

CONFIDENTIAL

February 19th, 1975.

c.c.: Mr. Haney
Mr. Gwyn

MEMORANDUM FOR MR. GRAVELLE

Amending procedure and "patriation"
of the constitution

Attached is a copy of a memorandum I am sending to the Prime Minister to give him the "nub" of our conclusions in the meetings we had on Monday and Tuesday. I note from my distribution list that I had neglected to send you, Bill Haney and Nick Gwyn copies of my memorandum of February 11th to the Prime Minister. A copy of that is also attached.

I gather from Mr. Carter's note that you will be assuming the leading responsibility for coordinating things on this question in the FPRO. I would welcome particularly any thoughts you may have at any time on the particularly delicate question of Quebec reaction. I think we must do everything we can to avoid causing any unnecessary difficulties there while at the same time moving effectively ahead to achieve the result that the Prime Minister wants.

R.G.B.


CONFIDENTIAL

February 18, 1975

R. G. R. ✓
MRS REED
F. A. G. CARTER
P. GRAVELLE
N. G. V. N.

NOTES OF WHAT WE DECIDED ABOUT "PATRIATION"

*Hold in
"Constitution"*

A. Proposed Sequence of Events

1. Put before the P.M. by March 15 (i) a first draft of possible addresses by the two Houses of Parliament proposing the action to be taken by the U.K. Parliament, and (ii) a memorandum on the problems, pros and cons, and suggested procedures.
2. The P.M. would raise the matter informally with the provincial First Ministers either during the April Conference or, perhaps better, soon after it by phone or letter, proposing that R.G.R. and one or two others visit each of them to explore informally the possibility of some move toward the patriation of the Constitution together with some understanding of how an amendment formula might be incorporated into it if the provinces agreed.
3. R.G.R. would subsequently visit the provincial First Ministers as soon as the time was considered propitious to discuss this matter and perhaps others. (Some attention should probably be given to the order of the visits. It might be well to start with Alberta to ascertain how much trouble might be expected there, then go to Ontario in the hope of getting some possible support "such as Mr. Robarts provided" and then to Quebec when it had been decided whether a strong line could be taken to move quickly. After that, others could be met in the West and the East.)
4. Assuming that no unexpected serious reactions were met on the part of the provinces there would be some proposals made publicly which would lead to public provincial reactions. We did not discuss whether there should be a conference of First Ministers. That may be necessary or desirable.
5. The matter should then be put before Parliament as promptly as possible (July or October?).

B. Substance of Proposals

1. Parliament would be asked to approve formal Addresses to the Queen, which would ask her to cause a bill to be laid before the U.K. Parliament on Canada's behalf.

2. The U.K. Parliament would be asked: (i) to amend the BNA Act to change the title to, say, "The Constitution of Canada Act" and to incorporate into that Act a new Part containing in essence Part IX of the Victoria Charter (together with those details of Part X of that Charter that would remove the duplication in the powers to amend, e.g. 91(1) and 92 (1)), with a proviso that this new Part would only take effect where it had been approved by the legislatures of each province (the approval should not be revocable). There might also be a further proviso that before the new Part comes into effect, any part of the Act that cannot otherwise be amended could be amended by concurrent action by Parliament and all ten provincial legislatures; and (ii) to amend the Statute of Westminster 1931 to delete paragraphs (1) and (3) of Section 7.

(Question -- do we ask U.K. to amend various other U.K. acts set forth in the schedule to Part X of the Victoria Charter?)

3. When the Address is before the House of Commons the P.M. would table what the government would propose as parts of the first amendment to be made to the Constitution of Canada Act once the proposed amending formula had received the assent of all the provincial legislatures. This would presumably include as much of the Victoria Charter as the government feels would be acceptable as a package. It might also announce its willingness to negotiate with the provincial governments further changes to be incorporated in the first package of amendments once the amending formula was approved.

R/S