

*File*  
CONFIDENTIAL

May 22nd, 1975.

c.c.: Mr. Gravelle  
Mrs. Reed

MEMORANDUM FOR MR. CARTER

"Constitutional guarantee" for Quebec

I told you this morning that Mr. Thorson and I had agreed to get together on Monday at 2.30 to have a discussion of the question of a "constitutional guarantee" that might be of some interest to Mr. Bourassa. My conversation with Mr. Thorson was really about the petition to the government on Bill 22 so the discussion of the constitutional guarantee problem was brief. I did, however, mention to Don that one idea that we have toyed with has been that of putting a paragraph in the preamble to the proclamation by the Governor General. Don's reaction to this was one of some interest.

Thorson says that in Canadian practice the preamble to a statute is not "mere piety" and is regarded by the Courts as something to which meaning should be given if the law and the situation in any particular case so permit. His quick reaction, subject to further consideration, was that a paragraph in a preamble to the special kind of proclamation that would be involved in this case would be deemed to have a similar importance. He said that what it amounts to is that the Courts will give effect to a preamble "if there is room" - as I understand it, if the specific provisions in the body of the statute itself (or I suppose in some other statute) do not make it impossible for such effect to be given without violating a specific provision of the law.

By way of analogy, Thorson referred to the fact that the preamble to the B.N.A. Act provided for the union of the provinces into a "dominion" "with a constitution similar in principle to that of the United Kingdom". This preambular statement, according to Thorson, has been given considerable

effect in judicial interpretation of the B.N.A. Act and of statutes passed under the Act. He said he thought that a preamble to the proclamation which had some suitable reference to the preservation of the French language and culture - or of the two official languages - and the cultures based on them - would have "a degree of significance".

We will have a chance to go into this as well as other possibilities on Monday.

A handwritten signature in black ink, appearing to be 'W. G. B.', with a stylized flourish extending from the bottom right.