, create much difficulty for us. As several have already commented, it would seem appropriate to give first priority to finding solutions to those questions on the "first list" which we were not able to deal with completely in February. We have agreed that no change should be made respecting the Monarchy, and have reached basic agreement on Family Law. There is perhaps no point now in further pursuing the question of indirect taxation, although the federal government is quite open on this. On all the other subjects, however, we might indeed make progress if we have these added days in which to deal with them. We are already close to consensus on some; on others we could surely

benefit by further discussions, even on matters which are still strongly controversial among us such as the settlement of the resources question, the important matter of whether unanimity is the only basis for action, and the question of patriation and the amending formula.

In addition to considering the first list, we could also devote time to a preliminary discussion of items proposed for the "second list", and seeking agreement on a complete version of that list. We could also put in train the necessary studies and other preparatory work leading to a further Conference in the fall.

Since we last met, I have also had the opportunity to review the considerable list of proposals which the federal government put forward at the February Conference or at the meetings leading up to it. We were seeking, in all the ideas we put forward, a constitutional balance for the future which would serve Canadians well. We had in mind things the federal government wished to achieve, and the aspirations of the provinces. When we come together again, I would like to give you my assurance that, with the one exception I shall mention, all of the federal proposals will remain on the board, and we can continue our discussions from that point.

The one exception is the applicability of the declaratory power to resources. We had proposed that, in the future Constitution, the power would no longer be capable of being used by Parliament to take legislative jurisdiction over the development and disposition of all those kinds of natural resources which we were defining together. The federal government was planning to rely solely on the emergency power as the means of

controlling these matters in the unlikely case where a province should act (or refuse to act) in a way that would cause great harm to other provinces or to Canadians generally.

World events of recent months have caused us to take another and most careful look at this question, and we have become more concerned. While we all hope that circumstances would never necessitate action by a federal government, we are, in renewing the Constitution, planning for the decades ahead. I would propose therefore that the declaratory power over resources remain in place but be capable of use only in circumstances of compelling national interest. We would, of course, be prepared to review this in the light of whatever agreements are reached among us in future concerning a renewed definition of the federal emergency power.

All the other proposals which we made at the February 5-6 Conference in our first "package" for constitutional renewal will, as already mentioned, remain on the board for our next Conference. Many of these proposals, including those dealing with resources and communications, were put forward to meet strongly expressed wishes of a number of provinces and involve, from our point of view, substantial concessions. Our willingness to move ahead on these questions of prime interest to provinces is, of course, related to provincial willingness to see similar progress on those items of prime interest to the federal government, among which is the Charter of Rights and Freedoms with its provisions for language rights, including minority rights in education.

- 5 -

I will be interested in your comments on the proposed timing and agenda for an early Constitutional Conference. I remain firm in my belief that the renewal of our Constitution is essential to our unity and, at the same time, essential to our future economic progress and well-being.

Sincerely,