

November 27th, 1975.

MEMORANDUM FOR THE PRIME MINISTER:

Next steps on "patriation" of the constitution

I mentioned to you yesterday the information that has come to us from Arthur Tremblay indicating that there has been some discussion by Mr. Bourassa with officials in Quebec and also with members of his Cabinet about the document that I transmitted to Julien Chouinard as the basis for agreement on action on "patriation". It appears that the Ministers plus the "new team" are suggesting several new things: addition to the provisions concerning the Supreme Court of a special panel of the Court to deal with constitutional questions; some mechanism for First Ministers to meet periodically to consider the "political implications" of Supreme Court decisions; and something (undefined) that would deal with equalization and the spending power. In the light of this information you will be wanting to consider what step it would now be best to take.

I am attaching herewith the original of my memorandum to you of February 19th last. So far, we have been adhering to the course recommended in it as amplified in subsequent discussion. There has been no mention to anyone of the "fall back" position which is described on pages 2 to 3 of the memorandum. In a later memorandum to you of April 1st, I suggested (and you agreed) that the best course would be not to reveal the fall back position until the "first round" of discussions had been completed. The qualification on this was that it could be made clear to Mr. Bourassa if it seemed necessary to do so in order to make it apparent that achievement of agreement on "patriation" plus amendment is not a lever that could be used to force the federal government into constitutional changes. It sounds as though some disposition is now developing in

Quebec to try to use our attempt at securing agreement in precisely this "leverage" way.

It is distinctly possible that the transmission of information via Tremblay was in order to test the reaction here. Whether that is the case or not, it seems to me that it would be highly desirable to make clear to Mr. Bourassa that you were serious when you said that the document we sent to Chouinard is as far as you are prepared to go. I can see no point in letting the idea develop that more concessions are possible. I suspect that, if they were met, they would simply lead to a request for a third slice of concessions once the second had been worked out.

A separate question is whether this would be the time to tell Mr. Bourassa what you plan to do if agreement cannot be achieved. It is quite possible that this is in fact the time for that since he may otherwise not take seriously your indication of intention to "go it alone". There is some risk, of course, that Mr. Bourassa might decide that this would be the most attractive solution for him: it would get the question out of the way without his having to take any action on it. On the other hand, articles 38 and 40 of the draft proclamation are very important gains for French Canada and Mr. Bourassa could make something pretty positive out of his success in achieving them if he was disposed so to do. If there was no agreement and you "went it alone", articles 38 and 40 would probably have to be left aside. Even if, in the end, it was decided to include them in the federal action, they would come as a purely federal concession and they would not have behind them the very important status that we are trying to achieve for them in getting the agreement of all the provinces and ultimately the approbation of all the provincial legislatures.

In the hope that we would be getting word that Mr. Bourassa agreed to the draft proclamation, I had a draft memorandum to the Cabinet prepared. A copy of it is attached for information. You

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might conceivably want to be aware of it and of the summary of positions taken by certain of the provinces. You might also want to use it to indicate to Mr. Bourassa that you are all set to go - one way or the other.

R.G.R.