

CONFIDENTIAL

June 16th, 1975.

c.c.: Mr. Carter
Mr. Gravelle
Mr. Hurley

MEMORANDUM FOR MRS. REED

The problem of "constitutional guarantees"
for "cultural security"

See the attached copy of a memorandum plus a rough draft of a "form" for the proclamation of the Governor General on the "patriation" of the constitution. As you will see, it is an attempt to put into a broader formulation the kind of possibilities that we discussed here. The final paragraph of the "form" is along the lines of the idea Don Thorson suggested but rather broader than just "communications".

Would you please take a good look at this proposal and let me have your comments on any aspect of it that you think is important. Primarily, I would want to know whether you see any constitutional difficulties about something along these lines. How much influence do you think a paragraph such as the final one would have? Would it be a significant protection for Quebec? Would it be too serious an inhibition for the federal Parliament or government?

The question of Article 59 of Victoria

The Nova Scotia officials raised a question that had not come up previously in my discussions. It was whether it will not be necessary in the proclamation to include a modified version of Article 59 of the Victoria Charter. Their point was that without such an Article the status of the "patriated" B.N.A. Act would not be clear and the content of "The Constitution of Canada" for purposes of the application of the amending procedure would not be clear. It may well be that they are right. I

would welcome your comments. If something along the lines of Article 59 has to be included, clearly there would have to be a modified schedule.

R.G.R.


P.S.: I am not sending a copy of the memorandum and the draft "form" to Don Thorson at this stage since I would like to have the Prime Minister's reactions before I formally take this matter up with any other department of government. Just as soon as I have the Prime Minister's reactions, if they are favourable, I will of course refer the matter to Don. If, in the meantime, you think you should discuss it with him, I would have no objection whatever.

R.G.R.


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MEMORANDUM FOR MR. CARTER

The question of "constitutional guarantees"

Further to our discussions in the course of our trip, I have now done a memorandum for the Prime Minister of the kind we talked about and I am sending it to him today with the "form" for the proclamation that we discussed. The latter remains precisely as we left it. I think the amendments that you proposed make it very much better than it was originally.

I am sending copies of the memorandum to Messrs. Gravelle and Hurley and to Mrs. Reed. It could well be that it would be useful for us to have a meeting in the course of the next few days to see what comments people have and to carry consideration of this a bit further. I am not for the moment sending a copy of the memorandum and of the "form" to Don Thorson since I would rather have the Prime Minister's reaction before discussing this with any other department or agency. It may well be that Barbara Reed will discuss the matter with Thorson in any event. I will make clear to her why I have not sent the memorandum to Don at this stage.

Handwritten signature in black ink, appearing to be 'J.S.B.' with a flourish.

DISCUSSION WITH PREMIERS RE "PATRIATION" OF CONSTITUTION

Nova Scotia - Premier Regan - June 13, 1975

Meeting - 12:00 noon with Premier Regan, Innis MacLeod Hal Stevens, Carter, RGR.
(Was to have been at 11:00 but Premier held in legislature for emergency legislation to end nurses' strike.)

Presentation- Outlined position of Premiers seen to date: Schreyer, Lougheed, Davis, Bourassa and Moores. Said essentially wanted to know whether N.S. would go along with proposal; whether it had any special problems or proposals; whether would agree in principle to some kind of "constitutional guarantees" for security of French culture.

Points Discussed:

(a) Mr. Regan was unclear on the precise plan: had the impression that all of Victoria Charter was proposed. Clarified this point.

(b) On amendment formula, Regan expressed some initial concern over any change in the Victoria provisions. Said there had been some criticism of veto for Ontario (OK for Quebec on cultural grounds) - it was "no more a province than N.S.". His defense had been it was an agreed package. If it were changed, there could be renewed criticism. However, on reflection he decided this would not be too difficult: if B.C. could accept an Ontario veto, N.S. could.

(c) On Supreme Court, Regan was strongly for inclusion. Agrees fully with Lougheed.

(d) On cultural guarantees, N.S. "would do the best it could" to accept and go along, but he would have to see the precise text proposed and would have to consult his colleagues. If properly worded, it could have some attraction for Acadians in N.S.

(e) If provisions went in with respect to culture, there would be pressure to have something in about regional disparities. This was fundamentally important to N.S. I said this clearly could not be ruled out as being contrary to the ground rules and that I would raise it with the P.M. (Part VII of Victoria)

(f) Regan asked about the Senate: had it not been covered by Victoria (appt. by the provinces to some degree). I said not. He referred to discussions (possibly Feb/71 or private) when P.M. had indicated would consider action on once amending formula agreed. He would like this raised with P.M. - not as a condition and not as something to be included in the package. I said I would mention to P.M.

(g) N.S. would be favourable to action for "patriation" on the basis proposed but:

- (i) would need to see the "constitutional guarantees", and
- (ii) if they were in, would want to have something like Part VII on Regional Disparities.

Procedure - Mr. Regan said he thought a conference was not necessary and probably should be avoided if agreement could be reached through bilateral discussions. He said they would like to see a text whenever one was ready. He planned to talk to "Dick" (Hatfield) and "Alex" (Campbell) at a meeting with the Governors of the New England states they would be attending shortly.

Separate Meeting with MacLeod and Stevens

From 11:00 to 12:00, while waiting for Regan, Carter and I met with MacLeod and Stevens. Two technical points were raised:

- (a) Re Part IX: omission of Articles 53, 54, 55

MacLeod pointed out substantive aspects: would leave procedure re change in Senate and powers of Senate in 91(1), also office of the Queen, also proportional rep. Could this change not be included in package? I pointed out ground rules: not get into BNA Act - "not break the shell". If did, no way to stop. If change that, why not powers re broadcasting; disallowance; reservation. He saw point, but said would have to raise with his Premier. I said OK: but be clear that it would not "worsen" the situation, would only leave it as it now is.

(b) Re Article 59: is it not needed?

Stevens argued that, if not in, the status of BNA Act, after process, would not be clear. Would it be a Canadian statute? A part of the Canadian constitution? (Here he and MacLeod also tied Act 59 to Part IX). I promised to take up with Justice.

DISCUSSION WITH PREMIERS RE "PATRIATION" OF CONSTITUTION

Newfoundland - Premier Moores - June 11, 1975

Meeting - 3:15 p.m. - Premier Moores, Jim Channing, Cy Abery, Frank Carter, RGR.

Presentation- Explained P.M.'s objective - dinner of April 9 and letter of April 19. Told of sequence with other provinces and positions taken by Messrs. Schreyer, Lougheed, Davis and Bourassa.

Discussion - (a) Mr. Moores said Nfld. had no problems with the proposal for "patriation" on the basis of the Victoria amendment formula.

(b) Re Mr. Lougheed's two points:

(i) The change re "Western provinces" would be for them to decide. He would expect a good deal of pressure on Mr. Barrett by the other three western Premiers.

(ii) He would favour inclusion of the Supreme Court proposals. He commented that there had never been a Supreme Court judge from Nfld.

(c) Re Mr. Bourassa's "constitutional guarantees", Mr. Moores said Nfld. would have no difficulty in principle. They had much sympathy for Quebec's feeling about its culture. They would want to look at what guarantees might be proposed, but they "would be sympathetic".

(d) Completion by the summer of 1976 would be quite feasible for Nfld. They would have no difficulty in their legislature. I told Mr. Moores, in reply to a question by him, that Mr. Bourassa "did not exclude" action in 1976 but felt that this matter would be of such importance that there might have to be "some kind of popular ratification", whether by referendum or in an election. This could affect timing.