



Federal-Provincial  
Relations Office

Bureau des relations  
fédérales-provinciales

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MR. GRAVELLE  
MRS. REED  
MR. HURLEY

See the attached copy  
of a memorandum I have done for  
Mr. Carter on the "patriation"  
exercise. Please give this  
some thought. I think we may  
well want to have some discussion  
about the questions that are  
raised here before the end  
of this week.

sept. 15/75

R.G.R.

CONFIDENTIAL

September 15, 1975.

c.c.: Mr. Gravelle  
Mrs. Reed  
Mr. Hurley

MEMORANDUM FOR MR. CARTER

The next developments on the  
"patriation" of the constitution

I had a brief discussion with the Prime Minister on September 10 on the "patriation" exercise and there will, I hope, be an opportunity for a further discussion before too long. The Prime Minister had read Jim Hurley's memorandum of September 5 with its attachments and my covering memorandum of September 8. The discussion that we had was in advance of a meeting of a quite different purpose and it did not cover everything that is involved. It was, however, helpful on several points.

With regard to the three questions for decision raised in my memorandum:

- (a) The Prime Minister agrees that you and I should try to see Mr. Barrett in order to complete the round of discussions with the provinces. I shall get in touch with his office in the next day or two to see what can be arranged.
- (b) The Prime Minister may try himself to speak to Mr. Bourassa to get further clarification of his position. He is likely to be in touch with him on other matters and, if so, he will use the occasion for some discussion.
- (c) We had some short discussion of strategy in the light of recent developments. The Prime Minister, subject to his discussion with Mr. Bourassa, is not very optimistic about getting an agreed position that would permit agreed action

in 1976. On the other hand, he is reluctant to slow down the process of discussion and accept a delay until 1977. The only alternative to those is, of course, use of the "fall back" position. It has obvious dangers.

I told the Prime Minister that I had been wondering whether there should not be a further effort at discussion - and a further effort to get agreement - in which the "fall back" position would be used. We have not made any reference to it at all as yet and it is likely that the Premiers think that, failing agreement, the Prime Minister and the federal government will be stalled in getting "patriation" and the amending procedure. If it were made clear that this is not going to be the case and that there is a course which will permit action on a unilateral basis, it is not impossible that that could lead to some modifications of position. I told the Prime Minister that it seemed to me that, as compared with the "fall back" action, there is something for at least 8 of the 10 provinces that would be advantageous in the "package" that we are seeking to get agreement on.

If we were to move on the "fall back" option, it would establish purely and simply the Victoria amending formula to come into effect when all 10 provinces had passed a resolution of approval. As compared with that situation, if there were agreement on the "package", there would be attractions for most of the provinces:

For Quebec - constitutional guarantees plus the Supreme Court provision plus regional disparities.

For the Atlantic provinces - the regional disparities guarantee.

For Alberta - the Supreme Court provision and possibly a change in the amending formula re western provinces.

For Saskatchewan and Manitoba - the same items as for Alberta plus the provision on regional disparities.

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The only provinces for which there is no specific attraction in an agreed "package" rather than in the "fall back" are British Columbia and Ontario. Ontario would almost certainly come along if Quebec and the other provinces do so. This may well leave only British Columbia with a disposition against the agreed "package".

Apart from the above considerations, it is quite possible that all the Premiers might be disposed to find it more attractive to be participants in an historic action to "patriate" the constitution and end the frustration of an amending formula than to be by-standers while the Prime Minister and the federal government accomplish this alone. In that sense, there may be some attraction for all 10 in seeing that the "fall back" option is not used.

The Prime Minister was interested in this idea and asked me to give it further thought with a view to more discussion when that is possible. I would very much like to have your comments and suggestions. At one stage or another - probably at a fairly early point - it seems almost certain that we are going to have to say something about the "fall back" possibility. I think we must consider very carefully just how best to do this since it is obviously a pretty explosive item.

Perhaps we should try to get together to talk about this matter in this office before the end of the week. So far as I am concerned, Wednesday <sup>PM</sup> or Thursday afternoon about 4 would do. If either time would suit you, please let Louise know and we will arrange a meeting.

R.G.R.