

May 21, 1975.

"PATRIATION" OF THE CONSTITUTION: THE FALL-BACK POSITION

(a) Content of the Fall-back

To provide an incentive to the provinces to adopt the package, by action reasonably soon after "patriation", it should include:

1. The amending procedure

- Part IX less Articles 53-55

- Article 49 modified to call for "2 of the Western Provinces" without the "50% of population" provision

2. The Supreme Court provisions (Part IV)

While not a part of the "attraction", there clearly should be an interim amending provision.

Part IV will be attractive to all provinces, although Mr. Hatfield personally may not like it. While it is not attractive to the federal government, it would be a small price to pay for getting a good amending procedure.

Part IV should not be made effective forthwith, as obviously could be done, for two reasons:

1. To provide an incentive to adopt the amending procedure, and

2. Because it is an inhibition on the federal government and it ought not to accept that if there is no net constitutional gain.

(b) Tactics with the Fall-back

1. It ought not to be mentioned or hinted at in the first round at all. Mention of it could be interpreted as a threat.

2. After the first round, there probably should be a second round of visits, although that may not have to be complete. Possibly some of the Premiers could be advised by letter from the Prime Minister with indication that I would visit them to discuss if they so wish.

3. Subject to further developments in "Round One", the provinces to be notified by actual visit, and the probable sequence, would be:

- (i) Quebec
- (ii) B.C. - because of the change in Article 49
- (iii) Ontario - because of importance
- (iv) N.B. - because of Mr.Hatfield's personal views on Part IV
- (v) Alberta - to gain the strong personal support of Mr.Lougheed for "his" package.

4. It could well be desirable not to proceed to the "fall-back" action without a meeting of the Prime Minister and Premiers. Not to have a discussion, with a last chance to agree, might seem unduly high-handed.

(c) Quebec and the "Fall-back"

The "fall-back" may be subject to harsh attack in Quebec if it does not have somewhere some recognition of the problem of "sécurité culturelle". This could not be in the substance of the provisions without clearly departing from the basis in the Victoria Charter. Possibilities might be:

- (i) Something from or based on the Language Rights provisions of Victoria;
- (ii) A preambular paragraph for the proposed Proclamation of the Governor General which would relate to culture and language as things requiring the support of provinces of both "groups" for amendments;

(iii) Conceivably some provision like the Scottish rights" provision in Britain to be brought in with the "package" - either an integral part of it or a severable one.

(Possibly:

- to apply in respect of actions by the Parliament or government of Canada which adversely affect the security of the French culture in Canada (or Quebec?)
- to be triggered by a resolution of the Assemblée Nationale of Quebec (2/3 majority?)
- to call for debate in the House of Commons within 90(?) days
- action to reject resolution of Assemblée Nationale to require a majority of the members of the House of Commons including a majority of the Members of Parliament from Quebec
- action on the resolution not to affect directly any law or action, but to be "indicative".)