

Mr. Austin  
Mr. Carter  
Mr. Haney  
Mr. Gravelle  
Mrs. Reed  
Miss Macdonald

CONFIDENTIAL

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MEMORANDUM FOR THE PRIME MINISTER

Initial discussions with some Premiers  
on "patriation" of the constitution

I have now had meetings with three Premiers on "patriation" of the constitution. You may be interested in a brief report concerning their reactions and comments. They were as follows:

A. Premier Schreyer

Mr. Carter and I had a lunch meeting with Mr. Schreyer and Mr. Fawley, the Attorney General, plus two officials on May 15th. The points he raised were the following:

1. Whether the amending formula agreed on at Victoria, with its "veto" for Quebec even if it ceased to have 25 per cent of the population of Canada, ought not to be limited to things that had a "cultural" aspect. His concern appeared in part to relate to the privileged position Quebec would have with regard to non-cultural matters and in part to the "veto" for any province with regard to matters that were of a general interest. I told Mr. Schreyer that I thought that if we departed from the Victoria amending formula we would be in great difficulty and would probably have to renegotiate the whole thing.

2. He expressed a brief but not very serious concern over the potential "veto" for British Columbia because of the provision that the two consenting western provinces must include at least 50 per cent of the western population.

3. There was some question as to just what things would be amendable under the provision for things that affect "one or more, but not all" the provinces. I told

Mr. Schreyer that this had not been defined and would probably have to be left to the Courts in future for precision as any attempt to clarify it at this stage would involve great difficulty.

At the end of the discussion, Mr. Schreyer said that I could advise you that Manitoba "would not object" to proceeding to "patriation" on the basis of the Victoria amending formula. (He did not raise any question about using the whole formula instead of the specific parts of it referred to in your letter of April 19th.) He asked me to let him know what the results were of my discussions with Alberta, Ontario and Quebec and I promised to do so.

#### B. Premier Lougheed

Mr. Carter and I had a meeting of about an hour with Premier Lougheed, Attorney General Hyndman and an official on May 16th.

As Mr. Lougheed had not been at Victoria, I went into the discussions and positions on the procedure of amendment rather more fully than with Mr. Schreyer but I found that Mr. Lougheed had been well briefed and had gone into the question quite thoroughly. The main points he raised were the following:

1. The potential British Columbia "veto" based on the requirement for 50 per cent of the western population. Unlike Mr. Schreyer, Mr. Lougheed was very firm on this. While he thinks that the growth of Alberta may mean that B.C. will not achieve 50 per cent of the western population for a good many years, if ever, he thinks it is a thoroughly undesirable provision and not really acceptable to his government. He stressed that he had not been at Victoria and had no commitment to the formula. I told Mr. Lougheed that the federal government had itself preferred not to have a population provision and had started without one but that it had been inserted at the insistence of Mr. Bennett who had in fact pressed for having five regions for purposes of the amending formula - which would have given British Columbia a veto without any population requirement whatever. Mr. Lougheed wants me to talk to Mr. Barrett about this provision and to make clear to him that Alberta thinks it is quite undesirable and that the provision with respect to the

western provinces should be the same as for the Atlantic provinces - two provinces with no population requirement.

2. Mr. Lougheed raised the question whether Part IV of the Victoria Charter concerning the Supreme Court could not be included in the "patriation" exercise without departing from your basic idea of not getting into the substance of the B.N.A. Act. You will recall that, in my initial memorandum to you, I had pointed out that this would be a possibility since the Supreme Court is really "structural" rather than substantive and since the provision for it is not in the B.N.A. Act itself. I told Mr. Lougheed that I thought it might be possible to make such a distinction and that I would raise the matter with you if he so wished. He made it clear that he did and that inclusion of the provision would be important to him. He had apparently raised the matter at the Conference of Premiers last autumn and he said that all but Premier Hatfield had favoured establishing Part IV as soon as possible. Mr. Lougheed said that having Part IV would "be a definite attraction for Alberta and would give substance to the 'patriation' exercise".

3. The situation if new provinces were to be added from the Yukon or the Northwest Territories. Mr. Hyndman raised this question and wanted to know whether the addition of one or two new provinces would require a change in the amending formula or would "dilute" the requirement to have the consent of two of the present provinces for an amendment. I said that the addition of one or more provinces would not require any change in the formula. If one province were added, the "majority" would remain six; if two were added, the "majority" would become seven. In neither case would there be any change in the requirement to have the consent of two of the present western provinces since "western provinces" is defined, as a term, by naming the present four provinces.

The final position is that Mr. Hyndman will recommend to the Cabinet that Alberta be prepared to go along with "patriation" provided:

- (a) the formula be amended by deleting the requirement for "at least 50 per cent of the population of all the western provinces" and

- (b) the "package" include Part IV on the Supreme Court.

Mr. Lougheed asked me to advise Mr. Bourassa, when I see him, of the Alberta position especially concerning the Supreme Court. He also asked me to let him know of the positions that Ontario and Quebec take (I told him of Mr. Schreyer's position).

C. Premier Davis

When Mr. Carter and I met Premier Davis yesterday, he had no Minister with him but only Jim Fleck who is Secretary of the Cabinet. The meeting was brief but Mr. Davis had clearly thought about the matter and knew the points he wanted to make. They were the following:

1. Ontario would like to see "patriation" accomplished.
2. The Victoria amending formula was satisfactory to Ontario.

He did not make any reference to "full" or "partial" Part IX.

3. It might be desirable to have something about the Supreme Court as a part of the "patriation" exercise. Mr. Davis brought this out without my having mentioned that Premier Lougheed had raised it. After he had done so, I told him that Premier Lougheed had made the same point and he said he was not surprised since he knew from the discussion last autumn that Mr. Lougheed attaches a good deal of importance to it.

4. He wants me when I see Mr. Bourassa to tell him that, while Ontario would like to see "patriation" accomplished, he (Mr. Davis) will see that Quebec "is not isolated again" as it was at Victoria. The message here seems to be as much for us as for Quebec. I take it that Mr. Davis is saying that Ontario will cooperate in achieving "patriation" but it will not give its agreement to go ahead with anything that is not acceptable to Quebec.

In all three discussions, I told the Premiers that I had first been in touch with Quebec and that Mr. Bourassa had asked me to see some of the English-speaking Premiers before coming to see him. I also told them that, consistent with his attitude on the occasion of your dinner on April 9th, Mr. Bourassa seemed now to be wanting some kind of a "constitutional guarantee" with respect to "cultural security" rather than insisting on any increase in legislative powers. I said that the trick would be to see how anything resembling a guarantee could be contrived without getting into the question of powers. All expressed agreement about that dilemma and all expressed agreement that if we were to get involved in "powers" the game would become impossible. No one at either the Ministerial or the official level had any suggestions for a solution but all three Premiers indicated sympathy with Mr. Bourassa's desire to have something. I got the impression that they would go along with some kind of provision if one can be devised that does not get into the problem of legislative power.

I plan now to get in touch with Chouinard to see whether Mr. Bourassa would be ready to have a discussion. If he is not, I will explore whether they think it might be all right for me to see a couple of the Atlantic provinces before going to Quebec.

R.G.B.  
