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Montreal.

June 5th, 1936.

Harold E. Winch, Esq., M.L.A.,  
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Vancouver, B.C.

Dear Mr. Winch,

I have looked into the questions you asked me in your letter of May 26th and will attempt to answer them to the best of my ability. In view of their necessarily abstract and general nature it will not be possible for me to do much more than indicate the lines of solution in a general way.

I shall not attempt in this letter to deal with anything but the constitutional points you have raised. In a separate document I am submitting draft proposals for inclusion in your election programme, which have been prepared by Professor Marsh and myself as a result of the discussions that we held in Ottawa. The phraseology of the proposals is not in any final form, but we hope it will assist you in your work of preparing a complete programme.

Turning to the questions in your letter, you asked me first whether there were legal obstacles to making the distribution of gasoline a provincial monopoly. I do not think there <sup>is</sup> any constitutional reason why this should not be done. The method would be similar to that used in creating a liquor monopoly. The province may prohibit the sale, distribution and keeping of gasoline, save through the authority of the Oil Commission which would be set up. I doubt if a province could prevent the import of gasoline, but if you can control the sale, the private citizen would not have much incentive to import. To obtain control of liquor, the importation into the province had to be prevented by a Dominion statute implementing the provincial legislation. You could ask Ottawa for such a statute; it would be difficult for the Dominion to refuse, but even if it did I do not think your monopoly would be wrecked.

It is true that the Dominion has control over the importation of oil and gasoline from abroad, and can impose any duties authorized under the tariff. But I do not anticipate that you will meet this sort of opposition. If the Dominion wished to stop the scheme they could disallow the legislation directly without having to resort to dumping duties. I think you should act on the assumption

that when the people of British Columbia have expressed a desire to take over the distribution of gasoline that the Dominion Government is not going to engage in a major battle on the issue.

The next question you ask is in regard to insurance. It is not easy to say with confidence just what the Dominion powers are in this field, but I incline to the opinion that a province could, if it wished, prohibit the issuance of policies by private corporations in the province. Certainly the history of the legal battle between the Dominion and the province over insurance has consistently gone in favour of provincial autonomy. I suggest you do not attempt to take over the whole field at once. You might create a Fire Insurance Board, with power to issue policies, and you could prohibit any fire insurance contracts to be made except with the Board. Life insurance you could issue directly through some government department, and sell competitively.

You ask me next about the nationalisation of breweries. I cannot see any legal obstacle to this proposal. I would suggest that you simply add to your present Liquor Commission the power to expropriate, compensate and operate all breweries in the province, and to prohibit the creation of new

ownership by private owners.

As regards control of electric power, our draft programme outlines my ideas in this connection. Nova Scotia has already shown that a province may fix rates, assess plant and property, and limit profits on the basis of this assessment. You could do this in British Columbia by giving your existing Control Board additional powers of investigation and assessment. I imagine that once you were in power the existing Board could tell you right away just what additional powers are needed. The same Board might be instructed to prepare plans for the ultimate taking over of the industry.

As regards timber, your powers of control would be, I think, more limited because of the industry's dependence on foreign trade. However, labour conditions in the industry, and the nature and extent of conservation and reforestation, and stumpage dues, are well within provincial powers.

Your next question relates to the provincial constitution. Over this you have the most complete control, so long as you do not interfere with the position of the Lieutenant-Governor--and you could, if you liked, cut down his salary and make the position honorary. You may alter your parliamentary procedure, disband, reorganise, or extend the civil service, and fix your franchise in any way you desire.

Because of this full control over your provincial constitution, the Legislature may delegate all or any of its powers

to outside bodies. The commissions you create can be authorized to make by-laws which shall have the force of law. Your legislature could even, if it wished, legislate itself into continued existence for a period of ten or twenty years; there is no obligation under the B.N.A. Act for the provinces to hold elections every four years. But such behaviour would be quite unconstitutional in the sense that it would shock democratic sentiment in the country, and I have no doubt the law would be disallowed by Ottawa.

As regards disallowance of provincial laws, the Dominion authority to do this is full and unlimited. No reasons have to be given for such disallowance. Nevertheless, constitutional practice requires that the Dominion should not interfere with provincial autonomy save on some matter which seriously concerns the whole country. You will remember that even so radical a measure as Mr. Hepburn's cancellation of the power contracts in Ontario was not disallowed.

If your statutes are challenged, the proper way to meet the challenge is to defend the statutes in court. You should not contemplate extraordinary methods until forced to adopt them, and you can never predict in advance whether this will be necessary or not. The C.S.F. should observe constitutional behaviour as scrupulously as possible. I do not think that any of the proposals in your letter or in our draft programme

would require any unusual methods of enforcement or defense. It is true that the provincial legislature might always provide that no court action should be instituted in any provincial court to attack the legislation, and such statute might be made retroactive. Mr. Hepburn used this method for his power legislation. It is quite simple to declare that no action can be instituted without the consent of the Attorney-General; this gives you full power to allow or to refuse an action. But I think the better plan would be to fight the case through the courts; if you win you establish a valuable precedent; while if you lose you can always re-vamp your legislation. Further, the province's loss is the Dominion's gain, and from the point of view of the national movement the more power Ottawa has the better.

Next provincial legislation could be acted upon as valid until proven invalid; an injunction can be taken under certain circumstances to prevent provincial officers acting in such a way as would cause irreparable injury to private rights, but it is impossible to foreclose the circumstances under which this might arise, and I should not worry about the possibility at this stage.

As regards your power to control Dominion companies, the general rule may be stated in the words of Lord Atkin (*Lymburn v. Mayland*, 1938 A.C. at p. 324)

"A Dominion Company constituted with powers to

carry on a particular business is subject to the competent legislation of the Province as to that business and may find its special activities completely paralysed, as by legislation against drink traffic or by the laws as to holding land. If it is formed to trade in securities there appears no reason why it should not be subject to the competent laws of the Province as to the business of all persons who trade in securities".

The main point in dealing with Dominion companies is that if your legislation is directed specially at them, it is likely to be invalid, whereas if the legislation is general and applying to everybody in the province then the Dominion companies must submit to it. Through the provincial power ~~to pass~~ "blue sky laws", such as the legislation under consideration in *Lymburn v. Mayland*, you should be able to control the issuance of shares pretty thoroughly. I am afraid I do not know what to suggest with regard to control of speculation on the money markets, but if you work out a policy I do not think you will have any great legal difficulty in enforcing it.

The only kind of provincial bank you can set up would be a savings bank after the model of the Ontario one. You could, of course, attempt to set up your own commercial bank and have it incorporated under the Bank Act, but I doubt whether Ottawa would grant you the incorporation. If you are confined to a savings bank, then you are prohibited from issuing "currency". Such a bank would be of some use through its provision of capital funds, but I do not think you can expect to employ it as an agency for introducing some provincial monetary scheme,

and I am strongly opposed to any attempt at this way out of financial difficulties.

Lastly, you ask me a number of questions which I will answer in the order given:

a) Interprovincial trade.

A province has no direct control over interprovincial trade. The judgment in the Lawson case (1931 S.C.R. 357) showed this clearly enough. But a province may make general regulations controlling trade, working conditions, hours and wages, etc., which affect industries supplying goods for interprovincial trade. And a province may control its local provincial trade, even though indirectly the control affects interprovincial trade. When the interference with interprovincial trade is merely incidental to a scheme for controlling local trade, such interference is lawful to a province; but when the interference with interprovincial trade is the main object of the legislation (as in the Lawson case) then such interference is unlawful. The line is not easy to draw, and in the last analysis the courts merely express their own instinctive feelings (see my comments on this in L.S.R. pamphlet no. 4, "Social Reconstruction and the B.N.A. Act"). For instance, a law creating a 40-hour week would, I think, have to be obeyed by all companies, but a law attempting to fix prices at which lumber would be sold abroad would be ultra vires the



province. I think your brewing industry is undoubtedly a matter of local trade, even though in fact it might be exporting some part of its produce abroad.

#### b) Commodity Prices.

I think the province has control of commodity prices in so far as they are a matter of local trade. You could set the prices in your socialized factories and industries just as you now fix the prices on liquor. I presume that the prices for bread, milk, etc., are already pretty well controlled. Quebec has fixed the price for milk through its Milk Commission, and I understand Winnipeg is doing such the same thing. But I am doubtful how far you can fix the prices of goods imported from abroad. So long as their distribution and sale remains in private hands it would seem to be a matter of interprovincial trade and commerce and hence within the Dominion sphere. I am sure you could not impose special taxes on goods coming from abroad, although New Brunswick is attempting this very thing; such a disguised use of the taxing power to control trade would, in my view, be unlawful. If you are troubled by the importation of agricultural produce from other provinces, you might try the expedient of creating a provincial agricultural import board which would buy necessary agricultural imports and sell them wholesale to your grocery stores, which could be forbidden by

provincial law from selling produce purchased elsewhere than from the Import Board. By licensing the grocers you could secure that they would not sell at unfair prices. I feel, however, that the control of prices is so surrounded by difficulties that you had better not include it in your programme; it is something to be worked out gradually with your civil service experts and further legal advice after you have come into power. It will probably have to be done piecemeal.

e) and d) Influx of Workers into B.C. and Compulsory Unionisation.

I think the influx of workers would best be controlled through the trades unions. It would be lawful for the province to provide that provincial employers should only employ registered members of trades unions in specified trades. It would also be lawful, I think, for the province to make union membership compulsory. But such a step would have to be taken with great care, and could not immediately be enforced without causing great difficulties in the unorganised industries and services, and without forcing the pace of unionisation at too rapid a rate with the consequent danger of creating unsatisfactory unions. If you liked you could try a straight restriction of immigration at the Alberta boundary which I think might be lawful under Sec. 95 of the B.N.A. Act, though that section may refer only to immigration from abroad. Anyway you could

stop immigration pending the legal action.

e) Labour Conditions in Interprovincial Transportation and Banks.

I think you have a general power to control working conditions and wages in interprovincial transportation and banks. That is to say, these federal companies must submit to general provincial laws which cover them along with other corporations. Again I would stress the distinction between special laws dealing with say the banks, and a general law covering a number of industries and trades of which the banks were one. Banks must submit, for instance, to municipal building laws, to sanitation laws, and to general regulations applying through<sup>out</sup> the province. But even if the legislation should be invalid, you can probably effect the same thing by promoting trades unions in these services and helping them to bargain for the conditions they want.

Your last questions relate to Finance and Agriculture, and on these you have asked for general ideas rather than constitutional advice. In our draft programme we have suggested that, once the interest rates in the province have been reduced and taxation increased in appropriate places, the financing of the province should be quite orthodox. That is to say, we think you can balance your budget and develop your socialised sector out of the profits derived from your socialised enterprises. Taking over the breweries, for instance, does not require an immediate issuance of credit; you simply call in the shares and

give back in return new shares or bonds guaranteed by the province and bearing a certain rate of interest. The sale of beer does not stop, so that your income from the operation of the breweries will enable you to pay the interest and retire the bonds. You may decide, when you take over the distribution of gasoline, that you will keep the price to the consumer somewhere near its present level in order to maintain a higher margin of profit with which to finance further socialization.

I am afraid I do not know the agricultural situation well enough to suggest a policy for you. The promotion of co-operative enterprises will help agriculture in large part; and the development of highways, rural electrification, and schools will help to raise the cultural level of the farmers. If you succeed in controlling agricultural imports, you could even stabilize agricultural prices within certain limits. I think you would be well advised not to attempt any serious changes in agricultural method until you have a plan worked out which the farmers themselves -- or a considerable portion of them -- would welcome. You can probably postpone this until after you take office.

Trusting that these scattered remarks may be of some use to you,

I remain,

Yours sincerely,

F.R. Scott.