

Carter
Mr. Jodouin
Mr. Hurley
Mrs. Reed
Miss Macdonald

November 29th, 1975.

MEMORANDUM FOR THE PRIME MINISTER:

Next steps on "patriation" of the
constitution

I mentioned to you on Wednesday the information that has come to us from Arthur Tremblay indicating that there has been some discussion by Mr. Bourassa with officials in Quebec about the document that I transmitted to Julien Chouinard as the basis for agreement on "patriation". Apparently Tremblay is in the process of preparing a submission to the Quebec Cabinet for discussion soon - probably after December 10th. He thinks our document will not likely be accepted as it stands. He raised (in a conversation with Frank Carter) the possibility of some 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 think it would be most undesirable for officials in Quebec to prepare or for the provincial Cabinet to discuss in an atmosphere of unreality. They should know the limits of the possible and understand that they do not have the federal government or you over a barrel.

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. We agreed that the time to advise Mr. Bourassa about it would be if and when it seemed necessary to do so in order to make it clear that achievement of agreement on "patriation" is not a lever that can be used to force the federal government into constitutional changes. It sounds as though a disposition may now be developing in Quebec to try to use our attempt at securing agreement in precisely this "leverage" way. Whether this is so or not, it seems to me that this is the time when Mr. Bourassa should be told of the fall-back. Without knowledge of it, he - and his Cabinet - cannot assess our document, and the wisdom of arriving at agreement, without full knowledge of the consequences if there is no agreement.

There is some risk, of course, that Mr. Bourassa might decide that unilateral federal action 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.

Mr. Bourassa might well ask whether you are saying "take it or leave it" about the draft proclamation. You might not want to go quite that far since Mr. Bourassa might want to be able to get some change in order to meet views that may arise in his Cabinet - such, for instance, as inclusion of the Victoria provision about annual conferences of First Ministers. I think, however, that both he

and his colleagues should be thoroughly aware that the document as it stands represents a lot for Quebec and that nothing of substance can be added. (In effect, Quebec is the only province that will be getting something that is new and different since Victoria.)

It is possible that Mr. Bourassa and his Cabinet will want something to be able to show that "patriation" is not the end of the line but rather a move to open the way to constitutional change. This would fit with your own thinking. It could be given substance by agreement among First Ministers, either at a conference or by exchange of letters, that, at the first meeting of First Ministers after "patriation" had been achieved, there would be discussion of the items that should take priority for consideration of constitutional amendment under the new formula. This could be of interest to more than just Quebec - Newfoundland re Seventh Day Adventist schools; Nova Scotia re Sable Island - but Mr. Bourassa could validly represent it as something particularly for Quebec and say that he would be raising as top priority whatever he thinks is "top" - spending power, communications, etc.

I had a long talk with Mr. Basford yesterday (Friday) and told him of the exercise to date plus the latest news as to further developments in Quebec. He is concerned about the possibility of Cabinet discussion in Quebec, with possible leaks, before your colleagues here know what is being proposed. 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 week or so ago. A copy of it is attached for information. It could, if you so wish, be revised so that it does not rest on Quebec agreement. It could be simply a report on what has been put to Quebec with recommendations that would be conditional on agreement being received. Possibly you could let me know if you would like to have the memorandum revised in this way for submission to the Cabinet at an early date.

