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August 13, 1975

MEMORANDUM FOR MR. ROBERTSON

Your Note August 8 on Regina Meeting
of August 7, 1975 on Patriation of Constitution

I have compared your memorandum to file reporting on the Aug. 7, Regina discussions of patriation of the constitution with my notes made during the meeting. Your recollection of the various points made is very complete and I have only three relatively unimportant comments to make.

First, Mr. Blakeney indicated that he had no difficulty with the proposed procedure for patriation.

Second, he was slightly concerned about the perpetual veto to Ontario and Quebec, citing the problem that would certainly arise if some other province, during the next few decades, attains a population equal to 25% of the Canadian total.

Third, as regards the Supreme Court, my notes and my own recollection of the discussion indicate that Mr. Blakeney is likely to make suggestions designed to clarify the ambiguities of Part IV. He did state, however, that he would be prepared to accept Part IV if such suggestions "come under fire".

WLF
W.L. Haney

CONFIDENTIAL

August 8, 1975.

REGINA - August 7, 1975

Present: Premier Blakeney; Ken Lysyk (Deputy Attorney General), Bill Haney, R.G.R.

The meeting took place in the Premier's office from 11 to 12.20. I introduced the subject with an outline of the interviews that I had had with the various Premiers to that date. I then invited Premier Blakeney to raise any questions on which he would like to have further information and said I would welcome hearing his views.

Discussion

Premier Blakeney had been well briefed and made frequent reference to a memorandum that had evidently been prepared for him by Ken Lysyk (who had been on the staff of the Federal-Provincial Relations Branch of the PCO during a part of the period of the constitutional review). The main points Premier Blakeney made were the following:

1. The "patriation" exercise had a low priority as far as his government and Saskatchewan were concerned. He referred to Premier Thatcher having said that, if Saskatchewan had one hundred priorities, constitutional revision would be the one hundred and first. He said the position was more or less the same so far as "patriation" was concerned. That being so, he would not welcome any pressure to try to complete the exercise by the Olympics or by any other date in 1976.

Mr. Blakeney said that the fact of having to go to London for constitutional change did not cause him or his government any particular pain since it seemed clear that we were still periodically groping with the adjustment of a number of aspects of our constitution. In addition, he felt that the uncertainty of the present situation provided a flexibility that would be reduced when the Victoria

amending formula was adopted. I demurred at this and after discussion it became clear that what Mr. Blakeney had in mind is not the quantum of consent that is required in the new amending formula but the fact that it makes it necessary for a resolution of the Legislature to be secured in each case. He felt that in many instances it would be possible for a government to give assent if it could act without provoking a legislative debate. It might not be so easy under the new formula. He said that he was not happy about things that increased our constitutional rigidity nor was he happy about things that added shackles to the capacity of the federal government to act. In the course of this discussion, I pointed out that under the "patriation" plan, in which paragraphs 53, 54 and 55 of Part IX of Victoria would not be implemented, the total situation with respect to amendment would be more flexible than under the Victoria proposal. Mr. Blakeney had not perceived this point and he seemed to be in favour of the result.

2. The method of amendment

Mr. Blakeney said that he shared Mr. Lougheed's desire to have the requirement for the four Western provinces made parallel to that for the Atlantic provinces. He clearly did not feel as strongly on this point as Mr. Lougheed. He asked me whether my interpretation of the formula was that an amendment could be approved if three Western provinces agreed. I said that was so (apparently Mr. Lougheed had been given an interpretation - which Lysyk did not share - that western approval had to be with the definite inclusion of two provinces whose combined population exceeded 50 per cent of the western population). Mr. Lysyk then said that if Mr. Barrett objected too much to the straight "Atlantic" formulation possibly a compromise could be one in which western consent could be given by two provinces with 50 per cent or more of the population or any three provinces regardless of population. I said I would keep this in mind in case of need in the course of discussions.

Mr. Blakeney asked whether I had encountered any objection to the veto for provinces that had had at any time 25 per cent of the population of Canada. I said it had come up in Halifax with reference to Ontario but not with reference to Quebec. Mr. Blakeney said he was

a bit concerned at a provision which would retain a veto perpetually for a province regardless of the drop it might suffer in proportion of population. He wondered if it would not be desirable to introduce a "floor" of say 20 per cent below which the veto would no longer be retained. I made two comments in reply. In the first place, I said I thought that any attempt to modify the formula in so basic a way would mean that there would be no chance whatever of achieving agreement on "patriation". Quebec would perceive that the "floor" would be relevant only to Quebec and acceptance of the formula would become impossible. Secondly, since the "floor" would apply only to Quebec, it seemed to me it would be quite unrealistic. I thought there was no possibility of contemplating a situation in which constitutional amendments of general interest could be entered into without the agreement of Quebec. Mr. Blakeney was impressed by both points and said it was not a matter that he would press.

The third thing on the method of amendment that he raised was the participation of the Senate. He welcomed the reduction of its role by the 90 day suspensive veto provision but he saw no reason why the Senate should be involved at all. Would anyone object if the formula were changed to remove the Senate? I told him I did not know whether any particular province would raise objection but it would be a very wide departure both from the Victoria formula and from the fundamentals of our general legislative procedures. The matter was dropped and I am not certain whether Mr. Blakeney is likely to raise it again or not.

3. The Supreme Court

Mr. Blakeney thinks it would be desirable to include Part IV in the package. He does not feel as strongly as Mr. Lougheed and he raised the question whether Part IV could not be made clearer than it now is. I told him it had been the product of very difficult negotiation and I was dubious whether anything clearer or better was likely to emerge from a new effort. There appeared to be two points Mr. Blakeney has in mind: the ambiguity about the "appropriate province" for consultation in specific cases and the fact that there is no provision for a nominating council to consider names that might be raised by an Attorney General of a province.

4. Regional disparities

Mr. Blakeney said that he did not feel as strongly as Messrs. Regan - Campbell - Hatfield about the inclusion of Part VII of Victoria but on the whole he thought it would be desirable to have it inserted if there were going to be something on constitutional guarantees for Quebec. He thought that the provision on regional disparities could be something in the preamble to the proclamation only, Part IV in the operative part of the proclamation or both.

5. Constitutional guarantees

Premier Blakeney said that he fully understood the concern of Premier Bourassa about the preservation of the French language and the French culture. He had no objection in principle to the inclusion of something that might be appropriate to this effect. I outlined to him the kind of thing that had been discussed. Mr. Blakeney said that, while Saskatchewan would have no objection in principle, it would be very concerned indeed about the precise form and expression of the guarantees. He said there had been a very great increase in the consciousness of the "other" ethnic groups of their identity and anything that seemed to say that Canada was a bi-cultural country rather than a multi-cultural one could cause great difficulty. He stressed the fact that Saskatchewan is the only province in which the majority of the population are of origins other than English-speaking or French-speaking. I commented that it was apparent that the greatest sensitivity with respect to the form of the constitutional guarantees was in Saskatchewan and New Brunswick both of which had a demographic composition that was different from that of the other seven "anglophone" provinces. I said that we would almost certainly be discussing a text or texts at an early point with Premier Bourassa and that his points would be kept very much in mind. Mr. Blakeney said that he thought that, once that had occurred and once I had had my discussion with Premier Bourassa, it might be best to submit some overall text to the provincial governments so that they might have time to study the whole thing before further comments or reactions were sought.