

CONFIDENTIAL

November 27, 1975

MEMORANDUM FOR MR. ROBERTSON

c.c. M. Jodouin
Mr. Hurley
Mrs. Reed

Patriation of the Constitution

I have read your memorandum of November 27 and the attached copy of a memorandum you propose to send to the Prime Minister on the above subject. The latter reports on the discussions which I had with Arthur Tremblay and goes on to suggest a course of action.

Your description of Arthur's points is correct although it may exaggerate his intentions. To give you the setting, perhaps I could describe briefly my recollections of his thoughts. Arthur said that the handling of the patriation question was now "normal" in Quebec. By this he meant that he and his organization (Intergovernmental Affairs) had been charged with the responsibility. Henceforth he would be the one who would decide whether or not to seek Julien Chouinard's advice. He said that he was now in the process of preparing a submission to Cabinet which would give the Quebec Cabinet the first chance to have a thorough discussion of what was at issue. A date between December 10 and December 17 was to be set aside by the Cabinet for that discussion.

I indicated my worry about the "normalization" of the handling of the file in Quebec. I welcomed the presence of Arthur in the ball-game but made clear to him that only a very small group beside the Prime Minister were aware of the proposals in Ottawa. The other Premiers were not at all aware of all the later discussions which have taken place with Quebec.

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Arthur said he accepted the need for secrecy but he said it would also be quite impractical for the government to go into the Assemblée nationale with any proposal concerning patriation without having thought out carefully all the consequences. He felt that the proclamation as it now stood would not receive approval generally in Quebec. I told him that for us, the latest version of the proclamation was the end of the line and that we had probably gone as far as possible. Arthur said that he recognized our Prime Minister's desire to avoid opening the question of distribution of powers or adding materially to what was in the Victoria Charter. He thought however that even within the context of those restrictions, quite a bit could be done. He then went on to list the various possibilities which you have mentioned in your note to the Prime Minister.

Probably Arthur would have in mind a subtle approach to changes in the draft proclamation. His idea of First Ministers being able to act as a backstop to decisions by the Supreme Court on the Constitution which upset the political balance could be considered radical or could, on the other hand, involve a very modest expression such as "First Ministers will meet once a year to consider matters of general and/or constitutional importance". On the question of the spending power, he did not seem to be re-opening the proposal for limiting that power which had been talked about prior to Victoria but was instead linking it in a positive way to an exhortation (if not a requirement) to spend money on equalization payments.

Jim Hurley will be sending you a separate note on the possibility of an offer being made to the provinces, within a certain frame of limitations, to embark upon aspects of constitutional review once patriation has been accomplished. Arthur made it clear that such an assurance was important to Quebec. While he would like to see something on it in the proclamation, he would also be satisfied with a formal exchange of letters.

This would be quite wrong, I think.

I say all of the above to indicate that the sorts of things Arthur is talking about could be utterly impossible to accept or might be acceptable, depending on how they are put. Given that situation and given the fact that Mr. Bourassa will certainly have to find at least one or two small bones to give his Cabinet when they have their formal consideration of the subject in a couple of weeks, the Prime Minister in speaking to Mr. Bourassa could probably warn him strongly against seeking changes in substance but should probably not cut off at this stage of the game the possible acceptance of minor changes.

I believe the time has come to tell Mr. Bourassa of the federal fall-back position. It is only in the knowledge of that position that he will be able to decide how best to control his Cabinet in bringing forward reasonable further changes. If he fails, he will have done so with an advance knowledge of the consequences.

Having said all of this, you might wish to reflect the one thought of any importance above by adding a short P.S. to your note to the Prime Minister suggesting he not cut Bourassa off totally from any change whatever in the proposed proclamation.



F.A.G. Carter