

CONFIDENTIAL

November 27, 1975

MEMORANDUM FOR MR. R.G. ROBERTSON

cc: Mr. F.A.G. Carter
Mr. P. Jodouin
Mrs. B.J. Reed

Arthur Tremblay and Patriation

The Quebec position would appear to be shifting once again and the strategy that you propose to the Prime Minister in consequence is sound. Barbara Reed declares herself "enthusiastically in agreement" with your proposed approach.

It might be possible, however, to hold the door open in an indirect fashion to accommodate the interests of Mr. Tremblay in the following manner:

- a) The Prime Minister could inform Mr. Bourassa that it is well nigh impossible to add any new element of substance to the Proclamation and that his advisors should be so informed immediately;
- b) The Prime Minister could further indicate to Mr. Bourassa that, failing agreement in principle on the part of the government of Quebec, the federal government will be obliged to transmit the document to the other Premiers and to proceed with the fall-back position;
- c) The Prime Minister might further wish to indicate to Mr. Bourassa that although the federal government is not disposed to add any further elements of substance to the Proclamation, this does not mean that the governments of Canada collectively could not begin

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to exercise their sovereign powers of amendment after Proclamation; he might wish to suggest - say - that the eleven First Ministers assembled in plenary constitutional conference in (month) could give formal approval to the Proclamation with a commitment to secure legislative approval by (month) so that the Governor General could publish the Proclamation by (precise date); at the same conference, the First Ministers could solemnly declare that three months after the official Proclamation by the Governor General, an intergovernmental committee of officials will be constituted to begin a study of the (spending power?) with the intention of providing the first concrete case of the sovereign exercise of the power of constitutional amendment in Canada concerning those matters which, previously, could not be amended in Canada.

In other words: Mr. Tremblay should be reassured that his ideas about constitutional reform are not for naught (so to speak!); he should further be informed that the current exercise is basically one of patriation, not of amendment; some concrete sign that the government of Canada (and the other governments) do not consider patriation to be the end of the road in terms of constitutional review, but rather that patriation is the sine qua non of subsequent constitutional review, might be in order; and finally, the amending formula contained in the Proclamation, which does not require unanimity for amendment, would not make it more difficult for Quebec to pursue amendment in the future and might, in fact, make it easier. The same formula will provide Quebec with an explicit constitutional veto. Articles 38 and 40, which had not been contemplated in April, are of great significance for Quebec.


James Ross Hurley