

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Premier Lougheed to Prime Minister Trudeau

October 14, 1976

Ottawa
October 30-November 1, 1978

PREMIER LOUGHEED TO PRIME MINISTER TRUDEAU, OCTOBER 14, 1976

My dear Prime Minister:

Further to my letter of September 2, 1976 and my telex of October 3, 1976, I wish to inform you of the outcome of the deliberations by the ten Canadian Premiers on the issues raised by you in your letter of March 31, 1976 relative to patriation of the Constitution from Westminster to Canada.

Your letter of March 31, 1976 outlined three possible options and served as a framework for our deliberations. The provinces agreed in May 1976 to proceed with an examination of all three options. You will recall that your option 3 includes patriation, an amending formula and a number of other substantive changes to the British North America Act which were contained in the draft proclamation appended to your letter of March 31, 1976. You will also recall that when the premiers had private discussions on this matter at your residence during the evening of June 14, 1976, you indicated that you would be prepared to accept any proposal which had been unanimously agreed to by the provinces.

At the same time, you indicated that you hoped we could consider the matter over the summer and report to you early in the fall as to the outcome of our deliberations and discussions.

As Chairman of the Annual Conference of Premiers, I would like to now deal with the matters as they were outlined in your letter of March 31, 1976.

Patriation

All provinces agreed with the objective of patriation. They also agreed that patriation should not be undertaken without a consensus being developed on an expansion of the role of the provinces and/or jurisdiction in the following areas: culture, communications, Supreme Court of Canada, spending power, Senate representation and regional disparities. Later in the letter I will endeavour to give you some idea of our discussions on the above matters.

Amending Formula

Considerable time was spent on this important subject and the unanimous agreement of the provinces was not secured on a specific formula. Eight provinces agreed to the amending formula as drafted in Victoria in 1971 and as proposed by you in your draft proclamation. British Columbia wishes to have the Victoria Formula modified to reflect its view that British Columbia should be treated as a distinct entity with its own separate veto. In this sense it would be in the same position as Ontario and Quebec. Alberta held to the view that a constitutional amending formula should not permit an amendment that would take away rights, proprietary interests and jurisdiction from any province without the concurrence of that province. In this regard, Alberta was referring to matters arising under Sections 92, 93 and 109 of the British North America Act.

Matters Unanimously Agreed To

A number of matters were dealt with and unanimously agreed to. Specific texts were considered and given approval, subject to revision by draftsmen.

- a) A greater degree of provincial involvement in immigration.
- b) A confirmation of the language rights of English and French generally along the lines discussed in Victoria in 1971.
- c) A strengthening of jurisdiction of provincial governments of taxation in the areas of primary production from lands, mines, minerals and forests.

- d) A provision that the declaratory powers of the federal government to declare a particular work for the general advantage of Canada would only be exercised when the province affected concurred.
- e) That a conference composed of the eleven First Ministers of Canada should be held at least once a year as a constitutional requirement.
- f) That the creation of new provinces should be subject to any amending formula consensus.

As already mentioned under the remarks on patriation, the provinces were of the view that while patriation was desirable it should be accompanied by the expansion of provincial jurisdiction and involvement in certain areas. The Premiers believed that discussions on these matters should be held with the federal government because they involve the federal government to a significant degree.

- a) **Culture** — You will recall that culture was referred to in Parts IV and VI of the draft proclamation. The interprovincial discussions on culture focused on the addition of a new concurrent power to be included in the Constitution. This power would refer to arts, literature and cultural heritage and would be subject to provincial paramountcy. On this matter, there was a high degree of consensus on the principle and considerable progress was made with respect to a solution. There was also, however, firm opinion from one province that the provinces and the federal government should have concurrent jurisdictional powers in the area.
- b) **Communications** — In the draft proclamation, communications was referred to in Part VI. Discussions on this subject related to a greater provincial control in communications, particularly in the area of cable television.
- c) **Supreme Court of Canada** — In general, discussions on this topic developed from those articles found in Part II of the draft proclamation. The provinces unanimously agreed to a greater role for the provinces in the appointment of Supreme Court judges than provided for in the draft proclamation. In addition, a number of other modifications were suggested to the provisions found in the draft proclamation.
- d) **Spending Power** — Discussion on this matter focused on the necessity and desirability of having a consensus mechanism which must be applied before the federal government could exercise its spending power in areas of provincial jurisdiction.
- e) **Senate Representation** — Discussion on this subject related to British Columbia's proposal that Senate representation for that province be increased.
- f) **Regional Disparities and Equalization** — In the draft proclamation, Regional Disparities was referred to in Part V. The discussions on this topic focused on the expansion and strengthening of this section to include a reference to equalization. There was unanimous agreement on the clause contained in the draft proclamation and a high degree of consensus on incorporating clauses in the Constitution providing for equalization.

Other matters were discussed, but it was felt by the Premiers that their deliberations had been of a preliminary and exploratory nature. As such, in any future meeting it is possible that individual

provinces may present additional suggestions for consideration.

The Premiers were of the view that significant progress on this complex matter had occurred. It was felt that further progress would require discussions between the provinces and the federal government. It was concluded by the Premiers that the next step should be for you to meet with the Premiers and develop the discussions reflected in this letter. The Premiers felt that it would now be appropriate for them to accept your invitation for further discussions in the near future, at a mutually agreeable time.

Given the importance of this subject and the reference to it in your Throne Speech of October 12, 1976, the other Premiers may wish to join with me in tabling this letter before our respective provincial legislatures or otherwise making this letter public on October 20, 1976. If you have any objection could you please advise me forthwith.

Signed
Peter Lougheed