

"Patriation" of the Constitution:
meeting with Mr. Bourassa

- Québec, May 28, 1975

Dinner-meeting at Café d'Europe, 8:00 p.m.
- present only Mr. Bourassa, Julien Chouinard and myself.
Meeting went on until 11:15 p.m.

Presentation

I started by outlining the reactions I had had from the Premiers I had visited so far: Mr. Schreyer - would go along with "patriation" + amending formula; Mr. Lougheed - subject to Cabinet, would go with the plan but (a) change in "Western" part of the formula to eliminate the population provision, and (b) include Part IV on the Supreme Court; Mr. Davis - would like to see "patriation"; possibly the Supreme Court; would "not see Quebec isolated".

Mr. Bourassa did not comment on any of the positions and did not seem surprised. He said Chouinard had told him of my report by telephone after I saw Mr. Davis.

Attitude toward "Patriation"

(1) "If we cannot do it when Pierre is at Ottawa and I am here, we never can". In that sense, Mr. Bourassa was completely favourable to an attempt to "patriate".

(2) It cannot be only "patriation" + the amending formula: there must be some "guarantees" that the "patriation" could not expose Quebec to action that would erode or destroy its culture.

Mr. Bourassa said that, after 200 years of history in which the decisions and actions in London had been fair and just on the whole, the Quebec people believe, rightly or wrongly, that there is a "protection" in our having to go there to amend the essential parts of our constitution. While "the man on St. Jean Street" (50 feet away) never thinks of the constitution, once the question is raised, and fears are aroused, he will be very concerned if he thinks complete control will be in Canada, in the hands of the "majority" with no clear protections for his way of life - the Quebec "culture". The "man in the street" is probably right that London can be expected to be more objective than a government in Ottawa which is an interested party. He does not understand any subtleties about the British Parliament not going behind a resolution from the Canadian Parliament.

The protection that would be reassuring - and politically necessary - would not have to be a change in the distribution of powers, but some kind of "constitutional guarantees".

(3) While the amending formula is not a "bargaining lever", it is going to be almost impossible to persuade large numbers of people, both those who are informed and those who are not, that Quebec is not "giving up something" in accepting a formula. There is some substance in this in the sense referred to above: a "historic protection" would be removed. He said also Quebecers are "un peu normand" and do not want to be nailed down on something where they cannot really see what it may mean at some time. The comment seemed to add up to an underlining of the argument that some kind of "guarantee" is needed.

(4) While the demographic projections are relevant and important (decline in the Quebec proportion of Canadian population from 1971 - 27.95% to 2001 - 21.6-23.7%), they could not be argued strongly as a factor for "patriation". To do so would give emphasis to the "pessimistic" position of French Canada and would produce adverse reactions in a variety of ways. They would also, if argued, add to the pressure for very secure guarantees against a weakening position.

The nature of "constitutional guarantees"

I discussed "guarantees" on the basis of my document of May 28 (attached). Said that different kinds of "action" that could be a threat to French culture had to be met in different ways

- action to change the constitution - a Quebec veto in the formula (provided for)
- biased interpretation by the Supreme Court - protections about appointments (provided for in Victoria, Part IV)
- ultra vires action by the federal government - protection by the Supreme Court (as above)
- intra vires action by the federal government (or Parliament) - it seemed to be this that is the problem.

"Guarantees" against intra vires action that could be a threat to Quebec culture could take a variety of forms:

(a) The Victoria language rights clauses

Mr. Bourassa said these would not be helpful. They would revive the controversy over Bill 22, which, he said, was now being accepted even if it was not liked by both English-speaking and French-speaking.

(b) A paragraph in the preamble to the Proclamation on "principles" relating to, either, the French culture, based on the French language, or the two cultures based on the two official languages.

I went into this and referred to the B.N.A. Act preamble with its "similar in principle" to the British constitution. Both Mr. Bourassa and Mr. Chouinard were interested, but felt this would in itself not be enough to reassure.

(c) Some substantive provision that would establish a right to challenge or prevent adverse action

I said I could not see how this would be established without getting into "powers". Both

Mr. Bourassa and Mr. Chouinard said they thought it could. I asked if they had any draft. Chouinard said he had worked on some but had nothing ready. I said I thought it would be for him to produce something and we could look at it. He said he would do so. I warned that it must not get into "powers" - not touch sections 91 or 92 - or we would never be able to limit the pressures by one and all. Both Mr. Bourassa and Mr. Chouinard agreed.

I left with Chouinard a copy of my analysis and of Barbara Reed's memorandum on preambles (May 28, 1975) (attached).

Areas to be protected against

I asked Mr. Bourassa what he thought the sensitive areas were in respect of which protections would have to seem convincing. He said that "social policy" was no longer a field of concern. Arrangements were developing well and he did not think we had to worry about it. The main areas were the ones that he had mentioned in various speeches - immigration and communications.

So far as immigration was concerned, he thought that, as in the case of social policy, practical arrangements might carry adequate conviction. I formed the impression that the unstated half of his view was that he does not see how one can have provisions that would mean anything as long as there is freedom of movement across provincial boundaries within Canada.

Mr. Bourassa focussed on communications. He said it was not enough to be satisfied with a situation that was secure when Pierre Trudeau was Prime Minister and Gérard Pelletier was Minister of Communications. There had to be something that would provide some confidence against a situation when Leonard Jones was Minister and there was a government with little or weak francophone representation. It was a matter of ensuring that the federal government and federal agencies could not cause or allow things to happen, especially in radio and television broadcasting, that would gradually undermine this important instrument of French culture. He thought

that Mr. Pelletier had been unduly rigid in the recent conferences and that there was a failure at Ottawa to try to imagine the reality of the risk there could be with a government of quite different complexion.

There was only a passing reference to the use of the federal spending power in relation to the arts and letters. Mr. Bourassa did say, however, that he did not see why it was so difficult to try to get some arrangement under which there would be consultation with the government of Quebec about what orchestras were going to be supported by federal funds, what galleries, etc. He did not, at any time, suggest that the federal funds should be put into provincial hands for payment - or that there should be a provincial veto.

Possible action

(1) An acceptable solution would, in Mr. Bourassa's judgment, have to be presented in some way for "ratification" by the Quebec people.

Mr. Bourassa thinks a referendum would be very dangerous: would play right into the hands of the Parti Québécois and their referendum proposal.

The best course would be presentation in an election on "'patriation' plus other things". He would be prepared to contemplate this about, say, the autumn of 1976.

(2) A possibility would be to present a resolution to the Assemblée nationale some time in the session of 1975-76 with the intention of not carrying it to conclusion at that time. This would provide the means of explaining and arguing for the proposition with a view to "ratification" at an election.

(3) Mr. Bourassa expressed his very strong hope that nothing would be done that would put him in the position of appearing to block action or of having to say "non" again. He said he was genuinely interested in trying to solve the problem but there had to be some confidence in his judgment as to what he could

sell to Quebec. To attempt to force something that would be wide open to attack or that would create strong negative emotions would play into the hands of the separatists. He was a federalist; he wanted to see the country held together; and he would do what he could but there were limits to the possible.

(4) Mr. Bourassa said he hoped there would be no question of unilateral action by Ottawa to "patriate" and establish an amending procedure. He said he thought this too would afford great advantage to the separatist cause. (I said nothing about the kind of fall-back position that has been discussed.)

Information to the Premiers

I asked Mr. Bourassa what I could say to the other Premiers about his position. He said I could inform them that he was interested in the Prime Minister's proposal to achieve "patriation" with the amending formula agreed on at Victoria but that he was satisfied that there would also have to be some kind of "constitutional guarantees" which would be regarded as convincing in Quebec against the future risks to its culture. He said nothing whatever either at that point or during the discussion about any change in the distribution of powers so presumably this fact can be reflected in describing his position.

Mr. Bourassa agreed that there was no reason why I should not go ahead to discuss the proposal with the other Premiers as the Prime Minister had suggested.

W.S.R.