

cc. Mr. Pitfield
Mr. Austin
Mr. Carter
Mr. Gravelle
Mr. Hurley
Mrs. Reed
Miss Macdonald

CONFIDENTIAL

July 4th, 1975.

MEMORANDUM FOR THE PRIME MINISTER:

"Patriation" of the constitution; meetings
in P.E.I. and N.B.

I had meetings on July 2nd and 3rd with Premiers Campbell and Hatfield on the proposal for "patriation" of the constitution. Both were very useful meetings but both have served to complicate the situation a fair bit.

Premier Campbell

Premier Campbell is quite prepared to go ahead with the proposal to "patriate" the constitution on the basis of the Victoria amending formula - whether modified to meet Mr. Lougheed's point or not. He has sympathy with Mr. Bourassa's concerns about the security of French culture and has no objection in principle to constitutional guarantees. Like Mr. Moores and Mr. Regan, he would want to look at the text of what is proposed.

Mr. Campbell agrees with Mr. Regan that, if constitutional guarantees are to be provided as Mr. Bourassa wishes, there must be something on regional disparities. He feels, however, that the formula agreed on at Victoria (Part VII) was not sufficiently specific or enforceable in relation to the obligation of the federal Parliament and government to ensure a general level of services by all provinces to their citizens at a reasonable level of cost. You may recall that various attempts were made, especially by Premier Smith, at an earlier stage in the constitutional discussions, to get a formulation that would be very specific and which could be enforced in a court if the federal Parliament or

government of the future did not make possible the general level of services in all provinces. Mr. Bennett was strongest in objection and Part VII was the maximum that could be got by way of consensus. I told Premier Campbell that it seemed to me uncertain whether British Columbia or perhaps the federal government would be prepared to go as far as he wished...

Premier Campbell would prefer to see Part IV (the Supreme Court) included in the package.

Premier Campbell questioned me as to the degree of our confidence that Premier Bourassa would really go ahead with this exercise. He said that ~~apparently~~ Mr. Bourassa had, at the meeting of Eastern Premiers with the Governors of Northeastern States in St. Andrews about ten days ago, stressed the problems that would face him in trying to take action at an early point on constitutional "patriation". He apparently referred to the difficulty particularly of trying to do anything before the Olympics were out of the way. I told Premier Campbell what Mr. Bourassa had told me in Quebec and that I had nothing to go on other than that. I said I thought he could be confident that you would want to be very certain of Mr. Bourassa's position before getting into discussions other than the kind of bilateral talks that I was now having.

Premier Hatfield

After I had outlined to Premier Hatfield the positions taken by the Premiers I had seen up to that point, he asked me what the federal government's position was with respect to the enlargement that was being proposed from your original thought of "patriation" with the Victoria amending formula only. I said that the various proposals had not been referred to the Cabinet and that I had not had a chance to discuss some of them very fully with you. I said, however, that it was my impression

that you and the federal government would be prepared to see Part IV (the Supreme Court) added and to have some form of "constitutional guarantees" if they did not involve amendment of the BNA Act, change in the distribution of powers, and were satisfactory in form. I said I equally thought that the addition of Part VII (regional disparities) would be acceptable but I had no way of knowing whether one could go further along the lines Premier Campbell wants. Mr. Hatfield was very forthright in saying that the enlargement of the package caused very real difficulties for him. The main points he touched on were the following:

1. The Supreme Court

He is still as opposed as he was at Victoria to Part IV. He thinks there should not be consultation about appointments to the Court and that having it only lends credence to the idea that there is bias among the judges if appointments are by the federal government only. I reminded him that the suspicion has for some time been such that there are limits on the use of the Supreme Court for jurisdictional disputes involving Quebec and Newfoundland. He recognizes this but his opposition to Part IV remains.

2. Constitutional guarantees for cultural security

Mr. Hatfield does not like this idea at all: not because he does not want to see the French culture preserved and protected but because anything that smacks of "unilingualism" causes him trouble in New Brunswick. He said section 1 of Bill 22 declaring French only to be the official language of Quebec had been extremely embarrassing for him. If there now was some form of guarantee for the French culture, this embarrassment would be renewed and deepened. If there has to be any guaranteeing at all, he wants to be sure it includes both official languages and cultures.

Apart from this point, Mr. Hatfield surprised us by saying that, if there are guarantees, he would like them to "enshrine" the New Brunswick Official Languages Act constitutionally. He does not want it to be exposed to repeal or change by some future legislature.

In reply to a question by me, he was a bit unclear whether he wanted such protection also to extend to the federal Official Languages Act. I told him I thought his idea would create real difficulties as I did not see how New Brunswick could be singled out for mention, nor did I see how any specific provision for Quebec or for the generality of provinces could be acceptable.

This part of the discussion ended up with my saying that we would be giving further attention to this whole question of "constitutional guarantees" and his concerns would be kept in mind as we tried to see what kind of formulation might be possible.

3. Regional disparities

Mr. Hatfield agrees that these must be included if cultural guarantees are included. He also agrees with Premier Campbell's approach: something more specific and enforceable than Part VII.

4. The amending formula

On the whole, he would prefer to see it modified as Mr. Lougheed wishes but either version is acceptable to him.

5. The general exercise and objective

Mr. Hatfield is strongly in favour of achieving "patriation" and getting complete capacity to amend in Canada. He thinks that the federal

government should make clear the importance of this apart from formal status. There are many jurisdictional conflicts - communications, resources, off-shore minerals - and consideration of change is not respectably possible until there is a method of amendment.

6. The position of Quebec

Mr. Hatfield confirmed what Mr. Campbell had said about Mr. Bourassa's remarks ~~at St. Andrews.~~ He said he had been quite definite about his concern over the raising of this matter in the midst of present problems, the Olympics, etc.

As you can see, with eight of the provinces now covered, the game has taken on new complications.


R.G.R.