

November 7th, 1975.

MEMORANDUM FOR THE PRIME MINISTER:

Action on the patriation proclamation

In my memorandum to you of yesterday's date, I sent you an English version of a re-draft by Don Thorson of Article 40. I said that I would be in touch with Chouinard after a French version had been prepared and I spoke to him on the telephone about it yesterday. Chouinard found the English version entirely satisfactory and had only two drafting changes to make in the French version, both of which were entirely acceptable at our end - indeed they are improvements in the precise rendition of the ideas contained in the English version. The French version as it now stands is attached.

Chouinard is today communicating the proclamation with this new draft of Article 40 to Mr. Bourassa. He thinks that it should be possible for you to speak to him some time next week at your convenience.

When you speak to him, presumably the points you will want to touch on are the following:

(a) The draft as it now stands has been modified on several occasions to meet points that have been raised by Quebec. It is as far as you can go at this stage and indeed you have some concern as to whether the "guarantee" provisions may not cause difficulty with some of the English speaking provinces.

(b) There can be no question of including anything about the spending power in the proclamation. You would, however, be prepared to see it a subject for action when patriation has been accomplished.

(c) It would be most undesirable to contemplate a court reference. It would involve many months of delay during which time all kinds of opposition and criticism could be mounted, both in Quebec and elsewhere. We have also to consider that, however important the guarantees may be, a court will inevitably be cautious in its expression about their general effect. Even a very strong decision could be made to look inadequate.

(d) The draft proclamation should now go to the Cabinet and to the Premiers of the other provinces but this can be only on the clear understanding that it is acceptable to Quebec - both to the Premier and to the Cabinet.

(e) While we will, of course, undertake the discussion with the other provinces, it may be that Mr. Bourassa will have to do some work of persuasion if difficulty is encountered about the guarantee provisions.

A memorandum to the Cabinet is being prepared to secure Cabinet approval when we have the reaction of Quebec.

So far as the other provinces are concerned, I suggested in my memorandum of October 23rd that the best course would be to have letters from you to each Premier which would give some explanation of the considerations that have led up to this document. The letters will have to be somewhat different in almost every case. These are now being undertaken and will be ready for action when we have Cabinet approval.

R.G.B.


Les ententes fédérales-provinciales

Art. 40(1) Dans le but d'assurer une plus grande harmonisation de l'action des gouvernements et plus particulièrement d'éviter toute action qui pourrait compromettre au Canada la sauvegarde et l'épanouissement de la langue française et de la culture dont elle constitue l'assise, le gouvernement du Canada et les gouvernements des provinces, ou de l'une ou de plusieurs d'entre elles, peuvent, dans le cadre des pouvoirs que chacun d'eux possède par ailleurs en vertu de la loi, conclure entre eux des ententes relatives à la manière d'exercer ces pouvoirs, notamment dans les domaines de l'immigration, des communications et de la politique sociale.

(2) Rien dans cet article ne doit être considéré comme limitant ou restreignant toute capacité conférée avant ou après l'entrée en vigueur de cette proclamation au gouvernement du Canada, ou au gouvernement d'une province, de conclure des ententes dans le cadre des pouvoirs qu'il possède par ailleurs en vertu de la loi.