

SECRET

August 31st, 1981.

MEMORANDUM FOR MR. KIRBY

Patriation: London, September to December 1981

A. The British Plan

Assuming a favourable Supreme Court decision by, say, October 10th, the British Government intends to proceed as follows.

1. The "spillover" of the present session
Oct. 21 to Nov. 3.

In this session the British Government plans to have a two-day debate in both Commons and Lords on the Kershaw report and the Foreign Office response to it.

They have two things in mind. The first is to save time in the new session by getting some of the inevitable speeches about principles, the role of Westminster and the significance of the various precedents out of the way. The second is to carry out a definitive test of the mood of the Commons and Lords so that any required political action can be taken to ensure passage of the measure in the new session.

They are also concerned by the building pressure at Westminster to have select committee reports debated. This is likely to become normal practice, particularly when, as in this case, the committee report is highly controversial.

.../2

As you will recall originally we strongly resisted the preliminary debate since it appeared to introduce an unnecessary extra step and to involve real risks of a de facto defeat even though there will be no vote taken. On balance, I now feel the preliminary debate may serve the purposes the British envisage, a view I believe you share. In any event, unless there is a change of heart it is inevitable.

It should be noted that a 2-day debate is planned to enable a balanced presentation of the issue. The first day will begin with opening speeches from official party spokesmen. The Speaker will then feel bound to give the rest of the time that day to members who have been particularly vocal on the issue, all of whom are likely to be opposed. The second day is planned to redress the balance.

2. The New Session, Nov. 4

The Throne Speech (Nov. 4) will contain a reference to the Canadian measure. This is important since the measure then becomes an official element in the Government's program, going some way to strengthen Conservative Party discipline when the vote takes place.

First reading of the Canada Bill (a formality) would then take place on Nov. 5 and the Bill would be taken up as the first item of business after the Throne Speech debate. A realistic date for second reading is held to be Nov. 17.

Proceedings from then on are difficult to predict. The second reading debate is estimated by the British Government to be containable in 2 - 3 days. This leaves the Committee stage (on the floor of the House) and third reading. If, as we anticipate, the Speaker rules the Bill to be unamendable, the Committee stage should be little more than a formality, as is third reading.

Assuming a reasonably clear Supreme Court decision it is anticipated that the Bill will pass the Lords in two to three days.

We might then expect the Westminster proceedings to be completed before Westminster rises, on or about December 20th.

In this connection I feel it of first importance that we not indicate any Canadian deadline, which does not mean that we should not have a particular date in mind and share that date with the British Government. But, if a specific date is known or suspected at Westminster, it will become an objective for the antis (those opposed to the measure regardless of party) and the official opposition to see that the date is not met as a means of embarrassing the Canadian Government (on the part of the antis) and the British Government (on the part of the official opposition).

Games are played at Westminster, too.

B. Possibilities of delay

There are three in particular.

1. Major domestic problems in the U.K.

While I am satisfied that the British Government are basing their legislative program on the scenario set out above, with the best will in the world they may find themselves unable to deliver. Disastrous economic performance, continued and escalating "social unrest", i.e., riots, widespread strikes in essential sectors or indeed a general strike might occupy the Commons and Lords for a considerable period, forcing the Canadian measure back, possibly in to the new year. An official opposition likely to be in even greater disarray after the Labour Party Conference in September would ~~exacerbate~~ exacerbate the situation.

Based on my best understanding of the situation in Britain I regard this as a very real danger rather than as a remote possibility.

2. Effect of a petition to Westminster by
eight provinces acting in concert

The British Government is under no obligation to respond in any way to a petition to Westminster. Any individual, group, institution or government may petition Westminster as long as a member can be found to make the necessary presentation.

In my view, the first instinct of the British Government would be to ignore such a petition. They are firm in their view that the provinces have no standing outside Canada, that, internationally speaking, they do not exist.

Upon reflection, they might decide to have a short debate, possibly on adjournment. This would depend on the mood of the House. They might deem it advisable, from all points of view, to have the debate rather than to outrage the House, and they might well be right. If the petition were to be backed by legislative resolutions in all or a good number of the provinces the likelihood of debate would probably be increased.

It is my intention, subject to your views and those of the government, and assuming a reasonable certainty that a petition will be presented, to meet the House Leader's officials as soon as I am back in London, to look at the matter in a preliminary way. I think we need to have some indication of their attitude. I would also like to plant the idea that if such a petition is presented before the planned preliminary debate, the British Government should respond by saying that the matter can be discussed in that debate (a position the Speaker might be expected to support). Again if the petition were to be presented in the spillover but after the preliminary debate, the response might be (a) the matter has been debated (b) it will be debated again in the new session. It does not seem possible for the petition to be presented in the new session before first

reading of the Canada Bill but if it were the government should have no difficulty in referring the petition to the substantive debate.

Agreed

In any event we should resist a debate based on the petition alone. Such a debate would be held on ground chosen by the provinces, who would be expected to draft the petition with their usual skill and resource.

So far I have dealt only with procedural considerations. What may be even more important, and very difficult to assess, is the effect of such a petition on the concerned but uncommitted and on the uncommitted members.

Certainly we must be ready to respond quickly and effectively. The bones of such a response might be as follows:

- (i) Provincial governments do not represent the people of Canada in any different, or truer way than does the Government of Canada.
- (ii) The people of Canada are politically sophisticated, and have different expectations of their federal and provincial government, e.g. education, health are provincial, external affairs, the economy, the constitution are federal.

Can this be substantiated?

Assuming a number of legislative resolutions backing the provinces the problem is intensified. The British M.P. has a high regard for the democratic principles as expressed in a legislative vote, or at least pays ample lip-service thereunto. We must also be ready to explain, in a factual and non-controversial manner, the nature of the provincial legislatures and the high degree of control provincial governments exercise in them. This will call for some fancy footwork. We can hardly suggest that provincial legislatures "rubber stamp" government proposals. At the very least we will need to have a simple and fair-minded analysis of the makeup and voting patterns of the eight legislatures in question.

How is this different from the Federal Parliament?

3. Possibility of procedural delay at Westminster.

In my view the provinces and the "antis" at Westminster accept that the Canada Bill will pass when it comes to a vote. They are thus forced back on tactics of delay with the hope that the British Government's determination to pass the legislation will attenuate and the debate be "run into the sand".

Important because this puts in perspective the other debates

At the moment, their chances don't look too good, since none of the leading antis, to date, enjoy any particular standing at Westminster. Should they be able to bring on board a few heavies, their chances might improve. If a few heavyweights were to insist on the right to amend, the Speaker might find himself in difficulty, opening the door to very considerable delay.

No obvious candidate presents himself. Enoch Powell is an unknown factor as always. He is, however, a very strong supporter of the "old commonwealth", i.e. the white nations and might be loath to get involved. He could not do much alone. Tony Benn has other fish to fry -- some of his supporters might, however, be attracted because of their strange view of the Prime Minister as a renegade Marxist.

The 1922 committee that caused us a lot of concern earlier seems to be reasonably on board -- the Queen, the old Commonwealth etc.

How should he be involved.

Oil lies about under the surface, and there are a number of prominent Conservatives with interests in both Alberta and the North Sea.

Having gone into this in some detail my assessment is that this risk, though real, is remote and could be offset without great difficulty by a determined British Government.

C. Provincial Plans

The question of a petition has been discussed above.

1. Lobbying of British officials

Premiers attempting to lobby British officials will get a dusty answer. Officials may "take note" of views expressed but will not respond. The same would be true of Ministers if our Government decides that we should facilitate such encounters.

2. Possible appearance through legal counsel at the Bar of the House of Lords

3. Possibility of an action in the High Court in England

I understand that the Department of Justice will speak on these two items at the meeting on September 3rd.

4. A publicity campaign

I don't think any of us who have watched the British scene feel that such a campaign could possibly affect the proceedings at Westminster. The cost would be staggering and the results minimal.

5. The Premiers' Gallup Poll

In general British MPs and Lords do not seem to be particularly impressed by polls, certainly not by Canadian polls. We must be ready, however, to answer questions. The line I would propose to take is that the poll result is at least controversial, that the Premiers do not appear to have gained any great public support, and that the main outcome appears to have been to cast doubt on the professional standards of the Gallup organization. Leading experts on the polling process have stated publicly that the questions were designed to produce an entirely predictable result.

A one-page analysis of the poll and reactions to it should be prepared.

D. Planning the Fall Campaign in London

1. Background

Our campaign in London to date has been subject to three restraints not felt by the provinces:

- (i) we could not speculate on the nature, significance and effect of the Supreme Court decision;
- (ii) We could not assume the outcome of the final vote in Parliament;
- (iii) Being the High Commission in London we were bound to represent not only the federal government but also the provincial governments.

In the next phase the first two of these constraints will no longer apply. The third, however, remains. Throughout we have been advocates of the federal position, but have never tried to deny that the provinces also have a care and a point of view to which they are entirely entitled and which they are entitled to put forward.

I think this posture has served us well. The British understand that nothing is black and white, there are only shades of grey. The black-guarding of the federal government undertaken by Quebec and Alberta has weakened rather than strengthened their case whereas our more reasoned and balanced approach has been one of our greatest strengths.

So far, although there has been a lively competition between federal and provincial representatives, there has been little if any direct conflict -- we have been fighting for the hearts and minds at Westminster rather than fighting each other directly on the London scene.

With few, but very significant, exceptions, Members and Lords will never really understand the inwardness of the Canadian Constitutional issue. The question for them is rather who do we believe, who do we trust?

In this respect I believe that we are well ahead of our opposition. Certainly this was true in May and June, we seem to have lost some ground since then, probably as an inevitable concomitant of prolonged and repeated delay. When we are back in the fight we will be able to assess how great the slippage is and how to recover the ground we may have lost.

It is likely that events will help us, a Supreme Court decision, the final vote in Parliament, delivery of the address.

The major strategic question now before us is whether, in view of whatever campaign the premiers mount in London we can continue in our chosen mode of keen competition for the hearts and minds at Westminster or whether we will be forced to fight the provinces head-on in London.

For my part I would infinitely prefer to follow our earlier route. To do otherwise would be to descend from the high ground that has been our strength to date.

But the question must be faced, and there would be staffing and other implications to be considered.

2. Resources and Plans

The unit in London will be staffed and effective from September 15th. We will, however, have lost Wayne Hammond who has acted as an immensely effective anchor man. Gagnier and I are consumed by the substantive work and a highly responsible man who is prepared to say home and mind the ranch is an essential. It would be difficult to insist that this person should be Hammond, although he would be the best insurance of continued effectiveness.

John McNee should certainly be brought back from Madrid. He has proved his capacity to deal with the Members and Lords and carried out the one-to-one follow-ups required after group meetings with skill and vigour.

I realize that this will cause problems for External Affairs but I think that priority concerns must prevail. At the moment I do not think he need report to London until October 15, although this judgement may have to be revised when I see what is happening in London.

The major question facing us is whether or not we will need another senior official in London and if so, of what kind?

Ideally we would like to have a Constitutional lawyer, a strategist and an expert on the provinces. Certainly I do not suggest that three be sent. Probably the most essential are the two latter so we may be seeking a strategist with expert knowledge of the provinces. The constitutional lawyer is of course essential when the Supreme Court decision is made known, and there is a fully-operational plan for this event. The debates are likely to be political rather than legal in nature, at least in the Commons. For the period of the substantive debate in the Lords we should probably have a constitutional lawyer in London.

3. Use of supporters in the Commons and Lords

In all parties in both Houses we have people who are fully in support and ready to help. We will have to form one or more "Canadian Caucuses" to ensure that effective speeches are made in both debates in both Houses and that the Canadian case is made in the corridors of Westminster.

This again raises the question of resources. McNee could do a lot of the work but this additional responsibility tends to underline the need for a second senior official.

4. Party Leaders' speeches and the debates

Party leaders' speeches will be of first importance in setting the tone of the debates. Sir Ian Gilmour's speeches will be written in the foreign office and we should have some reasonable chance of influencing these. On the Labour side the speeches will be given, we expect (and the Labour Party Conference) by Dennis Healey and we can probably have some input via Denzil Davis and Roland Moyle.

.../11

*In this for the British
or just for our own
reputation?*

Either Lord Carrington or the Lord Chancellor will open the debates in the Lords. In any event the speech is likely to be prepared in the Foreign Office. At this time we do not know who will open in the Lords for Labour but the speech is likely to flow from the Davies - Moyle axis.

Management of the Commons debate will be in the hands of the House Leader's office where we are very well connected and will have an effective working relationship.

5. Target Groups

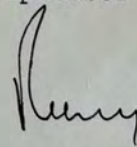
There are two groups we have not yet approached in an orderly fashion, the Canadian business oriented MPs and Lords, and the left wing of the Labour party. We have met people in both these groups but on a rather ad hoc basis. We must now consider if a special attempt should be made to develop support in these patches of stony ground.

*The energy settlement
will primarily help*

*Let sleeping
dogs lie*

... .

The areas discussed in this last section on Resources and Plans do not constitute a conclusive list. They may, however, serve as a basis for the discussions at our meeting on September 3rd.



Reeves Haggan.