

c.c.: Mr. Pittfield  
Mr. Austin  
Mr. Bryce  
Mr. Carter  
Mr. Haney  
Mr. Gwyn  
Mr. Gravelle  
Mrs. Reed  
Miss Macdonald

M. ROBERTSON

CONFIDENTIAL

April 14th, 1975.

MEMORANDUM FOR THE PRIME MINISTER

Discussions with the provinces  
on "patriation" of the constitution

I was very glad to learn from your note about the positive reaction you had received from the Premiers when you spoke to them at your dinner on April 9th about "patriation" of the constitution. I think it would be highly desirable to follow this up without delay with the letter from you that we have discussed. I am attaching a draft herewith. If you think it is appropriate, it can be put in final form and sent off forthwith.

I am not certain whether you think the letter to Mr. Bourassa should differ in any respect (other than language) from the letter to the other Premiers. In your note with regard to him in particular you have the following comment:

"Later, Bourassa said he would give it a lot of thought and was anxious to discuss with you. I made it quite clear that we would not be opening sec. 91-92. He said he understood and said he was more interested in 'guarantees'. (Bill of Rights?)".

If there is anything that you think ought to be added, perhaps you could let me know.

There are a few other points on which your guidance would be helpful:

- A. Public information about your initiative and the intended discussions

Almost certainly it will become known before too long that you raised this matter at your

dinner and that discussions on "patriation" are taking place. You may want to consider whether you should take the initiative in saying anything about this, possibly in the House of Commons, or whether it would be sufficient simply to be ready to reply to questions. Do you think there should be any reference in the letters to the course that you are likely to follow?

In case you do find it desirable to say something about this matter, you may want to have in mind the approval that was given by the Joint Parliamentary Committee to the amending formula that was in the Victoria Charter. In their report, the Committee said:

"In sum, we endorse the proposed amending formula as a feasible approach to constitutional amendment, and would not expect to see its general terms substantially improved on, no matter how long intergovernmental negotiations were carried on."

B. The desirability of trying to achieve completion of the process for the summer of 1976

You mentioned in your note that "Davis was interested in the timing as was Bourassa; suggested that just before Olympics might be a good time". It seems to me that there would be great advantage in having some target of this kind to impose a degree of pressure. I think the Premiers would be not unaware of the historic quality that there would be in some ceremony that could involve all of them in Ottawa at the time of the Queen's visit in 1976. In a sense, it would mark the constitutional completion of Confederation just as the entry of Newfoundland in 1949 marked the geographic completion.

Achievement of the 1976 date would involve pretty prompt action by all the legislatures, the Canadian Parliament and the British Parliament. There is not, however, anything impossible or unduly difficult about it. If, however, we are to work toward such a timetable I think that, when I see each Premier,

I should talk to him, not only about the procedure and substance of "patriation" and the amending formula but also about the resolution of approval for his particular legislature. Our legal advisers in 1971 emphasized the desirability of having resolutions that are as uniform as possible to avoid any possible question at a later stage as to whether there had, in fact, been consent to precisely the same effect by the various legislative bodies. If it would not seem premature, I could perhaps take with me to my meeting with each Premier a draft text of the proposed Proclamation by the Governor General and of wording that might be appropriate for the resolutions in each legislative body. In the discussions in February 1971, the following wording was proposed:

"... that this House (Assembly, etc.) approve the issuance of a Proclamation by the Governor General, proclaiming the following provisions respecting the Constitution of Canada to come into force on a date to be fixed by that Proclamation."

Do you think I should go as far as the above at my meeting with the Premiers?

C. Would it be desirable to raise any question about changing the name of the B.N.A. Act?

There would be a lot to be said for having a more meaningful and modern name than "British North America Act". A suitable one might be "The Constitution of Canada Act". Technically there would be no difficulty about having this change in name made as part of "patriation". The only arguments I can see against it are:

- (1) It might be thought to have an implication of finality about it. If we are calling this the "Constitution of Canada" does that mean we are thinking of foregoing further changes?
- (2) Because of the above possible implication, and because it constitutes a textual change in the Act, it could provide

some argument to any who may want to see other substantive changes made at this stage. That would upset the whole strategy in the present approach.

Subject to any guidance or comment you may have on the above or other points, it would be my plan to try to get discussions underway quite soon after your letter has gone to the Premiers. As you will see in the letter, I would like to have Frank Carter come with me for the meetings and to use the session as an occasion on which to have more general talks with provincial Ministers and officials. I know that they feel that we do not give sufficient priority to visiting them and talking to them individually about problems or to give them information on matters of which they are uncertain.

R.G.R.

D r a f t

CONFIDENTIAL

Letter from the Prime Minister to Provincial Premiers  
(French version for Premier Bourassa)

My dear Premier,

I was very pleased indeed at the reaction of yourself and our fellow First Ministers, during our dinner on April 9, to my proposal that we should proceed at an early date to the "patriation" of the British North America Act with the amending clause agreed on at Victoria. I am encouraged to believe that, after fifty years of effort, we may finally dispose of the last remnant of our one-time colonial status that is involved in our not being able to amend our own constitution in totality.

I am enclosing herewith a copy of Part IX of the Victoria Charter. As you know, there was no objection to it in 1971 by any government. It was regarded as the best solution that could be found to the difficult problem of making changes in future to those parts of our constitution that cannot now be amended under either Section 91(1) or Section 92(1) of the B.N.A. Act. There are three Articles in Part IX - Articles 53, 54 and 55 - which reproduce the substance of Sections 91(1) and 92(1). These were included at Victoria as a part of the "tidying up" of the constitution that would have been accomplished by the Charter which, of course, covered much more than simply the amending procedure. What I am proposing now, as I made clear, is that we should not, at this time, get into any questions of substance or form at all: we should simply "patriate" with an amending clause to cover those parts of the B.N.A. Act that are not now covered. This would mean that we would not now include Articles 53, 54 and 55 since they

involve amendment of Sections 91 and 92 of the B.N.A. Act. We would move simply with regard to the other Articles of Part IX. We would leave for future action under the new amending procedure whatever changes of form or of substance we or future governments may want to accomplish in the Canadian constitution.

The procedure for "patriation" was discussed at the Working Session of the Constitutional Conference on February 8-9, 1971. It is outlined in pages 399 to 402 of the Secretary's Report on "The Constitutional Review, 1968-1971". As you will see, the procedure contemplates three main steps: approval by the legislatures of the provinces and by both Houses of Parliament; legislation by the British Parliament and, finally, the issue of a Proclamation by the Governor General. The legislation by the British Parliament would provide the legal validity for the Canadian proclamation and its provisions about the procedure of amendment. It would also provide that no future British law should have application to Canada and would make consequential repeal or amendment of British statutes affecting the Canadian constitution. The issuance of the proclamation by the Governor General would coincide with the effective date of the British legislation. Once all this had been done, we would have full and complete capacity to deal with our constitution in Canada and the British Parliament would no longer continue to have the powers it still legally has to deal with the law and constitution of Canada.

I was particularly taken with the suggestion at our dinner that it might be desirable to accomplish the "patriation" of the B.N.A. Act just before the Olympic Games in 1976. The Queen will, I hope, be visiting Canada for the formal opening of the Games. It would be most appropriate if she could

be here for some suitable ceremony in the National Capital, attended by all the First Ministers of Canada, to complete this historic process relating to our constitution. To meet the suggested time, it would mean that the resolutions of the legislatures and the Joint Address of Parliament would all have to be passed at an early point in their respective sessions in 1976. The British Parliament would then have to legislate in its 1976 session, probably by May or June if that could be accomplished. This would leave time to plan the ceremony for the proclamation and whatever other formal arrangements seem appropriate. While all this would require prompt action, the substance of what is to be approved by the legislative bodies is brief and simple. I would hope that we could meet the schedule that would make the events of 1976 and the visit of the Queen especially historic.

I have asked Gordon Robertson to communicate with your office to arrange a convenient time to call on you on my behalf to discuss all aspects of what is proposed. He plans to have Frank Carter, the Deputy Secretary to the Cabinet for Federal Provincial Relations, accompany him with the thought that they could use the occasion of the visit also to discuss with you, your Ministers or your officials any other questions that you think could usefully be explored while they are in \_\_\_\_\_.

I was very glad to have had the occasion on April 9-10 to join with you and the other First Ministers in the discussion of the important problems that were before the Conference. It may well be, however, that the history books of the future will regard the discussion at our dinner on April 9 as a more memorable part of our meeting.

Yours sincerely,

PART IX  
AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

- (1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;

- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.